

# **Gulags of Tibet**



**Dedicated to those who  
Labored and starved,  
Suffered and endured,  
And those who died,  
Hidden from the world.**

**And to those who  
Risked all,  
Sacrificed all,  
Lost all,  
So the world could know.**



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# I. Introduction

On 15 November 2013, the PRC released the Third Plenum Decision, which, among other things, committed the PRC to abolishing Re-education Through Labor (RTL). A month and a half later, the Standing Committee for the National People's Congress officially abolished RTL. It remains to be seen whether RTL the abuses associated with RTL will be abolished or if the People's Republic of China (PRC) will abolish RTL in name only.

In 2012, 60,000<sup>1</sup>-250,000<sup>2</sup> people labored in the 320<sup>3</sup>-350<sup>4</sup> Re-education Through Labor (RTL) facilities throughout the PRC. These numbers reflect a broad range of estimates because the PRC stopped releasing annual data on the number of people sent to RTL 1995.<sup>5</sup> These people range from political prisoners, practitioners of prohibited religions such as Falun Gong, and petitioners, to drug addicts and petty criminals.<sup>6</sup> Even though their punishment is for "minor" offenses that do not merit a criminal punishment, they can spend up to four years in one of the largest forced labor systems in the world without ever receiving an inde-

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1 CHRD, "In the Name of "Stability": 2012 Annual Report on the Situation of Human Rights Defenders in China", Chinese Human Rights Defenders, March 2013 at 17.

2 United States Commission on International Religious Freedom, 2013 Annual Report, Covering 31 Jan. 2012 to 31 Jan 2013, at 38 *available at*: [http://www.uscirf.gov/images/2013%20USCIRF%20Annual%20Report%20\(2\).pdf](http://www.uscirf.gov/images/2013%20USCIRF%20Annual%20Report%20(2).pdf).

3 CHRD, "In the Name of "Stability": 2012 Annual Report on the Situation of Human Rights Defenders in China," Chinese Human Rights Defenders, March 2013 at 17.

4 Congressional Executive Commission on China, "Prospects for Reforming China's Reeducation Through Labor System," CECC at 2, 15 May 2013, *available at*: [http://www.cecc.gov/pages/virtualAcad/RTL%20Issue%20Paper%20Final%20\(May%208\).pdf](http://www.cecc.gov/pages/virtualAcad/RTL%20Issue%20Paper%20Final%20(May%208).pdf).

5 "Reeducation Through Labor (RTL): A Summary of Regulatory Issues and Concerns," *Human Rights in China*, Feb. 2001, *available at*: <http://www.hrichina.org/en/file/3009/download?token=cRA8WrJfTntFbVeWWOnKnVxnjq3LqDeUmNoNtqk3xvBc>.

6 *See Regulations on the Handling of Reeducation Through Labor Cases by Public Security Organs* (April 12, 2002, MPS Notice [2002] No. 21) (translated by *Dui Hua Research*) *available at*: <http://www.duihuaresearch.org/2012/10/rtl-regulations-police-authority-in.html>; "Four Tibetan Monks Released from Labor Camp," *TCHRD*, 13 Aug. 2013, *available at*: <http://www.tchrd.org/2013/08/four-tibetan-monks-released-from-chinese-labour-camps/>.

pendent hearing.<sup>7</sup>

The Third Plenum Decision was labeled by both the Chinese and international media as a major reform document. The actual abolition of RTL received less attention and did not address any of the concerns regarding whether RTL would only be abolished in name only. Until the abuses associated with RTL are stopped there is nothing to distinguish the abolition of RTL from other reform measures that have failed to live up to expectations. These reforms have failed because the PRC has been both unable and unwilling to seriously implement the promised reforms. Previous efforts to reform the PRC criminal justice system were undermined by the Ministry of Public Security (MPS) circumventing the criminal justice system. Other proposed reforms, such as amendments to the PRC's Constitution cannot be enforced by courts in the PRC and seem to be designed to placate human rights advocates without implementing any changes. The test of the PRC's commitment to reform and human rights is not its promise to abolish RTL but to actually abolish the human rights abuses that are linked with RTL.

Since its inception in the 1950s, over 4 million people have been sent to RTL.<sup>8</sup> Originally, RTL was modeled after the gulag system in the Soviet Union.<sup>9</sup> It was designed to facilitate purges of people who were suspected of opposing the newly installed Chinese Communist Party (CCP).<sup>10</sup> Over the next 60 years, RTL has adapted to address the perceived threat of the

7 Andrew Jacobs, "Opposition to Labor Camp Widens in China," *The New York Times*, 14 Dec. 2012, available at: [http://www.nytimes.com/2012/12/15/world/asia/opposition-to-labor-camps-widens-in-china.html?pagewanted=all&\\_r=1&&page-wanted=print](http://www.nytimes.com/2012/12/15/world/asia/opposition-to-labor-camps-widens-in-china.html?pagewanted=all&_r=1&&page-wanted=print).

8 See Congressional Executive Commission on China, "Prospects for Reforming China's Reeducation Through Labor System," CECC at 4, 15 May 2013, available at: [http://www.cecc.gov/pages/virtualAcad/RTL%20Issue%20Paper%20Final%20\(May%208\).pdf](http://www.cecc.gov/pages/virtualAcad/RTL%20Issue%20Paper%20Final%20(May%208).pdf); see also Veron Mei-Ying Hung, "Improving Human Rights in China: Should Re-education Through Labor Be Abolished," 41 *Columbia J. Transnat'l L.* 303 (2003) at 304.

9 Nicholas Bequelin, "Chinese Reeducation Revisited," published in *International Herald Tribune* (available at: [http://www.nytimes.com/2013/01/30/opinion/global/re-education-revisited.html?\\_r=0](http://www.nytimes.com/2013/01/30/opinion/global/re-education-revisited.html?_r=0)) accessed through HRW: <http://www.hrw.org/news/2013/01/30/china-re-education-revisited>.

10 Caijing.com.cn, "Re-education Through Labor Reform Hits Critical Point," *Caijing*, 28 Aug. 2012, available at: <http://english.caijing.com.cn/2012-08-28/112087206.html>.



moment. Despite its many uses the fundamental aspects of RTL have not changed. At its core, RTL is an extrajudicial system of forced labor. At times, various actors within the PRC have been involved in sentencing, detention, or review. However, the MPS has maintained unchallenged authority over RTL.

The MPS has used RTL to circumvent the due process protections in the criminal system and detain people for exercising their legally protected rights.<sup>11</sup> Even though such uses of the RTL system are ostensibly prohibited, the lack of meaningful, independent oversight allows these abuses to continue unchecked.<sup>12</sup> The MPS's success at circumventing laws that restrict their use of RTL has created a crescendo of criticism. Both within the PRC and internationally, RTL is criticized for violating Chinese and international law. There is also growing recognition that the abuses of RTL that exceed the scope and intent of the system are not isolated incidents. They are an inevitable consequence of a system that effectively gives the MPS unchecked authority.

In response to criticism of RTL and the unchecked power it gives to the MPS, some superficial reforms have been implemented. These reforms were passed despite the MPS's resistance<sup>13</sup> and claims that abolishing RTL would threaten the CCP's

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11 Fu Hualing, "Re-education Through Labor in Historical Perspective," (2005) *China Quarterly* 811 at 826 accessed through Social Science Research Network Legal Scholarship Network Legal Studies Research Paper Series, *available at*: <http://www.ssrn.com/link/U-Hong-Kong-LEG.html>; Margret K. Lewis, Written Statement for Congressional-Executive Commission on China Roundtable on "The End of Reeducation Through Labor? Recent Developments and Prospects for Reform" 9 May 2013 at 1, *available at*: <http://www.cecc.gov/pages/roundtables/general/roundtable3/CECC%20Roundtable%20-%20RTL%20Roundtable%20-%20Margaret%20Lewis%20Written%20Statement.pdf>.

12 *See* Fu Hualing, "Re-education Through Labor in Historical Perspective," (2005) *China Quarterly* 811 at 827 accessed through Social Science Research Network Legal Scholarship Network Legal Studies Research Paper Series, *available at*: <http://www.ssrn.com/link/U-Hong-Kong-LEG.html>.

13 Margret K. Lewis, "Interview with Prof. Margret K. Lewis," *China Law & Policy*, 6 Sept. 2012 at 05:01, *available at*: <http://chinalawandpolicy.com/wp-content/uploads/2012/09/Maggie-Lewis-Interview-Transcript.pdf>; Erik Eckholm, "China Hones Old Tool: 'Re-educating' Unruly," *The New York Times*, 27 Feb. 2001, *available at*: <http://www.nytimes.com/2001/02/27/world/china-hones-old-tool-re-educating-unruly.html?pagewanted=all&src=pm>.

single party rule and cause social chaos.<sup>14</sup> However, the reforms only addressed peripheral issues and left the fundamental aspects of RTL unchanged. The MPS has also preempted reform attempts by announcing its own reforms of RTL. The MPS's reforms were designed to make the minimum level of reform to satisfy critics of RTL without the MPS ceding any power or changing the defining characteristics of RTL.

The failure of previous reform measures to address the human rights abuses that define RTL creates skepticism what the abolition of RTL will actually entail. For the abolition of RTL to be meaningful it must fully abolish RTL in name and function. Since the Third Plenum various organizations have alleged that the reform will be cosmetic—simply renaming RTL facilities and expanding other forms of arbitrary detention—rather than substantive.<sup>15</sup> The PRC has attempted to refute these claims,<sup>16</sup> but until transparent action is taken that abolishes RTL skepticism will remain. Abolishing RTL in all its forms requires stopping the human rights abuses, such as arbitrary detention, forced labor, and torture, that are inherent in RTL and affect everyone in the PRC.

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14 Andrew Jacobs, "Opposition to Labor Camp Widens in China," *The New York Times*, 14 Dec. 2012, available at: [http://www.nytimes.com/2012/12/15/world/asia/opposition-to-labor-camps-widens-in-china.html?pagewanted=all&\\_r=1&page-wanted=print](http://www.nytimes.com/2012/12/15/world/asia/opposition-to-labor-camps-widens-in-china.html?pagewanted=all&_r=1&page-wanted=print).

15 See eg, "Community Correction Expands as RTL Contracts," *Dui Hua Human Rights Journal*, 19 Dec. 2013, available at: <http://www.duihuahrjournal.org/2013/12/community-correction-expands-as-rtl.html>; "China's 'Re-education Through Labour' camps: Replacing on system of repression with another?," *Amnesty International*, 17 Dec. 2013, available at: <https://www.amnesty.org/en/news/china-s-re-education-through-labour-camps-replacing-one-system-repression-another-2013-12-17>; John Ruwitch, "A Jail by another name – China labour camps now drug detox centres," *Chicago Tribune*, 1 Dec. 2013, available at: [http://articles.chicagotribune.com/2013-12-01/news/sns-rt-china-camps--pix-repeat-20131201\\_1-drug-offenders-labour-law-drug-detox](http://articles.chicagotribune.com/2013-12-01/news/sns-rt-china-camps--pix-repeat-20131201_1-drug-offenders-labour-law-drug-detox).

16 See eg, Sui-Lee Wee, "'Community corrections' system will not replace labour camps in China," *Chicago Tribune*, 29 Nov. 2013, available at: [http://articles.chicagotribune.com/2013-11-29/news/sns-rt-china-reformlegal-20131128\\_1-labour-camps-human-rights-watch-death-penalty-system](http://articles.chicagotribune.com/2013-11-29/news/sns-rt-china-reformlegal-20131128_1-labour-camps-human-rights-watch-death-penalty-system); "Beijing disputes Amnesty claims China's Labour camps only 'rebranded,'" *Australia Network News*, 18 Dec. 2013, available at: <http://www.abc.net.au/news/2013-12-18/an-amnesty-china-black-jails/5163070>.

Recent victims of RTL include Tibetan monks,<sup>17</sup> judges,<sup>18</sup> petitioners,<sup>19</sup> women’s rights activists,<sup>20</sup> worker’s rights activists,<sup>21</sup> business executives,<sup>22</sup> people calling for transparency and political reforms,<sup>23</sup> artists,<sup>24</sup> and Falun Gong adherents.<sup>25</sup> All of these people are denied due process, tortured, and sent to labor

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17 “Three Tibetan monks sentenced to ‘Re-education Through Labor’, China tries to dissuade Kirti monks with money,” *Tibetan Center for Human Rights and Democracy*, 19 Sept. 2011, available at: <http://www.tchrd.org/2011/09/three-tibetan-monks-sentenced-to-re-education-through-labour-china-tries-to-dissuade-kirti-monks-with-money/>.

18 Andrew Jacobs, “Opposition to Labor Camp Widens in China,” *The New York Times*, 14 Dec. 2012 (Guo Xuehong), available at: [http://www.nytimes.com/2012/12/15/world/asia/opposition-to-labor-camps-widens-in-china.html?pagewanted=all&\\_r=1&&pagewanted=print](http://www.nytimes.com/2012/12/15/world/asia/opposition-to-labor-camps-widens-in-china.html?pagewanted=all&_r=1&&pagewanted=print).

19 Congressional Executive Commission on China, “Prospects for Reforming China’s Reeducation Through Labor System,” CECC at 5, 15 May 2013 (Tang Hui), available at: [http://www.cecc.gov/pages/virtualAcad/RTL%20Issue%20Paper%20Final%20\(May%208\).pdf](http://www.cecc.gov/pages/virtualAcad/RTL%20Issue%20Paper%20Final%20(May%208).pdf); Congressional Executive Commission on China, “2012 Annual Report,” 10 Oct. 2012 at 132 (Liu Ruisheng), available at: <http://www.gpo.gov/fdsys/pkg/CHRG-112shrg76190/pdf/CHRG-112shrg76190.pdf>.

20 Amnesty International, 2013 Annual Report: China (Covers Jan. – Dec. 2012) (Mao Hengfeng), available at: <http://www.amnesty.org/en/region/china/report-2013>; Full Report available at: [http://files.amnesty.org/air13/AmnestyInternational\\_Annual-Report2013\\_complete\\_en.pdf](http://files.amnesty.org/air13/AmnestyInternational_Annual-Report2013_complete_en.pdf); “China Human Rights Briefing: Uyghur Man Gets 11 Years for ‘Inciting Splittism; Disappeared Tibetan Scholar May Be Serving 20-Year Sentence, and more,” *Chinese Human Rights Defenders*, 15 Feb. 2013, available at: <http://chrnet.com/2013/02/chr-uyghur-man-gets-11-years-for-incit...etan-scholar-may-be-serving-20-year-sentence-and-more-28-15-2013/>.

21 Erik Eckholm, “China Hones Old Tool: ‘Re-educating’ Unruly,” *The New York Times*, 27 Feb. 2001 (Zhou Guoqiang), available at: <http://www.nytimes.com/2001/02/27/world/china-hones-old-tool-re-educating-unruly.html?pagewanted=all&src=pm>.

22 Andrew Jacobs, “Opposition to Labor Camp Widens in China,” *The New York Times*, 14 Dec. 2012 (Lui Jie), available at: [http://www.nytimes.com/2012/12/15/world/asia/opposition-to-labor-camps-widens-in-china.html?pagewanted=all&\\_r=1&&pagewanted=print](http://www.nytimes.com/2012/12/15/world/asia/opposition-to-labor-camps-widens-in-china.html?pagewanted=all&_r=1&&pagewanted=print).

23 CHR, “In the Name of ‘Stability’: 2012 Annual Report on the Situation of Human Rights Defenders in China”, Chinese Human Rights Defenders, March 2013 at 19 (Xiao Yong).

24 International Campaign for Tibet, A ‘Raging Storm’: The Crackdown on Tibetan writers and artists after Tibet’s Spring 2008 Protests, May 2010, at 24 (Tashi Dhondup), available at: [http://www.savetibet.org/wp-content/uploads/2013/05/Raging\\_Storm\\_complete.pdf](http://www.savetibet.org/wp-content/uploads/2013/05/Raging_Storm_complete.pdf); “In the Name of ‘Stability’: 2012 Annual Report on the Situation of Human Rights Defenders in China”, Chinese Human Rights Defenders, March 2013 at 19 (Hua Yong).

25 United States Commission on International Religious Freedom, 2013 Annual Report, Covering 31 Jan. 2012 to 31 Jan 2013, at 38 available at: [http://www.uscirf.gov/images/2013%20USCIRF%20Annual%20Report%20\(2\).pdf](http://www.uscirf.gov/images/2013%20USCIRF%20Annual%20Report%20(2).pdf).

camps on the unilateral authority of the MPS. All of them suffered under a system that must now be abolished.

This report will examine the history and evolution of RTL. It will then analyze the current RTL laws. Next, this report will examine how RTL violates the international prohibitions of arbitrary detention, forced labor, and torture. It will then examine how RTL is used in practice in violation of both Chinese and international legal standards. This report will conclude with recommendations for the PRC, the United Nations, and corporations on how to abolish RTL.

## **II. History**

Until its abolition, the rationale and the reasons for RTL has changed but the system of arbitrary detention, forced labor, and torture, have not. RTL was created in the PRC to function like the gulag system in the Soviet Union and purge people who were not ideologically pure from the new revolutionary government. After the Cultural Revolution in the PRC (1966-1976), RTL became a tool that the Ministry of Public Security (MPS) used to impose order and address increased crime rates. When the PRC introduced reforms to its criminal justice system, RTL took an additional task of allowing the MPS to circumvent due process requirements and evidentiary rules.

Since the PRC introduced reforms to its criminal code in 1996 the MPS has worked to block, mitigate, and circumvent reforms that would erode its control over RTL. Simultaneously, the MPS has used RTL to punish people without due process. Information about the use of RTL has caused a public outcry for the abolition of RTL. Given its history, it is unclear whether the abolition of RTL will meaningfully do away with the system or if RTL will continue to exist under a different name.

## A. Gulags with Chinese Characteristics

The Chinese Revolution that created the People's Republic of China (PRC) is frequently compared with the Russian Revolution that created the Soviet Union.<sup>26</sup> Both were class-based revolutions that caused a rapid transformation in the state and class structures.<sup>27</sup> The two revolutions were relatively contemporaneous and installed governments that had to assert control over a large landmass and diverse population. After the military success of the revolutions the new government still needed to solidify its governmental and ideological control over the new country. Generally, this process is achieved through a reign of terror and virtue where radicals use extreme measures to purge moderates and dissenters from government and society.<sup>28</sup> The gulags were used to accomplish this in the Soviet Union. Joseph Stalin was instrumental in the Russian Revolution in 1917 and discussed tactics with Mao Zedong (毛泽东).<sup>29</sup> Through their discussions and conversations Mao Zedong implemented a system similar to the gulags in the PRC. RTL was based on the Gulags.<sup>30</sup>

The Russian Revolution created the Union of Soviet Socialist Republics (USSR) in November 1917. Before the end of the year Vladimir Lenin, the first Premier of the Soviet Union, demanded the merciless suppression of hooligans, drunkards, and counterrevolutionaries to establish strict revolutionary order.<sup>31</sup>

Summary executions and the use of labor camps were used to

26 See Theda Skocpol, *STATES AND SOCIAL REVOLUTIONS: A COMPARATIVE ANALYSIS OF FRANCE, RUSSIA, AND CHINA*, (1979).

27 See Jack A. Goldstone, "Toward a Fourth Generation of Revolutionary Theory," 4 *Annual Review of Political Science* 139-187 at 140; see also Theda Skocpol, *STATES AND SOCIAL REVOLUTIONS: A COMPARATIVE ANALYSIS OF FRANCE, RUSSIA, AND CHINA*, (1979).

28 See Crain Brinton, *THE ANATOMY OF A REVOLUTION* (1965) 180-81.

29 See Louisa Greve, "The Troubled Periphery," 24 *Journal of Democracy* 73-78 at 76 (2013); see also Cheng Shu-ping, *THE COMMUNIST SYSTEM OF REFORM THROUGH LABOR*, at 3-4(1978).

30 Nicholas Bequelin, "Chinese Reeducation Revisited," *The New York Times*, 29 Jan. 2013, available at: [http://www.nytimes.com/2013/01/30/opinion/global/re-education-revisited.html?\\_r=0](http://www.nytimes.com/2013/01/30/opinion/global/re-education-revisited.html?_r=0).

31 Aleksandr I. Solzhenitsyn, *THE GULAG ARCHIPELAGO 1918-1956: AN EXPERIMENT IN LITERARY INVESTIGATION*, (1973) (Thomas P. Whitney trans.) at 27, citing Lenin, *Sobrannye Sochineniya (Collected Works)*, fifth edition, Vol. 35, p. 68.

solidify the new government's power.<sup>32</sup> The labor camps became known as gulags and were the inspiration for RTL in the PRC.

The Nobel laureate Aleksandr I. Solzhenitsyn made the Russian gulag system of labor camps famous. In *The Gulag Archipelago* Solzhenitsyn described his own and other people's experiences of being sent to the labor camps. The *Cheka*, the Soviet organization charged with investigating counter-revolutionary activities, and its successors had unilateral control over the gulag system of extrajudicial reprisals against counterrevolutionaries.<sup>33</sup> Almost from its inception the scope of the term "counterrevolutionaries" was expanded to include intellectuals, people who committed theft, robbery, assault, bribery, speculation or were "a hindrance to a well-ordered, strict regime."<sup>34</sup> In one case, a man was sentenced to 10 years in the gulags for being the first to stop applauding a tribute to Stalin after 11 minutes.<sup>35</sup>

The unchecked and unregulated nature of the gulags made them arbitrary and brutal. In one example, 30 secondary school teachers were arrested on charges that they tried to burn down the school because they tried to bring in a tree to celebrate the New Year. Of the 30, five were tortured to death before trial and 24 died in the gulags. Only one survived to tell what had happened to them.<sup>36</sup> Usually the people were never given a reason for their arrest.<sup>37</sup> If the accused escaped his relatives would be exiled, tortured, detained to encourage his return, or sent to the gulags in the escapee's place.<sup>38</sup> The use of the gulags in purges created a

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32 See Crane Brinton, *ANATOMY OF REVOLUTION*, at 80 (1965); Cheng Shu-ping, *THE COMMUNIST SYSTEM OF REFORM THROUGH LABOR*, at 3(1978).

33 Aleksandr I. Solzhenitsyn, *THE GULAG ARCHIPELAGO 1918-1956: AN EXPERIMENT IN LITERARY INVESTIGATION*, (1973) (Thomas P. Whitney trans.) at 28.

34 Aleksandr I. Solzhenitsyn, *THE GULAG ARCHIPELAGO 1918-1956: AN EXPERIMENT IN LITERARY INVESTIGATION*, (1973) (Thomas P. Whitney trans.) at 28, 33.

35 Aleksandr I. Solzhenitsyn, *THE GULAG ARCHIPELAGO 1918-1956: AN EXPERIMENT IN LITERARY INVESTIGATION*, (1973) (Thomas P. Whitney trans.) at 69-70.

36 Aleksandr I. Solzhenitsyn, *THE GULAG ARCHIPELAGO 1918-1956: AN EXPERIMENT IN LITERARY INVESTIGATION*, (1973) (Thomas P. Whitney trans.) at 73, Footnote 37.

37 Aleksandr I. Solzhenitsyn, *THE GULAG ARCHIPELAGO 1918-1956: AN EXPERIMENT IN LITERARY INVESTIGATION*, (1973) (Thomas P. Whitney trans.) at 18.

38 Aleksandr I. Solzhenitsyn, *THE GULAG ARCHIPELAGO 1918-1956: AN EXPERIMENT IN LITERARY INVESTIGATION*, (1973) (Thomas P. Whitney trans.) at 8, 12, 33, 54.

sense of permanent revolution in the Soviet Union, where purges and crackdowns on dissent continued decades after the Russian Revolution.<sup>39</sup> The Soviet gulag system ended in the late 1980s but its legacy still exists today.<sup>40</sup>

The gulag system and Soviet styles of torture spread throughout the communist world including the PRC.<sup>41</sup> The PRC's system of RTL is based on the Soviet gulag system.<sup>42</sup> Originally, like the gulags, RTL was designed to be part of the PRC's effort to spread the revolution across the PRC by eradicating counter-revolutionaries and rightists.<sup>43</sup>

From 1949 to 1953 the PRC, like the Soviet Union before it, worked to strengthen the CCP's authority over the PRC. This included expanding its governmental control into Tibet, which remained independent while the Nationalists, Communists, and, briefly, the Japanese fought for control over the PRC.<sup>44</sup> The PRC used military force to expand its territorial and ideological influence into Tibet. Domestically, the PRC used tactics similar the Soviet Union's. Between 1949 and 1953, 800,000 people in the PRC, not including Tibet, were killed and many more were sent to labor camps.<sup>45</sup> The labor camps existed without statutory authorization until 1955 when they became RTL and reform through labor, the criminal equivalent of RTL.<sup>46</sup> Just as the use of the

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39 Crain Brinton, *THE ANATOMY OF A REVOLUTION* (1965) 225-26.

40 See Ann Applebaum, *GULAG: A HISTORY*, (2003) at 3.

41 Cheng Shu-ping, *THE COMMUNIST SYSTEM OF REFORM THROUGH LABOR*, at 4(1978).

42 Nicholas Bequelin, "Chinese Reeducation Revisited," *The New York Times*, 29 Jan. 2013, available at: [http://www.nytimes.com/2013/01/30/opinion/global/re-education-revisited.html?\\_r=0](http://www.nytimes.com/2013/01/30/opinion/global/re-education-revisited.html?_r=0).

43 Caijing.com.cn, "Re-education Through Labor Reform Hits Critical Point," *Caijing*, 28 Aug. 2012, available at: <http://english.caijing.com.cn/2012-08-28/112087206.html>; Joshua Rosenzweig, "The End of China's Extra-Legal Gulag?," *The Wall Street Journal*, 13 Mar. 2013 available at: <http://online.wsj.com/article/SB10001424127887323415304578370013183616152.html>.

44 Michael C. van Walt, "The Legal Status of Tibet," *Free Tibet*, accessed on: 18 Sept. 2013, available at: <http://www.freetibet.org/about/legal-status-tibet>.

45 Albert HY Chen, *AN INTRODUCTION TO THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA* (3rd ed. 2004) page 25-26

46 Human Rights in China, "Reeducation Through Labour (RTL): A Summary of Regulatory Issues and Concerns" (Feb. 2001) at 2, available at: <http://hrichina.org/>



gulags for purges decades after the revolution created a sense of permanent revolution, until Mao Zedong's death in 1976, RTL was predominately for victims of purges.<sup>47</sup>

The first purge to use RTL in function, though not yet in name, was in 1955. In 1955 a CCP Directive (1955 Directive) said that people who could not be convicted or sentenced for a crime but also could not return to a government position would be subject to "quasi-imprisonment."<sup>48</sup> "Quasi-imprisonment" was justified as a method of fighting unemployment. Because the people could not return their jobs in the government the State would gather them together and give them work.<sup>49</sup> Despite this rationalization, in practice "quasi-imprisonment" and imprisonment only differed in name.<sup>50</sup> The 1955 Directive was accompanied by a campaign to find and remove counterrevolutionaries in government departments.<sup>51</sup> Following the campaign the 8th National People's Congress declared that socialism had been established in the PRC.<sup>52</sup> Accordingly, the 8th People's Congress shifted the policy focus to economic growth, cultural develop-

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sites/default/files/oldsite/PDFs/Reports/HRIC-RTL.pdf.

47 Nicholas Bequelin, "Chinese Reeducation Revisited," *The New York Times*, 29 Jan. 2013, available at: [http://www.nytimes.com/2013/01/30/opinion/global/re-education-revisited.html?\\_r=0](http://www.nytimes.com/2013/01/30/opinion/global/re-education-revisited.html?_r=0).

48 Fu Hualing, "Re-education Through Labor in Historical Perspective," (2005) China Quarterly 811 at 813 accessed through Social Science Research Network Legal Scholarship Network Legal Studies Research Paper Series, available at: <http://www.ssrn.com/link/U-Hong-Kong-LEG.html>.

49 Fu Hualing, "Re-education Through Labor in Historical Perspective," (2005) China Quarterly 811 at 813 accessed through Social Science Research Network Legal Scholarship Network Legal Studies Research Paper Series, available at: <http://www.ssrn.com/link/U-Hong-Kong-LEG.html>, citing: Chinese Communist Party Central Committee, "Guanyu chedi suqing ancang de fangeming fenzi de zhishi" ("Directive on the thorough elimination of hidden counterrevolutionaries") (25 August 1955).

50 Fu Hualing, "Re-education Through Labor in Historical Perspective," (2005) China Quarterly 811 at 813 accessed through Social Science Research Network Legal Scholarship Network Legal Studies Research Paper Series, available at: <http://www.ssrn.com/link/U-Hong-Kong-LEG.html>.

51 Fu Hualing, "Re-education Through Labor in Historical Perspective," (2005) China Quarterly 811 at 811 accessed through Social Science Research Network Legal Scholarship Network Legal Studies Research Paper Series, available at: <http://www.ssrn.com/link/U-Hong-Kong-LEG.html>.

52 Albert HY Chen, AN INTRODUCTION TO THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA (3rd ed. 2004) page 29.



ment, and codifying the legal system.<sup>53</sup>

Though the 1955 Directive provided guidance on the use of “quasi-imprisonment,” it was not formally authorized by a national decision.<sup>54</sup> On 1 August 1957 the State Council’s Decision Regarding Reeducation Through Labor (1957 Decision) went into effect.<sup>55</sup> It placed the direction and management of local RTL bureaus under the control of the central government’s departments of civil affairs and public security.<sup>56</sup> In practice, this meant that the MPS was in charge of implementing the decision.<sup>57</sup>

As with the gulags, the scope of RTL expanded to include more offenses and people.<sup>58</sup> The 1955 Directive on RTL targeted only minor counterrevolutionaries and rightists who did not merit a criminal punishment.<sup>59</sup> The 1957 Decision expanded the offenses to include people who do not engage in honest pursuits, such as hooliganism, larceny, or fraud, but should not be sent to prison,<sup>60</sup> people who refuse to mend their ways and not work well either in government organizations or doing manual labor or obstruct public officials from doing their duties were made eligible

53 Albert HY Chen, *AN INTRODUCTION TO THE LEGAL SYSTEM OF THE PEOPLE’S REPUBLIC OF CHINA* (3rd ed. 2004) page 29.

54 Human Rights in China, “Reeducation Through Labour (RTL): A Summary of Regulatory Issues and Concerns” (Feb. 2001) at 2, *available at*: <http://hrichina.org/sites/default/files/oldsite/PDFs/Reports/HRIC-RTL.pdf>.

55 Albert HY Chen, *An introduction to the Legal System of the People’s Republic of China* (3rd ed. 2004) page 215.

56 Veron Mei-Ying Hung, “Improving Human Rights in China: Should Re-education Through Labor Be Abolished,” 41 *Columbia J. Transnat’l L.* 303 (2003) at 313.

57 Human Rights in China, “Reeducation Through Labour (RTL): A Summary of Regulatory Issues and Concerns” (Feb. 2001) at 2, *available at*: <http://hrichina.org/sites/default/files/oldsite/PDFs/Reports/HRIC-RTL.pdf>.

58 Fu Hualing, “Re-education Through Labor in Historical Perspective,” (2005) *China Quarterly* 811 at 814 accessed through Social Science Research Network Legal Scholarship Network Legal Studies Research Paper Series, *available at*: <http://www.ssrn.com/link/U-Hong-Kong-LEG.html>.

59 Joshua Rosenzweig, “The End of China’s Extra-Legal Gulag?” *The Wall Street Journal*, 13 Mar. 2013 *available at*: <http://online.wsj.com/article/SB10001424127887323415304578370013183616152.html>

60 Veron Mei-Ying Hung, “Improving Human Rights in China: Should Re-education Through Labor Be Abolished,” 41 *Columbia J. Transnat’l L.* 303 (2003) at 312, *quoting* Guowuyuan Guanyu Laodong Jiaoyang Wenti De Jueding [Decision of the State Council Regarding the Question of Re-Education Through Labor] at par.1(1) (1957).

for RTL as well.<sup>61</sup>

The addition of new groups of people eligible for RTL demonstrated a new purpose for RTL. Before the 1957 Declaration RTL was designed to punish counterrevolutionaries. After the 1957 Declaration RTL was refocused to create a disciplined workforce.<sup>62</sup> Ostensibly, RTL was no longer a form of imprisonment but an opportunity for self-betterment. The decision of who would go to RTL was made not only by the Public Security Bureau (PSB) but also other government organizations and people.<sup>63</sup> Once somebody was sent to an RTL camp there was no limit on how long they could be kept there.<sup>64</sup> Some people spent more than 20 years at RTL camps.<sup>65</sup>

The 1957 Decision was immediately followed by the Anti-Rightist Campaign, one of the largest political campaigns in the history of the PRC.<sup>66</sup> The Anti-Rightist Campaign was a political campaign designed to remove “rightists” from governments and

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61 Veron Mei-Ying Hung, “Improving Human Rights in China: Should Re-education Through Labor Be Abolished,” 41 *Columbia J. Transnat’l L.* 303 (2003) at 312-13, *quoting* Guowuyuan Guanyu Laodong Jiaoyang Wenti De Jueding [Decision of the State Council Regarding the Question of Re-Education Through Labor] at pars. 1(3). 1(4) (1957).

