

Evaluation of Switzerland's Human Rights Dialogue with the People's Republic of China

Thomas Richter and Frauke Seidensticker*

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* Dr. Thomas Richter is a lawyer in Freiburg i.Br.
Frauke Seidensticker is deputy director of the German Institute of Human Rights in Berlin.

0 Executive Summary

The present evaluation is a summary of the detailed external evaluation of the Sino-Helvetian human rights dialogue that has already been discussed in depth with representatives of the DFA. It examines activities in the period from autumn 2000 to summer 2006. The evaluators based their assessment on DFA documents and on interviews with partners from Switzerland, China and other states. The evaluation took place between August and November 2006.

Switzerland regards human rights dialogues as an additional instrument in its dealings with certain states. They are intended to complement, but not to replace, conventional bilateral and multilateral instruments. The dialogues consist of several components. In the case of the dialogue with China, these are:

- official and regular talks at the government and administrative levels (known as dialogue rounds),
- complementary activities.

The DFA has a set of general goals for human rights dialogues and specific goals for the human rights dialogue with China. To achieve these goals, four subject areas have been defined for the dialogue with China:

- Criminal law
- Minority rights/freedom of religion
- Human rights and the economy
- International human rights issues

The main focus of these subjects is criminal law, with the subsections torture, administrative detention, the death penalty, the penitentiary system, as well as other procedural and substantive aspects of criminal law. All these issues are closely linked with the wish for ratification of the International Covenant on Civil and Political Rights (ICCPR) which the People's Republic has so far only signed but has not yet ratified. Discussions on minority rights and freedom of religion are also held. In these talks Switzerland has raised in particular the issue of Tibet (Dalai Lama) and Xinjiang (Uyghurs), as well as the situation of religious and spiritual groups that are not officially recognised (such as Falun Gong). Human rights and business is a new field of discussion.

The evaluation found that the project management of the human rights dialogue was in essence well-run, creative and flexible. However, the vagueness of the goals is a weakness, as it hampers a better coordination of measures in terms of goals achieved and their measurability.

Compared with human rights dialogues conducted by other like-minded states, the Swiss human rights dialogue occupies a mid-table position. The funds devoted to the dialogue are relatively modest.

The authors consider the complementing of the dialogue rounds by project-related activities to be particularly positive. These activities include the prison project and the area of business and human rights, not least because these projects are very well interlinked with the dialogue rounds.-

As for the achievement of the self-defined goals, the picture is not uniform. This stems from the large number of goals that are not hierarchically ordered. The authors identified measurable successes in the goals of improving bilateral relations, intensifying a long-term basis of trust and the creation of a network of contacts, the promotion of and contacts to human rights constituencies, the discussion of individual cases, input to the transformation process, the strengthening of reforming forces within the political system and the promotion of cooperation with international human rights mechanisms.

Goals not achieved were the normative improvement of the human rights situation, including the ratification of international human rights mechanisms, and the strengthening of implementation mechanisms. The authors also found little evidence of activities that contributed in the strict sense to the creation of a diverse and strong civil society. The authors are of the opinion that the goals were too ambitious for a project of this size.

The authors recommend the continuation of the human rights dialogue as an instrument of human rights policy - not least because of the absence of constructive alternatives. The human rights dialogue provides an opportunity to achieve a positive impact on the human rights situation in China in a more long-term process.

The authors recommend the prioritisation of the principal goals as well as the development of achievable and measurable project goals, with corresponding benchmarks. The complementary activities, in particular the prison project, should if possible be expanded, while for the IFF components a re-orientation towards the minority rights and freedom of religion subject areas is proposed.

1 Introduction

• The issue

Since 1991 Switzerland has been engaged in a human rights dialogue with the People's Republic of China (hereafter referred to as China). This dialogue was last evaluated in 2000. The present evaluation covers the period from September 2000 up to and including the first half of 2006 and also beyond that date where information was available. In addition to regular official talks at government and administrative levels (dialogue rounds), the human rights dialogue includes complementary activities such as exchanges of experts in the area of the penitentiary system (the prison project) and the business and human rights project.

In addition, via the Swiss Agency for Development and Cooperation (SDC), the Federal Department of Foreign Affairs (DFA) supported an exchange of experts for Swiss and Chinese legal practitioners which was organised by the Freiburg University Institute of Federalism (IFF). This bilateral exchange which also aims to improve the human rights situation in China is not counted as part of the human rights dialogue proper but is known as the IFF component. This component will be examined in a separate evaluation but will also be referred to in the course of the present evaluation of the human rights dialogue.

• Methodology

The authors had at their disposal documents on the human rights dialogue that they evaluated. They also questioned numerous persons in Switzerland and in China, who are taking or have taken part in the human rights dialogue between Switzerland and China. The interviews in Beijing were organised by the Swiss embassy but with few exceptions did not take place in the presence of embassy staff. Depending on the interlocutors, the talks were held in Chinese, German, English or French and in a very open atmosphere. In addition, telephone interviews were conducted with several non-state actors and other forms of communication were used.

2 Switzerland's goals for the human rights dialogue with China

In its medium-term concept for 2004-2007 of March 2004, Political Affairs Division IV of the DFA (PA IV) stated that its goals for human rights dialogues were as follows:

- Normative improvement of the human rights situation
- Improvement of bilateral relations, strengthening of the long-term basis of trust and creation of a network of contacts, strengthening of implementation mechanisms
- Promotion of and contacts with human rights constituencies

The goals of the human rights dialogue with China are defined as follows:

- Providing input for the transformation process and strengthening reform-oriented forces within and outside the political system;
- contributing to the creation of a diverse and strong civil society;
- strengthening the rule of law;
- promoting the ratification and implementation of international human rights norms and cooperation with international human rights mechanisms;
- creating added value for Switzerland by intensifying bilateral relations and strengthening partnerships.

