

# HARD TIMES, HARD LABOR

PRISON LABOR REFORM IN CHINA FROM 1978 TO PRESENT

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*The world's biggest prison system is undergoing serious reform. Michael Pareles discusses the steps that the government has taken to reduce human-rights abuses and corruption within the laogai, the nation's system of prison-labor camps. New laws have been promulgated and are being enforced, and China appears to be legally internalizing a notion of human rights compatible with international standards.*

The *laogai*, China's "Reform through Labor" system, is the biggest prison system in the world.<sup>1</sup> In its vast network of over 1250 labor camps, prisons, and detention centers, it employs the productive power of over 2 million criminals, political prisoners, and innocents<sup>2</sup> in the manufacture of goods ranging from textiles to weapons and industrial machinery. In 1988, Chinese prisoners produced goods worth over US\$1.5 billion, accounting for 0.4 percent of China's GDP.<sup>3</sup> Since the "the Great Proletarian Cultural Revolution" period from 1966-1976, the *laogai* has changed significantly, now serving simultaneously as means of criminal rehabilitation, political repression, and revenue production for the Chinese government. The issue in this paper is not the moral legitimacy of prison labor as a concept. Many countries force their inmates to work for profit or reform and neither is considered by international law to be a human rights violation in itself. Nor is this paper's focus the Chinese government's extremely poor system of judicial review and practice of political imprisonment, often without trial, as these have already been the subject of much literature regarding the *laogai*. The subject of this paper is the abuse of prisoners' human rights in the *laogai*. The

*laogai* is a system riddled with corruption and abuse, plagued with structural problems, and operated in violation of both international and domestic law. However, as conditions in China broadly improve so do those in the *laogai*. The central government has been making a huge effort in the last decade to address human rights abuses and to comply with international human rights standards in many areas of Chinese life. Though abuses still exist in the Chinese prison system, the government is taking good-faith steps to address them and for that, it should be commended.

### *Laogai: An Overview*

The term *laogai* literally means "reform through labor" and in reality refers to a specific type of criminal punishment. However, in common parlance the term *laogai* is used to refer to both the specific punishment and the entire Chinese prison system.<sup>4</sup> The Chinese prison system is split into two main types of detention based on crimes and sentencing: Reform through Labor (*laogai*) and Re-education through Labor (*laodong*).<sup>5</sup> The greatest differences between the two are mainly procedural. *Laodong* has been the object of most human rights

inquiries into the Chinese criminal justice system because defendants receive little, if any, due process. It accounts for about 10 percent of the entire Chinese prison population. Detainees are usually urban-dwellers, sentenced without trial for mostly ideological crimes for a period of up to three years. Before 1978, this was used mostly against political dissidents, however now *laodong* punishes primarily drug offenders and those involved in the sex trade, though many political crimes are still punished under this heading.<sup>6</sup> About 87 percent of those in the Chinese prison system are sentenced to *laogai*.<sup>7</sup> *Laogai* is for criminals with longer sentences and more serious crimes, although political prisoners are often sent there as well. They have been formally tried, convicted and sentenced. Both *laogai* and *laodong* facilities put prisoners to work manufacturing goods for sale, and though *laodong* is supposed to be less harsh than *laogai*, both have very high rates of human rights abuses.<sup>8</sup>

#### *Human Rights Abuses in the Laogai System*

Although there are few if any government-documented instances of torture in the *laogai*, it is safe to say from prisoner accounts and NGO reports that at least until the promulgation of the Prison Law of 1994, human rights abuses in the *laogai* were rampant. Prisoners commonly reported being hung by their wrists, being beaten by guards or by fellow prisoners directed by guards in order to afford guards “deniability,” as well as having experienced electric shocks applied to sensitive body parts,<sup>9</sup> solitary confinement,<sup>10</sup> mental and emotional abuse and many other forms of torture.

