



**Upper Tribunal
(Immigration and Asylum Chamber)**

AX (family planning scheme) China CG [2012] UKUT 00097 (IAC)

THE IMMIGRATION ACTS

Heard at Field House (Procession House)

Determination sent to parties on:

On 8-9 December 2009
29 November 2010
19 December 2011

Before

**Upper Tribunal Judge Gleeson
Upper Tribunal Judge Gill**

Between

AX

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr M Symes, Counsel instructed by Halliday Reeves Law Firm

For the Respondent: Mr J Johnson, Counsel instructed by the Treasury Solicitor
Mr S Ouseley, Home Office Presenting Officer

Chinese family planning scheme:

(1) *In China, all state obligations and benefits depend on the area where a person holds their 'hukou', the name given to the Chinese household registration system. There are different provisions for those holding an 'urban hukou' or a 'rural hukou': in particular, partly because of the difficulties experienced historically by peasants in China, the family planning scheme is more relaxed for those with a 'rural hukou'.*

(2) *It is unhelpful (and a mistranslation of the Chinese term) to describe the Chinese family planning scheme as a 'one-child policy', given the current vast range of exceptions to the 'one couple, one child' principle. Special provision is made for 'double-single' couples, where both are only children supporting their parents and their grandparents. The number of children authorised for a married couple, ('authorised children') depends on the provincial regulations and the individual circumstances of the couple. Additional children are referred as 'unauthorised children'.*

(3) *The Chinese family planning scheme expects childbirth to occur within marriage. It encourages 'late' marriage and 'late' first births. 'Late' marriages are defined as age 25 (male) and 23 (female) and 'late' first births from age 24. A birth permit is not usually required for the first birth, but must be obtained before trying to become pregnant with any further children. The Chinese family planning scheme also originally included a requirement for four-year 'birth spacing'. With the passage of time, province after province has abandoned that requirement. Incorrect birth spacing, where this is still a requirement, results in a financial penalty.*

(4) *Breach of the Chinese family planning scheme is a civil matter, not a criminal matter.*

Single-child families

(5) *Parents who restrict themselves to one child qualify for a "Certificate of Honour for Single-Child Parents" (SCP certificate), which entitles them to a range of enhanced benefits throughout their lives, from priority schooling, free medical treatment, longer maternity, paternity and honeymoon leave, priority access to housing and to retirement homes, and enhanced pension provision.*

Multiple-child families

(6) *Any second child, even if authorised, entails the loss of the family's SCP certificate. Loss of a family's SCP results in loss of privileged access to schools, housing, pensions and free medical and contraceptive treatment. Education and medical treatment remain available but are no longer free.*

(7) *Where an unauthorised child is born, the family will encounter additional penalties. Workplace discipline for parents in employment is likely to include demotion or even loss of employment. In addition, a 'social upbringing charge' is payable (SUC), which is based on income, with a down payment of 50% and three years to pay the balance.*

(8) *There are hundreds of thousands of unauthorised children born every year. Family planning officials are not entitled to refuse to register unauthorised children and there is no real risk of a refusal to register a child. Payment for birth permits, for the registration of children, and the imposition of SUC charges for unauthorised births are a significant source of revenue for local family planning authorities. There is a tension between that profitability, and enforcement of the nationally imposed quota of births for the town, county and province, exceeding which can harm officials' careers.*

(9) *The financial consequences for a family of losing its SCP (for having more than one child) and/or of having SUC imposed (for having unauthorised children) and/or suffering disadvantages in terms of access to education, medical treatment, loss of employment, detriment to future employment etc will not, in general, reach the severity threshold to amount to persecution or serious harm or treatment in breach of Article 3.*

(10) *There are regular national campaigns to bring down the birth rates in provinces and local areas which have exceeded the permitted quota. Over-quota birth rates threaten the employment and future careers of birth control officials in those regions, and where there is a national campaign, can result in large scale unlawful crackdowns by local officials in a small number of provinces and areas. In such areas, during such large scale crackdowns, human rights abuses can and do occur, resulting in women, and sometimes men, being forcibly sterilised and pregnant women having their pregnancies forcibly terminated. The last such crackdown took place in spring 2010.*

Risk factors

(11) *In general, for female returnees, there is no real risk of forcible sterilisation or forcible termination in China. However, if a female returnee who has already had her permitted quota of children is being returned at a time when there is a crackdown in her 'hukou' area, accompanied by unlawful practices such as forced abortion or sterilisation, such a returnee would be at real risk of forcible sterilisation or, if she is pregnant at the time, of forcible termination of an unauthorised pregnancy. Outside of these times, such a female returnee may also be able to show an individual risk, notwithstanding the absence of a general risk, where there is credible evidence that she, or members of her family remaining in China, have been threatened with, or have suffered, serious adverse ill-treatment by reason of her breach of the family planning scheme.*

(12) *Where a female returnee is at real risk of forcible sterilisation or termination of pregnancy in her 'hukou' area, such risk is of persecution, serious harm and Article 3 ill-treatment. The respondent accepted that such risk would be by reason of a Refugee Convention reason, membership of a particular social group, 'women who gave birth in breach of China's family planning scheme'.*

(13) *Male returnees do not, in general, face a real risk of forcible sterilisation, whether in their 'hukou' area or elsewhere, given the very low rate of sterilisation of males overall, and the even lower rate of forcible sterilisation.*

Internal relocation

(14) *Where a real risk exists in the 'hukou' area, it may be possible to avoid the risk by moving to a city. Millions of Chinese internal migrants, male and female, live and work in cities where they do not hold an 'urban hukou'. Internal migrant women are required to stay in*

touch with their 'hukou' area and either return for tri-monthly pregnancy tests or else send back test results. The country evidence does not indicate a real risk of effective pursuit of internal migrant women leading to forcible family planning actions, sterilisation or termination, taking place in their city of migration. Therefore, internal relocation will, in almost all cases, avert the risk in the hukou area. However, internal relocation may not be safe where there is credible evidence of individual pursuit of the returnee or her family, outside the 'hukou' area. Whether it is unduly harsh to expect an individual returnee and her family to relocate in this way will be a question of fact in each case.

DETERMINATION AND REASONS

1. The appellant appeals with permission against the decision of the Asylum and Immigration Tribunal (AIT) in January 2006 following a hearing before Judge Fitzgibbon who dismissed her appeal against the respondent's decision in October 2005, to refuse to grant her leave to enter the United Kingdom. In February 2007, Senior Immigration Judge Southern decided that the AIT had materially erred in law and set aside the Immigration Judge's decision. We understand that the respondent has received further representations from the appellant's husband which will be determined in line with her appeal, but may give rise to a separate right of appeal for him, but that is a matter of which the present Tribunal is not seised.

Introduction

2. The disputed part of the appellant's account concerned her claim to have a former partner, a husband by customary marriage, in her home province of Hunan in China, and to have left two children by that relationship with her parents-in-law, when she fled to the United Kingdom in 2002. Her former partner was also said to be ethnically Han. We do not accept that part of her account as credible, for the reasons set out at paragraphs 197-199 of this determination.
3. The appellant and her husband are Chinese citizens, of the majority Han ethnicity. They met in the United Kingdom in 2004. They now have two children, a daughter born in 2005 and a son in 2007, both born before they married in March 2009. Both are only children and they are therefore a 'double-single' couple (see paragraph 16 below). Those elements of the appellant's account are fully supported by United Kingdom birth certificates and a marriage certificate. We have approached the question of risk on return now on the basis that the appellant is a married woman with two United Kingdom-born children, and that the family would be returned to China together.
4. The sections of this determination which are of general country guidance interest may be found in the following paragraphs:

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Procedural history

5. The oral evidence in this appeal was heard on 8-9 December 2009. We received oral evidence from the appellant and her husband, and country evidence from Dr Jackie Sheehan, and by video link, from Professor Fu Hualing in Hong Kong. Sitting as the AIT, we considered and reached our credibility conclusions on the disputed element of the appellant's account (that is, the account of her history in China) immediately after the oral evidence in December 2009. The AIT ceased to exist on 15 February 2010 and this appeal continued as an appeal before the Upper Tribunal (IAC). A transfer order has been made, the effect of which is that this appeal falls to be re-made by this panel of the Upper Tribunal.

6. Both parties sought permission to add to the country evidence during 2010. In November 2010, the appellant's solicitors sent a letter and some further evidence. We gave the respondent permission to submit an updated report from Professor Fu, which was finally received at the Upper Tribunal on 30 June 2011. Having considered Professor Fu's report, we re-listed the matter and received further updated materials and submissions in December 2011. We proceed to re-make this determination in the light of all of the extensive country materials before us, including the latest versions of the UKBA Country of Origin Report (COI) and US State Department Report, which are in the public domain.

The asylum claim

7. The appellant's original asylum claim was based on her claimed marriage and two children in China, and on her pregnancy with what would have been a third child, conceived outside marriage in the United Kingdom (the daughter born in November 2005). The asylum application did not name her baby's father.
8. The appellant claimed to be at risk on return because she owed money to the snakehead agent who had arranged her travel to the United Kingdom. She stated that she had travelled on a Chinese passport, which she no longer had, which the agent had obtained for her.
9. Before the Immigration Judge, she claimed to have received specific threats of harm or kidnap to her children in China. She also feared return to China as a single parent, a factor which has ceased to have relevance as she is now a married woman. Finally, the appellant claimed to be at risk as a member of a particular social group: 'women who have breached the Chinese family planning policy'.

Country guidance issues

10. The appeal was identified for possible country guidance on the operation of the Chinese family planning scheme, in particular the risk of persecution or serious harm on return to China affecting Chinese citizens living abroad and their children ('overseas Chinese').
11. There is no country guidance bearing directly on the question of the Chinese family planning scheme or the position of returning overseas Chinese, whose children have been born abroad (within or outside marriage). In TC (One child policy - prison conditions) China [2004] UKIAT 00138, the Immigration Appeal Tribunal (IAT), dealing with the October 2003 Country of Origin Report on China, upheld an Adjudicator's determination that a man who had been ordered to pay a fine of RMB 30000 (£3000) for having four children, and left China because he could not pay, would on return simply be made to pay his fine. The IAT decision in TC is of little assistance, because it is very much out of date, it concerns a different fact set from that which we are considering and it is no longer a country guidance case.
12. The questions of trafficking and illegal exit, originally intended as part of the guidance in this appeal, depended on a linked case which did not proceed before us. They were considered in 2009 by panels of the AIT, in HC & RC (Trafficked women) China CG

[2009] UKAIT 00027 and ZC & Others (Risk, illegal exit, loan sharks) China CG [2009] UKAIT 00028. The materials before the AIT in those appeals are set out at the end of each decision, and are up-to-date as at the end of 2008. We shall not therefore give guidance on those issues in this decision.

13. In November 2008 at a directions hearing, the parties agreed a list of matters with which the country experts should be asked to assist us. It was accepted before us, on the Respondent's behalf, that, if there was a real risk of persecution, there was an applicable Refugee Convention reason. The remaining issues in this appeal were as follows:

- (a) Penalties for breaching the Chinese family planning scheme and policies;
- (b) Risk factors in particular provinces
- (c) Internal relocation;
- (d) Article 8 ECHR aspects of return to China and/or removal from the United Kingdom.

14. The respondent accepted that the appellant and women like her are members of a particular social group, "women who gave birth in breach of China's family planning scheme". Other issues (such as the Appellant's claimed fear of the snakehead agent) in the original claim, or in the claim as advanced before the Immigration Judge, were not advanced before us.

15. We have taken into account all of the experts' evidence, both in the form of reports and oral evidence, including the exhibits to their reports, and the other documents and international materials before us.

Concepts in Chinese family planning

16. We have adopted a consistent description for the principal concepts involved in China's family planning scheme, as follows:

- (a) **'Authorised' and 'unauthorised' births and children.** Children born outside the family planning scheme are described variously in the materials we have seen as 'out of plan' children, *hei haizi* or 'black children', and 'unauthorised children'. We refer to them in this decision as 'unauthorised children' and their births as 'unauthorised births'. We refer to the children born within the family planning scheme as 'authorised children' and their births as 'authorised births';
- (b) **Certificate of Honour for Single-Child Parents' (SCP Certificate).** Parents with only one child qualify for this certificate, which entitles them to a range of enhanced benefits throughout their lives, from priority schooling, free medical treatment, longer maternity, paternity and honeymoon leave, priority access to housing and to retirement homes, and enhanced pension provision;
- (c) **Currency.** References to the Chinese currency vary, describing it as the Yuan (¥), the Renminbi (RMB), or Chinese Yuan Renminbi (CNY). We have adopted

Renminbi and used throughout the abbreviation RMB. As at March 2012, the conversion rate is RMB 10: £1;

- (d) **'Double-single' couples.** The Chinese authorities recognise a social problem for those couples where both are only children, supporting their parents and grandparents. It is sometimes described as the '4-2-1' problem (four grandparents, two parents, one child supporting all of them) or as the problem of 'double-single' couples, which is the description we use in this determination;
- (e) **Family Planning Scheme.** Given the vast range of exceptions to the 'one couple, one child' principle with which the pre-2004 scheme was identified, we do not consider it appropriate to describe the post-2005 statutory scheme as a 'one-child policy'. (We understand that 'one-child policy' is not a translation of the term used by the Chinese government to describe the statutory scheme);
- (f) **'Foreign-born children'.** Children born to Chinese nationals outside mainland China, whether in Hong Kong, Macao, or the rest of the world;
- (g) **Hukou.** A system of family registration, used to control internal migration in China between urban and rural areas. In 1958, the Communist government allocated 'rural' or 'urban' *hukous* to individuals. Today, the 'urban *hukou*' or 'rural *hukou*' is inherited and passed from parent to child. All social benefits and obligations derive from *hukou*, including entitlement to a birth permit, social security, contraception and medical care, education, housing, land and pension provision. Although it remains difficult to change *hukou*, the system has failed to prevent mass internal migration to the large cities in modern times, with hundreds of thousands of people living away from their *hukou*. Nevertheless, women of fertile age are obliged to send back regular pregnancy tests to their *hukou* area, seek birth permits there, and comply with local family planning regulation;
- (h) **'Income Multiplier'.** Social Upbringing Charge (SUC) is calculated as a multiple of an income reference rate based on the average per capita annual disposable income for urban residents, or net per capita income for rural residents ('the Income Multiplier'). Where the couple's actual income is known, that will be used if it is higher than the average. In appeals from abroad, however, there will be no local income information and the applicable rate will always be the per capita average;
- (i) **'Internal migrant'.** A person living away from their *hukou* area, typically in a large city elsewhere in China;
- (j) **National Population and Family Planning Commission (NPFPC).** The Chinese state agency responsible to the State Council for all aspects of population and family planning, including collection and reporting of relevant statistical information. The NPFPC English website is available at www.npfpc.gov.cn/en/about/index.aspx;

- (k) **‘Overseas Chinese’**. Chinese nationals returning from abroad, with or without foreign-born children, including those who have travelled to Hong Kong or Macao to have their children;
- (l) **‘Social upbringing charge’ (SUC)**. Similarly, there are many translations for the sums payable to the family planning authority in respect of unauthorised births: the phrase used in the overarching national Regulations translates as ‘social upbringing charge’. For clarity we have used the abbreviation SUC throughout this decision, in preference to ‘fine’, or any of the other terms used in the international materials;
- (m) **‘Temporary residence permit’ (TRP)**. An administrative measure enabling internal migrants to move to and live in cities. It does not require them to abandon their rural *hukou* and the land and social rights which that confers on them and their families, who may still be residing in their *hukou* area. In practice it is used by cities to control internal migrants and to discourage them from permanent residence in the city.

