

# Hard work

**Jerome A. Cohen and Margaret K. Lewis** say without recourse to constitutional backing, the move to truly abolish re-education through labour faces the same hurdles as in past reform efforts

Last week's decisions of the Communist Party's Central Committee promise significant changes to many aspects of China's legal system. None may be more important and immediate than its announcement that the party is terminating "re-education through labour", the notorious administrative punishment to which the police alone can sentence anyone for as much as three years of detention in a labour camp, with a possible one-year extension. Police don't need the approval of any court or even the agreement of the prosecutor's office.

Is re-education through labour, which has been a mainstay of China's dictatorial power since 1957 and often attacked by law reformers, really to be abolished in substance as well as name?

Just two months ago, we published a book titled *Challenge To China: How Taiwan Abolished Its Version Of Re-education Through Labor*. It tells the story of how, in 2009, Taipei finally ended its equivalent of re-education through labour, an abiding hallmark of the Leninist-style party-state of Chiang Kai-shek's Nationalist Party. This milestone was a triumph for the island's democracy and rule of law.

It took Taiwan over two decades to eliminate what it euphemistically called its "technical training institutes" for re-educating *liumang*, a term that can be loosely translated as "hooligans" but that had long been used to detain political offenders as well as petty hoods. Spurred by an increasingly well-informed and activist civil society and independent legal profession, Taiwan's executive, legislative and judicial branches collaborated to restrain police power by improving not only the formal criminal justice system but also the parallel system of police-dominated administrative punishment that undermined the criminal justice system.

Three interpretations by Taiwan's formerly docile constitutional court, invalidating various aspects of the administrative punishment system, played a critical role in its demise. Mainland China, however, has no constitutional court and denies its regular courts the power to apply its constitution. Despite China's constitutional guarantee that the state respects human rights, courts cannot vindicate human rights abuses based on this clear statement.

Moreover, the Standing Committee of the National People's Congress, which holds exclusive power to interpret the constitution, refuses to exercise it. Nevertheless, the just-released party plenum decisions, without offering details,

emphasise the necessity of strengthening supervision of the constitution's enforcement and flatly declares that re-education through labour will be annulled.

So how is this likely to be accomplished? Some areas in China stopped invoking re-education through labour soon after the new head of the party's central political-legal commission, former minister for public security Meng Jianzhu (孟建柱), said in January that it would cease by the end of the year.

Although government agencies heed such high-level guidance, they generally expect the National People's Congress,



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nominally the nation's supreme legal authority, to promulgate guiding laws that embody the party's commands. This is what we can next anticipate.

For a decade, the NPC has had on its agenda various drafts of a law intended to abolish re-education through labour and replace it with measures that, unlike re-education through labour, would withstand scrutiny as being consistent with China's constitution and the UN International Covenant on Civil and Political Rights, which the People's Republic signed

in 1998 but has never ratified. No draft was ever adopted, however, because of disagreement about its contents, including strong opposition from the police, who have relied on re-education through labour as a convenient tool of repression.

Chinese legislators and law reformers have proposed all types of changes to the current system. The Ministry of Public Security and its allies have until now fought a largely successful rear-guard action, offering concessions here and there as long as police do not lose final decision-making power to the courts or other institutions. They would be content, obviously, to retain re-education through labour in substance and merely abolish it in name.

Other proposals have called for more significant changes, for example, shortening the term of police-imposed detention to not more than a year or 18 months. Some suggested converting re-education through labour into a type of factory or boarding school rather than labour camp, allowing inmates to return home at weekends or in holidays. Some focused on procedural protections that would require participation of defence lawyers, the right to cross-examine witnesses, and even court approval of every police sentence. An optimistic economist once proposed a public jury trial!

The plenum document tantalisingly indicates broader reforms that were foreshadowed in a recent speech by Zhou Qiang (周强), the new president of the Supreme People's Court, in which he warned lower courts to prepare for much larger responsibilities that would soon be thrust upon them because many offenders previously processed as re-education

through labour targets would instead be prosecuted as criminals.

Yet most ordinary drug offenders, who constituted a major part of the group sent every year to such re-education, will probably be confined in existing administrative treatment centres for up to six months or a year rather than sent to court, and the same can be expected for prostitutes.

A miscellany of other petty offenders who do not respond well to the 15-day maximum detention currently dispensed by the police under the Security Administration Punishment Act may find themselves in "legal education" centres or other types of "community correction" units that have detained people for longer periods.

Moreover, despite a new mental health law, police are likely to continue their involuntary commitment to psychiatric hospitals of certain political dissidents, religious or Falun Gong adherents and other recalcitrants. They may also be increasingly tempted to resort to the many forms of illegal detention, ranging from kidnapping to "black jails", that have sullied their reputation.

Without a clear path for abolishing re-education through labour or a deadline for implementation, we must wait and see how China's leadership will finally leave it to the history books, as its neighbour across the strait has already done.

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