



*The School for Ethics and Global Leadership*

**Addressing the *Laogai*:  
A Human Rights Violation and Economic  
Dilemma**

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## Introduction

This document, written in the Fall of 2012, is the work of 24 high school juniors who attend The School for Ethics and Global Leadership (SEGL). The Mission of SEGL is to provide intellectually motivated high school juniors who represent the diversity of the United States with the best possible opportunity to shape themselves into ethical leaders who create positive change in our world. Each semester of students researches a relevant international issue with ethical implications and proposes reasonable policy recommendations to combat the issue. We hope that this document brings to light the current status of the People's Republic of China's prison system, known as *Laogai*, and inspires action to resolve this issue in the future.

## Executive Summary

Crime necessitates punishment. But what about when the crime is simply speaking one's mind or professing one's faith? Such things are considered crimes in the People's Republic of China (PRC), where these apparent "criminals" suffer from torture, repression, and reform through labor—under one system known as *Laogai*.<sup>1</sup> Once sent to the *Laogai* camps, prisoners are forced to work sixteen-hour days manufacturing goods, of which half are exported. Workers are subject to insufficient nourishment and medical treatment and are not paid. Such inhumane and illegal treatment of human beings violates international human rights laws. This humanitarian crisis is seemingly unparalleled anywhere else in the modern world, with fifty million people having passed through the camps' gates; yet, the world has fallen silent because it is largely unaware of the atrocities committed behind closed Chinese doors. Meanwhile, approximately three million people remain imprisoned. The *Laogai* also create an economic disparity that disadvantages the United States and other law-abiding countries by lowering prices through eliminating labor costs. The United States House of Representatives acknowledges the existence of the camps; however, minimal action has been taken to condemn the *Laogai*. Little substantive progress has been made since the camps' inception.

Mao Zedong rose to power in 1949 and brought with him the *Laogai*. It started small, imprisoning only those who committed a felony. In 1953, the system expanded to include *Jiuye*—a forced job placement program. The *Jiuye* kept prisoners near or within the camps after their sentence was served. Two years later, the PRC instituted the *Laojiao*—reeducation through labor for political or religious dissidents, enemies of the state, or those deemed to be useless to society. Currently, the overarching *Laogai* system is primarily used to detain and reform political and religious dissidents. Citizens whose beliefs are contrary to those of the Chinese Communist Party (CCP) are sent to the *Laogai* to undergo a process the CCP refers to as "thought reform". The legal system of the PRC violates international standards, as there is no presumed innocence, right to remain silent, nor protection against self-incrimination. A majority of prisoners are sent to the *Laogai* on trumped up charges. This lack of due process is only the beginning in a series of humanitarian concerns.

The *Laogai* provoke three main areas of concern from a humanitarian perspective: a lack of due process, a suppression of personal freedoms, and a disregard of international laws regarding prison conditions. The corruption in the legal system leads to extended periods of detention and unlawful confessions often obtained through torture. Once sentenced, prisoners are subject to a repression of political and religious freedoms that fail to adhere to international standards outlined in the Universal Declaration of Human Rights (UDHR). Both physical and psychological torture are used as methods of reformation to eliminate anti-CCP sentiments. Chinese law states that such torture is illegal; nevertheless, these practices can be observed throughout the PRC.

Although human rights pose a significant concern, due to the PRC's thriving economy and its relations with economic superpowers like the United States (U.S.), financial concerns are equally as problematic. The PRC's economy is fueled by a system of labor that is producing

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<sup>1</sup> Mandarin word meaning "reform through labor"

mass quantities of goods without the burden of compensation. In trade agreements those countries that do not have similar advantages fail to compete.

Since 1930, it has been illegal to import forced labor products into the United States. Customs and Border Protection, the agency responsible for enforcing that law, has only stopped twenty-six shipments of Chinese forced labor goods since 1991. We recommend that the U.S. Congress enact new legislation that requires businesses to establish a chain of supply that proves products are not *Laogai* produced. The U.S. Congress should also pass a resolution stating a desire to work with the PRC to end the *Laogai*. One source of tension between the U.S. and the PRC is the debt owed to the PRC by the U.S. Thus, the U.S. should begin negotiations for setting a deadline by which the debt must be repaid. This would decrease tensions in bilateral discussions of human rights. Similar to the U.S., many other nations have laws regarding forced labor products, but the lack of information on *Laogai* makes the process of identifying such products difficult. Therefore, the U.S. should form a coalition with foreign nations who have strong ties with the PRC. This coalition would encourage its member nations to pass internal legislation to investigate the sources of goods entering their respective nations to ensure they are not *Laogai* made. The final recommendation for the U.S. government is to begin discussing the *Laogai* within the United Nations (UN) to ensure that the issue is being discussed on the world stage.

Currently, international laws do not hold the necessary authority to combat the PRC's violations of them. The United Nations Convention Against Torture as it stands, does not require that a signatory's internal definition of torture match that of the Convention. For this reason, the PRC is able to avoid international pressures regarding their use of torture. Therefore, we propose an amendment be made to the United Nations Convention Against Torture so that all signatories must have an internal definition of torture that is congruent to that set forth in the Convention. In addition, the PRC has not signed on to the International Labor Organization Convention 105 (ILO 105), which condemns the use of forced labor as a form of re-education. We propose that this issue be addressed in the bi-annual meeting of the EU-China Human Rights Dialogue, with the intention of acquiring the PRC's signature of ILO 105. Finally, to monitor the PRC's adherence to all international laws of which they are signatories, we suggest that a *Laogai* working group be created under the jurisdiction of the UN Human Rights Commission.

The primary areas of concern for anyone involved in resolving the issue of the *Laogai* remain humanitarian and economic. Not only are the fundamental human rights of prisoners disregarded, but law-abiding economies are disadvantaged by this practice. In order to incentivize businesses to respect the rights of prisoners and not use *Laogai* products, we recommend the creation of a non-governmental body to monitor and deter the use of such products within the international business community. Finally, as the PRC has recently showed a commitment to reform for the first time in its history, they must recognize the existence of flaws within their penal system, in order to allow bilateral improvement.

# History and Current Situation

## Summary

The PRC has oppressed Chinese people for decades in labor camps known as *Laogai*. In modern history, no country has committed human rights abuses as drawn out as the PRC. This issue of human rights abuses has already been brought to the attention of the U.S. government; however, no action has been taken. This lack of attention to an issue of human rights and Communist oppression is deplorable. The United States must act quickly to put an end to the *Laogai*.

*Laogai* are labor camps in the PRC. The Mandarin word *laogai* translates as “reform through labor”.<sup>2</sup> While imprisoned in these camps, detainees are tortured and forced to work—manufacturing goods sold to the United States.<sup>3</sup> *Laogai* camps are both a violation of human rights and a threat to the U.S. economy.

The term *Laogai* is both an umbrella term for the entire prison system and a name for the long-term branch of the system.<sup>4</sup> The entire *Laogai* network has three branches: *Laogai*, *Laojiao*, and *Jiuye*. The *Laogai* are prison camps for criminals and enemies of the state. *Laojiao* camps, meaning “re-education through labor”, are reserved for petty criminals and “troublemakers”. *Jiuye* is forced job placement after release from the camps.<sup>5</sup>

## History and Background

Mao Zedong established the *Laogai* in the early 1950s, shortly after his rise to power.<sup>6</sup> The goals of the prison system are “to generate economic resources for the state through free labor and to ‘reform criminals’ through hard labor and political indoctrination”.<sup>7</sup> In 1953, the Second National Conference expanded the reach of its prison system by instituting the policy of “keeping many and freeing few”, or *Jiuye*.<sup>8</sup> To continue the fight against political dissidents, the PRC passed the 1954 Act of the People’s Republic of China for Reform Through Labor, which ordered prisoners to work for free in agricultural and industrial projects around the PRC.<sup>9</sup> The Chinese government said at the time, “*Laogai* production must serve the economic construction of the state and be a part of the general plan of

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<sup>2</sup> *Laogai Handbook* (Washington, DC: Laogai Research Foundation, 2006), 1.

<sup>3</sup> H.R. Con. Res. 308, 106th Cong., 2d Sess. (2000).

<sup>4</sup> Ramin Pejan, “Laogai: ‘Reform Through Labor’ in China,” *Human Rights Brief* 7, no. 2 (2000): accessed November 12, 2012, <http://www.wcl.american.edu/hrbrief/07/2laogai.cfm>.

<sup>5</sup> Hugo De Burgh, *China: Friend or Foe?* (Cambridge: Icon, 2006), 385.

<sup>6</sup> De Burgh, *China: Friend or Foe?*, 385.

<sup>7</sup> H.R. Con. Res. 294, 109th Cong., 1st Sess. (2005).

<sup>8</sup> Melissa Pearson Fruge, “The Laogai and Violations of International Human Rights Law: A Mandate for the Laogai Charter,” *Santa Clara Law Review* 38, no. 2 (January 1, 1998): 484.

<sup>9</sup> Fruge, “The Laogai and Violations of International Human Rights Law: Mandate for the Laogai Charter” 479 – 480.

production and construction of the state”.<sup>10</sup> The government used, and still uses, *Laogai* production to benefit economically. Forced labor gives the PRC an edge over nations that abide by international human rights and trade laws. In 1955, the PRC created a new branch of *Laogai*, the *Laojiao*.<sup>11</sup> The inception of *Laojiao* gave local police officers the ability to imprison alleged criminals for up to three years without trial.<sup>12</sup>

The same year, the CCP began to use its new prison system on a larger scale; it initiated a purge of counter-revolutionaries, or opponents of the newly created PRC. During this period, the government set a mandatory quota of five percent of all government employees to be purged. One hundred thousand “counter-revolutionaries” were found and sent to either *Laogai* or *Laojiao*.<sup>13</sup> The population in *Laogai* camps increased even more in April 1957 when Mao began his “Hundred Flowers Campaign”. This campaign encouraged citizens to exercise freedom of speech; it was an attempt by the Chinese government to check its progress. However, citizens went too far in criticizing the government and the CCP responded with an anti-rightist campaign. “Right” signifies support of social hierarchy. By 1958, at least 550,000 Chinese people were accused of being rightists and were imprisoned.<sup>14</sup> The 1950s shows a peak in *Laojiao* population based on these events and campaigns. However, several *Laojiao* prisoners were released following Mao’s death in 1979.<sup>15</sup>

The Mao-era of Chinese rule has a history of imprisoning people who oppose the views of the Chinese government. Even post-Mao, the practice continues. The CCP unlawfully and arbitrarily arrests political dissidents.<sup>16</sup> The United States must put an end to this oppressive and unjust treatment of Chinese citizens.

## Current Situation

There are approximately three million prisoners in nearly one thousand *Laogai* camps across the PRC.<sup>17</sup> About forty to fifty million prisoners have passed through the *Laogai* system.<sup>18</sup>

Prisoners are easily admitted to the camps. Similarly, a prisoner’s sentence can be extended with an administrative order or through the judicial process with little opposition. While imprisoned in *Laogai* camps, detainees undergo thought-reform to change their personality and anti-government sentiments. Prisoners are forced to work without being compensated

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<sup>10</sup> Nicole Kempton, ed., *Laogai: The Machinery of Repression in China* (Washington, DC: Umbrage Editions, 2009).

<sup>11</sup> Hualing Fu, "Re-education through Labour in Historical Perspective," *The China Quarterly*, 2005, 811.

<sup>12</sup> De Burgh, *China: Friend or Foe?*, 385.

<sup>13</sup> Fu, "Re-education through Labour in Historical," 813.

<sup>14</sup> Yvonne van der Heijden, "Reflecting the Life of China in the Mirror of His Life: A Chinese scholar and one-time journalist describes what happened to him during the Cultural Revolution.," *Nieman Reports*, 2003, accessed November 13, 2012, <http://www.nieman.harvard.edu/reports/article/101258/Reflecting-the-Life-of-China-in-the-Mirror-of-His-Life.aspx>.

<sup>15</sup> Fu, "Re-education through Labour in Historical," 822.

<sup>16</sup> Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices for 2011: China (includes Tibet, Hong Kong, and Macau), Rep. (2011).

<sup>17</sup> H.R. Con. Res. 294, 109th Cong., 1st Sess. (2005).

<sup>18</sup> *ibid.*

for their labor.<sup>19</sup> Prisoners are often starved and tortured by being “hung upside down, repeatedly whipped and beaten with wooden clubs, burned with cigarette butts, branded with irons and [have their] genitals ripped off”.<sup>20</sup> In 1998, the U.S. submitted a report on the current conditions in the prison system. The U.S. State Department “noted that conditions in *Laogai* penal institutions for both political prisoners and common criminals are harsh and degrading”.<sup>21</sup> The PRC’s abuse of its prisoners clearly violates the United Nations Convention Against Torture (signed in 1986),<sup>22</sup> which defines torture as:

Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.<sup>23</sup>

The PRC is torturing prisoners not only in *Laogai* camps but also during the interrogation process of the trial.<sup>24</sup> The PRC affirmed its support for UDHR in 1971 and has since then strayed from its principles.<sup>25</sup> *Laogai* prison camps are currently in violation of Articles 4, 5, 9, 11, 18, and 19 of the UDR.<sup>26</sup>

According to the United States Bureau of Democracy, Human Rights and Labor, the Chinese prison system has abhorrent conditions. It is reported that prisoners are not supplied with adequate food, medical care, and quarters. Prisoners are often forced to sleep on the floor or in extremely small cells because there is not enough space in the prison camps to allow for proper treatment of detainees.<sup>27</sup> In *Laogai* camps, political and religious

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<sup>19</sup> De Burgh, *China: Friend or Foe?*, 385.

