

RE-EDUCATION THROUGH LABOR

ABUSES CONTINUE UNABATED: OVERHAUL LONG OVERDUE

CHINESE HUMAN RIGHTS DEFENDERS

FEBRUARY 2009



Introduction

In stark contrast to its claim that 30 years of reform and opening have resulted in “remarkable progress in the improvement of its legal system,” the Chinese government continues to operate one of the world’s largest and most notorious arbitrary detention systems: the Re-education through Labor (RTL) camps. Without charge or trial, hundreds of thousands of people are held in forced labor camps. CHRDR called on members of the UN Human Rights Council to urge China to abolish the Re-education through Labor system on the occasion of the country’s rights record undergoing its first Universal Periodic Review by the body on February 9 & 11, 2008.

Under the RTL system the police are able to confine an individual for up to four years of detention for what are considered “minor offenses,” such as drug addiction, prostitution, petitioning, human rights advocacy, or being a member of an illegal religion such as a Christian “house church” or Falun Gong. In this report, CHRDR traces the evolution of RTL and investigates how the authority to bypass the judiciary and detain individuals in camps has become entirely vested in the police, whose power is neither constrained nor supervised by any independent government agency. Legal remedies through which RTL detainees may appeal against their detention do technically exist, but in practice they are rarely effective.

The RTL system violates the rights of Chinese citizens, in particular the right to be protected from arbitrary deprivation of personal freedom and the right to a fair trial. It is also inconsistent with a number of China’s own laws and its Constitution.

CHRDR’s research and interviews with former detainees reveal a grim picture of life in the camps: beatings and torture inflicted on detainees by fellow inmates on instructions from camp staff; forced, unpaid labor in hazardous working conditions; poor diet and unsanitary living quarters; extortion by the camp administration; little or no daily exercise; no family visits; and inadequate medical care. These are conditions which constitute a violation of the right not to be tortured or subjected to other cruel, inhuman and degrading treatment.

Over the past twenty years, intellectuals and civil society groups have been calling for the abolition of RTL, but though there are signs the government has been considering modifications to the system, nothing so far has changed.

CHRD calls on the Chinese government to abolish RTL without delay and replace it with an alternative system consistent with international human rights standards. An individual on trial for a minor crime should face simplified proceedings which guarantee a fair trial, access to legal counsel and the right of appeal. Abolition of RTL would be a major step in bringing about “advancement in... the Chinese people’s enjoyment of all human rights.”¹

This CHRD report has been compiled by China-based activists and legal experts who interviewed former RTL detainees. Key source materials include a March 2007 survey of more than 1,000 petitioners—many of whom had been detained in RT—and 13 interviews with former detainees.

Two appendices are available on CHRD’s website at <http://www.crd-net.org>. The first is a list of cases reported by RTL researchers of individuals sentenced to RTL between July 1, 2007, and January 1, 2009. The second contains a selection of translations of interviews with RTL detainees conducted for this report.

Overview

RTL is an administrative punishment measure unique to China: without legal proceedings or due process, an individual can be detained and subjected to forced labor for a maximum of three years, with the possibility of a fourth year extension. It is “administrative” because the power to sentence a person to RTL resides not with judicial authorities, but with the police. Its purpose, as defined by the government, is to reform, through education and labor, individuals who have committed minor offenses not sufficiently serious to be tried under Criminal Law. An RTL camp typically holds hundreds of people, while some bigger ones can house several thousands. Different types of detainees are generally found in them: petty criminals; social deviants, such as drug abusers or prostitutes; religious adherents, such as Falun Gong practitioners, Muslims or Christians belonging to sects not recognized by the government; petitioners and other individuals considered to have disturbed “social order,” such as unlicensed street vendors.

The government releases little or no information regarding the scope of the camps or the conditions within them. However, according to the Laogai Foundation, as of June 2008 there were currently at least 319 RTL camps housing an estimated population of 500,000 to two million.² Available statistics from official, UN, academic and NGO sources vary widely regarding the numbers detained in any given year and are often not up-to-date.

Evolution of RTL

The RTL system was introduced in the 1950s as a means for the CCP to achieve political and social control. Its initial targets were enemies of the state, such as “counterrevolutionaries,” “landlords” and “rightists.” In April 1951, the Central Committee of the CCP (CCCPC) created a “forced labor system” to employ former landlords, whose land had been nationalized and leased to poor farmers by the state; if the landlords were “able to do farm labor and had no other profession” they were compelled to work in “forced labor” teams.³

In the second half of 1955, the CCP launched a campaign to purge “counterrevolutionaries.” The first document to use the phrase “Re-education through Labor,” the “Directive for a Complete Purge of Hidden Counterrevolutionaries,” was published on August 25, 1954 and stated that counter-revolutionaries could be dealt with in two ways:

- After they have been sentenced they could be sent for reform through labor.⁵
- Those who have committed crimes insufficiently serious to warrant a criminal sentence... should be sent to RTL.



An RTL Camp in Heilongjiang Province

On January 10, 1956, the CCCCP published a further directive⁶ outlining the general guidelines for RTL, thus the system was born and RTL camps were set up throughout the country.

Though initially conceived of as a temporary measure, RTL became institutionalized during Deng Xiaoping’s reign as it proved to be a relatively easy and cost-effective means to exert state control over a society on the verge of a major transition. In November 1979, the Supplementary Regulations

Regarding RTL (hereafter referred to as the Supplementary Regulations)⁷ were announced by the State Council. In January 1982, the Trial Methods for Implementation of RTL (hereafter referred to as the Trial Methods)⁸ was approved by the State Council and promulgated by the Ministry of Public Security. Together with a memo entitled “Decision of the State Council Regarding the Question of RTL”⁹ promulgated in 1957, these three documents provided the foundation for the RTL system.