Before Mao’s death in 1976, there was a much greater emphasis on thought reform through self-criticism and “struggle sessions.” There was also a much larger political prisoner population. Prisoner

abuse was usually justified in accordance with a prisoner’s unwillingness to “reform,” to acknowledge the faults of his or her usually political crime, and to make significant progress in adopting the official ideological stance.<sup>11</sup> However, starting in 1978 under the national leadership of Deng Xiaoping, the *laogai*’s ideological function of enforcing the “dictatorship of the proletariat” became far less important. Developing new importance was the system’s productive potential as a source of government revenue. Thousands of political prisoners were “rehabilitated” and freed starting in 1978 and the correctional system’s population rate of what we would consider political prisoners has dropped from over 90 percent in the 1950’s to less than 10 percent currently, and perhaps significantly less.<sup>12</sup> Deng Xiaoping’s economic reforms ruled that the *laogai* should be subject to market principles and should thus be economically self-sufficient.<sup>13</sup>

With this shift in emphasis from prisoner reform to prisoner production, abuse of prisoners became linked to a prisoner’s failure to meet or exceed production quotas, rather than a failure in thought reform. Although prisoners are officially supposed to work no more than eight hours a day, in the early 1990’s prisoners reported that they were often forced to work 12 to 16 hours a day or more, six to seven days a week depending on production quotas and deadlines.<sup>14</sup> In addition, prisoner rations were routinely withheld or reduced depending on production performance,<sup>15</sup> and prisoners received generally poor medical care.<sup>16</sup>

Though not within the scope of this paper, it would be remiss not to mention that the Chinese criminal justice system’s largest source of human rights abuse is most likely the process of criminal review itself. To say that Chinese courts are a sham would perhaps be too strong, but to state that the

court's officials play a more important role in court decision-making than do the court's laws would not be an exaggeration. Though China's rate of incarceration as a function of the population is not much higher than the international average, and far below that of the United States, China's "defendant-to-conviction" rate is the highest in the world. This means that if a person is accused of a crime in China there is a smaller likelihood than anywhere else in the world that he or she will be acquitted.<sup>17</sup> Access to appeal is limited; consequently, it is believed that there is an extremely high rate of innocents sent and kept in prison. This, perhaps more than anything else, is the greatest and most reform-resistant source of injustice in the Chinese criminal justice system today.

#### *Abuses in the Laogai and the Law*

International law has much to say regarding the types of abuses found in the *laogai*. The physical and mental abuse of prisoners by guards clearly falls under the definition of torture as defined in Article 1 of the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) which the Chinese government ratified in 1988. Though China did ratify the Convention with reservations, those reservations questioned the competence of the Committee Against Torture and not the document itself. China is still bound by the rest of the Convention's provisions, and thus, is clearly in violation of its obligation under Article 2 to take appropriate measures to prevent and punish all acts of torture.

Article 2 of the International Labour Organization's Convention on Forced Labour (1930) excludes from the definition of forced or compulsory labor "any work or service exacted from any person as a consequence of a conviction in a court of law,

provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations."<sup>18</sup> Most Chinese reform through labor practices do not fall under the International Labour Organization's definition of "forced or compulsory labour," and thus, are not subject to the restrictions of its relevant conventions. However, camps involved in joint ventures with private corporations that force inmates to produce products for the public *are* guilty under this convention of employing forced labor. According to the ILO convention, the camps that produce goods for sale in partnership with private companies, and thus employ forced labor, must not, for example, use workers in underground mines, nor require a workday of over eight hours. The *laogai* has been reported as violating these provisions. The ILO's Abolition of Forced Labour Convention of (1957) bans forced labor:

- (a) as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system;
- (b) as a method of mobilising and using labour for purposes of economic development;
- (c) as a means of labour discipline;
- (d) as a punishment for having participated in strikes;
- (e) as a means of racial, social, national or religious discrimination.<sup>19</sup>

Because the PRC has signed neither of these conventions, it is incorrect to say that the PRC has broken their covenants. But this document is useful for determining a standard of acceptable labor standards in a prison labor system. If we were to

apply this document to *laogai* we would find that its very ideology as both a reformative and productive institution through the compelled labor of its prisoners puts it in violation of points (a) though (c). Some argue that the *laodong* especially, since its inmates are sentenced without trial, routinely accuses dissidents with bogus charges when in reality their prosecution is due to their political and religious views and activities.<sup>20</sup>

Though the provisions of the ILO's forced labor agreements exclude prison labor as forced labor with few exceptions, the abuses listed above do violate several parts of the United Nations' Rules for the Minimum Standards for the Treatment of Prisoners (1995), a document which lays out in detail the conditions under which prisoners are to be kept. Due to its relative newness, the high standards it sets for prison conditions, and rampant disregard of its provisions by many developed nations like the United States, this document is not a good benchmark for evaluating the excesses of the Chinese system. However, it does remain an articulated ideal towards which to strive for China and for all countries, and a concrete document to which activists and reformers can continually pressure China to adhere.