<sup>20</sup> U.N. Economic and Social Council, 58th Session. Commission of Human Rights. "Question of the Human Rights of all persons subjected to any form of detention or imprisonment, in particular: torture and other cruel, inhuman or degrading treatment or punishment: Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 2001/62." (E/CN.4/2002/76/Add.1). 14 March 2002.

<sup>21</sup> Pejan, "Laogai: 'Reform Through Labor in China'"

<sup>22</sup> "Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment," United Nations Treaty Collection, accessed November 13, 2012, [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-9&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&lang=en).

<sup>23</sup> United Nations General Assembly. "Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment." (A/RES/39/46). 10 December 1984, Article 1.

<sup>24</sup> H.R. Con. Res. 294, 109th Cong., 1st Sess. (2005).

<sup>25</sup> Greg Moore, *China's Cautious Participation in the UN Human Rights Regime: A review of China*, the United Nations, and Human Rights: The Limits of Compliance, by Ann Kent. (Philadelphia: University of Pennsylvania Press, 1999), 24, accessed November 12, 2012, <http://www.du.edu/korbel/hrhw/volumes/2001/1-1/kent.pdf>.

<sup>26</sup> Ibid.

<sup>27</sup> Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices for 2011: China (includes Tibet, Hong Kong, and Macau), Rep. (2011).

dissidents are mixed together with criminals. Additionally, the camps are isolated from society, usually by geography.<sup>28</sup> Within the camps, prisoners are forced to work without compensation and are often subject to “reported beatings, sexual assaults, lack of food, [and] no access to medical care”.<sup>29</sup> Throughout the history of *Laogai* camps, several international human rights laws have been violated. In 1984, the Chinese government instituted a policy allowing the harvest of organs from executed prisoners without consent from the deceased or his/her family members.<sup>30</sup> The government’s disregard for basic human liberties is unacceptable. Although the Chinese Vice Minister of Health, Huang Jiefu, declared that the PRC has put an end to unlawful organ harvesting, there are still many reports of this practice. Reports are often submitted by the Uyghurs, an ethnic minority in the PRC.<sup>31</sup>

## The Legal System

The judicial system of the PRC is tightly tied with the CCP. Former president of the Supreme People’s Court, Xiao Yang, stated in 2007 that “The power of the courts to adjudicate independently doesn’t mean at all independence from the Party. It is the opposite, the embodiment of a high degree of responsibility vis-à-vis Party undertakings”.<sup>32</sup> Because of strong influence, it is likely that the Party influences decisions made by the judicial system, weakening rule of law.

In 1997, the PRC redrafted the original Criminal Code from 1979. The revisions renamed the term “counter-revolutionary” as one who “endangers state security”.<sup>33</sup> Thus, speaking out against the government was criminalized. A looser definition for conviction permits the Chinese government to easily imprison citizens.

The PRC revised the Code of Criminal Procedure in March 2012. The code consists of 290 articles of which 145 articles were revised. The new amendments provide for respect and a guarantee of human rights in the law, “improvement in the evidence system...improvement in the coercive measures system...improvement in the defense system...improvement in investigative measures regulations...improvement in trial procedures...improvement in enforcement”.<sup>34</sup> These amendments show great strides in reforming the judicial system in the PRC. However, in practice, the Chinese government is not sufficiently reformed: citizens are still imprisoned unjustly and sent to *Laogai*.

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<sup>28</sup> De Burgh, *China: Friend or Foe?*, 385.

<sup>29</sup> Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices for 2011: China (includes Tibet, Hong Kong, and Macau), Rep. (2011).

<sup>30</sup> H.R. Con. Res. 294, 109th Cong., 1st Sess. (2005).

<sup>31</sup> Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices for 2011: China (includes Tibet, Hong Kong, and Macau), Rep. (2011).

<sup>32</sup> Zhengxu Tang, “正确的司法权威观是法治的应有之意” [The correct concept of judicial authority is the proper meaning of the rule of law], *China Court Daily*, last modified October 18, 2007, accessed November 13, 2012, <http://old.chinacourt.org/html/article/200710/18/270093.shtml>.

<sup>33</sup> Pejan, “Laogai: ‘Reform Through Labor in China.’”

<sup>34</sup> Yi Zhang, “Legal Special: Amendments Show China on Path toward Rule of Law,” *China Daily USA*, November 12, 2012, China Politics, accessed November 12, 2012, [http://usa.chinadaily.com.cn/china/2012-11/12/content\\_15917829.htm](http://usa.chinadaily.com.cn/china/2012-11/12/content_15917829.htm).



In August 2012 Tang Hui, a woman from the city of Yongzhou, was imprisoned for protesting the unfair sentencing of her eleven-year-old daughter's rapists. In 2006, her daughter was kidnapped, raped, and forced into prostitution. Tang fought for seven years in the courts to make sure the culprits were punished appropriately. The perpetrators' sentences varied from the death penalty and life imprisonment to a fifteen-year sentence. However, during the trials, Tang blocked traffic in front of the courts and slept in the halls of the courthouse. These offenses were enough to have her sentenced to eighteen months in *Laojiao* in early August 2012. Her sentencing caused major outrage, especially among the online community of the PRC. She was released a week later because of these protests.<sup>35</sup>

The controversy over Tang's imprisonment has influenced the Chinese government. In mid-October of 2012, China's State Council issued a white paper stating that the government reached a consensus and has begun reforming the *Laojiao* system.<sup>36</sup> The Chinese government acknowledges its use of re-education through labor. The United States must push the PRC even further to eliminate *Laogai*.

## United States Involvement

In 1930, the United States Congress passed the Smoot-Hawley Tariff Act, which forbade the import of products made wholly or in part by prison labor.<sup>37</sup> In 1997, the House of Representatives passed Bill 2195, which appropriated \$2 million to the U.S. State Department to enforce the Smoot-Hawley Act.<sup>38</sup> Unfortunately, despite the appropriations, the United States now violates this act because it continues to import products from *Laogai*. In 1992, the United States entered a Memorandum of Understanding (MOU) with the PRC to "obtain more information on the importation of *Laogai* goods to the U.S."<sup>39</sup> The United States suspected the PRC was in violation of this memorandum, so in 1995 the House of Representatives Subcommittee on International Operations and Human Rights held a hearing, which formatted Concurrent Resolution 294 condemning the *Laogai* that eventually passed the House in 2005.<sup>40</sup> Though the legislative action shows potential, the United States has yet to act.

As the U.S. continues to ignore resolutions created in Congress, the PRC continues to produce and export more products to the U.S.<sup>41</sup> In 2011, the U.S. imports from the PRC

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<sup>35</sup> Tania Branigan, "Outcry in China over Mother Sent to Labour Camp after Daughter's Rape," *The Guardian*, August 16, 2012, World News, accessed November 12, 2012,

<http://www.guardian.co.uk/world/2012/aug/16/china-tang-hui-labour-camp>.

<sup>36</sup> *Judicial Reform in China* (Beijing, China: Information Office of the State Council, 2012), accessed November 12, 2012, [http://www.gov.cn/english/official/2012-10/09/content\\_2239981.htm](http://www.gov.cn/english/official/2012-10/09/content_2239981.htm).

<sup>37</sup> Smoot-Hawley Tariff, 65 Stat. (June 18, 1930). Accessed November 13, 2012. <http://www-rohan.sdsu.edu/dept/polsciwb/brian/docs/1930Smoothawleytariff.pdf>.

<sup>38</sup> H.R. 2195, 105th Cong., 1st Sess. (1997). Accessed November 14, 2012.

<http://www.gpo.gov/fdsys/pkg/BILLS-105hr2195rh/pdf/BILLS-105hr2195rh.pdf>.

<sup>39</sup> Fruge, "The Laogai and Violations of International Human Rights Law: Mandate for Laogai Charter." 487.

<sup>40</sup> H.R. Con. Res. 294, 109th Cong., 1st Sess. (2005).

<sup>41</sup> H.R. Con. Res. 294, 109th Cong., 1st Sess. (2005).

totaled nearly \$400 million worth of products, a 9.4% increase from 2010 and an overall increase of 299% from 2000.<sup>42</sup> The increased number of products coming into the country puts the United States in a difficult position as it tries to put an end to *Laogai*. As more businesses rely on Chinese companies as suppliers, the United States' leverage over the PRC is diminished.

In 2011, the United States' top five imports from the PRC were electrical machinery (\$98.7 million), machinery (\$94.9 million), toys and sports equipment (\$22.5 million), furniture and bedding (\$20.5 million) and footwear (\$16.7 million).<sup>43</sup> The PRC uses "window" or "front" businesses that act as middlemen between *Laogai* camps and U.S. businesses to disguise *Laogai*-made products. In order to facilitate business and obtain profits, these "window" corporations operate under different names than that of their *Laogai* suppliers.<sup>44</sup> These corporations gain an unfair advantage by selling *Laogai* products without having to pay for its workforce.

There is speculation that many well-known American businesses such as Chrysler, Staples, and Adidas have purchased *Laogai* products.<sup>45</sup> The U.S. Customs and Border Protection (CBP) agency defends the U.S. against the importation of prison-labor products and takes charge of investigating the whereabouts of products being imported to the United States by working with foreign governments.<sup>46</sup> However, the CBP can only take action when it has sufficient information indicating a violation of the Smoot-Hawley Act of 1930. Due to the PRC's strict control of information, "window" corporation suppliers cannot easily be exposed. As a result, the CBP is not able to find adequate information indicating violations and therefore cannot prevent the importation of prison-labor products into the U.S. This is problematic because absence of product transparency will result in continued importation of prison-labor products and violates the Smoot-Hawley Act of 1930. Failing to challenge this system gives the PRC no incentive to abide by regulations other than its own. Allowing the PRC to play by its own rules is unfair to law-abiding American traders and places the U.S. at an economic disadvantage.

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<sup>42</sup> "U.S. Trade Representative Ron Kirk and U.S. Commerce Secretary John Bryson to Convene 22nd Session of U.S.-China Joint Commission on Commerce and Trade in Chengdu, China," news release, November 4, 2011, accessed November 12, 2012, <http://www.commerce.gov/news/press-releases/2011/11/04/us-commerce-secretary-john-bryson-and-us-trade-representative-ron-kirk>.

<sup>43</sup> "U.S. Trade Representative Ron Kirk," news release.

<sup>44</sup> "Slavery: A 21st Century Evil: Prison Slaves," Al Jazeera, video file, March 25, 2012, accessed November 12, 2012, <http://www.aljazeera.com/programmes/slaverya21stcenturyevil/2011/10/2011101091153782814.html>.

<sup>45</sup> Daniel J. O'Connor, "The Chinese Gulag," accessed November 12, 2012, <http://www.colby.edu/par/Winter%2098/Laogai.htm>.

<sup>46</sup> "About CBP," Customs and Border Protection, accessed November 13, 2012, <http://www.cbp.gov/xp/cgov/about/>.

# Humanitarian Concerns

## Summary

The *Laogai* in the PRC core present numerous instances of human rights violations. The instances of torture, inhospitable living quarters, and lack of necessary freedoms in the *Laogai* are evident in personal testimonies recognized by the U.S. House of Representatives Committee on Foreign Affairs, the UN Commission on Human Rights, and the Bureau of Democracy at the U.S. Department of State.<sup>47 48 49</sup> From a humanitarian standpoint, regardless of political or economic motivations, such acts cannot be allowed to carry on indefinitely. The U.S. has established its own set of regulations for prisoners to guarantee basic human rights, but on an international scale, the UN established the *Standard Minimum Rules for the Treatment of Prisoners* (SMRTP) in 1955.<sup>50</sup> Although not legally binding, the SMRTP serves as guidelines for the humane treatment of prisoners. The main aspects of concern are those of due process, personal freedoms, equal protections, and conditions of confinement.<sup>51</sup> These classes were defined in the United States Civil Rights Act under section 1983, which, although not internationally recognized, serves as an adequate assessment of the necessary humanitarian rights of prisoners. These classes are also on par with the UN's SMRTP.<sup>52</sup> Violation of these key aspects of human rights can be seen in a variety of ways in the *Laogai*. Oppression and coercion, especially against political and religious dissidents, along with inhospitable living conditions and many instances of torture are routine. A lack of adherence in the *Laogai* to international and PRC laws and guidelines regarding human rights acts as a serious humanitarian issue that requires an international response. The U.S., humanitarian non-governmental organizations (NGOs) and international factions such as the UN must coerce the CCP to adhere to its own laws on the treatment of prisoners as well as international guidelines as established in the SMRTP and the UN Convention Against Torture.

## Due Process

From a humanitarian standpoint, the deepest concern of the U.S. is the lack of due process in the *Laogai*.<sup>53</sup> In 2001, the Special Rapporteur to the UN reported that there was no presumption of innocence in the judicial process and no protection against self-incrimination.<sup>54</sup> The Chinese government, however, is responsible for providing a fair and

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<sup>47</sup> Committee on Foreign Affairs, Subcommittee on Oversight and Investigations, and Subcommittee on Africa, Global Health, and Human Rights, *Organ Harvesting of Religious and Political Dissidents by The Chinese Communist Party*: Report no.112-120. (Washington, DC: U.S GPO, 2012.).

<sup>48</sup> United Nations Economic and Social Council, *Report of the Special Rapporteur* (New York, NY, 2002.), 54-68.

<sup>49</sup> U.S Department of State, *Country Reports on Human Rights Practices for 2011 China (includes Tibet, Hong Kong, and Macau)* (Washington, DC: GPO, 2011.)

<sup>50</sup> First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, *Standard Minimum Rules for the Treatment of Prisoners*. (New York, 1977)

<sup>51</sup> Ibid.

<sup>52</sup> Jeffrey Ferro, *Prisons* (New York: Facts On File, 2006), 24.

