

## IN THIS ISSUE:

**Alex Ho Case  
Illustrates Police  
Use of “Custody  
and Education”**  
1-3

**Court Trials to  
Replace Detention  
Committees**  
3

**United Nations  
Working Group  
on Arbitrary  
Detention: Rulings  
on China & the US**  
4-5

**New Research  
& Prisoner  
Information**  
6-7

**News About  
Dui Hua**  
8

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## Alex Ho Case Illustrates Police Use of “Custody and Education”

Early on August 13, 2004, Hong Kong businessman and Democratic Party politician Alex Ho Waito was detained during a vice raid on a hotel in Dongguan, Guangdong Province. Ho was caught with a young woman who the police claimed was a prostitute. He was brought back to the police station where he confessed to consorting with a prostitute. Afterwards, Ho claimed to have been beaten and coerced into signing the confession; he told his wife that he was promised a quick release if he signed the document and that he had been threatened with prosecution for rape if he refused. Officers of the Dongguan Public Security Bureau refuted Ho's allegations, saying he signed the confession willingly.

All parties agree on one thing: shortly after the confession was signed, Alex Ho Waito was sentenced by the police to six months' detention in a labor camp. He was not afforded a lawyer, he had no access to family or friends, and he was never brought before a judge. As this issue of *Dialogue* goes to press, Ho is serving his term in a specialized detention center for “educating” prostitutes and their clients.

News of Ho's arrest and incarceration—what many in the media referred to as the Democratic Party's “sex scandal”—caused a sensation in Hong Kong. Although it was not the only reason the pro-democracy camp in general and the Democratic Party in particular failed to do as well as expected in Hong Kong's September 12, 2004 Legislative Council elections, analysts have cited the

negative impact on voter perceptions of the Democrats as a result of the Alex Ho affair. Compared to other geographical constituencies, the pro-democracy camp had its worst showing in Kowloon East, the geographical constituency in which Alex Ho was running.

Most of the media and many experts on Chinese law incorrectly reported that Alex Ho had been sentenced to reeducation through labor (RTL), a form of “administrative detention” in which individuals are sentenced to terms of three years or less for offenses that do not rise to the level of serious crimes. RTL has been a feature of China's penal system since the 1950s and is well known in China and abroad. Because individuals who are sentenced to RTL do not appear before a judge, have no right to confront the evidence or their accusers, no right to counsel, and no right to even attend the hearing at which they are sentenced, Chinese and foreign scholars have long considered RTL to be in violation of fair trial and due process guarantees set out in international human rights law.

As reported in a previous issue of *Dialogue*, the Chinese government has advised foreign diplomats that fundamental reform of RTL will take place. A law replacing the RTL committees with minor offenses tribunals that respect the rights of defendants and the presumption of innocence was said to be ready for consideration by the Standing Committee of the National People's Congress later this year.

In fact, Alex Ho was not sentenced to RTL, but rather to a kind of administrative detention known as “custody and education” (*shourong jiaoyu*). “Custody and education” is used to incarcerate prostitutes and their clients in labor camps for periods of six months to two years. It is one of several types of punishments administered by the public security organs. Others include “coercive drug rehabilitation” (*qiangshi jiedu*) and “legal education” (*fazhi jiaoyu*), used to incarcerate people who have failed drug rehabilitation as well as “seriously poisoned” Falun Gong practitioners who have failed RTL. “Custody and repatriation” (*shourong qiansong*), which was used to hold migrant workers caught without papers, was abolished by the State Council after the beating death of a young worker in a Guangzhou “custody and repatriation center” last summer.

Although “custody and education” resembles RTL, there are important differences. RTL sentences are passed by committees made up of representatives of different government departments (public security, justice, civil affairs, etc.); “custody and education” sentences are passed solely by the public security bureau (PSB) that makes the original arrest. If an individual sentenced to RTL wishes to appeal, he or she can do so by bringing a lawsuit against the RTL committee under the Administrative Procedure Law. Individuals sentenced to “custody and education” who wish to appeal must first do so with the public security organ one level above the bureau that passed the sentence. Only if that appeal is rejected can the individual sue the PSB.



