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Extended Response to Information Request

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China: Treatment of illegal emigrants repatriated to Fujian province; legal provisions for sanctions; actual practice

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This paper provides a summary of publicly available information concerning the sanctions and penalties imposed by the Chinese authorities in Fujian province on persons who have illegally exited China. The first section concerns the relevant legal provisions and includes a summary of some analysis of those provisions from other jurisdictions (Australia and the United States). The second section examines the actual practice of the authorities in Fujian drawing on government, academic and media sources. For the purposes of this Extended Response, only illegal exit will be examined in depth, though it should be acknowledged that separate (and harsher) provisions exist for persons involved in organizing illegal immigration (snakeheads) and for public officials involved in assisting illegal emigrants.

Legal Provisions

There are two separate statutes describing penalties for illegal exit from China, granting Chinese authorities the discretion to deal with violations under either law according to the circumstances of the case and the desired punishment. With respect to persons whose only unlawful act has been to illegally exit China, Article 14 of the *Law of the People's Republic of China on the Exit and Entry of Citizens* (1986) states:

Any person who, in violation of the provisions of this Law, leaves or enters the country illegally, forges or alters an exit or entry certificate, uses another person's certificate as his own or transfers his certificate may be given a warning or placed in detention for not more than ten days by a public security organ. If the circumstances of the case are serious enough to constitute a crime, criminal responsibility shall be investigated in accordance with the Law.

Article 322 (formerly Article 176) of the *Criminal Law of the People's Republic of China* (1997) states:

Whoever violates the laws and regulations controlling secret crossing of the national boundary (border), and when the circumstances are serious, shall be sentenced to not more than one year of fixed-term imprisonment and criminal detention or control.

Detailed information concerning the variety of punishments imposed under Chinese criminal and administrative law may be found in CHN32514.E of 28 July 1999, available in the Regional Documentation Centres, REFINFO and on the IRB Website at <<http://www.irb.gc.ca>>.

It is also relevant, in a discussion of the legal provisions applicable to returnees to refer to Chinese law with respect to fines. There is overlapping or concurrent jurisdiction in Chinese law in this area. The *Criminal Law*, permits considerable discretion and flexibility with respect to fines:

Article 52. In imposing a fine, the amount of the fine shall be determined according to the circumstances of the crime.

Article 53. A fine is to be paid in a lump sum or in installments within the period specified in the judgement.

Upon the expiration of the period, one who has not paid is to be compelled to pay. Where the person sentenced is unable to pay the fine in full, the people's court may collect whenever he is found in possession of executable property.

If a person truly has difficulties in paying because he has suffered irresistible calamity, consideration may be given according to the circumstances to granting him a reduction or exemption.

Article 8(2) of the *Administrative Punishment Law* establishes that fines may also be employed as a form of administrative punishment in circumstances that do not meet the *Criminal Law* threshold of a "serious nature" (17 Mar. 1996).

In addition to the provisions described above, there are administrative laws, including the *Administrative Punishment Law of the People's Republic of China* and numerous *neibu* (internal directives) that could be brought to bear upon the decision of selecting the relevant sanction for a person charged with illegal exit, sanctions that may include fines and/or detention (United States, INS 17 Dec. 1998; Australia, CIS June 1994; *ibid.* 7 Oct. 1992). This overlap exacerbates the difficulty of predicting the level of sanction a given person is likely to be subjected to. This issue has received some analysis in other countries that have received large numbers of migrants from Fujian, notably Australia and the United States. In 1992 Professor Alice Tay of the Faculty of Law at the University of Sydney prepared an opinion regarding the treatment of repatriated Chinese which suggested that there was a general lack of consistency in treatment and arbitrariness in selecting the appropriate punishments (*ibid.* 7 Oct. 1992). This opinion was the subject of a comment by professors Raymond Wacks and Albert H.Y. Chen of the University of Hong Kong Faculty of Law, who suggested that Chinese jurisprudence generally revealed greater consistency than the Tay opinion allowed. The Wacks and Chen opinion concurred, however, that a broad range of penalties were possible, ranging from "mere criticism and warning" to up to three years *laojiao* detention (re-education through labour) (*ibid.* 7 Jan. 1993).

In the United States, the leading case regarding the return of illegal immigrants to China is *Li v. Immigration and Naturalization Service* (92 F.3d 985 (9th Cir. 1996)). In that case it was found that the petitioner (claimant) could not prove disproportionate treatment based upon one of the five enumerated convention grounds and further, that the evidence indicated that the sanctions imposed on returnees was not as severe as the petitioner had claimed (United States 1996, *Li v. INS*).