62 Fu Hualing, “Re-education Through Labor in Historical Perspective,” (2005) *China Quarterly* 811 at 814-15 accessed through Social Science Research Network Legal Scholarship Network Legal Studies Research Paper Series, *available at*: <http://www.ssrn.com/link/U-Hong-Kong-LEG.html>.

63 Veron Mei-Ying Hung, “Improving Human Rights in China: Should Re-education Through Labor Be Abolished,” 41 *Columbia J. Transnat’l L.* 303 (2003) at 313, *citing* Guowuyuan Guanyu Laodong Jiaoyang Wenti De Jueding [Decision of the State Council Regarding the Question of Re-Education Through Labor] at par. 3 (1957).

64 Veron Mei-Ying Hung, “Improving Human Rights in China: Should Re-education Through Labor Be Abolished,” 41 *Columbia J. Transnat’l L.* 303 (2003) at 313; Fu Hualing, “Re-education Through Labor in Historical Perspective,” (2005) *China Quarterly* 811 at 816 accessed through Social Science Research Network Legal Scholarship Network Legal Studies Research Paper Series, *available at*: <http://www.ssrn.com/link/U-Hong-Kong-LEG.html>.

65 Human Rights in China, “Reeducation Through Labour (RTL): A Summary of Regulatory Issues and Concerns” (Feb. 2001) at 2, *available at*: <http://hrichina.org/sites/default/files/oldsite/PDFs/Reports/HRIC-RTL.pdf>.

66 Fu Hualing, “Re-education Through Labor in Historical Perspective,” (2005) *China Quarterly* 811 at 813-14, accessed through Social Science Research Network Legal Scholarship Network Legal Studies Research Paper Series, *available at*: <http://www.ssrn.com/link/U-Hong-Kong-LEG.html>.

academia. Launching the campaign undermined the declaration by the 8th National People's Congress that socialism had been established in 1955. That another larger purge was launched only two years later demonstrates how the sense of perpetual revolution that had existed in the Soviet Union also existed in the PRC. It also demonstrated that despite focusing on self-betterment and creating a disciplined workforce, RTL could still be used to punish people for their political views. This remained the case for almost 20 years. Until Mao's death in 1976, the majority of the people sent to RTL were political prisoners.<sup>67</sup>

The Anti-Rightist Campaign was not as violent as previous purges. The most severe punishment was the newly created RTL.<sup>68</sup> By the end of the campaign, more than 500,000 people were purged from the government and academic institutions.<sup>69</sup> The Anti-Rightists Campaign mostly targeted intellectuals but also targeted lawyers, jurists, and judges for their bourgeois ideology.<sup>70</sup> This campaign was based on the idea that the law was a political tool to suppress class enemies, counterrevolutionaries, and criminals.<sup>71</sup> Removing the traditional separation between law and undermined the foundational underpinnings the rule of law. Instead of the political branches of government being accountable to legal standards and the courts that enforce them, the laws and judiciary were accountable to the political branches. Accordingly, a new policy that violates the law would supersede the law.<sup>72</sup>

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67 Nicholas Bequelin, "Chinese Reeducation Revisited," *The New York Times*, 29 Jan. 2013, available at: [http://www.nytimes.com/2013/01/30/opinion/global/re-education-revisited.html?\\_r=0](http://www.nytimes.com/2013/01/30/opinion/global/re-education-revisited.html?_r=0).

68 Fu Hualing, "Re-education Through Labor in Historical Perspective," (2005) China Quarterly 811 at 815 accessed through Social Science Research Network Legal Scholarship Network Legal Studies Research Paper Series, available at: <http://www.ssrn.com/link/U-Hong-Kong-LEG.html>.

69 Fu Hualing, "Re-education Through Labor in Historical Perspective," (2005) China Quarterly 811 at 815 accessed through Social Science Research Network Legal Scholarship Network Legal Studies Research Paper Series, available at: <http://www.ssrn.com/link/U-Hong-Kong-LEG.html>; Albert HY Chen, AN INTRODUCTION TO THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA (3rd ed. 2004) page 30.

70 Albert HY Chen, AN INTRODUCTION TO THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA (3rd ed. 2004) page 30.

71 Albert HY Chen, AN INTRODUCTION TO THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA (3rd ed. 2004) page 235.

72 Albert HY Chen, AN INTRODUCTION TO THE LEGAL SYSTEM OF THE PEOPLE'S

In 1957, people who were encouraged to criticize the CCP and speak about human rights during the Hundred Flowers Movement before the Anti-Rightist Campaign, were then labeled as reactionary, antisocialist rightists during the campaign.<sup>73</sup> A common criticism was that the tactics employed during the purges were illegal and that the law should be independent from political influence.<sup>74</sup> Judges and lawyers that implemented these ideas and used the law to block political goals were labeled bourgeois and counterrevolutionary and sent to the countryside to learn from the peasants.<sup>75</sup> Basic judicial principles that ensure the impartial and fair implementation of the rule of law were labeled as bourgeois, including equality before the law and the principle that there cannot be a punishment without a law specifically authorizing it.<sup>76</sup>

The repercussions of the Anti-Rightists campaign lasted into and beyond the early 1960s.<sup>77</sup> Law schools started teaching politics instead of law<sup>78</sup> and law journals stopped publishing.<sup>79</sup> The Ministry of Justice was dismantled and some courts merged with the local police and procuratorates.<sup>80</sup> The procuratorates lost their independence and many of their responsibilities were given to the police or the MPS.<sup>81</sup> Even today there is still not a division between the legal system and politics. The Chinese Consti-

REPUBLIC OF CHINA (3rd ed. 2004) page 235.

73 Marina Svensson, *DEBATING HUMAN RIGHTS IN CHINA: A CONCEPTUAL AND POLITICAL HISTORY* (2002) 221-22.

74 Randall Peerenboom, *CHINA'S LONG MARCH TOWARD RULE OF LAW*, (2002) at 45.

75 Albert HY Chen, *AN INTRODUCTION TO THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA* (3rd ed. 2004) page 30; Randall Peerenboom, *CHINA'S LONG MARCH TOWARD RULE OF LAW*, (2002) at 45.

76 Albert HY Chen, *AN INTRODUCTION TO THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA* (3rd ed. 2004) page 30.

77 Albert HY Chen, *AN INTRODUCTION TO THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA* (3rd ed. 2004) page 30.

78 Albert HY Chen, *AN INTRODUCTION TO THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA* (3rd ed. 2004) page 30.

79 Randall Peerenboom, *CHINA'S LONG MARCH TOWARD RULE OF LAW*, (2002) at 45.

80 Albert HY Chen, *AN INTRODUCTION TO THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA* (3rd ed. 2004) page 30.

81 Randall Peerenboom, *CHINA'S LONG MARCH TOWARD RULE OF LAW*, (2002) at 45.

tution gives the National People's Congress Standing Committee the power to interpret the Constitution.<sup>82</sup> Relying on a case from 1955, Chinese courts are loath to apply the Constitution.<sup>83</sup>

RTL expanded during this period. Questions about the rule of law, abuse of power, or principles of justice that may have undermined RTL could get the questioner sent to RTL. Without these questions the arbitrary scope and application of RTL went unchecked and RTL camps, like the gulags before them, grew substantially. The growth of RTL was exacerbated by two additional factors. First, no single organization controlled the RTL intake process. A variety of organizations could refer people to RTL and used the system to get rid of "undesirables."<sup>84</sup> Second, even though it was easy for people to be sent to RTL it was difficult for them to get out. After a person was released, the MPS was responsible for finding them employment.<sup>85</sup> As a result, the number of people in RTL grew from 355,777 in 1958 to 499,523 in 1960.<sup>86</sup> In some individual camps the growth was even more dramatic. A camp in Anhui Province saw its population increase from 14,000 in 1957 to 51,000 by the end of 1960.<sup>87</sup>

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82 *Constitution Of The People's Republic Of China*, Adopted on December 4, 1982 and amended on March 14, 2004, by the 10th NPC at its 2nd Session :Article 10, Available at:<http://english.people.com.cn/constitution/constitution.html> [accessed 07.08.2013].

83 Sanzhuan Guo, "Implementation of Human Rights Treaties by Chinese Courts: Problems and Prospects," 8 *Chinese Journal of International Law* 161 (2009) at 171 par. 27.

84 Fu Hualing, "Re-education Through Labor in Historical Perspective," (2005) *China Quarterly* 811 at 817 accessed through Social Science Research Network Legal Scholarship Network Legal Studies Research Paper Series, available at: <http://www.ssrn.com/link/U-Hong-Kong-LEG.html>.

85 Fu Hualing, "Re-education Through Labor in Historical Perspective," (2005) *China Quarterly* 811 at 817 accessed through Social Science Research Network Legal Scholarship Network Legal Studies Research Paper Series, available at: <http://www.ssrn.com/link/U-Hong-Kong-LEG.html>.

86 Fu Hualing, "Re-education Through Labor in Historical Perspective," (2005) *China Quarterly* 811 at 822 accessed through Social Science Research Network Legal Scholarship Network Legal Studies Research Paper Series, available at: <http://www.ssrn.com/link/U-Hong-Kong-LEG.html>.

87 Fu Hualing, "Re-education Through Labor in Historical Perspective," (2005) *China Quarterly* 811 at 816 accessed through Social Science Research Network Legal Scholarship Network Legal Studies Research Paper Series, available at: <http://www.ssrn.com/link/U-Hong-Kong-LEG.html>.

While the use of RTL was expanding and people who had called for human rights and the rule of law were being persecuted for as rightists and counterrevolutionary, PRC was implementing contradictory rhetoric in Tibet. In 1959, the Chinese occupation in Tibet caused the Dalia Lama to flee to India. The PRC justified the invasion and occupation of Tibet by appealing to the “reactionary elements” in Tibet who took away Tibetan human rights.<sup>88</sup> This justification relied on a distinction the PRC drew during the 1960s between individual rights, such a due process and equal protection before the law, and collective rights, such as the right to self-determination.<sup>89</sup> The PRC argued that self-determination, especially against colonialism, imperialism, and hegemonism, was a prerequisite for individual rights.<sup>90</sup> The PRC built upon this distinction to argue that only collective human rights were of international concern.<sup>91</sup> Individual rights should follow from the effective exercise of collective human rights and are only of domestic concern.<sup>92</sup>

The distinction and the Chinese justification for invading Tibet implicitly argued that ignoring individual human rights could be justified for the purpose of protecting collective rights. Thus, the abuses in Tibet were acceptable because they were part of an effort to overthrow “reactionary elements in Tibetan society.” In Tibet, the “reactionary elements” belonged to the upper class, in the PRC purges were implemented to remove reactionary elements from academia and the courts. The PRC’s policy toward Tibet exposes the inherent contradictions in the prioritization of collective rights over individual rights. In Tibet, the PRC argued

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88 Marina Svensson, *DEBATING HUMAN RIGHTS IN CHINA: A CONCEPTUAL AND POLITICAL HISTORY* (2002) 234.

89 Marina Svensson, *DEBATING HUMAN RIGHTS IN CHINA: A CONCEPTUAL AND POLITICAL HISTORY* (2002) 251.

90 Marina Svensson, *DEBATING HUMAN RIGHTS IN CHINA: A CONCEPTUAL AND POLITICAL HISTORY* (2002) 251.

91 Marina Svensson, *DEBATING HUMAN RIGHTS IN CHINA: A CONCEPTUAL AND POLITICAL HISTORY* (2002) 234 (quoting a PRC claim that, “acts of suppressing national movements basically are not a question of a state’s internal affairs.”).

92 Marina Svensson, *DEBATING HUMAN RIGHTS IN CHINA: A CONCEPTUAL AND POLITICAL HISTORY* (2002) 251.

that allegations of human rights abuse and the invasion of Tibet was a domestic concern because they were helping the Tibetan people exercise their right to self-determination by overthrowing reactionary elements.<sup>93</sup> The evidence that the PRC relied upon to show that the Tibetan upper classes were reactionary elements was allegations of violations of individual rights.<sup>94</sup>

Despite the contradiction, the PRC relied upon the distinction between collective and individual rights to dismiss foreign criticism of the situation in Tibet in the 1960s.<sup>95</sup> At the same time the MPS was working to solidify its control over the RTL system by limiting the ability of other organizations to send people to RTL. In 1961, with the CCP's approval, the MPS introduced measures to limit the use of RTL.<sup>96</sup> The measures were aimed at centralizing the administration and use of RTL. People could not be sent to RTL for refusing to work and it could not be used to provide social welfare or employment for "undesirables."<sup>97</sup> The establishment of any RTL facilities at or below the county level was prohibited.<sup>98</sup> Without making a public announcement the Ministry of Public Security limited RTL sentences to 2-3 years but reserved the right to extend or shorten the sentences.<sup>99</sup> The

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93 See Marina Svensson, *DEBATING HUMAN RIGHTS IN CHINA: A CONCEPTUAL AND POLITICAL HISTORY* (2002) 234, 251.

94 Marina Svensson, *DEBATING HUMAN RIGHTS IN CHINA: A CONCEPTUAL AND POLITICAL HISTORY* (2002) 234.

95 Marina Svensson, *DEBATING HUMAN RIGHTS IN CHINA: A CONCEPTUAL AND POLITICAL HISTORY* (2002) 251.

96 Fu Hualing, "Re-education Through Labor in Historical Perspective," (2005) *China Quarterly* 811 at 817 accessed through Social Science Research Network Legal Scholarship Network Legal Studies Research Paper Series, *available at*: <http://www.ssrn.com/link/U-Hong-Kong-LEG.html>.

97 Fu Hualing, "Re-education Through Labor in Historical Perspective," (2005) *China Quarterly* 811 at 816 accessed through Social Science Research Network Legal Scholarship Network Legal Studies Research Paper Series, *available at*: <http://www.ssrn.com/link/U-Hong-Kong-LEG.html>.

98 Fu Hualing, "Re-education Through Labor in Historical Perspective," (2005) *China Quarterly* 811 at 817 accessed through Social Science Research Network Legal Scholarship Network Legal Studies Research Paper Series, *available at*: <http://www.ssrn.com/link/U-Hong-Kong-LEG.html>.

99 Fu Hualing, "Re-education Through Labor in Historical Perspective," (2005) *China Quarterly* 811 at 817 accessed through Social Science Research Network Legal Scholarship Network Legal Studies Research Paper Series, *available at*: <http://www.ssrn.com/link/U-Hong-Kong-LEG.html>.



MPS was not bound by this commitment and some people spent more than 20 years in RTL.<sup>100</sup> These new measures triggered a reduction in the RTL population and from 1961 to the beginning of the Cultural Revolution the RTL population steadily declined.<sup>101</sup>

## **B. The Cultural Revolution and its Aftermath**

During the Cultural Revolution (1966-1976) RTL and the entire Chinese legal system were almost completely destroyed.<sup>102</sup> Official government estimates after the Cultural Revolution estimated that 700,000 political leaders and party members were purged and 34,800 died.<sup>103</sup> The purges and attacks during the Cultural Revolution went beyond the Anti-Rightist Campaign and purges of counterrevolutionaries in the 1950s in both scope and severity. The children of “class enemies” and people who spoke out against guilt by association were targeted and, in some cases, executed.<sup>104</sup> People, including Xi Jinping, were transferred for re-education from urban centers to work in the countryside.<sup>105</sup> In total, 10% of the PRC’s urban population was sent to the countryside.<sup>106</sup>

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100 Human Rights in China, “Reeducation Through Labour (RTL): A Summary of Regulatory Issues and Concerns” (Feb. 2001) at 2, *available at*: <http://hrichina.org/sites/default/files/oldsite/PDFs/Reports/HRIC-RTL.pdf>.

101 Fu Hualing, “Re-education Through Labor in Historical Perspective,” (2005) *China Quarterly* 811 at 822 accessed through Social Science Research Network Legal Scholarship Network Legal Studies Research Paper Series, *available at*: <http://www.ssrn.com/link/U-Hong-Kong-LEG.html>.

102 Marina Svensson, *DEBATING HUMAN RIGHTS IN CHINA: A CONCEPTUAL AND POLITICAL HISTORY* (2002) 236.

103 James P. Sterba, “Mao’s Widow Sentenced to Death, but Penalty is Suspended 2 Years,” 25 Jan. 1981, *available at*: <http://www.nytimes.com/1981/01/25/world/mao-s-widow-sentenced-to-death-but-penalty-is-suspended-2-years.html>.

104 Marina Svensson, *DEBATING HUMAN RIGHTS IN CHINA: A CONCEPTUAL AND POLITICAL HISTORY* (2002) 234-35.

105 Kathrin Hille, “China’s ‘sent-down’ youth,” *Financial Times Magazine*, 20 Sept. 2013, *available at*: <http://www.ft.com/intl/cms/s/2/3d2ba75c-1fdf-11e3-8861-00144feab7de.html#axzz2fmh4IdpP>.

106 Kathrin Hille, “China’s ‘sent-down’ youth,” *Financial Times Magazine*, 20 Sept. 2013, *available at*: <http://www.ft.com/intl/cms/s/2/3d2ba75c-1fdf-11e3-8861-00144feab7de.html#axzz2fmh4IdpP>.



Even though labor camps were used for re-education during the Cultural Revolution, RTL was not. RTL was designed to be a less than criminal punishment. During the extremism of the Cultural Revolution, RTL was considered too weak a punishment but also a possibly means of aiding people who were targeted for punishment.<sup>107</sup> As a result, RTL almost disappeared during the Cultural Revolution. In 1970, there were 4,798 people in RTL facilities—12% of the RTL population in 1966 and less than 1% of the RTL population in 1960, when it was at its peak.<sup>108</sup>

The MPS responded to the lawlessness of the Cultural Revolution with law and order. The Cultural Revolution changed the perception of the law from a bourgeois tool of the elite to a necessary safeguard against the arbitrary and lawless conduct that defined the Cultural Revolution.<sup>109</sup> Because many current and future CCP leaders personally suffered during the Cultural Revolution the maintaining order and stability became a priority of the government. The MPS emerged from the Cultural Revolution as a powerful organization in the PRC by creating an image of itself as the guardian against chaos.<sup>110</sup> It has used this position to defend the use of RTL.<sup>111</sup>

RTL was one of the tactics employed by the MPS to end the chaos of the Cultural Revolution. Paradoxically, the MPS

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107 Fu Hualing, “Re-education Through Labor in Historical Perspective,” (2005) *China Quarterly* 811 at 818 accessed through Social Science Research Network Legal Scholarship Network Legal Studies Research Paper Series, *available at*: <http://www.ssrn.com/link/U-Hong-Kong-LEG.html>.

108 Fu Hualing, “Re-education Through Labor in Historical Perspective,” (2005) *China Quarterly* 811 at 822 accessed through Social Science Research Network Legal Scholarship Network Legal Studies Research Paper Series, *available at*: <http://www.ssrn.com/link/U-Hong-Kong-LEG.html>.

109 Randall Peerenboom, *CHINA’S LONG MARCH TOWARD RULE OF LAW*, (2002) at 55.

110 Fu Hualing, “Re-education Through Labor in Historical Perspective,” (2005) *China Quarterly* 811 at 818, 820 accessed through Social Science Research Network Legal Scholarship Network Legal Studies Research Paper Series, *available at*: <http://www.ssrn.com/link/U-Hong-Kong-LEG.html>.

111 See Elizabeth Lynch, “Interview with Prof. Margret K. Lewis,” *China Law & Policy*, 6 Sept. 2012 at 05:01, *available at*: <http://chinalawandpolicy.com/wp-content/uploads/2012/09/Maggie-Lewis-Interview-Transcript.pdf>.

used RTL, a form of arbitrary detention, to repress the arbitrariness and chaos of the Cultural Revolution. Beginning in 1971, the MPS used RTL and other tools to begin restoring order to Chinese cities.<sup>112</sup> By the end of the Cultural Revolution in 1976 the RTL population had grown to 37,083.<sup>113</sup> Seven years later the RTL population reached 220,000—its highest level since 1961.<sup>114</sup>

After the Cultural Revolution and Mao's death in 1976, RTL reemerged with a new focus. Before the Cultural Revolution RTL was primarily used during political purges.<sup>115</sup> After the Cultural Revolution, RTL became a method of social management.<sup>116</sup> Despite its widespread use during the Cultural Revolution RTL was not officially restored until the 1979 Supplemental Decision of the State Council for Re-education Through Labor (1979 Decision).<sup>117</sup> By then the number of people in RTL had reached 70,233, almost double what it was in 1976 at the end of the Cultural Revolution.<sup>118</sup> The 1979 Decision also changed who was

112 Fu Hualing, "Re-education Through Labor in Historical Perspective," (2005) *China Quarterly* 811 at 818 accessed through Social Science Research Network Legal Scholarship Network Legal Studies Research Paper Series, available at: <http://www.ssrn.com/link/U-Hong-Kong-LEG.html>.

113 Fu Hualing, "Re-education Through Labor in Historical Perspective," (2005) *China Quarterly* 811 at 822 accessed through Social Science Research Network Legal Scholarship Network Legal Studies Research Paper Series, available at: <http://www.ssrn.com/link/U-Hong-Kong-LEG.html>.

114 Fu Hualing, "Re-education Through Labor in Historical Perspective," (2005) *China Quarterly* 811 at 822 accessed through Social Science Research Network Legal Scholarship Network Legal Studies Research Paper Series, available at: <http://www.ssrn.com/link/U-Hong-Kong-LEG.html>.

115 Nicholas Bequelin, "Chinese Reeducation Revisited," *The New York Times*, 29 Jan. 2013, available at: [http://www.nytimes.com/2013/01/30/opinion/global/re-education-revisited.html?\\_r=0](http://www.nytimes.com/2013/01/30/opinion/global/re-education-revisited.html?_r=0).

116 Yu Jianrong, "Why I Support Abolishing the Re-education-Through-Labor System" *Beijing News*, 8 May 2010, quoted in: Dui Hua, "Professors Yu Jianrong and Jiang Ming'an Spar Over Future of Re-education Through Labor," 9 July 2010, available at: <http://www.duihuahrjournal.org/2010/07/professors-yu-jianrong-and-jiang-mingan.html>.

117 Fu Hualing, "Re-education Through Labor in Historical Perspective," (2005) *China Quarterly* 811 at 818 accessed through Social Science Research Network Legal Scholarship Network Legal Studies Research Paper Series, available at: <http://www.ssrn.com/link/U-Hong-Kong-LEG.html>.

118 Fu Hualing, "Re-education Through Labor in Historical Perspective," (2005) *China Quarterly* 811 at 822 accessed through Social Science Research Network Legal Scholarship Network Legal Studies Research Paper Series, available at: <http://www.ssrn.com/link/U-Hong-Kong-LEG.html>.

eligible for RTL.<sup>119</sup> It also imposed a mandatory 1-year minimum sentence and made the 3-year maximum sentence from 1961 official, though prisoners could receive a one-year extension “when necessary.”<sup>120</sup>

In 1980, a State Council Notice expanded RTL to include police tactics that previously existed independent from RTL. In the 1960s and 1970s, the police developed tactics to address punishment and interrogation respectively. In the 1960s the police created forced labor brigades that were separate from RTL.<sup>121</sup> These brigades were attached to and worked for police stations.<sup>122</sup> In the 1970s, the police began using “Shelter and Interrogation” to circumvent criminal procedures.<sup>123</sup> “Shelter and Interrogation” was originally used to control urban transients but by the mid 1970s was used as a crime control mechanism.<sup>124</sup> It involved compulsory interrogations where the police would detain a suspect beyond the time permitted by law while they conducted their investigation.<sup>125</sup> The State Council Notice incorporated both of these practices into the RTL system.<sup>126</sup> In doing so it created

119 Veron Mei-Ying Hung, “Improving Human Rights in China: Should Re-education Through Labor Be Abolished,” 41 *Columbia J. Transnat’l L.* 303 (2003) at 314.

120 Veron Mei-Ying Hung, “Improving Human Rights in China: Should Re-education Through Labor Be Abolished,” 41 *Columbia J. Transnat’l L.* 303 (2003) at 313.

121 Fu Hualing, “Re-education Through Labor in Historical Perspective,” (2005) *China Quarterly* 811 at 818 FN 41 accessed through Social Science Research Network Legal Scholarship Network Legal Studies Research Paper Series, *available at*: <http://www.ssrn.com/link/U-Hong-Kong-LEG.html>.

122 Fu Hualing, “Re-education Through Labor in Historical Perspective,” (2005) *China Quarterly* 811 at 818 FN 41 accessed through Social Science Research Network Legal Scholarship Network Legal Studies Research Paper Series, *available at*: <http://www.ssrn.com/link/U-Hong-Kong-LEG.html>.

123 Fu Hualing, “Re-education Through Labor in Historical Perspective,” (2005) *China Quarterly* 811 at 818 FN 42 accessed through Social Science Research Network Legal Scholarship Network Legal Studies Research Paper Series, *available at*: <http://www.ssrn.com/link/U-Hong-Kong-LEG.html>.

124 Fu Hualing, “Re-education Through Labor in Historical Perspective,” (2005) *China Quarterly* 811 at 818 FN 42 accessed through Social Science Research Network Legal Scholarship Network Legal Studies Research Paper Series, *available at*: <http://www.ssrn.com/link/U-Hong-Kong-LEG.html>.

125 Fu Hualing, “Re-education Through Labor in Historical Perspective,” (2005) *China Quarterly* 811 at 818 FN 42 accessed through Social Science Research Network Legal Scholarship Network Legal Studies Research Paper Series, *available at*: <http://www.ssrn.com/link/U-Hong-Kong-LEG.html>.

126 Fu Hualing, “Re-education Through Labor in Historical Perspective,” (2005)

a preventative element for RTL beyond the punitive aspect for crimes that do no merit criminal punishment.<sup>127</sup>

With the approval of the State Council the Ministry of Public Security passed the 1982 Trial Method for the Implementation of Re-education through Labor (1982 Trial Method).<sup>128</sup> The 1982 Trial Method expanded the scope and changed the focus of RTL. RTL became a punitive measure to handle the “contradictions among the people” by providing education and reform.<sup>129</sup> The 1982 Trial Method expanded the targets of RTL beyond those listed in the 1957 Decision.<sup>130</sup> People who joined others to commit murder, robbery, rape, arson, or abetted the commission of a crime but did not merit criminal punishment could be sentenced to RTL.<sup>131</sup> The 1982 Trial Method explicitly stated that RTL could be used as a punishment for people who had acted unlawfully but did not deserve a criminal punishment.<sup>132</sup>

One year later in 1983, the central government attempted to limit the power the MPS had amassed after the Cultural Revolution. It did so by giving control over the RTL facilities to the Ministry of Justice.<sup>133</sup> The MPS still maintained the unilateral

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China Quarterly 811 at 818 accessed through Social Science Research Network Legal Scholarship Network Legal Studies Research Paper Series, *available at*: <http://www.ssrn.com/link/U-Hong-Kong-LEG.html>.

127 Fu Hualing, “Re-education Through Labor in Historical Perspective,” (2005) China Quarterly 811 at 818-19 accessed through Social Science Research Network Legal Scholarship Network Legal Studies Research Paper Series, *available at*: <http://www.ssrn.com/link/U-Hong-Kong-LEG.html>.

128 Veron Mei-Ying Hung, “Improving Human Rights in China: Should Re-education Through Labor Be Abolished,” 41 Columbia J. Transnat’l L. 303 (2003) at 314.

129 Fu Hualing, “Re-education Through Labor in Historical Perspective,” (2005) China Quarterly 811 at 819 accessed through Social Science Research Network Legal Scholarship Network Legal Studies Research Paper Series, *available at*: <http://www.ssrn.com/link/U-Hong-Kong-LEG.html>.

130 Veron Mei-Ying Hung, “Improving Human Rights in China: Should Re-education Through Labor Be Abolished,” 41 Columbia J. Transnat’l L. 303 (2003) at 314.

131 Veron Mei-Ying Hung, “Improving Human Rights in China: Should Re-education Through Labor Be Abolished,” 41 Columbia J. Transnat’l L. 303 (2003) at 314.

132 Albert HY Chen, AN INTRODUCTION TO THE LEGAL SYSTEM OF THE PEOPLE’S REPUBLIC OF CHINA (3rd ed. 2004) page 215.

133 Fu Hualing, “Re-education Through Labor in Historical Perspective,” (2005) China Quarterly 811 at 819-20 accessed through Social Science Research Network Legal Scholarship Network Legal Studies Research Paper Series, *available at*: <http://www.ssrn.com/link/U-Hong-Kong-LEG.html>.

control over intake that it established in 1961.<sup>134</sup> The Ministry of Justice implemented programs designed to distinguish RTL from prison and criminal punishments.<sup>135</sup>

Like the gulags before it, the scope of RTL expanded immensely. In the 10 years between 1981 and 1991, 11 new offenses could be punished by RTL.<sup>136</sup> These changes, like previous changes, did not make RTL inapplicable for its original targets: counterrevolutionaries and perceived threats to the State. Instead, these changes expanded the scope of RTL to address a new social problem in addition to old social problems. In 1983 membership in a cult or secret society was added as an offense.<sup>137</sup> This law has been used to sentence over 10,000 Falun Gong rank and file practitioners to RTL.<sup>138</sup> In the aftermath of the 1989 Tiananmen Square crackdown, RTL was used widely against the protesters.<sup>139</sup> In the 1980s “Strike Hard” campaigns were launched to address an increase in crime.<sup>140</sup> The “Strike Hard” campaigns were de-

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[www.ssrn.com/link/U-Hong-Kong-LEG.html](http://www.ssrn.com/link/U-Hong-Kong-LEG.html).

134 Fu Hualing, “Re-education Through Labor in Historical Perspective,” (2005) *China Quarterly* 811 at 819-20 accessed through Social Science Research Network Legal Scholarship Network Legal Studies Research Paper Series, *available at*: <http://www.ssrn.com/link/U-Hong-Kong-LEG.html>.

135 Fu Hualing, “Re-education Through Labor in Historical Perspective,” (2005) *China Quarterly* 811 at 820 accessed through Social Science Research Network Legal Scholarship Network Legal Studies Research Paper Series, *available at*: <http://www.ssrn.com/link/U-Hong-Kong-LEG.html>.

136 Fu Hualing, “Re-education Through Labor in Historical Perspective,” (2005) *China Quarterly* 811 at 820 accessed through Social Science Research Network Legal Scholarship Network Legal Studies Research Paper Series, *available at*: <http://www.ssrn.com/link/U-Hong-Kong-LEG.html>.

137 Fu Hualing, “Re-education Through Labor in Historical Perspective,” (2005) *China Quarterly* 811 at 820 accessed through Social Science Research Network Legal Scholarship Network Legal Studies Research Paper Series, *available at*: <http://www.ssrn.com/link/U-Hong-Kong-LEG.html>.

138 Fu Hualing, “Re-education Through Labor in Historical Perspective,” (2005) *China Quarterly* 811 at 829 accessed through Social Science Research Network Legal Scholarship Network Legal Studies Research Paper Series, *available at*: <http://www.ssrn.com/link/U-Hong-Kong-LEG.html>.

139 Fu Hualing, “Re-education Through Labor in Historical Perspective,” (2005) *China Quarterly* 811 at 827 accessed through Social Science Research Network Legal Scholarship Network Legal Studies Research Paper Series, *available at*: <http://www.ssrn.com/link/U-Hong-Kong-LEG.html>.

140 Albert HY Chen, *AN INTRODUCTION TO THE LEGAL SYSTEM OF THE PEOPLE’S REPUBLIC OF CHINA* (3rd ed. 2004) page 240.

signed to deter crime by imposing strict sentences for both criminal conduct and less than criminal conduct.<sup>141</sup> RTL was used as a punishment for criminal conduct that did not merit a criminal punishment. Successive “Strike Hard” campaigns and other methods of crime suppression caused the number of people sentenced to RTL to peak in the 1980s and 1990s.<sup>142</sup>

### **C. Tactical Concessions in the 1990s and 2000s**

The 1989 Tiananmen Square massacre brought the PRC’s human rights record into the international spotlight. As a result, the PRC has made tactical human rights concessions that are designed to have a minimal impact domestically while, simultaneously placating international and domestic critics.<sup>143</sup> Many of the PRC’s reforms existed only in theory but were not, and in some cases could not be, implemented domestically.<sup>144</sup> Other reforms, particularly to the criminal code, merely relabeled or relocated the abuse without effectively changing it.

After reforms to the criminal justice system the MPS began using RTL to circumvent these reforms. However, the reforms and increased attention to human rights abuses in the PRC generated substantial criticism of RTL as well. Similar to the national government, the MPS attempted to implement tactical concessions to satisfy critics in 2002 and 2005.

In 1996, the National People’s Congress passed the PRC

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141 Albert HY Chen, *AN INTRODUCTION TO THE LEGAL SYSTEM OF THE PEOPLE’S REPUBLIC OF CHINA* (3rd ed. 2004) page 240.

142 Human Rights in China, “Reeducation Through Labour (RTL): A Summary of Regulatory Issues and Concerns” (Feb. 2001) at 1, *available at*: <http://hrichina.org/sites/default/files/oldsite/PDFs/Reports/HRIC-RTL.pdf>

143 Katrin Kinzelbach, *THE PERSISTENT POWER OF HUMAN RIGHTS: FROM COMMITMENT TO COMPLIANCE* (Eds. Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink) at 166.

144 Katrin Kinzelbach, *THE PERSISTENT POWER OF HUMAN RIGHTS: FROM COMMITMENT TO COMPLIANCE* (Eds. Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink) at 168.

