

October 22, 2015

# Rehabilitation of Illicit Behaviours in the Post-RTL Era: Disputes and Proposals

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## Rehabilitation of Illicit Behaviours in the Post-RTL Era: Disputes and Proposals

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**Abstract:** How to rehabilitate illicit behaviours that were subject to the re-education through labour system has been a topic of rigorous debate since the abolition of the system. Proposals brought forward so far can generally be categorised into a criminalisation approach and an administrative approach. This article asserts that the rehabilitation of these behaviours shall strictly observe principles of efficiency, transparency and fairness and proposes that the Legislature adopt the *Law on Correction of Illicit Behaviour* under pilot implementation to consign illicit behaviours that were subject to the re-education through labour system to a mixed decision-making procedure. This will constitute a wise use of current judicial resources and avoid such deficiencies as arbitrariness in the use of cruel treatment, the lack of an impartial decision-making party and deprivation of freedom without judicial decision, for which the re-education through labour system had long been criticised.

**Key Words:** Re-education through Labour; Criminalisation; Community Corrections; Procedural Justice; Mixed-Approach

China saw a significant breakthrough in the move toward the state of the rule of law

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in late 2013. On 12 December, the Standing Committee of the National People's Congress (NPC) adopted the *Decision on Abolishing Legislative Regulations Concerning Re-education Through Labour* following the *Resolution Concerning Some Major Issues in Comprehensively Deepening Reform* that had been passed at the 3rd Plenary Session of the 18th Central Committee of the Communist Party of China (CPC) on 12 November and called for an abolition of the Re-education Through Labour (RTL) system. The NPC adoption of this Decision put an end to RTL, a long-criticised sanction system. Early in the same year, central authorities had begun making preparations for its abolition. For example, in April and May 2013, respectively, the Supreme People's Court (SPC) and Supreme People's Procuratorate (SPP) jointly issued the *Interpretation on Certain Issues regarding Application of Law in Theft Cases* and the *Interpretation on Certain Issues regarding Application of Law in Disturbance Cases* and thereby consigned such minor illegal behaviours as repeated theft and disturbance that used to be punished by RTL to the realm of criminal law.

Despite these changes, a large number of illegal behaviours that were previously dealt with through the RTL system have not been addressed. These behaviours, which include disseminating pornographic materials, gambling and illegal pyramid selling, were not considered to be sufficiently serious to warrant criminal punishment in the *Suggestions on Strengthening and Improving Review and Approval Work of Re-education through Labour* (the *Suggestions*) issued by the Ministry of Public

Security (MPS) on 13 September 2005. Currently they fall into a gap between criminal punishment and other administrative sanction and still need to be lawfully and properly regulated. The aim of this article is to consider how these petty violations might be dealt with in the post re-education through labour era. Beginning with an explanation of the RTL system, and an outline of the conditions that brought about its abolition, this paper then reviews a range of proposals, including the extension of criminal law and introduction of a system of community corrections for addressing the gaps in the new system of regulation, and presents its proposals for both substantial and procedural reforms.

## **1. Brief Introduction to RTL and Its Abolition**

In the 1950s, the Central Committee of the Communist Party of China issued a set of directives regarding counter-revolution and thereby introduced the RTL system. For example, the *Directive on Completely Clearing Hiding Counter-revolutionaries*, which passed on 25 August 1955, stated that the counter-revolutionaries found in the (then) recent special campaigns, who were not sentenced to death or released because of voluntary confession or meticulous acts, should be (i) imprisoned for reform after conviction, or (ii) re-educated through labour in given facilities. The second option was mainly reserved for those persons whose behaviours were not serious enough to warrant criminal punishment but whom the authorities deemed so politically unreliable that they needed to be removed from their workplace and society. On 1

August 1957, the *Decision of the State Council on the Problem of Re-education through Labour* (hereafter referred to as the *Decision*) was approved by the NPC Standing Committee and legally established the RTL system. According to the *Decision*, RTL is both a measure to implement compulsory education and correction and is a means of employment and resettlement (article 2). It was applicable to counter-revolutionaries and anti-socialist reactionaries whose illegal behaviours *are not serious enough to warrant criminal punishment* — individuals who endanger public order but should not incur criminal liability due to the mild circumstances of their crime. Meanwhile, they are physically and psychologically able to work but refuse to work.

