

## **Assessment of the Canada-China Bilateral Human Rights Dialogue**

This report has been prepared based on Department of Foreign Affairs and International Trade Letter of Agreement Number 12800 CB of August 1, 2005

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### **Acknowledgements**

# **Assessment of the Canada-China Bilateral Human Rights Dialogue**

## **1. Mandate of this Assessment as defined by Letter of Agreement with Department of Foreign Affairs and International Trade**

### Background:

Canada and China have held 9 bilateral human rights dialogue meetings since 1997. The Canadian Department of Foreign Affairs and International Trade affirms that “the Dialogue has been used as an instrument for Canada and China to engage on human rights; a forum to share views and experience on policies and practices with respect to human rights; an avenue for both countries to express their views/concerns on each other's human rights situation and remind each other of our international obligations. From the Canadian perspective, the general objective has been to influence change in China's human rights practices.

### Objective of the review and assessment:

The objective of the present exercise is to review the dialogue and assess to what extent it has been an effective instrument to achieve the above, and draw lessons to strengthen it.

### More specifically, the review will assess:

- If the Dialogue has allowed a useful and frank exchange of information and views.
- What each country has learned about the other's policies, practices and situation through the Dialogue.
- Whether the above has stimulated a political interest, will and commitment for China to make progress on human rights.
- How the Dialogue may have contributed to change in China's human rights policies and practices, in the broader context of China's reforms.

### Further, the review will comment on:

- The quality and frequency of interaction with non-governmental organizations, both in China and in Canada

### Tasks:

In carrying out the work the contractor will consult/interview the following groups:

- Canada: DFAIT, CIDA, a sample of other government departments which have participated in the dialogue
- Chinese Ministry of Foreign Affairs (MFA) and a sample of other government departments and entities which have participated in the dialogue
- Canadian and Chinese civil society\_ in particular civil society members who have participated in the dialogue or in the dialogue consultative process
- Other governments who hold dialogues with China
- Other groups and individuals as need be

## **2. Methodology**

The Consultant traveled to Ottawa in August 2005 to read the Ministry of Foreign Affairs files related to the bilateral human rights dialogues dating from 1997.

In September he travelled to Beijing to meet with Chinese Government officials and members of Chinese organizations (including elements of the Chinese Communist Party) that have been involved with the human rights dialogues in the past, diplomats of other Governments involved with comparable human rights dialogues with the Government of China, as well as some Chinese NGOs whose work touches on human rights issues which have not participated in the dialogues. All of the meetings in China were conducted in the Chinese language without attendance by representatives of the Canadian or Chinese Ministries of Foreign Affairs with the exception of one meeting at the Chinese Ministry of Foreign Affairs which was attended by the Counsellor for Political Affairs of the Canadian Embassy to China and so English was used.

In October and November the Consultant travelled to Ottawa, Toronto and Montreal to meet with Canadian Government officials and representatives of Canadian NGOs concerned with the dialogues.

Finally he attended the Ninth Round of the dialogue in held in Ottawa October 31 and November 1, 2006. The interview data in this report pre-dates the Ninth Round of the dialogue.

The Consultant had previously attended the Third Round in Winnipeg and the Fourth Round in Beijing in his previous capacity as Counsellor, Political Affairs at the Canadian Embassy in Beijing and the Fifth Round in Ottawa in the course of which he made a presentation on religious freedom in Canada as a representative of Canadian civil society.

### 3. Introduction

“I would be less than frank if I did not say directly to you that many Canadians are disturbed when we hear reports from your country of restrictions on the right to free expression of different political views. And particularly when we hear of people being harassed and imprisoned for expressing political views different from the government.”

- Prime Minister Jean Chrétien in a speech to the School of Economics and Management of Qinghua University, Beijing, China, November 20, 1998

On April 14, 1997 the Department of Foreign Affairs issued their News Release No. 70 of that year which is entitled "Canada Decides Against Co-Sponsoring Human Rights Resolution on China at UN Meeting and Announces Bilateral Package of Human Rights Initiatives." The text reads in part:

On April 14, 1997 Foreign Affairs Minister Lloyd Axworthy and Secretary of State (Asia-Pacific) Raymond Chan stated on behalf of the Government of Canada that Canada would not co-sponsor a resolution on China's human rights situation at a meeting of the United Nations Commission on Human Rights (UNCHR) in Geneva.