The human rights abuses of the *laogai* are in violation of international law, and, most interestingly, are also in violation of Chinese law. Since the early 1990's there has been an unprecedented number of reform laws and regulations passed by the Chinese government regarding the *laogai* specifically. These include "Regulations Guiding the Management of the Reform Environment in Prisons" (1990), "Regulations Concerning the Behavior of Criminals Undergoing Reform" (1990), "Behavioral Standards for Labor Reform and Labor Reeducation Cadres" (1991), "Prison Law of the People's Republic of China" (1994), "Criminal Law of the People's

Republic of China" (1997), and the "Provisions on the Work of Prison Education and Reform," passed and promulgated in 2003. Of these laws and regulations, the broadest and most important are the new Prison Law of 1994, which replaced the Prison Law of 1978, and the new Criminal Code of 1997, which replaced the Criminal Law of 1979.

Articles 33 and 34 of the Criminal Law of 1997 dictate that the only punishments that can be handed down to criminal offenders are primarily public surveillance, criminal detention, fixed-term imprisonment, life imprisonment, and the death penalty, and secondarily fines, deprivation of political rights and the confiscation of property.<sup>21</sup> The new Criminal Code is four times as long as its previous version, addressing areas of economic and technological crimes that did not exist when the first version was drafted. However, the parts this paper is concerned with are identical in both versions. Both exclude any type of corporal punishment. This cannot necessarily be said about criminal regulations during the Mao era.

The Prison Law of 1994 is the first comprehensive set of regulations in China for the administration of the Reform Through Labor system. The State Administration branch of the Chinese government created a short set of general guidelines called "Labor Reform Regulations" in 1954, and in the 1980s it issued two provisions that were soon found to be woefully inadequate.<sup>22</sup> The Prison Law of 1994 is also significant in being the first to mention the word "torture." It also set clear limits on prison cadres in their treatment of prisoners. It clearly states:

The people's police of a prison shall not commit any of the following acts:

- 3) use torture to coerce a confession, or to use corporal punishment, or to maltreat a prisoner;
- 4) humiliate the dignity of a prisoner;

- 5) beat or connive at others to beat a prisoner;
- 6) utilize a prisoner to provide labor services for personal gains.<sup>23</sup>

The law dictates further that any member of the people's police who commits one of these crimes shall be investigated for criminal responsibility or given administrative sanctions.<sup>24</sup> This law is important because it sets up protections for prisoners from guards. This law also represents a shift from the "class-struggle mindset" that routinely blamed prisoners for all problems in the *laogai* to the increasing recognition of unqualified and corrupt guards as a major difficulty.<sup>25</sup>

#### *Structural Problems and Reform*

Despite (and, to some extent, because of) the changes it has undergone over the past 25 years, the *laogai* suffers from several structural problems. These problems not only make some forms of abuse difficult to identify and address, but also create new forms of abuse. The application of market reforms to and the decree of economic self-sufficiency for individual *laogai* camps in the 1980s put pressure on prison officials and cadres to minimize overhead costs like prisoner facility maintenance and to overwork prisoners far beyond the eight-hour daily limit. In some instances, guards had a personal interest in pushing inmates to work harder because low budgets often meant they would not be paid.<sup>26</sup> In addition, prison officials were under immense pressure to sell their products competitively on the market and to export prison-made goods to foreign countries. These exports were in direct violation of a local Chinese ban and an American-Chinese Memorandum of Understanding banning the export of prison-made goods.<sup>27</sup> No doubt this incentive, if not necessary, to break Chinese regulations in order

for the camp to survive economically bred a disregard for any laws governing the decent treatment of the prisoners themselves.

The poor oversight of administrative officers compounded this incentive to overwork prisoners and cut costs. As of 1989, the Ministry of Supervision, the government office responsible for overseeing China's administrative organs, had 568 offices with a total staff of over 1300 for a system of about 1250 facilities. According to James D. Seymour of Columbia University, this works out to about one supervisor for every 1,000 to 2,000 prisoners, a woefully inadequate number to address many instances of administrative misconduct or prisoner appeal.<sup>28</sup>

The productive nature and increased marketization of *laogai* camps does not mean that *laogai* camps are particularly profitable nor does it mean that the Chinese government relies on them as a large source of revenue. Though the full integration of the *laogai* into the Chinese economy is undeniable, arguments attesting to the government's benefit from prison labor are mistaken. It is important to note that since Mao's death, profits from *laogai* enterprises have decreased significantly, declining 86 percent from 1978 to 1983. Though profits rose from 1983 until 1987, they were still 54 percent less than they were in 1978. To put these figures in perspective, *laogai* production in 1988 (the year before the government stopped reporting these figures), was 5 billion *renminbi* or about 0.4 percent of China's GDP.<sup>29</sup>

