



Australian Government
Refugee Review Tribunal

Country Advice

China

China – CHN37292 – People’s Courts –
Record of convictions – Exit procedures –
Criminal offences
17 September 2010

1. Does the “Court of People’s Prosecution” record convictions in relation to matters such as embezzlement?

Specific information was not located on a “Court of People’s Prosecution” or a “People’s Court of Prosecution” in China. China is reported to have “a four-level court system”, with the highest court being the Supreme People’s Court in Beijing. There are also higher people’s courts which are located in the provinces, autonomous regions and special municipalities, intermediate people’s courts which are at the prefecture level and in parts of the provinces, autonomous regions and special municipalities, and basic people’s courts which are located in counties, towns and municipal districts. There are also special courts which handle matters affecting railroad transportation, water transportation, the military and forestry.¹ People’s Courts are reported to “represent the main trial organ of the state” in China.² The court system in China “is paralleled by a hierarchy of prosecuting organs called people’s procuratorates”. The Supreme People’s Procuratorate is the highest procuratorate.³

In relation to the recording of convictions by courts in China, it is reported that people’s courts normally keep some record of when a person is tried by the court and court records are available in most cases. The section on court records in the US Department of State Bureau of Consular Affairs reciprocity schedule for China indicates that:

Available in most cases. Normally, when someone is tried by a people’s court or by an organ of the executive branch of government, some record remains of the case even for a political crime. In some instances, the entire formal court verdict (Pan Jue Shu) is available upon request by the former defendant. In other cases, the court can provide only a synopsis of the charges and the verdict. In all instances, it is necessary to have the applicant request court records... Most court records will also indicate the original sentence, the actual sentence served and any reduction or commutation of the original sentence. Court records are generally not available for the period prior to 1949.

The reciprocity schedule also indicates that police records are generally available and reliable. A person could reportedly apply at a local Public Security Bureau (PSB) or some types of employers such as state owned enterprises for a certificate of no criminal record, then apply to a notary office for a certificate based on the PSB document. “Persons

¹ Library of Congress Federal Research Division 2006, *Country Profile: China*, August, p. 28 – Attachment 1

² ‘Legal System of China – The Trial System’ (undated), LawInfoChina website

http://www.lawinfochina.com/Legal/Display_1.asp - Accessed 15 September 2010 – Attachment 2

³ Library of Congress Federal Research Division 2006, *Country Profile: China*, August, p. 28 – Attachment 1

without a criminal record will be able to obtain a certificate to that effect. Certificates for individuals with one or more criminal convictions will list all convictions for which records still exist. The certificates purport to reflect all criminal convictions during residence in China.”⁴

DFAT advice from March 2007 indicates that only a PSB could issue a certificate confirming that a person had not committed a criminal offence. A Chinese legal academic had informed DFAT that differing rules were used by PSBs in different areas regarding the issuing of certificates of non-criminal record. The academic also implied that in certain circumstances, it could even be possible for a person convicted of a criminal offence to obtain a certificate of no-criminal record.⁵

In relation to cases of embezzlement, in the first six months of 2009, the Supreme People’s Procuratorate in China reported that 9,158 corrupt officials were found guilty of offences, including embezzlement. There are at least 68 capital offences in China, including non-violent financial crimes such as embezzlement.⁶ It is reported that China’s “Criminal Law stipulates that embezzlement of more than 100,000 yuan is the starting point for capital punishment.”⁷ In April 2009, the death sentence of Yang Yanming, who was convicted of embezzlement, was upheld by a Beijing court and he was executed on 8 December 2009.⁸

2. Please provide up-to-date information on departure checks in China and whether people who have been charged with, or convicted of, criminal offences would be able to leave the country.

