

Article 23 Debate Rewakens Interest in China's Counterrevolutionary Groups

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Under Hong Kong's Basic Law, the Special Administrative Region (SAR) is required to pass "on its own" legislation banning subversion, sedition, treason, and theft of state secrets. The SAR government, in late 2002, began working on a National Security Bill to comply with its constitutional requirements under the Basic Law. The bill sparked widespread opposition in virtually every sector of the Hong Kong community, and the governments and bars of every major common law democracy raised serious concerns with the bill. The SAR government under Chief Executive C. H. Tung nevertheless pressed ahead in hopes of enacting the legislation before the Legislative Council adjourned on July 9, 2003.

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On July 1, 2003, a massive demonstration against the government's National Security Bill took place in Hong Kong. Reliable estimates of the number of marchers exceeded 500,000. Clearly shaken by the unprecedented outpouring of public opposition to a piece of government legislation, Tung's government made three amendments on July 4 to some of the law's most controversial provisions. These concessions were not enough to save the bill, however, and its consideration has now been postponed to a future session of the Legislative Council.

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The Dui Hua Foundation played a timely and important role in the debate that led up to these dramatic events of early July. Dui Hua's Executive Director, John Kamm, was in Hong Kong on a regular visit when he was invited to speak on the relationship between Hong Kong's proposed national security bill and mainland Chinese law and practice at an international conference on Article 23 held at Hong Kong University. In his June 17 remarks, Kamm argued that the system for prohibiting mainland groups on the grounds of national security described in the proposed Hong Kong law does not currently exist on the mainland. Were it to be established by a law passed by China's National People's Congress, it would be a setback to human rights in China, resulting in more restrictions on the freedom of association, and would mark a retreat from the legal reforms of 1997 with respect to how political crime is treated.

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Kamm pointed out that the Chinese government is perfectly capable of banning groups and has done so famously with a group it considers to be a threat to social order (but not to national security). In 1999, the Central Committee of the Communist Party pronounced the Falun Gong a heretical sect, the National People's Congress (NPC) passed legislation that reinforced and reinterpreted the Criminal Law's article on heretical sects (Article 300), the Supreme People's Court issued detailed regulations on how to enforce the law on heretical sects, and the Ministry of Civil Affairs issued a public order banning the Falun Gong as a heretical sect.

No such framework exists for prohibiting groups like the China Democracy Party as threats to national security. On the contrary, neither of the two laws passed by the NPC that deal specifically with "national security" crimes (the 1993 National Security Law and the 1997 Criminal Law [Revised]) makes provision for prohibiting an organization by means of open proclamations and certificates as called for in the original Hong Kong legislation.

Chinese national security legislation criminalizes acts, not organizations. Setting up a political party that aims to overthrow the Chinese government is an act of subversion, but the party itself is not banned as it would have been when crimes of counterrevolutionary association were still on the books. In this sense, Kamm concluded, the system envisioned by the Hong Kong legislation went beyond what is allowed under Chinese law.

In their response to Kamm, SAR government officials conceded that the "proclamation and certificate" system for national security crimes does not exist on the mainland and, further, that no reference to such a system is made in China's laws on national security crimes. It claimed, however, that regulations issued by China's State Council governing how local authorities register associations and private non-enterprise groups *can be* used to prohibit groups as threats to China's national security.

Kamm replied that the regulations — in force for almost five years — had never been used to ban groups as threats to national security. The local registration authorities and



John Kamm, with prison officials, at the gate of Beijing No. 2 Prison. Behind its walls is Liu Jingsheng, who is serving a long sentence for organizing and leading a counterrevolutionary group.

the Ministry of Civil Affairs (which is empowered to ban groups that operate across provincial bodies) recognize that laws enacted by the NPC take precedence over regulations promulgated by the State Council and that the NPC has decided to handle political crime by criminalizing acts, not organizations. The registration authorities are treading carefully, Kamm said, because they recognize that criminalizing groups for political reasons is a throwback to a dark period in Chinese history when groups were regularly declared "counterrevolutionary" and their members thrown into prison.

Counterrevolutionary Association

The debate in Hong Kong over its national security legislation has refocused attention on China's "counterrevolutionary groups," and the people still in prison in China for organizing and leading them. Getting the Chinese government to review the sentences of these long-serving prisoners has been a priority of US human rights diplomacy in China since President Bill Clinton's state visit to China in July 1998. Dui Hua's research work has uncovered several of the prisoners' names and scores of previously unknown "counterrevolutionary groups."

