THE END OF REEDUCATION THROUGH LABOR? RECENT DEVELOPMENTS AND PROSPECTS FOR REFORM

ROUNDTABLE

BEFORE THE

CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

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THE END OF REEDUCATION THROUGH LABOR? RECENT DEVELOPMENTS AND PROSPECTS FOR REFORM

THURSDAY, MAY 9, 2013

CONGRESSIONAL-EXECUTIVE
COMMISSION ON CHINA,
Washington, DC.

The roundtable was convened, pursuant to notice, at 11:03 a.m., in room 562, Dirksen Senate Office Building, Senator Sherrod Brown, Chairman, presiding.

Also present: Lawrence Liu, Staff Director; Paul Protic, Deputy Staff Director; Anna Brettell, Senior Advisor; and Jesse Heatley, Senior Research Associate.

OPENING STATEMENT OF HON. SHERROD BROWN, A U.S. SENATOR FROM OHIO; CHAIRMAN, CONGRESSIONAL–EXECUTIVE COMMISSION ON CHINA

Chairman BROWN. The Commission will come to order. Thank you for joining us, those in the audience and the panelists. I appreciate Ms. Lewis being back with us. She was in our first panel. I appreciate your being here. You were on our first panel that day, too. Thank you, Ira for joining us. Mr. Wu, thank you for your 30 years of engagement with us and beyond and the courage you have shown as we have moved forward.

I particularly want to thank the excellent staff of the Commission, starting with Lawrence Liu and the good work he's done, and Jesse Heatley, David Petrick, Jen Salen, Abbey Story, Judy Wright, Dee Jackson, and Sarah Mellors. Thank you for the work that you do. As you all know, in this place, that's where most of the work is so often done, it is very good staff work.

I have been involved in this Commission and other Chinese-American relations and labor issues and human rights issues for a decade and a half or so now, and you can see, I think, on this issue we are discussing today, on reeducation through labor camps, the work that others have done as there is evidence—there is beginning to be some evidence that China may be looking seriously to change their policies, and maybe it is partly an economic issue to them, it is partly a human rights issue, it is partly an issue of, they are on the world stage more and more prominently and the People's Republic of China, the government, understands that being on the world stage and the light that this Commission and others have shown on them really does matter in changing behavior.

So when a number of people sitting on both sides of me, they do not seem the type to be discouraged, but I know that we all have moments of being discouraged when things seem so sometimes black and white, or certainly when issues of justice come up, that we really are, this Commission and the four people, or five people really, that flank me and the staff behind me really has had a significant impact on behavior there and I am so appreciative of that.

I want to introduce the four panel members. I can only be here for about 20 more minutes, and I apologize for that. None of us put quite the time that those of us elected—Chris Smith does a terrific job on this. None of us put quite the time we'd like to in this. But I will introduce the four panelists and stay for a while, listen to their opening statements, and then Mr. Liu will go from there.

Ira Belkin is executive director of the U.S.-Asia Law Institute at the NYU School of Law. He is an accomplished public servant and advocate for the rule of law in China. He was a Federal prosecutor for 16 years and served two tours at our Embassy in Beijing. He is a program officer at the Ford Foundation in Beijing, where his grantmaking supported the kinds of institutions that are so important in the rule of law, working to build their legal system and strengthen the rights of especially vulnerable groups.

To my immediate right is Margaret Lewis, Associate Professor of Law at Seton Hall, also in New York State. She is a member of the Council on Foreign Relations and Affiliated Scholar at NYU's law schools, the U.S.-Asia Law Institute and Public Intellectuals Program Fellow with the National Commission on U.S.-China Relations. She has written numerous articles that have appeared in top journals. Professor Lewis served as a panelist, as I earlier said, in our roundtable, I guess, two years ago, something like 2011.

To my left is Xiaorong Li. Ms. Li is a longstanding human rights advocate and has published numerous articles on diverse subjects ranging from ethics to democracy. She is recently a Research Faculty Member near here at the University of Maryland, College Park. She shared her expertise before the Commission on a number of occasions.

To my far left is one of my heroes, Harry Wu. Not that you three, the rest of you, aren't, too. But the Founder and Executive Director of the Laogai Research Foundation based in Washington, a victim of China's prison labor system. He has devoted his life to advocating for human rights in China. His groundbreaking research helped expose the cruelties, perhaps more than any single individual, of the legal system. Thanks to the four of you.

We will start with Mr. Belkin.

STATEMENT OF IRA BELKIN, EXECUTIVE DIRECTOR, U.S.-ASIA LAW INSTITUTE, NEW YORK UNIVERSITY SCHOOL OF LAW

Mr. BELKIN. Mr. Chairman, thank you very much. Distinguished members of the Commission and staff, ladies and gentlemen, I appreciate the opportunity to participate in today's roundtable. I also want to take the opportunity to acknowledge the importance of the Commission's work, especially your annual reports and periodic roundtables. They have made a great contribution to our understanding of China, as well as to improving human rights and rule of law in China.

Of course, the opinions I express today are my own, but I also represent the U.S.-Asia Law Institute at the New York University School of Law. I am proud to have Professor Margaret Lewis as an alumnae and a non-resident scholar. We do research, we do constructive engagement with China. Our institute was founded by Professor Jerome Cohen, who is a mentor to almost everyone in this field and a consistent advocate for both human rights, rule of law, and engagement with China.

I have been asked to talk about the overview of reeducation through labor, its history, its current use, the debate within China about reform, and recommendations for the U.S. Government. That is a lot to cover in five to seven minutes, but I'll do the best I can. I have prepared written remarks, but for time's sake I will just try to highlight some of those points.

The crux of reeducation through labor is that it's been a system of administrative detention with no judicial review, where the police have the authority to send someone to a reeducation through labor camp, to incarceration, for up to four years based on a very vague set of standards and, again, with no judicial process.

So although China has made tremendous progress since 1979 in improving its criminal law and criminal procedure law, administrative punishments like reeducation through labor provide a way out of the formal legal system for citizens to be punished for extensive periods of time without much process.

Historically, the system started in the 1950s during the early years of Chairman Mao's rule, and while it could be criticized at that time, at least within the context of the 1950s, the flexibility that it provided made some sense within that context.

At the time, as Chairman Mao famously had said, there are contradictions among the people and contradictions with enemies, and reeducation through labor was a way to deal with people who were enemies of the state and enemies of the Party.

The rules that surround reeducation through labor, even to this day, reflect that 1950s sense. When we think about China in 2013, this seems like a system that is very much out of date.

The system of reeducation through labor has never had a legislative basis, it's never been supported by legislation from the National People's Congress. It has a basis in orders from the State Council and regulations from the Ministry of Public Security. These go back to 1957.

The State Council rules were amended in 1979 and again in 1982, and then the Ministry of Public Security has issued regulations again in 2002 and 2005. I won't go through the details of those; they are in the remarks, and certainly the regulations are public.

In the 1950s, it seemed that reeducation through labor was used primarily as a political tool to identify counter-revolutionaries, people who were enemies of the Party, and was a way to incapacitate them, incarcerate them, or reform them through labor.

Over time, the way that reeducation through labor has been used and supported has changed and now it is considered to be, by its supporters, a way to maintain social stability. It certainly continues to have the flexibility—or one might say arbitrariness—to cover a whole range of conduct, basically anything that the police would consider to be troublemaking, but it's been used, from the reports that we've seen, for drug addicts, for people involved with prostitution, for people involved in minor offenses that do not rise to the level of a criminal offense, but also can be used, as I said, to suppress political dissent. It has been used against followers of Falun Gong as well.

Over the years there have been many efforts by reformers in China to either abolish the system or reform the system and in prior years it has come very close to reform, but the reforms have never been completely successful.

Earlier this year in January we heard from Mr. Meng Jianzhu, the chair of the Political Legal Committee of the Communist Party, which oversees the legal system in China, that reeducation through labor should not be used this year.

There had been rumors circulating that reeducation through labor reform was on the agenda of the new leadership and that was the first public statement from a high-level leader that we heard that, indeed, the system seemed to be being prepared for reform. I think that the new leadership deserves credit for taking this on and taking it on publicly.

A few months later, at the press conference after the National People's Congress Premier Li Keqiang, in response to reporters' questions, said that the relevant institutions in China were preparing plans for reform within the year. So it seems like this is a moment when reform might happen. Within China there is a diversity of opinions about how the reforms should take place.

In my written remarks I just highlighted Chinese legal scholars who are, I guess, at different ends of the spectrum. One, Liu Renwen from the Chinese Academy of Social Sciences, advocates for the abolition of reeducation through labor and he makes a lot of the arguments that those in favor of abolition have made. First, that reeducation through labor is really an unlawful system under Chinese law.

Under the Chinese legislation law which was passed in 2000, any law that limits the freedom or liberty of citizens must be passed by the entire National People's Congress. As I said, the reeducation through labor system was never supported by the full legislation of the National People's Congress. He also argues——

Chairman BROWN. May I interrupt for one second?

Mr. BELKIN. Sure.

Chairman BROWN. Was it spoken about in any kind of defending of in any way by prominent leaders of the 1950s, 1960s, 1970s, by Mao and others, or Lin Biao, or anyone defending it or speaking about it or was it just ignored? I understand the People's Congress didn't sanction it, if you will, or make it "legal."

Mr. BELKIN. Right.

Chairman BROWN. Was there any of that?

Mr. BELKIN. Well, it certainly is part of the system and it's an officially sanctioned system. Many people have defended it, including many legal scholars. But in 2000, China, as part of its efforts to establish the rule of law and to use legislation, kind of limited itself and said if we're going to limit people's liberty we're going to have to do it through legislation. My own view is that they probably had in mind that reeducation through labor would be abolished soon, but in fact it wasn't. This was in 2000. But it wasn't abolished.

There are those who argue, including the Ministry of Public Security, that it is lawful under Chinese law. I think those who say it is not have the better argument. Certainly the government—there is no mechanism under Chinese law for citizens to challenge the legality of the system under Chinese law, which is part of the problem.

So it's not an illegitimate system, it's not a rogue system. There are other forms of detention, like "black jails," or soft detention, that don't seem to have any regulatory basis at all but are allowed to exist. But reeducation through labor, you can find information about it on the Ministry of Justice Web site. It is a recognized system.

I think Chinese leaders would say that China is a country in transition, with a legal system in transition. I hope that answers your question. I can't cite specific quotes of the leadership, but clearly it's a system that has been allowed to continue to today.

So part of the debate in China is the legality of the system. Also, under the Chinese Constitution, there are provisions that say no one can be deprived of their liberty without a decision by a court. China's Constitution is not self-executing, but scholars are pointing to the Constitution as a basis for arguing that the system is illegal.

They also make the argument that China's criminal law is now well developed. There is also a public safety administrative punishments law. Between the two, there are a whole host of remedies, from probationary sentences, fines, 15 days in jail up to a life sentence, and capital punishment. There is no need or space for another administrative system that gives the police a maximum level of flexibility. So, those are the arguments for abolition.

Others say, well, the system could be changed, legislation could be passed to give it a legislative basis. Maybe it could be limited to two years and there could be a judicial review or a quasi-judicial review.

So even those who will support the system, I think, there's a consensus that there's a serious problem with the legal basis for it, the process, but there is no judicial review, and the vagueness of the standards.

Those who would say it shouldn't be abolished are proposing a new kind of law, what's called an Illegal Behavior Corrections Act. They say that there is still a need for some system to punish habitual offenders. So that is the current debate in China, which is quite lively. It's been going on for some time. That is a summary of it.

I will just wrap up with the last point. I was asked to talk about recommendations for U.S. Government policymakers. Here, I will just make a couple of quick points. There is a limit to what those outside of China can do. China is a sovereign nation and will make its own decisions and pass its own laws. But I think China, as part of the world community, other countries have a right and obligation to hold China to its own standards of establishing the rule of law and human rights.

I would just say, in using the tools that the U.S. Government has at its disposal, diplomacy, supporting exchanges, I would just say that, number one, we should expand our view. Reeducation through labor gets a lot of attention, but as I mentioned there are other forms of detention, administrative and otherwise, that should be part of the conversation.

Second, I think we need to be more persistent and more consistent in using all of our tools. We tend to focus on short-term goals, understandably. This is the nature of the work in the government, that every time we spend effort and spend money, we want to be held accountable for that. But this kind of legal reform takes more time and we need to be more persistent and more consistent in our approach.

I am sure I have used up my time so I will just conclude my remarks. Again, thank you for the opportunity to comment.

Chairman BROWN. We appreciate that.

Ms. Lewis?

[The prepared statement of Mr. Belkin appears in the appendix.]

STATEMENT OF MARGARET K. LEWIS, ASSOCIATE PROFESSOR OF LAW, SETON HALL LAW SCHOOL

Ms. LEWIS. Mr. Chairman, thank you for inviting me to participate in this panel. I would like to thank the staff as well for all of their hard work. In fact, I was grading papers on the way down here and my students in my China law class regularly cite the work of the Commission, so we are very grateful for what you do.

But with respect to today's topic I am going to be focusing on the reform aspects. In particular, I've been asked to talk about how Taiwan's experience might be relevant to this discussion about reeducation through labor, or RTL, in the mainland. I have also provided the Commission with a more detailed written statement.

Much of my discussion of Taiwan grows out of work that I've done with Jerry Cohen as part of NYU Law School's U.S.-Asia Law Institute's project looking at legal reforms that have happened in Taiwan over the last 25 years. Today I get to be the optimist—as we said, we are optimists up here—and deliver a hopeful story for reform based on Taiwan's experience.

Taiwan's form of "reformatory training," as it was called, was for people deemed "hooligans," or "liumang" in Chinese. It's not easy to translate and capture it fully, but it was a system that was gradually reformed in order to restrict police power and offer greater procedural protections. It was ultimately abolished in 2009.

It was formerly a non-criminal sanction or, as I like to think of it, a quasi-criminal sanction like RTL, and it allowed police in Taiwan to lock up these vaguely described hooligans originally for an indefinite period of time, and then that was changed to three years after the martial law period.

Chairman BROWN. It was begun under Chang Kai-shek or begun during martial law?

