

**Refugee Review Tribunal
AUSTRALIA**

RRT RESEARCH RESPONSE

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Questions

- 1. Please advise whether an applicant would be able to exit China if he had been issued with a *Decision on Bail Pending Trial with Restricted Liberty of Movement*?**
- 2. Please provide any other information about the effect of this document and who it is issued to.**

RESPONSE

- 1. Please advise whether an applicant would be able to exit China if he had been issued with a *Decision on Bail Pending Trial with Restricted Liberty of Movement*?**

The most recent information (from November 2006) provided by the Department of Foreign Affairs and Trade (DFAT) indicates that individuals “subject to arrest warrants” would be on alert lists at airports and that it is likely that individuals “under investigation but for whom a formal arrest warrant is yet to be issued” would also be on airport alert lists. DFAT also confirmed that Chinese authorities check all exiting passengers against an alert list, though the exact nature of the alert list remains unknown at present to DFAT. The *Decision on Bail Pending Trial with Restricted Liberty of Movement* document states that “This department is conducting an investigation on *a cult* and as the suspect was unemployed, according to Schedule 2, Section 51 of the “Criminal Proceedings Law of the People’s Republic of China, it was decided to set the suspect on bail...”.

In a November 2006 update on exit arrangements, DFAT stated:

We have so far been unable to obtain comprehensive information on alert lists from China’s Ministry of Public Security. We can confirm that Chinese citizens subject to arrest warrants would be on the alert lists. It is likely that people under investigation but for whom a formal

arrest warrant is yet to be issued would also be on these alert lists. The alert lists are connected to Chinese identity cards as well as passports. The alert lists operate at railway stations as well as airports and border crossings. We will continue to seek information on this issue (DIAC Country Information Service 2006, *Country Information Report No. 06/65 – China: Passport and exit arrangements China: Passport and exit arrangements*, (sourced from DFAT advice of 8 November 2006), 10 November – Attachment 1).

In August 2006 DFAT advised specifically with regard to persons with outstanding arrest warrants departing from airports (and ports), that it “can confirm that Chinese authorities check all outgoing passengers against an “alert” list. We do not know how comprehensive this list is” (DIMIA Country Information Service 2006, *Country Information Report No.06/42 – China: Failed asylum seeker return decision*, (sourced from DFAT advice of 7 August 2006), 25 August – Attachment 2).

In August 2005 DFAT referred to China’s Entry and Exit Law as prohibiting approval to leave China to “criminal suspects confirmed by a public security organ, a people’s procuratorate or a people’s court”:

China’s Entry and Exit Law states that the following groups of people shall not be given approval to leave China: (1) defendants in criminal cases **or criminal suspects confirmed by a public security organ, a people’s procuratorate or a people’s court**; (2) persons who, as notified by a people’s court, shall be denied exit owing to involvement in unresolved civil cases; (3) convicted persons serving their sentences; (4) persons undergoing rehabilitation through labour; and (5) persons whose exit from the country will, in the opinion of the competent department of the State Council, be harmful to state security or cause a major loss to national interests. The Ministry of Public Security (MPS), which administers the law, has advised that these five groups of people are not allowed to obtain passports (DIAC Country Information Service 2005, *Country Information Report No. 05/43 – Chinese passports for Falun Gong practitioners*, (sourced from DFAT advice of 9 August 2005), 10 August – Attachment 3).

DFAT confirmed this August 2005 advice to the Research & Information Services in September 2006 in the following terms:

3. The Ministry of Public Security said that border exit procedures were carried out according to Chinese law. Chapter II, Article 8 of the *Administrative Law on the Border Exit and Entry of Citizens of the People’s Republic of China* states that Chinese citizens will not be allowed to exit the PRC border under the following circumstances:

- i) If the person is a defendant in a criminal case or suspected of a crime by the security organs, the People’s Procuratorate or the People’s Court;
- ii) If the People’s Court notifies that the person is involved in a civil case that has not been completed and they cannot leave the country;
- iii) If the person is currently serving a criminal sentence;
- iv) If the person is undergoing re-education through labour;
- v) If the relevant organs of the State Council believe that, after departing the country, that person might cause danger to national security or cause extreme harm to national interests.

4. We note the broad wording of the last point could be interpreted to include Falun Gong practitioners, given the Chinese Government's extreme sensitivity to vocal campaigning by Falun Gong practitioners abroad.

