

2000

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### Recommended Citation

Pejan, Ramin. "Laogai: Reform Through Labor in China." Human Rights Brief 7, no. 2 (2000): 22-23, 27.

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## Laogai: "Reform Through Labor" in China

by Ramin Pejan\*

### Introduction

*Laogai*, which translates from Mandarin to mean "reform through labor," is the Chinese system of labor prison factories, detention centers, and re-education camps. Mao Zedong created the system in the early 1950s, modeling it after the Soviet *Gulag*, as a way to punish and reform criminals in a manner useful to the state, producing thought reform and economic gain. The *Laogai* system is still in place today and continues to deprive individuals of basic human rights. An individual's mere association with groups unpopular with the People's Republic of China (PRC) government can result in the individual being sent to a reform institution in the *Laogai* system, through a process that deprives the person of due process rights. Once inside the *Laogai*, prisoners are subject to cruel and degrading treatment and oftentimes torture. These human rights abuses violate both Chinese and international human rights norms.

### The Laogai System

The *Laogai* system consists of three distinct categories of reform: convict labor (*Laogai*), re-education through labor (*Laojiao*), and forced job placement (*Jiuye*). The *Laogai* Research Foundation, a non-governmental organization (NGO) in the United States, estimates that there are almost 1,100 labor institutions in the *Laogai* system with an estimated 6.8 million inmates.

*Laogai*, the most common type of reform, exists for prisoners convicted of crimes under the Chinese Criminal Code. Article 41 of the criminal code states that anyone sentenced for a crime "who is able to work, shall undergo reform through labor."

The PRC uses *Laojiao* to detain individuals it feels are a threat to national security or it considers unproductive. Individuals in *Laojiao* may be detained for up to three years. Because those in *Laojiao* have not committed crimes under PRC law, they are referred to as "personnel" rather than prisoners and they are not entitled to judicial procedure. Instead, individuals are sent to the *Laojiao* following administrative sentences dispensed by local public security forces. This vague detainment policy allows the PRC to avoid allegations that the individual's arrest was politically motivated and to assert that they were arrested for reasons such as "not engaging in honest pursuits" or "being able-bodied but refusing to work."

Finally, *Jiuye* is used by the PRC to keep individuals under government controls after the person's release from a labor camp. The *Jiuye* requires former detainees of the *Laogai* to live and work in specifically assigned locations. Under this policy, 70 percent of prisoners are held within the prison camp to continue working after completing their sentences.

Each *Laogai* camp has both a camp name and a public name. For example, the Shanghai Municipal Prison is also called the Shanghai Printing, Stationery Factory. Financial information on 99 forced labor camp enterprises collected by Dun and Bradstreet was released on June 30, 1999. According to this data, the 99 camps had total annual sales of U.S.\$842.7 million. These camps represent only 9 percent of the roughly 1,100 known *Laogai* camps. The extremely cheap cost of labor in the *Laogai* system creates a very low-priced, competitive product to export, providing the PRC additional incentive to continue its use of the *Laogai* system.

### Conditions in the Laogai System

Much of the information about the *Laogai* system comes from former prisoners, who describe camp conditions as inhumane. Former prisoner Tong Li stated: "The worst incident occurred after I refused to work more than the eight hour maximum day mandated by Chinese Law. At that time I was beaten by a group of inmates instructed by the police guards in the labor camp. I was not allowed to talk with other detainees in that labor camp. I had no access to newspapers, television or radio. My food rations were minimal." Other prisoners have testified to similar treatment.

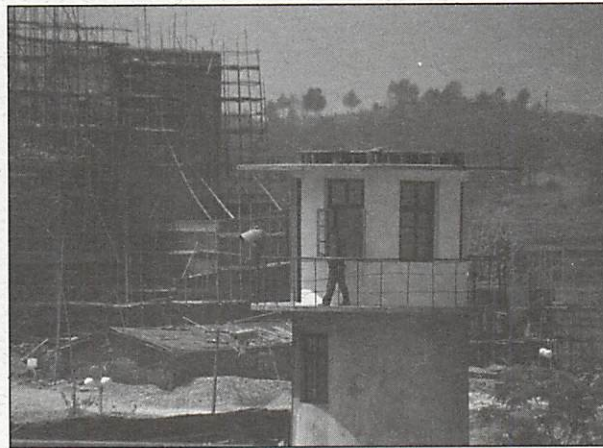
According to Harry Wu, the Executive Director of the Laogai Research Foundation, prisoners in both the *Laogai* and the *Laojiao* are given only one uniform and one pair of rubber and plastic gloves each year. They are fed three times a day, but the quantity of food depends on their daily performance and the quality of the food is poor, consisting mostly of corn gruel and corn bread. Prisoners often labor 12 hours per day or more, working at farms, mines, and different types of prison factories that manufacture a wide array of products for foreign and domestic markets.