Ms. LEWIS. It was begun under martial law and then it was subsequently altered after martial law ended. So what happened was, in the waning years of martial law, you started to see judicial involvement in these decisions that were formerly totally in the hands of the police; that finally got momentum going to get rid of the law in its entirety.

So what happened was that you had the constitutional court drawing attention to the law, drilling holes in the law. Then when

Ma Ying-jeou came into office, the executive finally said, "Well, we recommend that this law should be gotten rid of entirely," and the legislature did so in 2009 in an unexpected step. We thought that first they would just reform the law but instead they decided to abolish it entirely.

Chairman BROWN. This was done under KMT rule?

Ms. LEWIS. This was done under the KMT. This was under President Ma. Exactly. Although there were reforms going on during the time of Chen Shui-Bian as well. But what had happened is that criminal justice reforms had progressed in Taiwan, and you increasingly saw the government in Taiwan realizing there was this untenable gap between the procedures applied to criminal cases and those applied to hooligan cases.

Similarly, I think now that we've got the revised criminal procedure law in the PRC that just took effect in January, increasingly we're seeing there, too, this gap between the procedures that at least on paper are offered for people in the criminal system and those for people who are undergoing RTL. That gap is becoming more apparent.

But with Taiwan's experience, how is it relevant? First of all, I think it underscores that just having a court involved in the determination is not enough to guarantee that the person facing an RTL determination has a fighting chance. We don't just need more process, we need meaningful process.

I am certainly not expecting anything resembling the judicial independence we have in the United States to blossom overnight in China, but nonetheless even some modest judicial review can encourage the police and prosecutors to be more cautious in how they use their powers.

In highlighting how Taiwan's path might be helpful in charting the mainland's future, I recognize that there are huge differences between Taiwan and mainland China at this point. Their histories, despite the cultural ties and long historical ties, have diverged greatly over the last 60 years. Most glaringly, of course, Taiwan is now a vibrant, multi-party democracy.

Moreover, the PRC does not have a constitutional court akin to that in Taiwan, something I think which is a severe impediment to reforms. As Ira mentioned, it's very hard for people in the mainland to find a court where they can even air these grievances because of the limitations on how the Constitution can be used by citizens.

But that said, even though there are differences, I do think that Taiwan's experience is relevant, first in looking at how, even during the martial law era in Taiwan, you started to see these sort of embryonic organizations being set up like the court to hear these liumang cases. Then, later on as other reforms progressed, those institutions were already in place and were able to take on a much more important role in the process.

So maybe immediately you might not see these institutions making a huge difference, but they can put into place something that, when there is an opportunity years down the road, can really blossom.

Moreover, in Taiwan's experience, one thing they did with liumang was separate them into two categories of hooligans. You had the less serious ones who were only subject to a probation-like sanction, and then the more serious ones actually would be subject to incarceration.

One of the ideas kicking around with RTL reforms is does it have to be full incarceration? Is there some way to have some kind of less severe sanction, maybe more akin to a probation-like system that wouldn't involve at least the same direct restriction of liberty.

In light of this background, what steps should U.S. policymakers take? I think really that's the goal here today. I agree with Ira that what we can do as the United States is limited. I mean, reform is only going to happen when the government in the PRC, and particularly the Ministry of Public Security, is willing to allow reforms to happen. But that said, the United States can still serve a coordinating role in introducing both our experience and Taiwan's experience to people on the mainland.

Currently, the cross-strait relations are as good as they have ever been. It used to be unthinkable that you could have direct contact, particularly amongst government officials, across the strait. More and more you're seeing not just scholars going across the strait, but also people in government roles, and they are having conversations that are opening up this experience.

I have also been a part of conversations that involve not just Taiwan and the mainland, but also Hong Kong, the United States, and other jurisdictions. I, too, think that our experience with our U.S. system—for example, how we have a probation system, how we use bail—can assuage some concerns that just because you let people out, you don't have them locked up, they're going to go and create chaos.

So what this means is I really hope that the U.S. Government will continue to support scholarly exchanges. I think that's an important step just to get the information out there and to make sure that there are no misconceptions about how our systems are run. I also think that Taiwan is an untapped resource.

There are wonderful Taiwanese legal scholars, judges, and prosecutors. There are several right now at NYU who have a wealth of experience and they speak the same language. There's some different terminology across the strait, but you can put people in the same room from Taiwan and the mainland and I think they can have a really helpful discussion. So, thank you.

Chairman BROWN. Ms. Li, I apologize. Larry will conduct the roundtable. But Ms. Li, your comments. Thank you.

[The prepared statement of Ms. Lewis appears in the appendix.]

STATEMENT OF LI XIAORONG, INDEPENDENT SCHOLAR

Ms. LI. Thank you, Senator Brown. Thank you, CECC staff and Staff Director Lawrence for this opportunity. I also want to thank the two previous speakers for laying out the basics about laojiao, reeducation through labor [RTL]. It is sobering to be reminded of the Taiwan experiences. I think that will help us in thinking through this problem. I am very honored to be on the same panel with my friend Harry.

I was asked to talk about some key cases, how these recent cases changed the public discourse on RTL. The push for abolishing RTL has gained momentum, as everybody has recognized in recent months. But I think largely the credit should go to the Chinese citizens for their tireless and long-time push for the abolishing of this system.

Right now, everybody is holding their breath, hoping that this year, 2013, will mark a turning point in building the momentum for finally abolishing RTL. There are several high-profile individual cases that I will discuss, which marked a turning point, because they raised so much public outrage. There has since been unprecedented public discussion about RTL problems, and also impressive efforts by Chinese citizens to organize and push for the ending of RTL.

This, as we've heard, has prompted some officials to start speaking out and finally to echo the longstanding criticisms in civil society and among scholars about the system.

Of course, we have not said exactly how many people are detained in RTL. The numbers actually are mind-boggling. But the problem is that it is really difficult to know exactly how many there are. However, in recent months, Chinese officials have provided some numbers.

For example, according to official data, approximately 170,000 individuals were held in 320 RTL camps. That was a number given as of February 2009 at the Universal Periodic Review of China's human rights record by the UN Human Rights Council.

However, Chinese authorities reportedly stated in 2012 that more recently only 60,000 detainees were being held in RTL camps. The changing numbers, of course, could be a sign that, under domestic and international pressure, RTL detainees may have been transferred to other detention facilities, including some of the other administrative detention facilities that Ira mentioned that should also be brought into this conversation, for example, the notorious "black jails." The "black jails" have completely no legal foundation and anybody can be locked in them. They are some sort of makeshift, rented space or government buildings.

The few RTL cases I am asked to speak about particularly illustrate how arbitrary the decisions are and how much power police have to deprive the liberty of individuals without any judicial process. Also, another point I should emphasize is the use of RTL to persecute political dissidents, as well as practitioners of Falun Gong, and petitioners, who are ordinary people who seek justice by going to government officials to complain about grievances.

One particular case that caused so much public outrage is the case of Tang Hui. Tang is the mother of a girl who was raped at the age of 11 and then forced into prostitution. Tang Hui wanted to have those who committed these criminal acts prosecuted.

In order to make this happen, she repeatedly filed lawsuits and went through, since 2006, many processes. Some of the criminals were convicted, but eventually she suspected that some of the key criminals were not prosecuted so she staged sit-ins in courtrooms, in front of judicial official buildings. For that, she was sent to laojiao, RTL, for disrupting social order.

After she was sent to RTL, her lawyers filed requests for administrative review. Her case got so much attention, even officially controlled media reported on this case. It went viral on the Internet and so many netizens posted comments. It was really a great opportunity to expose the problems with RTL.

Another case many of you are probably aware of is the case of Ren Jianyu. Ren Jianyu was a college student who graduated from a university and went back to his village in rural China in Chongqing. Then he was elected director of the village. Like most young people, Ren, in his twenties and educated in college, lived part of his life on the Internet. He liked to post or repost comments by other people commenting on current events. Some of his comments had to do with official corruption. This was the time under Bo Xilai, then the CCP Party Secretary of Chongqing, so Ren was detained and sent to RTL for two years.

Then, of course, we know that Bo Xilai went out of favor. Ren was released early. Both his arrest, detention in RTL, and his early release, nine months early, reflected the arbitrariness of RTL and also the use of RTL to suppress free expression.

After much public discussion of Tang and Ren's cases and heavy coverage in the official press, participated by lawyers, scholars, and ordinary citizens, the pressure finally prompted the talk of change in official discourse.

But then this is not the end of the story. There is the recent disclosure of Masanjia. Masanjia is an RTL camp especially used for incarcerating women. Women in Liaoning province and other places have been sent there to serve laojiao.

Last month, appalling abuses of female detainees inside this Masanjia labor camp has triggered reports in the Chinese media and heated online discussions again, forcing officials to promise an investigation into the revelation.

The source of the information is a diary secretly taken out of the camp by a petitioner released in February of this year. The diary detailed police arbitrarily detaining and torturing petitioners and Falun Gong practitioners at the camp and committing a wide range of horrific abuses in the camp.

I should stress that RTL is not only an arbitrary detention system, it is also the place where torture and cruel treatment are rampantly committed. Interviews with the recently released detainees from Masanjia are documented in a documentary film called, "The Women of Masanjia Labor Camp," made by the director Du Bin. Part of the film which was released on May 1 is now available on YouTube.

At the same time, another documentary film called "The Juvenile Laborers Confined in Dabao Xiao Laojiao" also came out on May 1 and provided overviews with people who were put in RTL when they were as young as 10 years old in the late 1950s. The movie is also available on YouTube.

At this point, Lawrence kindly agreed we would show two or three minutes of "The Women of Masanjia Labor Camp."

[Whereupon, an excerpt from a video was played.]

Ms. LI. The upside down image on the screen is intentional because the laojiao camp was built on top of a tomb yard. The point was, I am told, that the women lived in hell, worse than the tombs where the ghosts lived. You can go search YouTube and continue watching, since I am running out of time here.

I will jump directly to a few suggestions for U.S. lawmakers. I understand that what the United States can do is limited but this does not discourage us from asking what would be good to do. I think the U.S. Congress should strongly urge the Chinese Government to abolish RTL, to steer clear from replacing RTL camps with any other extra-legal detention facilities and to free all the detainees from RTL camps and allow them access to justice in holding their abusers accountable and seeking redress for damages.

Such concerns should be raised by the Obama administration at its annual Human Rights Dialogue, Legal Expert Dialogue, and Economic Strategic Dialogue with China. Congress should consider imposing visa bans and asset freezes on Chinese officials involved in serious human rights abuses, including torture and arbitrary detention in RTL camps, similar to a recent act passed by Congress in December 2012 which places visa bans on and freezes assets of Russian officials who committed abuses of human rights.

Finally, Congress should urge China to revive its rule of law reforms. There can be no meaningful end to RTL or any other forms of arbitrary detention in a country where there is little respect for the rule of law. Thank you.

Mr. LIU. Thank you, Ms. Li.

Now we will go to Harry Wu. Thanks.

[The prepared statement of Ms. Li appears in the appendix.]

STATEMENT OF HARRY WU, FOUNDER AND EXECUTIVE DIRECTOR, LAOGAI RESEARCH FOUNDATION

Mr. WU. I was literally shocked at a hearing on the reeducation through labor because everybody understands atrocity. They need repressive systems. Hitler's Germany needed concentration camp systems, the Soviets needed a gulag system. I want to remind you, gulag is not a word, it was made by Alexander Solzhenitsyn. After 21 years, Stalin died. Stalin died in 1953 and the gulag in 1974 finally became a word in the dictionary.

In 1985, I was in America and I said, what about the laogai? You have to know the laogai is a very common word in China. If the people are 30, 40, or 50 years old, everybody understands what it is. The Chinese never use the words "imprisonment" or "in jail." No, they say laogai. So, where is your father? My father is in laogai. Where is my brother? My brother died in the laogai. Twenty-two percent of the population knew the word "laogai."

In 1993, I was interviewed by a Washington Post correspondent who said, "Harry, what do you want to do?" I said, "Well, I hope one thing. I hope laogai becomes a word in every dictionary, every language." The Chinese, right away, changed the laogai system. Stopped using the laogai. They have a Laogai Affairs Department. They have laogai detention everywhere and all these laogai camps stopped using the word "prison." There was only one reason.

They said it was because we have to have a good position in the international society, human rights society, to fight. That is the reason to stop using the laogai. Now they want to change and stop using the laojiao. Did the government give any explanation for it? No, we just want to stop it. That's it.

Laojiao is a very small part of the laogai system. Since 1949, Soviet experts in China assisted the Chinese judiciary system and security system and set up the laogai camp systems. The laogai camps only started in 1955, 1956, from then until today. So-called laojiao camps are for those only charged with light crimes, like counterrevolutionaries.

So for example, I was arrested in 1960. I don't have papers, don't have a verdict, no court. Even the police came to my classroom and said, "Hey, you have to go with me." I said, "Where?" He said, "Just go to labor camps." So I follow him and I go to the labor camps.

At midnight, the police in the camp says, "Do you know about your sentence?" I said, "I do not know." He said, "What do you mean? You're sentenced to life." That simple. I was sentenced to life in reeducation through labor. Reeducation through labor, until 1961, no term, forever.

Only in 1961 did they change the policies. Okay, everybody have a term. The longest one is three years, maybe two years, maybe one year, maybe one and a half years. So this is a new procedure really set up the reeducation camp until 1961, more than four and a half years.

The government issued and publicized the laojiao policy in October 1957, but way before that in 1955, 1956, there was an abolition of the counterrevolutionary movement. In 1950 and 1951, they had suppressed the counterrevolutionary movement and the Chinese probably executed more than 1 million prisoners. These people so-called were working for pulling down the government. But after a couple, five years, we have to abolish these counterrevolutionaries.

So in 1956, after the movement, many people were selected and collected and then they were arrested. Some of them were sentenced, but there are 200,000 people—actually, the government cannot sentence these people in the camp, so they created a new law, reeducation through labor.

Who are these people—of the—government or sweep the floor, a cleaner of the government, whatever. There's no crime at all, but the government doesn't trust you. You cannot have a legal job, whatever, in society. So 200,000 prisoners is the first group, the first wave of the reeducation through labor. At that time, the government had not issued the law yet.