Evidence considered

17. We are grateful to the parties for the extensive materials made available to us, including the relevant legislation from China, in informal (mainly UN) translations. We received country expert evidence from Dr Jackie Sheehan for the appellant, Professor Fu Hualing for the respondent, and we also had available to us the expert report of Professor Mario Aguilar, prepared for a linked case which settled, but considered as part of the materials before the Upper Tribunal, by agreement.

18. We also had before us various documents and country materials. The relevant materials are set out, and the oral evidence summarised, in Appendices to this determination, as follows:

- Appendix A** List of documents before the Upper Tribunal
- Appendix B** Error of law decision of SIJ Southern
- Appendix C** Summary of witness evidence (appellant and her husband)
- Appendix D** Respondent’s Country of Origin information
- Appendix E** The 2010/2011 documents
- Appendix F** Chinese guidance documents and case law.

19. In addition, we were provided with translations of the following Chinese law documents. It is not necessary for these documents to be set out in full in this determination but we provide the web links to them:

- (1) **Population and Family Planning Law of the People's Republic of China (PFPL)** (http://english.gov.cn/laws/2005-10/11/content_75954.htm)
- (2) **People's Republic of China State Council Order No. 357: Methods for administering the levy of social upbringing charges (SUC Regulations)** (http://english.gov.cn/laws/2005-07/25/content_16929.htm)
- (3) **Marriage law of the People's Republic of China ('the Marriage Law')** (<http://www.unescap.org/ESID/psis/population/database/poplaws/china/china3.asp>)
- (4) **Population and Family Planning Regulations (the 'PFP Regulations')** for Hunan, Yunnan, Guangdong, Shanghai, and Fujian, available on <http://www.unescap.org/ESID/psis/population/database/poplaws/china/index.asp> along with those for Anhui, Chongqing, Gansu, Hebei, Heilongjian, Hubei, Jiangsu, Liaoning, Jiangxi, Shaanxi, Sichuan, Tianjin.

20. We have taken into account all of the extensive material before us and shall refer to the appropriate parts thereof in this determination.

History of the Chinese family planning scheme

21. It is helpful to put the current Chinese family planning scheme in its historical context. Under Chairman Mao, Chinese families were encouraged to have as many children as possible, which led to an unprecedented population explosion. The population of China had doubled in less than 30 years, from just over half a billion in 1950 to a billion in 1978.
22. A family planning scheme, limiting most families to just one child, was introduced in 1978 by the Chinese government as part of an economic and social overhaul after the death of Chairman Mao in 1976. Uncontrolled population growth was recognised to be unsustainable and population control was perceived as necessary to alleviate the resulting social, economic, and environmental problems. The Chinese population currently stands at 1.35 billion and the family planning scheme is said to have prevented a further 400 million births since 1978.
23. In 2001/2, the Chinese government introduced an over-arching national legislative and regulatory structure to replace the corrupt and unreliable local regulation of family planning across China, the new scheme being based on payment rather than punishment. The structure consisted of the PFPL, brought into force on 1 September 2002, and the SUC Regulations which, along with specific PFP Regulations for each province, came into force on 1 January 2003.
24. In simple terms, the new regime gave a wide range of financial and social advantages to persons who restricted themselves voluntarily to one child and who were awarded an SCP Certificate. Further children were permitted, in a variety of circumstances, with considerable regional discretion and differences in implementation, but in each case,

the birth of the second child entailed the loss of the SCP Certificate and the benefits it entailed.

25. Enforcement was lax initially. The Chinese authorities were considering whether to continue the policy, and during the period 2001-2004, there was very little national enforcement. Many provinces' birth rates rose over their allocation.
26. After a period of review, and with claimed support from 70% of the population, the Chinese family planning scheme was reaffirmed in 2004/5 and enforcement recommenced. We have considered the risk to overseas Chinese and their additional children on the basis of how the family planning scheme is currently enforced and carried into effect.
27. The family planning scheme has been in place, in various forms, for over 30 years. The evidence indicates that there is considerable social support for it, but it has disadvantages, among which are an excess of male over female children, leading to difficulties in finding wives for single Chinese men, and the significant burden for children in 'double-single' couples responsible for supporting two parents and four grandparents.

Statutory and regulatory framework

28. The national legal framework which underpins the Chinese family planning scheme is the PFPL, which came into force in September 2002.
29. The family planning scheme is based on 'late' marriage and certificates of permission, which must be obtained during pregnancy (for the first birth) and in advance (for further births). 'Late' marriages are defined as from age 25 (male) and 23 (female) and 'late' first births from age 24. It follows, therefore, that if a woman marries at 23, she is entitled to seek to become pregnant almost immediately with her first child.
30. Some of the terms used in the family planning scheme law appear to be terms of art. 'Technical services' is used in these translations to denote maternity and fertility care, up to and including birth and/or medical termination or sterilisation, where required. 'Unit' means work unit or place of employment.
31. The provisions on regulation of fertility are to be found at Articles 17-22 in Chapter III of the PFPL:

Article 17. Citizens have the right to reproduction as well as the responsibility for practicing family planning according to law. Husbands and wives bear equal responsibility for family planning.

Article 18. The State shall maintain its current fertility policy encouraging late marriage and childbearing and advocating one child per couple; arrangements for a second child, if requested, being subject to law and Regulation. Specific measures shall be enacted by the People's Congress or its standing committee in each Province, autonomous region, and municipality. Ethnic minorities shall also practice family planning. Specific measures shall be enacted by the People's Congress or its standing committee in each Province, autonomous region, and municipality.

Article 19. In implementing family planning, the primary emphasis shall be on contraception. The State shall create conditions conducive to individuals being assured of an informed choice of safe, effective, and appropriate contraceptive methods. Safety of recipients of birth control procedures must be ensured.

Article 20. Couples of reproductive age shall be conscientious in adopting contraceptive methods and in accepting the guidance of family planning technical services. Incidences of unwanted pregnancies shall be prevented and reduced.

Article 21. Couples of reproductive age who practice family planning shall be able to obtain technical services free of charge under the basic items as specified by the State. The cost of the aforesaid services shall be itemized and public appropriations made in accordance with applicable State Regulations or be guaranteed by social insurance plans.

Article 22. Discrimination against and mistreatment of women who give birth to female children or who suffer from infertility are prohibited. Discrimination against, mistreatment, and abandonment of female infants are prohibited.”

32. Chapter IV sets out a scheme of incentives and social security to support the programme: couples who hold the SCP Certificate are to be recognised and rewarded by the state (Article 23), a package of basic social security measures is to be established, with separate provisions in rural areas (Article 24), citizens who marry late and delay childbearing are entitled to longer nuptial and maternity leave and other welfare benefits (Article 25), including leave for family planning surgery, and subsidies and employment protection during pregnancy, delivery and breast feeding (Article 26); they are entitled to state and local incentives, preferential access to funding, technology and training from their local authority and priority for poverty-alleviation loans, work relief and other social assistance when the household is in poverty.

33. Chapter VI deals with legal liability. Articles 36-40 set out the penalties for corruption and breaches of the policy by doctors and abortionists, family planning administrative departments (forgery and sale of certificates relating to family planning), family planning service providers (malpractice and delay in emergency response, diagnosis or treatment), staff of state organs (various types of corruption) and other local government officials (violations to be rebuked in a public circular and administrative penalties on the agency and the individual directly responsible).

34. Articles 41 and 43 set out the penalties which affect individuals; Article 44 gives a remedy for infringement on their legitimate rights and interests by an administrative organ:

“**Article 41.** Citizens who give birth not in accordance with the stipulations in Article 18 shall pay a social compensation fee prescribed by this law. Those failing to pay the full amount before the due date shall be levied a late payment penalty specified in applicable State Regulations. Those who persist in non-payment shall be sued for payment in People's Court by the family planning administrative departments that levied the social compensation fee.

Article 42. The state employees levied the social compensation fee described in Article 41 shall be subject to additional administrative penalties, according to law. Others levied such a fee shall be subject to additional disciplinary measures imposed by their employing units.

Article 43. Those who resist or hinder family planning administrative departments and staff in the performance of their legitimate duties shall be subject to criticism and ordered to amend their conduct by the family planning administrative departments involved. Conduct breaching public security Regulations shall be subject to public security penalties. Acts constituting a crime shall be referred for criminal prosecution.

Article 44. Citizens, entities treated as legal persons or other organizations deeming that an administrative organ has infringed on their legitimate rights and interests while implementing family planning policy may appeal for review or sue for redress.”

35. Article 42 imposes additional penalties on state employees who breach the PFPL, over and above those imposed on individuals by their work units.
36. The administration scheme for the SUC is set out in State Council Order no 357. Articles 1 and 2 set the context, and the rights and duties of both citizens and officials in relation to childbearing.
37. Article 3 sets out the method of calculating the Income Multiplier which is used when setting the SUC for an unauthorised birth. SUC is to be imposed taking into account the actual income of the parties and the detailed circumstances of the breach. No unit or individual may without authority establish additional charges or increase the Income Multiplier used. All SUC decisions are to be in writing (Article 4) and there is a right of appeal (Article 9) with suspensive effect. Decisions take effect when delivered to the parties, and SUC is to be paid within 30 days of receiving the decision. The rest of the Council Order is concerned with corruption offences.
38. Each Province, working from those principles, has its own family planning scheme Regulations governing the imposition and enforcement of SUC in that province. The SCP Certificate gives access to enhanced medical, pension, housing and employment benefits which are withdrawn, and additional SUC penalties imposed, where an individual or family breaches the policy. Employers are also expected to penalise the employee by penalties ranging between demotion and dismissal. Breach of the policy disentitles the individual and those in his or her work unit to government contracts, government employment, or local recognition of various types, in some cases on a discretionary basis, in some cases permanently, and in some cases for a fixed period of years. We deal with the local PFP Regulations, and actual practice in various provinces, separately below. That is the national and provincial legal and regulatory family planning framework within which we consider the risk on return.

Provincial Regulations

39. Since this decision is intended to give country guidance on the family planning scheme as a whole, we summarise relevant aspects of the provincial PFP Regulations in Hunan, Yunnan, Fujian, Guangdong, Beijing and Shanghai. As set out at paragraph 19 (4) above, it is possible to access the PFP Regulations for other provinces on the UNESCAP website if required.

Hunan Province

40. The Regulations for Hunan Province set out the source of the power to regulate and the various overarching responsibilities, including the responsibility of local People's Governments to fund family planning Regulation work (remembering that the fines go straight to the national State Treasury). The fertility Regulation provisions begin at Regulation 14.
41. Regulation 15 states that Hunan Province will give second-child permission to couples in the following circumstances: those with a disabled first child; childless couples who have adopted a first child; where one spouse has a child before the marriage and the other is childless; 'double-single' couples who have only one child; or where both spouses are returned overseas Chinese, or residents of Hong Kong, Macau or Taiwan who have settled in mainland China and only have one child settled there.
42. Additionally, where both husband and wife have a rural *hukou*, Regulation 16 permits a second child where: the only child is female; one (not necessarily both) of the spouses is the child of an only child (analogous to the 'double-single' problem, but where only one spouse bears that burden); one spouse is the only child of a martyr; the only child is a son and one spouse is a soldier with a Grade 2 or higher disability; brothers or sisters are all rural residents of whom only one is able to bear children and the other siblings have not adopted a child; or where the parties each have one disabled child before remarriage, and neither child will grow to have a normal capacity to work. There is provision for yet further Regulations in relation to the situation where the only child is female, but we have not seen such Regulations.
43. Regulation 17 disapplies Regulation 16 where one spouse has an urban *hukou* and one has a rural *hukou*, and either or both of them have changed from urban to rural *hukou*. If rural residents change to an urban *hukou*, the more relaxed rural régime is to apply for three years. There is provision for couples one or both of whom are from an ethnic minority to apply for a second child. A first pregnancy may be registered after it has occurred, but permission must be sought in advance for a second pregnancy. The effect of this complex scheme is that it seems relatively easy to qualify for a second child, except, of course, that the couple will always lose the SCP Certificate when the second child is born. Where a first pregnancy results in twins or a multiple birth, that couple will not be awarded an SCP Certificate, although the children will not be treated as unauthorised.
44. Regulation 22 regulates contraception: it states that intrauterine devices (IUDs) should be used as the main long-term means of contraception for women who have already borne two children. However, where a couple has two children, tubal ligation is the recommended method of contraception. Regulation 23 provides for reversal of sterilisation in special circumstances such as the death of the child, and for artificial insemination where couples are infertile or unable to give birth.
45. SCP Certificate holder benefits are set out, including: 12 additional days of honeymoon leave; thirty days of extra maternity leave (subject to the children being born 'late'); 15 days of carers' leave for the father at the time of the birth; child's health payments of RMB 5-20 (£0.50-£2) monthly until the child reaches the age of 14, paid by the couple's employer or employers, or if unemployed, the local authority; an additional one person share of collective economic benefits or land compensation

charges; preference in allocation of kindergarten and nursery places, access to education, medical treatment, employment, vocational training and so on; and other awards and preferential treatment locally. SCP Certificate holders are entitled (Regulation 29) to free contraception and related medical examination and provision, including abortion and sterilisation of male or female by tubal ligation. Time in hospital for such purposes is to be treated as time at work. Regulation 30 provides for the development of a small loans facility for rural families implementing family planning.

