

REFORM OF THE REEDUCATION THROUGH LABOR SYSTEM

AN HRIC BRIEF¹

China's state media recently announced that its half-century-old reeducation through labor (RTL) system will soon be replaced by a new law on "Rectifying Illegal Activities." The Standing Committee of the National People's Congress has reportedly incorporated this item into its legislative agenda and was to have commenced an initial review in April, but no updates on the status of the legislation have yet been reported. Observers hope reform will better protect human rights and reflect the spirit of rule of law.

Reeducation Through Labor (*laodong jiaoyang*) is a system of extra-judicial detention and punishment administratively imposed on those who are deemed to have committed minor offenses. It effectively provides the Chinese authorities with a tool to deprive people of their liberty without giving them access to legal counsel or trial. Public security organs alone determine the length of detention under Reeducation Through Labor (RTL), which can be longer than the sentence for comparable criminal offenses. Sentences run from one to three years' confinement in a camp set in a farm or factory, but can be extended to a fourth year if, in the prison authorities' judgment, the individual has not been sufficiently reeducated, fails to admit guilt or violates camp discipline.

During the past five decades, the authorities have also used RTL to suppress not only petty criminals, but also political dissidents, Falun Gong practitioners, religious dissidents, petitioners and others who seek to exercise their fundamental rights and freedoms. According to government statistics released in 1999, some 310,000 individuals were detained in more than 300 RTL camps around the country, compared to fewer than 10,000 at the beginning of 1957 when the system was introduced.

Now, nearly five decades after introducing RTL, the Chinese government is considering significant reforms to the system.

Reform of the RTL system has been a subject of discussion for years within China and in human rights dialogues between China and the European Union, and China and the United Nations. But there are three main reasons why China may finally reform the RTL system in the near future: 1) the current system became unlawful under China's Constitution and law after the NPC passed the Law on Legislation in 2000, which requires specific legislation before a citizen can be deprived of his liberty or political rights²; 2) China has been under severe criticism from the international community and human rights groups for instituting labor camps through the RTL system; and 3) the existence of the RTL system remains a major hurdle to China's ratification of the International Covenant on Civil and Political Rights.

Regulatory framework

RTL is not directly legislated by a lawmaking body—the National People's Congress (NPC)—but is regulated by a series of decisions made by administrative bodies such as the State Council and the Ministry of Public Security. The RTL system is built upon the following major administrative regulations:

1. *Decision of the State Council on the Question of Reeducation Through Labor* (*Guowuyuan guanyu laodong jiaoyang wenti de jue ding*) issued by the State Council on August 1, 1957, with the approval of the Standing Committee of the National People's Congress;
2. *Additional Decision of the State Council on the Question of Reeducation Through Labor* (*Guowuyuan guanyu laodong jiaoyang wenti de buchong jue ding*), issued by the State Council on November 29, 1979;
3. *Pilot Methods for Reeducation Through Labor* (*Laodong jiaoyang shixing banfa*), promulgated by the Ministry of Public Security with the approval by the State Council on January 21, 1982.

Pitfalls of current law and incentives for reform

Since its implementation in the 1950s, RTL has come under criticism as an extrajudicial measure that violates international human rights standards and allows abuses by state authorities. Following are some of the main points of contention:

Detention without trial: The Public Security Bureau (PSB) alone makes all decisions on RTL detention. There is no due process of law or any trial process, and the subjects are not entitled to legal counsel or judicial review of the administrative decisions. In

reporting on its recent mission to China, the United Nations Working Group on Arbitrary Detention expressed concerns that “the avenues to challenging placement in reeducation institutions do not satisfy international law requirements.”³ It condemned China for jailing citizens without trial under RTL, and for applying the overbroad and vague language of the penal code to penalize dissidents under the RTL system. The Working Group urged China to grant individuals the right to court review of any RTL decision and to engage legal counsel in the process.