The second wave of so-called counterrevolutionary—should I stop? Okay, I'll stop. The second group is the so-called counterrevolutionary rightists, because 1.5 million people collected by the Communist Government became a rightist. I was 20 years old. I was one of the counterrevolutionary rightists. I did nothing.

I just said a few words about the Soviet Red Army suppressed the counterrevolutionary uprising in Budapest. That is my so-called crime. So when the police came to the class and pulled out the paper and said you were sent to reeducation through labor, sign it, I signed it. That's not a verdict. I don't know what it said. So this was since 1960.

The third wave of the reeducation policy is peasants. In 1959 to the 1960s, many peasants wanted to escape from their villages because of starvation. According to that policy, reeducation through labor, the government cannot arrest these peasants.

The reeducation through labor camps only can set up in the cities, not in the countryside. But the government has additional papers and said, "Okay, we have to handle the situation because too many peasants right now are running away from their villages and get into the camps and become beggars." I can tell you how crowded it was in the reeducation through labor camps. Twenty-four hours, divided three times, for a turn to sleep. I don't want to say what is the current situation.

Some people talk about the torture. It's very different now. Before 1976, most of them died. Most of the torture in the prison camps were not really handled by the police but handled by inmates. For example, in 1965 they ordered all the prisoners to submit—okay. I'll stop. Thank you.

[The prepared statement of Mr. Wu appears in the appendix.]

Mr. LIU. Thanks. We just want to make sure we have enough time to get to all the questions.

Once again, thank you to all the panelists for the great job and all of the expertise that you bring to the table in sharing both personal first-hand experiences as well as some great research. So, thank you very much.

I know staff maybe have one or two questions, then the way our roundtables work is that we ask some questions and then you in the audience have an opportunity to also ask questions. We really want this to be interactive and sort of an opportunity for folks to ask questions and get some information from our great panelists.

So I have one question that I wanted to ask first to all of the panelists. As, I think, Ira, you had talked about in terms of reform has been discussed for some time now. This year it looks like maybe there's an opportunity for some real change, but that is unclear.

But I'm wondering whether or not there are economic interests at play here that may be working against reform or may be opposed to reform. I don't know if these RTL centers—for example, are people profiting off of them? If so, is that going to be an obstacle to reform? So I ask all of the panelists that question. Thanks.

Mr. BELKIN. Lawrence, it's a great question. As I think a few people said, the system is not terribly transparent. It's very hard to know. Certainly I think Chinese Government officials say it's not used for profitmaking, it's used to educate people in work skills. But we just don't know the answer.

I do think that reducing the population to 60,000, it seems like the government is taking steps to prepare for a big change. You would have to think a system that has not long ago housed 100,000 or 200,000 people, one of the issues is, what do you do with the people who are running the camps? So in what I've read I haven't seen a lot of discussion about the economic incentives. Unfortunately I don't have any more details to give you. I don't know if anyone else does.

Ms. LI. One thing in that documentary film I was struck with yesterday when watching it, is that in the diary smuggled out of RTL and in the interview with the woman who did it, she talked extensively about the work they were forced to do in the camp. The women were made to work at least 10 hours a day. Initially they worked seven days a week and then they got one day off each week. She mentioned that they made garments exported to Italy and they made police uniforms and police gadgets, stuff for the local police stations. Anyway, quite a lot of the interviews on this film were about how long they worked each day and how harsh the working conditions were. They were given fixed numbers of tasks to finish in a day. If one couldn't finish them, one got beaten up or had to stay up working late into the night.

I agree, it's hard to tell whether the economy really counts RTL labor or how important the RTL products were for the economy. But certainly this is something to look into to see what was produced in those labor camps and where they were exported, if there was any kind of economic profit to be made there or whether the campaign to abolish RTL should focus on the exports and whether some kind of boycott might help.

Ms. LEWIS. I would just add that I agree: There's so much we don't know about what's happening. But the conversations I am having with people from the mainland are really about the convenient repressive aspect of RTL. I, too, don't hear much about economic considerations.

For Taiwan, before they were abolished, I went to their "institutes," as they called them, where people would undergo reformatory training. There they would have various kinds of auto shop and other classes but it was more put in the guise that this was about reforming or reeducating. Though they did sell a few items, it seemed more to say, "Look, we're reforming these people who are these hooligans" than about whether the products that they were making were actually worth any major dollar amount of concern.

Mr. LIU. That is very helpful. I have one more question. China is coming before the UN Human Rights Council, I believe, later this year, the Universal Periodic Review. I am wondering if that is—and I may be asking folks to read the tea leaves a little—motivating Chinese officials to want to address this issue before they go before the Universal Periodic Review, or whether there may be other factors maybe because of the new leadership and wanting to start on a new foot that are driving the statements of officials right now.

Ms. LI. Yes. October 22 this year is the date that China will be reviewed at the UN Human Rights Council in Geneva. The Universal Periodic Review on any country takes place once every four years. It is such a good opportunity to generate momentum for change, I agree.

Also, next year China will likely come under review by the Committee Against Torture. It's been five years since the last review, and China is late to submit its state report, which means the committee cannot start the process. But perhaps next year. It will be another opportunity to generate international pressure.

Of course, the Chinese Government is good at shifting attention. For example, I made a point about "transferring" RTL detainees to some facility called "Illegal Behavior Correction Centers." So authorities could say RTL doesn't exist anymore, but it goes under a different name and the arbitrary detention system continues. So that's something to pay attention to.

I'll give you another example; before the last Universal Periodic Review, China adopted the National Human Rights Action Plan, even though it was not really implemented. The government simply claimed that the plan was implemented. There was very little civil society participation at any point.

But again, it's useful to have such a plan because the citizens can hold the government accountable for this action plan and present evidence to show that the plan was not met.

Ms. LEWIS. I agree that it's important to have international pressure and it shines a spotlight, but it's not going to be, alone, sufficient. One thing we see is in 1998 China signed the International Covenant on Civil and Political Rights [ICCPR], but it is still not ratified. One of the sticking points is RTL. In the covenant it says that people charged with crimes be afforded a fair public hearing by a competent, independent, and impartial tribunal established by law. That is not happening for RTL.

Although the PRC Government might say, "This is administrative, it's not criminal," just the label that is put on a sanction by the government is not sufficient. So I think it is not just about the international community saying, "China, here are some ideals that you should live up to because we tell you that you should live up to them," but here the Chinese Government itself said it wants to ratify the ICCPR, and we are reminding the government that this is its own goal.

Mr. WU. Can I? I think the most important thing is maybe the CECC can hold a hearing on the laogai systems. Laojiao reeducation through labor is only a very small part of the laogai system. But the whole issue of the laogai system right now is under the sleeping, nobody really cares about it. I think this is a basic human rights issue. Thank you.

Mr. BELKIN. Again, a very good question. It's hard to know exactly what has motivated the leadership to act at this time. I agree with what Professor Li has said. The ICCPR has been something that's been part of the human rights conversation in China since China signed it, and every couple of years China's leaders renew their commitment to ratify the ICCPR. I think Premier Wen Jiabao, within the last couple of years, said China would ratify the ICCPR very soon.

The Human Rights Plan is now—I mean, it would have been unthinkable 20 years ago for China to have a human rights action plan. So within the argument about reeducation through labor, Chinese scholars are using international human rights norms to support their arguments.

So I don't know that it's one particular thing, the date coming up for human rights review, but I do think that international human rights instruments, human rights advocacy does matter. We have seen that in the previous administration.

In the first year they took serious steps to reform other systems of arbitrary detention. It was very interesting and I don't think anyone predicted it, that when this new leadership took office very early, or maybe even right before they took office, they put this on their agenda. So I think it's probably the motivation is more domestic than international, but I do think that international human rights norms matter.

Ms. LI. I mean, absolutely. I think even without ratifying the ICCPR, there are other international norms that China has already ratified, which also apply here. For example, the Convention

Against Torture, China has not only signed, but ratified. Also, the Working Group on Arbitrary Detention. That's one of the special procedures. Countries don't need to sign or ratify any treaties for the special procedures to apply to them. As long as they are members of the United Nations, they are subjected to the SPs' scrutiny and review. So the Working Group on Arbitrary Detention had ruled that RTL was an arbitrary detention system, and also the Committee Against Torture, in its last review on China in 2008, in its "concluding observations" suggested to China to reform RTL.

Both of these UN interventions created a certain pressure on China. These are advocacy tools not only for Chinese citizens, but for the U.S. Congress and all other concerned stakeholders to use to get China further involved in the process and to generate pressure. Thank you.

Mr. LIU. Great. Thanks a lot.

I want to introduce at this time to my right the Deputy Staff Director, Paul Protic, who represents our Cochairman, Chris Smith. I think he has a question.

Mr. PROTIC. Thank you, Mr. Liu.

I want to first say thank you very much to the panelists for coming and for your insightful remarks. I have a followup question to Mr. Wu. Are you aware of any prison labor cases where goods that are being made in the laogai ended up in U.S. markets—that U.S. companies are importing in America? Can you address that?

Mr. WU. Yes, many of them right here. It goes through the reeducation through labor right now in America.

Mr. PROTIC. What can the government do about that? Any suggestions on what the government, our government, can do to keep that from happening?

Mr. WU. Right now they live in America. They can testify, no problem. I just really hope that Americans are aware that China is an atrocious country, they have a suppression machine, the so-called laogai. It's not only about reeducation through labor. But even the Chinese Government cares about reeducation through labor. What is the reason they want to stop it?

They did not tell the truth, how come they set up the reeducation camps, from when? Reeducation camps in 1970 entirely stopped and Deng Xiaoping reopened it, restarted it because we had so many people who wanted to argue about the issue that we cannot handle that. This is light crime, light criminal. But the laogai system included Liu Xiaobo, the Nobel Peace Prize winner, who was there. This is a big suppression machine.

We shouldn't only care about the gulag and concentration camps. It's a very good topic. But it's over. The Chinese laogai camps are still running, they're still putting people in there. I really hope the CECC can run with this issue. It's a part of the politics issue in China. I don't expect that the United Nations can do anything about it.

What is the United Nations? Did they condemn Chinese publishing control? Did the United Nations condemn execution for organ transplants in China? Did the United Nations care about religious freedom in China? Do they care about censorship of the Internet? No, they don't. They only care about these small countries called Iraq, Afghanistan, whatever. But so many violations of human rights happen in China, but I'm sorry, they ignore it. That's just my feeling, my personal feeling. Thank you.

Mr. LIU. Thank you, Mr. Wu.

I'd like to introduce one of our staff members, Jesse Heatley. He's going to ask a question. But I also wanted to point out that Jesse authored a special report on the reeducation through labor system and the prospects for reform, and we have copies of that report. Our staff helped him out also. It's meticulously sourced. We hope you'll take a copy with you. It's a great resource. I'll turn it over to him to ask his question.

Mr. HEATLEY. Thanks so much, Lawrence. Thank you to the panelists today for sharing their insights on RTL reform.

I have a quick question. Lawrence had mentioned that there has been talk of RTL reform for a number of years. Over the last 30 years there has been multiple rounds of policy debate. One thing that appears to have changed, though, is the emergence of social media tools and micro-blogging over the last few years and how that's affected this discussion. I was wondering if the panelists can discuss the role of social media tools in reform, and perhaps the role of social media and online advocacy for future reforms.

Just as a note, after the Tang Hui case that was mentioned earlier, there was something around, according to the China Daily, 700,000 posts about the Tang Hui case. After the Ren Jianyu case, there were over a million posts about that case just in the days following.

After the Masanjia case, there was a swell of support in postings on the People's Daily site and some other sites and they were quickly taken down. The government has done a tremendous job to try to control this discussion, but the public outrage that we've seen and the response has been great as well. So I would appreciate it if the panelists could discuss the role of the Internet and social media tools in driving this type of reform, and, perhaps, similar reforms. Thanks so much.

Mr. BELKIN. The phenomenon of social media and the role of public opinion is a complicated subject. I think that the growth of social media in China has coincided with government policy to take public opinion into account much more greatly in many different areas, sometimes in the advocacy of reforms but sometimes in advocating for particular results in individual cases.

Sometimes there have been cases where the public opinion has advocated for the death penalty in individual cases where the death penalty might not have been imposed but for strong public opinion. So sometimes it's easy to see social media as always a positive and public opinion as always a positive, but I think the picture is more complex. That's the first point.

The second point, it is always a puzzle as to why certain cases receive public attention. The two cases that were so well described by Professor Li, Tang Hui and Ren Jianyu, why did these two cases get attention and why did they get attention now? Is it spontaneous? Certainly the response, the overwhelming response, is spontaneous. But were people who were thinking about reeducation through labor reform using public opinion to support their position? We don't really know.

I would say in 2003 when the Sun Zhigang case happened, which was an individual case that was a great engine for reform of the custody and repatriation system, around the same time there was a case of someone in a reeducation through labor camp who also died in custody, was reported in a local paper, but information about that case never made it to the mass media.

So I think social media, although complex, is an overall positive thing for people to have the chance to express opinion. I think the fact is that the Chinese Government very much cares about public opinion.

I'll just cite another positive example. During the lead-up to the Criminal Procedure Law reform in 2012, the government published the draft online, solicited public comments. We were told there were 80,000 public comments, although the comments themselves were never made public.

But one of the more controversial provisions, Article 73, that allowed for six months of detention at an undisclosed location, there were public comments. As a result, the final draft was modified to at least require family notice when someone was placed in that kind of detention.

So it's something we are watching closely and trying to understand, but I think we should try to resist the temptation to say that it's all positive. It would be a very positive thing if things were more open and if, when sensitive cases were raised, there wasn't censorship so that the leadership could actually hear public opinion on all these issues.

We recently read in the press that people who are advocating that leaders disclose their financial assets have been either put under house arrest or charged right in the midst of an anti-corruption campaign. So it's a very complicated question.

Ms. LEWIS. I agree. It's not an unqualified "good" to have Internet use, but overall I think it's a great thing. Certainly with criminal justice reforms more generally we've seen a very positive role for public opinion in some ways.

