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6 July 2010

CHN103401.E

China: Implementation of the Criminal Procedure Law of the People's Republic of China in regard to arrest warrants and summonses, particularly in Guangdong, Fujian and Liaoning

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Statutes on arrest warrants and summonses specific to Guangdong, Fujian and Liaoning could not be found among the sources consulted by the Research Directorate.

Articles 59 through 76 of the Criminal Procedure Law of the People's Republic of China outline the national procedures for issuing arrest warrants (China 1997).

Article 81 of the Criminal Procedure Law states the following in regard to court documents, including summonses:

Article 81 Summons, notices and other court documents shall be delivered to the addressee himself; if the addressee is absent, the documents may be received on his behalf by an adult member of his family or a responsible person of his unit.

If the addressee or a recipient on his behalf refuses to accept the documents or refuses to sign and affix his seal to the receipt, the person serving the documents may ask the addressee's neighbours or other witnesses to the scene, explain the situation to them, leave the documents at the addressee's residence, record on the service certificate the particulars of the refusal and the date of service and sign his name to it; the service shall thus be deemed to have been completed. (China 1997, Art. 81)

In 7 May 2010 correspondence with the Research Directorate, an official from the Canadian Embassy in Beijing provided the following information on arrest warrants and summonses:

In terms of a physical description, a summons shows the issuing local Public Security Bureau office, date of issue, warrant number, official stamp, [and] name of the person being summoned. Normally the Public Security Bureau delivers the summons and the person needs to be at the designated place within 12 hours after he receives it. The Public Security Bureau will release the person in 24 hours after he reports if he is not a suspect; otherwise, he will be detained. No other document will be given to the person but a Notice of Detention will be given to the detainee's family.

The Public Security Bureau rarely uses arrest warrants. The Procuratorate will issue an arrest warrant after the Public Security Bureau has investigated the case and has evidence that the suspect committed the crime.

The security feature on an arrest warrant or summons in China is the official red stamp of the issuing office. All official documents in China bear a red stamp of the issuing office.

.... It is possible to obtain a copy [of an arrest warrant or summons] afterwards by contacting the local Public Security Bureau and making this request. (Canada 7 May 2010)

In 21 June 2010 follow-up correspondence, the same Official indicated that due to "wide administrative discretion throughout the country", there are discrepancies between legislation and its implementation in China (Canada 21 June 2010). The Official noted that "in some instances the individual may not receive a copy of the summons without specifically asking for it, or if the individual accompanies the PSB officers upon receiving a summons, he may not receive a copy afterwards" (ibid.).

The Australian Department of Foreign Affairs and Trade (DFAT), in March 2007 correspondence with the Australian Refugee Review Tribunal (RRT), stated that under "normal circumstances, both the arrest warrant and release papers [relating to detainment] should be given to the person who was the subject of the warrant" (16 Mar. 2007). However, DFAT also noted that in general,

... China is still far from complying with rule of law standards. Chinese local authorities sometimes detain people or otherwise subject them to punitive measures in a way which is not in accordance with Chinese laws. Similarly, some areas of China follow practices which do not conform with national laws and regulations. (Australia 16 Mar. 2007)

Moreover, the 2007 edition of *Criminal Procedure: A Worldwide Study* indicates that "Official Chinese media have, in recent years, ... identified police compliance with the law as a serious issue that needs to be addressed" (2007, 98). Author Kam C. Wong, who has published extensively on policing in China (Berkeley Electronic Press n.d.), indicates that interpreting Chinese police as a "monolithic entity," or judging police activities as uniform, is a misconception, arguing that "national policy and priorities are not equally shared locally" (Wong 2009, 7).

Wong adds that:

In terms of actual practice, however, arrest procedures differ from locale to locale, having to conform to local customs reflecting indigenous circumstances.

...

There are a number of reasons accounting for such local disparities: First, public security leaders, particularly those at the rural, village and township level, are ignorant of the legal responsibility and authority of the police. They have overemphasized the necessity to coordinate local police work with central Party policy directives at the expense of enforcing national laws uniformly and implementing administrative regulations dutifully, that is, allowing Party policy to trump the rule of law. Second, public security officials in the local areas routinely fail to follow established laws and regulations. They are consistently unable to resist illegal orders from local Party leaders who control their appointment, employment, and promotion. They are also afraid of spoiling the "good" or "established" relationship with the local village and township leaders, thereby making their work difficult, if not impossible. Third, there is a lack of checks and balances guarding against abuses of police authority. Fourth, local public security has inadequate funding to carry out national law and The MPS directives. (ibid.,

18-19)

Corroborating information on the reasons for the lack of uniformity in the application of arrest procedures could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

References

Australia. 16 March 2007. Refugee Review Tribunal (RRT). "CHN31404." <<http://www.mrt-rrt.gov.au/Country-Advice/China/China/default.aspx?retain=true&pg=19>> [Accessed 7 May 2010]

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Wong, Kam C. 2009. *Policing in China: History and Reform*. New York: Peter Lang Publishing.

Additional Sources Consulted

Oral sources: A professor of law at the University of British Columbia (UBC) and senior associate at the International Centre for Criminal Law Reform and Criminal Justice Policy (ICCLR), the program director of the Institute of Asian Research (IAR), and the China senior programme coordinator of Transparency International (TI) did not respond within the time constraints of this Response. The Embassy of the People's Republic of China in Ottawa did not have information for this Response.

Internet sites, including: Asian Association of Police Studies (AAPS), China Law & Policy, ChinaToday.com, Dui Hua Foundation, European Country of Origin Information Network (ecoi.net), Human Rights in China (HRIC), International Centre for Criminal Law Reform and Criminal Justice Policy (ICCLR), Open Society Institute (OSI), Rights and Democracy Canada, Transparency International (TI), United Nations (UN) Refworld.

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