Arbitrary application: RTL was designed in the 1950s to suppress individuals classified by the authorities as counter-revo-

lutionaries and bad elements. Today, it is used increasingly to target political dissidents, religious adherents and individuals seeking to enforce their rights, including petitioners and whistle-blowers who cause annoyance to the authorities. There have been reports of RTL detainees being tortured or beaten to death while in detention.⁴

Disproportionately severe punishment: Among RTL’s chief targets are petty criminals whose conduct offends public order while not qualifying as a criminal offense. However, the punishment ascribed to these individuals under the RTL system is more severe than under the penal code. The RTL systems allows

Anticipated Reforms		
	Reeducation Through Labor system	Law on Rectifying Illegal Activities
Target populations	<p>The 1982 pilot methods set the following list of six target populations:</p> <ol style="list-style-type: none"> 1. counter-revolutionary elements, anti-Communists, anti-socialists who have committed petty crimes; 2. participants in organized murder, rape, robbery, arson and other criminal activities; 3. participants in hoodlum activities, sex work, theft, fraud and other criminal activities; 4. participants in gang fights, disturbed public order; 5. those who were employed but refused to work, broke rules at their workplace, schools and disrupted the order of daily life; or 6. those who incited others to commit crimes. <p>However, RTL has been employed arbitrarily to punish political and religious dissidents, Falun Gong practitioners, petitioners and others engaged in non-criminal behavior.</p>	<p>The revised law will apply to two vaguely defined categories of people:</p> <ol style="list-style-type: none"> 1. Those who have committed law-breaking behaviour to a serious extent, but whose offenses are not regarded as criminal; or 2. Those who have committed petty criminal offenses for which deprivation of their personal liberty is not justified.
Adjudication Process and Right to Appeal	<p>Up to three close relatives or colleagues from the subject’s work unit of the detainees may attend the hearing unless the case involves state secrets, privacy of the detainees, juvenile delinquents, or its nature is not suitable for public hearing.</p> <p>The Public Security Bureau (PSB) has the sole authority to decide whom to send to RTL and for how long.</p> <p>Detainees may ask the Bureau to review its decision.</p> <p>Detainees may also challenge the Public Security Bureau’s decision by using the Administrative Procedure Law.</p>	<p>It is still unclear whether there will be a public hearing before the Public Security Bureau (PSB) makes the initial decision in which the individual is entitled to have legal representation. If there is a hearing, it is also unclear whether a third party will be allowed to attend the hearing where decisions are made by the PSB. In any case, it is unclear whether special procedures will be applied to politically sensitive cases.</p> <p>Individuals can petition the court to review unfavorable decisions made by the Bureau.</p>
Legal representation	<p>Legal representation is available only if the individual chooses to sue the Public Security Bureau under the Administrative Procedure Law after he/she is committed to RTL, but the term of the RTL is not suspended pending appeal.</p>	<p>The subject has the right to have legal representation during his or her case review.</p>
Terms of confinement	<p>Inmates can be detained for between one and three years, with a possible extension of one year, i.e. a maximum of four years.</p>	<p>Maximum length of detention is eighteen months.</p>
Freedom of movement	<p>Camps are operated in a closed model where inmates are locked behind bars, and are sometimes sent to prisons and detained with inmates who have committed criminal offenses.</p>	<p>Camps would be operated under either an open or semi-open model:</p> <ol style="list-style-type: none"> 1. Semi-open camps: inmates enjoy freedom of movement within the camp; 2. Open camps: inmates can spend their weekends at home and apply for casual leave. Inmates who committed minor offenses may be allowed to work at the camp during the day and go home in the evening.

detention for a period of one to four years, whereas sentence for offenses classified as misdemeanors run from one to six months' imprisonment.

Possible reforms under on Rectifying Illegal Activities

The exact language of the proposed Law on Rectifying Illegal Activities has not yet been publicized, but media reports suggest that certain changes are under consideration, as outlined in the chart on the facing page.

