



*Australian Refugee Rights Alliance*

*“No Compromise on Human Rights”*

**Draft Discussion Paper - Summary**

**Deportations to China:  
Australian RSD processes that return  
people to persecution**

**2007**

**Comments invited**

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**The full paper with complete references and comments  
on the situation in other countries can be accessed at  
[www.crr.unsw.edu.au](http://www.crr.unsw.edu.au) and [www.refugeecouncil.org.au](http://www.refugeecouncil.org.au)**

## Key Issues

The Australian Refugee Rights Alliance (ARRA) is very concerned about increasing numbers of Chinese nationals seeking asylum in Australia who have failed the refugee status determination process (RSD) despite prima facie cases of a "well founded fear of persecution". Advocates have documented many cases of detention, imprisonment and persecution following deportation to China. Most alarming are the disappearances where families do not see their relatives again. Recent case studies analysed by legal and psychological experts indicate questionable RSD processes where deportation of Chinese nationals with failed asylum claims has resulted in disappearance, imprisonment, torture and harsh sentencing.

In 2006-2007 there were 1,189 claims for protection from Chinese nationals in Australia. Only 256 cases were approved for refugee status while 889 cases were rejected with many deported to China. Chinese asylum seekers currently constitute approximately 80% of claims for asylum in Australia, and claims for protection are from Falun Gong practitioners, underground Christians, pro-democracy and separatist activists and other political dissidents. Amid continuing claims of systemic surveillance and police harassment, detention in labour camps, forced re-education, torture and death, Chinese nationals have increasingly sought protection in other countries.

Speaking out about persecution or ill-treatment, therefore "shaming" the Chinese Government prompts further persecution for those who are sent home following rejected claims for protection. Such evidence of disappearances, torture and forced labour is often dismissed as unconnected to original claims for protection and thus not considered grounds for questioning the veracity of decisions to dismiss protection applications. However, the extensive documentation and testimony of persecution of individuals denied protection upon their return is an indication that the number of genuine refugee cases may be far higher than given serious consideration in countries such as Australia.

Advocates describe the RSD process as flawed, as the Migration Review Tribunal (MRT) and the Refugee Review Tribunal (RRT) assess the "credibility" of many claims dismissing the current level of persecution and human rights abuses targeting specific groups in China. Given evidence of persecution of religious minorities and political dissidents and high levels of fear of Chinese authorities, this begs the question of just how "objective" RSD processes are.

RSD processes must be critiqued in a political context of Australia's strong economic ties with China. There is continuing demonisation in China of Falun Gong as "extremists" & Muslim Uighurs are targeted in the "war on terror". China also exerts diplomatic pressure on countries in which groups denounced by China seek asylum.

## Human Rights in China

China is an autocratic state with no fair and open judicial process; most trials are held behind closed doors. Amnesty International states that "serious human rights abuses continue to be reported every day" in China despite the Chinese governments promises to the contrary<sup>i</sup>. While the persecution of Tibetan "separatists" is well known, the targeting of Falun Gong is increasingly documented, with widespread persecution, surveillance and fear of imprisonment reported. Amnesty reports that thousands who have pursued their faith outside officially sanctioned churches have been harassed and imprisoned.

"The Chinese authorities' crackdown on what it calls the "three evil forces" of "separatist, terrorist and religious extremists" has resulted in serious and widespread human rights violations directed against the region's Uighur community, prompting many of them to flee the country". Countless human rights activists and critics of the Chinese Communist Party (CCP) have also been harassed, imprisoned and subject to house arrest. According to Human Rights Watch (HRW), China continues to lead the world in the use of the death penalty, which is mandated for 68 crimes including economic and non-violent crimes. Based on public reports, Amnesty International estimated that at least 1,010 people were executed and 2,790 sentenced to death during 2006. Although exact figures are kept a state secret, true statistics are believed to be much higher. HRW estimates that up to 10,000 executions are carried out each year.

