



Australian Government
Refugee Review Tribunal

Country Advice

China

China – CHN38568 –retrial – ex-prisoners
–Tiananmen activist – Guangzhou –
Christians
2 May 2011

1. How does the PRC government deal with citizens returning to China after being convicted of a serious crime overseas? Is there any evidence of retrials for crimes committed overseas?

Information on the People’s Republic of China’s (PRC) treatment of its citizens convicted overseas is extremely limited. Under Article 10 of PRC *Criminal Law*, a Chinese citizen can be re-tried for a crime already prosecuted overseas; however, reported examples of this are scarce.¹ There are conflicting interpretations of whether the lack of known cases indicates that few returnees are retried or whether it is symptomatic of the Government’s general lack of disclosure of trial information. Overall, UK Government reports indicate that the risk of returnees being retried for a crime is negligible while conversely, several credible China experts argue that re-prosecution does occur.² Experts further caution that the Government monitors criminal returnees and may subject them to administrative penalties.³

Article 10 of the PRC *Criminal Law* allows for citizens convicted of crime overseas to be retried but re-prosecution is discretionary and the circumstances under which re-trials should occur are not specified.⁴ According to Article 10, “[a]ny person who commits a crime outside PRC territory and according to this law bear criminal responsibility may still be dealt with according to this law even if he has been tried in a foreign country”.⁵ The Article goes on to say “a person

¹ UK Asylum and Immigration Tribunal 2008, *JC (Double Jeopardy: Art 10 CL) China v. Secretary of State for the Home Department*, CG [2008] UKAIT 00036, 23 January, <http://www.unhcr.org/refworld/pdfid/482c01ab2.pdf> – Accessed 2 May 2011 – Attachment 1; UK Upper Tribunal (Immigration and Asylum Chamber) 2011, *YF (Double jeopardy - JC confirmed) China v. Secretary of State for the Home Department*, CG [2011] UKUT 32 (IAC), 25 January available at: <http://www.unhcr.org/refworld/docid/4d42948d93a6.html> – Accessed 2 May 2011 – Attachment 2

² UK Asylum and Immigration Tribunal 2008, *JC (Double Jeopardy: Art 10 CL) China v. Secretary of State for the Home Department*, CG [2008] UKAIT 00036, 23 January, <http://www.unhcr.org/refworld/pdfid/482c01ab2.pdf> – Accessed 2 May 2011 – Attachment 1; UK Upper Tribunal (Immigration and Asylum Chamber) 2011, *YF (Double jeopardy - JC confirmed) China v. Secretary of State for the Home Department*, CG [2011] UKUT 32 (IAC), 25 January available at: <http://www.unhcr.org/refworld/docid/4d42948d93a6.html> – Accessed 2 May 2011 – Attachment 2

³ UK Asylum and Immigration Tribunal 2008, *JC (Double Jeopardy: Art 10 CL) China v. Secretary of State for the Home Department*, CG [2008] UKAIT 00036, 23 January, <http://www.unhcr.org/refworld/pdfid/482c01ab2.pdf> – Accessed 2 May 2011 – Attachment 1; UK Upper Tribunal (Immigration and Asylum Chamber) 2011, *YF (Double jeopardy - JC confirmed) China v. Secretary of State for the Home Department*, CG [2011] UKUT 32 (IAC), 25 January available at: <http://www.unhcr.org/refworld/docid/4d42948d93a6.html> – Accessed 2 May 2011 – Attachment 2

⁴ *Criminal Law of the People’s Republic of China*, (Adopted on July 1, 1979 and amended on March 14, 1997), Chinalaw website <http://www.qis.net/chinalaw/> – Accessed 2 Mat 2011 – Attachment 3.

⁵ *Criminal Law of the People’s Republic of China*, (Adopted on July 1, 1979 and amended on March 14, 1997), Chinalaw website <http://www.qis.net/chinalaw/> – Accessed 2 Mat 2011 – Attachment 3.

who has already received criminal punishment in a foreign country may be exempted from punishment or given a mitigated punishment”.⁶

In 2002, the National People's Congress (NPC), China's highest parliamentary body and legislative authority, advised that the “PRC is not bound by the foreign judgements, and in accordance with the criminal law of the PRC, the PRC judicial organs may still decide if such conduct constitutes a crime and the punishment to be imposed”.⁷ The report says:

China is an independent sovereign state, possessing independent power of criminal jurisdiction. It does not accept the binding force of foreign adjudication, and the power of its jurisdiction over crime cannot be lost just because such criminal conduct has been subjected to adjudication in another country.⁸

