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Dialogue is written by the staff of The Dui Hua Foundation, a non-profit organization dedicated to advancing the protection of universally recognized human rights in China and the United States.

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Will 2004 See Human Rights Reforms in China?

In late October 2003, the 16th Communist Party Congress passed a resolution to amend China's constitution by inserting a clause declaring that "the state shall respect and protect human rights." In December, the Standing Committee of the National People's Congress (NPC) approved the wording of the "human rights" amendment, which will be added to the constitution at the second annual session of the current NPC in March.

Critics of the Chinese government's human rights policies have for the most part dismissed the new amendment as vaguely worded and of little value. After all, the present constitution has been amended three times since its promulgation in 1982, and the document is already full of language guaranteeing freedom of speech, freedom of religion, and rights to things such as fair trials and due process—freedoms and rights that are all too frequently violated by the Chinese government.

It would be a mistake, however, to dismiss out of hand the importance of the impending change to the constitution. It will likely be followed by changes to current human rights policies in such areas as use of the death penalty and arbitrary detention by the police. Given the serious nature of abuses in both areas, the new policies will enjoy widespread support among the general population. The reforms will also be welcomed by the international community and especially by European countries that have made abolition of the death penalty and arbitrary detention

practices such as "reeducation through labor" high priorities of their human rights diplomacy.

The Death Penalty

From 1979 to 1981—the period right after the promulgation of China's criminal law—all death sentences required the approval of the Supreme People's Court in Beijing. In June 1981, the NPC allowed higher people's courts (i.e., those at the level of province, municipality, or autonomous region) to approve executions for those convicted of "seriously undermining public safety." Two years later, in September 1983, the NPC's Standing Committee amended the Organic Law of the People's Court to allow higher people's courts to approve executions. For the next 20 years, all executions in China, with the exception of those ordered for political crimes and corruption, were approved and carried out by provincial authorities. After each execution is carried out, a detailed report is filed with the Supreme Court in Beijing.

There is little doubt that the arrangement in force after 1983 contributed to the surge in the use of the death penalty in China in recent years. The exact number of executions carried out in China is a well-kept state secret, but it is likely that in the three years from 2000 to 2003 at least 10,000 executions a year took place. Many of the executions were for non-capital offenses including tax evasion, smuggling, and corruption. Former

premier Zhu Rongji was a strong proponent of executing tax cheats and smugglers.

In 2003, signs emerged that those opposed to the excessive use of the death penalty were making headway in the effort to reduce its use. A conference on the death penalty organized jointly by the Chinese Academy of Social Sciences and the Danish Institute for Human Rights contributed to the debate on capital punishment and prompted a spate of articles in provincial newspapers on the subject. Indications are that prosecutors in Beijing, many of them younger and better trained than their counterparts elsewhere, were asking for the death sentence less often and that Beijing judges were approving death sentences less frequently.

During the many human rights dialogues with European countries that took place in November 2003 (see story on page 8), Chinese officials hinted that the Supreme People's Court would take back approval for all executions in the coming year. Plans were underway to establish a 200-person body in the court to examine death sentences sent up from the provinces, and the establishment of provincial offices of this new department was also being considered.

During a visit to China in December, Dui Hua's executive director John Kamm was told by a legal expert that the Supreme People's Court was already exercising approval of death sentences for four types of crimes: 1) endangering state security; 2) corruption; 3) economic crimes; and 4) so-called "new crimes" (i.e., those crimes such as intellectual property theft or credit card fraud which



Liu Yong, alleged leader of a criminal gang, signs his death sentence.

have been added since the Criminal Law was adopted in 1979). Although there would be no reduction in the number of crimes carrying the death sentence (more than 80 crimes are now punishable by death), death sentences would be subjected to a more stringent approval process than that exercised in recent years.

Shifting the power over approval of death sentences from provincial to central hands will doubtless result in fewer executions. Rather than refer cases for approval to the Supreme Court, many provincial courts will hand down life sentences instead. Cases referred to the central government for approval risk getting bogged down by bureaucratic and political maneuvering. Judges and other judicial workers at the Supreme Court are generally better trained and more progressive than those in the provinces and will likely approve fewer executions.