Since the late 1970s, the scope of RTL has been continuously expanded through a number of legislative instruments. They include the *Supplementary Regulation on Re-education through Labour (Supplementary Regulation)* issued by the State Council on 5 December 1979; the *Trial Methods for the Implementation of Re-education through Labour (Trial Methods)* issued by the MPS on 21 January 1982 following the approval of the State Council; the *Regulation on Administrative Penalties for Public Security* enacted by the NPC Standing Committee in 1986; the *Regulation on Administrative Penalties for Public Security*; the *Decision on Drug Prohibition* enacted by the NPC Standing Committee in 1990 (article 8); and the *Decision on Strict Prohibition on Prostitution and Whoring* enacted by the NPC Standing Committee in 1991. In April 2002, the MPS, building on these legislative documents,

promulgated the *Regulations on the Handling of Re-education through Labour Cases by Public Security Organs (Regulations)* in which article 9 specifically defined 10 categories of behaviour for which persons aged 16 years or older can be sent to RTL. The article significantly expanded RTL by adding a miscellaneous clause (i.e., ‘other circumstances for which there is statutory basis for RTL’) to the list of relevant behaviours. Interpretation of this clause was left to the discretion of police authorities. In addition, the 2002 *Regulations* established that individuals who have committed offences of endangering state security, endangering public safety, infringement of civil rights, infringement of property, or obstruction of social order management but whom, because the offence was minor in nature, a people’s procurate has opted not to prosecute or a people’s court has exempted from criminal punishment may be sent to RTL if they meet the conditions for RTL.

Finally, the MPS stated in its 2005 *Suggestions* (referred to above) that the following persons shall be subject to compulsory education measures: (i) those who lure, shelter or procure another into prostitution; (ii) those who produce, transport, copy, sell or rent pornographic articles such as books, photos and video and audio products or who disseminate obscene information through the internet, phone or other means of communication; and (iii) those who, for the purpose of making a profit, provide gambling facilities or participate in gambling and refuse to cease after repeated education. Wang Gongyi (2012), Director of the Research Institute for Justice of the Ministry of Justice (MJ), explains that here the phrase ‘compulsory education

measures' refers to RTL.

RTL, being an administrative compulsory measure,<sup>1</sup> is decided by administrative authorities and subject to no judicial review. According to the 1957 *Decision*, the determination of re-education through labour should be made by governments at the provincial level or the agencies they authorise following an application submitted by either the department of civil affairs or public security, the unit to which the target (subject of the application) belongs, such as a governmental agency, an organisation, an enterprise, a school, or his/her parents or legal guardian. The 1979 *Supplementary Regulation* made a substantial change to the provisions of the *Decision* by establishing that for those who are subject to RTL, the decision shall be reviewed and approved by the Re-education through Labour Administrative Committees of provinces, of municipalities under direct control of the State Council and of large- and middle-sized municipalities. These committees are composed of leaders of departments of civil affairs, public security and labour. This change was confirmed in the MPS's 1982 *Trial Methods*. The 1984 *Notice regarding Re-education through Labour and Cancellation of City Residence Registration of Persons Subject to Re-education through Labour* offered further clarification of the MPS and Ministry of Justice (MJ) view that authority for review and approval rest with the public security organs. As a consequence, the powers to decide, review and approve are almost exclusively concentrated in the domain of the public security organ.

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<sup>1</sup> First Paragraph of (IV)(7) of *Human Rights in China*, issued by the State Council in November 1991, states that 'education through labour is not a criminal but an administrative punishment'.

The *Supplementary Regulation* was the first document to clearly specify the duration of RTL. It limits RTL to between one and three years, allowing it to be extended for another year if necessary. According to article 9 of the *Regulations*, the duration of RTL should be decided taking into account the facts, nature, circumstances, motive and degree of social harm of the suspect's offence, as well as the legal liability. In the case of juveniles, the duration shall generally be one year or one year and three months, with a maximum length not exceeding one year and six months, except for those who continue to take or inject drugs after compulsory drug treatment. According to the *Trial Methods*, any removal or extension or reduction of the duration of RTL should be approved by the Re-education Through Labour Administrative Committee. The *Trial Methods* also requires that RTL should not be terminated before half of the original designated duration of the program has been completed and that any extension should not extend beyond one year of the originally designated duration.

Initially, the departments of civil affairs and public security were jointly in charge of RTL administration. In the early 1980s, the MPS established the Bureau of Re-education Through Labour Administration, and the departments of public security at the provincial level and of large and middle-sized municipalities correspondingly established the Re-education Through Labour Authorities to address daily operations. In 1983, corresponding to the transfer of management and administration of Re-education Through Labour camps from public security authorities to judicial

administrative authorities, Re-education Through Labour Departments inside judicial authorities replaced public security departments in the delivery of specific education and reform work (for a detailed introduction, see, e.g., Chen 2003; Wang 2012; Liu 2004 ).