The range of RTL “targets” has been successively widened over the years, from political enemies to petty criminals or those who have behaved in ways the government deems “disruptive.” According to the Supplementary Regulations, RTL is for “individuals from large and medium-sized cities,” but the Trial Methods expanded the scope of the system to include rural people, “who have left their homes to commit crimes in cities, along railway lines and in large factories and mines.” The Trial Methods, the most recent major document, lists six types of targets for RTL:

- Counterrevolutionaries and anti-Party and anti-socialist elements who commit minor offences and are not criminally liable.
- Those involved in gangs who have committed murder, robbery, rape and arson but are not criminally liable.
- Those involved in hooliganism, prostitution, larceny, fraud, or other acts for which they are not criminally liable and who, despite repeated admonition, refuse to mend their ways.
- Those who gather crowds for fights, disturb social order, incite disturbances and involve themselves in other ways to disrupt social order but are not criminally liable.
- Those who have work units but have refused to work for a long period, violated labor discipline, have continued to behave disruptively, disturbed the order of production, labor, teaching and scientific research and life, obstructed public officials from performing their duties and refused, despite repeated advice and restraint, to mend their ways.
- Those who instigate others to commit crimes but are not criminally liable.

In 1980, the State Council issued a notice including within the scope of RTL two administrative measures: forced labor¹⁰ and detention for investigation,¹¹ which were used to punish offenders involved in petty crimes and crimes committed in multiple locations.¹²

In 1982, the General Political Department of the People's Liberation Army and the Ministry of Public Security jointly issued a notice¹³ making military personnel eligible for RTL, and in 1987 the Ministry of Public Security and the Ministry of Justice issued a notice¹⁴ stating that prostitutes, those who solicit prostitutes, and those providing facilities for prostitution, would also be targeted for RTL.

What is Wrong with RTL?

RTL violates domestic and international law

The main problem with RTL is the deprivation of liberty without due process: individuals are detained without charge, trial, or access to legal counsel and are frequently denied the right to appeal decisions against them. The deprivation of liberty without legal proceedings violates the Chinese Constitution, which states that,

The freedom of person of citizens of the People's Republic of China is inviolable. No citizen may be arrested except with the approval or by decision of a People's Procuratorate or by decision of a People's Court, and arrests must be

made by a public security organ. Unlawful deprivation or restriction of citizens' freedom of person by detention or other means is prohibited... (Article 37)

Similarly, Article 9 of the International Covenant on Civil and Political Rights (ICCPR), which China has signed but not yet ratified, prohibits arbitrary detention. The ICCPR requires that, “Anyone deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.”

A second, related problem with RTL is that it has no basis in law. According to Article 8 of China’s Legislative Law, “The deprivation of citizens’ political rights and compulsory measures and punishments that restrict citizens’ personal freedom... can only be effected through laws passed by the NPC and NPCSC.”¹⁵ Article 9 of China’s Administrative Punishment Law similarly states that, “only laws can impose administrative punishments which restrict personal freedom.”

Do the three documents governing RTL constitute “laws” as defined by China’s legal system?¹⁶ The Decision of the State Council Regarding the Question of RTL was promulgated by the State Council and approved by the NPCSC in 1957; the Supplementary Regulations were promulgated by the State Council and approved by the NPCSC in 1979; and the Trial Methods were promulgated by the Ministry of Public Security and approved by the State Council in 1982. However, the Decision of the State Council Regarding the Question of RTL and the Supplementary Regulations are both types of State Council regulations approved by the NPCSC and, as such, are not the same as national laws formulated and passed by the NPC or the NPCSC. An additional problem is that, despite gaining a degree of autonomy in recent years, the NPC is not an independent parliament as it functions merely as a rubber-stamp for the CCP Politburo. Furthermore, the Trial Methods for Implementation of RTL, which is the main bulwark of the RTL system, is not a law.

The third problem with RTL, discussed in more depth later in this report, is that detainees are forced to engage in heavy manual labor in hazardous conditions with minimal or no payment. Article 8 (3) of the ICCPR prohibits “forced or compulsory labor.” Although it exempts “hard labour... as a punishment for a crime,” such exemption is only valid if the punishment is decided on “by a competent court.”

Among the many issues surrounding RTL are the conditions in the camps. As discussed later in this report, detainees are subjected to a range of punishments and deprivations; the poor conditions mean that detainees get sick and are often denied medical treatment; family visits are often disallowed; and detainees are routinely deprived of exercise and recreation.

The treatment meted out to RTL detainees violates Article 10(1) of the ICCPR, which states that those “...deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the person.” Both the UN Standard Minimum Rules for the Treatment of Prisoners and Basic Principles for the Treatment of Prisoners set international standards for the treatment of those deprived of their liberty, many of which are ignored in the camps. Torture and beatings of detainees also violate the CAT.

Police empowered to sentence individuals to RTL

According to the three major RTL documents—the Supplementary Regulations Regarding RTL, the Trial Methods for Implementation of RTL, and the Decision of the State Council Regarding the Question of RTL, RTL Management Committees¹⁷ of provinces, autonomous regions, municipalities and cities examine and approve decisions to sentence individuals to RTL. In theory, the Management Committees decide on RTL applications sent from “[local] civil administrative and public security departments, the organizations, schools, work units, and parents or guardians.” Also, in theory, the RTL Management Committees include representatives from public security, labor and civil affairs in local government. In 1984 the Ministry of Public Security and Ministry of Justice issued a notice¹⁸ transferring authority to make RTL-related decisions from the Management Committee to the PSB, saying, “The agencies for examination and approval of RTL decisions are located at the PSB, and are entrusted by the RTL Management Committee to review and approve of individuals required to undergo RTL.” The PSB could therefore not only apply to send an individual to RTL, it was now in a position to examine and approve such applications.¹⁹ In practice, the real power in RTL decisions is the PSB, with the RTL Management Committee acting as a figurehead. When the decision is made to send someone to RTL, the PSB initiates the following process:

- The PSB office that handles the investigation sends the individual’s case file to its legal department for examination;
- If staff at the legal department decide to send the individual to RTL and the head of the PSB approves, the case files are then submitted to a higher-level legal department within the PSB; and
- A staff member in the legal department examines the case and reports the decision (including the length of sentence) to the director responsible for RTL at the higher-level PSB. If the decision is approved, it will be made in the name of the RTL Management Committee.