That being said, in some instances the Supreme Court will step in, overturn a sentence in a capital

case, and order the death penalty. This happened recently in the case of Liu Yong, a businessman and alleged leader of a criminal gang. Liu was originally sentenced to death by an intermediate people's court, but the Liaoning Higher People's Court reduced the sentence to death with two-year reprieve, citing fears that a critical confession was extracted through torture. The Supreme People's Court voided the verdict and ordered a retrial, which was held on December 22, 2003 in Jinzhou Municipality, Liaoning Province. The Supreme Court sentenced Liu to death, and he was executed immediately after the verdict was announced.

Arbitrary Detention

Changes are also likely in the area of arbitrary detention of citizens by public security and state security police. Prosecutors and courts are becoming more demanding and less compliant when ruling on requests from the police for arrest warrants and bills of indictment. Greater at-

tention will be paid to the time limits allowed for detention, arrest, and trial. Following the abolition of the “custody and repatriation” system which gave police unlimited powers of detention over migrant workers, reformers’ attention will now turn to the far more widespread use of “shelter and investigation,” with which police routinely hold suspects for periods in excess of those allowed by law.

The system known as “reeducation through labor” will be reformed but not abolished. A national conference of “advanced reeducation through labor units” was organized by the Ministry of Justice in November 2003, during which experiences of the model units were “summed up” to better prepare for reforming the system. According to officials interviewed by Dui Hua’s executive director, those brought before reeducation committees (which might be replaced by “minor offenses” or “misdemeanor” tribunals) will have the rights to counsel and a judicial hearing. Both rights are currently denied.

There are more than 300,000 people in roughly 300 reeducation camps in China. Construction of new camps, especially in the southern provinces, has been frantic in recent years as the population of the camps has swelled. Although most inmates in reeducation centers have committed crimes like prostitution and drug use, there are significant numbers of people in the camps for political and religious offenses, including labor leaders, Catholic priests, Falun Gong practitioners, and opposition party members.

Other facilities that have no basis in Chinese law are used by local

officials to hold people arbitrarily. A good example is the “legal education centers” used to incarcerate “seriously poisoned” Falun Gong practitioners. Falun Gong practitioners who complete their reeducation sentences but who remain unrepentant either have their reeducation sentences extended or are placed in legal education centers run by public security bureaus. Reformers with whom Kamm met spoke of the need to abolish places of arbitrary detention like legal education centers and public security “guest houses,” but they cautioned that such a move did not mean that people who are now being arbitrarily held would go unpunished. In all likelihood, most would be found guilty and sentenced by a court to prison “according to law.”

International Concerns

Although the change to China’s constitution and the new policies it will bring about will be welcomed by the international human rights community, many observers will remain skeptical that much will change. They will continue to press for greater access by international monitors in such areas as torture and arbitrary detention.

As 2003 ended, there were a few signs that the Chinese government might allow more access to international human rights monitors. For the first time, a representative of a foreign government was allowed to attend the trial of a Chinese citizen accused of endangering state security. The International Committee of the Red Cross will probably be allowed to open an office in Beijing in 2004. Negotiations for a visit to China by

the UN’s Special Rapporteur on Torture were underway as 2003 drew to a close, and Beijing was also involved in discussions with the United States on relaxing parole and sentence reduction regulations for China’s remaining counterrevolutionaries. The UN Working Group on Arbitrary Detention will probably visit China in 2004.

Yet the experience of the US Commission on International Religious Freedom is worth remembering as monitors look to 2004 for more access and greater transparency. Requests for meetings with religious leaders not approved by the government were denied by the commission’s Chinese host, as were visits to “sensitive” areas like Catholic communities in Hebei Province. The commission’s two attempts to visit China were called off when the Religious Affairs Bureau refused to countenance meetings the commission hoped to have with religious leaders and rights monitors in Hong Kong.