"Canada remains very concerned about the state of human rights in China, particularly in the areas of religious freedoms and political dissent," said Mr. Axworthy. "The government has decided, in light of the significant weakening in consensus on the resolution among its traditional co-sponsors, that it no longer carries the same weight it has in past years. Under the circumstances, we concluded that Canada could have a greater influence on the state of human rights in China by pursuing and intensifying our promising bilateral measures."

Through intensified dialogue with the Chinese government, agreement was reached on the establishment and a meeting in the coming months of a joint Canada-China human rights committee, to address all human rights issues including religious freedom.

Thus, in April 1997, the Canada-China bilateral dialogue was established with a view to encouraging China to make progress on a range of human rights issues. The two main elements to Canada's human rights dialogue with China are:

- **Bilateral:** The Joint Committee on Human Rights (JCHR) meets annually alternating in Canada and China. Both Canadian and Chinese delegations comprise mid-level officials from various ministries and agencies, NGOs and academics.
- **Regional:** includes the annual Plurilateral Human Rights Symposium in which Canada, Norway and China alternatively host a meeting of up to 20 North Eastern, South and Southeast Asian countries to exchange views on a range of human rights issues.

In addition, Canada's human rights programming with China is supplemented by CIDA projects which promote human rights, good governance and democratic

development in China through support for legal aid, training of judges, activities of China's civil society non-governmental organizations, etc. The Political Section of the Canadian Embassy in Beijing engages the Chinese Government on human rights concerns on an on-going basis.. And the Canadian Government also addresses human rights issues relating to China through multilateral institutions, particularly the UN Human Rights Commission.

Since 1997, Canada's human rights policy toward China has been based on the fundamental belief that engagement, rather than isolation, will be more effective in bringing about sustained improvement in China's human rights record. The dialogue process favours frank private dialogue over public confrontation. The dialogue, termed the Canada-China Joint Committee on Human Rights (JCHR), rotates between Canada and China.

Canada has held nine bilateral human rights dialogues with China to date. With the exception of the first round, each dialogue has included a formal discussion of one to two days, as well as a site visit and/or side meetings (one to three days) to study relevant human rights issues in depth. These site visits and side meetings have included other government departments and local governments, other government agencies, prisons, hospitals and health care facilities, non-government and community organizations.

Below is a brief summary of the topics addressed at each round. In addition to the specific topics listed below, there is an agenda item each year devoted to an overall review of the situation of human rights in both China and Canada.

***First Round - July 1997. Ottawa***

Topics: ICCPR, ICESCR, criminal law and treatment of the accused, minority rights

***Second Round - October 1997. Beijing***

Topics: Rights of women and children, rights of the accused and new criminal procedure law, civil and political rights, bilateral human rights cooperation

Site visit: Yunnan province to study national minorities and other issues

***Third Round - November 1998. Winnipeg and Vancouver***

Topics: CAT, freedom of religion, rule of law and independence of the judiciary, gender equity and situation of women in the workplace

Site visit: Whitehorse to study devolution of power from federal government

***Fourth round -November 1999. Beijing***

Topics: ICCPR and ICESCR (update on progress towards ratification), rule of law (with focus on prison issues and transparency of enforcement and administration officers), women's rights, minority rights, freedom of religion

Site visit: Lhasa (visit to a prison, meetings with regional officials on freedom of religion, gender and population, economic development, cultural and environmental protection)

***Fifth round - October 2000. Ottawa***

Topics: ICCPR and ICESCR (update on progress towards ratification), freedom of religion, children's issues

Site visit: Iqaluit to study devolution of federal of power of federal government and challenges, the experience and challenges of maintaining cultural practices, violence against women and prison administration

***Sixth Round - November 2002. Beijing***

Topics: Conditions of detention (with focus on special concerns of women prisoners), police training, international cooperation in human rights, labour practices

Site visit: Beijing (visit to prison) and Urumqi to study national minorities, freedom of religion and freedom of expression

***Seventh Round - October 2003, Ottawa***

Topics: Racism, the role of the UN in the field of human right, ICESCR and the Optional Protocol, human rights and terrorism

Site visit: Vancouver to study indigenous issues in Canada

***Eighth Round - October 2004. Beijing***

Topics: UN special mechanisms and recent visits, human rights and terrorism, OP to the ICESCR, HIV/AIDS and human rights

Site visit: Beijing (visit to hospitals and meetings with NGOs) to study HIV/AIDS and human rights