These goals apply to the entire human rights dialogue and are not confined to specific subject areas. Nevertheless the evaluation will attempt to specify the goals more narrowly for each subject area.

3 Subject areas of the dialogue

3.1 General points

3.1.1 Selection and significance of the subject areas

The DFA has defined four priority areas for the human rights dialogue:

- Criminal law (substantive), criminal procedure and the penitentiary system (hereafter referred to as criminal law)
- Minority rights/freedom of religion
- Human rights and business
- International human rights issues

The subjects are all relevant from a human rights perspective but the degree of acceptance by the Chinese side is very heterogeneous. The criminal law and international law issues are relatively standard fare, while according to various interview partners the Chinese side is more than willing to discuss human rights and business. The topics of minority rights/freedom of religion can at least be discussed, even when reference is made to Tibet (Dalai Lama) und Xinjiang (Uyghurs). The priority areas are interpreted by the DFA in such a way that other human rights areas such as freedom of expression can also be discussed.

3.1.2 Weighting of the subject areas

The subject areas are given different weightings. In the dialogue rounds since the 6th round in January 2002 criminal law questions have always been on the agenda and the penitentiary system, the death penalty and administrative detention have always been addressed. The same applies to minority rights/ freedom of religion and to international human rights issues. The main focus with regard to the latter was on the ratification of the International Covenant on Civil and Political Rights (ICCPR). The human rights and business subject area has been developed and put on the agenda only in recent years, although informal talks on this subject

have been held in the year 2003. From the 8th dialogue round (DR) of May 2005 on, all four subject blocks were dealt with together.

Area	Sub-section	2002 DR 6	2003 DR 7	2005 DR 8	2006 DR 9
1. Law reform			X	X	
2. Criminal law	a. Substantive criminal law			X	X
	b. Criminal procedure	X		X	X
	c. Death penalty	X	X	X	X
	d. Torture	X		X	X
	e. Penitentiary system ¹	X	X	X	X
	f. Administrative detention	X	X	X	X
3. Freedom of religion/ minority rights		X	X	X	X
4. Human rights and business ²			(X)	X	X
5. Multilateral instruments of HR policy	a. HR Council			(X)	X
	b. ICCPR	X	X	X	X

3.2 Criminal law, criminal procedure, penitentiary system

- Area specific goals³

In the area of criminal law there are relatively general objectives defining how a normative improvement of the human rights situation can be brought about by adapting to international standards. This particularly concerns criminal procedure and the penitentiary system as well as the areas of torture and administrative detention. These questions are moreover closely related to the question of the ratification of the ICCPR. On the other hand the goals are also very specific. For example the DFA's goal with regard to the death penalty is clearly abolition or at least agreement to a moratorium.

- Relevant activities

The area of criminal law can be regarded as a priority among the priorities. Questions of criminal law have been discussed in all the dialogue rounds since 2002. This also applies to the sub-sections penitentiary system, death penalty and administrative detention. With the exception of the 7th dialogue round, torture and criminal procedure have been discussed every time. Substantive criminal law was discussed during the 8th and 9th rounds of dialogue.

¹ The independent prison project should also be noted here.

² There were also complementary activities on this subject outside the dialogue rounds.

³ These goals are not stated in such detail in the documents. The authors have deduced them from the priority goals.

The exchange of experts on imprisonment was already agreed in the 6th round of dialogue in 2002. On the basis of this agreement, two Swiss experts on the penitentiary system visited China for ten days in April 2004 and visited inter alia the Baoding training centre, the ministries of justice and of foreign affairs, the Central Institute for Correctional Police and the Prison Administration Bureau in Tianjin.

The Chinese return visit to Switzerland was held in February 2005 and lasted 12 days. The eleven Chinese practitioners in the area of the penitentiary system were given theoretical explanations on the Swiss penitentiary system and detention law in various locations and also had the opportunity to visit several prisons. The Chinese practitioners again met the Swiss experts and were thus able to intensify their professional and personal contacts.

The second visit to China by the two Swiss experts on the penitentiary system took place in April 2006 and lasted eleven days. In preliminary talks the two Swiss experts met their Chinese colleagues and were also able to meet them again in the course of and at the end of their trip. For the prison visits they were joined by further specialists from Switzerland. Together they inspected the Baoding training centre, Beijing women's prison, Yangcheng prison, Qingpu prison in Shanghai and the Reformatory for Juvenile Delinquents in Shanghai. Discussions were also held in the Ministry of Public Security. The Swiss experts' wish to visit institutions outside the affluent region on the Chinese coast could not be accommodated.

- **Results**

In terms of hard facts, the Swiss side's expectations are relatively modest. It is aware of the magnitude of the task and regards even small steps towards greater human rights protection by China as a success. It is satisfied if Switzerland can make a contribution, however small, to this effect.

For example the planned concentration of the review of death sentences at the Supreme Court in Beijing was not claimed as a Swiss success. An examination of the causality here is not possible.

A study of the protocols of certain dialogue rounds as well as the evaluations of the prison project shows that the talks are in fact evaluated according to other criteria than the above-mentioned goals. These criteria include access, willingness of interlocutors to engage in discussions, and deeper and more substantial exchanges. The results here are very positive, but their value pales in comparison with the stated priorities. The question of whether the goals need to be reformulated remains open at this point.

- **Effective elements**

The dialogue rounds, and in particular the prison project, had a confidence-building effect. In this regard the dialogue rounds have a twofold function. The discussions further exchange and communication between the two delegations and the government and administrative

apparatuses behind them. On the other hand there is also a confrontational aspect to the dialogue rounds because the Chinese side is subjected to a certain pressure of expectation from the Swiss side. After all Switzerland has stated that it is not conducting the human rights dialogue with China for its own sake but in order to contribute to a criminal law regime in China that conforms to human rights standards.