The NPC guidance further seeks to clarify how Article 10 can be used. According to the NPC, the PRC is not required to re-prosecute but retains the power to do so. It also states that in the case of a retrial, courts should acknowledge time already served. As an example, the NPC comments that the PRC may decide not to re-prosecute an individual convicted by a foreign court “if the punishment is still a little heavier [in China], but the offender admits guilt, [and] in the enforcement of the sentence shows effective repentance”.⁹ The NPC goes on to say:

In order to achieve the purpose of effective education and change the offender, and at the same time to respect foreign law, the Criminal Law [CL] also provides that in cases in which there has already been criminal punishment then if the PRC must in accordance with the Criminal Law carry out a fresh trial, then the criminal punishment may be exempted or reduced. In this stipulation, it is important to consider that the offender has already been tried by the foreign court and received criminal punishment, so that when the PRC court handles the case, then in accordance with the concrete circumstances of the case, the court may exempt punishment or reduce punishment. Of course, the provisions of the CL “may” but this is not “should”, and if the foreign court's decision is obviously partial, resulting in an abnormally light sentence, the PRC of course may not be bound by the [decision] in which there is exemption or reduction of the criminal punishment.¹⁰

Although the Chinese legal framework allows for re-prosecution for crimes already tried overseas, many argue that, in practice, the risk of retrial of ordinary criminals is negligible. The UK Home Office reported in 2009 that the use of Article 10 is “discretionary and extremely rare”.¹¹ The report concludes that “[w]ithout particular aggravating factors, the risk falls well

⁶ *Criminal Law of the People's Republic of China*, (Adopted on July 1, 1979 and amended on March 14, 1997), Chinalaw website <http://www.qis.net/chinalaw/> – Accessed 2 Mat 2011 – Attachment 3.

⁷ UK Upper Tribunal (Immigration and Asylum Chamber) 2011, *YF (Double jeopardy - JC confirmed) China v. Secretary of State for the Home Department*, CG [2011] UKUT 32 (IAC), 25 January available at: <http://www.unhcr.org/refworld/docid/4d42948d93a6.html> – Accessed 2 May 2011 – Attachment 2

⁸ UK Upper Tribunal (Immigration and Asylum Chamber) 2011, *YF (Double jeopardy - JC confirmed) China v. Secretary of State for the Home Department*, CG [2011] UKUT 32 (IAC), 25 January available at: <http://www.unhcr.org/refworld/docid/4d42948d93a6.html> – Accessed 2 May 2011 – Attachment 2

⁹ UK Upper Tribunal (Immigration and Asylum Chamber) 2011, *YF (Double jeopardy - JC confirmed) China v. Secretary of State for the Home Department*, CG [2011] UKUT 32 (IAC), 25 January available at: <http://www.unhcr.org/refworld/docid/4d42948d93a6.html> – Accessed 2 May 2011 – Attachment 2

¹⁰ UK Upper Tribunal (Immigration and Asylum Chamber) 2011, *YF (Double jeopardy - JC confirmed) China v. Secretary of State for the Home Department*, CG [2011] UKUT 32 (IAC), 25 January available at: <http://www.unhcr.org/refworld/docid/4d42948d93a6.html> – Accessed 2 May 2011 – Attachment 2

¹¹ UK Home Office 2009, *Operational Guidance Note – China*, 10 June, Accessed 2 May 2011 – Attachment 4.

below the level required to engage international protection under the Refugee Convention”.¹² Professor Fu Hua Ling, an Associate Professor at Hong Kong University argues that with police already overloaded, they are unlikely to conduct criminal investigations of ordinary criminal returnees, even those who have committed serious crimes.¹³ Similarly, in July 2005, the UK Foreign Office reported that Article 10 is probably reserved for high-profile crimes, particularly those with a political dimension.¹⁴ According to the report:

The circumstances under which an individual would be punished in China for a crime committed in a foreign country for which he had already been punished in that country are unstipulated. The Chinese authorities are most likely to take this action if the crime had received a lot of publicity in China, if the victims were well-connected in China, if there were a political angle to the original crime or if the crimes were of a particular type that the authorities wanted to make an example of. Our Embassy in Beijing is unaware of such instances. The specific inclusion in the Criminal Law of „exemptions’ from second punishment in China for crimes committed abroad suggests that the authorities would not take further action against ordinary criminal offences.¹⁵

According to an October 2010 decision by the UK Upper Tribunal Immigration and Asylum Chamber:

The risk of prosecution or re-prosecution will be a question of fact in individual cases but is more likely where (a) there has been a substantial amount of adverse publicity within China about a case; (b) the proposed defendant has significantly embarrassed the Chinese authorities by their actions overseas; (c) the offence is unusually serious...; (d) political factors may increase the likelihood of prosecution or re-prosecution; and (e) the Chinese Government is also particularly concerned about corruption of Chinese officialdom.¹⁶

In 2008, DFAT advised that it was unaware of Chinese authorities re-prosecuting returnees that had been convicted of crimes overseas.¹⁷ DFAT also noted, however, that there are cases “where PRC nationals, who had previously been convicted and sentenced abroad, were detained for questioning by PRC authorities”.¹⁸ Post commented that ordinarily, a person would be held for a maximum of 10 days although this can be longer depending on the circumstances of the case.¹⁹ This indicates that the Government maintains an interest in its citizens prosecuted for crimes

¹² UK Home Office 2009, *Operational Guidance Note – China*, 10 June, Accessed 2 May 2011 – Attachment 4.

¹³ UK Asylum and Immigration Tribunal 2008, *JC (Double Jeopardy: Art 10 CL) China v. Secretary of State for the Home Department*, CG [2008] UKAIT 00036, 23 January, <http://www.unhcr.org/refworld/pdfid/482c01ab2.pdf> – Accessed 2 May 2011 – Attachment 1

¹⁴ UK Home Office 2010, *Operational Guidance Note – China*, 15 November – Accessed 2 May 2011 – Attachment 5

¹⁵ UK Home Office 2010, *Operational Guidance Note – China*, 15 November – Accessed 2 May 2011 – Attachment 5

¹⁶ UK Upper Tribunal (Immigration and Asylum Chamber) 2011, *YF (Double jeopardy - JC confirmed) China v. Secretary of State for the Home Department*, CG [2011] UKUT 32 (IAC), 25 January available at: <http://www.unhcr.org/refworld/docid/4d42948d93a6.html> – Accessed 2 May 2011 – Attachment 2

¹⁷ DIAC Country Information Service 2009, *Country Information Report No. 09/04 – Double Jeopardy for serious crimes in China* (sourced from DFAT advice of 22 January 2009), 29 January – Attachment 6.

¹⁸ DIAC Country Information Service 2009, *Country Information Report No. 09/04 – Double Jeopardy for serious crimes in China* (sourced from DFAT advice of 22 January 2009), 29 January – Attachment 6.

¹⁹ DIAC Country Information Service 2009, *Country Information Report No. 09/04 – Double Jeopardy for serious crimes in China* (sourced from DFAT advice of 22 January 2009), 29 January – Attachment 6.

overseas. It is of note that the Australian Government notifies Chinese officials when a Chinese citizen is convicted of an offence.²⁰

Many experts consulted by the UK Asylum and Immigration Tribunal (UKAIT) contend that there is a genuine risk of re-prosecution of returnees. In refugee cases addressed by UKAIT, several academics and experts (including Professor Fu Hua Ling, an Associate Professor of Law at the University of Hong Kong; Professor Michael Palmer, Professor of Law at the School of Oriental and African Studies London; Dr Mei-Ying Gechlik, Law Fellow at Stanford University Law School and Dr Dillon, senior lecturer in the Department of East Asian Studies and founding director of the Centre for Contemporary Chinese Studies at the University of Durham) advised that the double punishment provision **exists not just formally but are applied in practice to returnees who have committed serious offences abroad.**²¹ According to Professor Palmer, the lack of examples reflects “not an absence of such cases but, rather, a problem of reporting – reflecting in part the problem of the secrecy that pervades important areas in the operation of the legal system in the PRC”.²² Professor Palmer further stated “the NCP guidance would not have been given to those working in the criminal justice system unless it was intended to guide actual practice”.²³ In the 2008 UKAIT report, these experts provided several examples that highlight that citizens convicted of crimes overseas are at risk of being reinvestigated and re-imprisoned:

a) In 1990, Ning Hong was convicted of causing serious injury to another Chinese citizen in Kuwait in 1990 and sentenced to imprisonment (the term is unknown). A few months later, Iraq invaded Kuwait. The prison was attacked. Ning escaped and returned to China. After his return, he was identified by the person he attacked. The victim called the police and Ning was subsequently arrested, re-prosecuted, and re-convicted for the same offence in China. (Professor Fu)

b) In June 1996, the Shandong PSB [Public Security Bureau] was considering investigating the criminal responsibility of a returned Chinese citizen (Yao Weiye) who had committed a crime and been tried and punished by a court in Ukraine. However, the prison term the citizen had served overseas might be taken into account by the Chinese authorities as a mitigating factor in determining his punishment. There is no further information as to how this case was handled eventually but the question of re-prosecution was at least considered. (Professor Fu and Dr Gechlik)

c) In July 2001, a news article identified the case of Lin Xuecheng, convicted in the United States of smuggling more than 60 illegal immigrants to the United States, tried, and sentenced to 30 months imprisonment. He served his sentence and returned to China; upon his return, he was arrested by the local Procuratorate. Again, the final outcome of this case is unknown. (Dr Gechlik)

