



Australian  
Human Rights  
Commission  
*everyone, everywhere, everyday*

---

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

.....

Australian Human Rights Commission Submission  
to the Joint Standing Committee on Foreign Affairs,  
Defence and Trade – Human Rights Sub-  
Committee

August 2011

---

Australian Human  
Rights Commission  
ABN 47 996 232 602

Level 3  
175 Pitt Street  
Sydney NSW 2000

GPO Box 5218  
Sydney NSW 2001

General enquiries  
Complaints infoline  
TTY  
[www.humanrights.gov.au](http://www.humanrights.gov.au)

1300 369 711  
1300 656 419  
1800 620 241

## Table of Contents

<b>1</b>	<b>Introduction and Background .....</b>	<b>3</b>
	(a) <i>Attendance at Dialogues .....</i>	3
	(b) <i>Preparation of Briefing .....</i>	4
	(c) <i>Technical Cooperation Programs with China and Vietnam .....</i>	4
<b>2</b>	<b>Response to the Terms of Reference .....</b>	<b>6</b>
<b>2.1</b>	<b><i>Involvement of Non-Government Organisations .....</i></b>	<b>6</b>
<b>2.2</b>	<b><i>Monitoring and Evaluation of Outcomes .....</i></b>	<b>7</b>
	(a) <i>General Observations .....</i>	7
	(b) <i>China-Australia Human Rights Technical Cooperation Program.....</i>	9
	(i) <i>Outcomes from Activities of the 2010-2011 China HRTC Program .....</i>	9
	(ii) <i>Outcomes from Earlier Years of the China HRTC Program.....</i>	26
	(c) <i>Vietnam-Australia Human Rights Technical Cooperation Program.....</i>	31

## 1 Introduction and Background

1. The Australian Human Rights Commission appreciates the opportunity to provide a submission to the Inquiry into Australia's Human Rights Dialogues with China and Vietnam. The Commission does not propose responding to all of the terms of reference. Because the Commission's direct involvement in the Dialogue process is quite limited, it is not in a position to provide highly insightful comments on all areas being covered by the inquiry. As such, this submission addresses two of the terms of reference:
    - involvement of non-government organisations;
    - the monitoring and evaluation of outcomes including an assessment of whether any human rights reforms within those countries have been obtained.
  2. The Commission participates in the Dialogue processes with China and Vietnam in three ways:
    - a. 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;
    - b. 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
    - c. 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.
- (a) *Attendance at Dialogues*
3. The Commission was not invited to attend the first two Dialogues with China in 1997 or 1998, but has been invited to and attended all of the China Dialogues since 1999. The Commission has attended all of the Dialogues with Vietnam from the initial session in 2002. 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.
  4. The Commission views the Dialogues as activities of the Executive and recognises that as an independent statutory body its role in the Dialogues is 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.

5. It should be noted that 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 approach valuable in demonstrating to the Dialogue partners that pluralism is respected in Australia.

*(b) Preparation of Briefing*

6. The Commission provides briefing at the invitation of the Department of Foreign Affairs and Trade (DFAT) on subjects nominated by DFAT. This briefing has focussed mainly on the role of the Australian Human Rights Commission, as well as various domestic human rights issues that fall within the Commission's responsibilities. This has included briefings on children's rights, gender equality, disability, indigenous affairs and other areas.

7. The Commission also provides the Dialogues with briefings on progress in the implementation of the human rights technical cooperation programs. Where the Dialogue agenda includes approval of the next cycle of the cooperation program, the Commission also provides a short outline of the activities recommended for implementation in the next cycle.

*(c) Technical Cooperation Programs with China and Vietnam*

8. Both of the human rights technical cooperation (HRTC) 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.

9. The program with China is the larger of the two and it also has the longest history. The proposal for a human rights technical cooperation program was put forward at the first dialogue session in 1997, as an avenue for providing practical capacity building for key Chinese agencies in areas relevant to human rights protection. The program commenced in 1998.

10. HRTC activities focus on three priority theme areas:

- legal reform,
- women's and children's rights; and
- ethnic minority rights.

11. Each activity is designed and implemented through a cooperative venture between the Australian Human Rights Commission and a particular Chinese

organisation. In addition, a great many Australian agencies and professionals from the government and community sectors contribute technical expertise to the program.

12. There are approximately a dozen Chinese partner agencies, consisting of:
  - 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
  - United Nations Association of China.
13. Methods for delivery of program activities include seminars and workshops in China, study visits to Australia by Chinese delegations, short work placements in Australian organisations and a small number of scholarships. The program addresses a wide variety of topics including domestic violence prevention, reproductive health rights, criminal justice procedures, humane treatment of detainees in correctional facilities, as well as alternatives to detention. In recent years some activities have also aimed to encourage the emerging civil society in China.
14. HRTC activities support legislative and policy initiatives related to human rights, as well as more grass-roots activities such as pilot programs. The program has been able to assist some quite major reform programs being pursued by the Chinese authorities in areas relevant to human rights.
15. The HRTC has grown progressively since its inception, in terms of both funding and number of partner agencies. AusAID funding for the 2010-2011 program cycle was \$2.5 million.
16. The human rights technical cooperation program with Vietnam is more recent, having commenced in 2006. Implementation of the Vietnam HRTC follows a quite similar model to the program with China. Each activity in the program is implemented as a cooperative venture between the Commission and a particular Vietnamese organisation. Activities include seminars and training workshops, study visits, development of publications and other initiatives.
17. The Commission is currently working with seven Vietnamese partner agencies in the HRTC:
  - 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
  - Vietnam Women's Union
18. Subject areas that have been addressed in HRTC activities include skills for conducting community education on legal rights and responsibilities rights, human rights training for lawyers, raising awareness of women's rights, access to the court system and administration of criminal justice. The Vietnam HRTC is a smaller program than the one with China. The funding for the most recent cycle in 2010-2011 was approximately \$1.1 million.
19. Both the China and Vietnam HRTC programs are linked to the Human Rights Dialogues, the processes for their formal approval. The usual process is that the next cycle of each program is approved at the regular Dialogue sessions. However, where this is not practical due to delays in the scheduling sessions, approval has been given out-of-session though an exchange of letters between the Dialogue partners.

## **2 Response to the Terms of Reference**

### **2.1 Involvement of Non-Government Organisations**

20. Commission supports the involvement of non-government organisations in the Human Rights Dialogues. They are a valuable source of information and experience and their participation gives the Dialogue process added credibility, transparency and accountability.
21. The Commission welcomes efforts that have been made by the Australian Government to engage Australian NGOs in the Dialogue. Those efforts include seeking written submissions from interested NGOs for incorporation into the brief which DFAT provides to Australian delegates, raising their concerns during the formal Dialogue session and providing debriefs on the Dialogues during the regular DFAT-NGO consultations on human rights and on other occasions. In the case of the China-Australia Human Rights Dialogue (when held in Australia) Australian NGOs have had opportunities to interact directly with Dialogue delegates through participation in parallel talks and welcome receptions
22. The Commission believes that these initiatives should be maintained and strengthened. In addition, various other options have been proposed by NGOs to facilitate more substantial participation by their sector. These have included inviting NGOs to attend the Dialogue meetings in an observer capacity, holding informal seminars with NGOs in conjunction with the formal Dialogue, and conducting 'parallel Dialogues' involving NGOs, academics and legal experts at the same time as, but separate from, the government meeting. These ideas all have merit and are worth exploring further.
23. The 13th round of the China-Australia Human Rights Dialogue, held in Beijing in December 2010, included a positive example of NGO participation. After the formal Dialogue session concluded, a short symposium of Chinese NGOs was

convened. The symposium was attended by representative of the China Foundation for Poverty Alleviation, China Educational Association for International Exchanges, China Centre for Promotion of Grassroots Democracy, China Society for Human Rights Studies, China Tibetology Research Centre, Internet Society of China and Beijing Migrant Workers' Legal Aid Organisation. Each NGO gave a short presentation on their role and activities in relation to human rights. While the symposium did not involve Australian NGOs, members of the Australian delegation attended and were given the opportunity to ask questions and share information with the Chinese participants. Although the discussion was fairly limited in terms of both duration and content, it was still quite a useful exchange. The Commission sees value in continued events of this type in future Dialogues, hopefully in even more substantial formats.

24. While the Commission supports these initiatives in principle, maintaining the trust and confidence of the overseas Dialogue partners also means that steps to increase the engagement of NGOs needs to be pursued carefully and with sensitivity. While most NGOs would be acceptable to Dialogue partners there would be some that would be considered unacceptable as direct interlocutors. In such circumstances, efforts to secure direct involvement of NGOs could make the Dialogues unmanageable and unfruitful. Dealing with these sensitivities means that reaching a point where Australian and overseas NGOs achieve an optimum level of involvement in the Dialogues will inevitably be an incremental process.