Recent practice of other jurisdictions in repatriating Fujianese migrants

Countries receiving Chinese migrants have been repatriating those not found to have valid refugee claims in recent years. In May 1999 the BBC reported that Australia had returned 60 illegal immigrants from China (4 May 1999). In a press release concerning the same repatriation, the Australian Minister for Immigration and Multicultural Affairs, Philip Ruddock, stated that, with respect to cooperation on the issue of illegal immigration:

Australia has a long-standing relationship with China and has received excellent cooperation from the Chinese Government in its determination to combat the illegal smuggling of people (Australia 4 May 1999).

In two separate repatriations in October 1998 and February 1999, about 650 illegal immigrants were returned to China from Taiwan (Taiwan Central News Agency 14 Feb. 1999; *Muzi Lateline News* 12 Oct. 1998). The former group was reportedly turned over to the Red Cross Society of Fujian (*ibid.*). The Research Directorate was unable to obtain additional information from the Chinese Red Cross Society within time constraints.

According to a senior researcher with the Resource Information Center of the United States Immigration and Naturalization Service with extensive experience regarding Chinese asylum claims, the United States recently repatriated 293 illegal immigrants to Fujian's capital, Fuzhou, by air (United States INS 21 Sept. 1999). According to the information provided by the senior researcher, the principal issues for both the United States and China with respect to the repatriation were to improve the administrative efficiency of future repatriation and to facilitate Sino-U.S. cooperation in anti-smuggling initiatives (*ibid.*).

Research concerning the treatment of returnees to Fujian

A recent United States Immigration and Naturalization Service (INS) Response to Information Request contains information regarding the treatment of returnees provided by Amnesty International, USA:

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 (17 Dec. 1998)."

According to the *South China Morning Post* a man repatriated from Australia to Changle, Fujian in 1999 was ordered to pay a fine of 7,500 *yuan* (about CAN\$1,300) and spent 11 days in a "detention centre" (23 May 1999).

In 1999 there have been numerous media reports of Chinese security forces interdicting smuggling ships in Chinese waters and intercepting large numbers of would-be illegal immigrants destined for Australia, Japan and the United States (Xinhua 1 Sept. 1999; *China Daily* 8 June 1999; BBC 7 June 1999; Xinhua 7 June 1999; *China Daily* 28 May 1999; Xinhua 27 May 1999; *Muzi Lateline News* 5 Jan. 1999; see also Xinhua 20 Aug. 1998; *Renmin Ribao* 24 May 1997). None of these reports give any indication as to the sanctions faced by the illegal immigrants themselves. However, several of the sources do indicate that the primary targets of the public security authorities are the organizers or "snakeheads," who are reported as having been arrested (*China Daily* 8 June 1999; BBC 7 June 1999; Xinhua 7 June 1999; see also *Renmin Ribao* 24 May 1997). According to Xinhua:

The [senior Public Security Ministry] official said that the fight against the snakeheads is the most important part of the battle and that they need to be given harsh penalties in accordance with the law instead of just being fined (7 June 1999).

In a 1 June 1999 report by the Australian Broadcasting Corporation, a man whose smuggling ship was intercepted in Chinese waters was interviewed and stated that he had been detained for 12 days, beaten several times a day and fined \$3,000. The man further claimed that "people who had money were released earlier" and that those without were detained for up to 12 days (*ibid.*).

Several academic sources have also provided current information concerning the treatment of returnees: Dr. Ko-lin Chin of Rutgers University, Dr. Peter Kwong of the City University of New York and Dr. Frank Pieke of the University of Oxford. Dr. Chin is an associate professor at the School of Criminal Justice, Rutgers University-Newark, and is the author of *Chinese Subculture and Criminality: Non-traditional Crime Groups in America* (Greenwood Press, 1990), *Chinatown Gangs: Extortion, Enterprise & Ethnicity* (Oxford University Press, 1996), and *Smuggled Chinese: Clandestine Immigration to the United States* (forthcoming from Temple University Press, 1999).

With support from the U.S. National Science Foundation, Dr. Chin recently completed a comprehensive study of illegal immigration from Fuzhou entitled "Smuggled Chinese Immigrants in America" (18 Mar. 1998). The report examines Chinese anti-smuggling initiatives in considerable detail, including the imposition of sanctions against returnees as a means of deterrence. The report states that returnees may face fines, detention or both:

According to the Chinese officials I interviewed, illegal migrants who are deported to China from abroad are confined in local *shoushengsuo* (police lockups) for about two weeks, at which time they are interrogated by police and case files are prepared. If a deportee's family is well connected, he or she is often released within a week. Some deportees who once worked for the government may be able to go back to their original work units.

