

OPERATIONAL GUIDANCE NOTE



CHINA

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1. Introduction

- 1.1** This document evaluates the general, political and human rights situation in China and provides guidance on the nature and handling of the most common types of claims received from nationals/residents of that country, including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Case owners must refer to the relevant Asylum Instructions for further details of the policy on these areas.
- 1.2** This guidance must also be read in conjunction with any COI Service China Country of Origin Information at:
- http://www.homeoffice.gov.uk/rds/country_reports.html
- 1.3** Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. In considering claims where the main applicant has dependent family members who are a part of his/her claim, account must be taken of the situation of all the dependent family members included in the claim in accordance with the Asylum Instruction on Article 8 ECHR. If, following consideration, a claim is to be refused, case owners should consider whether it can be certified as clearly unfounded under the case by case certification power in section 94(2) of the Nationality Immigration and Asylum Act 2002. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail.

Source documents

- 1.4** A full list of source documents cited in footnotes is at the end of this note.

2. Country assessment

- 2.1** The Chinese imperial system came to an end in 1911. The Qing (Manchu) dynasty was overthrown and China was proclaimed a republic. In 1927 the Nationalist Party or 'Kuomintang' (KMT), under its leader Chiang Kai-shek, established a central government in Nanjing. The Chinese Communist Party (CCP) was founded in 1921. It broke with the KMT and was forced to flee. Both KMT and CCP forces opposed Japan during World War Two but a civil war broke out from 1945-1949. CCP forces under Mao Zedong routed their KMT opponents. In 1949 Mao announced the establishment of the People's Republic of China. The government of the then Republic of China under President Chiang Kai-shek fled to Taiwan, together with approximately 2 million supporters. The period between 1949 and Mao's death in 1976 was characterised by an ambitious political and economic restructuring programme. This involved the collectivisation of industry, the establishment of communes and the redistribution of land. The Cultural Revolution from 1966-1976 brought enormous upheaval in the political system. Mao had to rely on the armed forces to maintain order and exercise control.¹
- 2.2** In December 1978 the CCP launched a wide-ranging programme of economic and social reform. This sought to modernise the economy, develop China's external relations (the 'open door policy') – especially with the West, and implement a gradual and limited liberalisation of Chinese society. Political opposition to the more liberal reforms forced periods of retrenchment. In June 1989, following the brutal suppression of pro-democracy demonstrators in Beijing, political control swung firmly into the hands of conservative elements within the CCP. The Chinese government labelled the demonstrations a 'counter-revolutionary rebellion' and clamped down on any dissent.²
- 2.3** The People's Republic of China (PRC) is an authoritarian state in which, as specified in its constitution, the Chinese Communist Party (CCP) is the paramount source of power. Party members hold almost all top government, police and military positions. Ultimate authority rests with the 25-member political bureau (Politburo) of the CCP and its 9-member standing committee. General Secretary Hu Jintao holds the three most powerful positions as CCP general secretary, president, and chairman of the Central Military Commission (CMC). Chinese citizens cannot change their government democratically. The parliament (National People's Congress NPC) elects the top officials, but the NPC itself is controlled by the CCP.³
- 2.4** China has all the structures a modern democratic state would expect to have, with in theory a separation of powers between the different functions of state similar to most western democracies. But all structures are subordinate to the leadership of CCP. Key laws are passed by the National People's Congress (NPC) and its Standing Committee. The NPC has around two thousand members, and only meets in full session for a fortnight every March. Outside that time, a Standing Committee of around three hundred members carries out business. Members are 'elected' from Provincial and Municipal People's Congresses, who are in turn 'elected' from People's Congresses below them. Only at the lowest level are members 'elected' by the public, but from a very narrow slate of approved candidates. Villages are now officially regarded as theoretically self-governing (and therefore not part of the formal government hierarchy). There are direct popular elections to village committees. They are responsible for providing some public services, and receive a budget from higher authorities to do so. The quality of the elections varies, but they are more or less free and fair.⁴
- 2.5** In 2008, the government's human rights record remained poor and worsened in some areas. The government increased its severe cultural and religious repression of ethnic

¹ FCO Country Profile 27.01.09

² FCO Country Profile 27.01.09

³ USSD 2008

⁴ FCO Country Profile 27.01.09

minorities in Tibetan areas and the Xinjiang Uighur Autonomous Region (XUAR), increased detention and harassment of dissidents and petitioners, and maintained tight controls on freedom of speech and the internet. Abuses peaked around high-profile events, such as the Olympics and the unrest in Tibet. NGOs continued to face intense scrutiny and restrictions. Other serious human rights abuses included extrajudicial killings, torture and coerced confessions of prisoners, and the use of forced labour, including prison labour. The government continued to monitor, harass, detain, arrest and imprison journalists, writers, activists and defence lawyers and their families. A lack of due process and restrictions on lawyers further limited progress towards rule of law. The party and state exercised strict political control of courts and judges, conducted closed trials and carried out administrative detention. Individuals and groups deemed politically sensitive continued to face tight restriction on freedom to assemble, practice religion and travel. The government continued its birth limitation policy, in some case resulting in forced abortion or forced sterilisation. Serious social conditions that affected human rights included endemic corruption, trafficking in persons and discrimination against women, minorities, and persons with disabilities.⁵

- 2.6** Two events stand out in 2008. Firstly there was unrest in Tibet in March 2008 when 500 monks from Drepung Monastery staged a peaceful protest demanding religious freedom and the release of colleagues arrested in October 2007. A number of other protests in Tibetan areas followed which resulted in large numbers of detentions and both Han and Tibetan deaths. The Chinese government then instituted a widespread crackdown on freedom of religion and expression across Tibetan-populated areas. The second was the Olympics, which saw human rights defenders detained or expelled from Beijing, and measures designed to provide greater freedom of expression for foreign journalists only partly implemented.⁶ On 22 March 2009 almost 100 Tibetan monks were detained during a riot at a police station after a man detained for advocating independence 'disappeared' from jail.⁷
- 2.7** There has been no progress towards ratification of the International Covenant on Civil and Political Rights. Tibet and Xinjiang are still subject to particularly repressive security regimes. There are allegations of a crackdown on religious practices in the Xinjiang Uighur Autonomous Region, preventing individuals from displaying symbols of religious belief and observing religious festivals. Chinese lawyers, dissidents and academics who signed a document, 'Charter 08', calling for political reform were detained in December 2008.⁸
- 2.8** There were two positive developments in 2008. The first was China's ratification of the International Covenant on the Rights of Disabled People and the positive awareness-raising of disability issues which resulted from China hosting the Paralympic Games in September 2008. The second was the extension of the more liberal reporting regime for foreign journalists in China, put in place before the Olympics. However, domestic journalists are still subject to both formal and informal restrictions on reporting, and certain areas of China, notably Tibet, are outside their scope.⁹
- 2.9** Chinese law states that the courts shall exercise judicial power independently, without interference from administrative organs, social organisations, and individuals. However, in practice the judiciary was not independent. It continued to receive policy guidance from both the government and the CCP, which used a variety of means to influence courts on verdicts and sentences, particularly in politically sensitive cases. At both the central and local levels, the government bodies frequently interfered in the judicial system and dictated court decisions.¹⁰ The USSD report 2008 put the conviction rate at over 99 per cent in 2007

⁵ USSD 2008

⁶ FCO Human Rights report 2008

⁷ China COI Report 16 April 2009

⁸ FCO Human Rights Report 2008

⁹ FCO Human Rights Report 2008

¹⁰ USSD 2008

and noted that ‘the criminal justice system was biased toward a presumption of guilt, especially in high-profile or politically sensitive cases, including capital cases.’¹¹

- 2.10** Chinese criminal law includes approximately 68 capital offences, many of which are for non-violent crimes such as drug trafficking, official corruption, and leaking state secrets abroad. The government does not publish official statistics on the number of executions, and this figure remains a state secret.¹² Despite the Supreme People’s Court recovering its right to review all death penalty cases on 1 January 2007, Amnesty International reported in March 2009 that almost twice as many people had been executed in 2008 as in 2007.¹³
- 2.11** In March 2009, a string of inmate deaths raised new concerns over alleged prisoner abuse in Chinese jails. In April, China launched a three-month campaign to “eliminate unnatural deaths” of prison inmates. On 13 April China released its first “action plan” on human rights, but made clear that its citizens’ right to earn a living, educate their children and see a doctor would come before Western ideas of freedom of speech, assembly and fair trial. On 14 April, China’s leadership ordered local officials to step up efforts to address public grievances in their areas amid a surge in complaints that had been brought to the central government in Beijing.¹⁴