***Ninth Round – November 2005, Ottawa***

Topics: Equality with focus on minorities, women and migrants, Multiculturalism and non-discrimination, Police violence and accountability

Site visits: Ottawa (visits to RCMP, Department of Justice and Canadian Human Rights Commission), Montreal (Roundtable with NGOs at Rights and Democracy and visit to Canadian Human Rights Foundation), and Toronto (Police training and public complaints)

#### **4. Chinese Perspectives on the Human Rights Dialogues**

A. National People's Congress, Ministry of Justice, Ministry of Public Security, Supreme People's Procuratorate, All China Women's Federation, All China Lawyers' Association

These institutions face challenges in their work associated with changes brought about by the marketization of China's economy and globalization and therefore have strong interest in learning from the experiences of advanced industrial foreign nations including Canada. These include matters of institutional organization, laws, regulations, practices and procedures. Many of their representatives involved in the dialogues have received professional training including advanced graduate degrees abroad. Areas of cooperation with foreigners that they indicate have been of benefit to their work include:

- the promotion of the concepts of family violence and of sexual harassment in China and associated legislation
- the presumption of innocence in criminal procedure law
- improved management of prisons
- improved policing procedures including arrest protocols
- promotion of rule of law through foreign-funded programs for training of legal professionals including judges, etc.

They feel that China has benefited from foreign exchanges in general, but that the human rights dialogues have not been effective in meeting their institutional needs. The reasons for this are:

- The Chinese MFA does not consult with them about what agenda items would be most useful to them in their ongoing work. The Chinese MFA simply advises them of the topics and asks that they research the Canadian situation in these areas and prepare questions and observations about Canadian human rights shortcomings
- The Chinese MFA's mandate is to defend China's interests abroad. It has no institutional interest in promoting respect for China's human rights domestically
- Much of the dialogue is taken up by the Chinese MFA reading scripts prepared for them by the Chinese Academy of Social Sciences whose content is well known to both the Chinese and foreign participants and of little interest
- The topics of discussion tend to repeat between dialogues. The presentations and discussions are generally too shallow to be of substantive benefit. The foreign participants tend to lack knowledge of China and make simplistic and sometimes condescending presentations. One interviewee said that the Canadians have "a missionary attitude." They tend to ask the Chinese participants to comment on "some unrepresentative case they have read about in a tabloid." This puts the Chinese participants on the spot as they are unable to assess the completeness or veracity of the foreign report and therefore have no means to speak in defence of their Government's actions

- The dialogues usually only last a day but cover many diverse topics only one or two of which are of value to the particular Chinese participants (that is the All China Women's Federation has little interest in the presentations directed at the Chinese Police and *vice versa*.)
- There is little opportunity for follow-up or for engaging in more in-depth exchanges of a more technical nature once the dialogue day is done
- The foreign dialogue partners are constantly changing which makes for lack of continuity and the need to "start from the beginning" with them over and over again whereas the Chinese team has more expertise and composition is more stable
- The dialogues involve only a small number of Chinese people and have no mechanism to spread the information beyond this small group
- Materials provided by the Chinese side are translated into English but the materials provided by the Canadian side are not translated into Chinese. This makes their dissemination up to unilingual Chinese speakers in the policy-making organs ineffective
- Interpretation is generally of low quality resulting in much of the content being lost or distorted in translation. Consecutive interpretation works better than simultaneous interpretation as the foreign speakers do not know how to use interpreters properly and tend to speak too quickly and the interpreters often cannot keep up with them.

In their view these shortcomings could be mitigated by the Foreign Ministry assuming simply a coordinating role instead of dominating the limited time allowed for the dialogues by reading their formulaic scripted presentations. This would allow for the Canadian and Chinese people attending the dialogues who are actually involved in human rights-related policy formulation and programming to engage each other directly on issues of practical concern. The problem of lack of depth and limited dissemination of the dialogue content could be resolved if the dialogues were more closely tied to follow-up technical assistance projects. This would allow the dialogue to sustain beyond the one-day meeting. The topics of the dialogues should be set in consultation with the agencies of the Chinese Government with mandate for domestic programming in human right-related areas. These topics should be followed up year-by-year to focus the dialogue on more practical impact that will make a difference in the actual work of the Chinese agencies involved.

