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Extended Response to Information Request

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China: Treatment of returnees to Fujian by organized crime groups involved in illegal emigration (snakeheads) including whether they extort or threaten returnees; whether illegal emigrants use loan sharks to pay snakeheads' fees and, if so, whether loan sharks extort or threaten returnees

Research Directorate, Immigration and Refugee Board, Ottawa

This Extended Response provides a summary of publicly available information concerning the treatment of returnees to Fujian by organized crime groups involved in illegal emigration (snakeheads), including whether they extort or threaten returnees. The first section provides a brief overview of snakehead operations. The second section describes the response of the Chinese government to the activities of snakeheads and loan sharks with reference to applicable legal provisions and reports of the government's response in practice. The third section briefly summarizes the problem of corruption as it relates to the effectiveness of the state response, with reference to relevant media reports. In the fourth and final section, the treatment of returnees by snakeheads is addressed. For information concerning the treatment of returnees to Fujian by the government, please consult CHN32869.EX of 22 September 1999 available at the IRB's Regional Documentation Centres, REFINFO and on the IRB Website at <<http://www.irb.gc.ca>>.

Snakehead operations

At least two book-length studies exclusively devoted to the phenomenon of illegal emigration from Fujian have been published since 1997 (Kwong 1997; Chin 18 Mar. 1998). The purpose of this section will be to provide a brief overview of the operations of snakeheads. For more comprehensive information concerning snakehead operations, please consult Dr. Ko-lin Chin's report, "Smuggled Chinese Immigrants in America", particularly Chapter 3, "The Social Organization of Human Smuggling" (18 Mar. 1998, 75-120) available at Regional Documentation Centres. 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). According to Chapter 3, "The Social Organization of Human Smuggling," snakeheads are frequently categorized as either little snakeheads (also snaketails) or big snakeheads:

In general, a big snakehead (or arranger/investor) is a person who invests money in a smuggling operation and oversees the entire operation. This person, often a non-Chinese citizen, is usually not known to the person being smuggled. A little snakehead, or recruiter, is a person who works as a middleman between a big snakehead and customers. He or she, often a Chinese citizen, is mainly responsible for finding and screening customers and collecting down payments (18 Mar. 1998, 78-79).

According to Dr. Chin other roles performed within the operation include:

- Transporters - who convey the illegal emigrants to the border, airport or smuggling ship within China and between modes of transport in transit points
- Corrupt public officials - who assist in securing documents in China, facilitate illegal exit and

facilitate transfer through transit countries

- Guides and crew members - responsible for moving illegal emigrants between transit points, includes crews of smuggling ships
- Enforcers - responsible for maintaining order on smuggling ships and themselves illegal emigrants
- Support personnel - locals in transit points who house and feed illegal emigrants during stages of the journey
- Debt-collectors - based in country of destination, debt collectors detain illegal emigrants until the smuggling fee has been paid by their families (ibid., 89-90)

According to Dr. Chin, the arrangements for paying the smuggling fees of the snakeheads are quite varied, with payments being made either in China, in the destination country or in transit countries (ibid., 271). Dr. Chin provided further information concerning the financial arrangements in correspondence with the Research Directorate, stating that less than 10 percent of the smuggled Chinese he had interviewed had borrowed from loan sharks, instead of borrowing from friends and relatives (30 Sept. 1999). With respect to down payments, Dr. Chin stated that "Most smuggled Chinese pay the smugglers about US\$1,000 to 3,000 as down payment. If they are arrested and deported to China, the snakeheads of course do not expect them to pay the rest of the smuggling fee ... If a Chinese is returned to China, he or she would not be harassed by the loan shark because there is no actual, monetary transaction between the two yet" (ibid.). In response to a question as to whether the snakeheads and loan sharks were connected, Dr. Chin stated that there is "little or no connection between loan sharks and human smugglers" (ibid.).