<sup>53</sup> U.S. *Implementation of Prison Labor Agreements with China: Hearings Before the Committee on Foreign Relations*, 1997 United States Senate, Washington, DC, 1997, 1.

<sup>54</sup> United Nations Economic and Social Council, *Report of the Special Rapporteur*, 54.

proper trial, which they are not adhering to.<sup>55</sup> The police have the right to detain suspects up to 37 days before formal arrest.<sup>56</sup> Once arrested, prisoners are brought to detention centers to wait the investigation of their case. After the completion of a police investigation, a sentence of 45 more days gives leeway to the procuratorate to determine whether or not they will file criminal charges. If charges are filed, then they may be detained for an additional 45 days as they wait for their trial. Labor reeducation panels have authorized extension of this period for up to one year.<sup>57</sup> The conditions described in the detention centers outside of official arrests can have serious physical and psychological effects on detainees. Torture is often used in detention centers to obtain confessions by force, invalidating many convictions.<sup>58</sup> A personal account from The Chinese Human Rights Defenders, a Washington, D.C. based NGO that uses first hand testimonies to back appeals to the UN, explains that conditions in the detention centers are so awful that “one month in a detention centre ... is equal to a year of labour reform”.<sup>59</sup> In addition, more than 70% of criminal defendants have gone to judicial proceedings without any sort of defense council.<sup>60</sup> Fair trials are not guaranteed to *Laogai* prisoners, which is in direct contradiction to PRC and international standards.<sup>61</sup>

## Personal Freedoms

Following World War II, the United Nations General Assembly signed on to the Universal Declaration of Human Rights (UDHR) to ensure a standard humane treatment for all human beings. Article 18 in the UDHR states that “everyone has the right to freedom of thought, conscience and religion”.<sup>62</sup> This right includes the freedom to practice, observe and worship any religion of choice.<sup>63</sup> In the *Laogai*, this right is ignored. Many prisoners in the *Laogai* are initially convicted due to religious issues. For instance, the religious group the Falun Gong is a spiritual religion seen as an illegal cult in the eyes of the Chinese government. Members are often prosecuted for their views.<sup>64</sup> This is one of many examples of the types of religious prisoners the Chinese government arrest in hopes of reforming them. Generally, prisoners in the *Laogai* are not allowed to say prayers or read the Bible, and they are forced to work on Sundays, the day of rest in numerous religions.<sup>65</sup> Political

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<sup>55</sup> U.S Department of State, *Country Reports on Human Rights Practices for 2011 China (includes Tibet, Hong Kong, and Macau)*, 8

<sup>56</sup> *Ibid.*, 8.

<sup>57</sup> *Ibid.*, 9.

<sup>58</sup> Committee on Foreign Affairs, Subcommittee on Oversight and Investigations, and Subcommittee on Africa, Global Health, and Human Rights, *Organ Harvesting of Religious and Political Dissidents by The Chinese Communist Party*, 36.

<sup>59</sup> Kate Saunders, *Eighteen Layers of Hell: Stories From the Chinese Gulag*. (N.p.: Cassell, 1996), 4.

<sup>60</sup> U.S Department of State, *Country Reports on Human Rights Practices for 2011 China (includes Tibet, Hong Kong, and Macau)*, 14.

<sup>61</sup> Roosevelt, Eleanor, Charles Dukes, Charles Malik, Dr., Alexandre Bogomolov, Peng-chun Chang, Dr., René Cassin, William Hodgson, Hernan Santa Cruz, and John P. Humphrey, *The Universal Declaration Of Human Rights*. (New York: United Nations, 1948), Article 10.

<sup>62</sup> *Ibid.*, Article 18.

<sup>63</sup> *Ibid.*, Article 18.

<sup>64</sup> U.S Department of State, *Country Reports on Human Rights Practices for 2011 China (includes Tibet, Hong Kong, and Macau)*, 21.

<sup>65</sup> Chinese Prison System, "Laogai": Hearings Before the Subcommittee on International Operations and Human Rights of the Committee on International Relations, 104th Cong., First (1995), 6.

dissidents are also imprisoned because of their views, which violate their right to freedom of thought as defined in the UDHR.<sup>66</sup> In the PRC, individuals who articulate a critical view of the CCP, risk being punished or imprisoned.<sup>67</sup> In the *Laogai*, political and religious dissidents are singled out for extremely harsh treatment. Political prisoners have also reported beatings by fellow prisoners who were coerced to do so by guards. These prisoners are often detained or beaten without a proper trial or arrest.<sup>68</sup> Jaing Tianyong, a Chinese lawyer, released after 2 months of detention, said he experienced beatings, extreme interrogation that consisted of 15 hours of sitting still, and other forms of torture. Jaing Tianyong was never officially charged with anything or formally arrested, but was singled out for his political beliefs and humiliated by interrogators. The guards told him, “We can do things in accordance to law. We can also not do things in accordance to law, because we are allowed to.”<sup>69</sup> Political and religious dissidents are the main targets of abuse and humiliation in the *Laogai*.

## Conditions

Conditions in the *Laogai* are regularly in violation of several international standards, as well as domestic laws within the PRC. As a point of reference, federal courts in the United States award certain liberties to their prisoners.<sup>70</sup> These rights include equal protection, due process, and free speech. Most importantly, prisoners must have livable conditions.<sup>71</sup> The 8<sup>th</sup> amendment, which prohibits cruel and unusual punishment, was extended to cover living conditions; the law now mandates that a prison must be ventilated, well-lit, warm, clean, and equipped with adequate facilities for basic hygienic needs. Cleanliness of both the prisoners and the prison must be kept up diligently; prisoners must have access to weekly showers or other appropriate hygienic needs according to the respective climate. Areas used regularly by the prisoners need to be cleaned frequently as well.<sup>72</sup>

All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.<sup>73</sup>

However, conditions in the *Laogai* have not met these standards and have been described as “harsh” and “degrading” by the U.S. Department of State.<sup>74</sup> They are often overcrowded, and therefore, unsanitary. Prisoners are regularly insufficiently fed, and many rely on

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<sup>66</sup> Roosevelt, Eleanor, Charles Dukes, Charles Malik, Dr., Alexandre Bogomolov, Peng-chun Chang, Dr., René Cassin, William Hodgson, Hernan Santa Cruz, and John P. Humphrey, *The Universal Declaration Of Human Rights*. (New York: United Nations, 1948), Article 19.

<sup>67</sup> U.S Department of State, *Country Reports on Human Rights Practices for 2011 China (includes Tibet, Hong Kong, and Macau)*, 21.

<sup>68</sup> *Ibid.*, 6.

<sup>69</sup> *Ibid.*, 4.

<sup>70</sup> Ferro, *Prisons*, 24

<sup>71</sup> *Ibid.*, 24

<sup>72</sup> *Ibid.*, 24.

<sup>73</sup> First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, *Standard Minimum Rules for the Treatment of Prisoners*, 2.

<sup>74</sup> U.S Department of State, *Country Reports on Human Rights Practices for 2011 China (includes Tibet, Hong Kong, and Macau)*, 5.

relatives' deliveries of food, medicine, and warm clothing, which are denied to certain prisoners.<sup>75</sup> Within many *Laogai*, there are inadequate sanitation, ventilation, heating, lighting, medical care, and access to things as simple as potable water.<sup>76</sup> A political dissident, Fang Jue, reports being kept in a bare cell with minimal food and water. During the winter months, he developed frostbite in his limbs as a result of the lack of heating, a bed or blankets in his cell. He also suffered respiratory and digestive illnesses, with chronic diarrhea.<sup>77</sup>

## Torture

Under the Criminal Procedure Law (CPL), in the PRC, the use of torture to extract information or as a means of punishment is outlawed.<sup>78</sup> Regardless the Bureau of Democracy, Human Rights, and Labor at the U.S. Department of State regarded the “torture and coerced confessions of prisoners” as a main instance of human rights violation in 2011.<sup>79</sup> The unlawful and immoral use of torture is of high humanitarian importance regarding the conditions of confinement in the *Laogai*. The UN’s Committee on Human Rights has three times in the past two decades dispatched a Special Rapporteur to the PRC to investigate conditions.<sup>80</sup> In 2001, the Special Rapporteur reported numerous first-hand accounts of torture. These accounts vary geographically from Beijing to Mongolia; they describe torture methods that range from whippings, beatings, and brandings similar to those acts committed against Zhou Jianxiong in Hunan province, to the long-term fettering of prisoners such as Fang Jue in the Liang Xiang Prison in Beijing.<sup>81</sup> A variety of methods of physical torture is also coupled with intense psychological manipulation known to the CCP as “thought reform”.<sup>82</sup> The U.S. House of Representatives’ Committee on Foreign Affairs stated in a hearing during 2012 that, especially those religious dissidents belonging to the Falun Gong, were often subject to psychological torture “for nothing more than fidelity to truthfulness, compassion, and forbearance”.<sup>83</sup> The goal of thought reform in the CCP is to penetrate the prisoner’s inner emotions through psychological forces, often involving a struggle between life and death. In this way, dissidents undergo a “transformation of the self”, which eliminates their status as a political or religious threat. The goals of all forms of torture in the *Laogai* appear consistent in their attempt to punish and reshape those prisoners the CCP views as religiously or politically incompatible.<sup>84</sup> Nevertheless, the diversity in accounts points to the lack of uniform standards enforced by the PRC.

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<sup>75</sup> Philip F. Williams, and Yenna Wu, *The Great Wall of Confinement: The Chinese Prison Camp through Contemporary Fiction and Reportage* (Berkeley: University of California, 2004), 57-58.

<sup>76</sup> U.S Department of State, *Country Reports on Human Rights Practices for 2011 China (includes Tibet, Hong Kong, and Macau)*, 5.

<sup>77</sup> United Nations Economic and Social Council, *Report of the Special Rapporteur*, 56.

<sup>78</sup> *Ibid.*, 54.

<sup>79</sup> U.S Department of State, *Country Reports on Human Rights Practices for 2011 China (includes Tibet, Hong Kong, and Macau)*, 1.

<sup>80</sup> United Nations Economic and Social Council, *Report of the Special Rapporteur*, 55-57.

<sup>81</sup> *Ibid.*, 55-57.

<sup>82</sup> Saunders, *Eighteen Layers of Hell*, 73.

<sup>83</sup> Committee on Foreign Affairs, Subcommittee on Oversight and Investigations, and Subcommittee on Africa, Global Health, and Human Rights, *Organ Harvesting of Religious and Political Dissidents by The Chinese Communist Party*, 4.

<sup>84</sup> Saunders, *Eighteen Layers of Hell*, 87.

## Full Disclosure

Currently, the *Laogai* are under significant scrutiny from the humanitarian community. In 1990 the PRC was forced to abandon the term *Laogai* and refer to their penal system simply “as prisons”.<sup>85</sup> With this adjustment came a great shift in the PRC’s policies regarding the *Laogai*. The existence of a penal labor system is now continually denied by the PRC and any and all records are classified.<sup>86</sup> Additionally public information of the system is banned from the people in the PRC. For example in 2012 information on the *Laogai* put forth by Al Jazeera English resulted in the network’s removal from the PRC.<sup>87</sup>

Along with limited acknowledgement of their existence, another aspect of the current situation in the PRC is the restricted access of outside governments such as the U.S. and various NGOs to inspect the *Laogai*. For example, the International Red Cross asked to see the *Laogai*, but was continuously denied access.<sup>88</sup> PRC rarely allows foreigners to examine the *Laogai*.<sup>89</sup>

One promising aspect of the current system has been the recent efforts to eliminate prisoner organ harvesting. Following pressures from humanitarian NGOs and the World Health Organization condemning the Chinese organ harvesting, the PRC’s Ministry of Health agreed to work with the Red Cross Society of China to ensure all organ donations are legal.<sup>90</sup> The joint effort with the Red Cross works as a pilot program to demonstrate how future humanitarian concerns involving the *Laogai* can be addressed bilaterally. The agreement also validates the idea that international and humanitarian pressures will result in a response from the PRC.

## Recommendation

- The PRC must first acknowledge the continued existence of forced labor in their penal system in order to foster reform in a manner similar to the recent efforts regarding organ harvesting.
- The PRC must establish authority over their penal system in order to enforce their already existent national standards.
- The United Nations should continue to dispatch Special Rapporteurs and other investigatory groups to examine and report back on the current situation in the *Laogai*.
- Humanitarian non-governmental organizations should utilize the access points created by the UN to get inside the *Laogai* and work bilaterally to improve conditions in contradiction to national and international standard with the PRC.

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<sup>85</sup> Laogai Research Foundation, *The Laogai: Exercising Dictatorship Over Dissent* (Washington, D.C.: Laogai Research Foundation, 2009), 1.

<sup>86</sup> *Ibid.*, 1.

<sup>87</sup> Michael Wines, "China Expels Al Jazeera Channel." *The New York Times*, May 7, 2012.

<sup>88</sup> U.S Department of State, *Country Reports on Human Rights Practices for 2011 China (includes Tibet, Hong Kong, and Macau)*, 7

<sup>89</sup> *Ibid.*, 7.

<sup>90</sup> Andrew Jacobs. "China Bans Court Evidence Gained Through Torture." *The New York Times*, May 31, 2012.

# International Legal Community

## Summary

The PRC is one of the fastest growing economies and carries much economic clout and power in the international community. Furthermore, the lack of rule of law and an independent judiciary, make adherence to law difficult. Actions and conditions in the Chinese *Laogai* prison system break a host of international treaties and conventions. The following outlines the key international treaties and conventions that apply to the *Laogai* prison system within the PRC. In addition, it seeks to identify actions to be taken in order to improve the human rights abuses in the *Laogai* and the system's compliance with international law.

## Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The Convention Against Torture (henceforth “the Convention”), which entered into force in 1987, seeks to establish international legal guidelines for the prevention and elimination of torture and “other acts of cruel, inhumane, or degrading treatment or punishment” in territories that fall under the control of the State Parties to the Convention.<sup>91 92</sup>

The Convention also establishes the Committee Against Torture (henceforth “the Committee”), which collects information from State Parties on measures taken to bring domestic practice in line with the articles of the Convention.<sup>93</sup> It also conducts confidential inquiries in response to “well-founded indications that torture is being systematically practiced in the territory of a State Party.”<sup>94</sup>

The Convention was signed by the PRC in 1986 and was ratified in 1988.<sup>95</sup> The main provisions affecting the case of the *Laogai* are Articles 1 and 4. Generally, Article 1 defines torture “as the infliction of severe physical and/or mental suffering committed under the color of law. The Convention allows for no circumstances or emergencies where torture could be permitted.”<sup>96</sup> Article 4 states the following:

Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an

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<sup>91</sup>"Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment," Office of the United Nations High Commissioner for Human Rights, <http://www2.ohchr.org/english/law/cat.htm>.

<sup>92</sup> Ibid (Article 16, section 1)

<sup>93</sup> Ibid

<sup>94</sup> Ibid (Article 20, section 1)

<sup>95</sup> "Status of ratification of the Convention against Torture," Office of the United Nations High Commissioner for Human Rights, last modified November 2, 2004, accessed November 14, 2012,

<sup>96</sup> Michael John Garcia, comp., *U.N. Convention Against Torture (CAT): Overview and Application to Interrogation Techniques*, report (n.p.: n.p., 2008).



act by any person which constitutes complicity or participation in torture. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.<sup>97</sup>

## Current Status of Torture in the PRC

The Committee Against Torture, the Special Rapporteur for Torture and the State Department of the United States all agree that progress has been made but there are still gaps between the PRC's commitment to the Convention and the situation on the ground. The PRC has been found to still practice torture in violation of the Convention.<sup>98 99 100</sup> The Committee's periodic report in 2000, stated that it is "concerned about the continuing allegations of serious incidents of torture."<sup>101</sup> According to the State Department, "numerous former prisoners and detainees reported that they were beaten with fists and water bottles, subjected to electric shock, forced to sit on stools staring at the wall for hours on end, deprived of sleep, and otherwise subjected to physical and psychological abuse."<sup>102</sup> The Special Rapporteur on Torture, an expert appointed by the United Nations High Commissioner on Human Rights to examine questions relevant to torture, has found abuses that fall in violation of the Convention and other treaties as stipulated in his reports to the UN.<sup>103</sup> In addition, testimonies of individuals before the Subcommittee of International Human Rights of 1995 suggest abuses that violate the Convention.<sup>104</sup>

## PRC Domestic Law Regarding Torture

The PRC's domestic legal code contains no explicit definition of torture.<sup>105</sup> The Criminal Law Code contains two general conceptions of torture, the first being to 'coerce a statement' (Art. 136), the second being to subject imprisoned people to corporal punishment and abuse for this purpose (Art. 189).<sup>106</sup> The amended Criminal Law Code of 1997 still fails to define torture in a way that satisfies the Convention.<sup>107</sup> According to the Special Rapporteur, the PRC legislation relevant to the prohibition and criminalization of torture does not satisfy the requirement set forth in Articles 1 and 4 of the Convention. Specifically, it lacked mental torture, the direct or indirect involvement of a public official or another person acting in an

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<sup>97</sup> Office of the United Nations High Commissioner for Human Rights, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 1984 (New York City, NY)

<sup>98</sup> "Convention Against Torture: 4-2 UN Concluding Observations," Congressional-Executive Commission on China: Virtual Academy, last modified June 23, 2005, <http://www.cecc.gov/pages/virtualAcad/inthrol/cat.pdf>.

<sup>99</sup> Manfred Nowak, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak*, report (New York, NY: United Nations General Assembly, 2010), 37-48.

<sup>100</sup> Hillary Rodham Clinton. Secretary's Preface to Country Reports on Human Rights Practices for 2011.

<sup>101</sup> "Convention Against Torture: 4-2 UN Concluding Observations," Congressional-Executive Commission on China: Virtual Academy, last modified June 23, 2005, <http://www.cecc.gov/pages/virtualAcad/inthrol/cat.pdf>.

<sup>102</sup> U.S. Department of State Bureau of Democracy, Human Rights and Labor, *Country Reports on Human*,

<sup>103</sup> Nigel Rodley, Sir, *Questions of the Human Rights of all Persons Subjected to any Form of Detention or Imprisonment, in Particular: Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, issue brief (n.p.: United Nations Economic and Social Council, 2002), 53.

<sup>104</sup> Chinese Prison System, "Laogai," 1995

<sup>105</sup> Nowak, *Report of the Special*, 37-48.

<sup>106</sup> Jianan Guo et al., *World Factbook of Criminal Justice Systems: China*, report (n.p.: Bureau of Justice Statistics to the State University of New York at Albany, n.d.),

<sup>107</sup> Fifth National People's Congress, *Criminal Law of the People's Republic of China*, 1997 (China)

official capacity; and infliction of the act for a specific purpose.<sup>108</sup> In addition, the Committee's periodic report from 2000 and 2010 and the UN's General Report from 1996 to 2000, include recommendations stating that the PRC should amend its domestic definition of torture as to better reflect that set forth in the Convention.<sup>109 110 111</sup>

## Caveat in the Convention Definition

A crucial weakness that affects the ability of the Convention to successfully eliminate the use of torture is the inclusion of the following caveat in the definition set forth in the Convention: torture “does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”<sup>112</sup> Governments are free to practice torture as long as it is in accordance with law.<sup>113</sup> As a result of this clause, and the inconsistencies between the definitions of torture in the Convention and the PRC's Criminal Law Code, many of the human rights abuses that occur have been claimed to be lawfully sanctioned as documented by the PRC.<sup>114</sup> The PRC has justified actions of torture using the caveat in the definition of the Convention that would not be accepted by the standards of the international community, or that do not reflect the definition set forth in the Convention.

## International Covenants on Civil and Political Rights

The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), bodies established under the auspices of the UN, entered into force in 1976.<sup>115</sup> These binding international agreements serve to better implement and enforce the principles embodied in the legally non-binding UDHR.<sup>116</sup> Both Covenants reiterate fundamental human rights as stated in the UDHR.

The ICCPR and the ICESCR both provide for investigation and enforcement mechanisms. The Human Rights Committee, established under Article 28 of the ICCPR, seeks to ensure compliance with the provisions of this Covenant by receiving and providing commentary on

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<sup>108</sup> Nowak, *Report of the Special*, 37-48.

<sup>109</sup> People's Republic of China, *Consideration of Reports Submitted by States Parties under Article 19 of the Convention*, report, United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (n.p.: n.p., 1999).

<sup>110</sup> Nowak, *Report of the Special*, 37-48.

<sup>111</sup> “Convention Against Torture: 4-2 UN Concluding Observations,” Congressional-Executive Commission on China: Virtual Academy, last modified June 23, 2005, <http://www.cecc.gov/pages/virtualAcad/inthrol/cat.pdf>.

<sup>112</sup> Office of the United Nations High Commissioner for Human Rights, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 1984 (New York City, NY)

<sup>113</sup> Melissa Pearson Gruge, “The Laogai and Violations of International Human Rights Law: A mandate for the Laogai Charter.” *Santa Clara Law Review* 38, no.2 (January 1, 1998): 473-519.

<sup>114</sup> Greg Moore, “China's Cautious Participation in the UN Human Rights Regime,” review of *China, the United Nations, and Human Rights: The Limits of Compliance*, in *China, the United Nations, and Human Rights: The Limits of Compliance* (Philadelphia, PA: University of Pennsylvania Press, 1999),

<sup>115</sup> “International Covenant on Civil and Political Rights,” Office of the High Commissioner for Human Rights, <http://www2.ohchr.org/english/law/ccpr.htm>.

<sup>116</sup> “The International Covenant on Civil and Political Rights,” Global Governance Watch, [http://www.globalgovernancewatch.org/human\\_rights/the-international-covenant-on-civil-and-political-rights](http://www.globalgovernancewatch.org/human_rights/the-international-covenant-on-civil-and-political-rights).

reports submitted by State Parties regarding the implementation of these provisions within their countries.<sup>117</sup> The Committee on Social, Economic, and Cultural Rights established by Resolution 1985/17 of the Economic and Social Council is the enforcement mechanism associated with this Covenant and serves a function similar to that of the Human Rights Committee.<sup>118</sup>

The PRC signed the ICCPR in 1997.<sup>119</sup> They signed the ICESCR in 1998 and ratified it in 2001.<sup>120</sup> In contrast to its binding obligations under the ICESCR, the PRC is not bound by the provision of the ICCPR because it has not been ratified. However, as a result of its signature to the ICCPR, the PRC “may not act contrary to the objects and purposes of the treaty.”<sup>121</sup>

## Standard Minimum Rules for the Treatment of Prisoners

The Standard Minimum Rules for the Treatment of Prisoners (SMRTP) was adopted by the First United Congress on the Prevention of Crime and Treatment of Offenders in 1955, which included the PRC.<sup>122</sup> The *Laogai* system violates the guidelines of due process, personal freedom, equal protections, and conditions of confinement, as set forth in the SMRTP.<sup>123</sup>

## ILO 105

In 1957 the International Labor Organization (ILO) hosted the Abolition of Forced Labor Convention or ILO 105. The purpose of the convention was to address forms of labor that were still legal under international law even after the signing of ILO 29, which addressed “forced or compulsory labor.”<sup>124 125</sup> ILO 105 is a binding set of guidelines that “prohibits the use of forced labor 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.”<sup>126</sup> The PRC is one of 13 countries that have not ratified ILO 105.<sup>127</sup>

The *Laogai* prison camps attempt to “re-educate” inmates. According to Tang Boiqiao, an ex-*Laogai* inmate, “the police or officials forced the prisoners to work day and night ” and

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<sup>117</sup> "International Covenant on Civil and Political Rights," Office of the High Commissioner for Human Rights, <http://www2.ohchr.org/english/law/ccpr.htm>. (Article 40)

<sup>118</sup> "Committee on Economic, Social and Cultural Rights," Office of the High Commissioner for Human Rights, <http://www2.ohchr.org/english/bodies/cescr/>.

<sup>119</sup> *International Covenant on Economic, Social and Cultural Rights* (New York, NY: n.p., 1966)

<sup>120</sup> *Ibid*

<sup>121</sup> <http://www.ohchr.org/Documents/Publications/FactSheet15rev.1en.pdf>

<sup>122</sup> United Nations, *First United Nations Congress on the Prevention of Crime and the Treatment of Offenders*, 1955. Geneva, Switzerland.

<sup>123</sup> *Ibid*

<sup>124</sup> International Labour Organization, *Abolition of Forced Labour Convention (No. 105)*, 1957 (Geneva, Switzerland)

<sup>125</sup> International Labour Organization, *Forced Labour Convention (No. 29)*, 1930 (Geneva, Switzerland)

<sup>126</sup> International Labour Organization, *Abolition of Forced Labour Convention (No. 105)*, 1957 (Geneva, Switzerland)

<sup>127</sup> *Ibid*

when he refused to work “the public security police would often arrange for the other prisoners to abuse and beat” him.<sup>128</sup>

While in the *Laogai*, prisoners are forced to take part in daily political study classes. In these classes the prisoners are forced to say, “I am here to receive reform through labor.” Prisoners also sing songs such as “Socialism is Good” and “Without the Communist Party There Would Be No New China.”<sup>129</sup> Through these acts the prisoners are exposed to propaganda as the guards try to re-educate them through labor. A scholar at the Chinese Academy of Social Sciences, Professor Yu Jianrong claimed, “As a compulsory re-education administrative measure, [the Laogai] is against the concept of law, lacks legal basis and is contrary to the principles of fairness and justice.”<sup>130</sup>

## Amending the Convention against Torture

Because of the caveat and the resultant issues, it follows that this caveat should be amended out of the Convention. The United States should propose an amendment to the Secretary-General of the United Nations, as stipulated in Article 29 of the Convention.<sup>131</sup> In accordance with the processes described in Article 29, the amendment enters into force and is binding to those States Parties, which have accepted it, after 2/3 of State parties have ratified the amendment. Because “Every act of torture within the meaning of the Convention is illegal under existing federal and state law” and the United States’ definition of torture is already aligned with the definition set forth in the Convention we believe that the U.S. would fully support this amendment and ratify it.<sup>132</sup> In light of this, with the lead of the U.S., we believe that acquiring 2/3 of States Parties to ratify the amendment is plausible. With 2/3 of States Parties ratifying, there would be significant international pressure on the PRC to do the same. In addition, the elimination of the caveat and the ratification of the proposed amendment, would advance the situation of human rights in the PRC and would aid them in achieving their human rights goals as stated in the National Human Rights Action Plan of China.<sup>133</sup>

## European Union-China Human Rights Dialogue

In regards to ILO 105, we considered putting responsibility in the hands of the ILO itself, but were concerned that, as the ILO is actually part of the UN, their jurisdiction to enforce anything is rather diminutive. Therefore, we instead believe that the ideal place to coerce the PRC into signing ILO 105, would be the EU-China Dialogue. The EU would present their concern about reeducation through labor, and provide the solution of ILO 105. The PRC

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<sup>128</sup> *Chinese Prison System, "Laogai": Hearings Before the Subcommittee on International Operations and Human Rights of the Committee on International Relations* (1995) (statement of Tang Boiqiao).

<sup>129</sup> *Ibid*

<sup>130</sup> Jamie A. FlorCruz, "Reforming China's Controversial Labor Camps," CNN, last modified October 18, 2012, accessed November 12, 2012, <http://www.cnn.com/2012/10/18/world/asia/china-forced-labor-camps/index.html>.

