

# China

<b>Response to Information Request Number:</b>	CHN99004.ZLA
<b>Date:</b>	December 17, 1998
<b>Subject:</b>	<p>China: Repatriated Illegal Emigrants:</p> <ul style="list-style-type: none"> <li>• Information About The Internal Documents, Directives ("<i>Neibu</i>") And Regulations That Illegal Emigrants Are Subjected To</li> <li>• Information On The Amount Of Fines Levied On Illegal Emigrants</li> <li>• Information On Possible Motives For Levying The Fines</li> <li>• Information On The Labor Camps Where Illegal Emigrants Are Held</li> </ul>
<b>From:</b>	INS Resource Information Center, Washington, DC
<b>Keywords:</b>	China / Freedom Of Movement / Emigration / International Migration / Right To Leave And Return To One's Country / Reeducation Camps / Administrative Detention / Labor Camps / Prisons / Forced Labor / Repatriation / Deportation / Displaced Persons / Fines

## Query:

- 1) Are there internal documents, directives ("*Neibu*") and regulations that illegal emigrants are subjected to?
- 2) What is the amount of fines levied on illegal emigrants?
- 3) What are the possible motives for levying the fines?
- 4) Is there any information on the labor camps where illegal emigrants are held?

## Response:

### 1) Legal structure

There are three types of "law" in China:

- A. the law of the People's Republic of China
- B. administrative regulations and rules
- C. "internal documents and directives" or "*neibu*"/classified.

(Tay opinion, part 1)

The first type of law includes the Criminal Code of the People's Republic of China, with articles 176 and 177 dealing with penalties for illegal departure. The articles are included

under Chapter VI of the Code, "Offenses of Obstructing the Governing of Social Order."

The second type of law would include the Law of the PRC on the Management of Chinese Citizens Entering and Leaving the country (1985) and Detailed Rules for Implementing the Law of the PRC on the Management of Chinese Citizens Entering and Leaving the Country (1986) (Tay opinion, part 2).

China's December 1982 Constitution stipulates two kinds of official legal institutions, the People's Courts, and the People's Protectorates. (*Country Profile*, §1.10.1).

Under the published laws, returnees could be deemed "ordinary criminals," and dealt with under articles 176 and 177 of the Criminal Code, resulting in a sentence of one to five years and a fine. They also could be dealt with leniently under the provisions of the various border management laws, in which case they would be held for no more than ten days by the Public Security Bureau (Dutton, part 1).

The third type of law is the "*neibu*" system, which enables local authorities to make decisions on some cases without reference to a court or *protectorate*. The word "*neibu*" means "internal" and refers to a classification of official documents that are meant for circulation only within government and Communist Party organizations. Prior to the late 1970s, almost all Chinese legal and administrative directives were "*neibu*." Since that time, accompanying China's drive to become more open, China's legal and administrative systems have become more public and codified. However, the "*neibu*" area still encompasses a large portion of government activity (*Country Profile*, §§1.10.2.1, 2.2).

There are three types of detention in China: "Shelter and investigation," re-education through labor (*laodong jiaoyang* or *laojiao*), and reform through labor (*laodong jiazio* or *laogia*).

It is fairly clear that, with the exception of returnees with past criminal records and those involved in the smuggling of illegal emigrants (the so-called "snake-heads"), the returnees are not subjected to the published criminal laws, but rather fall under the purview of the "*neibu*" laws. In response to a reporter for the *York Daily Record*, the Chinese Embassy in Washington, DC stated: "So long as they have not violated the Chinese criminal law, we do not bring any criminal charges against those illegally emigrated Chinese citizens after their repatriation" (Clarke). Australia's Department of Foreign Affairs and Trade noted that the "*neibu*" system is "particularly relevant to cases of illegal departures" (*Country Profile*, §1.10.2.1).

In an interview for a 1993 *Los Angeles Times* article, Yu Daodang, a spokesman for the Fujian province government said that while convicted smugglers are imprisoned, people caught trying to leave or those sent back from other countries are not punished in labor camps, but are given strict lectures (Holley).