Prior to 1997, groups were classified as "counterrevolutionary" by means of a trial held by an intermediate people's court. The public security bureau's political security police would seek approval for an arrest from the people's procuratorate on the grounds of either leading and organizing a counterrevolutionary group or

belonging to a counterrevolutionary group. If the procuratorate approved the arrest and found sufficient evidence to proceed with a trial, it would issue an indictment and seek a trial before a panel of judges. The counterrevolutionary nature of the group would be specified in the indictment and subsequent verdict.

In an analysis of a 1992 case involving the “Chinese People’s Party,” a group that the Beijing Intermediate People’s Court declared “counterrevolutionary,” a Chinese legal scholar enumerates the characteristics of a counterrevolutionary group: “A counterrevolutionary group is a group organized to carry out counterrevolutionary activities over a long period of time. Generally, it is made up of at least three people; has a definite organizational structure, leadership and name; has an internal division of labor; and has a political program and plan of action.” Only if a court finds a group to be counterrevolutionary can people be convicted of either leading it or belonging to it.

Groups that threaten national security are today banned by internal decrees issued by the Ministry of Public Security’s First Bureau; lists of banned groups are maintained by local public security bureaus. A “proclamation and certification” system for China would indeed make mainland practice more transparent, but at a terrible cost in human lives. Criminalizing a group is a short step from criminalizing membership in that group, but it is a step that could put many people at risk of imprisonment.

For example, the China Democracy Party (CDP), which is banned by the political security police with the full support of the Chinese authorities, is known to have at least 500 members. Yet, to date, no more than 50 CDP activists have been convicted of subversion; ordinary members face police harassment but rarely go to prison. Likewise, of the 1,000 members of the recently discovered Chinese Nation’s Democratic Party in Gansu Province, 15 were tried for subversion, ten were sent to reeducation camps, and ten were “released on bail to await trial” (see page 6 for details of this case). If parties themselves were criminalized, hundreds of ordinary members would face imprisonment, an unexpected but painfully real consequence of the “proclamation and certificate” system envisioned by Hong Kong’s now-postponed National Security Bill.

Exchange of Letters between China’s Supreme Court and Dui Hua

The Dui Hua Foundation recently exchanged letters with China’s Supreme People’s Court on the question of whether or not prisoners serving sentences for counterrevolution might benefit from a relaxation of sentence reduction and parole regulations.

On February 27, 2003, Dui Hua’s Executive Director John Kamm hand-delivered a letter to a senior official of the Supreme People’s Court in Beijing. Since the crime of counterrevolution was removed from the criminal law in 1997, the letter asked, were sentence reduction and parole for imprisoned counterrevolutionaries still being “strictly handled,” as called for in 1991 regulations issued by the Supreme People’s Court? In practice, “strict handling” has meant far lower rates of early prison release for counterrevolutionaries than for inmates serving sentences for other crimes. Dui Hua’s letter noted that the 1997 regulations covering sentence reduction and parole which replaced the 1991 regulations do not specifically mention counterrevolutionaries. The regulations state that prisoners serving sentences for endangering national security will be subjected to “strict handling” when it comes to sentence reduction and parole.

On March 12, 2003, the Supreme Court faxed a reply to Dui Hua. The Court asserted that “the crime of counterrevolution as stipulated in the 1979 Criminal Law is, in essence, the same as the crime of endangering national security in the revised criminal law.” According to the letter, the main difference between counterrevolution and endangering national security is that the crime of counterrevolution was not “scientifically defined.”

The letter concluded: “Regarding those convicted of endangering national security (including those convicted of counterrevolutionary crimes before 1997), their sentence reduction and parole are to be strictly handled.”

Disenfranchisement of Felons Prompts National Debate in US

Should Americans convicted of a felony lose some of their rights as citizens after they have completed their punishment? There is no clear answer to this question in the United States, as each state has its own laws regarding “felon disenfranchisement.” Some ex-felons regain their civil rights automatically upon the completion of their term of punishment, while others must face a complex, seemingly interminable bureaucratic process or rely upon the lenience of a governor. Such widespread disparity, combined with more fundamental questions about both the role and impact of felon disenfranchisement on society, is leading to a new focus on the system and calls for reform.

Restrictions Vary by State

Once convicted of a felony, most offenders lose the right to vote, serve on a jury, or hold elected office. Because state laws govern voting eligibility in the United States, it is the states that determine the “civil disabilities” to be imposed even if the crime is federal. Nearly two-thirds of states, plus the District of Columbia, prohibit convicted felons from voting while incarcerated or on parole, and just over half also prohibit those on felony probation from voting. Five states (Alabama, Florida, Iowa, Kentucky, and Virginia) restrict the civil rights of all ex-felons for life, while others do so only for particular categories of offenders (e.g. those convicted of more than one felony) or impose waiting periods of three to five years before rights may be restored. Maine and Vermont are the only two states that place no restrictions on the rights of convicted felons, even allowing prison inmates to vote in elections.

