

China

Response to Information Request Number:	CHN01001.ZSF
Date:	1 March 2001
Subject:	China: Information on Treatment of Homosexuals
From:	INS Resource Information Center, Washington, DC
Keywords:	China / Discrimination based on sexual orientation / Gay rights / Same-sex couples

Query:

Applicant claims she was arrested for being a lesbian. She submitted a document entitled "Public Order Administrative Penalty Verdict." It states that she "has violated the Public Order Rules by committing homosexual and other indecent activities. She has exerted a bad moral influence and disturbed the public order." She was in prison for 15 days and had to pay a fine. Are women being arrested and punished for being lesbian?

Response:

The RIC was unable to find information on a "Public Order Administrative Penalty Verdict" and on the arrest and punishment of women for being lesbian.

The Third Pink Book states that there are reports of homosexuals in China being imprisoned on "specious grounds" such as Section 158 of the Penal Code, which punishes "disturbance against the social order" with up to 5 years imprisonment (1993). It is not clear from sources available to the RIC whether Section 158 of the Chinese Penal Code has any relation to the document submitted by the applicant. It is also unclear if Section 158 of the Penal Code is related to (or the same as) the Penal Code article (discussed below) which allowed arrests on charges of hooliganism but was removed from the law in 1997.

General information on the situation of homosexuals in China follows.

Background

According to a recent BBC article:

[T]he relaxation of social controls in China over recent years has given homosexuals greater freedom to congregate openly in certain bars and parks of major cities^{1/4} However, many Chinese gays complain they still face harassment by the authorities, with meetings frequently raided by police and an official stance that regards homosexuality as a perversion (7 July 2000).

Homosexuality is heavily referenced in ancient Chinese literature, and gay culture in China dates to the beginning of Chinese civilization (Reuters 7 July 2000, *South China Morning Post* 28 Jan. 2001, Agence France-Presse 15 Jan. 2001). Unlike Europe during the Middle Ages, however, high-profile persecution of Chinese homosexuals did not occur (*South China Morning Post* 28 Jan. 2001).

It wasn't until the 20th century that homosexuals in China became marginalized and regarded as deviant. "Since 1949, in an ironic reversal...China, as part of the process of 'modernization,' [chose] to abandon traditional attitudes for the historical Western view of homosexuality as a perversion...Under the forty-year rule of the Communist government, social acceptance of homosexuality has virtually disappeared" (Ng 3 July 2000).

After coming to power in 1949, the Communist Party under Mao Tse-tung "stamped out anything they deemed deviant or decadent," and in the late 1960s and early 1970s (during the Cultural Revolution), gays were subjected to public humiliation and long prison terms (Reuters 7 July 2000, Agence France-Presse 15 Jan. 2001). The past 20 years have brought economic reform; a broad trend in Chinese society toward (and government allowance of) more personal freedom; increasingly tolerant public attitudes toward gays, lesbians, and bisexuals; and a realization on the part of the Chinese government that to ignore the gay community does nothing to ameliorate the growing AIDS problem in the country (Reuters 7 July 2000, *Washington Post* 24 Jan. 2000). Homosexuality is still generally taboo in the media, though sources indicate this too is changing (*CSSSM News Digest* 3 Aug. 1998).

Internal Chinese government documents and academic studies state that currently there are about 15 million homosexuals within China's population of 1.2 billion (Reuters 7 July 2000). The vast majority of them still choose to keep their sexuality a secret, due in part to societal conservatism, strong pressures to marry and have children, and fear of prejudice, though societal attitudes may also be liberalizing (Agence France-Presse 15 Jan. 2001, *Asiaweek* 7 Aug. 1998, *CSSSM News Digest* 3 Aug. 1998, *South China Morning Post* 28 Jan. 2001).

Chinese Law

Homosexuality is not illegal in China. Private "consensual homosexual acts" were decriminalized in Hong Kong in 1991 (IGLHRC Dec. 2000), and sodomy was decriminalized in China in 1997 (it remains illegal in 20 U.S. states) (*Washington Post* 24 Jan. 2000). In October 2000, however, a Beijing court ruled that homosexuality was "abnormal and unacceptable to the Chinese public" (*Washington Post* 24 Jan. 2000).

According to the Hong Kong-based Information Center for Human Rights and Democracy, the police have "used a secret 1993 directive, which charged gays with illegal demonstrations or hooliganism, to close down gay clubs across the country" (Reuters 7 July 2000). "Hooliganism," a term used for anything the Chinese Communist Party regards as anti-social, could result in dispatch to labor camps without trial or jail terms of up to seven years (Reuters 7 July 2000, *Washington Post* 24 Jan. 2000). The Chinese Society for the Study of Sexual Minorities (CSSSM) states that the article in the Penal Code, which allowed for arrest of homosexuals on charges of hooliganism, was expunged during legal reform in 1997 (26 Oct. 2000). The *Washington Post* also states that arrests of homosexuals on charges of hooliganism have "in general stopped" (24 Jan. 2000). The CSSSM asserts that the more recent police raids of gay bars, discos, and other establishments "seem to be more financially than politically motivated, which indicates that the gay community is a victim more of bureaucratic corruption than of political persecution" (26 Oct. 2000).