3. Main categories of claims

- 3.1** This Section sets out the main types of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in China. It also contains any common claims that may raise issues covered by the Asylum Instructions on Discretionary Leave. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/ punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant Asylum Instructions, but how these affect particular categories of claim are set out in the guidance below.
- 3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the applicant would, if returned, face persecution for a Convention reason - i.e. due to race, religion, nationality, membership of a particular social group or political opinion. The approach set out in ***Karanakaran*** should be followed when deciding how much weight to be given to the material provided in support of the claim (see the Asylum Instruction on Considering the Asylum Claim).
- 3.3** If the applicant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the applicant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in section 4 below or on the individual circumstances.
- 3.4** This guidance is **not** designed to cover issues of credibility. Case owners will need to consider credibility issues based on all the information available to them. (For guidance on credibility see the Asylum Instructions on ‘Considering the Asylum Claim’ and ‘Assessing Credibility in Asylum and Human Rights Claims’.
- 3.5** All Asylum Instructions can be accessed on the Horizon intranet site. The instructions are also published externally on the Home Office internet site at <http://www.ukba.homeoffice.gov.uk/documents/asylumpolicyinstructions/>

¹¹ USSD 2008

¹² China COI Report 16 April 2009

¹³ China COI Report 16 April 2009

¹⁴ China COI Report 16 April 2009

3.6 Falun Gong/Falun Dafa

- 3.6.1** Most claimants apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of the Chinese authorities due to their involvement with Falun Gong/Falun Dafa.
- 3.6.2 *Treatment.*** The Falun Gong movement was established in 1992 by Li Hongzhi. Based on the Chinese ancient art of qigong or energy cultivation and fused with elements of other religions it emphasises high moral standards and good health amongst its followers who combine gentle exercises with meditation. Despite the spiritual component within Falun Gong, it does not consider itself a religion and has no clergy or places of worship. Pre-ban (July 1999) followers would gather in public parks and squares to practise the five exercises/movements. The middle-aged and those from the middle class were reported to comprise the sect's main following although its ranks included people from all walks of life. Since 1999 there have been no reported public manifestations of Falun Gong practitioners in China.¹⁵
- 3.6.3** In 2008 Falun Gong activity in the country remained negligible, and practitioners based abroad reported that the government's crackdown against the group continued. Even practitioners who had not protested or made other public demonstrations of belief reportedly were forced to attend anti-Falun Gong classes or were sent directly to reeducation-through-labour (RTL) camps. Many practitioners had given up because of fear of persecution. Practising Falun Gong in the privacy of one's own home may be possible but could become 'dangerous' if officials or the police became aware of it. UNHCR reported in its 2005 position paper that, although membership per se does not adequately substantiate a claim to refugee status and members are not 'sought out' at home, even lower level members may risk longer term detention. Likely punishment would be detention without trial for approximately four years in RTL camps and police beatings that often accompany such detention.¹⁶
- 3.6.4** Falun Gong sources estimated that since 1999 at least 6,000 Falun Gong practitioners have been sentenced to prison, more than 100,000 practitioners have been sentenced to RTL, and almost 3,000 have died from torture while in custody. Some foreign observers estimate that Falun Gong adherents constituted at least half of the 250,000 officially recorded inmates in RTL camps, while Falun Gong sources overseas placed the number even higher. Over the past several years, Falun Gong members identified by the government as "core leaders" were singled out for particularly harsh treatment. More than a dozen were sentenced to prison for the crime of "endangering state security", but the great majority of Falun Gong members convicted by the courts since 1999 were sentenced to prison for "organising or using a sect to undermine the implementation of the law", a less serious offence. Most practitioners, however, were punished administratively. Some practitioners were sentenced to RTL. Some Falun Gong members were sent to "legal education" centres specifically established to "rehabilitate" practitioners who refused to recant publicly their belief voluntarily after their release from RTL camps. Government officials denied the existence of such centres. In addition hundreds of practitioners were confined to mental hospitals, according to overseas groups.¹⁷ Amnesty International reported that during 2008 over 100 Falun Gong practitioners were reported to have died in detention or shortly after release as a result of torture, denial of food or medical treatment, and other forms of ill-treatment.¹⁸
- 3.6.5** In addition to reports of harassment and detention of adherents, the Falun Gong movement has claimed that family members, including children, of practitioners are also targeted for

¹⁵ China COI Report 16 April 2009

¹⁶ China COI Report 16 April 2009

¹⁷ USSD 2008

¹⁸ Amnesty International Report 2008

arbitrary arrest, detention and harassment including expulsion from school and re-education through labour. There are accounts of family members allegedly being arrested in order to pressure adherents who are wanted by authorities into surrendering, or otherwise punished for the adherents' Falun Gong activities. Many children of Falun Gong members are reportedly left unattended and sometimes homeless following the arrest of their parents.¹⁹

3.6.6 Sufficiency of protection. As this category of claimants' fear is of ill treatment/persecution by the state authorities they cannot apply to these authorities for protection.

3.6.7 Internal relocation. As this category of claimants' fear is of ill treatment/persecution by the state authorities, relocation to a different area of the country to escape this threat is not feasible.

3.6.8 Caselaw.

L (China) v SSHD [2004] EWCA (Civ) 1441. The Court of Appeal found that there are no Falun Gong membership lists and "anyone can become a member or cease to be a member at any time and practise Falun Gong exercises by him/herself in the privacy of his/her home without significant risk of being ill-treated" (para 33).

[2005] UKIAT 00122 LL (Falun Gong – Convention Reason – Risk) China CG Heard: 29 July 2005 Promulgated: 9 August 2005 The AIT found that in the absence of special factors "there will not normally be any risk sufficient to amount to "real risk" from the Chinese authorities for a person who practices Falun Gong in private and with discretion" (para 35). The IAT also found that "if on the established facts it is held that there is a real risk of persecutory ill-treatment by reason of Falun Gong activities, then it is by reason of imputed political opinion and thus engages a 1951 Convention reason as well as Article 3." (para 28)

[2002] UKIAT 04134 MH (Risk-Return-Falun Gong) China CG Heard: 25 July 2002 Notified 3 September 2002 The IAT accepted that "ordinary Falun Gong practitioners have on a significant number of occasions been subjected to human rights abuses of various kinds, however, it is only in respect of Falun Gong activists that the scale and level of interference with their human rights has been sufficient to warrant a conclusion that upon return they would face a real risk, as opposed to a possible risk, of persecution or serious harm." (para 11)

3.6.9 Conclusion. There is widespread repression of Falun Gong by the Chinese authorities and Falun Gong practitioners/activists may face ill-treatment in China if they come to the attention of the Chinese authorities. Falun Gong practitioners and in particular Falun Gong activists who have come to the attention of the authorities are likely to face ill-treatment that may amount to persecution in China and therefore are likely to qualify for a grant of asylum under the 1951 Convention by reason of imputed political opinion.

3.6.10 However, the Court of Appeal found in **L (China) v SSHD [2004] EWCA (Civ) 1441** that anyone can become a member or cease to be a member of Falun Gong at any time and can practise Falun Gong exercises on their own in the privacy of their home without significant risk of being ill-treated. The IAT found in **[2005] UKIAT 00122** that there will not normally be any real risk from the Chinese authorities for a person who practices Falun Gong in private and with discretion. Therefore, ordinary Falun Gong practitioners who have not come to the attention of the Chinese authorities are unlikely to qualify for a grant of asylum or Humanitarian Protection.

3.7 Involvement with pro-Tibetan/pro-independence political organisations

3.7.1 Some claimants apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of the Chinese authorities due to their involvement with pro-Tibetan/pro-independence political organisations.

