

**Refugee Review Tribunal
AUSTRALIA**

RRT RESEARCH RESPONSE

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Questions

- 1. Can you check if Regulations on Re-education exist?**
 - 2. What does section 10 say?**
 - 3. Can you find any penalties?**
- A copy of the said document plus translation is on file.**

RESPONSE

1. Can you check if these Regulations on Re-education exist?

The regulations translated as “Regulations on Re-education-through-labour Program (Trial)” in the documentation provided appears to refer to the *Trial Methods for Implementation of Reeducation through Labour* approved in January 1982. The name of the regulation has also been translated as the “*Temporary Measures on Re-education through Labour*”, as well as “pilot methods” and “pilot scheme”. Sources report that the regulation is one of three documents that form the main basis for Re-education through Labour (RETL). However, sources have also indicated that the “Trial Methods” regulation is not a law and may be considered to be administrative legal regulations or departmental regulations.

Highlighted on the attached in the Chinese-language document provided (at Attachment 1) are the Chinese characters for “Regulations on Re-education-through-labour Program (Trial)”. These characters are the same as 劳动教养试行办法 (laodongjiaoyang shixing banfa) translated as “Trial Methods for Implementation of RTL [Re-education through Labour]” in a Chinese Human Rights Defenders (CHRD) report (at Attachment 2) (‘Yichang Municipal People’s Government: Re-education-through-labor Program Administrative Commission’ – Attachment 1; Chinese Human Rights Defenders 2009, *Re-education through*

Labor Abuses Continue Unabated: Overhaul Long Overdue, 4 February, p.61/footnote 8 http://docs.law.gwu.edu/facweb/dclarke/public/CHRD_RTL_Report.pdf – Accessed 16 February 2009 – Attachment 2).

With the assistance of a Chinese-speaking Tribunal officer and Google Translate¹ the attached Chinese-language document, “Trial Methods for Implementation of Reform through Labour”, was accessed on the Yichang Government website. A Google translation is also included at the end of the document

(‘国务院关于转发公安部制定的劳动教养试行办法的通知’ [‘State Council on Forwarding the Ministry of Public Security established the pilot scheme of re-education through labor NOTICE’] (Approved 21 January 1982) 2007, Yichang Government website, 6 July http://www.yichang.gov.cn/art/2007/7/6/art_472_54712.html – Accessed 16 February 2009 – Attachment 3).

Also, the six subsections of Article 10 highlighted in the Google translation (at Attachment 3) are similar to information in the CHRD report and at p.197 in Sarah Biddulph’s book *Legal Reform and Administrative Detention Powers in China*. Biddulph names the source for the information as the *Temporary Measures on Re-education through Labour* (Chinese Human Rights Defenders 2009, *Re-education through Labor Abuses Continue Unabated: Overhaul Long Overdue*, 4 February, p.6

http://docs.law.gwu.edu/facweb/dclarke/public/CHRD_RTL_Report.pdf – Accessed 16 February 2009 – Attachment 2; Biddulph, Sarah 2007, *Legal Reform and Administrative Detention Powers in China*, Cambridge University Press, Cambridge, p.197 – Attachment 4).

CHRD and Human Rights in China (HRIC) reports note that the *Trial Methods for the Implementation of Reeducation through Labor* was promulgated by the Ministry of Public Security and approved by the State Council in 1982. The “Trial Methods” is one of three documents that form the main basis of the RETL system. The other two documents are the “Decision of the State Council Regarding the Question of Reeducation Through Labor”, promulgated in 1957, and the “Supplementary Decision of The State Council for Reeducation Through Labor”, promulgated in 1979 (Hung, Veron Mei-Ying 2003, ‘Reassessing Reeducation Through Labour’, *China Human Rights Forum*, No. 2, pp.36-37, Human Rights in China website http://www.hrichina.org/fs/reportables/pdf/crf/vhung.pdf?revision_id=9045 – Accessed 16 February 2009 – Attachment 5; Chinese Human Rights Defenders 2009, *Re-education through Labor Abuses Continue Unabated: Overhaul Long Overdue*, 4 February, p.5 http://docs.law.gwu.edu/facweb/dclarke/public/CHRD_RTL_Report.pdf – Accessed 16 February 2009 – Attachment 2).

Biddulph writes on the “Temporary Measures” in which “the targets of forced labour and detention for investigation were incorporated into the scope of RETL [Re-education through Labour]” as follows:

The second document is the *Temporary Measures on Re-education through Labour* (‘*Temporary Measures*’) which was approved and issued by the State Council in January 1982. In redefining the targets of RETL in the *Temporary Measures*, the MPS [Ministry of Public Security], after investigation, determined that the previous definitions of targets were too vague, did not suit the current public order situation and were not easy to implement. Since its passage, the scope of targets has been amended by numerous documents, though the

¹ Google translations can often be poor and can contain errors – as such they give only a rough indication of the contents of a document. For any further reliance on this information, a better translation should be obtained.

Temporary Measures officially remain the basic definition of targets for re-education (Biddulph, Sarah 2007, *Legal Reform and Administrative Detention Powers in China*, Cambridge University Press, Cambridge, pp.196-197 – Attachment 4).

