

Immigration and Refugee Board of Canada

[Home](#) > [Research Program](#) > [Responses to Information Requests](#)

Responses to Information Requests

Responses to Information Requests (RIR) respond to focused Requests for Information that are submitted to the Research Directorate in the course of the refugee protection determination process. The database contains a seven-year archive of English and French RIRs. Earlier RIRs may be found on the UNHCR's [Refworld](#) website.

30 November 2012

CHN104188.E

CHN104188.E

China: Circumstances and authorities responsible for issuing summonses/subpoenas; procedural law; whether summonses and subpoenas are given to individuals or households; format and appearance; whether legality can be challenged; penalties for failure to comply with a summons or subpoena

Research Directorate, Immigration and Refugee Board of Canada, Ottawa

1. Circumstances and Authorities Responsible for Issuing Summonses or Subpoenas

In correspondence sent to the Research Directorate, an associate professor of law at the Procedural Law Research Institute of the China University of Political Science and Law (CUPL) explained that there was "significant difference" between the legal system in China and the one in Canada, making it difficult to compare summonses and subpoenas in the two countries (Associate Professor, CUPL 2 Oct. 2012). However, the Associate Professor at the CUPL added that,

if summonses are defined as "the official requirement to defendant[s] to [appear] before the authorities or attend the court" [and] subpoenas as "the official requirement to witnesses to testify before the authorities or in the trial," there are similar legal arrangements in China. (ibid.)

1.1 Summonses

In correspondence sent to the Research Directorate, a visiting scholar on the Faculty of Law of the Chinese University of Hong Kong, who has extensive research experience regarding Chinese criminal justice and administrative detention, provided detailed information regarding the summonses in use in China (Visiting Scholar 19 Sept. 2012). The Visiting Scholar stated that there are three types of summonses in China: public security summonses, criminal summonses, and "coercive summonses" (ibid.).

According to the Visiting Scholar,

[p]ublic security summonses (*zhi'an chuanhuan*) are issued by public security organs to persons who violate the Security Administration Punishment Law of the People's Republic of China (SAPL), or any other piece of law or regulation on the administration of public security. (ibid.)

The Visiting Scholar provided the following information regarding criminal summonses

Criminal summonses (*xingshi chuanhuan*) are served by the people's courts, people's procuracies, public security or state security organs to criminal suspects or defendants who need not be placed under pretrial detention, and have to appear before courts or undergo interrogation by the procuracy, the police or state security organs. (ibid.)

The Visiting Scholar added that

Criminal summonses cannot last more than twelve hours, and cannot be used more than once on the same person. While a suspect or a defendant is being summoned for questioning, it is possible to issue a coercive summons if it is found out that there is the need to limit his personal freedom. (ibid)

Regarding "coercive summonses," the Visiting Scholar stated that

"[c]oercive summonses" (*xingshi chuanhuan*) are served by the people's courts, people's procuracies, public security

or state security organs to those who do not comply with criminal summonses. (ibid.)

Similarly, in a memorandum to the Chinese government regarding China's Criminal Procedure Law (CPL), Amnesty International (AI) notes that there exists "a category of short term detention for interrogation known as 'summonsing' (*chuanhuan*) or 'coercive summonsing' (*juchuan*)" (AI Mar. 2012, 11). AI adds that these types of short-term detentions are allowed for 12 hours under Article 92 of the CPL (ibid). AI explains that this type of short term detention "is used against criminal suspects the police consider do not need to be formally arrested (*daibu*) or detained (*juliu*)" (ibid).

1.2 Subpoenas

Regarding subpoenas, the Visiting Scholar stated that "[s]ubpoenas (*chuanpiao*) are served by people's courts to require all parties to criminal proceedings to appear in court (19 Sept. 2012). However, several sources note that witnesses frequently do not appear in court in China (Associate Professor, Seton Hall 14 Sept. 2012; US 24 May 2012, 18; ibid. 10 Oct. 2007, 52; HRIC 2001, 37). The US Department of State *Country Reports on Human Rights Practices for 2011* states that "fewer than 10 percent of subpoenaed witnesses appeared in court" (US 24 May 2012, 18).

