
China Australia Development Cooperation Program

Review of Human Rights Technical Cooperation Program

Report

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Abbreviations and acronyms

ACR	Activity Completion Report
ACWF	All China Women’s Federation
ADS	Australian Development Scholarships
AGD	Attorney-General’s Department
AusAID	Australian Agency for International Development
CPS	China-Australia Country Program Strategy
CAGP	China-Australia Governance Program
CASS	Chinese Academy of Social Sciences
CPL	Criminal Procedure Law
DFAT	Department of foreign Affairs and Trade
Dialogue	China-Australia Human Rights Dialogue
FHRD	Foundation for Human Rights Development
GoA	Government of Australia
GoPRC	Government of the People’s Republic of China
HREOC	Human Rights and Equal Opportunity Commission
HRTA	Human Rights Technical Assistance Program (later the HRTC)
HRTC	Human Rights Technical Cooperation Program
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
LFM	Logical Framework Matrix
MC	Managing Consultant
MCA	Ministry of Civil Affairs
MFA	Ministry of Foreign Affairs
MoJ	Ministry of Justice
MPS	Ministry of Public Security
NGO	Non Governmental Organisation
NPFPC	National Population and Family Planning Commission
NJC	National Judges College
Program	Human Rights Technical Cooperation Program
PRC	People’s Republic of China
PRPM	Program Review and Planning Mission
ROU	Record of Understanding
RT	Review Team
SEAC	State Ethnic Affairs Commission
SPC	Supreme People’s Court
SPP	Supreme People’s Procuratorate

TAR (DoE)	Tibet Autonomous Region (Department of Education)
TOR	Terms of Reference
UNAC	United Nations Association of China
UNFPA	United Nations Population Fund

Executive Summary

The Review Team found that the HRTC has generally been very effective in fulfilling its objective to work collaboratively with Chinese government agencies and NGOs to implement programs and activities ‘*to strengthen the administration, promotion and protection of human rights in China*’. The HRTC program is strongly supported by both the Chinese and Australian partners. Most activities are achieving their objectives and there are indications of capacity building in some areas. A key strength of the HRTC program has been that it targets areas identified by the GoPRC and its cooperating agencies as priorities, often where there are current proposals for reform, where there is a sufficient degree of complementarity with Australian experience and where there is relevant expertise in the area in Australia.

This objective has been implemented within the three broad thematic areas of legal reform, women’s and children’s rights and ethnic and minority affairs. The Review Team considers that these remain an appropriate focus for the HRTC program. The Review Team has made comments and recommendations on the ways in which, within these broad thematic areas, the Managing Contractor can remain responsive to changes in priorities identified in this Report in the process of program planning.

The Review Team found that the Managing Contractor, HREOC, has worked to establish a very open and positive environment within which the activities under the HRTC are planned and implemented. Participants noted the high degree of professionalism of the MC and the environment of mutual trust and respect within which the parties operate. The Review Team considers that the current method of gradual accretion of cooperating partners remains the most sound way to ensure a vibrant mix of cooperating partners, some long standing and others more recent, which is one way in which the program is able to remain responsive to emerging priorities. The Review Team has made recommendations about management of less successful relationships and improvement of the development of linkages between Chinese and Australian counterparts.

The Review Team suggests that no change be made to the current planning cycle involving a mix of one and three year programs. It has made a number of recommendations for enhancement of the implementation of these programs and activities. Whilst the current geographical focus for activities in China remains appropriate, the Review Team has made recommendations about adjustment of the geographical focus of activities in Australia.

The Review Team found that there is scope for improvement in monitoring and evaluation of activities and their intermediate and long term outcomes and has made a number of recommendations on this point. Strategies for improving the monitoring and evaluation of activities and programs should be designed with individual cooperating agencies on a case by case basis, and be responsive to the needs of the agency. They should take into account the nature of the activity and may be linked to forward planning in agencies where there is a longer term plan and ongoing cooperation.

The Review Team has also made suggestions for the improvement and refinement of current reporting requirements. Reporting should be more concise and better focussed. It

should pay attention to the correct use of terminology, eliminate repetition and include reporting on medium term and longer term outcomes.

In response to other issues raised by AusAID and DFAT Post, the Review Team has made further comments and recommendations about the ways in which the HRTC program can better complement or take into account other AusAID programs.

In conclusion, the Review Team found that the HRTC program is successful and well managed. The Managing Contractor has created a positive environment within which activities have been planned and implemented. On the basis of the overall success of the HRTC program, the Review Team has made comments and suggestions that seek to improve and enhance its operation in the future.

List of Recommendations

Rec No	Recommendation	Sect Ref	Page Ref
<i>Partner Organisations and linkages</i>			
1-2	<p><u>The RT recommends</u> that the existing method of gradual accretion of cooperating agencies be retained and that, in considering the removal of less well performing agencies, a range of approaches that may not involve removal of an agency from the program entirely, receive careful consideration. [Recommendation 1]</p> <p><u>The RT recommends</u> that the MC actively explore ways to foster the development of ongoing linkages between Australian and Chinese agencies and organisations outside the scope of the HRTC and the establishment of new linkages as part of its regular project development and design work. [Recommendation 2]</p>	2.3	7-9
<i>Adjusting the range of thematic areas</i>			
3	<p><u>The RT recommends</u> that within the existing thematic areas, the MC should ensure that program development remains responsive to emerging priority areas. The MC should also attempt to keep itself apprised of these as well as any other priorities that may emerge in future through its own research and information exchange with other donor agencies. [Recommendation 3]</p>	2.4 4.1-4.2 4.7	9-10 20-1 26-8
<i>Adjusting Implementation Methods</i>			
4-11	<p><u>The RT recommends</u> that when discussing and prioritising programs for each year the MC should retain a sharp focus on the protection of human rights and seek to steer cooperating agencies away from activities without a clear focus on the promotion and protection of</p>	3.4-5	16-19

Rec No	Recommendation	Sect Ref	Page Ref
	human rights and clearly defined human rights outcomes. [Recommendation 4]	4.1	20
		4.6	26
	<u>The RT recommends that</u> the MC continue to give careful consideration to ensuring an appropriate balance between study tours, conferences and workshop type activities, placements that facilitate the ‘train the trainer’ outcomes, and grass roots activities such as training and pilot programs. In particular the RT recommends exploring greater use of work attachments in suitable situations and with suitable participants. [Recommendation 5]	4.4	22-3
	The <u>RT recommends</u> retention of the current time lines for program planning and approval processes. [Recommendation 6]	4.4	23
	<u>The RT recommends</u> that a 50/50 gender balance be mandatory each year for the MFA scholarship program provided qualified candidates for admission to an Australian Masters program can be identified within the Ministry. [Recommendation 7]	4.3	21-2
	<u>The RT recommends that</u> the MC consult with participants in upcoming activities to obtain information about the nature, extent and content of briefing materials needed to prepare for the activity and develop a plan for effective dissemination of those materials. [Recommendation 8 (i)]	3.5	17-19
	<u>The RT also recommends</u> that the MC engage in greater post activity consultations with Australian participants and provide participants with a copy of the relevant Activity Completion Report on an in confidence basis. [Recommendation 8 (ii)]	3.5	17-19
	<u>The RT recommends</u> that the MC review both the content and use of the Logical Framework Matrix, associated Impacts Matrix, Risk Matrix as well as the content of activity designs, addressing the issues highlighted in the HRTC Review. [Recommendation 9]	4.8	28-30
	<u>The RT recommends</u> that except as opportunities present themselves where collaboration is initiated by the Chinese counterpart such as the NPFPC, that donor coordination not be expanded beyond these case by case collaborations. [Recommendation 10 (i)]	2.4	9-10
	<u>The RT recommends</u> that HREOC use its best endeavours to time its regular monitoring visits to China to coincide with the six monthly Human Rights and Law Reform Donor’s Roundtable coordinated by the Ford Foundation. [Recommendation 10 (ii)]	2.4	9-10
	<u>The RT recommends</u> that the MC further discuss MFA’s proposal to hold alumni activities and to establish possible operational parameters. It could, for example, involve maintaining listing of participants in key study and design visits to Australia, keep them posted on activities	5.3	38

Rec No	Recommendation	Sect Ref	Page Ref
	taking place (through the HREOC website) with occasional gatherings in Beijing possibly in conjunction with the Human Rights Dialogue. The objective would be to help maintain long-standing linkages between key program participants, HREOC and MFA staff and the Australian embassy. [Recommendation 11]		
Geographical focus issues			
12	(i) <u>The RT recommends</u> that the location of activities in China continue to be determined on a case by case basis. [Recommendation 12 (i)] (ii) <u>The RT recommends</u> that the MC consider broadening the geographical scope of activities in Australia where relevant and appropriate. [Recommendation 12 (ii)]	4.4	23-4
Assessing Activity Outcomes			
13	<u>The RT recommends</u> a more active evaluation methodology that may vary according to sector and agency circumstances but that will move beyond deductive reasoning approaches currently mainly applied at activity completion. The proposed approach would seek to establish activity outcomes (rather than impact). Partner agency ownership of the agreed approach would be an important consideration. The MC should discuss M&E options with long-standing partners during future monitoring visits and where considered appropriate some <u>ex-post</u> evaluation activities should in future be costed and built into multi-year activity designs. A range of appropriate techniques could be used. A fundamental objective would be to link such M&E to Strategic Objective 1 and <u>Program Outcome</u> 1.1 of the China-Australia Country Program Strategy. The results of such M&E, clearly identified as such, would be reported in one of the program’s current Annual Reports. [Recommendation 13]	4.9	30-3
Reporting			
14	<u>The RT recommends</u> refined reporting specifications in the ROU that will reduce the volume of documentation produced while at the same time providing more meaningful information on activity outcomes and program performance. This includes concise and refined ACRs that report more effectively on lessons learnt and activity outcomes and less on implementation detail; a reduced number of reports by incorporating the content of monitoring reports into other reports currently being reduced and monthly exception reports. [Recommendation 14]	4.10	33-4
Other Issues			

Rec No	Recommendation	Sect Ref	Page Ref
15-17	<p><u>The RT recommends</u> that future MFA awards be designated as MFA ADS awards and managed by the CAGP MC as an earmarked sub-component of the broader China ADS program. MFA would continue to select the two students and submit its two nominees to the CAGP MC via the Post for processing including placement with other ADS awardees. Payments to students and institutions would be managed by the CAGP MC and the Scholarships Section in AusAID Canberra. In other words, the China ADS program would be seen as covering 26 rather than 24 awards. Recently introduced China ADS alumni arrangements would apply to the MFA students. [Recommendation 15]</p> <p><u>The RT recommends</u> that the HRTC and CAGP managing contractors meet at least annually (twice a year in year one) firstly to exchange ideas and review lessons learnt about good practice programming approaches and secondly to discuss their respective activity pipelines to ensure that there is no overlap and in the longer term to identify potential complementarities. For the latter, these would be referred to AusAID for further consideration. The RT further recommends that this requirement be included in a future contract amendment for the CAGP MC and in the ROU Annex for the HRTC MC. [Recommendation 16]</p> <p><u>The RT recommends</u> that AusAID Canberra and AusAID Beijing review current HRTC management arrangements and review the case for devolving management responsibility for this program to AusAID Beijing consistent with AusAID’s strategic project/program management directions. [Recommendation 17]</p>	5.7	39-41

1 Introduction

1.1 Background and program structure

This Report sets out the outcome of a review of the China-Australian Human Rights Technical Cooperation Program (HRTC or Program).

After discussions between Premier Li Peng and Prime Minister John Howard in August 1997, a high level Dialogue on Human Rights (Dialogue) was initiated between Australia and China. At this Dialogue it was agreed that a technical cooperation program be established. The HRTC program is closely linked to the annual Dialogue and is designed to *‘provide effective support to the foreign policy objectives of the Australian Government and to the broader human rights development objectives of China’*. It supports the Dialogue by implementing specific activities that *‘give substance and specific outcomes to the Dialogue process’* (2006 PRPM Report 2). The specific activities under the program, however, are not confined to the specific topics discussed in the annual Dialogue.

The objective of the HRTC is *‘to strengthen the administration, promotion and protection of human rights in China’*. This objective is implemented within three broad theme areas which are: legal reform, women’s and children’s rights and ethnic and minority affairs.

The HRTC is funded by AusAID, with a budget of AUD2 million for the year 2006-7. The HRTC is administered by the Human Rights and Equal Opportunity Commission (HREOC), with the lead Chinese counterpart organisation being the Ministry of Foreign Affairs (MFA). Each year HREOC has been engaged by AusAID to carry out an annual Program Review and Planning Mission (PRPM). The PRPM reviews the previous year’s activities and develops a list of proposed activities for the next year in consultation with relevant Chinese officials and organisations. An Aide Memoire including the proposed list of activities for the next year is submitted to MFA at the conclusion of the PRPM. The agreed list of activities is approved at the annual Dialogue meeting. HREOC and AusAID enter into a Record of Understanding (ROU) under which HREOC implements the activities for that year in accordance with the terms of the ROU.

The HRTC program has been implemented through a range of activities that include Australian and Chinese government departments and officials, judges and other organisations with similar areas of responsibility. Activities also include a range of other actors including academics, non-governmental organisations (NGOs) and semi-governmental organisations with expertise in the subject matter of particular activities. As the budget for the HRTC has expanded over the years of the program, the scope of the program and the range of collaborating agencies have also increased. In 2006 the Chinese collaborating agencies included the: MFA, Supreme People’s Procuratorate (SPP), Supreme People’s Court (SPC), Ministry of Public Security (MPS), Ministry of Justice (MoJ), Ministry of Civil Affairs (MCA), State Ethnic Affairs Commission (SEAC), National Population and Family Planning Commission (NPFPC), All-China Women’s Federation (ACWF), United Nations Association of China (UNAC), the National Judges’ College (NJC), Chinese Academy of Social Sciences (CASS) Foundation for Human Rights Development (FHRD) and the Tibet Autonomous Region Department of Education (TAR DoE).

The program seeks to achieve its goals through a strategy of progressive engagement under which activities build upon and develop successive activities and which is designed

to foster the establishment of linkages between agencies and institutions. Whilst the program of activities is approved on an annual basis, HREOC is required to develop a range of activities with implementation periods of between one and three years. Each multi-year program must have discrete annual outputs that can be reported on and approved in the annual Dialogue. Multi-year or multi-stage programs are designed to facilitate the program's goals of progressive engagement and developing high quality relationships built on frankness, trust, and mutual respect.

1.2 Review objectives

Even though the HRTC has been implemented for over eight years, it has not yet been the subject of an external review. It was considered appropriate, in the 10th year of the Dialogue, that such a review be conducted.

The overarching objectives of this review are set out in the Terms of Reference (TORs). They are to:

1. Assess how effective the HRTC has been in fulfilling its goals and objectives; and
2. Make constructive recommendations that will enable the HRTC to improve its effectiveness and strategic impact.

The Review is not designed to evaluate either the Dialogue or the relationship of the HRTC to the annual Dialogue, nor is it to consider whether the Dialogue and the HRTC should continue. The Review is not to make judgments about the overall goals and objectives of the HRTC, as it has already been determined that these are to continue unchanged.

Within these overarching objectives and subject to the limitations of the scope of the Review set out above, the Review is to assess the achievements and impacts of the HRTC, assess factors associated with successful and less successful activities, assess lessons learnt, evaluate the broader operating environment and make recommendations for the future management of the HRTC.

1.3 Approach

The review was conducted by two consultants from Australia, Dr Sarah Biddulph (Team Leader) and Kai Detto (Project Management/Monitoring and Evaluation Specialist) during the period September–November 2006, with 12 days in the People's Republic of China (PRC). In Australia, the team reviewed program documents made available by both AusAID and the managing contractor, HREOC.¹ The team was briefed by AusAID Canberra and HREOC staff in Sydney and then met with or interviewed by phone a range of Australian participants in individual programs under the HRTC. In China, working closely with AusAID Beijing, the Review Team (RT) met with staff of the Australian Embassy, officials of the MFA and with Ministries and Agencies of the Government of the People's Republic of China (GoPRC), NGOs and bilateral and multilateral donors.

The activities reviewed by the Team from which most success factors and lessons were drawn tend to be the more recent activities. This was firstly because Activity Completion

¹ Documents made available to and reviewed by the Team are listed in the *References* Appendix.

Reports made available to the RT were recent and secondly because interlocutors both in Australia and in China understandably tended to restrict their comments to recent activities. Given that most activities are sequenced this is not seen as a limiting factor. Where appropriate the RT relied on MC activity reporting, notably the 2004 and 2005 Program Completion and 2004-2006 PRPM reports to supplement its findings.

Mention needs to be made of the scope of Annex 4 – the achievements update of the 2004 Retrospective Study. Achievements at program and activity level are summarised in Sections 3.1 and 3.2 of the Main Report. Unlike the Retrospective Study, Appendix 4 does not deal with the broader Chinese Context issues since these are detailed in Sections 2 and 4 of the Main Report. As noted in the TORs, the Retrospective Study did not analyse weaknesses and lessons learnt nor did it make recommendations on future strategic directions. These are detailed in Sections 4 and 5 of the Main Report and not repeated in Appendix 4. In providing an updated summary of achievements and outcomes at program and activity level since the Retrospective Study (Appendix 4A) a number of post-2004 activity case studies are used to illustrate RT findings on achievements and outcomes (Appendix 4B). An overall summary of the Review’s findings and recommendations is found in the Executive Summary of the Main Report.

2 Operating environment

2.1 Chinese government policy

The success of the HRTC has been greatly enhanced by the commitment of the GoPRC over the last ten years in particular to the promotion and protection of human rights and the development of a comprehensive legal framework and systems for the definition and protection of human rights. China has acceded to many international human rights conventions including: the International Covenant on Economic Social and Cultural Rights (ICESCR), The Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Rights of the Child. China has signed and is yet to ratify the International Covenant on Civil and Political Rights.

China's commitment to the protection and promotion of human rights was enshrined in domestic legislation when the National People's Congress passed an amendment in March 2004 to the *Constitution of the People's Republic of China* to add an extra paragraph to article 33 stating that: '*The State respects and safeguards human rights*'. The inclusion of this statement in the *Constitution* introduced the concept and vocabulary of human rights into the mainstream of public discourse and as a focus of the work of government agencies. The HRTC has benefited from this evolving conceptual framework which has enabled enhanced and deepened cooperation in a wide range of areas that might previously have been seen as too sensitive for foreign participation.

The recognition and protection of human rights domestically has been integrally connected with the program to implement the rule of law, or governance according to law (*yi fa zhi guo*). The protection of human rights is only one aspect of the broader program to introduce a system of rule of law. As a result the focus of the HRTC is not upon establishment of the rule of law generally, but upon those aspects which impact on human rights. That said, the focus on creating a comprehensive legal infrastructure to govern social and economic relations means that law is a key mechanism for the definition and protection of human rights.

In addition to the reform to the *Constitution*, a wide range of important legislation has been passed which articulates rights of certain groups, such as the *Law on the Protection of the Rights and Interests of Women*, the *Maternal and Infant Healthcare Law* and the *Population and Family Planning Law*. More generally, the program of establishing a system of rule according to law has included a commitment to strengthening the administration of justice, improving the implementation of law so that all are able to enjoy the rights enunciated by the law, strengthening mechanisms to ensure accountability of government agencies in the exercise of their powers and educating citizens and officials to inculcate a culture of respect for law. The *Legislation Law 2000* and subsequent complementary regulations sets out a requirement that legislation not be passed merely to empower government agencies, but that it also take into account and protect the rights and interests of citizens.

Efforts to strengthen the administration of justice and to better regulate the coercive power of the state have been an important component of China's rule of law project. Important reforms have taken place to improve the professional standard and independence of judges and prosecutors, with introduction of a national judicial examination and increased programs of professional judicial training. Over the last 10 years, reforms have been made to the criminal justice system with passage of the amended *Criminal Procedure Law* (CPL) in 1996. Reforms in this area remain

incomplete, with new revisions to the CPL and the *Criminal Law* currently under discussion. Proposed reforms include: broadening sentencing options to increase non custodial sentences; parole and community correction, greater recognition and protection of the rights of the accused in trial procedure by giving increased access by defence lawyers to the accused and removal of the power to conduct the final review of death sentences to the Supreme People's Court, with a commitment to the idea that the death sentence should be imposed more sparingly than before. Powers of the police to detain minor offenders and to detain and interrogate suspects under criminal and administrative powers have been increasingly under scrutiny, both within and outside China, with growing pressure for reform.

In all these areas of reform, strong progress has been made toward establishing the legal infrastructure which, in addition to providing a legal basis for and regularising the exercise of state power, increasingly acknowledges the importance of protecting citizens' rights. Much still remains to be done to complete this legislative infrastructure and especially to achieve practical recognition and protection of these rights. The gap between what the law promises and what occurs in practice highlights continuing weaknesses in the structures to define and protect citizens' rights, in systems of supervision and accountability of agencies for the exercise of their power and unevenness in the consciousness of and respect for citizens' rights, especially where the pursuit of these rights involves a challenge to the exercise of power by local agencies.

Another important context within which the HRTC operates is the October 2006 *Decision of the CPC Central Committee on the Several Major Issues on the Construction of a Socialist Harmonious Society*. The Decision sets out the state's priorities for balancing reform, development and stability. This Decision affirms China's commitment to promotion of social fairness, justice and stability and environmental protection, with a continued emphasis on the development of the rule of law. The Harmonious Society policy builds on the focal points of the 11th Five Year Plan which include expanding employment, strengthening social security and improving social management.

The detailed interpretation and implementation strategies and programs are still being formulated, though some priority areas are clearly identified. These include a focus on dealing with areas of social inequality, especially those that have led to social unrest. Notably these include labour and the rights of migrant labourers and the rights of farmers. The policy also focuses on improvement of mechanisms for the protection of social security, including protection of the aged, improvement of health services and care of those families affected by HIV/AIDS, improvement of education and the provision of social welfare.

In its meetings in Beijing, the RT found that a significant numbers of agencies and organisations identified these issues as emerging priority areas: labour, in particular the rights of migrant workers, health, housing, social security and aged care. The MFA raised the protection of economic, cultural and social rights, including education, health, housing and social security as significant new priority areas. The rights of workers, especially those of migrant workers, have been an issue of growing concern for some time. The ACWF indicated that the second most common subject of complaints it had received in the previous year was about labour issues. The MCA indicated that it expected the Harmonious Society policy would result in it playing an increased role in the protection of street children, AIDS orphans, children living in AIDS affected families and the creation of a cohort of professional social workers to address social issues.

Whilst China's interpretation of human rights has traditionally emphasised economic, social and cultural rights over civil and political rights (Keith and Lin 50-2, Peerenboom

533), this Decision reaffirms these priorities and, together with the 11th Five Year Plan, will form the foundation for allocation of priorities and the implementation of specific policies.