Human rights reformers in the Chinese government will be pushing hard to capitalize on the addition of the “respect and protect” clause in the constitution, but they are up against formidable foes—police who use torture and the threat of death to extract confessions, corrupt prosecutors and judges whose decisions can be bought, and entrenched party and state bureaucracies which will resist any diminution of their powers. Whether and to what extent reformers succeed in reducing the number of people sentenced to death and subjected to arbitrary detention will have great consequences for the struggle to protect and respect the human rights of the Chinese people. ■

New Figures Highlight Imbalance in Prosecution of Political Cases in China

Dui Hua recently discovered the accompanying table in the 2003 edition of the *Law Yearbook of China*, a publicly available annual compendium published by the China Legal Press in Beijing. Although the yearbook has been published since at least 1987, this is the first time that a table of this type has ever appeared. It shows, in considerable detail, the adjudication of various types of criminal cases on a national level. It is particularly interesting for what it shows about the relative rarity of acquittal in the Chinese judicial system—especially in cases of “endangering state security” (hereafter, ESS).

Before turning to the table itself, it is necessary to offer a note of explanation. The crime categories listed in the left column correspond almost exactly to the major categories enumerated under “Specific Provisions” in the 1997 Criminal Law, except that two such categories—“Endangering State Security” and “Dereliction of Duty by a Serviceman”—have been subsumed under the category “Other.” Although it is impossible to determine precisely what proportion of the figures under “Other” refer to ESS crimes, based on 1998 statistics for trials conducted by Chinese courts, it may be assumed that approximately

99 percent of these cases consist of ESS crimes.

It is clear from the table that the overwhelming majority of individuals prosecuted for crimes in China are convicted, with the rate of conviction at nearly 98 percent. Of the approximately 2 percent remaining, fewer than a third (or 0.7 percent of all adjudicated individuals) are actually acquitted, with the rest exempted from criminal punishment. (Such an exemption—usually for offenses deemed to be minor—does not constitute pronouncement of innocence and does not necessarily protect a defendant from punishment, since such individuals may still be

Criminal Adjudication Statistics for China, 2002

Crime Type	Adjudicated during Period		Manner of Adjudication								
	Cases	Individuals	Acquitted	Exempted from Criminal Punishment	Given Criminal Punishment	Types of Criminal Punishment					
						> 5 yrs or Death	< 5 yrs	Short-Term Detention	Suspended Sentence	Public Surveillance	Other
Endangering Public Safety	44,408	50,750	108	1,208	49,434	5,899	17,636	2,284	23,081	473	61
Disrupting Socialist Market Economy	11,314	18,357	132	223	18,002	3,881	8,216	1,013	4,472	33	387
Infringing on Citizens' Rights	122,335	153,766	3,649	5,958	144,159	47,410	55,077	7,312	30,963	3,225	172
Property Violation	236,616	367,554	527	1,699	365,328	79,927	207,224	26,430	38,105	4,075	9,567
Obstructing Administration of Public Order	64,081	98,797	191	755	97,851	19,420	53,573	8,238	12,572	2,159	1,889
Endangering National Defense	102	167	0	1	166	19	112	14	14	7	0
Embezzlement & Bribery	13,517	15,806	261	1,169	14,376	3,536	3,084	124	7,579	14	39
Dereliction of Duty	944	1,144	66	253	825	41	282	20	474	5	3
Other*	183	366	1	0	365	191	147	3	18	3	3
Total	493,500	706,707	4,935	11,266	690,506	160,324	345,351	45,438	117,278	9,994	12,121

*Includes crimes of “Endangering State Security” and “Dereliction of Duty by a Serviceman.”
Source: *Law Yearbook of China 2003*.

subjected to such administrative sanctions as “reeducation through labor.”)

In other words, this table shows that Chinese defendants indicted for criminal offenses are almost always convicted. Moreover, the figures

university student named Liu Di, became the focus of worldwide appeals and a symbol of the many victims of China’s efforts to curb free expression on the Internet. Liu, Li Yibin, and Wu Yiran are just three of the many individuals detained for

from prosecution by a local court and release on bail in May 2001 led to speculation that he might be acquitted of the charges against him. In fact, according to information obtained by Dui Hua from an official response to a foreign government, Li Jiaqing was formally acquitted and has even returned to his job at the paper factory. Statistically speaking, an acquittal in such a case (“Obstructing the Administration of Public Order”) is even more rare (0.2 percent) than acquittals for ESS (0.3 percent). Both categories, however, see acquittals much less frequently than the overall acquittal rate of 0.7 percent.