²⁰ DFAT 2007, *DFAT Report 622 – RRT Information Request: CHN31495*, 3 April, Accessed 2 May 2011 – Attachment 7

²¹ UK Asylum and Immigration Tribunal 2008, *JC (Double Jeopardy: Art 10 CL) China v. Secretary of State for the Home Department*, CG [2008] UKAIT 00036, 23 January, <http://www.unhcr.org/refworld/pdfid/482c01ab2.pdf> – Accessed 2 May 2011 – Attachment 1; UK Upper Tribunal (Immigration and Asylum Chamber) 2011, *YF (Double jeopardy - JC confirmed) China v. Secretary of State for the Home Department*, CG [2011] UKUT 32 (IAC), 25 January available at: <http://www.unhcr.org/refworld/docid/4d42948d93a6.html> – Accessed 2 May 2011 – Attachment 2

²² UK Asylum and Immigration Tribunal 2008, *JC (Double Jeopardy: Art 10 CL) China v. Secretary of State for the Home Department*, CG [2008] UKAIT 00036, 23 January, <http://www.unhcr.org/refworld/pdfid/482c01ab2.pdf> – Accessed 2 May 2011 – Attachment 1

²³ UK Asylum and Immigration Tribunal 2008, *JC (Double Jeopardy: Art 10 CL) China v. Secretary of State for the Home Department*, CG [2008] UKAIT 00036, 23 January, <http://www.unhcr.org/refworld/pdfid/482c01ab2.pdf> – Accessed 2 May 2011 – Attachment 1

d) In September 2007, a mainland Chinese citizen, surname Shi, a convicted arsonist who had been sentenced to 9 months' imprisonment in the United States and then deported with a warning as to his mental illness from the United States authorities to the Chinese authorities was given lenient treatment by the Border police. (Professor Fu)

e) In February 2007, a news article reported that a Mr. Yang was convicted of trafficking illegal drugs to Japan and was sentenced to five years imprisonment. He was released in late February 2007 and deported to China by the Japanese authorities. Immediately upon his return, he was "handled in accordance with relevant legal rules" by the authorities at the Shanghai border. It is not known whether that included re-prosecution. (Dr Gechlik).²⁴

Many of the academics interviewed by the UKAIT also cautioned that returnees that have been convicted of crime overseas risk extrajudicial punishment.²⁵ According to Dr Gechlik, even if returnees are not formally retried there is a risk that local authorities will use other administrative penalties, such as forced labour, as punishment.²⁶ Similarly, Dr Dillon advised in the case of a Chinese people smuggler that the Government may use non-formal punishments.²⁷ According to Dr Dillon extrajudicial punishment is popular as it is quicker and simpler, just requiring an arrangement between police and local authorities.²⁸ On this case, Dr Dillon said:

It is possible, although unlikely, that he would be simply able to get on with his life. The authorities would wish to monitor him in some way but the precise method of supervision would depend on local conditions and local attitudes. The options available would include surveillance, re-prosecution or sending him to a laoiao camp, which would not require formal prosecution. It is not possible to know what has happened to convicted criminals who have been deported to China as that information is not openly available.²⁹

²⁴ UK Asylum and Immigration Tribunal 2008, *JC (Double Jeopardy: Art 10 CL) China v. Secretary of State for the Home Department*, CG [2008] UKAIT 00036, 23 January, <http://www.unhcr.org/refworld/pdfid/482c01ab2.pdf> – Accessed 2 May 2011 – Attachment 1

²⁵ UK Asylum and Immigration Tribunal 2008, *JC (Double Jeopardy: Art 10 CL) China v. Secretary of State for the Home Department*, CG [2008] UKAIT 00036, 23 January, <http://www.unhcr.org/refworld/pdfid/482c01ab2.pdf> – Accessed 2 May 2011 – Attachment 1

²⁶ UK Asylum and Immigration Tribunal 2008, *JC (Double Jeopardy: Art 10 CL) China v. Secretary of State for the Home Department*, CG [2008] UKAIT 00036, 23 January, <http://www.unhcr.org/refworld/pdfid/482c01ab2.pdf> – Accessed 2 May 2011 – Attachment 1