The MC in the 2006 PRPM correctly asserts that *‘human rights programs should, if implemented successfully, have a disproportionate impact on those who are most in need of rights protection.’* These include women and children and ethnic and minority groups. The priorities identified under the Harmonious Society policy highlight the strong correlation between the disadvantage suffered by these groups and the need for stronger protection of their rights. The targeting for special protection of disadvantaged and vulnerable groups is not inconsistent with the Chinese approach which has also identified a number of ‘vulnerable groups’ whose rights require special protection. Those most directly affected by weakness in systems for the protection of rights to enjoy social security, education, public health care and housing include women, children, ethnic and minority groups. Human rights issues relating to the handling of public health issues such as SARS and the treatment of people with serious infections and diseases including HIV/AIDS have gained increasing prominence since the 1990s. In addition to the issues of adequate provision of medical care and the use of coercive and other measures to prevent spread of these diseases, serious issues of discrimination also arise. For all these groups, discrimination is an important cross-cutting issue as the most vulnerable are the most likely to suffer discrimination and the least likely to be able successfully to obtain redress.

It is within this evolving context that the three main themes of the HRTC: legal reform, women’s and children’s rights and ethnic and minority rights have been identified and its particular activities implemented.

2.2 Other emerging human rights issues

As the awareness of concepts of citizens’ rights becomes more widespread and acceptance of the importance of protecting those rights increases, a larger number of people, both professional lawyers and other rights advocates, have become increasingly active in publicising infringements of rights and breaches of the law and in assisting aggrieved parties to seek redress. The tensions that have arisen as a result of these activities highlight two areas of difficulty in promoting and protecting rights. The first is ensuring protection of the substantive rights of those arguing there has been an infringement of their rights. The second is protecting the lawful rights of those advocates who seek to assist these people in seeking redress.

An area of great complexity which has arisen as the result of the economic reform process is dealing with social unrest amongst groups of people, many in the countryside, who are dissatisfied with their treatment at the local level. Many feel they are unable to obtain justice, leading at times to an escalation of the dispute into more confrontational forms of protest, or taking the protest to provincial capitals, even to Beijing. Finding timely and fair ways to resolve these disputes in a manner which deals with the grievance, prevents social disorder and upholds the rights of the complainants is becoming an urgent problem. The related issue is to ensure that the lawful rights of lawyers and other advocates who are willing to provide lawful legal assistance to these groups are protected. This issue is a critical human rights issue as it relates directly to the proper administration of justice, the protection of citizens’ rights and the rights of lawyers and other public interest advocates to represent the lawful interests of their clients without fear of retribution.

2.3 Partner organisations

There has been a close correlation between the three thematic areas and the primary responsibilities of the Chinese partner organisations. The bulk of collaborating agencies are Chinese government departments, with a lesser number of NGOs. In order to pursue the main objective of the program in the three thematic areas, it has been important that the primary government agencies and NGOs with responsibilities and interests in those thematic areas have been actively engaged in the HRTC program. The government to government linkages built through collaborations with government departments and agencies under the HRTC as well as working with the GoPRC on the evolving role of non-state actors accords with the priorities articulated in the China-Australia Country Program Strategy 2006-2010 (CPS).

The MFA is lead counterpart agency and is responsible for coordination of both the Dialogue and the HRTC. In meetings with the RT, the MFA noted the positive impact the HRTC has had on the bilateral human rights Dialogue and also commented that there is high level political support for the HRTC program. The positive consequences for the program are discussed further at sections 3.1 and 3.2 below. It has actively collaborated with the MC in designing and implementing its own programs, has allowed the MC unhindered access to and collaboration with other cooperating agencies, and has provided active assistance to the MC by introducing new organisations, agencies and NGOs into the program. Most recently, agencies that the MFA has proposed for introduction into the Program include the Tibet Autonomous Region Department of Education and the Beijing Legal Aid Office for Rural Migrants.

As the budget and size of the program has increased over the years, it has been possible to add new cooperating agencies to the program. The number of cooperating agencies has gradually increased over the years. A selected list of these agencies and their primary functions is included in Appendix 5. The MC identifies the current issue as being that the level of demand for activities exceeds the resources available to fund them. It is thus necessary to consider carefully both the number and type of activities carried out with different agencies each year, the quality of outputs from activities and the overall number of cooperating agencies. The capacity of the MC to respond to emerging priorities, which is a principle in implementation of the CPS, depends both upon the quality of its relationship with cooperating agencies of long standing as well as adding new cooperating agencies to the program.

The MC has noted that the levels of successful collaboration differ between different agencies, where collaborations with some agencies are more productive than with some others. There is also evidence to suggest that the level of successful collaboration with a particular agency may also change over time.

Currently there is a mix of agencies which have been involved in the HRTC program for a number of years and those which have recently joined. HREOC has been sensitive to the question of how the balance between long term collaborative partners and new collaborative partners should be reached. In the 2006 PRPM HREOC repeated its concern to ensure that *'relationships with cooperating agencies remain dynamic and productive.'* It goes on to state that *'[W]hile the closeness and longevity of relationships have contributed to the success of the program, there is also a risk that these factors may lead to a sense of complacency, with some cooperating agencies taking the relationship for granted.'* The fear of complacency is an oft repeated concern.

The RT found from discussions in Beijing that there was no indication that agencies were taking the program for granted. One of the pronounced success factors of the HRTC

identified by most interlocutors is the high levels trust and mutual understanding that is built over an extended period of cooperation. Some of the characteristics of the more successful activities discussed in Section 3.3 below share the high levels of trust, mutual respect and the detailed knowledge of the work of the agencies and capacity to have frank and open discussions about the issues facing the agency in promoting and protecting human rights and the areas where there is relevant Australian expertise. An example is the ACWF where the strong lines of communication, understanding and respect that have been built over many years of collaborations with the MC made it possible to identify the natural end to one program; trafficking, and the need to continue and build upon another; combating domestic violence. Maintaining an ongoing relationship with long standing successful collaborative partners and enhancing relationships with key training organisations facilitates the achievement of the program's objective to consolidate achievements and broaden impact.

In addition to government agencies and NGOs, it is only in the 2006 PRPM that the program has included an NGO advocacy group, the Beijing Legal Aid Service for Migrant Workers. This inclusion is significant for the program in at least two respects. First it addresses issues of the legal protection of the rights of migrant workers, which has been identified as a priority area. Secondly it is a legal advocacy organisation, which is involved in an emerging area of rights protection in China, which is public interest litigation and advocacy. When considering the addition of new cooperating agencies the MC should take into account their role in the emerging priority areas and the capacity of any collaboration to have long term impacts in improving the protection of rights within their areas of responsibility and activity.

Those agencies with whom activities have been less successful pose a difficult problem. The 2006 PRPM specifically identifies SEAC as an agency where there were concerns about its capacity *'to effectively pursue cooperation within the HRTC.'* From its discussions in Beijing, the RT concluded that poor performance of some agencies is not at the stage where it is possible to conclude that the agency is no longer interested in or willing to cooperate in a way that would warrant a recommendation that they be removed from the program. The MC needs to consider carefully whether removing the less well performing agencies from the HRTC may send the wrong signals about the program itself, moving it to a position that is more judgmental than collaborative. Removing a less well performing agency or organisation, depending on its areas of responsibility, may also have broader ranging consequences for the program by impeding the capacity of the MC to continue to conduct meaningful activities in a particular thematic area, such as for example ethnic and minority rights. The MC should consider adopting a range of approaches in addressing these difficulties which may not involve removal of the agency from the HRTC program entirely. Such approaches might include lowering the priority for activities involving that agency alone, or for activities where there is some doubt about the possible outcomes, or, where appropriate, including members of the agency in activities conducted primarily by other agencies where the subject matter relates to an area of the agency's responsibilities.

The recent addition of the TAR (DoE) and expansion of the program to the TAR Public Security Bureau and the TAR Department of Justice represents an enhancement of the focus of the program on ethnic and minority rights.

The capacity of the HRTC to respond to emerging priority issues is achieved both through adjustments of programs with existing partner organisations and the gradual adding of government departments and other agencies to the HRTC program.

An objective of the HTRC is to foster the ‘*development of linkages between Chinese and Australian organisations and between Chinese and Australian professionals working in particular sectors*’. The RT found that there has been limited development of linkages outside the HTRC. Some Chinese agencies, when asked, suggested that language remains a barrier. Other agencies suggested that having the name cards of the relevant Australian participants was sufficient as they could be contacted to provide further information as required, suggesting a limited interest or resources in developing further relationships outside the HTRC. The Beijing Legal Aid Service for Rural Migrants expressed a different view on ongoing collaboration, suggesting that only participants who intend to have an ongoing relationship with the service and its work should participate. Mr Tong expressed the strong view that willingness and ability to have an ongoing interest in the service should be one criterion for including any Australian participant in activities involving this service.

2.4 Other donor programs

There is a wide range of bilateral and multilateral donors currently engaged in programs to promote law reform and the development of human rights. (Woodman) Some commentators and bilateral aid donor respondents in Beijing noted that many of the law related human rights programs were being conducted in similar areas and sometimes overlapped. However, they also noted that working with similar Chinese agencies on similar topics was not a problem as long as approaches weren’t in conflict and weren’t directly repetitious, as there was a lot of work to be done and the contributions that each agency might be able to make was not identical. (Ford Foundation) Two main issues arise in respect of other donor programs. The first relates to the potential for different programs to overlap and highlights the need for regular information sharing to take place between donors. The second relates to the extent of collaboration between bilateral and multilateral donors on activities.

Information sharing

At present, as part of the annual PRPM, the MC visits a selection of bilateral and multilateral donor agencies to obtain information on related programs. This information is set out in the annual PRPM. In order to guard against repetition of programs or programs that work at cross-purposes, the MC needs to ensure that the information it has on other programs is current and it has a comprehensive overview of these programs. Another excellent opportunity for the MC to meet and exchange information with other donors working on law and human rights is provided by the six monthly meeting currently coordinated by the Ford Foundation. At this meeting donors exchange information and listen to addresses by experts giving up to date information on newly emerging issues. This meeting is regularly attended by AusAID representatives in Beijing. The political counsellor of the Canadian Embassy in Beijing also indicated that, apart from donor organisations, a large proportion of political counsellors from relevant Embassies also attend this meeting. All commented that the meeting was well organised and attended and provided an excellent opportunity for detailed exchanges of information.

Collaboration amongst donors

Limited multilateral donor coordination has occurred in the area of human rights. One example is the collaboration between NPFPC, HREOC and UNFPA, initiated by the NPFPC, to conduct a training activity for local family planning officials. This activity was considered successful as it involved working with trusted agencies on a program where the agendas, work style and approach of each agency coincided. The MC also

identified a complementarity in the skills and experience that each of HREOC and UNFPA brought to the training program and the increased number of people able to participate in the training. This example illustrates that such collaboration can be successfully conducted on a case by case basis in line with the spirit of the Paris Declaration.

However, due to the politically sensitive nature of the HRTC, and other bilateral and multilateral human rights programs, the RT considers it would not be appropriate to extend such efforts to coordinate activities beyond collaboration on a case by case basis and where that collaboration is initiated by the Chinese party. The HTRC, as with other programs for the promotion of the protection of human rights, differs to an extent from other types of aid programs not only because of its political sensitivity, but also because the HRTC is integrally connected to the Dialogue which is conducted on a bilateral basis and is an integral component of the broader political relationship between Australia and China.

In meetings in Beijing, the MFA emphasised that the success of the HRTC owed much to the high level political support for the program. The MC itself indicated that further collaboration for the sake of collaboration alone would possibly have harmful impacts on the program, as, in addition to the close relationship between the HRTC and the annual Dialogue, such collaboration had to potential to blur the lines of the communication, management and responsibility with the possibility of disrupting the relationship between the MC and the cooperating agency. The MC noted that the administration within China and objectives of other donor funding is likely to be very different from that of the HRTC. In discussions in Beijing with some other donors, the question of their attitude either to expanding more formal collaboration or agreeing to conduct similar programs in different geographical regions of China was raised. The response was that these forms of collaboration were not strongly encouraged for the reasons set out above.

3 Program performance

3.1 Program level achievements

The HRTC program is targeted to areas identified by the GoPRC as priorities, where there is a sufficient degree of complementarity with Australian experience and where there is relevant expertise in the area in Australia. Most activities are achieving their objectives and there are indications of capacity building in some areas. Some changes in policies and procedures and even legislation could be attributed at least in part to inputs made as part of the HRTC.

Some partners state that program activities are more successful than those of other donors. Some go further and state that other donors are asked to use the Australian program as a model for them to emulate to improve their own performance.

The program is a key element of the annual Dialogue and MFA noted that it makes the Dialogue productive and fruitful. MFA added that the Dialogue between China and Australia is particularly effective and, unlike other dialogues, has a press conference on completion. The HRTC has now achieved an outcome where the Chinese side does not feel at all uncomfortable about discussing sensitive human rights related issues.

The September 2005 Australian Parliament Report of the Inquiry into Australia's Human Rights Dialogue Process, made a similar observation by stating that '*...the Committee wishes to acknowledge the important complementary role of the technical cooperation activities associated with the bilateral human rights dialogues. The Australia-China Human Rights Technical Cooperation Program (HRTC) makes a practical contribution to improving human rights through various capacity building and institutional strengthening activities...*'

All of the agencies consulted expressed appreciation for the opportunity to work with HREOC in the program's three thematic areas. Not a single agency expressed concerns about fundamental strategies and approaches although a few suggested some operational enhancements. All sought future cooperation and support.

A major achievement essential for overall program success is the basic operational model that is strongly supported by program partners based on annual program planning and monitoring but that also manages to develop indicative multi-year programs using delivery mechanisms that are effective overall and produce good results. The sequencing of activities, firmly supported by program partners, is based on a progressive engagement approach where successive activities build on previous achievements often covering new topics that relate to a common underlying priority theme. HREOC is an effective program manager trusted and respected by program partners.

3.2 Summary of key specific achievements in the thematic areas

Specific key achievements identified by the RT include:

- Trainers at the National Judges Training College have adjusted their training approaches and curricula (with flow on to provincial training institutions) following

study visits to Australia to reflect good practice human rights protection principles with real prospects of long term positive impact.

- Senior judges in China following visits to Australia have been able to broaden their knowledge and have been exposed to alternative approaches in areas such as juvenile justice and rules of evidence that help to provide a basis for judicial reform.
- Productive exchanges of ideas and experiences with Ministry of Public Security officials in examining ways to strengthen the rights of detainees in detention centres.
- Progress in the family planning area with indications of a genuine commitment to achieve reforms. In a significant recent development the NPFPC has requested Australia as a trusted bilateral partner and UNFPA as a trusted multilateral partner to collaborate on mainstreamed HR activities under its leadership. NPFPC is committed to ex post evaluation, again under its leadership but with active support from the funding partners.
- Model UN Rights Council conferences are viewed by the Chinese partner as a great success, introducing future Chinese leaders to International Human Rights norms and are seen as a model for conducting creative human rights education.
- A series of activities covering anti-human trafficking has facilitated the development of strategies and formulation of reform measures and fostered regional contacts.
- Successful interventions in the area of domestic violence with new laws passed by the local level Peoples' Congress and local hotlines established and attributed by ACWF to HRTC sponsored workshops.
- Positive changes in juvenile justice with Chinese partners ready to engage in substantive dialogue and dialogue in relation to community corrections offering the prospect of longer term reform.
- Highly successful outcomes in relation to scholarship awards to staff of the MFA.
- The program has helped build up Australia's visibility in areas such as Tibet and Yunnan province where it impacts on minority groups and has helped build closer bilateral relations with a range of agencies. Activities funded in Yunnan province are seen by MFA as reflecting Australia's desire to address poverty issues more directly and are greatly valued.
- Occasional ongoing professional contact between key Chinese individuals and agencies and their Australian counterparts in the sectors supported by the HRTC, notably in judicial areas.

3.3 Activities that have been particularly successful

Listed below are relatively recent completed successful activities highlighting the main achievements of these activities. More detail on most of these activities including activity outcomes where available is found in Appendix 4.

Activity 1.6.1: National Judges College – Judicial Protection of Human Rights Training Research Visit (August 2004)

Senior staff of the College gained insights into Australian experience in development of human rights curriculum in universities and judicial training institutions to inform the NJC's work in developing curricula on judicial protection of human rights.

There has been some strengthening of the capacity and the willingness of the NJC to deliver human rights related training to Chinese judges. The RT found that training approaches and curricula have been adjusted since the visit to reflect good practice human rights protection principles. Around 30% of courses have been adjusted based on what was learnt in Australia. Links were established with relevant Australian institutions.

Activity 1.7.1: National Judges College – Human Rights Education Audit (July-October 2005)

Two senior academic staff were based at the Human Rights Centre in the University of New South Wales Faculty of Law to obtain information and experience. The RT concludes that there has been significant capacity building and the activity has further facilitated the work of the College in refining its curricula, building on the August 2004 research visit, as well as earlier assistance.

Activity 1.9.1: National Judges College – People’s Assessors Study Visit (April 2006)

Senior training staff of the College visited Australia to strengthen the capacity of the College to develop policy consistent with human rights in the training of People’s Assessors in China’s judicial system. The RT found that knowledge gained during the visit in relation to Australia’s jury system and the use of JPs has been used as input in developing training designed to improve the implementation of China’s revised People’s Assessor system.

These three activities combined illustrate well the benefits of the program’s progressive engagement approach where each activity builds on and tends to complement previous activities while moving to related but new subject areas. Additionally it tends to highlight the significant potential multiplier effect of a focus on training institutions and ‘train-the-trainer approaches’.

Activity 1.5.1: Supreme People’s Court – Rules of Evidence Design Visit (June 2003)

Senior members of the peak Chinese judicial organ obtained knowledge of how the rights of accused persons and witnesses are promoted and protected through the operation of rules of evidence in criminal trials in Australia. While labelled a design visit, it proved to be more a valuable interactive workshop/training exercise with train-the-trainers components managed by senior staff of the NSW Judicial Commission. It has resulted in some ongoing professional contacts at very senior levels and is likely to have contributed to the legislative reform process in China to strengthen the ‘rules of evidence’ in criminal trials.

Activity 2.2.1: All China Women’s Federation – Workshop on Domestic Violence in Minority Areas (July 2006)

The workshop held in Urumqi enhanced the capacity of provincial women’s federation and other agencies to combat domestic violence. This was the seventh workshop on specific aspects of combating domestic violence mostly held in remote provinces with significant minority populations, a baseline survey to establish the level of social awareness of domestic violence issues and the development and distribution of advocacy materials. It was preceded by a Domestic Violence Study Visit to Australia in April 2006. The sixth Domestic Violence Workshop was held in Shanghai in July 2005.

Activity 1.8.1: United Nations Association of China (UNAC) – Model United Nations Commission on Human Rights (November 2005)

The activity disseminated knowledge concerning the human rights objectives of the United Nations to Chinese University students and both UNAC and Chinese universities gained further experience in conducting an educational activity aimed at promoting an understanding of human rights issues.

A complementary activity was a Human Rights Knowledge Competition that strengthened UNAC's practical expertise in promoting international human rights standards and provided groups of students and the general public with an awareness of the role of these standards in protecting their rights.

Activity 1.5.1: Penitentiary Administration Bureau of the Ministry of Public Security – Penitentiary Administration Design Visit (February 2006)

The activity provided knowledge to the MPS about Australian experience and expertise in the administration of detention with a view to enabling China to strengthen the protection of the rights of female and juvenile detainees in MPS penitentiary centres. Sequential activities were a Penitentiary Seminar in China to consolidate and further disseminate the information and knowledge gained and a Penitentiary Administration Seminar CD/DVD to provide a practical educational resource for distribution to all penitentiary units in China.

Activity 2.4.3: National Population and Family Planning Commission of China –Human Rights and Family Planning Seminar (April 2006)

The activity further enhanced the capacity of the NPFPC and provincial family planning commissions to apply human rights based approaches in the delivery of family planning and reproductive health services. Its objective was to encourage practices that protect and promote human rights including the rights of women, children and minorities within China's family planning system. This was the fourth in a series of activities within a multi-year program titled 'Project Proposal for Safeguarding Women's Reproductive Health Rights in Central China'. It was followed by a further Training Workshop with similar objectives in a different location in October 2006. That Workshop was co-funded with the UNFPA at the request of the NPFPC which will evaluate program outcomes (with donor support). Australian workshop participants speak highly of the NPFPC's genuine commitment to achieve reform based on mutual respect between dialogue partners able to discuss both successes and failures in the past.

Activity 1.11.1: Ministry of Justice – Community Corrections Workshop (June 2006)

The activity provided a key justice agency with knowledge of how Australian non-custodial sentencing options and community corrections programs operate and protect human rights in support of a current pilot program on community corrections encouraging alternatives to detention where appropriate. The seminar was preceded by a Community Corrections Pilot Study Visit to Australia in March 2005. The initial pilot program with six provinces undertaking community corrections has now been extended to 18 provinces with the issues learnt in Australia cited as a contributing factor by the MoJ.

Activity 1.10.1: Supreme People's Procuratorate – Juvenile Justice Consultation (March 2006)

The activity was to assist with the design of a Juvenile Justice Workshop to be implemented in China in May 2007. It was preceded by a Juvenile Justice Study Visit to

Australia in April 2005. The SPP has obtained knowledge of how Australian laws and procedures and practices within the criminal justice system operate to protect juvenile human rights. The Workshop is expected to further strengthen the capacity of the SPC to contribute to current PRC reforms in juvenile justice including the proposed establishment of a specialist Juvenile Court.

Activity 1.5.1: All China Women’s Federation – Anti-Trafficking Workshop (April 2005)

Staff of the ACWF and a range of other relevant provincial and municipal agencies obtained new insights into human rights-based strategies to combat trafficking in women and children. Officials from various provinces exchanged information on anti-trafficking programs and discussed future collaborative work. The workshop was preceded by a *SE Asia Anti-trafficking Study Visit* in April 2004 which assessed measures being taken in Thailand, Vietnam and Australia and formed linkages with related bodies in SE Asia.

Ministry of Foreign Affairs – Scholarship Awards (Ongoing)

Two scholarships for study of human rights related subjects at Masters level are provided each year. Thirteen MFA officials have previously successfully completed their studies in Australia and returned to duty with MFA. They include the current Director of the Human Rights Division and staff posted to Geneva and New York.

3.4 Activities that contain less successful elements

Activity 1.6.1: Compensation Law Consultation with the Supreme Peoples Court (April 2005)

The stated objective of this activity was to provide China’s peak judicial agency with knowledge of Australian law and policy relating to state liability and compensation, for the purpose of assisting the SPC to undertake a review of the *PRC State Compensation Law*. A second objective was to enable the cooperation partners to identify whether there is sufficient relevance in Australian experience to support a more detailed future activity relating to compensation law.