The PSB is also empowered to consider appeals from individuals dissatisfied with the decisions it has made. According to Article 12(2) of the Trial Methods, “Those who object to being sent to RTL should have their cases reviewed by organizations that conduct review and approval. If review shows that there are insufficient reasons for the person to undergo RTL, the decision should be revoked. If review turns up conclusive facts and the defendant still objects to the decision, RTL detention should be upheld.” The PSB is therefore required to correct its own reconsideration; however, such “reconsideration” is, invariably a formality. The entire process, from application to examination, approval and reconsideration, is conducted behind closed doors.

The decision to reduce or extend the length of an individual’s detention is also made out of public view, by an administrative department. The 1984 notice, referred to above, shifted authority to handle the RTL Management Committee’s daily business to an administrative office under the Ministry of Justice. In 1991, the Ministry issued a document²⁰ stating that, on behalf of the RTL Management Committee the same administrative office is empowered to reduce or extend the detention period of an RTL detainee.

The unchecked power of the police to sentence individuals to RTL is wide open to abuse. Even when the Procuratorate disapproves of an arrest because of insufficient evidence and returns the paperwork to the police, or

when the Court rules that an individual is not guilty of an alleged crime, the police can ignore these decisions and, with impunity, send a detainee to RTL (see Case Study #1).

Severity of punishment

Although RTL is intended to be an administrative punishment imposed on individuals whose offences are too minor to be tried under the criminal law system, it is a more severe form of punishment than what would be prescribed under criminal law, such as fines, confiscation of property, or deprivation of political rights.²¹ Even when compared with types of punishment under criminal law which focus on the deprivation of liberty, such as surveillance, criminal detention, or fixed-term imprisonment, RTL can be more severe; it violates the basic legal principle of proportionality of punishment. Furthermore, RTL detainees are deprived of the minimal procedural guarantees which theoretically exist within the criminal law system.

Lack of effective legal remedies

There are two legal remedies an RTL detainee can pursue in the hope of overturning a decision against them: file for administrative reconsideration or file an administrative litigation lawsuit against the RTL Management Committee. But it is only after an individual has been detained that they have the right to seek such remedies; in the unlikely scenario that the decision to sentence the RTL detainee is overturned, they would have already been deprived of liberty for some time. But neither of these remedies are effective, nor do they meet the minimal procedural guarantees of criminal justice.

Application for administrative reconsideration

According to Article 6 of the Administrative Reconsideration Law,²² a person can file an application for administrative review if they have been subjected to “a compulsory administrative measure, such as restriction of personal freedom” imposed by a government agency when “this organ has failed to perform its statutory duty to protect rights of the person and of property.” Individuals can apply for administrative reconsideration with the RTL Management Committee at a higher level or to the government at the same level.²³

In an administrative reconsideration, a government agency is responsible for investigating whether the decision being appealed was made in accordance with the relevant regulations. The investigation is again held behind closed doors without due process and a decision is delivered in writing to the applicant. Moreover, the interests of the government agencies tasked with reviewing the cases are closely connected to the RTL Management Committee that made the initial decision, so reversing a decision is unlikely.

File an administrative litigation lawsuit

According to Article 2 of the Administrative Litigation Law, anyone who believes that a government agency or its staff has infringed their rights and interests may initiate litigation by filing a lawsuit. Using this law, people can challenge decisions of Management Committees. This option was made available after the Administrative Litigation Law²⁴ became effective in 1990 and is the individual’s last opportunity to overturn the Committee’s ruling.



Former RTL detainee Li Guirong

officials or organs, appear to have limited the courts' role in reviewing the legality of administrative sanctions such as RTL.²⁶ According to the article, most people "identified interference by government organs and by the CCP as the greatest difficulty encountered in an administrative litigation lawsuit."

The ineffectiveness of legal remedies

CHRD's own research revealed that very few individuals sentenced to RTL make use of these remedies to challenge RTL decisions. In March 2007, CHRD conducted a survey in Beijing of more than 1,000 petitioners from all over the country. The survey was carried out in areas frequented by petitioners, which included the South Train Station, the Petitioners' Village and outside various Letters and Visits Offices. Those who were willing filled out questionnaires and some were interviewed. Petitioners surveyed and interviewed included both sexes and all ages, excluding anyone under the age of 18.

Of those surveyed who had been sent to RTL only 5% had applied for administrative reconsideration or filed a lawsuit; for those who did, none managed to overturn the decision. Only one person had her sentence reduced after an administrative reconsideration, from two years to one. However, this was a special case: she was a Falun Gong practitioner with an American Green Card, and it is believed that pressure from the U.S. government was influential in the reduction of her sentence. Some may argue that, since we surveyed petitioners, who are poorly regarded by government agencies, the two remedies might not have been so effective for this particular group.