The CSSSM also states:

Although gays were arrested in the name of hooliganism, cases like this drastically decreased since mid 1980s [sic]. Nowadays offenders are only those who try to engage in sex in the public area [e.g. public restrooms]. Gay advocacy should theoretically be allowed by the constitution (3 Aug. 1998).

Although homosexuality is not illegal in China, gay rights are not protected by law. In December 2000, a senior Chinese government official announced that "it is not the right

time to introduce a law banning discrimination against homosexuals [in areas such as employment or housing], due to a lack of majority support" and that though the public had become more open to homosexuality, "it takes time" and "the Government cannot impose any social values on the public" (*South China Morning Post* 13 Dec. 2000). The government has announced instead that discrimination can be eradicated through education (*South China Morning Post* 13 Dec. 2000, 5 Feb. 2001).

While many homosexuals still choose to remain closeted, the *South China Morning Post* states that advocacy and awareness groups for homosexuals are becoming more organized and are continuing to push the government to recognize them and work with them toward anti-discrimination legislation (5 Feb. 2001).

Police Raids

Gays and lesbians are vulnerable to unofficial oppression, police harassment, and arrest for various offences (Agence France-Presse 15 Jan. 2001, IGLHRC Representative 16 Feb. 2001). Arrests are especially prevalent during the "strike hard" periods, in which the government incites the police force nationwide to crack down on organizations and individuals deemed to be connected with vice and immorality (*CSSM News Digest* 16 March 1998). In a March 1997 police raid of the only gay and lesbian gathering place in Guangzhou in Guangdong province, about 20 people were arrested, and "unconfirmed reports" indicated that they were charged with "hooliganism" and detained for 15 days (see discussion on charges of hooliganism above). According to a *Dateline* article reprinted in the *CSSM News Digest*, "for a gay community which had grown comfortable with a harassment free police policy in the past few years, so long as you were not overtly 'out', the 1/4 incident came as a shocking reminder that life in China is still very repressive and quixotic" (22 March 1997).

On July 3, 2000, 37 gay men were arrested on charges of prostitution at the Junjie men's beauty and health center, a gay health spa in Guangzhou that had opened in February 2000. Articles cite the Chinese police as stating that the raid was part of a July-September nationwide campaign against "social vices" which also included strikes against gambling, pornography, and illegal drugs (BBC 7 July 2000, CND-Global 10 July 2000). The police said that they arrested the men at the Junjie beauty and health center because they were prostitutes and not because they were gay, "which is a voluntary mutual relationship" (Reuters 7 July 2000).

Current Situation

According to an Agence France-Presse (AFP) article, "prison terms are increasingly rare but harassment remains a fact of life, and gay bars and cafes are subject to periodic raids and closures" (15 Jan. 2001). An owner of a gay bar interviewed for AFP stated that the police have a "live and let live" attitude toward gay bars that have the proper paperwork and do not have dancing or floor shows (15 Jan. 2001). Three of Shanghai's most popular gay bars were shut down in 2000 (Agence France-Presse 15 Jan. 2001).

In regards to persecution of homosexuals in China, the CSSSM states:

The few cases [of persecution] we have heard happened in the mid 1980s and does not [sic] reflect the current situation. China has changed so much in the past two decades. Although gays, lesbians and other sexual minorities are still subject to strong prejudice, it is not in their best interest to exaggerate the plight or improvement for any possible political gains (3 Aug. 1998).

Asiaweek states that in Asia as a whole, the "underlying truth" is that there is "safety in numbers" for gays throughout the region (7 Aug. 1998). In China, "there is little overt anti-gay hostility... [and] homosexuals say they do not fear being picked on by roughnecks in the way they are in the West" (*Asiaweek* 7 Aug. 1998).

The *Washington Post* cites a Chinese doctor who has studied homosexuality in China for over a decade as stating:

In China, we really don't have the radical conservatives and the radical liberation activists that you do in the West. We don't see gays being beaten to death in our country because of their sexuality. At the same time, we don't have gay and lesbian parades (24 Jan. 2000).

The *Washington Post* article, which features a lesbian wedding in China (unrecognized under Chinese law), also speaks of slow but increasing Chinese recognition of homosexuality in their society. At one time, homosexuals were committed by the state to mental institutions for electric shock treatments (*Washington Post* 24 Jan. 2001, *CSSSM News Digest* 26 Oct. 2000). Although homosexuality is still classified as a mental disorder, "this type of intervention is rarely enforced today" (*CSSSM News Digest* 26 Oct. 2000). Though families and workplaces largely continue to be intolerant, "the state generally does not prosecute people for homosexuality any more" (*Washington Post* 24 Jan. 2000).

According to an IGLHRC representative, blanket statements about safety and openness for homosexuals in China can not be relied upon. He says that while there is more tolerance for gays collectively, individual outing can invite persecution because of continuing strong phobias against gays in Chinese society. Homosexuals are gaining ground in Chinese society and are eager to let people know they are there and have yet there is still unofficial oppression in China, and the police can not always be depended upon for protection (16 Feb. 2001).

This response was prepared after researching publicly accessible information currently available to the RIC within time constraints. This response is not, and does not purport to be, conclusive as to the merit of any particular claim to refugee status or asylum.

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