## **2.2 *Monitoring and Evaluation of Outcomes***

### *(a) General Observations*

25. The Commission sees its most significant connection with the Human Rights Dialogues as being through the human rights technical cooperation programs which operate under the Dialogues. The most useful insights that the Commission can provide to this inquiry are from the perspective of its role as the implementing agency for these programs. For that reason, the majority of this submission is focussed on the following term of reference:

*'the monitoring and evaluation of outcomes including an assessment of whether any human rights reforms within those countries have been obtained'*

26. To the extent that the two human rights technical cooperation programs form part of the overall Dialogue process, their results and achievements may be considered outcomes of the Human Rights Dialogues with China and Vietnam.
27. The Commission submits that technical cooperation in human rights is an important vehicle for achieving practical outcomes from the Human Rights Dialogue process. These programs build on the periodic Dialogue discussions by facilitating ongoing and more in-depth exchanges addressing issues relevant to the protection and promotion of human rights. Technical cooperation programs that are well-designed, properly targeted and implemented to a high standard can make a significant contribution to the

aims of the Human Rights Dialogues by supporting key reform initiatives in the partner countries.

28. While the formal Dialogue sessions engage relatively high level officials, technical cooperation programs afford opportunities to also work with, and influence, officials more directly engaged in development and delivery of policies and programs that impact on the rights of citizens. And more generally, programs of technical cooperation assist in building close relationships between relevant agencies in each country, generating goodwill and trust which benefits the Human Rights Dialogue as well as the wider relationship with the partner country.
29. In a strategic sense, technical cooperation programs also provide a degree of leverage for the Human Rights Dialogues. In the Commission's experience, the partner countries are more enthusiastic about their participation in the technical cooperation programs than the Dialogue. This is particularly the case with China. They tend to view the cooperation programs more positively because they are seen as less threatening and a source of access to a range of opportunities. Their desire for the continuation of these programs provides a level of incentive for them to 'come to the table' and engage in the regular Dialogue sessions.
30. The Commission therefore considers that continuing participation by Australia in human rights technical cooperation with China and Vietnam should be an integral part of strategies to maximise the effectiveness of Human Rights Dialogues with those countries.
31. The Commission is keen to continue supporting the Dialogue process through future participation in programs of human rights technical cooperation with China and Vietnam. It is our view that the Commission's effectiveness in this endeavour would be maximised through the establishment of a strategic partnership with AusAID, governing the funding and implementation of these and other programs managed by the Commission on AusAID's behalf. The Commission's current and potential work with AusAID involves implementation of programs in China and Vietnam and a number of other countries. Establishing an over-arching framework for these programs would, in our view, contribute to even more effective collaboration between the Commission and AusAID. A strategic partnership could provide a more cohesive and flexible mechanism for the Commission to make available its staff and expertise for these programs.
32. The remainder of this submission focuses on highlighting some of the main outcomes that have been achieved from the HRTC programs, including contribution to human rights reforms in China and Vietnam. These outcomes, identified through the monitoring and evaluation strategies applied in the two programs, demonstrate how technical cooperation can complement and enhance the Dialogue process by providing an avenue for practical capacity building and more in-depth exchanges on issues central to the Dialogue.
33. The following sections highlight some key outcomes from activities of the China and Vietnam HRTC Programs. As indicated in the following material,



the outcomes from the China HRTC program are more extensive, primarily because it is a larger program with a longer history. The fact that it has had more time to evolve and develop has enabled identification of longer term and more substantial outcomes arising from activities conducted in earlier years. As the Vietnam HRTC is a more recently established program, the main focus of these comments is on short –term capacity building resulting from program activities. However, there are also encouraging signs that such capacity building will feed into significant human rights reforms being pursued over the longer term.

(b) *China-Australia Human Rights Technical Cooperation Program*

(i) Outcomes from Activities of the 2010-2011 China HRTC Program

34. The 2010-2011 HRTC Program was approved in late 2010 by an exchange of letters between the Governments of China and Australia. AusAID funding for the 2010-2011 program is \$2.5 million. Most of the activities from the 2010-2011 program have now been completed.

Activity 3.1 Model United Nations

35. Cooperating Organisation: United Nations Association of China (UNAC).

Activity Description

36. The China National 2010 Model UN was held in Chongqing on 12-14 November 2010. The activity was organised by UNAC in partnership with Sichuan International Studies University, which hosted the event and provided the venue.
37. The activity simulated the proceedings of the UN Human Rights Council. The Model UN aimed to further understanding about the UN Human Rights Council, giving participants the opportunity to discuss global issues and the work of the UN through cooperation and diplomacy. During the Model UN the students engaged in debate, drafting and adoption of resolutions focusing on two human rights related themes:
- Promotion and Protection of the Rights of Persons with a Disability; and
  - The Impact of the Global Financial Crisis on the Universal Realisation and Effective Enjoyment of Human Rights.
38. The activity involved the participation of 233 students representing 61 universities from across China. A team of Australian students also attended and participated in the proceedings.

Key Outcomes

39. The potential long-term outcomes from this activity include application by the student delegates of the knowledge about substantial human rights issues and skills in human rights advocacy, in their future roles.

40. The strength of this outcome is underlined by the number and breadth of human rights concepts that were identified by the students in general debate during the Model UN. Issues raised included:
- The impact of double discrimination on marginalised groups;
  - The need to mainstream disability into the Millennium Development Goals;
  - The importance of health-care assistance;
  - The right to participate in meaningful work;
  - Identification of structural barriers to equality; and,
  - Education as a tool for eradicating poverty and the need to provide equal access to education.
41. Discussion of these concepts indicated an advanced understanding of the issues being considered and knowledge of their wider impact on marginalised groups in society. The student delegates selected for the Model UN are generally considered the cream of talent among Chinese students. Therefore, it is reasonable to expect that at least some participants will be future leaders and decision-makers, occupying senior positions in government, diplomacy and law where the consciousness-raising provided by this activity may have a long term impact.

Activity 6.1 Study Visit on Government and NGO Responses to Domestic Violence

42. Cooperating Organisation: All China Women's Federation (ACWF)

Activity Description

43. The 'Study Visit on Government and NGO Responses to Domestic Violence' was held on 25 October – 4 November 2010 in Australia. The visit took place primarily in two jurisdictions, Victoria and Queensland. The nine member delegation consisted of officials from the AWCF, the National People's Congress, the Ministry of Justice and the Ministry of Civil Affairs, all with responsibilities in relation to the Chinese response to domestic violence.
44. The visit provided the delegation with a broad examination of government policies and measures to both respond to and to prevent domestic violence – including domestic violence legislation, independent research, dedicated police response, specialised court programs, inter-agency mechanisms for coordinated action and policy procedures. Also examined was the role of NGOs in providing services to victims of domestic violence – this included legal services, the provision of emergency safety assistance, crisis accommodation, specific services for immigrant and Indigenous women experiencing violence, advocacy services and counselling.

Key Outcomes

45. The study visit facilitated substantial flows of information and dialogue between Australian and Chinese participants, which is likely to impact on the development of China's domestic violence response. Likely outcomes are in the following areas:

46. Legislation: The delegation stated that they felt that the Victorian *Family Violence Act 2008* was a particularly useful reference for the continued drafting and development of the Chinese national domestic violence law. As such, it is anticipated that aspects of this Act may be included in the China draft, most likely in relation to the definition of family or domestic violence.
47. Law Reform: In relation to Australian laws in this area, the delegation noted the value of the law reform process in terms of evaluating the effectiveness of the law and amending it to ensure better protection for women. This was in specific reference to the joint national inquiry into Australia's domestic violence laws being undertaken by the Australian Law Reform Commission and the NSW Law Reform Commission and also the Victorian Law Reform Commission's review of the Victorian legislation in 2006.
48. Integrated Government Responses: The relevance to the ACWF of the Victorian Government's strong leadership role in the ensuring an integrated domestic violence response across government was noted by the delegation. The ACWF has a similar role in the Chinese context. It was remarked that the Victorian State-Wide Steering Committee on domestic violence needed to be emulated at the national level in China and that this was something the ACWF could institute relatively quickly.
49. Police Practices: The Victorian Police Code of Practice for domestic violence was of strong interest to the delegation. It is anticipated that the ACWF will select parts of the Code for translation and adaptation to the Chinese context.
50. Risk Assessment: A uniform risk assessment tool has been developed in Victoria for use right across the board in the delivery of medical, counseling, legal and other service support for women experiencing violence. The delegation emphasised the value of this tool and indicated that they would like to develop something very similar (the tool has been subsequently emailed to the ACWF).
51. Economic Modelling: During the study visit, a number of the Australian presenters made mention of the significant economic costs of domestic violence and how this type of estimate was extremely powerful in terms of convincing decision-makers of the need to respond to the problem. The delegation was very taken with the idea of economic modeling for domestic violence and considered an economic argument would be very persuasive in China. The delegation said they intend exploring whether an external auditor (such as KPMG) could be engaged to undertake similar modeling in China.
52. Funding of NGOs: The delegation found the funding of NGOs to deliver support services, particularly legal assistance, to victims of domestic violence, *"an excellent practice to enlarge the government's scope and reach into the community whilst reducing their burden in delivering the service themselves. We want to take this practice back to China for use in domestic violence service delivery."*
53. Referral Systems: Perhaps the most valued part of the NGO program, and the most likely to result in a short-term outcome, was the referral system in place

at domestic violence hotlines. The ACWF is currently drafting at the national level, a management plan to streamline the implementation of the domestic violence hotline that operates through Chinese provinces by the provincial women's federations. In various meetings during the study visit, the delegation leader noted that the ACWF could build this into the national management plan, including strategies for developing the referral system and also for improving the call response rate through implementing plans used in the Australian context.