B. China Tibetology Research Centre, State Administration for Religious Affairs, and the State Ethnic Affairs Commission

These organizations have sent representatives to bilateral dialogues of many nations (one of the interviewees reported having attended 16 dialogues in total) but none of these organizations has an equivalent counterpart in Canada. The China Tibetology Research Centre is a subsidiary of the Chinese Communist Party Central Committee United Front Work Department. The other two also have strong "united front" components to their mandates. All three do extensive foreign-directed propaganda work producing materials in many foreign languages as well as regularly hosting "friendship" delegations from foreign countries. As a

significant aspect of their work is to explain and defend to foreigners Chinese Government policy and practices in their area of responsibility, the human rights dialogues are perceived by them as good fora to implement this facet of their institutional mandates.

They praise the dialogues as having reduced misunderstanding by foreign governments on China's religious and ethnic policies and practices. One benefit they attribute to the dialogues is that there are now fewer "unpleasant interactions when the foreigners just attacked us" than in the past. While some foreign participants in the bilateral human rights dialogues still adopt an arrogant and insulting attitude, over time the dialogues have moved more from condemnation and criticism of their work by the foreign dialogue partners "to a more constructive attitude." So the dialogues should continue.

But according to these officials there is significant resistance among senior Chinese Communist officials to their organizations participating in the human rights dialogues as those officials see it as an affront to China's national dignity for China to be made to answer to foreigners for domestic policy decisions. Moreover they indicate that among the "masses of the people" there is a feeling that the Party does too much to accommodate religious and ethnic minorities. So publicizing the fact and content of the human rights dialogues inside would be problematic as it could lead to pressure to cease the bilateral human rights dialogue process. This would be regrettable as the dialogues are in their view a good mechanism to allow for opening up lines of communication. So it is best to maintain their confidential nature.

### C. Ministry of Foreign Affairs

The Chinese MFA indicates that in comparison with the MFA's dialogues with other partners, the Canada-Sino dialogue is "one of the best ones." It shows "less political prejudice against us." It is a "model" dialogue from the Chinese point of view. With regard to cooperation in dialogue topics and agenda China has a good working relationship with the Canadian Embassy and a very good productive atmosphere prevails.

The Ministry is aware of the discontents of the Chinese participants and the universal concern that the dialogue is "hollow" (this was said in English presumably referring to *kongde* also meaning "empty" or "devoid of content"). The Ministry of Education has already indicated to the Chinese MFA that they will no longer allow their personnel to participate in human rights dialogues. The complaint of the Chinese units that they are not consulted about the dialogue topics in advance is true. A coordinating meeting is held one month in advance at the MFA. The MFA does not solicit the other units' views, "we just tell them what to do." A problem is that the Canadian side proposes too many diverse topics. But these Chinese units misunderstand the purpose of the dialogue and only see it from the narrow perspective of their own institutional interest. They do not understand what the dialogue is supposed to be. The dialogue is "first and foremost a political/diplomatic dialogue, closely linked to the UN Resolution."

These units “lack comprehensive understanding of the political importance” of the bilateral human rights dialogues. It is primarily an activity of the Chinese MFA for diplomatic purposes. According to the Chinese MFA, if the MFA assumed only a coordinating role the Chinese units would waste dialogue time by making overly lengthy interventions.

But the Chinese MFA proposes that to better serve the needs of all, the dialogue could be divided into two aspects:

- first part would consist in the interaction of “the traditional issues” that are mostly Canadian concerns about Chinese affairs
- second part would consist in a focussed in-depth discussion of specific topic which in principle would be proposed by the Chinese side. These could lead to technical assistance projects on capacity building and economic, social and cultural rights.

There are technical ways to make the dialogues work better such as exchange of written materials in advance and specifying in advance the questions that each side plans to raise in the course of the dialogue. The Chinese MFA suggested that more sensitive issues could be addressed in the dialogues if Canada would make gestures of good will such as providing funding in support of the impoverished county in Yunnan that the Chinese MFA is tasked by the Central Government with assisting. A donation of CAN\$60,000 is suggested. Stronger candidates would be attracted to the Human Rights Division of the Chinese MFA if Canada funded training for these diplomats both short term and for M.A. degrees at Canadian universities. Such opportunities funded by Canada could also be extended to young officials in the Public Security and Justice ministries. This would build trust and better working relationships.

It would be problematic to make the process more transparent as the *laobaixing* (“old hundred surnames”; meaning ordinary people) would not be happy to know about this dialogue activity. Any press release given to the foreign press would eventually be known in China. But if the dialogue was more “equal” (*pingdeng*) then it could be publicized more.