Administrative Punishment Law. Before this law was passed the MPS could unilaterally send people to RTL, an administrative punishment, without any due process. The 1996 Administrative Punishment Law added the illusion of due process. People were given the right to a hearing and to challenge their administrative punishment.<sup>145</sup> There was no requirement that the hearing or appeal be heard before an independent body. The MPS controlled both the hearing and the appeal. The perception of the lack of judicial independence and the prevalence of judicial corruption prevented people from filing appeal or withdrawing them before the case reaches a decision.<sup>146</sup> Before 2003, it was estimated that the withdrawal rate of administrative litigation ranged from 43.2% to 57%.<sup>147</sup>

Because RTL exists outside of the PRC's criminal justice system it is rarely affected by changes in the criminal justice system. However, two developments in the criminal justice system in the late 1990s did have an impact of RTL. The first, in 1996, was the changes to the criminal procedure law in 1996. The new criminal procedure law imposed stricter evidentiary rules for the police.<sup>148</sup> As a result cases that did not meet the stricter standards were sent to RTL rather than a court for criminal prosecution.<sup>149</sup> The second was in 1997 when the PRC amended its criminal code. The new criminal code codified three basic principles: 1)

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145 Congressional Executive Commission on China, "Prospects for Reforming China's Reeducation Through Labor System," CECC at 3, 15 May 2013, *available at*: [http://www.cecc.gov/pages/virtualAcad/RTL%20Issue%20Paper%20Final%20\(May%208\).pdf](http://www.cecc.gov/pages/virtualAcad/RTL%20Issue%20Paper%20Final%20(May%208).pdf).

146 Sanzhan Guo, "Implementation of Human Rights Treaties by Chinese Courts: Problems and Prospects," 8 Chinese Journal of International Law 161 (2009) at 177 par. 43.

147 Sanzhan Guo, "Implementation of Human Rights Treaties by Chinese Courts: Problems and Prospects," 8 Chinese Journal of International Law 161 (2009) at 177 par. 43.

148 Fu Hualing, "Re-education Through Labor in Historical Perspective," (2005) China Quarterly 811 at 826 accessed through Social Science Research Network Legal Scholarship Network Legal Studies Research Paper Series, *available at*: <http://www.ssrn.com/link/U-Hong-Kong-LEG.html>.

149 Fu Hualing, "Re-education Through Labor in Historical Perspective," (2005) China Quarterly 811 at 826 accessed through Social Science Research Network Legal Scholarship Network Legal Studies Research Paper Series, *available at*: <http://www.ssrn.com/link/U-Hong-Kong-LEG.html>.



that there could be no criminal punishment without a pre-existing law; 2) the equal application of the laws; and 3) the punishment must be proportionate to the crime and the crime must be attributable to the offender.<sup>150</sup> The amendment to the criminal code also made a semantic change that was relevant to RTL. It replaced counterrevolutionary crimes with the crime of endangering national security.<sup>151</sup> The effect of this word change was to broaden the PRC's ability to send people to RTL.<sup>152</sup>

Neither the 1996 Administrative Punishment Law nor the 1997 amendment to the criminal code diminished the use of RTL. After the 2001 terrorists attack in the United States, RTL was used to punish Muslims, specifically the Uighurs. Preachers and teachers were arrested and given criminal sentences while their followers were sentenced to RTL.<sup>153</sup> Rather than increasing punishment for the principal target, this tactic turned RTL into a supplemental method of punishment for people associated with the target. In recent years the PSB has employed this tactic in Tibet. For example, after three monks from Kirti Monastery were sentenced to 10-13 years in prison for assisting the 2011 self-immolation by Phuntsok,<sup>154</sup> the MPS sentenced several more monks to 15-18 months of RTL.<sup>155</sup>

In the late 1990s and early 2000s RTL came under criticism from both international and domestic actors in the PRC. Chinese law journals debated the reform or abolition of RTL in

150 Albert HY Chen, AN INTRODUCTION TO THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA (3rd ed. 2004) page 236.

151 Albert HY Chen, AN INTRODUCTION TO THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA (3rd ed. 2004) page 236.

152 Mike McConville, "Criminal Justice in China: An Empirical Inquiry" (2011) at 14, citing Dobinson, Ian (2002), 'The Criminal Law of the People's Republic of China (1997): Real Change or Rhetoric', *Pacific Rim Law & Policy Journal*, 11:1.

153 Fu Hualing, "Re-education Through Labor in Historical Perspective," (2005) *China Quarterly* 811 at 828 accessed through Social Science Research Network Legal Scholarship Network Legal Studies Research Paper Series, available at: <http://www.ssrn.com/link/U-Hong-Kong-LEG.html>.

154 "Three Kirti monks imprisoned for assisting self-immolation," *Tibet Society*, 2 Sept. 2011, available at: <http://www.tibetsociety.com/content/view/208>.

155 Human Rights Watch, "China: End Crackdown on Tibetan Monasteries," 12 Oct. 2011, available at: <http://www.hrw.org/news/2011/10/12/china-end-crackdown-tibetan-monasteries>.



the late 1990s.<sup>156</sup> Options for reform included reducing sentences and adding judicial review of the sentencing.<sup>157</sup> Internationally, the United Nations Office of the High Commissioner for Human Rights (OHCHR) raised the issue of RTL with the PRC in 2000 and then three months later called on the PRC to abolish RTL.<sup>158</sup> But the Justice and Security Ministries in charge of RTL strongly opposed reforming RTL.<sup>159</sup> The director of the Justice Ministry's Bureau of Re-education Through Labor defended the system but also promised that it would be reformed.<sup>160</sup>

In 2002, the Ministry of Public Security introduced the *Regulations on handling of Reeducation Through Labor Cases by Public Security Organs* (2002 Regulations) to muffle the criticism. The 2002 Regulations comprehensively laid out how the RTL system should work. It also introduced some reforms to address some criticisms without altering the fundamental nature of RTL. The 2002 Regulations abolished the practice of investigative detention, "Shelter and Interrogation," that became part of the RTL system in 1980.<sup>161</sup> It also imposed a formalized system of review and appeal that allowed a RTL case to work up through the hierarchy in the MPS.<sup>162</sup>

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156 Erik Eckholm, "China Hones Old Tool: 'Re-educating' Unruly," *The New York Times*, 27 Feb. 2001, available at: <http://www.nytimes.com/2001/02/27/world/china-hones-old-tool-re-educating-unruly.html?pagewanted=all&src=pm>.

157 Erik Eckholm, "China Hones Old Tool: 'Re-educating' Unruly," *The New York Times*, 27 Feb. 2001, available at: <http://www.nytimes.com/2001/02/27/world/china-hones-old-tool-re-educating-unruly.html?pagewanted=all&src=pm>.

158 See, Veron Mei-Ying Hung, "Improving Human Rights in China: Should Re-education Through Labor Be Abolished," 41 *Columbia J. Transnat'l L.* 303 (2003) at 305; Erik Eckholm, "China Hones Old Tool: 'Re-educating' Unruly," *The New York Times*, 27 Feb. 2001, available at: <http://www.nytimes.com/2001/02/27/world/china-hones-old-tool-re-educating-unruly.html?pagewanted=all&src=pm>.

159 Erik Eckholm, "China Hones Old Tool: 'Re-educating' Unruly," *The New York Times*, 27 Feb. 2001, available at: <http://www.nytimes.com/2001/02/27/world/china-hones-old-tool-re-educating-unruly.html?pagewanted=all&src=pm>.

160 Erik Eckholm, "China Hones Old Tool: 'Re-educating' Unruly," *The New York Times*, 27 Feb. 2001, available at: <http://www.nytimes.com/2001/02/27/world/china-hones-old-tool-re-educating-unruly.html?pagewanted=all&src=pm>.

161 Fu Hualing, "Re-education Through Labor in Historical Perspective," (2005) *China Quarterly* 811 at 827 accessed through Social Science Research Network Legal Scholarship Network Legal Studies Research Paper Series, available at: <http://www.ssrn.com/link/U-Hong-Kong-LEG.html>.

162 Regulations on the Handling of Reeducation Through Labor Cases by Public

The Ministry of Public Security released the 2002 Regulations to assuage the demands for RTL reform while still keeping it entirely under the MPS's control. However, as the MPS introduced measures in response to critics of RTL, it also hid data on whether these measures had been implemented. For example, the Ministry of Public Security banned the use of "Shelter and Interrogation" and simultaneously stopped reporting on the reasons for detention, thereby making it impossible to know if the ban had actually been implemented.<sup>163</sup>

In other areas, the reform to RTL did not address the criticism that struck at the core of RTL. Ever since the end of the Cultural Revolution, there has been concern over the unilateral authority vested in the Ministry of Public Security. Critics of RTL had called for judicial oversight of RTL sentencing. The 2002 Regulations addressed this criticism by adding more actors from within the MPS but refused to allow any outside review.<sup>164</sup> People who were charged with using a cult to undermine national laws and people who faced an RTL sentence of less than two years were not required to receive a hearing.<sup>165</sup> A Law Professor at the Peking University described this as making a player the referee.<sup>166</sup>

The 2002 Regulations also formalized 10 categories of conduct that could result in an RTL sentence. The conduct built upon the expansion of RTL since its inception. The use of coun-

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Security Organs (April 12, 2002, MPS Notice [2002] No. 21) at Arts. 6, 7, [hereinafter "2002 Regulations"] English translation *available from*: "RTL Regulations: Police Authority in Procedural Dress," *Dui Hua*, 23 Oct. 2012, *available at*: <http://www.duihuaresearch.org/2012/10/rtl-regulations-police-authority-in.html>, *Chinese Original available at*: <http://www.mps.gov.cn/n16/n1996048/n2283084/2288628.html>.

163 Fu Hualing, "Re-education Through Labor in Historical Perspective," (2005) *China Quarterly* 811 at 827 accessed through Social Science Research Network Legal Scholarship Network Legal Studies Research Paper Series, *available at*: <http://www.ssrn.com/link/U-Hong-Kong-LEG.html>.

164 2002 Regulations Arts. 6, 7.

165 2002 Regulations Arts. 23(ii), 25, 27.

166 Dui Hua, RTL: Reporters shed some light on reform projects, 11 Dec. 2012 *available at*: <http://www.duihuahrjournal.org/2012/12/rtl-reporters-shed-some-light-on-reform.html> (quoting Peking University Law School Professor Jiang Ming'an).

terrevolutionaries was formally replaced with “endangering state security” to reflect the change in terminology in the 1996 criminal code<sup>167</sup> and allowed for the possibility of adding additional conduct.<sup>168</sup> Most scholars agreed that the conduct was broad and flexible enough for almost any offense to be included.<sup>169</sup> With no external checks on the MPS there was nothing to stop them from imposing RTL without legal authorization.<sup>170</sup>

The 2002 Regulations did not silence the critics of RTL. Shortly after the 2002 Regulations were released, the National People’s Congress announced it was planning on replacing RTL with “education and correction.”<sup>171</sup> At the end of 2004, the United Nations’ Working Group on Arbitrary Detention said that the 2002 reforms to RTL, specifically the options for appeal, did not meet international standards.<sup>172</sup> A Chinese law was passed that gave legal grounding for administrative punishments except for RTL, which, for the purposes of the law, was considered compulsory education rather than a punishment.<sup>173</sup> It seemed as if the RTL system, which since the 1950s had sent 3.5 million people to RTL camps,<sup>174</sup> could be abolished.<sup>175</sup>

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167 2002 Regulations Art. 9(i).

168 2002 Regulations Art. 9(x).

169 Fu Hualing, “Re-education Through Labor in Historical Perspective,” (2005) *China Quarterly* 811 at 821 accessed through Social Science Research Network Legal Scholarship Network Legal Studies Research Paper Series, *available at*: <http://www.ssrn.com/link/U-Hong-Kong-LEG.html>.

170 Fu Hualing, “Re-education Through Labor in Historical Perspective,” (2005) *China Quarterly* 811 at 821 accessed through Social Science Research Network Legal Scholarship Network Legal Studies Research Paper Series, *available at*: <http://www.ssrn.com/link/U-Hong-Kong-LEG.html>.

171 “Police Updated RTL Rules in 2005, But Have They Complied?,” *Dui Hua*, 3 Jan. 2013, *available at*: <http://www.duihuaresearch.org/2013/01/police-updated-rtl-rules-in-2005-but.html>.

172 Win Lam, “HRIC Brief: Reform of the Reeducation Through Labor System,” 2 *China Rights Forum* 31 at 32 (2005).

173 “Police Updated RTL Rules in 2005, But Have They Complied?,” *Dui Hua*, 3 Jan. 2013, *available at*: <http://www.duihuaresearch.org/2013/01/police-updated-rtl-rules-in-2005-but.html>.

174 Veron Mei-Ying Hung, “Improving Human Rights in China: Should Re-education Through Labor Be Abolished,” 41 *Columbia J. Transnat’l L.* 303 (2003) at 304.

175 “Police Updated RTL Rules in 2005, But Have They Complied?,” *Dui Hua*, 3 Jan. 2013, *available at*: <http://www.duihuaresearch.org/2013/01/police-updated-rtl-rules-in-2005-but.html>.

The MPS responded by issuing an opinion on strengthening and improving RTL (2005 Opinion).<sup>176</sup> The 2005 Opinion was directly aimed at addressing and responding to criticism of RTL. It began with an explanation of the legal basis for RTL.<sup>177</sup> It then emphasized that RTL should not be used to circumvent the law, for example, by imposing RTL instead of pursuing a criminal sentence to avoid rules of evidence.<sup>178</sup> It also expanded the right to a hearing to include using a cult to undermine the national law<sup>179</sup> and provided a right to have an attorney represent people in all cases except those involving state secrets.<sup>180</sup> The maximum sentence was reduced from three years to two.<sup>181</sup> Most importantly, expanded the oversight of RTL cases.<sup>182</sup> The 2005 Opinion referred to oversight from the people’s procuratorate, the people’s courts, and the people.<sup>183</sup> However, the exact nature and scope of the oversight is dependent on the people’s procuratorate stationed at an RTL facility conducting investigations and petitioning.<sup>184</sup>

Similar to the 2002 Regulations, the MPS subtly took measures to step back from the 2005 Opinion. Most notably given the importance of oversight, illegal petitioning became an RTL offense in 2009.<sup>185</sup> Petitioning is a method of raising a complaint or grievance through letters or visiting an official at work.<sup>186</sup> It

176 “Police Updated RTL Rules in 2005, But Have They Complied?,” *Dui Hua*, 3 Jan. 2013, *available at*: <http://www.duihuaresearch.org/2013/01/police-updated-rtl-rules-in-2005-but.html>.

177 Ministry of Public Security Notice on Issue of “Implementation Opinion Regarding Further Strengthening and Improvement of Reeducation Through Labor Review and Approval Work” MPS Legal [2005] No. 292 [hereinafter 2005 Opinion] at pars. 1-2.

178 2005 Opinion at par. 6.

179 2005 Opinion at par. 11.

180 2005 Opinion at par. 7.

181 2005 Opinion at pars.13, 14.

182 2005 Opinion at par. 18-23.

183 2005 Opinion at par. 20.

184 2005 Opinion at par. 20.

185 Congressional Executive Commission on China, “Prospects for Reforming China’s Reeducation Through Labor System,” CECC at 3, 15 May 2013, *available at*: [http://www.cecc.gov/pages/virtualAcad/RTL%20Issue%20Paper%20Final%20\(May%208\).pdf](http://www.cecc.gov/pages/virtualAcad/RTL%20Issue%20Paper%20Final%20(May%208).pdf).

186 Albert HY Chen, *AN INTRODUCTION TO THE LEGAL SYSTEM OF THE PEOPLE’S REPUBLIC OF CHINA*, 146 (3rd Ed. 2004).

is a protected constitutional right and Chinese courts have units or divisions specifically for incoming petitions.<sup>187</sup> Petitioning, or the use of letters and visits, was the only method of oversight where abuse of RTL was brought to the attention of the people's procuratorate.<sup>188</sup> Despite its problems, the 2005 Opinion, it was sufficient to stall reform efforts in 2005.<sup>189</sup>

## D. Abolition

The European Union's EU-China human rights dialogue highlighted the reform of RTL as a major policy issue in 2005 and 2006.<sup>190</sup> The 2005 Opinion succeeded in preserving RTL. Other attempts to reform or abolish RTL were stalled without the MPS needing to make any further concessions<sup>191</sup> while ensuring there were no notable efforts to reform RTL until 2012. In 2012, a series of high profile examples of the abuses associated with RTL revived talk of abolishing the system. In some respects the seeds for these abuses were planted when the reforms were not effectively implemented and the MPS began targeting petitioners. Announcing the reforms, such as those to the criminal justice system and RTL raised expectations both in Tibet and the PRC. The MPS refused to allow people to exercise their rights and even took measures to prevent them from doing so. For example, during the 2008 protest Tibetans began using their RTL sentencing documents to claim legal rights and as evidence of their treatment. The authorities responded by not letting Tibetans keep their sentencing documents.<sup>192</sup> Unsurprisingly, when people were denied

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187 Albert HY Chen, *AN INTRODUCTION TO THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA*, 146 (3rd Ed. 2004).

188 2005 Opinion at par. 20.

189 Congressional Executive Commission on China, "2012 Annual Report," 10 Oct. 2012 at 74, *available at*: <http://www.gpo.gov/fdsys/pkg/CHRG-112shrg76190/pdf/CHRG-112shrg76190.pdf>.

190 Katrin Kinzelbach, *THE PERSISTENT POWER OF HUMAN RIGHTS: FROM COMMITMENT TO COMPLIANCE* (Eds. Thomas Risse, Stephen C. Ropp, and Kathryn Sikink) at 178.

191 Congressional Executive Commission on China, "2012 Annual Report," 10 Oct. 2012 at 74, *available at*: <http://www.gpo.gov/fdsys/pkg/CHRG-112shrg76190/pdf/CHRG-112shrg76190.pdf>.

192 TCHRD interview, Ngawang Phuntsok (TCHRD # 08-1864) from Kham Province, Kandze Tibetan Autonomous Prefecture, Sichuan Province, 19 July 2013,

their legal rights they complained. This led to reprisals against human rights activists, petitioners, and lawyers.<sup>193</sup> This put the government in the position metaphorically killing the messenger; the people highlighted abuse were punished more than their abusers. In Tibet, lawyers Teng Biao (滕彪) and Jiang Tianyong (江天勇) did not have their licenses renewed after doing free-legal work for Tibetans detained during the 2008 protests.<sup>194</sup> With the reforms being accompanied by a crackdown on people attempted to hold government officials accountable it became inevitable that this sort of case would catch the public's attention.

In August 2012, Tang Hui (唐慧) was sentenced to RTL. Her daughter had been abducted, raped, and sold into prostitution.<sup>195</sup> Tang Hui's daughter was rescued and some of the perpetrators were tried. However, Tang Hui believed that officials had falsified documents to protect the perpetrators and began petitioning the local government for a more appropriate response.<sup>196</sup> The local government officials responded by sending her to RTL. The story of her sentence went viral. Because of the ensuing public outcry Tang Hui was released from RTL after only one week.<sup>197</sup>

Tang Hui's case came only a few months after a 6 April 2012 article in *Lens Magazine*. The article described the conditions conducted by Nyinje Tsering, Dawa Tsering, and John Gaudette.

193 Katrin Kinzelbach, *THE PERSISTENT POWER OF HUMAN RIGHTS: FROM COMMITMENT TO COMPLIANCE* (Eds. Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink) at 171.

194 Katrin Kinzelbach, *THE PERSISTENT POWER OF HUMAN RIGHTS: FROM COMMITMENT TO COMPLIANCE* (Eds. Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink) at 171.

195 Congressional Executive Commission on China, "2012 Annual Report," 10 Oct. 2012 at 74, *available at*: <http://www.gpo.gov/fdsys/pkg/CHRG-112shrg76190/pdf/CHRG-112shrg76190.pdf>; Congressional Executive Commission on China, "Prospects for Reforming China's Reeducation Through Labor System," CECC at 5, 15 May 2013, *available at*: [http://www.cecc.gov/pages/virtualAcad/RTL%20Issue%20Paper%20Final%20\(May%208\).pdf](http://www.cecc.gov/pages/virtualAcad/RTL%20Issue%20Paper%20Final%20(May%208).pdf).

196 CHRDR, "In the Name of 'Stability': 2012 Annual Report on the Situation of Human Rights Defenders in China", Chinese Human Rights Defenders, March 2013 at 22.

197 Congressional Executive Commission on China, "Prospects for Reforming China's Reeducation Through Labor System," CECC at 5, 15 May 2013, *available at*: [http://www.cecc.gov/pages/virtualAcad/RTL%20Issue%20Paper%20Final%20\(May%208\).pdf](http://www.cecc.gov/pages/virtualAcad/RTL%20Issue%20Paper%20Final%20(May%208).pdf).

tions in the Masanjia Women’s RTL Camp in Liaoning. The article was based in part on the diary of a petitioner that was smuggled out of the facility.<sup>198</sup> The article described pregnant women and disabled women being forced to perform hard labor for up to 14 hours each day.<sup>199</sup> All the detainees were subject to beatings and other punishments, including the use of positional torture and electric shocks, from the guards.<sup>200</sup> The detainees suffered from exhaustion, as a result of being overworked, and the denial of medical treatment.<sup>201</sup> The story became a sensation in the PRC and was one of the most popular news stories on the PRC’s top four news websites.<sup>202</sup> Four days after the magazine article was released the story was censored and *Lens Magazine* was temporarily shut down.<sup>203</sup> On 10 April, Internet searches for “Masanjia Women’s Labor Re-education Camp” were blocked.<sup>204</sup>

The subsequent cases of RTL abuse, including a national television broadcast of an 80 year-old Korean War veteran with Parkinson’s disease sobbing about his 18 month RTL sentence

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198 CHRD, “China Bans Media Coverage of Labor Camp Ordeal,” 8 April 2013 available at: <http://chrdnet.com/2013/04/china-bans-media-coverage-of-labor-camp-ordeal/>.

199 CHRD, “China Bans Media Coverage of Labor Camp Ordeal,” 8 April 2013 available at: <http://chrdnet.com/2013/04/china-bans-media-coverage-of-labor-camp-ordeal/>.

200 Congressional Executive Commission on China, “Prospects for Reforming China’s Reeducation Through Labor System,” CECC at 6, 15 May 2013, available at: [http://www.cecc.gov/pages/virtualAcad/RTL%20Issue%20Paper%20Final%20\(May%208\).pdf](http://www.cecc.gov/pages/virtualAcad/RTL%20Issue%20Paper%20Final%20(May%208).pdf).

201 Congressional Executive Commission on China, “Prospects for Reforming China’s Reeducation Through Labor System,” CECC at 6, 15 May 2013, available at: [http://www.cecc.gov/pages/virtualAcad/RTL%20Issue%20Paper%20Final%20\(May%208\).pdf](http://www.cecc.gov/pages/virtualAcad/RTL%20Issue%20Paper%20Final%20(May%208).pdf).

202 Probe International, “New documentaries take on the horrors of China’s labor camp system,” 7 May 2013, available at: <http://journal.probeinternational.org/2013/05/07/new-documentaries-take-on-the-horrors-of-chinas-labor-camp-system/>.

203 Probe International, “New documentaries take on the horrors of China’s labor camp system,” 7 May 2013, available at: <http://journal.probeinternational.org/2013/05/07/new-documentaries-take-on-the-horrors-of-chinas-labor-camp-system/>.

204 CHRD, “China Bans Media Coverage of Labor Camp Ordeal,” 8 April 2013 available at: <http://chrdnet.com/2013/04/china-bans-media-coverage-of-labor-camp-ordeal/>.



for filing a complaint about corruption,<sup>205</sup> rekindled the calls for RTL's abolition. After Tang Hui was released from RTL a survey found that 87% of respondents supporting abolishing RTL.<sup>206</sup>

The public opposition to RTL also tied into political struggles within the CCP. In 2012, the CCP went through the process of choosing its leader for the next ten years.<sup>207</sup> Throughout 2012, Bo Xilai (薄熙來), a powerful Chinese politician, was embroiled in a very public scandal that ultimately led to his expulsion from the CCP in late September 2012.<sup>208</sup> One year earlier, in 2011, Ren Jianyu (任建宇) was sentenced to two years in RTL for using social media to promote “Western political models and attacked [the PRC’s] party and government.”<sup>209</sup> Ren Jianyu was from Chongqing, a municipality that at the time was under the control of Bo Xilai.<sup>210</sup> Like Tan Hui’s case, Ren Jianyu’s case went viral and he was released in November 2012.<sup>211</sup>

### Bo Xilai’s downfall exposed divisions within the CCP in

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205 Andrew Jacobs, “Opposition to Labor Camp Widens in China,” *The New York Times*, 14 Dec. 2012, available at: <http://www.nytimes.com/2012/12/15/world/asia/opposition-to-labor-camps-widens-in-china.html?pagewanted=all&r=1&&pagewanted=print>.

206 United Kingdom: Foreign and Commonwealth Office, *Human Rights and Democracy: The 2012 Foreign & Commonwealth Office Report - China*, 15 April 2013, available at: <http://www.refworld.org/docid/516fb7cf9.html>.

207 See Charlie Zhu and David Lague, “In China, A Power Struggle of a Different Order,” *The New York Times*, 17 Oct. 2012, available at: <http://www.nytimes.com/2012/10/18/business/global/in-china-a-power-struggle-of-a-different-order.html?smid=pl-share>.

208 Edward Wong, “Ousted from Party in China, Bo Xilai Faces Prosecution,” *The New York Times*, 28 Sept. 2012, available at: <http://www.nytimes.com/2012/09/29/world/asia/bo-xilai-expelled-from-chinas-communist-party.html?smid=pl-share>.

209 Dui Hua Research, “Court Avoids Free Speech Issue, RTL Case Lost on Technicality,” 28 Feb. 2013, available at: <http://www.duihuaresearch.org/2013/02/court-avoids-free-speech-issue-rtl-case.html>. (quoting translated version of Chongqing Municipality No. 3 Intermediate People’s Court Administrative Decision, (2013 CQ 3d. Int. Admin. First No. 14).

210 John Delury, “China’s Labor’s Lost: The End of Re-Education Through Labor Camps,” *Foreign Affairs Snapshot*, 25 Nov. 2013, available at: <http://www.foreignaffairs.com/articles/140289/john-delury/chinas-labors-lost>.

211 CHRD, “In the Name of “Stability”: 2012 Annual Report on the Situation of Human Rights Defenders in China”, Chinese Human Rights Defenders, March 2013 at 22.



the run up to the selection of the next Chinese president.<sup>212</sup> Ren Jianyu's RTL conviction was not only emblematic of the abuses inherent in RTL, but it was also used as an example of Bo Xilai's abuse of power. Bo Xilai's mentor and retired chief of domestic security, Zhou Yongkang, claimed that RTL was necessary to prevent social chaos and the CCP's loss of power.<sup>213</sup> On 7 January 2013 Meng Jianzhu, the Secretary of Central Politics and Law Commission of the PRC, announced that pending approval from the National People's Congress Standing Committee RTL would end in 2013.<sup>214</sup>

This statement and its retraction fueled speculation that RTL would be abolished.<sup>215</sup> Heated discussions about the future of RTL began appearing in the Chinese media.<sup>216</sup> There were rumors that Guangdong and Yunnan were preparing to end or phase out RTL.<sup>217</sup> On 17 March 2013, the new Chinese Premier, Li Keqiang, announced that reforms to RTL would be announced by the end of 2013.<sup>218</sup>

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212 See Michael Wines, "A Populist's Downfall Exposes Ideological Divisions in China's Ruling Party," *The New York Times*, 6 April 2012, available at: <http://www.nytimes.com/2012/04/07/world/asia/bo-xilais-ouster-exposes-chinese-fault-lines.html>.

213 Andrew Jacobs, "Opposition to Labor Camp Widens in China," *The New York Times*, 14 Dec. 2012, available at: [http://www.nytimes.com/2012/12/15/world/asia/opposition-to-labor-camps-widens-in-china.html?pagewanted=all&\\_r=1&pagewanted=print](http://www.nytimes.com/2012/12/15/world/asia/opposition-to-labor-camps-widens-in-china.html?pagewanted=all&_r=1&pagewanted=print).

214 Congressional Executive Commission on China, "Prospects for Reforming China's Reeducation Through Labor System," CECC at 7, 15 May 2013, available at: [http://www.cecc.gov/pages/virtualAcad/RTL%20Issue%20Paper%20Final%20\(May%208\).pdf](http://www.cecc.gov/pages/virtualAcad/RTL%20Issue%20Paper%20Final%20(May%208).pdf).

215 Congressional Executive Commission on China, "Prospects for Reforming China's Reeducation Through Labor System," CECC at 7, 15 May 2013, available at: [http://www.cecc.gov/pages/virtualAcad/RTL%20Issue%20Paper%20Final%20\(May%208\).pdf](http://www.cecc.gov/pages/virtualAcad/RTL%20Issue%20Paper%20Final%20(May%208).pdf).

216 Elizabeth M. Lynch, "DC Event: The End of Re-education Through Labor – May 9," *China Law & Policy*, 7 May 2013, available at: <http://chinalawandpolicy.com/2013/05/07/dc-event-the-end-of-re-education-through-labor-may-9/>.

217 Congressional Executive Commission on China, "Prospects for Reforming China's Reeducation Through Labor System," CECC at 7, 15 May 2013, available at: [http://www.cecc.gov/pages/virtualAcad/RTL%20Issue%20Paper%20Final%20\(May%208\).pdf](http://www.cecc.gov/pages/virtualAcad/RTL%20Issue%20Paper%20Final%20(May%208).pdf).

218 Congressional Executive Commission on China, "Prospects for Reforming China's Reeducation Through Labor System," CECC at 2, 15 May 2013, available at: [http://www.cecc.gov/pages/virtualAcad/RTL%20Issue%20Paper%20Final%20\(May%208\).pdf](http://www.cecc.gov/pages/virtualAcad/RTL%20Issue%20Paper%20Final%20(May%208).pdf).

Given the history of previous reform efforts stalling or being scuttled by the MPS, it remained unclear whether RTL would be reformed, renamed, abolished, or left unchanged. Immediately after the Third Plenum meeting ended on 12 November 2013, there was speculation that despite Xi Jinping's personal dislike of RTL he had been unable to overcome conservative opposition and abolish RTL.<sup>219</sup> On 15 November 2013, the CCP released the "CCP Central Committee Resolution concerning Some Major Issues in Comprehensively Deepening Reform" (Third Plenum Decision). The Third Plenum Decision is a 60-point document covering 16 topics. It committed the PRC to "abolish[ing] the re-education through labor system."<sup>220</sup> The Standing Committee of the National People's Congress fulfilled this promise on 28 December 2013. Officially, they decided that in light of development in Chinese law RTL was redundant and had fulfilled its historic purpose.<sup>221</sup>

## **E. Prospects for Real Reform**

Throughout its history RTL has managed to expand, adapt, and survive. If the abolition of RTL is going to be more than a semantic change, the abuses related to RTL must be stopped. Since the announcement that RTL would be abolished, numerous accounts from China hint at how this may be carried out in practice. These reports describe RTL facilities being relabeled as "drug rehabilitation centers"<sup>222</sup> and other programs, such as the communi-

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219 Benjamin Kang Lim and Ben Blanchard, "Insight – Failure to end China's labour camps shows limits of Xi's power," *Reuters*, 7 Nov. 2013, available at: <http://in.reuters.com/article/2013/11/06/china-politics-xi-idINDEE9A50FT20131106>.

220 "CCP Central Committee Resolution concerning Some Major Issues in Comprehensively Deepening Reform," (hereinafter "Third Plenum Decision") at pt. 34, 15 Nov. 2013, translated by China Copyright and Media, available at: <http://china-copyrightandmedia.wordpress.com/2013/11/15/ccp-central-committee-resolution-concerning-some-major-issues-in-comprehensively-deepening-reform/>.

221 "China mulls abolition of reeducation through labor," *Xinhua*, 23 Dec. 2013, available at: [http://news.xinhuanet.com/english/china/2013-12/23/c\\_132990188.htm](http://news.xinhuanet.com/english/china/2013-12/23/c_132990188.htm).

222 See e.g. John Ruwitch, *Reuters*, "A jail by another name: China labor camps now drug detox centers," *Chicago Tribune*, 2 Dec. 2013, available at: <http://www.chicagotribune.com/news/sns-rt-us-china-camps-20131130,0,2123677,full.story>.

ty based correction program expanding to replace RTL.<sup>223</sup> These reports have raised substantial questions of whether the PRC's commitment is to abolish RTL in name or if the PRC is serious about making reforms close the gap between its international obligations and its practice.

The Third Plenum Decision was heralded as the PRC's blueprint to reform and an historic milestone.<sup>224</sup> Xi Jinping was credited with personally championing the Third Plenum Decision and spending seven months leading the team that drafted the Third Plenum Decision.<sup>225</sup> Early reports that Xi Jinping "loathes" but had been unable to abolish it,<sup>226</sup> now bolster optimism that RTL will actually be abolished. Suggestions by academics that RTL could be relabeled and action taken by local governments to shift to other forms of arbitrary detention dampen the optimism surrounding the Third Plenum Decision. In fact, without RTL there are still numerous methods of extrajudicial detention that allow people to be detained for years at a time.<sup>227</sup>

Previous reforms of Chinese judicial system have resulted in the police avoiding the judicial system and relying on their independent authority, such as RTL.<sup>228</sup> The Third Plenum Deci-

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223 Hu Qingyun, "Correction program pushed," *Global Times*, 30 Nov. 2013, available at: <http://www.globaltimes.cn/content/828751.shtml>; "Community Correction Expands as RTL Contracts," *Dui Hua Human Rights Journal*, 19 Dec. 2013, available at: <http://www.duihuahrjournal.org/2013/12/community-correction-expands-as-rtl.html>.