In relation to departure checks in China, recent advice from DFAT indicates that the Post understands China’s national-level border entry and exit system electronic database “to be efficient. But Post is unclear about how this entry-exit database interfaces with individual provinces’ crime databases and counties’ maintenance of *dang’ans*” or personal dossiers. The Post “is aware that law enforcement agencies at the local and provincial levels have put in place electronic databases to enable them to track suspects and their crimes”, but also comments that “China’s various database systems can be disjointed,” and the “Post considers that the integration of electronic databases holding personal information to be at an embryonic stage.”⁹

China is reported to have developed a national computer network for policing named the Golden Shield Project. A counsellor at the Chinese Embassy in Ottawa informed the Immigration and Refugee Board of Canada in June 2009 that the Golden Shield Project had eight databases, including criminal record information, criminal fugitive information and information on passports and entry and exit. Police departments at provincial, city and

⁴ US Department of State Bureau of Consular Affairs (undated), ‘China Reciprocity Schedule’, Travel.State.Gov website http://travel.state.gov/visa/fees/fees_4881.html?cid=3537# - Accessed 15 September 2010 – Attachment 3

⁵ Department of Foreign Affairs and Trade 2007, *DFAT Report No. 612 – China: RRT Information Request: CHN31404*, 16 March – Attachment 4

⁶ US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – China (includes Tibet, Hong Kong, and Macau)*, March, Sections 1(e) & 4 – Attachment 5

⁷ Jieren C. 2010, ‘Raising the bar to punish corruption’, *China Daily*, 19 April – Attachment 6

⁸ US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – China (includes Tibet, Hong Kong, and Macau)*, March, Section 1(e) – Attachment 5

⁹ Department of Foreign Affairs and Trade 2010, *DFAT Report No. 1183 – China: RRT Information Request: CHN36990*, 10 August – Attachment 7

county levels and most police stations and other grass-roots units under the county level could connect to the system. Some small police stations and grass-roots units in remote areas were not connected. The Chinese police were in charge of entry and exit administration and the police units in charge of examination at all ports of entry including international airports could connect to the system. A researcher who was previously a professor of Chinese and East Asian Politics at Western Michigan University also advised the Immigration and Refugee Board of Canada in May 2009 that China's Public Security Departments had nationwide computer information sharing networks. There had been complaints, however, about provincial police departments being unwilling to share information with each other. The researcher also noted that China's policing system was very decentralised.¹⁰

DFAT in its recent advice of 10 August 2010 indicates that "[a]lthough Post is aware of foreign reports of the Golden Shield database, Post is unable [sic] confirm the existence or implementation of the Golden Shield database or equivalent(s)."¹¹

Earlier information on departure checks in China include advice from the Chinese embassy in Canada to the Immigration and Refugee Board of Canada in July 2008 that inspection officers at Chinese airports verify a person's identity through a computer-based information system.¹² In August 2006, DFAT advised that the Chinese authorities checked all outgoing passengers against an alert list, but DFAT did not know how comprehensive the list was.¹³ In November 2006, DFAT confirmed "that Chinese citizens subject to arrest warrants would be on the alert lists" and that it was likely that people being investigated but for whom a formal arrest warrant was yet to be issued would also be on the lists. The alert lists were connected to Chinese identity cards as well as to passports and operated at railway stations as well as airports and border crossings.¹⁴

Article 14 of the *Rules for the Implementation of the Law of the People's Republic of China on the Control of the Exit and Entry of Citizens* indicates that Chinese citizens when entering or leaving the country should present their passports or other entry-exit certificates to the border inspection office, fill in the entry-exit registration card and accept inspection. Article 15 sets out categories of persons who the border inspection office has the right to forbid entry to or exit from the country.¹⁵ The *Law of the People's Republic of China on the Control of the Exit and Entry of Citizens* lists in Article 8 the categories of persons who shall not be granted approval to leave the country. Article 9 sets out the

¹⁰ Immigration and Refugee Board of Canada 2009, *CHN103133.E – China: Whether the Public Security Bureau (PSB) has set up a national computer network for information sharing; nature and extent of communication between PSB offices across the country; whether a link to a police computer network is available at international airports in China (2006 - May 2009)*, 2 July http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=452429&l=e – Accessed 14 September 2010 – Attachment 8