Alex Ho (front) playing basketball at Dongguan Custody and Education Center, Guangdong Province.

People sentenced to “custody and education” serve their sentences in “custody centers” run by the PSB. It is not known if there are regulations governing the operation of these centers. RTL sentences are served in camps run by the Ministry of Justice in accordance with regulations issued in August 1992.

Although “custody and education” is supposed to be used solely for combating prostitution, human rights groups have claimed that local police forces have used it to punish dissidents and stifle protestors. In April this year, Xiao Xiangjin, a journalist suspected of encouraging farmers to petition the local government over corruption and abuse of power, was reportedly sentenced to one year of “custody and education” in Fujian Province. The following month, another journalist, Liu Shui, was sentenced to two years in a Guangdong Province “custody and education camp” for soliciting prostitutes. Liu had served two previous sentences in prison for “counterrevolutionary propaganda and incitement” and was, when arrested, active in posting es-

says calling for political reform on the Internet.

### Hong Kong Residents and RTL

On May 27, 1992, the Ministry of Public Security issued a notice prohibiting the sentencing of foreigners, overseas Chinese and “Taiwan, Hong Kong, and Macao compatriots” to RTL. Shortly after the notice was issued, the Guangdong Province Public Security Department asked the ministry to clarify whether or not foreigners, overseas Chinese and “Taiwan, Hong Kong, and Macao compatriots” could be sentenced to “custody and education.” The ministry replied, on July 24, 1992, that foreigners should not be sentenced to “custody and education,” but that “others from places outside the mainland” (Hong Kong is not specifically mentioned) can be sentenced to “custody and education,” on condition that sentencing be “strictly handled” (how is not specified).

Although RTL sentences can be longer than “custody and education” sentences, it is generally recognized that treatment of detainees in PSB

camps is worse than in facilities run by the local prison bureau. The difference in the way prisoners are treated was evident at a press conference on the Alex Ho case called by the Dongguan PSB on September 8. Senior officers of the bureau used the conference to release lurid details of Mr. Ho's alleged dealings with prostitutes as well as several photographs, including one of a half-naked Mr. Ho at the time of his arrest and another showing him playing basketball at the "custody center," presumably to show that he was healthy and being well treated (see photo on page 2).

Release of photographs of prisoners taken at Ministry of Justice facilities was not uncommon before 1994. Claims by rights groups that well-known political prisoners like Wei Jingsheng, Wang Juntao, and Xu Wenli were in ill health were rebutted by the release of photographs showing Wei on a tour of Beijing, Wang enjoying a song and dance performance, and Xu playing an energetic game of badminton.

In 1994, China's Prison Law was promulgated. It requires that the legal rights of prisoners, including so-called "personal rights"—the right to name, reputation, and image (including photographs)—are to be protected. Since publication of the law, Ministry of Justice wardens have not released photographs of identifiable prisoners even when there have been accusations of mistreatment. Unfortunately for Alex Ho and the prospect of fair elections in Hong Kong, the Dongguan police had no scruples about releasing photos of the incarcerated candidate, images that appeared in Hong Kong newspapers three days before votes were cast. ■

## Court Trials to Replace Detention Committees

The following letter from Dui Hua Executive Director John Kamm was published in the *South China Morning Post* on August 26, 2004.

For several years, I have been engaged in a dialogue with officials of the central government regarding detainees and their treatment. Late last year, I began receiving reports from authoritative sources in Beijing that a decision had been made at the highest levels to "fundamentally reform" the system known as "re-education through labour."

Recently, officials have told me that legislation replacing re-education through labour (RTL) committees with minor offences or misdemeanour courts will be considered by the Standing Committee of the National People's Congress later this year.

Those brought before these courts will benefit from the presumption of innocence, the right to a lawyer and other due process rights—all missing from the current system. I understand that the minimum sentence for RTL is one year and it must be served in an RTL camp. Under the legislation being drafted, minor offenders can be sentenced to terms of less than one year and some offenders need not serve sentences in detention facilities.