5. As a general point, we remind you that implementation of rules in China can be incomplete, or over-zealous (Department of Foreign Affairs and Trade 2006, *DFAT Report No. 540 – RRT Information Request: CHN30682*, 28 September – Attachment 4).

Research Response CHN32179 of August 2007 provides some information on the extent of computerisation of Public Security Bureau (PSB) records (see question 8, pp. 11-12, of *Research & Information Services 2007, Research Response CHN32179*, 29 August – Attachment 5). The most recent data presented there is to May 2007 research undertaken by the Immigration and Refugee Board of Canada (IRBC) on whether a person detained at an underground church meeting would have his or her name placed in the Public Security Bureau (PSB) database. The IRBC information indicates that (1) PSB officers have access to law enforcement records from a central database, (2) the PSB has reportedly collected information on more than 96 percent of the country's population, and (3) PSB officials in Tianjin [northeast China] reportedly keep a database containing over 30,000 names of Falun Gong practitioners, as well as names of persons belonging to other banned religious groups:

In 26 March 2007 correspondence sent to the Research Directorate, a representative of the New York-based organization Human Rights in China (HRIC) stated that

[o]nce a person has been rounded up in a church raid, he'll be known to local officials, who will also mark him as a recidivist if he pops up in future raids. ... It is very likely that a person detained at an underground church meeting would be entered into the [Public Security Bureau (PSB)] database.

According to the Representative, China's security databases are becoming "increasingly comprehensive" (HRIC 26 Mar. 2006).

In 2003, the PSB established its "Golden Shield" program, designed to monitor and collect information on Chinese citizens (Reuters 7 Apr. 2006; see also CQ Transcriptions 15 Feb. 2006; Legal Affairs Jan.-Feb. 2006). "Policenet," which is part of the program, reportedly allows PSB officers to access a Chinese citizen's work history, financial information, and **law enforcement records from a central database** (Legal Affairs Jan.-Feb. 2006; see also CQ Transcriptions 19 Apr. 2006). Other types of personal information accessible to PSB officers through "Policenet" include political activities of citizens, as well as family background, internet surfing history, and fingerprints (CQ 19 Apr. 2006; Taipei Times 1 Sept. 2005). Photographs and other images are also apparently stored in the database (Taipei Times 1 Sept. 2005; see also CQ Transcriptions 15 Feb. 2006).

Since the implementation of China's "Golden Shield" program, **the PSB has reportedly collected information on more than 96 percent of the country's population** (Reuters 7 Apr. 2006; CQ Transcriptions 19 Apr. 2006). Sources consulted indicate that, with the exception of the province of Sichuan, the "Policenet" system has been introduced in all of China's 22 provinces (Taipei Times 1 Sept. 2005; see Legal Affairs Jan.-Feb. 2006).

Officials in the PSB's State Council Leadership Team for Preventing and Monitoring Cults Tianjin [northeast China] branch reportedly keep a database containing over 30,000 names of Falun Gong practitioners, as well as names of persons belonging to other banned religious groups (Independent On Sunday 10 Sept. 2006). Some of the data on these persons has apparently been drawn from the country's hukou registration system, which

is being digitized under the “Golden Shield” program (ibid.) (Immigration and Refugee Board of Canada 2007, *CHN102493.E ‘China: Whether a person detained at an underground church meeting would have his or her name placed in the Public Security Bureau (PSB) database’*, 8 May – Attachment 6).

It is unknown whether the PSB databases referred to above are connected to computerised systems at major airports in China. Separate IRBC research from October 2005 stated that “Frontier Defense Inspection Bureau (FDIB) ...officers examine the passports and immigration departure cards of Chinese travelers [and]... verify the identity of the person through a computerised record system”:

A representative of the Canadian Embassy in Beijing provided the following observations on exit controls at Chinese airports in 4 October 2005 correspondence to the Research Directorate. Separate inspection barriers at airports are designated for Chinese citizens, foreign travellers, diplomatic staff, and airline personnel. The Frontier Defense Inspection Bureau (FDIB) is in charge of the inspection barriers, and FDIB officers examine the passports and immigration departure cards of Chinese travellers. **The officers also verify the identity of the person through a “computerised record system.”** Chinese travellers do not need to present their resident identity card during the inspection. According to information contained on the Website of Air China, there is a Frontier Defense Inspection station at each of the 115 Chinese ports currently open for international departures and arrivals (n.d.) (Immigration and Refugee Board of Canada 2005, *CHN100513.E China: Exit controls for citizens travelling overseas, including documents and police checks, and whether a person wanted by authorities could leave China using a passport in his or her name; exit procedures at Beijing airport (2003 – 2005)*, 25 October – Attachment 7).