According to a 2001 report examining the implementation of the CPL, produced by Human Rights in China (HRIC), a US-based NGO that monitors human rights in China (n.d.),

[m]ost witnesses are exempted from presence at trial by a decision of the court, even when lawyers have applied for their presence. In cases where witnesses are called by the court, many witnesses ignore the court order and choose to stay away. (HRIC Mar. 2001, 37)

Country Reports 2011 states that "[d]efense attorneys [have] no authority to compel witnesses to testify or to mandate discovery," adding that,

[i]n most criminal trials, prosecutors read witness statements, which neither the defendants nor their lawyers [have] an opportunity to rebut. Although the criminal procedure law states that pretrial witness statements cannot serve as the sole basis for conviction, prosecutors [rely] heavily on such statements to support their cases. (US 24 May 2012, 18)

In an analysis of changes to the CPL, representatives of the Danish Institute of Human Rights (DIHR), a research institution mandated by the Danish parliament to study and promote human rights both domestically and internationally (n.d.), similarly state that "the practice has been that the prosecutor read out written witness statements during the trial without the defence lawyer being able to cross-examine the witnesses" (DIHR 29 Mar. 2012). The HRIC report likewise states that, "[i]n most trials, the courts proceed only with written testimony provided by prosecutors," and adds that defense lawyers have "no choice but to focus on contradicting the written testimony" (Mar. 2001, 37). According to the HRIC report, "Chinese courts have subpoena powers," but "no legal penalty has been set for not complying with a court's subpoena" (Mar. 2001, 37).

1.2.1 Revision of the Criminal Procedural Law and Impact on Witness Subpoenas

Sources report that amendments to the CPL were passed in March 2012 (US 9 Apr. 2012; DIHR 29 Mar. 2012; Dui Hua Foundation 19 Mar. 2012). The new CPL will come into effect on 1 January 2013 (Associate Professor, Seton Hall 14 Sept. 2012; Dui Hua Foundation 19 Mar. 2012). In correspondence sent to the Research Directorate, an associate professor of Law at Seton Hall University in New Jersey who conducts research on China's legal system with an emphasis on criminal justice, added that "the revised CPL indicates a new emphasis on in-court testimony, which would make summonses and subpoenas more important" (14 Sept. 2012).

Sources concur that the amendments to the law will allow for witnesses to be compelled to appear in court (US 24 May 2012, 17; DIHR 29 Mar. 2012; Visiting Scholar 14 Sept. 2012). According to the Visiting Scholar,

[f]rom January 1, 2013 failure to comply with a witness subpoena will result in the issuance of a compelled appearance notice. A further refusal to appear will induce an admonition. In 'grave circumstances' witnesses will be committed to detention of no more than ten days upon approval by the president of the court. (19 Sept. 2012)

However, the Associate Professor at Seton Hall noted that "concrete guidance from the Supreme People's Court and other authorities regarding [the law's] concrete application" is still needed before the law goes into effect (14 Sept. 2012.).

2. Law and Procedures for Issuing Summonses and Subpoenas

In correspondence sent to the Research Directorate on 19 September 2012, the Visiting Scholar provided all of the information in Section 2. Information corroborating that given by the Visiting Scholar for this section could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

The Visiting Scholar noted that procedures for issuing summonses [described in this section] "are not always followed in practice." She added that

[l]egal scholars as well as the official and unofficial media describe a variety of procedural violations and abuses, ranging from the failure to notify [of] summonses, to their repeated use, to their enforcement by auxiliary or private policemen.

2.1 Public Security Summonses 2.1.1 The Law

According to the Visiting Scholar, "[t]he issuance of public security summonses is governed by [the Security Administration Punishment Law], and by "the Ministry of Public Security Regulations on the Handling of Administrative Cases." English versions of these documents could not be found among the sources consulted by the Research Directorate.

2.1.2 Procedures for Issuing Public Security Summonses

The Visiting Scholar stated that "[p]ublic security summonses can be issued in oral or written form." The Visiting Scholar also provided the following details on the procedures for the issuance of public security summonses:

An oral summons can be issued *only before* a case has been filed for investigation. In case of urgency people's police officers can stop *suspects of administrative offences* who have been found on the scene, show their police identification, and bring them to the nearest police station for questioning. Formal approval procedures are fulfilled at the end of the questioning session.

Regarding written summonses, the Visiting Scholar stated that they can be issued only after a case has been filed for investigation and when suspects or defendants are not subject to certain conditions, such as preparing to commit or committing a crime, being found in possession of criminal evidence, or of tampering with evidence, refusing to identify oneself, or being suspected of committing crimes in different places. The Visiting Scholar further stated that

[t]he issuance of a summons has to be approved by the director of a public security station (*paichusuo*) or by the officer in charge of the 'case handling department' at a public security organ at or above the county level.

A suspect of administrative offences can be summoned to a police station, to his home or workplace. He has to be informed of the reason, legal basis, time and place of the summons.

