

Exit regulation in the People's Republic of China: Law, policy and practice

Lili Song 

Faculty of Law, Otago University, Dunedin,
New Zealand

Correspondence

Lili Song, Faculty of Law, Otago University,
Dunedin, New Zealand.

Email: lili.song@otago.ac.nz

Funding information

New Zealand Law Foundation

Abstract

In the past 20 years, there have been increasing media reports of individuals being banned from exiting the People's Republic of China (PRC). This article aims to provide a comprehensive overview of the current PRC mechanisms for regulating the exit of PRC and foreign citizens. It proposes that the PRC uses three types of exit regulation mechanisms. First, restrictions on access to passports serve to preclude targeted PRC citizens from obtaining the document necessary for international travel. Second, PRC and foreign citizens with valid passports could be prohibited from exiting the PRC on extensive grounds. Third, the criminalization of unauthorized departure serves to punish and deter the clandestine exit of PRC citizens. In relation to each mechanism, it outlines the legal grounds for imposing restrictions or punishment and provides illustration with recent cases. It also identifies a number of shortcomings of the PRC exit regulation system, including fragmented and overly broad legislation in some aspects, inconsistency of legislation, overly decentralized distribution of power among institutions and insufficient safeguard for procedural transparency.

This is an open access article under the terms of the [Creative Commons Attribution-NonCommercial-NoDerivs](https://creativecommons.org/licenses/by-nc-nd/4.0/) License, which permits use and distribution in any medium, provided the original work is properly cited, the use is non-commercial and no modifications or adaptations are made.

© 2022 The Authors. *International Migration* published by John Wiley & Sons Ltd on behalf of International Organization for Migration.

INTRODUCTION

In November 2021, Daniel Hsu, a US citizen who had been banned from leaving the People's Republic of China (PRC) since 2017,¹ was allowed to return to the US shortly before a meeting between the US president Joe Biden and the Chinese president Xi Jinping.² Just 2 months earlier, two US citizens, Cynthia and Victor Liu, were allowed to return to the US after having had been banned from leaving the PRC for 3 years.³ In both Hsu's case and the Liu siblings' case, US officials indicated that the US citizens were victims of unlawful coercive exit ban and arbitrary detention as they had not been charged with any criminal offence.⁴ On the other hand, the PRC Ministry of Foreign Affairs spokespersons asserted that the Liu siblings' case was handled in accordance with PRC law.⁵ The cases of Hsu and the Liu siblings are far from isolated cases of exit bans imposed by the PRC. In the past 20 years, there have been increasing reports in international media of both foreigners and PRC citizens being banned from exiting the PRC.⁶ Indeed, exit restrictions have been used extensively on PRC citizens. For example, in the 3 years prior to March 2019, PRC courts placed exit restrictions on 34,000 so-called enforcement debtors.⁷

Traditionally, the PRC has been a major source of international migrants. It also attracts many foreigners to visit and live there nowadays as the world's 2nd largest economy. Thus the PRC's regulation of exit undoubtedly has the potential to affect large numbers of people. However, existing scholarship on PRC exit regulation is scarce and mostly deals with some aspects of prohibition of exit of PRC citizens with valid passports.⁸ Systematic reviews are rare. Exceptions include Xiang's relatively brief but insightful 2003 overview of PRC exit control policies and Liu's 2007 book, which dedicated two chapters to the right to be granted a Chinese passport and the right to leave China, respectively.⁹ Both publications predate the 2012 PRC Exit-Entry Administration Law (the main PRC immigration statute)¹⁰; Xiang's article also predates the 2006 PRC Passport Law (the PRC's first passport law). Both publications contain very limited empirical material regarding exit regulation, which probably was hard to access at the time they were written.

This article aims to provide a comprehensive overview of the current PRC mechanisms for regulating the exit of PRC and foreign citizens. It proposes that, broadly speaking, the PRC uses three types of exit regulation mechanisms. First, restrictions on access to passports serve to preclude targeted PRC citizens from obtaining the document necessary for international travel. Second, PRC and foreign citizens with valid passports could be prohibited from exiting the PRC on extensive grounds. Third, criminalisation of unauthorized departure serves to punish and deter the clandestine exit of PRC citizens. In relation to each mechanism, it outlines the legal grounds for imposing restrictions or punishment, identifies current issues with the design or implementation of those legal grounds and provides illustration with recent cases. This article relies entirely on public information from scholarly publications, media reports, policy papers and press releases published by governmental and nongovernmental organizations.

TERMINOLOGY AND TRANSLATION

For the purpose of this article, the term "exit regulation" refers to all measures, explicit and implicit, that govern the rights of citizens, or noncitizens, to leave the territory of a state, whether temporarily or permanently. In the PRC context, the terms *xianzhi chujing*, which literally translates as "restrict exit" and *kongzhi chujing*, which literally translates as "control exit" are often used to refer to the prohibition of passport holders from leaving the country,¹¹ whereas the term *bupizhun chujing*, which literally translate as "disapprove of exit" is often used to refer to the denial of access to a PRC passport for the purpose of exit ban.¹²

In the PRC, the legislative power is shared by more than one organ.¹³ PRC legislation can be divided into three tiers.¹⁴ Top-tier legislation consists of laws (*falü*) made by the National People's Congress or its Standing Committee; second-tier legislation consists of administrative regulations (*xingzheng FAGUI*) made by the State Council; and third-tier legislation includes local regulations (*difangxing FAGUI*), autonomous regulations (*zizhi tiaoli*), separate regulations (*danxing tiaoli*) and rules (*guizhang*). The PRC legal system does not formally recognize judicial decisions

as a source of law.¹⁵ In this article, unless otherwise indicated or implied by the context, the term “PRC law” refers to PRC legislation in general encompassing all the aforementioned three tiers of legislation.

In terms of English translation of PRC legal provisions, wherever possible, this article uses the English translation published by PRC governmental departments and provides a link to the relevant websites. Where no such government-published English translation is available, the translation is the author's own, unless otherwise stated.

HISTORICAL AND INTERNATIONAL CONTEXT

When the PRC was founded in 1949 as a socialist country, it followed the Soviet approach to controlling international movement.¹⁶ Until the late 1970s, the PRC government generally considered spontaneous emigration of its citizens as betraying the socialist ideology.¹⁷ When the PRC began to reform and open up in the late 1970s, it also began to gradually depoliticize and relax exit control. The current exit regulation system discussed below should be viewed contextually as the result of such gradual relaxation of historically highly restrictive exit control.