Additional information was provided by Dr. Peter Kwong, the chair of the Asian American Studies program at Hunter College, City University of New York, who has extensively studied the problem of illegal emigration from Fujian. In his 1997 book *Forbidden Workers: Illegal Chinese Immigrants and American Labor*, Dr. Kwong describes the complexity of snakehead operations:

The success of human smuggling operations depends on the cooperation of hundreds of individuals, including snaketails in Fuzhou, corrupt officials in China, fishermen-smugglers on China's coast, Taiwanese fishing and freight fleet owners, Malaysian shipping crews, safe house operators dotting the globe, and underworld "facilitators" along the smuggling routes from Bangkok, Central America, Mexico and Texas to New York (1997, 82-83).

In a telephone interview with the Research Directorate, Dr. Kwong stated that smuggling fees were normally financed through funds raised from family kinship networks and that the use of loan sharks was less frequent (30 Sept. 1999; see also ibid., 1997, 91-104). Dr. Kwong stated that while undertaking field research, he had spoken to a snakehead in Fujian who reported that the method of payment arranged was a down payment of U.S.\$1,500, with the balance of the (US\$33,000) smuggling fee payable upon safe (undetected) arrival at the country of destination (30 Sept. 1999; see also 1997, 60). An illegal emigrant would not be required to pay the full amount unless successfully delivered to the final destination and returnees would only forfeit their deposit (Kwong 30 Sept. 1999).

State response to organized crime groups involved in illegal emigration

There are a number of legal regimes describing penalties for involvement in organizing illegal emigration from China, granting Chinese authorities the discretion to deal with violations under a given law according to the circumstances of the case and the desired punishment. These provisions may be found in the attached Appendix.

Chinese media reports indicate that the central government in China, the Fujian provincial government and public security officials at both levels have publicly committed themselves to combating snakehead operations, describing that struggle as a "massive war" (Xinhua 7 June 1999) and a "specialized crackdown" (*Renmin Ribao* 24 May 1997; see also *Fujian Ribao* 17 July 1998). According to Xinhua, 59 snakeheads were arrested by Fujian police between January and July 1998 (20 Aug. 1998). In May 1999, Xinhua reported the arrests of 17 snakeheads in connection with the interdiction of a Korean-registered vessel carrying 90 would-be illegal emigrants (27 May 1999). In late May 1999, a month long campaign against snakeheads was announced by the Ministry of Public Security at a national conference on illegal emigration held in Fuzhou (*China Daily* 28 May 1999). In June 1999 *China Daily* reported that 224 people involved in organizing illegal emigration had been arrested in the preceding five months (8 June 1999).

Information regarding the response of the Chinese authorities to loan sharks is scarce among the sources consulted by the Research Directorate. The provision relevant to loan shark activities from the Criminal Law is cited in the attached Appendix. However, no media reports concerning actual application of this or other laws to loan shark operations could be found within the time constraints of this Extended Response.

Corruption and collusion involving snakeheads and government officials

As mentioned above, both Dr. Chin and Dr. Kwong state that governmental corruption plays a role in snakehead operations (Chin 18 Mar. 1998, 89-90; Kwong 15 Sept. 1999; *ibid.*, 1997, 82-83). However, according to both sources this assistance is primarily focused on facilitating illegal exit (*ibid.* 1997, 61-66; Chin 18 Mar 1998, 109-119; see also Tung Hsiang 15 Oct. 1997). Commenting on the extent of governmental corruption in China, Dr. Kwong states:

The Chinese government is itself acting as a snakehead and profiting handsomely from this illegal human smuggling trade. Particularly alarming is the inevitable cooperation between Chinese officials and the underground crime elements (1997, 63).

However, neither Dr. Chin nor Dr. Kwong explicitly states that this corruption affects the level of state protection for returnees.