46. In addition, any couple or person entitled to two children who voluntarily do not take up that option will receive a financial reward, in rural areas a sum equating at least to the average net income for the previous year, or in urban areas, an amount equal to the average disposable income for the previous year (Regulation 26). Under Regulation 27, urban parents of one child and rural parents of two (conceived lawfully) have preferential treatment in old age insurance and care establishments, as well as financial aid where the only child has died or is disabled, or the family is in difficulty and impoverished.
47. For those who do not comply with family planning, SCP Certificate benefits are withdrawn. If pregnancies then result, they are required to pay for their own terminations or sterilisations. Unlawful pregnancies must be terminated promptly and, if this is not done, local People's Governments may require a deposit of RMB 2000-10000 (£200-£1000), refundable when the termination has occurred. Sex choice terminations are prohibited.
48. Chapter 6, Regulations 42-44 sets out additional penalties for non-compliance. Having regard to the Income Multiplier, and with regard to the severity of the breach and the actual income of the parties, the SUC for an uncertificated but otherwise lawful second birth is 30% of the couple's total income in the previous year; for an unlawful second child, the levy is two to six times the Income Multiplier; where the parties are in a bigamous marriage or not married, the levy is six to eight times the Income Multiplier; and a further multiple of three times is to be added each time an additional child is born. If the annual income is lower than the Income Multiplier or unknown, then the Regulations apply the Income Multiplier.
49. Under Regulation 43, if a person or couple induces termination for medically unnecessary choice of sex, falsely reports that a child has died or abandons, sells or disables a child or children, double the SUC in Regulation 42 will apply, all certificates to have children are cancelled, and no further arrangements are to be made for births.
50. Workplace discipline, in addition, will result in demotion, removal from positions, or dismissal according to law for those in breach of the policy who are employed by the state. Other discipline is left to work units or organisations. They may not then work for state emanations or be promoted to leading positions, and must disclose the facts if there is any question of their being recommended as People's Congress representatives, members of Villagers' (Residents') Committees or members of political consultative committees.

51. The rest of the Regulations deal with the penalties for corruption by local officials and medical personnel, and the payment of all SUC to the State Treasury.

Yunnan Province

52. The PFP Regulations in Yunnan province are similar to that in Hunan Province. Yunnan borders on Burma on the western side of China and is an area with several ethnic minority groups which receive preferential treatment for additional birth permits: those named in the family planning Regulations are the Derong, De'ang, Jino, Achang, Nu, Pumi and Blang peoples. The appellant's husband has his *hukou* in Yunnan.

53. The provisions for second children in the agricultural population are set out in Regulations 19-21: couples are to be persuaded to have only one child and may apply jointly in situations of real hardship for a certificate for a second child. There is provision for provincial awards to agricultural couples who fulfil the requirements for a second child but choose not to exercise them.

54. Second children are permitted where one spouse is a member of one of the specified ethnic minorities, or, on joint application, where they live in a frontier village. Where the marriage is a second marriage for one spouse, but the other is marrying for the first time, or is childless, the new couple may apply to have another child, and widowers with two children are permitted a third child if the new wife has not yet had a child. Giving a child up for adoption is not a permissible reason for a further birth permit, but the lifelong prohibition which the Hunan Regulations contain is not replicated in Yunnan.

55. Yunnan's additional honeymoon leave for late marriage is 15 days, not 12, but the additional maternity leave for late birth remains at 30 days, with 7 days of husband's leave, as before, all such leave to be treated as work. Specific periods of leave are also prescribed for the various medical procedures which the family planning scheme entails. The SCP Certificate health pay is RMB 10 (£1) until the child is fourteen, with similar provisions for social aid and education preference, and an additional 5% of old age pension, and poverty and technology support. If an only child dies and its parents do not give birth to or adopt another child, they retain the SCP Certificate benefits.

56. Yunnan still requires four years between approved births, though there is provision for reduction of that period to three years in exceptional circumstances. The fine for incorrect spacing of births is between RMB 200-1000 (£20-£100) for each spouse. Birth of a second child, even with official approval, entails loss of all SCP Certificate benefits.

57. After dealing with the responsibilities of family planning officers and medical staff, the Regulations move on to deal with SUC, which, as before, applies to those with adopted children as well as born children, and to those who are not legally married as well as those who are. Regulation 37 requires SUC to be levied on each spouse separately, and state employees to be dismissed. There is no demotion option in these Regulations. Enterprises' labour contracts are to be cancelled. Members of the agricultural community are to have no poverty support until birth control measures are in place.

58. For those without SCP Certificates, there is no right to maternity, paternity or honeymoon leave, no free family planning surgery, no state contribution to the health costs of pregnancy and birth, and no employment protection (Regulation 44). Those in breach of the family planning scheme may not be employed or recruited as state employees, promoted to leading positions in national authorities, mass organisations, institutions or state enterprises. The default must be disclosed in connection with any possible selection as a representative at People's Congresses, a member of a political consultative committee or of Villagers' (Residents') Committees. Regulation 46 withdraws any prospect of social or employment advancement and penalises the spouses' workplaces.
59. The Yunnan employment penalties differ from the Hunan scheme: exclusion from public recognition and promotion is both mandatory and time-limited:

“Regulation 46. Persons who have children in breach of the law may not for five years be selected as advanced or receive titles or awards of honour; they may not be appointed to positions of responsibility in Government authorities, enterprise units, State owned enterprises or enterprises in which the State is controlling shareholder, or social organisations.

The units where persons who have children in breach of the law work may not be selected as civilised units or advanced units for three years and must not be awarded any title of honour.”

60. Other than that, the Yunnan provisions mirror those of Hunan and the national scheme.

Fujian Province

61. Fujian Province is on the eastern seaboard of China, facing Taiwan, and looking out towards Japan and the Philippines. Fujian has a tradition of migration and is the source of more overseas Chinese migrants (lawful or unlawful) than any other province.
62. The Fujian Regulations follow the familiar scheme. Article 9 sets out categories of couples who may have an additional child: if both spouses only children; one spouse child of a martyr; couple previously diagnosed as sterile who adopted a child and became pregnant; first child disabled; husband or wife disabled by work accident at level 2A or above; both spouses being returning residents from Hong Kong, Taiwan or Macao and residing in Fujian for less than six years; second marriage, with one party having a child and the other none, or one a widow or widower and both having a child born within the family planning rules and Regulations.
63. Article 10 makes provision for additional second child possibilities for rural residents: either spouse being an only child; husband's brothers being childless and sterile; where wife has no brother and has only one sister, and the husband goes to live with wife's family and supports wife's parents; couple living in a township with very low population density (specified) and a certain amount of arable or forest land per inhabitant (specified); only one daughter; and there are provisions where both parties are fishermen, or where one or other is a miner and they only have a daughter.

64. Article 11 deals with returning overseas Chinese, who may have further children if they arrive pregnant; leave all their other children overseas; or have been back for less than six years. The paragraph is qualified: one party must have returned from Hong Kong or Macao and the other must have a local *hukou*.
65. Article 12 deals with national minorities. With the exception of Zhuang people, where both are from a national minority, and are rural peasants or have worked in a national minority township for over five years, they may have a second child. They may go on to have a third child if either spouse is an only child, one of their two children is disabled, or it is a second marriage with two children between the parties when they married. Fujian retains the four-year gap rule and any second child must be born when the wife is over 25. No gap is required if the wife is over 30. The gap is dis-applied for some of the prescribed circumstances, especially in relation to children of martyrs and national minorities.
66. The Fujian Regulations also permanently remove the right to give birth from anyone involved in the abandonment, giving away or illegal adoption of a child, and prohibit birth of children of extramarital affairs. There are payments for restraint, longer maternity and paternity leave (135-180 days for the wife, 7-10 for the husband), extended honeymoon leave (15 days), and very similar SUC rates, save that there is an extra high rate for those whose children are born out of extramarital affairs (four to six times the Income Multiplier). The rest of the Fujian Regulations are very similar to those already considered.

Guangdong Province

67. Guangdong is the next province south of Fujian, on the coast of China but nearer to Vietnam. Its PFP Regulations follow the familiar scheme of requiring the wife to have an IUD inserted after the first birth and for one spouse to opt for tubal ligation after the second. Article 49 of the Guangdong Regulations provides, inter alia, as follows:

“ ...The specific [collection of SUC] work shall be carried out by the subordinate family planning operational agency, and the village (residents) committee and pertinent work-units shall assist in the execution of this work.

—If the party in question has real difficulty paying the [SUC] in one lump sum, an application to pay in instalments may be submitted in conformity with the law to the body that decided on levying the fee, but the period during which instalments may be paid shall not exceed three years.

—Where a migrant gives birth in a matter that contravenes these Regulations, the collection of the social support fee shall be done in accordance with national Regulations. Payment to the national treasury of [SUC] and late payment fines shall be managed under a two-track revenue and expenditure control system. No entity or individual shall retain, divert, embezzle or pocket said funds.”

68. It is clear that the SUC is a significant source of revenue and that there is concern about corruption in its collection.

Beijing and Shanghai Provinces

69. Shanghai, a very small but influential coastal province, is further north than Guangdong, roughly equidistant between Fujian and the Koreas. Beijing is inland, adjoining the coastal province of Tianjin, landlocked between Tianjin and Hebei, in the far north of China nearer to Mongolia. As regards Beijing and Shanghai, the UKBA COI Report for China 2009 says this:

“28.39 On 9 August 2003 the official Xinhua news agency reported that under new Regulations (effective from 1 September 2003) nine types of household in Beijing are permitted a second child. The report continued:

“The nine groups that are allowed a second child include couples who have a disabled first child, who are the only child of their respective families and currently have only one child, and remarried couples who have only one child. Under the former municipal Population and Birth Control Statutes, these couples could only have a second child at least four years after the first child was born and if the mother was at least 28 years old.”

28.40 As recorded by the same source on 13 April 2004, Shanghai also approved similar measures, which permit couples who are both single children to have a second child. It also allows couples with children from a previous marriage to have a child together, as well as permitting urban couples to have a second child if one of the spouses is “disabled to such an extent that it affects his or her ability to work.”

28.41 On 24 July 2009 the BBC reported, “A public information campaign has been launched [in Shanghai] to highlight exemptions to the country's one-child policy. Couples who were both only children, which includes most of the city's newly-weds, are allowed a second child. The move comes as China's most populous city becomes richer and older, with the number of retired residents soaring... the current average number of children born to a woman over her lifetime was less than one.”

28.42 On 30 September 2006 the official *People's Daily* newspaper confirmed that Beijing will not ease restrictions on family planning to allow people with higher educational qualifications to automatically have a second child.”

The Country experts

70. The application of the statutory scheme, which embodies the current family planning policy, is crucial to an assessment of whether there is a real risk or a reasonable degree of likelihood of treatment which might require international protection.

71. We were assisted by country evidence from Professor Fu Hualing, Dr Jackie Sheehan, and Professor Mario Aguilar, to assist us in understanding how the Chinese family planning scheme works in practice and how it appears to be evolving, having regard to the list of issues which we had defined with the parties.

Professor Mario Aguilar

72. The Tribunal had concerns about the evidence of Professor Aguilar which, absent the opportunity to cross-examine him, reduced the value of his evidence to us. Professor Aguilar has no qualifications in Chinese law. His report did not state that he had spent

any time in China or had first hand knowledge of the matters on which he commented. His experience of China was developed within the context of a treatise on Tibet and was therefore somewhat indirect and his report was un-sourced. Although we took his evidence into account, Professor Aguilar did not give oral evidence and we were able to give only limited weight to his evidence, save where it was corroborated by other evidence or documents before us.

73. The country expertise of Professor Fu Hualing and of Dr Jackie Sheehan was accepted by both parties. Each of them had assisted the AIT in a number of previous Chinese cases. In HC and RC (Trafficked women) China CG [2009] UKAIT 00027, the AIT described Dr Sheehan as having “a familiarity with Chinese society which of course is helpful in the compilation of her reports” but considered that “her expertise lay in assembling items of background material which provided the basis for her expressions of opinion, rather than having an expertise which gave her the confidence to be able to predict what was likely to happen in a given situation”.

Dr Jackie Sheehan

74. Dr Sheehan’s evidence consisted of a main report dated 1 December 2009, an addendum produced on 8 December 2009 at the hearing, her oral evidence in December 2009, and a lengthy updated report dated 16 December 2011. Dr Sheehan did not produce an updated report for the hearing in November 2010.

75. Dr Sheehan is not a lawyer. Her expertise lies in collecting and collating published material from China. She speaks and writes Mandarin Chinese and travels there two or three times a year. Her doctorate was based on political and trade union issues, and a study of migration to the United Kingdom. Her expertise in these proceedings arises from her knowledge of developments in human rights in China.

76. Dr Sheehan’s report did not make the sharp distinction between materials before and after 2005 which is found in Professor Fu’s report. The documents referenced in her decision mainly date from the earlier period. The report made a number of unsourced, speculative suggestions, such as that the appellant would be likely to be subject to forced sterilisation or administrative detention of up to three years on return. Dr Sheehan did not maintain either of those positions in her oral evidence.

77. Much of the report approached the appellant’s situation on the basis that she would be returned as a lone woman, or a single parent, or that she had been trafficked to the United Kingdom. The appellant is married, and her husband has no status in the United Kingdom, and it has never been her case that she was trafficked to the United Kingdom or abused here.