Despite the declared purpose of reforming detainees, shaping them into ‘citizens who abide by the law, respect public morals, love the country, love labouring and who can contribute to the construction of socialism using their cultural knowledge and productive skills by delicate and deep ideological and political works, cultural and technical education and labouring training under strict management’ (article 3 of the Regulations), the RTL system had been used to repress perceived threats. As Professor Chu Huaizhi (2013) of Peking University explains, ‘the RTL and human rights violation have become two definitions that follow each other like a shadow in public opinion’; consequently, in recent decades, RTL has become the focus of both domestic (see, e.g., Chen 2003; Liu 1998; Liu 2004; Wei 2013; Chu 2013) and international (see, e.g., Amnesty International 2013) scrutiny. Criticism of the RTL system can generally be summarised as follows.

First, the RTL system violates the right to liberty under both the Constitution of the PRC<sup>2</sup> and international human rights law<sup>3</sup> as the police and public security officials can send individuals to detention without any effective judicial review. Second, it

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<sup>2</sup> Article 33 of the Constitution declares that ‘the State respects and protects human rights’.

<sup>3</sup> E.g., article 9 (1) of the International Covenant on Civil and Political Rights (ICCPR) provides that ‘[e]veryone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.’

goes against the 2000 Legislative Law of the PRC because article 8 of that law clearly states that '[o]nly national law may be enacted in respect of matters relating to ... (v) the deprivation of the political rights of a citizen, or compulsory measures and penalties involving restriction of personal freedom'. None of the instruments that provide for the imposition of RTL are in the strict sense 'national law' promulgated by the NPC or its Standing Committee. Third, the Re-education Through Labour Administrative Committee, at all levels, had become an empty shell in practice. The absence of effective external monitoring rendered the enforcement of RTL arbitrary, disordered and chaotic. Fourth, the severity of RTL did not match its status as an administrative penalty. As mentioned above, the term of RTL can be as long as four years, which is much longer than that of detention and public surveillance, two principal criminal punishments in article 33 of the Criminal Law of the PRC.<sup>4</sup> As a consequence, a considerable number of detainees in RTL camps voluntarily choose to confess crimes they had committed to obtain a conviction, which in turn resulted in a sentence much shorter than the RTL term imposed. Finally, the RTL system had become an unlawful tool for dealing with a special category of persons (such as petitioners) who are considered dangerous to social stability in practice. The *Notice on Dealing with Abnormal Petitioning in accordance with the Law* jointly issued by the Shenzhen local authority in 2009, for example, authorises police to impose RTL on persons who commit any of the 14 categories of irregular petitioning conduct that it defines.

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<sup>4</sup> According to articles 38 and 42 of the Criminal Law, the term of public surveillance is more than 3 months but less than 1 year, and that of detention is more than 1 month but less than 6 months.

Since the beginning of the 1990s, Chinese academics have responded to the above criticism by proposing various reforms. These can generally be divided into three categories. The first category recognises the necessity of reform for the RTL system but insists that it should be retained because it plays an indispensable role in maintaining everyday order (see, e.g., Wang 2012; Chu 2013). The second category argues for the abolition of the RTL system, proposing that the *Law on Administrative Penalties for Public Security* be expanded to address those who could be subject to RTL and that a special petty offence division be established inside the people's court to address cases of this type (see, e.g., Song 1996; Zhao, Hao, Yan and Xiao 1996). The final category suggests that the RTL system, as well as compulsory drug rehabilitation, custody and education for minors, compulsory medical treatment, compulsory concentrated education for sex workers, etc. (RTL in the broad sense), should be replaced with a new judicial sanction similar to measures available in western States (see, e.g., Qu 1996; Liu 2013). Chinese decision makers responded positively to the last category for proposed reform. As early as 2005, the NPC Standing Committee reportedly put the *Law on Correction of Illicit Behaviour* on its legislative agenda. According to Professor Ma Huaide, an administrative law expert at China University of Political Science and Law, this law was intended to replace RTL.<sup>5</sup> On 9 March 2010, Wu Bangguo, the then Chairman of the NPC Standing Committee, proclaimed that China would adopt a set of new laws including the *Law on Correction*

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<sup>5</sup> *Huashang Morning*, 15 March 2005.

*of Illicit Behaviour* (LCIB).<sup>6</sup> Meanwhile, in 2010, correctional programs were piloted in the cities of Nanjing, Lanzhou, Zhengzhou and Jinan. They focused on the education and (re)integration of violators into society.

RTL was completely abolished by the end of 2013. The problem that now arises is how to fill the gap left by the absence of the RTL system. The remaining compulsory sanctions, such as custody and education for sex workers and concentrated rehabilitation for drug users, face the same criticisms that challenged the system of RTL. As a result, Liu (2013) and others have argued that we need to discuss a comprehensive framework of compulsory measures that restrict or deprive personal liberty, such as custody and education and compulsory detoxification (see, e.g., Liu 2013), and a large number of proposals for both substantial law reform and procedural law reform have been brought forward.