According to the *Hong Kong Standard*, "China's biggest smuggling case" was uncovered in Fujian in September 1999, involving corruption at very high levels including a provincial deputy director of public security (who also held the office of police chief of Fuzhou city) and the director of customs in the port city of Xiamen (18 Sept. 1999; see also AFP 17 Sept. 1999). However, reports do not indicate whether the case was solely concerned with the smuggling of goods into China, or whether the corruption also affected snakehead operations (*ibid.*).

Specific reports regarding treatment of returnees by snakeheads

Specific reports regarding treatment of returnees by snakeheads are scarce among the sources contacted by the Research Directorate. The ill-treatment of illegal immigrants by snakeheads within the United States, including kidnapping, rape and torture, is extensively documented (Kwong 1997, 81-82; Chin 1998, 255-99). It has also been reported during the period that smuggled persons are overseas, their families in China are at risk from snakeheads, that in these circumstances "local authorities are not likely to intervene" (Kwong 1997, 96-97).

In a subsection of Dr. Chin's report titled discussion of the "General Tactics of the Debt Collectors," there are no references to harassment of returnees or of their families in China (18 Mar. 1998, 276-82). In fact, the report contains an account in which a "big snakehead", early in her smuggling career, was threatened by group of "clients" who had been unsuccessful in reaching their destination (in this case Hong Kong) and were successful in securing a 50% refund of their down payment (*ibid.*, 80). In correspondence with the Research Directorate, Dr. Chin stated that this information remains an accurate reflection of the situation for returnees as of September 1999, stating that:

Snakeheads have no reasons to harass those smuggled Chinese who have been returned to China. When I visited Fuzhou a few months ago, I learned that snakeheads are now even willing to pay the fines for the deportees, mainly to make sure that the deportees will not tell the Chinese authorities the identities of the snakeheads (16 Sept. 1999).

In Dr. Kwong's *Forbidden Workers* there are no specific accounts of harassment of the returnees or their families in China, although, as stated above, the book documents abuses inside safe houses in the United States (1997, 81-82). However, Dr. Kwong stated in a telephone interview that if a person were to be harassed by snakeheads in Fujian, the targets of such harassment would be unlikely to report it to police because they were themselves complicit in illegal activity and because police protection, particularly at very local levels, is ineffective (30 Sept. 1999).

Additional information was provided by Jim Fisher, coordinator for the Asian Organized Crime Unit at the Criminal Intelligence Service Canada, RCMP Headquarters in Ottawa. Mr. Fisher stated that as a general rule snakeheads would be unlikely to attempt to collect anything beyond the down payment from returnees or their families because the snakeheads tended to perceive themselves as business people engaged in a competitive field, and that a snakehead who became known for extracting full payment from clients even after failing to deliver would encounter difficulty in attracting business (10 Sept. 1999). In a subsequent telephone interview Mr. Fisher stated that he was not aware of reports of loan sharks pursuing returnees or their families, and also reported that less than 10 per cent of illegal emigrants used loan sharks to finance their transactions with the snakeheads (29

Sept. 1999).

Additional information 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 "harassment by snakeheads is not infrequent" in their attempts to extract payment (23 Sept. 1999; 4 Oct. 1999). In subsequent correspondence Dr. Pieke added that "migrants who have been forced to return to their country of origin still often face crippling debts, no matter to whom they owe them" (4 Oct. 1999). An incidental effect of the debt incurred by returnees, either from down payments made to snakeheads or fines levied by the authorities, appears to be the encouragement of recidivism, as migrants believe that the only possible way to escape the debt is to earn hard currency overseas (ABC 1 June 1999; Kwong 30 Sept. 1999; Fisher 29 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. The Hong Kong office of Human Rights in China had no information regarding the treatment of returnees to Fujian by snakeheads (4 Oct. 1999).

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.