224 "China's Reform Blueprint Broken Down by Keyword," *The Wall Street Journal*, 18 Nov. 2013, available at: <http://blogs.wsj.com/chinarealtime/2013/11/18/chinas-reform-blueprint-broken-down-by-keyword/>; "The Xi Manifesto," *The Economist*, 23 Nov. 2013, available at: <http://www.economist.com/news/china/21590499-chinas-president-unveils-most-striking-plans-reform-two-decades-they-mix-unusual>.

225 "The party's new blueprint," *The Economist*, 16 Nov. 2013, available at: <http://www.economist.com/blogs/analects/2013/11/reform-china>.

226 Benjamin Kang Lim and Ben Blanchard, "Insight – Failure to end China's labour camps shows limits of Xi's power," *Reuters*, 7 Nov. 2013, available at: <http://in.reuters.com/article/2013/11/06/china-politics-xi-idINDEE9A50FT20131106>.

227 See Peter Ford, "China votes to abolish notorious reeducation camps," *Christian Science Monitor*, 30 Dec. 2013, available at: <http://www.csmonitor.com/World/Asia-Pacific/2013/1230/China-votes-to-abolish-notorious-re-education-camps>.

228 Fu Hualing, "Re-education Through Labor in Historical Perspective," (2005) *China Quarterly* 811 at 826 accessed through Social Science Research Network Legal

sion's promise to increase transparency regarding prosecutions and trials, and to maintain court records and documents<sup>229</sup> creates a situation similar to those in the past when government officials have avoided the judicial process rather than face embarrassment or reform. Traditionally, this was accomplished by utilizing RTL and other forms of extrajudicial detention. The abolition of RTL may only encourage the authorities to use other methods of extrajudicial detention the same way they used RTL.

After the Third Plenum Decision was released, the *Southern Weekend* newspaper revealed that the websites for four provincial RTL facilities were parenthetically adding “drug rehabilitation” after any mention of RTL.<sup>230</sup> This is confirmed by antidotal evidence of a former RTL detainee who said the RTL camp he was in began shifting to a compulsory drug treatment facility.<sup>231</sup>

In addition to merely, relabeling RTL facilities, the use of other forms of arbitrary detention may be expanded to fill the void left by RTL. “Community corrections,” “compulsory legal education classes,” “drug rehabilitation,” and black jails are all existing forms of arbitrary detention that will continue to exist after RTL is abolished.<sup>232</sup> For example, the “legal education class-

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Scholarship Network Legal Studies Research Paper Series, available at: <http://www.ssrn.com/link/U-Hong-Kong-LEG.html>.

229 Third Plenum Decision at point 33.

230 Adam Century, “As Labor Camp Prisoners Are Released, Questions Remain,” *The New York Times*, 21 Nov. 2013, available at: [http://sinosphere.blogs.nytimes.com/2013/11/21/as-labor-camp-prisoners-are-released-questions-remain/?\\_r=0](http://sinosphere.blogs.nytimes.com/2013/11/21/as-labor-camp-prisoners-are-released-questions-remain/?_r=0).

231 “Petitioner’s Account of RTL Reforms,” *Dui Hui Human Rights Journal*, 20 Nov. 2013, quoting: Zhou Xifeng, “Sent to RTL five times, Six Times in the RTL Facility: RTL Inmate Recounts His Past,” *Xiaoxiang Morning News*, 19 Nov. 2013, available at: <http://www.duihuahrjournal.org/2013/11/petitioners-account-of-rtl-reforms.html>.

232 “Re-education Through Labor Abolished Yet Arbitrary Detention Remains,” *Laogai Research Foundation*, 15 Nov. 2013, available at: <http://www.laogai.org/commentaries/re-education-through-labor-abolished-yet-arbitrary-detention-remains>; Chris Buckley, “China to Ease Longtime Policy of 1-Child Limit,” *The New York Times*, 15 Nov. 2013, available at: [http://www.nytimes.com/2013/11/16/world/asia/china-to-loosen-its-one-child-policy.html?\\_r=0&pagewanted=all](http://www.nytimes.com/2013/11/16/world/asia/china-to-loosen-its-one-child-policy.html?_r=0&pagewanted=all); Stanley Lubman, “China Legal Reform Promises Cause for Optimism,” *The Wall Street Journal*, 20 Nov. 2013, available at: <http://blogs.wsj.com/chinarealtime/2013/11/20/china-legal-reform-promises-cause-for-cautious-optimism/>.

es” involve members of ‘cult’ organizations, such as the Falun Gong, and people who engage in mass petitioning or activity that is persistent or disruptive are detained and forced to attend lectures for days or months.<sup>233</sup> The same paragraph that announced the abolition of RTL also announced the goal of enhancing the community corrections system.<sup>234</sup> This approach would abolish RTL but not its defining characteristics, which would continue to exist as part of different mechanisms.

If the essential functions and defining characteristics of RTL survive its abolition, either under a different name or as part of another system, it will undermine the PRC’s reform efforts. Especially because RTL has been used to circumvent other reform efforts if any system of arbitrary detention continues to exist after RTL is abolished it will undermine all other efforts at reforming the judiciary and legal system in the PRC. For the proposed reforms to be meaningful, the PRC must comply with all international legal standards regarding detention and the treatment of detainees.

As the Chinese government implements the abolition of RTL it must do so in a clear and transparent manner. This involves not only shutting down or repurposing RTL facilities but also demonstrating to the international community that RTL has not been replaced with another form of arbitrary detention. The PRC can accomplish this by increasing transparency of court proceedings and informing family members and the international community of the status and location of people detained by the government.

The decision to abolish RTL and its subsequent abolition did not come as a shock. High profile cases of abuse of the system led to widespread criticism of RTL by the Chinese public

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233 “Legal Education: Arbitrary Detention Doesn’t End with RTL,” *Dui Hua Research*, 2 April 2013, available at: <http://www.duihuaresearch.org/2013/04/legal-education-arbitrary-detention.html>.

234 “Community Correction Expands as RTL Contracts,” *Dui Hua Human Rights Journal*, 19 Dec. 2013, available at: <http://www.duihuahrjournal.org/2013/12/community-correction-expands-as-rtl.html>.

and media.<sup>235</sup> Xi Jinping was also personally opposed to RTL.<sup>236</sup> However, both the lack of details and the specificity of the announcement applying only to RTL have fueled skepticism and concerns that RTL may be abolished in name only and similar methods of arbitrary detention will continue to exist.

The Third Plenum Decision's only mention of RTL was that it would be abolished. There have been some reports that in the months leading up to the release of the Third Plenum document RTL facilities stopped admitting new detainees.<sup>237</sup> Some detainees have been released early.<sup>238</sup> However, there are still Tibetans who were sentenced to RTL in 2013 and have not been released. For example, Ngawang Tobden was detained in October 2012 and sentenced to RTL four months later, in February 2013.<sup>239</sup> The sentencing of these Tibetans to RTL and their continued detention raises questions about whether RTL will be actually abolished in practice and, if it is, whether the abolition will be implemented in Tibet.

The legal decision to abolish RTL at the end of the National People's Congress Standing Committee's bimonthly session did not assuage fears that RTL would only be abolished in name.<sup>240</sup> Unsurprisingly, China did not mention the abuses as-

235 John Delury, "China's Labor's Lost: The End of Re-Education Through Labor Camps," *Foreign Affairs Snapshot*, 25 Nov. 2013, available at: <http://www.foreignaffairs.com/articles/140289/john-delury/chinas-labors-lost>; Congressional Executive Commission on China, "2012 Annual Report," 10 Oct. 2012 at 74, available at: <http://www.gpo.gov/fdsys/pkg/CHRG-112shrg76190/pdf/CHRG-112shrg76190.pdf>.

236 Benjamin Kang Lim and Ben Blanchard, "Insight – Failure to end China's labour camps shows limits of Xi's power," *Reuters*, 7 Nov. 2013, available at: <http://in.reuters.com/article/2013/11/06/china-politics-xi-idINDEE9A50FT20131106>.

237 "Petitioner's Account of RTL Reforms," *Dui Hui Human Rights Journal*, 20 Nov. 2013, available at: <http://www.duihuahrjournal.org/2013/11/petitioners-account-of-rtl-reforms.html>.

238 "Four Tibetan Monks released from Chinese Labour camp," *Tibetan Centre for Human Rights and Democracy*, 13 Aug. 2013, available at: <http://www.tchrd.org/2013/08/four-tibetan-monks-released-from-chinese-labour-camps/>.

239 "Tibetan Jailed for Having Photos of Self-Immolators," *Radio Free Asia*, 23 Feb. 2013, available at: <http://www.rfa.org/english/news/tibet/photos-02232013143634.html>.

240 "China mulls abolition of reeducation through labor," *Xinhua*, 23 Dec. 2013, available at: [http://news.xinhuanet.com/english/china/2013-12/23/c\\_132990188.htm](http://news.xinhuanet.com/english/china/2013-12/23/c_132990188.htm).

sociated with RTL and instead declared that, after more than 50 years, RTL had fulfilled its purpose and could be abolished.<sup>241</sup> Yang Huanning (杨焕宁), the vice minister for public security, said that the functions of RTL have been replaced by other laws, such as the Criminal Law, Law on Penalties for Administration of Public Security, and the Anti-Drug Law.<sup>242</sup> Yang Huanning's reliance on two forms of extrajudicial detention may suggest that, despite previous assurance, the PRC does not intend to abolish RTL in function. Within the PRC, there are many different methods of arbitrary detention that may replace RTL.

In the months leading up to the Third Plenum Decision, facilities were transitioned into drug rehabilitation centers and guards were being trained to provide "legal education classes."<sup>243</sup> This renaming was a precursor to Yang Huanning's statement about the functions of RTL existing in other laws. The retraining of guards is particularly worrisome. Especially since the 2008 protests, the PRC has used education campaigns, euphemistically focusing on "legal education" or "patriotic education," to detain Tibetans en masse. In April 2011, 300 security officials surrounded Kirti Monastery for an education campaign.<sup>244</sup> This "education campaign" made 300 monks disappear for months while nobody was allowed into or out of the camp.<sup>245</sup> The consequences of the "education campaign" were so severe that the United Nations Working Group on Enforced or Involuntary Dis-

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241 "China mulls abolition of reeducation through labor," *Xinhua*, 23 Dec. 2013, available at: [http://news.xinhuanet.com/english/china/2013-12/23/c\\_132990188.htm](http://news.xinhuanet.com/english/china/2013-12/23/c_132990188.htm).

242 "China mulls abolition of reeducation through labor," *Xinhua*, 23 Dec. 2013, available at: [http://news.xinhuanet.com/english/china/2013-12/23/c\\_132990188.htm](http://news.xinhuanet.com/english/china/2013-12/23/c_132990188.htm).

243 "Petitioner's Account of RTL Reforms," *Dui Hui Human Rights Journal*, 20 Nov. 2013, available at: <http://www.duihuahrjournal.org/2013/11/petitioners-account-of-rtl-reforms.html>.

244 "Kirti monk sentenced to 3 yrs, hundreds of security officials deployed in Kirti," *Tibetan Centre for Human Rights and Democracy*, 27 July 2011, available at: <http://www.tchrd.org/2011/07/kirti-monk-sentenced-to-3-yrs-hundreds-of-security-officials-deployed-in-kirti/>.

245 "Legal education" claim purely propaganda, account for the disappeared," *Tibetan Centre for Human Rights and Democracy*, 11 June 2011, available at: <http://www.tchrd.org/2011/06/legal-education-claim-purely-propaganda-account-for-the-disappeared/>.



appearances became seriously concerned about the situation and urged the PRC to account for what had happened to the monks.<sup>246</sup> Only a few months after the 2011 “education campaign” the PRC launched another “patriotic re-education campaign” that lasted six months.<sup>247</sup> The campaign caused pervasive feelings of despair and loneliness in the monastery.<sup>248</sup> During the campaign, elderly monks were arrested then released in desolate areas.<sup>249</sup> Many of them died of heart attacks.<sup>250</sup>

The use of “patriotic re-education” campaigns at monasteries began in 1996 as part of a nation-wide Strike Hard Campaign.<sup>251</sup> By 1998, six monasteries and nunneries were completely shut down, 294 monks and nuns were arrested, and 14 killed.<sup>252</sup> The “patriotic re-education” campaigns effected all but seven of the 1,787 monasteries and temples in Tibet and 30,000 Buddhist monks.<sup>253</sup> By August 2004, 11,383 monks and nuns were expelled from their monasteries as a result of the patriotic education campaigns.<sup>254</sup>

Following the 2008 Protests, the “patriotic re-education campaigns” were mostly relabeled as “legal education cam-

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246 “China: UN expert body seriously concerned about Tibetan monks reportedly subjected to enforced disappearance,” *United Nations Office of the High Commissioner for Human Rights*, 8 June 2011, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11122&LangID=E>.

247 Mar Jang-nyug and TCHRD, *ANCESTORS’ TOMB*, (2013) at 100.

248 Mar Jang-nyug and TCHRD, *ANCESTORS’ TOMB*, (2013) at 100.

249 Mar Jang-nyug and TCHRD, *ANCESTORS’ TOMB*, (2013) at 101.

250 Mar Jang-nyug and TCHRD, *ANCESTORS’ TOMB*, (2013) at 101.

251 Anand Upendran, “Patriotic Education” in Tibet,” *The Diplomat*, 21 Aug. 2013, available at: <http://thediplomat.com/2013/08/the-patriotic-education-of-tibet/>.

252 Over 3,993 monks and nuns expelled: religious repression continues in Tibet,” *Tibetan Centre for Human Rights and Democracy*, 23 May 1998, available at: <http://www.tchrd.org/1998/05/over-3993-monks-and-nuns-expelled-religious-repression-continues-in-tibet/>.

253 Over 3,993 monks and nuns expelled: religious repression continues in Tibet,” *Tibetan Centre for Human Rights and Democracy*, 23 May 1998, available at: <http://www.tchrd.org/1998/05/over-3993-monks-and-nuns-expelled-religious-repression-continues-in-tibet/>.

254 “Tibetan Monks Arrested, Monastery Closed Amid Protests,” *Tibetan Centre for Human Rights and Democracy*, 29 Nov. 2005, available at: <http://www.tchrd.org/2005/11/tibetan-monks-arrested-monastery-closed-amid-protests-2/>.



paigns.”<sup>255</sup> Though the effects have not. For example, after the 2008 Protests the PRC instituted an education campaign at Gomang Monastery. By September 2012, the population of the monastery dropped from over 900 to 370.<sup>256</sup> The use of the education campaigns has increased in past years. In addition to the campaigns at Kirti Monastery, every monastery in the Tibet Autonomous Region (TAR) has been subjected to “patriotic re-education” and “legal education” campaigns.<sup>257</sup> In July 2013, political education classes forced the 300 year old Shak Rongpo Gaden Dhargyeling Monastery, in Shakchu (Ch: Xiaqu) Township in Nagchu County, TAR to close.<sup>258</sup> Most recently, PRC officials announced in December 2013 there must be a “re-education” campaign in Diru (Ch: Biru) as part of the on-going crackdown there.<sup>259</sup>

The conditions during the education campaigns will only get worse as the guards from RTL facilities bring their knowledge of forced labor and torture into the “education classes.” Even without the RTL guards, conditions during the “education sessions” are bleak. Monks and nuns who resist the re-education campaigns have been kick out of the monastery or arrested.<sup>260</sup> The monks and nuns are also subjected to beatings, forced exer-

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255 “China Re-launches ‘Legal Education’ Campaign in TAR,” *Tibetan Centre for Human Rights and Democracy*, 17 May 2012, available at: <http://www.tchrd.org/2012/05/china-re-launches-legal-education-campaign-in-tar/>.

256 “Amdo Ngaba monk sheds light on repression in Tibet,” *Tibetan Centre for Human Rights and Democracy*, 18 Feb. 2013, available at: <http://www.tchrd.org/2013/02/amdo-ngaba-monk-sheds-light-on-repression-in-tibet/>.

257 “China Re-launches ‘Legal Education’ Campaign in TAR,” *Tibetan Centre for Human Rights and Democracy*, 17 May 2012, available at: <http://www.tchrd.org/2012/05/china-re-launches-legal-education-campaign-in-tar/>.

258 “Ancient Tibetan monastery under siege over reincarnation issue: mother of two attempts suicide protest,” *Tibetan Centre for Human Rights and Democracy*, 10 Sept. 2013, available at: <http://www.tchrd.org/2013/09/ancient-tibetan-monastery-under-siege-over-reincarnation-issue-mother-of-two-attempts-suicide-protest/>.

259 “Diru Crackdown: Senior Tibetan Buddhist scholar beaten to death in police custody,” *Tibetan Centre for Human Rights and Democracy*, 19 Dec. 2013, available at: <http://www.tchrd.org/2013/12/diru-crackdown-senior-tibetan-buddhist-scholar-beaten-to-death-in-police-custody/>.

260 “China Re-launches ‘Legal Education’ Campaign in TAR,” *Tibetan Centre for Human Rights and Democracy*, 17 May 2012, available at: <http://www.tchrd.org/2012/05/china-re-launches-legal-education-campaign-in-tar/>.

cises, and tied up.<sup>261</sup> In some cases, monks have died as a direct result of the education campaigns.<sup>262</sup>

The “education campaigns” do not only affect monks. In Tibet, farmers, nomads, government employees, security forces, businessmen and schoolchildren are all subject to “education campaigns.”<sup>263</sup> Outside of Tibet, there are legal education classes for members of ‘cult’ organizations, including the Falun Gong, and people who engage in mass petitioning or activity that is persistent or disruptive that can last for days or months.<sup>264</sup>

The renaming of RTL facilities as drug rehabilitation centers, that Yang Huanning alluded to, is another form of extrajudicial detention. Drug rehabilitation centers have also been used to suppress political dissent without working through the judiciary.<sup>265</sup> Reports that RTL facilities and staff are adapting to provide other forms of arbitrary detention under the guise of “legal education” or “drug rehabilitation” suggest that rather than actually abolishing arbitrary detention the PRC is committed to continuing the practice under a different name.

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261 Anand Upendran, “Patriotic Education” in Tibet,” *The Diplomat*, 21 Aug. 2013, available at: <http://thediplomat.com/2013/08/the-patriotic-education-of-tibet/>.

262 See eg, “A young monk dies under mysterious circumstances following the “patriotic education” campaign in Drepung monastery,” *Tibetan Centre for Human Rights and Democracy*, 9 Nov. 2005, available at: <http://www.tchrd.org/2005/11/a-young-monk-dies-under-mysterious-circumstances-following-the-patriotic-education-campaign-in-drepung-monastery/>.

263 “12 monks arrested for opposing “patriotic education” campaign,” *Tibetan Centre for Human Rights and Democracy*, 31 May 2008, available at: <http://www.tchrd.org/2008/05/12-monks-arrested-for-opposing-patriotic-education-campaign/>.

264 “Legal Education: Arbitrary Detention Doesn’t End with RTL,” *Dui Hua Research*, 2 April 2013, available at: <http://www.duihuaresearch.org/2013/04/legal-education-arbitrary-detention.html>.

265 “Re-education Through Labor Abolished Yet Arbitrary Detention Remains,” *Laogai Research Foundation*, 15 Nov. 2013, available at: <http://www.laogai.org/commentaries/re-education-through-labor-abolished-yet-arbitrary-detention-remains>.

### **III. Current Re-education Through Labor Law**

Until its abolition, the most recent regulations regarding RTL is the *Regulations on the Handling of Reeducation Through Labour* (2002 Regulations). The Ministry of Public Security (MPS) reserved the right to interpret the Regulations.<sup>266</sup> In 2005 the Ministry of Public Security exercised this power and issued an *Implementation Opinion Regarding Further Strengthening and Improvement of Reeducation Through Labor Review and Approval Work* (2005 Opinion). The 2005 Opinion reflects the Ministry of Public Security's internal opinion.<sup>267</sup> The 2005 Opinion is not binding on the Ministry of Public Security but does provide an insight into how RTL functions in theory. This section will examine how RTL is designed to work, omitting information concerning juveniles and non-custodial detention. Section IV will examine how RTL has been applied.

#### **A. Summary of RTL process**

The 2002 Regulations reflect an idealized version of how RTL should function. It leaves the defining aspects of RTL unchanged but it presents the image of an efficient process with numerous internal checks to prevent abuse. The implication of the 2002 Regulations is that the PSB can be trusted to handle RTL cases without external oversight if a lot of people within the PSB are involved.

From detention to sending somebody to a RTL facility, the entire RTL process outlined in the 2002 Regulations should take less than two months.<sup>268</sup> During this time period the detainee will be questioned twice by PSB officers at the county level

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266 Art. 80.

267 "Reference Materials: Police Updated RTL Rules in 2005, But Have They Complied?" *Dui Hua*, 3 Jan. 2013, available at: <http://www.duihuaresearch.org/2013/01/police-updated-rtl-rules-in-2005-but.html>.

268 See 2002 Regulations Arts. 18, 31, 29, 52.

working for the case-handling and the legal affairs department then by special panel at the prefecture level consisting of 3-5 PSB officers from the prefecture's legal affairs unit.<sup>269</sup> Unless the detainee is allowed to and does request a hearing, the questioning is the only input the detainee has regarding the detainee's case.

While the detainee is in detention awaiting a sentence, the RTL case will travel through 2-3 different PSB units, a legal affairs panel, and a RTL review and approval committee. All of these actors are required under the 2002 Regulations to create a substantial amount of paperwork. From start to finish the PSB will produce a request for RTL approval,<sup>270</sup> a detailed record of questioning that is authenticated by the suspect,<sup>271</sup> a verification report,<sup>272</sup> a request for deliberation and decision,<sup>273</sup> a panel meeting transcript,<sup>274</sup> a hearing notice and an RTL Decision.<sup>275</sup>

None of the paperwork, committees, or panels are able to provide the same due process guarantees as an independent oversight and real enforcement of the law. Unless there is an appeal to the judicial system RTL is handled entirely within the Ministry of Public Security, which, as the previous section demonstrated, resists external supervision that would curtail its authority.

## **B. RTL Crimes and Who May be Sent to RTL**

People are subject to RTL if they commit, among others things: minimally endangering state security without entailing criminal responsibility;<sup>276</sup> endangering public safety by creating an atmosphere of fear or undermining national laws through a se-

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269 2002 Regulations Art. 20.

270 2002 Regulations Art. 16.

271 2002 Regulations Art. 17.

272 2002 Regulations Art. 18(i).

273 2002 Regulations Art. 23(i).

274 2002 Regulations Art. 23(i).

275 2002 Regulations Art. 49.

276 2002 Regulations Art. 9(i).

cret society, cult or superstition;<sup>277</sup> non-violently deliberately disrupting daily life, research, work, education, or production or obstructing state employees from carrying out their legal duties;<sup>278</sup> instructing others to commit crimes without entailing criminal responsibility;<sup>279</sup> other circumstances provided for by statute;<sup>280</sup> membership in a criminal gang that does not warrant criminal responsibility;<sup>281</sup> committing minor non-criminal offenses within five years of being released from prison or within three years of suffering an administrative punishment;<sup>282</sup> and prostitution and drugs.<sup>283</sup> This long list of offenses is broad enough to include any offense.<sup>284</sup>

People who commit these offenses may be subject to RTL even if the people's procuratorate declines to pursue criminal punishment.<sup>285</sup> People who are incapable of working due to illness or a physical malady are exempt from RTL unless the cause is self-inflicted to avoid RTL.<sup>286</sup> Foreigners, stateless people, and residents of Hong Kong, Macao, and Taiwan cannot be subject to RTL.<sup>287</sup>

## **C. Procedure of an RTL Conviction**

### **1. Standards of Proof**

RTL decisions must be based on reliable and sufficient ev-

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277 2002 Regulations Art. 9(iv).

278 2002 Regulations Art. 9(v).

279 2002 Regulations Art. 9(vi).

280 2002 Regulations Art. 9(x).

281 2002 Regulations Art. 9(ii).

282 2002 Regulations Art. 9(iii).

283 2002 Regulations Arts. 9(vii-ix).

284 Fu Hualing, "Re-education Through Labor in Historical Perspective," (2005) *China Quarterly* 811 at 821 accessed through Social Science Research Network Legal Scholarship Network Legal Studies Research Paper Series, *available at*: <http://www.ssrn.com/link/U-Hong-Kong-LEG.html>.

285 2002 Regulations Art. 9.

286 2002 Regulations Art. 11.

287 2002 Regulations Art. 12.

idence to allow a correct decision on wrongdoing.<sup>288</sup> The punishment must be appropriate for the offense and the procedure must be lawful.<sup>289</sup> According to the 2002 Regulations, RTL may not be used when a criminal sentence is appropriate and cannot be used to covertly extend a criminal punishment.<sup>290</sup> A person may not be prosecuted for an RTL offense three years after its commission.<sup>291</sup>

## 2. County Level

After a criminal or public order case has been investigated by the case-handling unit they will submit a “Request for RTL Approval” if they believe that the facts are clear and the evidence is sufficient to justify a RTL sentence.<sup>292</sup> Upon receiving a “Request for RTL Approval” the legal affairs unit will appoint two PBS officers to verify the facts and if procedures merit RTL,<sup>293</sup> this includes questioning the suspect and reviewing the principal facts and evidence.<sup>294</sup> A detailed record of the questioning must be kept and authenticated by the suspect.<sup>295</sup>

The legal affairs unit has 3 days to determine how to handle the case.<sup>296</sup> If the legal affairs unit believes the case as described in the “Request for RTL Approval” does not merit RTL it may send the case back to the case-handling unit either for further investigation<sup>297</sup> or a written explanation of why RTL is inappropriate and a recommendation on how the case should proceed.<sup>298</sup>

If the legal affairs unit believes RTL is appropriate the case is forwarded from the county level to the prefecture level for verification. The county-level legal affairs unit sends the prefec-

288 2002 Regulations Art. 4.  
289 2002 Regulations Art. 4.  
290 2002 Regulations Art. 4.  
291 2002 Regulations Art. 43.  
292 2002 Regulations Art. 13.  
293 2002 Regulations Art. 16.  
294 2002 Regulations Art. 17.  
295 2002 Regulations Art. 17.  
296 2002 Regulations Art. 18.  
297 2002 Regulations Art. 18(ii).  
298 2002 Regulations Art. 18(iii).

ture the original “Request for RTL Approval” and its own “Verification Report.”<sup>299</sup> If the case originated at the prefecture level and not the county level the prefecture level case-handling unit will send a “Request for RTL Approval” directly to the prefecture level legal affairs unit for verification.<sup>300</sup>

### 3. Prefecture level

When the prefecture level legal affairs unit receives a “Request for RTL Approval” the legal affairs unit shall convene a panel of 3-5 police officers with two or more years experience and “relatively high degrees of professional and legal character.”<sup>301</sup> The panel will verify the documents, and question the suspect and, when necessary, hear the opinions of the unit reporting the case.<sup>302</sup> The panel will also conduct a hearing if necessary.<sup>303</sup>

The panel has 3 days to complete its investigation, though it may be extended to up to 15 days if the suspect has requested a hearing and additional time is necessary.<sup>304</sup> The panel’s decision is taken by a majority vote.<sup>305</sup> Once the panel has reached a decision it submits a “Panel Meeting Transcript” to a member of the legal affairs unit at or above the prefecture level<sup>306</sup> who then decides how the case can proceed.<sup>307</sup>

The case can proceed one of four ways. If the case should be addressed through a means other than RTL it is returned to the reporting unit to be handled appropriately.<sup>308</sup> If further investigation is required the case is returned to the reporting unit or the legal affairs unit when necessary may carry out the investigation.<sup>309</sup>

299 2002 Regulations Art. 18(i).  
300 2002 Regulations Art. 19.  
301 2002 Regulations Art. 20.  
302 2002 Regulations Art. 20.  
303 2002 Regulations Art. 33.  
304 2002 Regulations Art. 21.  
305 2002 Regulations Art. 22.  
306 2002 Regulations Art. 22.  
307 2002 Regulations Art. 23.  
308 2002 Regulations Art. 23(iv).  
309 2002 Regulations Art. 23(iii).

The additional investigation must be carried out in five days and if the case is still unclear or the evidence insufficient for RTL the legal affairs unit must request that RTL not be imposed.<sup>310</sup>

If the case merits RTL a “Request for Deliberation and Decision” along with the “Panel Meeting Transcript” is sent to the RTL review and approval committee of the same administrative level.<sup>311</sup> Suspects who face two years or more of RTL and are not suspected of “organizing or using a cult to undermine the implementation of national laws” may request a hearing before the panel before the case is sent to the RTL review and approval committee.<sup>312</sup> Local public security departments may allow hearings for more cases at their discretion.<sup>313</sup>

The suspect must be informed of his or her right to a hearing within two days of the panel reaching its decision.<sup>314</sup> The suspect will be considered to have waived his or her right to a hearing if the suspect does not request on within two days of being informed of the option.<sup>315</sup> If the suspect requests a hearing, the public security authority must determine the suspect is eligible for a hearing before a hearing is scheduled.<sup>316</sup> Two days before the hearing the suspect must receive a “Hearing Notice” that includes the time and place of the hearing and the suspect’s legal rights at the hearing.<sup>317</sup> This is the suspect’s only opportunity for a hearing and to present a case and be heard.

At the hearing the suspect may check the hearing record,<sup>318</sup> introduce new facts or evidence,<sup>319</sup> make a statement or defense plea,<sup>320</sup> cross-examine the evidence,<sup>321</sup> and debate the case inves-

310 2002 Regulations Art. 24.  
311 2002 Regulations Art. 23(i).  
312 2002 Regulations Arts. 23(ii), 25, 27.  
313 2002 Regulations Art. 25.  
314 2002 Regulations Art. 26.  
315 2002 Regulations Arts. 27, 28.  
316 2002 Regulations Art. 29.  
317 2002 Regulations Art. 30.  
318 2002 Regulations Art. 35(v).  
319 2002 Regulations Art. 35(iv).  
320 2002 Regulations Art. 35(iii).  
321 2002 Regulations Art. 35(iii).



tigators concerning the facts, evidence, applicable law, and any other relevant issues.<sup>322</sup>

If the case does not involve state secrets or individual privacy the suspect may have 1-3 observers at the hearing from the suspect's close family or work unit.<sup>323</sup> The victim may participate in the hearing if the panel deems it necessary.<sup>324</sup>

After the hearing the panel will send the "Hearing Report" to the legal affairs unit at that level of administration.<sup>325</sup> The "Hearing Report" will include the opinion of the panel arrived at through majority vote and the minority opinions if applicable.<sup>326</sup> The legal affairs unit sends a "Request for Deliberation and Decision," which includes an opinion on how to handle the case based on the "Hearing Report" and "Hearing Transcript," to the RTL review and approval committee.<sup>327</sup>

#### **4. RTL Review and Approval Committee**

The RTL review and approval committee is the final decision maker regarding whether to impose RTL.<sup>328</sup> The RTL review and approval committee is chaired by a lead cadre from the legal affairs unit and consist of another 4-6 members of the local Ministry of Public Security from legal affairs, police inspection, public order, criminal inspection, and other units.<sup>329</sup> Upon receiving a request to review a RTL case from a legal affairs unit the RTL Review and Approval Committee must decide by a majority vote whether to impose RTL within two days.<sup>330</sup>

The RTL review and approval committee will hear a presentation from the verification panel's chair summarizing the case

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322 2002 Regulations Art. 36.  
323 2002 Regulations Art. 32.  
324 2002 Regulations Art. 33.  
325 2002 Regulations Art. 37.  
326 2002 Regulations Art. 27.  
327 2002 Regulations Art. 38.  
328 2002 Regulations Art. 39.  
329 2002 Regulations Art. 3.  
330 2002 Regulations Art. 39.

and the opinions. The RTL review and approval committee will organize a review of the file and reach a decision by majority vote.<sup>331</sup> The “RTL Decision” must provide the evidence and facts of the case, give a reason for the decision, whether there was a hearing, and duration of the RTL detention, and the rights of the suspect.<sup>332</sup> The “RTL Decision” is given to the unit that reported the case who must then announce the result to the suspect within two days.<sup>333</sup>

The RTL review and approval committee may decide not to impose RTL if the evidence is insufficient or the case is unclear,<sup>334</sup> decide the case merits a different punishment or should be handled differently and return the case to the unit reporting the case to take care of the case,<sup>335</sup> or impose RTL if the evidence is clear and sufficient.<sup>336</sup> The RTL review and approval committee cannot impose RTL based solely on a confession or a statement of the victim.<sup>337</sup> At the same time the RTL review and approval committee can decide when applicable to confiscate any of the suspect’s illegal or illicit property and add it to the treasury and return the victim’s lawful property<sup>338</sup> but cannot rule on the merits of a civil claim.<sup>339</sup>

## **D. Sentencing**

Once it is determined that a person should be sent to RTL the next issue is how long the sentence should be. RTL sentences range from 1-3 years.<sup>340</sup> Once the suspect arrives at the RTL facility, the RTL sentence may be extended to four years.<sup>341</sup> To

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331 2002 Regulations Art. 40.