## **2. Proposal for Substantial Law Reforms**

From the point of view of substantial law, proposals for programmes that promote the rehabilitation of illicit behaviours in the post-RTL era can roughly be divided into two categories. One argues in favour of diverting those who have engaged in illicit behaviours covered by RTL to alternative programmes of administrative or criminal regulation (see, e.g., Gao and Zhang 2013; Ruan 2013; Wang 2013; Xiong 2014). The

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<sup>6</sup> *People's Daily (overseas edition)*, 12 March 2010.

other prefers the extension of community corrections to behaviours covered by RTL (see, e.g., Yao 2013); this option has attracted international support (see, e.g., Williams 2013).

## **2.1 Diversion Approach**

According to the proponents for diversion, the illicit behaviours that can be subject to RTL include (i) those behaviours (such as petty theft, disturbance and fraud) that violate both criminal law and administrative law but are not sufficiently serious to trigger criminal punishment, and (ii) those behaviours (such as drug use, sex work and being a client of a sex worker) that violate only administrative laws. Lowering the conviction threshold for certain crimes, such as theft, disturbance, handling pornographic articles and blackmail, would divert those engaging in the first group of behaviours from RTL into the criminal system. This was done by the SPC and the SPP in 2013. The second group of persons, along with others who may be subject to administrative compulsory sanctions such as prostitutes, drug users and mental health patients, can be diverted to regulation under the *Law on Administrative Penalties for Public Security* and *Criminal Law*.

To ensure that diversion is efficient and fully respects international human rights law, proponents have come up with suggestions for the reform of relevant laws. For example, Liu Renwen, a professor at the Law Institute of the Chinese Academy of

Social Sciences (LICASS), suggested that the *Law on Administrative Penalties for Public Security* and *Criminal Law* be revised. Crimes in *Criminal Law* should be divided into felonies and petty offences; behaviours that used to be punished by RTL and those that are subject to administrative detention in the *Law on Administrative Penalties for Public Security* would become petty offences. He also suggests that the *Law on Administrative Penalties for Public Security* abolish administrative detention and only authorise police authorities to use sanctions that do not involve restriction or deprivation of personal freedom, such as warnings, fines, licence revocation and confiscation of illicit items.<sup>7</sup> Meanwhile, Professor Gao Mingxuan (2013) cautions that we must stay alert to the conflict between limited judicial resources and the expansion of criminal law and make wise and appropriate use of the policy of combining severity with leniency in dealing with petty offences. He proposes that petty offences be tried through summary procedures, as long as this is done promptly. He suggests that we extend the use of probation, fines, other non-imprisonment penalties and community corrections to the sentencing of petty offences. In addition, Professor Xiong Qihong (2014) suggests that the minimum term of criminal detention in Chinese criminal law be reduced from one month to 15 days, which is the maximum term of administrative detention. This would ensure a seamless connection between the *Law on Administrative Penalties for Public Security* and *Criminal Law*.

The effect of the diversion proposal on crime prevention has been questioned. For

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<sup>7</sup> Chinese Social Science Today, 13 January 2014.

example, Professor Ma Huaide, in an interview with the Beijing Times in November 2013, expressed concern that the expansion of criminal law to illicit behaviours under the RTL system would not contribute to the rehabilitation of violators and to crime prevention.<sup>8</sup> In addition, Professor Gao Mingxuan argues that the expansion of criminal law would result in a heavier burden for the criminal justice system and thereby distract attention that should be focused on serious crimes. Moreover, criminal convictions will label violators as ‘criminals’, making it harder for them to (re)integrate into society by, for example, providing a barrier to entry to education and employment.

## **2.2 Community Corrections Approach**

Documents issued by the SPC, the SPP, the MJ and the MPS since 2003 indicate that community correction finally found its way into national law after nearly 10 years of pilot programmes in major cities. Amendment VIII to the Criminal Law became effective on 1 May 2011. It prescribes that offenders who are sentenced to public surveillance (article 2), granted probation (article 13) or parole (article 17) shall be subject to community corrections. Article 258 of the newly revised Criminal Procedure Law that came into effect on 1 January 2013 further adds that offenders who are granted temporary execution of sentence outside prison shall also be subject to community corrections. According to the *Implementation Methods of Community*

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<sup>8</sup> Beijing Times, 16 November 2013.

*Corrections*, jointly issued by the SPC, the SPP, the MJ and the MPS on 10 January 2011, community corrections are not a type of punishment but a means to execute punishment and shall be operated by judicial administrative organs (for a detailed introduction to community corrections in China, see, e.g., Wu, Cai and Peng 2012; Zhai 2013).