Chinese defendants indicted for criminal offenses are almost always convicted. Moreover, those indicted in ESS cases are more than twice as likely to receive more severe sentences than other criminal defendants.

show that individuals indicted in ESS cases are more than twice as likely to receive more severe sentences than other criminal defendants. Fifty-two percent of those sentenced in ESS cases are sent to prison for longer than five years or sentenced to death, while such sentences are imposed on only 23 percent of criminal defendants as a whole.

In fact, no other crime category even comes close to ESS on this score—only one third of individuals sentenced for “Infringing on Citizens’ Rights” (which includes crimes such as murder, rape, and kidnapping) are sentenced with such severity. Thus, while the stakes are high for all defendants in the Chinese criminal justice system, they are particularly high for those charged with political offenses.

Recent Cases

It is in this light that observers worldwide greeted the release late last year of three Chinese who had been charged with “inciting subversion” for posting essays critical of the government on the Internet. One of the three, a 23-year old Beijing

online activities around the time of the 16th Congress of the Chinese Communist Party in November 2002. After more than a year of detention, prosecutors unable to build a case against them returned the case to police, citing insufficient evidence. Shortly thereafter, in late November 2003, all three were released on bail pending trial, and less than one month later prosecutors announced on December 24 that the three would be exempted from prosecution because of the minor nature of their offenses.

Because these three Internet activists were never brought before a court, their case is not reflective of the statistics in the table on page 4. (they do, however, represent the minority of those formally charged with ESS who are exempted from indictment.)

The case of Henan worker Li Jiaqing, first reported by Dui Hua in the Spring 2003 issue of *Dialogue*, is a more appropriate illustration even though it is not an ESS case. Charged with “gathering a crowd to disturb social order” for his role in leading worker protests at the Zhengzhou Paper Works in 2000, Li’s exemption

Room for Improvement

China’s rate of acquittal in criminal cases is quite low by international standards. The acquittal rate in the United States is around 17 percent, in Germany and Hong Kong it is around 15 percent, and the rate in Taiwan is about 12 percent. However, there are many variables that complicate direct comparison between judicial systems, such as the use of jury trials, political and bureaucratic pressures, corruption, or simply an emphasis by prosecutors of “winnable” cases.

When rates of indictment and conviction are both high, as they are in the case of China’s prosecution of political crime, it suggests that the system may be unfairly biased against defendants. More transparency—including the continued release of detailed statistics such as the ones cited above—will allow us to measure whether the systemic reforms underway will help to address this imbalance. ■

Wuhan Falun Gong Head Xu Xianglan Given “Lenient” 8-year Sentence

According to *People’s Public Security News*, on January 6, 2000 the Wuhan Municipality Intermediate People’s Court announced a verdict in the case of Xu Xianglan, who was sentenced to eight years’ imprisonment, and Xu Xianglan’s husband Wang Hansheng, who was sentenced to six years’ imprisonment, for the crime of organizing and using a heretical sect to sabotage implementation of the law.

During the trial, it was determined that Xu Xianglan was in charge of Falun Gong’s Wuhan station and established the Falun Gong’s Wuhan headquarters. Xu was also responsible for recruitment and for managing the Falun Gong organization and its practice activities in Hubei, Hunan, Jiangxi, Jiangsu, and Zhejiang provinces, as well as in Shanghai Municipality. In June 1998, Xu Xianglan convened a meeting of the Wuhan Falun Gong headquarters’ principal members and subsequently organized Falun Gong practitioners to surround the Wuhan Municipality Committee newspaper offices (*Changjiang Daily*). Xu Xianglan and Wang Hansheng also were found to have reproduced, distributed, and sold books, pictures, and music containing Falun Gong propaganda.