¹⁹ China COI Report 16 April 2009

- 3.7.2 Treatment.** There are 5.4 million Tibetans within China, accounting for 0.44 per cent of the population. The total population of the Tibetan Autonomous Area (TAR) is 2.6 million (based on the 2000 census). The Karze/Kardze (Ganzi in Tibetan) Tibetan Autonomous Prefecture (TAP) located in Sichuan province is the most volatile area outside of the TAR. Tibetan activists have also been detained in Qinghai and Gansu Provinces.²⁰
- 3.7.3** The main group at risk in the Tibetan areas is active political dissidents, especially those seeking Tibetan independence. Activities attracting prison terms are those classified as endangering state security or promoting separatism. They include espionage, bomb blasts, leaflet distribution advocating independence, and possessing the Dalai Lama's picture or reading the Dalai Lama's works. Among the dissidents the majority belong to the clerical order.²¹
- 3.7.4** Government officials maintained that possessing or displaying pictures of the Dalai Lama was not illegal. Nevertheless, the authorities appeared to view possession of such photos as evidence of separatist sentiment when detaining individuals on political charges. Pictures of the Dalai Lama were not openly displayed in major monasteries and could not be purchased openly in the TAR. The Government also continued to ban pictures of Gendun Choekyi Nyima, the boy recognised by the Dalai Lama as the Panchen Lama. Photos of the 'official' Panchen Lama, Gyaltzen Norbu, were only publicly displayed in his home monastery in Shigatse.²²
- 3.7.5** The government's human rights record in Tibetan areas of China deteriorated severely during 2008. Authorities continued to commit serious human rights abuses, including torture, arbitrary arrest, extrajudicial detention, and house arrest. Official repression of freedoms of speech, religion, association, and movement increased significantly following the outbreak of protests across the Tibetan plateau in the spring. The preservation and development of Tibet's unique religious, cultural, and linguistic heritage continued to be of concern.²³
- 3.7.6** On 10 March 2008, 500 monks from Drepung Monastery staged a peaceful protest demanding religious freedom and the release of colleagues arrested in October 2007. A number of other protests also took place. Following beatings and arrests, violent protests took place in Lhasa and elsewhere in Tibetan areas on 14 March which resulted in large numbers of detentions and both Han and Tibetan deaths. Since March 2008, the Chinese government has instigated a crackdown in Tibet and its surrounding Tibetan regions. Freedom of religion, expression and association of Tibetans continues to be severely restricted. Chinese authorities claim only 23 people were killed during the 14 March violence, but NGOs claim the number was in the hundreds. Chinese authorities claim that Tibet is now stable and secure, but a heavy security presence in Tibet and a significant security presence in nearby provinces suggest underlying tensions remain. There are also reports of ongoing patriotic education campaigns in schools and monasteries which require Tibetans to reaffirm their loyalty to the Chinese state and denounce the Dalai Lama. Concerns remain about sentencing of Tibetans in November 2008 in connection with the March demonstrations in Lhasa.²⁴
- 3.7.7** The number of political prisoners in Tibetan areas, estimated at 95 in 2007, rose sharply due to the March 2008 unrest. Although exact figures were unavailable, the Tibetan Centre for Human Rights and Democracy (TCHRD) placed the number of Tibetans detained in the months following the protests at more than 6,500. Based on information available from the Congressional Executive Commission on China's (CECC) political prisoner database (PPD), at the end of 2008 there were 550 political prisoners imprisoned in Tibetan areas. However, the actual number of Tibetan political prisoners and detainees was believed to be

²⁰ China COI Report 16 April 2009

²¹ China COI Report 16 April 2009

²² China COI Report 16 April 2009

²³ China COI Report 16 April 2009

²⁴ FCO Human Rights Report 2008

much higher. Of the 550 documented political prisoners and detainees, 463 were detained on or after 10 March and 385 political prisoners were Tibetan Buddhist monks and nuns. At year's end the CECC PPD contained sentencing information on only 20 of the Tibetan political prisoners. The judicial system imposed sentences on these 20 political prisoners ranging from one year to life imprisonment. An unknown number of prisoners continued to be held under the RTL system.²⁵

3.7.8 On 11 February 2009 *The Guardian* stated, "China has sentenced 76 people and detained more than 950 since last year's deadly riots in Tibet, state media reported today... Last month, the authorities in Lhasa launched a 'strike hard' campaign in which at least 81 people were detained and thousands checked by security officials."²⁶

3.7.9 According to numerous sources, many of those detained after 10 March 2008 were subjected to extrajudicial punishments such as severe beatings and deprivation of food, water and sleep for long periods. In some cases, detainees suffered broken bones and other serious injuries at the hands of PAP and Public Security Bureau (PSB) officers. Eyewitnesses reported that bodies of persons killed during the unrest or subsequent interrogations were disposed of secretly rather than returned to their families. Tibetans seeking to flee to India and other countries overland via Nepal risked violence and arrest at the hands of security forces.²⁷

3.7.10 Sufficiency of protection. As this category of claimants' fear is of ill-treatment/persecution by the state authorities they cannot apply to these authorities for protection.

3.7.11 Internal relocation. As this category of claimants' fear is of ill-treatment/persecution by the state authorities relocation to a different area of the country to escape this threat is not feasible.

3.7.12 Caselaw.

SP and Others (Tibetan – Nepalese departure – illegal - risk) People's Republic of China CG [2007] UKAIT 00021. Heard 18 August 2006. Determination promulgated 9 February 2007

The AIT summarised its conclusions as follows: (para 119)::

(a) "There are no figures for Tibetans who are returned from the West to the only two points of removal to the People's Republic of China – Beijing and Shanghai -and we do not consider it safe to infer that the figures we have for those returned to China in recent years include any Tibetans.

(b) The Chinese authorities are concerned with any activity by Tibetans which they consider to be "splittist"- that is, any activity which indicates that a Tibetan might wish Tibet region to break away from China. Any support for the Dalai Lama is seen as "splittist" and as furthering the cause of Tibetans nationalism, which the Chinese authorities continue to want to crush. Those Tibetans who leave China unlawfully on the Tibet/Nepal route are seen as being supporters of the Dalai Lama.

(c) Tibetans who having left China unlawfully on the Tibet/Nepal route now face removal by the United Kingdom, are reasonably likely to be considered as "splittists".

(d) Accordingly, Tibetans who have made their way to the West having left China unlawfully on the Tibet/Nepal route face a real risk on return of detention and ill-treatment which amounts to persecution.

(e) Tibetans who left China legally, and who did not leave because they had a well founded fear of persecution, would not be likely to face persecution on return at the airports in Beijing or Shanghai or subsequently upon re-entry to Tibet region.

(f) The Chinese regime in the Tibet region is repressive and the individual facts of each case must be considered carefully as it is a society where there is a considerable amount of surveillance.

²⁵ USSD China 2008

²⁶ China COI Report 16 April 2009

²⁷ USSD China 2008

A Tibetan who is able to show he faces a real risk on return arising out of past adverse experiences in the Tibet region, should be able to succeed in his or asylum claim, irrespective of what the position is as regards failed asylum seekers generally.

(g) Unless the Secretary of State can show that their exit from China was lawful, and not on the Tibet/Nepal route, Tibetan[s] returned to Beijing or Shanghai are reasonably likely to face persecution on return and therefore the issue of an internal relocation alternative does not arise. (PLEASE NOTE – THIS PARAGRAPH WAS REMOVED AS A RESULT OF A CONSENT ORDER IN THE COURT OF APPEAL, 5 OCTOBER 2007)

(h) However, even if the issue of internal relocation did arise, given the terms of the [OGN and COIS report] and the evidence pointing to likely state persecution of Tibetans who have left Tibet illegally via Nepal, there would not be any viable internal relocation alternative.”

The AIT further stated (para 121) that in future cases it will be very important that the Secretary of State states his position upon, and that clear findings are made regarding, the following issues in particular:

- a) “Whether or not an appellant had a well founded fear of persecution before leaving China,
- (b) Whether or not he or she left China legally or without authority; and
- (c) The route by which they should be considered to have left China (that is, from the mainland or on the Tibet/Nepal route).”

3.7.13 Conclusion. It is clear that the Chinese authorities may take serious action against Tibetans expressing political or religious views and that this treatment may amount to persecution. Where an individual is able to demonstrate that they are at serious risk of facing such persecution on account of their activities, a grant of asylum will be appropriate.

3.7.14 Case owners should be aware that, of the individual accounts considered in *SP and Others*, two were found to be incredible. The appeals were only allowed because the AIT was prepared to accept that the appellants had left Tibet illegally via Nepal and, on this basis alone, the AIT considered that there would be a real risk of treatment amounting to persecution on return. For cases potentially falling within the ambit of *SP and Others*, in addition to examining the credibility or otherwise of the substantive claim (including ethnicity, nationality and place/country of origin or habitual residence), case owners should also take particular care in establishing both the circumstances of the applicant’s exit from China (i.e. was it lawful?) and also full details of the route to the UK. (i.e. did the applicant travel via Nepal or did he leave China by another route?). Findings on all material aspects of the claim should be reflected in the written decision.