The proposal to replace RTL with community corrections has attracted a large amount of support. Proponents argue that community corrections are designed to address the types of petty offences that constitute violations of RTL provisions. In addition, recidivism rates resulting from community corrections pilot programmes have been reported to be as low as an astonishing 0.2 per cent.<sup>9</sup> Scholars interviewed in *Chinese Social Science Today* held that community corrections should play an important role in sanctioning petty violations. Professor Liu Renwen suggested that the Community Corrections Law should adopt new intervention measures including behaviour monitoring because this would support the behavioural and psychological correction of offenders who refuse to reform after repeated compulsory rehabilitation and, as a result, pose a potential threat to society in the future.<sup>10</sup> With regard to the RTP police force and labour camps, Professor Xiong Qihong (2014) suggests that given that a number of labour camps have been converted to drug treatment institutions, the administration of drug treatment institutions should be transferred from police authorities to judicial administrative authorities. This would establish a check and

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<sup>9</sup> Legal Daily, 23 November 2011.

<sup>10</sup> Chinese Social Science Today, 13 January 2014.

balance mechanism where the former is in charge of investigation and punishment, while the latter is responsible for carrying out drug treatment. Labour camps in regions with few drug problems should be converted to prisons. Meanwhile, she holds that the RTL police force can be divided into three parts: drug offence police, prison officers and community corrections police.

In contrast to the proposals outlined above, China's Deputy Justice Minister Zhao Dacheng has argued that community corrections would not replace the RTL system because there are substantial differences between the two systems.<sup>11</sup> Some academics have also expressed doubts about such a transition. Professor Zhang Yonghe at Southwest University of Political Science and Law, for example, suggests that the proposal to replace RTL with community corrections faces a variety of barriers that cannot simply be resolved through legislative change. It is a complex change that requires effort and cooperation across all sectors of society. Professor Fei Meiping, from the Social and Public Management School, East China University of Science and Technology, agrees with Zhang, adding that the transfer of those subject to RTL to community corrections will make the ongoing professionalisation of correctional staff essential as the nature of clients changes and the content of services increases. A decision to replace RTL with community corrections cannot be made before the structure, governance and training required for a community corrections system has been agreed upon and established. This includes addressing questions about

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<sup>11</sup> Chong Qing Chen Bao, 30 November 2013.

perfecting the government purchase system and the processes for establishing sustainable cooperative relationships between government agencies and non-governmental organisations that are service providers.<sup>12</sup> Mr. Li Fangping, a legal consultant at Beijing Yirenping Centre who has kept a close eye on the implementation and reforms of RTL, cautions that the detention of those subject to RTL should not be extended if RTL were replaced with community corrections, and we should guard against the latter becoming RTL by another name.<sup>13</sup>

### **2.3 Law on Correction of Illicit Behaviour**

The author of this work holds, in the first place, that the illicit behaviours that were subject to RTL shall not be criminalised for two main reasons. One is that, as already mentioned above, criminalising these behaviours means labelling the violators ‘criminals’, thereby resulting in prejudice in the current social environment. The other is that to criminalise these behaviours necessitates that they should be dealt with through criminal procedure, which will in turn impose a heavy burden on the criminal justice system. It has been noted that the ever-increasing number of criminal cases leaves the criminal justice system no choice but to focus on major cases such as murder, rape, drug crimes and economic crimes due to a limited budget and a shortage of personnel in recent years (see, e.g., Zhou 2011). As a consequence, the prosecution and the courts may not give the illicit behaviours that used to be sanctioned by RTL

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<sup>12</sup> Chinese Social Science Today, 13 January 2014.

<sup>13</sup> Beijing Times, 16 November 2013.

appropriate attention in practice if they were criminalised, such as requiring pre-trial investigation and granting violators all necessary safeguards, which makes criminalisation of these behaviours meaningless because it is for the purpose of ensuring procedural justness that dealing with them through criminal procedure is proposed. Therefore, the criminalisation approach may not be a wise choice.

Does this mean that the *Law on Administrative Penalties for Public Security* is a better choice? The answer is NO as well. According to article seven of the Law, the public security department of the State Council is responsible for the management of the Law at the national level. Local people's governments above the county level public security organs are in charge of the administrative areas of the Law. In others, the policy authority is in charge of administering the law and imposing administrative penalties, receiving almost no external supervision. Therefore, it can be reasonably expected that all of the problems and defects return if the illicit behaviours that can be subject to RTL were provided for in the *Law on Administrative Penalties for Public Security* without radical procedural reforms, which are largely impossible within the framework of said law.