²⁷ UK Asylum and Immigration Tribunal 2008, *JC (Double Jeopardy: Art 10 CL) China v. Secretary of State for the Home Department*, CG [2008] UKAIT 00036, 23 January, <http://www.unhcr.org/refworld/pdfid/482c01ab2.pdf> – Accessed 2 May 2011 – Attachment 1

²⁸ UK Asylum and Immigration Tribunal 2008, *JC (Double Jeopardy: Art 10 CL) China v. Secretary of State for the Home Department*, CG [2008] UKAIT 00036, 23 January, <http://www.unhcr.org/refworld/pdfid/482c01ab2.pdf> – Accessed 2 May 2011 – Attachment 1

²⁹ UK Asylum and Immigration Tribunal 2008, *JC (Double Jeopardy: Art 10 CL) China v. Secretary of State for the Home Department*, CG [2008] UKAIT 00036, 23 January, <http://www.unhcr.org/refworld/pdfid/482c01ab2.pdf> – Accessed 2 May 2011 – Attachment 1

2. How are ex-prisoners treated by the government/authorities/society in China?

Reports indicate that some former prisoners are monitored by local Government officials and denied access to education and employment opportunities, despite legal safeguards against discrimination.³⁰ Information on broader societal attitudes towards former prisoners in China is limited but available reports indicate that societal prejudice exists.

The 1994 *Prison Law* guarantees former prisoners “equal rights as other citizens”.³¹ In 2008, the Immigration and Refugee Board of Canada reported that a person’s hukou (citizenship registration) is cancelled when they enter prison but a person can apply to local authorities for a new hukou when they are released. It is of note that when former prisoners receive their new hukou there is no indication on the card of their criminal history.³² However, as this process alerts local official to a person’s criminal history it creates the potential for monitoring and harassment.

US Government reports indicates that former prisoners, particularly political dissidents, are at risk of monitoring and harassment by local authorities. The US Department of State 2009 *Country Report on Human Rights Practices* states that “[f]ormer prisoners sometimes found their status in society, ability to find employment, freedom to travel, and access to residence permits and social services severely restricted”.³³ Similarly, the US Department of State’s 2007 *China Profile of Asylum Claims and Country Conditions* report says that economic opportunities for former prisoners are limited, in part as result of community prejudice.³⁴ According to the report:

Persons released from prison, including dissidents, often face restricted employment opportunities for a variety of reasons. Social prejudice against former prisoners plays a part. Loss of party membership (as a mandated result of a prison sentence) can preclude employment in government jobs. Categories such as ‘on parole,’ ‘on probation,’ ‘activities restricted,’ and ‘no political rights for (a specified number of years)’ provide another barrier to some employment. When former prisoners try to start private enterprises, they may not be allowed to register their companies or authorities might try to intimidate potential customers. Educational opportunities are often denied to former prisoners and dissidents. Freedom to travel and access to social services such as housing also can be severely restricted. Other former prisoners have returned home but have been denied freedom of movement.³⁵

According to Professor Fu of the University of Hong Kong the government traditionally monitors people with criminal records but its capacity to do so has decreased. Professor Fu commented:

Traditionally, police paid special attention to special groups of population, including people with a serious crime record. **Under the Regulation on Targeted**

³⁰ US Department of State 2007, *China Profile of Asylum Claims and Country Conditions*, May – Accessed 2 May 2011 – Attachment 8

³¹ National People's Congress 1994 “Prison Law of the People's Republic of China” (adopted and enacted 20 December 1994 at the Standing Committee of the Eighth National People's Congress) <http://www.china.org.cn/english/Judiciary/31277.htm> – Accessed 28 April 2011 – Attachment 9

³² Immigration and Refugee Board of Canada 2008, *China: Whether an individual who has been sent to prison would have his or her hukou automatically cancelled; procedures to incarcerate and release a convict, including forfeiture of documentation, return of documentation and any demarcations on documentation noting incarceration*, 20 May – Accessed 2 May – Attachment 10

³³ United States Department of State 2010, “2009 Country Reports on Human Rights Practices”, 11 March www.state.gov/g/drl/rls/hrrpt/2009/eap/135989.htm – Accessed 27 April 2011 – Attachment 11

³⁴ US Department of State 2007, *China Profile of Asylum Claims and Country Conditions*, May – Accessed 2 May 2011 – Attachment 8

³⁵ US Department of State 2007, *China Profile of Asylum Claims and Country Conditions*, May – Accessed 2 May 2011 – Attachment 8