2. Please provide any other information about the effect of this document and who it is issued to?

The translated document provided would appear to be referring to schedules and sections contained in the *Criminal Procedure Law of the People’s Republic of China (CPL)*: “...according to Schedule 2, Section 51 of the “Criminal Proceedings Law of the People’s Republic of China, it was decided to set the suspect on bail pending for trial with restricted liberty of moving...”. Several translations of this law consulted for this research do not contain a Schedule 2 or Section 51. The parts of this Law explaining circumstances surrounding bail pending trial, the provision of guarantors, restrictions on liberty, as well as the conditions which the guaranteed suspect must adhere to during parole, are contained in Part One, Chapter VI (Compulsory Measures), Articles 50 – 56. Article 51 refers to the circumstances that “the people’s court, the people’s procuratorate and the public security organ may subject the crime suspect or defendant to release upon bail pending trial”. The United Nations High Commission for Refugees website provides the following version and translation of the *Criminal Procedure Law of the People’s Republic of China* and the relevant articles

Chapter VI Compulsory Measures

Article 50

The people’s court, the people’s procuratorate and the public security organ may, in light of the circumstances of a case, issue a warrant to compel the appearance of the crime suspect or defendant, release him upon **bail pending trial** or subject him to residential surveillance.

Article 51

Under any of the **following circumstances, the people's court, the people's procuratorate and the public security organ may subject the crime suspect or defendant to release upon bail pending trial** or to residential surveillance:

1. if he could be sentenced to punishment of control, criminal detention or could be subjected to accessory punishment separately; or
2. if a sentence at or above termed imprisonment could be meted out thereto and the adoption of the release upon bail pending trial or residential surveillance would not likely cause the occurrence of a social danger. The release upon bail pending trial and residential surveillance shall be executed by the public security organ.

Article 52

Crime suspects and defendants already taken into custody, their legal representatives and near relatives shall have the right to apply for their release upon bail pending trial.

Article 53

When a people's court, people's procuratorate and public security organ decide to grant the release upon **bail pending trial to a crime suspect or defendant, they shall order him to provide a guarantor or deposit a security.**

Article 54 A guarantor must satisfy the following requirements:

1. being not related to the present case;
2. being capable of executing the obligation and responsibility under the guarantee;
3. enjoying political rights, and freedom of the person not being restricted; and
4. having a permanent domicile and regular income.

Article 55 A guarantor must be under the following duties:

1. supervising the guaranteed in observing the provisions of Article 56 of this Law;
2. reporting without delay to the executing organ when he finds that the guaranteed is likely to commit or has already committed an act in violation of a provision of Article 56 of this Law. Where the guaranteed has an act in violation of a provision of Article 56 of this Law, but the guarantor fails to make a prompt report, a fine shall be imposed on the guarantor, if a crime is constituted, criminal responsibility shall be investigated according to law.

Article 56 A crime suspect or defendant being released upon bail pending trial must observe the following provisions:

1. may not leave the city or county in which he resides without approval of the executing organ;
2. shall appear before the court whenever being summoned;
3. may not interrupt in any manner the witness to testify; and
4. may not destroy or falsify any evidence or collude to make confession tally.

If a crime suspect or defendant being released upon bail pending trial violates a provision of the preceding paragraph and has already deposited a security, the security shall be confiscated, and in light of different circumstances, he shall be instructed to write a statement of repentance, deposit a security or provide a guarantor again, or be subject to residential surveillance or be arrested. If the crime suspect or defendant did not violate the provisions of

the preceding paragraph during the period of release upon bail pending trial, the security shall be returned when the period ends (*Criminal Procedure Law of the People's Republic of China* 17 March 1996, United Nations High Commission for Refugees website <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=search&docid=3ddbcd4e7&skip=&query=criminal%20procedure%20china> – Accessed 29 November 2007 – Attachment 8).