332 2002 Regulations Art. 49.

333 2002 Regulations Art. 52.

334 2002 Regulations Art. 41(ii).

335 2002 Regulations Art. 41(iii).

336 2002 Regulations Art. 41(i).

337 2002 Regulations Art. 42.

338 2002 Regulations Art. 41.

339 2002 Regulations Art. 50.

340 2002 Regulations Art. 44.

341 “Changing the Soup but not the medicine?: Abolishing Re-education Through Labour in China,” *Amnesty International*, Dec. 2013, at 5, available at: [https://www.amnesty.org.uk/sites/default/files/china\\_rtl.pdf](https://www.amnesty.org.uk/sites/default/files/china_rtl.pdf).

determine the length of the sentence the RTL review and approval committee should consider the facts, nature, legal liability, motive, circumstance, and the degree of social harm.<sup>342</sup> A non-custodial detention may be revoked and the RTL sentence extended for 3-12 months “if there is a serious violation of the public security’s monitoring and control rules” or the suspect commits another minor criminal act that does not warrant criminal punishment.<sup>343</sup>

A suspect may be exempted from RTL if: 1) the offense was a minor illegal criminal act and the suspect voluntarily surrendered to the authorities;<sup>344</sup> 2) the offense was a minor illegal criminal act and was tricked or coerced into the criminal act;<sup>345</sup> 3) it is a first offense and the suspect sought to remedy the wrong and is remorseful;<sup>346</sup> or 4) or the suspect demonstrated meritorious service.<sup>347</sup>

A suspect should receive a lenient sentence if: 1) the suspect played a minor or secondary role in the offense;<sup>348</sup> 2) was coerced or defrauded into engaging in the illegal criminal act;<sup>349</sup> 3) voluntarily surrendered to the authorities and truthfully confessed offense;<sup>350</sup> or 4) demonstrated meritorious service.<sup>351</sup>

A suspect should receive a severe sentence if: 1) committed an intentional illegal act within two years of release from prison or one year of release from RTL;<sup>352</sup> 2) escaped when investigation was pending;<sup>353</sup> 3) “coerced, defrauded or instructed juveniles to commit offenses;”<sup>354</sup> or 4) committed multiple offenses

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342 2002 Regulations Art. 44.  
343 2002 Regulations Art. 61.  
344 2002 Regulations Art. 45(i)  
345 2002 Regulations Art. 45(ii).  
346 2002 Regulations Art. 45(iii).  
347 2002 Regulations Art. 45(iv).  
348 2002 Regulations Art. 46(i).  
349 2002 Regulations Art. 46(ii).  
350 2002 Regulations Art. 46(iii).  
351 2002 Regulations Art. 46(iv).  
352 2002 Regulations Art. 47(i).  
353 2002 Regulations Art. 47(ii).  
354 2002 Regulations Art. 47(iii).

punishable by RTL.<sup>355</sup>

An RTL sentence is to be performed within one month of the delivery of the “RTL Decision.”<sup>356</sup> During that month the suspect may appeal to the judiciary by appealing for administrative reconsideration or administrative litigation<sup>357</sup> in accordance with the law.<sup>358</sup> The suspect’s family or work unit can request non-custodial detention or a postponement.<sup>359</sup>

A request for administrative reconsideration is directed to the RTL management committee at the same administrative level the “RTL Decision” originated or one level higher.<sup>360</sup>

A RTL sentence can be delayed to allow the suspect to fulfill a prison sentence, but RTL will be imposed immediately after the prisoner’s release from prison.<sup>361</sup> If the person is given a criminal punishment that does not involve detention, such as public surveillance or a suspended sentence, then the non-detention criminal sentence will then be implemented immediately after the suspect’s release from RTL.<sup>362</sup>

In some circumstances a person may receive a non-custodial RTL sentence. However, people sentenced to RTL rarely receive non-custodial detention except as a reward from the guards.<sup>363</sup> Tibetans, particularly those sent to RTL for protesting for human rights in Tibet, do not receive non-custodial detentions. Under the 2002 Regulations, people are ineligible for Under the 2002 Regulations, a person must receive custodial detention if: 1)

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355 2002 Regulations Art. 47(iv).

356 2002 Regulations Art. 53.

357 See 2002 Regulations Art. 73.

358 2002 Regulations Art. 53.

359 2002 Regulations Art. 53.

360 2002 Regulations Art. 72.

361 2002 Regulations Art. 67.

362 2002 Regulations Art. 67.

363 See Chai Huiqun, “Confessions of Disgraced RTL Officers, RTL Centers: Labor First?,” *Southern Weekly*, 2 May 2013 (translated by Dui Hua Human Rights Journal, “RTL Detainees Pressed to Work, Paying to Leave, Officers Say” 5 Aug. 2013, available at: <http://www.duihuahrjournal.org/2013/08/rtl-detainees-pressed-to-work-paying-to.html>).

RTL was imposed for endangering state security;<sup>364</sup> suspect is a serial offender or offense had a negative impact of the locality;<sup>365</sup> the suspect has been sent to prison or RTL before;<sup>366</sup> suspect could be a danger to society if not sent to RTL;<sup>367</sup> the suspect's family, guardian and work unit cannot provide help and education.<sup>368</sup>

### III. International Legal Standards

Re-education Through Labor violates international law in two ways. First, on its face RTL violates international legal prohibitions regarding arbitrary detention and forced labor. These violations are defining features of RTL and exist regardless of how the law is interpreted or applied. Second, RTL violates the prohibition of torture, cruel, inhumane, and degrading treatment. This violation exists because of how RTL is applied. There is nothing in the Chinese laws regarding RTL that require torture, yet because of the lack of oversight regarding RTL torture is an inevitable consequence of the law. This section will address the international legal standards regarding arbitrary detention, forced labor, and torture in turn.

#### A. Arbitrary Detention

The international prohibition of arbitrary detention is binding upon the PRC as customary international law. Customary international law is a binding principle of law formed through widespread and consistent state practice coupled with *opinio juris* or the sense that a State is acting out of a legal obligation.<sup>369</sup> Unlike treaties, which are only binding upon States after States

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364 Art. 55(i).

365 Art. 55(ii).

366 Art. 55(iii).

367 Art. 55(vi).

368 Art. 55(vii).

369 *North Sea Continental Shelf* (Republic of Germany/Denmark; Republic of Germany/Netherlands), *Judgment*, I.C.J. Reports 1969 p. 3 (hereinafter *North Sea Continental Shelf*) at par. 74.

have acceded to the treaty, customary international law is binding upon all States because of their membership in the international community. It represents the agreed upon but unwritten rules that States are legally bound to follow as responsible stakeholders in the international community.

The most authoritative statement of the prohibition of arbitrary detention is found in article 9 of the International Covenant on Civil and Political Rights (ICCPR), which states:

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

...

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.<sup>370</sup>

The PRC signed the ICCPR in 1998. Despite repeated assurances, the PRC has not ratified the ICCPR.<sup>371</sup> As such, none of the articles in the ICCPR, including article 9, are binding upon the PRC as a treaty obligation.<sup>372</sup> However, individual articles in treaties may be part of customary international law.<sup>373</sup>

The ICCPR is part of the International Bill of Human Rights and has been acceded to by 163 State parties to the ICCPR, representing over 80% of the States in the world.<sup>374</sup> Many of the

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370 International Covenant on Civil and Political Rights, 999 U.N.T.S. 171, entered into force Mar. 23, 1976 (hereinafter ICCPR) Art. 9.

371 Report of the Working Group on Universal Periodic Review: China. (5 Oct. 2009). A/HRC/11/25. Article 63, 114(1); “Universal Periodic Review and China’s Human Rights Records in Tibet,” *Tibetan Centre for Human Rights and Democracy*, July 2013, at 7.

372 Vienna Convention on the Law of Treaties, 1155 U.N.T.S. 331, entered into force 27 Jan. 1980 (hereinafter VCLT) Art. 15.

373 *North Sea Continental Shelf* at par. 71.

374 See United Nations Treaty Collection, Chapter IV. Human Rights Treaty Da-

obligations in the ICCPR are reiterated in other multilateral treaties. The Rome Statute, which created the International Criminal Court, lists arbitrary detention as an underlying criminal offense for crimes against humanity.<sup>375</sup> Regional human rights treaties from Europe, the Americas, and Africa repeat the principles in the ICCPR, including the prohibition of arbitrary detention.<sup>376</sup> The Universal Declaration of Human Rights<sup>377</sup> and regional human rights declarations from the Americas,<sup>378</sup> the Association of South East Asian Nations (ASEAN),<sup>379</sup> the Middle East,<sup>380</sup> and the European Union<sup>381</sup> all recognize the right to security of the person and the prohibition of arbitrary arrest or detention. The International Law Commission's Draft Code of Crimes Against the Peace and Security of Mankind lists arbitrary detention as a crime against humanity.<sup>382</sup> Domestically, national courts have recognized the importance of and the enforced the prohibition of arbitrary detention in, for example,<sup>383</sup> Bosnia and Herzegovina,<sup>384</sup> Canada,<sup>385</sup> Columbia.<sup>386</sup> These international instruments and national decisions

tabase, International Covenant on Civil and Political Rights, *available at*: [http://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg\\_no=iv-4&chapter=4&lang=en](http://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-4&chapter=4&lang=en).

375 Rome Statute of the International Criminal Court, 2187 U.N.T.S. 90, entered into force 1 July 2002, art. 7(1)(e).

376 European Convention on Human Rights Art. 5(1); American Convention on Human Rights Arts. 7(1), 7(3); African Charter on Human and People's Rights Art. 6.

377 Universal Declaration of Human Rights Arts. 3, 9.

378 American Declaration on the Rights and Duties of Man Art. 1.

379 ASEAN Human Rights Declaration para. 12.

380 Cairo Declaration on Human Rights in Islam Art. 20.

381 EU Charter on Fundamental Rights art. 6.

382 ILC Draft Code of Crimes against the Peace and Security of Mankind (1996) Art. 18(j).

383 See ICRC, *Customary IHL – Practice Relating to Rule 99. Deprivation of Liberty*, *available at*: [http://www.icrc.org/customary-ihl/eng/docs/v2\\_rul\\_rule99#SectionA\\_VNaCa](http://www.icrc.org/customary-ihl/eng/docs/v2_rul_rule99#SectionA_VNaCa).

384 Bosnia and Herzegovina, Court of Bosnia and Herzegovina, *Jankocić* case, Judgment, 23 Oct. 2007, p. 14 (“in order to establish imprisonment as a crime against humanity, the following elements must be established ... ii) the deprivation of liberty is imposed arbitrarily, that is, no legal basis can be invoked to justify the deprivation of liberty”).

385 Canada, Supreme Court, *Charkaoui* case, Judgment, 23 Feb. 2007 § 88 (“Section 9 of the *Charter* [Canadian Charter of Human Rights and Freedoms] guarantees freedom from arbitrary detention. This guarantee expresses one of the most fundamental norms of the rule of law. The state may not detain arbitrary but only in accordance with the law.”).

386 Colombia, Constitutional Court, *Constitutional Case No. C-291/07*, Judgment of 25 April 2007, p. 112 (“Taking into account ... the development of customary

represent not only widespread and consistent state practice but also the understanding by almost every State that arbitrary detention is a violation of international law. Therefore, the prohibition of arbitrary detention is part of customary international law and binding on the PRC.

Under international law, a detention is arbitrary if a person is deprived of their liberty except in accordance with established laws and procedures and after receiving a fair trial from an independent judicial authority.<sup>387</sup>

Furthermore, a person must be able to challenge their detention in a court.<sup>388</sup> These standards apply regardless of how the detention is labeled under domestic law.<sup>389</sup> The analysis under international law hinges on the nature rather than the label of the detention. This approach both simplifies the legal analysis by avoiding an analysis of a country's domestic legal standards and prevents States from circumventing their legal obligations by creating a punitive system outside of the criminal justice system. Even though RTL and other forms of administrative detention, such as enforced drug rehabilitation and legal education classes, are not labeled as a criminal punishment,<sup>390</sup> the affected individuals are still protected by the prohibition of arbitrary detention.

The European Court for Human Rights, applying the European Convention on Human Rights' prohibition of arbitrary detention, which is functionally the same as the prohibition of arbitrary detention under customary international law, determined that a detention of 3-6 months fell within the scope of the prohibition of arbitrary detention under international humanitarian law applicable in internal armed conflicts, the Constitutional Court notes that the fundamental guarantees stemming from the principle of humanity, some of which have attained *ius cogens* status, ... [include] the prohibition of arbitrary deprivation of liberty.") (internal footnote omitted).

387 ICCPR Art. 9(1); "Fact Sheet No. 26, the Working Group on Arbitrary Detention," *Office of the United Nations High Commissioner of Human Rights*, available at: <http://www2.ohchr.org/english/about/publications/docs/fs26.htm>.

388 ICCPR Art. 9(4).

389 See *Case of Engle and Others v. The Netherlands* (Application no. 5100/71; 5101/71; 5102/71; 5354/72; 5370/72), Judgment, 1976 European Court of Human Rights, at par. 59.

390 See 2002 Regulations, art. 9.



bition of arbitrary detention.<sup>391</sup> Under RTL, enforced drug rehabilitation, and legal education classes, individuals can be detained for months or years.<sup>392</sup> Therefore, even though these methods of detention are not labeled as criminal, they must still fulfill international standards preventing arbitrary detention.

Re-education Through Labour does not fulfill international standards preventing arbitrary detention. A detention is arbitrary if it is not provided for by law or if the detainee is denied their right to a fair trial.<sup>393</sup> A fair trial must include, “fair and public hearing by a competent, independent and impartial tribunal established by law.”<sup>394</sup> Since 1961, a defining feature of RTL is that the MPS has maintained unilateral control over the RTL intake process.<sup>395</sup> The MPS functions not only as the accuser but also the final arbitrator of whether a person should be sent to RTL.<sup>396</sup> Great sentence! The detainee may appeal the MPS’s decision only after the MPS has reached a final decision and the

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391 See *Case of Engle and Others v. The Netherlands* (Application no. 5100/71; 5101/71; 5102/71; 5354/72; 5370/72), Judgment, 1976 European Court of Human Rights, at par. 64.

392 Ministry of Public Security Notice on Issue of “Implementation Opinion Regarding Further Strengthening and Improvement of Reeducation Through Labor Review and Approval Work” MPS Legal [2005] No. 292 [hereinafter 2005 Opinion] at pars. 13, 14 (stating RTL sentences can last up to 2 years); “Abolishing “Re-education through Labour” and other forms of punitive administrative detention: An opportunity to bring the law into line with the International Covenant on Civil and Political Rights” *Amnesty International*, May 2006 AI Index: ASA 17/016/2006, at 5, available at: <http://www.amnesty.org/en/library/asset/ASA17/016/2006/en/5149fbb3-d453-11dd-8743-d305bea2b2c7/asa170162006en.pdf> (state enforced drug rehabilitation can last 3-6 months); “Legal Education: Arbitrary Detention Doesn’t End with RTL,” *Dui Hua Research*, 2 April 2013, available at: <http://www.duihuaresearch.org/2013/04/legal-education-arbitrary-detention.html> (stating detention for legal education classes can last months).

393 Fact Sheet No. 26, the Working Group on Arbitrary Detention,” *Office of the United Nations High Commissioner of Human Rights*, available at: <http://www2.ohchr.org/english/about/publications/docs/fs26.htm>.

394 ICCPR Art. 14; Fact Sheet No. 26, the Working Group on Arbitrary Detention,” *Office of the United Nations High Commissioner of Human Rights*, available at: <http://www2.ohchr.org/english/about/publications/docs/fs26.htm>.

395 Fu Hualing, “Re-education Through Labor in Historical Perspective,” (2005) *China Quarterly* 811 at 819-20 accessed through Social Science Research Network Legal Scholarship Network Legal Studies Research Paper Series, available at: <http://www.ssrn.com/link/U-Hong-Kong-LEG.html>.

396 See 2002 Regulations, Art. 39.

detainee has been sent to an RTL camp.<sup>397</sup> In 2004, the United Nations' Working Group on Arbitrary Detention stated that this appeal process did not meet international standards.<sup>398</sup> Detainees sent to RTL are not given a fair trial and are subject to arbitrary detention in violation of international law.

## **B. Forced Labor**

Once a person is sent to an RTL facility they are forced to work for up to 20 hours a day.<sup>399</sup> Like the MPS's unilateral control over intake, forced labor is a defining aspect to RTL. Also like the MPS's unilateral control over intake, the forced labor at RTL facilities violates international law.

Even though the PRC has not ratified the major treaties regarding forced labor, the prohibition of forced labor is still binding upon the PRC as customary international law. The use of forced labor during peacetime was first prohibited by the Convention concerning Forced or Compulsory Labor in 1930.<sup>400</sup> The PRC is not one of the 177 States that has ratified the convention.<sup>401</sup> Similarly, the PRC has not ratified the Convention concerning the Abolition of Forced Labour,<sup>402</sup> which prohibits, among other things, the use of forced labor “[a]s a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political,

397 See 2002 Regulations, Art. 73.

398 Wing Lam, “HRIC Brief: Reform of the Reeducation Through Labor System,” 2 China Rights Forum 31 at 32 (2005).

399 Andrew Jacobs, “Opposition to Labor Camp Widens in China,” *The New York Times*, 14 Dec. 2012, available at: [http://www.nytimes.com/2012/12/15/world/asia/opposition-to-labor-camps-widens-in-china.html?pagewanted=all&\\_r=1&&page-wanted=print](http://www.nytimes.com/2012/12/15/world/asia/opposition-to-labor-camps-widens-in-china.html?pagewanted=all&_r=1&&page-wanted=print) (Citing 2009 Chinese Human Rights Defenders report).

400 Convention concerning Forced or Compulsory Labour (ILO No. 29), 39 U.N.T.S. 55, entered into force May 1, 1932, Arts. 1, 2.

401 “Ratifications of C029 – Forced Labour Convention, 1930 (No. 29),” *International Labour Organization*, available at: [https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:2332391598193404:::P11300\\_INSTRUMENT\\_SORT:1](https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:2332391598193404:::P11300_INSTRUMENT_SORT:1).

402 “Ratifications of C105 – Abolition of Forced Labour Convention, 1957 (No. 105),” *International Labour Organization*, available at: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312250:NO](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312250:NO).

social or economic system.”<sup>403</sup> Over 90% of States ratified both of these conventions. The ICCPR prohibits forced or compulsory labor unless it is performed as ordered by a court as punishment for a crime, as part of military service, in emergencies threatening the life or well-being of the community, or as part of normal civil obligations.<sup>404</sup> The European Convention on Human Rights prohibits forced labor with the same exceptions as the ICCPR.<sup>405</sup> The United Nations General Assembly in numerous resolutions has called upon States to end forced labor.<sup>406</sup> The widespread acceptance of the prohibition of forced labor in three major treaties and the recognition of the norm by the UN General Assembly fulfill the requirements for the creation of a rule of customary international law that is binding on all States, including the PRC.

This section will use the legal standard for forced labor found in the ICCPR. This standard is both the most recent and most permissive of the three major treaties that discuss forced labor. Under the ICCPR, forced labor is permissible as a punishment only if it is ordered by a court as a punishment for a crime.<sup>407</sup> RTL is expressly reserved for people who do not merit criminal punishment.<sup>408</sup> An RTL sentence is authorized by the MPS acting on its own authority independent of any court.<sup>409</sup> By its nature a sentence to RTL involves forced labor without any compensation. Therefore, the forced labor at RTL facilities violates the international prohibition of forced labor.

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403 Abolition of Forced Labour Convention (ILO No. 105), 320 U.N.T.S. 291, entered into force Jan. 17, 1959, Art. 1(a).

404 ICCPR, art. 8(3).

405 Convention for the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 222, entered into force Sept. 3, 1953, Art. 4.

406 See UN General Assembly Res. 51/112, 12 December 1996, §§ 1-3, 12, voting record 100-16-59-19; UN General Assembly Res. 59/263, 23 December 2004, § 3(h), adopted without a vote.

407 ICCPR, art. 8(3).

408 Andrew Jacobs, “Opposition to Labor Camp Widens in China,” *The New York Times*, 14 Dec. 2012, available at: [http://www.nytimes.com/2012/12/15/world/asia/opposition-to-labor-camps-widens-in-china.html?pagewanted=all&\\_r=1&&page-wanted=print](http://www.nytimes.com/2012/12/15/world/asia/opposition-to-labor-camps-widens-in-china.html?pagewanted=all&_r=1&&page-wanted=print).

409 See 2002 Regulations, Art. 39.

## C. Torture

Detainees are routinely tortured both as part of their detention while they await sentencing in RTL facilities. Even though the use of torture is not permitted in the PRC, the use of torture is a natural consequence of the MPS's unchecked power over the RTL process. Torture frequently occurs when the police are allowed to detain people for long periods of time without any oversight.<sup>410</sup> Organizations that do torture also tend focus on protecting their own security and less on obeying central authority.<sup>411</sup>

The Convention Against Torture, Cruel, Inhumane or Degrading Treatment or Punishment (CAT) prohibits the use of torture.<sup>412</sup> The PRC ratified the CAT in 1988 and is bound to implement it in good faith.<sup>413</sup> The CAT defines torture as the intentional infliction of physical or mental pain or suffering as a form of interrogation or punishment, among other things.<sup>414</sup> In RTL facilities detainees are beaten, electrocuted, and suspended from the ceiling. After their detention Tibetans have described how they suffered broken bones and saw friends beaten to death.<sup>415</sup> Even years after their release former RTL detainees suffer chronic headaches and have required significant medical treatment, such as the removal of a kidney as a result of their treatment in RTL.<sup>416</sup>

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410 Darius Rejali, "Torture and Democracy Interview," Conducted by Carnegie Council Director of Public Affairs Joanne Meyers 18 Mar. 2008, transcript *available at*: [https://www.carnegiecouncil.org/studio/multimedia/20080318/index.html/:pf\\_printable](https://www.carnegiecouncil.org/studio/multimedia/20080318/index.html/:pf_printable).

411 Darius Rejali, "Torture and Democracy Interview," Conducted by Carnegie Council Director of Public Affairs Joanne Meyers 18 Mar. 2008, transcript *available at*: [https://www.carnegiecouncil.org/studio/multimedia/20080318/index.html/:pf\\_printable](https://www.carnegiecouncil.org/studio/multimedia/20080318/index.html/:pf_printable).

412 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. res. 39/46, [annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984)], entered into force June 26, 1987 (hereinafter CAT).

413 VCLT, Art. 26.

414 CAT, Art. 1.

415 TCHRD interview, Tsering Phuntsok from Kardze from Tibetan Autonomous Prefecture, Sichuan Province, 29 May 2013, conducted by Tenzin Nyinje and John Gaudette.

416 TCHRD interview, Ngawang Dripsel from Tsodoe Township, Phenpo Lhundup County, Lhasa Municipality, Tibet Autonomous Region, 16 May 2013, conducted by Tenzin Nyinje and John Gaudette.

Because the treatment in RTL facilities resulted in broken bones and caused organ failure, it is torture under international law.

While not explicitly provided for by Chinese law, torture at RTL facilities is a consequence of the lack of independent, judicial oversight. As a State Party to the CAT, the PRC is bound to take effective measures to prevent torture.<sup>417</sup> The PRC has passed some laws designed to prevent the use of torture. The PRC's Criminal Procedure Law prohibited the use of torture to obtain a confession.<sup>418</sup> Seventeen years later in 2013, this prohibition was reiterated in the Third Plenum Decision of the Central Committee of the Chinese Communist Party (CCP).<sup>419</sup> The CCP and the international media heralded the Third Plenum Decision as a major reform document. That the Third Plenum Decision reiterated the prohibition of torture demonstrates how poorly implemented prohibition of torture was under the criminal procedure law. Part of the reason the prohibition of torture was not effectively implemented<sup>420</sup> was because the MPS relied on RTL to circumvent the stricter standards imposed on the criminal procedure law.<sup>421</sup> The torture that accompanies RTL, and other forms of extrajudicial detention, is a direct and foreseeable result of the unilateral au-

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417 CAT, Art. 2.

418 Criminal Procedure Law of the People's Republic of China, Adopted at the Second Session of the Fifth National People's Congress on July 1, 1979, last amended in according with the Decision on Revising the Criminal Procedure Law of the People's Republic of China adopted at the Forth Session of the Eighth National People's Congress on March 17, 1996, official translation available at: [http://www.china.org.cn/china/2012-03/08/content\\_24838895.htm](http://www.china.org.cn/china/2012-03/08/content_24838895.htm) (hereinafter PRC Criminal Procedure Law), Art. 43.

419 "CCP Central Committee Resolution concerning Some Major Issues in Comprehensively Deepening Reform," (hereinafter "Third Plenum Decision") at pt. 34, 15 Nov. 2013, translated by China Copyright and Media, *available at*: <http://china-copyrightandmedia.wordpress.com/2013/11/15/ccp-central-committee-resolution-concerning-some-major-issues-in-comprehensively-deepening-reform/>.

420 Margret K. Lewis, "Interview with Prof. Margret K. Lewis," *China Law & Policy*, 6 Sept. 2012 at 13:46 (saying that another reason the prohibition of torture has not been implemented is because under Chinese law the definition of torture is unclear), *available at*: <http://chinalawandpolicy.com/wp-content/uploads/2012/09/Maggie-Lewis-Interview-Transcript.pdf>.

421 Fu Hualing, "Re-education Through Labor in Historical Perspective," (2005) *China Quarterly* 811 at 826 accessed through Social Science Research Network Legal Scholarship Network Legal Studies Research Paper Series, *available at*: <http://www.ssrn.com/link/U-Hong-Kong-LEG.html>.

thority given to the MPS. Efforts to ban the use of torture in the PRC are undermined by the MPS as it finds different methods of maintaining and protecting its authority. A necessary first step toward abolishing torture in the PRC is to implement independent, judicial oversight over the detention practices of the MPS, including RTL, drug rehabilitation, and re-education classes.

### **Aside: Illegal Detention of Juveniles.**

In 2012, most of the detainees in RTL were juvenile delinquents and repeat offenders.<sup>422</sup> Some of the juveniles in RTL are there in violation of international law. According to the 2002 Regulations, RTL applies to all people over 16 years old.<sup>423</sup> However, according to both the Convention on the Rights of the Child<sup>424</sup> and the Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor,<sup>425</sup> which the PRC ratified in 1992 and 2002 respectively, define a child as anyone under 18 years old. The Convention on the Rights of the Child allows for the possibility of a child reaching adulthood earlier if provided for by domestic law.<sup>426</sup> The Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor does not have this exception.<sup>427</sup>

#### The difference between the international and Chinese

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422 Yin Pumin, "Ending an Outdated System," *Beijing Review*, 2 Dec. 2013, available at: [http://www.bjreview.com.cn/nation/txt/2013-12/02/content\\_580796.htm#](http://www.bjreview.com.cn/nation/txt/2013-12/02/content_580796.htm#).

423 2002 Regulations, Art. 9.

424 Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force Sept. 2 1990, Arts. 1, 37.

425 Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor (ILO No. 182), 2133 U.N.T.S.161, entered into force Nov. 19, 2000, Art. 2.

426 Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force Sept. 2 1990, Arts. 1.

427 Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor (ILO No. 182), 2133 U.N.T.S.161, entered into force Nov. 19, 2000, Art. 2.

definition of a child means that people who are internationally considered a child may be punished as an adult in the PRC. This is permissible under the PRC's domestic law but internal law cannot justify or excuse failing to fulfill an international obligation.<sup>428</sup> Because RTL is considered to be a less than criminal punishment, juveniles are sentenced to RTL when their age is considered a mitigating circumstance. This has created a relatively large number of juveniles in RTL in violation of international law. One such juvenile was Dhundup who was interviewed by TCHRD for this report.<sup>429</sup>

Dhundup was 17 years old when he was driven out of his monastery by a reeducation campaign and arrested trying to escape to India where he could continue his studies. He was sentenced to two years of RTL. Dhundup tried to appeal his RTL sentence because he and the other Tibetans he was sentenced with thought he was too young to receive an RTL sentence. Under international law he was correct. His appeal never received a response. In the Trisam RTL facility near Lhasa, Dhundup was put in a cell with 12-14 adults and forced to work 8-9 hours every day without pay. Dhundup was also forced to clean the toilets by hand standing knee deep in feces. Forced blood donations sapped Dhundup of his strength. He was sick and unable to work or take care of himself for six months before he underwent surgery at a military hospital and was released. He spent his first two months out of RTL recovering from the surgery at his family's expense.

As a child under 18 years old, Dhundup was required to special protections under international law. Dhundup was not only denied any special consideration because of his age, he was denied fundamental protections required by international law. He was sentenced to arbitrary detention, forced to labor, and tortured. All while he was under 18 years old and still legally a child under international law.

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428 VCLT Art. 27.

429 TCHRD interview, Dhundup from Chushul (Ch: Qushui) in Tibet Autonomous Region, 22 July 2013, conducted by John Gaudette.

## IV. Treatment

In the months leading up to the abolition of RTL in December 2013, Chinese and international media focused on three RTL stories that highlighted the abuses inherent in RTL.<sup>430</sup> The sentencing of Ren Jianyu (任建宇)<sup>431</sup> and Tang Hui (唐慧)<sup>432</sup> to RTL demonstrated its arbitrary nature and both were released after their cases gained attention online. An article in *Lens Magazine* documented the torture and mistreatment in Masanjia Women's RTL Camp in Liaoning.<sup>433</sup> In the two days before the article was censored and taken down it was one of the most popular stories on the four biggest news sights in the PRC.<sup>434</sup>

These three stories were very influential and helped shape public opinion in the PRC but they did not reveal any new information about the RTL system. For the groups traditionally

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430 See e.g. John Delury, "China's Labor's Lost: The End of Re-Education Through Labor Camps," *Foreign Affairs Snapshot*, 25 Nov. 2013, available at: <http://www.foreignaffairs.com/articles/140289/john-delury/chinas-labors-lost>; Andrew Jacobs, "Opposition to Labor Camp Widens in China," *The New York Times*, 14 Dec. 2012, available at: <http://www.nytimes.com/2012/12/15/world/asia/opposition-to-labor-camps-widens-in-china.html?pagewanted=all&r=1&page-wanted=print>; CHRDR, "In the Name of 'Stability': 2012 Annual Report on the Situation of Human Rights Defenders in China", Chinese Human Rights Defenders, March 2013 at 22; CHRDR, "China Bans Media Coverage of Labor Camp Ordeal," 8 April 2013 available at: <http://chrdrnet.com/2013/04/china-bans-media-coverage-of-labor-camp-ordeal/>.

431 CHRDR, "In the Name of 'Stability': 2012 Annual Report on the Situation of Human Rights Defenders in China", Chinese Human Rights Defenders, March 2013 at 22.

432 Congressional Executive Commission on China, "Prospects for Reforming China's Reeducation Through Labor System," CECC at 5, 15 May 2013, available at: [http://www.cecc.gov/pages/virtualAcad/RTL%20Issue%20Paper%20Final%20\(May%2008\).pdf](http://www.cecc.gov/pages/virtualAcad/RTL%20Issue%20Paper%20Final%20(May%2008).pdf).

433 CHRDR, "China Bans Media Coverage of Labor Camp Ordeal," 8 April 2013 available at: <http://chrdrnet.com/2013/04/china-bans-media-coverage-of-labor-camp-ordeal/>.

434 Probe International, "New documentaries take on the horrors of China's labor camp system," 7 May 2013, available at: <http://journal.probeinternational.org/2013/05/07/new-documentaries-take-on-the-horrors-of-chinas-labor-camp-system/>.



subject to RTL, such as rights activists,<sup>435</sup> Manchurians,<sup>436</sup> Falun Gong practitioners,<sup>437</sup> Uyghurs,<sup>438</sup> and Tibetans,<sup>439</sup> the arbitrary nature of RTL and the abuses associated with it are well known. This section will focus on how RTL has been used on Tibetans and how despite some temporary and superficial changes the system and the abuses related to it have left the fundamental abuses inherent in RTL—arbitrary detention, forced labor, and torture—unchanged.

Except where otherwise noted the information in this section is based on interviews by TCHRD of Tibetans who served RTL sentences in the PRC and now live in India. The detainees were in RTL facilities from 1989-2010. This time period was when RTL was strongly criticized by legal experts both within China<sup>440</sup> and internationally.<sup>441</sup> It is also when the PRC instituted some reforms to its criminal justice system and RTL. The information from the interviews is consistent both with other interviews and other accounts of RTL. The remainder of this section will focus on the treatment of RTL detainees during their arrest and detention, sentencing, in the RTL facilities, how RTL compares to prison, and after their release.

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435 Amnesty International, 2013 Annual Report: China (Covers Jan. – Dec. 2012) (Mao Hengfeng), *available at*: <http://www.amnesty.org/en/region/china/report-2013>; Full Report *available at*: [http://files.amnesty.org/air13/AmnestyInternational\\_AnnualReport2013\\_complete\\_en.pdf](http://files.amnesty.org/air13/AmnestyInternational_AnnualReport2013_complete_en.pdf).