Officials close to the RTL reform say that other types of administrative detention managed by the Public Security Ministry—custody and education, forced drug rehabilitation and legal education—will be brought into the system of misdemeanour courts, either next year or not long afterwards. Some of the impetus for these moves lies in China's commitment to ratify the International Covenant on Civil and Political Rights, which it signed in 1998. RTL and all the other forms of detention other than administrative detention as defined in the Criminal Law (maximum 15 days) clearly violate the covenant's fair-trial provisions, and they will eventually be abolished.

I and others involved in a human rights dialogue have been told by foreign affairs and judiciary officials that RTL does not apply to Hong Kong residents. Some of us have been given the text of the ministry's "Regulations on the handling of re-education through labour cases by public security organs", which came into force on June 1, 2002. Article 12 says foreigners, stateless persons, overseas Chinese, Taiwan residents and residents of Hong Kong and Macau cannot be sentenced to RTL.

In the last week, I read several statements, some in your newspaper, by officers of the Dongguan Public Security Bureau, mainland-based lawyers and scholars, and journalists in Hong Kong that Hong Kong resident Alex Ho Wai-to was sentenced to six months of RTL. Some have asserted that Hong Kong people can, in fact, be sentenced to RTL. These statements appeared in the international media.

I would appreciate a Hong Kong minister, in consultation with the central government, confirming that Hong Kong residents: cannot be sentenced to RTL; can be sentenced to six months to two years of "custody and education," a form of administrative detention used to sanction prostitutes and their clients that is distinct from RTL. I hope the Hong Kong government can also confirm that Mr. Ho is, in fact, serving a sentence of "custody and education," not RTL.

## United Nations Working Group on Arbitrary Detention: Rulings on China & the US

The United Nations Working Group on Arbitrary Detention was established by the UN High Commission on Human Rights in 1991. The mandate of the five-member body is to investigate allegations of arbitrary detention, which are classified into three types: (1) deprivations of liberty without clear legal basis; (2) deprivations of liberty resulting from the exercise of rights or freedoms established in the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (for states that have signed that treaty); and (3) deprivations of liberty involving serious non-observance of norms concerning the right to a fair trial as established in the UDHR and other international treaties.

Although the Working Group may investigate cases on its own initiative, most cases are brought to its attention by petitioners—usually the individuals concerned, their families, or non-governmental organizations. Cases may concern detention before, during, or after trial as well as various forms of administrative detention, such as house arrest and reeducation through labor, that are carried out by an authority other than a judge. The Working Group considers only the basis for detention and does not rule on matters of torture or disappearance, which are each dealt with through other UN mechanisms.

After receiving a case, the Working Group first offers the government in question an opportunity to

refute the allegations and then allows the original source an opportunity to comment on the government's response. Once the adversarial process has been completed, the Working Group meets in closed session and renders an opinion on the case.

In most cases, the detention is determined either to be arbitrary or not arbitrary. If the Working Group decides that it needs further information to make a determination, it may postpone its opinion pending receipt of additional information. If unable to obtain sufficient information to render an opinion, it may file the case. If an individual is released after his or her case is referred to the Working Group, the case is filed but

### Selected Arbitrary Detainees Currently Imprisoned in China

Name	Sentence	Crime	Due For Release	Year of Working Group Opinion
Jigme Gyatso	15 years	Counterrevolution	2011	2000
Phuntsog Wangdu	14 years	Espionage	2011	2000
Tohti Tunyaz	11 years	Inciting splittism; illegal acquisition of state secrets	2009	2001
Yao Fuxin	7 years	Subversion	2009	2002
Chen Gang	3 years	Falun Gong activities	2005	2003
Li Bifeng	7 years	Fraud	2005	2003
Liu Junhua	10 years	Falun Gong activities	2011	2003
Liu Xianbin	13 years	Subversion	2012	2003
Trakru Yeshe	5 years	Endangering state security	2005	2003
Tsering Lhagon	15 years	Endangering state security	2015	2003
Wang Bingzhang	life	Espionage; terrorism		2003
Yang Jianli	5 years	Espionage; illegal border crossing	2007	2003
Yeshe Tenzin	10 years	Endangering state security	2010	2003

the Group reserves the right to render an opinion if there are special circumstances that require it to consider the nature of the detention.