Appendix: Legal provisions

With respect to public officials who facilitate illegal exit from China, Article 16 of the *Law of the People's Republic of China on the Control of the Exit and Entry of Citizens* (1986) states:

Where a state functionary charged with implementing this Law takes advantage of his position and power to extort and accept bribes, he shall be punished according to the *Criminal Law of the People's Republic of China* and the Decision of the Standing Committee of the National People's Congress Regarding the Severe Punishment of Criminals Who Seriously Undermine the Economy. If he has committed any other act involving violation of the Law and dereliction of duty which is serious enough to constitute a crime, his criminal responsibility shall be investigated according to the relevant provisions of the *Criminal Law of the People's Republic of China*.

Additional information is contained in the Regulations Concerning Implementation Of Law On Exit And Entry Of PRC Citizens (1994):

Article 24. Offenders for forging, altering, transferring and trading Exit and Entry documents will be detained for no more than 10 days. In case of serious situation related to a crime, offenders have to bear criminal responsibility according to the related articles in the "*Criminal Law of the People's Republic of China*" and "National People's Congress Standing Committee supplementary regulations concerning heavy penalty on the criminal offence of organisation and transportation of people across the border/frontier".

Article 25. Citizens who have obtained Exit and Entry Document by illegal means such as making up stories, providing false evidence or paying a bribe, in case of less serious situations, will receive warning or be detained for no more than 5 days. In case of serious situation related to a crime, offenders have to bear criminal responsibility according to the related articles in the "*Criminal Law of the People's Republic of China*" and "National People's Congress Standing Committee supplementary regulations concerning heavy penalty on the criminal offence of organisation and transportation of people across the border/frontier".

Article 26. If, when executing the "People's Republic of China Citizen Exit and Entry Management Law" and these Implementation Regulations, officers of public security organisations use their official power to extort, receive a bribe or demonstrate other delinquent behaviour, in case of less serious situation, head of the department will exercise administrative disciplinary measures accordingly. In case of serious situation related to a crime, offenders have to bear criminal responsibility according to the related articles in the "*Criminal Law of the People's Republic of China*" and "National People's Congress Standing Committee supplementary regulations concerning heavy penalty on the criminal offence of organisation and transportation of people across the border/frontier".

The Supplementary Regulations Concerning Heavy Penalty on the Criminal Offence of Organisation and Transportation of People Across the Border/Frontier (1994), referred to above, also contain specific penalties:

In order to enforce severe penalty to offenders assisting others to cross (smuggle) the country (border) (known as offenders crossing the country (border) illegally from below) to control illegal activities and protect the regulations of arrivals and departures, the following supplementary regulations have been stipulated:

I 2 to 7 years imprisonment besides paying a fine for organizing illegal departures out of the country (border). Over 7 years imprisonment or life imprisonment together with paying a fine or property confiscation is the penalty for offenders [who have] committed any of the following crimes:

1. Chief organizer of an organization for illegal departures;
2. Organizer for illegal departures on numerous occasions or organizer of a large number of people for illegal departures;
3. causing serious injury or death to those organized for illegal departures;
4. Removing or limiting personal freedom of organized ones;
5. Refusing inspection by force and threats;
6. Receiving a big profit as a result of illegal activities;
7. Any other serious circumstances.

Death penalty according to the regulations can be enforced on offenders for the organized ones being murdered, injured, raped, abducted and sold or for the inspectors being murdered and injured.

II Obtaining exit permits such as passports and visas by falsely declaring the needs for having to work overseas, to travel for trade and other reasons and using those travel(sic) documents will be punished as stated in clause No. I

The unit has to pay a fine if any of the above crimes are found. For the actual offenders as well as the direct managing officers, same penalty as in clause No. I is to be given.

III Offenders supplying or selling false or altered travel documents such as passports and visas will receive a prison term under 5 years besides paying a fine. Over 5 years imprisonment and payment of a fine are for more serious(sic) offenders.

IV [Offenders] Sending others out of the country illegally will be imprisoned, detained, or under surveillance for under 5 years besides having to pay a fine.