By contrast, the prison programme relies entirely on specialist discourse between largely homogeneous interlocutors. In this area equality of status, a de-politicised atmosphere and specialist interest ensured that the Chinese discussion partners came away with valuable new ideas and the Swiss experts were granted access to information which provided them with the basis for competent content-based criticism.

3.3 Minority rights and freedom of religion

- **Area-specific goals**

The main goals in this area are above all the normative improvement of the human rights situation and the strengthening of implementation mechanisms. The Chinese constitution and specific laws envisage liberties and protected rights but in practice there are wide gaps between theory and reality. The ratification of the ICCPR is likely to be particularly important for the protection of minorities and therefore also to be a goal. The discussion of individual cases is also relevant in this context. The Swiss delegates are aware that minority rights and freedom of religion are among the most difficult areas of the dialogue and that in this section the goals of improving bilateral relations and deepening the long-term basis of trust are unrealistic, at least in the short and medium term.

- **Relevant activities**

Within the framework of the human rights dialogue, minority rights and freedom of religion in the period under review were discussed only in the dialogue rounds. All dialogue rounds since 2002 have dealt with this subject. For the Swiss side, the main difficulty is that although the Chinese constitution speaks of freedom of religion it defines it so narrowly that- as is usual in the case of non-governmental organisations - only officially registered religious bodies that can be controlled by the government benefit from the constitutional provisions. Non-registered religious groups are classified as illegal and, although they are non-violent, they are rapidly criminalised. As for minorities, on paper there are far-reaching autonomy provisions for regions inhabited by minorities but practical implementation of these rights lags behind the paper promises.

- **Results**

With regard to improvements of the normative situation and of the implementation of such improvements in the area of minority rights and freedom of religion, no successes were achieved in the period under review. Both the normative and the de facto situations seem to be stagnating. The recognition of human rights in the constitution is unlikely to have changed this. The state grants a certain amount of protection for the activities of religious groups that are already registered, although it insists on its right to control them. This applies in principle to all relevant religions in China. The relation of the Chinese state to Tibetan Buddhism, Uyghur Islam, Roman Catholicism and Protestantism remains tense. The Falun Gong (or Falun Dafa) has been regarded as an illegal organisation since 1999. Its members are combated by means of criminal law and administrative detention.

Certain prisoners with a religious or a minority background were allowed to leave the country and have taken this opportunity, some coming to Switzerland. The largest such group is probably the Tibetans, who form a substantial exile group in Switzerland. Questions about the Panchen Lama have remained unanswered. The Chinese side refused to provide information, invoking respect for the privacy of his family.

- **Effective elements**

It is difficult to discern any individual effective elements in this area.

3.4 Human Rights and Business

- **Area-specific goals**

Although no specific dialogue goals were defined for this area, numerous and very diverse goals have probably been considered. They include not only the normative improvement of the human rights situation and the strengthening of the rule of law but also the strengthening of reformist forces within and outside the political system and the related promotion of a diverse and strong civil society as well as a transformation process. The improvement of bilateral relations, the deepening of a long-term basis of trust, the creation of a network of contacts as well as the creation of added value for Switzerland are also likely to be specific goals in the area of human rights and business.

- **Relevant activities**

The Human Rights and Business topic was added as a complementary activity to the human rights dialogue in a project initiated as of 2005. After preliminary talks in summer 2003 with representatives of business and the administration and in autumn 2003 with the Chinese side during the 7th dialogue round, the Sino-Swiss Seminar on Corporate Social Responsibility (CSR) was held in Beijing in September 2005. This one-day seminar was attended by about

50 representatives of Chinese and foreign companies, associations and authorities. A proceedings summary of the seminar was written.

In March 2006, shortly before the 9th round of dialogue, a group of six Chinese entrepreneurs and association officials made a study tour of Switzerland lasting several days. They visited a number of globally active Swiss companies where their talks focused on the specific application and design of CSR and on related topics in the field of business and human rights. They also visited the United Nations in Geneva and a number of federal offices.

For the end of 2006 a training course for leaders of Chinese companies in Beijing was to be held, run by the specialized British consultancy firm TwentyFifty. In 2007 these training courses were to be extended to include the provinces and involve about 40 companies. Parallel to this, PA IV has commissioned two brochures on this subject, a translation of the *Business Leaders Initiative on Human Rights (BLIHR)/ UN Management Guide* into Chinese and a handbook on Business and Human Rights in China produced in conjunction with the Danish Institute for Human Rights. These brochures were not yet available when the evaluation was completed but were due to be distributed from the end of 2006. This project phase was to be completed in 2007 or 2008 with the holding of a second conference on Business and Human Rights.

The later inclusion of this project meant that this subject area could not be discussed until dialogue rounds 8 and 9 (2005 and 2006), although they were informally included in the previous round. In the last meeting in March 2006 the subject area was extended to include for example questions of property rights and of mediation in labour conflicts.

- **Results**

The interviews indicate that many of the goals defined for the area of business and human rights were achieved. At any rate, the process of awareness raising about human rights issues for business leaders meant that it was possible to involve people who would never have been reached if the process had been confined to discussions at the governmental and administrative levels. The impact of the relatively large seminar of September 2005 was probably confined to the immediate participants and is unlikely to have created any wider ripples. The event received no publicity, not even within the scope of the Chinese Enterprise Confederation (CEC). There were no reports either in the CEC newspaper or on its web site.