<sup>131</sup> Office of the United Nations High Commissioner for Human Rights, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 1984 (New York City, NY)

<sup>132</sup> Garcia, U.N. *Convention Against Torture*.

<sup>133</sup> *National Human Rights Action Plan of China (2012-2015)*, report (n.p.: Information Office of the State Council of the People's Republic of China, 2012).

would then have to provide a response, in a public manner.<sup>134</sup> The EU-China dialogue is a “forum where China is committed to responding” to concerns.<sup>135</sup>

## SMRTP Policy Option

With the SMRTP, we wanted to find a way to monitor the PRC’s adherence to the guidelines. We understood that most of the international legal bodies have little ability to actually enforce the laws. However, the proposed *Laogai* working group under the Human Rights Commission would have the ability to send representatives to the PRC to ensure that the prisoners were being treated in a way that upholds the rules set forth in the SMRTP.

## Working Group

Several of the above mentioned laws provide for monitoring and enforcement mechanisms that measure individual states’ compliance with their standards.<sup>136</sup> The ICESCR employs, for example, the Committee on Economic and Social Rights as its monitoring and enforcement body, while the Human Rights Committee serves a similar function with respect to the ICCPR. The Convention has as its investigative enforcement mechanism the Subcommittee on the Prevention of Torture which both serves in an international capacity and aids in strengthening national preventative measures regarding torture.

However, while enforcement on an individual basis is ensured for the laws listed above, there is currently no single, comprehensive enforcement mechanism that monitors and reports on the specific situation within the *Laogai* from an international legal standpoint. International conventions such as the ICESCR, the ICCPR, the Convention, the SMRTP, and ILO 105 are designed to address compliance and enforcement for a number of state parties, and cannot solely address the PRC, let alone the *Laogai* specifically. Furthermore, certain international laws, such as the SMRTP, do not provide for specific enforcement.<sup>137</sup>

Both the International Law Commission, established in 1947 in association with the Legal Committee of the UN General Assembly, and the Human Rights Council, established in 2006 by the UN General Assembly, serve as tools for the application of international law.<sup>138</sup>  
<sup>139</sup> <sup>140</sup> The Commission seeks to address subjects and areas that either have not been exposed to the international legal regulation or in which the practice of international law is weak.<sup>141</sup> In contrast, the Human Rights Council focuses primarily on the protection of human rights

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<sup>134</sup> "EU and China Hold Human Rights Dialogue (01/06/2012)," European Union External Action, [http://eeas.europa.eu/delegations/china/press\\_corner/all\\_news/news/2012/20120601\\_en.htm](http://eeas.europa.eu/delegations/china/press_corner/all_news/news/2012/20120601_en.htm).

<sup>135</sup> "EU-China Human Rights Dialogue," European Union External Actions.

<sup>136</sup> See page 19-22

<sup>137</sup> "Standard Minimum Rules for the Treatment," Office of the United Nations High Commissioner for Human Rights.

<sup>138</sup> "Introduction," International Law Commission, <http://www.un.org/law/ilc/>.

<sup>139</sup> "Background Information on the Human Rights Council," United Nations Human Rights Office of the High Commissioner for Human Rights, <http://www.ohchr.org/EN/HRBodies/HRC/Pages/AboutCouncil.aspx>.

<sup>140</sup> *Report of the International Law Commission on the work of its sixty-third session (Agenda item 81)* (New York, NY: United Nations General Assembly, 2012)

<sup>141</sup> "Introduction," International Law Commission, <http://www.un.org/law/ilc/>.

rather than the development or implementation of specific international laws.<sup>142</sup> Unlike the International Law Commission it does provide, however, through its special procedures mechanisms, for human rights situations in specific countries to be addressed by working groups or experts.<sup>143</sup> The ability of the Human Rights Council to focus on individual countries rather than comprehensive legal issues makes it better equipped and suited for investigating the application and enforcement of relevant human rights law, including the SMRTP, the International Covenants, and the ILO Convention, in the Chinese *Laogai*.

Furthermore, the Human Rights Council has previously conducted extensive research in the PRC under such thematic mandates as the Working Group on Arbitrary Detention (2004) and the Special Rapporteur on Torture (2005), and has been able, under these broad mandates, to collect information specifically relevant to the *Laogai*.<sup>144</sup> The fact that the country visits on which the information-gathering function of the country mandates depends are possible only in the event of direct invitation by a government serves as a crucial potential obstacle to the effectiveness of a working groups established under a country mandate.<sup>145</sup> However, the precedents described above demonstrate the willingness of the PRC to extend such an invitation in the future.

## Recommendations

- Amend the definition of torture set forth in the United Nations Convention against Torture so that signatories are required to adopt the definition set forth in the Convention.
- Present the concern of forced labor in the PRC in the EU-China Human Rights Dialogue in attempts to convince the PRC to sign and ratify ILO 105.
- Create a *Laogai* working group, under the jurisdiction of the UN Human Rights Commission, to monitor the PRC's adherence to ILO 105, The Standard Minimum Rules for the Treatment of Prisoners, the ICCPR, and the ICESCR.

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<sup>142</sup> "Background Information on the Human Rights Council," United Nations Human Rights Office of the High Commissioner for Human Rights, <http://www.ohchr.org/EN/HRBodies/HRC/Pages/AboutCouncil.aspx>.

<sup>143</sup> United Nations Rights Office of the High Commissioner for Human Rights, Country and Other Visits of Special Procedures

<sup>144</sup> *Country and Other Visits by Special Procedures Mandate Holders since 1998* (n.p.: United Nations Human Rights Office of the High Commissioner for Human Rights, 2012),

<sup>145</sup> "Country and Other Visits of Special Procedures," United Nations Human Rights Office of the High Commissioner for Human Rights, <http://www.ohchr.org/EN/HRBodies/SP/Pages/CountryandothervisitsSP.aspx>.

## United States Congress

The *Laogai* prison system of the PRC presents both a humanitarian and economic predicament for the United States. Particularly, the *Laogai* give the PRC an economic advantage through the utilization of unpaid forced labor.<sup>146</sup> Importing such products is currently illegal under U.S. law, but these products still enter the U.S.<sup>147</sup> The *Laogai* also pose a humanitarian crisis due to lack of due process, the poor treatment of prisoners, and the torture of those within the system.<sup>148</sup> Congress needs to act to end the *Laogai* since it is within both the humanitarian and economic interest of the U.S.

### Official Stance of the Congress

Congress, having recognized the need to investigate the *Laogai* and other matters of human rights in the PRC, created the Congressional-Executive Commission on China (CECC) in 2000 with H.R. 4444. Since then, the CECC has held a number of hearings and has produced annual reports and recommendations for submission to Congress.<sup>149</sup>

In 2006 the House of Representatives passed the House Concurrent Resolution 294, which later died in the Senate. It would have issued specific condemnation of the Chinese forced-labor prison system for its repeated and systematic abuse of human rights. It called on the international community to condemn the *Laogai* and for the U.S. government to fully implement all standing laws that prohibit the importation of forced-labor goods.<sup>150</sup>

In 2012, the annual CECC report stated that:

... [The] Commission observed the Chinese people... exercising the basic freedoms to which they are entitled and demanding recognition of these rights.... This development... originated from the Chinese people themselves, and was evident... at all levels of Chinese society. ...the Commission [also] observed a deepening disconnect between the growing demands of the Chinese people and the Chinese government's ability and desire to meet such demands. ...Chinese officials appeared more concerned with "maintaining stability" and preserving the status quo than with addressing the grassroots calls for reform taking place all over the PRC.<sup>151</sup>

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<sup>146</sup> U.S. *Implementation of Prison Labor Agreements with China: Hearings Before the Committee on Foreign Relations*, 105th Cong., 1st Sess. 1-2 (1997).

<sup>147</sup> *Smoot-Hawley Act*. U.S. Code 19(1930), § 1307.

<sup>148</sup> Chinese Prison System, "Laogai": Hearing Before the Subcommittee on International Operations and Human Rights of the Committee on International Relations, 104th Cong., First (1995)

<sup>149</sup> "Frequently Asked Questions," Congressional-Executive Commission on China, last modified May 21, 2003, accessed November 14, 2012, <http://www.cecc.gov/pages/general/faqs.php>

<sup>150</sup> U.S. House of Representatives, *H.Con.Res. 294 (109th): Calling on the international community to condemn the Laogai, the system of forced labor prison camps in the People's Republic of China, as a tool for suppression maintained by the Chinese Government*, (Washington, DC: GPO, 2005). 5-6.

<sup>151</sup> Congressional-Executive Commission on China, *Annual Report 2012* (Washington, DC: GPO, 2012).

Given this political climate, Congress should refocus attention on resolving this issue by passing a resolution prescribed in several steps.

Firstly, the resolution must state a desire to work with the PRC towards reaching consensus on the issue of the *Laogai* openly and as equals. This provision sets the tone well for further conversation with the PRC, given that Congress as a whole has not formally stated its position on the *Laogai*. This amount of pressure, while not assertive enough to potentially damage the U.S.-PRC relationship, adds to the pressure already being exerted from within. It is imperative that the resolution does not openly endorse dissidents, nor be in any way accusatory against the PRC, lest negotiations break down completely.

Secondly, the resolution should urge that diplomatic channels remain open as leadership in the PRC transitions. Negotiations should focus on convincing the PRC to abide by its previous commitments — for example, the 1992 Prison Labor Memorandum of Understanding and the National Human Rights Action Plan of China (2009-2010) — as opposed to attempting to cause the PRC to sign new agreements or make concessions. This approach is collaborative and not coercive, a vital stance for maintaining good relations with the PRC. Furthermore, by holding the PRC to its own standards, negotiators gain legitimacy for their cause. As an additional goal, United States foreign policy executors should support and further the amendment to the UN Convention Against Torture proposed elsewhere in this document.<sup>152</sup>

These negotiations should emphasize the PRC's diplomatic interest in appearing consistent and stable, the American economic interest in removing forced labor products from their markets, and both countries' interest in satisfactorily resolving the problem. The US should be prepared to offer small economic incentives to the PRC as part of the deal-making process, but must remain firm and persistent in its attempts to negotiate an agreement.

## **Economic Implications of Action**

In accordance with Congress' responsibility to manage budgets and supervise the national debt, we explored the current trade relationship between the PRC and the U.S. as well as the American debt that the PRC holds. These are two important factors to consider when analyzing possible actions Congress may take concerning *Laogai*.

The PRC is one of the United States' largest trading partners. In 2011, the goods and services trade between the PRC and the United States totaled to \$539 billion. Of this total, \$411 billion accounted for imports, making the PRC the biggest exporter to the United States.<sup>153</sup> Imports from the PRC represent 18.4% of the United States' total imports.<sup>154</sup> The same year, the United States' exports to the PRC amounted to \$129 billion.<sup>155</sup> Approximately 7% of total exports went to the PRC, ranking it third amongst the countries that the United

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<sup>152</sup> See page 21, par. 3

<sup>153</sup> "China," Office of the United States Trade Representative, accessed November 9, 2012, <http://www.ustr.gov/countries-regions/china>.

<sup>154</sup> "United States," The World Factbook, accessed November 14, 2012, <https://www.cia.gov/library/publications/the-world-factbook/geos/us.html>.

<sup>155</sup> "China," Office of the United States Trade Representative.



States exports to.<sup>156</sup> Due to the large gap between imports and exports, the United States had a negative deficit of \$282 billion in the services and goods trade with the PRC. This total is composed of a goods trade deficit which amounted to \$295 billion and a positive services trade deficit of \$13 billion.<sup>157</sup> As of November 2012, the current trade deficit with the PRC totaled to \$322.8 billion out of the U.S.'s total \$740.9 billion trade deficit.<sup>158</sup> Chinese imports still greatly outnumber U.S. exports. This gap is only enhanced by the use of forced labor within *Laogai* camps, which creates an economic concern for the U.S. in addition to humanitarian concerns.<sup>159</sup> As a result of facilities within the PRC using forced labor, the overall cost of production is driven down, allowing involved companies to be more competitive by lowering product prices. Thus, these companies profit more than companies that do not take advantage of said labor.

As of November 2012, the United States' national debt was approximately \$16.25 trillion. This number is continuously growing; the U.S. Treasury predicts that the debt ceiling of \$16.394 trillion, set in January 2012 by the U.S. Congress, will be reached by the end of the year.<sup>160 161</sup> Although the majority of this debt is still owned by the American people, about \$5.6 trillion is held by foreign countries. Of this, the PRC owns approximately \$1.2 trillion with \$1.15 trillion worth of Treasury Securities, making the PRC the leading foreign holder of available Treasury Securities.<sup>162 163</sup> However, according to the Pentagon, this does not pose a real threat to the American economy.<sup>164</sup> In a video released by the Nightly Business Report on how the PRC could use the portion of the national U.S. debt that they own as leverage, the Vice Chairman of the US-PRC Economic and Security Review Commission, William Reinsch said, "...that the cost to them would probably be larger than the cost to us." Additionally, Sam Nunn, who served as a senator from Georgia for 24 years, noted, "In the economic sense, I think we have a mutual assured type of survival between the United States and the PRC because we are dependent on each other."<sup>165</sup> Therefore, it can be concluded that the chances the PRC would use the debt as leverage against the U.S. are very slim. As a result, the U.S. does not have to be concerned with possible economic consequences when taking action in response to the *Laogai*.

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<sup>156</sup> "United States," The World Factbook

<sup>157</sup> "China," Office of the United States Trade Representative.

<sup>158</sup> "US Debt Clock," chart, USDebtClock.org, accessed November 12, 2012, <http://www.usdebtclock.org/>.

<sup>159</sup> *U.S. Implementation of Prison Labor*, U.S. Congress.