78. Dr Sheehan in her oral evidence considered that the snakehead who helped the appellant leave China sounded like a professional, but that his threats to the appellant’s Chinese children were probably empty threats. There was no evidence that he had sought to collect his outstanding fees from the appellant’s parents or parents-in-law in China and the level of the fee was surprisingly low, even allowing for the decline in fees charged by snakeheads in the two year period 2008-2010.

79. The evidence was that the authorities no longer refuse to register a child on the family *hukou* even where it was unauthorised. The Chinese authorities recognised that failure to register a child was punishing the child in a manner which was unfair. Parents sometimes did not seek registration because SUC would then have to be paid for the birth. It was the absence of a *hukou* which caused the educational and other difficulties relied upon: if the parents were prepared or able to discharge the SUC for any unauthorised births, the child would be registered and the difficulties would not occur, although parents with more than one child would not be entitled to the additional benefits which a SCP Certificate attracted.
80. There were between 150 million and 250 million migrant workers in China, mostly in the cities. In general, they would retain their original rural or urban *hukou* when moving to the larger cities for work. The *hukou* system had not been abolished. It had been weakened but its function in reducing the social security burden caused by rural migrants in cities, by requiring them to refer to their *hukou* area, was still very important. The resource and fiscal implications of its abolition were huge.
81. Despite the improvements in the *hukou* system, the crucial distinction between urban and rural *hukou* was likely to remain in place for the foreseeable future. There had, however, been modifications since Dr Sheehan had last looked at published materials on the *hukou* system. Each person's *hukou* had two characteristics: a 'rural' or 'urban' designation, inherited from the individual's parents, not necessarily representative of their current occupation; and a fixed location. The person was entitled to the services appropriate to the type of *hukou* they held, in the area to which that *hukou* was tied. Dr Sheehan set out a number of points dealing with the interrelation between *hukou* and TRP, for internal migrants:
- (a) A number of provinces and municipalities had abolished the rural/urban designation but to obtain permanent status in a city, and thus be entitled to the same rights and benefits as born urban residents, a person still needed to apply for a change of *hukou* location.
 - (b) Conditions for a change of location were set by the cities, and there were no longer any national conditions for permanent migration. The conditions set tended to be very restrictive, typically requiring a relatively high level of education and money to invest in business or property; or demobilised members of the forces; or spouses and children of those who already held an urban *hukou*. Migrants might be required to show a stable place of residence (which excluded rented apartments) and a stable source of income (which excluded unskilled casual work). One Zhejiang city also required five years' previous residence in the city.
 - (c) Shanghai required residents to have held a TRP and have been in the city's social insurance programme for seven years, to have paid taxes, to have intermediate to high vocational qualifications, and to have clean credit and criminal records. Of six million migrants in Shanghai, only 3000 had met the requirements so far.
 - (d) Beijing was reported to process only ten applications a day for TRPs and it might be several weeks before an application could be made. Those lacking TRPs would have difficulty in finding accommodation, education or training, banking facilities,

registering for self-employment or social insurance schemes, including pension schemes. There was now no risk that they would be forcibly repatriated to the rural area. There was no relevant evidence to indicate that current custody and repatriation centres were as poor as those before 2003. Dr Sheehan considered that if there were, international sources would have reported it. Forged TRPs were an option but were difficult to counterfeit.

82. The present appellant was not a highly educated woman, which restricted her opportunities in a city, were she to migrate internally. If she sought to move to a city and obtain a TRP, but would need a character reference from police in her *hukou* area, which meant that she would have to regularise her position first and as she would probably be expected to attend personally at the police station in Hunan, her additional children would be disclosed. Even if living in a city, she would still be required to undergo regular pregnancy tests: some local family planning officials, having had experience of falsified pregnancy tests from local women who had migrated elsewhere, now required them to return home and be tested in the *hukou* area. It was unclear from Dr Sheehan's report what the enforcement mechanism would be if the appellant did not comply.
83. Although there were well-publicised outbreaks of unlawful behaviour by local officials, particularly the Linyi scandal, Dr Sheehan had been unable to find any reports of forced sterilisations in Hunan province. Some provinces imposed sharply increasing fines for failure to be sterilised, for example Jiujiang in Jiangxi, but she had not found evidence of such fines in Hunan. Nor had she been able to establish that the charge increased for each additional child.
84. However, absence of evidence was not evidence of absence, since the information about women's fertility was treated by the Chinese authorities as a state secret. In practice, it was much harder to keep incidents secret, since the advent of camera phones. The case of Arzigul Tursun in Xianjiang province was a case in point: the mother, a member of an ethnic minority, was pregnant with what she considered a permitted third child. Attempts to force her to abort the baby were stopped after the intervention of two members of the United States Congress and the American Ambassador. Local officials complained that 3000 more babies had been born in defiance of abortion orders in the months that followed, described by them as 'American babies'.
85. Dr Sheehan's evidence on the legal enforcement of SUC was speculative. She did not know how it worked; she was not a lawyer and accepted that she could not gainsay Professor Fu's evidence on this area. Nor was she able to say whether the appellant would be entitled to the provisions for 'overseas Chinese'. The evidence was confused on this point: the original meaning of the phrase referred to Chinese who had settled abroad, but her literature survey did not indicate that in practice, those who were first-generation migrants whose status was not 'settled' in the country of migration were excluded.
86. Dr Sheehan agreed that there was a massive publicity campaign supporting the family planning scheme. She did not consider it likely that the appellant could have been unaware of her rights and duties. There would have been posters around her village

with positive messages about small families and girl children, and she had seen lists on the walls of village schools, listing every married woman in the area and when she was next entitled to apply for a birth permit and become pregnant.

87. The penalty for unauthorised foreign travel was confiscation of the travel document, a fine of between RMB 500 - RMB 2000 (£50-£200) and possibly a short period of detention, up to 14 days. Young children could remain with their mother during detention; the authorities would look for relatives or grandparents to care for them if that was not appropriate, and there was no 'Looked After Children' system in China.

Supplementary report of Dr Sheehan

88. On 16 December 2011, Dr Sheehan prepared a supplementary report dealing with the fact set as it now stood: that the appellant was now a married woman, with two children born by her husband, albeit before her marriage. She was asked to deal with the likelihood that these foreign-born children would be registered, the cost of registration to obtain *hukou* for them, the consequences of non-payment, whether the appellant would benefit from the overseas Chinese exemption provisions; and the risk to her of compulsory sterilisation as the mother of four children.

89. Dr Sheehan did not consider that the appellant could benefit from the overseas Chinese exemption, since her children were born before she married their father. That statement is not sourced. She also considered that the SUC would be very high because neither child would count as 'authorised' since they were conceived and born before the parties married. Subsequent marriage would not authorise the children retrospectively.

90. The risk could not be averted by internal relocation, since the same system, with local variations, applied everywhere. The appellant had neither sought nor received a birth permit for the second child and Dr Sheehan considered that she would be liable to a significant fine of 6-8 times her previous year's income. Based on average local income, as it would be, the fine could be as much as RMB 68726 for both births (about £6873). The family would have to make a down payment of at least half of that and would have to pay the rest, if they could, within three years. There was anecdotal evidence of collection of any outstanding balance over up to a decade by local officials, although that appears to be ultra vires the Regulations. The gravity of the offence is approached by Dr Sheehan on the basis that these are the appellant's third and fourth children, which we have not accepted.

91. Dr Sheehan set out Article 53 of the 1997 Criminal Law, which deals with defaulters, but that is a return to her original error. SUC is not a criminal penalty but a civil one. She reviewed the country materials which we discuss later in this decision. She considered that the level of local abuses remained high and that there were incentives for local officials to enforce the policy.

92. She considered it overwhelmingly likely that the appellant as the mother of four children would be forced to undergo sterilisation, either by social and personal pressure, or if there were a sterilisation campaign in her area, by force. If the appellant were permitted to have an IUD inserted instead, there was a high failure rate (10% in

the first year and 20% in the second) which might well result in a further pregnancy which the appellant would certainly be required or compelled to abort.

93. Dr Sheehan's report went through the country evidence in detail. Where it agreed with her underlying thesis she adopted it but where it did not, she criticised it as based on inadequate information. She considered that the education and healthcare system outside the SCP Certificate was unaffordable, especially to families who were also paying off a substantial SUC. She considered that the risk of the appellant's children being taken from her and put up for illegal adoption cannot be ruled out.
94. Dr Sheehan reminded us of the 2005 Linyi scandal and the continuing house arrest of Chen Guangcheng, the families' blind lawyer. He was continuing to suffer physical abuse on occasion and was under very tight restrictions. His wife had made a secret film, available on the net, of the conditions in which they were held (<http://www.youtube.com/watch?v=oTagQK4uGzY>). Both had subsequently been beaten. Their son was staying with relatives in another county and was able to attend school: their six year old daughter was living with them and prevented by their house arrest from being educated. Only Mr Chen's mother was allowed to leave the house to work in the garden. Attempts to visit them at their home in Shandong province by foreign journalists, Chinese lawyers and human rights campaigners, and the American actor Christian Bale, had been prevented by dozens of guards, some armed. Abuses to compel pregnant women to terminate pregnancies were occurring again in Linyi. A women's rights campaigner, Mao Hengfeng, herself a victim of a forced abortion in the 1990s, was continuing to suffer detentions and abuse, the latest resulting in her unexpected release in a wheelchair in July 2011. Dr Sheehan argued that with such high-profile abuse of whistleblowers, absence of evidence in other areas was not evidence of absence of abuses.
95. Much of the relevant information remained classified as a state secret, including the levels of induced terminations, infanticide, and child abandonment. The report continued:
- "52. ...The combined 5th and 6th Periodic Report [on CEDAW implementation in the PRC] provides few details on women's reproductive rights beyond maternal and infant health. Despite requests and recommendations from the Committee and other international human rights monitoring bodies, individual cases of abuse continue to be documented, and may represent a much larger body of similar occurrences. The experts who gave evidence to the US Congressional-Executive Committee on China [CECC] in 2002 conceded that it was impossible to generalize from the relatively small number of well-documented cases as to how widespread coercion and abuses remained after the passing of the Family Planning Law that year, but all agreed that verifiable cases continued to occur. Indeed, the Shandong and Guangxi cases of widespread abuses and coercive enforcement of family-planning Regulations have both occurred since 2002, and both cases were attributed to pressure on lower-level officials to meet birth-quota targets, something which the 2002 passing of the Family Planning Law was supposed to ease."
96. There is no analysis of the later US CECC reports. The Shandong/Linyi and Guanxi cases occurred in 2005. The report goes on to consider the 2010 census amnesty for unregistered children (the census ended in 2011). There had been amnesties also in the

1990 and 2000 censuses, although the information was passed in some cases to the family planning authorities and SUC or other penalties were imposed.

97. Dr Sheehan was sceptical of the claimed opportunity in the 2010 census to declare additional unregistered children without the information being passed to the family planning authorities for enforcement. Similar offers had been made in the previous two censuses but SUC and other penalties had been imposed on many women.

98. She noted that the opportunity had now passed for additional children to be declared, since the census was complete. She concluded that:

“55. ...The fact that the Chinese government’s estimate of the number of people still not hukou registered has increased so much (from 8 million to 13 million) between the 2000 and 2010 censuses suggests to me that the claimed amnesties have had little effect. In any case, an ‘amnesty’ for those who are only prevented from registering by their inability to pay a large fine is of no use to someone like [the appellant] given her likely earnings in rural Hunan. Coverage of the ‘amnesty’ states that fines were temporarily reduced, not abolished, and that migrants in major cities like Beijing, Guangzhou and Shanghai took up the opportunity. These migrants would have had a much higher earning capacity, even as temporary residents of China’s biggest and most prosperous cities, than [the appellant] would have in rural Hunan, and in any case, the census and the amnesty, such as it was, are over.”

99. Dr Sheehan dealt, finally, with the position of single mothers, in case the appellant’s husband did not return with her. The 1987 Passport Law of the People's Republic of China stated that those who were returned to China for illegally leaving the People's Republic of China or illegally living or working abroad would not be entitled to a passport for a period between six months and three years. The appellant would be the subject of rumours and gossip and would find life ‘extremely difficult’ on her own. Many women in that situation married to obtain social inclusion such as education and healthcare. The appellant did not have the necessary educational and skill qualifications for temporary residence in a major city like Beijing or Shanghai.

Professor Fu Hualing

100. Professor Fu’s evidence focused on the Chinese law materials. His report did not look to international human rights organisations or reports, which we considered separately. Professor Fu is an academic lawyer and a practitioner, who has provided the Tribunal with the legal provisions under which the policy operates, as well as searching the university database for reported cases. The legal provisions have already been summarised. He emphasised that unauthorised births were a civil matter and did not entail any criminal offence: to force a woman to abort her child would be a criminal offence by the officer involved, though he did not produce any evidence of criminal prosecutions for such conduct. Violent obstruction of, or threats to family planning officials in the execution of their duties was a criminal offence. There was no equivalent to the common-law concept of an injunction in Chinese law, and no way to restrain impending abuse. Judicial review was the only remedy and there was in practice no legal aid available.