Exit regulation is a limitation on the basic human right to leave, which is enshrined in the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights (ICCPR) and a wide range of universal and regional human rights instruments.¹⁸ According to the ICCPR, restrictions on the right to leave should be limited to those that are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the ICCPR.¹⁹

The PRC has signed but has not ratified the ICCPR as of September 2022. However, as Liu pointed out, the PRC has the obligation not to defeat the purpose of the ICCPR and it is also bound by provisions relating to the right to leave in international treaties to which it is a party, such as article 5(d) (ii) of the 1965 Convention on the Elimination of All Forms of Racial Discrimination, article 28 of 1951 Convention Relating to the Status of Refugees, article 10 of the 1989 Convention on the Rights of the Child and article 3 of the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.²⁰ Thus the PRC has legal obligations to respect and protect the right to leave under those treaties. Notably, article 1 of the 2006 Passport Law and article 3 of the 2012 Exit-Entry Administration Law recognize the rights of PRC citizens to exit from the territory of the PRC.²¹

RESTRICTIONS ON ACCESS TO PRC PASSPORTS

Overview

Passports are recognized in international law as official documents issued by national or international authorities to individuals enabling the bearer to offer some proof of his or her identity and nationality and to cross international boundaries.²² The PRC Exit-Entry Administration Law requires PRC citizens to present their passport when they leave the country and prohibits those without proper documentations from leaving the country.²³ Therefore, generally speaking, a PRC citizen needs to hold a PRC passport to legally leave the PRC.²⁴

The PRC passed its first Passport Law only in 2006; prior to that, access to PRC passports was by and large a policy matter and it was extremely difficult for ordinary PRC citizens to obtain a passport.²⁵ The PRC Passport Law requires the exit-entry administration department to issue an ordinary passport within 15 days after the receipt of application documents and to provide a written explanation if it declines to issue a passport.²⁶

Under the PRC Passport Law, restrictions on access to a PRC passport mainly take two forms: (1) refusal to issue a passport under articles 13 and 14 and (2) confiscation and invalidation under articles 15–17. They are discussed below.

Legal grounds for refusal to issue PRC passports

First, article 13 of the Passport Law requires that the passport issuing authority shall not issue a passport to seven types of persons, namely those who:

1. do not possess the nationality of the PRC;
2. cannot prove their identity;
3. commit frauds in the course of their application for their PRC passport;
4. are punished for a crime and are serving a sentence;
5. are not allowed to leave the country because of an unsettled civil case, as are notified by a people's court;
6. are a defendant in a criminal case or a criminal suspect; or
7. the relevant competent department of the State Council believes will undermine national security or cause major losses to the interests of the PRC after they exit the PRC.

Enforcement of article 13(6) of the Passport Law could be problematic. In current PRC law, there are no clear legal criteria for assessing the sufficiency of evidence for identifying a person as a criminal suspect.²⁷ The police has significant discretion in determining whether a person is a criminal suspect;²⁸ that arguably increases the risk of potential abuse of article 13(6) of the Passport Law. As an illustration, in the recent case of *Zhao Qinjun v Exit-Entry Administration Bureau of the Shanghai Public Security Bureau*,²⁹ the Shanghai Exit-Entry Administration Bureau refused to issue a new passport to Zhao citing article 13(6) of the Passport Law on the ground that the Shanghai Public Security Bureau had identified Zhao as a suspect of the criminal offence of contract frauds and consequently added his name to an internal list of "persons disapproved for exit." Zhao claimed that he had never been formally charged with the criminal offence or even been notified that he had been identified as a criminal suspect. He argued that in the absence of any evidence of his alleged involvement in contract frauds, the Shanghai Exit-Entry Administration Bureau's refusal to issue him a new passport, which was made relying solely on an internal list of the Public Security Bureau, apparently lacked factual and legal basis. The court dismissed Zhao's appeal, finding that the Shanghai Exit-Entry Administration Bureau had complied with article 13(6) of the Passport Law. The court further noted that it was outside the scope of the current case for the court to investigate whether Zhao was rightly identified and listed as a criminal suspect, which was a matter Zhao would need to find a different venue to challenge if he wished to do so.

Under article 14 of the Passport Law, if a person is punished for the criminal offences of obstructing border control,³⁰ no passport shall be issued to such person for a period of 6 months to 3 years from the date the punishment has been executed. The same bar to access to passports applies to PRC citizens who are deported by another country for illegally leaving the PRC, overstaying or illegally working overseas. A similar provision can be found in article 75 of PRC Exit-Entry Administration Law.³¹

It is worth mentioning that certain public servants, as well as certain employees of state-owned enterprises, are required to supply a "statement of opinion" from their employer as part of their application for an ordinary passport.³² It is commonly understood that the employer's approval of the intended overseas travel is essential for the relevant public servants and employees of state-owned enterprises to be issued a passport.

In practice, the PRC authority has refused to issue passports for reasons not provided for in the Passport Law. For example, in July 2021, the PRC National Immigration Administration Bureau announced that it would temporarily stop issuing new passports to PRC citizens for nonessential and nonemergency overseas travel in order to curb the spread of COVID-19.³³ The National Immigration Administration Bureau did not elaborate what matters would be considered necessary or urgent. To illustrate, an elderly couple who wished to travel to the US to look after their daughter who was expecting a new baby were refused passports under this policy.³⁴ Such a blanket restriction on access to passports appears to have no legal basis within the current PRC legal framework. As another example, residents of the Tibet Autonomous Region and the Xinjiang Uygur Autonomous Region reportedly have been subjected to a more restrictive system of passport application,³⁵ including lengthier procedures, stricter political scrutiny and

requirements of extra application documents.³⁶ Nothing in the Passport Law provides a basis for differentiating treatment based on an individual's region of origin/residence or ethnicity. Any local-level legislation and policy allowing such differentiation based on an individual's region of origin/residence or ethnicity would be inconsistent with the Passport Law.

Legal grounds for confiscation and invalidation of PRC passports

Article 15 of the Passport Law empowers PRC courts, the procuratorate, public security organs, national security organs and administrative supervisory authorities to seize the passports of the parties of a pending case where it is deemed necessary for the handling of the case. If the relevant person refuses to hand over their passport, the aforementioned authorities may request the passport issuing authority to declare the relevant person's passport invalid.³⁷ Under articles 16 and 17, the passport issuing authority can also declare a PRC passport invalid if the holder of the passport forfeits their PRC nationality,³⁸ or if the passport is lost or stolen,³⁹ or if the passport is obtained by fraudulent means.⁴⁰

In practice, there have been incidents of arbitrary confiscation of passports. For example, in April 2015, the Public Security Bureau of Ili Prefecture in the Xinjiang Uygur Autonomous Region ordered all residents of Ili who held an ordinary private passport to hand in their passport to local police stations.⁴¹ The Ili Public Security Bureau provided no explanation or justification for such order. A notice issued by the Ili Public Security Bureau stated that those who refused to hand in their passport would have their passport invalidated.⁴² As human rights lawyers rightly pointed out, the Passport Law provides no basis for such requirement.⁴³ Another example is PRC human rights lawyer Teng Biao whose PRC passport was confiscated at a Chinese airport in 2008 when he was travelling to a conference overseas.⁴⁴