After completing the workday, inmates usually have a two-hour study period where they must read and listen to communist teachings. The camps are often overcrowded and it is common for two prisoners to sleep in the same bed and for 200 prisoners to share six showers within a half-hour period of clean-up time. While *Laogai*

system officials claim that all prisoners have the right to prompt medical treatment, Human Rights in China, a Chinese-American NGO that investigates *Laogai* conditions, reports that proper, adequate, and timely medical care is a serious problem. In particularly dangerous situations, detainees work with toxic chemicals and are rarely allowed to wash their hands, even before eating. In sum, the conditions of the *Laogai* camps are hazardous and debilitating.

### Applicable Chinese Law

Although Article 35 of the Chinese Constitution guarantees Chinese citizens "freedom of speech, of the press, of assembly, of association, of procession and of demonstration," the PRC has curtailed these freedoms on several occasions. For example, on October 25, 1998, China's State Council promulgated two sets of regulations, one entitled Regulations on the Registration and Management of Social Groups, and the other, Provisional Regulations on the Registration and Management of People-Organized Non-Enterprise Units. The new laws had the following effects: (1) the number of legal requirements and time necessary for establishing a social group were increased; (2) Chinese authorities were allowed more leeway to forbid the registration of selected groups; (3) the involvement of people in social groups who have had their political rights removed was forbidden; (4) the controls that can be placed on groups by their "official government sponsors" were increased; and (5) government funding provided for new groups was limited. It should be noted that even prior to the implementation of the new set of regulations, Chinese law required all independent groups to register with the Chinese government. These regulations result in the PRC denying its citizens their right to association and allow the government to detain its citizens in the *Laogai* under unconstitutional terms.



Zhejiang Qiaosi Farm, or Zhejiang No. 5 prison.

Harry Wu, Laogai Research Foundation



*Laogai*, continued from previous page

In addition to promulgating regulations that conflict with Chinese constitutional provisions, the PRC also crafted its criminal code to allow the detention of individuals for an undefined array of activities it considers politically threatening. For example, in 1997, the PRC redrafted its 1979 criminal code, broadening the scope of what constitutes a counterrevolutionary crime. Under the 1979 criminal code, counterrevolutionary crimes were defined as "all acts endangering the People's Republic of China committed with the goal of overthrowing the political power of the dictatorship." When the crime was renamed "endangering state security" under the 1997 criminal code, an explanation of what constituted endangerment was not provided. As a result, the PRC may now criminalize activities it interprets as threatening state security.

The PRC also broadened Article 91 of the 1979 criminal code, which previously mandated that an individual could be found guilty of collusion when he or she conspired "with foreign states to harm the sovereignty, territorial integrity, and security of the PRC." Article 102(1) of the 1997 code broadens this crime by adding "foreign institutions, organizations, and individuals" to accompany "foreign states" as entities with which one cannot collude. This broadening of the scope of crimes, along with the ambiguous language of the code, allows the PRC to regulate more public activities, and gives courts wide latitude to interpret a multitude of activities as criminal activities and detain more people in the *Laogai* system.

The conditions of *Laogai* camps are also in non-compliance with policy statements issued by the PRC, such as the White Paper on Human Rights, an official document issued by the PRC government in November 1991 setting forth the PRC's human rights policy. Although the White Paper guarantees prisoners the right to personal dignity and personal security, the U.S. State Department has indicated that the *Laogai* is not in compliance with these provisions. In its China Country Report on Human Rights Practices for 1998, the U.S. State Department noted that conditions in *Laogai* penal institutions for both political prisoners and common criminals are harsh and degrading. The report goes on to note that prisoners are tortured with pain inflicting devices such as cattle prods and electrodes. This treatment clearly denies prisoners their rights to dignity and personal security as set forth in the PRC's White Paper on Human Rights. The White Paper also states that convicts shall not work more than eight hours per day and should receive the same amount of food that ordinary employees of state-run industries receive when doing similar work. According to the *Laogai* Research Foundation, however, many ex-prisoners testify that they worked 12 to 14-hour days, and consumed a very poor diet lacking important nutrients.