101. His research on the Peking University database, www.chinalawinfo.com, had produced about fifty family planning related judicial review decisions, but only six of those are before us. Professor Fu's report indicated that the focus in judicial review cases was on due process and proper procedures in the imposition of the SUC. Two of the cases he produced were before the change from punishment to financial penalties, and illustrated exactly why the Chinese authorities considered it necessary to do so. The claimants were mainly men of property. If the cases we have seen are a proportionate sample of the fifty cases on the database, they do indicate that the Chinese courts, when accessed, will quash unlawful approaches to the SUC by local officials and order costs and restitution.
102. Local authorities made a great deal of money from SUC payments and birth permits. SUC would also be imposed on mothers of children born outside marriage (even first children), but the rates were much lower. Awareness was high: enforcement, generally, limited to fines.
103. The position regarding termination of pregnancies was less satisfactory. Persuasion and financial measures were lawful, but forcible termination was not. The law required informed consent before an abortion was carried out. Some provincial family planning Regulations were prescriptive: Hubei, Anhui, Heilongjian and Jiangsu required prompt termination of any unauthorised pregnancy. Jiangsu required abortions only where medically permissible. Hunan, Hainan and Zhejiang required the collection of a deposit, returnable after the abortion had been performed (RMB 200-10000, equivalent to £20-£1000). Hunan and Liaoning required the work unit and village/residents' committee to compel termination.
104. In his opinion, while there had been brutal and violent enforcement cases, they were exceptional and the numbers were declining. The courts were prepared to hold local family planning officers liable in damages where family planning powers had been abused. In his oral evidence, Professor Fu was asked about the scandals in Linyi city (in Shandong province) and in Guangxi Province, both of which occurred in 2005, just after enforcement recommenced. They were shocking: in Shandong as a whole, which was very substantially over its quota, with Linyi the city with the highest number of unauthorised births in China that year, international reports suggested that the family planning officials had forcibly sterilised at least 7000 persons (male and female) and detained 130,000 for forcible abortions or sterilisations. A lawyer who represented the families of those affected was imprisoned and persecuted. He had only recently been released. In Guangxi, when family planning officials tried to enforce a forcible abortion policy, the villagers rebelled and there was a widely-reported violent clash between villagers and local police.
105. Professor Fu considered that these incidents were isolated: the authorities were now extremely cautious about using force to enforce either termination or sterilisation. Such behaviour had been much more common in the 1980s under the earlier policy. Some provinces now offered payments to poor families as an incentive for voluntary sterilisation.
106. The multiples of the Income Multiplier set for each unauthorised child increased: however, SUC enforcement was restricted in practice, since Chinese law did not permit

civil judgments to be enforced so as to remove the basic conditions of living (a home, food on the table, and schooling for the children).

107. Returning asylum seekers would be investigated to establish how they had left China. That would involve establishing where they held their *hukou* and checking whether there were any outstanding criminal charges against them. A one-way travel document would be issued only when those checks were complete. On return, the person would be briefly detained and questioned at the border, to verify their identity, then fined and their travel documents confiscated, barring them from further travel for three years. If there were any outstanding criminal charges against them, they would be escorted back to that local authority; otherwise, the returnee would be allowed to proceed unless there was an instruction from 'high-ranking officials' or they were involved in a significant case, in which circumstances they would be escorted back to the area where their *hukou* was held.
108. The penalty for illegal exit would usually be administrative detention for not more than five days and a fine up to RMB 500 (£50), with higher fines for remaining outside China unlawfully, depending on when the last valid travel document expired.
109. Once properly identified by overseas birth certificates, foreign-born children would now be registered. Whether they were regarded as unauthorised was controversial: a Guangdong spokesman indicated that they were, but a family planning official in Hainan province considered that parents of an unauthorised foreign-born child would not be punished.

Professor Fu's supplementary report

110. In a supplementary report prepared in June 2011, Professor Fu responded to the appellant's new material. He confirmed that family planning enforcement had been stepped up in early 2010, particularly for migrants with rural *hukous* working in cities. There were 150 - 200 million such migrants, who lived, studied and worked in cities where they had no legal right to do so. Conditions for migrant workers had improved vastly compared with the past, although they were still discriminated against. The improvements came from a series of alleviative policy initiatives in relation to work and study in cities.
111. There had always been cases in which force was used to enforce abortion and sterilisation, where unauthorised pregnancy was detected, but the medical profession in China had become increasingly independent, with doctors aware of their own duties and responsibilities, and the legal liability for any operation performed without patient consent. The hospital, as the doctor's employer, would also be legally responsible. There had been a decline in the direct application of force. He was aware of the case of Li Hongmei in Anhui, but overall the new materials did not suggest an increase in violent enforcement of the family planning scheme, which continued to be enforced mainly by financial penalty.

Submissions

112. For the respondent, Mr Johnson challenged the credibility of the appellant's evidence about her life in China, her husband and children there, and her journey to the United Kingdom. There were glaring and unanswerable issues of credibility affecting central themes in the appellant's evidence: it was for us to assess the overall credibility of that evidence. He asked us to place very little weight on the appellant's account, to find that her account of her marriage in China was fabricated, and that the only children the appellant had were the two born in the United Kingdom.

113. Mr Johnson directed us to the appellant's account as given to Immigration Judge FitzGibbon (as he then was). He argued that on a number of central themes, the appellant's evidence was glaringly and unanswerably discrepant:

(a) Conflict as to the extent to which the appellant was aware of the family planning scheme when living in China. It was the appellant's consistent evidence that until the very last day she spent in China, she had not been aware of those rules, but the country evidence was that the policy was very widely and thoroughly publicised throughout the appellant's life. He reminded us that both Dr Sheehan and Professor Fu agreed on that. The publicity included picture posters and was designed to reach both literate and illiterate women, given its overwhelming importance in the eyes of the Chinese state. Women of childbearing age with whom the appellant worked talked about it and, on the appellant's evidence, steps were taken to keep her second child's birth secret;

(b) The appellant's evidence regarding the reasons her Chinese partner or husband left her had varied across her accounts. At different times she had said that he left to obtain work, because he was having an affair, or to escape sterilisation. None of those reasons stood up to scrutiny: had he been leaving to escape sterilisation or to seek work elsewhere, Mr Johnson submitted that there would have been discussions between the appellant and her husband before he left.

(c) The evidence about how the appellant discovered the affair varied: sometimes she said a neighbour told her, sometimes her mother-in-law, and on one occasion, that while she was in prison in the United Kingdom she remembered a woman coming to the house in China looking for her husband.

(d) There were similar, serious difficulties in her account of where she had met the agent who arranged the journey to the United Kingdom and from whom she had borrowed the money for the down payment. The cost was surprisingly low, given that there was no allegation of any element of trafficking, and the appellant's account that the agent would know how to find her, without her having his name or address in the United Kingdom, was very difficult to credit. The Tribunal should disbelieve her account of receiving a demand while in prison in the United Kingdom but not retaining the letter. There was no evidence of the appellant trying to repay the person who lent her RMB 20,000 (£2000) in China.

(e) As regards the passport on which the appellant left China, there was a flat inconsistency in her original interview over a short period of time as to what passport she used and whether it was lost or destroyed. The explanation in the

appellant's latest oral evidence that there had been a second passport given to her to enable her to get on the plane was frankly incredible.

(f) It was also very surprising that her husband did not know the ages of the putative Chinese children. Although the parties had been married for a relatively short time, they had been together for a number of years, the appellant had discussed her children and stated that she missed them. He claimed also not to know which province she came from in China. These were matters which one would expect him to have learned from the appellant.

114. Overall, the appellant was not a credible witness and he invited the Tribunal to disbelieve her account of events in China entirely. The appellant was therefore not to be treated as a person with four children and at risk of forcible sterilisation in her hukou area, but one who had only two children both born in the United Kingdom.

115. In relation to the expert evidence, Mr Johnson asked the Tribunal to prefer the evidence of Professor Fu and of Dr Sheehan to the report of Professor Aguilar, which, absent the opportunity to cross-examine him, was almost entirely unsourced, out of step with the other country evidence, and unhelpful. He submitted that the Tribunal should give it very little weight. Absent the ability to test the report of Professor Aguilar, which was almost entirely devoid of reference to its sources, the Tribunal should not give his evidence any significant weight, in particular since parts of it flatly contradicted the careful evidence of Professor Fu. Professor Aguilar had no particular expertise in relation to China or its family planning scheme, his field of expertise being religion and politics in Tibet.

116. The evidence showed relatively few instances of widespread abuse of pregnant women after 2005, the Linyi scandal being earlier than that. Forcible sterilisation was unlawful, as Professor Fu's evidence showed. The Tribunal should find that although the fines required for an unlawful birth were significant, the enforcement was linked to the ability to pay, both as to the fines themselves and as to payment. The consequences were not criminal prosecution but civil enforcement: the Tribunal should accept Professor Fu's evidence that there was no real risk of forcible sterilisation, detention, or destitution on these facts.

117. Dr Sheehan's evidence should be treated with a degree of caution, as set out by the Tribunal in HC and RC:

"...As a researcher and teacher of contemporary Chinese studies and as a result of her visits to the PRC she clearly has a familiarity with Chinese society which of course is helpful in the compilation of her reports. In her oral evidence she told us that on her last visit to China she spent time examining documents which might well have given her a degree of expertise assessing the genuineness of documents. We did have the impression, however, that more generally her expertise lay in assembling items of background material which provided the basis for her expressions of opinion, rather than having an expertise which gave her the confidence to be able to predict what was likely to happen in a given situation."

118. Dr Sheehan, he submitted, was given to rather sweeping general statements, which necessarily affected the weight which the Tribunal could give her evidence.

119. Professor Fu's evidence, on the other hand was balanced, and objective in the best sense. He was an independent witness whose evidence could be accepted and his evidence was that there was no real risk on return for this appellant of treatment infringing either Convention. Professor Fu's evidence was consistent with the objective material, both electronic and in the country bundle.
120. The evidence was that there were 200,000 children born unauthorised each year and if abuses existed they would be very well documented. Particularly with modern technological advances, it was impossible to silence the families of so many individuals; instances of abuse were reported, for example, the scandal at Linyi received prompt and prominent attention round the world. Strikingly few instances of forced sterilisation or abusive family planning measures had been reported since then. The US State Department for 2008 reported only a single instance of forced sterilisation in the whole of China in that year. The UKBA Country of Origin Reports for 2005-2007 indicated that there were isolated problems but no pattern amounting to a real risk of persecution.
121. Legal remedies were available where local officials abused their powers; they were imperfect, and there were difficulties with legal aid and accessing experienced lawyers but they did exist and the courts were prepared to enforce the remedies. Professor Fu's examples supported that.
122. In relation to whether there was an applicable Refugee Convention reason, Mr Johnson noted that the appellant did not seek to present her breach of the family planning scheme as arising from her political opinion, religious belief, or wish to defy the Chinese authorities. He contended that it was unhelpful to consider the risk to her, and others like her, as arising from perceived political opinion, since the country evidence clearly pointed to the abuses being based upon over-enthusiasm for targets by local party officials, rather than politics.
123. However, Mr Johnson accepted that the identified particular social group, "women who gave birth in breach of China's family planning scheme" existed, and had the required characteristic of immutability. The family planning rules were not an expression of a political philosophy but of a strategic and practical necessity, and their breach was perceived as conduct which put China's strategic and practical aims at risk. Women who had unauthorised children were subject to collective economic punishment based on the prejudice such births caused to one of China's most vital social measures.
124. If the Tribunal found that there was a real risk of forcible sterilisation, Mr Johnson accepted that such treatment would be persecutory, as defined by the Refugee Convention, by reason of the parties' membership of the particular social group identified above, and such treatment would also be a breach of Article 3 ECHR.
125. Turning to the disposal of the present appeal, the appellant's evidence as to what occurred in China was of low credibility and even to the standard applicable to the international protection Conventions she had not shown that she had children in China. The Tribunal should find that the appellant would be returning to China as the mother of two children, a girl and a boy. She and her husband were both only children

and thus were, despite their Han ethnicity, entitled to have two children. The children having been born outside China, there was no question of registration being refused, or of breach of the family planning scheme in their home province leading to sanctions. There was also no real risk of physical force being used now to achieve family planning ends. For those reasons alone, this appeal should fail and in the generality of cases, other appeals should not succeed on this basis.

126. The likelihood was that the appellant and her husband would be required to pay a fine of between RMB 500-2000 (£50-£200). He relied on the evidence of Professor Fu regarding ability to pay and the limits of enforcement. There might well be difficulties in accessing education, social care, and health care if the children were unregistered, but the evidence did not support a finding that they would not be registered. If the Chinese children existed, the question whether they had been registered already was one of fact unaffected by the appellant's marriage and additional children born in the United Kingdom. Accordingly, her return to China would not negatively affect their position.
127. Turning to Article 8 ECHR, the appellant was now a married woman, whose husband was also a Chinese citizen with no status or right to be in the United Kingdom. Her United Kingdom born children would return to China with their mother and it would be a matter for the parties, and in particular for her husband, whether he returned with his wife and children. There were no insurmountable obstacles to family life continuing in China as it had in the United Kingdom thus far. Any interference with the Article 8 right to respect for private and family life enjoyed by this appellant, her children and her husband should be regarded as proportionate, having regard to the importance of maintaining immigration control. The parties had met, and the children been conceived, when the husband's asylum claim had already been refused and the appellant herself had no right to be in the United Kingdom; the parties knew that they were in a precarious position.
128. If returned with two children, Professor Fu's evidence was that such return would not trigger the administrative consequences of breaching family planning rules. The likelihood was that they would be subject to a fine on return, since the existence of the children would be obvious at the airport when the parties arrived, but despite the relatively high levels of such fines, the fine should not be regarded as persecutory. Chinese law provided that if the parties could not pay, then it would not be enforced, since the Chinese civil enforcement rules, like those of the United Kingdom, required the courts to allow the parties to retain a basic minimum income, allowing them to provide food, a home and education for the children.
129. Mr Johnson accepted that the husband's case was currently under consideration outside the Immigration Rules, and the appellant's representatives had made written submissions which would need to be considered at the same time. If and only if the Tribunal were to consider that returning the appellant without her husband would breach Article 8, the Secretary of State would be prepared to undertake not to return the appellant to China unless or until the husband's further submissions had been dealt with and rejected. In such a case, the Tribunal should allow the appeal but leave

it to the Secretary of State to grant a short period of discretionary leave and/or deal extremely swiftly with the husband's legacy application.