While the stated objectives were partly met, the activity arose because the SPC had requested a more substantial activity. The MC had concluded that because Australia does not have a comprehensive compensation law, nor a tradition of paying compensation for administrative transgressions, an activity was not warranted. The SPC would not be dissuaded and as a compromise a less expensive short consultation in China was agreed. This activity served to maintain the relationship but nevertheless an activity was funded in an area where Australia does not have substantial expertise.

Activity 1.1.1 Chinese Academy of Social Sciences (CASS) – Mass Communication Law and Freedom of Expression (Ongoing)

The objective of this activity is to provide practical assistance towards the development of an institutional framework for the effective protection of free speech and the regulation of mass communication media in China. The activity first conceived in 1998, included a number of sub-activities one of which involves the translation of academic texts and materials by CASS to be completed in 2000. The texts are due to be published in 2006 but this timing has shifted many times and the ongoing activity has not yet achieved its objective.

Activity 1.4.1: Ministry of Foreign Affairs – Seminar on Implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR) Concluding Observations (October 2006)

The activity which was the third in a series, helped to strengthen the capacity of MFA and other relevant agencies to implement the ICESCR enhancing China's capacity to improve the quality of periodic reports under the treaty. The seminar was considered successful overall and valued by its sponsor and achieved high quality exchanges of views on issues such as the protection of the rights of women and consultations with NGOs. It was less successful in addressing ethnic and minority rights highlighting that this remains a very sensitive issue. The seminar proved to be interactive on the less sensitive issues with key Chinese participants expressing a range of views. However, on the most sensitive issue the time allocated was taken up by set speeches and did not encourage much interaction. Overall success was also limited by the fact that several key Australian government agencies (including DFAT and AGD) had been unable to send a representative at the time of the seminar – the absence of 'Australian practitioners' was noted by MFA.

Activity 1.3.1: Various Agencies – International Covenant on Civil and Political Rights (ICCPR) Study Visit (November 2005)

Representatives from a wide range of GoPRC agencies visited Australia to learn about Australia's experience in developing domestic legislation and policy that is in conformity with the ICCPR. Participants were reportedly satisfied overall with what they learnt and gained a better understanding of the role and functions of a human rights organisation generally. Nevertheless, Chinese participants reported that the Australian experience in this area is quite different from the issues faced in China in implementing law and policy to deal with China's obligations under the Convention. As a result what the Chinese participants were able to learn from the Australian experience was necessarily limited because of the lack of directly relevant problems in setting up relevant legislative and policy infrastructure in its preparations for ratification of the ICCPR.

Activity 1.6.1 China Foundation for Human Rights Development – Community Democracy Workshop (September 2006)

The objective was to enhance the capacity of this NGO to promote democratic processes, civic participation, accountability and effective service provision by Community Neighbourhood Committees. The Workshop achieved some useful outputs. There was an enhanced awareness of the functioning of Community Neighbourhood Committees and the workshop deliberations received extensive media coverage. A report by a group that visited Australia in 2005 was distributed widely including to senior leaders including the State Council and the proceedings of the seminar have also been published and distributed. The workshop sponsors value the support provided and are keen to conduct similar activities in future. Against these positive developments there are concerns that the Workshop is seen as an end in itself and there is no indication of how information exchanged will benefit associated community democracy pilot activities or other community democracy initiatives. Possibly reflecting the fact that this is a relatively new partner, the MC had difficulty obtaining answers to questions about a shift of the workshop to Wuxi, the relationship to pilots and only the performance of the Australian presentations were able to be evaluated. The MC has correctly concluded that if further cooperation on community democracy is to occur it needs to cover very specific issues where Australian experience and expertise is directly relevant with firm understandings about a practical and outcome-oriented program.

3.5 Management performance

Overall Strengths

The MC has worked to establish a very open and positive environment within which the activities under the HRTC are planned and implemented. All participants spoke very highly of the MC, noting the high degree of professionalism and the environment of mutual trust and respect within which the parties operated and indicated that much of the success of the program should be attributed to the MC. Chinese cooperating partners emphasised that the MC listens carefully to them, and programs are designed and implemented in a manner which is ‘*orderly, transparent and systematic*’ and on the basis of equality, down to the detailed planning of workshops such as ensuring the same number of keynote speakers from both the Chinese and Australian participants. The nature of this relationship encourages Chinese agencies to feel degree of confidence in the relationship and in the discussion of sensitive issues. In fact all Chinese cooperating partners uniformly commented on and commended the MC’s approach: of fostering trust, equality, and mutual respect. These issues directly contribute to the factors for success of the program which are discussed in more detail in Section 4.5.

There is currently an appropriate blend of program planning and monitoring: including regular monitoring visits and ongoing discussions with Chinese agencies about their priorities and about the development and planning of individual activities. The MC sends at least one representative to participate in each activity, which provides the continuity required between planning and implementing the activity. All interlocutors pointed out the valuable role played by HREOC representatives in setting a good tone for the activity greatly strengthening the likelihood of success.

The MC has also very successfully used highly qualified, expert participants from Australia both for visits to China and for program delivery in Australia, who largely provide their services on a non fee paying basis.² These experts expressed their enthusiasm for the MC’s work and for the overall objectives of the HRTC and their willingness to continue their involvement in the activities of the HRTC.

In the conduct of activities, such as workshops and seminars, HREOC has shown sensitivity to the needs of participants and responsiveness to feedback. For example, the ability of HREOC to respond to the need for increased opportunities for interaction during workshops and seminars and adjusting the organisation of these workshops accordingly. HREOC also provides timely pre-departure briefings to Australian participants in workshops and conferences in China. Prior to departure for Australia, it also prepares detailed programs and information for participants in study tours to Australia.

Issues that require attention: briefings

Generally the Chinese and Australian participants commended the level and standards of briefing provided by HREOC, but some Australian and Chinese participants commented that they would have benefited from some enhancements to the briefing process.

Prior to the implementation of activities, especially for Australians participating for the first time, more detailed and focussed background material on the Chinese political,

² There are some exceptions where program delivery has involved an extensive commitment of time and resources, such as the two week evidence design mission to the Judicial Commission in which case there has been payment of a negotiated fee.

cultural and social context, the particular context within which the subject matter of the activity is being implemented and in which the agency functions would have been helpful. Many commented that more information on the experience and needs of the Chinese participants, both at the institutional level and specifically in relation to the particular seminar, would have assisted their preparation for the workshop. Some suggested that a pre-departure briefing would provide a very useful opportunity for the Australian parties to meet each other and have an opportunity to discuss and co-ordinate their approaches to the subject matter of their presentations.

Some Australian interlocutors commented that it would be preferable to include the Australian participants on the basis that their systems, programs and policies represent best practice in a particular area, for example juvenile justice, rather than relying so heavily on participants from NSW.

In relation to study tours in Australia, the desirability of ensuring that the Chinese delegation was well and effectively briefed before leaving China was emphasised. Many Chinese interlocutors suggested that more in-depth preparatory information about the fundamentals of the Australian constitutional, political and legal structures be provided prior to departure so that these matters did not need to be covered in as much detail in Australia, thus freeing up more time for specialist discussions. Some also asked for more detailed briefings to be given on the subject matter of the study tour prior to departure so that discussions could proceed from a more informed starting point and so that more practical activities such as site visits could be included in the study tour. This would match the comment of some Australian participants that with each Chinese study tour they address, they needed to start with the most general introductory material with which the Chinese delegates were not familiar. More effective pre-departure briefing would obviate the need for Australian participants to constantly rehash preliminary or introductory materials in lectures during the study tour.

A number of Australian participants indicated that after completion of an activity, there was almost no post activity follow up from HREOC. They all expressed a desire to be provided with more information about the activity completion, to have some inputs into forward planning of related activities - not in selecting the subject matter of the activity - but involvement in discussions of how it might be handled, targeted and constrained, and an opportunity to make comments and suggestions in a debriefing session, not necessarily confined to providing a written report, which for many is just more work. Given the high level of interest in and support for the program and the non fee paying basis upon which experts contribute their knowledge, contacts and expertise, within the limits of cost, HREOC should consider how better to ensure a continuing involvement and dialogue with these participants.

Issues that require attention: focus of activities

The characteristic of some of the less successful activities discussed in section 3.4 above is that the primary objective of the activity is an exchange of views and information, or to hold the activity, a conference for the sake of a conference, with no other clearly defined outcomes. Although Chinese cooperating agencies propose activities, HREOC plays an important role in discussing and refining these proposals. There is an opportunity at this early stage of planning for HREOC to take a more proactive role in training or coaching agencies to focus on human rights outcomes leading from the activity and not just accept that dialogue or exchange of views should be the primary outcome of an activity. This point is also considered in Section 5.3: Adjusting implementation methods.

4 Factors affecting progress

4.1 Chinese government sector policy issues

The success of the HRTC program relates to the ways its activities reflect and are responsive to Chinese government human rights priorities. The specific policy and priority setting activities of Chinese government departments and other agencies reflects these higher level policies and programs. As the process of formulating the annual program of activities in the PRPM is responsive to suggestions and activity proposals put by cooperating agencies, the program thus is able to adapt to reflect emerging priorities.

With a number of existing partners, the strengthened emphasis on economic, cultural and social rights has already become apparent. Activities have already been planned, for example a Women’s Labour Rights Workshop with the ACWF, and the focus of the Human Rights Knowledge Competition in 2007 to be on economic, social and cultural rights with UNAC.

This enables substantive work to be done on areas of emerging priority and for important human rights issues in these areas to be addressed. Conversely, it may be comparatively more difficult to obtain active support for activities that address particular human rights issues which are not specifically identified as having a high policy priority. A task of HREOC in the process of discussing and refining proposals with agencies is to ensure that the activities remain closely focussed on human rights. With the emphasis currently being placed on social and economic rights, discussed in sections 2.1 and 2.2, HREOC will need to be cautious to ensure that that focus of the program does not shift away from human rights towards direct poverty alleviation, or law reform generally.

Some areas are particularly sensitive and so developing relationships and very successful activities may be more difficult to develop than other, less sensitive, areas of human rights protection. Human rights protection for ethnic and minority groups has a high degree of sensitivity and greater political implications than other areas due to concerns about separatist sentiments amongst certain minority groups, the heightened sensitivity to terrorism and perceived problems of Islamic extremism. These considerations add an additional layer of sensitivity to programs involving ethnic minority groups for example in the western parts of China and in particular in Xinjiang.

4.2 Thematic areas

The three thematic areas have been selected to implement the overall objective of strengthening the administration, promotion and protection of human rights in the areas of: law reform, women’s and children’s rights and ethnic and minority rights. These themes continue to reflect important Chinese priorities and are key to the promotion and protection of human rights. The CPS identifies gender equality as a continuing priority area, affirming the continuing centrality of the thematic area of women and children in the HRTC. The emergence of new priority areas discussed at sections 2.1 and 2.2 above in line with the program to establish a Socialist Harmonious Society raises the question of whether the thematic areas should be changed or expanded to focus more directly on the protection of social and economic rights, particularly the rights of migrant workers, rights to health, and social security, rights of children and the aged. This suggestion was explicitly made by the MFA.

The RT concludes that the existing thematic areas do not require amendment as they are sufficiently broad in scope to incorporate these emerging priority areas. Within the existing thematic areas, adjustments will need to be made to ensure that the program remains responsive to Chinese priorities. Especially difficult areas such as rights advocacy require attention. In reaching this conclusion, the RT took into account a range of considerations which are set out below.

The CPS has identified capacity building and a more comprehensive approach to governance issues as its priorities. The strategy moves away from a *‘discrete poverty reduction activities towards the sharing of ideas, high level capacity building and policy engagement.’* This strategy has a direct impact on the way in which programs in the new priority areas to deal with social inequality and the protection of social rights are formulated. That is, they should aim to strengthen capacity building and address the factors that underpin poverty rather than focus on direct poverty alleviation programs. This approach reinforces the overwhelming consideration in the HRTC which is its human rights focus rather than a direct poverty alleviation focus, even though these two are related. With continuing priority given by the GoPRC to the development of the rule of law in China, the thematic area of law reform in particular is especially broad in scope and remains an important vehicle for the definition, implementation and advocacy for the protection of social and cultural rights. For example, legal reform and advocacy is a key practical strategy for the promotion and protection of the rights of migrant workers, the young, aged and infirm to proper health care, social services and protecting them against discriminatory conduct. The protection of women and children, ethnic and minority groups is a central focus of the emerging priority on the protection of social rights.

The MC has the capacity within the existing thematic areas to make timely adjustments to the specific focus of activities to address areas of emerging priority. Agencies with whom HREOC has a long and well developed relationship, such as the ACWF, expressed an interest in pursuing activities relating to the protection of the rights of women workers, including migrant workers. There is sufficient flexibility within existing relationships for activities to reflect the emerging priority areas. This flexibility is enhanced by the gradual addition of new cooperating agencies whose interests will also be in promoting human rights in these priority areas. This is illustrated by the inclusion in 2006 of the Beijing Legal Aid Service for Rural Migrants as a new partner agency. Similarly, protection of the rights of women and children and of ethnic and minority groups include the protection and promotion of the social and economic rights of these groups.

There are also potential synergies between the HRTC and other AusAID programs within the existing HRTC themes. These are primarily programs in China, such as the China-Australia Governance Program (CAGP) discussed in more detail in Section 5.7 and the Health and HIV/AIDS programs. They might also include regional programs such as the Australian government’s regional anti-trafficking project and the Asia regional HIV/AIDS Project. Governance and health are clear cross-cutting influences with the themes of the HRTC. For example, to date the activity on correctional administration reform has included components on the management and protection of the rights of detainees with HIV/AIDS represents an intersection between the concerns of the HIV/AIDS programs and the HRTC program.

4.3 Gender issues

Gender is a central focus of the HRTC, as one of its three themes is the promotion and protection of the rights of women. The CPS includes as one of its priorities the

‘promotion of social dialogue on gender equity in the development and implementation of laws and policies.’ This reinforces the importance of programs and activities that have as their focus the protection of the rights and interests of women.

Another aspect of gender about which HREOC has remained commendably vigilant is to ensure that there is a gender balance in those participating in program activities and especially study tours to Australia. Not only is the focus on the number of women participating in study tours, workshops, seminars and attachments, but also in ensuring the inclusion of women participants who have relevant qualifications, rank and status. During discussions in Beijing, the RT found that interlocutors expressed an awareness of and support for the goal of ensuring a gender balance. Gender balance has not always been achieved, where for sector specific reasons there are more men than women working in an area.

In the previous three years a gender balance in the MFA scholarship program has not been achieved. The RT notes that HREOC indicated that they have raised this issue with MFA but been informed that scholarships are awarded on the basis of merit, that is, the top two candidates are selected. In the award of scholarships, the importance of achieving a gender balance amongst relevantly qualified candidates is of particular importance and arguably achievable where female candidates meet the required standards. Other AusAID programs insist on gender equality in granting scholarships and there is no reason to depart from this principle in this situation.

4.4 Programming

Activities

The HRTC includes a wide range of activities including: study tours to Australia, workshops and seminars in China involving Chinese and Australian participants, training and short term visits. As discussed in Section 4.4 below, each has its own advantages and challenges. A balance of each is required. In discussions with both Chinese and Australian participants a number of suggestions for further refinement and improvement of these activities were made. Some suggested that more emphasis might be placed on ‘grass roots’ level activities involving pilots, training programs and projects which provide practical assistance to vulnerable groups.

Study tours are seen by many Chinese agencies as a very important way for Chinese participants to gain a first hand understanding of the ways the Australian system operates in a particular field and to understand the areas of complementarity where Australia may have relevant experience at the beginning of a longer term collaboration or program. Chinese interlocutors travelling to Australia expressed a desire to change the balance between lectures and site visits more in favour of site visits, indicating, that as professionals, there was a very great benefit in witnessing Australian institutions and practices. Issues relating to the management of study tours and workshops are also dealt with at Section 3.5 above.

In workshops and conferences, some Australian participants expressed a strong desire to allow more time for informal discussions with Chinese participants, either through extending the length of the conference, or reorganising the mix of plenary sessions and small group discussions, subject to language constraints and the availability of interpreters. This was seen as a way of facilitating more detailed and open discussions of problems and challenges for their own work and strategies they have adopted to address these issues.

Consideration should be given to the advantages of longer term visits and work placements. The participants in the three month visit by NJC officials to the Law School of the University of New South Wales were very enthusiastic about their visit and what they achieved in that time. The many achievements of this visit suggest that work attachments in appropriate circumstances could usefully complement prior study visits and enable a more in-depth exploration of the issues canvassed during the study visit. A range of Chinese government agencies commented that such an approach would also be very valuable for developing their understanding of the Australian situation and its applicability and usefulness for informing issues they are seeking to address in China.

Program planning: one and three year planning

The annual PRPM is required to ‘*review the performance of the program and design new activities for implementation in the coming year for approval at the annual Dialogue on Human Rights*’. This task has been achieved by developing a range of activities with a ‘*mix of activities with implementation periods of between one and three years... Each multi year activity must be self contained with specific outputs that can be achieved in each year...*’

The degree of flexibility in planning activities facilitates achievement of several goals of the HRTC. The first is to facilitate progressive engagement with partner organisations where aspects of a priority issue, such as combating domestic violence, can be developed and deepened over the course of a three year program. Such flexibility also accords with the evolving nature of the HRTC program, facilitates the addition of new partner agencies and the addition of new programs in areas of emerging priority. Many agencies expressed satisfaction with this aspect of program planning. Secondly, it maintains the strong link with the annual Dialogue at which the program for each year and its individual activities are approved. Both Australian and Chinese counterpart agencies emphasised the importance of the close link between the Dialogue and the HRTC and the mutually reinforcing nature of the relationship between them.

Geographical focus: in China

In China, the geographic focus of programs has been varied. It has included programs in Beijing involving central government agencies and participants from other regions and organisations operating in Beijing, as well as programs in regional and local areas with participation from central, provincial and local organisations. HREOC has identified willingness of cooperating partners, wherever possible, to arrange for activities to be held in areas outside the capital and large coastal cities to facilitate the broadest possible dissemination of information and to increase opportunities for training and information sharing to participants in local areas where these opportunities may not arise frequently. A number of Chinese partner agencies also expressed a desire for training programs to be held in local areas where possible, to facilitate participation by officials and others participating in grass roots work.

The diverse array of geographical locations of activities accords with the practical focus of programs under the HRTC and with the suitability of the location for each activity, determined on the basis of the objectives of the activity and the adequacy of resources in each location to host such an activity.

Geographical focus: in Australia

In Australia, activities have tended to be located in NSW, with some activities held in Victoria and Queensland. Some agencies indicated that their learning from the Australian

experience would have been enhanced by being exposed to approaches taken to dealing with relevant issues in other parts of Australia, in particular where the subject matter of the study tour related to issues concerning rural or remote areas, where approaches towards particular issues varied between States, or where the systems in a state other than NSW represent best practice in a particular area.

4.5 Summary of activity success factors

- Program initiatives have coincided with fundamental legislative and constitutional reforms that have provided an impetus for agencies to address HR reform issues in a number of areas. Sophisticated Chinese officials increasingly recognise that economic, social and civil rights can't be separated and that protection of rights can lead to economic progress.
- Detailed attention has been given to establishing areas where Australia has expertise that will add value when planning study/design visits to Australia coupled with exchanges of information between partner agencies and the MC well in advance of activity commencement.
- Program priorities are set by the Chinese program partners and HR elements are increasingly linked with pilot reform programs and then mainstreamed into their regular work programs. The MC was described as responsive not pushy. However, when responsiveness is taken too far there is a risk that activities may be funded in areas where Australia does not have expertise.
- There is progressive engagement both at the broad partner agency and activity levels. The latter is well illustrated by assistance to the NJC where a 3 month research/work experience assignment complemented a study visit on the same subject and where the combined activities have achieved significant outcomes. This approach facilitates more systematic monitoring and evaluation some of which now happens informally (but is not adequately reported), enabling consideration of activity outcomes before moving to another topic in the same general area.
- In China participants in 'Study Tours' are generally expected to prepare a comprehensive report on what has been learnt and how this knowledge may be applied to benefit the agency's aims and these reports may be distributed widely at both central and provincial levels. While not an 'Action Plan' as such, this approach may help facilitate successful outcomes and provides a potential post-activity monitoring tool.
- Encouraging 'train-the-trainer' activities either directly (involving academic staff of training institutions such as the NJC) or others (judges of the SPC) who on a casual basis conduct lectures at a training centre (the NJC). Such activities are likely to achieve more significant multiplier effects.
- MFA as the program's key counterpart cited HREOC's competencies, human skills, professionalism and working methods as well as its 'considerate' approach as major success factors.
- A very recent joint activity between two donors (Australia-HREOC and UNFPA) involving donor coordination is functioning well with good prospects for ongoing cooperation because it was requested and is led by a Chinese partner agency (NPFPC). The NPFPC has progressive and strong leadership and has developed close working relationships built on trust with the two implementing agencies over an extended period.

- For scholarships, clear targeting by the agency (MFA) in terms of subjects/training institution, a selection process based on merit and good career prospects on return. This has resulted in a very high return rate and in graduates working in fields closely aligned with their areas of study and the objectives of the ‘activity’.
- At conferences/seminars in China the atmosphere is generally one of equality where all participants share their experiences freely and the Australian participants acknowledge that Australia and they may not have all the answers, that they also learn from China’s experiences and that they acknowledge progress that has been made by Chinese participants.
- Australian participants have been carefully selected by the MC and were described by one key agency as ‘*always very modest*’. Australian resource persons are practitioners, experts in their field and adequately briefed.
- Understanding and trust were often cited as key factors fundamental to success – particularly by those agencies that have participated in the program for many years. Showing respect to Chinese participants and not being judgemental are related success factors. Giving participants an opportunity also to challenge aspects of the Australian system eg in relation to Rules of Evidence and Juvenile Justice helped build trust and sound relationships.
- Generally good attention to detail including in areas such as quality translation and well structured and carefully prepared programs.
- In relation to anti-trafficking the program adopted a pragmatic approach that involved exposing officials to practices in neighbouring countries rather than a study tour to Australia coupled with some exposure to the AusAID-funded anti-trafficking project based in Bangkok. Then, knowing when to stop and when to move on to another topic is an important success factor.
- Australian participants at in-country workshops and seminars generally provide translations of their presentations in advance of these events. Chinese participants generally do not – a point made by Chinese agencies in commending the Australian approach.
- Australian counterparts were highly complementary of the overall quality of the Chinese delegation members on design/study visits to Australia. They commented that the Chinese delegations were always eager to learn and had a strong interest in the subject matter. This indicates that the selection criteria agreed between the MC and Chinese counterparts are sound and effective overall.
- Maximising the use of interactive rather than lecture type workshops.
- Ensuring some reasonably senior participants. For the Rules of Evidence initiative a judge occupying a very senior position in the national hierarchy of the SPC ‘*with capacity to influence reform in relation to the rules of evidence*’ was cited as a key participant. The program has focused on the middle level officials, but senior level buy-in has been a success factor. At times initial difficulties with new partners were overcome when senior officials took an interest in and expressed support for program initiatives.
- Encouraging multi-agency participation in activities including study visits where such agencies play an important role in the reform process being pursued by the sponsoring agency (eg in relation to combating domestic violence).
- Choosing counterparts with great care and strategically. MFA was keen for the program to undertake activities in Tibet. Instead of working with the SEAC, the

program chose initially to work with the TAR Department of Education and has now moved to the public security organs and the Department of Justice working on police detention centres.