Research Response CHN31695 of May 2007 examined three documents submitted by a previous applicant in relation to Falun Gong activities in Qingdao City (Research & Information Services 2007, *Research Response CHN31695*, 22 May – Attachment 9). As translated, these documents are titled: “Decision on Bailing out while the Person Awaits Trial”, “Guarantee for Bailing out while the Person Awaits Trial”, and “Summons”. This response refers to a 2001 Amnesty International report which briefly discusses two forms of pre-trial restrictions in China: Supervised Residence (*jianshi juzhu*) and Taking a Guarantee and Awaiting Trial (*qubao houshen*). The report refers to the latter as a form of bail and explains that it is the least restrictive of all pre-trial control measures which may be imposed by police:

In addition to detention (*juliu*), the CPL [Criminal Procedure Law] sets out two forms of pre-trial restriction which the police may impose on their own authority, without charge or judicial review. These are: Supervised Residence (*jianshi juzhu*), comparable to detention, and Taking a Guarantee and Awaiting Trial (*qubao houshen*). These may be imposed on any “criminal suspect” (article 51) including those against whom there is insufficient evidence to justify arrest (article 65). They may also be imposed when pre-trial investigation by the police, procuratorate or the courts cannot be concluded within the legal time limits (article 74). Whereas the CPL stipulates time limits for Supervised Residence and Taking a Guarantee and Awaiting Trial of 6 and 12 months respectively, subsequent interpretations have extended the limits to 18 months and 3 years respectively. On paper, Supervised Residence may appear preferable to detention, but in practice it is being widely used as a means of detaining “suspects” incommunicado outside regular detention centres away from the oversight of existing supervisory mechanisms. Torture is frequently the result.

Taking a Guarantee and Awaiting Trial, a form of bail, is the least restrictive of all pre-trial control measures. However, certain categories of suspect are excluded, including those suspected of crimes “endangering national security”. This includes the majority of prisoners of conscience and political prisoners known to Amnesty International. Detainees, their near relatives or legal representatives now have the right to apply for it. There is no appeal process if their request is rejected (Amnesty International 2001, *People's Republic of China: Torture – A Growing Scourge in China -Time for Action*, 12 February, ASA 17/004/2001, Sect. 6.1 – Attachment 10).

An earlier 1997 Amnesty International study titled *Law Reform and Human Rights* stated that measures involving “Taking a guarantee and awaiting trial” applies to people “suspected of or charged with crimes which are considered minor or to those who ‘do not pose a danger to society’”:

Similar provisions [to supervised residence/surveillance] exist in the law for another form of restriction, known as “taking a guarantee and awaiting trial [out of custody]” (*qubao houshen*), which involves less stringent restrictions than “supervised residence”. **“Taking a guarantee and awaiting trial” means restriction to the city or county where the suspect resides.** It is limited to one year under the revised CPL. **Like “supervised residence”, it applies to people suspected of or charged with crimes which are considered minor or to those who “do not pose a danger to society”.** The “guarantee” is either a personal or a

financial guarantee. The revised law includes a new provision making it possible for detainees, their legal representatives or close relatives to apply for “taking a guarantee and awaiting trial” (Article 52) which, if granted, is equivalent to release on bail. This is an improvement over the 1979 CPL. **However, like “supervised residence”, this form of restriction can also be imposed by the police against people who are not charged with an offence, for up to one year and without any recourse against it, in cases where there is insufficient evidence to justify arrest.**

Suspects subjected to “supervised residence” or to the other “coercive measures” permitted by the law – including “taking a guarantee and awaiting trial”, “detention” and “arrest” – have no recourse to a court or other authority to challenge the legality of their restriction or detention so long as these remain within the specified time limits. Under the revised CPL, the police, the procuracy or the courts must rescind or alter “coercive measures” if they discover that these measures have been inappropriately taken (Article 73). However, the only circumstance in which detainees and restricted persons, or their legal representative, can demand release or the lifting of their restriction order is when the maximum permitted length for their detention or restriction has been exceeded (Article 75, revised CPL). Prior to this point, there is no other procedure giving detainees the right to contest the legality of their detention. As will be seen below, for those who are formally “arrested”, the length of detention without recourse can be particularly long (Amnesty International 1997, *People’s Republic of China: Law Reform and Human Rights*, March, ASA 177/14/97, p.6 – Attachment 11).