¹¹ Department of Foreign Affairs and Trade 2010, *DFAT Report No. 1183 – China: RRT Information Request: CHN36990*, 10 August – Attachment 7

¹² Immigration and Refugee Board of Canada 2008, *CHN102869.E - China: Exit controls and security measures at airports in China for mainland citizens travelling overseas and to Hong Kong*, 8 July http://www2.irb-cisr.gc.ca/en/research/rir/index_e.htm?action=record.viewrec&gotorec=451972 - - Accessed 7 April 2009 – Attachment 9

¹³ 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 10

¹⁴ DIMIA Country Information Service 2006, *Country Information Report No.06/65 – China: Passport and exit arrangements*, (sourced from DFAT advice of 8 November 2006), 10 November – Attachment 11

¹⁵ *Rules for the Implementation of the Law of the People's Republic of China on the Control of the Exit and Entry of Citizens* (Approved 3 December 1986 & Promulgated 26 December 1986), Provided to the Refugee Review Tribunal by the Department of Foreign Affairs and Trade on 16 September 2008 – Attachment 12

categories of persons the frontier inspection offices shall have the power to stop from leaving the country.¹⁶

In relation to whether people who have been charged with, or convicted of, criminal offences would be able to leave the country, Article 13 of the *Passport Law of the People's Republic of China*, which came into effect on 1 January 2007, indicates that a person who is defending a criminal case, is a criminal suspect, or is serving a sentence for a crime shall be refused a passport. The provision does not specifically refer to whether a person with a previous criminal conviction would be refused a passport although a passport can be refused to a person who it is believed will undermine national security or cause major losses to the State's interests. Under Article 13, a person who "is a defendant in a criminal case or a criminal suspect" is among those persons to whom the passport issuing authority in China "shall refuse to issue a passport". A person who "is punished for a crime and is serving a sentence" shall also be refused a passport, as shall "a person who the relevant competent department of the State Council believes will undermine national security or cause major losses to the interests of the State." Under Article 15 of the law, "[p]eople's courts, people's procuratorate, public security organs, national security organs and administrative supervisory authorities may, where necessary for handling a case, seize the passports of the parties of a case according to law."¹⁷

Article 8 of the *Law of the People's Republic of China on the Control of the Exit and Entry of Citizens* also indicates that defendants in criminal cases or criminal suspects, convicted persons serving sentences, persons undergoing rehabilitation through labour, and 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" are in the categories of persons who shall not be granted approval to leave the country.¹⁸

DFAT advice from December 2008 indicates that the Post was "aware of reports of Chinese citizens with legally-obtained passports being prevented from leaving China because the local security bureau believes them to be involved in a sensitive case or believes they will undermine national security."¹⁹ Earlier DFAT advice from November 2007 refers to "cases where dissidents who have been subject to criminal punishment

¹⁶ *Law of the People's Republic of China on the Control of the Exit and Entry of Citizens* (Adopted at the 13th Meeting of the Standing Committee of the Sixth National People's Congress, promulgated by Order No. 32 of the President of the People's Republic of China on November 22, 1985, and effective as of February 1, 1986), UNHCR Refworld website <http://www.unhcr.org/refworld/docid/3ae6b57718.html> - Accessed 16 November 2009 – Attachment 13

¹⁷ *Passport Law of the People's Republic of China* (Adopted 29 April 2006 & Promulgated 1 January 2007), Provided to the Refugee Review Tribunal by the Department of Foreign Affairs and Trade on 16 December 2008 – Attachment 14

¹⁸ *Law of the People's Republic of China on the Control of the Exit and Entry of Citizens* (Adopted at the 13th Meeting of the Standing Committee of the Sixth National People's Congress, promulgated by Order No. 32 of the President of the People's Republic of China on November 22, 1985, and effective as of February 1, 1986), UNHCR Refworld website <http://www.unhcr.org/refworld/docid/3ae6b57718.html> - Accessed 16 November 2009 – Attachment 13