After the interviews doubts remain as to how genuine the motivation for the project was, both on the Chinese side and that of the Swiss entrepreneurs. However, it is clear that at the Beijing seminar, the trip to Switzerland by a Chinese economic delegation and in the last two rounds of dialogue an atmosphere of trust has been created. This should ultimately benefit Swiss business, the human rights dialogue as a whole and Sino-Helvetian relations as a whole. Relations in this area have only existed since 2005, so that we cannot yet talk of a

long-term basis of trust. Nevertheless, the prospects for a positive development look good. In particular the relationship to the CEC now seems to be relatively trusting and stable. On the other hand, there is no escaping from the fact that this area too is both difficult and contentious. The Swiss side has designated the project Business and Human Rights, whereas the Chinese side insists on the title Corporate Social Responsibility.

It is hard to pinpoint the precise importance of the CEC. It is a business association founded in 1979. In 1988 it was merged with the China Entrepreneurs Association. The association represents one in two Chinese companies and has branches in all the provinces, but in economic circles it is not necessarily very well known. Theoretically the CEC can reach a large number of Chinese business people throughout the country. Norway for example cooperates closely with the CEC in the CSR field. The CEC is involved in several human rights dialogues and seems to follow the Chinese foreign ministry line. According to the CEC, China is very interested in finding solutions to conflicts that have only arisen as a result of the re-structuring from a planned economy to a socialist market economy. The social changes required new approaches to the solution of emerging conflicts. Switzerland is also interested as a successful central European country in this process and could become a model for China. However, it is still too early to discern any measurable success of Swiss activities in this area.

The actual results of these elements are hard to define but they amount to a good and trusting basis for further activities. The signals to learn from Swiss global companies indicating interest in finding solutions are also highly promising.

- **Effective elements**

The goals mentioned above were achieved first and foremost by the Human Rights and Business project, in particular the 2005 Beijing Seminar 2005 on CSR and the visit to Switzerland by the Chinese delegation in 2006. The project was complemented by dialogue rounds 8 and 9. The brochures have not yet been published but will probably support the attainment of the above goals.

3.5 International human rights issues

- **Area-specific goals**

In addition to normative improvements of the human rights situation, the focus in this area will probably be particularly on the promotion of the ratification and implementation of international human rights norms and on cooperation with international human rights mechanisms. Intensification of bilateral relations is likely to be a further primary goal.

- **Relevant activities**

International human rights issues were discussed in all the dialogue rounds. The ratification of the ICCPR by China was on the agenda at each one of the dialogue rounds. At the 8th round of dialogue, reform of multilateral human rights protection was discussed. This was also the case - more intensively - in the 9th round of dialogue.

No complementary activities in connection with international human rights questions took place in the period under review. However, a training course for Chinese experts was planned for July 2006 in Switzerland. The purpose of the course was to present the possibilities of ratification of the ICCPR. However, the Chinese side cancelled their participation at short notice on the grounds that they were unable to finance the journey.

In recent years Switzerland has made efforts to cooperate with China on international human rights mechanisms. These efforts go beyond the framework of the human rights dialogue. Switzerland cooperated closely with the UN High Commissioner for Human Rights, the UNDP, the Special Rapporteur on Torture and other special rapporteurs. With regard to the creation of the Human Rights Council, in which Switzerland regarded itself as a driving force, it made efforts to persuade China in particular to participate constructively.

- **Results**

Over the past decades, China has joined a number of international human rights conventions, whose content it has begun to implement, though not fully. The International Covenant on Civil and Political Rights, which Switzerland regards as especially important and which China signed in 1998, has not yet been ratified. Nonetheless, academic research and Chinese policy take their bearings from the ICCPR. Given the current national legal situation, ratification would be possible only in conjunction with numerous reservations.

The dialogue rounds on international human rights questions and on activities outside the human rights dialogue should have strengthened and deepened bilateral relations.

China cooperates with the relevant international institutions, in particular the UN High Commissioner for Human Rights. Official visits by the UN High Commissioner for Human Rights Louise Arbour and of the Special Rapporteur on Torture Manfred Nowak took place in August and in November 2005 respectively. However, no causal link can be discerned between these developments and specifically Swiss efforts or with the Sino-Helvetian human rights dialogue.

- **Effective elements**

The dialogue rounds have helped to bring about a better understanding and greater trust in the field of international human rights questions. No other effective elements are relevant here.

4 Overall evaluation of the dialogue

4.1 Evaluation of the dialogue as a project

The human rights dialogue conducted by Switzerland with China is characterised by well-organised and creative project management. The conception is clear and well-defined without being rigid. Although no concessions are made in terms of content, the procedure itself is constantly subject to internal evaluation in an effort to make improvements. In the course of the evaluation period two complementary activities, the prison project and the human rights and business project, were started. Taken together with the IFF component, this means that a multi-dimensional approach has been adopted that offers opportunities but also contains risks. One weakness is that the goals are so vaguely formulated that it is hard to establish whether or not they have been achieved. In addition, the measures are not sufficiently tailor-made to the goals.

In comparison with the human rights dialogues conducted by other like-minded states, the Swiss human rights dialogue occupies a mid-table position and the budget available for it is rather modest. It emerged from the Beijing interviews that a wide range of human rights dialogues are going on among like-minded states. There is a lack of uniformity even in terminology. Some states refer to the regular meetings at government or administrative level as human rights dialogues. Other states, including Switzerland, use the term to include further activities in the human rights field. There are also centralised and decentralised approaches. Some states - Norway for example - concentrate all activities of governmental, semi-governmental and non-governmental bodies in a single human rights dialogue, whereas other states, such as Germany, define only the official dialogue rounds as a human rights dialogue while they use a broad range of other tools such as technical support activities or activities of political foundations and other organisations. Despite the similarity of goals and approaches between the like-minded states, it seems that each country wishes to conduct its own specific human rights dialogue with China. So there is a certain competition between these states.