A 2002 article by Ping Yu, a research fellow at the New York University School of Law, commented on bail procedures in China according to the CPL under the title, *Pretrial release: Taking A Guarantee and Awaiting Trial*. While the author focuses on those circumstances when legal representatives request bail for their client, he does state that most suspects are released on the initiative of the authorities and gives some evidence on the situations under which this is done by public security departments. After referring to Articles 51 and 52 of the CPL, the author concludes:

A lawyer’s petition for taking a guarantee and awaiting trial, however, is either quickly dismissed or left forever pending. There have been only a very few occasions in which lawyers managed, after a long painful process, to get their clients out on bail under this measure. One commentator claimed that to his knowledge not a single application for bailing out suspects had been granted by the people’s procuratorates since the 1996 reforms. In fact pretrial release is an exception in China, ...

The lawyers and legal scholars interviewed for this report complained that provisions concerning taking a guarantee and awaiting trial are often rendered meaningless. In practice, there is no set standard for deciding whether or not to grant such a request. This allows the determination to be made on an arbitrary basis. **Among the small number of people released awaiting trial, very few gain release as a result of a lawyer’s application or a request from the suspect. Most suspects are released on the initiative of the authorities.** Though the CPL stipulates the conditions for taking a guarantee and awaiting trial, public security departments and procuratorates usually do not consider a pre-trial release unless such a release becomes absolutely necessary.

According to a Shanghai lawyer, public security departments consider the release of a suspect in only two situations: if the public security departments will exceed the time limit for pretrial detention or if the offenses in question are so minor that suspects are unlikely to be sentenced to any jail term. Procuratorates are even more reluctant to release suspects. In the overwhelming majority of situations, suspects are not released until the investigation is over. Prosecutors claim that all cases investigated by them are either so complicated or serious that it is inappropriate to release suspects before the investigation is

complete. This statement explains why lawyers are unable to gain the release of their clients during the criminal investigation period when cases are handled by prosecutors (Yu, Ping 2002, 'Glittery Promise vs. Dismal Reality: The Role of a Criminal Lawyer in the People's Republic of China after the 1996 Revision of the Criminal Procedure Law', *Vanderbilt Journal of Transnational Law*, Vol. 35, pp.842-843
<http://law.vanderbilt.edu/journals/journal/35-03/Ping6.pdf> – Accessed 21 May 2007 – Attachment 12).

The US Department of State's most recent report on human rights practices also refers to the rarity of granting bail in China:

Detained criminal suspects, defendants, their legal representatives, and close relatives were entitled to apply for bail; however, in practice few suspects were released on **bail pending trial** (US Department of State 2007, *Country Reports on Human Rights Practices for 2006 – China*, 6 March – Attachment 13).

List of Sources Consulted

Internet Sources:

Government Information & Reports

US Department of State website www.state.gov

United Nations (UN)

United Nations High Commission for Refugees website <http://www.unhcr.org/>

Search Engines

Google search engine <http://www.google.com.au/>

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. DIAC Country Information Service 2006, *Country Information Report No. 06/65 – China: Passport and exit arrangements China: Passport and exit arrangements*, (sourced from DFAT advice of 8 November 2006), 10 November. (Cisnet China CX164795)
2. DIMIA Country Information Service 2006, *Country Information Report No.06/42 – China: Failed asylum seeker return decision*, (sourced from DFAT advice of 7 August 2006), 25 August. (Cisnet China CX160293)
3. DIAC Country Information Service 2005, *Country Information Report No. 05/43 – Chinese passports for Falun Gong practitioners*, (sourced from DFAT advice of 9 August 2005), 10 August. (Cisnet China CX130538)
4. Department of Foreign Affairs and Trade 2006, *DFAT Report No. 540 – RRT Information Request: CHN30682*, 28 September.

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7. Immigration and Refugee Board of Canada 2005, *CHN100513.E China: Exit controls for citizens travelling overseas, including documents and police checks, and whether a person wanted by authorities could leave China using a passport in his or her name; exit procedures at Beijing airport (2003 – 2005)*, 25 October.
8. *Criminal Procedure Law of the People's Republic of China* 17 March 1996, United Nations High Commission for Refugees website <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=search&docid=3ddbcd4e7&skip=&p;query=criminal%20procedure%20china> – Accessed 29 November 2007.
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