People Management issued on 21 March 1989 and amended on 25 May 1998, “residents suspected of serious criminal activities” including “people suspected of having violated citizens’ physical and personal rights through activities such as murder, rape, bodily injury, and trafficking of women and children” are put into the blacklist of targeted people of the local police and subjected to police surveillance. However, as Fei-Ling Wang noted, given the high mobility of people in contemporary China, police control over targeted people has become much more difficult and less effective. Additionally, according to Wang, factors such as “the changed social environment in China, which has led to the public increasingly despising secret dossiers, informants, intolerance, and persecution by association and suspicion” were considered by the police to be another significant reason undermining the effectiveness of the police in monitoring the targeted population.³⁶

Further information was located on the Government’s treatment of former political prisoners; however, it is unclear if ordinary criminals would attract the same level of government interest. The US Department of State wrote in 2009 that “[f]ormer political prisoners and their families frequently were subjected to police surveillance, telephone wiretaps, searches, and other forms of harassment, and some encountered difficulty obtaining or keeping employment, education, and housing”.³⁷ Similarly, in 2011 Reporters Without Borders stated that political prisoners that had been recently released “have been placed under house arrest, or subjected to some other curtailment of their freedom or, worse still, forced disappearance”.³⁸ The report offers the example of an opposition party member who was beaten by police when released in January this year and is reported to be subject to ongoing threats and harassment.³⁹

3. (Briefly) Is the PRC government demonstrating any interest in 1989 pro-democracy activists (who have not been politically active since then)?

No evidence was located that indicates the PRC authorities target ordinary participants and low-level organisers of the 1989 pro-democracy protests who are no longer politically active. Recent information about the Government interest in 1989 pro-democracy activists is very limited. Available information indicates that although the PRC Government is sensitive about the 1989 protests, it only targets high level organisers who remain politically active.⁴⁰

The Government continues to silence debate and suppress commemoration of the 1989 protests.⁴¹ In the 2007 *China Profile of Asylum Claims and Country Conditions* report, the US Department of State wrote that “[i]ndividuals suspected of ongoing involvement in activities commemorating those killed in the Tiananmen Square massacre are subject to harassment and sometimes

³⁶ UK Asylum and Immigration Tribunal 2008, *JC (Double Jeopardy: Art 10 CL) China v. Secretary of State for the Home Department*, CG [2008] UKAIT 00036, 23 January, <http://www.unhcr.org/refworld/pdfid/482c01ab2.pdf> – Accessed 2 May 2011 – Attachment 1

³⁷ United States Department of State 2010, “2009 Country Reports on Human Rights Practices”, 11 March www.state.gov/g/drl/rls/hrrpt/2009/eap/135989.htm – Accessed 27 April 2011 – Attachment 11

³⁸ Reporters Without Borders 2011 “Chinese authorities keep tight grip on former prisoners of conscience” 3 March http://en.rsf.org/china-chinese-authorities-keep-tight-03-03-2011_39667.html – Accessed 2 May 2011 – Attachment 12

³⁹ Reporters Without Borders 2011 “Chinese authorities keep tight grip on former prisoners of conscience” 3 March http://en.rsf.org/china-chinese-authorities-keep-tight-03-03-2011_39667.html – Accessed 2 May 2011 – Attachment 12

⁴⁰ US Department of State 2007, *China Profile of Asylum Claims and Country Conditions*, May – Accessed 2 May 2011 – Attachment 8

⁴¹ US Department of State 2007, *China Profile of Asylum Claims and Country Conditions*, May – Accessed 2 May 2011 – Attachment 8

detention”.⁴² There are also recent cases of authorities arresting high levels organisers who are still engaged in pro-democracy activities; for example, in 2010, the Government detained a prominent 1989 pro-democracy activist when he released a photograph of the Tiananmen Square protests.⁴³ This is consistent with advice from DFAT from the 1990s and early 2000s. In 1990, DFAT reported that although many 1989 activist were initially detained, those not considered “major key players” were released after interrogation.⁴⁴ In March 2002, DFAT advised that 1989 activists who return to China are likely to be of interest to the Government if they have since remained politically active and high profile.⁴⁵ According to the report:

As far as we are aware, the likely treatment of Tiananmen-era returnees would depend to a large degree on their behaviour on return, as well as on the nature and extent of their involvement in protest activities abroad. Individuals who took a leading role in protests overseas would likely be monitored by local public security authorities on return (provided, of course, that they were aware of the individual's return). Official interest would be ongoing if those authorities assessed that an individual was likely to continue political agitation while in China.⁴⁶

A 2007 US Department of State report states the participants in 1989 protests in Guangdong were subject to less Government harassment than those involved in protests in Beijing.⁴⁷ The report says “these local demonstrations were smaller and less dramatic than those in Beijing, and appear to have been closed down by local authorities – as generally was the case elsewhere in China outside of Beijing – less forcefully, i.e., and without violence or widespread retribution”.⁴⁸ Based on this, people involved in the Guangdong 1989 protest may be of lower interest to the Government.