The MFA asserted that submission of lists of cases of concern should be discontinued. Foreigners demanding release of Chinese prisoners amounts to interference with the Chinese process of law and Chinese judicial independence. The lists contain too many names which demand too much of the limited resources of the Ministry of Justice to research. Canada forwards unreliable information submitted to the Canadian Government by NGOs. The listed prisoners include “too many murderers and exploders of bombs.”

The dialogue would have more impact “if we avoided politically sensitive topics.”

#### D. Chinese NGOs Not Involved in Human Rights Dialogues

None of these NGOs do meet the stringent criteria of the Chinese Ministry of Civil Affairs to register as independent NGOs. Some are registered as

businesses, some are legally (if not *de facto*) subsidiary to GONGOs such as the Woman's Federation, some operate as "research institutes" of universities even though their primary function is advocacy and operation of "telephone hotlines", etc. Most of them prefer not to be named in this report.

One Chinese NGO representative indicated that the large sums of money expended on activities the Chinese Government claims are intended to promote better implementation of China's human rights commitments lead to no practical benefit as they do not address the fundamentals of China's political system. The other NGO representatives interviewed were nevertheless supportive of the bilateral human rights dialogue process as "better than nothing."

They all would like to establish contact with their Canadian NGO counterparts and engage in exchanges with them. They all would welcome technical assistance funded by the Canadian Government.

## **5. Canadian and other Western Countries' Perspectives on the Dialogues**

### A. Government

There is a high degree of consensus among the Canadian Government stakeholders in the bilateral human rights dialogues and this is consistent with the views expressed by the representatives of other governments who have comparable human rights dialogues with China. The bilateral human rights dialogue process is considered indispensable as it allows a forum for Western governments to table their concerns about human rights violations in China. But there are concerns about the substantive impact of the dialogues.

The following points have been raised:

- Chinese MFA take up much of the dialogues reading scripts. These scripts are repeated at the dialogues of the various countries over the year
- There is little connection established between the dialogues and progress on the ground; it is difficult to determine benchmarks or other objective indicators of success
- Chinese MFA is showing less commitment to the dialogues by downgrading the level of head of delegation and reducing staff in their Human Rights Division
- The rise of nationalism in China concomitant with China's economic rise to power has made the Chinese Government "unwilling to be chastised over human rights any more"
- Chinese side tends to drag its feet in making dialogue arrangements sending out a signal that "the western nations are the demandeurs in this instance."
- Response to the lists of cases of concern is not as complete as Canada expects it should be and degree of responsiveness varies significantly year by year.;
- There is a pervasive cynicism about the process and "dialogue fatigue has set in"
- But on the positive side since the dialogues started in 1997 China has signed the ICCPR and ratified the ICESCR (albeit with an extraordinary reservation on the entire Article 8) and has added the phrase "The State respects and safeguards human rights" to China's national constitution.

### B. Canadian NGOs Who Have Participated in the Dialogues

These NGOs have their focus as advocacy inside Canada and the participants in general had little previous knowledge of China.

They were grateful for the opportunity to travel to China and for the site visits and other activities. They all felt that they were inadequately briefed by DFAIT prior to departure and inadequately de-briefed on return. The interaction with their Chinese counterparts was more like "ships passing in the night" than substantive engagement. None of them ever heard from the Chinese counterparts again once the bilateral dialogue meeting ended. After the dialogue was done DFAIT did not seem interested in continuing any relationship with these NGOs.

They feel that they could offer more to future dialogues based on their previous involvement but there appears to be no mechanism to allow for this.

C. Canadian NGOs with Interest in Matters Relating to Human Rights in China

These NGOs are sceptical of the value of continuing the dialogues in absence of evidence that the dialogues have benefited the elements in China that are the focus of their work and concern. They are suspicious that the commitment of the Government of Canada to promoting human rights in China is overshadowed by the imperatives of forging closer Canadian trade and investment ties with the Chinese Communist régime.

There is general dissatisfaction with lack of transparency of the process, particularly with regard to the lists of cases of concern.

Many feel that the bilateral dialogues could be detracting from the effectiveness of multilateral mechanisms designed to encourage China to better comply with human rights norms as defined by the UN. If the dialogues cannot be shown to be effective by the establishment of meaningful benchmarks, most feel that the dialogue process should be wound down and replaced by more effective Canadian Government programming to promote observance of human rights in China.