For example, there was an infamous case, Zhao Zuohai, where a man was convicted of murdering a fellow villager after a fight: The police had found a headless body. He confessed and he was put in prison, and thankfully not executed. The death sentence was reprieved.

Ten years later, suddenly, the alleged victim comes back, head intact and everything and he was not dead. People said, "Well, why did you confess?" Well, because it was beaten out of him. It was a coerced confession. That case drew a lot of attention. We see subsequent reforms in the new Criminal Procedure Law. There are other cases like that where individual cases have generated attention in a positive way.

On the flip side you do have this court of public opinion that can occur in a very negative way. There's a lot of false information out there in these sort of human flesh search engines where the Internet will say, "Oh, this is a bad person."

To the extent that people involved in legal reforms in China are trying to emphasize a process that is fair and just, and based on evidence—that isn't just rumor—in some ways the Internet can cut against that goal and make it so there's a lot of rumors flying around and people who haven't had a chance to be judged by a court using lawful procedures are finding their lives adversely impacted.

Mr. BELKIN. If I could just follow up for just a second. I think that this situation actually creates an opening for the U.S. Government. My own view is that part of the reason that the Chinese Government is allowing public opinion to express itself in the area of legal cases and legal reform is they want more public support and public legitimacy.

But allowing public opinion to influence individual case decisions is very problematic. I think we actually have a lot of good experience that we can share. We have our own problems and we certainly need to acknowledge them, but in terms of the legitimacy of our judicial system and public confidence in the system, I think this is where the rule of law can work to enhance social stability. So I do think this does create an opportunity for the U.S. Government and for more exchange with China.

Ms. LI. I agree with what has been said about the mixed benefit in this cost-and-benefit analysis about social media. I want to add that in a country where media and the press and information on the Internet are tightly controlled by the government and the cyberspace closely policed by authorities, social media certainly is a good thing to level the playing field and give every citizen basically a media to air their views. So in that sense I think the net benefit of social media comes out ahead of its limitations and problems.

I also want to add that, particularly in the RTL case, we can see social media has certainly played a positive role. But in all other fields of civil society, people are getting organized to protect their own rights and social media has been such a valuable and useful tool for them.

I have many stories I could share with you. When, for example, a demolition team came to bulldoze a house illegally, activists used social media to gather citizens to protect the house, to alert media, and to report the incident to police. There have been some success stories. In one case, the activists managed to get the police to arrest the demolition members for trespassing.

Social media has also offered a good venue for citizens to exercise their right to free association, which is not possible in China and is so tightly controlled. So people get together on the Internet using social media to form groups, to organize actions, and to try to generate synergy in order to be more effective. I am an enthusiast for social media.

Mr. LIU. Okay. We have, now, about 15 minutes. I wanted to open it up to questions from the audience. In the interest of time, please only ask one question and try to be brief. There are two microphones, one over here and one to my right, to your left. If you would just raise your hand, we'll bring the mike to you. Also, please note that this event is being webcast and transcribed, so if you have a question, please raise your hand.

Tom, go ahead.

Mr. LUM. Hi. I'm Tom Lum with the Congressional Research Service. In the past there used to be two systems, reform through labor and reeducation through labor. I think one is laojiao, one is laodung. I was just wondering what happened to the other system? Are there two systems and what happened to the other one? Thank you.

Mr. WU. Well, China only has one system, the one system so-called reform through labor. Reeducation through labor is a part of the reform through labor and only handles these light criminals.

Mr. BELKIN. I think if we're focusing on the language that's used in Chinese law, laogai tends to be used to describe a punishment under the criminal justice system, where as laojiao, laodung jiao yong, reeducation through labor, is an administrative punishment.

So I understand what Mr. Wu is saying in terms of a whole system, but in terms of the way the language is used, they're actually used to describe different aspects of the overall administrative and criminal justice system.

Mr. LIU. Does that answer your question, Tom?

Mr. LUM. I think so.

Mr. LIU. Okay.

Mr. LUM. I had the impression that reeducation was a wider form and there was some other—much harsher. But you're also saying that would be taken care of by the criminal justice system. Thank you.

Mr. LIU. Yes. Okay. Who else has a question? Okay. Over here.

ANGELA. My name is Angela. I'm a pharmacist and also a Falun Gong practitioner. I just wanted to let you know there are two Falun Gong practitioners that are the victims in the forced labor camp. One is Emily Ma. She was a survivor, and thank goodness she is here. She served more than four years in China's forced labor camp. And Yu Zhengjie, she's also a survivor, too. I think Masanjia, those words to us are only words, but I think for those two who have served in the forced labor camp, no words can describe and their lives were changed.

Also, I want to share with you that 18 Falun Gong practitioners, females, their clothing was ripped off and they were dumped into the male prisoner's camp and they were raped, raped, raped. One even carried a baby from the rapist. So together we hope we can do something to stop it.

Mr. LIU. Thank you.

Any other questions?

Ms. BRETTELL. Yes. My name is Anna Brettell and I work for the Congressional-Executive Commission on China. I was curious if there are public discussions about how to reform the system or what the system might look like if reforms do occur.

Ms. LI. It's interesting. In fact, in Yunnan province, where, just last month, one official said that Yunnan had practically ended RTL and from this year on they would no longer send people to RTL, but then he talked about what would happen to the people normally detained in RTL. He gave a few possibilities. He said the prostitutes will be sent to some kind of women's correction centers but will be processed by the judicial system, and then the drug users will be sent to drug rehabilitation centers. This has been a long debate among not only Chinese legal scholars, but legal scholars in the United States. Some scholars have asked the rhetorical question, what would you do with the detainees if you abolish RTL? Would you rather put them in jails or go free? But the thinking behind that rhetorical question begs the question: The RTL detainees were never tried in court. One cannot assume they were criminals. Other scholars have argued that for anybody who had not been tried, they should never have been put in RTL so they should be freed. If authorities suspect that anybody committed any crime, then they should go through the normal judicial criminal procedure to convict the person. But of course, there is another concern about the problems with the criminal system itself.

Anyway, this Yunnan official gave some ideas about what to do. But the fundamental issue is whether people who were detained in RTLs without ever going through any kind of judicial system should be freed.

Ms. LEWIS. I agree in principle that people that have been subject to RTL should be freed because they were not put in with judicial process, but I think in reality the chances of that happening are extremely, extremely small.

More likely what would happen would be a phase-out. Whereas, we're seeing that less people will be put in, and over the course of several years the numbers would decrease. Certainly in Taiwan, that's what happened with their system for liumang, where gradually those cases started being channeled through the formal criminal justice system instead of through this separate track.

By the time that the law was actually abolished there weren't that many people that were locked up as hooligans, so there wasn't the same sort of panic that there was going to be a deterioration in social order. But we are going to have to see, I think, a several-year process, at a minimum.

Mr. BELKIN. There is wide-ranging debate in China among scholars about whether or not the system should just be abolished. Some people say that with the Criminal Law and the Public Safety Administrative Punishments Law, which has a maximum sentence of 15 days, any criminal offense could be covered, any violation of law could be covered. There is no need to have a separate system that does not have a judicial process, that does not have very clear standards. So that is one point of view that is being expressed strongly.

Others say, "Well, we can modify the system. We have to change the name because it has such a bad reputation. We should have some review and we should maybe limit the time period." But I want to reiterate the point that although reeducation through labor has a terrible reputation, it's more well-known than many other forms of detention.

When we talk about these issues, whether it's the U.S. Government or other people who focus on it, I think we have to look at the whole system. What we saw in 2003 when shourong qiansong, custody and repatriation, was abolished, it appears that the number of people detained in "black jails" increased.

So for police who are used to having the discretion to punish people this way, it would be almost expected that if they have other ways of detaining people, that they would use those as well. So I think it's great that the Commission is focusing on reeducation through labor, but I would say we have to widen the scope of focus. The same principles would apply.

As Maggie said, there should be a judicial process. There might be some social problems, drug addiction or prostitution, that could be dealt with in other ways, but they shouldn't involve detention. If they involve detention, then under Chinese law there should be some judicial process.

Mr. LIU. Thanks. We'll take one more question.

Susan?

Ms. WELD. [Inaudible.]—because after these cases are unwound and undone there might be a lot of cases for compensation, not huge compensation, but some kind of symbolic compensation as happened after the Cultural Revolution. So there is a precedent for that.

I think some of the feeling of injustice, the government is almost as equally afraid of a large group of uncontrolled people feeling everything unjust has happened to them. If you could give them a feeling they have gotten some bit of justice, maybe the government would be less afraid of this unwinding process. What do you think?

Mr. LIU. Does anyone want to comment on that?

Ms. LEWIS. There is more recent precedent than the Cultural Revolution. In fact, after the Zhao Zuohai case, the case I mentioned with the wrongful conviction, he was given monetary compensation and that got a lot of press. There are news reports about that.

I think it's important to recognize what terrible things have happened to people and to give monetary compensation, but at the same time recognize that sometimes that can act as an impediment to reforms because you do not want government officials to say, "Oh, because we have to pay money we can't admit that we were wrong." The goal is to try to figure out how to allow for some sort of compensation while still not making that end up being more of a hurdle than it is meant to be.

Ms. WELD. [Inaudible.]

Ms. LEWIS. And there are a lot of other countries who have had especially experiences with truth and reconciliation commissions or other forms of restorative justice focused on not just money but also on how to go about the healing process and moving forward. There are international models that could be very helpful.

Ms. LI. I think some channels are available in China today for RTL victims to seek compensation, which is not necessarily monetary, and it could be a piece of paper, issued by authorities, saying it was wrong to put a person in RTL. Tang Hui is currently seeking compensation for the RTL decision and quite a few former RTL detainees are doing what she is doing.

There are two such channels. One is called xingzheng fuyi, or administrative review of the decision to send a person to RTL. Whether the person is still in RTL or released, she or he can use this procedure to seek redress. The other one is suing the police officers or government authorities who made the laojiao decision. This kind of lawsuit goes through the criminal system actually. Such lawsuits are often blocked by the court.

Mr. LIU. Okay. Thanks for the great question.

I wanted to give our panelists a final opportunity to make any closing remarks, if you have any.

[No response].

Mr. LIU. You're good? Okay.

Thank you once again for your excellent input in helping us in the United States and in our government and in Congress understand this issue more.

I wanted to note for the record that Congressman Smith, our Cochairman, has a statement that will be entered into the record.

I thank all of you for attending.

This roundtable is adjourned.

[The prepared statement of Representative Smith appears in the appendix.]

[Whereupon, at 12:35 p.m. the roundtable was adjourned.]

A P P E N D I X

PREPARED STATEMENTS

PREPARED STATEMENT OF IRA BELKIN

MAY 9, 2013

Mr. Chairman and distinguished Members of the Commission, thank you for the invitation to participate in this Roundtable. I would like to acknowledge the importance of the Commission's efforts to enhance American understanding of China and the contributions the Commission has made to the improvement of the Rule of Law and human rights situation in China.

The opinions I express here today are my own but I am also proud to represent the U.S.-Asia Law Institute at New York University School of Law. Our Institute was founded by Professor Jerome A. Cohen who has been a strong, consistent voice for human rights and the Rule of Law and an untiring advocate of engagement with China. Our mission is to promote the Rule of Law in Asia and to promote mutual understanding between the United States and Asian countries, especially China, on legal issues. We do that through constructive engagement, research and exchanges with legal experts. Our goal is to be educated observers of Asian legal systems and, when appropriate, honest, fair and well-informed critics as well. It is in that spirit that I provide these remarks.

With respect to our topic today, "The End of Reeducation Through Labor? Recent Developments and Prospects for Reform," I am going to focus my remarks on the topics I have been asked to cover: to provide an overview of the Reeducation Through Labor System ("RTL"), including its history, the purpose behind RTL, how it is currently used, and a summary of the current debate over RTL reform, as well as recommendations for U.S. policymakers.

The institution of RTL has been around for 60 years. Its precise use has shifted over time but it seems to be chiefly valued by the government because its flexibility allows police to incarcerate individuals and members of groups they consider troublesome without having to go through formal judicial processes. It is currently used mainly to detain drug addicts and members of the banned Falun Gong sect, but it is also used to detain political dissidents. The new leadership has recently said it is reexamining RTL with an eye to reforming it. This is a very welcome development.

AN OVERVIEW OF REEDUCATION THROUGH LABOR

At the outset, allow me to emphasize the importance of today's discussion. The issue of RTL reform is important because what happens in China is important. It is important to China's 1.3 billion citizens, one fifth of the world's population, and it is important to the world because of China's growing influence in the world.

RTL allows the police, on their own, to confine someone for one to three years, with the possible addition of a fourth year, for any conduct that falls within one of six vaguely defined categories of conduct. According to Article 10 of the "Trial Methods for Reeducation Through Labor," issued by the Ministry of Public Security ("MPS") and approved by the State Council on January 21, 1982, the following persons may be sent to RTL:

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

A mere reading of these categories shows how vague and open to abuse they can be. One could question the legitimacy of this type of system during any era, but these "trial" RTL regulations from 1982 read like pages of history. RTL would seem to have no place in modern Chinese society in the year 2013.

Perhaps in recognition of how dated the original rules read, in 2002, the MPS issued new regulations, changing the reference to "counterrevolutionaries and elements who oppose the Chinese Communist Party or Socialism" to those who commit acts of "endangering state security." The 2002 regulations also modified the definition of the other categories and expanded the list from six to ten categories but did not cure their vagueness.[1]

Moreover, in terms of process, RTL is still administered solely by the MPS. A decision to incarcerate someone under RTL is made by the MPS without any judicial review.[2]

China has committed itself to establishing a society under the Rule of Law. To the extent China maintains the authority to detain individuals outside the formal legal system and under such a vague set of standards, with very little in the way of due process, such a system undermines China's own goal of establishing a society under the Rule of Law.