## Economic Ties with China

Australian exports such as coal and iron ore have been supplying the huge demand in China's booming economy. China is now Australia's third largest trading partner with two-way trade running at about \$23 billion a year. Given the significant emphasis both governments place on nurturing unfettered economic relations, it is not surprising that human rights abuses have been dismissed as non-existent or insignificant when considering claims for protection.

Furthermore, the level of intimidation, surveillance and corruption or the desperation that results from a well founded fear of persecution is not well understood or necessarily believed in a democratic society such as Australia.

## UNHCR Agenda for Protection

In recent years UNHCR has pressed UN member states to uphold their international obligations under the 1951 Convention of *non-refoulement* of Chinese asylum seekers, whether they are Falun Gong practitioners, Uighur Muslims or Human Rights activists. This reflects the recognition by the UNHCR of the severe and unique risk of persecution they face upon deportation back to China. UNHCR recently called for an expedient investigation into the fate of a Chinese Uighur disappearance and reminded the government of Kazakhstan of its obligations under the 1951 Convention, in particular of the importance of the principle of *non-refoulement*. The UNHCR also protested the recent forced deportation of Ma Hui and her 8 year old daughter Ma Jingjing from Russia in 2007.

## UNHCR Conclusions

Since 1975 the Executive Committee of the High Commissioner's Programme has made more than 50 references to *non-refoulement* in their Conclusions. Recognition of the scope of refoulement and the obligations of States to offer effective protection at every stage has been clearly stated and include:

**2005 No 56 (LVI), (j)** *Recalls* its Conclusions No6 (XXVII) and 7 (XXVIII), as well as numerous subsequent references made in its other Conclusions to the principle of *non-refoulement*; *expresses* deep concern that refugee protection is seriously jeopardized by expulsion of refugees leading to *refoulement*; and calls on States to refrain from taking such measures and in particular from returning or expelling refugees contrary to the principle of non-refoulement.

UNHCR concerns have also been expressed in relation to the drive to keep the number of asylum seekers as low as possible in industrialised countries which may result in some genuine refugees being denied the protection they need.

### Case study of Mr. Zhang –

A Chinese pro-democracy and human rights advocate involved in Tiananmen Square demonstrations and arrested and detained further for his pro-democracy activities. He fled China and arrived in Australia in 1997. The RRT rejected his claimed democracy activities as true; following ministerial refusal he was deported in April 2007. Refugee advocate Francis Milne tracked his deportation and eventually nearly two months later, he was interviewed by an ABC journalist and his story documented from China through an interpreter. Australian officials handed Mr Zhang to Chinese Customs at Guangzhou. They contacted Guangzhou police who arrived for an interview, and further contacted the Tianjin Public Security bureau (Police) who blindfolded and detained him and accessed by computer all the relevant information about him in Australia. He was detained for 15 days, brutally interrogated, beaten and among other injuries had a finger broken while being forced to squat on the floor on his hands. He was fearful about the amount of information that the police had on his pro-democracy activities in Australia. The police said to him "*you are so bold in Australia protesting against the Chinese Government and saying the government is corrupt. Execution is too good for you. Execution is not enough*". He has since been continually monitored and harassed by police and remains in hiding.

### Case of Mr. S –

A Tibetan Separatist sympathizer imprisoned and tortured in China for 6 months before fleeing to Australia, he arrived in Australia on a 676 tourist visa in April 2005. His RSD application was rejected at every level despite a report carried out by the Survivors of Torture and Trauma Assistance and Rehabilitation Service (STTARS) which indicated severe mental trauma and evidence of torture in China. STTARS was not brought in to evaluate this case until the final stage of the determination so the evidence for torture was not apparent throughout the RSD process. Mr S did not trust this information to be revealed until an independent assessment was undertaken and a level of trust was established. STTARS recommended that counseling continue and that he be placed in the community in order to "restore a sense of wellbeing and trust". He was deported soon after this evaluation. Mr S had received letters from his wife pleading with him not to return to China because of police harassment and he also held great fears for her safety. Upon return to China Mr S disappeared and following refugee advocates speaking with his wife, she has also disappeared along with their daughter. Many refugee advocates hold grave fears for their safety.