We were unable to find any official statistics on the success rate of the two remedies in challenging RTL decisions. According to figures from a court in Luoyang City, Henan Province, which appears to be relatively friendly to RTL-related administrative litigation lawsuits, in 10% of the 20 RTL cases they had accepted annually over the previous

However, the courts are generally reluctant to accept cases related to RTL and many simply refuse to hear them. Even if a hearing is granted, the person is brought before a judge *after* it has been decided to send them to RTL. A 1997 report by the UN Working Group on Arbitrary Detention pointed out that the effectiveness of an administrative litigation lawsuit "is very relative, as can be seen from the very small number of such proceedings."²⁵ A 2003 article in *China Rights Forum* concludes, "A number of factors, particularly fear, lack of access to legal counsel and interference by public

five years the original decision was overturned. No numbers were provided on RTL cases the court had refused to hear during the same time period.

Interviews with people who had been sentenced to RTL show why these remedies are so rarely used (see Appendix II online for details). Some people said they did not know about the remedies or how to go about seeking them; some said they preferred to endure the punishment rather than challenge the authorities and risk retaliation; some thought legal remedies were useless due to the lack of judicial independence; some did not have family or close friends—particularly veteran petitioners who have been petitioning for years and had become alienated from their families—who could advocate on their behalf when they were already in the camps; and some said they handed in their applications for administrative reconsideration but the applications were not passed to the relevant authorities.

Most of the people we spoke to did not have the money for legal representation and they did not know about the very few lawyers in China who might handle their cases pro bono. Although citizens are entitled to the limited legal aid provided by the government, government-funded lawyers are unwilling to take on RTL cases because these would put them on the “wrong side” of the local government. As a result, few detainees or their families approach the government’s legal aid services for assistance. Among those we surveyed, none had received this form of aid.

DID YOU SEEK ANY LEGAL REMEDIES?

“My freedom was completely limited; where could I go to seek legal remedies? Go looking for them? It is completely impossible.”

LUO HONGSHAN (罗洪山), a petitioner detained for three years in a RTL camp in Liaoning Province.

“I did not believe at all that there would be a fair decision [if I] asked the court for an administrative litigation. The RTL Management Committee’s decision was definitely going to be upheld. Since I knew this would be the case, of course I was unwilling to spend time and effort in seeking a useless decision.”

LI GUIRONG (李桂荣), twice detained in a RTL camp in Jilin Province.

“The RTL camp wouldn’t even let us meet with people who could help us with legal remedies, so how could we seek any legal remedies? I submitted a written petition for administrative reconsideration, but I found out later that the camp staff withheld it from the proper authorities. Other detainees had the same experience, and never received any kind of legal remedy.”

JIN HANYAN (金汉艳), spent a year and ten months in a RTL camp in Hubei Province.

Other Complaint Mechanisms

Individuals sent to RTL can complain to the Procuratorate and to the RTL Management Committee that made the decision, or petition higher authorities about the decision. However, unlike the two legal remedies of administrative reconsideration and administrative litigation, while the three complaint mechanisms exist in theory, they can offer only empty promises as their decisions have no legal effect.

The Procuratorate, which is supposed to oversee the behavior of police, is unable to fulfill its responsibility of supervising the PSB in its processing of RTL decisions. According to Article 25 of the Procuratorial Methods for RTL Inspectors,²⁷ the department responsible for supervising prisons within the Procuratorate can accept an appeal from an individual who objects to the decision and whose objection has been rejected by the RTL Management Committee which made the decision. The Procuratorate can request that the RTL Management Committee rectify a decision which it believes to be wrong but if the Committee refuses, the Procuratorate should then report the case to the Procuratorate at a higher level; if they agree with the revision, it should ask the PSB at the same level to make the change.

However, if the PSB refuses to correct the decision, the Procuratorate does not have the power to force the RTL Management Committee to reverse its decision; it is therefore only able to make recommendations regarding the rectification of RTL decisions. The Procuratorate can only begin its very limited supervision over the PSB after the decision to send an individual to RTL has already been made; it has virtually no oversight of the PSB when it is making and approving RTL decisions.

Abject conditions in camps

Detainees in RTL camps are forced to spend long hours doing heavy manual labor:

"In the early days of my detention, I had to do washing, this was later changed to processing electronics... The typical work day lasted between 12 and 13 hours, but when the workload was increased, there would be overtime and we would end up working 17 to 18 hours. It was very intense; it often tired people out physically and mentally."

Li Yanqin (李艳琴) spent one year in a RTL camp in Henan Province.

"In order to meet the quota, we had to work so hard our fingers became thick and swollen, with little blisters on top of the big blisters. Some detainees' hands were covered in blood, some hurt so bad they couldn't sleep at night. Each week we had only one day's rest, and even then we still had to clean up the workshop."

Zhang Cuiping (张翠平) spent two and a half years in a Shanghai RTL camp.

The detainees lack basic labor protection and are often forced to work in hazardous conditions:

"Starting at 5 a.m. we worked between 14 and 15 hours every day; aside from time for eating, we did not stop until after 9 p.m. Because of the heavy workload and the demands of the camp, we sometimes worked until after 1 a.m.... Our main job was to make bottle gourds with a kind of poisonous dye. It was dangerous and unhealthy work, and often made us feel unwell."

Du Fengqin (杜风芹) spent a year and ten months in a Heilongjiang RTL camp.

“A fellow detainee working with me had his four fingers on the right hand sucked into a machine. His middle finger and thumb were seriously injured... such accidents take place because RTL detainees lack basic labor protection and do not get enough rest.”²⁸

Li Guohong (李国宏) spent 11 months in a RTL camp in Henan Province.

Detainees often receive very little compensation for their work, if any:

“Despite the heavy workload, we were paid just two cents a day, which means RMB6 a month. The daily necessities for sale in the camp are extremely costly; those whose families could not afford to send them money couldn’t even afford basic necessities such as toilet paper.”

Li Yanqin

“I did not receive any money for my work in the RTL camps. I remember once, in 2007, at the Qiqihaer Camp, after I had finished a job I was paid a little. After that time I was never paid again, not even for completing my work as before.”