3.7.15 A grant of asylum will not be appropriate solely on the basis of Tibetan ethnicity if an individual has left Tibet lawfully by a route other than Nepal. However, in accordance with the conclusions in *SP and others*, if we accept that an ethnic Tibetan has left China unlawfully and via the Nepal route, a grant of asylum will be appropriate.

3.8 Involvement with religious organisations

3.8.1 Some claimants apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of Chinese authorities due to their involvement with religious organisations.

3.8.2 Treatment. The Constitution and laws provide for freedom of religious belief and the freedom not to believe, although the constitution only protects religious activities defined as ‘normal’. The government sought to restrict legal religious practice to government-sanctioned organisations and registered places of worship and to control the growth and scope of the activity of both registered and unregistered religious groups, including house churches. To be considered legal, religious groups must register with a government-

affiliated patriotic religious association (PRA) associated with one of the five recognised religions: Buddhism, Taoism, Islam, Protestantism and Catholicism. Buddhists made up the largest body of organised religious believers. The traditional practice of Buddhism continued to expand in many parts of the country. The PRAs supervised the activities of each of these religious groups and liaised with government religious affairs authorities charged with monitoring religious activity. Repression and harassment of unregistered religious groups intensified in the run-up to the Olympics. Nonetheless, freedom to participate in religious activities continued to increase in many areas. Religious activity grew not only among the five main religions, but also among the Eastern Orthodox Church and folk religions.²⁸

- 3.8.3** The government's repression of religious freedom intensified in Tibetan areas (see Section 3.7) and in the XUAR [Xinjiang Uighur Autonomous Region] in 2008. Authorities reportedly requested that some house church groups in Beijing, including those with large congregations, those that were high-profile, or those located near Olympic venues, suspend meeting during the Olympic Games and Paralympic Games, although few groups reported that this request was enforced. Followers of Tibetan Buddhism faced more restrictions on their religious activity and ability to organise than Buddhists in other parts of the country. The 'patriotic education' campaigns in the TAR and other Tibetan regions, which often required monks and nuns to sign statements denouncing the Dalai Lama, and other new restrictions on religious freedom were major factors that led monks and nuns to mount peaceful protests on 10 March 2008.
- 3.8.4** The law requires religious groups to register religious venues, although many thousands of religious groups did not register. Spiritual activities in unregistered venues may be considered illegal and participants can be punished. Government officials state that private homes where family and friends gather to study the Bible would not be required to register. Reports of government pressure on religious groups to register or to come under the supervision of official religious organisations continued during 2008. Various unofficial groups reported that authorities refused them registration without explanation or for failure to affiliate with a PRA or to employ PRA-approved clergy.²⁹
- 3.8.5** Local authorities' handling of unregistered Protestant groups varied in different regions of the country. In some regions unregistered groups or house churches with hundreds of members met openly, with the full knowledge of local authorities. In other areas, meetings of more than a handful of family members and friends were strictly proscribed. Unregistered groups were more likely to encounter difficulties when their membership was large or when they forged links with other unregistered groups or foreign organisations. During 2008 there were numerous reports of detention and harassment of unregistered Protestant groups. Harassment of unregistered Catholic bishops, priests and laypersons continued, including government surveillance and detentions.³⁰
- 3.8.6** The government tightly controlled the practice of Islam and official repression of Uighur Muslims in the XUAR increased in 2008. Regulations restricting Muslims' religious activity, teaching, and places of worship continued to be implemented forcefully in the XUAR. XUAR authorities arrested nearly 1,300 persons on state security charges during 2008, a dramatic increase from 2007, and approved the prosecution of 1,154 individuals for committing one or more of the "three evils" of terrorism, separatism and extremism. As well as the restrictions on Party members and government officials throughout the country, teachers, professors and university students in the XUAR were sometimes not allowed to practise religion openly.³¹
- 3.8.7** **Sufficiency of protection.** As this category of claimants' fear is of ill treatment/persecution by the state authorities they cannot apply to these authorities for protection.

²⁸ USSD China 2008

²⁹ USSD China 2008

³⁰ USSD China 2008

³¹ USSD China 2008

3.8.8 Internal relocation. As this category of claimants' fear is of ill treatment/persecution by the state authorities, relocation to a different area of the country to escape this threat is not feasible.

3.8.9 Conclusion. Although there are restrictions on religious freedom and the Chinese authorities seek to control religious groups, the treatment individual members of officially registered religious groups suffer on account of these restrictions does not generally amount to persecution. The majority of claimants from this category of claim are therefore unlikely to qualify for asylum or Humanitarian Protection.

3.8.10 Members of unregistered religious groups face more difficulties than members of registered communities and individuals may face intimidation and serious harassment which in some cases may amount to persecution. Where an individual is able to demonstrate that they are at serious risk of facing such persecution on account of their activities a grant of asylum will be appropriate. However, the levels of ill-treatment suffered will vary depending on region and the attitude of local officials and will not always reach the level of persecution. Therefore a grant of asylum will not be appropriate in many cases.

3.9 Involvement with illegal political organisations

3.9.1 Some claimants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of Chinese authorities due to their involvement with illegal political organisations.

3.9.2 Treatment The law does not provide citizens with the right to change their government peacefully, and citizens cannot freely choose or change the laws and officials that govern them. The CCP retained a monopoly on political power and forbade the creation of new political parties. It controls appointments to positions of political power (see 2.3-2.4). Some township, county and provincial elections featured experiments with increased competition, including self-nomination of candidates, campaign speeches by candidates, public vetting of nominees and a two-tiered indirect election system.³²

3.9.3 No substantial political opposition groups exist, although the government has identified the Falun Gong spiritual movement (see Section 3.6) and the China Democracy Party (CDP) as subversive groups.³³ Dozens of CDP leaders, activists and members have been arrested, detained or confined. One of the CDP's founders, Qin Yongmin, who was imprisoned in 1998, remained in prison at the end of 2008, as did others connected with a 2002 open letter calling for political reform and reappraisal of the 1989 Tiananmen massacre. More than 30 current or former CDP members reportedly remained imprisoned or held in RTL camps in 2008.³⁴

3.9.4 Government officials continued to deny holding any political prisoners, asserting that authorities detained persons not for their political or religious views, but because they violated the law; however, during 2008 the authorities continued to confine citizens for reasons related to politics and religion. Tens of thousands of political prisoners remained incarcerated, some in prisons and others in re-education through labour camps and other forms of administrative detention. Foreign NGOs estimated that several hundred persons remained in prison for the repealed crime of 'counter-revolution,' and thousands of others were serving sentences for offences relating to 'state security', which Chinese authorities stated covers crimes similar to counter-revolution. Former political prisoners were frequently subjected to police surveillance. Security personnel also harassed and detained the family members of political prisoners.³⁵