### **Detentions in China and the US**

Since its inception in 1991, the Working Group has heard many cases concerning Chinese detainees. Between 1992 and 2003, the Working Group issued 39 opinions involving 208 Chinese detainees. Of this number, 180 were found to have been detained arbitrarily. The remaining 28 individuals' cases were filed for lack of information or because they had been released. The Working Group has never ruled a case of detention in China to be not arbitrary. (The table on page 4 shows a selection of individuals currently serving prison sentences in China who have been determined by the Working Group to have been arbitrarily detained.)

By comparison, over the same period there were ten Working Group opinions involving 17 individuals in the United States. Of this number, 14 were ruled to have been detained arbitrarily and the remaining three detentions were ruled not to have been arbitrary.

The major difference between cases of arbitrary detention in China and those in the United States is that Chinese cases typically involve violations of the rights and freedoms set out in the UDHR, whereas cases of arbitrary detention in the United States have more often been based on violations of legal procedure. There is arguably more leeway to find in favor of the government when the allegations are based on procedure.

However, in 2003 the Working

Group issued a strongly worded opinion regarding the imprisonment of four detainees in the Guantánamo Bay military base in Cuba. In this opinion, the Working Group "deplored" the lack of cooperation by the US government (which had ignored numerous requests to provide information about the case) and ultimately ruled that the four were being detained arbitrarily without any clear legal basis.

### **Signs of Progress?**

Looking at the dozens of opinions concerning China that have been issued since the Working Group began operating over ten years ago, one sees some progress in China's interactions with the body. Information is now provided with greater detail and consistency than before, and the government goes to greater lengths to justify its detentions in the context of Chinese law. While this by itself does not indicate any liberalization of the Chinese criminal justice system, it points to the possibility that greater awareness of international law and cooperation with international mechanisms can lead to reforms.

China has also given limited indications of heeding at least some of the decisions of the Working Group by releasing several prisoners early. Ngawang Choephel (1999), Wang Youcai (1999), and Ngawang Sangdrol (2000) were all determined by the Working Group to have been arbitrarily detained. Uyghur businesswoman Rebiya Kadeer, whose imprisonment on state secrets charges was determined to be arbitrary in 2000, was granted a one-year sentence reduction in 2003.

### **Field Missions**

In addition to deliberating on individual cases, the Working Group also conducts field missions in which it is invited to visit a country in order to learn more about its legal, penal, and criminal justice systems. Through direct dialogue with government officials, the Working Group aims to foster greater cooperation and increase its effectiveness. Working Group delegations also frequently have opportunities to conduct private interviews with detainees, who can provide unique and valuable perspectives on conditions of detention.

In late September 2004, the Working Group completed a 12-day visit to China at the invitation of the Chinese government. Led by the Working Group's chairperson-rapporteur, Ms. Leila Zerrougui, the five-person delegation traveled to Beijing, Chengdu, and Lhasa to visit a variety of detention locations (including prisons, reeducation-through-labor facilities, psychiatric hospitals, and police stations) and meet with representatives of government bureaus and Chinese non-governmental organizations.

This is the Working Group's third trip to China since it was established in 1991. The last visit in 1997 created controversy when it was alleged that three prisoners received sentence extensions for staging a peaceful demonstration during the group's visit to Tibet's Drapchi Prison (Chinese authorities have repeatedly denied these allegations.) A report about the visit will be published as part of the Working Group's annual report to the Commission on Human Rights when it meets in Geneva next spring. ■



## NEW RESEARCH & PRISONER INFORMATION

### Previously Unknown Reduction Reported for Ngawang Gyaltsen

In the Winter 2003 issue of *Dialogue*, we reported on a Chinese response provided to Dui Hua on the sentences of four Tibetans arrested in 1989 for taking part in activities related to Tibetan independence. Jampel Changchup, Ngawang Gyaltsen, Ngawang Oezer, and Ngawang Phulchung each received long sentences of either 17 or 19 years' imprisonment. In the response given by the Chinese government in December 2002, of the four, only Jampel Changchup and Ngawang Oezer were given sentence reductions of three years and two years, respectively.

