Country Advice
China
China – CHN36823 – Falun Gong – Non-practitioners who assist Falun Gong members – Dalian City
12 July 2010

1. Is there any country information regarding treatment by officials of those associated with Falun Gong practitioners in Dalian City/ Liaoning province, including:

   a) whether persons accused of harbouring Falun Gong practitioners are breaching a particular criminal/other law; and

   b) whether such persons are detained administratively or sentenced through an official process; and

   c) whether such persons would have a criminal record which may impact on their ability to leave China and/or obtain official documentation?

Although Falun Gong encounters strong opposition from authorities in Dalian City and Liaoning province, no information was found regarding city or provincial officials’ treatment of people associated with Falun Gong who were not themselves practitioners.\(^1\) Other sources, however – reports on the treatment of people who helped Falun Gong elsewhere in China, Chinese legal documents, and information on the situation of Falun Gong more widely – are instructive on these questions.

Harbouring Falun Gong

Persons accused of harbouring Falun Gong practitioners may be considered to have breached Article 310 of the Criminal Law of the People’s Republic of China, which states:

Whoever provides a person who he clearly knows to be a convict with a hiding place, financial and material support, assists him to escape, hides, or protects him by falsifying evidence is to be sentenced to not more than three years of fixed-term imprisonment, criminal detention, or control; when the circumstances are severe, to not less than three years but not more than ten years of fixed-term imprisonment.

Whoever commits a crime as stated in the previous paragraph and conspires in advance is to be punished as committing a joint crime.\(^2\)


Only one report was found regarding a person who had allegedly harboured Falun Gong members. A Jilin City resident and Falun Gong follower herself, she was sentenced to five years in prison for “sheltering fellow practitioners”. The source, a Falun Gong website, did not specify which law she had broken, but Article 310 was applied in another case in which individuals were accused of harbouring a criminal. In 2010, the New York Times reported that five Tibetans were sentenced to prison terms ranging from three to seven years for sheltering another Tibetan who was convicted for taking part in riots in Lhasa in March 2008. According to a Chinese news story reproduced in translation by the International Campaign for Tibet, the men had violated “Article 310, Clause 1…constituting the crime of harboring a criminal”.

### Administrative detention versus legal processing

A person accused of harbouring a Falun Gong member could be dealt with either administratively or in a court of law. As noted above, two reports were found of people accused of harbouring a criminal, and only one of these concerned Falun Gong. In both instances, the accused were sentenced judicially, but this should not be taken as a typical outcome because these cases were of a serious nature. Wider reporting suggests that a minor, first-time offender would be more likely to encounter an administrative penalty.

The Law of the People’s Republic of China on Penalties for Administration of Public Security Law (Administration of Public Security Law), which is administered by departments of public security (police), allows officials considerable flexibility in detaining and punishing offenders without trial. Article 2 of the Administration of Public Security Law clarifies that criminal acts that are “not serious enough for criminal punishment” shall incur an administrative penalty, of which there are four types (Article 10):

1. warning;
2. fine;
3. administrative detention; and
4. revocation of licenses issued by public security organs.

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According to Article 5 of the Law, the harshness of the penalty should reflect the “nature and circumstances of the act committed and the extent of harm done to the society”.\(^{11}\) In the case of administrative detention, “non-judicial panels” can sentence persons to up to three years in detention.\(^{12}\) Thus, although administrative penalties are intended to punish lesser crimes, they can still be severe and are meted out at the discretion of local security officials without judicial oversight. Taking a case to court requires more steps and stronger adherence to criminal procedure law.\(^{13}\)

Administrative detention has been a key weapon in the Chinese Government’s arsenal against Falun Gong. Most practitioners are punished administratively, with judicial sentencing typically reserved for core leaders and organisers and “largescale publishers and distributors”.\(^{14}\) In the previously mentioned case of a woman who was sentenced in court for sheltering Falun Gong members, the offender was herself a practitioner who was accused of harbouring multiple members.\(^{15}\) Reports indicate that people who have provided other forms of assistance to Falun Gong have been punished administratively or judicially, with the latter option more common for recurrent and/or high-profile offenders. Some of these reports come from Falun Gong organisations without corroboration from independent sources.