Du Fengqin



Former RTL detainee Du Fengqin

Not only are detainees not paid for their labor, or are paid very little, the camps often exploit opportunities to profit from their work. Since the legitimization of money-making activities²⁹ by state agencies (to subsidize staff and supplement government funding, a practice tolerated since the 1980s) the camps often feed detainees cheap, poor quality food and then demand miscellaneous fees from families, such as “food subsidies” and “medical expenses.”

“Every day for breakfast we had a steamed bun and a bowl of rice gruel; for lunch and dinner we had a small bowl of rice and a few boiled vegetables... there was nothing else, not even a little cooking oil... Whatever unpalatable or cheap foodstuffs there were, that’s what we ate; and it was usually so rotten, we didn’t want to eat it, but it was all we had so we had to eat.”

Jin Hanyan

“If you could not tolerate the food the only alternative was to buy it from the camp stores, but since everything inside the camp was so expensive, life would be very hard to bear unless your family was very well-off... Any kind of medical treatment required payment, and it was much more expensive than in the outside world. The administrators never gave anyone a receipt; they just took the fee from the money detainees were forced to pay the camp.”

Du Fengqin

Detainees are treated poorly in many other ways: there are few opportunities to get out of their cells for fresh air and exercise; they are often denied family visits; and there is little access to clean water or adequate sanitary facilities. The treatment of RTL detainees violates the Standard Minimum Rules for the Treatment of Prisoners:

“We were never given any free time to be outside. There was so much work that we could never complete it; how then could we have time for exercise? For fear of being beaten no one would dare raise the question of free time.”

Feng Xixia (封西霞), spent one year and three months in a RTL camp in Shaanxi Province.

“As for visits, there was really no standard. I was only granted one visit from my husband in seven months. When the Olympics were going on, the detainees who had fulfilled their work orders were allowed to have visits from relatives, but the so-called “disobedient” detainees who “refused to reform” were not allowed any visitors. Letters written from inside were simply not delivered.”

Zhang Shufeng (张淑凤) spent a total of two years in a RTL camp in Beijing.

“Chances to use the restroom were few and far between... even when we were about to eat, we were not allowed to wash our hands after going to the bathroom. As for taking a shower or washing clothes, before you could even rinse the soap off your clothes the guards would shout ‘Tap water turned off!’”

Zhang Cuiping

RTL detainees are often subjected to beatings, torture and other forms of mistreatment such as solitary confinement, verbal abuse and sleep deprivation. Fellow detainees, usually camp bullies, are appointed “supervisors” and instructed by camp officials to mistreat particular prisoners and are given free rein to tyrannize others. RTL detainees are subjected to cruel treatment for being “defiant,” such as being unable to finish their work on time, even if they are ill:

“Beatings are commonplace in the camps. It is the staff who put criminal offenders in charge of supervising work and uncooperative inmates are beaten up by these “supervisors.” I remember when I first entered the camp, four detainees were ordered to beat me.”

Liu Xueli (刘学立) spent one year in a Hebei Province RTL camp.

“All kinds of torture were common. Taking a Plane, Riding a Motorcycle, Taking the Train, Eating Long, Thin Noodles, Standing on Tiptoe at Midnight—these are nicknames for different kinds of punishment. They would make us eat faeces and drink urine and call it eating fried dough sticks and drinking wine. They were inhuman. I don't know how many detainees were beaten to death.”

Luo Hongshan

“One time when I was ill and could not help nodding off to sleep, four other inmates beat me so badly my mouth filled with blood, my nose was bruised and my face swollen. Despite this, I had to get up and go to work.”

Li Guirong

It is forbidden to incarcerate the disabled or anyone older than 70 in RTL camps, but despite such prohibitions and the harshness of the RTL environment these rules are ignored:

“The camp detained the elderly, people over the age of 70, and physically disabled people. According to the RTL regulations, this is not allowed, but the local government does not bother about this. Whoever they want in RTL, they send them to RTL.”

Li Yanqin

Detainees are often given little or no medical treatment when they fall ill. They might have to plead to see a doctor and even if they manage to see one, they have to pay for treatment:

“The injury in my leg became inflamed but the camp refused to provide treatment. I had several negotiations with the camp management and after a long delay they finally allowed the camp doctor to treat me and prescribe medication. Yet they still demanded that my family send RMB1,000 to the camp for my medical fees. These delays

to my treatment left me with side-effects; even now, I experience an occasional sudden onset of pain and I have difficulty walking.”

Liu Xueli

“In mid-May 2006, I had a slight flu. After taking some medicine prescribed by the camp doctor... my condition worsened... when I was really unable to manage, I asked to be sent for a hospital checkup. I borrowed RMB 3,500 from my elder brother and went to the Military Police Hospital but the specialist there said I was not sick... I knew this was wrong. After depositing RMB10,000 with the camp I was allowed to return home for a couple of days where I took the opportunity to go for a hospital checkup: they told me I had heart disease... even with the evidence of my need for hospitalization the camp still refused to grant me leave for treatment. It was only after I went on hunger strike that my workload was reduced, to shelling 20 kg of broad beans daily... My condition worsened and at the next check-up, the doctor... declared that I had neuritis and must be treated immediately... This went on until March 2007; I was finally allowed to be released for medical treatment.”³⁰

Hu Shuzhen (胡淑珍) spent a year in Yinchuan RTL Camp for Women in Ningxia Province between 2006 and 2007.

It is not uncommon for detainees to suffer severe and permanent injuries due to mistreatment and lack of proper medical care in RTL camps. In the worst cases, detainees die from their injuries. **Luo Shubo** (罗淑波), a petitioner, was sentenced to two years RTL on October 30, 2007, for "extortion." She was repeatedly barred from receiving medical treatment at the Qiqihaer camp; in March 2008, Luo was finally sent to hospital, but was shackled and handcuffed during her treatment. She was released on April 12, but was already too ill for the treatment she received to be effective; she died on August 24, 2008.