130. For the appellant, Mr Symes said that his instructing solicitors were not instructed by the husband on his asylum appeal, though they were dealing with the legacy application made outside the Rules in 2009. The husband's asylum claim had already been finally determined. The representations under consideration were based on a fear of incarceration as a former asylum seeker. No other reason was relied upon.
131. The appellant should be treated as a credible witness, although she had not found it easy to give a consistent account. Some of the negative credibility points were based on answers given by the appellant in her screening interview, when she was fresh off the plane and what she said had not been read back to her. The appellant had been legally represented by Luqmani Thompson only since lodging her asylum appeal.
132. As to the discrepancies relied upon, the appellant had provided explanations for some of them. She had not been aware, before coming to the United Kingdom, that her customary marriage in China had no legal effect, leaving her free to marry again here without any formalities in relation to the Chinese 'marriage'. As to the distances and time taken to reach the 'the town', that could be explained by one journey, to Jinji, being 30 minutes by bicycle and the other, to the different city where the agent lived, being two days on foot.
133. In relation to the claimed risks in China arising out of events there, he relied on his skeleton argument. The appellant had breached the spacing requirement between children, even if two children were permitted because they were a 'double-single' couple. There was a real risk of financial penalties for those births.
134. The key distinction in China was between those with urban and rural *hukous*. No province could properly be regarded as more or less likely to enforce the policy in an abusive manner. There was evidence of one attempt to enforce the policy on a visitor from Hong Kong, in Hunan province which was the appellant's home province. The evidence was that, from time to time, a rash of official activity surfaced, as set out in the report of Louisa Lim in 2007 regarding Guangxi Province, the Linyi city incident (Shandong Province) in early 2005, and the discovery of coercion in the supposedly 'Model' Sihui Country programme.
135. Even if the children born in the United Kingdom were within the permitted quota, they had been born close together and did not meet the birth spacing rules still applicable in some states. In Hunan, and in much of China, those rules were no longer strictly applied, as set out in the US State Department Report, but the two children born in the United Kingdom were born in 2005 and 2008, before the abolition of the requirement for spacing. If born when the appellant was in China, the second birth would definitely have been treated as 'unauthorised'. The appellant would have to pay a fine to register the second birth. They were unlikely to earn the 'inward brain drain' second child reward for those returning from abroad. Dr Sheehan's evidence was that returning with more than one child could give rise to a risk of forced sterilisation. Absence of evidence was not evidence of absence in this context: the

Chinese Government regarded it as important to keep forced sterilisations a state secret.

136. The Tribunal should treat the evidence of Professor Fu with a degree of caution on the question of sufficiency of protection. Although he mentioned the Linyi incident, the only sources he cited were Chinese publications and legal provisions. He had not considered reports from international NGOs and there was arguably an element of self-censorship in his report. Where his assertions were not sourced, the Tribunal should not give them weight. Professor Fu's unsourced word should carry no more weight than that of Dr Sheehan. For example, he made no mention of birth spacing, although the US State Department Report emphasised that element of the policy.
137. The evidence of a remedy provided by the six cases Professor Fu had found did not amount to sufficiency of protection: in each case, actions for damages and retraining of officials were taken by male Chinese citizens after the event. There was no concept of injunction in Chinese law enabling parties to restrain local officials from acting unlawfully in advance. Access to courts in China was restricted, both by financial considerations and because of the lack of access to legal advice. There were approximately 20 lawyers to a county of almost a million inhabitants, legal aid was not in practice available, unless one were destitute, and judicial review applications could only be made on payment of a fee. The litigants in the cases found by Professor Fu were people of substance, shop owners and businessmen, not persons facing destitution.
138. Access to justice was not easy for a floating migrant. One of the examples was a settled husband with a migrant wife who had an unauthorised baby, where he complained successfully of the actions of urban family planning officials who confiscated the family's television and video recorder, and detained the wife for 4.5 hours, at the end of which she fell from the 7th floor of a building and was so badly injured that in due course she died. Damages were not an effective remedy in that situation.
139. The meaning of forced sterilisation in Chinese terms was narrow. Professor Fu confirmed that there were social pressures, including harassment and threats, to persuade people to become sterilised. From the Chinese point of view, only being strapped down and operated on against your will counted as 'forced sterilisation'.
140. Internal relocation was impractical since wherever a person went, they would need to involve the home province. He invited the Tribunal to make findings on the availability of internal relocation. In the AIT's country guidance decision, HC and RC, it relied on evidence from the Canadian IRB concerning the reform of the *hukou* system. However, recent evidence from the same source indicated that the system had not been completely relaxed, and that migrants still required a character reference from the police in their original *hukou* zone. That was unlikely to be forthcoming here.

International case law

141. The Tribunal requested the parties to assist us by producing relevant decisions of other international courts on the risk to parents of unauthorised children. We had the

benefit of a wide range of international materials, including case law from Australia, New Zealand, and Canada. The United States case law was less apposite, particularly in the light of a statutory presumption in American law that any requirement to limit reproduction is persecutory. We have not examined the international authorities on trafficking, which were included for a linked appeal which did not proceed. Refugee Appeal No. 76044, a September 2008 decision of the Refugee Status Appeals Authority in New Zealand, concerned the availability of internal relocation to women at risk of honour killings in Turkey. It is an analysis, by Rodger Haines QC, of the law concerning internal relocation but adds nothing particular to the present appeal.

142. Some of the materials produced dealt only with the meaning of refugee status and/or the definition of particular social group. The law on particular social group in the United Kingdom is now settled. The Tribunal is bound by the decision of the House of Lords in Secretary of State for the Home Department v. K, Fornah v Secretary of State for the Home Department [2006] UKHL 46 (K and Fornah). In any event, we note Mr Johnson's acceptance, on the respondent's behalf, that if we were to find that there was a real risk of persecution, there existed an applicable Refugee Convention reason (particular social group as defined in paragraph 123 above).
143. Many of the international cases draw a distinction between the Chinese family planning scheme as a law of general application, which would not be innately persecutory, and its implementation, which might be persecutory either generally or in specific ways or areas. The relevant case law dealing with issues in the present appeal, from Canada, New Zealand, and Australia, is summarised below.

Canada

144. Cheung v Canada (Minister of Employment and Immigration) (A-785-91:1 April 1993) [1993] 2 FC 314 held that although the Chinese family planning scheme was a law of general application and had no persecutory intent, a risk of forcible sterilisation amounted to persecutory application of that law since it was a fundamental violation of basic human rights. In contrast, the Court considered that the economic penalties authorised by China's one-child policy 'may well be acceptable'.
145. Zheng v. Canada (Citizenship and Immigration) [2009] FC 327 was a judicial review application where the appellant had been pregnant, had a forced abortion, and been compelled to accept an IUD against her wishes. The Court considered that a statutory regime requiring the insertion of an IUD was capable of constituting persecution, depending on its implementation:

"[13] The Board's finding that the requirement to use an IUD is not persecutory because it arises from a law of general application for women of child bearing age, represents an over-simplification of the applicable legal principles and is an error of law. The issue of persecution arising from state interference with a woman's right to reproductive choice cannot be reduced to the simple determinant of whether that interference is supported by a law of general application. That the state is able to legislate in the area of family planning and population control is not the issue. *It is the means by which the state's objectives are achieved that must be critically examined. The more coercive or physically intrusive the approach the more likely it is that the state's conduct will be seen to be*

persecutory.”
(*Emphasis added*)

Australia

146. In 0801099 [2008] RRTA 208, a decision of the Refugee Review Tribunal (RRT) dealing with the risk to single mothers on return to China, it held that 'women who have a child out of wedlock' constituted a particular social group, and that the risk was of a significant fine. The RRT considered the effect of such a fine on single mothers to be persecutory, particularly as the fine for unmarried mothers was higher than that for married couples with unauthorised children:

“126. China’s family planning laws and Regulations have as their ultimate objective the Regulation of population growth in that country. In itself, population control in China might be considered a legitimate object, the enforcement of which is designed to protect the general welfare of the Chinese state. However, the family planning laws and Regulations target not only those who exceed the permitted quota. They also specifically target women who have only a single child out of wedlock. Further, as is the case in Guangdong, they impose penalties on such mothers that exceed those of a married couple who have one child in excess of the permitted number. The Tribunal finds that the aspects of China’s family planning laws punishing women who have a single child out of wedlock are not appropriate and adapted to achieving the legitimate object of population control. In circumstances where they apply more severe penalties than those applying to married couples who have two children, the Tribunal does not consider that they satisfy the requirement of proportionality. In making these findings, the Tribunal also notes the observations of Merkel J in VTAO v MIMIA [2004] FCA 927, where he stated (at [41]), “A law of general application mandating the imposition of severe penalties on the mother irrespective of her personal circumstances may be regarded as a measure that, according to the standards of civil societies, is not appropriately adapted to achieving a legitimate object.”

147. However, in 0903266 [2009] RRTA 850, the RRT held that Australia did not have international protection obligations to a male Chinese applicant from Guangdong province who had been ordered to pay SUC contributions for his second and third children, and had paid them by raising a loan which he repaid over three years, and borrowing from friends and family, whom he repaid over a five year period. The RRT found, on the background evidence before it, that family planning enforcement in Guangdong had been very lax in the early 1990s but had become more regulated later. The family had been warned after the second child that there would be heavy fines if they had a third child. The RRT considered that the appellant had exaggerated the fine, which was likely to have been of the order of RMB 5000-10000 (£500-£1000), not RMB 50000 (£5000) as he claimed, in order to claim that it would have caused him significant financial difficulties. Land confiscation occurring at the same time was a result of a separate programme and the appellant had been compensated for the loss of his land in due course: it had nothing to do with the children.

148. In 0906142 [2009] RRTA 955, which concerned a couple from Fujian Province and their baby, the RRT found that unauthorised children constituted a particular social group. The RRT dismissed the parents' appeals but held that deprivation of education and health services for unauthorised children amounted to persecution because, it

considered that such births could not be registered, the parents would not be able to obtain work, and the cost of private education and health services was prohibitive.

149. A decision of the Federal Magistrates Court of Australia (FMC), SZJTQ and others v Minister for Immigration and another [2008] FMCA 1188, concerned another applicant from Fujian province. The FMC quashed the decision of the RRT and remitted it for reconsideration. No particular social group had been posited by the male applicant but the FMC defined the group in question as 'parents of a child born in breach of China's one child policy'. The FMC considered that the RRT had erred in law in finding that the consequences which might or had followed from that breach, if in accordance with the laws of Fujian province, which were laws of general application, were therefore lawful. It criticised the RRT for having insufficient regard to country materials other than the US State Department Report for China:

“46. ...The country information available to the Tribunal stated that such measures could not be taken without court approval, but that that requirement was not always followed. The fact that such incidents occur does not mean that the actions of the authorities in confiscating the land and detaining individuals were taken in accordance with the relevant laws. Neither does it mean that the action is taken in a non discriminatory fashion.”

150. In effect, the FMC considered that the question whether the measures to be taken were persecutory was a question of fact, and that the RRT should have made a finding as to whether the implementation of the law would be carried out in a lawful and non-discriminatory manner. The decision is also authority for the point that, subject to statutory exclusions, the RRT must take into account the most recent information on country conditions. The SZJTQ judgment was followed in SZNCK v Minister for Immigration and Citizenship [2009] FMCA 399, which quashed and remitted a decision of the RRT for the same reason. The FMC in SZNCK held that the RRT was not entitled to assume that action taken in consequence of non payment of a fine imposed according to law was itself taken in accordance with law and was not discriminatory, nor, without evidence, that such action would be appropriate and adapted to the circumstances in accordance with international standards.

151. In SZJRU v Minister for Immigration and Citizenship [2009] FCA 315, the FCA held that the RRT's failure to identify a particular social group was not a fatal error of law, since the particular social group 'those women who became pregnant in contravention of China's family planning scheme and who have been required to have that pregnancy terminated' could be deduced. However, it had been an error of law for the RRT to find that forced sterilisation could be considered a non-discriminatory penalty for contravention of a law of general application. The FCA noted that after reviewing the recent country evidence, the RRT had concluded that Chinese government policy forbade forced sterilisations, although they occurred from time to time. They tended to result from the actions of overzealous officials and they were becoming rarer.

152. The international authorities define the relevant particular social group in a number of ways. The existence of a particular social group is not in issue in this appeal. The relevant principles which emerge from the international authorities and case law may be summarised thus:

- (a) Claimants sometimes overstated the level of SUC contributions which might be imposed, in order to prove destitution and engage the Refugee Convention.
- (b) Lawful implementation of a law of general application will not in general be persecutory, unless the penalties imposed were likely to cause destitution, or physical force would be used to achieve the forcible insertion of an IUD, sterilisation, or abortion of an unauthorised child; and
- (c) Whether unlawful force will be used is a question of fact to be determined in the context of the country materials and the evidence in the particular case.

Discussion

153. We reminded ourselves of the issues defined at the beginning of this determination:

- (a) Penalties for breaching the Chinese family planning scheme and policies;
- (b) Risk factors in particular provinces;
- (c) Internal relocation; and
- (e) Article 8 ECHR aspects of return to China and/or removal from the United Kingdom.

154. The respondent accepted that women who had given birth in breach of the Chinese family planning scheme are members of a particular social group. When dealing with Article 8 we must have regard to the best interests of the children under s.55 of the Borders, Citizenship and Immigration Act 2009; that is a fact-specific analysis for each individual appellant.

155. The national legal structure underpinning the family planning scheme in China comprises laws of general application, whose provisions do not render lawful forcible sterilisation or termination of pregnancy: rather, Chinese citizens are expected to take responsibility for their fertility, in the manner set out in the PFPL, the PFP Regulations, and local regulations. The scheme is run by local family planning officials, and is based on the woman's *hukou* area, wherever she may actually be within China.

156. The risk of harm on return, where it exists, arises from unlawful actions by local family planning officials, derived from pressure on officials to maintain particular birth levels in their province or local area. There is a tension between these national requirements to regulate births, and the substantial income generated locally from the collection of birth permit and birth registration fees, and the imposition of SUC for unauthorised births.

157. The evidence before us does not indicate that the AIT in HC & RC erred in its analysis of the current position in relation to the *hukou*. On the contrary, it confirms that very large numbers of migrant women workers are living in cities and sending pregnancy tests back to their original *hukou* areas; that many children are being born in cities, although their parent has a rural *hukou*, or an urban *hukou* from another part of China, and that most of China's educational provision is not state-run but run on a commercial, fee-paid basis.