There have also been incidents of invalidation of passports that appear to be inconsistent with the law. For example, in April 2021, the PRC National Immigration Administration Bureau invalidated the passports of 145 PRC citizens as part of a crackdown on cross-border gambling and telecommunications frauds.⁴⁵ Those 145 individuals include 71 suspects of illegal border crossing and 19 deportees from neighbouring countries; both groups were deemed to have been involved in illegal gambling and frauds in Southeast Asia.⁴⁶ The other 55 individuals, who were suspected to have been involved in gambling and telecommunications frauds, were intercepted by the PRC border control authority when attempting to leave the country.⁴⁷ There is no evidence showing that these individuals' circumstances justified the invalidation of their passports under articles 15–17 of the Passport Law. Rather, the PRC authority could have refused to issue these 145 individuals new passports under articles 13(6)–(7) or 14 of the Passport Law on the ground that they were criminal suspects or deportees, or even confiscate their passports under article 15 of the Passport Law (only if that proves necessary for handling their cases) or under article 75 of the Exit-Entry Law (in terms of those who were repatriated).

EXIT RESTRICTIONS ON PERSONS WITH VALID PASSPORTS

Overview

This part deals with exit restrictions that can be imposed on PRC and foreign citizens who hold a valid passport under PRC law. Historically, those who wished to leave the PRC had to obtain an exit visa from the PRC government. Nowadays, exit visas are no longer required, but exit restrictions can be invoked under a wide range of PRC laws made by national and local authorities, such as the Civil Procedure Law, Exit-Entry Administration Law, the Law on the Administration of Tax Collection, the Law on Regulation of and Supervision over the Banking Industry, the Supervision Law, the Regulation on the Implementation of Customs Administrative Punishment.⁴⁸ A total of 178 PRC laws contain provisions relating to exit restrictions.⁴⁹ Scholars have criticized the fragmented and arguably overly broad statutory provisions relating to exit restrictions from a number of aspects.⁵⁰ In particular, article 8(5) of the PRC Legislation Law provides that mandatory measures and penalties involving restriction of personal liberty should only be governed by laws made by

the National People's Congress (the PRC's highest legislative organ) or its Standing Committee. As Chen rightly noted,⁵¹ arguably exit restrictions could be seen as a form of restriction of personal liberty and should therefore only be governed by laws made by the National People's Congress or its Standing Committee. Thus existing provisions in laws that are not made by the National People's Congress or its Standing Committee are arguably inconsistent with the Legislation Law.

Given the extensiveness of existing legal provisions on exit restrictions, the following section does not aim for an exhaustive discussion of legal grounds for exit restrictions in the PRC. Instead, it is generally structured around articles 12 and 28 of the Exit-Entry Administration Law, which each sets out a list of circumstances under which PRC citizens and foreigners, respectively, are not allowed to exit the PRC. These two articles probably could be seen as the latest effort to provide some "one-stop" guidance on exit restrictions:

Article 12 Under any of the following circumstances, Chinese citizens are not allowed to exit China:

1. Hold no valid exit/entry documents, or refuse or evade border inspection;
2. Are sentenced to criminal punishments, the execution of which has not been completed, or are suspects or defendants in criminal cases;
3. Are involved in unsettled civil cases and not allowed to exit China upon the decision of the people's courts;
4. Are subject to criminal punishment for impairing border administration, or are repatriated by other countries or regions due to illegal exit from China, illegal residence or illegal employment and the No-Exit-from-China period has not expired;
5. May endanger national security or interests and are not allowed to exit China upon decision by competent departments under the State Council; or.
6. Other circumstances in which exit from China is not allowed in accordance with laws or administrative regulations.

...

Article 28 Under any of the following circumstances, foreigners shall not be allowed to exit China:

1. Are sentenced to criminal punishments, the execution of which is not completed, or suspects or defendants in criminal cases, except those who are sentenced and transferred under relevant agreements between China and foreign countries;
2. Are involved in unsettled civil cases and are not allowed to exit China upon the decision of the people's courts;
3. Are in arrears of paying off labour remuneration and therefore are not allowed to exit by decision of the relevant departments under the State Council or of the people's governments of provinces, autonomous regions or municipalities directly under the Central Government; or
4. Other circumstances in which exit shall not be allowed in accordance with laws or administrative regulations.

Articles 28(1), 28(2) and 28(3) are identical to articles 12(2), 12(3) and 12(6), except that the former apply to foreigners, whereas the latter apply to PRC citizens; thus they are discussed together below. Article 12(1) is consistent with the requirement for PRC citizens to present proper documentation to legally leave the PRC (mentioned above) and needs little explanation. It is therefore not discussed below. Notably, both articles contain an umbrella clause covering "Other circumstances in which exit from China is not allowed in accordance with laws or administrative regulations," which reflects and accommodates the reality that exit restrictions can be invoked under a wide range of existing legal provisions.

Legal grounds for banning passport holders from exiting and the relevant practice

Criminal convicts, defendants and suspects

According to articles 12(2) and 28(1) of the Exit-Entry Administration Law, criminal convicts serving sentences, defendants who have been charged of a criminal offence and criminal suspects who are yet to be charged of any

offence, shall be banned from leaving the PRC. For example, in the case of Cynthia and Victor Liu, the PRC authority claimed that they were suspects of economic crimes and referred to article 28 of the Exit-Entry Administration Law as the basis for their exit ban.⁵²

Although travel bans on persons indicted for or convicted of criminal offences may, under certain circumstances, be justified as an acceptable restriction on the right to leave,⁵³ a blanket exit ban encompassing criminal convicts, defendants in criminal cases and suspects yet to be indicted for any criminal offence is unlikely to meet the internationally accepted standards for restriction on the right to leave.⁵⁴ Furthermore, as with article 13(6) of the Passport Law discussed above, the lack of clear legal criteria within the current PRC legal framework for assessing the sufficiency of evidence for identifying a person as a criminal suspect arguably increases the risk of potential abuse of articles 12 and 28 of the Exit-Entry Administration Law for arbitrary exit bans.