Switzerland's contribution to the protection of human rights in China is regarded as valuable for a country of its size, while not being comparable with the contribution made by larger actors such as the EU, Germany, the United Kingdom, but even Norway.

Switzerland's influence on China in the human rights field is limited. This is self-evident given China's sheer size, its population and its political and economic importance. China's rapidly growing economic strength has given the country an increasing self-confidence, and this in itself reduces the influence that any other country can exert. Nevertheless, Switzerland's reputation for integrity and its image as a country with a sound legal and economic system lends the Confederation credibility and opportunities for exerting influence. The Beijing interviews tend to indicate - although given the limited number of interlocutors this must be a cautious assertion - that human rights dialogues, with Switzerland and with other countries, are capable of lastingly influencing the Chinese discussion and are therefore welcome in principle. It can be concluded from this that reformist forces within the existing system hope that this cooperation with other countries can strengthen their position.

The dialogue rounds reach only a very small and socially rather isolated group. This is also true, though to a lesser extent, for the IFF component, where the regular interlocutor is the Chinese Ministry of Justice, from whose inner and outer ranks the majority of delegation members are recruited. The situation in the area of complementary activities is somewhat better. These activities provide an opportunity of meeting interlocutors who do not belong to the core of political power. This is true of the prison project and to an even greater extent of the business and human rights project. The main discussion partner for the latter project is the Chinese Enterprise Confederation, which regards itself as a non-state organisation but is officially registered. Civil society, non-governmental organisations are still relatively rare in China and they run the risk of being immediately identified as troublesome and of being subjected to harassment by the party and the government. It has not yet been possible to determine conclusively to what extent the CEC is independent of government influence.

The Corporate Social Responsibility project is interesting but its importance as a factor in attaining the dialogue goals should not be over-estimated. It emerged from the Beijing interviews that other countries are also working together with China on human rights issues connected with business. These countries had also taken up the subject of CSR, in some cases as long ago as the beginning of the nineties.

4.2 Interaction of the elements

The authors consider the idea of complementing the dialogue by means of project-related activities to be very positive. These activities include the prison project and the area of business and human rights. These activities are also likely to have the greatest ripple effect and to appeal to reformist forces in China. The projects are closely linked to PA IV, indeed management of the business and human rights project is in the hands of PA IV.

The prison project is linked in exemplary fashion to the various activities. Both Swiss prison experts were involved in the study trips by Chinese experts in the framework of the IFF component and in dialogue rounds 7 to 9. One expert was already involved in the 6th dialogue round.

In a first stage, the direct impact of the dialogue rounds themselves probably does not go beyond the small group of Chinese participants. Nevertheless, the dialogue rounds remain indispensable as a means of bringing together all the activities within the narrower and the wider scope of the human rights dialogue.

By contrast the IFF component, which managed the bilateral visit programme autonomously during the third phase of the project, was far less integrated. The main contacts between the IFF and the DFA consisted of regular short visits to PA IV during the study trips by Chinese delegations and in written reports on completed visits.

4.3 Overall evaluation in comparison with the goals

It should be stated at the outset that the Swiss side does not evaluate the dialogues only in terms of the above goals⁴. As a rule, the high level of the discussion, a pleasant atmosphere or lively participation by Chinese partners are also factors that lead to positive evaluations. These goals are legitimate and may ultimately indicate that the groundwork has been done for re-thinking by a number of (future) key persons. However, it should be noted that there is a discrepancy between the goals that are formally defined and those that are actually applied. The authors of this review were required to base their evaluation on the goals stated in the formal papers (medium term conception and goals of the China dialogue).

The formally defined goals of the human rights dialogue are highly abstract. Moreover they are not always consistent; indeed they are sometimes even contradictory, so that a certain amount of balancing out needs to be done. For example the goal of a normative improvement of the human rights situation may meet with resistance in the Chinese leadership and may conflict with the goal of improving bilateral relations. Or contacts with human rights constituencies may collide with the strengthening of a long-term basis of trust with the state leadership. With this proviso, it can be stated that the dialogue has brought about changes in certain areas, in particular:

- Improvement of bilateral relations

The human rights dialogue contains potential both for an improvement and for a deterioration of bilateral relations. Even though controversies are not unusual in dialogue rounds, it should be acknowledged that the human rights dialogue has provided opportunities for making contacts with numerous further actors in China that are positive on the whole for bilateral

⁴ See above 2. Switzerland's goals for the human rights dialogue with China.

relations. This probably applies on the Chinese side at least to the Ministry of Public Security and the Chinese Enterprise Confederation and probably also to the Ministry of Justice and its sub-organisations. The discussions and talks during the dialogue rounds, the prison project and the business and human rights projects enabled both sides to acquire a better understanding of the other side's point of view and thus created a certain basis of trust. The potential for tension on the Chinese side is probably concentrated mainly in the Ministry of Foreign Affairs.

- Deepening of a long-term basis of trust and creation of a network of contacts, as well as
- Creation of added value for Switzerland through intensification of bilateral relations and the strengthening of partnerships.

Long-standing contacts to the Ministry of Justice were maintained and extended. New contacts were made in the area of the penitentiary system, for example with the China Prison Society or with the Baoding Justice and Police Institute. Relations of trust were also established with the Chinese Enterprise Confederation. Initial discussions have taken place with the Ministry of Public Security and are likely to contain considerable development potential for the future.

- Promotion of and contacts to human rights constituencies

The authors assume that in the Chinese government and administrative bodies involved in the human rights dialogue there are reformist forces that are interested in a genuine improvement of the human rights situation in China. Thanks to the dialogue rounds and to complementary activities it has been possible to build up contacts and to support these forces.