158. The potential consequences for a family or parent with unauthorised children or a couple who have failed to arrange for one of them to be sterilised after a second child fall into two groups:

- (a) social and financial penalties, such as the withdrawal of the SCP Certificate, the imposition of SUC and other employment and promotion consequences;
- (b) physical risks, forced abortion for women and/or of forced sterilisation of either men or women.

159. The withdrawal of the SCP certificate affects the whole family, moving them from a free educational, medical and housing regime, into one where they must make private fee paid provision in all those areas. We have also considered the practicalities of enforcement where a parent in breach cannot pay the SUC; including, sometimes, property destruction and compulsory education amounting in effect to detention, for parents and grandparents of those in breach. We are aware of some reports in May 2001 of 20 girl babies in Hunan province being taken from their parents and put up for international adoption (see para 7 and para 3.10.6 of the quote at para 13 of Appendix D). The evidence is that this was an exceptional, one-off, event.

The experts

160. We considered the weight to place on the evidence of the country experts. We have already stated that we are unable to give any independent weight to the evidence of Professor Aguilar, save where it is corroborated by other materials or evidence. It may well be that had we heard oral evidence from him, as we did from Dr Sheehan and Professor Fu, that our concerns may have been answered. Professor Aguilar is not to be criticised for that: he was ready to appear, but the linked appeal in which he was instructed did not proceed.

161. We turn next to the weight which Dr Sheehan's evidence will bear. Dr Sheehan's is not legally qualified: her strength as an expert witness lies in her regular visits to China and her knowledge of publications and press reports obtained during those visits. She was unable to assist us in relation to the legal enforcement régime for SUC.

162. We are indebted to Dr Sheehan for a vivid description of the local poster campaigns and the way in which information about family planning is communicated in rural areas. Dr Sheehan's expertise was very helpful in relation to the levels of payment required by snakeheads and the modern *hukou* system. Dr Sheehan did not consider that the amount of the claimed snakehead payment by this appellant was realistic, where no trafficking claim was made: although rates had been declining, it seemed very low.

163. Dr Sheehan had seen for herself the posters and lists in village schools defining who was entitled to apply for a birth permit, and when. She did not consider it likely that the appellant would have been unaware of the family planning scheme as alleged. She had refreshed her knowledge of the changes in the *hukou* system, and noted that it did seem to have been ameliorated in a number of respects, in particular the ability to move from rural to urban *hukou* without permission, needing to make only one

application for a change of residence. We have found her evidence about the TRP particularly enlightening.

164. However, her evidence did present difficulties: her early reports were directed to a fact set which no longer existed, since the appellant when we heard the appeal was not a single trafficked woman with one child, but a married woman with two children born in the United Kingdom, who has never claimed to have been trafficked. Her latest report treats the appellant as the mother of four children. We have found, for reasons we set out below, that the children in China do not exist and that she is the mother of only two children. We were concerned that Dr Sheehan's report appeared to exaggerate the risks to the appellant. In particular, her written report stated that the appellant was 'likely' to face forced sterilisation, a position she did not maintain in her oral evidence.

165. We have considered Dr Sheehan's December 2011 with particular interest, since (apart from the number of children involved), it engaged with the existing factual matrix. Although the material in this report is helpful, we consider that Dr Sheehan's approach lacks sufficient objectivity, in particular since she continued to refer to the SUC as a 'fine' and to the criminal enforcement procedures. We were concerned that the evidence relied upon often dated back to the pre-2005 régime. Dr Sheehan's report did not assist us by indicating what SUC was likely to be imposed if the appellant were the female member of a 'double-single' couple, who had never been married before coming to the United Kingdom, but had married her husband after the birth of their children. Since that is the factual matrix as we found it, we received only limited assistance from Dr Sheehan on the SUC amounts which would be imposed. We do not consider that it is appropriate, as Dr Sheehan has, to judge the appellant's ability to pay SUC only on the basis of a putative rural income which she might earn, or to discount the destitution protection legislation described by Professor Fu.

166. We accepted the evidence of Professor Fu and of the Chinese Regulations themselves that the family planning scheme is civil law, not criminal. Professor Fu was able to assist the Tribunal in understanding the operation of the scheme and the relevant elements of the legal system in China. The evidence of Professor Fu had limitations also: as he acknowledged, he had not been asked to look outside the Chinese materials. The six reported cases produced from the Beijing University database were of interest, but since they were a sample drawn from over fifty cases held on that database, it is difficult to evaluate whether they are representative of the overall position. As regards his updated report dealing with the appellant's November 2010 documents, we did not find that document as helpful as we hoped, despite the long delay in its preparation.

Country guidance findings

167. Based on the evidence before us, we are satisfied that the Chinese government has largely moved away from the excesses of the unregulated family planning policy which existed before the statutory scheme came into force in 2005. There is no doubt that appalling abuses took place during the 'punishment' approach, but China has been moving to increased statutory protection and Regulation, after a period of consideration during which there was increased laxity.

168. The statutory scheme is now revisited every five years, most recently in 2010. The present scheme will be reviewed again in 2015. In the period leading up to the 2005 and 2010 reviews, there was increased laxity in local areas, followed by a national campaign to return to the authorised quotas, which placed pressure on local officials. In each case, in a small number of provinces and areas, that resulted in human rights abuses, including large-scale forced sterilisations and termination of unauthorised pregnancies, even very close to term.
169. The family planning policy is well-known. The policy is China's flagship policy and huge resources are placed behind enforcing it. It is openly discussed among women and a lack of literacy would not mean that a rural woman would be unaware of her responsibilities. It has social support too now; larger families are not considered to be a good thing, as they were in the past. In rural areas, family planning officials post lists of married women entitled to apply for a birth permit, indicating precisely when such an application may be made. There are family planning posters, some threatening and some encouraging.
170. Millions of Chinese internal migrants work away from home in cities where they do not hold a *hukou*. They are required to stay in touch with their *hukou* area and, if female, either return for tri-monthly pregnancy tests or else send back test results. Some provinces collect a deposit, refundable against the SUC where a pregnancy is required to be terminated. Mothers pregnant with unauthorised children in rural areas were described as moving around and keeping out of sight during the pregnancy ('pregnant guerrillas').
171. Double-single couples are entitled to two children, subject in some provinces to four-year birth spacing, and there are many other options for second or additional children, according to the family planning Regulations in each province. Different regulations apply where one is an only child and the other is not, or where both spouses have siblings. The only generalisation that can be made in all circumstances is that the number of children permitted will depend on the provincial Regulations and the individual circumstances of the couple.
172. Considerable social pressure is applied to women and to families during unauthorised pregnancies. Any second child, even authorised (including first pregnancies ending in a multiple birth, whether natural or IVF-induced), will entail the loss of the family's SCP Certificate, and affects the whole family, including children. The family loses its privileged access to schools, housing, pensions, and free medical and contraceptive treatment. SUC will be payable, albeit at a reasonable rate, where the additional child is authorised or results from a multiple birth. If the child is unauthorised, there are additional penalties. Those working for emanations of the state will be dismissed; in private businesses, they may be demoted or dismissed and their line managers penalised.
173. Hundreds of thousands of unauthorised children are born every year. Family planning officials are required to register them, once the SUC has been paid: they have no incentive to refuse registration, since registration fees are a significant source of income for local family planning authorities, as are birth permits and SUC. There is a tension between that profitability, and the quota of births for the town, county and

province, which is subject to regular national reporting and pressure on local officials to bring their province, district, or area back within the quota, or face workplace discipline and career consequences themselves. Education and medical treatment are available, but are no longer free. We remind ourselves that the vast majority of nursery schools in Shanghai are in private hands, and are fee paying.

174. From time to time, most recently in early 2010, national campaigns to reduce over-quota births lead to vigorous (sometimes unlawful) local 'crackdowns' on unauthorised pregnancies and couples who have not opted for sterilisation after the second child. The pressure on officials sometimes results in large scale unlawful family planning abuses in provinces or areas which are significantly over quota. During such crackdowns, human rights abuses can and do occur in some provinces and areas. We do not consider that these large-scale abuses are likely to be under-reported: on the contrary, they attract widespread international attention and opprobrium and may even result in international diplomatic intervention. However, these occurrences, appalling as they are, are exceptional.
175. Where officials break the law in the enforcement of the statutory scheme, judicial review, criticism of the officials, and damages for breach are available. In the cases we were shown, that right was exercised by husbands with some standing in the community: there is no legal aid and no indication that there exists any real remedy for the woman concerned, especially where the termination or sterilisation of which she complains causes her long-term physical harm or even death.
176. The requirement to pay for education, contraceptive and medical care does not, without more, amount to persecution, but if there are factors individual to the family (such as, for example, the inability of the parents to support themselves because of an injury or ill health), we accept that it is capable of doing so.
177. Although both spouses are responsible for fertility control, on the evidence before us, it is the family planning regulations attached to the wife's *hukou*, having regard to the personal characteristics of the couple and any children they already have (their ethnicity, whether they have a disabled child, their status as children of heroes or miners, and so forth) which regulates the number of children to which that couple is entitled, as well as the SUC, social and employment consequences of breach for both of them.
178. The evidence before us indicates that Chinese women in general do control their fertility, broadly in accordance with the family planning scheme. They send back regular tri-monthly pregnancy tests even when working away from their *hukou* area, and either conform to the birth authorisation scheme, or, if young or in difficult circumstances, may opt for termination, which is readily available. Where an unauthorised or inappropriate pregnancy occurs, Chinese women are expected to terminate that pregnancy, and to do so is socially unremarkable. In general, we do not consider that the risk to a mother who has herself opted for a termination engages international protection.

Risk on return

Forcible termination of pregnancy

179. The country materials contain a number of reports of forced abortion in some provinces and areas, particularly at times where additional pressure is exerted on local birth control officials. Particularly at such times, a woman who does not opt for voluntary termination of an unauthorised pregnancy may well face a risk of forced abortion, sometimes very late in the pregnancy, which is plainly persecutory in nature.
180. If the woman remains in her *hukou* area and becomes pregnant with an unauthorised child, she may be able to escape detection by being a 'pregnant guerilla' in the evocative Chinese phrase, that is to say, by keeping out of sight during the pregnancy and moving around between relatives. The evidence indicates that many rural Chinese women have large families, despite the restrictions. However, if a national or local birth limitation campaign (a 'crackdown') occurs, the risk rises sharply, both for unlawful forced termination of pregnancy, right up to the date of delivery, and for unlawful forcible sterilisation or forcible insertion of an IUD.
181. During those times, if the woman is in her *hukou* area, and if there is a crackdown in the area which is accompanied by unlawful enforcement methods, we are satisfied that the risk may well rise to the level required to engage international protection under the Refugee Convention, or humanitarian protection or human rights protection, that is to say, that there will be a real risk or a reasonable degree of likelihood that a woman with unauthorised children, or an unauthorised pregnancy, may well suffer an unlawful termination or sterilisation procedure. The level of risk of unlawful action by family planning officials will be a question of fact in each case, dependent on circumstances in the mother's *hukou* area and whether there is a birth limitation campaign in progress.
182. We have considered whether such risk, where it exists, may be avoided by internal relocation. Internal migrant women must send back tri-monthly pregnancy tests, but we also note that a number of provinces have returned to requiring physical testing because they are concerned that many of the tests they receive are falsified. There are over 200,000 unauthorised births in China, many of them in cities. The country evidence does not indicate effective pursuit of internal migrant women by birth control officials from their *hukou* area.
183. The persecutory treatment (forcible termination or sterilisation) which the returnee fears is unlawful. The motivation for birth control officials to deal with individuals for breaches of the family planning scheme arises out of considerations which affect them personally (either in terms of their remuneration or employment prospects or both) and the country evidence does not indicate co-ordination of such unlawful actions between birth control officials in different areas. We consider that internal relocation will prevent any adverse consequences during pregnancy in almost all cases.

Forcible sterilisation

184. Voluntary sterilisation of one spouse after the second birth is the norm and is generally socially accepted. Although either partner can be the one sterilised, in the great majority of cases, it will be the woman who is sterilised. A much smaller

percentage of Chinese men undergo the procedure. Some provinces reward compliance with either a small regular payment or a one-off payment to the family. Again, we do not consider, where a couple opts for voluntary sterilisation, that either of them will require international protection. Nor do we consider that voluntary sterilisation in pursuance of a law of general application is a procedure which is inherently persecutory.

185. Where there exists a real risk of forcible sterilisation of either partner, that would be persecutory and international protection would be engaged. On the extensive evidence before us, we are not satisfied that in general there is a real risk of forcible sterilisation of either partner, although we recognise that there have been three modern scandals during birth regulation crackdowns, where such sterilisations occurred in large numbers. We recognise also that some of the international reports state that forcible sterilisation occurs 'fairly frequently'; however, the overwhelming evidence, and the evidence of Professor Fu (which we accept and prefer on this point) is that the occurrence is limited and therefore, in our judgment, it does not amount to a real risk.

Foreign-born children

186. In general, the evidence before us indicates that the consequences of an unauthorised birth once it has occurred (whether within or outside China) are social and financial. We remind ourselves that breach of the family planning policy is not a criminal offence but a civil matter, and that after a down payment of 50%, the balance of any SUC imposed may be paid over at least three years. We accept Professor Fu's evidence regarding the existence of statutory protection against destitution for those who cannot pay. We note that many couples regard giving birth abroad as evidence of wealth and status, and that significant numbers of parents travel to Hong Kong and Macao, in particular, for that purpose.

187. The attitude taken by provincial birth control authorities to parents returning with foreign-born children remains unclear; some provincial officials indicated that the additional child would be treated as unauthorised and registered only on payment of SUC; others, that foreign-born children do not breach the family planning scheme because their birth did not breach the PFP Regulations in any particular province.

188. Parents returning with foreign-born children are expected to produce birth certificates for that birth and to pay the SUC. In general, the rate of SUC, even if it is imposed, is not likely to be beyond the means of a couple who have lived abroad for some years. There is very little evidence of parents being disproportionately penalised when they return to China with foreign-born children.

189. We find that in general, couples with foreign-born children, over and above the permitted number for that couple (which is variable, depending whether they are a double-single couple, children of heroes or miners, members of ethnic minorities and so forth) will on return to China not be at real risk of persecution, serious harm or human rights breaches engaging international protection.