For example, a Falun Gong Human Rights Working Group (FGHRWG) newsletter reported on cases in which people who had attempted to assist Falun Gong – whether by collecting or publicising evidence of abuse, speaking out against mistreatment of members, or “refusing to persecute” Falun Gong. \(^{16}\) These individuals were reportedly punished harshly: two people (one of whom was a government official) were sentenced to prison, while others were sent to labour camps, a form of administrative detention.\(^{17}\)

Several reports concerned lawyers who have helped Falun Gong. In 2005, Reporters Without Borders said that a lawyer who had defended a Falun Gong practitioner had had his legal licence suspended.\(^{18}\) The revoking of a license is an administrative penalty.\(^{19}\) More recently, the US Congressional-Executive Commission on China’s (CECC) 2009

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Annual Report noted that “Chinese officials harassed, detained, and in some cases, physically abused attorneys who defended practitioners of the banned spiritual movement called Falun Gong.” The CECC report noted the disappearance of human rights lawyer Gao Zhisheng, who had worked to raise awareness of the government’s mistreatment of Falun Gong practitioners.

Chinese authorities have sometimes resorted to legal measures to punish lawyers who supported Falun Gong. In 2009, AsiaNews reported the arrests of three such persons. At least two - Ruping Liu and Wang Yonghang - were subsequently sentenced to prison in courts of law. Both were vocal and repeat offenders. Liu had reportedly been detained on multiple occasions before being tried, while Yonghang, a Dalian City resident, had his law licence revoked in 2008. He continued to provide legal advice and representation to Falun Gong members until his formal arrest in July 2009.

Criminal records and restrictions on travel

A person accused of harbouring Falun Gong would only have a criminal record if s/he were convicted of a criminal offence. Such a person would not have a criminal record if s/he were detained but not convicted, or if s/he had only served a period of administrative detention. In itself, a criminal record may not prevent a person from obtaining a passport and exiting China.

The current Passport Law of the People’s Republic of China does not explicitly prohibit the issue of passports to individuals with criminal records; rather, it stipulates that criminal suspects, those who are currently serving a criminal sentence, and those who are awaiting a civil trial may not be granted a passport. Conditions under which a passport would not be approved are listed at Article 13 of the Passport Law:

Under any of the following circumstances, the passport issuance departments shall not issue any passport to the applicant:

1. He does not have the nationality of the People’s Republic of China;
(2) He is unable to prove his identity;
(3) He cheats during the process of application;
(4) He has been sentenced to any criminal punishment and is serving the sentence at present;
(5) He is not permitted to leave China because the people’s court has notified him of any pending civil case;
(6) He is a defendant or criminal suspect of a criminal case; or
(7) The competent organ of the State Council believes that his leaving China will do harm to the state security or result in serious loss to the benefits of the state. 28

This is not to deny that a person with (or without) a criminal record could face difficulty obtaining a passport. Under Article 13, officials may refuse to issue a passport to anyone they deem to satisfy criteria number seven – that is, a person whose departure could harm the state.

DFAT has indicated that the Administrative Law on the Border Exit and Entry of Citizens of the People’s Republic of China (Border Law) offers similar flexibility to officials in determining who may leave China. 29 Much like Article 3 of the Passport Law, Article 8(v) of the Border Law stipulates that officials can refuse to allow a person to exit China “[i]f [they] believe that, after departing the country, that person might cause danger to national security or cause extreme harm to national interests”. 30 DFAT commented that:

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. 31

This comment would almost certainly apply to Article 13.7 of the Passports Law as well.

While no reports were found regarding the experiences of non-practitioner friends of Falun Gong in trying to obtain passports and leave China, information about practitioners themselves suggests that officials would probably permit a low-profile Falun Gong “helper” or supporter to depart the country. The Chinese government has been known to deny travel documents and departure rights to activists and other persons perceived to be threats, 32 but reports indicate that a number of Falun Gong practitioners have obtained passports and left China. In 2008, DFAT advised that only those who were considered to be Falun Gong “leaders” would be refused passports outright – though some members had been prevented from obtaining a passport through indirect means, for example officials’ confiscation of their identity documents. 33 The US State Department’s latest International Religious Freedom Report noted that a Falun Gong

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practitioner who had served two-and-a-half years of re-education through labour managed to leave the country afterwards, and Falun Gong sources have also reported that members have been able to depart China.34

2. Would records of a person’s 30 day detention in Liaoning province be accessible by the authorities of Shandong province?

While it was not possible to confirm that authorities in Shandong province would be able to access records of a person’s claimed arrest and 30-day detention in Liaoning province, this scenario is conceivable. China has a national digital network that connects all police departments at county level and above and most police stations and other units under the county level to a central database (or group of databases) containing information on Chinese citizens.35 The database is known to include criminal records,36 but it is not clear whether it also contains records of administrative detention.