¹⁹ Department of Foreign Affairs and Trade 2008, *DFAT Report No. 943 – China: RRT Information Request: CHN34077*, 16 December – Attachment 15

(including imprisonment) have subsequently been able to obtain passports and leave the country.²⁰

Attachments

1. Library of Congress Federal Research Division 2006, *Country Profile: China*, August.
2. 'Legal System of China – The Trial System' (undated), LawInfoChina website http://www.lawinfochina.com/Legal/Display_1.asp - Accessed 15 September 2010.
3. US Department of State Bureau of Consular Affairs (undated), 'China Reciprocity Schedule', Travel.State.Gov website http://travel.state.gov/visa/fees/fees_4881.html?cid=3537# - Accessed 15 September 2010.
4. Department of Foreign Affairs and Trade 2007, *DFAT Report No. 612 – China: RRT Information Request: CHN31404*, 16 March.
5. US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – China (includes Tibet, Hong Kong, and Macau)*, March.
6. Jieren C. 2010, 'Raising the bar to punish corruption', *China Daily*, 19 April. (FACTIVA)
7. Department of Foreign Affairs and Trade 2010, *DFAT Report No. 1183 – China: RRT Information Request: CHN36990*, 10 August.
8. Immigration and Refugee Board of Canada 2009, *CHN103133.E – China: Whether the Public Security Bureau (PSB) has set up a national computer network for information sharing; nature and extent of communication between PSB offices across the country; whether a link to a police computer network is available at international airports in China (2006 - May 2009)*, 2 July http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=452429&l=e – Accessed 14 September 2010.
9. Immigration and Refugee Board of Canada 2008, *CHN102869.E - China: Exit controls and security measures at airports in China for mainland citizens travelling overseas and to Hong Kong*, 8 July http://www2.irb-cisr.gc.ca/en/research/rir/index_e.htm?action=record.viewrec&gotorec=451972 - Accessed 7 April 2009.
10. 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)
11. DIMIA Country Information Service 2006, *Country Information Report No.06/65 – China: Passport and exit arrangements*, (sourced from DFAT advice of 8 November 2006), 10 November. (CISNET China CX164795)

²⁰ DIAC Country Information Service 2007, *Country Information Report No.07/83 – CISQuest CHN9120 – 'Shouters' Christian group and Fujian Province*, (sourced from DFAT advice of 28 November 2007), 28 November – Attachment 16

12. *Rules for the Implementation of the Law of the People's Republic of China on the Control of the Exit and Entry of Citizens* (Approved 3 December 1986 & Promulgated 26 December 1986), Provided to the Refugee Review Tribunal by the Department of Foreign Affairs and Trade on 16 September 2008.
13. *Law of the People's Republic of China on the Control of the Exit and Entry of Citizens* (Adopted at the 13th Meeting of the Standing Committee of the Sixth National People's Congress, promulgated by Order No. 32 of the President of the People's Republic of China on November 22, 1985, and effective as of February 1, 1986), UNHCR Refworld website <http://www.unhcr.org/refworld/docid/3ae6b57718.html> - Accessed 16 November 2009.
14. *Passport Law of the People's Republic of China* (Adopted 29 April 2006 & Promulgated 1 January 2007), Provided to the Refugee Review Tribunal by the Department of Foreign Affairs and Trade on 16 December 2008.
15. Department of Foreign Affairs and Trade 2008, *DFAT Report No. 943 – China: RRT Information Request: CHN34077*, 16 December.
16. DIAC Country Information Service 2007, *Country Information Report No.07/83 – CISQuest CHN9120 – 'Shouters' Christian group and Fujian Province*, (sourced from DFAT advice of 28 November 2007), 28 November. (CISNET China CX189037)