<sup>160</sup> "Debt Subject to Limit Graph," infographic, Treasury Direct, accessed November 9, 2012, [http://www.treasurydirect.gov/govt/charts/charts\\_debt.htm](http://www.treasurydirect.gov/govt/charts/charts_debt.htm).

<sup>161</sup> "Treasury Says Current \$16.39 Trillion Debt Limit Will Be Reached by End of This Year," *Washington Post*, October 31, 2012, [Page #], accessed November 14, 2012, [http://www.washingtonpost.com/business/treasury-says-current-1639-trillion-debt-limit-will-be-reached-by-end-of-this-year/2012/10/31/2bc1e786-235c-11e2-92f8-7f9c4daf276a\\_story.html](http://www.washingtonpost.com/business/treasury-says-current-1639-trillion-debt-limit-will-be-reached-by-end-of-this-year/2012/10/31/2bc1e786-235c-11e2-92f8-7f9c4daf276a_story.html).

<sup>162</sup> "US Debt Clock," chart.

<sup>163</sup> Department of the Treasury, *Major Foreign Holders of Treasury Securities*, report (Washington, DC: GPO, 2012).

<sup>164</sup> Tony Capaccio and Daniel Kruger, "China's U.S. Debt Holdings Aren't Threat, Pentagon Says," *Bloomberg*, September 10, 2012, accessed November 14, 2012, <http://www.bloomberg.com/news/2012-09-11/china-s-u-s-debt-holdings-aren-t-threat-pentagon-says.html>.

<sup>165</sup> "China: Utilizing U.S. Debt for International Leverage," Nightly Business Report, video file, 2:44, September 20, 2012, accessed November 12, 2012, <http://www.nbr.com/videos/video/1852300720001/china-utilizing-us-debt-for-international-leverage-sep-20-2012#.UKMcCJsUqsp>.

Several possible policy options were considered in deciding recommendations to submit to Congress. We looked to influence the PRC through economic means, specifically the use of tariffs. Increasing tariffs on Chinese products was considered if the PRC refused to abolish *Laogai* forced labor. It was thought to be effective, as the PRC is one of the U.S.' largest trading partners.<sup>166</sup> Ultimately, we chose against increasing tariffs. While the PRC plays a considerable role in our economy, statistically speaking the U.S. has a greater need for Chinese trade than the PRC has for U.S. trade.<sup>167</sup> Increasing tariffs could provoke a trade war between these two nations—one with numerous consequences; including but not limited to: a reduction in U.S. exports to the PRC and an increase in price of imports from the PRC. As the PRC can afford to weaken economic ties with the U.S, the trade war would affect the PRC far less than it would affect the U.S. On the other hand, the loss of the PRC, as one of our largest trading partners, could be detrimental to the U.S. economy.<sup>168</sup> A trade war with the PRC should be avoided, and thus tariffs should remain unchanged.

## Present and Future Legislation

Congress has recognized the need for legislation in regards to forced labor products that enter the United States, but has yet to implement laws to specifically screen for *Laogai* products.<sup>169</sup> In 1930, Congress passed the Smoot-Hawley Act, prescribed in Chapter 19 of the US Code § 1307, stating:

All goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced labor... under penal sanctions shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited, and the Secretary of the Treasury is... directed to prescribe such regulations as may be necessary...<sup>170</sup>

This law is still in effect, therefore importing *Laogai* products into the United States is illegal. Currently, Customs and Borders Protection is responsible for enforcing § 1307.<sup>171</sup> The Commissioner of Customs is charged with detaining products and conducting a review if the information “available reasonably but not conclusively indicates that merchandise within the purview of section 307 is being, or is likely to be, imported”. If the Commissioner finds conclusively that the products were illegally imported, in regards to Section 1307 of Title 19, then, with the consent of the Secretary of the Treasury, he is to publish his findings in the weekly edition of the Customs Bulletin and *Federal Bulletin*. If the products are not released

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<sup>166</sup> "China," Office of the United States Trade Representative, accessed November 13, 2012, <http://www.ustr.gov/countries-regions/china>.

<sup>167</sup> "Foreign Trade: Trade in Good with China," United States Census Bureau, accessed November 13, 2012, <http://www.census.gov/foreign-trade/balance/c5700.html>.

<sup>168</sup> Annie Lowrey, "Romney Pledge to Call China's Currency," *New York Times*, October 22, 2012, Politics, accessed November 13, 2012, <http://www.nytimes.com/2012/10/23/us/politics/romney-pledge-to-call-china-a-currency-manipulator-poses-risks-experts-say.html>

<sup>169</sup> Senate Committee on Foreign Relations, *U.S. Implementation of Prison Labor Agreements with China*, 105th Cong., 1st sess., 1997, May 21. (1)

<sup>170</sup> *Smoot-Hawley Act*. U.S. Code 19(1930), § 1307.

<sup>171</sup> Convict, Forced, or Indentured Labor Product Importations, Customs and Border Patrol, published December 10, 2009, [http://www.cbp.gov/xp/cgov/trade/trade\\_outreach/convict\\_importations.xml](http://www.cbp.gov/xp/cgov/trade/trade_outreach/convict_importations.xml).

by the time those findings are published, then the products are to be treated as if they are repugnant to Section 1307.<sup>172</sup> The company may petition for the release of the products by proving their origins through a chain of custody, submitting to the Commissioner a *Certificate of Origin*, establishing an admissible chain of custody.<sup>173</sup> This method has proven ineffective. Since 1991, the Commissioner of Customs has issued detainment orders on only 26 different shipments and published six findings of fault in regards to the detained products.<sup>174</sup> According to Congressional minutes, former-chairman Jesse Helms of the Senate Committee on Foreign Relations stated Chinese labor imports to the United States have not ceased, despite such importations being illegal under both PRC and American law.<sup>175</sup>

Legislation providing new tools can be based off of a tangential law, the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act. One part of the act, Section 1502, focuses on controlling conflict materials originating from the Democratic Republic of the Congo; the profits fund the conflict within the country. According to a press release of the U.S. Securities and Exchange Commission, the agency that enforces Section 1502:

Congress enacted Section 1502 of the Act because of concerns that the exploitation and trade of conflict minerals by armed groups is helping to finance conflict in the DRC region and is contributing to an emergency humanitarian crisis. Section 1502 of the Act amends the Securities and Exchange Act of 1934 to add Section 13(p).<sup>176</sup>

In order to impede those who benefit from the goods, Dodd-Frank requires that businesses in the affected areas “undertake ‘due diligence’ on the source and chain of custody of its conflict minerals”. If the companies suspect their minerals might be conflict materials, they must exercise “due diligence” in creating a report on the source and establishing a chain of supply of their minerals. An independent, private sector auditor then certifies the report at the level set by the Comptroller of the United States. The businesses must certify that there has been such an audit, add the audit report into their Conflict Minerals Report, and identify the auditor.<sup>177</sup> These reports must then be submitted to the SEC for evaluation, who then publicly discloses the reports.<sup>178</sup>

Section 1502 has had wide effects on the Congolese mineral trade. The SEC published on December 15<sup>th</sup>, 2010 the set of rules it will use to enforce Sections 1502-1504 once the full law takes effect.<sup>179</sup> Laura E. Seay published a working paper about the implementation and

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<sup>172</sup> *Code of Federal Regulations*, Findings of Commissioner of Customs, title 19, sec. 12.42, (2012).

<sup>173</sup> *Code of Federal Regulations*, Proof of admissibility, title 19, sec. 12.43, (2012).

<sup>174</sup> Convict, Forced, or Indentured Labor Product Importations, Customs and Border Patrol.

<sup>175</sup> Senate Committee on Foreign Relations, *U.S. Implementation of Prison Labor Agreements with China*, 105th Cong., 1st sess., 1997, May 21. (1)

<sup>176</sup> "SEC Adopts Rule for Disclosing Use of Conflict Minerals," U.S. Securities and Exchange Commission press release, August 22, 2012, on the SEC website, <http://sec.gov/news/press/2012/2012-163.htm>.

<sup>177</sup> U.S. Securities and Exchange Committee. *Specialized Corporate Disclosure*. Report. N.p.: n.p., 2012. Accessed November 14, 2012. <http://www.sec.gov/spotlight/dodd-frank/speccorpdisclosure.shtml>.

<sup>178</sup> "SEC Adopts Rule for Disclosing Use of Conflict Minerals," U.S. Securities and Exchange Commission press release.

<sup>179</sup> *Ibid.*

effects of Sections 1502.<sup>180</sup> She states that the most serious burdens the disclosure requirements pose to businesses are the consequence of the SEC wanting to act too quickly.<sup>181</sup> Implementing the rules slowly over a period of 3 years and requiring the amount of conflict materials be capped at certain levels each year (i.e. 25% conflict free, then 75% conflict free, then 100% conflict free) would lessen the economic burden of businesses.<sup>182</sup> Another roadblock for the legislation to be as effective as possible was the lack of communication and understanding between American and Congolese leadership.<sup>183</sup>

With these facts in mind, we recommend the Congress of the United States enact a new law that requires businesses to prove their chain of supply of imported merchandise from the PRC. The companies would need to provide that chain to independent, private auditors, who meet the requirements set by the United States' Comptroller General, for certification. This would then be submitted to port managers as the cargo enters the United States, as well as published publicly. The same regulations as before would then apply. The law should require Customs and Border Protection to develop new regulations within a year of the enactment of the law, which would take effect in a tiered approach over a series of 4 years. Since the amount of commerce between the US and the PRC is so large, this time should be extendable by the President to the extent of no more than 2 years so as to allow businesses to duly prepare without overly burdening them. This law should provide no penalties for companies that willfully come forward with *Laogai* products, except for the refusal of admittance of the products. If the chain of custody cannot be proven and the port manager has suspicion that the products might be from the *Laogai*, CBP should investigate the company after the first instance, but still allow the first shipment to enter the United States. After that, the company should be on probation for a period of time to be established by the Commissioner of Customs. Undoubtedly, some companies may try to act in less than manners. CBP should expand its mechanism for fielding complaints and investigate the complaints per current regulation. The penalties for not complying with the law should start with probationary oversight of the companies, moving up to fees for not complying, and the final penalty should be the loss of importation rights, but only after much investigation by the Commissioner and the approval of the Secretary of Treasury.

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<sup>180</sup> Laura E. Seay, "What's Wrong with Dodd-Frank 1502? Conflict Minerals, Civilian Livelihoods, and the Unintended Consequences of Western Advocacy," CGD Working Paper 284, (Washington, DC: Center for Global Development), accessed 11 November, 2012, <http://www.cgdev.org/content/publications/detail/1425843>. (Abstract)

<sup>181</sup> Ibid., Recommendations: 1.

<sup>182</sup> Ibid.

<sup>183</sup> Ibid., Recommendations: 4.

## Recommendations

- The Congress should pass a resolution stating the United States' desire to work with the PRC to end the *Laogai* system of forced labor and urge diplomatic channels to remain open between the two countries. It should also state a desire to follow current laws regarding the matter.
- Congress should proceed with addressing the *Laogai* without fear of reprisal, due to the symbiotic relationship of Chinese-owned American debt or the American-Chinese trade deficit.
- Congress should not excessively raise tariffs so as to avoid a trade war with the PRC.
- Congress should pass new legislation requiring businesses that import products from the PRC to prove a chain of supply so as to end the importation of *Laogai* products. This law should have a flexible timetable for implementation and progressing penalties for repeat offenders.

# Foreign Policy

## Summary

The *Laogai* prison system in the PRC presents a pressing human rights concern and thus affects United States diplomatic and economic relations with the country. The PRC has continued to be the second largest trade partner of the United States.<sup>184</sup> In maintaining trade relations with the PRC, the U.S. is essentially overlooking the suppression and abusive working conditions that occur within the *Laogai*. The U.S. State Department has devoted itself to the advancement of human rights in seeking:

...to build a positive, cooperative, and comprehensive relationship with China by expanding areas of cooperation and addressing areas of disagreement, such as human rights.<sup>185</sup>

## Current U.S. Policy on Human Rights

The U.S. State Department recognizes and addresses the human rights concerns within the PRC. The PRC prohibits forced and compulsory labor; however, according to the China Report on Human Rights Practices for 2011 authored by the State Department, prisoners and detainees were required to work often without pay for their services.<sup>186</sup> Evidence strongly suggests that prisoners were involuntarily employed under private prison production facilities.<sup>187</sup>

The United States has made the advancement of human rights a priority of U.S. foreign policy.<sup>188</sup> The State Department aims to instill American values in other countries around the world in order to defend the inherent rights and freedoms of people. This course of action will encourage other government systems to feel responsible for upholding human rights.<sup>189</sup> Furthermore, the United States prioritizes coordinating human rights endeavors with friendly nations and international organizations such as the EU.<sup>190</sup>

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<sup>184</sup> U.S. Department of Commerce, Top Trading Partners - Total Trade, Exports, Imports, Rep., at 1 (2012). Accessed November 12, 2012. <http://www.census.gov/foreign-trade/statistics/highlights/top/top1209yr.html>.

<sup>185</sup> U.S. Department of State, U.S. Relations with China, Rep. (2012). Accessed November 12, 2012. <http://www.state.gov/r/pa/ci/bgn/18902.htm>.

<sup>186</sup> U.S. Department of State, Country Reports on Human Rights Practices for 2011 China (includes Tibet, Hong Kong, and Macau), Rep. (2012). Accessed November 11, 2012. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>.

<sup>187</sup> Ibid.

<sup>188</sup> "Human Rights," U.S. Department of State, <http://www.state.gov/j/drl/hr/index.htm>.

<sup>189</sup> Ibid.

<sup>190</sup> Ibid.