A 1994 message from the Australian Consulate in Shanghai to Canberra stated: The official attitude toward illegal immigrants was that they were victims even though they had broken the law. They were not punished when they returned to China. Illegal immigrants were interred when they arrived. This was to allow authorities to complete health and identity checks. The latter was sometimes time consuming because the [illegal immigrants] often had no documentation when they returned. After they received 'education' they were allowed to return to their home villages. The [illegal immigrants] were charged for accommodation while in custody and for the cost of this compulsory 'education.' (Message).

In July 1996, the American Consulate in Guangzhou reported that returned PRC nationals face small fines and short periods of detention, ranging from one week to a little over one month. During this time, they receive medical examinations, are interviewed about the circumstances of their departure, and are educated on the ills of illegal immigration. Crew

members and alien smuggling organizers, however, face prison terms of up to three years (Scialabba letter).

## 2) Fines

A June 1993 message from the Australian Embassy in Beijing to Canberra concluded that fines for illegal departures are imposed under unpublished "*neibu*" administrative guidelines, and that Chinese officials are precluded from discussing these guidelines with foreigners (Minute).

The amount of the fines imposed on returnees varies. Some of the variables include the region of China where the illegal émigré is returning, the country the illegal émigré is returning from, the method that the illegal émigré departed (whether by boat or airplane), and whether or not the individual was returned as part of a "higher profile" group such as those from the Golden Venture, or returned individually and "anonymously," that is, without unusual official or international attention drawn to the case.

The most recent Profile by the Bureau of Democracy, Human Rights, and Labor of the U.S. Department of State indicates that returnees are generally fined anywhere between \$600 and \$6,000 (DRL, 41)

A 1994 message from the Australian Consulate in Hong Kong to Canberra reported on discussions with officials of the US Department of State and the US Immigration and Naturalization Service regarding an article in the *South China Morning Post*. The State Department official said that the fine for illegal departure for a first offense "can indeed be up to 20,000 [yuan]." Both officials noted that the fine escalates for subsequent offenses. The INS official said that organizers will usually pay customer's fines for them (Message).

In a January 28, 1998 conversation with RIC, Dr. Ko Lin Chin of Rutgers University stated that fines vary depending on the country from which one is deported. For example, the fine following deportation from Taiwan is a 5,000-8,000 yuan fee, with the fine after deportation from Japan is higher, with the fine following deportation from the United States being the highest. Dr. Chin stated that most people can come up with the fines, and that the fines are negotiable. Dr. Chin stated that non-payment of the fine can result in a one-year sentence at a re-education through labor camp.

In a December 5, 1996 letter from Nicholas Rizza, National Refugee Coordinator for Amnesty International USA in San Francisco to General Counsel/INS, Mr. Rizza said that Amnesty International received evidence that Golden Venture passengers who were deported were detained and fined after returning to China. "Those who could not pay the imposed fine were reportedly given prison sentences of two to three years."

Australia's Department of Foreign Affairs and Trade reports that "there are indications that *neibu* provisions are consistent, despite the discretion of the particular authority they allow" (*Country Profile*, §1.10.2.3). In June 1993, the Chief Migration Officer of the Australian Embassy in Beijing, wrote an opinion that the amount of the fines imposed on returnees was consistent with Chinese Law. The officer stated that the Hong Kong Immigration Department said that returnees from Hong Kong were fined 10 to 50 yuan. There were unconfirmed reports that returnees from Japan were fined 200 yuan. The U.S. Embassy in Beijing said that returnees from the "Eastwood" ship, who were repatriated in March 1993, were fined 5,000 yuan.

The Chief Migration Officer of the Australian Embassy in Beijing stated that Chinese law permits the development of local legislation and guidelines to suit local conditions, provided that they are consistent with national legislation. Article 6 of the *Organic Law of the Local People's Congresses and Local People's Governments* states, "people's congresses of provinces may, in the light of the specific conditions and actual needs of their respective administrative areas, formulate and promulgate local regulations, which

must not contravene the Constitution, the law, policies, decrees and administrative orders of the state."