Involvement in unsettled civil cases

According to article 255 of the PRC Civil Procedure Law,⁵⁵ PRC courts may ban a person who refuses to perform their obligations under a court decision from leaving the PRC. This article has been invoked frequently to ban PRC citizens who fail to perform court orders to repay debts, known as “enforcement debtors” (*shixin beizhixingren*) in the PRC. As mentioned above, in the 3 years prior to March 2019, PRC courts imposed exit bans on 34,000 enforcement debtors.⁵⁶

Under articles 12(3) and 28(2) of the Exit-Entry Administration Law, PRC citizens and foreigners who are involved in unsettled civil cases shall not be allowed to leave the PRC. In comparison with article 255 of the Civil Procedure Law, the wording of articles 12(3) and 28(2) of the Exit-Entry Administration Law only requires that the person is “involved” in unsettled civil cases. It does not appear to require that a final judgement on the dispute has been made before the imposition of the exit ban. In civil cases, courts typically impose exit restrictions upon the application by a party to the dispute, and such application is often filed with the initial complaint.⁵⁷ It has been noted that in some cases, PRC courts granted exit bans without sufficiently assessing whether they were necessary and reasonable.⁵⁸

Further, PRC courts have imposed exit bans on persons who are not a party to a pending civil case but whose employer is. Wagner and Wong noted in 2011 that, based on their experience in PRC courts, foreigners employed by companies involved in pending civil cases could be restrained from leaving the PRC if they were perceived by the court to “have a high enough or important enough position in the company to be able to have some impact on the case (for example, some knowledge about the case or some influence on decisions concerning settlement)”.⁵⁹ It was not necessary that they were senior executives.⁶⁰ A recent example is the case of Irish citizen Richard O'Halloran, who was a director of a Dublin-based aircraft leasing firm.⁶¹ A Shanghai court placed an exit ban on O'Halloran in 2019 because of a legal dispute involving the firm which he worked for, even though O'Halloran was not a party in that case.⁶² It should be noted that in a 2010 Guiding Opinion issued by the Supreme People's Court,⁶³ it is stated that exit bans on foreigners should be applied with caution and should only be applied when all of the following three criteria are met: (1) the exit ban should only be imposed on the parties of the pending civil litigation or, when the party is a legal person, the legal representative or principal, (2) the person concerned may evade the litigation or the responsibility to perform their legal obligations and (3) not imposing the exit ban may cause difficulties in the hearing of the case or in the enforcement of the judgement.⁶⁴ As O'Halloran was not a party to the litigation or the legal representative or principle of the firm he worked for, which was relied upon to impose the exit ban, he did not meet the first criteria. Therefore, if the 2010 Guiding Opinion was to be followed,⁶⁵ an exit ban should not have been imposed on him.

Endangering national security and interest

Under article 12(5) of the Exit-Entry Administration Law, if competent departments under the State Council decide that a PRC citizen may endanger national security or interest, the person shall not be allowed to leave the PRC. This

provision echoes with article 13(7) of the Passport Law mentioned above. There has been no authoritative definition or interpretation as to who the “competent departments” are, what “national security or interest” means and what amounts to “endanger” in this context.⁶⁶ Chen has rightly noted that such provision is abstract and vague, gives the government discretion and thus could potentially lead to abuse of power.⁶⁷ In practice, article 12(5) has been invoked to ban many PRC citizens from going abroad, including notable political dissidents, human rights lawyers and their families, and independent economists and academics.⁶⁸

Foreigners in arrears of paying off labour remuneration

Article 28(3) of the Exit-Entry Administrative Law prohibits foreigners who are in arrears of paying off labour remuneration from leaving the PRC by decision of the relevant departments under the State Council or the government at the provincial level. This provision applies to foreigners only and was put in place in response to the problem of foreign business owners evading their responsibilities of paying off labour remuneration by leaving the PRC.⁶⁹ For example, a Tianjin court imposed an exit ban on a Korean businessman who had not paid his PRC employees' salaries according to an employment arbitration settlement agreement.⁷⁰ The court lifted the ban after he made the payment.⁷¹

Matters relating to border management and immigration

Under article 12(4) of the Exit-Entry Administration Law, those who are punished for committing the criminal offences of obstructing border management, as well as those who are deported by other countries because of illegal exit from PRC, overstaying or illegal employment, could be banned from leaving the PRC for a certain period of time. This provision resonates with article 14 of the Passport Law discussed above. Article 12(4) does not specify which authority is competent to decide whether and for how long an exit ban should be imposed on this category of individuals. In practice, the PRC National Immigration Administration Bureau has recently exercised the power to ban PRC deportees from exiting the PRC for 3 years.⁷²

Duration, notification and legal remedies

Provisions on the duration of exit bans are scattered and inconsistent.⁷³ Cheng noted that in practice courts usually granted a 3-month initial duration, which can be extended multiple times,⁷⁴ whereas Chen noted that the public security authority followed its own internal rules and normally applied a 1-year ban with a maximum of 5 years allowed in exceptional circumstances.⁷⁵ In the cases of Daniel Hsu and the Liu siblings, their exit bans lasted more than 3 years and less than 5 years.

According to a 1987 notice, the person on whom an exit ban is imposed should be notified verbally or in writing and such notification should be made as early as possible rather than at the border when the person concerned attempts to exit.⁷⁶ However, in practice, most exit bans were done by simply recording the name and details of the person in the border control database and the individual concerned was typically unaware of the exit restriction until when they attempted to leave the PRC and were prevented from doing so by the border control authority.⁷⁷ For example, Chen noted that at Shanghai Pudong International airport alone, thousands of travellers were told that they were banned from exiting the PRC just before boarding the plane.⁷⁸

It is widely noted that it is difficult to seek judicial remedies for wrongfully imposed exit bans in the PRC.⁷⁹ As mentioned above, courts, as well as various government agencies, are empowered to impose exit bans according to various statutes in the PRC. Exit bans imposed by courts under the Civil Procedure Law can be appealed to a

higher court or reconsidered by the same court.⁸⁰ Lawyers have recently noted that there is no clear legal provision on how to challenge exit bans imposed by courts according to the 2012 Exit-Entry Administration Law and different approaches to the matter exist.⁸¹ In terms of exit bans imposed by government agencies, in theory, as they are administrative decisions, they can be challenged according to the PRC Administrative Reconsideration Law and the PRC Administrative Litigation Law.⁸² However, in practice seeking judicial remedies for exit bans wrongfully imposed by government agencies is difficult because of the opacity of the decision-making process.⁸³ For example, it has also been reported that persons banned from exiting were not given the information about which authority made the decision to impose the exit ban, leaving the affected person with no means to seek remedies.⁸⁴

CRIMINALIZATION OF UNAUTHORIZED EXIT

Article 322 of the PRC Criminal Law provides: "Whoever, in violation of the laws or regulations on the administration of the national border (frontier), illegally crosses the national border (frontier), if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than one year, criminal detention or public surveillance and shall also be fined; whoever illegally crosses the national border (frontier) for the purpose of joining terrorist organizations, receiving terrorist training or carrying out terrorist activities shall be sentenced to fixed-term imprisonment of not less than one year and not more than three years and shall also be fined."⁸⁵ Article 322 applies to illegal departure and illegal entry on the same footing, although it appears to have been invoked more frequently to punish unauthorized departure of PRC citizens than to punish unauthorized entry of foreigners.⁸⁶

Only if the circumstances are deemed serious will the illegal crossing become a punishable criminal offence. It is apparent from the provision of article 322 that illegally crossing the border in order to join terrorist organizations, receive terrorist training or carry out terrorist activities are considered punishable serious circumstances. Further examples of serious circumstances include: (1) carrying out activities overseas that damage national interest; (2) illegally crossing the national border (frontier) for more than three times or illegally crossing the national border (frontier) in a group of more than three persons; (3) roping in or enticing other persons to illegally the cross-national border (frontier); (4) illegally crossing the national border (frontier) in collusion with overseas organizations or individuals; (5) illegally crossing the national border (frontier) within 1 year after having received an administrative penalty for illegally crossing the national border (frontier).⁸⁷ Notably, article 322 of the Criminal Law has been invoked by the PRC authority to seek the extradition of and convict Jiang Yefei, a PRC political dissident and activist who fled to Thailand and was recognized as a refugee by the Bangkok office of the United Nations High Commissioner for Refugees.⁸⁸

CONCLUSION

Exit in the PRC is regulated through three mechanisms, namely restrictions on access to passports, prohibition of certain passport holders from exiting and criminalization of unauthorized exit.