The Laogai Research Foundation, although not mentioning the 1982 “Trial Methods” document, states on RETL:

[2] Laodong Jiaoyang (Laojiao): Reeducation through Labor

According to the 1957 law Laodong jiaoyang, commonly abbreviated as Laojiao, is an administrative type of reform designed to “reform idle, able-bodied people who violate law and discipline and who do no decent work, into new people, earning their own living” and “to further strengthen social order and enhance socialist construction.” Legal proceedings are not needed to sentence an individual up to three years in the Laojiao. Family members and employers can recommend people for reeducation, but usually it is local police that decide the Laojiao term. Because Laojiao inmates are not considered convicted criminals, they are not counted as prisoners in official numbers or covered by international treaties. Moreover, the goods they are forced to produce are not addressed in bilateral trade agreements regarding forced labor products.

The 1979 amendments to the “Measures for Reeducation through Labor,” clarified which categories of people should undergo reeducation through labor:

Counterrevolutionaries and anti-Party, antisocialist reactionaries, whose crimes are minor and not subject to criminal prosecution, and who have been dismissed by government offices, organizations, enterprises, schools or other units and have no way to make a living (The Laogai Research Foundation 2006, *Laogai Handbook 2005-2006*, October, pp.17-18 – Attachment 6).

Sources also indicate that the “Trial Methods”/“Temporary Measures” regulation is not a law.

The CHRDR reported:

However, the “Decision” and “Supplementary Regulations” are both types of State Council regulations approved by the NPCSC [National People’s Congress Standing Committee] and, as such, are different from national laws formulated and passed by the NPC [National People’s Congress] or the NPCSC (Then there is the general problem that the NPC is not a truly independent parliament but functions merely as a rubber-stamp for the CCP [Chinese Communist Party] Politburo, even if it may have gained a small measure of autonomy only in recent years). Furthermore, “Trial Methods”, which has become the main basis of the RTL system, is definitely not a law (Chinese Human Rights Defenders 2009, *Re-education through Labor Abuses Continue Unabated: Overhaul Long Overdue*, 4 February, p.7 <http://docs.law.gwu.edu/facweb/dclarke/public/CHRD RTL Report.pdf> – Accessed 16 February 2009 – Attachment 2).

In a footnote on “Temporary Measures” Biddulph noted the following:

MPS, *Temporary Measures*, issued by the State Council on 21 January 1982. Guo, 1990:28 asserts that this document when passed was designated for ‘internal’ circulation (*neibu*) (Biddulph, Sarah 2007, *Legal Reform and Administrative Detention Powers in China*, Cambridge University Press, Cambridge, footnote 23/p.197 – Attachment 4).

An undated article accessed on the Institute of Law of the Chinese Academy of Social Science website also stated:

The legal basis for the current work of reeducation through labor are the following documents. The “Decision On the Question of Reeducation through Labor” (1957 simplified in this transcript as the Decision in the following text) approved by the Standing Committee of National People’s Congress and promulgated by the State Council; the “Additional Decision on the Question of Reeducation through Labor” (1979, simplified as the “Additional Decision”); the “Pilot Methods for Reeducation through Labor” approved by the State Council and promulgated by the Ministry of Public Security (1982, simplified as the “Pilot Methods”). Among these documents, even though the “Decision” and the “Additional Decision” were approved by the Standing Committee of the National People’s Congress, they are still basically administrative laws and regulations because they were promulgated by the State Council. Even if there is room for arguing whether the “Decision” and the “Additional Decision” are laws, there is absolutely no doubt that the “Pilot Methods” is not a law. At most, it is a set of administrative legal regulation. (In reality, it can only be regarded as a set of departmental regulations.) Even though Article 1 of the “Pilot Methods” states clearly that this document is formulated on the basis of the previously mentioned “Decisions” and the “Additional Decisions”, it is not difficult for us to see that it is, in fact, a comprehensive amendment and addition to those two documents if we look deeply into it’s content. In reality, the “Pilot Methods” has become the de facto main legal basis for the work of reeducation through labor (Zexian, Chen (undated), ‘The System of Reeducation Through Labor and its Reform’, Institute of Law of the Chinese Academy of Social Science website <http://www.iolaw.org.cn/shownews.asp?id=923> – Accessed 17 February 2009 – Attachment 7).

2. What does section 10 say?

The six subsections of Article 10 highlighted in the Google translation (at Attachment 3) are similar to information in a CHR D report and at p.197 in Sarah Biddulph’s book *Legal Reform and Administrative Detention Powers in China*

(‘国务院关于转发公安部制定的劳动教养试行办法的通知’ [‘State Council on Forwarding the Ministry of Public Security established the pilot scheme of re-education through labor NOTICE’] (Approved 21 January 1982) 2007, Yichang Government website, 6 July http://www.yichang.gov.cn/art/2007/7/6/art_472_54712.html – Accessed 16 February 2009 – Attachment 3; Chinese Human Rights Defenders 2009, *Re-education through Labor Abuses Continue Unabated: Overhaul Long Overdue*, 4 February, p.6 http://docs.law.gwu.edu/facweb/dclarke/public/CHRD_RTL_Report.pdf – Accessed 16 February 2009 – Attachment 2; Biddulph, Sarah 2007, *Legal Reform and Administrative Detention Powers in China*, Cambridge University Press, Cambridge, p.197 – Attachment 4).