RTL used to punish human rights defenders, petitioners & Falun Gong practitioners

Because of the ease with which the police can impose it, RTL has been used extensively to persecute petitioners, human rights defenders (HRDs), political dissidents and others whom the government regards as “trouble-makers.” Between July 2007 and January 2009, CHRD documented the cases of 29 individuals sent to RTL (see Appendix I online). Many of them, such as **Li Guohong** (李国宏), **Liu Jie** (刘杰) (see Case Study#1) and **Wang Ling** (王玲) were sent to RTL for defending human rights and exercising their rights to freedom of association, expression and religion.

Most of the RTL cases documented by CHRD are petitioners who had traveled to lodge grievances with higher government authorities.

Although Article 3 of the Regulations on Letters and Visits states that the government at all levels shall “keep free-flowing channels for letter-writers and visitors and provide convenience for letter-writers,” and that “No organization or individual may retaliate against [them],” in practice, RTL has become an effective tool to penalize petitioners. In an October 2007 survey of petitioners conducted by CHRD, 35.2% had been formally

CASE STUDY #1
THE PROBLEMS WITH THE RTL SYSTEM
AS ILLUSTRATED BY THE CASE OF LIU JIE



Liu Jie (刘杰), 55, is a veteran human rights activist and rural campaigner from Beian City in Heilongjiang Province. On October 8, 2007, Liu released a public letter signed by 12,150 people calling on leaders at the 17th Chinese Communist Party Congress to implement political and legal reforms. On October 11, three days after the the release of the letter was published, she was taken into custody.

On October 13, Liu was formally detained on suspicion of "gathering crowds to create trouble." The Procuratorate decided that there was not enough evidence to prosecute her and dropped the charge. However, on November 12, 2007, the Heilongjiang Province Military Farm Bureau RTL Management Committee chose to ignore the Procuratorate's decision and sentenced Liu to RTL, alleging she had "instigated trouble and disturbed social order."

Between March and May 2008, together with other detainees, Liu was forced to work more than 14 hours a day making crafts for an upcoming festival using a chemical dye which stained their hands red; the detainees alleged the dye was poisonous and Liu and others complained to the camp authorities about this. On May 17, 2008, together with 29 other female detainees who had complained with her, Liu was transferred to a rehabilitation center. Soon after their arrival, she was reportedly forced to sit on a "Tiger Bench," a very painful form of torture, especially if used over an extended period.

On August 15, Liu was beaten when she confronted a camp guard about the mistreatment of a fellow detainee; in self-defense she tried to push the guard away and was later accused of attacking camp staff. As punishment, Liu was again forced to sit on a "Tiger Bench," for a further five days.

On December 20, 2007, a doctor who examined Liu reported that she would go blind if she did not immediately receive proper medical treatment. On the basis of her condition, Liu's family applied for her release; on December 1, Liu's husband was informed that his wife's application had been denied as she "did not fulfill the conditions for release" and could only receive treatment at local hospitals. He demanded to see the medical records on which their decision was based, but this request was refused.

On November 28, 2007, Liu filed an administrative reconsideration with the Heilongjiang RTL Management Committee, but it was rejected because the Committee could not find "anything wrong" with the original decision. Liu then filed an administrative lawsuit suing the Heilongjiang Nongken RTL Management Committee, but both Nangang District People's Court and Heilongjiang Military Farm Bureau Intermediate People's Court in Heilongjiang Province declined to accept her case, refusing to give any reason for the refusal.

detained or sent to RTL.³¹ Many of them had allegedly committed offenses such as “disturbing social order” and “instigating trouble.” Although these “offenses” are punishable under Article 20 and 47 of the Regulations on Letters and Visits, they are very vaguely-defined. Together with the Regulations on Letters and Visits, the RTL system encourages officials to retaliate against petitioners and provides a seemingly legitimate basis upon which to do so. Some local governments even encourage the PSB to send petitioners to RTL: a leaked document from Jiangyong County government in Hunan Province, dated May 16, 2007, notes a RMB 6,000 reward from the county government to the county PSB for every petitioner sent to an RTL camp.³²

More than half of our 13 interviewees remarked on the persecution of Falun Gong practitioners, who make up one of the largest groups in the camps and who are often persecuted because of their faith:

“Uncooperative detainees were made to sit on the ‘Tiger bench,’ especially if they were Falun Gong practitioners. They were severely persecuted... Falun Gong practitioners were often not allowed to sleep until they promised to reform and wrote letters denouncing their beliefs. Only then would their situation improve.”

Du Fengqin

“Of all the detainees, the Falun Gong practitioners were the largest group... normally they weren't allowed to have visitors unless they worked especially hard and admitted their guilt.”

Feng Xixia

Reforming RTL

Numerous Calls for Abolition of RTL

The United Nations and international human rights organizations have long called for the abolition of RTL. Since the early 1990s within China, calls for reform of the system have been mounting and some have urged that it be abolished altogether.³³ By the late 1990s, legal professionals, writers and academics within the establishment had started to publicly call for its abolition. On many occasions, representatives of the NPC and members of the CPPCC have suggested that the NPCSC abolish RTL.

For example, in spring 2003, six members of the Guangdong Provincial CPPCC jointly questioned the constitutionality of RTL and proposed a constitutional review of the system. In 2004, after China had amended its Constitution to include guarantees for human rights, representatives at the NPC and the CPPCC annual meetings in March put forward 13 motions advocating reform of RTL.