The PRC's current exit regulation system has notable shortcomings. The legal provisions governing exit bans on valid passport holders are not only fragmented but also overly broad and some of those provisions are inconsistent with each other or with the PRC Legislation Law. A wide range of government organs, including courts, the procuratorate, the National Immigration Administration Bureau, border inspection authorities, public security authorities, national security authorities, State Council departments, local government departments and administrative supervisory authorities are empowered or have de facto exercised the power to take exit restriction measures, with some legal provisions being vague or silent on the institution empowered to impose exit restrictions. On the other hand, the current PRC legal framework lacks sufficient safeguard for procedural transparency in relation to exit restrictions and provides insufficient judicial remedies for the individual on whom exit restriction measures are taken. These shortcomings are exemplified by the alarming number of incidents discussed above that are prima facie inconsistent with

relevant PRC laws or internationally accepted standards for the protection of the right to leave in international law. As a result of these deficiencies in the PRC exit regulation system, where the system is abused by the PRC authority against the individual, it is difficult to hold the relevant government agencies or officials accountable.

The PRC authority should review its exit regulation system and take timely actions, such as abolishing local-level laws and policies imposing stricter restrictions on access to passports in Xinjiang and Tibet, clarifying the criteria for assessing the sufficiency of evidence for identifying a person as a criminal suspect and decriminalizing unauthorized departure, to improve the protection of the right to leave of its citizens.

ACKNOWLEDGEMENTS

The research presented in this article was partly supported by a research grant awarded by the New Zealand Law Foundation (reference: 2020/47/23). I would like to thank my research assistant Ms Feifei Zhou for her work. Open access publishing facilitated by University of Otago, as part of the Wiley - University of Otago agreement via the Council of Australian University Librarians.

CONFLICT OF INTEREST

I declare that I have no conflicts of interest.

DATA AVAILABILITY STATEMENT

Data sharing not applicable - no new data generated.

ORCID

Lili Song  <https://orcid.org/0000-0001-9652-2900>

ENDNOTES

- ¹ For the purpose of this article, the PRC refers to China Mainland, excluding Hong Kong, Macao and Taiwan.
- ² Raymond Zhong and Katie Rogers "China and U.S. quietly released captive citizens before summit", 19 November 2021, <https://www.nytimes.com/2021/11/19/world/asia/us-china-exit-ban-deport.html>.
- ³ Michael Forsythe, Chris Buckley and Katie Benner "American siblings barred from leaving China for 3 years return to U.S.", 27 September 2021, <https://www.nytimes.com/2021/09/27/us/politics/china-americans-released.html>.
- ⁴ Erika Kinetz "American siblings back home after 3 years trapped in China", 28 September 2021, <https://www.cbsnews.com/news/cynthia-victor-liu-china-american-siblings-home-3-years-trapped-exit-ban/>; Erika Kinetz "After 4 years as pawn in US-China game, Seattle man is home", 25 November 2021, <https://abcnews.go.com/Politics/wireStory/years-pawn-us-china-game-seattle-man-home-81352817>.
- ⁵ Associated Press "China on American siblings, Australia and NKorea", 4 October 2021, <https://www.youtube.com/watch?v=tvC4EXTrwn4>, at 0:15. The PRC authority has been silent on Daniel Hsu's case.
- ⁶ See eg Nectar Gan "Unirule economist barred from leaving the PRC for Harvard event on 'national security' grounds", 5 November 2018, <https://www.scmp.com/news/china/politics/article/2171808/unirule-economist-barred-leaving-china-harvard-event-national>; Thomas Kellogg and Zhao Sile "China's dissident cannot leave", 23 July 2019, <https://foreign-policy.com/2019/07/23/chinas-dissidents-cant-leave/>; Peter Goff "Irish man detained in the PRC back in court in bid to exit country", 1 March 2021, <https://www.irishtimes.com/news/world/asia-pacific/irish-man-detained-in-the-PRC-back-in-court-in-bid-to-exit-country-1.4498446>; Li Ning and Li Tingting "A Beijing Resident Was Banned from Exit, No Government Agency Takes His Complaint", 23 July 2014, <http://politics.people.com.cn/n/2014/0723/c70731-25325322.html>; Boxun Editorial "On 6 September Four Lawyers Were Banned from Exiting on the Ground of 'Endangering National Security'" 6 September 2015, <https://news.boxun.com/news/gb/china/2015/09/201509061918.shtml>; Louisa Lim "Ai Weiwei Says He Is Barred From Leaving China", 21 June 2012, <https://www.npr.org/2012/06/21/155481606/chinese-court-hears-artists-tax-evasion-case>; Radio Free Asia "Chinese police slap exit ban on another son of a human rights lawyer", 16 October 2015, <https://www.refworld.org/docid/5674038025.html>.
- ⁷ Wang Shujuan and Lan Tianming "More than 14 million Individuals Became Enforcement Debtors", 12 November 2019, http://www.xinhuanet.com/2019-11/12/c_1125223915.htm. See also Liu Zhixin and Dong Lijie "Improvement of and Remedies for Exit Restriction Measures in Legislation Proceedings—Limitations on Citizens' Freedom to Exit and Relevant