4. (Briefly) Are the authorities in Guangzhou city, targeting Christians?

Guangzhou city authorities target and harass some Christians, mainly members of underground congregations, while allowing others to practice their religion without significant interference. Guangdong is reported to be one of the most tolerant provinces in China with respect to Christianity but Government harassment and closures of unofficial churches do occur.⁴⁹

Recent cases were located of Guangzhou authorities targeting Christians. In April this year, the *New York Times* reported increased government interference in underground church activities across China – including Guangzhou where two churches were shut down and their Pastors

⁴² US Department of State 2007, *China Profile of Asylum Claims and Country Conditions*, May – Accessed 2 May 2011 – Attachment 8

⁴³ DFAT 2002, “*CIR 61/02 Treatment on return of demonstrator*”, 12 March – Accessed 2 May – Attachment 13; Amnesty International 2010 “*China urged to release activist detained over Tiananmen photography*”, 1 December <http://www.amnesty.org.au/news/comments/24300/> – Accessed 2 May 2011 – Attachment 14

⁴⁴ DFAT 1990, *Cable BJ 44445 – DORS applications*, 7 December, Accessed 2 May 2011 – Attachment 15

⁴⁵ DFAT 2002, “*CIR 61/02 Treatment on return of demonstrator*”, 12 March – Accessed 2 May – Attachment 13;

⁴⁶ DFAT 2002, “*CIR 61/02 Treatment on return of demonstrator*”, 12 March – Accessed 2 May – Attachment 13;

⁴⁷ US Department of State 2007, *China Profile of Asylum Claims and Country Conditions*, May – Accessed 2 May 2011 – Attachment 8

⁴⁸ US Department of State 2007, *China Profile of Asylum Claims and Country Conditions*, May – Accessed 2 May 2011 – Attachment 8

⁴⁹ Immigration and Refugee Board of Canada 2010, CHN103500.E – *China: Situation of Protestants and treatment by authorities, particularly in Fujian and Guangdong* (2005 – May 2010), 30 June http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=453033&l=e – Accessed 2 May 2011 – Attachment 16. For details of the Guangzhou regulations see *Guangzhou City Regulations for the Management Of Religious Affairs*, *China Study Journal*, Vol. 13, No. 1, April 1998, pp.28-34 (promulgated by the Guangzhou City People’s Congress on 28 December 1997, effected on 1 March 1998) Accessed 2 May 2011 – Attachment 17

detained.⁵⁰ According to the article, “[a]lthough many congregations continue to hold services unhindered, in recent weeks the pastors of two large unofficial churches in the southern city of Guangzhou have been detained and their congregations rendered homeless”.⁵¹ Similarly, in May 2010, Guangzhou public security officers forced the termination of the lease of Liangren Church in Guangzhou and arrested its Pastor, charging him with “disrupting social order”.⁵² According to the US Department of State, local authorities have detained Pastor Wang and his wife “on several occasions, raided their home and threatened the couple”.⁵³

For further information on the Government’s treatment of Christians in Guangzhou see *Country Advice CHN33718*, dated 5 September 2008.⁵⁴

⁵⁰ Jacobs, A., 2011, “Illicit Church, Evicted, Tries to Buck Beijing”, *New York Times*, 17 April http://www.nytimes.com/2011/04/18/world/asia/18beijing.html?_r=1 – Accessed 2 May 2011 – Attachment 18

⁵¹ Jacobs, A., 2011, “Illicit Church, Evicted, Tries to Buck Beijing”, *New York Times*, 17 April http://www.nytimes.com/2011/04/18/world/asia/18beijing.html?_r=1 – Accessed 2 May 2011 – Attachment 18

⁵² US Department of State 2010, *International Religious Freedom Report 2010*, 17 November, www.state.gov/g/drl/rls/irf/2010/148863.htm – Accessed 2 May 2011 – Attachment 19

⁵³ US Department of State 2010, *International Religious Freedom Report 2010*, 17 November, www.state.gov/g/drl/rls/irf/2010/148863.htm – Accessed 2 May 2011 – Attachment 19

⁵⁴ RRT Research & Information 2008, *Research Response CHN33178*, 5 September – Attachment 20. Also see RRT Research & Information 2006, *Research Response CHN30006*, 14 March – Attachment 21.