#### Violation of International Law and Standards

In addition to not complying with the PRC's domestic standards, the *Laogai* system is also in violation of international law. Both the Universal Declaration on Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) include the rights to due process and freedom from cruel, inhuman, or degrading treatment. In addition, the Convention Against Torture prohibits torture in all cases.

**Violations of the UDHR and ICCPR.** All of the member states of the United Nations, including the PRC, have adopted the UDHR. The PRC signed the ICCPR in October 1998, but has not ratified it; however, 94 countries have ratified the ICCPR, supporting the position that particular provisions in the document, such as due process rights and freedom from cruel, inhuman, or degrading treatment, are customary international law. For this reason, the PRC is arguably bound to uphold these standards.

Both the UDHR and the ICCPR provide for the right to due process, including an adequate defense. Article 11(1) of the UDHR states that an individual has the right to "a public trial at which he has had all the guarantees necessary for his defence." Article 14 of the ICCPR provides that anyone who has a criminal charge brought against them shall "have adequate time and facilities for the prepa-

ration of [their] defense and to communicate with counsel of [their] own choosing." Article 14(3)(b) of the ICCPR adds that all persons charged shall have adequate time and facilities for the preparation of their defense, and shall have the right to communicate with counsel of their choosing. Although *Laogai* detainees are given a trial, they may be appointed defense counsel only seven days before. This short time before trial often does not allow for the preparation of an adequate defense. Moreover, appointed counsel are usually agents of the state and rarely present evidence on behalf of their clients. Detainees are not entitled to the presumption of innocence and may not be given an opportunity to present evidence in their own defense. Article

The *Laogai* system consists of three distinct categories of reform: convict labor (*Laogai*), re-education through labor (*Laojiao*), and forced job placement (*Jiuye*).

14(2) of the ICCPR and Article 11(1) of the UDHR states that everyone charged with a criminal offense shall have the right to be presumed innocent until proven guilty according to the law.

Furthermore, *Laojiao* detainees receive no judicial process. Those who come before *Laojiao* administrative boards are not provided the right of counsel or the right to have the legitimacy of their detentions reviewed by a judicial authority. In addition, Article 9 of the ICCPR and Article 9 of the UDHR prohibit arbitrary arrest or detention. *Laojiao* detainees, however, are oftentimes arbitrarily detained without being accused of a criminal offense.

The ICCPR and UDHR also address standards of treatment for prisoners. Article 7 of the ICCPR and Article 5 of the UDHR both state: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Article 10 of the ICCPR adds that "[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person." Acts occurring inside the *Laogai* system that violate these provisions include excessive amounts of work, poor nourishment, and lack of proper medical care. Former prisoners' testimonies describe a wide variety of degrading activity that takes place in *Laogai* camps. For example, instances have been reported where prison guards beat and starve inmates for stealing small amounts of food or for hiding Western "democratic" books.

**Violations of the Convention Against Torture.** Although China ratified the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT) in 1985, it made a declaration under Article 28 of the CAT that it would not recognize the competence of the Committee Against Torture, the UN body that oversees compliance with the CAT, to investigate allegations of widespread torture within its boundaries. Nonetheless, by ratifying the remaining provisions of the CAT, the PRC is bound to follow the convention. Article 1 of the CAT defines torture as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person." Under Article 1, the use of torture is prohibited as either a means of punishment or intimidation. Although Article 1 does not apply to pain and suffering arising from, inherent in, or incidental to lawful sanctions, the article still applies to the *Laogai* system because the PRC currently detains people in the *Laojiao* despite no formal judicial sanctions being levied against them. When *Laojiao* "personnel" are treated as regular prisoners and subjected to severe pain or suffering, the PRC violates the CAT. The U.S. State Department, personal testimonies from former prisoners of the *Laogai*, and organizations such as the *Laogai* Research Foundation have documented torturous treatment in the *Laojiao* system.

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According to Yakir, this case is one of the most important cases in Israeli legal history. The decision of the Supreme Court surprised many civil rights advocates because of the sweeping rhetoric it employed. In the opinion, rendered amid hostile public opinion against limiting GSS authority, the Supreme Court stripped the GSS of the wide latitude the government previously allowed the service. The Court held the GSS did not have the authority to use physical force against prisoners, stating that GSS interrogators had no more power than regular policemen.

Israeli Prime Minister Ehud Barak subsequently has appointed a committee of jurors to study the decision and make recommendations on its implementation. Yakir testified before this committee in November 1999. He stated that ACRI opposed any legislation that would authorize the GSS to use force during interrogation. He urged the committee to legislate a specific prohibition against the use of torture.