The Visiting Scholar also stated that relatives of a person who receives a summons must be notified "via telephone, short text message, fax or in other ways, unless the suspect does not provide his relatives' contact details, or his relatives cannot be contacted."

The Visiting Scholar added that "a written summons has to be signed by the suspect, who however has the right not to affix his signature," but did not provide information on the consequences, if any, of not signing. The Visiting Scholar further stated that

[r]egardless of the form they take, public security summonses cannot last more than twelve hours, or twenty-four hours if the person is suspected of administrative violations punishable with detentive penalties.

2.2 Other Types of Summonses and Subpoenas 2.2.1 The Law

The Visiting Scholar stated that "[t]he issuance of criminal summonses, 'coercive summonses' and subpoenas is governed by the Criminal Procedure Law of the People's Republic of China and by subordinate legislation."

2.2.2 Procedures for Issuing Criminal Summonses

The Visiting Scholar stated that "[c]riminal summonses must be issued *before* a case is filed for investigation, to those who do not meet the conditions for pre-trial detention or arrest." The Visiting Scholar added that

[t]he issuance of criminal summonse[s] must be approved by the officer in charge of a public security bureau at or above the county level. Criminal suspects or defendants can be summoned to a public security bureau in their city or county of residence, as well as to a public security bureau in the place where they live *without* a household registration certificate.

The Visiting Scholar also added that "police officers have to show their identification and the order to the suspect or defendant, and order him to affix his signature and fingerprint thereon." According to the Visiting Scholar, "[s]uspects and defendants can choose not to sign the police order." The Visiting Scholar did not provide details on the consequences, if any, of refusing to sign.

2.2.3 Procedures for Issuing Subpoenas

Regarding subpoenas, the Visiting Scholar stated that the current Criminal Procedure Law and related legislation did not address the issuance of subpoenas, but that the revised CPL scheduled to come into force on 1 January 2013

contains relevant provisions.

3. Format and Appearances of Summonses and Subpoenas

According to the Visiting Scholar, "the format and appearance of summonses should not differ according to the territorial jurisdiction of courts, procuracies and public security organs" (19 Sept. 2012). The Associate Professor of Law at the CUPL likewise stated that there are no jurisdictional differences in the format and appearances of summonses and subpoenas, with the exception of Hong Kong and Macao (2 Oct. 2012).

3.1 Public Security Summonses

According to the Visiting Scholar, "the format and appearance of public security summonses are governed by the 'Notice of the Ministry of Public Security issuing the model administrative legal documents (for trial implementation)' issued on February 12, 2006" (19 Sept. 2012). The Visiting Scholar added that: "[p]ublic security summonses should be printed in two copies. The first copy is to be included to the case file, while the second copy is served to the suspect or defendant" (19 Sept. 2012). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

3.2 Criminal Summonses

According to the Visiting Scholar, "[t]he format and appearance of criminal summonses are governed by the 'Notice of the Ministry of Public Security determining again the format of public security organs' pre-trial documents', issued on February 16, 1989" (19 Sept. 2012). The Visiting Scholar also provided the following details on the standard format of criminal summonses:

Criminal summonses must be printed in three copies on 260 mm high and 185 mm wide sheets of white paper, with a top margin of 25 mm, a bottom margin of 20 mm, a left margin of 25 mm and a right margin of 15 mm with a 0.5 mm tolerance.

A stamp is to be affixed to both sides of the central page. The first copy of the summons is to be archived by the issuing organs, the second copy is to be served to the suspect or defendant, the third copy is to be included in the case file. (19 Sept. 2012)

Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

3.3 Coercive Summons and Subpoenas

Details on the formats and appearances of coercive summons and subpoenas could not be found among the sources consulted by the Research Directorate.

4. Whether Subpoenas and Summonses May Be Issued to Households

Sources stated that subpoenas and summonses may only be issued to individuals (Associate Professor, CUPL 2 Oct. 2012; Visiting Scholar 19 Sept. 2012). According to the Visiting Scholar, summonses or subpoenas may be issued to households only if every member of the household receives them (ibid.).

5. Challenging the Legality of Summons and Subpoenas

Regarding whether the legality of subpoenas and summonses can be challenged, the Visiting Scholar stated that, prior to 1 January 2012, public security summonses and coercive summonses were considered to be "administrative investigative measures" and challenges to their legality could not be made "because investigative measures are outside the scope of administrative reconsideration and administrative litigation" (ibid.). However, according to the Visiting Scholar, following the adoption of the Law on Administrative Coercion on 1 January 2012, public security summonses and coercive summonses are included in the definition of administrative coercive measures that can "be challenged through administrative reconsideration or through administrative litigation" under Article 8 of the Law (ibid.).