The court determined that Xu Xianglan and Wang Hansheng’s behavior constituted the crime of organizing and using a heretical sect to sabotage implementation of the law and that the circumstances were especially serious. Xu and Wang committed the crimes together, with Xu being the head criminal and Wang being the accomplice. In view of the fact that Xu Xianglan and Wang Hansheng attested to the criminal facts in the case, “exposed the evil nature of Li Hongzhi and the Falun Gong heretical organization, expressed support for the banning of the Falun Gong, stated their determination to thoroughly break with the Falun Gong, and expressed regret for their crimes,” it was decided to punish Xu Xianglan “leniently” and punish Wang Hansheng “lightly” according to law.

The following response on Xu Xianglan was received from the Chinese government on September 10, 2003. No confirmation of Wang’s sentence has yet been received:

Xu Xianglan (徐祥兰), female, born in September 1952, Han ethnicity, middle school graduate, prior to arrest worked for the Wuhan Communications Instrument and Meter Plant in Hubei Province. Sentenced on January 6, 2000 to eight years’ imprisonment (sentence to run from July 24, 1999 to July 23, 2007) by the Wuhan Intermediate People’s Court for committing the crime of organizing and using a heretical sect to sabotage implementation of the law. Currently in prison serving her sentence. ■

Shanghai Lawyer Zheng Enchong Sentenced on State Secrets Charges

On June 9, 2003, the China News Service reported that Shanghai lawyer Zheng Enchong had been placed under criminal detention on June 6 on suspicion of illegally procuring state secrets. The report states that in July 2001, because Zheng did not comply with relevant regulations in the “Lawyers’ Code of the PRC,” the Shanghai Municipality Bureau of Justice barred Zheng from continuing to work in his profession.

On October 28, 2003, the China News web site reported that Zheng had been sentenced to three years’ imprisonment with two years’ subsequent deprivation of political rights.

Zheng’s sentence was confirmed in this November 2003 response to a foreign government:

Zheng Enchong (郑恩宠), male, Han ethnicity, formerly an employee at the Minjian Law Firm in Shanghai. (He had not yet passed his annual examination.) He was placed under criminal detention on June 6, 2003 on suspicion of illegally providing state secrets outside of the country and formally arrested on June 18. On August 15, because Zheng was suspected of providing documents containing state secrets to foreign organizations, the No. 2 Branch of the Shanghai

Municipality People's Procuratorate sent his case for prosecution to the Shanghai Municipality No. 2 Intermediate People's Court on charges of illegally providing state secrets outside of the country.

On August 26, that court held a trial to hear this case. Because the case involved state secrets, the court applied the regulations in Paragraph 1, Article 152 of the "Procedural Law of the PRC" and held a closed trial.

The defendant and his defense attorney attended the trial, during which the defendant's rights to a defense and other procedural rights were fully protected. On October 23, the Shanghai Higher People's Court announced its verdict, stating that Zheng's behavior constituted the crime of illegally providing state secrets outside of the country and sentencing him to three years' imprisonment with two years' deprivation of political rights. ■

Update on Rebiya Kadeer Case

On March 21, 2000, *Xinjiang Legal News* reported that a verdict had been reached in the Rebiya Kadeer case, a case which, according to the report, had attracted much "attention from society" due to Kadeer's previous high standing in government bodies (see response below). The Urumqi Municipality Intermediate People's Court sentenced Kadeer to eight years' imprisonment with two years' subsequent deprivation of political rights for illegally providing state secrets outside of the country.

According to the court, in June 1999 Kadeer collected and then mailed to her husband, who was living in the United States, newspaper articles containing speeches by government officials regarding the launch of a campaign on comprehensive public security management and the crackdown by political and legal organs on "minority splittist elements" and terrorist activities. Allegedly at her husband's request, on August 11, 1999, Kadeer went to the Yindu Hotel in Urumqi to meet one or more foreigners, to

whom she was bringing written materials that included a list of people who had been investigated and handled by judicial organs. She was captured at the scene by the public security organ.