Though he believes the Supreme Court decision is an extremely important victory, Yakir still maintains that the battle against torture is not over. Recently, the opposition party *Likud* introduced a private bill in the *Knesset* to authorize the GSS to use special means of interrogation in certain emergency situations. Such a bill, if passed, would threaten the progress made in the area of torture.

Yakir feels privileged to work as a lawyer with ACRI because he can devote his time to worthwhile cases. Although his work can be frustrating at times, Yakir obtains great satisfaction from it. He looks forward to continuing his crusade for greater protection of civil rights and liberties in Israel. Currently, Yakir is working on another case involving the GSS use of torture against detainees, this time, in the *Al Khaim* prison in South Lebanon. Although Israeli troops are visibly present in South Lebanon, Israel denies any responsibility for the human rights violations occurring in the prison. On behalf of ACRI, Yakir has filed a petition asking the Israeli Supreme Court to order the Minister of Defense to release the detainees or allow them their due process rights. It is Yakir's hope that a victory in this case would force Israel to take responsibility, under international law standards, for the enforcement of human rights in South Lebanon. ☉

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submitted to the CIE, which assesses whether the state party failed to comply with its obligations under the Charter or Revised Charter and drafts a report for the Committee of Ministers. The Committee of Ministers may then issue a recommendation to the party if it agrees with the assessment of the CIE. To date, only 8 of the 41 member states of the Council of Europe have ratified the 1995 Additional Protocol. Although the Revised Charter also relies primarily on government reports for monitoring and enforcement, it provides that where a Contracting Party has ratified the 1995 Additional Protocol on collective complaints, it will continue to be bound by that protocol. The Revised Charter also provides that Contracting Parties that have not ratified the collective complaints protocol, may accept the supervision of this protocol upon notification to the Secretary General.

#### Future of the Revised Charter

The Revised Charter has suffered from a remarkable lack of publicity, which threatens public and political commitment to the aims it delineates. There are a significant number of treaties and declarations addressing the subject of social and economic rights, such as the UN Universal Declaration of Human Rights, the UN International Covenant on Economic, Social and Cultural Rights, and various ILO Conventions. The Charter and the Revised Charter have as yet failed to fully distinguish themselves from these documents. Whether the Revised Charter will ever realize its proper significance is uncertain, depending largely on the extent to which Council of Europe member states ratify it. Economic prosperity in Europe, which is fueled by the New Economy resulting from recent advances in technology, may also highlight the importance of the provisions of the Revised Charter in securing social and economic benefits to all Europeans. As Peter Leuprecht eloquently stated at the May 1997 colloquy, "The reality of the world we live in shows us that it is only if all fundamental rights in it are guaranteed, civil and political rights as well as economic, social and cultural rights, that man can have a dignified existence." ☉

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#### Ending the Laogai System

Aside from the PRC's obligations to eliminate the *Laogai* system, nations other than the PRC should stop importing products manufactured with forced labor in the *Laogai*. The United States is one country that is currently making an effort to stop importing such products. In 1992, for example, the governments of the United States and PRC signed a Memorandum of Understanding (MOU) prohibiting trade in prison labor products. Two years later, the two countries signed a Statement of Cooperation which detailed specific working procedures for the implementation of the MOU. Unfortunately, enforcement of the MOU thus far has proved largely unsuccessful. In 1998, for example, U.S. customs officials attempted to pursue eight standing requests to visit sights they suspected of manufacturing prison labor products. The Chinese Ministry of Justice, however, refused access on the grounds that *Laogai* inmates are not technically prisoners, and thus the MOU did not apply.

There are currently a number of organizations that are actively campaigning against the continued use of the *Laogai* system and many critics also have requested that the United Nations establish a special

tribunal to investigate *Laogai* activities. Harry Wu and the Laogai Research Foundation are leading this fight. Wu has returned to China numerous times in order to document the current conditions and continued abuses occurring in the *Laogai* system.

#### Conclusion

The *Laogai* system continues to be a major concern to many human rights organizations and countries around the world. The manner in which the PRC places individuals in the *Laogai* system and the conditions of the camps violate Chinese law and international standards. One way in which *Laogai* can be countered is by further educating the international community about abuses that take place in the system. On September 17-19, 1999, for example, the Laogai Research Foundation presented a conference, "Voices from *Laogai*," at American University in Washington, D.C. The conference included numerous survivor testimonies. Only through continued perseverance by the international community and organizations such as the Laogai Research Foundation will the *Laogai* system ever come into compliance with international human rights norms. ☉

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