The Visiting Scholar added that "[c]riminal summonses and [subpoenas] are coercive measures, and as such their legality cannot be challenged" (ibid.).

Information corroborating the information in this section could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

6. Penalties for Failure to Comply with a Summons or Subpoena

According to the Visiting Scholar, "[f]ailure to comply with a public security summons results in the suspect being restrained and coerced into compliance," while [f]ailure to comply with a criminal summons automatically induces the use of coercive summons (ibid.). Corroborating information 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

Amnesty International (AI). March 2012. *People's Republic of China: Bringing China's Criminal Procedure Law in Line With International Standards*. (ASA 17/007/2012) <<https://doc.es.amnesty.org/cgi-bin/ai/BRSCGI/asa170072012en?CMD=VEROBJ&MLKOB=30468164848>> [Accessed 13 Sept. 2012]

Associate Professor of Law, Procedural Law Research Institute, China University of Political Science and Law (CUPL). 2 October 2012. Correspondence sent to the Research Directorate.

Associate Professor of Law, Seton Hall University, New Jersey. 14 September 2012. Correspondence sent to the Research Directorate.

The Danish Institute for Human Rights (DIHR). 29 March 2012. Bjarne Andreasen and Paul Dalton. "Analysis: China Improves Legal Protection for the Majority and Introduces More Control of the Few." <<http://www.humanrights.dk/news/news?doc=21415>> [Accessed 17 Sept. 2012]

_____. N.d. "About DIHR." <<http://www.humanrights.dk/about+dihr>> [Accessed 17 Sept. 2012]

Dui Hua Foundation. 19 March 2012. "China's New Criminal Procedure Law: 'Disappearance Clauses' Revised." *Human Rights Journal*. <<http://www.duihuajournal.org/2012/03/chinas-new-criminal-procedure-law.html>> [Accessed 17 Sept. 2012]

Human Rights in China (HRIC). March 2001. *Empty Promises: Human Rights Protections and China's Criminal Procedure Law in Practice*. <http://www.hrichina.org/sites/default/files/oldsite/pdfs/Empty_Promises_Text.pdf> [Accessed 14 Sept. 2012]

_____. N.d. "Our Mission and Approach." <<http://www.hrichina.org/about/mission>> [Accessed 14 Sept. 2012]

United States (US). 24 May 2012. "China." *Country Reports on Human Rights Practices for 2011*. <<http://www.state.gov/documents/organization/186478.pdf>> [Accessed 3 Sept. 2012]

_____. 9 April 2012. Library of Congress. "China: Amendment of Criminal Procedure Law." <http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l205403080_text> [Accessed 17 Sept. 2012]

_____. 10 October 2007. Congressional-Executive Commission on China. *Annual Report*. <<http://www.cecc.gov/pages/annualRpt/annualRpt07/CECCannRpt2007.pdf>> [Accessed 13 Sept. 2012]

Visiting Scholar, the Chinese University of Hong Kong. 19 September 2012. Correspondence sent to the Research Directorate.

Additional Sources Consulted

Publication: *Chinese Policing: History and Reform*

Oral sources: A research fellow at the Griffith Asia Institute of Griffiths University and a senior lecturer of the Faculty of Law at the University of Technology, Sydney, could not provide information to the Research Directorate. Attempts to contact the following were unsuccessful: a research fellow at the College of Asia and the Pacific of Australia's National University (ANU), professors of law at the University of Melbourne and the University of Hong Kong, and a research associate at the University of Hong Kong.

Internet sites, including: *China Daily*; China Internet Information; Center China Laws; China Law and Practice; China Today; Chinese Academy of Social Sciences; *The Christian Science Monitor*; The Danish Institute for Human Rights; eoi.net; *Global Time*; Lehman, Lee & Xu; *The People's Daily*; People's Republic of China – Legislative Affairs Office of the State Council, Ministry of Justice, Supreme Court; United Kingdom Home Office; United Nations – Office of the High Commissioner for Human Rights, Refworld; Xinhua News Agency.

[Click here for tips on how to use this search engine.](#)

Date modified: 2013-07-17 [Top of Page](#)

The attached reproduction is a copy of an official work that is published by the Government of Canada. The reproduction has not been produced in affiliation with, or with the endorsement of the Government of Canada.