Attachments

1. UK Asylum and Immigration Tribunal 2008, *JC (Double Jeopardy: Art 10 CL) China v. Secretary of State for the Home Department*, CG [2008] UKAIT 00036, 23 January, <http://www.unhcr.org/refworld/pdfid/482c01ab2.pdf> – Accessed 2 May 2011. (CISNET)
2. UK Upper Tribunal (Immigration and Asylum Chamber) 2011, *YF (Double jeopardy - JC confirmed) China v. Secretary of State for the Home Department*, CG [2011] UKUT 32 (IAC), 25 January available at: <http://www.unhcr.org/refworld/docid/4d42948d93a6.html> – Accessed 2 May 2011.
3. *Criminal Law of the People's Republic of China*, (Adopted on July 1, 1979 and amended on March 14, 1997), Chinalaw website <http://www.qis.net/chinalaw/> – Accessed 2 Mat 2011.
4. UK Home Office 2009, *Operational Guidance Note – China*, 10 June – Accessed 2 May 2011.
5. UK Home Office 2010, *Operational Guidance Note – China*, 15 November – Accessed 2 May 2011.
6. DIAC Country Information Service 2009, *Country Information Report No. 09/04 – Double Jeopardy for serious crimes in China* (sourced from DFAT advice of 22 January 2009), 29 January – Accessed 2 May. (CISNET)
7. DFAT 2007, *DFAT Report 622 – RRT Information Request: CHN31495*, 3 April – Accessed 2 May.
8. US Department of State 2007, *China Profile of Asylum Claims and Country Conditions*, May – Accessed 2 May 2011.
9. National People's Congress 1994 “Prison Law of the People's Republic of China” (adopted and enacted 20 December 1994 at the Standing Committee of the Eighth National People's Congress) <http://www.china.org.cn/english/Judiciary/31277.htm> – Accessed 28 April 2011. (CISNET)
10. Immigration and Refugee Board of Canada 2008, *China: Whether an individual who has been sent to prison would have his or her hukou automatically cancelled; procedures to incarcerate and release a convict, including forfeiture of documentation, return of documentation and any demarcations on documentation noting incarceration*, 20 May – Accessed 2 May. (CISNET)
11. US Department of State 2010, “2009 Country Reports on Human Rights Practices”, 11 March www.state.gov/g/drl/rls/hrrpt/2009/eap/135989.htm – Accessed 27 April 2011.
12. Reporters Without Borders 2011 “Chinese authorities keep tight grip on former prisoners of conscience” 3 March <http://en.rsf.org/china-chinese-authorities-keep-tight-03-03-2011,39667.html> – Accessed 2 May 2011. (CISNET)
13. DFAT 2002, “*CIR 61/02 Treatment on return of demonstrator*”, 12 March – Accessed 2 May. (CISNET)

14. Amnesty International 2010 “*China urged to release activist detained over Tiananmen photography*”, 1 December <http://www.amnesty.org.au/news/comments/24300/> – Accessed 2 May 2011.
15. DFAT 1990, *Cable BJ 44445 – DORS applications*, 7 December, Accessed 2 May 2011 – (CISNET)
16. Immigration and Refugee Board of Canada 2010, CHN103500.E – *China: Situation of Protestants and treatment by authorities, particularly in Fujian and Guangdong* (2005 – May 2010), 30 June http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=453033&l=e – Accessed 2 May 2011.
17. *Guangzhou City Regulations for the Management Of Religious Affairs*, *China Study Journal*, Vol. 13, No. 1, April 1998, pp.28-34 (promulgated by the Guangzhou City People’s Congress on 28 December 1997, and came into effect on 1 March 1998). (CISNET China CX38635)
18. Jacobs, A., 2011, “*Illicit Church, Evicted, Tries to Buck Beijing*”, *New York Times*, 17 April http://www.nytimes.com/2011/04/18/world/asia/18beijing.html?_r=1 – Accessed 2 May 2011.
19. US Department of State 2010, *International Religious Freedom Report 2010*, 17 November, www.state.gov/g/drl/rls/irf/2010/148863.htm – Accessed 2 May 2011.
20. RRT Research & Information 2008, *Research Response CHN33178*, 5 September – Accessed 2 May 2011.
21. RRT Research & Information 2006, *Research Response CHN30006*, 14 March – Accessed 2 May 2011.