#### Activity 7.1 Workshop on Domestic Violence and Legal Aid Services

54. Cooperating Organisation: All China Women's Federation (ACWF)

##### Activity Description

55. The Workshop on Domestic Violence and Legal Aid Services was held in Changchun, Jilin Province, China, on 12-16 April 2011. The workshop was attended by approximately 90 Chinese participants including representatives from the ACWF, the Ministry of Justice, project directors of legal aid centres in ten provincial women's federations, lawyers working in legal aid centres in the ACWF system. The Australian presenters included representatives of the New South Wales Domestic Violence Legal Service, and the Women's Information Referral Exchange (WIRE), Victoria.
56. The workshop included presentations by Chinese and Australian experts, group discussions and interactive training sessions. Participants received training on principles of human rights and gender awareness, the legal framework and civil and criminal legal responses to domestic violence, and models for providing legal aid for domestic violence cases. Participants from different provinces and agencies shared experience on best practice in legal aid services for women affected by domestic violence.

##### Key Outcomes

###### Domestic violence concepts and gender awareness principles

57. This activity significantly raised awareness among participants of key concepts and principals relevant to the domestic violence response in the legal/judicial sphere.
58. The operation of protection orders as a mechanism for enhancing a woman's future safety was a new concept to some of the participants and was very well received with one participant proclaiming, "Protection orders are a great new idea for improving safety protections for women. I am hopeful that our local courts will introduce this pilot program soon to our city". This remark and others like it at the workshop signal an increase in demand for legal change among practitioners. This in turn has the potential to drive legal reform and therefore may be viewed as a long-term upstream outcome.
59. There was also a demonstrated increased understanding of the need to respect the decisions of a domestic violence victim even in instances when the

person providing advice considers it a wrong or a bad decision, demonstration of respect and understanding will ultimately empower the victim. A participant from Zhejiang Province noted: "I see now that women (victims) need to make their own decisions and that those decisions need to be respected. Sometimes we get frustrated at women crying and we will just say stop crying and just get a divorce. This is not right". Again, this type of comment indicates a probable change in practice at the grassroots level in the short-term and is an important outcome of the workshop.

#### Access to Justice

60. One of the major reoccurring themes of the workshop was increasing women's access to legal aid services and therefore access to justice. Many participants were concerned with both standardising and simplifying the process by which women access legal aid in China as well as lowering the income threshold for eligibility. To this end, the Australian use of a 'means test' for assessing eligibility for legal aid was of significant interest to participants. They were particularly taken with the NSW Legal Aid Commission's model of being able to determine one's likelihood of eligibility by answering seven fairly simple questions online. It was felt that this type of process would create greater efficiency and transparency in the legal aid centres. The Australian 'means test' as a process is something which can easily be adopted in China to standardise practice and procedure, thereby enabling a more streamlined and efficient use of scarce legal aid funds.

#### Lobbying and Advocacy

61. While the ACWF funds legal centres around the country, the most substantial funding of women's federation legal aid centres comes from the Ministry of Justice (MOJ), however, MOJ currently only directly supports 10 of the 31 provinces and autonomous regions. As all 31 provinces and autonomous regions were present at the workshop, those representatives from outside the 10 funded centres used the workshop to lobby MOJ officials for financial support for their legal aid centres in both formal and informal sessions of the workshop program. The workshop presented a unique opportunity for local women's federations to directly lobby the central MOJ to advance their work, an opportunity unlikely to be made available to them in other spheres.

#### Activity 8.1 Domestic Violence Training Workshop for People's Jurors

62. Cooperating Organisation: All China Women's Federation (ACWF)

#### Activity Description

63. The Domestic Violence Training Workshop for People's Jurors was held in Chongqing Municipality, China, on 14-17 June 2011. The workshop was attended by approximately 90 Chinese participants including representatives from the All China Women's Federation and women's federations at city and county levels. The Australian presenters included representatives of Women's Legal Service Queensland and the Law Faculty of the Queensland University of Technology.

64. The workshop aimed to build the capacity of women's federation workers who also act as People's Mediators and People's Jurors with the Chinese justice system. The ACWF advises that approximately 8,000 of the 60,000 women's federation staff employed around China also serve as People's Jurors or People's Mediators. These women attend court hearings and mediation conferences related to women and children and in doing so, seek to protect the rights of the women and children in the judicial process.

Key Outcomes

65. The 90 women's federation jurors who participated in this workshop are now better equipped to protect the rights and interests of women involved in judicial proceedings, particularly in cases involving domestic violence. They have gained new knowledge and skills which will be able to be applied directly in their day to day work supporting women as they go through the court system and related legal processes. The training addressed fundamental principles of human rights and gender equality, but also had a strong focus on practical measures that bring real benefits for women who have experienced violence or are at risk of violence. This included measures to prevent domestic violence, methods for ensuring safety of victims, dealing with power balance and control issues in a gender context, delivery of counseling and welfare support services for women, and techniques for effective dispute resolution.
66. The AHRC considers that there are good prospects that the information shared at this workshop will translate into concrete outcomes for women in China. This conclusion is supported by the strong track record of the ACWF in using HRTC activities to feed into of new laws, policies and practices to advance their reform agenda. In this regard, they have demonstrated a commitment to strengthening the performance and professionalism of women's federation people's jurors. This endeavor should, in the longer term, contribute to better protection for Chinese women against gender based violence.

Activity 9.1 Workers' Rights Internship

67. Cooperating Organisation: Beijing Migrant Workers' Legal Aid Organisation (BLAO)

Activity Description

68. The Workers' Rights Internship involved a staff member of BLAO, Ms Bai Yu, Deputy Director and labour lawyer, visiting Melbourne and Sydney for a period of approximately two months between October and December 2010.
69. During the internship, Ms Bai spent time primarily in two key Australian organisations: Fair Work Australia (two weeks from 12 – 25 October 2010), and the Fair Work Ombudsman (3 weeks from 10 November – 3 December). Ms Bai also spent a period of about one and a half weeks with the Australian Council of Trade Unions (ACTU) and other industry specific unions in Melbourne and in Sydney, and spent three days visiting the Fair Work Divisions of the Federal Court of Australia and Federal Magistrates Court. In

addition, Ms Bai undertook a range of shorter visits and meetings with other relevant agencies, including: government agencies, statutory bodies and community organisations with responsibilities relevant to labour dispute resolution, workers representation and workers' rights.

Key outcomes

70. There were some positive indications that this activity may contribute to some long-term outcomes in the form of high level changes to policy and laws. It is expected that the activity will assist research and advocacy by BLAO over the longer term towards improved labour laws and more effective dispute resolution and investigation bodies, which are responsive to the needs of vulnerable workers. The workers' rights publication which Ms Bai is developing (as a follow-up from the internship) will also assist BLAO's efforts to promote reform of the labour system in China. Ms Bai identified a number of specific reforms that BLAO is, or may in future be, working towards, which may benefit from this activity:
- Establishment of a specialist body or tribunal for resolving labour disputes by mediation and arbitration (similar to the functions of Fair Work Australia), with specially trained and qualified labour arbitrators with an understanding of the complex issues and laws involved in labour disputes.
  - Establishment of specialist labour disputes panel or bench of the court system, with specialist labour judges to hear these matters, similar to the Fair Work divisions of the Federal Court and Federal Magistrates Court in Australia.
  - Strengthening the independence and professionalism of the China's labour dispute arbitration committees and labour inspectorates, through measures which ensure transparency and accountability, such as regular reporting, publication of reasoned decisions and enhanced selection requirements.
  - Reform of labour laws, involving development of minimum standards (drawing from the National Employment Standards and modern awards in the Australian system).
  - Targeting reform to Chinese trade unions, including increased independence and much stronger representative role for workers. BLAO already cooperates with the trade unions and is well placed to work to influence reform.
71. Ms Bai also identified some more direct or short-term outcomes which may flow from this activity. They included:
- Ms Bai undertook to recommend development of a publication and information campaign targeted at Chinese workers seeking to obtain temporary employment in Australia, who are often vulnerable to abuse and exploitation. In particular, this would inform would-be migrants about the

role of unions in Australia and places to seek support, advice and assistance to address issues of exploitation.