In 2005, a proposed replacement, the Draft Law on Correction of Unlawful Acts,³⁴ was included in the NPCSC’s legislative plan and deliberated on for the first time by the NPCSC in April. As the majority of draft laws included in the NPCSC’s legislation plan later become law, it was hoped that RTL was about to be abolished. However, nothing came of the deliberations and the topic was not brought up again in the NPC session the following year. In 2007, a large number of proposals calling for the abolition of RTL resurfaced during the annual NPC session and the same Draft Law was again included for consideration. The government appears to be seriously considering

ending RTL but as it has not released any details relating to the Draft Law, it is not known if it offers any better human rights protection than the RTL system.

There are also increasingly vocal calls for the abolition of RTL from China's burgeoning civil society. On December 4, 2007, a proposal calling for a constitutional review and abolition of RTL was released, signed by sixty-nine prominent citizens such as economists **Mao Yushi** (茅于軾) and **Hu Xingdou** (胡星斗), jurist **He Weifang** (贺卫方) and human rights lawyer **Zhang Xingshui** (张星水). The proposal was reported on December 6, 2007, by *Southern Weekend*. On December 12, 12,149 petitioners from all over the country issued a joint appeal for the abolition of RTL. On July 1, 2008, CHRD issued a public letter calling for its elimination.

Alternative forms of punishment for minor crimes

Supporters of RTL claim that the system has been very successful in punishing minor criminals and maintaining "social stability." However, there are many alternative punishments consistent with international human rights standards which are available to penalize and educate offenders who commit minor crimes.

Although there are other laws to punish minor criminals, such as the Anti-Drug Law, the Administrative Punishment Law (APL), and the Public Security Administration Punishment Law (PSAPL), their shortcomings are similar to those affecting RTL, principally in that they allow punishment and detention to be imposed by administrative authorities. As stipulated by the Anti-Drug Law, an administrative body, most often the PSB is empowered to sentence a person to a maximum of three years "mandatory drug treatment," and the other two laws allow for a maximum of 15 days of "administrative detention." As with RTL, a person dissatisfied with the decision against them can only lodge an appeal by applying for administrative reconsideration or filing a lawsuit. Although under the APL and PSAPL the accused has the right to a hearing, this is not before a judicial body, nor do the procedures stipulated by APL and PSAPL meet other internationally-recognized procedural guarantees governing the deprivation of liberty.

The government should conduct a review of RTL and other administrative detention measures and replace them with an alternative system consistent with international human rights standards. As the Chinese leadership vows to continue with its effort to "build a country based on the rule of law," it would benefit from studying those countries where the rule of law underpins the prosecution of minor crimes. In Canada, the US and the UK, for example, a minor crime is defined as a "misdemeanor" or "summary offence" and a major crime as a "felony" or "indictable offense." Under these legal systems a person suspected of committing a minor crime undergoes a simplified litigation process with procedural guarantees, such as a fair trial, access to legal counsel and the right of appeal, and are also given less severe punishment, ranging from short-term detention to community service and/or a fine.

The government claims that in July 2003, it piloted a community-based correctional scheme, but CHRD's research shows that, five years on, this has not been implemented. It is time that China delivers on its long overdue promise to start such a scheme and explore alternative punishment and rehabilitation measures in the handling of minor

crimes. For those offenders who must be confined, part of the existing RTL facilities could be converted into prisons and criminals currently serving short sentences, such as those punished with less than three years of imprisonment, could also be moved to these prisons for detention.

▼ Recommendations to the Chinese Government

- The NPCSC should immediately abolish the RTL system.
- Any punishment involving the deprivation of liberty must be decided by a judicial system with guarantees for due process.
- The NPC should devise a new and coherent system to punish minor crimes. Such a system should be consistent with the Criminal Law so that the severity of punishment is proportional to the gravity of the crime. Below are some of our suggestions:
 - Crimes deemed serious enough to be punished with deprivation of liberty of more than three years could be subsumed under the Criminal Law. Minor crimes, including those punished with deprivation of liberty of less than three years should be tried using simplified proceedings.
 - The legislature should explore alternative means of punishment for minor crimes, such as community service and mandatory training.
 - Individuals currently detained in RTL camps should be given fair and public hearings by competent, independent and impartial tribunals.
 - After the tribunal has determined that a person has not committed a crime as defined by the Criminal Law, they should be immediately released.
 - If the person is found guilty, they should be given appropriate punishment as outlined in the Criminal Law. However, if a lighter penalty is specified in the new scheme for minor crimes, the individual should benefit accordingly, as stated in Article 15(1) of the ICCPR.
 - Individuals who are arbitrarily detained have a right to complain and seek compensation.
- The government should convert the current RTL camps into detention facilities for minor criminals, defined as those in the proposed scheme for minor crimes outlined above. However, it must ensure that detainees in these facilities are treated humanely and their rights respected in accordance with the UN Standard Minimum Rules for the Treatment of Prisoners. Specifically, detainees should be:
 - Allowed to labor in a safe working environment, with reasonable work hours and compensation;
 - Held in a facility free from violence and mistreatment; and
 - Given adequate access to medical treatment.
- Hold guards and their supervisors at detention facilities responsible for beatings and other mistreatment to

which detainees under their supervision are subjected, whether such treatment is inflicted by officials, other detainees or prisoners.

- Individuals should not be punished for exercising internationally-recognized rights, such as expressing a personal opinion, defending human rights, or practicing a religion.