³² USSD China 2008

³³ China COI Report 16 April 2009

³⁴ USSD China 2008

³⁵ USSD China 2008

- 3.9.5** It was reported in January 2009 that Chinese lawyers, dissidents and academics who signed a document calling for political reform were being harassed by the authorities. Signatories to the Charter 08 document, published online in December 2008, were detained, questioned by police and put under pressure at work. The charter calls for a radical overhaul of China's political system by introducing elections, a new constitution and an independent judiciary. Writer and dissident Liu Xiaobo was believed to be the only signatory remaining in police detention by the end of 2008.³⁶
- 3.9.6** *Sufficiency of protection.* As this category of claimants' fear is of ill treatment/persecution by the state authorities they cannot apply to these authorities for protection.
- 3.9.7** *Internal relocation.* As this category of claimants' fear is of ill treatment/persecution by the state authorities, relocation to a different area of the country to escape this threat is not feasible.
- 3.9.8** *Conclusion.* It is clear that the Chinese authorities may take serious action against individuals involved with opposition political parties/organisations who they believe pose a threat to the state and that this treatment may amount to persecution. Where an individual is able to demonstrate that they are at serious risk of facing such persecution on account of their activities a grant of asylum will be appropriate.
- 3.10** **Forced abortion(s)/sterilisation under 'one child policy'**
- 3.10.1** Some claimants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of Chinese authorities due to them having more than one child.
- 3.10.2** *Treatment.* Article 25 of the State Constitution states that "The State promotes family planning so that population growth may fit the plans for economic and social development." Article 49 states, "Both husband and wife have the duty to practise family planning." While the national family planning authorities have shifted their emphasis from lowering fertility rates to maintaining low fertility rates and emphasise quality of care in family planning practices, the country's birth limitation policies have retained harshly coercive elements in law and practice.³⁷
- 3.10.3** However, the 'one-child policy' does not restrict every couple to only one child. Some provinces have eased restrictions to allow younger couples who come from single-child families to give birth to two children and a NPFPC spokesman claimed that the exemption applied to all such couples nationwide with the sole exception of Henan province. The one-child limit was more strictly applied in the cities and more relaxed in most rural areas. In most rural areas, if a family only has one girl or a child with a disability, the couple can have another child. In some remote and poor mountainous areas, farmers are allowed to have two children. People who remarry may have second children if their new partners are childless.³⁸
- 3.10.4** In addition recognised ethnic minorities are partially exempt from the 'one child policy'. In urban areas, if both husband and wife are only children in their families, they can have two children. In most rural areas, if a family only has one girl or the first child is disabled, the couple can have another child. In ethnic minority areas, more preferential policies permit some families to have three children, and in the farming and pastoral areas in Xinjiang Uygur Autonomous Region, families are allowed to have four children. In Tibet's farming and pastoral areas, there is no restriction on childbirth.³⁹

³⁶ China COI Report 16 April 2009

³⁷ USSD China 2008

³⁸ China COI Report 16 April 2009

³⁹ China COI Report 16 April 2009

- 3.10.5** The country's population control policy relies on education, propaganda and economic incentives as well as on more coercive measures. Those who violate the policy face disciplinary measures such as social compensation fees, job loss or demotion, loss of promotion opportunity, expulsion from the party and other administrative punishments, including in some cases the destruction of private property. Although the law standardises implementation of the policy, enforcement varies significantly. The 'social compensation fee' sometimes reaches 10 times a person's annual disposable income and is set and assessed at the local level. The law grants preferential treatment to couples who abide by the birth limits. Although the law states that officials should not violate citizens' rights, these rights, as well as penalties for violating them, are not clearly defined. The law provides significant and detailed sanctions for officials who help persons evade the birth limitations. The law requires family planning officials to obtain court approvals before taking 'forcible' action, such as detaining family members or confiscating and destroying property of families who refuse to pay social compensation fees but this is not always followed in practice.⁴⁰
- 3.10.6** The penalties for violating the law are strict, leaving some women little choice but to abort pregnancies. Although some officials have suggested that adjustments to the policy were needed to address aging and sex-ratio at birth problems, the family planning minister announced in 2008 that the policy would not change for at least a decade.⁴¹ Reports of physical coercion by officials trying to meet birth targets continued in 2008.⁴²
- 3.10.7** In the case of families that already had two children, one parent was often pressured to undergo sterilisation. The penalties sometimes left women with little practical choice but to undergo abortion or sterilisation. The law states that family planning bureaus will conduct pregnancy tests on married women and provide them with unspecified 'follow-up' services. Some provinces fined women who did not undergo periodic pregnancy tests.⁴³ In some provinces, the local villagers' or residents' committee are permitted to 'take measures' and establish a deadline for terminating the pregnancy. Couples who refuse to undergo an abortion are given a warning, and if the abortion is not performed, the couple may be fined up to CNY 2,000 (\$242). Citizens who have children without permission from the government must pay social compensation fees, must assume financial responsibility for all maternal health-care costs, and are denied maternity insurance benefits for leave and subsidies; rural citizens are refused future increases in land allocation.⁴⁴
- 3.10.8** The Chinese government prohibits the use of physical coercion to compel persons to submit to abortion or sterilisation.⁴⁵ However, the government offers a number of incentives designed to encourage individuals to undergo sterilisation. These can include extended leave and extra benefits in the workplace and the right to marry if they are at risk of transmitting certain congenital defects. However, forced sterilisations continue to occur, most frequently when couples have more children than the allowable number. Women may be allowed to carry the 'excess' child to term, but then one member of a couple is strongly pressured to be sterilised. In some cases, they may be asked to go to a hospital under other pretences, or sterilised without consent. Additionally, if doctors find that a couple is at risk of transmitting disabling congenital defects to their children, the couple may marry only if they agree to use birth control or undergo sterilisation.⁴⁶
- 3.10.9** Several provinces: Anhui, Hebei, Heilongjiang, Hubei, Hunan, Jilin, Liaoning and Ningxia require "termination of pregnancy" if the pregnancy violates provincial family planning regulations. An additional 10 provinces: Fujian, Guizhou, Guangdong, Gansu, Jiangxi,

⁴⁰ USSD China 2008

⁴¹ USSD China 2008

⁴² China COI Report 16 April 2009

⁴³ USSD China 2008

⁴⁴ China COI Report 16 April 2009

⁴⁵ USSD China 2008 (Section 5)

⁴⁶ China COI Report 16 April 2009

Qinghai, Sichuan, Shanxi, Shaanxi and Yunnan require unspecified “remedial measures” to deal with out-of-plan pregnancies.⁴⁷

3.10.10 Officials at all levels are subject to rewards or penalties based on meeting the population goals set by their administrative region. In 2008 there continued to be sporadic reports of violations of citizens’ rights by local officials attempting to reduce the number of births in their region. Officials in Gansu Province reportedly forcibly detained and sterilised a Tibetan woman who had abided by local population planning requirements. In Henan Province officials reportedly forcibly detained an unmarried woman who was seven months pregnant. Officials reportedly tied her to a bed, induced labour, and killed the newborn upon delivery. In April 2008 population-planning officials in Shandong Province reportedly detained and beat the sister of a woman who had illegally conceived a second child in an attempt to compel the woman to undergo an abortion. In November in XUAR, family planning officials and police escorted a Uighur woman, who was more than six months pregnant with her third child, to the hospital for an abortion. She had gone into hiding to save her pregnancy but returned amid threats that her family’s home and land would be confiscated. After the situation was brought to the attention of central government officials, she was released from the hospital without having to undergo the procedure.⁴⁸ Compulsory abortion or sterilisation by local officials still occurs but is illegal and far less common than in the past.⁴⁹

3.10.11 Sufficiency of protection. As this category of claimants’ fear is of ill treatment/persecution by the state authorities they cannot apply to these authorities for protection.

3.10.12 Internal relocation. As this category of claimants’ fear is of ill treatment/persecution by the state authorities relocation to a different area of the country to escape this threat is not feasible.

3.10.13 Caselaw.

[2004] UKIAT 00138 TC (China) Heard 27 February 2004, Promulgated 10 June 2004 The IAT accepted that the appellant who had four children had been fined 30,000 Yen for breaching the One Child Policy. He had been beaten by the police and officials had damaged his house and taken his furniture. In the course of the encounter, the appellant had hit a police officer. As he was unable to pay the fine, he went into hiding and left China illegally.

The IAT found that even if the appellant was arrested and detained, they do not consider that the resultant pre-trial detention, the sentence and the post-trial detention would give rise to serious harm to the appellant that would breach Article 3. Conditions in both the prison system and the administrative detention system facilities are harsh and ill-treatment does occur. However, there was no evidence as to what proportion of prisoners in China are estimated to experience ill-treatment. In order to be satisfied there is a real risk, the objective evidence considered as a whole needs to demonstrate a consistent pattern of gross, flagrant or mass violations of the human rights of the prisoners. If there was such a consistent pattern, the Tribunal would expect to find more evidence than there is of the scale and frequency of human rights abuses (paras 9-12).

The fact that the “appellant’s wife had not met with any adverse consequences since his departure was rightly treated by the adjudicator as a strong indication that the authorities were not continuing to pursue his family for violation of the One Child policy” (para 6). If however the appellant was to return and there was a renewed requirement to pay the fine, even if this amounted to a significant proportion of his annual wage, this could not be considered to be so disproportionate as to give rise to a violation of Article 3.

3.10.14 Conclusion. The Chinese authorities restrict the number of children that couples may have and impose punishments on those who breach the regulations. However, the one child policy is not universally enforced throughout China, especially in the more rural areas and towns of less than 200,000 people. Even for those that live in the larger cities there are

⁴⁷ USSD China 2008

⁴⁸ USSD China 2008

⁴⁹ Freedom House: Freedom in the World Report 2008: China

a number of exemptions that allow couples to have more than one child. Even if couples are punished, in the majority of cases the punishment is a simple fine which would not be a breach of Article 3. Therefore in the majority of cases claimants are unlikely to qualify Humanitarian Protection.