- Direct use of Australian cases and legal principles to argue for the development of similar protection and principles in Chinese cases and lobby for legislative changes;
- Other practical measures included those used by Fair Work Australia and the Fair Work Ombudsman to promote public awareness, ensure efficiency and quality control in case management.

#### Activity 9.2 Children's Rights Internship

72. Cooperating Organisation: Beijing Children's Legal Aid and Research Centre (BCLARC)

#### Activity Description

73. The Children's Rights Internship involved a BCLARC lawyer and research fellow, Ms Han Jingjing, visiting Melbourne and Sydney for approximately two months in February – April 2011. During the internship activity, Ms Han visited a number of Australian agencies for work placements of between a half-day to two weeks. They included the Victorian Department of Human Services, Victoria Legal Aid, the Victorian Law Reform Commission, the Children's Court of Victoria, Ombudsman Victoria, the Public Interest Advocacy Centre, the National Children's and Youth Law Centre, and the Shopfront Youth Legal Centre.

#### Key Outcomes

74. The Children's Rights Internship facilitated substantial flows of detailed information and dialogue between Australian organisations and a representative of a high profile and effective NGO, which the AHRC considers are likely to impact on the protection and promotion of children's rights in China – through legislation, policy implementation, and the provision of legal services to children and young people. The Chinese Government currently views strengthening the country's child protection system as a national priority and is developing policies and legislation to this end. The AHRC feels that this activity contributed in a small way by strengthening BCLARC's capacity to support and further these reforms.
75. This activity is likely to benefit a number of quite specific reform initiatives that BCLARC is currently involved with. China does not have a specialised child protection agency or child protection law. However, the government is currently exploring various options to improve the protection of vulnerable children. These proposals have support from the highest reaches of the government. Practical measures include plans by the Ministry of Civil Affairs to launch a specialised government body to deal with adoption and child protection cases. This body will have a specific focus on child homelessness. Ms Han explained that it is envisaged to play a role similar to the Departments of Human Services currently operating in Victoria and NSW – providing



frontline services to vulnerable children and their families, and ensuring effective coordination across government agencies and NGOs.

76. BCLARC has been asked by the Ministry of Civil Affairs to draft a working paper on effective child protection strategies to guide the design of this new body. The AHRC feels that the in-depth understanding of the role and functions of the Victorian Department of Human Services, gained during her two-week placement there, has undoubtedly strengthened BCLARC's capacity to contribute to this important reform.
77. In the field of juvenile justice, current reforms being considered in China make the information transferred to Ms Han, and by extension to BCLARC, particularly relevant. Juvenile cases in China are generally heard in special tribunals operating with the adult court system. However there is some momentum to develop a separate system of juvenile courts that would be more appropriate in better ensuring that the rights of juvenile defendants are protected. BCLARC has long advocated for this change. The information gathered by Ms Han during placements at the Victorian Children's Court and at other agencies working at the front line with children in the juvenile justice system will strengthen BCLARC's capacity to contribute to these reforms.
78. BCLARC's healthy relationship with government gives the AHRC confidence that it is well placed to use the information transferred during this activity in ways deliver sustainable and long term outcomes. Discussions with Ms Han throughout the activity confirmed the view that BCLARC, despite its degree of independence from government, has the ear of government officials. BCLARC appears to be increasingly engaged in an advisory capacity by government departments who turn to it for expert guidance on child protection and juvenile justice issues.

#### Activity 11.1 Sentencing and Human Rights Study Visit

79. Cooperating Organisation: Supreme People's Court (SPC)

#### Activity Description

80. The Sentencing and Human Rights Study Visit was held in Sydney from 28 February – 4 March 2011. This activity aimed to support current sentencing reforms being pursued by the SPC under the policy of 'tempering justice with mercy', which is a key element in the SPC's Third Five Year Judicial Reform Plan (2009-2013).
81. The visit provided the delegation with a broad examination of Australian practice and experience in sentencing matters. There was a particular focus on proportionality and consistency in sentencing, which is essential for protecting the rights of offenders. The delegation explored sentencing options for crimes of varying degrees of seriousness, as well as sentencing of vulnerable offenders (including juveniles), drug-dependent offenders, and defendants who confess. The delegation met with a variety of courts, judges, agencies and experts involved in determination and implementation of sentences.

Key Outcomes

82. The study visit facilitated substantial flows of information and dialogue between Australian and Chinese participants, which the AHRC considers likely to impact on the development and implementation of judicial reform in China. It was encouraging that the delegation informed the AHRC that much of information provided during the study visit was considered transferrable to the Chinese context.
83. Such outcomes could take various forms. The one most frequently cited by the delegation was the possibility of pilot programs at the provincial level. The delegation felt that it would be useful to explore the applicability of particular Australian models at the provincial level. They considered the diversionary programs offered by the NSW Drug Court and NSW Youth Drug and Alcohol Court to be potentially useful models for developing pilot programs that would cater specifically for juvenile and drug-dependent offenders. Another Australian initiative that was flagged by the delegation for possible roll-out in the form of a provincial-level pilot program was the sentencing database managed by the NSW Judicial Commission.

Activity 11.2 Sentencing and Human Rights Seminar

84. Cooperating Organisation: Supreme People's Court (SPC)

Activity Description

85. The Seminar on Sentencing and Human Rights was held in Shenzhen, China, on 25-26 May 2011. This activity built on the preceding SPC study visit (see Activity 11.1, above) and part of the objective was to share the learning from that visit among a wider audience of Chinese officials. The seminar shared Australian and Chinese experience in sentencing responses from the perspective of judicial officers, prosecutors and academia. Two senior Australian judges attended as expert presenters. Chinese participants consisted of 54 central and provincial representatives from the courts, prosecution offices and academic institutions from 13 provinces as well as Beijing and Shanghai.
86. The seminar provided a group of Chinese judges and other legal professionals with information and knowledge of laws, procedures and practices to ensure proportionality and consistency in sentencing and implement diversionary and non-custodial sentencing programs in accordance with the protection and promotion of human rights.

Key Outcomes

87. The seminar provided further assistance to the SPC in the sentencing reforms currently being pursued through its 'tempering justice with mercy' policy. That policy is an integral part of the SPC's Five Year Judicial Reform Plan (2009-2013).
88. The seminar enabled central and provincial legal professionals to be exposed to and develop understanding of the SPC's 'tempering justice with mercy'

policy. This relatively recent policy marks a significant shift away from the severe penalty doctrine of the longstanding yanda 'strikehard' policy which has featured prominently within the criminal justice system in China for many years. The exchange of dialogue amongst practitioners is likely to further influence national policy development in a manner that moderates judicial discretion within the sentencing process that is more consistent with the protection of the human rights of offenders. The seminar also provided a platform to refine SPC's sentencing guidelines and sentencing standardization initiatives in general that support the overarching policy.

89. In addition the seminar provided an opportunity for legal practitioners to become familiar with some new Chinese laws relevant to the protection and promotion of human rights, such as the Eighth Amendment to the Criminal Law of the People's Republic of China<sup>1</sup>. The 8th Amendment is a very recent development and has a substantial human rights focus. It explicitly provides for the establishment of a community corrections and non-custodial punishment system within the criminal law, following the successful trialing of pilot programs across the country since 2003. Both the Australian and Chinese models that were canvassed prioritized protection of offenders through education, preventative measures, rehabilitation and reintegration into the community.
90. The seminar impressed upon participants the importance of focused and comprehensive community engagement in relation to sentencing reform. The SPC is very concerned about ensuring public trust and confidence in the judicial system. They recognize that successful implementation of the 'balancing leniency and severity' policy requires broad based stakeholder consensus and understanding about how the system should operate. The seminar included valuable discussion about community education programs and measures for ensuring public access to the SPC's sentencing opinions and guidelines, as ways to enhance the transparency and credibility of the judicial system.