- ¹ China's National Report to the Human Rights Council Working Group on Universal Periodic Review, for its Fourth session, Geneva, 2-13 February 2009, A/HRC/WG.6/4/CHN/1, December 5, 2008.
- ² The Laogai Research Foundation, *Laogai Handbook 2007-2008*, <http://www.laogai.org/news2/book/handbook2008-all.pdf>.
- ³ Central Committee of the Chinese Communist Party (CCCCP), "Directives For the Employment and Participation in Labor and Production of Landowners In Areas of Completed Land Reform" (中共中央对土地改革业已完成地区的地主参加劳动生产及就业问题的指示), 23 April 1951.
- ⁴ CCCCCP, "Directive for a Complete Purge of Hidden Counter-revolutionaries" (关于彻底肃清暗藏反革命分子的指示), 25 August 25, 1955.
- ⁵ 劳动改造
- ⁶ CCCCCP, "Directives Related To RTL Institutions That All Provinces And Cities Should Immediately Prepare and Organize" (关于各省、市应立即筹办劳动教养机构的指示), January 10, 1956.
- ⁷ State Council, "Supplementary Regulations Regarding Re-education through Labor" (关于劳动教养问题的补充规定), 29 November 29, 1979.
- ⁸ Ministry of Public Security, "Trial Methods for Implementation of RTL" (劳动教养试行办法), January 1982.
- ⁹ State Council, "Decision of the State Council Regarding the Question of Re-education through Labor" (国务院关于劳动教养问题的决定), 1957.
- ¹⁰ 强制劳动
- ¹¹ 收容审查
- ¹² 流窜作案
- ¹³ General Political Department of the People's Liberation Army and the Ministry of Public Security, "Notice On Some Issues Related to The Military Implementing The State Council's Methods of Implementation of RTL" (关于军队执行国务院〈劳动教养试行办法〉几个问题的通知), 1982.
- ¹⁴ Ministry of Public Security and the Ministry of Justice, "Notice on the Problem of RTL for Prostitution" (关于对卖淫嫖宿人员收容劳动教养问题的通知), 1987.
- ¹⁵ People's Republic of China Legislative Law (中华人民共和国立法法).
- ¹⁶ Other Chinese scholars have made similar arguments that the three documents that provide the basis of RTL are not national laws. See for example, "Reassessing RTL," Veron Mei-ying Hung, *China Rights Forum*, Vol.35, No.2, 2003, p.37; "Abolition of the RTL system: A Proposal to CCP Politburo, National People's Congress

- and State Council,” Hu Xingdou, November 9, 2003; “Reform of China’s RTL System,” Liu Renwen, the Brookings Institution, January 25, 2005
- ¹⁷ 劳动教养管理委员会
- ¹⁸ Ministry of Public Security and Ministry of Justice, “Notice On RTL And The Nullification Of Inmates’ City Residence” (关于劳动教养和注销劳动教养人员城市户口的通知), effective since 1984.
- ¹⁹ The transfer of authority by the aforementioned Notice is problematic. The Supplementary Decision is an administrative regulation approved by the NPCSC whereas the Notice is a departmental document. For a government document lower down in the legal hierarchy to modify provisions specified by one higher in the hierarchy is in contradiction with the usual legal order.
- ²⁰ Ministry of Justice, “The Approval of the Right to Approve the Reduction and Extension of Detention Period for RTL detainees” (关于对劳教人员减延期审批权的批复), 28 February 1991.
- ²¹ Section 1: Types of Punishment, Criminal Law of the People’s Republic of China.
- ²² 行政复议法
- ²³ According to the Administrative reconsideration Law and the Ministry of Public Security’s “Opinions of PSB On Several Issues Concerning Implementation Of The Administrative Reconsideration Law” (关于公安机关贯彻执行〈行政复议法〉若干问题的意见).
- ²⁴ 行政诉讼法
- ²⁵ Commission on Human Rights, “Report submitted by the Working Group on Arbitrary Detention Addendum Plus Visit to the People’s Republic of China,” E/CN.4/1998/44/Add.2, December 22, 1997.
- ²⁶ “Resassessing Re-education through Labor,” Veron Meiying Hung, *China Rights Forum*, Vol. 35, No. 2, 2003.
- ²⁷ 人民检察院劳教检察工作办法
- ²⁸ Civil Rights and Livelihood Watch, “Li Guohong Exposes the Poor Working Conditions that Lead to Serious Injuries in RTL Camps” (李国宏劳教所内披露劳动条件恶劣致人严重受伤), March 13, 2008, http://www.crd-net.org/Article/Class18/liguohong/200803/20080313100359_8010.html
- ²⁹ 创收
- ³⁰ Hu Shuzhen, “Complaints and Allegations against Yichuan RTL Camp for Women by a Former Detainee Who Was Sent to RTL due to Petitioning” (一个上访被劳教者对银川女子劳教所的控诉), 2 May 2008, http://www.crd-net.org/Article/Class53/200802/20080205224213_7493.html
- ³¹ In October 2007, the authors conducted a survey of 3,328 petitioners from all over China in areas frequented by petitioners in Beijing.
- ³² The document is entitled “Regulations Regarding the Investigation of Responsibilities in the Implementation of the Work of Letters and Visits” (关于实行信访工作责任追究的若干规定).
- ³³ A number of changes may have triggered greater concern by members of civil society about the legality of RTL: legal reforms in recent years might have made more people aware of the system’s illegality; international pressure for China to comply with its international treaty obligations; international human rights groups’ criticisms of the system filtered through Chinese consciousness; economic transition bringing more rural migrants to cities, and in the process the police putting an increasing number of these migrants-turned-petty criminals or migrants deemed guilty of “disorderly conduct” in RTL camps during efforts to clean up city

streets and maintain “public order.” The abolition of “Custody and Repatriation” camps (*shourong qiansong*) in 2003 has, ironically, meant that police are sending more people to RTL, having lost the means to arbitrarily detain whoever they consider “undesirables.” This increased use of RTL may have alarmed many legal scholars and public intellectuals as well as international monitoring agencies and NGOs.

³⁴ 违法行为矫治法草案