The PRC is in the process of addressing many of these structural problems. The "self-financing system" was deemed a failure and abolished by President Jiang Zemin in 1994. Soon after, the State took the important step of exploring the separation of production enterprises from reform and re-

education through labor.<sup>30</sup> More specifically, last year the government instated pilot prison programs in six provinces and municipalities in an effort to separate the reform aspect of the prison from the profit-making aspect. The official goal is “to separate the prison’s original function of penalty enforcement from its functions of production and operational management; and to build up a just, incorruptible, civilized and highly efficient new structure for the country’s prison work that mainly focuses on separating the functions of the prison system from those of an enterprise.”<sup>31</sup> The Prison Administration, the department of the Chinese government that directly administers the *laogai*, will be both legally and functionally separating the reformatory and corporate organizations of each labor camp. This will hopefully both minimize the instances of production-motivated abuse and maximize reform through less production-intensive vocational training. While the first and only prison run directly by the Ministry of Justice seems to have a ridiculous emphasis on activities like painting<sup>32</sup> that could not and should not be duplicated around the country, its emphasis on training and de-emphasis on production should and hopefully will.

A large source of abuse in the *laogai* is due to guards and cadres who are simply unqualified for the position of correctional officer. Guards and security personnel are chosen on the local level, and often administrators with political connections are chosen over more qualified candidates. However, as government projects are administered from higher and higher up the power structure, cronyism becomes less of a problem. Prisons tend to be increasingly well managed the more directly they come under control of the central government.<sup>33</sup> Thus, as prisons begin to come under more direct central government control, and personnel are picked based on their

qualifications and not their personal relationships, we are likely to see a decrease in abuses.

The Chinese have also made an effort to increase administrative oversight of prisons in order to address grievances, enforce new legislation, and assist the rising population of appellants. The Chinese government’s official report on human rights in China in 2004 boasted that they had set up 3,329 procuratorial offices at *laogai* institutions around the country, had organized procuratorates at 75 of its largest prisons, and had extended procuratorial services through representatives to 92 percent of the countries prisons, detention centers, and *laodong* centers.<sup>34</sup> Hopefully, these new offices will go a long way towards providing the oversight and self-policing mechanism that is so essential to the effective enforcement of law in any prison system.

The laws that China has recently promulgated regarding the *laogai*, such as the Prison Law of 1994, have gone a long way to minimizing abuse by their mere enforcement and dissemination to prison officials and prisoners alike. As early as 1996, prisoners in certain provinces were reporting that conditions had improved and that abuses like beatings rarely occurred, although many abuses were still commonplace.<sup>35</sup> Reform in China has not been limited to the criminal justice sector. They are part of a much greater effort over the past decade by Chinese leaders towards human rights, the elimination of conflicts of interest, and the rule by law instead of by administrative discretion.<sup>36</sup> The incorporation of human rights into the actual text of the Chinese constitution is the most recent and perhaps most symbolically significant act towards these ends. On March 14, 2004 the 10<sup>th</sup> National People’s Congress, the highest legislative body of the PRC, adopted the recently proposed amendments to the Constitution, adding the provision “the state

respects and safeguards human rights,” amongst other human rights provisions. These “cognitive changes” not only reflect the ongoing discourse within the Chinese government regarding human rights, but also change and shape policy.<sup>37</sup> The fact that there is a large and growing body of Chinese law, most passed within the last decade, banning these abuses and taking steps to prevent them is perhaps the most significant point of this paper. If nothing else, it shows what Professor Dali Yang at the University of Chicago describes as a huge ideological shift in the Chinese Communist Party from rejecting the Universal Declaration of Human Rights as “Western Human Rights” to an acceptance and growing internalization of international human rights standards.<sup>38</sup> It is this internalization of human rights that is essential if the Chinese are going to work towards human rights *sans* pressure from foreign governments, foreign companies, and foreign NGOs.

*“What is to be done?”*

Scholars and organizations have long debated what measures China should take to cleanse the *laogai* of its poor human rights record, or if the *laogai* as an institution can be compatible with human rights at all. It is an increasingly small group of scholars, activists and former *laogai* inmates who argue the latter. Many, like Steven Mosher, formerly of Stanford University, write from Taiwanese journals and are unequivocally anti-PRC. Others, like Harry Wu, founder and director of the Laogai Research Foundation, are former prisoners of the *laogai* who have since emigrated or sought asylum in the West. Some, like Mr. Wu, have published books and testified in front of congressional committees, and though the struggle and courage of these people is admirable, their work is often more emotional than

it is scholarly, and their figures more inflated than accurate.