4.6 Summary of factors that relate to less successful activities

The issues highlighted in this Section relate not only to the less successful activities. They also emerge from a review of reporting on activities that were successful overall but where Chinese or Australian interlocutors noted or mentioned that improvements could be made.

- Uncertainties about Australian areas of expertise and/or reluctance by Chinese partner agency to accept advice on the issue while not a very common problem have been a key factor behind several less successful activities. Basic differences between the two countries are such that what study tours find in Australia ‘...*does not always match what China needs to know*’ according to one agency.
- Agencies that have entered the program more recently do not yet have a complete understanding of how the program operates and the high degree of trust established with HREOC is not yet in place.
- Improved briefing on the broad Chinese context for Australian experts and more detailed background briefings on relevant sector issues for Chinese participants in Study/Design Missions to Australia.
- A lack of clarity about the desired practical and outcomes-oriented objectives of a workshop such that the workshop is seen as an end in itself, thus limiting the scope for human rights related outcomes.
- An overly cautious approach towards post activity monitoring and evaluation that has resulted in very limited data on outcomes and impact.
- For some seminars and workshops in China an inappropriate mix of set speeches and interactive discussion with too great a focus on the former.
- At times translation services are not of a sufficiently high standard which impacts on the quality of the outputs.
- According to MFA the Australian Commonwealth/State structure is very complex and too much time is spent by study tour members trying to understand these relationships that are not relevant to China’s situation.

4.7 Lessons learnt

Current approaches to reporting lessons learnt

The MC is required to ‘describe any lessons learnt from the activity’ in each Activity Completion Report (but not in any other report including the annual Program Completion Report). While a great deal of material is found in ACRs under the heading of lessons learnt, much of this merely provides an account of events at the workshop – for example a description of logistics and hospitality, the quality of presentations and translation facilities. There is no consistency of approach. A few ACRs present this material under the heading of ‘*Evaluation of the Visit (or seminar)*’ which is where it belongs.

An example of the current approach is the February 2006 ACR 1.5.1 on a *Penitentiary Design Visit* where 3 pages of Lessons Learnt are presented under various sub-headings providing factual accounts of what took place. There is not a single lesson either specified or implied. The July 2005 ACR 2.3.1 on a *Domestic Violence Workshop* also has 3 pages of Lessons Learnt under various sub-headings with several important lessons hidden in this material. A different approach appears in the April 2006 ACR 2.4.3 on a *Human Rights and Family Planning Seminar* where this type of material appears under the heading of ‘*Impacts*’ (which raises other issues) and a single agency-specific lesson is drawn and presented in a short paragraph.

The RT proposes in Section 5.6 below a new and consistent approach for MC reporting on lessons in future. When combined with targeted evaluation activities also proposed in Section 5.6 it will be easier to extract meaningful lessons in future.

Lessons learnt identified by the Review Team

The RT has adopted the following AusAID draft M&E Framework Good Practice Guide definition of Lessons Learnt: ‘*Generalisations based on evaluation experiences with projects, programs, or policies that abstract from the specific circumstances to broader situations. Frequently, lessons highlight strengths or weaknesses in preparation, design and implementation that affect performance, outcomes and impact*’.

The lessons identified by the RT are not agency or activity specific. They have been drawn from both successful and less successful activities.

Monitoring & evaluation

- When the evaluation of project outcomes is important for an agency’s core business, is owned by that agency and local systems are used as far as practicable, assumed sensitivities about the evaluation of outcomes are more imagined than real.
- Standardised evaluation approaches are not essential in a program that involves a multiplicity of agencies all with different roles and functions, where sensitivities about the subject matter may vary and where activities are not related except at the broad goal level. A case-by-case approach that assesses not only the assumed sensitivities but that also takes into account the length of time that an agency has been with the program and the degree of trust that has been built up may be a more effective approach.
- Terminology is important when discussing monitoring and evaluation issues and ideally, for AusAID projects, the terminology used should be consistent with AusGUIDE as far as practicable. Confusion between the terms ‘*outcomes*’ and ‘*impact*’ and what this means in relation to ex-post evaluation, can lead to evaluation approaches that do not maximise the opportunities for collecting and reporting

valuable outcomes data to feed into AusAID’s Country Program Performance Frameworks.

Looking for multiplier effects

- In a country like China this type of program can only ever hope to reach a limited number of relevant agencies particularly at the local level. A focus on capacity building for key staff of training institutions has the potential to achieve significant multiplier effects given the wider reach of such institutions. Similarly study visit teams should include individuals who are in a position to promulgate what has been learnt and in-country workshops and seminars should maximise opportunities for multi agency and multi-province representation.

Progressive engagement

- A program working in a sensitive area such as human rights where new partners less familiar with donors and potentially distrustful of a donor’s motives will benefit from a process of progressive engagement where trust, mutual respect and comfort levels, which are key success factors, are built up.
- Progressive engagement also enables improved programming where each activity builds on outcomes and lessons learnt from the previous activity, improving the potential for significant positive outcomes. It also facilitates a staged withdrawal and move to a new thematic area when the program has no further meaningful expertise to offer or higher priorities are agreed.

Responding to Partner Government Priorities

- The program has carefully responded to Chinese priorities and not sought to impose priorities perceived by the contractor or Australian government agencies. This had helped to build up high levels of trust and this is considered a major success factor and this approach needs to be continued.
- At the same time, relationships with agencies that have been program partners for many years are now so positive that it should not in future be necessary to fund activities in areas where Australia does not have relevant expertise merely to demonstrate this point to a partner agency that has difficulty accepting the Managing Contractor’s advice about comparability of systems and relevance of Australian expertise.

Improving the effectiveness of in-country workshops and seminars

- Each activity funded needs clear and practical outcomes oriented objectives or there is a risk that a program partner keen merely to be working with a donor will view a conference or workshop as an end in itself severely limiting the scope for meaningful outcomes.
- Without quality translation services workshops may be a waste of time and given the importance of this factor, stand-by or back up arrangements may have to be considered. Relying on promises may not be enough.
- The effectiveness of a workshop may be significantly enhanced by ensuring a significant interactive component and minimising set speeches and by enhancing the depth of contextual briefing provided to Australian experts (who should where possible be practitioners in the subject area) and by ensuring that the texts of their presentations are provided to the Chinese sponsor agency well in advance.

4.8 Program design

The HRTC program began without a detailed design process but an AusAID design team did undertake some detailed design work after program commencement. The status of this ‘design’ is unclear but it is noted that there is no reference to a design in the annual ROU Annex.

While there is no design as such, the previous design work has resulted in a detailed Logical Framework Matrix and Risk Matrix. These documents are cited in MC documents and attached to the detailed annual PRPM Reports.

The Logical Framework Matrix (LFM) and Impacts Matrix

The LFM has a range of at times quite ambitious performance indicators together with means of verification. The latter tend to be standard for most indicators. The LFM is then used to support an Impacts Matrix also attached to the annual PRPM Report.

For systematic monitoring and reporting of activity outcomes, the LFM will be an essential tool. It will need to be reviewed and refined to match the M&E strategies adopted. At present, the LFM with its often ambitious performance indicators gives an impression of quite active evaluation of outcomes which does not reflect reality and is certainly not reflected in program reporting. Some of the terminology used also needs to be reviewed. Apart from avoiding references to impact when intermediate or long term outcomes are being discussed, there is also some confusion between some of the specified outputs and outcomes. For example, the discussion of the logframe in the main PRPM notes an underlying eighth ‘output’ common to many activities as ‘*Agencies implement new regulatory frameworks, policies or practices relevant to legal reform and/or the administration of justice for improved human rights.*’ This would normally be considered an activity outcome that may not emerge until some time after activity completion.

The Impacts Matrix, while an interesting document is not entirely credible as it also purports to report a wide range of activity impacts (quite apart from the fact that they are outcomes rather than impacts) many of which are not supported by material found in any of the program’s reports to stakeholders. More care will need to be taken to back up purported outcomes and to distinguish those that are merely assumed or hoped for and those that are based on some ex-post activity monitoring and evaluation.

The Risk Matrix

This document is detailed and uses a format found in many detailed program designs. It contains numerous comprehensive risk treatments and containment strategies. However, a Risk Matrix (more correctly a Risk Management Plan) is only of value if it is used and updated as necessary. The PRPM notes the attached Risk Matrix, provides some useful discussion of broader level risks and concludes that:

‘All of the risks in the Risk Matrix are accepted, both major and minor, with risk treatment or containment strategies as specified in the Matrix. While most of these strategies cannot guarantee success, they are considered to be realistic in the circumstances and on past experience have proven generally effective.’

For this statement to be valid there is a need to review and revise some of the fundamental risk treatments. For example, there are references to action plan techniques but these have never been used; a reference to monitoring and evaluation processes does not appear to reflect what happens in practice; the reference to donor coordination is not entirely accurate and references to the analysis and monitoring of organisational roles, structures and processes also seem to overstate what happens in practice given the

understandably cautious approach of the MC in delving too deeply into the inner workings of some partner agencies.

Apart from the Matrix and the broad discussion of risks, each new activity described in the PRPM has its own risk strategy. This begins with a passing reference to the program risks but then lists a range of quite generic risks (eg people falling ill or suffering injury) that need not be included. Even the risk that Australia's experience will not be relevant should not be a risk given that relevance is established before an activity is programmed.

Activity designs

Each activity purports to have a design. Some of the visits to Australia by partner agencies are labelled design visits. The Risk Matrix frequently cites '*careful activity design*' as an important risk treatment. The RT obtained copies of several of these proposals/designs from partner agencies. Some are very basic and focus mainly on the activity budget whereas others are more elaborate and deal with goals and objectives at some length. It would be useful to review current approaches and consider use of a more standardised format (which could still be adjusted to meet particular agency circumstances) but that would contain some material on desired activity outcomes which would facilitate subsequent monitoring and evaluation. There is no suggestion that '*designs*' should be very elaborate but some enhancements to the current approach should be considered particularly for those agencies that have been partners for many years and where more systematic monitoring and evaluation of activity outcomes should not be a problem or threaten the close and important working relationships between the MC and the partner agency. This could for example help avoid situations where a conference or seminar is proposed that is not sufficiently outcomes oriented.

4.9 Monitoring and evaluation

Analysis of current M&E approaches

The program's evaluation strategy is said to rely largely on direct observation, focuses on the assessment of the quality of each activity and the extent to which the design and implementation of the activity is capable of contributing to achieving its objectives and to the overall objective of HRTC. A proposal in 2002 to embed a joint cooperative evaluation mechanism in cooperating organisations beginning with free-standing evaluation seminar for cooperating organisations was not accepted. '*Deductive reasoning*' approaches are used to determine whether an activity has achieved its objectives. While evaluation has been very limited, M&E issues are discussed in some detail in PRPM and Program Completion Reports. Key statements include:

- '*This Mission again has noted that the AMC's evaluation actions may not reach the level often expected of conventional technical cooperation programs. However, it has concluded that the nature of the Program, the sensitivity of some of the topics and the approach to the subjects taken by some of the cooperating organisations has made embedding conventional evaluation techniques too intimately into program management a high risk strategy. Previous PRPM reports have drawn attention to the specific risks involved if the Program were to attempt to introduce rigid, conventional evaluation techniques that often have limited application to human rights programs.*' (p.47 PRPM Report 2006)

The RT agrees that so-called rigid evaluation techniques particularly if introduced across the board would not be appropriate for a program of this kind. However the RT also notes that no one seems to have suggested such an approach and this comment that has

appeared in previous MC reports may have helped deflect attempts to introduce more appropriate M&E strategies into the program.

- *‘Evidence about the impact of the HRTC program is limited and is not available in any systematic way. This is due to the nature of the program’s environment - both the Chinese domestic environment and the human rights sectoral environment.’ (p.10 Program Completion Report, 2005)*
- *‘At both activity and program level the evaluation strategy seems reasonably effective....Unfortunately it is not nearly so easy to assess whether cooperating organisations make effective or sustained use of newly acquired capacity and thus it is exceedingly difficult to evaluate the program against its longer term ambitions... One can argue that any meaningful evaluation of the program against such long term ambitions requires the benefit of a 30 to 50 year perspective... The evaluation strategy therefore stops short of assessing the extent to which cooperating organisations use new capacity to promote and protect human rights.’ (p.48 PRPM Report 2006)*

The RT does not disagree with the statements but notes that given the acknowledged limitations about assessing impact, it is surprising to find pages of material on ‘*impact*’ in ACRs and elsewhere.

- *‘Existing data is mainly ad hoc and based on immediate impressions, with little feedback on the medium or longer-term consequences of activities. However it is apparent that if cooperating organisations are willing – a very important proviso – then a great deal of additional longitudinal or “activity follow-up” data may be obtainable. It is not appropriate at this point ... to request statistical data. However it is appropriate to question cooperating organisations about the results of activities in terms of changed processes, policies and programs’.* (p.127 PRPM Report 2006)

The RT agrees that statistical data is not the key. It is understood that the MC does collect a great deal of qualitative data after activity completion. Unfortunately current reporting arrangements do not facilitate the reporting of such data to key stakeholders. As shown below, the RT finds that some key agency partners are ‘*willing*’ to cooperate in evaluation activities.

- *‘Qualitative indicators are very important in this Program. Most of these are in the form of oral or written formal and informal reports. ... In addition to reports, discussions and conversations, qualitative indicators may be assessed in this Program by follow-up interviews performed as part ... simple case studies involving visits, formal or informal individual or group interviews and direct observations, in order to track what has happened and the contribution of the Program to any reported institutional changes. ... many of the subjects dealt with under the Program are highly sensitive and that for this reason cooperating organisations may not be willing to share internal information and data. However, the strength of relationships with a number of cooperating organisations has resulted in a relatively high level of candour in discussions which has in turn facilitated the collection of increasingly valuable qualitative data.’* (p.128 PRPM Report 2006)

The RT agrees but again notes that such qualitative data does not readily find its way into program reporting probably because it operates essentially on an annual program cycle focused on annual activity completion and there is currently no reporting that takes a longer term view of activity outcomes. As discussed in Section 5.5 below, the RT supports the proposal to use case studies as an evaluation tool in appropriate

circumstances. The RT strongly endorses the MC's assessment that strong relationships with some partners will facilitate the collection of qualitative data.

Definitions

As a general rule, an ex-post evaluation to determine project outcomes should be undertaken between one and about three years after activity completion. At that time '*... an assessment of outcomes and sustainability should be possible...*'. Ex-post evaluations to establish impact are undertaken from 4 to 10 years after project completion. Evaluations towards the end of an activity would at best assess intermediate rather than final outcomes.³ Clearly therefore this program has adopted an '*impact*' definition that does not accord with standard AusAID practice.

Partner attitudes

The RT was conscious of sensitivities and raised the issue carefully with Chinese agencies where considered appropriate. For example, there was no point raising the issue with new partners that have not yet developed a relationship of trust with HREOC and where activities have not yet commenced or the first activity is quite recent. In any case, the RT from the outset took the view that evaluation will need to be addressed on a case-by-case basis.

The RT concludes based on its discussions that the attitude towards evaluation varies between agencies. For example, the NPFPC would be very disappointed if the program displayed any reluctance to participate in evaluation activities following the completion of the current project. It has already completed a base line survey and indicated that it will seek funding support for ex-post evaluation from both HRTC and UNFPA. UNFPA as a funding partner made it clear that its joint funding is conditional on some evaluation in line with its standard operating rules. The RT believes that the ACWF would support some ex-post evaluation. The Judges College presented its key participants in past HRTC activities to the RT '*for examination*' and all spoke at great length about achievements, freely provided documents (journals and course details) to demonstrate post-activity outcomes. At the Aide Memoire presentation, the Ministry of Foreign Affairs expressed firm support for carefully targeted ex-post evaluation initiatives.

Other donors tend to evaluate their human rights focussed programs. For example the Ford Foundation which cooperates with some of the same partners as the HRTC, will evaluate some of its activities on a selective basis particularly where it cooperates with an agency over a number of years. Each activity document incorporates performance benchmarks and it seeks to establish activity outcomes particularly where these feed into strategic reviews. It may also launch more substantive evaluations involving specialist consultants. For example, it undertook an evaluation of its judicial reform initiative projects funded between 1995 and 2001.

Proposed approach

While there will be ongoing sensitivities and the issue will have to be approached with a great degree of tact, it seems clear that a more proactive approach on evaluation is overdue. This should focus on long-standing partners, address outcomes (it would be premature to seek to assess program impact), support the Country Program Strategy Performance Framework and consider appropriate M&E approaches on a case by case

³ AusAID (2005), *AusGUIDELINE 5.2. Undertaking Activity Evaluations*, p.2

basis. More use could be made of current practices whereby study tour teams prepare comprehensive reports on their findings. These could in some circumstances be the basis for action planning approaches already mentioned in program documentation but not currently used. Some agencies would support appropriate follow-up surveys – ownership by the agency itself will be an important issue. Simple case studies involving follow-up interviews to track post activity outcomes could be considered as previously proposed by the MC but should be costed and integrated into multi-year activity designs.

4.10 Reporting

Reporting to stakeholders is comprehensive and provides a great deal of useful information. The key reporting tool is the annual PRPM Report. The annual Program Completion Report and the separate Monitoring Reports provide additional useful information as do the Activity Completion Reports (ACRs). The latter provide an extraordinary amount of detail on the implementation of each activity.

The good practice trend in AusAID over recent years has to reduce the volume of program reporting. For approved activities that are currently being implemented or where implementation is complete, the fundamental reporting objective is to report on outcomes, lessons learnt and to bring to the attention of AusAID staff problems that have arisen that require some intervention or to highlight how the MC will be addressing such problems. AusAID does not require a detailed account of every implementation event, what was said by participants, the nature of the administrative arrangements and the like. There is a need of course to report in some detail on proposed new activities since these are subject to annual approval. This is covered very effectively by the annual PRPM Report which also makes some attempt to report on activity outcomes, restricted to those activities completed recently. Some of this reporting is repeated in the annual Program Completion Report. The RT understands that a great deal more informal post activity monitoring takes place but results are not reported to stakeholders in a meaningful way.

All other program reporting is activity focused, essentially concludes upon activity completion, is very repetitive and is fundamentally flawed in two key areas – lessons learnt and activity impact. Limitations regarding the former have been noted in Sections 4.7 above. Regarding impact, there is firstly the definitional problem described in Section 4.8. Secondly, in most Activity Completion Reports the extensive material that appears under the heading of ‘*Impacts*’ bears little relationship to impact, has very little to do with outcomes and may not provide much guidance about outputs. There is also no consistency of approach as shown in the examples below:

- *ACR 2.4.3 Human Rights and Family Planning Seminar, April 2006*: A clear statement of ‘*outputs*’ and a brief ‘*outcome*’ statement that restates one of the outputs. This is followed by six pages of descriptive material headed ‘*Impacts*’. Apart from the opening paragraph which discusses likely impact, the material has little to do with impact and is unnecessarily detailed regarding administrative arrangements and the detailed presentations.
- *ACR 1.7.1 Juvenile Justice Design Visit, May 2006*: Brief statements of outputs and an assumed intermediate outcome followed by almost five pages of material headed ‘*Impact*’ including one page on philosophies and approaches to juvenile justice and two pages on practical measures for protecting the rights of juveniles.
- *ACR 2.3.1 Domestic Violence Workshop, July 2005*: A Clear statement of ‘*outputs*’ achieved. Under the heading of ‘*Outcomes*’ the outputs are restated. Under the heading of ‘*Impacts*’ there is some concise discussion of likely outcomes. Apart from

the terminology confusion this is one of the better ACRs in terms of dealing with achievements.

The frequency and coverage of reports is described in some detail in the annual ROU Schedule or MC Scope of Services.: Apart from ACRs and the annual PRPM Report, the MC must submit each year one Mid Program Report; one Program Completion Report; three Monitoring Visit Reports and Monthly Reports. Other comparable AusAID programs and projects tend to require less reporting. The RT raised this issue with HREOC staff who have no difficulty complying with this requirement as it facilitates HREOC's own data recording needs. The ROU specifies the scope of ACRs and requires a '*summary of impacts*' against various criteria. These unhelpful specifications given the confused terminology and the guidance of '*no more than 10 pages*', help explain some of the problems described above. In practice ACRs average 11 pages not counting attachments.

5 Solutions proposed

5.1 Expanding the range of partner organisations

The RT concludes that the current method of accretion creates a good mix of established and new co-operating agencies. The RT has found that many cooperating agencies of long-standing have established the good working relationship and trust that enables frank and constructive consultations on programs such as when they might need adjustment or when they have reached their natural end point. Adding new cooperating agencies enhances the capacity of the HRTC program to be adjusted to meet emerging priorities. The process for identifying and including Chinese partner agencies to the program remains appropriate.

The MC should consider carefully on a case by case basis how best to deal with less well performing agencies especially where they have important responsibilities and powers in particular thematic areas. As discussed in Section 2.3 above, the MC should consider very carefully all possible implications of removing a poorly performing cooperating agency from the HRTC entirely, especially where the agency expresses willingness and enthusiasm to continue participating in the HRTC program. The MC should consider adopting a range of approaches in addressing these difficulties which may not involve removal of the agency from the HRTC program entirely.

The RT recommends that the existing method involving gradual accretion of cooperating agencies be retained and that in considering the removal of less well performing agencies a range of approaches that may not involve removal of an agency from the program entirely, receive careful consideration. [Recommendation 1]

Linkages

As noted in Section 2.3 attention needs to be given to development of linkages between cooperating agencies in China and Australia outside the HRTC. This should be integrated into programming and planning more generally, with consideration to be given to the influence of the particular activities whose nature facilitates the fostering of longer term connections, language ability, geographical focus of the activity, partner agencies and other related programs in which the parties might be involved.

The RT recommends that the MC actively explore ways to foster the development of ongoing linkages between Australian and Chinese agencies and organisations outside the scope of the HRTC and the establishment of new linkages as part of its regular project development and design work. [Recommendation 2]

5.2 Adjusting the range of thematic areas

Thematic areas

As discussed in Sections 4.2 above the RT considers that emerging priority areas can be adequately accommodated within the existing three thematic areas of the HRTC and so there is no need to alter the existing thematic areas.