436 CHR, “In the Name of “Stability”: 2012 Annual Report on the Situation of Human Rights Defenders in China”, Chinese Human Rights Defenders, March 2013 at 19.

437 United States Commission on International Religious Freedom, 2013 Annual Report, Covering 31 Jan. 2012 to 31 Jan 2013, at 38 *available at*: [http://www.uscirf.gov/images/2013%20USCIRF%20Annual%20Report%20\(2\).pdf](http://www.uscirf.gov/images/2013%20USCIRF%20Annual%20Report%20(2).pdf).

438 *See e.g.* D. Burton, “Xinjiang Worker Sentenced to Two-Years Re-Education Through Labor for Assisting American Christian Businessman,” *Christian News Wire*, 4 Dec. 2007, *available at*: <http://christiannewswire.com/news/172764971.html>.

439 *See e.g.* Human Rights Watch, “China: End Crackdown on Tibetan Monasteries,” 12 Oct. 2011, *available at*: <http://www.hrw.org/news/2011/10/12/china-end-crackdown-tibetan-monasteries>.

440 Erik Eckholm, “China Hones Old Tool: ‘Re-educating’ Unruly,” *The New York Times*, 27 Feb. 2001, *available at*: <http://www.nytimes.com/2001/02/27/world/china-hones-old-tool-re-educating-unruly.html?pagewanted=all&src=pm>.

441 Veron Mei-Ying Hung, “Improving Human Rights in China: Should Re-education Through Labor Be Abolished,” 41 *Columbia J. Transnat’l L.* 303 (2003) at 305.

## **A. Arrest and Detention**

Most of the Tibetans interviewed by TCHRD were arrested because of or during a protest against Chinese rule in Tibet. These protests ranged from blanket opposition to the Chinese occupation of Tibet to the arrest of a popular monk who had traveled to India. The protests varied in size from one person to tens of thousands of people. One person, Dhundup,<sup>442</sup> interviewed by TCHRD was arrested while trying to sneak into India. Dhundup was studying at a monastery when the Chinese authorities instituted a reeducation campaign that required everyone in the monastery support the Chinese rule over Tibet and denounce the Dalai Lama or be kicked out of the monastery. Dhundup chose to leave the monastery and tried to flee to India and was arrested in the attempt.

Once arrested the Tibetans usually spent 2-6 months in detention before they were sentenced. The time in detention was the same regardless of whether they were sent to prison or RTL. However, Ngawang Choedon and Lobsang Chodon<sup>443</sup> were each detained for only 15 days. Lobsang Chodon was arrested along with nine other nuns during the Monlam Festival on 10 March 1989 when thousands of Tibetans protested against Chinese rule. Ngawang Choedon was also at the protest but escaped arrest. The police then appeared at her nunnery and imposed “patriotic reeducation campaign,” Ngawang found it unbearable and, with some other nuns who attended the protest, turned herself in. They hoped the police would stop the reeducation campaign that required the nuns to denounce the Dalai Lama.

During detention the Public Security Bureau (PSB),

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442 TCHRD interview, Dhundup from Chushul (Ch: Qushui) in Tibet Autonomous Region, 22 July 2013, conducted by John Gaudette.

443 TCHRD interview, Ngawang Choedon and Lobsang Chodon from Lhasa, Tibet Autonomous Prefecture, 30 May 2013, conducted by Nyinje Tenzin and John Gaudette.

which is operated by the Ministry of Public Security (MPS) tried to figure out what to do with the detainees. There was no oversight during the initial detention and Tibetans only see their captors and, if they are not held in solitary confinement, their fellow detainees. Without anybody to regulate the PSB's behavior the detainees were tortured. Prisoners are frequently tortured when they are detained for long periods of time without oversight from lawyers, judges, journalists, or human rights organizations.<sup>444</sup> Ngawang Dripsel<sup>445</sup> was suspended from the ceiling by his hands and, other times, by his feet. Sometimes, the PSB officers would suspend Ngawang Dripsel upside down above raw sewage.

The torture usually occurred during the interrogation sessions. The Tibetan detainees were always interrogated most frequently immediately after their arrest. Usually, they were interrogated for one to two hours once or twice a day. In 2008, Ngawang Phuntsok<sup>446</sup> heard about the widespread protests throughout Tibet and staged a one-man protest. He was shot with a rubber bullet, was hit on the head with an iron rod, and arrested. During his detention he knew of some Tibetans who were suspended from the ceiling by their thumbs with their feet barely touching the ground for up to five days. These people were only taken down to eat.

Suspending people from the ceiling by their arms or thumbs is a form of positional torture that was used by the PRC and North Korea during the Korean War. In the winter of 1951 the PRC took over the management of Prisoners of War (POWs) and adopted methods of torture that left only minimal physical damage.<sup>447</sup> In the case of suspending prisoners by their thumbs

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444 Darius Rejali, "Torture and Democracy Interview," Conducted by Carnegie Council Director of Public Affairs Joanne Meyers 18 Mar. 2008, transcript *available at*: [https://www.carnegiecouncil.org/studio/multimedia/20080318/index.html:pf\\_printable](https://www.carnegiecouncil.org/studio/multimedia/20080318/index.html:pf_printable).

445 TCHRD interview, Ngawang Dripsel from Tsodoe Township, Phenpo Lhundup County, Lhasa Municipality, Tibet Autonomous Region, 16 May 2013, conducted by Tenzin Nyinje and John Gaudette.

446 TCHRD interview, Ngawang Phuntsok (TCHRD # 08-1864) from Kham Province, Kardze Tibetan Autonomous Prefecture, Sichuan Province, 19 July 2013, conducted by Tenzin Nyinje, Dawa Tsering, and John Gaudette.

447 Darius Rejali, *TORTURE AND DEMOCRACY* at 85.

the physical injuries, broken thumbs and rope burns, could be explained as accidents or minor injuries inherent in detention.<sup>448</sup>

Electricity is another method of torture frequently used by the Chinese. The use of electricity is a modern torture technique that has become popular because there is little evidence of its use and it is quick and painful.<sup>449</sup> The use of electricity as a method of torture in the PRC became widely known after Palden Gyatso smuggled a satchel of torture devices, including electric batons, out of Tibet in 1993.<sup>450</sup> Despite its popularity, the use of electricity is not an effective method of making people talk because it causes muscles that must be relaxed for speech to contract.<sup>451</sup>

It is not clear whether the purpose of electrocution was to get the detainees to talk or a form of punishment. Ngawang Choedon, who was detained in 1989, and Ngawang Phuntsok, who was detained in 2008, both described being electrocuted until they lost consciousness. That they lost consciousness and were unable to speak suggests that the purpose of the electrocution was not to coerce them into speaking. It is also note worthy that the prohibition of torture under the PRC's criminal procedure law in 1996<sup>452</sup> did nothing to change the use of torture. One possible explanation for this could be that both the criminal procedure law only prohibits the use of torture to obtain a confession.<sup>453</sup> The Third Plenum Decision reiterates this decision and also prohibits corporal punishment or abuse—though it remains to be seen if or how this prohibition will be implemented.<sup>454</sup>

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#### The PSB officials who conducted the interrogations also

448 Darius Rejali, *TORTURE AND DEMOCRACY* at 85.

449 Darius Rejali, *TORTURE AND DEMOCRACY* at 89-90.

450 Orange Magazine, "Human Rights in Film - Tears on the Roof of the World," *available at*: <http://www.orangemagazine.eu/tears-on-the-roof-of-the-world/>.

451 Darius Rejali, "Torture and Democracy Interview," Conducted by Carnegie Council Director of Public Affair Joanne Meyers 18 Mar. 2008, transcript *available at*: [https://www.carnegiecouncil.org/studio/multimedia/20080318/index.html/pf\\_printable](https://www.carnegiecouncil.org/studio/multimedia/20080318/index.html/pf_printable).

452 PRC Criminal Procedure Law, Art. 43.

453 PRC Criminal Procedure Law, Art. 43.

454 Third Plenum Decision at pt. 34.

beat the detainees with batons, chairs, fists, rifle butts, and whatever else was lying around. When a stick was broken over Lob-sang Chodon's head she only heard a sound come from her head. She did not feel any pain for a few days. But when it arrived, she felt like her teeth would come out of her head. Twenty-four years later she still suffers from headaches that make it impossible to study for long periods of time.

Over more than 20 years the questions the PSB asked the detained Tibetans did not change significantly. The PSB always asked the detainees who had instigated, coordinated, and paid for their protest or escape attempt and how the Tibetan exile community was involved. Tsering Phuntsok,<sup>455</sup> who was arrested in 1999, was singled out for particular attention by the PSB. Before his arrest Tsering Phuntsok earned a good living as a sculptor in Sichuan Province. Along with dozens of other Tibetans, Tsering Phuntsok protested the arrest of Geshe Sonam Phuntsok, a very popular monk who did teachings, charity work, and medical work for the community. Geshe Sonam Phuntsok died from illnesses caused by his treatment while in prison in 2008.<sup>456</sup> When Tsering Phuntsok was detained for protesting Geshe Sonam Phuntsok's arrest, the PSB questioned Tsering Phuntsok about why, with a good job and income, he would protest against the PRC. The emphasis of the PSB on Tsering Phuntsok's economic position and the consistent emphasis on discovering external instigators demonstrates that a failure to understand the deep seeded opposition to the PRC's occupation of Tibet and its refusal to provide basic human rights.

Not all the Tibetans detained survived. Tsering Wang-chuck, who protested Geshe Sonam Phuntsok's arrest in 1999, died while in police custody.<sup>457</sup> The detainees interviewed by

455 TCHRD interview, Tsering Phuntsok from Kandze Tibetan Autonomous Prefecture, Sichuan Province, 29 May 2013, conducted by Nyinje Tenzin and John Gaudette.

456 "A popular Tibetan religious figure, Geshe Sonam Phuntsok, passes away in Kardze," *TCHRD*, 15 April 2008, available at: <http://www.tchrd.org/2008/04/a-popular-tibetan-religious-figure-geshe-sonam-phuntsok-passes-away-in-kardze/>.

457 "A popular Tibetan religious figure, Geshe Sonam Phuntsok, passes away in Kardze," *TCHRD*, 15 April 2008, available at: <http://www.tchrd.org/2008/04/a-pop->

TCHRD noticed that, for those who did survive detention, their interrogations and beatings were less frequent before a detainee was sentenced. Tsering Phuntsok was singled out for interrogation because he was economically successful. When he was first arrested he would be interrogated up to four times a day. In the week before he received his sentence Tsering Phuntok was only interrogated once a day. Similarly, Ngawang Phuntsok's interrogation sessions went from once a day to once a week. This is in part because the RTL facilities would not accept prisoners who were too injured. The decrease in interrogations allowed the bruises from the beatings to subside. In the case of Ngawang Phuntsok, the detainees were also dressed in long sleeves and pants to hide the evidence of their treatment. The bus ride to the RTL facility was also extended because the detainees needed an extra three days to recuperate.

It is worth noting that the only time the PSB in charge of detention showed any concern for the treatment and condition of the detainees is when there was some, minimal form of oversight. Similar stories of RTL facilities refusing to accept people who are severely injured have come from other parts of PRC. For instance, an RTL facility near Beijing initially refused to accept Ma Lijun (马丽君) because she was severely beaten while detained. She was ultimately admitted to the facility but denied medical treatment and when she left the facility several weeks early she was permanently disabled.<sup>458</sup> For admission to an RTL facility the PSB relies on hiding evidence of the detainees' horrific treatment. If the PRC could implement real, meaningful, independent oversight of detention facilities it could curb and eventually eliminate the use of torture.

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ular-tibetan-religious-figure-geshe-sonam-phuntsok-passes-away-in-kardze/.

458 Chinese Defenders of Human Rights, "Chinese Human Rights Briefing: Chinese Officials Criminalize Tibetans for "Inciting" Self-Immolations, Heibe Petitioner May Be Permanently Disabled After RTL Term," Feb. 1-7, 2013, *available at*: <http://chrnet.com/2013/02/chrb-chinese-authorities-criminalize-tibet...itioner-may-be-permanently-disabled-after-rtl-term-february-1-7-2013/>.

## B. Sentencing

There were only a few minor differences between how different Tibetans were informed that they had been sentenced to RTL. All were charged with some vague form of opposition to the Chinese government, such as counterrevolutionary activities or splittism. None of the Tibetans knew what they had been charged with until they received their sentence.

Usually Tibetans were taken from their cells in small groups and brought to a courtyard where each person was told what they had been convicted of and how long their RTL sentence was. They then had to sign and put their thumbprint on a document before they boarded a bus to the RTL facility. Lob-song Chodon and Ngawang Choedon said that their photograph was also on the document but the PSB official delayed taking the photograph so that their bruises could heal. Their sentencing was televised and, by watching the broadcast, Lobsang Chodon discovered she had been arrested and sentenced.

Neither Ngawang Dripsel nor Ngawang Phuntsok received a sentencing hearing. Instead, both were given a short document informing them they had been sentenced to RTL and told to put their signature and thumbprint on it. In the case of Ngawang Phuntsok the PSB took the document away from him immediately after he signed it. He discovered that this was because, during the 2008 protests, Tibetans sentenced to RTL had used the document as evidence of their treatment and to demand legal rights. This is another example of how despite whatever reforms are implemented in the books, in practice the PSB finds a way of circumventing the reforms and denying people their legally guaranteed rights.

Another example of reforms not being implemented is the right to appeal. Under the 2002 Regulations everyone sentenced to RTL may appeal their decision.<sup>459</sup> Only Dhundup, who also had his sentence read by a judge, was told he had a right to appeal.

459 2002 Regulations, Art. 73.

In the case of Ngawang Phuntsok, it appears the PSB deliberately prevented detainees from appeal. Most of the Tibetans interviewed stated that, even if they had known about their right to appeal, they probably would not have because they did not trust the independence of the judiciary and were concerned that their sentences could be increased on appeal. Because Dhundup was only 17 years old he appealed his RTL sentence with the help of some other detainees. Despite international treaties that define a child as anyone under 18,<sup>460</sup> for the purposes of RTL he could be treated as an adult.<sup>461</sup> Dhundup never received a response to his appeal.

After their detention the detainees expected to be sent to prison. During their detention they were oblivious to what the PSB was doing concerning their case. The law regarding RTL required that during detention the PSB should be investigating the case and determining whether the detainee should be released, sent to the criminal justice system, or sentenced to extrajudicial detention, like RTL. However, none of the detainees were aware of an ongoing investigation and never had the opportunity to address the charges against them. Even though the Tibetans who were arrested during protests were exercising rights protected under international law<sup>462</sup> and the Constitution of the PRC,<sup>463</sup> they expected to be arrested. The exact charge against them was a mystery until their sentencing.

## C. Re-education Through Labor

After receiving their sentence the detainees were sent RTL facilities. The decision on where a detainee would serve an RTL sentence seems to be largely determined by geography. The Ti-

460 Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force Sept. 2 1990, Arts. 1, 37.

461 2002 Regulations, Art. 9.

462 See e.g. ICCPR Art. 18 (freedom of thought), Art. 21 (freedom of assembly)

463 Constitution of the People's Republic of China, adopted 4 Dec. 1982, Art. 35 ("Citizens of the People's Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration.").



betans interviewed by TCHRD arrested in the Tibet Autonomous Region (TAR) were sent to the Trisam RTL facility near Lhasa in Toelung Dechen (Ch: Doilung Deqen) County. Those arrested in Sichuan Province were usually sent to the RTL facility in a large prison near Mianyang, larger prisons usually house RTL facilities half a day's drive from Trindu (Ch: Chengdu), the capital of Sichuan Province. This section will focus on the treatment and conditions in each of these facilities.

Despite the difference between Trisam and Mianyang there are some common elements. The beatings and torture in the RTL facilities was less during detention but this was because the detainees were forced to work. However, every person in RTL described receiving severe beatings. The beatings usually occurred during forced military drills, which were performed when there was less work to do. During the military drills the guards used what was nearby to punish the detainees. In addition to beating the detainees, they were also forced to stand completely still in the sun for hours or to hold a chair directly above their head without moving. The beatings broke bones and left detainees permanently debilitated. This is consistent with other descriptions of treatment at RTL facilities, which describe many of the torture techniques from detention continuing in RTL.<sup>464</sup> The *Lens Magazine* article describing the treatment in Masanjia Women's RTL Camp in Liaoning described the use of positional torture techniques and solitary confinement. Other accounts of RTL confirm the use of positional and electric torture techniques, beatings, solitary confinement, and sleep deprivation.<sup>465</sup>

Another common element of the RTL facilities was that they are designed to be self-sufficient. The operating costs of the facilities are designed to be offset by selling the products

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464 Probe International, "New documentaries take on the horrors of China's labor camp system," 7 May 2013, available at: <http://journal.probeinternational.org/2013/05/07/new-documentaries-take-on-the-horrors-of-chinas-labor-camp-system/>.

465 United Kingdom: Foreign and Commonwealth Office, *Human Rights and Democracy: The 2012 Foreign & Commonwealth Office Report - China*, 15 April 2013, available at: <http://www.refworld.org/docid/516fb7cf9.html>.

produced by the detainees. Any additional money made by the RTL facility can be used to supplement the income of the people managing the facilities. This invites abuse. Not only does it encourage the facility to get as much production as possible from the detainees, but it also encourages the facility to cut back on the operating costs as much as possible. Unsurprisingly, there are no accounts of the detainees being paid for their labor. Tsering Phuntsok, who spent a year and a half in Mianyang, discovered that the RTL facility was paid daily rate for each detainee's labor and food. All of this money was taken by the facility and never reached the detainees.

All the RTL facilities were forced labor camps that operated with little to no supervision and were designed and encouraged to operate at a profit. The main differences between RTL facilities involve how far the detainees are pushed to maximize profit. The remainder of this section will examine the conditions in Mianyang and Trisam.

## **1. Mianyang Re-education Through Labor**

In the Mianyang RTL facility the detainees were pushed beyond their limit. Both Tsering Phuntsok, who spent 18 months in Mianyang starting in 1999, and Ngawang Phuntsok, who spent two years after being transferred there from another RTL facility around 2008, independently described conditions that killed or disabled the vast majority of detainees there.

At Mianyang, detainees were forced to work 20 hours a day. Their day began at 5am. They were given 15 minutes to eat, smoke, and use the bathroom. Then they were sent to work. Tsering Phuntsok worked in a brick factory within the Mianyang facility. Dressed only in his underwear because of the heat he removed bricks from the kiln. Similar to other RTL facilities,<sup>466</sup> both

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466 See Congressional Executive Commission on China, "Prospects for Reforming China's Reeducation Through Labor System," CECC at 4, 15 May 2013, *available at*: [http://www.cecc.gov/pages/virtualAcad/RTL%20Issue%20Paper%20Final%20\(May%208\).pdf](http://www.cecc.gov/pages/virtualAcad/RTL%20Issue%20Paper%20Final%20(May%208).pdf).

Tsering Phuntsok and Ngawang Phuntsok were forced to work 20 hours or more every day. Tsering Phuntsok worked until 1 am or 2 am with only 15 minutes to eat lunch and another 15 minutes to eat dinner. Eight years later, Ngawang Phuntsok worked on parts for bicycles and cars and the wiring for televisions and laptops. Like Tsering Phuntsok, Ngawang Phuntsok worked until 1 am or 2 am but he only received 5 minutes for lunch and dinner.

It is telling that both Tsering Phuntsok and Ngawang Phuntsok worked on building small parts whose origin is difficult to trace. This avoids transparency and possible efforts both by consumers to discover and boycott products produced by forced labor and gives corporations plausible deniability concerning the use of forced labor in their supply chain. Danny Cancain, a New Zealander who was released from a Chinese labor prison in 2012, described making disposable small electric inductors and disposable headphones for major international airlines including Qantas.<sup>467</sup> The headphone were placed in boxes with the airlines' logos and were thus easy to trace, the small inductors, like the bricks produced by Tsering Phuntsok or the wiring produced by Ngawang Phuntsok, were impossible to trace.

During the short time the detainees in Mianyang got to eat they never received enough to eat. They were given small buns and hot water in the morning then watery soup in the afternoon and evening. The base of the soup was either rice or vegetable but the actual amount of rice or vegetables in the soup was minimal. The detainees could eat as much rice as they wanted within the 5-15 minutes allowed for meals but rice can only fill a person's stomach, not provide strength. Tsering Phuntsok said that for Chinese New Years they would get a holiday and some meat to eat. After surviving such a minimal diet the meat made Tsering Phuntsok sick.

While Tsering Phuntsok was at Mianyang the food did

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467 Lisa Murray and Angus Grigg, "Qantas in China prison labour row," *The Australian Financial Review*, 26 June 2013, available at: [http://www.afr.com/p/national/qantas\\_in\\_china\\_prison\\_labour\\_row\\_yn60kkiVeQoyy4DzD3VrWP](http://www.afr.com/p/national/qantas_in_china_prison_labour_row_yn60kkiVeQoyy4DzD3VrWP).

improve. This was because high government officials, that Tsering Phuntsok thought might be government ministers, inspecting Mianyang found out about the food situation when they inspected the facility. During the inspection they saw that Tsering Phuntsok was bleeding and asked him why he was bleeding. There were strict punishments for detainees caught fighting and blood was considered evidence of fighting. Tsering Phuntsok suffered frequent nosebleeds after his nose was broken during detention. While he had the officials' attention he told them about the treatment and food at Mianyang. The officials were shocked and after that visit the food improved. By the time Ngawang Phuntsok arrived at Mianyang eight years later, the food had reverted back to the lower standard.

This event illustrates not only that minimal transparency can improve conditions but also that government officials have difficulty ensuring standards are uniformly followed. In this instance there was some minimum standard of food that Mianyang failed to meet. When government official capable of changing behavior at Mianyang discovered the problem they were able to fix it, but only temporarily. At some point between 2001 and 2008 the food reverted back to the same minimal, dirty, low quality food that was served before. This raises substantial questions about the PRC's ability to meaningfully abolish RTL in function as well as name. It may be that only superficial changes, such as name changes, will be implemented or that official who supported and prospered from RTL may find a way to introduce the essential elements to other programs even if the central government tries to completely abolish RTL.

The long work hours and brutal conditions took their toll on the detainees in Mianyang. Tsering Phuntsok estimated that on average one person died everyday in Mianyang. Some of the deaths were suicides with prisoners eating broken glass, hanging themselves, or throwing themselves into the industrial equipment. The last type of suicide was difficult to distinguish from industrial accidents that happened because the detainees had no training or safety equipment and were exhausted from working

20 hours a day seven days a week. Ngawang Phuntsok said that almost everyone who entered Mianyang either died or was permanently disabled. Both Tsering Phuntsok and Ngawang Phuntsok had friends who either died or were blinded by their time in Mianyang.

Detainees at Mianyang were denied any medical care unless they physically could not work. This meant that detainees who carried contagious diseases such as tuberculosis were not separated from the rest of the prison population. After his release from Mianyang Tsering Phuntsok was diagnosed with tuberculosis. This also meant that some detainees in Mianyang were literally worked to death. Tsering Udak, a friend of Tsering Phuntsok's in Mianyang, died from an apparent heart attack. By the time Ngawang Phuntsok entered Mianyang the officials tried to prevent deaths in the facility by giving "hopeless cases" a medical parole. One of Ngawang Phuntsok's friends had trouble with his eyes and after he was no longer able to work was labeled a hopeless case and released. The friend permanently lost his ability to see.

One of the two major beatings that Tsering Phuntsok remembers came when the guards did not believe he was sick. The guards at first tried to make him run but he only had the strength to crawl. They then sat him in a chair and forced him to read from the facility's rules and regulations, when he fell out of the chair the guards beat him with canes. His case was not determined hopeless and once he recovered enough he was put back to work.

The conditions in the Mianyang RTL facility are deplorable and during the 2008 protests many Tibetans were sent there. The beatings, long work hours, and denial of medical care killed and disabled most of the detainees who were sent there. But it is clear that with transparency the conditions can be marginally improved. Merely relabeling the facility a drug rehabilitation facility and then requiring the detainees to do the exact same work, as is already the case at the existing drug rehabilitation facili-

ties,<sup>468</sup> will do nothing to improve the situation of the people sent to Mianyang or bring China in compliance with international law.

## 2. Trisam Re-education Through Labor

Tibetans interviewed by TCHRD that were arrested in TAR were sent to the Trisam RTL facility. Trisam is a RTL facility for political prisoners near Lhasa.<sup>469</sup> Unlike Mianyang, where the detainees were worked beyond exhaustion producing untraceable parts for sale, in Trisam the detainees worked 50-60 hours each week, from 9 am to 6 pm six to seven days a week. The abuses that accompanied the extreme working hours in Mianyang were mitigated in Trisam. However, the extra time when the detainees were not actively making money for the facility allowed for more forced military drills and punishments. The food in Trisam was different from Mianyang but also inadequate.

At Trisam the detainees worked year round growing vegetables. These vegetables were sold to make money for the camp and also to feed the camp. In addition to working in the fields during the summer and in greenhouses during the winter, detainees also had to keep the facility clean. Dhundup, who at 17 was the youngest person in the RTL facility, was forced to clean the toilets by hand. This involved standing knee deep in human excrement. Unsurprisingly, many of the detainees developed skin diseases.

Illness in Trisam was exacerbated because the feces from the toilets were used to fertilize the vegetables. The vegetables were not cleaned before they were cooked and served to the detainees. As a result, Dhundup, Ngawang Choedon, and Lobsang Chodon, the nuns who were sent to RTL in the early 1990s after

468 John Ruwitch, *Reuters*, "A jail by another name: China labor camps now drug detox centers," *Chicago Tribune*, 2 Dec. 2013, available at: <http://www.chicagotribune.com/news/sns-rt-us-china-camps-20131130,0,2123677,full.story>.

469 "New prison in Lhasa: increased surveillance for political prisoners, 'oppressive' cell-blocks," *International Campaign for Tibet*, 20 Jan 2006, available at: <http://www.savetibet.org/new-prison-in-lhasa-increased-surveillance-for-political-prisoners-oppressive-cell-blocks/>.

servicing three years in prison, described seeing fecal matter and tapeworms on the vegetables they were served. These vegetables were served to the detainees for lunch along with a small tingmo (a Tibetan steamed bun). During the winter the watery vegetable soup was replaced with watery rice porridge. For breakfast and dinner the detainees were served a tingmo and black tea. Dhundup described all the food for a cell of 12-14 detainees being served together and the guards left the detainees to divide the food as they saw fit. Because Dhundup was so young some of the more senior cellmates took care of him and made sure he received a fair share of the food.

In the summer the detainees were forced to work in the fields. To cut down on expenses there were no cows or oxen to help plow the field. The detainees were left to perform all the manual labor, which destroyed their hands. During the winter the detainees moved into the greenhouse but there was still less labor to do. As a result the detainees were forced to spend more time singing patriotic songs and performing military drills. In the winter mornings they were forced to run and then perform hours of military drills. Despite being in TAR, all of the instructions during the military drills were given in Chinese and not Tibetan. The guards frequently beat the prisoners who did not understand Chinese. The guards would also beat the detainees if they did not know the how to sing the Chinese songs. During the military drills the guards would subject the detainees to positional torture techniques by making them stand still or hold difficult positions for long periods of time.

Detainees could be beaten during military drills or at any other time. Ngawang Dripsel was beaten by the guards twice for refusing to spy on his fellow detainees for the guards. The guards beat him with batons and ropes. Similar beatings broke detainees' hands and legs. The detainees were also subjected to interrogations similar to the ones they endured in detention and prison. However, the guards at Trisam would also place detainees in solitary confinement for up to 20 days. They made no effort to conceal evidence of the beatings from officials.

Between military drills, the work around the camp, gardening, and the minimal diet the detainees were in a state of perpetual exhaustion and quite weakened. This was exacerbated by the forcible blood donations the Tibetans were forced to undergo. The Tibetan blood was then sold to Chinese border guards patrolling the Tibetan border areas. (See Aside). Six months in Trisam overwhelmed Dhundup's body and he became severely ill.

Like Mianyang, in Trisam they were loath to provide people with medical care. This meant that Dhundup spent six months in his cell without the strength to stand and go to the bathroom without help from his cellmates. During this time the only medical attention he received was injections of glucose and two bottles of medicine each day. Sometimes he noticed that the medicine had expired. Despite not eating, Dhundup's stomach expanded. When he did not get better after six months, Dhundup's cellmates started to think Dhundup was going to die. At this point the authorities at Trisam decided to send Dhundup to a nearby medical hospital. There the doctors performed an operation and removed something from his stomach. Dhundup was never told what was wrong with him or what they removed from his stomach. The time he needed to recover from the surgery was longer than the time left in his RTL sentence and he was granted a medical parole.

The different experiences at Trisam and Mianyang demonstrate the different methods of abuse in RTL facilities. In Mianyang, the detainees interviewed by TCHRD described a system focused almost entirely on labor and extracting as much money as possible from the detainees. In Trisam, the detainees described a system with more of an emphasis on re-education. The re-education was carried out in the form of military drills and beatings. These two camps are illustrative of the two different aspects of RTL and how despite using different means and different approaches they are both brutal, unforgiving systems that left many of the detainees seriously and permanently maimed.



## **Aside: Forced Tibetan Blood Donations**

Most of the Tibetans interviewed by TCHRD described being subjected to forcible blood donations while detained, in prison, or when in RTL. In Sichuan Province where Tibetans were detained with non-Tibetans the Tibetans were singled out for blood donations. In Mianyang the guards would force the Tibetans to run if they could not initially draw blood. They also took so much blood that one of Ngawang Phuntsok's friends almost died. In TAR the guards told Dhundup that the blood was being sold to Chinese border guards in Tibet. Dhundup was subjected to two blood donations. Each blood donation left him so weak that he could not stand on his own. He was then given an injection to build up his strength.

It is likely that the Tibetans were singled out for blood donations because their bodies had adapted to living at high elevations. The average elevation in Tibet is 4,500 m (14,764 ft). This is higher than Mt. Whitney, the highest mountain in the continental United States, which is 4,421 m (14,505 ft) tall. At 4,500m there is 41% less oxygen available than at sea level.<sup>470</sup> Living at this elevation forces the body to process the little oxygen it can take in more efficiently. It does this by producing more red blood cells, which carry oxygen throughout the body. Another artificial way of achieving the same result is to give a person who has not adapted to altitude a transfusion of blood from somebody whose blood has adapted to altitude. If done correctly, this will increase the person's endurance and make his body process oxygen more efficiently. If done incorrectly, the person can develop blood clots and die. In endurance sports, this is referred to as "blood doping" and is considered a form of cheating.

From the stories of Tibetans being singled out for blood donations that are then sent to Chinese border guards in Tibet, it seems likely that the guards are using the Tibetan blood in a similar manner. For Chinese border guards who lived their entire

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470 See "Interactive calculators: Altitude air pressure calculator," *Altitude.org*, available at: [http://www.altitude.org/air\\_pressure.php](http://www.altitude.org/air_pressure.php).

lives at or near sea level, living and performing their duties in Tibet would be extremely difficult and even deadly. Up to 10% of people who ascend to 4,500 m without giving their bodies time to adjust suffer from High Altitude Pulmonary Edema (HAPE).<sup>471</sup> HAPE is the most frequent cause of death from altitude related illnesses and is usually treated by bringing the suffered to a lower elevation.<sup>472</sup> Tibetan blood could, which has naturally adapted to life at high elevations, may help the Chinese border guards in Tibet avoid HAPE and adjust to living and working at the high elevations in Tibet.

## **D. Comparison with Prison**

Three of the Tibetans interviewed by TCHRD served prison sentences before being sent to RTL. Re-education Through Labor is designed to be a less than criminal punishment<sup>473</sup> that applies to conduct that does not merit a criminal punishment.<sup>474</sup> This is not how RTL has been implemented. In some instances an RTL sentence can be more severe than the criminal punishment. For example, a man in a rural area of the PRC was caught stealing one belt. This was deemed a minor offense that did not merit a criminal punishment and he was sent to RTL. However, if he had stolen 10 belts, he would have been treated like a criminal and received a lighter sentence.<sup>475</sup>

Ngawang Dripsel spent four years in prison for participating in a peaceful protest against the PRC's rule over Tibet

471 Larry Rigsby M.D., "High Altitude Illness," *Everest News*, 1 Nov. 2005, available at: <http://www.everestnews.com/stories2005/illness01112005.htm>.

472 Larry Rigsby M.D., "High Altitude Illness," *Everest News*, 1 Nov. 2005, available at: <http://www.everestnews.com/stories2005/illness01112005.htm>.

473 Andrew Jacobs, "Opposition to Labor Camp Widens in China," *The New York Times*, 14 Dec. 2012, available at: <http://www.nytimes.com/2012/12/15/world/asia/opposition-to-labor-camps-widens-in-china.html?pagewanted=all&r=1&&pagewanted=print>.

474 2002 Regulations, Art. 9.

475 Erik Eckholm, "China Hones Old Tool: 'Re-educating' Unruly," *The New York Times*, 27 Feb. 2001, available at: <http://www.nytimes.com/2001/02/27/world/china-hones-old-tool-re-educating-unruly.html?pagewanted=all&src=pm>.

in 1993. Ngawang Choedon and Lobsang Chodon were both sentenced to three years in prison and then six months in RTL for participating in a protest in 1989. However, both Tsering Phuntsok and Ngawang Phuntsok participated in protests in 1999 and 2008 respectively but did not receive a criminal punishment. This difference can be explained in two ways. First, the reforms to the PRC's criminal justice system in the mid 1990s made the PSB send more cases to RTL rather than submitting them to the criminal justice system. Second, RTL is an arbitrary system and as such, it is unlikely to operate consistently over the years. Regardless of the reasons for why some protests merited a criminal punishment and others merited RTL, the treatment in both places did not vary substantially.