Golden Shield and Policenet

Since the early 2000’s, China has been developing and implementing a national censorship and surveillance project known as “Golden Shield”.37 In 2006, Legal Affairs magazine reported that:

[a] new technology called Policenet is part of Golden Shield and currently operates in all but one of China’s 22 provinces. [Sichuan being the exception.] It connects officials of the Public Security Bureau – a national agency with local branches that handle security, immigration, “social order”, and law enforcement – to each other and to electronic records that store a wealth of information on every citizen in China.38

Sources are mixed regarding the nature and use of the information in the Golden Shield database (or databases). A Chinese diplomat in Ottawa recently advised the Immigration and Refugee Board of Canada (IRBC) that the aim of the project was to improve policing and Golden Shield had eight databases, as follows:

(1). Population information, mainly the information on the citizen ID; 
(2). Criminal record information; 
(3). Criminal fugitive information; 
(4). Information on stolen and robbed cars; 
(5). Information on passports and exit and entry;

35 Immigration and Refugee Board of Canada 2009, “CHN103133.E – Whether the Public Security Bureau (PSB) has set up a national computer network for information sharing; nature and extent of communication between PSB officers across the country; whether a link to a police computer network is available at international airports in China”, 2 July – Attachment 25.
36 Immigration and Refugee Board of Canada 2009, “CHN103133.E – Whether the Public Security Bureau (PSB) has set up a national computer network for information sharing; nature and extent of communication between PSB officers across the country; whether a link to a police computer network is available at international airports in China”, 2 July – Attachment 25.
The diplomat told the IRBC that “[n]on-policing information and information from other departments, such as family planning information, is not stored in the project” and there were “strict regulations on how to use [Golden Shield] data”.

However, some commentators have raised concerns about Golden Shield and suggested that the system includes information that is not strictly of a policing nature. For example, China expert Ethan Gutmann testified in a 2006 US congressional hearing that a systems engineer from the Shanghai branch of Cisco, the company that sold Policenet to China, told him that Chinese police could use the database to access information on a person’s “political behaviour, family history…[and internet] surfing history for the last 60 days” as well as his or her email account. In 2008, leftist journalist and activist Naomi Klein claimed that:

> With political unrest on the rise across China, the government hopes to use the surveillance shield to identify and counteract dissent before it explodes into a mass movement like the one that grabbed the world’s attention at Tiananmen Square.

### Records of administrative detention

The majority of reporting on Policenet references Ethan Gutmann without corroboration from other sources. The lack of further information on the content of Golden Shield databases makes it difficult to assess whether the system contains records of administrative detention. Country Advice has contacted the Department of Foreign Affairs to request further information on this matter. The reply is due on 3 August 2010. In the meantime, reading disparate reports together indicates that it is conceivable that such records would be included in one or more Golden Shield databases.

In 2007 DFAT advised that individuals who had spent time in administrative detention were “likely…[to] have a record of their detention placed on their personal file”, the dang’an. The dang’an or “personal dossier” is

> [a] collection of papers containing personal comments by teachers, records of marks, official commendations or records of disciplinary offences. [Beginning from primary school,] [i]t is passed through high school and on to university authorities. The dossier takes on real significance after university, when it can be used by potential employers in place of a personal resume or references to determine employment opportunities and promotion prospects.

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39 Immigration and Refugee Board of Canada 2009, “CHN103133.E – Whether the Public Security Bureau (PSB) has set up a national computer network for information sharing; nature and extent of communication between PSB officers across the country; whether a link to a police computer network is available at international airports in China”, 2 July – Attachment 25.

40 Immigration and Refugee Board of Canada 2009, “CHN103133.E – Whether the Public Security Bureau (PSB) has set up a national computer network for information sharing; nature and extent of communication between PSB officers across the country; whether a link to a police computer network is available at international airports in China”, 2 July – Attachment 25.


A 2001 report from the International Centre for Human Rights and Democratic Development stated that the Chinese government planned to digitise dang’an, and every citizen’s personal dossier would be contained in a second-generation citizen ID card with an embedded microchip. No further information was found to verify that this happened – though China did begin to begin to replace paper-based ID cards with digital ones in 2004, and the new cards can reportedly be “read electronically and checked with databases kept by China’s security authorities”. If dang’an were digitised and included in citizens’ ID card information, it is probable that the contents of dang’an – including any records of administrative detention – would be in Golden Shield’s first database, “population information, mainly the information on the citizen ID”.

Attachments


30. DIAC Country Information Service 2003, Country Information Report 82/03 Personal Files, (sourced from DFAT advice 10 June 2003), 17 June. http://immibelweh03/NXT/gateway.dll/cisnet_bacis/cisnet_bacis_chn_frame/bacis_ex79779?f=templates$fn=document-frameset.htm$q=%5Borderedprox,0%3Apersonal%20files%5D%20$x=server$3.0#LPHit_1