3.10.15 However, if a claimant is able to demonstrate that on return they face a serious risk of an enforced termination of a pregnancy or an enforced sterilisation, a grant of Humanitarian Protection will be appropriate.

3.11 Double Jeopardy

3.11.1 Some claimants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of Chinese authorities due to their fear that they will face a re-trial based on Chinese law for a crime they have committed abroad and have already been punished for.

3.11.2 *Treatment.* Articles 8 to 12 of the Criminal Law covers the circumstances in which an individual who commits crimes outside the Peoples Republic of China (PRC) can be retried upon return to China.⁵⁰

3.11.3 Article 10 states: Any person who commits a crime outside the territory and territorial waters and space of the PRC, for which according to the law he should bear criminal responsibility, may still be investigated for criminal responsibility according to this Law, even if she or he has already been tried in a foreign country. However if he has already received criminal punishment in the foreign country he may be exempted from punishment or given mitigated punishment.⁵¹

3.11.4 The circumstances under which an individual would be punished in China for a crime committed in a foreign country, for which he had already been punished in that country, are unstipulated. The Chinese authorities are most likely to take this action if the crime had received a lot of publicity in China, if the victims were well-connected in China, if there were a political angle to the original crime or if the crimes were of a particular type that the authorities wanted to make an example of. As of July 2005 the British Embassy in Beijing is unaware of any such instances. The specific inclusion in the Criminal Law of 'exemptions' from second punishment in China for crimes committed abroad suggests that the authorities would not take further action against those convicted abroad for ordinary criminal offences.⁵²

3.11.5 *Sufficiency of protection.* As this category of claimants' fear is of ill treatment/persecution by the state authorities they cannot apply to these authorities for protection.

3.11.6 *Internal relocation.* As this category of claimants' fear is of ill treatment/persecution by the state authorities relocation to a different area of the country to escape this threat is not feasible.

3.11.7 *Caselaw.*

JC (double jeopardy: Art 10 CL) China CG [2008] UKIAT 00036

Upheld by the Court of Appeal. See JC (China) v Secretary of the State for the Home Department [2009] EWCA Civ 81

1."There is a risk of prosecution or re-prosecution under Articles 7 and 10 of the Chinese Criminal Law for overseas offenders returned to China. However, the use of those provisions is discretionary and extremely rare. Absent particular aggravating factors, the risk falls well below the level required to engage international protection under the Refugee Convention, the ECHR, or humanitarian

⁵⁰ China COI Report 16 April 2009

⁵¹ China COI Report 16 April 2009

⁵² China COI Report 16 April 2009

protection. The risk of prosecution or re-prosecution will be a question of fact in individual cases but is more likely where:-

- (a) there has been a substantial amount of adverse publicity within China about a case;
- (b) the proposed defendant has significantly embarrassed the Chinese authorities by their actions overseas;
- (c) the offence is unusually serious. Generally, snakehead cases do not have the significance they have in the West and are regarded as ordinary (but serious) crimes requiring no special treatment;
- (d) political factors may increase the likelihood of prosecution or re-prosecution; and
- (e) the Chinese Government is also particularly concerned about corruption of Chinese officialdom.

2. Prosecution under Article 7 or 10 is a fresh prosecution. The discretion to prosecute is exercised in the light of the opinion of the Chinese authorities as to whether the foreign jurisdiction dealt properly, and without undue leniency, with the offence. It can no longer be said that there is no information available on the use of that power: the China court database of cases and the NPC website guidance are maintained directly by the Chinese Government and provides guidance for judges and lawyers on the use of these powers.

3. The burden of proof does not shift to the Secretary of State in double jeopardy cases. The Court of Appeal decision in Adam v Secretary of State for the Home Department [2003] EWCA Civ 265 is not authority for such a proposition, particularly where the decision to re-prosecute is discretionary.

4. In the light of our findings above, the decisions in WC (no risk of double punishment) China [2004] UKIAT 00253 and SC (double jeopardy – WC considered) China CG [2006] UKAIT 00007 are no longer factually accurate and SC should no longer be treated as country guidance.”

3.11.8 Conclusion. The Chinese legal system allows for double jeopardy in which Chinese citizens can be punished/imprisoned on return to China for crimes they have committed and been punished for in other countries. However, the IAT found in **JC (double jeopardy: Art 10 CL) China CG [2008] UKIAT 00036** that the use of the legal provisions is discretionary and extremely rare. Without particular aggravating factors, the risk falls well below the level required to engage international protection under the Refugee Convention or the ECHR. The risk of prosecution should be considered on the individual circumstances of a case and case owners should have particular regard to the factors set out at Paragraph 273 (19) of the determination.

3.12 Civil disturbances/criminal gangs/corruption

3.12.1 Some claimants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of organised criminal gangs working in co-operation with corrupt police officers and/or the Chinese authorities due to their involvement in civil unrest.

3.12.2 Treatment: The law provides for freedom of peaceful assembly; however, the government severely restricted this right in practice. Despite restrictions, during 2008 there were many demonstrations, but those with political or social themes were often broken up quickly sometimes with excessive force. Social inequalities and uneven economic development, combined with dissatisfaction over widespread official corruption, increased social unrest. As in previous years, the vast majority of demonstrations in 2008 concerned land disputes, housing issues, industrial, environmental, labour, government corruption, taxation and other economic and social concerns.⁵³

3.12.3 Forced relocation because of urban development continued in 2008 and in some cases increased. Protests over relocation terms or compensation, some of which included thousands of participants, were increasingly common and some protest leaders were prosecuted. There were numerous reports that evictions in Beijing were linked to

⁵³ China COI Report 16 April 2009

construction for the Olympics. In rural areas relocation for infrastructure and commercial development projects resulted in the forced relocation of millions of persons.⁵⁴

- 3.12.4** Human Rights Watch, in its World Report 2009 stated that people were increasingly taking to the streets, with tens of thousands of public protests, at times violent, taking place across China each year, highlighting the dangers of not providing meaningful avenues for express and redress for official misconduct. In one of several similar incidents in 2008, up to 30,000 people rioted in Weng'An county (Guizhou province), following suspicions that the police had tried to cover up the murder of a 15-year-old girl. The crowds torched a police station, ransacked government buildings, and overturned police cars. Chinese media disclosed shortly after the unrest that the number of such 'mass incidents' had reached 90,000 in 2006 – the highest number ever reported.⁵⁵
- 3.12.5** Although the law provides for the freedom of association, in practice workers were not free to organise or join unions of their own choosing. The All-China Federation of Trade Unions (ACFTU), which is controlled by the CCP and headed by a high-level party official, is the sole legal workers' organisation. The trade union law gives the ACFTU control over all union organisations and activities, including enterprise-level unions. Independent unions are illegal. The ACFTU and its constituent unions influenced and implemented government policies on behalf of workers. The CCP used the ACFTU to communicate with and control workers.⁵⁶
- 3.12.6** During 2008 strikes and labour protests throughout the country were increasingly widespread and well-organised. Most of these protests occurred at export-orientated Hong Kong and Taiwan-invested factories, which shut down suddenly due to deteriorating business conditions without paying back wages or severance pay. The government acted against some activist workers especially when they engaged in organised campaigns. Some workers who complained to local labour and social security bureau offices about working conditions reported that they faced harassment from their employers and police and sometimes from labour bureau officials. Labour rights activists complained throughout 2008 of police surveillance, including interviews with police. Authorities used force to suppress demonstrations and brought criminal charges against some protestors. Although the government showed some tolerance for civil society organisations and law firms involved in protecting worker's rights, authorities monitored labour rights organisations closely, especially those receiving funding from foreign sources.⁵⁷
- 3.12.7** Organised crime groups, also referred to in China as "black societies" and "underworld groups" have become a growing concern in China. The prevalence of organised crime groups and criminal activity in the country has been attributed to corrupt Chinese authorities and "widespread poverty". The most serious organised crime problems for the Chinese authorities are drug distribution, gambling, prostitution and violence. Other problems are drug manufacturing, political/criminal connections and the penetration of organised crime groups into legitimate businesses. Prevalence varies geographically as a result of factors such as economic development, effectiveness of local authorities and differences in local culture and customs. Major or serious crimes are reportedly more prevalent in the north and west of China than in the south and east. A number of sources report the existence of links between organised crime groups and certain Chinese authorities.⁵⁸
- 3.12.8** There were isolated reports of government corruption in 2008, and the government sought to combat official corruption through the Prevention of Bribery Ordinance and the Independent Commission against Corruption (ICAC). By the end of September 2008, the ICAC had received 2,549 reports of corruption (a 5 percent decrease over the same period in 2007), of which 743 were related to the government (an increase of 2 percent from