In prison Ngawang Choedon and Lobsong Chodon both said that political prisoners were singled out for interrogations and beatings. The use of positional torture, beatings, and electric shocks continued as they did in detention and later in RTL. In prison the Tibetans were also subjected to forced blood donations. Like detainees in RTL, prisoners in the criminal system were forced to perform manual labor. Ngawang Dripsel's treatment in prison was very similar to in RTL. In both places he was forced to work in vegetable farms and perform hard labor in his cell. When he was not doing forced labor he performed military drills from morning until the afternoon.

Ngawang Phuntsok, who did not serve in prison but during his RTL sentence heard other people compare the criminal system and RTL, said the biggest difference between prison and RTL was that RTL facilities were expected to make money from the detainees. In RTL facilities where detainees could buy goods they were more expensive than they would be in prison.

This did not improve the medical care in prisons. Ngawang Dripsel was never admitted to the prison clinic when he was sick or suffering from a beating. Ngawang Choedon and Lobsang Chodon only saw people released early from RTL on medical parole. Similar to RTL and Dhundup's experience, medical parole

was only for hopeless cases or when a person would be released before they could recover. They saw two people receive a medical parole after the guards beat the two victims on the head. One of the victims, Tsamla, died in the hospital after receiving the medical parole.

Ngawang Dripsel said the only difference between prison and RTL was that prisoners were not allowed to return to their work unit, monastery, or nunnery. However, as the next section will discuss, it is almost impossible for a former political prisoner to return to work, school, or a monastery or nunnery after being detained—regardless of the sentence or label.

The three Tibetans describe how the Chinese law in the books is different from how the law is practiced. While RTL may be described as a minor punishment for less than criminal offenses—in reality it is difficult to distinguish between prison and RTL. The reasons for receiving a criminal sentence and a RTL sentence overlap substantially and the timing of the arrest seems to be more important than the person's conduct. Once in prison or RTL it is difficult to distinguish between the two. The work and treatment are very similar. In prison there may not be the same profit motive as in RTL facilities like Mianyang. However, for Ngawang Dripsel, Lobsang Chodon, and Ngawang Choedon who were sent to Trisam for RTL the differences were negligible.

## **E. After Re-education Through Labor**

After their release from RTL all of the Tibetans tried to continue their lives as if nothing had happened. All discovered this was impossible. Requirements that the detainees register with the police, receive permission to move, and police harassment made life in Tibet impossible. Severe medical problems produced by the treatment during RTL and the lack, and in one case denial, of medical care forced the Tibetans interviewed by TCHRD to leave their homeland, friends, and family and risk arrest and death to live in exile in India.

One common defense of RTL was that it was actually better for the detainees than a criminal conviction. This was in part because RTL avoids the stigma that accompanies a criminal conviction.<sup>476</sup> The experiences of the Tibetans subject to RTL contradict this argument. After their release the Tibetans interviewed by TCHRD were all labeled as former political prisoners and singled out for abuse by the police. Three had also served time in prison before they were sent to RTL. But the treatment all the RTL detainees were subjected to was consistent regardless of whether they also had a criminal conviction.

All the Tibetans were forced to check-in with the police once a month and report and receive permission for all their movements. The police rarely gave permission. Like most of the Tibetans, after his release from RTL Tsering Phuntsok was hospitalized. The local hospital lacked the facilities to give him the treatment he required and the police refused to allow him to travel to other hospitals. As a result, he received a diagnosis for kidney problems and tuberculosis only after he arrived in India. By refusing to allow Tsering Phuntsok to travel the police also destroyed his business as a sculptor. Before his arrest and detention in RTL, Tsering Phuntsok was a successful sculptor and traveled to monasteries to make and repair sculptures. By refusing to allow Tsering Phuntsok to travel the police made it impossible for him to continue his business as a sculptor. He also did not have an identity card that would allow him to find work. He was also subjected to police harassment, including one incident when the police took his motorbike without any reason or explanation. After one year life became impossible and he went to India.

Ngawang Choedon, Lobsang Chodon, and Dhondup all

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476 Amnesty International Memorandum to the State Council and the Legislative Committee of the National People's Congress of the People's Republic of China, "Abolishing "Re-education through Labour" and other forms of punitive administrative detention: An opportunity to bring the law into line with the International Covenant on Civil and Political Rights" May 2006 AI Index: ASA 17/016/2006, available at: <http://www.amnesty.org/en/library/asset/ASA17/016/2006/en/5149fbb3-d453-11dd-8743-d305bea2b2c7/asa170162006en.pdf>

tried to reenter a monastery after their release and all were turned away. If a monastery or nunnery admits a former political prisoner it may be targeted by the authorities for abuse or simply told they must kick out the political prisoner. The same is true for school and employers. As a result, both Ngawang Choedon and Lobsang Chodon left Tibet after one year to continue their studies in India.

When Dhundup received his medical parole and his family saw the condition he was in they broke into tear and were forced to check him into a hospital. Dhundup spent his first two months after his release recovering from his illness and surgery in a hospital at his family's expense. When he was healthy enough to try to rebuild his life he discovered that there was only one school in Lhasa that would accept him. He went to Lhasa without seeking permission from the police. While there the police frequently visited and harassed his parents in Chushul (Ch: Qushui) and him in Lhasa. While on his way back from school the police would stop Dhundup, take him to the police station, and accuse him of some crime. They would then take whatever money he had on him as a "fine" and sometimes held him over night. Eventually, Dhundup did not feel safe in Lhasa and realized that to end the harassment of his parents he had to leave Tibet. With three other Tibetans he escaped to Nepal. The Nepalese government caught two of his traveling companions and returned them to China, where they were imprisoned. Dhundup was able to avoid arrest and eventually make his way to India.

Like Dhundup, Ngawang Phuntsok refused to report to the police. He was subjected to constant police surveillance and threatened with arrest but knew that because of his imposing figure, Ngawang Phuntsok is broad shouldered and well over six feet (1.8 m) tall, the police were afraid to confront him. After four months Ngawang Phuntsok was unable to resume his life in Tibet left for India.

Ngawang Dripsel stayed in Tibet for seven years before life became unbearable and he went to India. He was able to

make a living working as a shop assistant. Despite complying with the reporting requirement he was still subjected to police surveillance and harassment. The local hospitals were also unsuccessful at treating his chronic headaches he suffered after being hit in the head by a rifle butt while in prison. The hospitals merely prescribed painkillers that masked the pain.

When Ngawang Dripsel arrived in India he discovered that the painkillers not only masked the pain in his head but also the pain in his kidneys. In 2012, Ngawang Dripsel underwent major surgery to have a kidney removed. Ngawang Dripsel is not the only former RTL detainee to suffer from kidney problems (see aside) and chronic pain after his release. Ngawang Choedon's back was dislocated during a beating and she never received proper medical care. She was only able to receive treatment once she arrived in India and still suffers from chronic pain. Lobsang Chodon suffers chronic headaches and is unable to study for long periods of time because of a stick being broken over her head while she was in detention.

The experiences of Tibetans after their release from RTL demonstrate that, despite ostensibly being a minor punishment, RTL ruined their bodies and made life inside Tibet impossible. Despite never being convicted of a criminal offense and being detained only for a "minor offense," which usually involved exercising rights protected under international and Chinese law, upon release the Tibetans were harassed and persecuted by the police until they were forced to seek exile in India. The stigma, enforced by the police, made it impossible for all but two of the Tibetans to find work or study. The two were only able to work and study for a short period before they were forced out of Tibet. The effects of RTL traveled with them to India in the form of chronic pain and disease.

### **Aside: Kidneys in Traditional Chinese Medicine**

Ngawang Choedon, Tsering Phuntsok, and Ngawang

Dripsel were all diagnosed with kidney problems after their release from RTL. Tibetan political prisoners frequently suffer from kidney problems during and after being tortured in all forms of Chinese detention facilities.<sup>477</sup> There are many possible causes for the kidneys being specifically affected. These include the heavy use of painkillers both inside RTL facilities and in hospitals in Tibet. It may also be a result of frequent beatings and surviving on a starvation diet.

However, Ngawang Choedon remembers one beating that injured her kidneys specifically. This suggests that her kidneys may have been specifically targeted. The specific targeting of the kidneys could be a unique form of Chinese torture designed to break the victim's will. In Traditional Chinese Medicine the kidney Ch: 腎: shèn) stores essence, which in turn houses willpower.<sup>478</sup> Thus, harming the kidney could be a direct attempt to undermine and damage a person's willpower.

It is unclear whether any principles of Traditional Chinese Medicine have influenced the torture techniques in the PRC. Some torture techniques in the PRC can be traced to the Soviet Union or North Korea.<sup>479</sup> There are also torture techniques that were developed in the PRC.<sup>480</sup> It is possible that damage done to kidneys is part of an effort to undermine the victim's will power, another torture development in the PRC. It is also possible that the damage done to the victim's kidneys is simply the result of their brutal treatment and the frequent use of painkillers.

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477 See e.g. "Prominent political prisoner in critical condition on release after 17 years," *TCHRD*, 3 April 2013, available at: [http://www.tchrd.org/2013/04/prominent-political-prisoner-in-critical-condition-on-release-after-17-years/\(Jigme-Gyatso\)](http://www.tchrd.org/2013/04/prominent-political-prisoner-in-critical-condition-on-release-after-17-years/(Jigme-Gyatso)); "China releases Jampel Jangchub after 16 years in jail," *TCHRD*, 6 April 2005, available at: <http://www.tchrd.org/2005/04/china-releases-jampel-jangchub-after-16-years-in-jail/> (Jampel Jangchub); "Freedom at last?: Released from 25 years' imprisonment, former longest serving Tibetan political prisoner under surveillance," *TCHRD*, 3 May 2013, available at: <http://www.tchrd.org/2013/05/freedom-at-last-released-from-25-years-imprisonment-longest-serving-tibetan-political-prisoner-under-surveillance-2/> (Lobsang Tenzin).

478 See Huang-fu Mi, *THE SYSTEMATIC CLASSIC OF ACUPUNCTURE AND MOXI-BUSTION*, (2004, trans. Yang Shou-zhong and Charles Chace) at 5.

479 Darius Rejali, *TORTURE AND DEMOCRACY* at 84-85.

480 Darius Rejali, *TORTURE AND DEMOCRACY* at 84.



## **V. Conclusion**

The abolition of RTL was one of the first reforms from the Third Plenum Decision to be given legal force. As such, it is the first opportunity to see whether Xi Jinping is able and willing to implement real reform in the PRC. If Xi Jinping is going to separate himself from his predecessors, who announced reforms but did not implement real change he must start by abolishing RTL and the abuses associated with it.

The abolition of RTL by the National People's Congress Standing Committee did not fulfill the promise of the Third Plenum Decision. To truly abolish RTL the abuses that define it must also be abolished. Until this happens the promise from the Third Plenum Decision will remain unfulfilled. Whether the PRC is capable of and willing to deliver on this promise will be a defining test of both Xi Jinping and whether the PRC can be a credible stakeholder in the international system.

Despite the seemingly simple promise there are already indications that the PRC is already planning to keep the essential functions of RTL under a different name. The relabeling of RTL facilities and the retraining of RTL guards to work in compulsory education facilities begs the question of how these facilities will function if and when RTL is abolished. Even if these facilities do not function as RTL facilities under a different label the abuses associated with RTL will not end.

As this report has demonstrated, the abuses that are inherently part of RTL are not limited to RTL. They begin when the victims are arrested and detained and continue up to and even after their release. To abolish the defining abuses of RTL and thereby abolish rather than rename RTL, these abuses must stop.

Stopping arbitrary detention, forced labor, and torture will begin by implementing changes that provide meaningful, independent, oversight of detention, sentencing, and prison. These abuses will not be abolished until the MPS loses the ability to act

as judge, jury, and executioner by circumventing the judicial and the criminal justice systems.

While implementing meaningful oversight from within the CCP is important it is not a panacea. Tsering Phuntsok's story of how high government officials discovered that the detainees in Mianyang were being well fed and improved the food is telling for two reasons. First, it demonstrates that oversight was able to improve conditions. Second, it demonstrates what conditions the government officials believed were tolerable. Of all the abuses in Mianyang, only the poor food was deemed so substandard that it needed to be changed. Forcing people to work for 20 hours or more a day in dangerous conditions without any safety equipment, denying them medical care, and torturing them were all considered acceptable by the officials who inspected Mianyang.

The beating, long working hours, and torture were the aspects of the *Lens Magazine* article that received public attention. It was more than a poor diet that causes the Tibetans to suffer, years after their release from RTL, from chronic pain and kidney problems.

By committing itself to abolishing RTL the PRC created a gap between its words and practice. It is still too early for critics of RTL to claim victory and trust that after abolishing RTL the PRC will stop arbitrary detention, forced labor, and torture. The PRC's history of making tactical concessions without meaningful implementation and the resilience of RTL require that the people and organizations that have waited so long for RTL's abolition ensure the PRC stops abuses that defined RTL—regardless of their name. If Xi Jinping is going to make the abolition of RTL more than an empty promise he must stop the abuses that defined RTL.

## **VI. Policy Recommendations**

To the People's Republic of China

- Abolish all other forms of arbitrary detention
- Abolish all forms of extrajudicial detention
- Abolish all forced labor camps
- Stop the use of torture
- Institute criminal cases against people who continue to use torture
- Stop the persecution of human rights defenders and media outlets that highlight abuses

To the International Community

- Closely supervise the PRC's abolition of RTL
- Investigate and highlight all allegations of arbitrary detention, forced labor, and torture that come from the PRC
- Institute a boycott all goods produced by forced labor

To individuals, media outlets, corporations, NGO and other non-state actors

- Push for transparency regarding the provenance of products made in China so that products produced through force labor can be eliminated
- Closely observe the abolition of RTL
- Ensure that the abuses associated with RTL are ended

# Appendix

## A. Prisoner's Stories

The following stories are based on interviews conducted by TCHRD on RTL. They are listed in reverse chronological order.

### 1. Ngawang Phuntsok

Ngawang Phuntsok (TCHRD # 08-1864) is 36 years old. In Tibet he was a subsistence farmer (growing mainly potatoes), husband and father, and brother. That changed on 18 June 2008 when Ngawang Phuntsok staged a protest against the Chinese occupation of Tibet. Ngawang Phuntsok was inspired by the protests in Lhasa on 10 March 2008 that he heard about through word of mouth.

On 18 June 2008 Ngawang Phuntsok staged his protest in Kardze (Ch: Ganzi) Tibetan Autonomous Prefecture, Sichuan Province. Ngawang Phuntsok's travel permit allowed him to travel to the city limits but no further. From there he walked past the police who lined the road and up to the police station. The police lining the road had their guns ready but would not shoot people who walked silently. When Ngawang Phuntsok got to the police station he shouted out for independence and the return of the Dalai Lama as he threw pamphlets into the air (emulating a Tibetan ritual of throwing tsampa, or roasted barley, into the air). He was able to take three steps before the police shot with a rubber bullet and knocked him unconscious with an iron rod.

Ngawang Phuntsok was taken to the county detention center managed by the Public Security Bureau. At the detention center he saw members of People's Armed Police, People's Liberation Army, and a special team that was rumored to have a free license to shoot. In the detention center he saw the effects of crackdown against the 2008 protests. So many people were ar-

rested the detention facility could not hold them all. Nuns and other detainees were kept outside in tents. In the detention facility Ngawang Phuntsok also heard about protesters who were shot by the police who would panic and fire into the crowds.

Ngawang Phuntsok's cell held 70 of the 300 people in the detention facility. The cell had one window high in the wall and one toilet at the opposite end from the door. Because the cell was narrow and crowded it was difficult to reach the toilet. The cell was made even narrower by a concrete platform lined along the wall and served as a bed for the detainees. Ngawang Phuntsok shared the cell with petty criminals who were serving their sentences. An old man was serving the longest sentence—10 years.

Ngawang Phuntsok spent six months in the county detention center. His family did not know what had happened to him and assumed he was dead. Even if Ngawang Phuntsok's family had known what happened to him because he was a political prisoner the police would not have allowed them to visit. Ngawang Phuntsok and his fellow detainees were fed twice a day, a small portion of rice at 10am and potatoes at 5pm. As a farmer Ngawang Phuntsok had plenty of food. The meager diet he received was not enough to sustain his almost 2 meter tall frame with broad shoulders. When he entered the detention facility he was already weakened from the blood loss when he was hit with the iron rod. He eventually became so weak he could not stand on his own.

Ngawang Phuntsok's condition was not helped by the interrogations. For the first two months in the detention facility Ngawang Phuntsok was interrogated every day. His interrogators wore masks to hide their face and plain clothes to hide their affiliation. Sometimes he would see mid-level officials but usually everyone remained anonymous.

During the interrogation Ngawang Phuntsok's hands were tied behind his back and then pulled backwards. His muscles strained and his bones broke. Sometimes the interrogators would use a hook to pull on his arms. Sometimes he would lose con-

sciousness because of the pain. Ngawang Phuntsok heard stories of people whose arms lost circulation, and almost dying, when they were tied behind their backs – blood rushed back into their arms and clotted. Ngawang Phuntsok was also beaten and electrocuted until he lost consciousness.

Ngawang Phuntsok was spared some of the worst interrogation methods because he was arrested alone. When the police wanted two or more confessions to be consistent they would suspend the detainees by their thumbs with their feet only barely touching the ground. The detainees would be taken down to be fed and could be kept suspended for 4-5 days at a time.

Ngawang Phuntsok's interrogations could last all day. They demanded to know who had instigated his protest and whether exile Tibetans led by the Dalai Lama were involved in it. After two months of telling them truthfully that the protest was his own idea the police stopped interrogating him so frequently. For his last four months in the detention center he was interrogated on a weekly, rather than daily, basis.

After six months of detention Ngawang Phuntsok was told he had been sentenced to 3 years of Reeducation Through Labour (RTL). The police showed him a document informing him of his sentence and forced him to sign it and put a thumb print. They then took the document back. Previous Tibetans sentenced to RTL were allowed to keep the document but since they started using it as evidence of their treatment and to demand legal rights, the Chinese government has now stopping issuing the document to the prisoners. Rather than grant the Tibetans their legal rights the police simply took the document back.

Ngawang Phuntsok heard stories of how some prisons refused to accept detainees that were too heavily bruised. To avoid this the interrogators at detention facilities would make the detainees wear long sleeves and long pants during the interrogation so as to hide the bruises. Ngawang Phuntsok and the 11 other detainees were sentenced to 9-36 months of RTL. Usually the RTL

camp was a two-day trip from the detention facility. Ngawang Phuntsok's bus stopped for four days in Dhartsedo (Ch: Kangding) to let the prisoners recuperate and rest because they were so weakened. The trip took them five days.

When they finally arrived at the RTL camp (*Sichuan Sheng mei shan shi dong po qu sha ping lao jiao suo*) the 12 Tibetans were separated and mixed into the other 4,000 detainees. They were the first Tibetans to join the Han and Muslim Hui detainees. By the time Ngawang Phuntsok left the camp 7 months later there were more than 100 Tibetans in the camp. Most of the Tibetans came from Kham province, arrested by the Chinese during the 2008 protests.

Putting the Tibetan political prisoners in with Han Chinese and Hui Muslim detainees, some of who were drug addicts and petty criminals caused conflicts. Each group had their own prejudices and there were misunderstandings.

In the camp the Tibetans were usually treated like the other prisoners except when they were singled out for frequent blood donation. All of the detainees were subject to medical tests when they entered the camp and the Tibetans then had their blood drawn. The rumor was that the Tibetan's blood was being given to the Chinese border guards in Tibet. Sometime the Tibetans were too weak for any blood to be drawn. Those Tibetans would be forced to run until the guards could take their blood. One of Ngawang Phuntsok's friends almost died because they took too much of his blood.

At the RTL camp Ngawang Phuntsok was forced to make wires that would be used in televisions and laptops, jeans for business owners, and machine parts for automated mahjong games. Each prisoner was given a quota they had to reach but prisoners could pay (bribe?) to have their quota passed on to other prisoners. The prison would sell whatever the prisoners made to support the camp. The camp also tried to get money from the prisoners. Relatives were allowed to bring things for the prisoners, including money, which could be spent at the stores in the

RTL camp. The RTL camp made a large profit on anything they sold to prisoners.

After seven months in the RTL camp Ngawang and the other, now over 100, were transferred to a secret RTL camp an hour from Mianyang. The prison was a massive complex that held around 8,000 people. The conditions at the secret RTL camp were horrible. More than 90% of the prisoners who left the secret detention facility were disabled. The leading cause of death and illness in the secret camp was exhaustion. Ngawang spent the next two years hoping to survive.

Each day the prisoners would wake up at 5am and they were given 5 minutes to eat and an additional 10 minutes to use the bathroom, smoke, and get going. They would to 1 or 2 in the morning with 5-minute breaks to eat lunch at noon and dinner at 5pm. Sometimes they would work on smoothing out the rough parts for bicycles and cars. Other times they worked on wires like they did at the RTL camp. Each group was given a quota and if they did not meet the quota it was increased. When there was no work to do the prisoners were forced to run and perform military exercises, like marching in formation and standing at attention.

The diet consisted of two small pieces of tingmo and a glass of hot water in the morning. In the afternoon and evening they were given rice soup that was mostly hot water. The prisoners were allowed to eat as much rice as they could in the 5 minutes they were given to eat but rice did not give them any strength; it only filled their stomachs.

Each cell held 12 people who slept in bunk beds. The tap water in the cells would make you sick so the 12 prisoners were forced to share one bucket of hot water. All 12 shared a flask of hot drinking water. Once a month they were allowed to wash in cold tap water. The prison authorities would never let one group of people stay together for very long so the prisoners could not form friendships with each other. In each cell the guards would appoint a leader who would punish any troublemakers in the cell.



A lot of the prisoners were Falun Gong practitioners. The guards would single out the Tibetans and the Falun Gong practitioners for particularly bad treatment.

The prison authorities were told they could not have prisoners dying in their care so prisoners were released if they were about to die or be so debilitated they could not work. A prisoner who complained he was feeling sick was forced to work until he collapsed. Only after a prisoner collapsed was he taken to see a doctor. Serious cases were referred to the biggest prison in Sichuan Province in Trindu (Ch: Chengdu). If the doctors there declared that the case was helpless the prisoner would be released to either die or live as a cripple. One of Ngawang Phuntsok's friends was having trouble with his eyes and was released with two months left in his sentence. When Ngawang Phuntsok next saw his friend, after his release, he found him blind.

When Ngawang Phuntsok was finally released after two years. Outside of the prison Ngawang Phuntsok refused to report to the police every month despite threats that he would be arrested if he did not. The police were constantly watching and following him. After 4 months the constant surveillance became intolerable and Ngawang Phuntsok left Tibet for exile in India.

## 2. Dhundup



Dhundup was born in Chushul (Ch: Qushui) near Lhasa in Tibet Autonomous Region. He studied in a Chinese school until 6<sup>th</sup> grade when he entered Nyima Thang Monastery to study Tibetan language. In the monastery he studied Tibetan language and history.

Dhundup's first encounter with political activism was in 1996 when he was 12 years old. Dhundup and some other

monks decided to stage a demonstration in Lhasa. A spy in the monastery tipped off the police and Dhundup and the other monks planning the protest were confronted by the police and kept in the monastery.

Two years later Dhundup got involved in distributing CDs of the Dalai Lama's speeches and information about Tibet because he felt he had to do something. At the same time the Chinese instituted a reeducation campaign for the monasteries. The reeducation campaign forced the monks to attend classes designed to get monks to accept and support Chinese rule and denounce the Dalai Lama. At the end of the reeducation classes all the monks were required to take an exam demonstrating that they accepted Chinese rule and rejected the Dalai Lama. Monks who failed the exam would be kicked out of the monastery.

Dhundup like the other monks in his monastery disagreed with the Chinese reeducation policy. The Chinese teachers could tell Dhundup disliked the Chinese policy and wrote down that he had a bad attitude. Dhundup decided that he could not accept the Chinese teachings and skipped the reeducation classes. Rather than be kicked out of the monastery Dhundup decided to go to India where he could study under the Dalai Lama.

Dhundup fled the monastery with a friend. Dhundup was 17 years old. Around midnight one night the police descended upon them. Dhundup and his friend were handcuffed and searched. The police took all of their money and brought them to Lhasa in a police van with no windows. They arrived at one of the worst prisons in Tibet in the morning. Dhundup was separated from his friend and put in a 1.5x2m cell. The cell was perpetually dark. The only source of light was a hole in the ceiling and a small window above the door. There was only one bed with the toilet next to it. The concrete cell was very cold. During the five days Dhundup was kept in the tiny cell he was only fed leftover Chinese noodles once and was forced to drink the water in the toilet.

The police interrogated him every night. In the dark they led him from his cell to an empty office. At night the office was empty except for Dhundup's interrogators. There was nobody to see Dhundup or how he was treated during the interrogation. Dhundup could tell from the insignia on the uniforms that the interrogators were of different ranks (up to three stars and three stripes/bars) Dhundup's interrogators demanded to know why he was escaping, how he found out about going abroad and how he met his guide. They also wanted to know who organized, planned, and instigated Dhundup's attempted escape.

When Dhundup refused to answer their questions and insisted that he acted on his own his interrogators tortured him. They beat him with plastic batons, shocked him electric batons, doused him in cold water, forced him to kneel with his hands tied behind his back then kicked him to ground smashing his forehead, and put a gun to his head and threatened to shoot him if he did not tell them what they wanted to know. All of these techniques either left no visible mark or could be explained away as an accident so that there would be no evidence of the abuse.

Dhundup's interrogators also tried more subtle methods of interrogation. They mocked Dhundup's faith in the Dalai Lama telling him to ask the Dalai Lama to save him. To build a false sense of trust they gave Dhundup tea and told him he would be released if he told them what they wanted to know. When he still refused to talk they threatened him with life in prison. Through out all of this Dhundup refused to get other people in trouble and insisted that he acted on his own. Dhundup's friend had a similar experience and tried to say that it was all his idea and Dhundup was blameless.

After five days Dhundup and his friend were put into cells at the Gutsa detention center in Lhasa. The police still kept them in separate cells. Dhundup was put in a cell with 15 other prisoners. When he walked in he was immediately afraid. Dhundup was a 17-year-old monk who was arrested for trying to escape China's repression of Tibetan Buddhism. All the other

prisoners were much older and awaiting sentencing for criminal cases. One of the Tibetans asked Dhundup what he had done to be arrested so young. When he explained that he was political prisoner the Tibetan took care of him and made sure he had food and a blanket.

Despite coming from the small, dark cell Dhundup could still not believe the conditions in the cell during his first night. Some prisoners were forced to sleep on the floor because there was not enough space on the concrete beds. Dhundup was given space on a bed. There was one bucket that the 16 prisoners had to use as a toilet. It was emptied every morning but not before it started to smell.

For the next two months Dhundup was kept in Gutsa detention center. Every morning the prisoners received tingmo and black tea for breakfast, vegetables in water and rice for lunch, and rice noodles and tingmo for dinner. Sometimes there were no noodles. The food was delivered in bulk and the prisoners were forced to divide the food amongst themselves. The other Tibetans made sure that Dhundup got food but it was still difficult. The tingmos were very dirty but they were the only food available and Dhundup had to eat.

Dhundup was interrogated twice while he was in the cell. Once during his first week two police officers escorted him to a room with four other police officers. They sat him down, offered him a cup of tea, and asked if he wanted to go home and see his family. All he had to do was answer their questions and tell them why he was a political activist. When Dhundup said he was not an activist and just wanted to see the Dalai Lama they accused him of lying and sent him back to his cell. Eventually, the police found out who he was and that the reeducation teachers at his monastery said Dhundup had a bad attitude.

After a month Dhundup was taken out of his cell to take part in a propaganda film. Dhundup and some other prisoners were restrained, hooded, and taken in an army convoy to plains

in Nangchen (Ch: Nangqian) in Qinghai Province. Dhundup and the other prisoners were forced to enact being arrested by the army in front of cameras. The video was shown on television. One of Dhundup's relatives recognized him from the video and told his parents that Dhundup had been arrested.

For two months Dhundup's parents had been looking for him. It was not until the propaganda video was broadcast that they knew he had been arrested. Dhundup's parents were allowed to visit him once before he was sentenced.

For sentencing Dhundup and 17 other prisoners were taken from their cells and forced to stand in a line. Dhundup's friend and a lama were among the 17. Most were monks from the Tibetan province of Kham. They were surrounded by police and military while a judge announced their sentences. Everybody was sentenced to Re-education Through Labor (RTL aka *laojiao*). Dhundup and his friend were sentenced to 2 years for participating in political activity against the government. The judge told them that they could appeal their sentence within 15 days. Dhundup tried to appeal his decision but never received a response.

The bus took Dhundup and the other prisoners to the Gutsa detention center before they were sent to the Trisam *laojiao* camp. At the Gutsa detention center, Dhundup and his fellow prisoners were forced to pay for the time they spent there. The officials at Gutsa took the Tibetans' blood and told Dhundup they would sell it to the border police in Tibet. Twice they took Dhundup's blood as payment. Each time they took so much blood from Dhundup that he could not stand on his own and he was given an injection to build up his strength.

When Dhundup arrived at the Trisam *laojiao* camp he was told the rules and regulations of the camp and put in a cell with 12-14 other prisoners. He was the only political prisoner in his cell. In the entire facility of approximately 500-600 prisoners only 15-17 were political prisoners. The political prisoners were sentenced to RTL for demonstrating, sending information out of Tibet, or

trying to bring information to Tibet. The guards maintained a strict policy regarding what was allowed in the prison. Each prisoner was given a copy of the rules and regulations and on Saturdays they were given copies of a newspaper about Chinese policies. All Tibetan texts were confiscated. Prisoners could be beaten or punished if they practice a mantra or read religious texts.

Family visits were allowed on the 15<sup>th</sup> and 30<sup>th</sup> of every month. The prisoners wore nametags that identified their behavior as good, better, or excellent. If a prisoner received the lowest ranking, good, the family meetings were limited to 5 minutes. If a prisoner maintained a good ranking for three consecutive months his sentence could be extended but not more than 6 months total. Most political prisoners received a good ranking. Prisoners ranked medium could meet with family for 10 minutes. Prisoners with the highest ranking, excellent, were allowed to meet with family for 15 minutes. It was very difficult to maintain an excellent ranking for three months but if a prisoner succeeded his sentence could be shortened. A prisoner could get an excellent by informing on other prisoners.

To get to family visits prisoners had to walk through two sets of doors where the guards checked everybody and everything. The prisoners sat with glass between them and their family and had to talk through telephones. They were allowed to speak in Tibetan but every conversation was monitored. Family members could give the prisoners cooked and dried food to bring back after the meeting but anything else was prohibited.

In general the political prisoners were singled out for particularly bad treatment. This was because the guards could lose their post if a political prisoner staged a protest at the prison. Dhundup was considered a political prisoner because of the notes the Chinese had on his activities in his monastery. But he was spared the worst treatment because he was so young. The prisoners were forced to work in vegetable fields in the summer and in greenhouse in the winter. The vegetables were sold in the markets and the profits went to the prison. The prisoners were

not paid and were forced to work 8-9 hours every day. To cut down on expenses there were no cows or oxen to help plow the fields. The hard manual labor destroyed the prisoner's hands.

The prisoners also had to do work around the labor camp. Dhundup was forced to stand knee deep in feces while he cleaned the toilets by hand. Many prisoners developed skin diseases. Sickness was common at Trisam. Prisoners were worked to exhaustion and not fed enough to keep their strength up. The food at Trisam was better than it had been at Gutsa but it was still not normal food. They could make tea in their cells though and would get two small tingmos instead of one. The food was still very dirty. They could see the feces from the fertilizer on the vegetables.

When the prisoners were not working, usually in the winter, they were forced to perform army drills for hours on end. If prisoners did not follow the instructions they would be beaten or forced to stand in the sun without moving. Some prisoners were forced to hold a chair over their head while they stood motionless. All of the instructions were in Chinese. The prisoners who did not understand Chinese were beaten frequently. Dhundup was punished twice. Once Dhundup did not realize that a guard was speaking. He was forced to stand in the sun for an hour without moving. By the end he was exhausted and his head hurt.

Eventually, the forced blood donations, hard unsanitary work, and the poor diet took its toll on Dhundup. After 5 or 6 months in Trisam Dhundup got severely ill. He lost all his strength and relied on his fellow prisoners for everything including using the bathroom and carrying him because he did not have the strength to stand. Even though he could not eat his stomach expanded. The nurses in the prison gave him glucose injections and two bottles of medicine each day. Sometimes the medicine had expired. None of this helped and after six months many prisoners expected Dhundup to die.

The authorities at Trisam sent Dhundup to a nearby

military hospital for surgery. At this point Dhundup had been sick and bedridden for over 6 months. When the doctors at the military prison needed him to consent to an operation he was unconscious and the police signed for him instead. Dhundup never found out what was wrong with him but the doctors at the military hospital told him they took something out of his stomach.