But they were encouraged by the invitation to come to DFAIT for a one-day roundtable in May 2005 and by DFAIT's funding of this assessment of the bilateral dialogue.

Most would like to be more involved in Canadian Government human rights initiatives including technical assistance projects. They feel that have they much linguistic, cultural and other expertise that the Canadian Government is not drawing on.

## 6. Findings

### A. Process of Determining Dialogue Topics

The topics Canada proposes be addressed in the Dialogue are arrived at by consultation between the Human Rights and China Divisions of DFAIT in consultation with the Canadian Embassy in Beijing. The Embassy Political Section conveys the Canadian suggestions to the Chinese MFA. After discussion, the Chinese MFA typically agrees to the agenda items proposed by Canada. For the most recent dialogue though, DFAIT indicates that the Chinese Government has been more pro-active in identifying topics.

After the agenda has been set, the Chinese MFA then calls representatives of the Chinese units whose area of responsibility corresponds to the agenda topics to a meeting held at the MFA. At that meeting the Chinese MFA advises of the subject areas to be addressed and asks the Chinese units to research questions they can ask the Canadian counterparts about the situation in Canada in these areas.

Chinese participants have expressed dissatisfaction that the topics that dialogues address are not relevant to the ongoing concerns of their organizations. That is to say, the Chinese units indicate that they do have strong interest in dialoguing with their Canadian counterparts on certain issues relating to human rights that the units are currently grappling with in their ongoing policy formula process. But these matters generally do not appear on the Dialogue agendas. As the Chinese participants point out, the MFA does not consult the Chinese ministries and GONGOs with responsibility for policy formulation in human rights-related areas as to what agenda items would be of greatest utility to them. The Chinese MFA has no mandate to promote greater respect for human rights in China domestically. The Chinese MFA's *raison d'être* is to defend China's interests abroad. Therefore, some of the Chinese participants suggest that it would be better if the Chinese MFA would limit its participation to a coordinating function and then “sit back and let us engage with our foreign counterparts in substantive exchanges.”

The Chinese MFA perceives the dialogue as a concession to Canada in return for Canada not supporting a resolution condemning China at the annual meeting of the UNHRC in Geneva every March. From the Chinese perspective the dialogue process is intended to allow Canada to demonstrate to Canadian NGOs, and Canadians in general concerned about China's human rights record, that Canada is actively pursuing the matter with the Chinese authorities. So the Chinese MFA sees the dialogue as responsive to Canadian domestic political demands. As the Chinese MFA has indicated in response to the criticisms of non-MFA Bilateral Dialogue participants, “The other units only understand it from their own narrow interest. First and foremost, it is a political and diplomatic dialogue.”

The Chinese participants in the dialogues also complain about lack of the continuity in subject areas proposed by Canada year by year on the one hand and in the duplication of the same topics between different nations' human

rights dialogues with China. The consensus is that due to the lack of continuity no topic is addressed in sufficient depth to be of significant benefit to China's democratic development, although there is some benefit to the Chinese participants in coming to preliminary understanding of western approaches through the dialogues. It is also evident to the Chinese participants that the Western dialogue partners are not well coordinated by the Chinese MFA so the substantive content of the dialogues tends to be repetitious to those Chinese participants who are called upon by the Chinese MFA to attend the dialogues of several countries. The issues raised by the western delegations in the *tour d'horizon* on the human rights situation in China over the year since the previous dialogue are criticized by the Chinese participants as tending to be superficial and dominated by the same issues year by year: Tibet, Xinjiang, Falungong, death penalty, etc. These issues fall outside of the purview of the dialogue participants, so the information has no relevance to them in their professional capacities. The senior-level policymakers at the higher levels of the Chinese Communist Party who have decision-making authority over such matters have had no involvement with the human rights dialogues to date. There is no evidence that any of the dialogue discussions on these matters of significant concern to Canadians is reported beyond the International Organizations Division of the Chinese MFA.

#### B. Impact of Bilateral Dialogue in China

The bilateral dialogue is seen by Canada as a form of engagement designed to promote better respect for human rights in China. The expectation is that the dialogues will lead to China modifying its laws and practices to bring them more into compliance with the universal norms of human rights as defined by Canada. But there is no reciprocal expectation on the Chinese side that Canada will modify its laws and practices. That being said, there is clear interest on the part of the non-MFA participants in the dialogue in seeing what aspects of Canada's advanced experience can be of benefit to China's development. But the Chinese MFA's mandate in this exercise is to defuse foreign unease with China's human rights record. They tend to maintain that Canada's critical interpretations of China's approach to human rights are partially misinformed and overly simplistic. They also counter the Canadian expressions of concern over specific human rights violations by claiming that the issues raised by Canada relate to phenomena that China is currently actively seeking to address through administrative or legislative measures, or that they are related to China's low level of development and will therefore resolve spontaneously in the course of China's modernization.