There is also considerable variation in the process by which ex-felons may have their rights restored. The process is automatic in most states, taking place after offenders have completed all of their sentencing conditions (including probation or parole) or following a specified waiting period. In the 13 states that take away rights for life, however, ex-offenders must overcome numerous obstacles if they want to regain their rights. For example, ex-felons in Virginia must petition the circuit court

and receive the governor’s approval before rights are restored, and Alabama requires ex-felons to provide DNA samples before they may regain the right to vote.

Historical Roots

Why strip felons of their civil rights in the first place? Experts agree that the practice has its roots in medieval Europe, where the imposition of “civil death” acted as a symbolic sanction on criminals by excluding them from the community. The history of felon disenfranchisement in the United States is also closely tied to efforts to limit the impact of the Fifteenth Amendment, which gave blacks the right to vote following the Civil War. Although laws prohibiting criminals from voting had existed since the founding of the United States, in the late nineteenth century many southern states specifically designed their laws on felon disenfranchisement to target blacks.

In the past century, however, our ideas about both rights and punishments have changed radically. American society has made both civil rights and suffrage nearly universal, rejecting earlier limitations based on property, race, or sex. We also largely subscribe to modern correctional theories that stress rehabilitation, meaning that punishments are designed in part to give many offenders the eventual opportunity to be reintegrated into society. Many do so successfully, but if, once back in society, those individuals are prohibited by law from enjoying the same rights as others, can we really say that they have been reintegrated?

Social and Political Impact

According to estimates by the Sentencing Project, a non-profit organization that studies the problem of felon disenfranchisement, nearly four million Americans (or two percent of the adult population) have lost their voting rights either currently or permanently. Of those, African Americans lose their rights at a rate of seven times the national average. Moreover, in seven of the states that prohibit ex-offenders from voting, about 25 percent of all African-

American men are permanently disenfranchised. If present incarceration rates continue, 30 percent of all black men may lose their civil rights at some point in their lives, and as many as 40 percent could lose their rights permanently in those states that disenfranchise ex-felons for life.

These statistics belie the notion that felon disenfranchisement has no real impact on political outcomes because only a small percentage of the population is affected. However, considering that today's prison population is disproportionately poor and is made up of a disproportionate number of minorities, some critics argue that alienating significant portions of these populations from the electoral process not only affects political outcomes, but threatens the democratic ideals of the United States as well. A recent academic study suggests that felon disenfranchisement benefits those can-

didates and political parties most apt to pursue measures that are "tough on crime," setting up a situation that perpetuates the further disenfranchisement of populations that might be in favor of change.

Regardless of whether or not such a "feedback process" truly exists, it gives one pause to realize that approximately 600,000 ex-felons in Florida — a state that imposes permanent disenfranchisement — were prohibited from voting in the controversial 2000 presidential election. Though several states have recently loosened restrictions and made it easier for ex-felons to regain their rights, still others have tightened restrictions and placed more individuals under the scope of disenfranchisement laws. Given the current political climate and the lack of consensus on the subject, it is difficult to foresee any major changes in the immediate future.

ARE CHINESE DPR LAWS READY FOR REVISION?

Chinese law regarding deprivation of political rights (DPR) is spelled out in Articles 54 – 58 of the Criminal Code, which define "political rights" as the rights to vote and stand for election; to engage in free speech, publication, association, demonstration, and protest; and to be employed by government agencies or to hold leadership positions in state-run enterprises or public organizations. All individuals convicted of crimes that endanger national security lose these rights for one to five years upon their release from prison, and judges may also impose DPR on individuals who commit serious offenses that endanger social order (such as murder, rape, or arson). Only criminals sentenced to death or life imprisonment lose their rights permanently.

China's law on DPR has its roots in the revolutionary period of the People's Republic, when class struggle was at the center of Chinese politics and all crimes were viewed through the lens of politics. Deprivation of political rights was thus both a method of stemming counter-revolution and a symbolic imposition of the "people's dictatorship" over politically unreliable individuals.

As class struggle and the people's dictatorship have largely receded into the background in present-day China, some Chinese legal scholars openly question whether the current laws covering DPR should be revised. Many point out that, at the very least, the phrase "political" rights (*zhengzhi quanli*) is too reminiscent of the period of class struggle and should be replaced by "civil rights" (*gongmin quanli*). Others go further, arguing that the rights of free speech, publication, association, demonstration, and protest are fundamental rights of all Chinese citizens that should not be taken away under any circumstances.