However, in a new response provided to a foreign government in February of this year, Ngawang Gyaltsen (阿旺坚赞) also received a two-year sentence reduction in 1994, the same year as the reduction given to Jampel Changchup. According to this new information, Ngawang Gyaltsen should have been released on April 26, 2004, though no confirmation has been received of his release. Ngawang Phulchung has still apparently not received any sentence reductions and will be the last of the four to be released, in April 2008. Jampel Changchup is due for release in April 2005 and Ngawang Oezer one year later, in April 2006. ■

### First Response Received on Tibetan Jigme Gyatso

Although many requests for information concerning Jigme Gyatso (晋美加措) have been made to the Chinese government over the past several years, until recently no response to a foreign government has ever been provided. According to information available prior to the recent response, Jigme Gyatso was a monk at Ganden Monastery and was formerly the leader of the "Association of Tibetan Freedom Movement." He was arrested on March 30, 1996 and believed to have

been sentenced in March 1997 to 15 years' imprisonment for "organizing a splittist movement."

None of his sentencing details were verified until a response was provided to a foreign government this past summer. The response stated that Jigme Gyatso was sentenced on November 25, 1996 to 15 years' imprisonment with five years' subsequent deprivation of political rights by the Lhasa Intermediate People's Court for committing the crime of endangering state security. He is currently serving his sentence in the Tibet Autonomous Region [Drapchi] Prison, and his health is reported to be "normal." ■

### Xinjiang Statistics on Solution Rates of Counterrevolutionary Crimes

The following statistics on the number of counterrevolutionary cases discovered and solved for the years 1980-1991 were found in the 2004 issue of *Xinjiang Annals: Public Security Records*.

Year	Counterrevolutionary Cases		
	Discovered	Solved	% Solved
1980	64		
1981	123	89	72.4
1982	119	90	75.6
1983	91	73	80.2
1984	79	58	73.4
1985	71	43	60.6
1986	49	35	71.4
1987	47	26	55.3
1988	81	43	53.1
1989		66	
1990		49	
1991		11	

## Sichuan Reveals Investigation into Human Rights Violations

On August 7 of this year, the Sichuan Province Procuratorate revealed to the media that procuratorial organs throughout the province had “won an initial victory in the battle to investigate cadres who violated human rights due to dereliction of duty.” The spokesman for the procuratorate was quoted as saying: “This year in our province, violations of human rights due to dereliction of duty have caused 118 deaths and ten injuries.”

According to an article published in the *West China Metropolitan News* (华西都市报), the procuratorate said that so far this year it had received 510 cases of violating human rights due to dereliction of duty, of which 255 cases had been put on file for investigation. The province has “investigated and dealt with” 286 cadres suspected of committing this type of crime, and 12 of

the cases were considered serious enough to be supervised by the provincial procuratorate.

The investigation into cadres using their positions to violate human rights began in May and has focused on five types of cases: (1) cases in which dereliction of duty caused major losses of citizens’ lives or property; (2) illegally placing individuals in custody or performing illegal searches; (3) using torture to extract confessions or using violence to obtain evidence; (4) sabotaging elections and violating the democratic rights of citizens; and (5) mistreatment by prison officials.

Of the 52 cases investigated of judicial, administrative, or law enforcement employees using their positions to violate human rights, 11 were cases of illegally placing individuals under custody, seven were cases of extracting confessions through torture, and one was a case of using violence to obtain evidence. One example given was a case of four public security police officials in Mianyang who were suspected of using torture to extract confessions. ■

### Updates on 1989 Detainees Liu Zhihua, Shao Liangchen

Liu Zhihua and Shao Liangchen are two of the 68 individuals in Dui Hua’s prisoner database that are still serving sentences in Chinese prisons for crimes committed during the June 1989 disturbances.