The Chief Migration Officer of the Australian Embassy in Beijing stated that variation in the fines levied is therefore understandable. The officer also uses the Criminal Law and Regulations to determine that the fines are reasonable. Article 32 of the *Criminal Law* states "If the circumstances of a person's crime are minor and do not require punishment, he may be exempted from criminal sanctions; however, he may, according to the different circumstances of each case, be reprimanded or ordered to make a statement of repentance, offer an apology, pay compensation for the losses or be subject to administrative sanctions by the competent department." Article 2 of the Regulations on Administrative Penalties for Public Security state that where an act which constitutes a crime according to the Criminal Law "is not serious enough for criminal punishment but should be given administrative penalties ...penalties shall be given according to these Regulations." The subsequent articles of the Regulations on Administrative Penalties for Public Security specify penalties of detention from 1 to 15 days and fines from 1 to 200 yuan. However Articles 30, 31 and 32 set out a number of more serious offenses, e.g. prostitution, planting narcotics, gambling and distributing pornography, which may attract fines of up to 3,000 and up to 5,000 yuan (Minute).

The Australian Chief Migration Officer's conclusion is that "it is clear that any administrative guidelines must be consistent with these Regulations." (Please see attachment for the full text of the Minute).

While the Australian opinion that the fines can be construed to be consistent with Chinese law, there are cases that indicate that there is another variable, i.e., the amount of international media attention attracted by the illegal émigré while abroad.

Amnesty International reported on a case of a Chinese woman who arrived in Japan in with 230 others in September 1989. The woman attracted media attention when a television crew visited the detention center in Japan and learned about her claim for political asylum. The woman was returned to China in August 1991. Despite Chinese assurances that the returnees would be treated fairly, a Japanese investigative journalist reported that she was sentenced to re-education through labor for two years. Chinese officials later conceded that she was serving a one-year term of re-education through labor, but was released after six months, with her re-education continuing at home. The Amnesty International report noted that that the 229 deported with her had reportedly been held for 2 days and fined 3,000 yuan (AI, e-mail exchange, Apr. 1998).

Another group of illegal immigrants that attracted a lot of media attention was the passengers on the Golden Venture. Dr. Ko Lin Chin of Rutgers University speculated that the Golden Venture returnees faced a more serious punishment and at a higher level due to the political profile and embarrassment to the government surrounding the case. Dr. Chin stated that in the case of the Golden Venture, Chinese authorities at the national were involved in all aspects of the case well before the emigrants returned. Pressure was placed on the authorities managing the returnees to scapegoat or make an example of them, and to send a message for both foreign and local audiences that China can be with such cases.

### 3) Motive

According to the U.S. State Department, the fines levied against returnees are used as a deterrent and to recover local costs incurred during the repatriation (*Country Reports 1996, 1997, 630*).

Dr. Ko Lin Chin of Rutgers University also states that the purpose of the fine is a deterrent. "According to local authorities, the purpose of fining the deportees is to deter people from leaving illegally" (Chin)

According to Australia's Department of Foreign Affairs and Trade, "Fines are imposed at the provincial or local level. The amount appears discretionary, and intended to be a punishment and disincentive to reoffend" (*Country Profile*, §1.10.2.3).

In a 1993 article in the *South China Morning Post*, a Chinese official said that some returnees would be made to pay cash penalties, which he said was necessary to deter other "would-be illegal immigrants." The official said, "The case penalty system was introduced to make efforts against illegal immigration more effective. Some of the money is used for the returnees' living and transportation expenses." Another official said that repeat offenders would be held in the "reeducation through labor" program. The official said that returnees in his town were required to pay 15,000 yuan to the Fuzhou branch of the People's Armed Police, with about half of the amount serving as a penalty, and the remainder being used to pay for the returnees' accommodation, food, and transportation (*South China Sunday Morning Post*, 22 July 1993)

In June 1984, a message from the Australian Embassy in Beijing to Canberra, stated: "The repatriation of the Eastwood passengers was the first time we had received reports of such large fines. There were implications in some reports that the fines were imposed by local authorities as bribes or as a form of persecution" (Message).

#### 4) Re-education through labor

Re-education through labor (*laodong jiaoyang*) is a form of administrative detention imposed as punishment. According to a definition in a 1985 issue of *China Legal News*, re-education through labor is punishment for actions which fall "somewhere between crime and error." This system involves detention without charge or trial for up to three years, renewable by one year, in a forced labor camp (AI, March 1997, 23). Re-education through labor is imposed on people who have committed minor offenses, regarded as not serious enough to be tried under the criminal law (*Country Profile*, §§1.10.2.4). Examples of reasons to be subjected to re-education through labor include persons who are classified as being "counter-revolutionary," "anti-party," or "anti-socialist," and for people who "behave like hooligans" such as engaging in fights, smuggling or prostitution, or disturbing the public order (AI, March 1997, 24). Other examples of these lesser crimes include burglary and fraud (Chin).