- Remedies" (2013) issue 11 *falv shiyong* [Journal of Law Application] 85, <http://temp.pkulaw.cn:8117/qikan/1510192229.html>.
- ⁸ Jasper Habicht "Exit restrictions in the context of Chinese civil litigation" (2019) 27(1) *Asia Pacific Law Review* 83; Richard Wagner and Melody Wang "Permission Denied: The Curious Case of Exit Restrictions in Chinese Commercial Litigation", 8 July 2011, <https://www.chinalawandpractice.com/2011/07/07/permission-denied-the-curious-case-of-exit-restrictions-in-chinese-commercial-litigation/>; Chen Qing'an "A Study of Issues relating to the PRC's Exit Restriction Measures" (2018) issue 9 *Zhengzhi yu falv* (Journal of Politics and Law) 141, <http://fzfyjy.cupl.edu.cn/info/1057/9647.htm>; Xie Junsu "Critical Analysis of Exit Restriction Measures from the Perspective of Citizens' Right to Freedom of Movement" (2013) 35(3) *Ningxia daxue xuebao (renwen shehui kexue ban)* [Journal of Ningxia University (Humanities and Social Sciences Edition)] 78; Du Yixing, "Several Practical Issues Concerning Measures on Exit Restrictions in Civil Procedures" (2012) 4 *falv shiyong* [Journal of Law Application] 81; Zhu Jianchao, Jin Xiangping and Jinliang Jiang "The Legal Application of the Measure of Exit Restrictions (Border Control)" (2015) 18 *renmin sifa anli* [The People's Judicature (Cases)] 107.
- ⁹ Biao Xiang "Emigration from China: A Sending Country Perspective" (2003) 41 (3) *International Migration* 21, pp.23–27; Guofu Liu *The Right to Leave and Return and Chinese Migration Law* (Martinus Nijhoff, Leiden, 2007) chs 6–7.
- ¹⁰ The 2012 Exit-Entry Administration Law replaces two statutes respectively regulating cross-border movement of PRC and foreign nationals.
- ¹¹ Chen Qing'an "A Study of Issues relating to the PRC's Exit Restriction Measures" (2018) issue 9 *Zhengzhi yu falv* (Journal of Politics and Law) 141, <http://fzfyjy.cupl.edu.cn/info/1057/9647.htm>; Lian Pengfei "People's Court Daily: Current Status of Application of 'Exit Restrictions' and Suggestions for Improvement", 18 April 2018, <https://cq5zy.chinacourt.gov.cn/article/detail/2018/04/id/3271900.shtml>.
- ¹² Chen, above n 8.
- ¹³ See Ronald Keith and Zhiqiu Lin "Judicial Interpretation of China's Supreme People's Court as 'Secondary Law' with Special Reference to Criminal Law" (2009) 23 *China Information* 223 at 246.
- ¹⁴ PRC Legislation Law, adopted in 2000, amended in 2015. English translation (2000 version) available at: http://www.npc.gov.cn/zgrdw/englishnpc/Law/2007-12/11/content_1383554.htm.
- ¹⁵ For more discussion on this, see John Zhuang Liu, Lars Klöhn, Holger Spamann "Precedents and Chinese Judges: An Experiment" (2021) 69(1) *The American Journal of Comparative Law* 93.
- ¹⁶ Alan Dowty *Closed borders: the contemporary assault on freedom of movement* (Yale University Press, New Haven, 1987) 114.
- ¹⁷ Teng, above 9, 23.
- ¹⁸ For discussion about the right to leave in international law, see eg Vincent Chetail "The transnational movement of persons under general international law—Mapping the customary law foundations of international migration law" in Vincent Chetail and Céline Bauloz (eds) *Research handbook on international law and migration* (Edward Elgar, Cheltenham, 2014) 1; Dimitry Kochenov "The Right to Leave Any Country including Your Own in International Law" (2012–2013) 28 *Connell Journal of International Law* 43; Colin Harvey and Robert P. Barnidge, Jr "Human Rights, Free Movement, and the Right to Leave in International Law" (2007) 19(1) *International Journal of Refugee Law* 1.
- ¹⁹ Article 12, ICCPR.
- ²⁰ Guofu Liu "The Right to Leave and Return and the PRC's Law on Exit-Entry Administration" (2009) issue 3 *Fazhi Yanjiu* (Journal of the Rule of Law Studies), retrievable at: <http://www.faxin.cn/lib/flwx/FlqkContent.aspx?gid=F143606>.
- ²¹ Article 1, PRC Passport Law, adopted by the Standing Committee of the National People's Congress on 29 April 2006, entry into force 1 January 2007, English translation available at: http://www.npc.gov.cn/zgrdw/englishnpc/Law/2008-01/02/content_1388000.htm; article 3, PRC Exit-Entry Administration Law, adopted by the Standing Committee of the National People's Congress on 30 June 2012, entry into force 1 July 2007; English translation available at http://english.www.gov.cn/archive/laws_regulations/2014/09/22/content_281474988553532.htm.
- ²² Cornelia Hagedorn "Passport – Oxford Public International Law", January 2008, <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e857#:~:text=1%20Passports%20are%20recognized%20in,and%20to%20cross%20international%20boundaries>.
- ²³ Articles 9, 11 and 12, PRC Exit-Entry Administration Law.
- ²⁴ The PRC does not recognize dual nationality. There are a few exceptions, for example, residents in designated border areas can use the so-called border pass to travel to and from certain areas in neighbouring countries.
- ²⁵ Peng Xunwen "From Strict Control to Issuance on Demand: The Evolution of New China's Passports", 21 May 2018, http://www.gov.cn/xinwen/2018-05/21/content_5292338.htm; Xinhua "China Focus: 70 years on, Chinese Travel Abroad More