The RT recommends that within the existing thematic areas, the MC should ensure that program development remains responsive to emerging priority areas. The MC should also attempt to keep itself apprised of these as well as any other priorities that may

emerge in future through its own research and information exchange with other donor agencies. [Recommendation 3]

Assess the scope for the HRTC to better support and or complement the AusAID China-Australia Program Strategy

The RT believes that as an important part of the new country strategy, HIV/AIDS should be seen as a cross cutting influence. Where appropriate, the HRTC program should take HIV/AIDS into consideration. In particular, as discussed in Section 4.2 there are several areas where activities under the HRTC naturally already touch on issues of HIV/AIDS, such as penitentiary detention reform and juvenile justice. Similarly, discrimination should be seen as a cross cutting issue and factored into programs as appropriate.

The relationship with the CAGP and potential interactions between the HRTC and the CAGP is dealt with at Section 5.7 below.

5.3 Adjusting implementation methods

Project development and methods of implementation

The RT recommends that when discussing and prioritising programs for each year the MC should retain a sharp focus on the protection of human rights and seek to steer cooperating agencies away from activities without a clear focus on the promotion and protection of human rights and clearly defined human rights outcomes. [Recommendation 4]

Examples are study tours and general law reform projects without a clearly identifiable human rights focus and conferences or workshops that are held for the sake of the conference, or for an exchange of information or views, without clearly identified human rights objectives. An example is the Community Democracy Workshop discussed at Sections 3.4 and 3.5 above.

The RT recommends that the MC continue to give careful consideration to ensuring an appropriate balance between study tours, conferences and workshop type activities, placements that facilitate the ‘train the trainer’ outcomes, and grass roots activities such as training and pilot programs. In particular the RT recommends exploring greater use of work attachments in suitable situations and with suitable participants. [Recommendation 5]

Planning timelines

As discussed in Section 4.4 the RT considers that the current planning timelines are appropriate and enable sufficient flexibility to engage in three year programs of activities in appropriate circumstances and to limit other activities to one year. The annual approval process facilitates the close link to the Dialogue which has been identified on both the Chinese and Australian sides as being an important factor in the strong political support for both the Dialogue and the HRTC.

The RT recommends retention of the current time lines for program planning and approval processes. [Recommendation 6]

Gender issues

The RT considers that continuing attention to achieving gender balance discussed in Section 4.3 remains a high priority consideration for HREOC and partner organisations.

In addition to the recommendations made in relation to the MFA scholarship program at Section 5.7 below, the RT believes that achieving a gender balance in the scholarship program should be dealt with in the same manner as other AusAID scholarship programs which insist on gender equality where there are relevantly qualified male and female scholarship candidates.

The RT recommends that a 50/50 gender balance be mandatory each year for the MFA scholarship program provided qualified candidates for admission to an Australian Masters program can be identified within the Ministry. [Recommendation 7]

Management

The RT has reached the conclusion that the management performance of the MC is very good and is a key factor in the success of the HRTC. As discussed in Section 4.4 both Australian and Chinese participants have expressed a desire for more detailed and effective briefings prior to participation in activities. Some of their suggestions for improvements are set out in that Section. Whilst the RT notes that the MC already provides a great deal of briefing materials to Chinese and Australian participants in activities, the fact that there were common requests made for greater briefing suggests that the MC needs to consider how to make the existing modes of briefing more effective and in what ways more detailed background information can be given. Both Australian and Chinese participants expressed the desire to limit the amount of time spent giving lectures on background information and to increase the amount of time spent either on site visits, or engaged in more detailed and informal discussions on matters of interest to practitioners and experts in the field.

The RT recommends that the MC consult with participants in upcoming activities to obtain information about the nature extent and content of briefing materials needed to prepare for the activity and develop a plan for effective dissemination of those materials. [Recommendation 8 (i)]

The RT also recommends that the MC engage in greater post activity consultations with Australian participants and provide participants with a copy of the relevant Activity Completion Report on an in confidence basis. [Recommendation 8 (ii)]

Program design

As noted Section 4.8 attention needs to be given to refinements to the current LFM and Risk Matrix as well as associated design processes.

The RT recommends that the MC review both the content and use of the Logical Framework Matrix, associated Impacts Matrix, Risk Matrix as well as the content of activity designs, addressing the issues highlighted in the HRTC Review. [Recommendation 9]

Donor coordination

The RT recommends that except as opportunities present themselves where collaboration is initiated by the Chinese counterpart such as the NPFPC, that donor coordination not be expanded beyond these case by case collaborations. [Recommendation 10 (i)]

The RT recommends that HREOC use its best endeavours to time its regular monitoring visits to China to coincide with the six monthly Human Rights and Law Reform Donor's Roundtable coordinated by the Ford Foundation. [Recommendation 10 (ii)]

Alumni

MFA suggested alumni activities involving past participants in the HRTC program.

The RT recommends that the MC further discuss this proposal with MFA to establish possible operational parameters. It could for example, involve maintaining listing of participants in key study and design visits to Australia, keep them posted on activities taking place (through the HREOC website) with occasional gatherings in Beijing possibly in conjunction with the Human Rights Dialogue. The objective would be to help maintain long-standing linkages between key program participants, HREOC and MFA staff the Australian embassy. [Recommendation 11]

5.4 Geographic focus issues

On the basis of the discussion in Section 4.4, the RT concludes that most appropriate geographical location of activities in China be judged on a case by case basis based on a consideration of a broad range of factors including the nature of the activity and the participants, the capacity of the hosting agency.

The RT recommends that the location of activities in China continue to be determined on a case by case basis. [Recommendation 12 (i)]

As discussed in Section 4.4, the RT believes that MC needs to consider carefully the expansion of the geographical focus of activities in Australia on the basis not only of cost, but also utilising the most appropriate expertise and best meeting the requirements of the activity.

The RT recommends that the MC consider broadening the geographical scope of activities in Australia where relevant and appropriate. [Recommendation 12 (ii)]

5.5 Assessing activity outcomes

A fundamental lesson is that monitoring and evaluation when owned by the partner organisation and serving its own needs and relying in the main on local mechanisms, is likely to be acceptable to most program partners even in quite sensitive areas. The RT found that some agencies would welcome surveys and other M&E approaches that would help to establish the extent to which capacity building has taken place and even whether cooperating agencies are making effective use of newly acquired capacity. This does not involve the embedding of so-called rigid, conventional evaluation techniques clearly inappropriate for programs of this kind. It will facilitate linkage to the Country Program Strategy Performance Framework.

*The RT recommends a more active evaluation methodology that may vary according to sector and agency circumstances but that will move beyond deductive reasoning approaches currently mainly applied at activity completion. The proposed approach would seek to establish activity outcomes (rather than impact). Partner agency ownership of the agreed approach would be an important consideration. The MC should discuss M&E options with long-standing partners during future monitoring visits and where considered appropriate some *ex-post* evaluation activities should in future be costed and built into multi-year activity designs. A range of appropriate techniques could be used. A fundamental objective would be to link such M&E to Strategic Objective 1 and Program Outcome 1.1 of the China-Australia Country Program Strategy. The results of such M&E, clearly identified as such, would be reported in one of the program's current Annual Reports. [Recommendation 13]*

5.6 Reporting

Given the issues highlighted in Section 4.10 above, there is clearly a need to rationalise both the range and scope of reporting. The key determinant of what is required should be essential needs of key stakeholders for meaningful and concise information on program outcomes and performance. An immediate requirement would be to ensure that ACRs do not exceed 5 pages in length, that they detail real lessons learnt and that a distinction is made between what are outputs, outcomes and longer term impact. For outcomes and impact the reports would usually be making some forecast and provide some reasons why certain outcomes may be anticipated. Excessive detail on implementation arrangements should be avoided. Monthly exception reports might be considered and a way could be found to combine and rationalise the monitoring reports. For example, this material could be captured by the mid term and program completion reports or where a significant issue has arisen by the proposed monthly exception reports.

The RT recommends refined reporting specifications in the ROU that will reduce the volume of documentation produced while at the same time providing more meaningful information on activity outcomes and program performance. This includes concise and refined ACRs that report more effectively on lessons learnt and activity outcomes and less on implementation detail; a reduced number of reports by incorporating the content of monitoring reports into other reports currently being reduced and monthly exception reports. [Recommendation 14]

5.7 Other issues

The RT was required to assess the scope for the HRTC to better support or complement other priority issues identified by AusAID or DFAT. No particular issues were identified but several management and operational issues were raised in that context. DFAT suggested that more attention be given to donor coordination. This is discussed in Section 2.4 above.

AusAID Beijing raised a number of issues that are discussed below with RT recommendations.

MFA scholarships

As noted in Sections 3.3 and 4.5 above, the scholarship program under which MFA is awarded two Masters level study awards each year has been very successful. These awards are managed by HREOC which places the students in Australian Universities and manages the payment of allowances and fees. Terms and conditions that apply to the awards are very similar and in most respects identical to those applying to Australian Development Scholarships (ADS). AusAID also funds 24 post graduate ADS awards annually in sectors that match country program strategy priorities in areas of governance broadly defined. These awards are managed by the Managing Contractor for the CAGP but with the Post retaining responsibility for strategic issues and selection. Students apply through the Ministry of Commerce (the CAGP counterpart agency) with selection undertaken jointly by AusAID and MOFCOM.

The Post considers and the RT concurs that it would be administratively more efficient and cost effective for the two annual MFA awards to be redesignated as ADS rather than program awards and managed by the CAGP managing contractor.

The RT recommends that future MFA awards be designated as MFA ADS awards and managed by the CAGP MC as an earmarked sub-component of the broader China ADS program. MFA would continue to select the two students and submit its two nominees to the CAGP MC via the Post for processing including placement with other ADS awardees. Payments to students and institutions would be managed by the CAGP MC and Education and Scholarships Taskforce Section in AusAID Canberra. In other words, the China ADS program would be seen as covering 26 rather than 24 awards. Recently introduced China ADS alumni arrangements would apply to the MFA students. [Recommendation 15]

Liaison with the Governance Facility

The CPS notes that ‘capacity building in the governance sector will be supported through two major programs, the China Australia Governance Program and the Human Rights Technical Cooperation Program.’ In its Program Strategy Performance Framework both programs fall under strategic objective 1 and outcomes for both are assessable under program outcome 1.1: ‘Strengthened Chinese capacity to implement sustainable governance reforms’. The two programs tend to operate in different sub-sectors but there is potential overlap. For example, the CAGP has been working in the legal area which is a focus of the HRTC. The Central Party School is a key CAGP partner and could equally be a HRTC partner (not proposed by the RT).

Both programs have used progressive engagement approaches very effectively. The CAGP has developed guidelines for using study tours more effectively, has adopted action learning approaches and seeks to monitor activity outcomes even in sensitive areas. There is scope for these programs to exchange ideas. There is also a need to discuss future program priorities to avoid overlap. In the longer term there could be scope for complementary activities. There has been some informal contact in the past but the RT supports the views of the Post that such contacts should be formalised. Experience elsewhere has shown that coordination between programs is unlikely to occur where different contractors are involved unless specified in original designs and/or in the MC Scopes of Services.

The RT recommends that the HRTC and CAGP managing contractors meet at least annually (twice a year in year one) firstly to exchange ideas and review lessons learnt about good practice programming approaches and secondly to discuss their respective activity pipelines to ensure that there is no overlap and in the longer term to identify potential complementarities. For the latter, these would be referred to AusAID for further consideration. The RT further recommends that this requirement be included in a future contract amendment for the CAGP MC and in the ROU Annex for the HRTC MC. [Recommendation 16]

Devolution of HRTC contract management responsibilities

Management responsibilities for activities funded under the Technical Cooperation program have been devolved from AusAID Canberra to AusAID Beijing. The HRTC is the only exception and AusAID Canberra retains responsibility for managing contractual arrangements with HREOC. AusAID Beijing is responsible for in-country monitoring. The Post indicated to the RT that it would prefer to assume full management responsibility for the HRTC program. In practice, this would mean that HREOC would communicate with the Post rather than Canberra on all operational issues including reporting, that the Post would be responsible for all contract management issues including the preparation of annual schedules to the ROU as well aspects of financial management including the certification of invoices. AusAID Canberra would retain responsibility for broader policy issues including program planning in consultation with the Post. Given

that the Post already manages the Governance Facility contract and assuming that the RT recommendations about future collaboration between HRTC and the Governance Facility are accepted, there may be advantages in having the Post assume responsibility for HRTC contract management.

The RT recommends that AusAID Canberra and AusAID Beijing review current HRTC management arrangements and review the case for devolving management responsibility for this program to AusAID Beijing consistent with AusAID’s strategic project/program management directions. [Recommendation 17]

6 Conclusions and recommendations

6.1 Conclusions

The Review Team found that the HRTC has generally been very effective in fulfilling its objective to work collaboratively with Chinese government agencies and NGOs to implement programs and activities ‘*to strengthen the administration, promotion and protection of human rights in China*’. The HRTC program is strongly supported by both the Chinese and Australian partners. Most activities are achieving their objectives and there are indications of capacity building in some areas. The HRTC program has a wide range of Chinese cooperating organisations. The Managing Contractor has established a strong, cooperative relationship with these organisations based on trust and mutual respect.

Within this overall success, this Review has identified the need for operational enhancements in a number of areas: to refine and improve implementation, monitoring and evaluation and reporting.

6.2 Recommendations

The Review Team’s 17 recommendations detailed in *Section 5* above, are tabulated at the end of the *Executive Summary* with cross-referencing by Section and page number.

Appendix 1: Terms of reference

Review of the Human Rights Technical Cooperation Program (HRTC)

Terms of Reference

Background

In August 1997, following discussions between Premier Li Peng and Prime Minister John Howard, China and Australia initiated a high-level Dialogue on human rights. During the first Dialogue it was agreed that the two countries would undertake a program of technical cooperation aimed at strengthening the administration, promotion and protection of human rights in China. A technical cooperation program was considered (and remains) in keeping with the Australian Government's overall human rights policy which emphasizes practical approaches and outcomes.

In late 1997, a Program Planning Mission gathered seven disparate proposals for human rights-related activities in China, and bound them together into a Human Rights Technical Assistance Program (HRTA). A second Program Planning Mission in July 1999 developed a series of further activities. In the years following the second Program Planning Mission, the number of activities and the range of participating agencies increased. Eventually, the HRTA gradually matured into the Human Rights Technical Cooperation Program (HRTC), with a defined set of goals and objectives and an agreed methodology.

Characteristics of the HRTC

The HRTC is funded by AusAID and implemented by the Human Rights and Equal Opportunity Commission (HREOC). Its goal is to strengthen the administration, promotion and protection of human rights in China. Its purpose is to assist in the development of key Chinese organisations to contribute to improvements in the administration, promotion and protection of human rights in each of the three program theme areas, being (i) legal reform, (ii) women's and children's rights and (iii) ethnic and minority rights. The HRTC recognizes that these thematic areas are interlinked; many HRTC activities target more than one area.

The HRTC is run on an annual cycle which complements the annual Human Rights Dialogue process. Each year, HREOC is engaged by AusAID to undertake a Program Review and Planning Mission (PRPM), which reviews the progress of the HRTC in the previous year, and through consultation with relevant Chinese officials, develops a program of activities for possible implementation in the following year. A report from the PRPM is presented to the Dialogue partners for consideration. After approval of the PRPM recommendations, AusAID and HREOC then enter into a Record of Understanding, under which HREOC implements the proposed activities for that year, in collaboration with the relevant Chinese agencies.

HRTC activities are designed to expose Chinese officials to new ideas and ways of operating, to enable them to make more informed decisions about policy and practice relating to human rights. Activities also seek to foster and sponsor longer-term contact between Chinese and Australian individuals and organisations. Building relationships is a crucial aspect of the program and is key to continued progress, particularly when sensitive issues are involved. The program recognizes the sensitivity of human rights issues, and that substantial

change is likely to occur slowly. The philosophy underpinning the program is that by working together and exchanging views and approaches, the most effective elements of human rights protection, promotion and administration will, over time, develop and prosper.

Activities under the HRTC are generally small-scale and short in duration. While the program as a whole is intended to have a long-term impact across Chinese society, each activity focuses on an organisation and a sectoral area where it is possible to have an immediate impact on a specific aspect of human rights in China. Even though activities are discrete and complete in themselves, they frequently build directly on the successes of earlier activities. For example, between 2000 and 2005, the HRTC included a series of workshops developed in cooperation with the All-China Women's Federation (ACWF), which examined strategies to address family violence faced by minority women and strengthened the capacity of the ACWF to deliver effective assistance to minority women.

Over time, the size of the HRTC has increased. Approximately \$400,000 was spent on HRTC activities in 1997-98. By 2002-03, the program was worth over \$1.2 million annually. Since 2002-03, the annual budget has increased by \$200,000 per annum, so that it was \$1.4 million in 2003-04, \$1.6 million in 2004-05 and \$1.8 million in 2005-06. The HRTC budget for 2006-07 is \$2 million and it will remain at this figure for subsequent years.

In line with its increasing budget, the HRTC has expanded its scope. It has increasingly included activities in provincial locations, as well as in Beijing. The number of Chinese cooperating organizations has steadily increased. As of early 2006, HRTC activities have been undertaken with the Ministry of Foreign Affairs (the lead counterpart organisation), the Supreme People's Procuratorate, the Supreme People's Court, the National Judges College, the State Ethnic Affairs Commission, the Ministry of Justice, the Ministry of Public Security, the All-China Women's Federation, the Chinese Academy of Social Sciences, the United Nations Association of China, the Foundation for Human Rights Development, the National Family Planning and Population Commission, and the Tibet Autonomous Region Department of Education.

Rationale for a Review of the HRTC

Despite having been implemented for over eight years, the HRTC has not yet been the subject of a formal review. Other AusAID projects typically run for 6 years or less and for accountability and program improvement purposes are reviewed at least once during this period.

In early 2004, a consultant who had been involved in some HRTC activities, David Allen, completed a "retrospective study" of the HRTC. The purpose of this study was to identify and describe some of the key impacts of the HRTC up to that point. This study did not constitute a proper "review" of the program. While Mr Allen's study provided a very useful analysis of the HRTC's impacts, it did not attempt to judge the broader success of the program, nor analyse weaknesses or lessons learnt, nor make recommendations for possible future strategic directions.

In 2007, the China-Australia Human Rights Dialogue will enter its tenth year. This is an important milestone, which may lead to renewed attention on the Dialogue and on its achievements. A detailed review of the HRTC would be timely in this context.

Review Objectives

The overarching objectives of the Review will be to:

- (i) Assess how effective the HRTC has been in fulfilling its goals and objectives;
- (ii) Make constructive recommendations that will enable the HRTC to improve its effectiveness and strategic impact.

The Review will assume that the China-Australia Human Rights Dialogue, and the HRTC, will continue to operate for the foreseeable future. It will also assume that the overall goal of the HRTC (i.e. to strengthen the administration, promotion and protection of human rights in China) will not change. Therefore, the Review will *not* make judgments as to whether the Human Rights Dialogue should or should not take place, or whether there should be an HRTC, or whether the goals and objectives of the HRTC are appropriate.

In fulfilling the overarching objectives described above, the Review will:

- (i) Assess the impacts of the HRTC
 - a. Update the findings of David Allen’s *Retrospective Study*, by re-assessing the findings of David Allen’s study, and identifying the subsequent achievements of the HRTC, both at the activity level and more broadly, since that study was completed in early 2004.
 - b. Summarise the key achievements and impacts of the HRTC in a relatively short document.
- (ii) Assess the lessons learned from less successful HRTC activities
 - a. Identify, from the HRTC activities that have been completed to date, the activities that have not been as successful as other activities, and/or not had such significant impacts.
 - b. Describe, in summary format, the issues that have led to these activities having not been as successful.
- (iii) Assess the factors associated with more successful HRTC activities
 - a. As a companion analysis to (i) and (ii) above, identify, from the HRTC activities that have been completed to date, the activities which have been particularly successful, and/or had significant impacts.
 - b. Describe, in summary format, the factors have led to these activities having been particularly successful.
- (iv) Assess the HRTC’s operating environment
 - a. Identify and describe significant recent shifts in Chinese government policy relating to human rights, which might have implications for future programming under the HRTC, and thereby its effectiveness and impact;
 - b. Identify and describe emerging human rights issues in China, which may not be the subject of government policy, but which are likely to have implications for the HRTC in the future;

- c. Taking into account the findings of (a) and (b), identify organisations in China who are not yet cooperating organisations under the HRTC, but which could be relevant cooperating organisations in the future;
- d. Describe relevant programs of other donors supporting human rights-related activities in China, and assess the implications of these programs for the HRTC.

(v) Make recommendations for future HRTC management

- a. Taking into account the findings of (i) – (iv), assess how successfully the HRTC has addressed the current HRTC thematic areas (i.e. legal reform and the administration of justice, women’s and children’s rights, and ethnic and minority rights), assess whether these thematic areas are still appropriate, and recommend whether the thematic areas should be changed.
- b. Taking into account the findings of (i) – (iv), assess whether the current method of HRTC implementation remains the best approach (i.e. short activities implemented over 1-year timeframes, focus on study tours/seminars/workshops, and annual PRPM and Dialogue approval process), and if appropriate, recommend any changes to this approach;
- c. Taking into account the findings of (i) – (iv), assess whether or not the HRTC would benefit from having a stronger geographical focus (e.g. on particular provinces or regions in China);
- d. Assess the scope for the HRTC to better support and/or complement the priorities of the new *AusAID China-Australia Country Program Strategy 2006-2010*, and the new directions under that strategy (in particular, the focus on communicable diseases such as HIV/AIDS), and make recommendations accordingly.
- e. Assess the scope for the HRTC to better support and/or complement other priority issues identified by AusAID and/or DFAT.
- f. Suggest strategies/methods to better assess/analyse short term and long term impact of activities.

Resources and timeframe

The Review will be undertaken by a Review Team comprising personnel with the following specialist skills and/or experience:

- (i) China, particularly in a context relevant to human rights
- (ii) Law and/or Human Rights
- (iii) Project Management, including Monitoring and Evaluation and Performance Assessment

The following provides some guidance on primary responsibilities for the review. However, this should be a collaborative assessment and roles should not be seen as mutually exclusive.

Team leader & legal/human rights specialist:

Will be responsible for directing, coordinating and managing the assignment. Drawing on their legal/human rights expertise, they will pay particular attention to assessing the operating environment, the continuing appropriateness of the thematic areas, effectiveness of the current approach and the impact of the program. Consider and make recommendations on the strategic direction of the program. The Team Leader will have primary responsibility for report preparation.

Project Management/Monitoring & Evaluation Specialist:

Will, in particular, assess the appropriateness of the management, planning and implementation of the program, the factors associated with successful activities, the lessons learned from those which were less successful and how these could be incorporated in planning future activities. They will have primary responsibility for summarizing the key achievements and impacts of HRTC.