#### Activity 12.1 Seminar on Protection of Cultural Diversity for Ethnic Minorities

91. Cooperating Organisation: State Ethnic Affairs Commission (SEAC)

#### Activity Description

92. The Seminar on Protection of Cultural Diversity for Ethnic Minorities was conducted in Jinghong, Yunnan Province, China over a period of three days on 8-10 April 2011. The Seminar was attended by approximately 40 Chinese representatives including officials from SEAC as well as local and provincial ethnic and religious affairs commissions (including from Yunnan, Shanghai, Chongqing, Inner Mongolia Autonomous Region, Heilongjiang, Fujian, Hubei, Sichuan, Guizhou and Xinjiang Autonomous Region). Among the 40 participants were representatives of at least 13 ethnic nationalities.

---

<sup>1</sup> This was adopted at the 19<sup>th</sup> meeting of the Standing Committee of the Eleventh National People's Conference of the People's Republic of China on February 25<sup>th</sup>, 2011.

93. The Australian presenters included representatives of the NSW Community Relations Commission and the Commonwealth Department of Education, Employment and Workplace Relations. Their presentations described Australian experience in multiculturalism and provision of culturally appropriate services from culturally diverse backgrounds, including indigenous Australians.

Key Outcomes

94. As a result of this activity, the Chinese participants gained a deeper understanding of human rights principles and their application to cultural diversity. The AHRC considers it reasonable to conclude that at least some of the participants, in particular those working in central and provincial ethnic affairs commissions, are likely to incorporate these new insights into their future work. This may manifest itself in changes such as greater participation by minority communities into developing programs and policies, better processes for engagement and consultation, recognition of the need to continually revise programs and policies to ensure they remain relevant for minorities, and creating opportunities for minorities to be employed in the public service and hold senior government positions.

Activity 13.1 Family Planning and Human Rights On-Site Monitoring

95. Cooperating Organisation: National Population and Family Planning Commission (NPFPC)

Activity Description

96. The 'Family Planning and Human Rights On-site Monitoring' took place on 1 – 7 November 2010 in two of the NPFPC's pilot locations: Ningxia Autonomous Region and Jiangxi Province.
97. This activity was undertaken by an advisory team made up of Chinese and Australian experts. The Australian members of the team included representatives of Family Planning NSW and the NSW Health Care Complaints Commission. The advisory team provided direct guidance and advice to officials from the pilot counties on the implementation of human rights principles into the delivery of family planning and reproductive health services. Approximately 50-60 Chinese participants took part in the workshop sessions in each location.

Key Outcomes

98. The Family Planning and Human Rights On-site Monitoring was aimed at assisting the NPFPC implement the Chinese Government's comprehensive reform of its approach to population and family planning in conformity with the 1994 International Conference on Population and Development (ICPD). The AMC considers that outcomes from this activity are likely to be fairly modest, but that it will nevertheless further the momentum of change created by cooperation under HRTC in the pilot counties and surrounding areas.

99. Information transferred during this activity is likely to be useful in informing the ongoing development of high level policy by the NPFPC, such as by strengthening the concept of informed choice and rights based principles including client participation, accessibility and safety, emphasis on development of effective complaints processes (which is clearly a priority for NPFPC) and their implementation in policy guidelines issued to lower level commissions and service providers.
100. Some short-term outcomes in the form of changes to practice as well as training and awareness-raising at provincial and local levels are also likely. The activity strengthened county level participants' understandings of human rights concepts and implementation through a wide range of measures in areas of privacy, staff training and management, conducting clinical consultations and counseling, managing client feedback and complaints and conducting training and dissemination targeted to particular disadvantaged and excluded groups. Many local level service providers and participants expressed great enthusiasm for this detailed information and sought out copies of resources from Australian participants, so it is likely that some of the information and strategies transferred will be adopted in changes in practice at local levels.
101. The activity is also likely to result in strengthened evaluation mechanisms, through increased understanding of the logframe and indicators, as well as monitoring and evaluation strategies shared by Family Planning NSW, and methods for seeking client feedback shared by NSW Health Care Complaints Commission.

Activity 14.1 Family Planning and Human Rights Training

102. Cooperating Organisation: National Population and Family Planning Commission (NPFPC)

Activity Description

103. The Family Planning and Human Rights Training Workshop was held in Yinchuan, Ningxia Hui Autonomous Region, China, on 14-16 June 2011. The workshop was attended by 60 Chinese officials and family planning practitioners from Beijing and from several of the NPFPC's pilot provinces across China. Australian presenters included representatives of New South Wales Family Planning.
104. The workshop discussed practical measures to ensure that human rights are promoted and protected in the delivery of family planning and reproductive health services. As in previous workshops, a central theme of the activity was the importance of informed choice in family planning, and the role of incentives as opposed to punitive measures in the administration of family planning policies.

Key Outcomes

105. As a result of this activity, the NPFPC and local family planning agencies across a number of Chinese provinces are better equipped to apply human rights based approaches in the delivery of family planning and reproductive health services. This includes greater emphasis on choice as opposed to coercion in administration of government policy on family planning. The training addressed measures to protect the privacy and confidentiality of clients. In addition, there was a strong focus on measures for ensuring that services are culturally appropriate and target the needs of minorities, with specific reference to the large Muslim minority population in Ningxia Hui Autonomous Region. Participants also received training on the provisions of the International Planned Parenthood Federation (IPPF) Charter on Sexual and Reproductive Rights.
106. The likelihood that this workshop will produce concrete outcomes, through the information and knowledge being applied in the ongoing work of family planning officials, is enhanced by the fact that it is feeding into a vigorous program of reform of China's family planning system. Greater attention to human rights protection is a key element in these reforms. The reforms being driven by the NPFPC are at the central policy level and also at local level though a quite extensive pilot program across six provinces and autonomous regions. Ningxia Hui is one of the pilot provinces, and this workshop directly assisted the implementation of the pilot in this location.
107. NPFPC has consistently demonstrated a commitment to applying the information from HRTC activities in the development of practical measures to enhance service delivery in family planning. Feedback from the NPFPC officials and participants was universally positive with comments about the usefulness and practical applicability of the information to the Chinese setting. Likely outcomes include more effective community education on reproductive health rights, more effective measures to ensure client privacy, greater attention to the cultural and other needs of minority groups, more sensitive techniques for client counseling, less stigmatization of young and unmarried clients, and giving clients greater autonomy and control over decisions affecting them.

Activity 15.1 Human Rights Website Development

108. Cooperating Organisation: National Population and Family Planning Commission (NPFPC)

Activity Description

109. The Human Rights Website Development builds on an activity implemented in the 2006-2007 HRTC. That activity involved the development by the NPFPC of a website on reproductive health rights for access in China by service providers, clients, government agencies, members of the public and other stakeholders.

110. The above website established in the earlier HRTC activity contains comprehensive information on reproductive health rights including international standards, relevant Chinese laws and regulations and details of relevant family planning initiatives at the central, provincial and local levels. It also includes guidance on the procedures for making complaints about family planning services. Having been operational for several years, the website required updating. There was a need to incorporate new policies, standards and information resources that have been developed in recent years.

Key Outcomes

111. This activity facilitated the development and updating of an online resource that will provide comprehensive and up-to-date information on reproductive health rights. As a result of this activity, members of the public will have easier access to information which will enhance their knowledge and understanding of reproductive health rights. The activity will also give family planning agencies and other relevant organisations better access to information they need in order to protect and promote reproductive health rights.

Activity 16.1 Seminar on Government Purchase of NGO Services

112. Cooperating Organisation: Ministry of Civil Affairs (MCA)

Activity Description

113. The Seminar on Government Purchase of NGO Services was held in Hangzhou, Zhejiang Province, on 6-7 December 2010. The Chinese participants at the seminar included 32 central and provincial level officials from five provinces, representatives from fourteen social organisations and eight academics from four universities. The Australians presenting at the seminar included experts from the NSW government and from the NSW NGO sector.
114. The seminar examined technical issues associated with government contracting of NGOs to provide services on behalf of government, and also the fundamental principles and approaches which underpin these contractual relationships and which have important implications for human rights protection. For example, Australian presentations highlighted the careful balance needed to safeguard the autonomy and independence of civil society organisations while at the same time ensuring accountability by those organisations in terms of outcomes delivered. The presentations also emphasised the positive benefits to be gained from giving NGOs who enter these contracts the freedom to pursue not only provision of services to vulnerable groups but also wider advocacy on relevant policy issues.

Key Outcomes

115. The seminar provided central and provincial government officials with new insights on ways of working with NGOs that are more conducive to the development of a healthy civil society. The seminar itself was a valuable

networking opportunity for government and NGO representatives, and an opportunity to develop closer working relationships.