*The following responses were provided to Dui Hua by the Chinese government in February 2004:*

**Liu Zhihua** (刘智华), male, from Xiangtan in Hunan Province, prior to arrest was unemployed. Sentenced in October 1989 to life imprisonment according to law with deprivation of political rights for life by the Xiangtan Intermediate People’s Court in Hunan Province for committing the two crimes of injury with intent and hooliganism. Because he truly expressed regret and a willingness to reform, in September 1993 his sentence was reduced to 15 years’ imprisonment with five years’ subsequent deprivation of political rights. In 1997, his sentence was extended by five years for again committing injury with intent, and a combined sentence of 16 years’ imprisonment was imposed (term to run from January 17, 1997 to January 16, 2013). Because he truly expressed regret and a willingness to reform, in June 2001 his sentence was reduced by two years, with his term to now be completed on January 16, 2011. Currently serving his sentence in Longxi Prison, Hunan Province.

**Shao Liangchen** (邵良臣), male, from Ji’nan in Shandong Province, prior to arrest was a worker. Sentenced on September 2, 1989 to death with two-year reprieve and deprivation of political rights for life by the Ji’nan Intermediate People’s Court in Shandong Province for committing the crime of sabotaging communications equipment. Because he truly expressed regret and a willingness to reform, his sentence was reduced to life imprisonment in November 1999 [sic], and then to 17 years’ imprisonment in July 1994. Later, he received two further reductions in 1998 and 2000 totaling three years and six months, bringing his date of release to November 4, 2007. Currently serving his sentence in Weihui Prison, Shandong Province.

### **Executive Director John Kamm Receives MacArthur Fellowship**

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The executive director of The Dui Hua Foundation, John Kamm, has been awarded a MacArthur Fellowship by the John D. and Catherine T. MacArthur Foundation. The prestigious award is given every year to individuals who have demonstrated extraordinary originality and dedication to their creative pursuits and have contributed importantly to society through their work.

In awarding Kamm a MacArthur Fellowship, the MacArthur Foundation cited Kamm for designing and implementing “an original approach to freeing prisoners of conscience in China by leveraging business relationships. . . . Kamm’s pragmatic, case by case strategy complements human rights advocacy based on international conventions and principles. Having won the release or improved the conditions of hundreds, he has demonstrated his approach as an effective means of addressing contentious human rights issues with Beijing.”

The MacArthur Foundation lists Kamm’s profession as “Businessman/Human Rights Strategist.” Although a number of human rights leaders have received MacArthur Fellowships, this is apparently the first time in the 23-year history of the MacArthur Fellows Program that the award has been given to a businessman.

For more information on the MacArthur Foundation and the MacArthur Fellows Program, and to read the announcement of this year’s MacArthur Fellows, please visit the foundation’s website at [www.macfound.org](http://www.macfound.org).

Reacting to news of the award, Kamm said: “Businesspeople can contribute to the advance of human rights in ways previously thought not possible, notably by collecting information on political prisoners and advocating their release to officials of countries where they trade and invest. In giving me this extraordinary award, the MacArthur Foundation is recognizing the potential of business

to advance the cause of human rights.”

“I could not have done the work being recognized today without the support and encouragement of my family and friends, my fellow directors and colleagues at The Dui Hua Foundation, friends in the American, Chinese, and other governments, coworkers in the international human rights community, and released prisoners and their families, who have urged me not to forget those still imprisoned for the non-violent expression of their beliefs. I am also grateful to those who have taken a chance on Dui Hua and chosen to support us—grantors and contributors. I intend to use the award to strengthen Dui Hua and help enable it to carry on its work,” Kamm said. ■

### **Reception Held at Dui Hua’s New Office**

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On August 13, 2004, the Dui Hua Foundation held a reception in our new office at 450 Sutter Street in San Francisco, one block from Union Square. The reception was intended to both welcome friends and visitors to our new, much larger premises, as well as to celebrate Dui Hua’s fifth anniversary as a non-profit organization dedicated to advancing the protection of human rights.

Some 70 guests attended the reception, including Dui Hua’s Board of Directors and many of our contributors and supporters. Executive Director John Kamm showed groups of visitors our “media wall”—a collection of newspaper articles from around the world featuring Dui Hua’s work—and talked about the stories behind different cases that Dui Hua has been involved with.

Many of those present also took a great interest in our already extensive and growing prisoner database, which was made available for visitors to view during the reception. Research Manager Josh Rosenzweig answered questions on how we conduct research, what sources we use, and how we compile prisoner lists. ■