## U.S. Trade with the PRC

Currently, trade with the PRC including imports and exports comprises about 13.6% of the U.S.'s overall international trade.<sup>191</sup> The PRC has an interest in getting the U.S. to pay off its debt. The PRC is the largest foreign holder of the 16 trillion dollars of U.S. debt, holding about 8% of the public debt as of August 2012, which is approximately 1.3 trillion dollars.<sup>192</sup> While the United States does not need to fear economic reprisal, talks about debt may improve diplomatic relations between the two countries. Furthermore, the debt that the U.S. owes presents an opportunity of leverage in diplomatic discussions.

## U.S. Policy on the PRC

The U.S. feels that the PRC's communist government is not upholding fundamental human rights.<sup>193</sup> However, the U.S. has thus far conducted its diplomatic relationship with the PRC based on the idea that "cooperation between the United States and the PRC is imperative to address the many vexing challenges we face".<sup>194</sup> On the whole, the PRC has been willing to negotiate on human rights but less willing to take any action.<sup>195</sup> Its government signed the International Covenant on Civil and Political Rights in 1997 but has yet to enforce or ratify it.<sup>196</sup>

In 1992, the United States signed a Memorandum of Understanding with the PRC. The 1992 Prison Labor Memorandum of Understanding (MOU) was originally intended to facilitate the exchange of information between the U.S. and PRC regarding product importation.<sup>197</sup> A statement of cooperation was signed in March of 1994 in which the U.S. and PRC agreed on specific time frames in hopes of creating more timely responses from the PRC.<sup>198</sup> In addition, the U.S. Customs Service secured the right to obtain sufficient evidence (i.e. business and personnel records) for the production of forced labor products in the PRC before criminal prosecution.<sup>199</sup> As the PRC has failed to comply with the terms of the MOU and implementation statement, there has been no reference to either agreement in government documentation since the 2005 hearing on Forced Labor in China by the Executive Commission on China. The Memorandum proved ineffective based on differences in

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<sup>191</sup> U.S. Department of Commerce, Top Trading Partners - Total Trade, Exports, Imports, Rep., at 1 (2012)

<sup>192</sup> "The Debt to the Penny and Who Holds It," Treasury Direct, last modified November 9, 2012, <http://www.treasurydirect.gov/NP/BPDLLogin?application=np>.

<sup>193</sup> U.S. Department of State, U.S. Relations with China, Rep. (2012).

<sup>194</sup> Hillary Rodham Clinton, "Remarks," address presented at Lunch in Honor of Chinese Vice President Xi Jinping, Benjamin Franklin Room, Washington, D.C., USA, February 14, 2012, Embassy of the United States-Brussels, Belgium, last modified February 14, 2012, accessed November 12, 2012, <http://www.uspolicy.be/headline/clinton's-remarks-luncheon-chinese-vice-president-xi>.

<sup>195</sup> Human Rights Watch, comp., *World Report 2012: China*, research report (Human Rights Watch, 2012), accessed November 11, 2012, <http://www.hrw.org/world-report-2012/world-report-2012-china#header>.

<sup>196</sup> Ibid.

<sup>197</sup> United States General Accounting Office, Implementation of the 1992 Prison Labor Memorandum of Understanding, Rep. No. 104th Cong., 1st Sess. (1995).

<sup>198</sup> Ibid.

<sup>199</sup> Ibid.

commercial practices and court standards between the U.S. and the PRC.<sup>200</sup> Presently, the U.S. has been unable to access records due to a lack of communication with the PRC.<sup>201</sup> A memorandum has no legal binding; therefore, the U.S. has no means of enforcing terms of the MOU.

The PRC currently holds a seat in the United Nations Security Council, which gives it unilateral veto power.<sup>202</sup> Any resolutions that specifically target the PRC in the United Nations are likely to be opposed. Agreements between the PRC and the United States have been made instead.

## International Policy Regarding the PRC

In order to make any serious international change, there must be a multilateral effort by the international diplomatic community. The United States will be unable to reform the *Laogai* unilaterally. Therefore, the U.S. must work with allied nations that have both the will and power to implement change.

The EU has thus far had an open dialogue addressing human rights concerns with the PRC. This has brought some issues to attention on an international scale.<sup>203</sup> The UN Human Rights Council has a similar forum and an advisory committee with the intent to “[allow] individuals and organizations to bring human rights violations to the attention of the Council.”<sup>204</sup>

Germany, having the strongest economy in, and therefore being the strongest component of, the European Union, is a necessary partner in the endeavor to reform the *Laogai*.<sup>205</sup> Germany’s policy towards the PRC differs very little from that of the United States. According to the German Foreign Office,

Improving the human rights situation also remains a priority of the German Government. The Government openly addresses cases of human rights abuse, calls for improved understanding during the annual German-Chinese Human Rights Dialogue and advocates the abolition of the death penalty.<sup>206</sup>

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<sup>200</sup> United States General Accounting Office, Implementation of the 1992 Prison Labor Memorandum of Understanding, Rep. No. 104th Cong., 1st Sess. (1995).

<sup>201</sup> Ibid.

<sup>202</sup> “Members of the United Nations Security Council,” last modified 2012,

<http://www.un.org/en/sc/members/>

<sup>203</sup> “EU-China Human Rights Dialogue,” European Union External Action,

[http://eeas.europa.eu/delegations/china/eu\\_china/political\\_relations/human\\_rights\\_dialogue/index\\_en.htm](http://eeas.europa.eu/delegations/china/eu_china/political_relations/human_rights_dialogue/index_en.htm).

<sup>204</sup> Office of the High Commissioner for Human Rights, “Background Information on the Human Rights Council,” United Nations Human Rights Council, accessed November 11, 2012,

<http://www.ohchr.org/EN/HRBodies/HRC/Pages/AboutCouncil.aspx>.

<sup>205</sup> Central Intelligence Agency, “Germany,” in *The World Factbook*,

<https://www.cia.gov/library/publications/the-world-factbook/geos/gm.html>.

<sup>206</sup> “China – ein Land mit vielen Gesichtern” [China – a Land with Many Faces], Auswärtiges Amt, last modified January 19, 2012, [http://www.auswaertiges-amt.de/DE/Aussenpolitik/RegionaleSchwerpunkte/Asien/China/Regionalschwerpunkt\\_China\\_node.htm](http://www.auswaertiges-amt.de/DE/Aussenpolitik/RegionaleSchwerpunkte/Asien/China/Regionalschwerpunkt_China_node.htm).



Germany will oppose humanitarian concerns involved in the *Laogai* and make a powerful ally in this cause. Furthermore, Germany is among the PRC's top ten export locations.<sup>207</sup> Their strong trade background gives them strong bargaining leverage with the PRC.

The United Kingdom is another strong partner in international negotiations with the PRC. While the United Kingdom is not the strongest leader in the European Union, it is, like Germany, among the PRC's top export locations.<sup>208</sup> Furthermore, the United Kingdom has had a longstanding history of friendly relations with the United States in supporting American propositions that often seem unpopular.<sup>209</sup> Britain, while hoping for strong economic relations with the PRC, is also concerned with human rights.<sup>210</sup> According to the United Kingdom's *Framework for Engagement* regarding China, "[a] policy of engagement and co-operation is integral to our promotion of human rights, and will remain an extremely high priority for the Government in years ahead."<sup>211</sup>

Japan, being the PRC's second biggest trade partner (topped only by the United States), would make another desirable ally in combating the importation of forced labor goods.<sup>212</sup> Currently, Japan is on less amicable relations with the PRC due to recent conflict over the Senkaku Islands. However, the two countries have maintained a relatively stable relationship due to their economic ties.<sup>213</sup> Furthermore, Japan has expressed concerns with the PRC's approach to human rights and has engaged in one-on-one talks with the PRC to attempt bilateral reform.<sup>214</sup> Japan has been concerned with the implementation of international law in the PRC. Due to the two countries' trade and historical relations, Japan would be an ideal and likely candidate to sign onto a policy similar to that which may be implemented by the United States.

The European Union would be the most valuable player in an international coalition. It is a confederacy of united economic bodies that has a strong trade relation with the PRC. The PRC is the EU's biggest trading partner, and EU-PRC trade has been increasing steadily over the years. The total value of goods exported from the EU to the PRC adds up to €136.2 billion, or approximately \$173.1 billion. European Union imports goods from the PRC that amount to €292.5 billion or \$371.8 billion.<sup>215</sup> However, the EU is also seeking to pursue human rights violations committed in the PRC. According to the European Union's policy

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<sup>207</sup> "US-China Trade Statistics and China's World Trade Statistics," last modified 2012, <https://www.uschina.org/statistics/tradetable.html>.

<sup>208</sup> Ibid.

<sup>209</sup> "Iraq Inquiry Hears Defiant Blair Say: I'd Do It Again," British Broadcasting Corporation, last modified January 29, 2010, [http://news.bbc.co.uk/2/hi/uk\\_news/politics/8485694.stm](http://news.bbc.co.uk/2/hi/uk_news/politics/8485694.stm).

<sup>210</sup> Foreign & Commonwealth Office, *The UK and China: A Framework for Engagement*, publication (2012), [4].

<sup>211</sup> Ibid.

<sup>212</sup> "US-China Trade Statistics and China's World Trade Statistics," US-China Business Council.

<sup>213</sup> "The Basic View on the Sovereignty over the Senkaku Islands," last modified November, 2012, <http://www.mofa.go.jp/region/asia-paci/senkaku/senkaku.html>.

<sup>214</sup> "The 7th Japan-China Human Rights Dialogue," last modified November 24, 2011, [http://www.mofa.go.jp/announce/announce/2011/11/1124\\_03.html](http://www.mofa.go.jp/announce/announce/2011/11/1124_03.html).

<sup>215</sup> "EU-China Trade Relations," European Union External Action, [http://eeas.europa.eu/delegations/china/eu\\_china/trade/index\\_en.htm](http://eeas.europa.eu/delegations/china/eu_china/trade/index_en.htm).

on the PRC, dialogue occurs twice a year in which Chinese representatives are committed to responding to the EU's allegations. Often there are concerns over civil and political freedoms, use of the death penalty and "re-education through labor". These dialogues have resulted in action to address the human rights concerns including a visit by the UN Commissioner for Human Rights, the PRC's signature onto the UN Covenant on Civil and Political Rights and the release of prisoners. However, the EU seeks more concrete manifestations of a human rights improvement in the PRC.<sup>216</sup> The European Union proves a valuable ally in addressing human rights concerns in the PRC because of their strong trade relations and their commitment to improving conditions there.

## Recommendations

- The United States form a coalition with allied foreign nations who have strong economic ties with the PRC. The intent of this coalition is to encourage these nations to pass domestic laws to investigate the origin of imported products and ensure they were not produced in the *Laogai*. These countries include, but are not limited to, the United Kingdom, Japan, the European Union, South Korea, the Netherlands, India, and Singapore.
- The United States and the People's Republic of China commence negotiations for setting a deadline by which the U.S. make restitution on the debt it owes. The repayment plan would ideally accommodate America's struggling economy.
- The United States begin dialogue within the United Nations Human Rights Council. The intent is not necessarily to promote any sort of military, economic, or diplomatic action against the PRC. The potential success of this tactic is based on the success it had in a similar forum within the European Union but on a larger international scale.

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<sup>216</sup> "EU-China Human Rights Dialogue," European Union External Action.

# International Business Community

## Summary

Forced labor within the *Laogai* camps is directly tied to business. Many prisoners in *Laogai* are required to work without compensation.<sup>217</sup> Prisoners work for private production facilities associated with the prisons. Goods and materials produced by forced labor camps include toys, garments, textiles, electronics, bricks, and coal.<sup>218</sup> Some large American businesses, like Walmart, compete to get their products produced the fastest and at the cheapest prices.<sup>219</sup> Walmart, one of the top ranked businesses in America, needs a fast paced sale and production rate in order to respond to consumers' high demands.<sup>220</sup> In using the *Laogai* labor camp system, businesses are able to sell products that their customers are more willing to buy because of the lower prices. American businesses are trying to maximize their profit without having to spend too much on production: prioritizing cheap production rather than ethical production.

This exploitation of labor is creating an unfair economic competition.<sup>221</sup> In order to address this competition, society needs to decide what holds greater value: cheap products or fair labor. In addition, it is imperative that the international business community recognizes forced labor within *Laogai* camps as an unfair economic situation.

## How We Know Products are Being Exported

In 2005, the United States' Congress determined that there were over 1,000 *Laogai* camps.<sup>222</sup> As mentioned before, *Laogai* camps are under a prison name and an enterprise name.<sup>223</sup> The enterprise name makes it easier for the products to be exported around the world. According to the Laogai Research Foundation's 2010 report on *Laogai*, "once products have been manufactured and the *Laogai* camp has partnered with an import export company, the products easily make their way through the supply chain to the U.S. and other countries throughout the world."<sup>224</sup> There are cases where prisoners from the *Laogai* prison system were able to identify their products, like Simpson slippers, in American markets such as K-

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<sup>217</sup> Bureau of Democracy, Human Rights, and Labor, Country Reports on Human Rights Practices for 2011, Rep. Accessed November 13, 2012.

<sup>218</sup> *Wal-Mart Standards Fail, Workers Suffer*, report (n.p.: China Labor Watch, 2012), accessed November 13, 2012, <http://www.chinalaborwatch.org/pro/proshow-102.html>.

<sup>219</sup> Ibid.

<sup>220</sup> Ibid.

<sup>221</sup> U.S. *Implementation of Labor Agreements with China: Hearings Before the Committee on Foreign Relations*, 105th Cong., 1st Sess. (1997), Accessed November 13, 2012. <https://docs.google.com/file/d/0B722Z2ss3xqqd3B2aFFXb0lQcUE/edit>, 1-2.

<sup>222</sup> H.R. Con. Res. 294, 109th Cong., 1st Sess. (2005).