116. In terms of outcomes, it was encouraging that the seminar was aligned closely with the Chinese Government's reform objectives in this subject area. From the outset, the seminar was framed by key policy objectives of the Chinese government in relation to purchase of NGO services. These include to enhance the quality and quantity of services to meet public demand, and to provide more focused capacity building of NGOs. Information and experience transferred and shared by the Australian experts is likely to be useful in assisting MCA's pursuit of these reforms. The activity may also contribute to broader reforms in re-shaping government attitudes to NGOs. For example, the activity may help secure a stronger commitment by government to developing partnership models with NGOs and allowing NGOs greater freedom to undertake advocacy and policy development. Realistically though, it is to be expected that changes in this direction will be very gradual and incremental.
117. Outcomes of a more specific technical nature are also likely to flow from this activity. These are changes in procedure and practice in the contractual arrangements between Government and NGOs. These include further development of tendering processes and criteria-based decision-making on the types of services they will fund. Quality of welfare services may be enhanced by the adoption of more open and competitive processes for contracting of NGO service providers. The current situation in China is characterised by a marked lack of competition, with the majority of contracts are given to a very limited pool of suppliers. This inevitably raises questions about the capacity of NGOs and their efficiency in service delivery.
118. The seminar may also encourage the adoption of clear evaluation outcome and risk management frameworks by both government agencies and NGOs from the outset of service planning and implementation. These issues featured prominently in the Australian presentations, and the Chinese participants seemed receptive to these concepts. They seemed to regard them as relevant to their own work, and they recognized that more rigorous planning and design could improve service delivery for disadvantaged citizens.

Activity 17.1 Study Visit on NGOs and Vulnerable Citizens

119. Cooperating Organisation: Ministry of Civil Affairs (MCA)

Activity Description

120. A six member delegation from MCA participated in the Study Visit to Australia during the period 21 March -31 March 2011. The visit took place in two jurisdictions, New South Wales and Victoria. During the visit the delegation met with numerous NGOs and other relevant organisations that provide support for vulnerable citizens. The main focus was on NGOs working in two sectors: disability and women's rights. The delegation had discussions with approximately 20 organisations including the Australian Network on Disability, Vision Australia, Mental Health Coordinating Council, Warringa Baiya



Aboriginal Women's Legal Service, Equal Opportunity for Women in the Workplace, Women in Prisons Advocacy Network, and Domestic Violence Victoria.

Key Outcomes

121. There were signs that this activity is likely to have a positive, albeit modest, influence on future direction of MCA's work in development of its partnership approach, policy reform and regulatory processes in relation to NGOs. The delegates stated in clear terms that the new insights gained from the Study Visit would be incorporated into their on-going policy and program work, particularly the exposure to NGO practices and initiatives affecting women and people with disabilities.
122. For example, one of the key areas highlighted during the study visit was the role of peak bodies in advocating for the rights of vulnerable citizens. This clearly resonated with the delegation, who acknowledged the value of peak bodies. This recognition is significant given that peak NGO bodies are largely absent in China and the potential threat that the Chinese government might perceive from large representative bodies.
123. As a result of this activity, MCA officials have also broadened their horizons on some very important conceptual issues related to the human rights of vulnerable citizens. They are better equipped to promote these concepts in areas of legislation and policies as they relate to women and people with disabilities. For example, one of the key issues impressed upon the delegation was the importance of vulnerable citizens themselves being the drivers and key decision makers in organisations affecting their rights. The delegation specifically stated that this was an area they wish to improve, so that members of target groups have more active roles in organisations representing their interests.

Activity 18.1 Community Corrections Study Visit

124. Cooperating Organisation: Ministry of Justice (MOJ)

Activity Description

125. An eight member delegation from the MOJ visited Australia on 15-21 May 2011, to examine community corrections programs in Australia. The delegation consisted of officials from the central and provincial justice offices. The study visit aimed to support a nationwide pilot program on community corrections being administered by MOJ. The pilot is part a broader reform agenda of the Chinese Government involving greater emphasis on non-custodial and community based programs as more appropriate measures for dealing with minor offences than detention and other harsh penalties. The study visit canvassed a wide range of community based programs including home detention, community service orders, suspended sentences, good behavior bonds and the system of probation and parole. The delegation observed education, training, welfare and other programs aimed at achieving

effective rehabilitation of offenders. Particular attention was given to vulnerable offenders and ensuring that their rights are protected.

Key Outcomes

126. From its observation of the study visit and feedback from MOJ the AHRC considers there are reasonable prospects that this activity will contribute to long-term outcomes by assisting development of new policies and practices in community corrections in China. The activity particularly provided new insights on strategies for vulnerable offenders including women, juveniles and minorities that, if implemented, will encourage better protection of their rights and interests.
  127. The fact that the study was directly, linked to a major reform initiative currently being implemented across China increases the likelihood that it will produce sustainable outcomes. China's community corrections pilot was established in 2003. In recent years however the pilot has expanded exponentially and has developed into a permanent feature of the MOJ's corrections programs. Community corrections have now been rolled out across the country, in all provinces and autonomous regions except for Tibet, where MOJ is currently preparing to launch the program. A national Community Corrections Office has been established within the MOJ to oversee the program and to date, 480,000 offenders have been sentenced to community corrections, with 250,000 released from the program so far.
  128. It was evident that some of the delegates clearly had a good grasp of the human rights implications of community based correctional programs. Moreover they acknowledged the need for improvement of their own system and seemed receptive to new ideas and approaches. They advised that where possible they will aim to incorporate some elements of community corrections practice from NSW into their reform programs. These include inviting members of the community to become involved in the parole decision making process, working with local departments and grassroots organisations to carry out community corrections, introducing specific programs and facilities for women in the criminal justice system, and establishing more detailed measures for oversight of community corrections.
- (ii) Outcomes from Earlier Years of the China HRTC Program
129. Despite the inherent complexities in measuring human rights change, much of which is long-term and not always easily quantifiable, it is possible to discern positive changes in change in areas in which HRTC has worked.
  130. Based on information gleaned in the management and monitoring of the program, it is reasonable to conclude that HRTC has played a part in helping make human rights more prominent in public discourse and debate. It has assisted in bringing human rights further into the "comfort zone" of senior officials as well as in raising awareness in the broader public arena. By assisting citizens to become more aware of their rights and officials more conscious of their obligations in protecting those rights, the program is

contributing to the development of greater accountability in government processes in China.

131. In terms of outcomes, one of the strengths of the HRTC program is the fact that it strongly aligns itself with the human rights priorities of the Chinese Government. The program supports major policy and legislative reforms being pursued by PRC authorities. This alignment helps give HRTC activities momentum and sustainability, and increases the likelihood that activities will contribute to concrete outcomes, by “riding the wave” of existing Government reform initiatives.
132. In addition to these fairly general observations, evaluation case studies have also revealed more specific examples of outcomes from HRTC activities. In recent years the Commission has undertaken case studies in cooperation with a number of the Chinese partner agencies including the All China Women's Federation, the Ministry of Justice, the National Judges' College, the National Population and Family Planning Commission, and the Supreme People's Court. The studies sought to assess outcomes from selected earlier activities implemented under HRTC. Essentially this involved identification of positive changes and developments in areas relevant to those HRTC activities, where there was evidence to suggest that HRTC had made some contribution to those changes. It should be emphasised that there is no suggestion that HRTC is the sole or predominant factor responsible for the changes identified in the case studies. The role of HRTC relative to other factors should not be over-stated. However, information gleaned during these studies supports the view that the program has made a modest but worthwhile contribution to these developments.
133. Relevant changes highlighted by the cases studies are listed below.
134. In terms of new law and regulation:
  - amendments to the *Law on the Protection of Minors*, including new provisions prohibiting domestic violence against minors
  - guidelines on combating domestic violence setting out the responsibilities of different Ministries and agencies in combating domestic violence
  - the inclusion of national domestic violence legislation as part of the current five year legislation plan
  - the promulgation by 25 provinces, autonomous regions and provincial level municipalities, of their own local regulations on domestic violence
  - the amendment, by 18 provinces, regions and municipalities, of their methods of
  - implementation of the *Law on the Protection of the Rights and Interests of Women*, adding provisions on domestic violence in accordance with the revisions to the Women's Law

- the promulgation of new *Regulations on the Protection of the Rights of Women* by the Xinjiang Autonomous Region Standing Committee
- coming into force of several amendments to the Xinjiang regional family planning regulations in recent years reflecting new national level policies. These include a 2006 amendment which removed obligatory birth spacing requirements and revisions to ensure that regulations focus on providing incentives and rewarding families who practise family planning (as opposed to coercive measures)
- development of national standards for protecting client privacy and confidentiality in family planning and reproductive health services.