But this is not to say that foreign engagement with China through human rights dialoguing is without positive outcome. In general Chinese participants in the dialogues point to several human rights areas that China has addressed based on foreign input. These include such significant developments as the presumption of innocence in the Criminal Procedures Law, legislation to address violence against women and sexual harassment, and improved procedures in police conduct and prison management. On the other hand important areas of concern to Canada such as those relating religious freedom, labour rights and rights of ethnic minorities have not shown much progress despite being constants

on the agendas of human rights between China and several countries over the years.

The format of the dialogues falls into two parts. The first consists of reports by the two Governments to each other on progress in human rights over the past year. This includes such matters as UN responses to reports to national reports to Covenant bodies, visits by special rapporteurs, new legislation initiated that touch on human rights concerns and so on. Canada raises concerns about reports of Chinese human rights abuse over the past year in this part of the dialogue. Chinese participants find this rather *pro forma* observing that year by year the same issues are raised: Tibet, Falungong, internet censorship, arbitrary detention in the Reform Through Education camps, death penalty, etc. The Chinese responses to these are similarly *pro forma* rarely varying year by year. Nevertheless as a Canadian participant has observed, without the Bilateral Human Rights Dialogue, Canada would lack an important institutional context for directly tabling our ongoing concerns about human rights violations in China.

The second part of the dialogue consists in dialogue on specific subject areas followed by site visits related to these topics. For example in the 9<sup>th</sup> Dialogue the topics addressed included: “Equality, with a focus on minorities, women and migrants and Multiculturalism and non-discrimination” (with presentations by the Canadian Department of Justice and by Heritage Canada); and “Police Violence and Accountability” (with presentations by the RCMP). So the Chinese MFA arranged for representatives of the Supreme People’s Procuratorate, Ministry of Public Security, Ministry of Justice, State Ethnic Affairs Commission, and the All-China Women’s Federation to come to Canada for the meeting. All of these people are veterans of multiple human rights dialogues with various countries in past years.

The impact of the Canadian presentations on the Chinese Government’s future policy formulation in these areas is limited in its effectiveness by the structure of the exercise. For example the entire Chinese delegation spent the morning of the second day of the 9<sup>th</sup> Dialogue attending a presentation on “Police intervention and incident management” by the Inspector of the RCMP in change of tactical training for new recruits. A very compelling PowerPoint slide show distilled from training materials for in-coming RCMP officers was shown. It focussed on appropriate levels of use of force by police under various conditions. But the interest in such a detailed presentation on the part of the State Ethnic Affairs Commission, and the All-China Women’s Federation representatives who sat through it the full morning was necessarily limited. On the other hand for the senior officials from the Supreme People’s Procuratorate, Ministry of Public Security, and Ministry of Justice with high-level expertise in this area and extensive international experience to whom the presentation was directed the presentation was too simplistic. That indicated that they did not find it very useful to them.

The Chinese participants complain that the presentations by the Canadian Delegation are too shallow and that the Canadian participants lack knowledge of the Chinese situation and are therefore unable to provide information that is relevant to Chinese needs. Another criticism is that the

Dialogue touches on only a small number of people. Moreover written materials provided by the Canadian side tend to be of a generic nature and available only in English and French, not in the Chinese language. This makes distribution to officials in policymaking functions higher up in their organizations problematic as most senior Chinese officials are unable to read foreign language materials. Another issue frequently raised by the Chinese participants is that in past dialogues there has been no mechanism for follow-up activities.

But these issues may be resolved in future Canada-China Human Rights Dialogues as CIDA has expressed strong willingness to organize future follow-up activities. The Chinese Government has already made a proposal to Canada for follow-up programs in 3 areas defined by the Ministries of Justice, Public Security and Foreign Affairs.

### C. Transparency and NGO Participation

Canadian NGOs are briefed confidentially by tele-conference before and after the dialogues. But the NGOs have express dissatisfaction with what they regard as the unsatisfactory nature of past briefings due to lack of specifics of exactly what was raised by the Canadian Government in the course of dialogues. They generally criticize DFAIT for a “going through the motions” approach to the activity and suggest the Bilateral Dialogue has an overall negative effect on the furthering of social justice in China by detracting from UN Human Rights processes.