⁵⁴ China COI Report 16 April 2009

⁵⁵ China COI Report 16 April 2009

⁵⁶ USSD China 2008

⁵⁷ USSD China 2008

⁵⁸ Immigration and Refugee Board Canada: RIRs CHN101062.E 5.05.06

2007). The ICAC completed 285 prosecutions involving 246 individuals (an increase of 6 percent over 2007).⁵⁹

- 3.12.9** In Transparency International's (TI) Corruption Perceptions Index 2008, released in September 2008, China was placed at 72 out of 180 countries, based on perceived levels of corruption in the public and political sectors, as determined by expert assessments and opinion surveys. China scored 3.6 out of ten, ten representing zero perception of corruption. It was reported in December 2008 that the President had launched several anti-corruption campaigns among government officials but that in the absence of systemic reforms to establish real checks and balances on politicians, efforts more often appeared to be at least partly connected with attempts by senior CCP officials to remove factional rivals in the ruling bureaucracy.⁶⁰
- 3.12.10 Sufficiency of protection.** Corruption in China remained a problem in 2008. The high levels of corruption within China may limit the effectiveness of any protection that the authorities are able or willing to offer to those that fear organised crime or corrupt officials. In cases where the claimant fears the Chinese authorities, he will be unable to approach them to seek protection.
- 3.12.11 Internal relocation.** The national system of the hukous (residence permits) are issued for all Chinese citizens and are inscribed to identify the carrier as a rural or urban resident. Each urban administrative entity (towns, cities, etc.) issues its own hukou, which entitles only registered inhabitants of that entity full access to social services, like education.⁶¹ There are approximately 230 million migrant workers from rural areas engaged in employment in urban areas. They lack official residence status in cities and it is difficult for them to gain full access to social services, including education, despite laws, regulations and programmes to address their needs. Some major cities maintain programmes to provide migrant workers and their children access to public education and other social services free of charge.⁶²
- 3.12.12** In general it would not be unduly harsh for a claimant who feared organised criminal gangs/corrupt officials in their local area to move to another part of China even if they were not able to officially register. However, in cases where the claimant fears the Chinese authorities then internal relocation is unlikely to be an option.
- 3.12.13 Conclusion** In recent years there has been a significant increase in civil unrest in China mainly related to the issues of unpaid wages and land. Depending on the circumstances of the unrest these protests may be directed against the Chinese government or against corrupt local officials (often supported by organised criminal gangs). Many of these protests have involved thousands of people and some have turned violent, resulting in deaths and serious injury.
- 3.12.14** Although the Chinese government is wary of any form of popular protest and is likely to respond harshly to protests that challenge the state's authority, the majority of these land and industrial protests are based on local issues and directed against local officials. Even when the protests are directed against the state they rarely challenge the state's authority or right to govern but instead protest against its specific policy as regards wages or land. In general, claimants from this category of claim are unlikely to be seen by the Chinese authorities as having engaged in a political act and are therefore unlikely to engage the United Kingdom's obligations under the Refugee Convention. In addition, for those claimants who fear organised gangs there is the option to internally relocate to another province.

3.13 Prison conditions

⁵⁹ USSD China 2008

⁶⁰ China COI Report 16 April 2009

⁶¹ China COI Report 16 April 2009

⁶² China COI Report 16 April 2009

- 3.13.1** Claimants may claim that they cannot return to China due to the fact that there is a serious risk that they will be imprisoned on return and that prison conditions in the China are so poor as to amount to torture or inhuman treatment or punishment.
- 3.13.2** The guidance in this section is concerned solely with whether prison conditions are such that they breach Article 3 of ECHR and warrant a grant of Humanitarian Protection. If imprisonment would be for a Refugee Convention reason, or in cases where for a Convention reason a prison sentence is extended above the norm, the claim should be considered as a whole but it is not necessary for prison conditions to breach Article 3 in order to justify a grant of asylum.
- 3.13.3 Treatment.** Conditions in penal institutions for both political prisoners and common criminals were reported to be generally harsh and sometimes degrading. Prisoners and detainees were often kept in overcrowded conditions with poor sanitation. Inadequate prison capacity was an increasing problem in some areas. Food was often inadequate and of poor quality, and many detainees relied on supplemental food and medicines provided by relatives; however, some prominent dissidents were not allowed to receive such goods. Many inmates in penal and Re-education through Labour (RTL) facilities were required to work with minimal or no remuneration. Former prison inmates reported that workers who refused to work in some prisons were beaten. Adequate, timely medical care for prisoners remained a serious problem, despite official assurances that prisoners have the right to prompt medical treatment. Prison officials often denied privileges, including the ability to purchase outside food, make telephone calls and receive family visits to those who refused to acknowledge guilt. Political prisoners were segregated from each other and placed with common criminals, who sometimes beat political prisoners at the instigation of guards. Newly arrived prisoners or those who refused to acknowledge committing crimes were particularly vulnerable to beatings.⁶³
- 3.13.4** The UN Committee Against Torture reported in December 2008 that it remained concerned about reports of abuses in custody, including the high number of deaths, possibly related to torture or ill-treatment, and about the lack of investigation into these abuses and abuses and deaths in custody. The Committee noted that the Special Rapporteur on the question of torture had found the availability of medical care in the detention facilities he visited to be generally satisfactory.⁶⁴

Re-education through Labour (RTL)

- 3.13.5** Re-education through Labour (RTL) is one type of administrative detention. The re-education through labour system allows non-judicial panels of police and local authorities, called labour re-education committees, to sentence persons to up to 4 years of detention for 'minor crimes.' These include drug use and prostitution, but also presenting petitions, defending human rights, being a member of an illegal religious community, like the underground Christian communities, Muslim communities, the Falun Gong. Defendants were legally entitled to challenge re-education through labour sentences. They could appeal for a reduction in, or suspension of, their sentences; however, appeals were rarely successful.⁶⁵
- 3.13.6** Conditions in administrative detention facilities, such as RTL camps, were reported to be similar to those in prisons. Beating deaths occurred in administrative detention and RTL facilities. Under the 'staying at prison employment' system applicable to recidivists incarcerated in RTL camps, authorities denied certain persons permission to return to their homes after serving their sentences. Some released or paroled prisoners returned home but were not permitted freedom of movement.⁶⁶

⁶³ China COI Report 16 April 2009

⁶⁴ China COI Report 16 April 2009

⁶⁵ China COI Report 16 April 2009

⁶⁶ China COI Report 16 April 2009

Other Forms of Administrative Detention

3.13.7 Persons were also detained in other forms of administrative detention known as ‘custody and education’ (for women engaged in prostitution and those soliciting prostitution) and ‘custody and training’ (for minors who committed crimes).⁶⁷

3.13.8 *Caselaw:*

[2005] UKIAT 00099 LJ (China) Heard 24 February 2005, Promulgated 10 May 2005.

The IAT found that before reaching a conclusion on whether prison conditions were inhuman and degrading more detailed evidence would be required regarding:

- The frequency with which prisoners are subjected to degrading treatment;
- History, circumstances, length of sentences and nature of the offences they have been convicted for.
- Length of any sentence of imprisonment (as opposed to the maximum sentence) which is likely to be imposed for the individual regarding the offence or offences they have committed.
- There is no indication that imprisonment for those unable to pay fines is either the normal course or reasonably likely to be imposed where they have left illegally (para 11d).

[2004] UKIAT 00138 TC (China) Heard 27 February 2004, Promulgated 10 June 2004

The IAT found that even if the appellant was arrested and detained, they do not consider that the resultant pre-trial detention, the sentence and the post-trial detention would give rise to serious harm to the appellant that would breach Article 3. Conditions in both the prison system and the administrative detention system facilities are harsh and ill-treatment does occur. However, there was no evidence as to what proportion of prisoners in China are estimated to experience ill-treatment. In order to be satisfied there is a real risk, the objective evidence considered as a whole needs to demonstrate a consistent pattern of gross, flagrant or mass violations of the human rights of the prisoners. If there was such a consistent pattern, the Tribunal would expect to find more evidence than there is of the scale and frequency of human rights abuses (paras 9-12).