- Easily in Much Larger Numbers”, 28 September 2019, http://www.xinhuanet.com/english/2019-09/28/c_138430646.htm.
- ²⁶ Article 6. There are three types of PRC passports: ordinary passports, diplomatic passports and service passports (article 3, Passport Law).
- ²⁷ See Liu Meixiang “Identification of Criminal Suspects” (2003) 25(2) *Faxue Yanjiu* [Chinese Journal of Law] 104; Liu Fangquan “On Establishment and Cancellation of the Status of Criminal Suspects” (2009) issue 4 *Zhongguo renmin gong’an daxue xuebao: shehui kexue ban* [Journal of Chinese People’s Public Security University: Social Science Edition] 131; Shen Donghua “On Establishment of the Status of Criminal Suspects”, 14 December 2007, <https://www.chinacourt.org/article/detail/2007/12/id/279406.shtml>.
- ²⁸ *Ibid.*
- ²⁹ Case number: (2021) Hu03XingzhongNo. 571, Shanghai 3rd Intermediate People’s Court, 12 December 2021, judgment available at: http://www.hshfy.sh.cn/shfy/web/flws_view.jsp?pa=adGFoPaOoMjYMaOpu6YwM9DQ1tU1NzG6x-SZ3c3hoPTEPdcssz.
- ³⁰ For discussion about what constitutes criminal offences of obstructing border control, see: Jing Changling “Crime of obstructing entry and exit administration and prevention” (2004) 76(1) *Hubei jingguan xueyuan xuebao* [Journal of Hubei Police College] 38, retrievable at: http://www.ims.sdu.edu.cn/_local/C/29/1E/072A100D18B9F870EC388D-D9CA1_737A706F_525FF.pdf?e=.pdf.
- ³¹ Article 75 of the Exit-Entry Law provides: “Where Chinese citizens are repatriated due to illegally going to other countries or regions after exiting China, exit/entry border inspection authorities shall confiscate their exit/entry documents. Exit/entry document issuing authorities shall refuse to issue new exit/entry documents to such citizens for a period ranging from 6 months to 3 years calculating from the date of their repatriation.”
- ³² Article 6, Passport Law; article 7, Organization Department of the CPC Central Committee, Financial Work Commission of the CPC Central Committee, Enterprise Work Commission of the CPC Central Committee, Ministry of Public Security, Ministry of Personnel Provisional Regulations on Strengthening Administration of Overseas Travel by State Functionaries for Personal Reasons, *gongtongzhi* [2013] No.13, 14 January 2003, https://www.ccdi.gov.cn/fgk/law_display/353.
- ³³ Berry Appleman & Leiden LLP “COVID-19: Entry document issuance temporarily suspended”, 10 August 2021, <https://www.bal.com/bal-news/china-covid-19-entry-document-issuance-temporarily-suspended/>. Those who have confirmed overseas studies, employment or business will not be affected.
- ³⁴ World Journal Editorial “China Suspends Issuance of Passports, Family Reunion Overseas Hindered”, 5 December 2021, https://www.worldjournal.com/wj/story/121360/5938904?from=wj_catelistnews.
- ³⁵ Human Rights Watch “One Passport, Two Systems: China’s Restrictions on Foreign Travel by Tibetans and Others”, 13 July 2015, <https://www.hrw.org/report/2015/07/13/one-passport-two-systems/chinas-restrictions-foreign-travel-tibetans-and-others>; Radio Free Asia “China: Passport application process ‘not easy’ for Uyghurs”, 20 November 2013, <https://www.refworld.org/docid/52e0d5d23.html>; Cindy Huang “Faith and Ethics in the Time of Postcommunism” (2009) 92(1/2) *Soundings: An Interdisciplinary Journal Secular Faith* 77–98, 93; Xi Wang “Female Ethnic Uyghur University Student Denied Passport for ‘Failing Political Scrutiny’”, 20 December 2012, <https://www.rfa.org/mandarin/yataibaodao/nu-12202012163430.html>; Phoenix Weekly Editorial “Uyghur Citizens: Hard to Obtain a Passport, 50,000 Deposit Required before Getting the Passport”, 5 April 2014, retrievable at: <https://chinadigitaltimes.net/chinese/344993.html>.
- ³⁶ *Ibid.* For more discussion about passport access restrictions on Uyghurs, see Uyghur Human Rights Project “Uyghurs to China: ‘Return our relatives’ passports”, August 2020, https://uhrp.org/sites/default/files/Passport_returns_briefing.pdf; Uyghur Human Rights Project “Weaponized Passports: the Crisis of Uyghur Statelessness”, April 2020, https://docs.uhrp.org/pdf/Weaponized_Passports.pdf; The Office of the United Nations High Commissioner for Human Rights “Report to the United Nations General Assembly on Eliminating Intolerance and Discrimination Based on Religion or Belief and the Achievement of Sustainable Development Goal 16 (SDG 16): NGO Submission on Uyghurs in the People’s Republic of China”, <https://www.ohchr.org/Documents/Issues/Religion/Submissions/CSOs/44.jubileecampaign-2.docx>.
- ³⁷ Article 15, Passport Law.
- ³⁸ Article 16, Passport Law.
- ³⁹ *Ibid.*
- ⁴⁰ Article 17, Passport Law. Article 17 also allows the passport issuing authorities to confiscate PRC passports that are obtained by fraudulent means.
- ⁴¹ Luisetta Mudie “Passports in Xinjiang’s Ili to Be Handed into Police Stations: China”, 13 May 2015, <https://www.rfa.org/english/news/uyghur/uyghur-yili-05132015140829.html>.

- ⁴² Zhang Yunqing and Hong Sha "Refusal to Issue Passports: China's Powerful Tool for Suppressing Dissent", 20 May 2015, <https://p.dw.com/p/1FTGe>.
- ⁴³ An Jing "Arbitrary Requirement for Handing in Passports Is Unlawful", 5 May 2015, <https://p.dw.com/p/1FQN1>.
- ⁴⁴ Zhang and Hong, above n 42. For more examples, see Andrew Jacobs "No Exit: China Uses Passports as Political Cudgel", 22 February 2013, <https://cn.nytimes.com/thePRC/20130225/c25passport/>.
- ⁴⁵ Ren Qinqin "National Immigration Administration Bureau Declares 145 Fraud and Gambling Suspects' Passports Invalid and Imposes Exit Restriction", 29 April 2021, http://www.xinhuanet.com/2021-04/29/c_1127390780.htm; PRC National Immigration Administration Bureau "National Immigration Administration Bureau Declares Invalid the Passports of 89 Individuals Who Committed Transnational Gambling and Telecommunications Frauds", 6 April 2021, http://www.gov.cn/xinwen/2021-04/06/content_5597985.htm. A three-year exit ban was also imposed on these individuals.
- ⁴⁶ Ibid.
- ⁴⁷ Ibid.
- ⁴⁸ For a more extensive list of relevant laws, see Chen, above n 8.
- ⁴⁹ Ibid.
- ⁵⁰ Lian, above n 11; Chen, above n 8; Habicht, above n 8; Du Lijun "Analysis on the Practice of Exit Restrictions", 11 August 2010, http://rmfyb.chinacourt.org/paper/html/2010-08/11/content_13864.htm; Xie, above n 8; Du, above n 8; Zhu, above n 8.
- ⁵¹ Chen, above n 8; Du, above n 8.
- ⁵² Associated Press, above n 5, at 0:15; BBC Editorial "China defends holding fugitive businessman's US children", 26 September 2018, <https://www.bbc.com/news/world-us-canada-46352336>.
- ⁵³ *Földes and Földesné Hajlik v. Hungary*, 31 October 2006, application number 41463/02, paras 32–36 and the cases cited therein; *Nalbantski v. Bulgaria*, 10 February 2011, application number 30943/04, paras 58–67 and the cases cited therein.
- ⁵⁴ For more discussion about relevant international standards, see Elspeth Guild "The Right to Leave A Country", October 2013, at 19.
- ⁵⁵ Promulgated 1991, last amended 2021, English translation (2017 version) available at: <http://cicc.court.gov.cn/html/1/219/199/200/644.html>.
- ⁵⁶ Wang and Lan, above n 7.
- ⁵⁷ Wagner and Wang, above n 8.
- ⁵⁸ Chen, above n 8.
- ⁵⁹ Wagner and Wang, above n 8.
- ⁶⁰ Ibid.
- ⁶¹ BBC Editorial "Richard O'Halloran back in Ireland after being denied exit from China", 29 January 2022, <https://www.bbc.com/news/world-europe-60181058>.
- ⁶² Goff, above n 6; BBC Editorial, *ibid*.
- ⁶³ Supreme People's Court Guiding Opinion on Further Improving Work in the Trial of Foreign-related Civil and Commercial Cases in Border Areas, *fafa* [2010] No. 57, 28 December 2010, <http://210.73.66.144:4601/law?fn=chl381s359.txt&dbt=chl>.
- ⁶⁴ Article 7.
- ⁶⁵ Guiding Opinions issued by the PRC People's Supreme Court are not legally binding but are usually regarded as carrying significant weight by the PRC judiciary.
- ⁶⁶ Ibid.
- ⁶⁷ Chen, above n 8.
- ⁶⁸ Gan, above n 6; Boxun Editorial, above n 6; Jacobs, above n 8.
- ⁶⁹ "Six Highlights: Deciphering the PRC Exit-Entry Administration Law", <http://gat.gxzf.gov.cn/ztzl/crjglfxczl/ftjd/t3804339.shtml>.
- ⁷⁰ Sohu Editorial "Foreign Businessman Denied Exit Due to Failure to Pay Salaries, No Payment No exit", 10 November 2017, https://www.sohu.com/a/203550885_452365.
- ⁷¹ Ibid. For more examples, see: <https://read01.com/zh-my/nxK4o5G.html#.YgM3rW1BzDI>.