Offenders of any of the following will have to pay a fine and to be imprisoned for 5 to 10 years:

1. Sending others out of the country illegally on numerous occasions or smuggling a large number of people out;
2. Using the transport vehicles such as boats and cars which have not met the necessary safety requirement and resulting in serious consequences;
3. Making a big profit out of the illegal activities;
4. Having other special serious circumstances.

Offenders causing serious injury, death to those illegal smugglers [sic] or refusing to be inspected by using force and threats while sending others out of the country illegally will have to pay a fine as well as serve a prison term of over 7 years.

Death penalty can be applied for offenders killing, harming, raping, abducting and selling those who are to be sent away illegally or killing and harming the inspectors.

Sending others out of the country is not serious enough for punishment. They would be detained by

the police for less than 15 days besides paying a fine of 5000 to 50,000 RMB.

V Those departing the country illegally will be detained for a period less than 15 days by the police only or have to pay a fine between 1000 to 5000 RMB. on top of the detention. In serious cases, they will either be imprisoned or detained for a period under 2 years as well as having to pay a fine.

VI Those government officers who were aware of people intending to leave the country illegally and were responsible in organizing the travel documents including passports and visas as well as those government officers working for the customs and guarding the border who were aware of and allowed the illegal departures will be imprisoned, detained or put under surveillance for a period less than 3 years. In serious cases, the imprisonment is from 3 to 10 years.

Ganging up with the organizations or those assisting the illegal departures in committing the above crimes will be punished as stated in clauses No. I and IV.

VII All transport and communication equipment used for the illegal activities as stated here and any other profits or properties made as a result of those activities will be confiscated. **VIII** This regulation takes effect from the date as published. Additional;

Related to the law clauses:

(1) Penalty

- Clause No. 132 - Death penalty, life imprisonment or a prison term of over 10 years for murder with intent. 3 to 10 years imprisonment for less serious circumstances.

- Clause No. 134 - Under 3 years imprisonment or detention for harming others with intent. In committing the above crimes causing serious injury leads to 3 to 7 years imprisonment. If death results, the penalty is either 7 years or life imprisonment. There are other regulations for this crime to be based on.

- Clause No. 139 - 3 to 10 years prison term to be given to offenders raping the females by force, threats or other means. Illiciting(sic) sexual relations to girls under 14 is regarded as rape. Offenders will be given severe penalty.

A term of 10 years, life imprisonment or death penalty is for those committing the previous 2 crimes in serious cases resulting in serious injury or death.

Severe penalty for 2 or more offenders raping the victim in turns.

(2) The Standing Committee of the National People's Congress "Decision on severe penalty for serious offenders of public order"

1. The highest punishment leading to death penalty can be used for offenders seriously endangering the public order as stated below;

[...]

b. Harming others with intent resulting in serious injury or death as in serious cases, or harming the government officers or citizens who have reported, exposed or arrested the offenders and prevented the criminal activities.

(3) The Standing Committee of the National People's Congress "Decision on severe penalty for offenders having abducted, sold and kidnapped the females and children" 5 to 10 years prison term and a fine under 10,000 RMB.

For having abducted and sold the females and children. For committing any of the following, the prison term is either 10 years or life besides a fine of under 10,000 RMB. or property confiscation. In serious cases, it is death penalty and property confiscation.

[...]

(d) Inveigling or forcing the abducted females to engage in prostitution or selling the abducted females to others for such activities.

(e) Causing serious injury, death or other serious consequences to the abducted females, children or their relatives

(f) Selling females and children to other countries.

Also relevant is the *Criminal Law of the People's Republic of China* (1997), which contains the following provision potentially applicable to loan sharks:

Article 238. Whoever unlawfully detains another or deprives him of his freedom of the person by any other means is to be sentenced to not more than three years of fixed-term imprisonment, criminal detention, control, or deprivation of political rights. In circumstances where beating or humiliation are involved, a heavier punishment is to be given.