- Input to the transformation process and strengthening of reformist forces within and outside the political system

The contacts in the framework of the human rights dialogue have been mainly with forces within the political system that are reformist to a greater or a lesser degree. No tolerated opposition exists in China and official contacts to dissidents are not possible.

- Strengthening of the rule of law

Switzerland can exert influence here as a successful model but the importance of this aspect should not be over-estimated. Technical and psychological support for Chinese lawyers and politicians is likely to some extent to lead to a further juridification of the social order and thus to more legal security.

- Promotion of cooperation with international human rights mechanisms

The China-related activities of the High Commissioner for Human Rights have been intensified in the past years. The Special Rapporteur on Torture was also allowed to carry out a mission in China at the end of 2005. In the reform of UN human rights mechanisms, Switzerland played a leading role in the creation of a Human Rights Council and in the course of its efforts it tried to win China's support for its position. China was initially hesitant but subsequently agreed to support Switzerland's proposal - a stance that was no doubt encouraged inter alia by invitations to discussion groups.

The majority of the goals are either medium-term or long-term. Given the size and the structure of China, the Swiss government bodies concerned are aware that it is unrealistic for Switzerland to play a major causal role here. The interviewees also broadly agreed that it was difficult to establish whether goals have been achieved.

A number of the defined goals have not been achieved, such as the normative improvement of the human rights situation, including the ratification of international human rights instruments and the strengthening of implementation mechanisms. The authors are not aware of activities that have contributed in the strict sense to the creation of a diverse and strong civil society. The authors did not identify a specific gender component in the dialogue.

5 Conclusions and recommendations

5.1 General recommendations

- **Continuation of the human rights dialogue**

The authors recommend the continuation of the human rights dialogue as an instrument of human rights policy because at the moment there are no constructive alternatives. The human rights dialogue represents an opportunity to make a positive impact on the human rights situation in China as part of a long-term process. Its success will depend on the quality and credibility of arguments by which the Chinese leadership can be convinced of the benefits of improvements in its human rights policies.

An abandonment of the human rights dialogue - not recommended by any of the interlocutors - would probably lead to a deterioration of bilateral political relations, as the relationships and contacts established in recent years would be reduced and might even be lost. Given China's considerable and increasing self-confidence, it is generally regarded as unlikely that China would accept new human rights dialogues or would resume dialogues that had been interrupted.

- **Human rights dialogue as an instrument**

The credibility of the human rights dialogue also depends on sustained advocacy of human rights by the dialogue partner. Two conditions should be met here: Switzerland has to give a

credible example for good human rights policy, and it should be perseverant in seeking a fundamental improvement of the human rights situation in China is crucially important. This is an area in which the authors believe that Switzerland has a good starting position, although it should be stressed that for a number of reasons Switzerland can only to a limited extent be a model for China. However, the human rights dialogue in the form of dialogue rounds is only the strategic superstructure, which is accompanied by complementary activities in which Switzerland can play an influential and persuasive part.

As far as possible, the "rights based approach" measuring Chinese policy by international standards, already applied by Switzerland, is to be preferred to a purely moral approach. The rights based approach has its limitations the moment that the core of the political regime in China is affected and when China has not entered into internationally binding agreements. This is likely to be the case in the area of freedom of communication. Respect for freedom of expression and of the press is not compatible with an authoritarian one-party regime. Progress in this area is therefore not likely to be achieved by the instrument of a partnerly human rights dialogue. The exclusion of freedom of communication from the priority topics therefore seems plausible against this background.

The definition of four priority topics by Switzerland clearly does not mean that discussion is confined to these topics. In fact, all human rights issues can be addressed, which means that there is no restriction on the topics. However, the inclusion of all the priority topics in one round of dialogue does not necessarily appear to be advisable. If all four topics are to be tackled, provision must be made for enough time to deal with them. If this is not possible, a further selection should be made.

As for the dialogue rounds themselves, there is a lot to be said for quiet diplomacy. Quiet or discreet diplomacy is definitely not synonymous with an obsession with harmony. Rather it means not involving public opinion as a witness of criticism addressed to the dialogue partner. Dialogue rounds provide an opportunity to take frank stock of the current human rights situation and to analyse developments since the end of the last round of dialogue. Partnerly dialogue simply presupposes frankness and the possibility of criticism, though in respectful form. As examples from other human rights dialogues have shown, there are alternatives to the creation of transparency in dialogue rounds, for example the inclusion of parliamentarians or of non-governmental organisations as full participants or as observers in the entire dialogue round or in parts of it. These points should in all cases be clarified in advance with the Chinese partner. The authors recommend for the sake of increased effectiveness that the dialogue rounds should continue to be held in a confidential atmosphere. But they also recommend inviting representatives of parliament and of human rights organisations. Evaluation serves the purpose of transparency and should be held at regular intervals.

The definition of human rights dialogues as one instrument of human rights policy among several leaves open the possibility of leaving the terrain of quiet diplomacy of the dialogue rounds and publicly criticising the dialogue partner in a bilateral or a multilateral forum.

- **The hierarchy of goals**

On the whole the PA IV should reflect more actively on the hierarchy of priority goals in the human rights dialogue. In particular, it is important to rethink the question of the partnerly approach.

A second criterion that should be applied to the revision of the goals concerns their achievability and the possible influence of Switzerland. For example the goal of normative improvements is both very ambitious and difficult to assign to any activities. However, if the goal is to familiarise target groups specifically and in depth with Swiss/European legal conceptions so that they include these conceptions in their later professional activity, this is a goal that can be reached by means for example of scholarships for young lawyers such as those previously awarded by the DFA. The authors therefore recommend that in addition to priority goals more specific project goals should be developed, providing a specific orientation for activities.