A BRIEF HISTORY OF RTL

The history of the RTL system also suggests that it is long overdue for reform. The RTL system was initially created in the 1950's during the early years of Chairman Mao's rule and it was used to suppress "counterrevolutionaries" and others who the Party determined did not support the new socialist regime in China. As

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[1] The definition of these categories was modified in Article 9 of the 2002 regulations issued by the Ministry of Public Security as follows:

Persons aged 16 years or older who committed one of the following acts shall be sent to RTL in accordance with the law:

1. Acts of endangering state security that are clearly minor in nature, wherein criminal punishment is not yet warranted;
2. Membership in a criminal gang formed to murder, rob, rape, commit arson, kidnap, set explosions, or traffic women and children, wherein criminal punishment is not yet warranted;
3. Subsequent commission of one the [following] illegal criminal acts, wherein criminal punishment is not yet warranted, either within five years of completing a criminal penalty, sentenced in accordance with the law, [for the one of following acts] or subsequent commission of one the [following acts] within three years of being lawfully fined by police or completing administrative detention, custody and education, or RTL issued by police: compulsory indecency; humiliating women; indecency with children; group promiscuity; luring juveniles to engage in group promiscuity; illegal detention; theft; fraud; forgery or resale of invoices; resale of train or boat tickets; forgery of price tags; sale of forged price tags; forcible seizure; group robbery; extortion; swindling; forgery; alteration; trafficking in official documents, credentials, or chops; or the harboring, transfer, purchase, or sale of stolen property;
4. Endangering public safety by creating an atmosphere of terror or causing the public to panic; organizing or using a secret society or cult or use of superstition to undermine implementation of national laws; mass brawling; creating a serious disturbance; instigating turmoil; forcing purchases or sales to dominate the market; or disrupting social order through deeply engrained bad habits such as bullying, engaging in mischief, or oppressing the masses, wherein criminal punishment criminal punishment is not yet warranted;
5. Deliberate provocations that disrupt the order of production, work, education or research, or daily life, as well as rejection or obstruction of state employees' [efforts] to carry out their duties in accordance with the law but without the use of violence or threats;
6. Instructing others to commit crimes, wherein criminal punishment is not yet warranted;
7. Introducing or allowing others to engage in prostitution or solicit prostitutes; enticing others to engage in prostitution; gambling or providing conditions for gambling; or producing, reproducing, selling, renting, or disseminating pornography, in which the acts are of a rather serious nature but do not yet warrant criminal punishment;
8. Engaging in prostitution or soliciting prostitutes after being lawfully warned, fined, or given administrative detention by the public security authority for engaging in prostitution or soliciting prostitutes;
9. Taking or injecting drugs after having been sent to compulsory drug treatment for addiction to taking or injecting drugs;
10. Other circumstances for which there is statutory basis for RTL.

Individuals who have committed offenses of endangering state security, endangering public safety, infringement of civil rights, infringement of property, or obstruction of social order management but whom, because the offense was minor in nature, a people's procuratorate has opted not to prosecute or a people's court has exempted from criminal punishment may be sent to RTL, in accordance with the law, where they meet the conditions for RTL. I am grateful to the Duihua Foundation for providing links to these 2002 regulations and the 2005 opinion on their website, as well as English language translations. The link to those materials at the Duihua website is: http://www.duihuaresearch.org/2013/01/police-updated-rtl-rules-in-2005-but.html.

[2] A person subject to RTL may challenge the RTL decision in court after the fact through the Administrative Litigation Law. Such review may not take place until the individual has served a substantial portion of their RTL sentence.

such, the maximum level of flexibility, or one could say, arbitrariness, served that type of system well.

Fast forward to 1979, the end of the Cultural Revolution and the beginning of Deng Xiaoping's policy of Reform and Opening Up. In 1979, China opted to develop a formal legal system with predetermined rules and procedures that would limit arbitrariness. Thus, in 1979, China promulgated a new Criminal Law and a new Criminal Procedure Law. However, at that time, China maintained the RTL system as well. The Criminal Law and Criminal Procedure Law have been amended repeatedly, each time introducing new procedural protections for individuals.

Over the years, there have been many efforts by legal reformers to abolish or substantially reform RTL. To date, those efforts have not succeeded. However, the role RTL has played during this period of time has shifted away from suppressing "counterrevolutionaries" to, according to its supporters, "maintaining social stability."

As noted above, in 2002, the Ministry of Public Security issued new "Regulations on the Handling of Reeducation Through Labor Cases by Public Security Organs." The MPS has the authority to issue departmental regulations and guidance about how to implement national rules and regulations provided they do not contradict those laws and regulations. Of course, MPS regulations can be changed by the MPS at any time and do not have the same status as State Council regulations or National People's Congress legislation. In the 2002 MPS regulations, the MPS provided more details concerning how RTL should be administered. The rules provided for RTL hearings in some cases, but excluded from the hearing requirement any cases involving drug addicts and 'those involved in organizing or using a cult to undermine the implementation of national laws," an apparent reference to followers of Falun Gong. The MPS also provided for non-custodial RTL in some cases.

In 2005, China's National People's Congress promulgated a Public Safety Administrative Punishments Law, which provides for a maximum punishment of fifteen days in jail for minor offenses. This seemed to presage the abolition of RTL because RTL's supporters had claimed it was a more lenient alternative for minor offenses. With the Public Safety Administrative Punishments Law providing for a maximum punishment of fifteen days detention for minor offenses, RTL's maximum sentence of four years seemed even more out of step with the rest of Chinese law.

However, in the same year, 2005, the MPS issued an "Implementation Opinion Regarding Further Strengthening and Improvement of Reeducation Through Labor Review and Approval Work." The 2005 Opinion provided for police hearings for all those subject to RTL, removing the exclusion for drug addicts and cult members, expressly limited the maximum RTL sentence to two years and provided that legal counsel could participate in RTL proceedings.

Has Reeducation Through Labor served the purpose of maintaining social stability? The system is not very transparent but it appears that RTL is primarily used for involuntary drug rehabilitation for drug addicts, for compulsory reform for those engaged in prostitution, and to confine followers of Falun Gong as well as some political dissidents.

The point is that the standards for RTL are so vague and ambiguous and the decision-making process so lacking in due process and transparency that it seems that RTL could be used, or in the view of some, abused, to incarcerate a whole host of people the police simply find to be annoying or obnoxious. A system such as this can also be used and appears to have been used to stifle the freedom of expression and dissent.

In addition, to the extent that China has made important strides in improving the rights protections in its formal criminal justice system, the existence of an alternative, much more flexible and arbitrary police-friendly system like RTL, undermines those reforms. The police can completely avoid the criminal justice system and its small but growing protections for individuals' rights simply by sending someone to RTL.

CHINESE LEGAL SCHOLARS DEBATE RTL REFORM

Since even before the 18th Party Congress, rumors began to circulate that China's new leaders might take up RTL reform as one of their first tasks after assuming power. In January, we learned that Mr. Meng Jianzhu, Chair of the powerful Political-Legal Committee of the Communist Party had directed that the use of RTL be terminated this year. On March 17, 2013, after the annual meeting of the National People's Congress, Premier Li Keqiang told a press conference that with respect to RTL reform, "the relevant departments are working intensively to formulate a plan, and it may be laid out before the end of this year."

The leadership's public support for RTL reform has reopened the public debate about RTL and Chinese experts are publicly debating whether it should be abolished and whether something should be enacted to replace it. One of the bright spots of the debate is the use of legal norms, as expressed in domestic Chinese law and the Chinese Constitution, as well as international human rights norms and concepts of the Rule of Law to support various arguments. Under all of these norms, RTL falls short. Chinese scholars are debating whether providing judicial review, substantially shortening the maximum period of incarceration and changing the name can save the system.

For example, Professor Liu Renwen of the Chinese Academy of Social Sciences advocates for the abolition of RTL and argues that all punishments that involve the loss of liberty should be handled under the criminal justice system and be subject to judicial review. He argues forcefully that RTL is inconsistent with Article 9 of the Legislation Law, passed in 2000, because the Legislation Law requires that all laws restricting the liberty of citizens be enacted as legislation by the full National People's Congress. He further argues that RTL is inconsistent with the Chinese Constitution, apparently referring to Article 37, which provides that "no citizen may be arrested except with the approval or by decision of a people's procuratorate or by decision of a people's court" and "unlawful detention or deprivation or restriction of citizens' freedom of the person by other means is prohibited." He further argues that many punishments permitted by the Criminal Law are less severe than RTL and therefore it does not make sense to have an administrative system of punishment that can provide for more severe punishments than the Criminal Law itself.

On the other hand, Professor Chu Huizhi of Beijing University argues that there is still a social need to deal with habitual offenders and he suggests that a new law titled: "Unlawful Behavior Corrections Law" be enacted to provide for up to two years confinement for habitual drug addicts, those engaged in prostitution as well as juveniles who are not subject to criminal prosecution. Professor Chu also proposes that the process be modified to make it a judicial or quasi-judicial process to ensure some neutrality in the decision-making process. There are many other opinions that fall somewhere between complete abolition, as advocated by Professor Liu, and the type of reform suggested by Professor Chu.

There does appear to be consensus among Chinese legal scholars that the legal basis for RTL is questionable, the lack of judicial review is problematic, and that RTL's vagueness and lack of due process does not comport with China's own commitment to governance according to law.

However, while legal scholars will no doubt have input into the decision about what to do with RTL, the final decision will be made by political leaders. China's new leaders deserve credit for publicly committing to reforming RTL at a very early stage in their administration. They did not have to put this pressure on themselves. There are also hopeful signs that the reform may be meaningful. There have been reports of local governments issuing rules to stop the use of RTL this year and we have also heard reports that the number of people in RTL has been reduced dramatically. It may also be that some of those held in RTL, specifically juveniles, drug addicts and those involved in prostitution, may have been sent to other forms of administrative confinement. At this point, it would be mere speculation to predict what the final outcome will be.

RECOMMENDATIONS FOR U.S. POLICYMAKERS

This brings us to the question of what U.S. policy makers should do. First, let me congratulate the Commission on bringing attention to this issue. Bringing these issues out in the open and discussing them is always helpful. Second, while there are limits to what anyone outside of the Chinese system can do to affect the final outcome I do believe there are many positive steps that the U.S. government can take.

Before I go into those, however, I want to suggest that the U.S. government expand the scope of its interest in this issue beyond RTL to encompass all forms of extra-legal, extra-judicial detention in China. This would include so-called "black jails" used to detain petitioners and "soft detention (*ruanjin*)" used to keep some people deemed to be troublemakers under some form of house arrest. To my knowledge there is no legal basis in legislation or publicly available regulations for either of these forms of limitations on the liberty of individuals.

Moreover, there are other specific forms of administrative confinement and involuntary treatment and education for drug addicts, for those engaged in prostitution and for juveniles who are too young to be subject to the juvenile criminal justice system. These include custody and education (*shourong jiaoyu*), used for those involved in prostitution and custody and cultivation (*shourong jiaoyang*), used for juveniles under the age of 16, who are exempt from criminal punishment. While RTL gets most of the attention, I would urge the United States government to also take note of these other forms of detention and include them in its efforts to engage with the Chinese government.

What can the United States do? First of all, China is an independent, sovereign nation that has the right to make its own decisions and its own laws. However, China is also a prominent member of the international community, and, as such, engages with the rest of the world through various multilateral and bilateral processes. China is a permanent member of the United Nations Security Council. China has ratified many international human rights documents. While China has not yet ratified the International Covenant on Civil and Political Rights, which prohibits arbitrary detention, China has signed it and has repeatedly committed to ratifying it in the near future.

My own view is that all countries, as well as all individuals have an interest in upholding international human rights standards and the Rule of Law and that there is a constructive role for sovereign nations to play with regard to human rights and the Rule of Law in other countries as well as within their own. We are all imperfect and we all benefit from mutual exchange and oversight.

The first order of business, however, is to get one's own house in order and lead by example. This is not the time or the place to go into how the United States could improve its own adherence to international human rights standards and the Rule of Law but I think it is fair and appropriate to make that a part of the larger discussion. The better we do at home the more credibility we have overseas.

Second, the United States government has many tools at its disposal which it can use to voice its concerns to the Chinese government, foremost among them the diplomacy conducted on a regular basis by our excellent career diplomats. The government can also raise these issues during the visits of high level officials and members of Congress, and at periodic human rights and legal experts' dialogues, and other high level dialogues. Each of these is an opportunity to communicate the United States' concern about these issues.

Third, the United States can support research to help us understand the actual situation in China. The government has provided some support for research but, speaking very frankly, support for research is not robust.

Fourth, the United States government should continue to support expert legal exchanges between non-government actors, including academics, practitioners and students. My own view is that those programs have been highly valuable in enhancing mutual understanding and in improving the Rule of Law and human rights situation in China. It is hard to imagine where China would be now had it not welcomed the support of the rest of the world, including the United States, or had the rest of the world not provided it.

Every country borrows ideas from other legal systems and China has been very active in studying the legal systems of other countries as a way to improve its own system. As noted, RTL is a form of arbitrary detention. But the reform of RTL raises legitimate questions about how to deal with social problems such as minor offenses, drug addiction, prostitution and juvenile delinquency in a fair and effective way. These are challenges common to many countries, including the United States, and we could all benefit from sharing our experiences and best practices.

I should say here that U.S. government support for such exchanges is critical. Institutes like the U.S.-Asia Law Institute rely upon grant support, including U.S. government grants, to be able to maintain our expertise and to engage constructively and productively with Chinese partners. Without that support it would be difficult, if not impossible, to carry on this work. Our Institute and other organizations also commit their own resources to this work but the extent of such work is dependent, in part, on the level of government support.

The real question though is how to use these tools effectively. To be effective, we need to be persistent, consistent and focus on the long term as well as whatever short term goals may be within reach. There is a tendency in government to demand short term deliverables and outcomes from each meeting, each dialogue and each legal reform project. That is understandable from the point of view of accountability to taxpayers. However, legal reform and social change do not necessarily work on the schedule of diplomats and grant makers. Progress takes time and requires a process of exchanging ideas, opening minds to new ways of thinking, and assuring policymakers in other countries that improving the rights protection of their citizens can enhance social stability rather than undermine it.

Sometimes, in the pursuit of concrete outcomes that we can claim as successes we overemphasize the short term at the expense of persistence, consistency and the pursuit of long term goals. Our long term goal should be to help China meet its own objectives of creating a society under the Rule of Law and meeting the obligations China has undertaken under international human rights instruments.