Although revision of China's DPR laws would certainly be welcomed by the international community, by placing clear limits on the types of offenses for which DPR may be imposed and setting clear limits on the application and duration of this punishment, Chinese law is superior to the inconsistency and lack of uniformity that characterizes the US system.

Members of the Chinese Nation's Democratic Party Sentenced in Gansu Province

According to an article published in the *Gansu Public Security Yearbook* (2001), nearly 1,000 members of a group known as the Chinese Nation's Democratic Party (中华民主党) were investigated by the local public security bureau and more than 50 core members were detained. Under the "guise of opposing corruption," the group's guiding principles were Dr. Sun Yatsen's "Three Principles of the People." Li Wenshan, Chen Shiqing, and 13 other main suspects were arrested, and Fan Fuyou and nine other suspects were sent for reeducation-through-labor. The compulsory measures brought against the remaining ten suspects, whose criminal behavior was relatively light, were quickly changed to released on bail to await trial. The ordinary members of the public who joined the organization were given "education," acknowledged their mistakes, and signed letters of regret.

Based on statistics provided in the *Gansu Public Security Yearbook* for the year 2000, arrests for endangering national security in that province totaled 18 (12 men and six women). It is very likely that a large percentage of those arrests were for members of this previously unknown political group.

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Plum Nation Party "Commander" Imprisoned in Sichuan

In Issue No. 3 (Spring 2001) of *Dialogue*, Dui Hua published an extensive report on several cases of the "Plum Nation Party" (梅国党) that it had discovered through its research. The articles described the Plum Nation Party as a "counterrevolutionary group" with a "constitution and party program" and "rules and discipline." The party was active in Zhejiang, Sichuan, and 17 other provinces in the late 1980s and throughout the 1990s, but the fates of the members involved were never made public. Dui Hua followed up on several of the individuals by including their cases in its *Occasional Publications* and requesting information from the Chinese government.

The following response was received from the Chinese government on May 28, 2003:

Li Wenshan (李文山), a.k.a. Li Dongsheng, male, born in September 1953, Han nationality, prior to arrest was a farmer in Huaqi Village, Qincheng District, Tianshui Municipality in Gansu Province. Sentenced on August 30, 2001 to 13 years' imprisonment (sentence to run from May 11, 2000 to May 10, 2013) with five years' subsequent deprivation of political rights by the Gansu Province Longnan Prefecture Intermediate People's Court for committing the crime of subversion. Currently serving his sentence in Gansu's Linxia Prison.

Chen Shiqing (陈世清), a.k.a. Chen Jiuwa, male, born in January 1945, Han nationality, prior to arrest was a farmer in Li County, Gansu Province. Sentenced on August 30, 2001 to eight years' imprisonment (sentence to run from September 16, 1999 to September 15, 2007) with five years' subsequent deprivation of political rights by the Gansu Province Longnan Prefecture Intermediate People's Court for committing the crime of subversion. Currently serving his sentence in Gansu's Linxia Prison.

On April 23, 2003, Dui Hua received the following information on the "commander" of the Plum Nation Party, Fan Zhengming:

Fan Zhengming (范正明), a.k.a. Fan Xiaodong, male, born in February 1953, prior to arrest was a farmer. Sentenced on July 7, 1993 to 15 years' imprisonment (sentence to run from April 15, 1992 to April 14, 2007) with five years' subsequent deprivation of political rights by the Sichuan Province Dachuan Prefecture Intermediate People's Court for committing the crime of organizing and leading a counterrevolutionary group. Currently serving his sentence in Sichuan's Chuandong Prison.

Wu Yilong and Three Other CDP Members Serving Long Sentences for Subversion in Hangzhou

According to an article in the *Hangzhou Yearbook* (2000), on November 9, 1999 the Hangzhou Municipal Intermediate People's Court announced the verdict in a trial of the first instance: For the crime of subversion, defendants Wu Yilong, Mao Qingxiang, and Zhu Yufu were sentenced to prison terms of 11 years, eight years, and seven years, respectively, all with three years' subsequent deprivation of political rights. Defendant Xu Guang was sentenced to a prison term of five years, with two years' subsequent deprivation of political rights.