3.13.9 Conclusion. Whilst prison conditions in China are poor with overcrowding, and abuse by prison officials is a particular problem, conditions are unlikely to reach the Article 3 threshold. Therefore even where claimants can demonstrate a real risk of imprisonment on return to China a grant of Humanitarian Protection will not generally be appropriate. However, the individual factors of each case should be considered to determine whether detention will cause a particular individual in his particular circumstances to suffer treatment contrary to Article 3, relevant factors being the likely length of detention the likely type of detention facility and the individual’s age and state of health. Where in an individual case treatment does reach the Article 3 threshold a grant of Humanitarian Protection will be appropriate.

4. Discretionary Leave

4.1 Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See Asylum Instruction on Discretionary Leave) Where the claim includes dependent family members consideration must also be given to the particular situation of those dependants in accordance with the Asylum Instruction on Article 8 ECHR.

4.2 With particular reference to China the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should *not* imply an automatic grant of DL. There may be other specific circumstances related to the applicant, or dependent family members who are part of the claim, not covered by the categories below which warrant a grant of DL - see the Asylum Instruction on Discretionary Leave and the Asylum Instruction on Article 8 ECHR.

⁶⁷ China COI Report 16 April 2009

4.3 Minors claiming in their own right

- 4.3.1** Minors claiming in their own right who have not been granted asylum or HP can only be returned where they have family to return to or there are adequate reception, care and support arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception, care and support arrangements in place.
- 4.3.2** Minors claiming in their own right without a family to return to, or where there are no adequate reception, care or support arrangements, should if they do not qualify for leave on any more favourable grounds be granted Discretionary Leave for a period as set out in the relevant Asylum Instruction.

4.4 Medical treatment

- 4.4.1** Claimants may claim they cannot return to China due to a lack of specific medical treatment. See Asylum Instruction 'ECHR' and IDI Ch.1 Sections 10 which set out the requirements for Article 3 and/or Article 8 to be engaged.
- 4.4.2** The World Health Organisation noted in 2008 that overall, people in China are living longer and healthier lives. The disease profile resembles that of a developed country, with some 85% to 90% of deaths due to non-communicable diseases and injuries. Among the remaining infectious diseases, hepatitis B infection, TB and lower respiratory infections still account for significant mortality. National averages, however, mask considerable regional variations and disparities across socioeconomic groups, genders and geographic localities. Economic growth has enabled wealthier households to benefit more from access to health care and medical technologies. However, most low-income households face important barriers in accessing affordable essential health services and medicine. Despite large-scale government infrastructure investment, the cost of health services remains a major barrier to accessing quality services, particularly for people in remote and rural areas. Increasing levels of user fees are resulting in low usage of health services among low-income households, as medical care expenditure and the cost of health services are rapidly outpacing average incomes. While health insurance coverage is increasing, especially in rural areas, many people are underinsured and continue to face high out-of-pocket costs. Large geographical differences exist in health outcomes. Remote and rural regions face problems in making available specialised care to their populations, including emergency obstetric services and trauma, adequate facilities, and trained health professionals. This presents a major problem in implementing universal health care coverage. The availability and affordability of life-saving and common medicines needs to be improved. Senior-level officials have publicly recognized the problems in the pharmaceutical sector and the insufficient access to essential medicines.⁶⁸
- 4.4.3** It was reported in October 2008 that the UK-based medical journal, The Lancet, is launching a major series of scientific papers in Beijing on China's plans for healthcare reform. The country is debating an ambitious programme which aims to provide health insurance for all its 1.3 billion people by 2020. The Healthy China 2020 plan is intended to create a universal health service. Critics say the Chinese health system presently falls far behind the needs of those it is supposed to be treating. Primary healthcare, especially for the poor, disintegrated in recent decades when the old state system was dismantled and medical fees introduced. Healthcare was reported to be a top public complaint – many cannot get access to it or simply cannot afford it. Many of the 700 million people in the countryside have to travel to cities to get decent care.⁶⁹

Psychiatric Treatment

- 4.4.4** According to Ministry of Health figures, China has 16,055 psychiatrists - one for every 87,500 people. This figure doesn't reflect disparities in rural areas, where qualified

⁶⁸ China COI Report 16 April 2009

⁶⁹ China COI Report 16 April 2009

psychiatric care is non-existent. According to the same source many hospitals don't have real psychiatrists. Instead they have neurologists and other doctors who have been briefly retrained and then sit and listen to patients before writing prescriptions.⁷⁰

- 4.4.5** Among all the cities of China, Shanghai has the most developed psychiatric setup. It includes community follow-up programmes, guardianship networks, work therapy stations, mental health services in factories, day hospitals, night hospitals, family support groups. Services at each of the three levels-municipal, district and grass-root level are available.⁷¹

HIV/AIDS

- 4.4.6** Currently, China's HIV epidemic remains one of low prevalence overall, but with pockets of high infection among specific sub-populations and in some localities. The government's resource commitments to AIDS have continued to increase and comprehensive training to strengthen the HIV awareness of leaders is being implemented. Mass organisations, civil society organizations and business enterprises are actively involved in the national response to AIDS. Comprehensive HIV prevention initiatives are increasingly focused on behavioural change among the most-at-risk populations (MARPs). AIDS was reported to be the top killer among infectious diseases in China for the first time in 1998, with 6,897 people dying in the nine months through September. Though the report by the Xinhua News Agency, citing the Ministry of Health, did not explain the jump, a possible factor is the Chinese government's improved reporting of HIV/AIDS statistics in recent years as it slowly acknowledged the presence of the disease.⁷²
- 4.4.7** Expanding access to free antiretroviral treatment under the 'Four Free and One Care' policy was reported in March 2009 to have been a priority, with coverage extended to 1,190 counties in 31 provinces (autonomous regions and municipalities). Standardised ART was strengthened, the national drug resistance monitoring system was established and a pilot second-line drug trial was launched. Comprehensive treatment models, prevention of opportunistic infection treatment and traditional Chinese medicine treatment were under exploration, while care and support have been further intensified. While there have been impressive achievements in the national response to AIDS, a number of core challenges remain. These are outlined under seven key areas, namely: (1) programme management and accountability; (2) awareness campaigns and anti-discrimination; (3) comprehensive interventions; (4) treatment, care and support; (5) all society involvement; (6) capacity-building of response teams; and (7) monitoring and evaluation systems.⁷³
- 4.4.8** Human Rights Watch reported in December 2008 that China has won increasing praise for its aggressive response to the HIV/AIDS epidemic. Among other efforts, the Chinese government had sharply expanded HIV prevention programmes and increased the availability of 'first line' HIV treatment medicines. Particularly promising have been community-based programs targeting drug users that have increased the availability of methadone therapy to address opioid drug dependency. Yet, despite these advances, harsh law enforcement practices and extended confinement of drug users in detox and RTL centres continued, impeding efforts to provide effective drug dependency therapy and ignoring the HIV prevention and treatment needs of drug users.⁷⁴
- 4.4.9** The Article 3 threshold will not be reached in the majority of medical cases and a grant of Discretionary Leave will not usually be appropriate. Where a case owner considers that the circumstances of the individual claimant and the situation in the country reach the threshold detailed in the Asylum Instruction 'ECHR', making removal contrary to Article 3 or 8 a grant of Discretionary Leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

⁷⁰ China COI Report 16 April 2009

⁷¹ China COI Report 16 April 2009

⁷² China COI Report 16 April 2009

⁷³ China COI Report 16 April 2009

⁷⁴ China COI Report 16 April 2009

5. Returns

- 5.1** Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules, in particular paragraph 395C requires the consideration of all relevant factors known to the Secretary of State, and with regard to family members refers also to the factors listed in paragraphs 365-368 of the Immigration Rules.
- 5.2** Chinese nationals may return voluntarily to any region of China at any time by way of the Voluntary Assisted Return and Reintegration Programme (VARRP) implemented on behalf of the UK Border Agency by the International Organisation for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining any travel documents and booking flights, as well as organising reintegration assistance. The programme was established in 1999, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Those wishing to avail themselves of this opportunity for assisted return should be put in contact with the IOM offices in London on 0800 783 2332 or www.iomlondon.org.

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China COI Report, 16 April 2009

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