The CHR D report and Biddulph list six types of targets for RETL. Below is information relating to targets as outlined by Biddulph and sourced to the *Temporary Measures on Re-education through Labour* (Chinese Human Rights Defenders 2009, *Re-education through Labor Abuses Continue Unabated: Overhaul Long Overdue*, 4 February, p.6 http://docs.law.gwu.edu/facweb/dclarke/public/CHRD_RTL_Report.pdf – Accessed 16 February 2009 – Attachment 2; Biddulph, Sarah 2007, *Legal Reform and Administrative Detention Powers in China*, Cambridge University Press, Cambridge, p.197 – Attachment 4).

Biddulph writes (sub-sections 1 and 4, mentioned in the translation provided, have been bolded by the researcher):

Under the 1982 *Temporary Measures*, targets include:

1. counter-revolutionary and anti-Party, anti-socialist elements whose crimes are not sufficiently serious to warrant criminal sanction;

2. those who form groups to commit murder, armed robbery, rape, arson and other gang crimes, whose crimes are not sufficiently serious to warrant criminal sanction;

3. those who commit unlawful or criminal acts of hooliganism, prostitution, theft, fraud, etc., who do not reform after repeated education, whose crimes are not sufficiently serious to warrant criminal sanction;

4. those who disrupt social order by inciting the masses to create disturbances and fights, pick quarrels and cause a disturbance, stir up trouble, whose crimes are not sufficiently serious to warrant criminal sanction;

5. those who have a work unit, but who, for a long time, refuse to labour or who disrupt labour discipline, ceaselessly cause trouble without cause, disrupt order of production, work, study and teaching or living or obstruct official business, whose crimes are not sufficiently serious to warrant criminal sanction; and

6. those who instigate others to commit unlawful criminal acts, but whose offences are not sufficiently serious to warrant a criminal sanction (Biddulph, Sarah 2007, *Legal Reform and Administrative Detention Powers in China*, Cambridge University Press, Cambridge, p.197 – Attachment 4).

3. Can you find any penalties?

From the Google translation in Attachment 3, Article 13 of the “pilot scheme” appears to set out time periods of one to three years for RETL. According to Biddulph, Article 13 of the “Temporary Measures” sets out the time limits for RETL. Biddulph states that “Under RETL a person may be detained for between one and three years with a possible extension of a further year” (‘国务院关于转发公安部制定的劳动教养试行办法的通知’ [‘State Council on Forwarding the Ministry of Public Security established the pilot scheme of re-education through labor NOTICE’] (Approved 21 January 1982) 2007, Yichang Government website, 6 July http://www.yichang.gov.cn/art/2007/7/6/art_472_54712.html – Accessed 16 February 2009 – Attachment 3; Biddulph, Sarah 2007, *Legal Reform and Administrative Detention Powers in China*, Cambridge University Press, Cambridge, p.200, footnote 45 – Attachment 4).

List of Sources Consulted

Internet Sources:

Google search engine <http://www.google.com/>

Databases:

BACIS (DIAC Country Information database)

REFINFO (IRBDC (Canada) Country Information database)

ISYS (RRT Research & Information database, including Amnesty International, Human Rights Watch, US Department of State Reports)

RRT Library Catalogue

List of Attachments

1. 'Yichang Municipal People's Government: Re-education-through-labor Program Administrative Commission'.
2. Chinese Human Rights Defenders 2009, *Re-education through Labor Abuses Continue Unabated: Overhaul Long Overdue*, 4 February
http://docs.law.gwu.edu/facweb/dclarke/public/CHRD_RTL_Report.pdf – Accessed 16 February 2009.
3. '国务院关于转发公安部制定的劳动教养试行办法的通知' ['State Council on Forwarding the Ministry of Public Security established the pilot scheme of re-education through labor NOTICE'] (Approved 21 January 1982) 2007, Yichang Government website, 6 July
http://www.yichang.gov.cn/art/2007/7/6/art_472_54712.html – Accessed 16 February 2009.
4. Biddulph, Sarah 2007, *Legal Reform and Administrative Detention Powers in China*, Cambridge University Press, Cambridge. (MRT-RRT Library;
5. Hung, Veron Mei-Ying 2003, 'Reassessing Reeducation Through Labour', *China Human Rights Forum*, No. 2, Human Rights in China website
http://www.hrichina.org/fs/reportables/pdf/crf/vhung.pdf?revision_id=9045 – Accessed 16 February 2009.
6. The Laogai Research Foundation 2006, *Laogai Handbook 2005-2006*, October.
7. Zexian, Chen (undated), 'The System of Reeducation Through Labor and its Reform', Institute of Law of the Chinese Academy of Social Science website
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