## Dismissal of Claims: Refugee Determination processes in Australia

RSD processes increasingly come under scrutiny when considered in light of the number of "failed" asylum seekers who, following deportation to China, "disappear" with their families having no knowledge of their whereabouts and fearing for their safety. Despite evidence to the contrary, Immigration officials in Australia do not view "failed" asylum seekers as being "in danger" upon their return to China. All claims for asylum from Chinese nationals refer to the high levels of police harassment and the level of surveillance from public security bureau officials at the local level, and with connections to provincial authorities and CCP officials.

However, RSD mechanisms in Australia are not as robust as they could be and it is increasingly clear that people with legitimate protection needs are having these ignored. A major concern is the impact of adverse credibility assessments in determining protection application. In particular there is evidence of:

- The inappropriate use of “textbook” tests to assess if beliefs are genuine – eg in the case of Falun Gong and Christians (many people in China are illiterate or have limited education). The MRT and RRT expect identical answers to questions of faith when this is understood in diverse ways.
- The integrity of translators, many of whom allow their own misconceptions to influence their interpreting service – Falun Gong and Tibetan sympathizers refer to inappropriate interpreting services where many Han Chinese are not able to adequately interpret the level of persecution or sympathise with their torture or ill-treatment.
- The lack of cross-cultural understanding (despite training) of decision makers and the inadequate knowledge of the reality of country information in terms of the impact on specific groups living in a police state like China.

There is also a major problem concerning decision-making at every stage, particularly when Ministerial refusals are presented with no reasons given and no capacity to assess the importance of all the issues of “credibility” by this stage. Any credibility assessment in protection claims must account for the reality and impact of autocracy in China particularly in regard to the high level of surveillance and police control of people through corruption, intimidation and detention.

## Complicating Factors

In June 2005, an example of the Australian Government cooperating with Chinese authorities and bending to diplomatic pressure prompted allegations of the violation of the Refugee Convention. The Department of Immigration was accused of giving details of the detainees (marriage certificates, copies of passports, family member’s details etc) to Chinese Government officials. Of further concern was that Chinese Government Officers were allowed into Villawood to interview 40 Chinese detainees under the pretext of determining identity. Amid detainee protests, petitioning, and claims of being interrogated by those they were seeking asylum from, no adequate Australian Government response has since indicated why the Refugee Convention could be flouted in the case of Chinese asylum seekers.

In addition, the process of obtaining travel documents for the removal of Chinese nationals alerts local (PSB) officials as identity documents are confirmed in the hometown of registration. Families are also placed in danger as the investigation of cases increases or promote the level of harassment and surveillance. Furthermore, there remains a continual problem of leaked documents regarding background investigations with evidence from those deported that Chinese authorities have extensive detail of their cases for asylum in Australia.

## Conclusions

Refugee advocates have recently been monitoring failed asylum seekers that have been deported to China. Several asylum seekers received warnings from their families that the Public Security Bureau (PSB) was waiting to interview them when they returned to China. Of those being tracked, none have returned home for fear of their families and their safety, or they have disappeared and their families have grave concern for their whereabouts. There are now many cases of deportees being tortured upon their return to China following ‘secret’ trials and imprisonment. It is unknown how many have been executed.

This suggests questionable RSD processes that given the trade relationship that China has with Australia, may also indicate a politicized process. It is also evident that China uses its diplomatic leverage to extend its persecution abroad. However, it is clearly against the spirit of the Convention to relate asylum seeker information with the country of origin.

## Recommendations

1. All States ensure that all stages of the RSD process are consistent with established UNHCR policies and international law regarding the treatment of vulnerable asylum seekers.
2. The principle of *non-refoulement* be recognised by all States as a cardinal principle of refugee protection, and adhered to accordingly.
3. Appropriate measures be taken against States which fail to adhere to the principles of *non-refoulement* and confidentiality, noting the serious repercussions which may result for individual asylum seekers and their families when these principles are not upheld.

*Thanks to Anna Samson for comments and feedback and to Michelle Carr for research assistance*

<sup>i</sup> Amnesty International 2007 Report <http://report2007.amnesty.org/eng/Regions/Asia-Pacific/China>