- **Complementary activities**

The approach of complementing dialogue rounds by additional activities that are to some extent detached from the exchanges at governmental and administrative level and located more at the working level should be continued. It means that human rights concerns can be dealt with in depth or in breadth. The dialogue rounds focus on central government and are unlikely to have any impact beyond Beijing. However, the primary goal of the human rights dialogue should remain that of bringing about normative changes and changes in implementation in large areas of China and thus achieving improvements in the human rights situation.

On the assumption that the funds available will remain more or less the same, the authors consider that a focus on two or three complementary activities is appropriate. If the number of activities were higher, the resources available would probably no longer be sufficient to remain flexible. Switzerland's activities are compared by their Chinese partners to similar activities by other states and so for each of the areas concerned it is important to avoid a strong negative differential. Otherwise there is likely to be disappointment on the Chinese side. A drop in overall expenditure on the human rights dialogue would inevitably involve a reduction in spending on the complementary activities and this would lead to a weakening of the human rights dialogue as an instrument. The authors therefore recommend an extension of the dialogue to include components of technical cooperation, possibly in cooperation with

PA IV and with the SDC. These components would then have to be coordinated closely and specifically with the dialogue goals.

Independently of the human rights dialogue, Swiss policy towards China as a whole, including foreign economic policy, should pay greater attention to respect for human rights.

- **Benchmarks and indicators**

Given the complexity of the priority goals, they will as a rule be very difficult to achieve, at least in the medium or short term. With the aid of solid, demanding process goals and corresponding benchmarks, the DFA should be able to carry out a project management more specifically oriented towards results. This would also be easier to assess at a later stage.

It would be helpful if there were greater clarity about whether the aim is to influence the formation of political opinion in China or to contribute to capacity building by the Chinese side. In the above example of complaints mechanisms in prisons, discussions on legal or administrative norms would come into the opinion-forming category, whereas an exchange on data gathering could potentially be regarded as a contribution to capacity building (and would therefore be more likely to be accepted).

As an example for the area of criminal law and the prison project, the improvement of complaints possibilities for prisoners could be defined as a goal. A goal of this kind could be tackled with an array of instruments. The dialogue rounds could discuss laws and administrative rules. The recording of data - throughout China, in the provinces or in individual prisons - would be another area in which Switzerland could contribute know-how in dialogue rounds or in technical cooperation projects. Practical topics could also be integrated as the need arose into the prison project. In the framework of goals of this kind it should certainly be possible to develop meaningful benchmarks.

The majority of like-minded states have not defined any benchmarks or indicators. Many do not consider this to be possible or meaningful. However, at least one of the countries interviewed stated that it intended to establish benchmarks and another said that it planned to do so. Many believe that it is unrealistic to set benchmarks jointly with China. China is becoming increasingly powerful and is aware of the fact. The demeanour of the Chinese, even in the framework of the Beijing interviews, testifies to their high degree of self confidence. China is perfectly willing to accept advice on specialist issues but it will not be told what to do when it comes to political decisions. It wishes to follow its own path in the time frame that it considers appropriate. -

Switzerland can very well choose to apply benchmarks even though other countries do not. In any case, it does seem advisable to define sub-goals and project goals for the priority areas. Such goals already partially exist in the area of criminal law but in other areas they have not yet been defined, although the interests of Switzerland are relatively clear. Benchmarks

would serve the purpose of making visible the small steps that are required to achieve the goal.

- **Partnership / choice of target groups**

Switzerland has won more friends in China than some other countries conducting dialogues. This strength could be exploited more effectively. This would involve a variety of measures relating both to the dialogue rounds and to the complementary activities:

- The involvement of academic specialists who speak Chinese and have thorough specialist knowledge of the area of Chinese law concerned.
- Strong investment in identifying suitable discussion partners (opinion formers) on the Chinese side, efforts to influence the composition of the Chinese discussion partners. Stronger involvement of the Swiss embassy in these areas.
- Increasing the number of meetings between comparable partners, i.e. people with similar professional status at the working level, not at the diplomatic level.

- **Limitation of rotations in der PA IV und in the embassy**

The diplomatic service is generally characterised by a high degree of fluctuation. Diplomats are trained as generalists who are capable of being allocated to many fields and to many areas of the world. Too strong a focus on any one region of the world is discouraged. However, this philosophy conflicts with the long-term human rights commitment in China. Rotations can create dynamism but on the other hand they can also lead to a loss of knowledge and of contacts and to the expenditure of more resources during the settling-in period. One clear conclusion from the Beijing interviews was that the competence of discussion partners was closely related to the duration of their stay in the country. In China the high language barrier is a further complication. A familiarisation period of six months (not taking the language into account) seems realistic. Most like-minded countries have only one human rights expert in their embassy. Hence the replacement of the human rights specialist has a particularly strong impact.

In order to keep losses as a result of rotation to a minimum, the authors recommend that human rights experts should be allowed to remain in their posts for the maximum permissible period. This applies particularly to persons in China. A longer stay in Beijing should lead to greater competence and hence to a better standing for Switzerland both vis-à-vis like-minded states and Chinese discussion partners. Short-term allocations to such positions should therefore be avoided. To ensure continuity, rotations should not occur simultaneously in the embassy and at headquarters.

5.2 Area-specific recommendations

- **Prison project**

The prison project initiated in 2002 is a worthwhile one and has developed positively since its inception. Clearly a basis of trust at the working level has been created, thanks to continuity of personnel and to the excellent linking of this project with the Sino-Helvetian human rights dialogue. On the Swiss side, the nucleus of the prison project is formed by the two experts on the penitentiary system, who have built up a network of Chinese discussion partners. The reciprocal visits have contributed greatly to mutual understanding and to the intensification of relations at the professional and the personal level.