A move forward?

Despite years of discussion and dialogue, China appears to have chosen a minimalist approach to reforming the RTL system. The most significant breakthroughs in the proposed revision are the incorporation of judicial review, the right to legal representation and the shortening of the maximum term from four years to eighteen months. However, the Public Security Bureau continues to play multiple roles as investigator, prosecutor and adjudicator, and there is no suggestion that the PSB will need to inform the accused of what particular crime he or she has committed, nor is there any guarantee of an open trial process. Without clearly articulated offenses and an open trial process, it is doubtful whether the right to judicial review can serve as a meaningful check against official excess. The suggestion to transform closed RTL camps into semi-open or open day camps is a significant step forward, but genuine reform requires a complete eradication of the extrajudicial RTL system, not merely tinkering with the system's most egregious flaws. It remains to be seen whether the Chinese government has the political will to carry out the genuine reforms necessary to comply with international standards and promote the rule of law.

END NOTES

1. The primary drafter of this brief was Wing Lam, with final review by Zenobia Lai.
2. Law on Legislation of the People's Republic of China, Article 8, Constitution of the People's Republic of China, Article 37 (2004).
3. Report of the Working Group on Arbitrary Detention: Mission to China, E/CN.4/2005/6/Add.4, December 29, 2004, para. 75.

4. SouthernWeekend cited a case where a petitioner was put under administrative detention for three months and was found almost paralyzed upon release. See "RTL system lacks legal basis (*Laojiao jidu quefa falu yiju*)," SouthernWeekend (*Nanfang Zhoumou*), December 4, 2003. See also examples cited in Wu Xingdou, "The evil reeducation through labor system (*Qianfu suozi de laojiao zhidu*)," The EpochTimes, February 4, 2004, <http://www.epochtimes.com/gb/4/2/4/n460405.htm>.

REFERENCES

- "The system of reeducation through labor to be reformed drastically (*Laojiao jidu jiangzuo zhongda biange*)," Beijing News, March 8, 2004.
- China's Human Rights, <http://www.humanrights.cn/>.
- "Law on Rectifying Illegal Activities incorporated into this year's legislation plan to replace Reeducation through labor (*Weifa Xingwei Jiaozhi Fa lieri jinnian lifa jihua qudai laojiao jidu*)," China.org, March 14, 2005, <http://www.china.org.cn/chinese/law/810132.htm>.
- Veron Mei-ying Hung, "Improving Human Rights in China: Should reeducation through labor be abolished?," *Columbia Journal of Translation Law*, 41:303, 2003.
- "Reeducation through labor system lacks legal basis (*Laojiao jidu quefa falu yiju*)," SouthernWeekend, September 14, 2003, <http://www.nanfangdaily.com.cn/zm/20030904/xw/fz/200309040770.asp>.
- United Nations Working Group on Arbitrary Detention, 'Report of the Working Group on Arbitrary Detention, Mission to China', E/CN.4/2005/6/Add.4, December 29, 2004.
- "Reeducation through labor to be reformed. New law on Rectifying illegal activities to be legislated (*Woguo laojiao jidu mianlin biange jiangdin weifa xingwei jiaozhi fa*)," Xinhua News Agency, March 2, 2005, http://www.news.xinhuanet.com/legal/2005-03/02/content_2636013_2.htm.
- The PRC State Council, "Decision of the State Council on the Question of Reeducation Through Labor (*Guowuyuan guanyu laodong jiaoyang wenti de jue ding*)," August 1, 1957.
- The PRC State Council, "Additional Decision of the State Council on the Question of Reeducation Through Labor (*Guowuyuan guanyu laodong jiaoyang wenti de buchong jue ding*)," November 29, 1979.
- The PRC Ministry of Public Security, "Pilot Methods for Reeducation Through Labor (*Laodong jiaoyang shixing banfa*)," promulgated on January 21, 1982.