In conclusion, I thank you for the opportunity to share these thoughts and I hope you will continue to support efforts to improve the Rule of Law and human rights protections in China and in the United States.

Prepared Statement of Margaret K. Lewis

MAY 9, 2013

Mr. Chairman and distinguished Members of the Commission, I am privileged to be invited to participate in this roundtable and greatly appreciate the Commission's efforts to improve American understanding of China and the specific issues at hand.

With respect to our topic today, "The End of Reeducation Through Labor? Recent Developments and Prospects for Reform," I am going to focus my remarks on the prospects for reform of reeducation through labor (RTL). In particular, I have been asked to discuss Taiwan's experience in abolishing its RTL analog, how that experience could inform the People Republic of China's (PRC) own efforts to reform RTL, and recommendations for US policymakers.

Today, I get to be the optimist and deliver the hopeful story for reform. Taiwan's system of reformatory training for people deemed "hooligans" (or "*liumang*" using the Romanization of the Chinese term) was gradually reformed in order to restrict police power and to offer greater procedural protections before its ultimate abolition in January 2009. Reformatory training was formerly a non-criminal sanction—hough more accurately understood as a quasi-criminal sanction—that allowed police to lock up vaguely described hooligans for up to three years.

By way of general background, from shortly after President Chiang Kai-shek's Nationalist Party (Kuomintang or KMT) took refuge on Taiwan in 1949 until the mid-1980s, the police wielded tremendous power. Throughout the martial law period, the police easily found support for their actions in suppression-friendly laws and regulations. Although outwardly aimed at hooligan behavior such as gang participation and gambling activities, the relevant legal framework also proved itself to be expedient for silencing political opponents who did not fit the conventional description of hooligans. As with RTL, police unilaterally made the decision to condemn hooligans. The punishment imposed on hooligans at the time was an extraordinarily harsh military-administered punishment that could be used to detain perceived troublemakers indefinitely.

Consequently, despite the fact that the KMT had brought with it to Taiwan the Republic of China's 1928 Criminal Procedure Code, police could easily avoid the judicial process required by the Code. Although the KMT's tight grip on the judiciary during the years of martial law virtually guaranteed desired outcomes if it chose to invoke the formal criminal process, in many cases—especially politically charged ones—it was more convenient to bypass the judicial system by resort to administrative punishments. This experience echoes in the PRC today.

Following the end of martial law in the late 1980s came a crucial transition in Taiwan whereby police powers diminished and judges, prosecutors, and lawyers were no longer under tight political control. In contrast to the entrenched police repression in the PRC, the past twenty years have witnessed a startling transformation of Taiwan's criminal justice system. Perhaps the most immediately notable shift was the transformation of the draconian, military-run punishment into the Ministry of Justice's "reformatory training," a more conventional form of imprisonment for which judicial approval, albeit truncated, was required in every case and incarceration was limited to three years.

The waning years of martial law in Taiwan had seen the beginnings of judicial involvement in decisions that had formerly been left exclusively to the police. Legal reforms introduced the use of special "public security tribunals" within the district courts to determine whether alleged hooligans should be incarcerated, but those courts provided little check both because of daunting procedural barriers to mounting a defense and the courts' general pro-KMT/police propensity. Even reforms after the end of martial law changed little with regard to procedures with, for example, the tribunals continuing to rely heavily on secret witnesses. It was not until Taiwan's constitutional court—the Council of Grand Justices (the Council)—stepped in that important changes began to occur.

In a series of judicial interpretations) the Council increasingly declared unconstitutional portions of the legal regime for dealing with hooligans. In the final interpretation issued in 2008, the Council was persuaded by several constitutional arguments but called for only targeted repeal of unconstitutional provisions rather than requiring wholesale repeal of the law. The last interpretation apparently persuaded Taiwan's political elite that the special law aimed at hooligans was proving to be more trouble than it was worth. After President Ma Ying-jeou took office in May 2008 the executive branch recommended its abolition. In January 2009, the legislature took the unexpected step of repealing the law in its entirety. Four years since abolition, I have heard no reports that the public security situation in Taiwan has deteriorated because of the law's repeal. In part this is because gradual reforms leading to abolition meant that the number of people undergoing reformatory training had dwindled. People who formerly would have been treated as hooligans were increasingly being channeled through the standard criminal process. A sudden shock to the system would similarly be politically difficult to accept in the PRC and, thus, Taiwan's experience suggests that incremental reforms to RTL might allow for a smoother transition than abrupt repeal.

The gradual decline in the previously unfettered punishment powers of Taiwan's police must be viewed within the broader context of reforms to the criminal justice system that had gathered strong support. Beginning in the late 1990s, Taiwan's Criminal Procedure Code underwent seismic changes, even while further reforms to the procedures for hooligan cases appeared to stall and those cases remained largely behind closed doors without any prosecutorial involvement and using heavily truncated judicial proceedings.

As reforms to the criminal justice system progressed, the judiciary, legislature and executive gradually recognized the untenable gap between the new procedures applied to "criminal' cases and those used for "hooligan" cases. Likewise, the PRC's newly revised Criminal Procedure Law includes a number of reforms that are unavailable to people facing RTL. Taiwan's experience also underscores that merely involving an entity called a "court" is insufficient to guarantee a fighting chance for the suspect to contest the possible imposition of RTL. What is needed is not just more process but rather more meaningful process. I am certainly not expecting anything resembling the judicial independence we enjoy in the United States to blossom overnight in China. Nonetheless, even modest judicial review can encourage the police and prosecutors to be more cautious in how they use their powers. For example, after Taiwan voided the prosecutorial power to detain people without judicial approval in 1997, the courts approved the vast majority of detention applications. At first glance, it might appear that judicial review served little purpose. However, the advent of judicial review also quickly saw a considerable decline in prosecutors' applications for detention. In other words, prosecutors in Taiwan sought detention far less once they had to go through the courts even though the courts rejected few applications.

Given existing political constraints and other distorting influences upon PRC courts, which significantly diminish prospects for independent judicial action, it would be unfortunate if the PRC should establish the equivalent of Taiwan's "public security tribunals." That would impose further restrictions on fair court procedures while misleading the public into thinking that adequate court review was being granted. It would be far better for the PRe's judicial resources to be expanded to assure that, at a minimum, all decisions imposing or recommending RTL would receive in practice the same judicial review as currently available in principle under the Administrative Litigation Law. Giving full force to the procedures provided for in the Administrative Litigation Law would be an initial step. A more significant step short of abolition would be to recognize that RTL is criminal in nature and require that all cases follow the procedures laid down in the Criminal Procedure Law.

In highlighting the ways that Taiwan's past might be helpful in charting the PRC's path forward with respect to RTL, I recognize that despite shared historical and cultural ties, Taiwan's recent experience is far from a perfect blueprint for the future of RTL. Most glaringly, since the late 1980s, Taiwan has transitioned to a vibrant multi-party democracy and the story of criminal justice reforms are embedded in the larger story of this political transition. Moreover} Taiwan's constitutional court played a critical role in both drawing attention to the human rights abuses involved in reformatory training and forcing the legislature to respond. Sadly, the Council has no counterpart in the PRC, where the Standing Committee of the National People's Congress has the exclusive power to interpret the Constitution but, in practice, does not exercise it.

That said, Taiwan's reform path still has much to offer despite the PRC's current political reality. Taiwan's judicial reforms did not flourish until the political climate changed. Nevertheless, reforms during the martial law era-such as the establishment of the public security tribunals-helped lay a foundation for future reforms even though the tribunals were heavily flawed from a human rights perspective. Likewise, Taiwan's revision to its Criminal Procedure Code in 1982 that allowed defense counsel to participate in the investigation stage made little difference at the time but was seized upon by lawyers in the 1990s as they began to vigorously expand their roles in the criminal process.

Even if it is unlikely that the PRC will directly and swiftly follow Taiwan's path by abolishing RTL, Taiwan's experience might at least stimulate new thinking and begin to assuage concerns that reforming RTL will lead to a deterioration in social order. As a possible intermediate step towards abolition, the Taiwan precedent of classifying hooligans into two categories and subjecting only those in the second, more serious category to incarceration may reduce the number of people subject to RTL detention, numbers that have been far larger in the PRC than in Taiwan.

In light of this background, what steps should US policymakers take? The US's ability to influence the path of RTL reform is, of course, limited. Reform will only happen when the government bodies in the PRC that have a vested interest in RTL—particularly the Ministry of Public Security—are willing to budge. What the US can do is both offer our own experience and serve a coordinating role in helping to introduce people in the mainland to Taiwan's experience. As an added benefit, although there are differences in legal terminology, the shared language between Taiwan and the Mainland allows for a more fluid, efficient discussion than is possible through translation.

The current relatively warm cross-strait relations have opened up opportunities for legal exchanges unthinkable in the past. In addition to bilateral cross-strait exchanges of scholars and personnel involved directly in administering the criminal justice system, I have also been involved in successful multilateral conversations that included the PRC and Taiwan, along with participants from the US, Hong Kong, Japan, and other jurisdictions. These meetings are relatively easy to arrange with participants from academia and other non-governmental positions. There remain challenges for government personnel from both Taiwan and the PRC to physically travel across the strait, though indications are that these restrictions are starting to relax. For example, Taiwan's Ministry of Justice recently established an Office of International and Cross-Strait Affairs. Alternatively, sometimes a third location, like Hong Kong, can serve as an easier meeting point. Another option is to make greater use of video conferencing capabilities.

A lack of accurate information regarding our bail system is an illustration of how not only cross-strait but also US–PRC meetings of legal practitioners and scholars can at least take the concrete step to dispel misconceptions regarding our criminal justice system that can serve as barriers to reform. I have on several occasions cleared up the mistaken belief that, only because the US has advanced technology to track people, it is rare for US defendants to fail to appear in court and, in contrast, the PRC is not ready for broader use of bail. In reality, the US bail system is quite low-tech and failure to appear rates are still very low: a recent study by the New York City Criminal Justice Agency (CJA) found that, using 2005 data, the failure to appear rate in New York City was 16%.[1] However, CJA found only 7% failed to return within thirty days: many defendants miss court dates "because of forgetfulness, illness, inability to find child care or transportation, or some other reason related to a disordered life rather than a willful attempt to evade justice."

Careful screening for risk factors at the time of bail determinations, not use of high-tech tracking methods, is largely responsible for New York's ability to release approximately 78% of non-felony defendants on their own recognizance without dire consequences for public security. I am convinced that the PRC could take steps to expand its system of release pending trial, which is at present seldom used. Similarly, there is room for creative thinking regarding how the prison-like RTL might be converted into a system akin to the US probation system that involves a much less severe deprivation of liberty. Reform efforts in the US to change our current practice of using administrative detention for unwanted immigrants offers another interesting point of comparison to the PRC's discussions regarding possible changes to RTL.

This is all to say that both the US's and Taiwan's experiences could help the PRC chart a reform path that, while it might not immediately abolish RTL, could gradually lead to significant reforms. And the time is ripe for these discussions. President Ma Ying-jeou has even proposed that the subject of human rights be placed on the cross-strait agenda. It is increasingly clear that stronger cross-strait relations cannot be built on economic ties alone. A meaningful discussion of how each side treats people who face criminal, or quasi-criminal, sanctions is an important next step in exploring prospects for the greater mobility of people between the PRC and Taiwan. Although the PRC has generally been careful not to impose RTL on visitors from Taiwan, the PRC's abolition of that administrative punishment would send the is-

[1] New York City Criminal Justice Agency, Inc., A Decade of Bail Research in New York City (August 2012).

land's people a strong signal of legal progress. It would be especially comforting to business personnel and other Taiwanese who reside on the Mainland.

Finally, US policymakers can continue to draw attention to the PRC's stated goal of ratifying the International Covenant on Civil and Political Rights (ICCPR). Although the PRC signed the ICCPR in 1998, it has thus far failed to ratify it. RTL stands as a notable barrier to ratification because it is difficult, if not impossible, to square the lack of judicial procedures for an RTL sentence with the ICCPR's requirement that people charged with crimes be afforded a "fair and public hearing by a competent, independent and impartial tribunal established by law" and that they be allowed to examine witnesses against them (Art. 14). Even if not labeled by domestic law as a criminal charge, a jurisdiction cannot skirt ICCPR protections by calling a proceeding "administrative" in nature.

As Xi Jinping and his cohorts begin their terms, I hope that the new PRC leadership has the wisdom to see that RTL, like Taiwan's reformatory training, should become a relic of the past. Surely there are many legal experts across the strait and from the US who are willing and able to provide valuable advice on charting a path to an RTL-free future. I hope that the US government will support those efforts.

Thank you for the opportunity to present a few thoughts. I look forward to our discussion with the Commission.

CECC talk: **The End of Reeducation Through Labor? Recent Developments and Prospects for Reform**

May 9, 2013, 11am-12:30pm

Written submission by Xiaorong Li

Thank you, Senator Brown and CECC staff, for this opportunity to discuss this serious matter involving horrifying human rights abuses in China.

The push for abolishing "reeducation through labor" (RTL) has gained momentum in recent months. This should be largely credited to Chinese citizens who have spoken publicly criticizing the system. Over the past two decades, Chinese intellectuals and civil society activists have called for reform or abolition of RTL, a form of administrative detention managed by police committees within the public security bureaus, where detainees are locked up for up to four years without a trial or little chance to appeal, and forced to perform hard labor in abhorrent conditions.[1]

Hopefully, 2013 may mark a turning point in building momentum for RTL reform, as several high-profile individual cases prompted public outrage, there have been unprecedented public discussions about RTL's problems and impressive efforts by Chinese citizens to push for an end to RTL in China today. This has prompted several officials in the government, which is ever mindful of instability, to finally begin to echo longstanding criticisms about the system. In October 2012, the head of a government judicial reform committee noted a consensus in favor of addressing RTL's shortcomings. And the *People's Daily*, the CCP's principal mouthpiece, stated in November that RTL had become "a tool of retaliation" for local officials.[2] The government announced in October that RTL "reform" was being piloted in four cities.[3] More optimism was felt in early January of 2013, when a high-ranking official was reported as saying that the government would halt the use of RTL by the end of the year, upon approval of the Standing Committee of the National People's Congress. However, official Chinese news sources did not corroborate the report and the official's remarks were immediately erased from CCTV and other government-run websites.[4] In February, the *Southern Metropolitan Daily* has **reported** that Yunnan Province is immediately phasing out the use of RTL in what an official has declared an "historical step" in RTL reform. The paper quotes Meng Sutie (孟苏铁), a member of the CCP Standing Committee in Yunnan and head of the Yunnan Politics and Law Committee, as saying that, from now on, provincial authorities will stop approving orders to send to RTL those who are suspected of three types of behavior—endangering state security, disruptive petitioning, and smearing the images of state leaders—and also suspend granting all other RTL cases involving violations of the law, which will instead be "handled according to relevant laws." Meng also reportedly stated that all RTL detainees will serve out the remainder of their terms and that no one will be sent RTL in 2013 in Yunnan. In March, the new Chinese premier Li Keqiang vaguely referred to a time table for phasing out RTL by the end of this year.