Especially in light of the last decade’s reforms, an increasing number of scholars and organizations are disagreeing with Harry Wu’s claim that “labor reform camps are a necessary product of the Chinese totalitarian State.”<sup>39</sup> In 1996, the UN Committee Against Torture commended China on its progress towards meeting its obligations under the Convention Against Torture. The committee was concerned, however, that authorities still did not follow up instances of torture in police stations and prisons with proper investigations. They were also concerned that the Chinese procuratorial bodies had yet to establish their authority over the security organs when dealing with torture allegations and the large number of deaths arising out of police custody. The Committee recommended to the Chinese government, among other things, that a “comprehensive system should be established to review, investigate and effectively deal with complaints of maltreatment, by those in custody of every sort” and be given the necessary jurisdiction to do so. The Committee also recommended that prison conditions should be brought up to meet standards set by Article 16 of the Convention Against Torture, that prisoners and detainees should be given access to legal counsel as soon as possible, and that “China should continue with its most welcome reforms to its criminal penal law, and continue to train its law enforcement personnel, procurators, judges and medical doctors to become professionals of the highest standing.”<sup>40</sup> In the last paragraph of its recommendations, the Committee Against Torture declared:

An independent judiciary, as defined in international instruments, is so important for ensuring the objectives of the Convention

Against Torture, that the Committee recommends that appropriate measures be taken to ensure the autonomy/independence of the judiciary in China.<sup>41</sup>

This last recommendation is one shared by both Seymour and Chinese security expert and former professor of Political Science at Western Michigan University Murray Scot Tanner. Tanner puts the need for an independent judiciary in a greater context:

China, like most authoritarian systems, lacks the institutions to create self-generating or self-sustaining monitoring of law enforcement abuses, or to generate effective political pressure for reform. The institutions I am talking about, of course, would be things such as a free and investigative press, civil society, human rights monitoring groups, professional judges and prosecutors, elections, and so on.<sup>42</sup>

The independent judiciary is essential to both aborting the miscarriages of justice that occur even before people enter the *laogai*, as well as to addressing official misconduct after such miscarriages have occurred. The common thread between all these recommendations, however, is greater oversight and transparency of the *laogai* system by the government, by NGOs, by the media, and by the Chinese people. Chinese leaders—spurred on by issues of security, economics, foreign policy, and culture—are taking many of the necessary steps towards reform. But sufficient oversight needs to be in place to ensure both that their laws are enforced and that they continue to work to come in line with international human rights standards.

### *Conclusion*

Though the prison population in China is growing (due to increased drug use and rising crime rates),

the *laogai* as a revenue-producing institution is dying.<sup>43</sup> Unlike the American prison system, it is increasingly becoming a place of legitimate criminal rehabilitation. Of course, China is still far behind many other industrialized countries when it comes to ensuring human rights in its prison system. It still incarcerates tens of thousands of political prisoners and sentences prisoners in the *laodong* system without trial. These are two areas which have yet to be reformed significantly, if not abolished, but the progress that the PRC has made and continues to make towards improving human rights is significant and should be encouraged and cautiously congratulated. Hopefully, with the greater effectiveness of China's Rule by Law policy, greater oversight of its procuratorial organs, and the greater liberalization of its media, we will soon see China emerge as an exemplar of the successes of international human rights, and not its failures.

As this paper is being written, people in China are mourning the 15<sup>th</sup> anniversary of the Tiananmen Square Massacres, the Beijing government is resisting calls for democracy in Hong Kong, and horror stories are coming to light about administrative misconduct and torture of inmates by American servicemen in Iraq and Guantanamo Bay. Though the United States has a population roughly one-fifth the size of China's, the size of its prison population is about the same. It may seem perverse to say, and only time will tell if this remains true, that countries like the United States stand to learn a great deal from the example that the People's Republic of China is setting in their efforts to reform and extend basic human rights to 1.3 billion countrymen. If a country without the necessary institutions for self-sustaining reform has made this effort, then the United States has little excuse not to.



## ENDNOTES

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- 3 United States General Accounting Office Report to the Senate Committee on Foreign Affairs, *Forced Labor in the People's Republic of China*, July, 1990, 13.
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