Chinese immigrants who are deported back to China from abroad for the second time may be sentenced to one year of re-education through labor (Chin).

In a 1994 article in the *South China Morning Post* regarding returnees, the newspaper reported that the wife of an illegal immigrant raised 20,000 yuan to pay her husband's fine, but that the Public Security Bureau refused to accept the money because her husband was a second offender, and had to spend a year in a re-education center (*South China Morning Post*, 30 January 1994).

Professor Ko Lin Chin of Rutgers University is working on a book regarding smuggling of PRC nationals to the United States. As this work is, as yet, unpublished, an excerpt provided by Dr. Chin is repeated here:

"According to a respondent from Pingtan:

If you are deported back to China for the second time, you will be sent to *laojiao* for a year. There, you've got to work everyday and live a bitter life. If you have *guanxi* (connections), you may avoid *laojiao* by paying an additional 10,000 yuan fine. If you don't have this kind of money and are subjected to *laojiao*, you've got to at least spend a few hundred yuan a month bribing the staff at the *laojiao* institution to make sure they treat you well. If you do not know how to take care of this [bribing the staff], you will suffer a lot there.

"Another subject I interviewed described his feelings about and observations of his

brother's confinement at the Lujian Institute in Mawei:

My brother is now being confined at the *Lujian Laojiao Suo*. He was imprisoned in December last year, so hopefully he will be out by this October. We can visit him twice a month, on the 5th and 20th of every month. They allow us to stay for about two hours per visit. Last time when I visited him, my god, I don't think anybody could hold back tears when he or she sees what's going on in there. There are thousands of people locked up, mostly illegal immigrants, but some are criminals. That is a huge institution; it's like a small town.

When my brother just got in, he was assigned to work in a unit that produces plastic flowers. Everyday, he had to work from early in the morning until late into the night. Sometimes when he could not finish the assigned work, he had to continue to work until 2 or 3 in the morning. My brother told me it was really, really tough to be in there. He had to sit and work for more than ten hours a day, and he felt like he is going to be paralyzed soon. When I hear that, I was very sad. So I found a "friend" [someone who is in a position to help the subject], and told him my brother is an illegal immigrant, not a criminal, and he should not be punished so severely. My "friend" was sympathetic, and he transferred my brother to work in the kitchen. At least now he can move around while he works. My brother's wife had some forms of mental disorder before her husband entered *laojiao*, but now she is so traumatized that she is like a lunatic.

"I interviewed a man in his thirties who had just been released from Lujian. He told me in detail what it was like to spend several months in this type of institution:

When I was departed back to China for the second time, the local Public Security Bureau sent me to *laojiao*. There were more than 2,000 inmates inside Lujian, predominately illegal immigrants. Some were criminals who may have had to stay there for up to three years. Immigrants like us only had to serve one year. If we behaved or gave them [prison staff] some money, then our sentence would be reduced -- for instance, we have to serve only about 20 days instead of a month. In this way, those who were lucky could be released within seven months instead of a year. I followed their [prison staff] orders and also bribed them with more than 2,000 yuan, so I got out after a little more than seven months.

You can buy almost anything in there. You can smoke, and you can even eat the food brought to you by your family. You can walk around freely, you can speak loudly, but you have to finish your work assignments. For example, if you are asked to produce 500 plastic flowers a day, you have no choice but to do it. You cannot go to sleep before you fulfill your work. Our monthly wage was 3 yuan (about 30 cents). All these plastic flowers are exported. Some who served time at Lujian immigrated illegally again. There's really no deterrent effect. A relative of mine was at the *laojiao* -- so what, he sneaked out of the country again." (Chin)

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**Attachments:**

Chin, Ko Lin. excerpt from unpublished book regarding smuggling of PRC nationals into the United States.

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*Last Modified 06/14/2002*