Nevertheless, the 9<sup>th</sup> Human Rights Dialogue in Canada included a workshop with invited Canadian NGOs at Rights and Democracy in Montreal. On the margins of the 8th Dialogue in Beijing arrangements were made for the Canadian delegation to meet with Chinese NGOs who have not been previously involved in the Bilateral Dialogues at a Roundtable held at the Canadian Embassy.

The Chinese MFA is amenable to future participation by Canadian NGOs in dialogues held in China, although certain NGOs would not be acceptable participants

After the 9<sup>th</sup> Dialogue DFAIT and the Chinese MFA made public statements about the Dialogue for the first time. These received significant publicity in China because they were picked up as a news item by the Chinese service of the VOA which is very widely listened to in China.

### D. Lists of “Cases of Concern”

All nine dialogues to date have included the presentation of a list of “cases of concern” consisting of names of people currently in prison or in Re-Education through Labour camps in China. They are people known by Canadians to have been involved in political or religious activities in China that would not be illegal under the laws of Canada; activities that Canadians judge should have been subject to the protection of the UN Human Rights Covenants. So Canadians suspect that these people may have been wrongly incarcerated by the Chinese authorities. Some of the people listed as “cases of concern” have been imprisoned

on criminal charges. But in these cases we believe that these cases are worthy of closer scrutiny by the Chinese authorities because due process of law by an independent judiciary is not yet fully available in China and because the rules of evidence applied in China are not yet at international standard. The Government of China has to date presented no corresponding list of people whose imprisonment in Canada is a cause of concern to people in China.

The Chinese MFA has asked that Canada no longer request information on these “cases of concern.” They argue that our urging the Chinese Government to reconsider the incarceration of certain Chinese citizens is inconsistent with the principle of the independence of the judiciary.

The position of the Canadian Government has been that raising the names with the Chinese Government has benefit in making known to the Chinese Government Canadians’ concern for Chinese nationals whose imprisonment appears to be for political and not criminal reasons. This may encourage the Chinese authorities to provide better conditions and to allow earlier release of some of the prisoners named, although a direct connection between the prisoner lists and the conditions of their incarceration and length of their sentences cannot be established.

#### E. Some General Observations

Both the Canadian Government participants and the Chinese Government participants in the Human Rights Dialogues have limited resources to devote to these human rights dialogues with due to pressing demands in myriad other diverse areas of responsibility. Both Governments acknowledge the lack of resources available for allocation to this bilateral activity. To make the Human Rights Dialogues more effective by improving the format and substantive content of the agenda to more effectively serve Chinese needs in human rights-related policy formulation would require that DFAIT and the Embassy and the other Canadian Government agencies involved dedicate a considerable increase in resources and expertise in Chinese affairs to this activity. Realistically, this is unlikely to be forthcoming under current conditions. Similarly DFAIT and the Embassy lack resources to stage meaningful follow-up activities to sustain human rights programming growing out of the dialogues and involve more key Chinese “players” in Dialogue-related human rights promoting events throughout the year. CIDA resources have been involved in the dialogues in the past, but the levels of funding and participation by CIDA-personnel has been limited, although CIDA has done and continues to do a lot of human rights-related programming as part of its mandate to promote China’s development. But CIDA has expressed strong willingness to become more committed to the human rights dialogues process in future and to better coordinate CIDA human rights related programming with the dialogues. In the spirit of the “whole of Government approach” to make the dialogues more effective, it seems logical to draw more deeply on specialized resources under CIDA’s mandate for capacity building in “Good Government, Democratic Development and Human Rights” to supplement DFAIT and other Government agencies’ and Canadian NGO participation in the Canada-China Bilateral Human Rights Dialogue.

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The report undoubtedly contains errors and shortcomings. I hope that the readers will take the time to point them out to me at the address on the cover of this document. While commissioned and vetted by the Department of Foreign Affairs Canada, this report does not necessarily represent the views of the Government of Canada.

Human rights are the universal and essential entitlement of all citizens regardless of nationality, culture, level of economic development, or political ideology. I hope that this report it will lead to further discussion with a view to furthering the cause of transnational social justice through the effective implementation of human rights as defined by the Universal Declaration of Human Rights and the associated UN Covenants.

Charles Burton