

REEDUCATION THROUGH LABOR (RTL): A SUMMARY OF REGULATORY ISSUES AND CONCERNS

BY HUMAN RIGHTS IN CHINA
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Background

Reeducation through Labor (RTL) has been in existence for about 45 years. It was first employed during the Chinese Communist Party's 1955 campaign against counter-revolutionaries. According to an official report, more than 3.5 million people have been subjected to punishment under RTL since that time.¹ Some legal scholars dispute this figure, asserting that the population affected is actually much larger.

In the last decade, use of RTL has increased. While official sources put the number sent to serve RTL terms at approximately 100,000 annually in the period from 1983-1991,² from then on the numbers have continued to grow. By the late 1990s, an annual total of around 200,000 people were being held in RTL.³ In 1995, the Chinese government ceased publishing annual figures for the number sent to serve RTL terms, but the previous numbers show a clear upward trend, with an increase of more than 50 percent between 1993 and 1995.⁴ Although national figures were not published, some local statistics provide a point of comparison which shows that the numbers continued to rise after this.⁵ In the 1980s, a peak in numbers sent to RTL was seen around the time of the "Strike Hard" anti-crime campaign, and the available evidence suggests that in the late 1990s, the combination of a continuing, intensified Strike Hard campaign and a nationwide "Anti-Yellow" campaign⁶ has meant record numbers of people being sent to serve labor camp terms under RTL. This upward trend was recently confirmed when Chinese officials revealed that the current number held in RTL has reached 260,000, with 60 percent detained for offenses involving "disturbing public order," and 40 percent for drug-related offenses.⁷

Two groups of people have been increasingly targeted for punishment in RTL in the last couple of decades: one is those using drugs and the other is those engaging in prostitution or patronizing prostitutes.⁸ Generally it is people detained repeatedly for using drugs or engaging in prostitution who are

¹ Shao Zongwei, "Reeducation law revamp due soon," *China Daily*, February 5, 2001, citing statement by Wang Yunsheng, director of the Ministry of Justice's RTL Bureau.

² An August 13, 1992, report in the PSB newspaper, *People's Public Security (Renmin Gong'an)*, put the number of persons sent to RTL during this period at a total of 825,414, thus approximately 100,000 per year.

³ *China Law Yearbook (1987-1997)*, China Law Yearbook Press, 1998.

⁴ The following are the figures from the *China Law Yearbook (1987-1997)* for total number of people held in RTL from 1989-1995: 1989, 165,071; 1990, 165,070; 1991, 144,584; 1992, 132,209; 1993, 132,209; 1994, 178,377; and 1995, 206,888.

⁵ The following are the numbers of people newly sentenced to RTL in 1997 in particular provinces. All figures are from the *China Law Yearbook 1998*. Guizhou Province: 4,178; Qinghai Province: 543; Sichuan Province: 7,013; Hunan Province: 13,328; Shandong Province: 2,197; Shanxi Province: 3,155; and Hebei Province: 5,601; making a total of 36,015. Since the total population of these seven provinces accounts for around one third of the national population, this would indicate a national annual total of people sentenced to RTL of around 100,000 persons.

⁶ Against "vices" including pornography, prostitution, drug use and gambling.

⁷ Comment by a Chinese official at EU-China experts seminar held in Paris in December 2000.

⁸ In Guizhou, the number of people newly sentenced to RTL in 1997 was 4,178, of which 2,927 were sentenced for

sent to RTL, but in some provinces, first time “offenders” may also be sentenced, especially during campaign periods when set targets may have to be met. It is estimated that in some provinces, those using drugs account for one third of total RTL population. In addition, substantial numbers of political and religious dissidents are sent into RTL camps. HRIC has documented over 30 cases of political dissidents being imprisoned in this way in the last three years. According to the Falungong group, some 5,000 members have been sentenced to RTL since the ban on the organization was issued in 1999.