Nevertheless the question arises whether the funds so far invested in this area that is so important in human rights terms are sufficient to produce results. In the light of the interest expressed on several occasions by the Ministry of Public Security, a short to medium-term increase in funds allocated to this project seems to be worth considering. This means either increasing the frequency of visits or, preferably, prolonging substantially the duration of stays in China. A combination of these two measures is desirable. By contrast the authors see little benefit in increasing on a permanent basis the number of persons in this area, although the involvement of Swiss experts for a limited period in April 2006 was considered positive. That measure stressed the importance of the project for Switzerland and gave the activities a broader foundation, and this in turn has a positive impact on return visits to Switzerland. Another interesting option would be a long-term mission by a specialist (of up to three months, possibly several visits). This would consist of a systematic programme of visits to relevant prison institutions and of discussions at specialist level. In the case of such a long-term mission there would be a strong possibility of being able to visit prisons in central and west China. The resultant findings could then be integrated into specialist discussions at the working level and could also be included in the dialogue.

In addition to the Ministry of Justice, the Ministry of Public Security could also be involved in this project. Initial talks have already been held. The Ministry of Public Security is a very important ministry in terms of domestic policy, with a high degree of human rights relevance. It is responsible inter alia for the entire police apparatus in the country, for remand prisons and for administrative detention, which was introduced in the 1950s. Consideration of these aspects leads to a more comprehensive overview of the prison project, is crucially important for the issue of torture⁵ and also forms a lateral link to the ICCPR, ratification of which remains an important goal. During the Beijing interviews, the Ministry of Public Security again expressed interest in this project. To avoid the impression that this exchange is merely a form of "private tuition", this cooperation could be established at the institutional level. At the

⁵ See the detailed Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (Manfred Nowak) on China of 10 March 2006.

appropriate moment the Chinese Ministry of Foreign Affairs (CMFA) could also be informed. During the 9th round of dialogue the CMFA indicated its agreement in principle to cooperation with the Ministry of Public Security.

It is very important to avoid giving the impression that Switzerland is trying to play one Chinese ministry off against another. This applies not only to the Ministry of Foreign Affairs but also to the Ministry of Public Security and the Ministry of Justice. To avoid the risk of internal conflicts between the latter ministries, it would be advisable to adopt a two-track policy, i.e. to divide the prison project into two parts, one related to the Ministry of Justice and the other to the Ministry of Public Security. It remains to be seen whether and to what extent the two ministries will be prepared to participate together with each other in this project.

In the light of activities to date, it would seem advisable to define the contours of the prison project more clearly and to have an academic follow-up to the findings. As for information on the prison project so far, most of the knowledge about the situation in the Chinese penitentiary system and the relevant proposals for improvement are probably still in the heads of the experts concerned, even though PA IV held oral debriefings after receiving written reports of the visits. The Swiss experts should outline and define the existing problems in the Chinese prison system and in prison accommodation more clearly, if necessary with the help of PA IV, to enable work to be done on theoretical approaches in parallel to the prison project. However this academic accompaniment should not call in question the nature of the project as an exchange between experts.

The blurred contours are also attributable to the fact that area-specific goals for the prison project have not yet been defined. The authors recommend the development of specific and achievable benchmarks by participating experts. On the basis of their own evaluation, the authors regard the above-mentioned improvement of complaints possibilities for prisoners as one of several possible goals.

- **The Human Rights and Business project**

The Corporate Social Responsibility project should be continued. The targeted distribution of brochures in China should be implemented as planned. The envisaged transfer of the project to a foundation financed mainly by business is to be welcomed. If necessary, cooperation with the activities of other actors in this area could be envisaged, for example with Norway, the United Kingdom or the WEF. This would also ease the pressure on the human rights dialogue budget in the medium term and allow it to be allocated to other, more central areas of human rights protection.

Serious consideration should be given to the introduction of a fundamental policy of including human rights questions more forcefully in economic negotiations particularly in the embassy's

regular contacts with the Chinese side. This would involve for instance issues of social rights in companies with which the Swiss side cooperates.

- **IFF**

The planned re-orientation of the IFF component towards the minority rights/ freedom of religion complex is to be welcomed. This is a subject area in which the IFF has a high degree of specialist competence. Moreover, the quality of the Sino-Helvetian discourse is likely to be raised by academic conferences. Finally, in the framework of minority protection there is an opportunity to adopt a gender perspective here, as human rights problems have different gender-specific impacts.

- **Involvement of the Chinese Ministry of Justice**

In the present Sino-Helvetian human rights dialogue the Chinese Ministry of Justice has always played a central role and has helped to establish numerous short-term and long-term contacts - particularly in the prison project and the IFF component but also in the dialogue rounds. In light of the recommended reorientation of the human rights dialogue, the role of the Ministry of Justice would be reduced but every effort should be made to avoid the impression of a marginalisation or even of the break-off of relations with this ministry.

Unless other relations with the Ministry of Justice are established, the authors recommend maintaining the present level of activities with the Ministry of Justice and its associated institutions (China Prison Society etc.). It is important not to reduce these contacts to zero and not to focus exclusively on the Ministry of Public Security.

- **International human rights protection: support for CEDAW recommendations**

The Committee on the Elimination of Discrimination against Women (CEDAW) made a number of recommendations in its concluding country report on China in August 2006. Within the framework of the international human rights protection component, it would be worthwhile to analyse the CEDAW criticisms and possibly also to discuss the CEDAW recommendations to Switzerland. The subject of gender-based data gathering could also be a fruitful topic of discussion. It would enable Switzerland to bring in its know-how and could also provide sufficient substance for a technical cooperation project.