When the doctor's finished the surgery Dhundup had a month and a half left in his sentence. He could not go back to work until he recovered and if he died in detention the guards would lose their salary. Rather than allow Dhundup to finish his sentencing recovering from the surgery the RTL officials decided to release him a month and a half early.

Dhundup's brother picked him up from Trisam and took him home where his family was waiting. When he arrived at 8.30pm and his family saw the condition he was in they cried. The stitches from his surgery had not been removed and he was still too weak to move. His family had to lift him out of the car and carry him to his bed. He spent two days at home before a local doctor said he needed to recover in a hospital. Dhundup spent the next two months in a local hospital. His parents were forced to pay for all of his medical treatment.

When Dhundup was healthy enough to leave the hospital the first thing he wanted to do was visit his Tibetan teacher at Nyima Thang Monastery. His teacher was under suspicion from the police because of his association with Dhundup. It was too much of a liability for the monastery to allow Dhundup to return. Dhundup soon found that because he was labeled a criminal and political prisoner none of the monasteries or schools would admit him. Dhundup was able to find one school in Lhasa that would accept him and teach him English.

While Dhundup was away from home in Lhasa Dhundup refused to check in with the police. The police in his home district visited Dhundup's parents every month and kept track of his activity. In 2003, on his way home from school two men in



suits approached him and told Dhundup to come with them. He knew by looking at them that they were police and asked what they wanted. The police responded by lifting their jackets to reveal their guns.

Dhundup was taken to the police station. The police asked him if he recognized CDs of a famous political prisoner and the Dalai Lama. The police accused him of distributing the CDs but eventually let him go. This incident was the first of two or three incidents. The police would interrogate Dhundup and accuse him of a crime. In one instance he was forced to spend the night in prison and the police tried to fine him 500 yuan. Dhundup only had 100 yuan on him and the police settled for that.

The police harassment reached the point where Dhundup did not feel safe in Lhasa. Dhundup realized that the only way to end the police harassing him and his family was for him to flee to India, where he resumed his studies. Dhundup got together with his friend and together with two other Tibetans they attempted another escape from Tibet. The four of them drove to as close as they could to the Nepalese border without too much risk and began walking over the mountains to Nepal. They walked during the night to avoid the army and their dogs. As they hid from the army Dhundup thought he would rather die than be captured alive again. Dhundup and his companions succeeded in avoiding the Chinese border patrols and in 24 days they arrived in Nepal. By then they had run out of food.

In Nepal they took a bus to Kathmandu. The four of them spread out on the bus with one in the front of the bus, Dhundup's friend and the other Tibetan toward the middle and Dhundup at the back of the bus. To get to Nepal the bus had to pass through 7 checkpoints. At the third checkpoint the Nepalese police noticed a hard brick of Tibetan tea in one of their bags. They questioned the Tibetan near the middle of the bus and Dhundup's friend in Nepalese. The police quickly discovered that they did not speak Nepalese. Both Dhundup and the other Tibetan were taken off the bus and sent back to Tibet.

Dhundup has now been in India for about 10 years. In 2003, he was admitted to the Tibetan Children's Village school. His marks were good enough that he was admitted to Delhi University where he is studying political science. He will graduate with a Bachelor of Arts in 2014. In addition to his studies, Dhundup has worked with other Tibetans now living in India who were sentenced to RTL. Together they assembled a list of 118 Tibetans they know who were sentenced to RTL. That list is included in the appendix.

### **3. Tsering Phuntsok**

Tsering Phuntsok was working as a popular and successful sculptor in Sichuan province before his arrest. He primarily traveled to nearby monasteries to help with renovations. In 1999, Geshe Sonam Phuntsok was arrested. Geshe Sonam Phuntsok was a popular monk who was a follower of the Dalai Lama's teaching. In addition to preaching non-violence, Geshe Sonam Phuntsok also gave teachings, provided medical services, and did other charitable work for the community. Tsering Phuntsok joined the spontaneous protests that demanded Geshe Sonam Phuntsok's release. The protesters soon also began calling for human rights in Tibet. Tsering Phuntsok was 25 years old and did not expect to leave the protest alive.

The Chinese soldiers and police who were present at the protest quickly created a barricade, went into a three story building, and telephoned their superiors for permission to shoot the protesters. The Chinese officials warned the protesters not to cross the barricade line. When an old man did the police were told to shoot him. Instead, they beat him with their pistols and arrested him. Tsering Phuntsok was arrested with sixty other protesters.

All sixty of them were taken to a police station where they were held for three months. One person was beaten to death in the detention facility while Tsering Phuntsok was there. The beatings

continued as if nothing had happened. Even though all sixty of them were held in one cell they were not allowed to talk. After two weeks the men and women were separated. Tsering Phuntsok's knew many people in the community because of his work as a sculptor. He knew some of the people in charge of his detention, including the people who interrogated and tortured him.

Knowing his tortures did not help Tsering Phuntsok. Instead, he was singled out for special attention. He would be interrogated 3-4 times a day for his first two weeks. During the interrogation sessions the interrogators demanded to know who had instigated the protest. From Tsering Phuntsok they also demanded to know why he would protest when he had a successful job. He responded that he was protesting for freedom and human rights. Each interrogation session ended with Tsering Phuntsok losing consciousness.

In the last week of his detention Tsering Phuntsok's beatings decreased to once every day. After three weeks of detention, Tsering Phuntsok was taken outside with 17 other people. They were given name tags and had their pictures taken. They were then told they were sentenced to RTL and split into two groups going to different RTL facilities. Tsering Phuntsok was sentenced to 18 months of RTL. Of the eight other people who went with Tsering Phuntsok, six were sentenced to 18 months of RTL and two were sentenced to three years.

The nine of them were sent to the Mianyang Re-education Through Labor facility, half a days drive from the capital of Sichuan Province. When the Tibetan protesters arrived at the Mianyang the guards tried to get other groups in the prison to dislike them but failed. The guards did beat the prisoners without leaving marks. Tsering Phuntsok remembers two major beatings. One was during a political education class because the guards did not believe he was talking the political education seriously. His nose was broken during the beating. The second major beating was when Tsering Phuntsok was too sick to work and the guards did not believe him. Tsering Udak, who was sent to Mianyang

with Tsering Phuntsok, was beaten to death.

At Mianyang Tsering Phuntsok and the other prisoners were forced to work 19-20 hours each day with only a day holiday for Chinese New Year. They would make at 5 am and have 15 minutes to eat breakfast. Then Tsering Phuntsok was sent to work in the brick factory. Wearing nothing but his underwear because of the heat he worked at a machine that helped make the bricks. At lunch he would get 15 minutes to eat lunch before going back to work. The routine was the same for dinner, where he was given a 15 minute break before working until 1 am or 2 am. For breakfast and dinner the detainees were served a small tingmo (Tibetan steamed bun) and either rice or vegetable soup. The rice soup had no rice and the vegetable soup had no vegetables. For Chinese New Year they would be given meat, but after surviving on their meager diets the taste of meat made the prisoners sick.

There was an official visit by a high member of the Chinese Communist Party while Tsering Phuntsok was in Mianyang. The official saw him with blood on his shirt from a bloody nose. The official demanded to know if Tsering Phuntsok had been fighting in violation of the prison rules. Tsering Phuntsok took the opportunity to tell the official about the conditions in the facility. He told the official about their diet was and how the prison authorities were keeping money given to the facility to pay for the food. After a week the food improved.

Even with the improvement in food, conditions in Mianyang were still abysmal. One detainee died, on average, each day. Some were beaten to death. Some would kill themselves. Because of the number of people hanging themselves with their shirts in their cells the prison authorities started making people got to their cells naked. Detainees would also kill themselves by eating glass. Sometimes, it was difficult to distinguish a suicide from an industrial accident. The long work hours and the minimal diet caused some detainees to lose control of the bricks they were working on and die.

Sickness was common at Mianyang. Detainees who were sick but could still work were forced to work, even if they had contagious diseases like tuberculosis. Eventually, Tsering Phuntsok got so sick he could not work. To avoid having his sentence extended he requested sick leave from work. The guards did not believe him and tried to force him to run. He could only crawl. They then forced him to sit in a chair and read the rules and regulations in a loud voice. He kept falling off the chair. When he fell the guards beat him with canes.

When Tsering Phuntsok finished his sentence he was given a document that said he was sentenced to crimes against the state. He was forced to check in with the local police and had to receive permission from them to travel. When he went to a local hospital after his release they told him he had problems with his bones, head, and nose and that he would need to go to a bigger hospital for treatment and possibly surgery. The police refused to let him travel. He had to make do with injections of pain killers. Tsering Phuntsok's business as a sculptor failed because the police would not let him travel.

In addition to not being allowed to travel, Tsering Phuntsok was subject to police harassment because he was a political prisoner. The police stopped him and, without explanation, demanded that he give them his motorcycle. Without any political rights, hope for employment, or medical treatment Tsering Phuntsok decided to leave Tibet and come to India. He now lives in Dharamsala with his wife and their three children.

#### **4. Ngawang Dripsel**



When Ngawang Dripsel was 20 years old he left his parents house in Tsodoe Township, Phenpo Lhundup County, Lhasa Municipality, TAR, for Drepung Monastery. At the monastery Ngawang Dripsel learned to read and write and received religious training. Yet he always preferred to work at the monastery's

tea stall.

On 13 May 1992 Ngawang Dripsel and seven monks staged a peaceful protest against Chinese rule in Tibet. They were joined by eight more monks and the 16 of them shouted slogans supporting the Dalai Lama and Tibetan freedom and opposing the Chinese occupation.

After 20 minutes the Public Security Bureau (PSB) and the People's Armed Police (PAP) took all 16 of the political activists to Gutsa Detention Centre, where they were interrogated and tortured with electric prods and other weapons. Throughout the interrogation they were beaten. They were forced to undress and stand still while the prison guards beat them black and blue with belts. Afterwards, they were hung from the ceiling by rope facing the sewage that flowed below them. When they were put in cells they were all kept separate.

After five months on 13 September 1993, Ngawang Dripsel and the other protesters were taken to Intermediate People's Court and convicted of "counter-revolutionary crimes" and "instigating reactionary propagandas." The sentences ranged from one to eight years of imprisonment.

Ngawang Dripsel was sentenced for 4 years in prison. While in prison Ngawang and his fellow protesters lived off a subsistence diet. On this meager diet they were forced to work on vegetable farms and to perform hard labor in their cells. When they were not doing manual labor they were forced to perform exercise drills from morning until the afternoon. Their labor and exercises were punctuated by beatings sometimes with electric cattle prods. There was a prison clinic but Ngawang Dripsel was never admitted to the clinic even when he was sick or suffering from the beatings.

Serving four years in prison did not dissuade Ngawang Dripsel from remaining political active. After his release Ngawang focused on exposing the torture and persecution of Tibetan

political prisoners while working at a Tibetan restaurant founded by a former cellmate. Without warning on 7 November 1997, just eight months after he was released from prison, Ngawang Dripsel was arrested again.

Initially, he was taken to the office of Lhoka (Ch: Shannan) Prefecture, north of Lhasa. He was then transferred to Seitru Detention Centre in Lhasa. He would not talk to anybody except his captors until he was transferred to Nedong Prison in Lhoka Prefecture two months later.

During his detention Ngawang Dripsel was kept alone in a cell and not allowed to talk to anyone, except for two hours every weekday when the police interrogated him. The interrogations were always accompanied by beatings, sometimes with electric batons and sometimes with whatever was nearby. Other times, Ngawang Dripsel was beaten while suspended from the ceiling by his hands and feet.

Unbeknownst to Ngawang Dripsel during his four-month detention the police were trying to decide what to do with him. Then one day a police officer handed him a two-page document telling him he had been sentenced to three years of Re-education Through Labor (RTL) for “leaking state secrets” to outsiders. Before that Ngawang Dripsel had never heard of RTL, never been informed of why he was arrested, never seen a lawyer, never had a trial, and never had the opportunity to defend himself against the charges. He was never allowed to appeal or challenge his sentence.

For the next 26 months Ngawang Dripsel was imprisoned in the Trisam Labour Camp in Toelung Dechen County north of Lhasa. At Trisam Ngawang Dripsel was one of 300 mostly Tibetan prisoners. The prisoners were kept 12 to a cell and slept on iron beds. Their use of the toilet was limited. The prisoners were separated into three groups: construction, farm work, building, and for the women cleaning and other menial labor. Their diet consisted of one tingmo (a Tibetan steamed bun) and a bowl of black tea

for breakfast and again for dinner. For lunch, instead of tea they were served a small amount of watery vegetables. During the cold winter months they were served a bowl of watery rice porridge and a steamed bun. Sometimes pieces of pork were added to the porridge.

Ngawang Dripsel was forced to live off this minimal diet while he worked six days a week on construction projects outside of the camp from 9 am to 6 pm with a short lunch break.

In addition to the manual labor, the prison guards taught Patriotic Chinese songs to the prisoners and beat them when they did not know how to sing the song. Twice the guards also beat Ngawang Dripsel when he refused to tell the guards about his fellow prisoner's activities. The beatings were usually with various batons and ropes that at times broke the prisoner's legs and hands.

At the RTL camp prisoners are allowed to meet friends and family once a month. The visitors could bring food to the prisoners. However, because Ngawang Dripsel's family did not know what happened to him since his initial arrest in 1992 they could not visit him. Prisoners could have their sentences extended if they attempted to escape or fought with the other inmates. They could also be released early for "good behavior" or wholeheartedly following orders from the prison authorities. With eight months remaining in his sentence, Ngawang Dripsel was released.

For the next seven years he tried to live in Tibet and build a life for himself working as a shop assistant. However, like other political prisoners, he had to keep the police informed about his whereabouts and was subject to police surveillance and harassment. Eventually, Ngawang Dripsel realized he could not stay in Tibet and fled to India. He is currently attending college in India but still bears the scars of his treatment.

After his release in 2000 Ngawang Dripsel consulted a doctor. In 2012 Ngawang Dripsel underwent major surgery to



have one of his kidneys removed. He also suffers from chronic headaches and cannot do any heavy lifting or hard work. His life has lost direction.

## 5. Ngawang Choedon and Lobsang Chodon



Ngawang Chodeon and Lobsang Chodon were nuns in Barkhor (Ch: Bakuo) in Lhasa. In September 1989 both were arrested and sentenced to two years in prison

for participation in the spontaneous protest that broke out during the Monlam festival, which honors Tsong Khapa, the founder of the Gelug school of Tibetan Buddhism.

In 1989, around 10,000 monks and lay people were praying and celebrating when a few people stood up and began shouting for pro-Tibetan slogans and for freedom of religion and speech in Tibet. These scattered independent voices were supported and eventually joined by the crowd. Ngawang Choedon stood up and shouted for Tibetan human rights and was supported by the crowd. She was given a change of clothes so she could change out of her robes and evade arrest.

Because the protest was spontaneous and had popular support the Chinese police struggled to suppress the various pockets that sprung up in the crowd. Without warning, the police resorted to using tear gas and firing indiscriminately into the crowd. When the police started firing into the crowd she felt bullets whizzing by her legs as she took cover behind a table. The police were climbing roofs and taking photographs or shooting into the crowd.

For the Tibetans in the crowd whether or not they were shot was merely a matter of luck. Three people were shot near Ngawang Choedon. One was shot in the head and died instantly, the other two—a young man and a 12 year old child—were taken to relative safety by the fleeing crowd. Ngawang Choedon never

heard what happen them. The people who were not shot sought cover and some threw rocks at the police. The police were too far away to reach and the rocks fell harmlessly into the street.

Lobsang Chodon left the protest and went to Nobulingka where she was organizing a picnic. She was arrested there with nine other nuns. The police would arrest people after the protest based on whether they had a suspicious attitude or if they disagreed or seemed irritated when the police denounced the Dalai Lama.

After Ngawang Choedon changed clothes she was able to escape back to her nunnery. Shortly after the protest the police came her nunnery and instituted a reeducation campaign because they were convinced some of the nuns from the nunnery were involved in the protest. Ngawang Choedon knew the campaign was unbearable and she went to a holy place that the police had occupied and shouted slogans with some other nuns. They intended to be arrested and to confess to participating in the protest to spare the rest of the nunnery. While she was in detention Ngawang Choedon discovered that other nuns from her nunnery had also been arrested and kicked out of the nunnery.

Both Lobsang Chodon and Ngawang Choedon were detained and interrogated for 15 days. They were separately kept in solitary confinement. The only people they saw were the guards who would silently escort them to the bathroom or their interrogations. During these walks the detainees were not allowed to look at or talk with the other detainees in the cells.

Lobsang Chondon's interrogators told her that if she answered her questions she would be released. They wanted to know how the exile community was involved in the protest and who had instigated the protest. Because it was a spontaneous protest Lobsang Chodon was unable to give her interrogators the answers they wanted. In response her interrogators beat her. At one point Lobsang Chondon had a stick broken over her head. She did not feel any pain at the time but was aware of a noise coming from

where she had been hit. A few days later, when the pain arrived it felt like her teeth would fall out of her head. She still has headaches, almost 25 years later, when she studies for too long.

Ngawang Choedon was subjected to similar treatment. When she was first arrested she was forced to stand with her arms in the air for four hours until she was hit on the back with a rifle butt and lost consciousness. Like Lobsang Chondon she was interrogated for about an hour twice each day, though sometimes interrogation sessions were skipped to allow the detainees to gain a false sense of security. Usually, the interrogators beat Ngawang Choedon with whatever was around. This included chairs, shoes and electric batons. The electric batons would be used on the detainees chests, back, and mouth. When Ngawang Choedon was shocked in the mouth she lost consciousness. Ngawang Choedon and Lobsang Chondon would not be electrocuted after they were forced to remove all their clothes—ostensibly as part of a search. When naked they would still be hit and stabbed with sticks but not electrocuted or raped.

Neither Ngawang Choedon nor Lobsang Chondon received the worst treatment. The people who were detained after Ngawang Choedon and Lobsang Chondon were restrained during their interrogation sessions, which were more frequent and included more beatings.

Ngawang Choedon and Lobsang Chondon never received any judicial process, though Lobsang Chondon was given a sentencing ceremony that was broadcast on television. Both Ngawang Choedon and Lobsang Chondon were photographed and fingerprinted for the prison. In Lobsang Chondon's sentencing ceremony her sentence was read in detail. Her family discovered what had happened to her when they saw the ceremony on television. Lobsang Chondon was convicted for counterrevolutionary activities and separatism.

When they arrived in the Gutsa prison, both Ngawang Choedon and Lobsang Chondon described having blood taken

from them for soldiers on the border. The treatment at prison was not very different from their treatment in the detention centers. They were still subject to torture and beatings but it was more frequently, though not exclusively, used as a punishment rather than to get information. The prisoners would be forced to balance on their hands on a cement table tennis table and were beaten with canes when they fell. Ngawang Choedon was suspended from the ceiling with her hands tied behind her back.

After two and a half years in Gutsa prison, Ngawang Choedon and Lobsang Chondon were transferred to the Trisam Re-education Through Labor facility near Lhasa. They were not allowed to bring anything with them—including prayer books and mantras. The biggest difference they noticed after their transfer was that they were told not to call Trisam a prison. Otherwise, in RTL they were still forced to perform military exercises and were still subject to beatings. The prisoners were still interrogated and could be placed in solitary confinement for up to 20 days.

There was a greenhouse at Trisam and the detainees were forced to harvest the crops all year to feed the detainees. The plants were fertilized with human feces from the toilets. The food was not well washed before it was served. This meant that when the detainees were given watery vegetable soup for breakfast and dinner they could find human fecal matter and tapeworms in their food. Unsurprisingly, people frequently suffered from stomach problem and the diet was never sufficient to fill their stomachs.

After six months in Trisam RTL, both Ngawang Choedon and Lobsang Chodon were released. Ngawang Choedon had expected to die in detention and learned after her release that while she was detained her younger brother had died. Both Ngawang Choedon and Lobsang Chodon discovered that they could not re-enter their monastery or find work. Lobsang Chodon spent a year with her family before she left Tibet to continue her studies in a nunnery in Dharamsala, India.

### B. Dhondup's Re-education Through Labor Victim List<sup>481</sup>

No	Main name	Alternate name	Sex	Occupation	Affiliation (monastery)	Date	Prison	Sentence length (months)	Residence
1	Woeser	Woser Choekyi	F	Nun	Shugseb Nunery	01/04/1999	Trisam labor camp	36	Lhokha
2	Palden Yankyi	Palden Yankyi	F	Nun	Shugseb Nunery	01/04/1999		36	
3	Bhuchung	-----	M	Monk	Sera Mon.	09/07/1996		12	Chamdo
4	Chime	Chime Youdon	F	Nun	Shugseb Nunery			36	Chushur
5	Choenyi Lhamo	-----	F	Nun	Samye Mon.	Unknown			Lhokha
6	Damchoe	-----	M	----		Unknown		24	Changza
7	Dawa	-----	M	Monk	Sera Mon.	22/06/1997		36	Lhasa
8	Dawa	-----	M	Lay/Student		05/03/1989		36	Lhasa

481 Dhondup, an RTL survivor, whose story appears in this report, and some of his friends who were also imprisoned in RTL, had prepared this list of RTL detainees years ago with the intention to write a book. The list contains only names of past RTL detainees in Tibet Autonomous Region.

9	Jampa Dharchen	Dawa Yangzom	F	Nun	Shugseb Nunnery	14/09/1990		36	Lhokha
10	Dadrul		M	Lay		20/07/1994		36	Lhokha
11	Dadrul		M	Lay		03/01/1995		6	Lhasa
12	Dolma Sangmo		M	Lay		04/05/1991		36	Chamdo
13	Kyigyen	Drugyal Choephel	M	Monk	Tsurphu Monastery	03/01/1995		24	Lhasa
14	Gyalo		M	Monk	Sungrabling Monastery	23/01/1995		24	Lhokha
15	Passang Lhamo	Gyaltzen Damchoe	F	Nun	Chubsang Nunnery	02/09/1989		36	Phanpo Lhundrub Dzong
16	Gyaltzen Dolma		F	Nun	Garu Nunnery	09/06/1991		24	Lhasa
17	Penpa	Gyaltzen Lodo	F	Nun	Garu Nunnery	09/06/1991		36	Lhasa
18	Dadon	Gyaltzen Ngodup	F	Nun	Shugseb Nunnery	18/08/1991		36	Lhasa
19	Gyaltzen Palmo		F	Nun	Garu Nunnery	09/06/1991		24	Meldro Gungkar
20	Gyaltzen Yeshi		M	Monk	Drepung Monastery	Unknown		36	Meldro Gungkar

21	Phurbu Tashi		M	Monk	Dunphu Choekhor Monastery	05/08/1993		30	Lhokha
22	Phurbu Tsering		M	Monk	Ganden Monastery	07/05/1996		24	Meldro Gungkar
23	Penpa	Rinchen Gyatso	M	Monk	Nalanda Monastery	28/02/1995		24	Lhasa
24	Kunsang Choekyi	Rinchen Choedon	F	Nun	Shugseb Nuntery	22/09/1989		36	
25	Samten		M	Lay		14/09/1995		24	Dam-shung
26	Dawa	Samten Dawa	F	Nun	Shugseb Nuntery	14/09/1990		36	Lhokha
27	Sangye	Sangye Thinlay	M	Monk	Ganden Monastery	07/05/1996		24	Chamdo
28	Namdrol	Sherab Ngawang	F	Nun	Mechungri Nuntery	03/02/1992		36	Meldro Gungkar
29	Sonam		M	Farmer		28/06/1993		36	Lhokha
30	Drolsang	Sonam Choedrol	F	Nun	Shugseb Nuntery	22/09/1989		36	Chushur

31	Sonam Choephel		M	Monk	Dunphu Choekhor Monastery	15/08/1993		36	Lhokha
32	Sonam Gyamtso		M	Lay		Unknown		24	Maho
33	Sonam Lhamo		F	Nun	Chubsang Nunnery	02/09/1989		24	Lhokha
34	Sonam Tenpa		M	Monk	Ganden Monastery	07/05/1996		24	Meldro Gungkar
35	Tashi Dhondrub		M	Lay		05/03/1989		36	Lhasa
36	Tashi Phelthar		M	Monk	Sera Monastery	15/08/1996		36	Meldro Gungkar
37	Tenchoe		M	Monk	Ganden Monastery	07/05/1996		24	Meldro Gungkar
38	Tenzin Choegyul		M	Lay		27/05/1994		36	Shigatse
39	Tsetan	Tenzin Choekyi	F	Nun	Mechungri Nunnery	28/10/1988		36	Chushur
40	Passang Norbu		M	Monk	Phentse Monastery	15/08/1997		36	Meldro Gungkar
41	Passang Wangmo		F	Nun	Shugseb Nunnery	02/09/1989		36	



42	Pema Chodak		M	Monk	Tashi Choeling Monastery	19/06/1994		36	Phanpo lhundrub dzong
43	Pema choedon	Tsering yangzom	F	Nun	Shugseb Nunery	22/09/1989		36	Lhokha
44	Pema Yeshe		F	Nun	Nyemo Gyaltse Monastery	04/06/1993			Taktse
45	Penpa		M	Monk	Ganden Monastery	07/05/1996		24	Taktse
46	Penpa		M	Driver		14/05/1997		36	Shigatse
47	Phuntsok	Phurbu	M						
48	Phuntsok Dhargyal		M	Monk	Draglha Lughug Monastery	16/03/1990		36	Meldro Gungkar
49	Phuntsok Jigdel	Lodhen	M	Monk	Sang Ngag Khar Mon.	07/12/1994		24	Taktse
50	Migmar	Phuntsok Tendol	M	Monk	Tashigang Monastery	31/05/1994		36	Nyethang
51	Migmar	Phuntsok Tendol	F	Nun	Chubsang Nunery	02/09/1989		36	Nyethang

52	Tsering Bhado	Phuntsok	M	Monk	Ganden Monastery	07/05/1998		24	Meldro Gungkar
53	Penpa	Phuntsok Choyang	F	Nun	Mechungri Nunnery	Unknown		36	Phanpo Lhundrub Dzong
54	Thubten		M	Monk	Sera Monastery	26/05/1991		36	Tolung Dechen
55	Karma	Phuntsok Wangmo	F	Nun	Tsangkhug Nunnery	10/06/1991		24	Tolung Dechen
56		Phuntsok Samkyi	F	Nun	Mechungri Nunnery	14/10/1989		36	Tolung Dechen
57	Ngawang	Phurbu Choedon	F	Nun	Tsangkhug Nunnery	10/06/1991		24	Tolung Dechen
58	Phurbu Dolma		F	Student		11/12/1990		24	Lhasa
59	Rinzin Dolkar	Ngawang Lhamo	F	Nun	Garu Nunnery	09/06/1991		24	Lhokha
60	Tashi Dolkar	Ngawang Ihamo	F	Nun	Chubsang Nunnery	18/08/1991		36	Tolung Dechen
61	Ngawang Lhundub		M	Monk	Drepung Monastery	12/12/1996		36	Dam-shung
62	Sonam Norbu	Ngawang Palden	M	Monk	Thangkya Monastery	12/07/1992		36	Meldro Gungkar

63	Bhuti	Ngawang Pelkyi	F	Nun	Garu Nunnery	15/06/1992	36	Phanpo Lhundrub Dzong
64	Tsochoe	Ngawang Bhuti	F	Nun	Garu Nunnery	10/06/1991	30	Meldro Gungkar
65	Ngawang Tharchen		M	Monk	Drepung Monastery	26/09/1996	36	
66	Jigme	Ngawang Thokmey	M	Monk	Taglung Drak	21/08/1999	24	Nyemo
67	Ngawang Thubwang		M	Monk	Drepung Monastery	Unknown	36	Lhokha
68	Tsetan Dolkar	Ngawang	F	Nun	Chubsang Nunnery	14/05/1992	36	Chushur
69	Phurbu	Ngawang Tseten	F	Nun	Chubsang Nunnery	18/08/1991	36	Nyethang
70	Ngawang Tsultrim		M	Monk	Rabten Monastery	26/02/1998	12	Nagchu
71	Lhakpa	Ngawang Wangmo	F	Nun	Tsangkhug Nunnery	06/10/1991	24	Lhokha
72	Pema Dechen	Ngawang Yangkyi	F	Nun	Tsangkhug Nunnery	06/10/1991	36	Toelung Dechen

73	Ngawang Sangmo		M	Monk	Drepung Monastery	29/08/1996		36	Meldro Gungkar
74	Ngodup		M	Lay		02/09/1991		36	Phenpo Lhundrub Dzong
75	Norbu		M	Lay		17/07/1990		24	Phenpo Lhundrub Dzong
76	Nyima		M	Farmer		28/06/1993		24	Lhokha
77	Nyima Tenzin		M	Lay		19/07/1990		24	Meldro Gungkar
78	Kalsang Phuntsok	Lobsang Phuntsok	M	Monk	Sera Monastery	09/07/1996		36	Nyemo
79	Tenzin	Lobsang Tenzin	M	Lay		14/09/1990		24	Meldro Gungkar
80	Samdup	Lobsang Tenzin	M	Monk	Sera Monastery	14/08/1991		36	Lhokha
81	Thinlay	Lobsang Thinlay	M	Monk	Drukha Monastery	25/10/1989		4 to 6	Yamdruk
82	Yonten Phuntsok	Lobsang Yonten	M	Monk	Sera Monastery	01/03/1992		36	Phenpo Lhundrub Dzong

83	Lodhen		M	Lay		05/03/1989		36	Lhasa
84	Ngawang Balchoe		M	Monk	Drepung Monastery	22/10/1997		1 to 6	Toelung Dechen
85	Chemi Lhamo	Ngawang Choedon	F	Nun	Tsangkhug Nunnery	15/10/1989		36	Meldro Gungkar
86	Chemi Choedon	Ngawang Choedon	F	Nun	Choebup Nunnery	28/06/1993		2 to 6	Lhokha
87	Dechen Dolma	Ngawang Choekyi	F	Nun	Chubsang Nunnery	02/09/1989		36	Tolung Dechen
88	Ngawang Choezin		F	Nun	Chubsang Nunnery	02/09/1989		36	Lhokha
89	Lhakpa Tsering	Ngawang Choklang	M	Monk	Thangkya Monastery	14/07/1992		36	Meldro Gungkar
90	Sonam Dhondup	Ngawang Damchok	M	Monk	Ngari Monastery	11/07/1989		4 to 6	Lhokha
91	Yeshe Bhugyal	Ngawang Damchok	M	Monk	Drepung Monastery	21/03/1991		36	Phenpo Lhundrub Dzong
92	Penpa	Ngawang	M	Monk	Drepung Monastery	27/12/1997		36	Phenpo Lhundrub Dzong

93	Ngawang Dolma		F	Nun	Mechungri Nunnery	13/03/1993		36	Toelung Dechen
94	Dakpa Tenzin	Ngawang Kunchok	M	Monk	Ganden Monastery	07/05/1996		24	Taktse
95	Ngawang Choezom		F	Nun	Tsangkhug Nunnery	13/09/1990		36	Meldro Gungkar
96	Pema Dolkar	Ngawang Lhadon	F	Nun	Tsangkhug Nunnery	10/06/1991		24	Toelung Dechen
97	Langdor		M	Monk	Tsephak Lhakhang	04/06/1993			
98	Tenzin Gyaltzen	Lekshey Lharab	M	Monk	Nalanda Monastery	06/03/1993		36	Lhundub Damkha
99	Tashi Ngodup	Lekshey Tharchen	M	Monk	Nalanda Monastery	06/03/1995		24	Lhasa
100	Lhakchung	Lhekshey Yeshe	M	Monk	Nalanda Mon.	01/03/1995		36	Lhasa
101	Lhaktok		M	Monk	Draglha Lughug Monastery	25/10/1989		36	Lhasa
102	Lhaksam Gyatso		M	Monk	Ganden Monastery	30/08/1996		36	Lhasa
103	Lhundub		M	Lay		25/08/1995		24	Lhasa

104	Pasang Dolma	Lobsang Choedon	F	Nun	Chubsang Nunery	02/09/1989	36	Nyethang
105	Dekyi Choedon	Lobsang Choedon	F	Nun	Mechungri Nunery	03/02/1992	36	Lhokha
106	Lobsang Choejor		M	Monk	Ratoe Monastery	05/10/1988	36	Chushur
107	Lobsang Dawa		M	Tailor		24/05/1993	36	
108	Lobsang Gyatso		M	Lay		00/09/1991	36	Lhasa
109	Lobsang Jamphel		M	Monk	Drepung Monastery	06/07/1991	36	Nyemo
110	Kunchok	Lobsang Lhundup	M	Monk	Sera Monastery	26/05/1991	36	Lhokha
112	Lobsang Namgyal		M	Monk	Nechung Monastery	12/01/1995	36	Chushur
113	Phuntsok	Lobsang Phuntsok	M	Monk	Tsemonling Monastery	14/09/1990	24	Meldro gungkar
114	Phurbu	Lobsang Samten	M	Monk	Sera Monastery	15/08/1996	36	Nagchu
115	Wangden Choekyi	Tenzin Choekyi	F	Nun		28/06/1993	2 to 6	Lhokha
116	Phurbu Tashi		M	Monk	Phentse	07/06/1993	24	

117	Chemi	Nyima Tenzin	M	Monk	Tsurphu Monastery	03/01/1995		24	Toelung Dechen
118	Dorje Tenzin	Ugen Choekyi	M	Monk	Samye Monastery	01/11/1991		36	Kongpo