135. In terms of new policy and practice:

- the creation of a new domestic violence category for case management by public security bureaus
- the establishment by public security bureaus in most provinces of their own anti-domestic violence emergency hotlines
- the establishment by 5000 public security bureaus across the country of complaint handling centres to receive domestic violence complaints
- the establishment by the Beijing Women's Federation of a total of 800 legal aid centres for women across the municipality
- the creation of specialist legal aid centres for women within the legal aid offices of local justice departments
- the development of a website with details of the HRTC supported pilot program: 'Protecting Women's Reproductive Health Rights in Central and Western China Program' incorporating materials such as the international human rights instruments as well as laws, legislation and policies, 'rights protection channels' and details of each of the activities which have been carried out under the cooperation program
- the establishment of family planning complaints hotlines in the pilot counties whose success has led to the development of a plan to establish complaints hotlines nationally
- the completion by the National Population and Family Planning Commission of a future planning and directions document which will guide further development of policy and practice to address 5 key human rights related issues
- the establishment in Xinjiang Autonomous Region of 517 service centres in townships which provide family planning services free of charge

- the creation, by the Xinjiang Family Planning Commission, of individual, private counselling rooms to protect privacy and the elimination of the large open rooms in which privacy was protected only via 'whispering'
- the provision of family planning counselling services in minority languages
- the development and distribution of information pamphlets, in minority languages aimed at advising people about their reproductive health rights, and the channels available to them to protect their rights
- the establishment of a family planning service complaints hotline accessible throughout Xinjiang Autonomous Region
- a series of information and education campaigns in Xinjiang's Kuche County (and apparently other counties) designed to provide information to communities about their reproductive health rights, and how they can ensure these are protected via the complaints system
- the development of a handbook on the protection of prisoners' rights, which has been an important reference for courses delivered to prison staff
- a shift from traditional prison management approaches that emphasise isolation from the community and other harsh measures, to approaches that emphasise rehabilitation and skill development, maximize contact with the wider community and encourage effective reintegration into mainstream society following release
- the implementation of a community corrections pilot program in six provinces, under the joint agreement and authority of four agencies: Ministry of Justice, the Supreme People's Court, Supreme People's Procuratorate and Ministry of Public Security. By September 2006, the pilot had been extended to cover 85 cities and 375 counties in 18 provinces, involving approximately 72,000 offenders.
- creation of a compulsory human rights training component for all judges undertaking programs at the National Judges College
- development and introduction of a menu of courses on specific human rights topics at the National Judges' College
- the development of a database of online course material at the National Judges' College, including resources on human rights, incorporating much of the information collected from HRTC activities
- Implementation of a pilot program in the court system in Chengdu, Sichuan Province, eliminating the criminal records of certain categories of juvenile offenders

- Issuing of a decree by the High Court of Jiangsu Province in 2009 formalising school education requirements for juveniles in detention centres.

136. In terms of new demand:

- the study of statistics gathered by the All China Women's Federation indicates that nationally the number of domestic violence cases generally is decreasing while the number of reported cases and cases in which the victim sought help is increasing
- the development, by the Beijing Women's Federation of cards, paintings and posters which promote anti-domestic violence messages and information on the domestic violence related amendments to China's *Marriage Law*. Ten different posters on this theme have been put up in buses around Beijing.
- the establishment of domestic violence and legal aid services in and around Beijing, the use of which has consistently increased since they were established. The Beijing Women's Federation concludes that this is because of an increase in the number of women who knew about the services and felt confident that they would receive help through the services.
- the establishment, by the Centre for Women and Children's Health of an active screening program to identify victims of domestic violence accompanied by a system of referral of apparent victims to women's federations and other agencies for assistance
- the establishment of about 160 domestic violence hotlines across Xinjiang, including in the large cities as well as grassroots and rural areas
- the distribution of leaflets and pamphlets in native ethnic languages with information about domestic violence and women's rights
- the increased attendance at clinics by Muslim and other ethnic nationalities as a result of more culturally sensitive delivery of services
- the development and delivery of target-specific human rights training: training for managers includes human rights information, whereas training to clients and the masses is mainly information about what their rights are under the law and what avenues are available to them to assert these rights and to lodge complaints
- the distribution of 70,000 brochures and publications throughout Kuche county on reproductive healthy rights and quality of care in family planning services.

(c) *Vietnam-Australia Human Rights Technical Cooperation Program*

137. The Commission is pleased with the level of progress that has been made to date in the Vietnam HRTC program. The partner organisations are very enthusiastic about their participation in the program and most are performing to a high standard.
138. As a general rule, changes in this area require the passage of time and as such are normally identified through longer term monitoring and evaluation strategies. As the Vietnam HRTC is still young, having commenced in 2006, the outcomes described below are encouraging, but not yet in the form of concrete improvements in human rights protection attributable to the HRTC program. It starts from analyzing the extent to which the partner agencies have increased their capacity to produce such change. We will need to conduct longer term studies to ascertain the extent to which such change is realized.
139. Most of the partner agencies of the program participate in a regular human rights dialogue between Vietnam and Australia. The programs' activities described below build on and learn lessons from similar activities in previous phases of the program. For example activities with Vietnam's Supreme People's Court in Phase 1 (2006-2008) involved a general examination of access to justice and application of human rights principles at all levels of the Vietnamese court system. Building on information transferred during previous phases, phases 2 and 3 moved to a more specific focus to ensure practical access to justice for particular disadvantaged groups including victims of crime, women and children, ethnic minorities and persons with disabilities.
140. Within this context, some key outcomes from the program are:
- Improved understanding of some important human rights issues by the Australian and Vietnam participants in the bilateral Human Rights Dialogue, enhancing the quality of discussions during the Dialogue;
  - Improved information and education programs at grass roots and local level. This was achieved through training of 'legal dissemination officials' who work in justice departments at grass roots and local level;
  - Improved access to justice for vulnerable and disadvantaged groups with particular focus on ethnic minorities and people with disabilities. This was done by educating provincial and district level judges and court staff on relevant level judges and court staff on relevant legal procedures to accommodate the needs of these groups. This includes access to interpreters and other services to ensure full participation in and access to judicial processes;
  - Improved access to justice for ethnic minority communities in six provinces by educating village leaders on citizens' legal rights;

- Improved access to legal and health insurance services for women in five targeted provinces by educating them on their rights to access these services;
- Improved access to justice for criminal offenders by educating prosecutors at local levels on practical measures to ensure the right to a fair trial, equality before the law, presumption of innocence, trial without undue delay, the right to be informed of and have the opportunity to defend charges, the opportunity to examine witnesses and rights of appeal and review; and
- Improved capacity of Vietnamese agencies to implement international and domestic human rights commitments by exchanging ideas with Australian peers.

141. The following is a summary of outcomes from a sample of completed activities of Phases 2 and 3 of the HRTC Program. The allocated budget for each activity is also noted. In this way, it is hoped that the document gives some indication of 'value for money' from the program's activities, to the extent that that is possible in a short summary of this type.

Activities 3.1-3.4 – Phase 2: Legal Dissemination Seminars

142. Cooperating Organisation: Ministry of Justice

143. The four legal dissemination seminars were held in

- Sa Pa, 16-17 October 2008;
- Quy Nhon, 21-22 October 2008;
- Buon Me Thuot, 23-24 March 2009; and
- Ca Mau, 2-3 April 2009.

Activity Descriptions

144. The seminars provided training to approximately 330 officials from 10 provinces. The officials were mostly representatives from provincial departments of justice. The seminars gave the participants new insights relevant to their work in disseminating information about legal rights and responsibilities. As a result of this activity, participants are better informed about i) Civil rights of citizens, as set out in the Civil Code of Vietnam (2005); ii) Complaint and denunciation rights, as set out in the Law on Complaints and Denunciations of Vietnam (1998), iii) Methodologies for education and dissemination about legal rights.

Key Outcomes

145. The Outcomes from this activity are of a type that can be realised immediately through the ongoing work of justice officials in conducting more effective information and education programs at grassroots and local level. The achievements were made more significant by the fact that the seminars were



located in areas of high need, where residents include a high proportion of socially disadvantaged minority groups.

Activities 2.3 and 2.4: Legal Dissemination Training for Ethnic Minorities

146. Cooperating Organisation: Ministry of Justice (MOJ)

Activity Descriptions

147. The two two-day training courses on legal dissemination were held in Lam Dong and Dien Bien Provinces on 5-6 August 2010 and 14-15 November 2010 respectively.
148. The courses were attended by 206 village leaders in ethnic minority communities and local justice officials, whose responsibilities include awareness raising for members of local communities about their rights and responsibilities under Vietnamese law.
149. As with the abovementioned courses for socio-political organisations, the training covered substantive knowledge about Vietnamese laws affecting rights and responsibilities of citizens. In addition, the training addressed skills and methodologies needed in order to conduct effective education and information programs at grass roots level.