Would-be migrants who are deported back to China from abroad are heavily fined by Chinese authorities. The amounts of fines differ by locality, even though Chinese law stipulates that the fine should be between 1,000 and 5,000 *yuan*. According to my interviews in China, in 1993, returned migrants from Changle, Tingjian and Lianjiang were usually fined up to 25,000 *yuan* (about \$3,000); migrants from Fuqin were fined 18,000 *yuan* (about \$2,000); whereas migrants from Pingtan were subjected to a fine of up to 6,000 *yuan* (about \$700) (1998, 373-374).

Dr. Chin is also cited in a United States Immigration and Naturalization Service Response to Information Request on the subject of fines:

In a January 28, 1998 conversation with RIC [Resource Information Center], 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 [being] 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 (17 Dec. 1998).

Dr. Chin's report also provides detailed information concerning longer-term detention of deportees:

Chinese immigrants who are deported back to China from abroad for the second time may be sentenced to one year of imprisonment in a *laojiao* [re-education through labour] prison. For Fujianese immigrants, the most likely *laojiao* institution is the *Lujian Laodong Jiaoyang Suo* (Lujian Institute of Re-education through Labour), which is located in Mawei near Fuzhou City. According to the subjects I interviewed in China, repeat transgressors of emigration regulations need not be confined to Lujian if they can pay off local authorities (18 Mar. 1998, 376).

The report also includes accounts from interview subjects which indicate that conditions in the *laojiao* can be particularly harsh for those without *guangxi* (connections) or the ability to bribe the staff for better treatment (ibid., 376-7). Dr. Chin's report is available in the IRB's Regional Documentation Centres.

In correspondence with the Research Directorate, Dr. Chin indicated that this information remains an accurate reflection of the situation for returnees as of September 1999, stating that:

The treatment of deported smuggled Chinese by the Chinese government has not changed much since the report was completed, except that the fine has increased somewhat. As mentioned in my report, the Chinese authorities generally do not mistreat the deportees, unless a person has been deported to China more than one time (16 Sept. 1999).

This information was corroborated by Dr. Peter Kwong in his 1997 book *Forbidden Workers: Illegal Chinese Immigrants and American Labor*. Dr. Kwong is the chair of the Asian American Studies program at Hunter College, City University of New York and has extensively studied the problem of Fujianese illegal immigration. On the subject of the punishment facing returnees, he wrote:

The normal punishment for illegal emigration is one month's imprisonment, a fine of 10,000 *yuan* (approximately \$1,200 U.S. - a prohibitive sum in China), plus the cost of room and board at the prison (1997, 50).

In a telephone interview with the Research Directorate Dr. Kwong added that although the law provides for the possibility of longer term incarceration, in practice returnees are rarely imprisoned owing to a number of factors: the pervasiveness of the phenomenon of illegal emigration from Fujian, the volume of returnees from Australia, Japan, Taiwan, the United States and elsewhere, and the extensive influence of the snakeheads (15 Sept. 1999).

Additional corroboration was provided by Dr. Frank Pieke of the Institute of Chinese Studies, University of Oxford. Dr. Pieke is the principal investigator undertaking a study titled "At the Margins of the Chinese World System: The Fuzhou Diaspora in Europe." In correspondence with the Research Directorate, Dr. Pieke stated that "*De facto*, China (and particularly the Fujian authorities) have a pro-emigration policy" (23 Sept. 1999).

In June 1999 staff from the Canadian embassy in Beijing and the Canadian consulate in Guangzhou conducted an area trip to Fujian in which they interviewed government officials, including Public Security Bureau (PSB) officials (Cumming June 1999). On the topic of penalties the report states:

Penalties for smuggling are somewhat flexible, and seem to increase in severity the greater the involvement of the accused with the organization of smuggling. By way of example, it was stated that an actual smuggler without any organizational duties would receive a minor fine and a few days in jail, up to a maximum of one year (ibid.).

This corroborated earlier information provided by Jim Fisher, coordinator for the Asian Organized Crime Unit at the Criminal Intelligence Service Canada, RCMP Headquarters in Ottawa, who emphasized that repeat offenders were more likely to receive higher fines and/or detention (10 Sept. 1999).

Attempts to obtain additional information from Hong Kong and North American based human rights, refugee advocacy and migration organizations were unsuccessful as these organizations were either unable to provide information which could be cited publicly or failed to respond within the time constraints of this Extended Response.

This Extended Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Extended Response is not, and does not purport to be,

conclusive as to the merit of any particular claim to refugee status or asylum.

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