Whoever commits one of the crimes in the preceding paragraph and causes a person's serious injury is to be sentenced to not less than three years and not more than 10 years of fixed-term imprisonment; when he causes a person's death, he is to be sentenced to not less than 10 years of fixed-term imprisonment; when he causes a person disability or death by violent means, he is to be punished in accordance with the stipulations in Article 234 and Article 232 of this law.

Whoever unlawfully detains or takes somebody into custody for the purpose of demanding the payment of a debt is to be given a punishment in accordance with the stipulations stated in the two preceding paragraphs.

Where an employee of a state organ abuses his authority to commit any of the three aforementioned crimes, he is to receive a heavier punishment in accordance with the stipulations stated in the three preceding paragraphs.

The Criminal Law also contains several provisions applicable to the operations of snakeheads:

Article 318. Whoever organizes people to secretly cross the national boundary (border) shall be sentenced to not less than two years and not more than seven years of fixed-term imprisonment and a fine; or not less than seven years of fixed-term imprisonment or to life imprisonment, and may in addition be sentenced to a fine or confiscation of property for any of the following situations:

- (1) ringleader who organizes people to secretly cross the national boundary (border);
- (2) repeatedly organizing people to secretly cross the national boundary (border) or organizing a large number of people to secretly cross the national boundary (border);
- (3) causing serious injuries and deaths to the people being organized;
- (4) depriving or restricting personal freedom of the people being organized;
- (5) resisting investigation by violent or threatening methods;
- (6) obtaining huge amounts of illegal income; (7) other exceptionally serious circumstances.

Whoever commits the crimes mentioned in the preceding paragraph, killing, harming, raping, and kidnapping and selling the people being organized, or the crimes of killing and harming investigating personnel shall be punished in accordance with the stipulations concerning combined punishment for more than one crime.

Article 319. Whoever defrauds people, in the name of labor export and economic and trade exchanges or for other reasons, of their exit documents such as passports and visas through fraud and deception for use in organizing people in the secret crossing of the national boundary (border) shall be sentenced to not more than three years of fixed-term imprisonment, and may in addition be sentenced to a fine; and when the circumstances are serious, not less than three years and not more than 10 years of fixed-term imprisonment, and may in addition be sentenced to a fine.

Institutions which commit the crimes mentioned in the preceding paragraph shall be sentenced to a fine, and principal personnel directly responsible for the crime and other personnel with direct responsibility shall be punished in accordance with the stipulations of the preceding paragraph.

Article 320. Whoever provides fake and altered exit and entry documents such as passports and visas, or sells exit and entry documents such as passports and visas, shall be sentenced to not more than five years of fixed-term imprisonment, and may in addition be sentenced to a fine; and when the circumstances are serious, not less than five years of fixed-term imprisonment, and may in addition be sentenced to a fine.

Article 321. Whoever transports people secretly across the national boundary (border) shall be sentenced to not more than five years of fixed-term imprisonment and criminal detention or control, and may in addition be sentenced to a fine; or not less than five years and not more than 10 years of fixed-term imprisonment and a fine for any of the following situations:

- (1) repeatedly involving [sic] in transporting activities or transporting a large number of people;
- (2) using transportation means such as ships and vehicles that do not meet essential safety conditions and that are sufficient to cause serious consequences;
- (3) obtaining huge amount of illegal income;
- (4) other exceptionally serious circumstances.

Whoever, in the course of transporting people secretly across the national boundary (border), causes heavy injuries and deaths to the people being transported or resists investigation by violent and threatening methods shall be sentenced to not less than seven years of fixed-term imprisonment, and may in addition be sentenced to a fine.

Whoever commits the crimes mentioned in the two preceding paragraphs by killing, harming, raping, and kidnapping and selling the people being transported; or the crimes of killing and harming investigating personnel shall be punished in accordance with the stipulations concerning combined punishment for more than one crime.

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