Officers from HREOC and the Chinese Ministry of Foreign Affairs will provide support to the Review Team, by facilitating the arrangement of meetings with relevant organizations in China and Australia, and by helping the Review Team obtain further information which might be relevant to the Review.

As preliminary background, the following documents will be made available to the Review Team:

- (i) A general overview of the HRTC, as summarized by HREOC;
- (ii) “Retrospective Study” of the HRTC, as completed by David Allen in 2004;
- (iii) Report from the 2006 HRTC Program Review and Planning Mission (PRPM)
- (iv) Selection of Program and Activity Completion Reports
- (v) China Country Program Strategy 2006-2010.

It is anticipated that the Review Team will need to commit the following time to the Review:

- (i) 10 days in Australia, in order to undertake preparatory reading and meet with relevant Australian organisations;
- (ii) 2 weeks in China (from 30 October-10 November 2006), in order to meet with relevant Chinese organisations;
- (iii) 1 week following the China mission, to write up the findings of the Review.

Reporting Requirements

The Review will be presented as:

- (i) Aide Memoire, to be presented prior to leaving China
- (ii) a draft written report, in electronic (Microsoft Word) format, to AusAID by 22 November;
- (iii) as an Annex to the draft Report a summary document updating the *Retrospective Study*, as per (i) ‘Assess the impacts of the HRTC’
- (iv) taking into account any comments by AusAID on the draft report, a final report, in electronic format and in hardcopy, by 20 December 2006.

All reports must:

- i) be provided in accordance with the specification under Standard Condition **Clause 7** (Reports);

- ii) be accurate and not misleading in any respect;
- iii) be prepared in accordance with AusGUIDE;
- iv) allow AusAID to properly assess progress under the Contract;
- v) be provided in the format,
- vi) number and on the media approved or requested by AusAID;
- vii) not incorporate either the AusAID or the Contractor’s logo;
- viii) be provided at the time specified in this Schedule; and
- ix) incorporate sufficient information to allow AusAID to monitor and assess the success of the Services in achieving the objectives of AusAID’s Gender and Development Policy.

Appendix 2: Review Schedule and organisations/persons consulted

Appendix 2: Review Schedule and organisations/persons consulted

Date	Meeting / Activity
CANBERRA – Meeting	
13 October (Friday)	<ul style="list-style-type: none"> ▪ AusAID (Briefing)
CANBERRA – Phone Interview	
<ul style="list-style-type: none"> ▪ Department of Foreign Affairs & Trade 	
SYDNEY – Meetings	
19 October (Thursday)	<ul style="list-style-type: none"> ▪ HREOC
20 October (Friday)	<ul style="list-style-type: none"> ▪ University of NSW ▪ NSW Department of Juvenile Justice ▪ Judicial Commission of NSW ▪ HREOC
SYDNEY – Phone Interviews	
<ul style="list-style-type: none"> ▪ University of NSW, Australian Human Rights Centre 	
<ul style="list-style-type: none"> ▪ Bureau of Crime Statistics and Research 	
MELBOURNE – Meetings	
25 Oct (Wednesday)	<ul style="list-style-type: none"> ▪ Department of Public Health, University of Melbourne ▪ Education Department, Victoria Police Academy ▪ Department of Victorian Communities, Family Violence Coordination Unit
MELBOURNE – Phone Interview	
<ul style="list-style-type: none"> ▪ University of Melbourne Law School 	
BEIJING – Meetings	
30 October (Monday)	<ul style="list-style-type: none"> ▪ AusAID, Australian Embassy ▪ Ministry of Foreign Affairs ▪ United Association of China
31 October (Tuesday)	<ul style="list-style-type: none"> ▪ All China Women’s Federation ▪ State Ethnic Affairs Commission
1 November	<ul style="list-style-type: none"> ▪ Ministry of Justice

(Wednesday)	<ul style="list-style-type: none"> ▪ United Nations Population Fund
2 November (Thursday)	<ul style="list-style-type: none"> ▪ Supreme People’s Court ▪ National Judges’ College
3 November (Friday)	<ul style="list-style-type: none"> ▪ AusAID, Australian Embassy ▪ Political Section, Australian Embassy ▪ Ministry of Civil Affairs
4/5 November (Sat/Sun)	<ul style="list-style-type: none"> ▪ Team Workshops ▪ Aide Memoire preparation
6 November (Monday)	<ul style="list-style-type: none"> ▪ Ministry of Public Security ▪ National Population and Family Planning Commission
7 November (Tuesday)	<ul style="list-style-type: none"> ▪ Beijing Legal Aid Centre for Migrant Workers ▪ China Foundation for Human Rights Development
8 November (Wednesday)	<ul style="list-style-type: none"> ▪ Ford Foundation ▪ EU Commission
9 November (Thursday)	<ul style="list-style-type: none"> ▪ AusAID, Australian Embassy ▪ Norwegian Embassy ▪ Supreme People’s Procuratorate
10 November (Friday)	<ul style="list-style-type: none"> ▪ AusAID & Political Section, Australian Embassy (Debriefing) ▪ Ministry of Foreign Affairs (Presentation of Aide Memoire)
CANBERRA – Meeting	
20 November (Monday)	<ul style="list-style-type: none"> ▪ AusAID (Debriefing)

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Department of Foreign Affairs and Trade	

Canberra	Rachel White
Beijing	Lucy Charlesworth, Political Counsellor Aviva Gulley, Second Secretary
Managing Contractor	
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Ministry of Justice	Zhao Yang, Program Officer, Department of Judicial Assistance and Foreign Affairs
Ministry of Civil Affairs	Liu Quan, Deputy Director, Division 2 of Department of Foreign Affairs
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	Ren Chengxi, Senior Officer, Penitentiary Administration Bureau Zang Chuanze, Senior Officer, Penitentiary Administration Bureau
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State Ethnic Affairs Commission	Wang Ping, Division Chief, Department of Politics and Law
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China Foundation for Human Rights Development	Lin Bocheng, Vice Chairman and Director of the Secretariat Zhang Weihua, Director of Foundation Department Gao Liansheng, Director of Publicity Department Hou Mingxu, Officer

Beijing Legal Aid Office for Migrant Workers	Tong Lihua, Director Shi Fumao, Executive Director Wang Fang, Lawyer
Other Donors	
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Canadian Embassy	Chantal Meagher, Counsellor Political
Norwegian Embassy	Jo Inge Bekkevold, First Secretary, Political Section
European Union	Lea Vuori, First Secretary Maria Rosa Sabbatelli, Attache, Development & Cooperation

Appendix 3

Aide Memoire

Review of the Human Rights Technical Cooperation Program

Introduction

This *Aide Memoire* reports on the outcome of a review of the Sino-Australian Human Rights Technical Cooperation Program (HRTC) which was initiated as part of a high level Dialogue on Human Rights in 1997 after discussions between Premier Li Peng and Prime Minister John Howard. The objective of the HRTC is ‘to strengthen the administration, promotion and protection of human rights in China’. The objectives of this review are to:

- assess how effective the HRTC has been in fulfilling its goals and objectives; and
- make constructive recommendations that will enable the HRTC program to improve its effectiveness and strategic impact.

The review was conducted by two consultants from Australia, Dr Sarah Biddulph (Team Leader) and Kai Detto (Project Management/Monitoring and Evaluation Specialist) during the period September–November 2006, with 12 days in the People’s Republic of China (PRC). In Australia, the team met with the Human Rights and Equal Opportunity Commission (HREOC), AusAID and a range of Australian participants in individual programs under the HRTC. In China, working closely with AusAID staff of the Development Cooperation Section, the Review Team (RT) met with staff of the Australian Embassy, officials of the Ministry of Foreign Affairs (MFA) and with Ministries and Agencies of the Government of the People’s Republic of China (GoPRC), NGOs and bilateral and multilateral donors.

This *Aide Memoire* summarises the RT’s main findings and recommendations. The opinions and conclusions put forward are those of the RT and have not been endorsed by Government of Australia or the GoPRC. The team records its appreciation of the facilitation provided by AusAID and MFA, the various participating GoPRC agencies, the Australian Embassy, Beijing, and HREOC for freely giving their time and resources in assisting the review. The team will submit a draft report to AusAID on 22 November 2006.

Operating environment

The success of the HRTC has been greatly enhanced by the strong commitment of the GoPRC to the promotion and protection of human rights and the development of a comprehensive legal framework and systems for the definition and protection of human rights. In March 2004 the National People’s Congress passed an amendment to the *Constitution of the People’s Republic of China* to include an article stating that: ‘The State respects and safeguards human rights’. The program to implement the rule of law has included a commitment to strengthening the administration of justice and protecting the rights of vulnerable groups including women and children and ethnic and minority groups. The October 2006 *Decision of the CPC Central Committee on the Several Major Issues on the Construction of a Socialist Harmonious Society* affirms the commitment to promotion of social fairness, justice and stability with a continued emphasis on the development of the rule

of law. This *Decision* emphasises the importance of the protection of social rights including those of labour, particularly the rights of migrant workers, health, social welfare and social security systems.

It is within this context that the three main themes of the HRTC: legal reform, women's and children's rights and ethnic and minority rights, have been identified and implemented.

MAIN FINDINGS

1. Program performance

The HRTC program is targeted to areas identified by the GoPRC as priorities, where there is a sufficient degree of complementarity with Australian experience and where there is relevant expertise in the area in Australia. Most activities are achieving their objectives and the program is well managed. Some partners state that program activities are more successful than those of other donors – who may be asked to use this program as a model for improving their own performance. The program is a key element of the annual HR dialogue. The high degree of trust based on the program has helped ensure that sensitive human rights related issues may be discussed '*without discomfort*'.

1.1 Key achievements identified by the RT include the following:

- Trainers at the national Judges Training College have adjusted their training approaches and curricula (with flow on to provincial training institutions) following study visits to Australia to reflect good practice human rights protection principles with real prospects of long term positive impact. Knowledge gained in relation to Australia's jury system and use of JPs has similarly influenced approaches designed to improve the implementation of the recently revised China's People's Assessor system.
- Progress in the family planning area where there is a genuine commitment to achieve reforms. Australian assistance approaches are based on mutual respect, trust and a willingness to discuss successes and failures. In a significant recent development the NPFPC has requested a trusted bilateral partner and a trusted multilateral partner to collaborate on mainstreamed HR activities under its leadership. The most recent HRTC program workshop was jointly funded with UNFPA.
- Model UN Rights Council conferences are viewed by the Chinese partner as a great success, introducing future Chinese leaders to International Human Rights norms. They have raised the profile of the United Nations Association of China, have a wide geographic reach and are seen as a model for conducting creative human rights education.
- Senior judges in China following visits to Australia have been able to broaden their knowledge and have been exposed to alternative approaches in areas such as juvenile justice and rules of evidence that help to provide a basis for judicial reform. An interactive workshop/training exercise on rules of evidence has helped create links with the Australian judiciary and contributed to legislative reform processes.
- Productive exchanges of ideas and experiences with Ministry of Public Security officials in examining ways to strengthen the rights of detainees in detention centres.
- A series of activities covering anti-human trafficking has facilitated the development of strategies and formulation of reform measures and fostered regional contacts.
- Successful interventions in the area of domestic violence with new laws passed by the local level Peoples' Congress and attributed by ACWF to HRTC sponsored workshops. Also local hotlines dealing with domestic violence established in various areas attributed

to what was learnt from Australian practice.

- Positive changes in juvenile justice with Chinese partners ready to engage in substantive dialogue and dialogue in relation to community corrections offering the prospect of longer term reform.
- Highly successful outcomes in relation to scholarship awards to staff of the MFA with Masters graduates in human rights areas of study returning to the Ministry and occupying important positions that utilise their new skills and knowledge.
- Occasional ongoing professional contacts between key Chinese individuals and agencies and their Australian counterparts in the sectors supported by the HRTC. However, the RT finds that such contacts are limited overall (language is a key constraint) and the program has no mechanisms to facilitate such contacts.

1.2 Activity success factors identified by the RT include:

- Program initiatives have coincided with fundamental legislative and constitutional reforms that have provided an impetus for agencies to address HR reform issues in a number of areas. Program priorities are set by the Chinese program partners and HR elements are increasingly linked with pilot reform programs and then mainstreamed into their regular work programs.
- Detailed and early attention given to establishing areas where Australia has skills and knowledge that will add value when planning study/design visits and workshops.
- Progressive engagement approaches at the broad partner agency and activity levels.
- The quality of study tour programs, the selection of key participants with a strong interest in the subject matter, multi-agency representation where appropriate and the preparation and distribution of comprehensive visit reports detailing what has been learnt and how this knowledge may be applied to benefit agency objectives.
- Encouraging ‘train-the-trainer’ activities involving academic staff of training institutions as well as casual presenters offering the prospect of multiplier effects.
- Most agencies cited HREOC’s competencies, human skills, professionalism and working methods as major success factors. Similarly, long-standing partners cited mutual respect, understanding and trust as key success factors.

1.3 Factors that help to explain less successful activities include:

- Uncertainty about Australian areas of expertise and/or reluctance by a Chinese partner agency to accept advice on the issue, while not a common problem, has been a key factor behind several of the less successful activities.
- More recent program partners are yet to develop a complete understanding of how the program operates and the high degree of trust critical to success is not yet in place.
- Implementation would benefit from improved briefing on the broad Chinese context for Australian experts and more detailed background briefings on relevant sector issues for Chinese participants in Study/Design Missions to Australia.

2 Sector issues

2.1 Thematic areas and partner agencies

The three thematic areas: law reform, women’s and children’s rights and ethnic and minority rights continue to reflect important Chinese priorities and are key to the promotion and protection of human rights. HREOC has also consistently emphasised the importance of the

HRTC program in protecting the rights of those most in need of protection. Whilst the program to establish a Socialist Harmonious Society strengthens the focus on the protection of social and economic rights, particularly the rights including, for example, those of migrant workers, rights to health, and social security rights of the aged, the RT considers that the existing thematic areas are sufficiently broad in scope to incorporate these emerging priority areas and to promote the protection of the human rights of these groups.

With continuing priority given by the GoPRC to the development of the rule of law in China, the area of law reform in particular is especially broad in scope and remains an important vehicle for the definition and protection of human rights, enabling timely adjustment of the specific focus of programs within that theme to address areas of emerging priority. This is illustrated by the inclusion in 2006 of the Beijing Legal Aid Service for Rural Migrants as a new partner agency. Similarly, protection of the rights of women and children and of ethnic and minority groups include the protection and promotion of the social and economic rights of these groups. *The RT will propose that the thematic areas remain unchanged.*

There has been a close correlation between the three thematic areas and the primary responsibilities of the Chinese partner organisations. One of the pronounced success factors of the HRTC identified by most interlocutors is the high levels trust and mutual understanding that is built over an extended period of cooperation. The capacity of the HRTC to respond to emerging priority issues is achieved both through adjustments of programs with existing partner organisations and the gradual adding of government departments and other agencies to the HRTC program. *The RT will suggest that the current process for identifying and including Chinese partner agencies to the program remains appropriate.*

2.2 Gender

Gender is a central focus of the HRTC, as one of its three themes is the promotion and protection of the rights of women. Interlocutors have expressed an awareness of and are supportive of the importance of ensuring a gender balance, not only in the number of women participating in study tours, workshops, seminars and attachments, but also in ensuring the inclusion of women of relevant qualifications, rank and status in those programs. *The RT considers that continuing attention to achieving gender balance remains a high priority consideration for HREOC and partner organisations.* In the award of scholarships, the importance of achieving a gender balance in relevantly qualified awardees is of particular importance. *The RT believes that achieving a gender balance in the scholarship program is a matter that requires renewed attention and serious consideration.*

2.3 Geographic focus

In China, the geographic focus of programs has been varied. It has included programs in Beijing involving central government agencies and participants from other regions and organisations operating in Beijing, as well as programs in regional and local areas with participation from central, provincial and local organisations. The diverse array of geographical locations of activities accords with the practical focus of programs under the HRTC and with the suitability of the location for each activity, determined on the basis of the objectives of the activity and the adequacy of resources in each location to host such an activity. *The RT will propose that the location of activities continue to be determined on a case by case basis.*

In Australia, activities have tended to be located in NSW, with some activities held in Victoria. Some agencies indicated that their learning from the Australian experience would have been enhanced by being exposed to approaches taken to dealing with relevant issues in

other parts of Australia, in particular where the subject matter of the study tour related to issues concerning rural or remote areas, or where approaches towards particular issues varied between States. *The RT will recommend that HREOC consider broadening the geographical scope of activities in Australia where relevant and appropriate.*

3 Programming and implementation approaches

3.1 Program planning

The annual Program Review and Planning Mission (PRPM) is required to ‘review the performance of the program and design new activities for implementation in the coming year for approval at the annual Dialogue on Human Rights’. This task has been achieved by developing a range of activities with a ‘*mix of activities with implementation periods of between one and three years... Each multi year activity must be self contained with specific outputs that can be achieved in each year...*’ The degree of flexibility in planning activities facilitates achievement of the goal of progressive engagement with partner organisations where aspects of a priority issue, such as combating domestic violence, can be developed and deepened over the course of a three year program. It also accords with the evolving nature of the HRTC program, facilitates the addition of new partner agencies and the addition of new programs in areas of emerging priority. Many agencies expressed satisfaction with this aspect of program planning. *The RT does not propose to recommend any changes to the current time lines for program planning and approval processes.*

3.2 Design issues

The program has a comprehensive risk management strategy based on a detailed Risk Matrix tied to an LFM. The design of activities using Chinese and Australian expertise involves a two stage process of ‘design and implement’. These approaches have been reviewed and while considered fundamentally sound, *the RT will suggest some improvements in how these tools are applied by the Managing Contractor.*

3.3 Assessing activity outcomes and reporting

A fundamental lesson is that monitoring and evaluation when owned by the partner organisation and serving its own needs and relying in the main on local mechanisms, is likely to be acceptable to most program partners even in quite sensitive areas. The RT found that some agencies would welcome surveys and other M&E approaches that would help to establish the extent to which capacity building has taken place and even whether cooperating agencies are making effective use of newly acquired capacity. This does not involve the embedding of rigid, conventional evaluation techniques clearly inappropriate for programs of this kind. It will facilitate linkage to the Country Program Strategy Performance Framework. *The RT will propose a more active evaluation methodology that may vary according to sector and agency circumstances but that will move beyond deductive reasoning approaches applied at activity completion to determine whether activity objectives are likely to have been met.*

Program reporting has been entirely activity focused and essentially concludes upon activity completion. While comprehensive and providing a great deal of useful information it tends to be repetitive and there is no mechanism for providing meaningful information on activity outcomes (let alone impact) based on current post-activity monitoring. Some post activity monitoring takes place but results are not reported to stakeholders in a meaningful way. The RT concludes that the detailed reporting requirements listed in the Records of Understanding between AusAID and HREOC do not facilitate such reporting. *The RT will recommend refined reporting specifications that should reduce the volume of documentation produced*

while at the same time providing more meaningful information on activity outcomes and program performance.

9 November 2006

Appendix 4: Key post-2004 achievements & outcomes - Update of 2004 Retrospective Study

This annex provides further detail on the issues summarised in Sections 3.1 to 3.3 of the Review Team’s main report. Unlike the Retrospective Study it does not deal with the broader Chinese Context issues since these are detailed in Sections 2 and 4. As noted in the TORs, the Retrospective Study did not analyse weaknesses and lessons learnt nor make recommendations on future strategic directions. These are found in Sections 4 and 5 of the main report and not repeated in this Appendix. An overall summary of the RT’s findings and recommendations is found in the main report Executive Summary, also not repeated in this Appendix.

In providing an updated assessment and summary of achievements and outcomes since the Retrospective Study (4A), a number of post-2004 activity case studies are used to illustrate the review findings on achievements and outcomes (4B). A similar approach was adopted by the 2004 Study which prefaced its review with the comment that *‘It is not intended to undertake an exhaustive review of all activities with all counterpart agencies, but to select examples that illustrate characteristic and important impacts...’*.

4A: Summary

Issue	Retrospective Study Conclusions	2006 Review Findings
<p>Systemic (program level) Outcomes</p>	<ul style="list-style-type: none"> ▪ Systemic reforms will be achieved gradually and are exceedingly difficult if not impossible to measure and the systemic impact of a program such as HRTC must be reasonably anticipated to be modest. ▪ Credit for the introduction of reforms by Chinese agencies should not be claimed by the program – it would be arrogant and premature to claim that HRTC has yielded a substantive global impact on the governance of human rights in China. ▪ In 2003 the constructive and practical approach of HRTC was commended by several agencies and distinguished from that of other donors as being practical, sensitive and responsive to Chinese reform processes. ▪ The program now provides a stable and resilient platform for cooperation with key Chinese agencies 	<ul style="list-style-type: none"> ▪ The RT agrees that the long term contribution contributions of HRTC to systemic improvements in human rights in China are found in the accumulation of outcomes achieved through individual activities. ▪ No attempt has been made since the Retrospective Study to measure systemic impact and it needs to be recognised that systemic impact may not be established until 4 to 10 years after activity completion. ▪ Some targeted and systematic evaluation activities at the activity level will be needed to help establish activity outcomes and how they may have contributed to systemic reforms. ▪ However, both the MC and the RT have identified instances where cooperating partner organisations have moved to institutionalise policies, procedures and legislation that they themselves attribute to HRTC activities. ▪ The number of cooperating agencies has increased and all commended the program’s practical and sensitive approaches to

Issue	Retrospective Study Conclusions	2006 Review Findings
	<p>addressing sensitive human rights issues.</p> <ul style="list-style-type: none"> ▪ MFA highlighted that the HRTC is a very positive factor in the bilateral political relationship between the two countries. ▪ The program continues to provide a solid foundation of activities closely tied to the annual Human Rights Dialogue. ▪ The establishment and smooth operation of the program itself is a primary impact of HRTC. It has achieved the methodical construction of an effective vehicle to systematically support the foreign policy objectives of GoA and the human rights development objectives of GoPRC. ▪ The long term contribution contributions of HRTC to systemic improvements in human rights in China are found in the accumulation of outcomes achieved through individual activities. It is at this level that precise impacts are achieved and result in contributions to gradual, systemic improvements. 	<p>Chinese reform processes.</p> <ul style="list-style-type: none"> ▪ The program continues to provide a stable platform for cooperation and now has a wider range of organisations addressing human rights issues. Additionally, a greater degree of trust has been built up with long standing program partners which helps ensure an even more effective cooperative platform. ▪ MFA as the program’s key counterpart expressed very strong support for the program and its operational approaches. ▪ MFA also highlights that the program is a key element of the annual HR dialogue and makes the dialogue productive and fruitful. MFA adds that the HR dialogue between China and Australia is particularly effective (in comparison with others) and has now achieved an outcome where the Chinese side does not feel at all uncomfortable about discussing sensitive human rights related issues. ▪ The program operates smoothly and continues to be a very effective vehicle for supporting the foreign policy objectives of GoA and the human rights development objectives of GoPRC. The Australian Parliamentary Inquiry into Australia’s Human Rights Dialogue Process acknowledged ‘... <i>the important complementary role of the technical cooperation activities associated with the bilateral human rights dialogues. The Australia-China Human Rights Technical Cooperation Program (HRTC) makes a practical contribution to improving human rights through various capacity building and institutional strengthening activities...</i>’
<p>Specific (activity level) outcomes</p>	<ul style="list-style-type: none"> ▪ <u>Workshops on Family Violence and Minority Women</u> resulted in an acknowledgement on the part of participants that their work would change to at least some extent. Provincial regulations were promulgated or had a catalytic impact in accelerating reform. A hotline was established in one province. A provincial Women’s Legal Assistance Centre was established in another and education campaigns and quizzes about domestic violence issues were launched. The ACWF’s capacity to deliver effective and culturally specific assistance through provincial level operatives was 	<ul style="list-style-type: none"> ▪ Trainers at the National Judges Training College have adjusted their training approaches and curricula (with flow on to provincial training institutions) following study visits to Australia to reflect good practice <u>human rights protection</u> principles with real prospects of long term positive impact. ▪ Senior judges in China following visits to Australia have been able to broaden their knowledge and have been exposed to alternative approaches in areas such as <u>juvenile justice</u> and rules of evidence that help to provide a basis for <u>judicial reform</u>.