According to reports from political detainees and others, conditions in RTL camps are generally abusive, with overcrowded, unsanitary living conditions; inadequate food; endemic violence; and excessive working hours being among the major concerns. Nationwide, there are now close to 300 RTL centers, according to official statistics.⁹ RTL detainees are mostly treated just like prisoners in the criminal justice system, although now, unlike in the past, they are generally segregated from inmates convicted of criminal offenses.¹⁰

Current Regulatory Framework for RTL

Up until 1957, RTL was not authorized by any formal national decision. Then on August 1, 1957, the State Council submitted a Decision on RTL to the National People’s Congress (NPC) Standing Committee for approval. The NPC Standing Committee passed this decision, authorizing the State Council to administer the use of RTL, which in practice meant that implementation was under the Ministry of Public Security.¹¹

From 1957 to 1979, RTL was employed in a very flexible way, both in terms of the scope of application, as well as the length of sentence. Many people held under RTL were detained for indefinite periods, which in some cases resulted in incarceration of more than 20 years.

On November 29, 1979, the State Council issued a second Decision on RTL, with the approval of the NPC Standing Committee.¹² In this decision, for the first time terms for RTL were fixed at between one and three years, with a possible extension of one year.

On January 21, 1982, the Ministry of Public Security issued its first set of comprehensive regulations on RTL, which were approved by the State Council.¹³ The Regulations stipulated the procedure for deciding

using drugs, which represented more than half the total number. *China Law Yearbook 1998*

⁹ Shao Zongwei, “Reeducation law revamp due soon,” *China Daily*, February 5, 2001.

¹⁰ For more detail, see Human Rights in China, *Detained at Official Pleasure: Arbitrary Detention in the People’s Republic of China*, June 1993; and Amnesty International, *China—Punishment Without Crime: Arbitrary Detention*, September 1991.

¹¹ NPC Standing Committee: Resolution on Approving the Decision of the State Council on the Issue of the Reeducation through Labor (*quanguo renmin daibiao dahui changwu weiyuanhui pizhun guowuyuan guanyu laodong jiaoyang wenti de jue ding de jueyi*), August 1, 1957.

¹² NPC Standing Committee: Resolution on Approving the Supplementary Decision of the State Council on the Issue of Re-education through Labor (*quanguo renmin daibiao dahui changwu weiyuanhui pizhun guowuyuan guanyu laodong jiaoyang de buchong guiding*), November 29, 1979.

on RTL sentences, detailed the categories of people punishable under RTL and allocated responsibilities for the administration of RTL facilities.

Following the enactment of these regulations, in May 1983 the management of RTL facilities was handed over to the Ministry of Justice, while the Ministry of Public Security retained the authority to decide who should be punished under the RTL regulations.

Although the 1979 State Council Decision called for the establishment of RTL management committees which were to be authorized to decide on RTL sentences, in reality the public security department generally makes such decisions alone. According to some scholars, the RTL management committees actually meet only rarely to decide on sentences, although if an individual challenges an RTL decision in court, members of the committee have to appear to defend the decisions.

In addition, since the mid-1980s the Ministry of Public Security and the Ministry of Justice have issued a number of different documents governing such matters as management of RTL facilities and the conditions under which sentences may be reduced or extended. However, these did not change in any appreciable way the legal framework created by the above-mentioned documents.

Abuses Associated with RTL

As an administrative punishment, RTL has been criticized by international human rights groups as well as legal scholars inside China, particularly for the following reasons.

1. No judicial process involved

According to internationally-recognized human rights norms, decisions on the limitation or deprivation of an individual's liberty must be made by an impartial judicial body. Detainees should have the right to defend themselves with the assistance of legal counsel at any hearings of such a judicial body on their cases.

But RTL has been administered solely by the ministries of Public Security and Justice, without the involvement of the courts. Thus detainees are effectively deprived of the right to due process of law. Therefore, the U.N. Working Group on Arbitrary Detention found that according to its criteria, RTL should be deemed "inherently arbitrary."

2. Vague and arbitrary scope

While initially the targets of RTL were counterrevolutionaries who had committed only minor offenses, the 1957 Decision shifted the measure's focus, providing for the detention of "lazy people" who were to be "reformed" in order to become self-sufficient. The 1979 Decision did not spell out

¹³ The Notice of the State Council on Circulating the Trial Practices of the Ministry of Public Security on Re-education through Labor (*guowuyuan guanyu zhuanfa gonganbu zhiding de laodong jiaoyang shixing banfa de tongzhi*), January 21, 1982.

who should be detained under RTL. Article 10 of the 1982 Practices issued by the Ministry of Public Security laid out the six categories of people punishable under RTL:

1. *Those counterrevolutionaries or elements who oppose the CCP or Socialism, where their offenses are minor, but do not merit criminal punishment;*
2. *Those who commit minor offenses relating to group crimes of murder, robbery, rape and arson, but whose acts do not merit criminal punishment;*
3. *Those who commit minor offenses such as hooliganism, prostitution, theft, or fraud but whose acts do not merit criminal punishment;*
4. *Those who gather to fight, disturb social order, or instigate turmoil but whose acts do not merit criminal punishment;*
5. *Those who have a job but repeatedly refuse to work, and disrupt labor discipline, complain endlessly, as well as disrupt production order, work order, school and research institute order and the people's normal life, but whose acts do not merit criminal punishment;*
6. *Those who instigate others to commit crimes, but whose acts do not merit criminal punishment.*

Evidently, the scope of people who can be held under RTL is extremely unclear and thus the measure can easily be manipulated by the authorities. Some scholars have called RTL a punishment that can be applied to virtually anyone who commits minor law breaking acts. The above list also clearly indicates that RTL may be used to punish those who merely engage in peaceful exercise of their fundamental rights and freedoms, and in fact, RTL has been routinely used against dissidents over the past four decades.

3. Severity of Punishment

Punishment under RTL is heavier than that provided for many crimes in the Criminal Code. According to official statistics, a significant number of criminal sentences imposed involve terms of below two years of fixed term imprisonment, while people under RTL are sentenced to an average of two years. Thus punishment under RTL is disproportionate considering the relatively minor nature of the “offenses” committed by people subjected to it.

4. Local Regulations on RTL

Since RTL is a convenient, extrajudicial measure, many local governments have incorporated it into local legislation, causing the expansion of RTL in local application. For example, a Shanxi Province regulation makes gambling punishable under RTL, while one from Shanghai allows for the punishment in RTL of people who have extra-marital affairs.

5. Abusive conditions in RTL facilities

As mentioned above, extensive documentation by human rights organizations from accounts by former detainees demonstrates that torture and ill-treatment in RTL facilities is endemic and often extreme. RTL centers are notorious for their poor sanitation and are often overcrowded, and detainees are also frequently denied visits from family members and access to proper medical care. Physical abuse at the hands of both guards and cell bosses selected by officials to “maintain order” is common. As for all forms of administrative detention, inmates held in RTL may have particular difficulty in

making complaints and gaining redress, compensation and rehabilitation when they are victims of torture or ill-treatment.¹⁴

Domestic Debates Over RTL

For the last two decades, Chinese legal scholars have been engaged in heated debate over the reform of RTL, while some have even advocated its abolition. China's signing of the ICCPR in 1998 heightened such debates, as most scholars agree that RTL is not in conformity with the treaty's provisions. Currently, there are three main proposals for the future of RTL:

1. Retaining RTL while enacting minor reforms regarding monitoring of its use

Proponents of this approach consider RTL to be an important tool for the authorities, and thus advocate its retention for the long term, since it has played a major role in cracking down on crime and maintaining social stability. However, they argue that some minor reforms are needed in order to limit official arbitrariness in the application of RTL. People holding this opinion are mostly officials in the ministries of Public Security and Justice.

2. Retaining RTL while carrying out extensive reform of the system

Recognizing the major shortcomings of RTL, proponents of this view have proposed comprehensive reforms of this measure. The principal reforms they advocate include:

Passing separate legislation on RTL

Authorizing courts to review RTL (proposals have failed to make clear the nature of the court review they envisage)

Shortening terms of RTL to two years or less

Some people supporting such proposals have taken note of the strong resistance from the public security and justice departments to abolition of RTL, and have tried to find a half-way solution that addresses some of the concerns of its critics.

3. Abolishing RTL altogether and incorporating the penalty into the Criminal Code

Some scholars have insisted that RTL is not in accord with Chinese law or international human rights norms, and therefore should be abolished. According to this line of thinking, offenses defined under RTL regulations which are significant enough to constitute crimes should be addressed under the Criminal Code. Such arguments have increasingly gained support from legal scholars in recent years.

¹⁴ The Administrative Litigation Law of the PRC, promulgated in 1989, does entitle people to a limited right to challenge RTL decisions. However, a person held under RTL would have great difficulty in proving to a court's satisfaction that s/he was wrongly sentenced to such a term, since the regulations governing this measure give the public security departments very broad discretion. Very few cases are known to have been reversed following challenges under the Administrative Litigation Law and, to our knowledge, not a single appeal by a dissident against an RTL sentence has been successful. Of course there is the additional problem that inmates in RTL have very limited opportunities to make contact with the outside world, and thus may have enormous difficulty in getting any legal advice or representation for such an appeal.