The following update on Rebiya Kadeer's situation was provided to Dui Hui by the Chinese government in September 2003:

Rebiya Kadeer (热比亚·卡得尔), female, born in December 1946, Uyghur ethnicity, prior to arrest was vice-chairperson of the Xinjiang Uyghur Autonomous Region's Nanjiang District Chamber of Commerce, a standing committee member of the Xinjiang Autonomous Region Chamber of Commerce, a member of the Chinese People's Political Consultative Conference, and a representative from Xinjiang to the National People's Congress. In 1997, she was elected to be a committee member of the World Conference on Women. She has also held the position of president of the Autonomous Region Private Business and Industry Association. Sentenced on March 10, 2000 to eight years' imprisonment (sentence to run from August 13, 1999

to August 12, 2007) with two years' subsequent deprivation of political rights by the Urumqi Municipality Intermediate People's Court for committing the crime of endangering state security. Currently serving her sentence in the Xinjiang Autonomous Region Women's Prison.

Recently, this prisoner's emotions have been stable, and she is able to respect prison regulations and obey supervision. She has expressed to prison officials that she recognizes the harmful nature of minority splittist ideology and terrorist activities, and that she herself is a victim of minority splittist ideology. She also expressed that from now on, she would definitely stand on the side of the Party and the people.

As for whether or not this prisoner will be granted parole, this prisoner enjoys all of the rights not otherwise deprived by law and receives exactly the same treatment as other prisoners. When this prisoner meets the legal requirements for sentence reduction or parole, the prison will handle these matters according to law. ■

Foreign Governments Say Year-End Rights Talks with China ‘Substantive’

In the space of one month late last year, China’s Ministry of Foreign Affairs held formal human rights talks with four foreign governments. Sessions of the bilateral human rights dialogues with Norway, Switzerland, the United Kingdom, and the European Union (EU) were all held in November 2003. The talks with Nor-

representing the Supreme People’s Court, the Supreme People’s Procuratorate, the Ministry of Justice, the Public Security Ministry, the Ministry of Civil Affairs, and the State Family Planning Commission. One foreign group was taken on a tour of Xinjiang, and another was granted a rare visit to a re-education through labor camp.

Dui Hua in September 2003 (see response on page 7). The labor activist Zhang Shanguang, who has now completed half of his 10-year sentence for providing information on labor unrest to a foreign radio service, has had his good behavior rewarded with educational opportunities and longer phone calls with his family. Acknowledging serious medical problems, prison authorities have exempted long-time democracy leader Li Wangyang from physical labor and have admitted him to hospital.

In 2001 and 2002, the United States and China held sessions of their official rights dialogue. Another session should have taken place at the end of 2003, but a dispute between the two countries over whether or not China was living up to human rights commitments made in previous sessions resulted in a decision by the US State Department to forego another round of talks in 2003. It remains to be seen when and if the two countries will resume discussions within the framework of the official rights dialogue. ■

For the first time, all foreign governments that had submitted prisoner lists in advance of the talks received written replies from the Chinese government.

way were held in Oslo, those with Switzerland were held in Berne and Geneva, while those with the British and the EU were held in Beijing.

Officials of the foreign governments that participated in the sessions told Dui Hua that the talks were the most substantive ever. Since the talks are held behind closed doors and details are rarely, if ever, disclosed, it is hard to judge whether or not this was the case. Foreign diplomats were told that progress was being made on talks with the International Committee of the Red Cross on the latter’s request to open an office in Beijing and that a decision had been made to return to the Supreme People’s Court the power to approve all death sentences. Capital punishment is probably the single most important issue for European countries—all of whom ban executions—in their bilateral dialogues with China.

In addition to meetings with the Ministry of Foreign Affairs, the dialogue partners were able to meet with a wide range of Chinese officials rep-

For the first time, all foreign governments that had submitted prisoner lists in advance of the talks received written replies from the Chinese government. Altogether, information on nearly 100 prisoners was provided. The information offers important clues as to how political and religious prisoners are being treated, and which prisoners might be considered for sentence reduction and early release.

Virtually all of the countries that asked about Rebiya Kadeer were given the same upbeat assessment of her behavior that was first provided to

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