Issue	Retrospective Study Conclusions	2006 Review Findings
	<p>strengthened.</p> <ul style="list-style-type: none"> ▪ <i>Correctional Administrative Reform</i> activities resulted in material being incorporated in the systemic curriculum of the institute; provided a large group of prison officers with specific knowledge of, and training in, strategies to protect and promote the human rights of prisoners; assisted the UN High Commissioner for Human Rights to develop a program of corrections training and further strengthened relationships with the MoJ which was judged to have concluded that HRTC activities area of high practical value and relevance to prison reform in China. ▪ <i>Criminal Procedure Training</i> had a direct influence on the formulation of SPP inputs to the drafting of innovative legislation defining detailed rules of evidence relating to criminal prosecutions in China; appeared to have had some undefined impact on new Chinese rules of criminal evidence; and led to a conclusion that HRTC activities have made a substantial impact on China’s program of legislative reform. 	<ul style="list-style-type: none"> ▪ Productive exchanges of ideas and experiences with Ministry of Public Security officials in examining ways to strengthen the rights of <u>detainees in detention centres</u>. ▪ Progress in the <u>family planning</u> area with indications of a genuine commitment to achieve reforms. ▪ Model UN Rights Council conferences are viewed by the Chinese partner as a great success, introducing future Chinese leaders to International Human Rights norms and are seen as a model for conducting creative <u>human rights education</u>. ▪ A series of activities covering <u>anti-human trafficking</u> has facilitated the development of strategies and formulation of reform measures and fostered regional contacts. ▪ Successful interventions in the area of <u>domestic violence</u> with new laws passed by the local level People’s Congress and local hotlines established and attributed by ACWF to HRTC sponsored workshops. ▪ Positive changes in <u>juvenile justice</u> with Chinese partners ready to engage in substantive dialogue and dialogue in relation to <u>community corrections</u> offering the prospect of longer term reform. ▪ Highly successful outcomes in relation to <u>scholarship awards</u> to staff of the MFA. ▪ The program has helped build up Australia’s visibility in areas such as Tibet and Yunnan province where it impacts on minority groups and has helped build closer bilateral relations with a range of agencies. Activities funded in Yunnan province are seen by MFA as reflecting Australia’s desire to address <u>poverty issues</u> more directly and are greatly valued.
<p>Integrated outcomes</p>	<ul style="list-style-type: none"> ▪ The above examples in three sectoral areas have manifold impacts and all contribute to systemic improvements but are not exclusive of each other. ▪ There has been a marked reluctance of Chinese agencies to participate in combined activities 	<ul style="list-style-type: none"> ▪ A wider range of agencies now participates in study tours – particularly in situations where an agency understands that to achieve its specific objectives it will need the support and cooperation of other key agencies at central or local level eg various pilot programs (such as community corrections by MoJ

Issue	Retrospective Study Conclusions	2006 Review Findings
	<p>addressing a single issue relevant to the work of several agencies although the strong relationships established have dampened this over time.</p> <ul style="list-style-type: none"> ▪ Nevertheless, impacts in one area, with one agency, flow through and affect the work of other agencies, producing a degree of integrated, systemic impact. For example, activities with the National Judges College intersect with the activities with the Supreme People’s Court which in turn have intersections with activities with the Supreme People’s Procuratorate which intersects with activities with the Ministry of Public Security. ▪ HRTC’s structural dependence on the annual approval process limits forward planning with no guarantee of implementation and coherent development of activities and impacts, even with an individual Chinese agency. ▪ While the objectives of HRTC activities may primarily address one thematic issue, their outcomes may simultaneously advance impacts in another thematic area, or in all three areas and HRTC has methodically designed activities to blend these themes together. 	<ul style="list-style-type: none"> ▪ The program strongly encourages multi agency participation in activities including Study Visits where such agencies play an important role in the reform process being pursued by the sponsoring agency (eg in relation to combating domestic violence). ▪ Most agencies seem less reluctant to participate in combined activities addressing a single issue relevant to the work of several agencies. Where agencies perceive a benefit in terms of their responsibilities they will encourage other key agencies to participate – on study tours or in provincial workshops. ▪ The program has overcome what were previously conceived as constraints associated with the annual approval process and adopted a planning approach that incorporates an appropriate mix of activities with implementation periods of between one and three years. ▪ The program also continues to fund activities that address more than one of the program’s three themes. This applies particularly to the third theme dealing with the human rights of minorities where in-country activities addressing each of the program’s themes are increasingly implemented in areas that have significant minority populations (eg activities dealing with domestic violence).
<p>The human face of human rights</p>	<ul style="list-style-type: none"> ▪ The design of activities to ensure that Australian experience and expertise correlate to Chinese circumstances and priorities – and the effective implementation of activities to achieve the transmission of precise technical information – are the central disciplines of HRTC. ▪ But perhaps the greatest impact of the program is achieved at the level of direct human contact and in the dimension of human understanding. The key to the program’s impact lies in its capacity not merely to transmit technical information, or even concepts, but to develop an insight into the values and beliefs that are served by them. 	<ul style="list-style-type: none"> ▪ All of the considerations cited in 2004 in relation to this issue remain valid. The human face of human rights is illustrated by some of the success factors identified by the Review Team: <ul style="list-style-type: none"> ○ MFA as the program’s key counterpart cited HREOC’s competencies, human skills, professionalism and working methods as well as its ‘<i>considerate</i>’ approach as major success factors. ○ At conferences/seminars in China the atmosphere is generally one of equality where all participants share their experiences freely and the Australian participants acknowledge that Australia and they may not have all the answers, that they also learn from China’s experiences and that they acknowledge progress that has been made by Chinese participants.

Issue	Retrospective Study Conclusions	2006 Review Findings
	<ul style="list-style-type: none"> ▪ The diligence of Chinese delegations in examining Australian approaches to the protection of human rights and their probing questions demonstrate a genuine process of inquiry as to the social and ethical values that underpin Australian practice. ▪ The willingness of exceptionally busy expert practitioners in various fields to continue their participation, without fee, indicates their conviction that the process is sincere and productive. 	<ul style="list-style-type: none"> ○ Australian participants have been carefully selected by the MC and were described by one key agency as <i>‘always very modest’</i>. Australian resource persons are practitioners and experts in their field. ○ Understanding and trust were often cited as key factors fundamental to success – particularly by those agencies that have participated in the program for many years. Showing respect to Chinese participants and not being judgemental are related success factors. ○ Australian counterparts were highly complementary of the overall quality of the Chinese delegation members on design/study visits to Australia. Always eager to learn and with a strong interest in the subject matter.

4B: Activity Case Studies

Material for these activity case studies covering the more successful activities, is based on selected Activity Completion Reports⁴ made available to the RT (see *References*) combined where relevant with material extracted from other MC reports (eg the 2004 & 2005 Program Completion Reports and 2004-2006 Program Review and Planning Mission Reports) supplemented by the RT's own assessments based on its consultations with Australian and Chinese participants and partner agencies. They provide a representative sample of successful activities in all of the program's thematic areas. The four headings used are those of the Retrospective Study except that references to 'impact' have been replaced with 'outcomes'.

4B1: Legal Reform and the Administration of Justice

Activity 1.6.1: National Judges College – Judicial Protection of Human Rights Training Research Visit (August 2004)

This visit involved the President and senior staff of the National Judges College. During their visit they examined the work of Australian institutions that undertake human rights and judicial training.

Objective – Nature of human rights issues addressed

The objective of the activity was to enhance the ability of the National Judges College to develop curricula for the education of trainee and mid-career judges in human rights and the judicial protection of human rights. The activity was intended to contribute to the goal of HRTC by supporting the development of curricula for the training of current and future Chinese judges in the promotion and protection of human rights.

Nature of Chinese participation

The activity provided staff of the College with new information and insights that should assist their future work in developing human rights training curricula for judges. Senior staff gained insights into Australian experience in development of human rights curriculum in universities and judicial training institutions to inform the NJC's work in developing curricula on judicial protection of human rights. Team members engaged in detailed discussions about the methodology for the effective delivery of human rights training for judges. A number of educators within the College now have direct knowledge of the design and delivery of Australian courses in human rights law and the role of Australian judges in the promotion and protection of human rights.

Acknowledgement by Chinese participants of specific learning outcomes

Senior staff of the College confirmed to the RT that they have gained important insights into Australian experience in development of human rights curriculum in universities and judicial training institutions and that this has and will continue to inform the NJC's work in developing curricula on judicial protection of human rights. Staff of the NJC confirm that they are now better able based on their visit and the extensive materials collected, to incorporate human rights training into training courses. Some modest professional linkages have been established between the NJC and judicial education bodies in Australia.

⁴ The Scholarship program has been included but is not covered by a separate Activity Completion Report.

Chinese utilisation of activity outcomes

While a large amount of material was transferred, sustainable outcomes depend on how this is utilised in the College work program. Based on detailed discussions with senior staff of the College the RT concludes that there has been some strengthening of the capacity and the willingness of the NJC to deliver human rights related training to Chinese judges. The RT found that training approaches and curricula have been adjusted since the visit to reflect good practice human rights protection principles. Around 30% of courses have been adjusted based on what was learnt in Australia.⁵

Activity 1.7.1: National Judges College – Human Rights Education Audit (July-October 2005)

Two senior academic staff were based at the Human Rights Centre in the University of New South Wales Faculty of Law to gain experience and to collect information relevant to the functions of the College which is a subsidiary organisation of the Supreme People’s Court and has a crucial role in providing in-service training for judges and ‘People’s Assessors’ in the court system.

Objective – Nature of human rights issues addressed

The objective of the activity was to strengthen the capacity of the peak judicial training institution to develop curricula for judicial education in human rights law through a detailed examination of teaching of human rights law in Australia. The fundamental HR issue being addressed was to facilitate stronger focus on human rights in the training of Chinese judges, through the integration of human rights into the College curriculum.

Nature of Chinese participation

The University conferred the status of Visiting Research Associates on the two staff who also had contact with other academic and judicial institutions. The staff were well qualified and were said (by staff of the Human Rights Centre) to have applied themselves with enthusiasm and energy to observing Australian practice and analysing and collecting material. They participated actively in a range of university activities including interactive seminars and group discussions and are currently engaged in translating more of the materials collected.

Acknowledgement by Chinese participants of specific learning outcomes

Participants in this activity acknowledge that they had acquired a deeper understanding and knowledge of human rights issues as they apply to training curricula, building on the curriculum enhancement elements of the earlier study visit by a larger group of officials and academic staff of the College. The RT met with one of the participants who, as editor of College Law Journal spoke enthusiastically about her experiences at the Human Rights Centre and the practical application both of knowledge gained and the extensive materials collected.

⁵ Courses where human rights elements have been included in the syllabus influenced by the Australian experiences:
Basic Level Courts Chief Judges Training (September 2005): Contemporary Judicial Ideas and Judicial System Reform; How should Judicial Organs Implement the Constitution; Our Country’s Death Penalty and its Judicial Restraint; The Harmonious Society and the Legal System.
8th National Basic Level Courts’ Chief Judges Training Course (November/December 2006): The Idea of Socialist Rule of Law; Correct Understanding of the Spirit of Law (video); Theory and Practice of the Construction of Judicial Professionalism; The Order of Judicial Conduct and Judicial System Reform; Judicial Ideas (video).

Chinese utilisation of activity outcomes

The RT concludes that there has been significant capacity building and the activity has further facilitated the work of the College in refining its curricula building on the August 2004 research visit as well as earlier assistance. Using some of the material collected as well as knowledge gained through participation in interactive seminars and group discussions the staff have prepared articles for the College's Monthly Law Journal on human rights issues such as how human rights-related complaints are handled in Australia. In terms of longer term outcomes there are plans to develop a detailed text to serve as a training resource for the College based on material collected and case law still being assessed. There are sound prospect for significant impact over longer term – but it will not be possible to attribute specific impacts solely and directly to the Australian intervention.

Activity 1.9.1: National Judges College – People's Assessors Study Visit (April 2006)

The People's Assessor Study Visit to Australia took place between 2-13 April 2006 in New South Wales and Queensland. Eight senior staff of the NJC visited Australia to examine the role of non-judicial actors in the judicial system including: juries, expert witnesses, Justices of the Peace and specialist or lay decision makers on various tribunals. Even though the Chinese system of lay assessors differs significantly from Australian systems for the involvement of non judicial personnel, there is a point of commonality in that their aim is to enhance fairness and accountability in decision-making by courts and tribunals.

Objective – Nature of human rights issues addressed

The objective of this activity was to strengthen the capacity of the peak Chinese judicial training institution to support the ongoing development and reform of the system of People's Assessors in China's court system, and to develop policy for the training of assessors consistent with human rights.

Nature of Chinese participation

The delegation observed the operation of common law juries as well as other processes which have some relevance and parallels to people's assessors. The delegation visited a wide range of agencies to look at the role of juries in trials, discussions about potential reform to juries in Australia, as well as at other mechanisms for advising and participating in the decisions of courts and tribunals in Australia.

Acknowledgement by Chinese participants of specific learning outcomes

The activity highlighted many ways in which access to justice and protection of human rights can be enhanced by the involvement of non-judicial actors in judicial processes by encouraging broader input into judicial and tribunal processes, which can enhance the quality of decisions and improve protection of human rights. The Chinese participants affirmed that even though there are significant differences between the Chinese and Australian systems, the Australian experience was valuable for China as it is considering how to reform. They pointed out that the merit in studying the Australian system and its complementarity with the Chinese system lay in the objectives to '*promote judicial democracy and fairness*' and promote public participation in and supervision of the administration of justice.

Chinese utilisation of activity outcomes

Whilst the People's Assessor system has been in place for many years, it was only in 2004 that the Standing Committee of the National People's Congress passed a *Decision on Improvement of the People's Assessors System* to regularise the system. There are many issues currently under debate about the status and regulation of lay assessors including their function, qualifications, selection process, degree of training, and remuneration. The National Judge's College plays a key role in this debate about development of policy in relation to people's assessors and then in devising relevant training programs. The RT found that knowledge gained during the visit in relation to Australia's jury system and the use of JPs has already influenced training approaches designed to improve the implementation of China's revised people's assessor system and to consider expanding the role of people in the position of Justices of the Peace throughout China.

Activity 1.5.1: Supreme People's Court – Rules of Evidence Design Visit (June 2003)

This activity involved 16 judges undertaking an intensive 10 day training program on the rules of evidence organised and delivered by the Judicial Commission of NSW between 18 and 28 June 2003.

Objective – Nature of human rights issues addressed

The focus of this training program was on the rules of evidence in criminal trials, with attention to the ways in which the rules of evidence help to protect the rights of accused people and witnesses. This program was specifically designed for the Chinese delegation.

Nature of Chinese participation

This activity differs from many other activities in terms of its length, 10 days and the intensity of its focus, which was concentrated on the rules of evidence in criminal trials. The judges participated in a very intensive training program located in the Judicial Commission of NSW.

Acknowledgement by Chinese participants of specific learning outcomes

After the 1996 reforms to the *Criminal Procedure Law*, it became clear that there were a number of difficulties in successfully implementing a more adversarial approach to criminal litigation and recognition that there was need for further reform. Reform to the rules of evidence and the role of witnesses in the criminal trial was identified as an area requiring further study and reform. The Chief Executive of the Judicial Commission of NSW reported that the Chinese judges expressed great enthusiasm for the program and that long standing relationships were formed and people remain in contact.

Chinese utilisation of activity outcomes

Senior members of the peak Chinese judicial organ obtained knowledge of how the rights of accused persons and witnesses are promoted and protected through the operation of rules of evidence in criminal trials in Australia. While labelled a design visit, it proved to be more a valuable interactive workshop/training exercise with train-the-trainers components managed by senior staff of the NSW Judicial Commission. It has resulted in some ongoing professional contacts at very senior levels and there is evidence that information learnt during this activity has contributed to the legislative reform process in China. Further follow up on these outcomes would be desirable.

Activity 1.5.1: Penitentiary Administration Bureau of the Ministry of Public Security – Penitentiary Administration Design Visit (February 2006)

The relationship with the MPS was reinvigorated with a group of activities around reform of the Chinese penitentiary detention system. A number of activities have been held starting with an initial visit by six high level officials from the Penitentiary Administration Bureau of the MPS, led by the Deputy Director-General, visited NSW between 17 and 23 July 2005. The initial visit was to determine whether there was sufficient similarity between the Australian and Chinese systems to pursue collaboration on this topic further.

Objective – Nature of human rights issues addressed

The objective of this activity was to provide the MPS with knowledge of Australian laws, policies and practices for the protection and promotion of the rights of detainees and prisoners and to assist in identifying a specific area for further cooperation. This program of activities is linked to a program to reform the legislative basis for the administration of penitentiary detention centres in China which are administered separately from detention centres under the criminal justice system. As part of the reform process, the MPS is examining ways strengthening the protection of the rights of detainees by examining the systems of other countries, including Australia.

Nature of Chinese participation

The design visit in the February 2006 was to identify more specific areas for cooperation. During the design visit the MPS identified females and juveniles in penitentiary detention centres as priority areas for cooperation under HRTC. Five officials from the Penitentiary Administration Bureau led by the Deputy Director General, visited NSW between 13 and 17 February 2006. The group met a wide range of agencies involved in the administration of justice relating to detention, the administration of detention centres and the protection of rights of detainees including their safety and care. The delegation also visited two detention centres.

Acknowledgement by Chinese participants of specific learning outcomes

The Chinese delegates indicated that the activity had been very informative and assisted them in obtaining an understanding of a number of systems not yet in place in China, including periodic detention and risk and self-harm minimization. The delegation also reported to HREOC that the value of international collaboration in the development of human rights approaches to detention practice was made clear on this visit, a point that was repeated to the RT in Beijing.

Chinese utilisation of activity outcomes

The activity provided knowledge to the MPS about Australian experience and expertise in the administration of detention with a view to enabling China to strengthen the protection of the rights of female and juvenile detainees in MPS penitentiary centres. It formed the basis for sequential activities which were (i) a **Penitentiary Seminar** in Xiamen to consolidate and further disseminate the information and knowledge gained. The presentations made at that seminar were copied in the form of (ii) a **Penitentiary Administration Seminar CD/DVD** with 1,000 copies being made and distributed not only to participants but also to provide a practical educational resource for distribution to all penitentiary units in China. This is an example of a design visit that facilitated understanding of the Australian system, refining of topics for future collaboration and which fostered the development of an ongoing, collaborative relationship under the HRTC program.

Activity 1.11.1: Ministry of Justice – Community Corrections Workshop (June 2006)

This workshop was held in Beijing following a study visit in to Australia in March 2005 where ten senior MoJ officials familiarised themselves with Australian policies, laws, procedures, programs, staff training requirements and client support services in relation to community corrections.

Objective – Nature of human rights issues addressed

This workshop was designed to expose a larger Chinese audience to the Australian approach to community corrections, and to assist the Chinese counterparts in their work to transform a community corrections pilot into a national program. Its objective was to provide a key Chinese justice agency with knowledge of the full range of Australian non-custodial sentencing options and community corrections programs and with knowledge of how Australian non-custodial sentencing options and community corrections programs operate to promote and protect human rights.

Nature of Chinese participation

The workshop involved around 45 participants who represented a wide range of agencies and institutions with a functional interest in community corrections. From MoJ it included the Department for the Guidance of Grass-Roots Work; Department of Judicial Assistance and Foreign Affairs; International Legal Cooperation Centre; Judicial Research Institute and Provincial Justice Bureaus. Also represented were the Ministry of Public Security; the Supreme People’s Court; the Supreme People’s Procuratorate; the Political and Judicial Commission, CCP Central Committee; the Central Institutional Organisation Commission, CCP Central Committee; the Central Committee for Comprehensive Management of Public Security, CCP; the Office of Criminal Law, Working Committee on Law, NPC Standing Committee; and representatives from academia: Peking University; Beijing Normal University and China University of Political Science and Law. The workshop had been planned for one of the more remote provinces where a pilot program is being implemented but budget constraints and the availability of a suitable venue prevented this. The decision to hold it in Beijing may have enhanced workshop outcomes by enabling senior party officials and agency representatives to attend. The MC was advised that these officials rarely come together and MoJ arranged for them to stay for a third day to discuss the pilot in a closed session of the workshop. Although the majority of participants were from Beijing, 13 other provinces and cities were represented.

Acknowledgement by Chinese participants of specific learning outcomes

A broad cross-section of senior Chinese officials with responsibility for the implementation of the community corrections pilot, or input into decisions regarding its expansion, were brought together to critically evaluate the pilot. Participants discussed openly problems with the pilot to be addressed, either through legislation, bureaucratic and policy reforms, improved funding arrangements or through an enhanced role for civil society.

The opportunity for Chinese participants to learn about the operation of the NSW model of community corrections, including its strengths and weaknesses, was timely in terms of China’s consideration of possible legislative options to formalise its community corrections pilot. Australian presenters were given high rankings in the workshop evaluation forms. Most highly rated was a presentation on how to evaluate the effectiveness of community corrections programs with several officials from provincial judicial bureaus noting that they were devising an evaluation methodology. They found particularly instructive practical information about different quantitative and qualitative approaches to the evaluation of community corrections

programs and the strengths and weakness of each. Some participants also expressed particular interest in concept of restorative justice.

Chinese utilisation of activity outcomes

The activity provided a key justice agency with knowledge of how Australian non-custodial sentencing options and community corrections programs operate and protect human rights in support of a current pilot program on community corrections encouraging alternatives to detention where appropriate. The initial pilot program with six provinces undertaking community corrections has now been extended to 18 provinces with the issues learnt in Australia cited to the Review Team by the MoJ as a contributing factor.