While mostly holding what authorities refer to as "petty criminals", RTL has been a convenient way to punish Chinese citizens who exercise constitutionally-protected civil liberties, including the rights to free expression when criticizing the government, and freedom of religion. Typically, rights activists, members of the banned spiritual sect Falun Gong and underground churches, and petitioners who seek redress for injustice, have been incarcerated in RTL.

How many people have been locked up in RTL and forced to perform hard labor in recent years? The exact numbers are difficult to come by, while Chinese officials have recently provided several inconsistent estimates. According to government data, approximately 170,000 individuals were held in 320 RTL camps at the February 2009 Universal Periodic Review of China's human rights record by the UN Human Rights Council.[5] However, Chinese officials reportedly stated that just over 60,000 detainees were being held in RTL camps in 2012.[6] The changing numbers could be a sign that, under domestic and international pressure, RTL detainees may have been transferred to other detention facilities, or that more people are being sent to "black jails", make-shift illegal holding cells on government property or officially designated facilities, or transferred to "illegal behavior correction" centers, another form of administrative detention.

Although perhaps using RTL less than in the past, Chinese authorities still sent many activists to labor camps in recent months.

For instance, Inner Mongolia petitioner **Song Cuirong (宋翠荣)** was sent to RTL in March for 18 months—reportedly for "undermining the harmony and stability of the Two Meetings" in Beijing[7]—after she was found to be sending instant messages to others to seek help in getting freed from a black jail. Before the Party Congress, Shanghai HRDs **Cui Fufang (崔福芳)** and **Tong Guojing (童国菁)** were each issued one-year RTL punishments in October on charges of "gathering a crowd to disrupt public order." **Mao Hengfeng (毛恒凤)**, a reproductive rights and housing activist from Shanghai, was sent to RTL for 18 months in October after being taken into custody in Beijing, on a charge of "gathering a crowd to disrupt public order." (Based on CHRD's reporting about Mao's detention, international NGOs submitted an appeal for urgent intervention in her case to high-ranking Chinese officials. Mao was subsequently released from RTL in February 2013, reportedly due to her poor health, and ordered to "serve out" her punishment at home.)[8]

Among the most prominent HRDs sent to RTL was **Xiao Yong (肖勇)** of Hunan, who was issued 18 months of RTL in July. In March, Xiao was among several activists detained in Guangzhou for "illegal assembly, procession, or demonstration" for marching and holding signs calling for official transparency and political reforms, and he was later placed under soft detention for questioning the death of **Li Wangyang**. Around the same time that Xiao was punished, Beijing-based artist **Hua Yong (华涌)** was sent to RTL on a charge of "causing a disturbance" for performing an art piece memorializing the Tiananmen Massacre. Reflecting the often nebulous nature of RTL, the precise charges against Xiao and Hua were at first not disclosed to their families or lawyers, neither detainee was given ready access to attorneys, and even the lengths of the punishments were not made immediately clear. (In February 2013, Xiao was released from an RTL facility and required to "serve out" his term at home, though the reason for his release remains unknown.) [9]

As in years past, some officials used RTL to punish some of the most vulnerable members of Chinese civil society: petitioners seeking to lodge grievances or demand compensation to alleviate devastating hardships. In February, **Li Zhongying (李忠英)** of Yunnan Province was given a 21-month RTL detention for "disturbing work order" for seeking compensation for severe injuries caused by a forced birth control surgery ordered by officials in 1994. After she was intercepted in Beijing, **Zhao Guixiang (赵桂香)** of Jilin Province was given 18 months of RTL in March for pursuing justice over a disabling traffic accident. **Liu Li (刘丽), from** Liaoning Province, was given a one-year RTL punishment in May after seeking relief from overwhelming debts. In June, **Dai Yuequan (戴月权)** of Chongqing was sent to serve a 15-month RTL punishment for "disrupting social order" after trying to get compensated for a debilitating work injury. (Dai was released from RTL in December 2012, when his punishment was dismissed.)[10]

Two petitioners whose persecution by authorities dates back to the Cultural Revolution were sent to RTL camps in 2012. **Li Huiyin (李辉银) of Hunan** was given a one-year punishment in January on a charge of "disrupting public order" after petitioning in Beijing. Li had previously served other RTL stints and also a five-year spell in a Reform through Labor camp in the 1970s for allegedly expressing political views. During that lengthy past punishment, Li's leg became disabled in a mine accident and, after he was released, he began petitioning over what had happened to him. In addition, **Zhao Zhenjia (赵振甲)** of Liaoning was issued an 18-month RTL punishment in February, reportedly for organizing a Chinese New Year gathering for fellow petitioners. Zhao was handed a death sentence with reprieve for "counterrevolution" in 1974—for his writings—and went to prison. In 1981, a court declared him innocent of any crime and he was released. Ever since, Zhao has unsuccessfully sought compensation for his unjust imprisonment.[11]

HRDs sent to RTL as part of the Jasmine Crackdown in 2011 remained in labor camps in 2012. **Yu Yunfeng (于云峰)** of Heilongjiang was still serving a two-year term that began in the summer of 2011, on an "inciting subversion" charge for allegedly "spreading rumors against the Party and against socialism." Activist **Yang Qiuyu (杨秋雨)** has been serving a two-year RTL term in Beijing since April 2011. It was learned in 2012 that his wife, **Wang Yuqin (王玉琴)**, was given a 21-month RTL punishment in July 2011, for allegedly "disturbing social order" after organizing others to petition and seeking an explanation for Yang's detention. **Huang Chengcheng (黄成诚)** of Chongqing also continued serving a two-year punishment for "inciting subversion," and even had seven days added to it in May on the purported grounds of "poor performance" in forced labor. Huang reportedly had been unable to complete work tasks due to worsening hand injury suffered during his detention. (Huang was eventually released in December—a few months early—after the RTL decision against him was dismissed.)[12]

Public outrage reached a crescendo with the exposure of the plight of a woman, **Tang Hui (唐慧)**, who was sent to RTL in August 2012 after petitioning about the abduction and rape of her young daughter. Once news about Yang's experience spread online, widespread outrage quickly led to her release. Tang's story inspired a group of Chinese human rights lawyers to send a letter to China's Ministry of Justice and Ministry of Public Security calling for "adjustments" to RTL. Notably, the lawyers' action was reported in official government media, which up to then had largely avoided coverage of RTL. In their letter, the lawyers recommended procedural improvements for hearings, increased openness about secretive decisions, more accountability for RTL authorities, and greater involvement of lawyers in RTL cases, including the right to meet with clients.[13]

Another RTL case that went viral on Chinese cyberspace and was picked up by the Chinese media was that of **Ren Jianyu (任建宇)**, an elected village committee director from Chongqing, who was sent to RTL for two years in September 2011 for "inciting subversion" after using a QQ group and his weibo account to share others' opinions about political reforms. Following the media exposure and pressure generated by public opinion, Ren was released early—in November 2012—in a case that showcased how RTL can be used to punish Chinese citizens who exercise their free speech rights online, especially if they criticize local officials.[14]

Despite even some officials' questioning of RTL's legitimacy and future, Chinese authorities stifled grassroots activism that pushed for an end to the system. Just as one example, in December, police in Hunan issued a death threat to a retired teacher and long-time rights activist, **Luo Hongzhong (罗洪中)**, who was urging petitioners to support an online campaign calling for RTL's abolition. Police reportedly pressured Luo, who himself has served five years in RTL, to cease his advocacy work and to not cause trouble for the local government, warning that they would "find some thugs to get rid of him" if he continued.[15]

In April, disclosures of appalling mistreatment at a Re-education through Labor camp for women in Liaoning Province have triggered reports in Chinese media and heated online discussions, forcing officials to promise an investigation into the revelations. The source of the information—a diary secretly taken out of the Masanjia Women's RTL by a petitioner released from the camp in February—shows how police arbitrarily detained petitioners under the pretext of "maintaining stability" and committed a wide range of horrible abuses in the camp. Interviews with the recently released detainees from Masanjia are documented in a documentary film "The Women of Masanjia Labor Camp" (小鬼头上的女人), made by the director Du Bin. Part of the film, which came out on May 1, is now available on YouTube: http://www.youtube.com/watch?v=sFEl7oophB0. Another documentary film, "Juvenile Laborers Confined in Dabao" (大堡小劳教), released at the same time, provides an overview of RTL and features interviews with people who were put in RTL in their teens in the late 1950's. This movie is also available on YouTube: http://www.youtube.com/watch?v=JeDMpLjlTJs.

According to the diary, the Masanjia Women's RTL accepted pregnant women and disabled individuals, a violation of RTL rules. All detainees there were forced to do strenuous labor for up to 10 or more hours a day, or risked being beaten or given other punishments. Guards chained detainees to chairs or beds and tortured them in hideous ways. The diary said that women were ordered to closely monitor each other while being held under very unsanitary conditions. Detainees were not provided basic nourishment or medical care even after becoming physically and mentally ill, and cancer sufferers were not given medical treatment. The original online story that appeared in official media has been blocked, but other state sites have posted the report. In light of the diary's details, the provincial government has indicated that an investigation would soon be conducted and that the findings would be published.[16] However, Masanjia is not alone: Similar abuses have also been documented in RTL camps across the country.

It is too early to celebrate the end to RTL. One must remain cautiously optimistic about the prospect of RTL's demise, what would take its place, and how effectively it could be phased out. The few officials' comments on reforming RTL so far were either censored or lacked any specifics. The snippets of hints and suggestions leave observers to only speculate about what, if any, solid plans were afoot to alter or do away with RTL. Rather than introducing substantive judicial or legislative changes, the main "reform" referred to by officials disappointingly has appeared to be cosmetic—i.e., renaming RTL as "Illegal Behavior Correction" centers or relocating RTL detainees to "drug rehabilitation facilities," which may mean that extralegal detention would continue as before only under different names. A more solid assurance requires a concrete plans for RTL's demise and no plans for keeping extralegal detention active under any new label.

Let us be reminded that in 2003 the "Custody Station" (收容站) replaced the outlawed "Custody and Repatriation" (收容审查所), which had been used by police to detain migrants, the homeless, petitioners, and dissidents. The abolition of Custody and Repatriation by the State Council followed a national outcry over the beating to death of a migrant, Sun Zhigang (孙志刚), inside a Custody and Repatriation center in Guangdong. Since then, black jails have mushroomed in number, and RTL camps have been put to extensive use to perform the same function of arbitrary detention by police without a trial or access to a lawyer.

Here are a few suggestions for US lawmakers:

US congress should strongly urge the Chinese government to abolish RTL, to steer clear from replacing RTL camps with any other extralegal detention facilities, and to free all of the thousands of detainees from forced labor camps and allow them access to justice in holding their abusers accountable and seeking redress for damage. Such concerns should be raised by the Obama administration at its scheduled annual human rights dialogue and legal expert dialogues with China this year.

Congress should consider impose visa bans and assets freezes on Chinese officials involved in serious human rights abuses, including torture and arbitrary detention in RTL camps, similar to the Magnitsky Act, passed by Congress in December 2012, which places visa bans and freezes assets of Russian officials who committed abuses of human rights.

Congress should urge China to revive its rule of law reform. There can be no meaningful end to RTL and all other forms of arbitrary detention in a country where there is little respect for rule of law.

Thank you!

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[1] For more about RTL, see: CHRD, *Re-education through Labor Abuses Continue Unabated: Overhaul Long Overdue*, February 4, 2009.

[2] ***The New York Times*, "Opposition to Labor Camps Widens in China," December 14, 2012.**

[3] ***China Daily*, "Reforming the system of rehabilitation through labor is necessary," October 11, 2012.**

[4] See news report (in Chinese).

[5] For more information about China's first UPR, see: CHRD, "UN Human Rights Council Universal Periodic Review of China: Summary, Analysis, and Suggestions for Follow-up," February 11, 2009.

[6] See news report (in Chinese).

[7] The "Two Meetings," which take place annually in Beijing during March, refer to the meetings of the National People's Congress and the Chinese People's Political Consultative Conference.

[8] CHRD, "Inner Mongolia Petitioner Sent to RTL for "Undermining Harmony and Stability of Two Meetings," *China Human Rights Briefing March 13-19, 2012*; CHRD, "Shanghai Authorities Detain, Punish Activists Around Party Congress," *China Human Rights Briefing November 3-8, 2012*; **CHRD, "Early Releases of Prominent RTL Detainees May Be Sign of Reform,"** China Human Rights Briefing February 8-15, 2013; **CHRD,** "Shanghai Activist Mao Hengfeng Criminally Detained After Being Seized in Beijing," *China Human Rights Briefing October 18-24, 2012*; World Organisation Against Torture, "China: Ongoing arbitrary detention of Ms. Mao Hengfeng," October 29, 2012.

[9] **CHRD, "Early Releases of Prominent RTL Detainees May Be Sign of Reform,"** China Human Rights Briefing February 8-15, 2013; CHRD, "Hunan Activist Xiao Yong Given 18-Month RTL Punishment," *China Human Rights Briefing July 20-26, 2012*; CHRD, "Artist Hua Yong Sent to RTL Over Tiananmen Massacre Performance Piece," *China Human Rights Briefing July 13-19, 2012*.