- ⁷² Ren, above n 45. For general discussion about exit bans on deportees who violated foreign immigration law, see: European Court of Human Rights *Stamose v. Bulgaria*, 27 November 2012, application number 29713/05.
- ⁷³ See PRC Supreme People's Court, Supreme People's Procuratorate, Ministry of Public Security and Ministry of National Security Several Provisions on Issues Concerning Restricting the Exit of Foreigners and Chinese Citizens from Chinese Territory, *gongfa* [1987] No. 16, 10 March 1987; article 6, Ministry of Public Security Provisions on Implementing the Rules on Notification and Recordation of Persons Legally Banned from Exiting, *gongtongzi* [1998] No. 33.
- ⁷⁴ Cheng Zhong "Application of and Remedies for Exit Restriction Measures", 9 December 2020, <https://zhuanlan.zhihu.com/p/335116427>.
- ⁷⁵ Chen, above n 8.
- ⁷⁶ Several Provisions on Issues Concerning Restricting the Exit of Foreigners and Chinese Citizens from Chinese Territory, above n 73.
- ⁷⁷ Wagner and Wang, above n 8.
- ⁷⁸ Chen, above n 8.
- ⁷⁹ See eg Thomas E. Kellogg "No Exit: China's Growing Use of Exit Bans Violates International Law", 16 January 2019, <https://www.lawfareblog.com/no-exit-chinas-growing-use-exit-bans-violates-international-law>; Michael Smith "China steps up and widens the use of exit bans on foreigners", 4 December 2018, <https://www.afr.com/world/asia/china-steps-up-and-widens-use-of-exit-bans-on-foreigners-20181129-h18jkh>; Chen, above n 8; Liu and Dong, above n 7; Xie, above n 8; Du, above n 8, at 85.
- ⁸⁰ Articles 100–105, 108, and 255, Civil Procedures Law (revised in 2017); Article 9, Supreme People's Court Provisions on Several Issues concerning the Handling of Enforcement Opposition and Reconsideration Cases by People's Courts (2020 Revision), Interpretation No. 21 [2020], <https://www.lawinfochina.com/display.aspx?id=34884&lib=law>. For more discussion about remedies in civil litigation, see Habicht, above n 8, 91–93; Wagner and Wang, above n 8; Guanglei Zhang and Jinhui Zhang "Exit Restriction in Civil Litigation", 17 June 2022, <https://law.asia/zh-hans/exit-control-china-civil-litigation-zh/>.
- ⁸¹ Zhang and Zhang, above n 80.
- ⁸² Chen, above n 8, 147.
- ⁸³ See eg Thomas E. Kellogg "No Exit: China's Growing Use of Exit Bans Violates International Law", 16 January 2019, <https://www.lawfareblog.com/no-exit-chinas-growing-use-exit-bans-violates-international-law>; Michael Smith "China steps up and widens the use of exit bans on foreigners", 4 December 2018, <https://www.afr.com/world/asia/china-steps-up-and-widens-use-of-exit-bans-on-foreigners-20181129-h18jkh>; Liu and Dong, above n 7; Xie, above n 8; Du, above n 8, at 85.
- ⁸⁴ Li and Li, above n 6.
- ⁸⁵ Adopted 1 July 1979, last amended 26 December 2020, English translation (1997 version) available at: http://www.npc.gov.cn/zgrdw/englishnpc/Law/2007-12/13/content_1384075.htm. The second half of article 322 was added by the PRC Criminal Law Amendment IX in 2015: https://www.pkulaw.com/en_law/6c18c6f3a93ad220bdfb.html.
- ⁸⁶ Yu Zhigang "City and Country Internationalization and Criminal Policy of Illegal Immigrant Crime—Based on Samples of Illegal Immigrant Crime of Entry-exit Port of Beijing" (2012) 29(2) *qinghua daxue xuebao (zhexue shehuikeexue ban)* [Journal of Tsinghua University (Philosophy and Social Science Edition)] 101, 112; Zhang Yiyang "Current Situation and Punishment of Crime of Crossing the Border Stealthily" (2008) 52(6) *Liaoning jingzhuan xuebao* [Journal of Liaoning Police Academy] 36, retrievable at http://www.ims.sdu.edu.cn/_local/B/CB/0A/490E32F84262383B970B6341E32_747117F5_4D83F.pdf; Peng Yonghe "Legislative Amendment and Judicial Application in relation to the Crime of Illegally Crossing National Border (Frontier)" (1994) issue 5 *falv shiyong* [Journal of Law Application] 38.
- ⁸⁷ Article 5, Supreme People's Court Supreme People's Procuratorate Interpretation on Issues Concerning the Application of Law in Handling the Criminal Cases of Obstructing Border (Frontier) Control, *fashi* [2012] No. 17, 20 August 2012, <https://www.chinacourt.org/law/detail/2012/12/id/146024.shtml>.
- ⁸⁸ Global Times Editorial "Thai Police Handed Over to China in Accordance of Law Two Criminal Suspects of the Offence of Organizing Human Smuggling", 25 November 2015, <https://world.huanqiu.com/article/9CaKrnJRKNy>; Voice of America

"Human Rights Defender Jiang Yefei Sentenced to Six and a Half Years' Imprisonment", 26 July 2018, <https://www.voachinese.com/a/news-6-and-half-years-in-jail-for-political-cartoonist-jiang-yefei-20180726/4500914.html>; Committee to Protect Journalists "Jiang Yefei", <https://cpj.org/data/people/jiang-yefei/>.

How to cite this article: Song, L. (2022) Exit regulation in the People's Republic of China: Law, policy and practice. *International Migration*, 00, 1–15. Available from: <https://doi.org/10.1111/imig.13058>