

Refugee Review Tribunal

AUSTRALIA

RRT RESEARCH RESPONSE

Research Response Number: CHN30681
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This response was prepared by the Country Research Section of the Refugee Review Tribunal (RRT) after researching publicly accessible information currently available to the RRT within time constraints. This response is not, and does not purport to be, conclusive as to the merit of any particular claim to refugee status or asylum.

Questions:

Please advise if the laws that deal with illegal departure and assisting people to depart illegally are of general application or whether they are used to target a particular group.

RESPONSE

1. Please advise if the laws that deal with illegal departure and assisting people to depart illegally are of general application or whether they are used to target a particular group.

No information to indicate that the laws that deal with illegal departure and assisting people to depart illegally are used by the Chinese government to target particular groups was found amongst the sources consulted.

Section 3, Chapter VI of *The Criminal Law of the People's Republic of China 1997* provides a number of penalties for assisting people to “secretly cross the national boundary” at Articles 318, 319, 321 and 322 and for providing fake and altered exit and entry documents at Article 320. Article 322 provides penalties for illegal emigration (*Criminal Law of the People's Republic of China*, (Adopted on July 1, 1979 and amended on March 14, 1997), Chinalaw website – Attachment 1).

Article 105 may also reportedly be used against those assisting dissidents to leave China. Article 105 provides for penalties up to three years in prison for participants who are not deemed to be actively involved in the dissident organisation:

Article 105. Whoever organizes, plots, or acts to subvert the political power of the state and overthrow the socialist system, the ringleaders or those whose crimes are grave are to be sentenced to life imprisonment, or not less than 10 years of fixed-term imprisonment; active participants are to be sentenced from not less than three years to not more than 10 years of fixed-term imprisonment; **other participants are to be sentenced to not more than three**

years of fixed-term imprisonment, criminal detention, control, or deprivation of political rights (*Criminal Law of the People's Republic of China*, (Adopted on July 1, 1979 and amended on March 14, 1997), Chinalaw website – Attachment 1).

Articles 23 to 25 of *The Detailed People's Republic of China Exit and Entry Management Law Implementation Regulations* provide penalties for using, “forging, altering, transferring and trading” and obtaining “by illegal means” exit and entry documents:

Article 23

Using forged, altered invalid document or using other's document for exit and entry purpose will lead to confiscation of document. The holder will receive warning or be detained for no more than 5 days. In case of serious situation related to crime, offenders have to bear criminal responsibility according to the related articles in the “National People's Congress Standing Committee supplementary regulations concerning heavy penalty on the criminal offence of organisation and transportation of people across the border/frontier”.

Article 24

Offenders for forging, altering, transferring and trading Exit and Entry documents will be detained for no more than 10 days. In case of serious situation related to a crime, offenders have to bear criminal responsibility according to the related articles in the “Criminal Law of the People's Republic of China” and “National People's Congress Standing Committee supplementary regulations concerning heavy penalty on the criminal offence of organisation and transportation of people across the border/frontier”.

Article 25

Citizens who have obtained Exit and Entry Document by illegal means such as making up stories, providing false evidence or paying a bribe, in case of less serious situations, will receive warning or be detained for no more than 5 days. In case of serious situation related to a crime, offenders have to bear criminal responsibility according to the related articles in the “Criminal Law of the People's Republic of China” and “National People's Congress Standing Committee supplementary regulations concerning heavy penalty on the criminal offence of organisation and transportation of people across the border/frontier” (*Detailed People's Republic of China Exit and Entry Management Law Implementation Regulations 1994*, (Amendment of Regulations of 12/86) – Attachment 2).

Information was found amongst the sources consulted to indicate that those who depart China illegally or assist others to depart illegally may be subject to fines and/or detention. No information to indicate that the above laws are used by the Chinese government to target particular groups was found amongst the sources consulted (Australian Consulate General, Guangzhou 1995, *Facsimile F.0244 – Customs Officer in Shenzhen*, 12 May – Attachment 3; DIMIA Country Information Service 1997, *Country Information Report No. 195/97 – China: PSB and Cultural Revolution – CIS Information Request No. CHN3996* (sourced from DFAT advice dated 30 March 1997), 7 May – Attachment 4; US Citizenship and Immigration Services 1998, *CHN99004.ZLA – China: Repatriated Illegal Emigrants*, 17 December <http://www.uscis.gov/graphics/services/asylum/ric/documentation/China4.htm> – Accessed 22 September 2006 – Attachment 5; Immigration and Refugee Board of Canada 2000, *CHN34770.E – China: Update to CHN32869.EX of 22 September 1999 regarding treatment of illegal emigrants repatriated to China: particularly information regarding treatment of those repatriated from Canada in May 2000*, 9 August – Attachment 6; and Immigration and Refugee Board of Canada 2003, *CHN39883.E – China: Update to CHN34770.E of 9 August*

2000 regarding the treatment of illegal emigrants repatriated to China, especially the treatment of those repatriated from Canada in May 2000, 3 April – Attachment 7).

List of Sources Consulted

Databases:

FACTIVA (news database)

BACIS (DIMA Country Information database)

REFINFO (IRBDC (Canada) Country Information database)

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

RRT Library Catalogue

List of Attachments

1. *Criminal Law of the People's Republic of China*, (Adopted on July 1, 1979 and amended on March 14, 1997), Chinalaw website.
2. *Detailed People's Republic of China Exit and Entry Management Law Implementation Regulations 1994*, (Amendment of Regulations of 12/86). (CISNET China CX13388)
3. Australian Consulate General, Guangzhou 1995, *Facsimile F.0244 – Customs Officer in Shenzhen*, 12 May. (CISNET China CX6081)
4. DIMIA Country Information Service 1997, *Country Information Report No. 195/97 – China: PSB and Cultural Revolution – CIS Information Request No. CHN3996* (sourced from DFAT advice dated 30 March 1997), 7 May. (CISNET China CX27869)
5. US Citizenship and Immigration Services 1998, *CHN99004.ZLA – China: Repatriated Illegal Emigrants*, 17 December.
<http://www.uscis.gov/graphics/services/asylum/ric/documentation/China4.htm> – Accessed 22 September 2006.
6. Immigration and Refugee Board of Canada 2000, *CHN34770.E – China: Update to CHN32869.EX of 22 September 1999 regarding treatment of illegal emigrants repatriated to China: particularly information regarding treatment of those repatriated from Canada in May 2000*, 9 August. (REFINFO)
7. Immigration and Refugee Board of Canada 2003, *CHN39883.E – China: Update to CHN34770.E of 9 August 2000 regarding the treatment of illegal emigrants repatriated to China, especially the treatment of those repatriated from Canada in May 2000*, 3 April.