Key Outcomes

150. The training covered similar topics to those addressed in the courses for socio-political organisations i.e. knowledge of Vietnamese laws dealing with citizens' rights (rights of citizens to lodge complaints and denunciations, laws guaranteeing democracy at local level, and procedures for resolution of land disputes affecting citizens' property rights) and skills/techniques for disseminating that knowledge in grass-roots communities.
151. The principal outcome from these two courses was that leaders of ethnic minority communities and local justice officials in six provinces are better equipped to disseminate information to citizens about their legal rights and responsibilities under Vietnamese law. Their performance of this role should be enhanced by the new knowledge they have gained about substantive Vietnamese laws and skills they have acquired in practical methodologies for legal dissemination and education. The application of the new knowledge should, in the longer term, contribute to greater awareness and understanding by ethnic minorities of their legal rights, which should in turn lead to strengthened protection and promotion of their rights.

Activities 4.1 and 4.3: Seminars on Access to Justice

152. Cooperating Organisation: Supreme People's Court (SPC)

Activity Descriptions

153. The two Seminars on Access to Justice were conducted back-to-back with the first seminar held in Hanoi (activity 4.1) on 11-12 October 2010 and the second seminar held in Ho Chi Minh City (activity 4.3) on 14-15 October 2010.
154. The seminars provided training to approximately 55 judges and officials from Vietnam's court system. Broad representation from surrounding provinces was also a feature of the activities with around 20 Northern provinces represented at the Hanoi seminar and 17 Southern provinces represented at the Ho Chi Minh City seminar. Australian presenters included representatives of the Office of the NSW Director of Public Prosecutions and the Aboriginal Legal Service of WA.
155. The objective of these seminars was to strengthen the knowledge of Vietnamese judges and officials from central SPC and lower level courts in relation to the protection of human rights in the judicial system. The content included a particular focus on access to justice for ethnic minorities and people with disabilities.

Key Outcomes

156. As a result of these activities, the Supreme People's Court and provincial courts are better equipped to ensure access to justice for citizens involved in judicial processes, particularly members of vulnerable and disadvantaged groups.
157. The seminars provided important capacity building for participants through the provision of new information on international human rights standards and principles relevant to the justice process, including fundamental guarantees of the right to a fair trial and the requirements of natural justice and due process in the judicial system. These principles were discussed in the context of Vietnam's court system and the daily work of judges and court officials, including in the application of Vietnam's Criminal and Civil Procedure Codes and other relevant legislation and procedural rules and guidelines.
158. The seminars provided particular insights into how these principles can be applied to making access to justice as a reality for certain vulnerable and disadvantaged groups, especially for ethnic minorities and people with disabilities. This included laws, rules and procedures to accommodate the needs of these groups, measures such as court support, interpreters, culturally and linguistically accessible court information, and other services to ensure full participation in and access to judicial processes.
159. In terms of human rights protections and enhancing access to justice for ethnic minorities and people with a disability, the seminars were very useful in highlighting major problems and barriers they face. Despite the differences between the judicial systems of Australia (adversarial) and Vietnam (inquisitorial), participants felt there was a lot of common ground and that the Australian material was useful in advancing Vietnam's judicial reform priorities. In terms of impact, there is likelihood that some of the protections canvassed

at the seminars will feed into the reform of the *Criminal Procedure Code* which is currently taking place.

Activities 5.1 and 5.2: Seminars on Human Rights in Criminal Justice

160. Cooperating Organisation: Supreme People's Prosecution Service (SPP)

Activity Descriptions

161. The two Human Rights in Criminal Justice Seminars were conducted back-to-back with the first seminar held in Hanoi (activity 5.1) on 18-19 March 2010 and the second seminar held in Ho Chi Minh City (activity 5.2) on 22-23 March 2010.
162. The seminars were attended by approximately 110 participants (70 in Hanoi and 40 in Ho Chi Minh City). In addition to SPP officials, participants included representatives of the Ministry of Justice, the Ministry of Foreign Affairs, the Ministry of Public Security and the Supreme People's Court.
163. The seminars examined the application of fundamental human rights principles in the criminal justice system. These included the right to a fair trial, equality before the law, presumption of innocence, trial without undue delay, the right to be informed of and have the opportunity to defend charges, the opportunity to examine witnesses and rights of appeal and review. In particular, the fundamental nature of these principles was emphasised, including derogation only in exceptional circumstances as stipulated by the *International Covenant on Civil and Political Rights*.

Key Outcomes

164. The current review of Vietnam's *Criminal Procedure Code* represents an avenue for these activities to feed into ongoing reforms and produce sustainable outcomes. The two seminars were very focussed on the current review of the Vietnam *Criminal Procedure Code* and the ways in which the Code could be amended in order to enhance human rights protections within the Vietnamese criminal justice system. It was clear from the discussions and presentations that the review and drafting of an amended Code was well under way (although the expected date for completion of the draft was given as 2015). The Commission was very impressed by the way the SPP maximised the opportunity presented by the seminars to explore in detail the potential improvements to the Code.
165. A number of specific provisions for strengthening the *Criminal Procedure Code* were discussed. These included the right to silence for accused, the right of defence counsel to access the prosecution evidence/case material, the right to plea bargain, and stipulation of time limits for detention of suspects.
166. In addition to canvassing specific recommendations for change to the revised Code, the seminar also considered other possible changes in policy and practice to strengthen human rights protection in the criminal justice system. These included:

- Consultation with defence counsel – the current practice of allowing defence counsel just one hour in which to meet with their client following arrest and pre-trial, and in circumstances where a prosecution official is always present, was viewed as entirely inappropriate by defence lawyers in the seminars, who lobbied strongly for change in this area.
- Admissibility of confessions – concerns were raised about the value and legitimacy of confessions that were not obtained either in the presence of an independent third party or in a recorded interview. The Vietnamese experts noted that it would be some time before Vietnam would be in a position to have sophisticated recording equipment available in each province and, a recommendation was made that, in the meantime, confessions only be admissible if made in the presence of defence counsel.
- Defence representation – it was noted that around only 20 per cent of defendants are represented in court by defence counsel. This appeared to be something the SPP was keen to see change, as they mentioned the need for more lawyers to be trained in the coming years to help address this problem.
- Review of prosecution guidelines – the current SPP prosecution guidelines are also being reviewed under the reform program. The SPP remarked that they would be looking to the NSW Prosecution Guidelines for direction in their review.

#### Activity 7.2 Establishment of Women's Legal Clubs

167. Cooperating Organisation: Vietnam Women's Union (VWU)

##### Activity Description

168. This activity assisted in the establishment of 18 'women's legal clubs' in three target provinces of Vietnam: Bac Ninh, Quang Binh, and Vinh Long. These clubs will have the role of disseminating information on women's human rights and women's rights under Vietnamese law and providing legal advice and consultation to women and advocacy for women's rights in the local community.
169. The activity establishing the legal clubs included a one-day training course in each province for officials and staff of each of the 6 clubs. The trainees were all people who have responsibilities for managing the club and carrying out club activities. The activity also involved the provision of resources and materials for use by the clubs, including copies of Vietnamese laws, legal texts and other relevant training materials and resources and equipment such as loudspeakers for use in training and dissemination activities.
170. The training course in Bac Ninh Province was held on 10 June 2010, in Quang Binh on 15 July 2010 and in Vinh Long on 15 August 2010. There were 90 participants in total (30 at each training course). The participants were made up of the management board for each newly established club. The training

provided the management boards of the clubs with information and guidance on the running of the clubs and implementing projects for women in their respective communities.

Key Outcomes

171. It is difficult to make definitive claims about the outcomes from the legal clubs as they are only newly established. However, the AHRC considers it likely that they will achieve outcomes towards greater awareness of women's rights in local communities and enhanced ability on the part of women to assert and exercise their rights. Reasons for this optimism include the fact that the legal club model appears to have very strong support within the VWU and its nationwide network.
172. Feedback from the Vietnamese participants supports the conclusion that the activity was a success. Their feedback noted that the training was considered practical and relevant to their work. This is very positive, as it indicates a high likelihood that they will use the information and knowledge and that it will be integrated into the ongoing operation of the clubs.
173. In population terms, there is potential for the clubs to achieve an extremely wide impact in reaching households and families at grassroots level. However, this will depend on many factors including how accessible they are to local communities and how dynamic the personnel responsible for the clubs are. There may be value in conducting a review or assessment of the legal clubs, after sufficient time has elapsed for them to establish a reasonable track record of activities. This would enable a more informed assessment of the outcomes from this activity, and the effectiveness of the legal club model generally.
174. We have very recently been advised that in November 2010 the VWU established legal clubs in another six provinces with their own budget based on the model supported by the program.