According to this source, in June 1998, after Wu Yilong and the others made the acquaintance of Wang Youcai (who has also been sentenced for subversion), they actively participated in establishing the "Chinese Democracy Party's Zhejiang Preparatory Committee" (hereafter referred to as the "Preparatory Committee") and drafted a constitution. From September 1998 to May 1999, while the "subversive activities" of Wang Youcai and others were being exposed, Wu Yilong, Zhu Yufu, Mao Qingxiang, and others actively participated in "Preparatory Committee" activities. Together they decided to publish *Opposition Party*, a publication of the "Preparatory Committee," which they then proceeded to distribute. In addition, Zhu Yufu selected texts to disseminate via the worldwide web.

In the middle of October 1998, the above-named three people discussed establishing a working group for the "Preparatory Committee," and they distributed the first notice on the establishment of their working group. Through his association with Wang Youcai and the other defendants, Xu Guang also actively participated in "Preparatory Committee" activities and issued a manifesto in *Opposition Party*. In June 1999, Xu drafted a "Public Manifesto on the Establishment of a Fuyang City Preparatory Committee of the China Democracy Party" and later helped to establish the Fuyang City Preparatory Committee.

On March 16, 2003 and April 23, 2003, the Chinese government provided Dui Hua with the following information:

Zhu Yufu (朱虞夫), male, born in February 1953, prior to arrest was an employee at the Hangzhou Municipal Shangcheng District Building Management Bureau's Chengnan Building Management Station. Sentenced on November 2, 1999 to seven years' imprisonment (sentence to run from September 15, 1999 to September 14, 2006) with three years' subsequent deprivation of political rights by the Hangzhou Municipal Intermediate People's Court for committing the crime of subversion. Currently serving his sentence in Zhejiang's No. 6 Prison.

Mao Qingxiang (毛庆祥), male, born in May 1950, prior to arrest was a manager in the Shangcheng District of Hangzhou Municipality. Sentenced on November 2, 1999 to eight years' imprisonment (sentence to run from June 20, 1999 to June 19, 2007) with three years' subsequent deprivation of political rights by the Hangzhou Municipal Intermediate People's Court for committing the crime of subversion. Currently serving his sentence in Zhejiang's No. 2 Prison.

Xu Guang (徐光), male, born in September 1968, prior to arrest was an employee at the Survey and Inspection Station of the Environmental Protection Bureau in Fuyang City. Sentenced on November 2, 1999 to five years' imprisonment (sentence to run from September 15, 1999 to September 14, 2004) with two years' subsequent deprivation of political rights by the Hangzhou Municipal Intermediate People's Court for committing the crime of subversion. Currently serving his sentence in Zhejiang's Qiaosi Prison.

Wu Yilong (吴义龙), male, born in May 1967. Sentenced in November 1999 to 11 years' imprisonment (sentence to run from April 1999 to April 2010) for committing the crime of subversion. Currently serving his sentence in Zhejiang's No. 4 Prison.

SARS Leads to Lull in Rights Dialogues

The crisis over Severe Acute Respiratory Syndrome (SARS) in China has had unforeseen consequences for China's program of human rights exchanges with foreign governments. The Chinese government, citing SARS, postponed scheduled dialogues with the United Kingdom and Norway. The Ministry of Justice, which closed all prisons to outside visitors, asked Dui Hua's Executive Director John Kamm to forego his usual quarterly visit to China scheduled for June.

A visit by a delegation of the International Committee of the Red Cross (ICRC), which has applied to establish an office in Beijing and is keen to gain access to Chinese prisons, was postponed by the ICRC itself.

The long-awaited visit to China by the UN Rapporteur on Torture has also been affected by SARS, but another reason for the delay in scheduling the visit — originally announced by US Assistant Secretary of State for Democracy, Human Rights, and Labor Lorne Craner in Beijing in December 2002 — is difficult negotiations over the conditions of the rapporteur's visit. Craner announced that the visit would be "without conditions," but it appears that some Chinese diplomats have a different opinion.

Restrictions caused by SARS have resulted in Chinese lawyers being unable to travel to cities where trials of dissidents have taken place. Some foreign observers have also claimed that the Chinese government has made use of the media attention on SARS to sentence dissidents to longer prison sentences than would have otherwise been the case. Foreign observers have wondered why SARS should interfere with the work of providing responses to prisoner lists submitted by governments that are participating in human rights dialogues with the Chinese government. Such information can be gathered locally and relayed to Beijing by fax or email for transmittal to the foreign government.

Since travel to Beijing has been restricted, foreign governments have invited Chinese delegations to go abroad for discussions. American experts assembled by the US State Department are eager to discuss counterrevolutionary and national security crimes with their Chinese counterparts, and are willing to host their Chinese counterparts in the US. Unfortunately, the Chinese haven't been able to make the trip on account of SARS.

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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