Then in which law shall we provide for the illicit behaviours that can be subject to RTL if we did not provide for them in either the *Criminal Law* or the *Law on Administrative Penalties for Public Security*? The *Law on Correction of Illicit Behaviour* (LCIB) that appeared on the agenda of the NPC Standing Committee in

2005 offers a third alternative (see, e.g., Li 2013). The LCIB was designed to replace RTL and remains a feasible option. The LCIB took the criticisms of RTL into account (for a detailed exploration, see, e.g., Jiang 2010). It narrowed the scope of those who could be subject to its provisions and adopted a more transparent decision-making process. Pilot programmes for the correction of illicit behaviours were implemented before the abolition of RTL. Although the results are yet to be reported, the lessons learned in the future from these programmes should be taken into account. More importantly, as a newly created law, the LCIB can accommodate reformed procedure to fill the procedural gap left by the abolition of RTL.

### **3. Proposal for Procedural Law Reforms**

As mentioned above, the absence of transparency and fairness in the decision-making process of the RTL system was one of the objects of focused criticism. This might be the reason that the pilot programmes of LCIB laid extra importance on the review and approval process. As Professor Chen Zhonglin at Chongqing University Law School stressed, the most critical problem before the LCIB was where to place the approval authority; the public security organ's position of being both the player and the referee must be changed.<sup>14</sup> Commenting on RTL reform, Professor Jiang Ming'an at Peking University Law School suggested the reform should include five parts — including the purpose and functions, targeted persons, decision-making process and means and

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<sup>14</sup> Beijing Times, 29 August 2012.

remedy — and admitted that the decision-making process is the most vital part.<sup>15</sup>

### **3.1 Judicialisation and Quasi-judicialisation Approaches**

Generally, proposed reform plans on procedural issues take two approaches, judicialisation and quasi-judicialisation. The former suggests that the application authority and adjudication authority for correction of illicit behaviour be separated from each other in accordance with the due process principle and that the decision-making power be set at the hand of the people's court. As to the question of how to judicialise the process, three opinions have been observed: (i) A special process is established according to article 21(1) of the Organic Law of the People's Courts<sup>16</sup> in which the public security organ directly transfers cases of illicit behaviour correction to the primary people's court without review by the people's procuratorate. This process is neither public/private prosecution nor summary trial (see, e.g., Chu 2013); (ii) A magistrate's court/division inside the people's court is established that is in charge of review decisions on illicit behaviour correction to ensure the impartiality of adjudication after related compulsory sanctions are implemented as part of the path to the rule of law. Meanwhile, efforts should be made to safeguard procedural rights of violators, such as the right to a court hearing, the right to legal counsel and the right to silence, in accordance with international human rights laws (see, e.g., Wei 2013; Xiong 2014); and (iii) A petty offence division is established inside the people's court

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<sup>15</sup> Beijing Wan Bao, 8 January 2013.

<sup>16</sup> The article provides that a primary people's court undertake the following tasks: (1) settling civil disputes and handling minor criminal cases that do not need to be determined by trials ....

specially designed to address illicit behaviour correction decisions to alter the present state of affairs in which authority rests almost exclusively with the public security organ. The division operates through summary procedure and no appeal is allowed. If we have to take efficiency into consideration, we may also choose the following design: first, the police organ makes the decision, and then the violator, if he opposed, is entitled to apply to a petty offence division for adjudication. He will of course not be granted the right to appeal (see, e.g., Wang 2012).

The proponents for the quasi-judicialisation approach, while supporting separation of the application authority from the adjudication authority, suggest that the final say be given to the administrative organ. Part of them suggest that the adjudication authority be given to the *Illicit Behaviour Correction Administrative Committee* established after the abolition of RTL and adoption of the envisaged LCIB in large- and middle-sized cities, which should be composed of representatives from departments of civil affairs, finance, justice and education. The rest insist that the public security organ continue to exercise decision-making power and that remedies be provided to violators. Specifically, the public security organ first makes a correction decision on the basis of a complete, objective and just investigation following a strict hearing and informs the violator of available remedies. If the violator concedes, the decision becomes effective; if s/he disagreed, s/he is entitled to apply for a review or bring a lawsuit, and the decision shall not be enforced until the dispute is settled (for a detailed introduction, see, e.g., Chu 2013; Yang 2013).

Both the judicialisation approach and the quasi-judicialisation approach have advantages and disadvantages. The advantages of the former lie in two aspects. One is that it can meet the requirements of the ICCPR that China signed in 1998. The other is that it can contribute to the prevention of abuse and misuse seen in the operation of RTL in which the public security organ has all of the authority to decide, review and approve. Meanwhile, it should be remembered that this approach will add an extra burden to the people's court because the cases at first instance have been rapidly increasing in the recent decade, reaching as high as 8,442,657 in 2012. Meanwhile, if magistrate's divisions or petty offense divisions were to be established, more human and financial resources would be necessary. Whether the national budget could afford this is arguable. Furthermore, dealing with violators through criminal procedure will stamp the label of criminal on them. The label may make it harder for these persons to reintegrate into the community due to the heavy discrimination against the criminal identity in present China.