<sup>223</sup> Harry Wu, *Laogai Forced Labor Camps*, research report (n.p.: Laogai Research Foundation, 2008), accessed November 13, 2012, <http://laogai.org/system/files/u1/Laogai-DB-Report.pdf>.

<sup>224</sup> Harry Wu, *Not For Sale: Advertising Forced Labor Products For Illegal Export*, report (n.p.: Laogai Research Foundation, 2010), accessed November 13, 2012, [http://www.laogai.org/sites/default/files/laogai\\_ads\\_report020410.pdf](http://www.laogai.org/sites/default/files/laogai_ads_report020410.pdf).

mart.<sup>225</sup> It's clear that there is an economic benefit from free labor used by *Laogai*, "China's laws and regulations clearly indicate the prison system was conceived to have an important economic function."<sup>226</sup> The PRC's government does not release clear information about the products from *Laogai*, but there is enough circulating evidence to believe the camps are selling their forced labor products to international markets.

## Lack of Information

The U.S. Department of State acknowledges the existence of the *Laogai* and stated in the 2011 Country Reports on Human Rights Practices that "forced labor remained a serious problem in penal institutions."<sup>227</sup> However, despite this recognition, the U.S. State Department has taken little to no action in improving *Laogai* working conditions. In addition, the House of Representatives petitioned a bill which called for, "... the international community to condemn the Laogai, the system of forced labor prison camps in the People's Republic of China, as a tool for suppression maintained by the Chinese Government."<sup>228</sup> Yet similarly, the Senate failed to pass the bill and carry out any action to alleviate the forced labor conditions.<sup>229</sup>

The lack of information surrounding the *Laogai* has made it difficult for any international action to take place. One reason for the lack of information is the existence of "window" companies selling the *Laogai* products.<sup>230</sup> The unwillingness of the Chinese government to allow foreign inspection in accordance to the MOU is an additional obstacle.<sup>231</sup> Despite these factors, mutual transparency is necessary.

## Pre-Existing Situation

As mentioned, the problem of the *Laogai* is significant to the international business community because it creates an unfair economic situation. Forced labor is only one of a number of human rights infringements contributing to unfair markets around the world, and the U.S. government as well as a number of Non-Profit and Non-Government Organizations (NPOs and NGOs) have taken strides against them. The State Department's Country Reports on Human Rights Practices for 2011 recognized the importance of international human rights to the U.S. and its commitment to limit offenses around the world.<sup>232</sup> The U.S. government has acknowledged evidence of continued exportation of

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<sup>225</sup> Aljazeera, "Prison Slaves," Aljazeera, video file, accessed November 13, 2012,

<http://www.aljazeera.com/programmes/slavery21stcenturyevil/2011/10/2011101091153782814.html>.

<sup>226</sup> Harry Wu, *Not For Sale: Advertising Forced Labor Products For Illegal Export*, report (n.p.: Laogai Research Foundation, 2010), accessed November 13, 2012,

[http://www.laogai.org/sites/default/files/laogai\\_ads\\_report020410.pdf](http://www.laogai.org/sites/default/files/laogai_ads_report020410.pdf).

<sup>227</sup> Bureau of Democracy, Human Rights, and Labor, Country Reports on Human Rights Practices for 2011.

<sup>228</sup> U.S. *Implementation of Labor Agreements with China: Hearings Before the Committee on Foreign Relations*

<sup>229</sup> Ibid.

<sup>230</sup> Aljazeera, "Slavery: A 21st Century Evil: Prison Slaves."

<sup>231</sup> U.S. General Accounting Office, *Implementation of the 1992 Prison Labor Memorandum of Understanding*, Rep. No. 104th Cong., 1st Sess. (1995).

<sup>232</sup> Bureau of Democracy, Human Rights, and Labor, Country Reports on Human Rights Practices for 2011, Rep. Accessed November 13, 2012. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/#wrapper>.

forced labor goods to the U.S. by the PRC.<sup>233</sup> The U.S. government also recognizes that its market is flooded with forced labor goods: a sign that American companies willingly import such goods.<sup>234</sup>

In addition, the PRC has admitted to harvesting organs from prisons. According to multiple news sources this year, the Red Cross in China is working towards preventing use of prisoner organs for transplants.<sup>235</sup> "Chinese officials acknowledge that a transplantation system that uses mostly organs from death-row prisoners is neither ethical nor sustainable."<sup>236</sup> Admitting that they are using organs from prisoners and working towards a solution is an appropriate method for resolving the issue.

Outside of government action, companies around the world have acknowledged the tie between humanitarian concerns and international business. A number of NGOs and NPOs have been working to create a more fair market relating to forced labor as well as other issues. The most prominent is the Fair Trade movement. Fair Trade USA began as TransFair USA in 1999. The NPO worked with existing groups to promote fair trade across a range of industries, mostly agricultural.<sup>237</sup> By 2000, Fair Trade coffee was the fastest growing segment of the US coffee industry, and with increased press in the following years, the Fair Trade movement increased in popularity and spread into a number of other markets with much success.<sup>238</sup> The success of Fair Trade USA led to the creation of a number of other fair trade certifiers like the World Fair Trade Organization (WFTO) and as a result products from around the globe have been labeled as Fair Trade goods. In an attempt to universalize the standards of Fair Trade certification, the Fairtrade Labeling Organization (FLO) was started.<sup>239</sup> Increases in popularity show that this is an effective method of limiting the effect of unethical goods on the market.

## Certification Failures

In August 2012, two inspectors working on behalf of Social Accountability International gave a bill of health to a Pakistani apparel plant. Social Accountability International is a nonprofit monitoring organization based in New York. The factory was certified with SA8000, meaning that the building met international standards in nine areas (i.e. health & safety, child & labor minimum wages). A month later, on September 12, the factory caught on fire, killing nearly 300 workers who were locked in. The tragedy led to international

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<sup>233</sup> *U.S. Implementation of Labor Agreements with China: Hearings Before the Committee on Foreign Relations.*

<sup>234</sup> Ibid.

<sup>235</sup> "China Begins Phasing out Prisoner Organs Next Year," *The Associated Press*, November 2, 2012, [Page #], accessed November 13, 2012, <http://abcnews.go.com/International/wireStory/china-begins-phasing-prisoner-organs-year-17623238#.UJQZOmktRE>.

<sup>236</sup> "China to phase out organ harvesting from prisoners," *The Telegraph*, November 2, 2012, [Page #], accessed November 13, 2012, <http://www.telegraph.co.uk/news/worldnews/asia/china/9650198/China-to-phase-out-organ-harvesting-from-prisoners.html>.

<sup>237</sup> "What is Fair Trade? History," Fair Trade USA, accessed November 13, 2012, <http://www.fairtradeusa.org/what-is-fair-trade/history>.

<sup>238</sup> Ibid.

<sup>239</sup> "History of Fairtrade," Fairtrade International, accessed November 13, 2012, [http://www.fairtrade.net/history\\_of\\_fairtrade.html](http://www.fairtrade.net/history_of_fairtrade.html).

accusations of Pakistani labor conditions and skepticism of Western monitoring organizations.<sup>240</sup>

## Dealing with Lack of Information

While there is enough evidence to believe that *Laogai* products are still being imported by U.S. companies, the CCP is overseeing these trades and therefore transparency in the process of importing products is imperative. To crack down on these trade relations, the UN will send a working group to ensure the PRC is following labor laws established by the international law community. These laws will enable businesses to obtain more information and determine their products' origin.

In the U.S., Congress will pass a law that requires companies to prove their chain of supply for products. In compliance with the law, companies are forced to look into where their products are being made. This shifts the burden of finding out information into the responsibility of the companies.

## Non-Prison Labor Goods Organization

The aforementioned Fair Trade movement has shown that businesses can have an effect in changing the international market. This started as a small number of North American and European companies reaching out to poor communities and aiding exploited coffee pickers; it has grown into a global effort to relieve exploitation of labor, as well as to promote a number of other fair trade goals. Fair Trade USA offers certification to companies that pay a small fee and comply with their standards.<sup>241</sup> We propose the creation and support of an international NPO, the Non-Prison Labor Goods Organization (NPLGO) that deals specifically with the issue of exportation of unpaid, forced labor goods by the international business community. The main goal of the NPLGO is to give businesses the opportunity to promote a third party certifier to work towards fair and equitable competition in the international market, while offering incentive for businesses to join. In order to do so, the NPLGO should do the following:

- Establish a set of standards with which a company must comply in order to become certified. Similar to the proposed bill to Congress, all perspective members will carry the “burden of proof” to trace back and publish all findings on the origins of their goods.<sup>242</sup>
- Develop guidelines for companies to check on each other to ensure that standards are met (such as strict guidelines and regular checks to avoid failures in the system, like those in Pakistan).<sup>243</sup>

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<sup>240</sup> Declan Walsh, "Inspectors Certified Pakistani Factory as Safe Before Disaster," *The New York Times* (New York, NY), September 19, 2012, [Page #], accessed November 13, 2012, [http://www.nytimes.com/2012/09/20/world/asia/pakistan-factory-passed-inspection-before-fire.html?pagewanted=all&\\_r=1&](http://www.nytimes.com/2012/09/20/world/asia/pakistan-factory-passed-inspection-before-fire.html?pagewanted=all&_r=1&).

<sup>241</sup> "What is Fair Trade? History," Fair Trade USA.

<sup>242</sup> Seay, *What's Wrong With Dodd Frank 1502: Conflict Minerals, Civilian Livelihoods, and the Unintended Consequences of Western Advocacy*, report no. 284.

<sup>243</sup> Declan Walsh, "Inspectors Certified Pakistani Factory as Safe Before Disaster,"

- Make certified companies pay a small fee in exchange for certification to run the organization. These fees help the NPLGO to function, like similar fees for Fairtrade International.<sup>244</sup> In addition, the funds can be used to promote public knowledge of the issues the NPLGO faces, or work with groups like the COC for the same purpose.<sup>245</sup>

The NPLGO will not only provide a system for companies with a common interest to join together and profit from their decision to follow high ethical standards but also provide incentive for other companies to join. The incentive lies in the NPLGO's support of consumer conscience run markets. The proposed Congressional bill, the publication of the source of goods, and a promotion of international public knowledge on the issue will create those markets.<sup>246</sup>

## The Fair-Labor Stamp Certification

The previously mentioned NPO's provide a stamp as evidence of a company's certification in compliance to their standards. As a part of the NPLGO, we recommend that the business community support the NPO's certification stamp, the Fair Labor Stamp (FLS). Business support of the NPLGO and its FLS will help achieve the goal of the companies involved: the certification and promotion of goods made without forced and unpaid labor in order to move the international community away from the unequal market that exists.<sup>247</sup> In addition, the stamp will provide extra incentive to the companies that meet the requirements: proof beyond doubt that their exported goods are not made with unpaid labor. The pre-existing certifications have done just that with the issues they sought to fix. The Fair Trade certification has been proven to have a positive effect on the demand for the certified goods as well as aiding the situation the organization seeks to improve.<sup>248</sup> Fair Trade had proven to be an effective method to reduce, or even eliminate, profit-maximizing firms "dominant position" in the market.<sup>249</sup> The effectiveness of the Fair Trade certification supports the idea that a Fair Labor Stamp could be effective in reducing, or hopefully eliminating, *Laogai* and other forced labor goods from the market.<sup>250</sup>

## Advertisement and the Chamber of Commerce

Consumers indulge businesses by purchasing forced-labor products. The Chamber of Commerce, an American interest group, is a balance between business and government and as well as a fundamental contributor to advocating consumer interests. "Everyone involved

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<sup>244</sup> "History of Fairtrade," Fairtrade International.

<sup>245</sup> "The Policy Making Process," U.S. Chamber of Commerce, accessed November 13, 2012, <http://www.uschamber.com/about/policymaking-proces>.

<sup>246</sup> See page 29.

<sup>247</sup> U.S. *Implementation of Labor Agreements with China: Hearings Before the Committee on Foreign Relations*

<sup>248</sup> Raphael Bemporad and Mitch Baranowski, *Conscious Consumers Are Changing the Rules of Marketing. Are You Ready? Highlights from the BBMG Conscious Consumer Report*, report (n.p.: Beijing Building Materials Group, 2007), [Page #], accessed November 13, 2012,

[http://www.fmi.org/docs/sustainability/bbmg\\_conscious\\_consumer\\_white\\_paper.pdf?sfvrsn=2](http://www.fmi.org/docs/sustainability/bbmg_conscious_consumer_white_paper.pdf?sfvrsn=2).

<sup>249</sup> Mark Hayes and Geoff Moore, *The Economics of Fair Trade*, research report (n.p.: Fairtrade Partnership, 2007).

<sup>250</sup> Ibid.

in the process must help develop positions that benefit the entire business community, rather than any given narrow interest.”<sup>251</sup> The mutual interest relies on the desire of the Chamber of Commerce to protect the interest of the consumers by recognizing how products are produced and their origins. “Maintaining the integrity of the process is essential for both moral and practical reasons.”<sup>252</sup> Economic prosperity is determined by consumer consciousness. Advertisements conducted by the Chamber of Commerce will promote this our desired consumer consciousness.

## **Recommendations**

- We recommend the creation of the Non-Prison Labor Goods Organization in order to monitor factory labor conditions.
- We recommend Fair Labor Stamp Certification to ensure ethically obtained products to domestic and international consumers at large.
- We recommend advertising both the Non-Prison Labor Goods Organization and Fair Labor Stamp Certification by way of the Chamber of Commerce.

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<sup>251</sup> "The Policy Making Process," U.S. Chamber of Commerce, accessed November 13, 2012, <http://www.uschamber.com/about/policymaking-proces>.

<sup>252</sup> *ibid.*



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