RTL's current conflicts with the law

Another major impetus for the “reform” of RTL emerges from the fact that it is in clear conflict with at least two recently-enacted laws, as a number of scholars in China have pointed out. The first is the Administrative Punishment Law (APL, 1996), which requires that any coercive measures involving limitation or deprivation of an individual’s personal liberty be authorized by legislation passed by the National People’s Congress (NPC) or its Standing Committee (Article 9). RTL is currently only authorized by a resolution by the NPC approving measures proposed by the State Council, not by national legislation passed by the NPC nor its Standing Committee. Strictly speaking, this is a violation of the APL.

The Legislation Law (LL, 2000), passed recently by the NPC, also contains a similar clause which clearly eliminates the possibility of any state organ other than the NPC or its Standing Committee legislating to authorize coercive measures limiting or depriving people of their liberty (Article 8(5)).

Thus these two laws require that, to be lawful, any measure like RTL be authorized by a law, a term specifically referring to legislation passed either by the NPC or its Standing Committee (1982 Constitution, Articles 62(3) and 67(2)).

Likely response to this legal limbo

Whichever proposal the authorities eventually accept, if the Chinese government is serious about implementing the APL and the LL and wishes to retain RTL, the measure must be enacted into law. According to legal scholars as well as Chinese officials, the most likely scenario is the creation of separate legislation that would then be approved by the NPC Standing Committee.¹⁵ The new legislation is likely to retain most of the current RTL regulations with more transparency on monitoring of RTL’s application. Local governments would no longer be able to legislate on RTL, unless such authority is specifically granted by a new law.

The Ministry of Public Security has already announced that a law on RTL is under consideration. It is interesting to note that a few recent news articles have mentioned proposals to legislate on another form of administrative detention that is in a similar state of legal limbo under the APL and the LL, Custody and Repatriation. In the EU-China human rights dialogue at the end of September, RTL was reportedly among the few subjects where the Chinese side was willing to go into some detail, and the passage of a related law was discussed. And a workshop on the punishment of minor crimes in Beijing on February 26-27 will be the first activity in the program of technical cooperation agreed in a November Memorandum of Understanding between the Office of the High Commissioner for Human Rights and the Chinese Ministry of Foreign Affairs.

Most recently, the Ministry of Justice indicated that legislation governing RTL would be passed “soon.” According to a statement by Wang Yunsheng, the director of the Ministry’s RTL Bureau, the NPC is

¹⁵ As the Chinese delegation indicated in the CAT session a week ago, drafting of legislation on RTL was initiated in 1998 and continued to be considered since then.

presenting drafting such a law, in consultation with the “relevant departments.” He stated that changes were being considered in the following areas: “the people covered by the system, the approval procedure, the implementation process and the length of the terms.” Wang clearly ruled out abolition of the measure, stating that:

*For such a populous nation as China, the RTL system, which aims at stopping those on the verge of committing serious crimes, is an effective one for reducing crime... The new law will function as a better guide for the RTL system and contribute to the stability of the rule of law.*¹⁶

International community must take principled position

Past experience demonstrates that the conclusions and comments made by international experts, bodies and institutions can have a serious impact on the decisions of the government. In many cases, we have seen that China’s legal scholars have successfully persuaded leaders to implement reforms by citing international pressure, including that from UN mechanisms, and international standards as reasons for changing China’s laws and policies. For example, international exchanges just prior to the finalization of the draft legislation did have some positive impacts in the case of the revision of the Criminal Procedure Law and the Lawyers’ Law. There is no question that international pressure played a significant role in the abolition of administrative detention under Custody and Investigation (*shourong shencha*, also known as Shelter and Investigation).

Based upon the above analysis, we conclude that the on-going debate has reached a very critical point. Unfortunately the more powerful elements in the bureaucracy appear to be committed to a cosmetic change which enacts the procedure into law and allows for a formalistic type of judicial review. This would do nothing to address the human rights concerns about RTL.

Human Rights in China has therefore been actively lobbying governments and international organizations, including the human rights mechanisms of the United Nations, to stand with the Chinese legal scholars favoring the abolition of RTL and strongly criticize the effort to legitimate this form of arbitrary detention by enacting it into law. We have argued that the recommendation of the UN Committee Against Torture in May 2000 that China abolish all forms of administrative detention should be adopted as the international community’s position on RTL. As Mary Robinson herself said on one of her visits to China in relation to this issue, “Bad law can be a tyranny.”