[10] CHRD, "Yunnan Petitioner Sent to 21 Months of RTL, Had Been Disabled by Forced Birth Control Surgery," *China Human Rights Briefing February 14-20, 2012;* CHRD, "Disabled Woman Sent to 18 Months of Re-education through Labor for Petitioning," *China Human Rights Briefing April 11-17, 2012*; CHRD, "Liaoning Woman Sent to RTL for One Year After Pursuing Relief From Extreme Poverty," *China Human Rights Briefing May 23-28, 2012*; CHRD, "Disabled Chongqing Petitioner Sent to RTL for 15 Months," *China Human Rights Briefing June 20-26, 2012*; **CHRD, "Early Releases of Prominent RTL Detainees May Be Sign of Reform,"** China Human Rights Briefing February 8-15, 2013.

[11] CHRD, "Henan Petitioner Sent to RTL for Third Time, Punishments Date to Cultural Revolution," *China Human Rights Briefing January 17-23, 2012*; CHRD, "Man Given 18 Months of RTL After Organizing Spring Festival Gathering for Fellow Petitioners," *China Human Rights Briefing February 21-27, 2012*.

[12] CHRD, "Early Releases of Prominent RTL Detainees May Be Sign of Reform," China Human Rights Briefing February 8-15, 2013; CHRD, "'Jasmine Crackdown' Detainee Languishes in Labor Camp," *China Human Rights Briefing July 7-12, 2012*; CHRD, "Beijing Activist Wang Yuqin Reportedly Serving 21-Month RTL Sentence," *China Human Rights Briefing February 14-20, 2012*.

[13] **CHRD,** "Lawyers' Call for "Adjustments" to RTL Covered in Official Media," *China Human Rights Briefing August 10-16, 2012*; *Caijing*, "Re-education Through Labor Reform Hits Critical Point," August 28, 2012.

[14] For more on Ren Jianyu's case, see: **CHRD,** "Chongqing Official Serving RTL for Online Posts, Lawyer's Visit Blocked," *China Human Rights Briefing August 17-23, 2012*; **CHRD,** "Media Coverage of RTL Case Adds to Public Debates on Extralegal System & Violations of Speech Rights," *China Human Rights Briefing September 6-12, 2012*; *The Telegraph*, "Chinese official speaks out after being jailed for

criticising Bo Xilai," November 22, 2012.

[15] CHRD, "Hunan Police Makes Death Threat to Activist for Campaigning to Abolish RTL," *China Human Rights Briefing December 6-13, 2012*.

[16] "Witnesses Of Punishments in Masanjia Women's Re-education through Labor Camp" (马三家女子劳教所的肉刑证人——写在口述纪录片《小鬼头上的女人》完成之际), April 10, 2013, Boxun; "Liaoning Government Organizes Group to Investigate Masanjia Women's Re-education through Labor Camp" (辽宁组成调查组调查马三家劳教所一事), April 8, 2013, People's Daily; "Revealing Masanjia Women's Re-education through Labor Camp" (揭秘辽宁马三家女子劳教所：坐老虎凳绑死人床), April 8, 2013, Beijing Times;"Revealing Masanjia Women's Re-education through Labor Camp" (揭秘辽宁马三家女子劳教所：坐老虎凳绑死人床), April 7, 2013, Sina.com

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PREPARED STATEMENT OF HARRY WU

MAY 9, 2013

INTRODUCTORY REMARKS

Thank you for inviting me to speak before the Commission today. As a survivor of China's brutal system of forced labor camps, the issue of laojiao reform is particularly meaningful to me. Ever since arriving in the US in the mid-1980s, I have fought tirelessly to expose the reality of forced labor camps in China. The CECC has also played a valuable role in raising awareness of this pressing issue, and I am tremendously grateful for their work in this regard.

As you are all aware, Chinese government officials have expressed intent to reform the laojiao system. Although I welcome changes to this horrible system, we must place proposed laojiao reforms in context. We must remember that the laojiao has long been an integral component of the Communist Party's efforts to imprison dissidents and maintain political stability. In addition, we need to recognize that the laojiao is only one part of a larger system of arbitrary detention institutions. In light of these realities, we must ask whether proposed reforms represent a genuine attempt to align the Chinese criminal justice system with international norms or just another effort to maintain stability in the face of mounting societal pressure to abolish this repressive system.

HISTORY OF FORCED LABOR IN CHINA

All authoritarian governments employ repressive tools in an attempt to maintain and project power. The Soviet Union relied on the gulag. Nazi Germany established a vast network of concentration camps. In China, the government has long relied on a system of labor camps to jail dissidents who threaten political stability.

The Chinese government initially established two networks of labor camps: laogai camps and laojiao camps. Although conditions in laogai and laojiao camps were substantially similar, laogai camps were reserved for convicted criminals, whereas laojiao camps served as jails for political dissidents and suspected petty criminals. In 1994, Chinese authorities proclaimed an end to the laogai system when they changed the name of these facilities to "jails." The government continues, however, to openly use laojiao camps.

The origins of Chinese labor camps can be traced to the Soviet gulag. In the early 1950s, Soviet security officials helped their Chinese comrades design a system of labor camps capable of jailing large numbers of dissidents. In addition to isolating troublemakers from the rest of society, these camps functioned to transform class enemies and criminals into "new socialist beings" through a combination of hard labor and thought reform.

Early laojiao camp inmates arrived in three waves: The first wave arrived in 1956 and consisted of an estimated 200,000 counterrevolutionaries. This label was applied to former bureaucratic officials under the Nationalist government and others deemed counterrevolutionaries during the early years of communist rule. The second wave of labor camp inmates took place from 1957 to 1958. These prisoners were mostly "rightists" who were arrested during the "Anti-Rightist Movement." The third wave occurred a couple of years later and was comprised of millions of peasants who had moved to cities from the countryside in search of food and work. Chinese cities were unable to cope with this influx of peasants, so the government decided to incarcerate these people in labor camps.

Early laogai inmates were issued sentences of indefinite duration. In 1960, however, the government limited laogai sentences to a maximum of three years. Despite the imposition of sentencing limits, many inmates toiled in laogai camps long after the expiration of their sentence.

Although many inmates remained in labor camps throughout the 1960s and 1970s, reliance on the laogai and laojiao as a means to jail criminals and dissidents waned during the madness of the Cultural Revolution. In 1979, however, Deng Xiaoping reinstituted the labor camp system in order to deal with increasing social unrest that accompanied economic reforms. At the same time, Deng limited the length of laojiao sentences to four years. Prior to 1979, laojiao sentences were of indefinite duration.

Today, an estimated 300–400 labor camps exist in China. These camps jail an estimated 200,000–300,000 inmates. Although the Chinese government has increasingly used laojiao camps to incarcerate petty criminals, a large number of laojiao inmates are petitioners and political dissidents. In addition, individuals incarcerated in laojiao camps are jailed without trial. Laojiao inmates are forced to perform hard labor for long hours and are often subjected to vicious beatings and other forms of abuse. In addition to laboring, inmates are forced to attend lengthy, daily study sessions during which they are subjected political indoctrination. Food rations at laojiao camps are meager, and inmates are routinely denied timely medical care.

PROSPECTS FOR MEANINGFUL REFORM

Laojiao camps exist in modern China despite the fact that the practice violates protections outlined in the Administrative Punishments Law, the Criminal Procedure Law, and the Law on Legislation, each of which prohibits the arrest and incarceration of an individual in the absence of authorization from the People's Procurate. Moreover, imprisoning an individual for exercising fundamental human rights undermines protections outlined in the Chinese Constitution. Laojiao inmates, however, are incarcerated at the whim of public security forces without even the pretense of due process protections, often for engaging in constitutionally protected activities. Despite these foundational legal protections, Ministry of Public Security regulations and State Council decisions provide the hollow legal justification for the continued use of laojiao labor camps. This supremacy of patchwork regulations over duly enacted laws and constitutionally protected rights exemplifies the dominant position of public security forces in China's criminal justice system. It is this disproportionate power granted to public security forces and their mission of maintaining political stability that serves as the greatest obstacle to rule of law reform in China.

In addition to facing resistance from public security forces, laojiao reform has been hampered by the reluctance of Chinese authorities to formally recognize past oppression perpetrated by the Party. Abolishing laojiao camps would vindicate criticism leveled against the Party for its historical reliance on labor camps as a means to suppress dissent. In addition embarrassing Party leaders, such an admission might prompt an influx of lawsuits seeking compensation for past labor performed and suffering endured. Despite indicating willingness to reform laojiao camps, it is not clear that the Party is prepared to accept the consequences of abolishing the laojiao system.

It is also important to note that the laojiao is only one component of China's vast system of arbitrary detention institutions. In addition to laojiao camps, authorities imprison individuals in facilities such as black jails, psychiatric hospitals, law education classes, military prisons, juvenile detention facilities, and the shuanggui system of punishment for Party members. Moreover, Chinese courts sentence political dissidents to lengthy prison sentences in violation of international human rights standards. Although providing a pretext of legality, such sentences are often issued in the absence of meaningful due process protections. Thus, the reform or even abolition of laojiao camps will not alter the arbitrary character of the countless politically motivated detentions imposed by Chinese authorities each year. Meaningful reform to China's criminal justice system would require the creation and empowerment of an independent judicial system committed to upholding substantive rule of law principles.

Instead of signaling an intention to more closely align China's criminal justice system with international rule of law norms, laojiao reform is likely an attempt to maintain stability in the face of mounting societal pressure to end this specific relic of Maoist repression. In the end, laojiao reform proposals represent nothing more than a substitute for meaningful political change.

RECOMMENDATIONS

(1) The US Congress should pass a resolution condemning the laojiao system and encouraging the Chinese government to completely abolish the use of labor camps to punish non-criminal offenders.

(2) The US Congress should work to raise awareness of other forms of arbitrary detention still in use by the Chinese Communist Party.

(3) The US Congress should pass a resolution in solidarity with the growing international movement to urge the Chinese government to ratify the International Covenant on Civil and Political Rights. The ICCPR explicitly forbids the practice of arbitrary detention, and China signed the treaty in 1998.

PREPARED STATEMENT OF CHRISTOPHER SMITH, A U.S. REPRESENTATIVE FROM NEW JERSEY; COCHAIRMAN, CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

MAY 9, 2013

Over the past several months, the Chinese government has suggested that reforms might soon come to China's brutal reeducation through labor (RTL) system. Under the current RTL system, Chinese officials can order Chinese citizens to be held in reeducation through labor centers for up to four years without a trial or legal representation. There are no judges, no defense attorneys, and no prosecutors. If the public security forces want to detain an individual for years without any judicial review, they have authority to do so. Detainees have little recourse.

China's police forces have used this administrative system for decades to target "minor offenders," whose crimes fall beneath the threshold of the Criminal Law. And, while the RTL system was created to "educate" minor offenders, Chinese police officials frequently use RTL to punish, among others, petitioners, dissidents, drug users, sex workers, Falun Gong practitioners, and individuals who belong to religious groups not approved by the government. The unchecked decisionmaking power has given China's police forces an extra cudgel to wield against a range of so-called troublemakers and those brave citizens wiling to advocate for change.

Once held within the RTL system, detainees are faced with a grim reality. They are forced to work long hours for little pay, often in unsafe working conditions. In addition, the detainees are sometimes subject to harassment or torture by officials—and even beatings by other inmates seeking shortened sentences. An April 2013 investigative article in a Chinese magazine highlighted cruel conditions in one of these camps. In the report on the Masanjia RTL detention center in northeast China's Shenyang city, ex-detainees described a range of abuses, including harsh restraints, electric shocks, extended solitary confinement, and forced labor.

It is a nightmare that tens of thousands of Chinese citizens live with every day.

Of course, China's RTL system is not the country's only forced labor camp system. Prison inmates, throughout China, continue to be subjected to forced labor and harsh working environments. I recall one of my earliest visits to Beijing, where I was able to visit Beijing Prison No. 1, one of hundreds of the vast Laogai system, where jelly shoes and socks were being made for export. We saw factory workers' heads shaved, very gaunt, and at least 40 Tiananmen Square activists in large vats with dye all over their bodies. Obviously, the dye is penetrating their skin and being absorbed into their systems. And we complained to the Administration that we knew, because we brought back the socks and the jelly shoes, that were being made by convict labor, including political prisoners, and it was showing up on our shores. An import ban was imposed and that place shut down, although I am sure they just relocated.

In recent months, stories of harsh work conditions and wrongful detentions have sparked public outrage and intensified calls for reforms. In response to controversial cases, Chinese citizens have taken to the Internet to voice opposition to the RTL system and to the corrupt practices. Citizens have also used popular social media and microblogging Web sites to express support for those detained unjustly. Even China's state-run publications have questioned the RTL system and its abuses. In response to the case of a young village official ordered to two years of RTL, the Global Times—an official publication under the People's Daily—wrote, "It's worrying that people can still be punished for expressing or writing critical thoughts in modern China. Ren's case is not an isolated one."

Officials appear to be listening. In March, China's new Premier Li Keqiang told a press conference in Beijing that RTL reforms may be unveiled before the end of the year. Other officials at lower-levels have similarly voiced support for RTL reforms or voiced their expectations for a timely end to this brutal system.

Still, today, tens of thousands of people languish in China's 350 RTL detention centers. Rhetoric is not enough.

China's new leaders should now act immediately to end reeducation through labor for once and for all. And, if they can have the courage to end this brutal and senseless system of arbitrary punishment, we commend them.

But, let's not forget: RTL orders are not the only form of arbitrary detention in China. Officials routinely use home confinement, harassment, torture and unofficial holding centers to silence those seeking to advocate for human rights or expose official abuses. Without a doubt, the outdated and cruel RTL system should be abolished immediately; however, the other forms of arbitrary detention and official harassment must end, as well.

Over the past few months, we have witnessed increasingly loud calls for reform and justice throughout China, as citizens have bravely and publicly called for an end to this arbitrary system of punishment and cruelty. Today, we are fortunate to have four expert panelists who can give us further insights into these developments and the potential for RTL reform. We look forward to hearing about the prospects for RTL reform and for other reforms that could end the arbitrary detention of Chinese citizens.