The quasi-judicialisation approach will barely add to the cost of law enforcement and will help to avoid confusion between 'crime', 'offence' and 'violation' that the judicialisation approach may create. Meanwhile, developed foreign experiences and successful examples are available. For example, in geographically large countries with a large population such as the US and the UK, administrative organisations such as parole boards in the US and magistrate's courts in the UK are usually given legal

authority to address 'judicial justness' for the need of State management. However, to grant adjudication to the Illicit Behaviour Correction Administrative Committee or the public security organ makes it possible that all of the problems and abuse in the operation of RTL will be revived because legally, it is the RTL administrative committees that manage and decide on the application of RTL, while the fact is that all of the authority is concentrated into the hands of the public security organ, which had previously led to the evolution of RTL as a convenient and arbitrary tool of 'maintaining stability'. Moreover, the quasi-judicialisation approach cannot meet the requirements of rules regarding personal freedom in international instruments such as the ICCPR. It can be easily seen that the judicialisation approach stresses justice and that the quasi-judicialisation lays more importance on efficiency.

### **3.2 Proposal for a Mixed Approach**

Basing on the above exploration, the author believes that a compromising or mixed approach to rehabilitation of illicit behaviour is also worth considering in the post-RTL era. Specifically, the decision authority can be granted to different organs according to the compulsory sanction concerned. If it does not involve deprivation or restriction of personal freedom, such as confiscation of illicit items, fines or behaviour monitoring, the community corrections organs shall make a decision according to an application submitted by the public security organ based on its investigation and assessment. The reason that it is proposed that community corrections organs be given

the final say here is that, on the one hand, such a design can actualise the separation of investigation authority and decision authority and reduce the potential burden on the people's court; on the other hand, the community corrections system is designed to address petty violations by adopting such measures as legal education and behaviour monitoring, which is exactly what rehabilitation of violations requires. Therefore, to give the final say to the community corrections organs is not only economically preferable but also helpful in enforcing the sanction.

In the case that the sanction to be imposed involves deprivation or restriction of personal freedom, the community corrections organ shall review the application submitted by the public security organ and decide whether the application is based on sound facts and meets legal requirements. If its conclusion is negative, the application shall be dismissed; if the conclusion is positive, the community corrections organ shall transfer the application to the administrative division of the people's court for its adjudication. First, such a design meets the requirements of rules in international instruments regarding deprivation of liberty, and second, it avoids the extra financial burden that may be created by the establishment of petty offence courts or magistrate's courts. Meanwhile, compulsory rehabilitation measures, like RTL, are administrative punishment, which fall legally within the jurisdiction of the administrative division of the people's court. What is more, statistics show that the absolute number of administrative cases handled by people's courts at all levels is not only small compared to that of criminal or civil cases but also has been decreasing in

recent years. Therefore, it would lay an excessive burden on the administrative division of the people's court to let it address rehabilitation cases that involve restriction or deprivation of personal freedom.

The entire sanction process may be divided into the following five phases: (i) Investigation and application phase in which the police authority submits an application for sanction to the community correction organs on the basis of its investigation of a violation; (ii) Debate phase in which the community corrections organ summons the police authority and violator to a meeting to debate both the legal and factual basis of the application; (iii) Decision phase, where, if the sanction to be employed involves restriction or deprivation of personal freedom, the community corrections organ shall decide whether the application should be submitted to the administrative division of the people's court at the corresponding level for judicial adjudication; for other sanctions, the community corrections organ shall make a final decision as to whether the application should be allowed; (iv) Judicial adjudication phase in which the people's court gives an order on the basis of the application and documents from the community corrections organ; and (v) Enforcement phase. If the application was dismissed by decision of either the community corrections organ or the people's court, the decision shall be enforced from the moment that the decision is made. The decision made by a community corrections organ that does not involve personal liberty shall be enforced seven days after the issue date, during which time the violator can choose whether to bring forward an administrative lawsuit, and the

order by the people's court shall become legally binding after the issue date.