Our recommendations

1. Abolish RTL

Human Rights in China has long argued that RTL should be abolished outright. We do not believe that this is a system that can be “fixed” or “reformed” by adding a formalistic judicial review. For the reasons

¹⁶ Shao Zongwei, “Reeducation law revamp due soon,” *China Daily*, February 5, 2001.

listed above, RTL is clearly in conflict with international human rights law and has resulted in widespread violations of fundamental rights, and therefore it must be eliminated at the earliest possible date.

2. Any minor offenses must be described in law

So that the law and its enforcement has the proper measure of predictability, proportionality and fairness, any criminal offenses should be specifically framed in law, so that people are aware of what constitutes a crime. If certain minor offenses that merit imprisonment are not included in the current Criminal Law, then the answer is to revise it to include them. Consideration should be given to alternatives to imprisonment, such as fines, community service and training.

3. Persons accused of minor crimes have the right to due process

Before being sentenced to any term in custody, an individual must be charged with a particular offense described in written law, and the authorities must prove that the accused committed the crime in question at a trial which accords the person full rights to due process of law, such as allowing for examination of evidence and presentation of a defense. Persons convicted of an offense should also have the right to appeal to an independent court for review.

4. Exercising rights must not be criminalized

In enacting further criminal-justice related legislation, including any revisions to the Criminal Law regarding minor crimes, no acts solely involving peaceful exercise of fundamental rights and freedoms should be subject to criminal penalties.

APPENDIX

Sample list of dissidents detained under RTL in the last two years

Abulikemu Kader: Resident of Xinjiang Autonomous Region. On November 26, 1999, he was sentenced to two years in RTL for “supporting splittists financially.” He is now serving the term.

Che Hongnian: a veteran labor activist who had been sentenced to two years’ imprisonment for “counterrevolutionary crimes” under the then Criminal Code in 1989. He was sentenced into three years’ RTL in March 1999 for “instigating the overthrow of state power.” He is now serving the term.

Fan Ziliang: a retired worker. He distributed articles on democracy to his friends. He was arrested on January 15, 2001, and sentenced to a two year RTL term in February without trial. He is currently serving his term.

Li Guotao: a resident of Shanghai, he was detained for participating in the student movement in 1989. He was deeply involved in the activities of organizing the China Democratic Party (CDP). On July 4, 2000, Li was sentenced to a three year RTL term for “disturbing social order,” for activities protesting the government’s crackdown on other dissidents.

Peng Cheng: a resident of Shandong. He was involved in the campaign calling for the government to alter its verdict on the June Fourth Student Movement. He was sentenced to a three year RTL term for

“instigating the overthrow of state power” and “disturbing social order” in 1999. He is now serving his term.

Peng Ming: resident of Beijing and a founder of China Development Union (non-governmental organization) advocating peaceful political reform. He was sentenced to one and half years of RTL for allegedly “patronizing prostitutes” on February 26, 1999. He served out the sentence and was released on August 9, 2000.

Wei Quanbao: a veteran dissident who started his political career in 1979 and later went into exile in the United States. He was sentenced to a three year RTL term after being caught sneaking into China in 1998. He is now serving the term.

Yao Zhenxiang: a human rights activist and a victim of repeated RTL punishment. In April 2000, on his way to participate in a dissident gathering in Xi’an, he was arrested and later sentenced to two years’ RTL ostensibly for “patronizing prostitutes.”

Zhang Lin: a student leader in the 1989 democracy movement who has engaged in various political activities in China. He went to the United States in 1997 and was arrested in November 1998 while attempting to enter China without going through border controls. He was sentenced to a three year term of RTL and is currently serving the term.

Zhou Wei: a retired cadre from Shenyang City in Liaoning Province. He led local demonstrations protesting against official corruption and uncovered some economic crimes. He was arrested in Ma, 1999 and sentenced to two years’ RTL and is currently serving the term.

Zhou Yongjun: a student leader in the June Fourth Democracy Movement in 1989 who fled to the United States in 1993. He was sentenced to three years of RTL in 1998 for allegedly “illegally crossing the border” after he sneaked into southern China. He is now serving this term.

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