Activity 1.10.1: Supreme People’s Procuratorate – Juvenile Justice Consultation (March 2006)

The activity was to assist with the design of a *Juvenile Justice Workshop* to be implemented in China in May 2007. It was preceded by a *Juvenile Justice Study Visit* to Australia in April 2005. During the 3 day consultation, the Chinese and Australian participants exchanged information and experience on laws, policies and practices for protecting the rights of juveniles in the criminal justice system.

Objective – Nature of human rights issues addressed

The objective of this activity was to assist the SPP with the collaborative design of a seminar on juvenile justice to be implemented in China. It was to provide officials of the SPP with further knowledge of how Australian laws, procedures and practices within the criminal justice system operate to protect the human rights of juveniles. Juvenile justice is an area of the Chinese legal system where there is currently considerable momentum for reform.

Nature of Chinese participation

Around 14 Chinese officials participated in the consultation. The consultation was coordinated by the SPP Foreign Affairs Bureau with technical input by senior and middle-level prosecution officials. The dual involvement of the SPP and the Haidian District Prosecution Service provided perspectives from both the policy and operational levels.

Both Chinese and Australian participants gave detailed presentations on the operation of juvenile justice in their respective countries, describing measures and approaches that have been developed to protect the rights of young people in the criminal justice system. The participants explored aspects of Australia’s approach to juvenile justice that hold greatest relevance to China’s circumstances and priorities in this field.

Acknowledgement by Chinese participants of specific learning outcomes

As a result of this activity the SPP has gained new insights and perspectives which will assist it in program of reforms to produce strong protection for the rights of juveniles in the criminal justice system. Both sides are better able to develop further cooperative activities based on a sound understanding of areas where Australian expertise is relevant to Chinese priorities in juvenile justice. It was acknowledged that the level of information transferred during the activity was relevant to Chinese circumstances. The SPP is enthusiastic about the forthcoming Workshop and it seems likely that information obtained during the consultation and the forthcoming workshop will be being used to assist juvenile justice reforms.

Chinese utilisation of activity outcomes

The SPP has obtained knowledge of how Australian laws and, procedures and practices within the criminal justice system operate to protect juvenile human rights. The Workshop is expected to further strengthen the capacity of the SPC to contribute to current PRC reforms in juvenile justice including the proposed establishment of a specialist Juvenile Court.

The SPP expressed enthusiasm for further cooperation on juvenile justice under the HRTC program. Positive outcomes likely to flow from this activity are helped by the fact that it is contributing to a high priority area of legal reform in China. Laws that have been passed and associated SPP Notices reflects a realisation by the authorities that different procedures and practices should be applied to juveniles from those that apply to adults. There is an ongoing problem about the effective dissemination of legislative reforms initiated at the national level and their practical application by local prosecution services.

4B2: Women’s and Children’s Rights

Several activities described in Section 4B1 above as well as the activity listed in Section 4B3 below have a strong focus on the rights of women and children.

Activity 2.4.3: National Population and Family Planning Commission of China – Human Rights and Family Planning Seminar (April 2006)

This was the fourth in a series of activities within a multi-year program titled ‘*Project Proposal for Safeguarding Women’s Reproductive Health Rights in Central China*’. It was held in the Xinjiang Autonomous Region and focused on practical measures for protection of human rights in the delivery of family planning and reproductive health services. It was followed by a further Training Workshop with similar objectives in a different location in October 2006. That Workshop was co-funded with the UNFPA at the request of the NPFPC.

Objective – Nature of human rights issues addressed

The objective of this activity was to provide a key Chinese social agency with knowledge of Australian experience, expertise and methodologies relating to human rights protection in the context of family planning and reproductive health. The activity was intended to provide officials with knowledge of Australian experience, expertise and methodologies relating to human rights protection in the context of family planning and reproductive health, with attention to priority areas of the rights of women, children and ethnic minorities.

Nature of Chinese participation

The 45 Chinese participants consisted mostly of representatives of the NPFPC as well as Directors, Deputy Directors and staff of family planning commission in six pilot provinces and autonomous regions.

The Chinese presentations at the seminar elaborated the reform agenda currently being pursued in their family planning system, including both the achievements and problems they face in developing services that more fully reflect principles of informed choice and human rights.

Acknowledgement by Chinese participants of specific learning outcomes

A group of key officials from the NPFPC and provincial family planning commissions obtained increased knowledge of relevant human rights standards as well as practical

measures for promoting reproductive health rights, drawing upon both Chinese and Australian experience.

Many participants said the seminar had given them a much better understanding of human rights and informed choice and how these principles can be applied in the day-to-day operation of family planning and reproductive health services. They also had a better understanding of the NPFPC's reform agenda and felt that the seminar was helpful in equipping them to provide a higher quality of service. They had also gained valuable insights into effective strategies for community education and information dissemination. They noted that the seminar had highlighted further initiatives that are needed in order to progress the above mentioned reforms in the areas of training and education; development of complaints mechanisms; reforms to facilitate the transition from punitive measures to incentives and the development of family planning performance indicators to incorporate human rights principles.

Chinese utilisation of activity outcomes

The activity further enhanced the capacity of the NPFPC and provincial family planning commissions to apply human rights based approaches in the delivery of family planning and reproductive health services.

The NPFPC will be evaluating program outcomes (with donor support) and to commence this process has completed a detailed baseline survey. Australian workshop participants speak highly of the NPFPC's genuine commitment to achieve reform based on mutual respect between dialogue partners able to discuss both successes and failures in the past. There are sound prospects of a much greater focus in future on informed choice and the protection of human rights in the delivery of family planning and reproductive health services in China.

The RT was told that a prior study visit to Australia in February 2005 led to a fundamental shift in how the NPFPC undertakes program planning. Previously a Plan would be developed centrally and transmitted to local authorities. In this case, the study visit to Australia came first. Following the visit, central and local officials came together and developed a Plan jointly taking into account what had been learnt in Australia. There is now strong ownership at the county level.

Activity 1.5.1: All China Women's Federation – Anti-Trafficking Workshop (April 2005)

The workshop held in Chongqing Municipality was preceded by a *SE Asia Anti-trafficking Study Visit* in April 2004 which assessed measures being taken in Thailand, Vietnam and Australia and formed linkages with related bodies in SE Asia. The activity extended the scope of previous anti-trafficking activities beyond Guizhou and Sichuan Provinces.

Objective – Nature of human rights issues addressed

The objective was to enhance the capacity of local women's groups in three provinces and one municipality to combat trafficking of women and children. It was designed to improve capacity to promote and protect the rights of women and children subject to trafficking.

Nature of Chinese participation

Participants were predominantly drawn from Sichuan, Guizhou and Shaanxi Provinces and Chongqing Municipality. Other provinces represented included Jiangsu, Yunnan, Henan, Anhui, and Guangxi. Approximately 100 Chinese participants representing the All China

Women’s Federation, the Ministry of Public Security, Local Courts, the Supreme People’s Procuratorate, the Ministry of Civil Affairs, the Justice Bureau, Local Government and the National Working Committee on Children and Women attended the workshop. Australian presentations were given by representatives of the HREOC Sex Discrimination Unit and the Anti-Trafficking NGO ‘*Project Respect*’.

Acknowledgement by Chinese participants of specific learning outcomes

Participants were introduced to the conceptual framework for a more gendered and rights-based approach to trafficking with presentations helping to convey the regional and international dimensions of the trafficking industry. Additionally, participants were exposed to a wide range of strategies (both international and domestic), together with theoretical and practical assessments of the usefulness of these strategies in particular circumstances.

The workshop was a valuable opportunity for senior officials, local authorities, and women’s federations to meet and exchange information about their anti-trafficking work and focus on the development of future collaborative strategies.

An important outcome was that participants gained a deeper understanding of the importance of addressing gender discrimination and gender inequality, if a genuinely preventative approach to trafficking is to be taken. A senior participant commented that the presentations on gender inequality by both Australian and Chinese experts had transformed the collective thinking of participants in relation to preventing trafficking and provided a new conceptual framework for future anti-trafficking strategies.

Chinese participants noted a number of measures that they intend to take to ensure positive workshop outcomes. These included the development of a whole-of-government approach to combating trafficking and better articulate the responsibilities amongst cooperating agencies; the development of strong legislation at the local and national levels that keeps pace with the evolution of the trafficking industry and provides more effective protection of women and children; stronger laws to regulate and provide for the supervision of labour markets/employment agencies; awareness raising about the prevalence and dangers of trafficking; training specialised staff in trauma counselling and providing discrete counselling facilities.

Chinese utilisation of activity outcomes

Staff of the ACWF and a range of other relevant provincial and municipal agencies obtained new insights into human rights-based strategies to combat trafficking in women and children. Officials from various provinces exchanged information on anti-trafficking programs and discussed future collaborative work. This and previous activities have been important in putting trafficking on the government’s agenda and have helped to galvanise a range of anti-trafficking measures.

4B3: Ethnic and Minority Rights

The activity described below could equally have been listed in Section 4B2. The RT did not meet with any agencies associated with activities in the Tibet Autonomous Region nor review any associated Activity Completion Reports. The RT met with the State Ethnic Affairs Commission but did not review Activity Completion Reports covering the two activities funded in 2004. There have been no recent activities involving the SEAC.

Activity 2.2.1: All China Women’s Federation – Workshop on Domestic Violence in Minority Areas (July 2006)

The workshop held in Urumqi was the seventh workshop on specific aspects of combating domestic violence mostly held in remote provinces with significant minority populations. The sixth *Domestic Violence Workshop* was held in Shanghai in July 2005.

Objective – Nature of human rights issues addressed

The objective of this activity was to enhance the capacity of the ACWF and local organisations to combat domestic violence in an effective and practical way and to deliver culturally appropriate support services to those affected. It was designed to enhance capacity to promote and protect the right of women to live free from domestic violence.

The workshop enhanced awareness amongst participants from minority areas in China that domestic violence is a serious breach of women’s fundamental human rights and a gendered crime that must be addressed if China is to become a harmonious society. The workshop revealed that there is still considerable work to be done to raise awareness and acceptance in China about women’s right to live free from all forms of violence, particularly in relation to financial and psychological forms of abuse which currently fall outside legal definitions of domestic violence.

Nature of Chinese participation

The workshop was attended by over 80 Chinese participants, including participants from Women’s Federations; Public Security Bureaus; Coordinating Group on Safeguarding Women and Children’s Rights; and representatives from the ACWF, the courts and other organisations. Australia was represented by the Federal Sex Discrimination Commissioner and staff of the Victorian Police and the Family Violence Coordinating Unit of the Victorian Department of Communities.

A representative of the Public Security Bureau outlined a range of measures that the Bureau had taken since 2003 to improve its response to domestic violence incidents, including training to raise gender awareness amongst its staff, the establishment of police centres to assess victim’s injuries, and a number of complaint centres staffed by police. It had also taken proactive measures, such as door-knocking every household the PSB considered ‘at risk’ of domestic violence to inform women of their legal rights and men of their responsibilities. The Bureau recorded a 53 % decline in domestic violence complaints in one district over a 3 year period. Other agencies in particular provinces that are making a concerted effort to stop violence against also addressed the workshop. This included the *Xinjiang Women’s Federation*, the first jurisdiction in China to enact a local law that gives effect to the national *Law on the Protection of the Rights and Interests of Women and Children*.

Acknowledgement by Chinese participants of specific learning outcomes

The workshop was regarded by all as very successful. The transfer of information and the depth of understanding of Australia’s legal and policy responses to domestic violence were rated highly. Chinese participants identified a broad range of issues where they felt future work was needed to more effectively combat domestic violence. This revealed strong support for China’s adoption of an integrated response strategy, and for ongoing international cooperation to learn from the experience of others in this regard. Following group discussions, participants developed priorities for future initiatives to combat domestic violence. The list reflected lessons learned from both Victoria and China, and included the need to raise general community awareness about domestic violence laws; safeguarding the safety of women and children; additional legal reforms including a clear definition of domestic violence; implementation and enforcement of legislation; and government leadership at all levels.

Chinese utilisation of activity outcomes

The ACWF readily attributes successful interventions in the area of domestic violence, including new laws passed by the local level People’s Congress to the various HRTC sponsored workshops. Other measures include local hotlines dealing with domestic violence established in various areas; plans to adopt victim ‘*safety plans*’ as used in Victoria; follow up workshops and information sessions based on the HRTC workshops but without HRTC assistance; the preparation of a provincial ‘*victim-targeted strategy*’; inclusion of domestic violence in a formal municipal social development plan; an annual violence awareness month; formalised coordination arrangements involving police, courts, prosecutors and local government in one province; the inclusion of the handling of domestic violence complaints in the formal job descriptions of local public security officials; inclusion of structured training for officials and volunteers; and WF experts sitting as ‘*public assessors*’ on legal cases involving domestic violence. Despite these achievements much remains to be done and domestic violence in China is seen as a growing problem. The ACWF has expressed appreciation for the program’s willingness to continue to work in a given subject area.

4B4: General Human Rights Activities

Activity 1.8.1: United Nations Association of China – Model United Nations Commission on Human Rights (November 2005)

The Model United Nations was held in Shaanxi Province in cooperation with the United Nations Association of China. It simulated the proceedings of the UN Commission on Human Rights and involved the drafting, debate and adoption of several resolutions dealing with key human rights themes.

Objective – Nature of human rights issues addressed

The objective of the activity was to assist UNAC to promote the human rights objectives of the United Nations by convening a Model United Nations Commission on Human Rights to debate resolutions on thematic issues of human rights. It was designed to disseminate knowledge, concerning the human rights objectives of the United Nations and thematic issues of human rights, to Chinese university students. A complementary activity was a *Human Rights Knowledge Competition* that strengthened UNAC’s practical expertise in promoting international human rights standards and provided groups of students and the general public with an awareness of the role of these standards in protecting their rights.

Nature of Chinese participation

The Model UN was attended by approximately 180 students from 36 Chinese universities. During the two day program students engaged in debate, drafting and adoption of resolutions focusing on the human rights related themes of HIV/AIDS and human rights and Women and Children's Rights. The UN Secretary-General and High Commissioner for Human Rights sent messages of support to be read at the opening session.

Acknowledgement by Chinese participants of specific learning outcomes

Both UNAC and Chinese universities gained further experience in conducting an educational activity aimed at promoting an understanding of human rights issues. A Chinese NGO and a large number of Chinese universities gained further experience in conducting an educational activity aimed at promoting understanding of human rights issues and promoting the skills for advancing those issues in an international context. Chinese students gained new insights into several important human rights themes as the Model UN encouraged them to look at HIV/AIDS and the experiences of women and children from a human rights perspective. Students were able to develop and practice skills for effective advocacy of human rights in international relations.

Chinese utilisation of activity outcomes

This activity built upon the impacts of the previous Model conducted under HRTC, in terms of both subject matter and participants. It addressed new areas of human rights that are both topical and sensitive. The inclusion of 'HIV/AIDS and Human Rights' as a key theme is a subject that until relatively recently remained largely unaddressed in public and policy discourse in China. HIV/AIDS is also a high priority for Australia's development cooperation programs. The Model UN received coverage in both the provincial and national media.

The students selected to participate in this Model UN were among the most talented at their respective universities with potential to pursue careers that would take them to positions of leadership and influence in the longer term. The MC in informal discussions with students concluded that many were ambitious and aspired to careers in fields such as international diplomacy, government ministries and the law.

Overall, the Model UN Rights Council conferences are viewed by the Chinese partner as a great success, introducing future Chinese leaders to International Human Rights norms. They have raised the profile of the United Nations Association of China, have a wide geographic reach and are seen as a model for conducting creative human rights education.

Ministry of Foreign Affairs – Scholarship Awards (Ongoing)

Two scholarships for study of human rights related subjects at Masters level in Australian universities are provided each year for MFA staff.

Objective – Nature of human rights issues addressed

The objective of the activity is to expand and strengthen the understanding of human rights law and the related domestic implementation issues among Chinese officials working in a key government agency. It provides institutional strengthening for the Ministry of Foreign Affairs in human rights related areas.

Nature of Chinese participation

Students are selected through a competitive process within the Ministry. In recent years the activity has not been able to achieve a gender balance.

Acknowledgement by Chinese participants of specific learning outcomes

All of the students that have studied in Australia have returned to fill responsible positions often used by MFA in roles directly related to human rights and most have been promoted.

Chinese utilisation of activity outcomes

Thirteen MFA officials have previously successfully completed their studies in Australia and returned to duty with MFA. They include the current Director of the Human Rights Division and staff posted to Geneva and New York. Graduates occupy important positions where they are able to utilise their new skills and knowledge.

Appendix 5 Selected list of agencies⁶

The National People's Congress (NPC) is the highest organ of state power. It exercises the unified power of the people in the areas of legislative, judicial and executive powers. The NPC and, when it is not in session, its Standing Committee, exercise power to amend the *Constitution* and supervise its implementation and to enact and amend basic laws and other laws. The Supreme People's Court, the Supreme People's Procuratorate (which exercise judicial power) and the State Council (which exercises executive power and under which are created Ministries and Commissions) are established under the NPC. The NPC is empowered to appoint and remove the heads of each of these agencies, and the agencies are supervised by and report to the NPC.

China's 'judicial system' comprises a number of agencies. The most important of which are the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security and the Ministry of Justice.

The SPC and the SPP answer directly to the NPC. The MPS and the MoJ are ministries which answer to the State Council. Each operates through a normal administrative pyramid structure with courts, prosecutors and police working at provincial and local levels. Each of these agencies is of crucial importance to the promotion and protection of human rights in China.

The Supreme People's Court is the highest adjudicatory organ of state. The Constitution guarantees independence in the exercise of its powers of adjudication. It exercises the highest level of supervision over the trial practices of local people's courts and special people's courts at various levels. Reforms in 2006 to the *Organic Law of People's Courts* affirm that the Supreme People's Court exercises the power of final supervision and approval of death sentences.

The National Judges College (NJC) is a subsidiary organisation of the Supreme People's Court. It is responsible for providing in-service training for judges and plays a central role in improving the educational and professional level of judges, improving efficiency of the courts and protecting human rights in the adjudicative system. The NJC also provides training for People's Assessors who act as lay adjudicators in trials.

The Supreme People's Procuratorate is the highest procuratorial organ and the supreme State organ for legal supervision. Procuratorates are responsible for legal supervision, for the prosecution of criminal offences and for the investigation of some offences including embezzlement, bribery, offences against the democratic rights of citizens, breach of public duty. Supervision is exercised over the powers of the police, through power to approve arrest, and to initiate criminal prosecutions, over the conduct of trials, through the power of protest and over the lawful operation of prisons and other detention centres.

The Ministry of Foreign Affairs (MFA) is a Ministry of the State Council and is responsible for China's foreign relations. As international human rights norms are largely established through an international multilateral treaty system, responsibility for cooperation programs aimed at the promotion and protection of human rights commonly falls within the responsibility of the Ministry. MFA is the signatory of the MOU between China and the Office of the UN High Commissioner for Human Rights and coordinates that and some other

⁶ This outline of the function of Chinese government agencies is taken from the 2006 PRPM Report pp 55-57 and from China's official portal, gov.cn

relevant technical cooperation programs. It is the direct counterpart agency for the implementation of HRTC.

The Ministry of Public Security (MPS) is a Ministry of the State Council. It is responsible for public security including: the prevention, suppression and investigation of criminal activities; anti-terrorist activities; maintenance of social security and order; addressing activities that jeopardise social order; traffic, fire, dangerous objects and special trades; administration of household registration and individual identification cards, nationality, entry-&-exit, travel of foreigners in China; maintenance of border security; protection of state assigned persons, venues and facilities; management of rallies, parades and demonstrations; security inspection of public information networks; supervision and instruction of security work in state organs, societal associations, enterprises and important construction sites; and instruction of crime prevention work of community security commissions.

The Public Security Bureau (PSB) of the Tibet Autonomous Region is an administrative department within the Autonomous People's Government of Tibet. It has operational autonomy but in the context of policy and laws determined by the Ministry of Public Security.

The Ministry of Justice (MoJ) is a Ministry of the State Council. The MoJ is not responsible for the courts or for public prosecutions. It has responsibility for the certification and discipline of the legal profession including licensing foreign lawyers to operate in China, legal publicity, legal aid and corrections. The MoJ is responsible for the administration of prisons and re-education through labour.

The Department of Justice (DOJ) of the Tibet Autonomous Region is an executive department within the Autonomous People's Government of Tibet. It has operational autonomy but in the context of policy determined by the central Ministry of Justice.

The Ministry of Civil Affairs (MCA) is a Ministry of the State Council. It has a wide mandate which includes registration and administration of NGOs and delivery of social welfare and relief programs for groups such as orphans, the elderly, people with disabilities, the destitute and victims of natural disasters.

The State Ethnic Affairs Commission (SEAC) is a specialised Commission of the State Council and is responsible for the welfare of the 55 minority nationalities that make up 9 percent of the Chinese population. Its responsibilities are complementary to the responsibilities of the sectoral agencies and of local government in minority areas.

The National Population and Family Planning Commission (NPFPC) is a specialised Commission of the State Council, being responsible for population and family planning, population development and the implementation of the *Population and Family Planning Law* 2002.

The All-China Women's Federation (ACWF) is an umbrella organisation under the sponsorship of government. It is sometimes known as a GONGO (Government Owned Non-Government Organisations) to distinguish it from the western concept of NGOs. The role of the All-China Women's Federation, is to represent and safeguard women's rights and interests and promote equality between women and men.

The United Nations Association of China (UNAC), although with objectives roughly analogous to similar NGOs in other countries, is also closely affiliated with the Government, in its case particularly with the Ministry of Foreign Affairs.

The Department of Education (DOE) of the Tibet Autonomous Region is an administrative department within the Autonomous People’s Government of Tibet. It has operational autonomy but in the context of policy determined by the central Department of Education.

The Foundation for Human Rights Development (FHRD) is a national NGO founded in 1994. It aims to “develop and improve the human rights cause of China, promote mutual understanding and cooperation between the Chinese people and people of other countries on the issue of human rights, and jointly promote the work for the progress of human rights the world over.” One of its more recent activities in November 2006 has been to organise a human rights exhibition in conjunction with the Information Office of the State Council and the China Society for Human Rights Studies.

The Beijing Legal Aid Office for Rural Migrants (BLAORM) is an NGO sponsored by the Ministry of Justice. The office provides free legal advice and representation for migrant workers in Beijing. The office is also involved in public interest litigation, law reform and pilot projects to strengthen protection of the rights of migrant workers.

The Chinese Academy of Social Sciences (CASS) is a research institution under the State Council. It parallels similar Chinese academies concerned with Engineering and Sciences. Research conducted by CASS tends to be highly respected in political circles and influential in the formulation of policy.

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