#### **4. Conclusion**

The RTL system was originally intended to prevent and rehabilitate illicit behaviours. Unfortunately, the system was gradually distorted and used as a convenient but illegal tool to maintain social stability. For example, the *Notice regarding Dealing with Abnormal Petitioning in accordance with the Law*, jointly issued by the Shenzhen Intermediate People's Court, the Shenzhen People's Procuratorate and the Judicial Bureau and Public Security Bureau of the Shenzhen Municipal Government in 2009, pointedly declares that persons taking actions falling within the 14 categories of 'irregular and radical petition conducts', such as causing a disturbance in Tian'anmen square and jumping off a high building, shall be subject to RTL. Considering the fact that the sources of social conflicts and the burden of keeping society 'stable' remain, we have a sound reason to stay alert as to a possible revival of RTL under another name. For example, it was reported by Wen Hui Bao on 15 February 2014 that a number of cities in Henan province, including Nanyang, Zhumadian, Dengzhou and Xinxiang, established the so-called 'Discipline and Education Centre for Irregular Petitioning' and continued the practices of the RTL system. Briefly, the abolition of RTL is no more than the beginning of long march, and more work remains to be done to resolve the problems of extra-judicial restrictions on and deprivation of personal liberty, such as custody and education for sex workers and their clients and the

compulsory rehabilitation of drug users.

## References

Amnesty International (2013) Changing the Soup but not the Medicine? AI Index: 17/042/2013.

Chen, Zexian(2003) ‘Chinese Re-education through Labour System and Its Reform’, *Global Law Review*, Winter: 397-402.

Chu, Huaizhi (2013) ‘On reforms of Re-education through Labour’, *People’s Procuratorate Daily*, 7 March 2013.

Gao, Mingxuan and Zhanghui(2015) ‘the Necessity to Abolish Re-education through Labour and Alternatives to It’, in Liu, Renwen (eds) *Improving the Structure of Criminal Law after the Abolition of Re-education Through Labour*, Beijing: Social Sciences Academic Press.

Jiang, Aidong (2010) *Studies on Legislation of Law on Education and Rehabilitation of Illicit Behaviours*, Beijing: Quzhong Press.

Jiang, Ming’an (2013) ‘Re-education through labour shall reformed toward judicialization’, *Beijing Evening*, 8 January 2013.

Li, Xiaoyang(2013) ‘Abolition of Re-education through Labour and Promulgation of Law on Education and Rehabilitation of Illicit Behaviours’, *Law Science Magazine*, 3: 105-11.

Liu, Renwen(1998) ‘Law on Re-education through Labour is in Urgency’, *Law Science Magazine*, 5:22-3.

----- (2013) ‘Security Measures: Direction of Reform of Re-education through Labour’,

*Chinese Cadres Tribune*, 1: 55-8

------(2004) Preliminary Studies on Criminal Policy, Beijing: Publishing House of Chinese People’s Public Security University.

Qu, Xuewu(1996) ‘Security Measures and Chinese Criminal Law Reform’, *CASS Journal of Law*, 18(5):55-68.

Ruan, Qilin (2015) ‘Adjustment of Criminal Law in Post-RTL ERA’, in Liu, Renwen (eds) *Improving the Structure of Criminal Law after the Abolition of Re-education Through Labour*, Beijing: Social Sciences Academic Press.

Song, Lu’an(1996) ‘Re-education through Labour Must be Abolished’, *Journal of Administrative Law*, 2:26-31.

Wang, Gongyi (2012) ‘Studies on Issues concerning Abolishing or Retaining Re-education through Labour’, *Journal of South-Central University for Nationalities (Humanities and Social Sciences)*, 32(3):110-4.

Wang, Shizhou (2015) ‘Tasks of Chinese Criminal Law in Post-RTL ERA’, in Liu, Renwen (eds) *Improving the Structure of Criminal Law after the Abolition of Re-education Through Labour*, Beijing: Social Sciences Academic Press..

Wei, Xiaona (2013) ‘Stepping out of the Dilemma of Re-education through Labour: Values, System and Technology’, *Law Science*, 2:27-32.

Wu, Zongxian, Cai, Yaqi and Peng, Yuwei (2012) *Application and Enforcement of Community Corrections System*, Beijing: China People's Public Security University Publishing House.

Xiong, Qihong (2014) Legal System after Abolition of Re-education through Labour. Online. Available HTTP <[http://law.cssn.cn/fx/fx\\_cgzs/201403/t20140320\\_1037900.shtml](http://law.cssn.cn/fx/fx_cgzs/201403/t20140320_1037900.shtml)> (accessed 25 March 2014).

Yang, Jianshun, It should be prudent to abolish re-education through labour. Online. Available HTTP <<http://theory.people.com.cn/n/2013/0128/c112851-20349898.html>> (accessed 25 March 2014).

Yao, Jia (2013) 'Just a Changed Face or Rise from the Ashes', *Journal of Beijing Police College*, 3:26-31.

Zhai, Zhongdong (2013) *New Models of Community Corrections and Rise of Community-based Punishments: An International Perspective*, Beijing: China University of Political Science and Law Press.

Zhao, Bingzhi, Hao, Xingwang, Yan, Maokun and Xiao, Zhonghua(1996) 'Issues regarding Reform of Chinese Criminal Law', *CASS Journal of Law*, 18(5): 3-24.