190. It was not suggested by either representative that the international protection Conventions would be engaged either by an appellant's intention to become pregnant

unlawfully after return to China, or her intention to abstain from such pregnancy. That was not the evidence in this appeal and we do not purport to give guidance on the point.

Country guidance summary

191. On the basis of all the evidence we saw and heard in this appeal, we summarise our country guidance as follows:

Chinese family planning scheme:

(1) In China, all state obligations and benefits depend on the area where a person holds their '*hukou*', the name given to the Chinese household registration system. There are different provisions for those holding an '*urban hukou*' or a '*rural hukou*': in particular, partly because of the difficulties experienced historically by peasants in China, the family planning scheme is more relaxed for those with a '*rural hukou*'.

(2) It is unhelpful (and a mistranslation of the Chinese term) to describe the Chinese family planning scheme as a 'one-child policy', given the current vast range of exceptions to the 'one couple, one child' principle. Special provision is made for 'double-single' couples, where both are only children supporting their parents and their grandparents. The number of children authorised for a married couple, ('authorised children') depends on the provincial regulations and the individual circumstances of the couple. Additional children are referred as 'unauthorised children'.

(3) The Chinese family planning scheme expects childbirth to occur within marriage. It encourages 'late' marriage and 'late' first births. 'Late' marriages are defined as age 25 (male) and 23 (female) and 'late' first births from age 24. A birth permit is not usually required for the first birth, but must be obtained before trying to become pregnant with any further children. The Chinese family planning scheme also originally included a requirement for four-year 'birth spacing'. With the passage of time, province after province has abandoned that requirement. Incorrect birth spacing, where this is still a requirement, results in a financial penalty.

(4) Breach of the Chinese family planning scheme is a civil matter, not a criminal matter.

Single-child families

(5) Parents who restrict themselves to one child qualify for a "Certificate of Honour for Single-Child Parents" (SCP certificate), which entitles them to a range of enhanced benefits throughout their lives, from priority schooling, free medical treatment, longer maternity, paternity and honeymoon leave, priority access to housing and to retirement homes, and enhanced pension provision.

Multiple-child families

(6) Any second child, even if authorised, entails the loss of the family's SCP certificate. Loss of a family's SCP results in loss of privileged access to schools, housing, pensions and free medical and contraceptive treatment. Education and medical treatment remain available but are no longer free.

(7) Where an unauthorised child is born, the family will encounter additional penalties. Workplace discipline for parents in employment is likely to include demotion or even loss of employment. In addition, a 'social upbringing charge' is payable (SUC), which is based on income, with a down payment of 50% and three years to pay the balance.

(8) There are hundreds of thousands of unauthorised children born every year. Family planning officials are not entitled to refuse to register unauthorised children and there is no real risk of a refusal to register a child. Payment for birth permits, for the registration of children, and the imposition of SUC charges for unauthorised births are a significant source of revenue for local family planning authorities. There is a tension between that profitability, and enforcement of the nationally imposed quota of births for the town, county and province, exceeding which can harm officials' careers.

(9) The financial consequences for a family of losing its SCP (for having more than one child) and/or of having SUC imposed (for having unauthorised children) and/or suffering disadvantages in terms of access to education, medical treatment, loss of employment, detriment to future employment etc will not, in general, reach the severity threshold to amount to persecution or serious harm or treatment in breach of Article 3.

(10) There are regular national campaigns to bring down the birth rates in provinces and local areas which have exceeded the permitted quota. Over-quota birth rates threaten the employment and future careers of birth control officials in those regions, and where there is a national campaign, can result in large scale unlawful crackdowns by local officials in a small number of provinces and areas. In such areas, during such large scale crackdowns, human rights abuses can and do occur, resulting in women, and sometimes men, being forcibly sterilised and pregnant women having their pregnancies forcibly terminated. The last such crackdown took place in spring 2010.

Risk factors

(11) In general, for female returnees, there is no real risk of forcible sterilisation or forcible termination in China. However, if a female returnee who has already had her permitted quota of children is being returned at a time when there is a crackdown in her 'hukou' area, accompanied by unlawful practices such as forced abortion or sterilisation, such a returnee would be at real risk of forcible sterilisation or, if she is pregnant at the time, of forcible termination of an unauthorised pregnancy. Outside of these times, such a female returnee may also be able to show an individual risk, notwithstanding the absence of a general risk, where there is credible evidence that she, or members of her family remaining in China, have been threatened with, or

have suffered, serious adverse ill-treatment by reason of her breach of the family planning scheme.

(12) Where a female returnee is at real risk of forcible sterilisation or termination of pregnancy in her '*hukou*' area, such risk is of persecution, serious harm and Article 3 ill-treatment. The respondent accepted that such risk would be by reason of a Refugee Convention reason, membership of a particular social group, 'women who gave birth in breach of China's family planning scheme'.

(13) Male returnees do not, in general, face a real risk of forcible sterilisation, whether in their '*hukou*' area or elsewhere, given the very low rate of sterilisation of males overall, and the even lower rate of forcible sterilisation.

Internal relocation

(14) Where a real risk exists in the '*hukou*' area, it may be possible to avoid the risk by moving to a city. Millions of Chinese internal migrants, male and female, live and work in cities where they do not hold an '*urban hukou*'. Internal migrant women are required to stay in touch with their '*hukou*' area and either return for tri-monthly pregnancy tests or else send back test results. The country evidence does not indicate a real risk of effective pursuit of internal migrant women leading to forcible family planning actions, sterilisation or termination, taking place in their city of migration. Therefore, internal relocation will, in almost all cases, avert the risk in the *hukou* area. However, internal relocation may not be safe where there is credible evidence of individual pursuit of the returnee or her family, outside the '*hukou*' area. Whether it is unduly harsh to expect an individual returnee and her family to relocate in this way will be a question of fact in each case.

Appellant's case

192. The appellant is a Chinese woman of the majority Han ethnic group, married to a Chinese national Han man whom she met in the United Kingdom. Her home province is Hunan; his is Anhui. She is poorly educated. She came from a rural area outside Jing Jie town. In China, she says she worked in a knitwear factory and was aware that women usually had sterilisations after their second child. The appellant and her husband have two children, born in the United Kingdom, a daughter first, then a son. They are a double-single couple, both only children: they did not marry until after the birth of their children.

Letter of refusal

193. The respondent rejected the appellant's claim by letter dated 7 October 2005, noting that the policy limiting the number of births in China applied to the whole population of China and was a legitimate effort on the part of the Chinese government to contain China's population growth; that the Chinese government opposed the use of force or coercion and that legal remedies had been available since the 1989 Administrative Procedural Law; that the policy was more relaxed in the rural areas, allowing second children in certain circumstances; that there was further relaxation for ethnic

minorities; that local officials frequently made false reports in response to pressure from their superiors and from individuals; that China's NPFPC estimated fertility at 1.8 births per woman as at the 2000 census; and that since the appellant's home province (Hunan) was a moderate province, it was highly unlikely that the appellant would be at risk there on return. The appellant had an internal relocation option to another (unspecified) part of China and the Refugee Convention was inapplicable. The humanitarian protection and human rights claims were also rejected.

Immigration Judge's determination

194. On 16 January 2006, the Immigration Judge dismissed the appellant's appeal on all grounds. The appellant then presented as a single unmarried mother with one child, a daughter born in the United Kingdom. The Immigration Judge asked a great many questions of detail, despite there being a respondent's representative present. He dismissed the appeal, because he considered that the entire account was a fabrication. The Immigration Judge considered that the appellant would probably be able to register her child on return, and dismissed the appeal on all grounds.

Error of law

195. The appellant made an application for reconsideration, arguing that the level of questioning by the Immigration Judge during the hearing was such as to offend against the guidance given by the IAT in the starred determination MNM (Surendran guidelines for Adjudicators) Kenya [2000] UKIAT 00005*. Reconsideration was ordered, and on 20 February 2007, SIJ Southern (as he then was) found that the determination contained a material error of law and set aside the Immigration Judge's determination, for reconsideration afresh (now remaking by the Upper Tribunal). His decision is appended to this determination at Appendix B.

196. The appeal came before us, for remaking afresh, with the credibility of the appellant's history in China clearly in issue. There were some factual changes when we heard the appeal: the appellant and her (now) husband had two children. They had a second United Kingdom-born child in 2007, this time a son. On 24 March 2009, the couple married. The marriage, and the birth of the daughter and son, were evidenced by United Kingdom marriage and birth certificates and are not disputed. The appellant and her husband are both only children and are a double-single couple, but their children were born before their civil marriage.

197. The appellant gave an account of another husband and two earlier children, born in China before she came to the United Kingdom. That part of her history was disputed and for the reasons we now set out, we do not find it credible, to the lower standard applicable for international protection, although we accept that it is broadly consistent with the country information. She said she was married, informally in her in-laws' home, and had two children, the first child born publicly in hospital and the second at home with the help of a private midwife. The marriage failed: the appellant refused sterilisation as she thought another man would not want her if she could not have children. Her husband left her in-laws' home, and not long after, the appellant left her children in China and came to the United Kingdom with the help of a snakehead agent, to whom she claimed to owe a lot of money. We were troubled by the close similarity

in the names of her claimed Chinese partner and her husband, and those of her children, but absent expert evidence, as we are not experts in Chinese naming conventions, we have not placed any weight on that.

Credibility

198. The appellant's refusal of sterilisation in the context of a divorce was consistent with the country evidence, since there is provision in most of the provincial Regulations for additional authorised children to be permitted in a new relationship, even where one party has children already from a previous relationship. Were that the only issue, we would have accepted the core of the appellant's account as credible.

199. However, there were other areas of the appellant's evidence where we were not satisfied that she told us the truth on a number of matters:

(a) The appellant claimed that she was completely unaware of the family planning scheme until shortly before she left China. That was inconsistent with her account of discussions with her co-workers about sterilisation after a second child. In our view, the appellant's evidence about her ignorance was inconsistent with the evidence of Professor Fu about the importance of the family planning policy in China and the publicity given to it, particularly in rural areas, and also with Dr Sheehan's description of a 'massive publicity campaign' in rural and urban China to publicise the family planning policy. If the appellant's *hukou* area was one in which it was possible to be unaware of the policy for so long, that does not assist her: it indicates that enforcement there was very lax indeed.

(b) There were significant discrepancies in her evidence as to how she funded her departure from China, and the overall circumstances of her departure. We have taken account of her variable references as to the distance to 'the city' and the conflicting accounts the appellant gave about what passport she had used and when.

(c) It is difficult to understand why someone with the modest financial circumstances of this appellant would choose to become indebted to an agent for a sum which was much greater than the SUC penalty she would have had to pay for any second child, had she remained in China. The provincial Regulations for Hunan, her home province, set out SUC for second children at 2-6 times the Income Multiplier, or 6-8 times the Income Multiplier if their relationship is bigamous or they are not married. The maximum SUC for an unauthorised second child born in marriage in Hunan is six times the local Income Multiplier of £490 (£2940) and the minimum is twice the Income Multiplier (£980), with a down payment of 50% and three years to pay the balance. Given the appellant's poor education and limited resources, a decision instead to pay £4000 to an agent, with a down payment of £2000, and the difficulties and risks of the journey to the United Kingdom, makes no sense at all.

200. Overall, and to the lower standard applicable to the international protection Conventions, we reject the appellant's account of her history in China. We do not accept that she had a partner in China, nor do we find that she had any children born in China, or left China unlawfully. We find that the appellant left China for some other reason than that stated, using her own, properly issued Chinese passport.

201. The marriage and births in the United Kingdom are supported by appropriate evidence and we accept, therefore, that if returned, the appellant would do so as a married overseas Chinese from the majority Han ethnic group, with two foreign-born children, both born in the United Kingdom, before her civil marriage to their father. The appellant, being out of the country, has not sought permission from birth control authorities in her home province either for her marriage or for her two children. We record that Mr Johnson accepted that in those circumstances, the appellant was a member of a particular social group.

Risk on return

202. In practice, permission is not required in advance for a first child. The appellant's first child was a daughter; she and her husband are a double-single couple; and, absent any difficulty over birth spacing and their not marrying until after they had their children, it appears that in China they would have been entitled to authorisation for a second child (see, in particular, paragraph 20 of Appendix E). As the mother of two children, there would be a strong social expectation that the appellant or her husband undergo sterilisation, but we are not satisfied on the evidence that there is a real risk to her, or her husband, of forcible sterilisation, albeit there is a social expectation that families will arrange for one of them to be sterilised, after the second child. Nor do we consider that the appellant would be unwilling to undergo sterilisation voluntarily in China: her claimed objections in relation to her earlier relationship (which we find to be a fabrication) were that she might need to be free to give children to a new husband. That is not an issue on the present factual matrix.

203. The provincial Regulations for Hunan, her home province, set out SUC for second children at 2-6 times the Income Multiplier, or 6-8 times the Income Multiplier if their relationship is bigamous or they are not married. There is no mention of SUC for a first child. We find, therefore, that the maximum SUC for which this couple would be liable would be 6-8 times the local Income Multiplier of £490 (so between £2940 and £3920) of which 50% would be payable on registration of the children, with three years to pay the balance. Subject to payment of the relevant level of SUC, and provision of proper overseas birth certificates, which we have seen, the children's births would be registered.

204. In assessing the claimant's ability to pay the SUC at that level, regard must be had to the fact that the appellant and her husband have been in the United Kingdom for a number of years, and that financial assistance with return is available from the respondent. The SUC 50% down-payment would be between £1470-£1910 and we consider that on return, the appellant and her husband would be able to make arrangements to pay it, and in due course the balance, if SUC were imposed. We note that enforcement of SUC is through the Chinese courts and cannot take the family below a certain level, as set out in Professor Fu's evidence. The couple would not

qualify for an SCP Certificate, but many Chinese parents do not, and birth control, medical treatment, and education for the children are available, albeit at a price, to parents who do not have an SCP Certificate.

205. For the reasons given above, we do not consider that there is a real risk of this appellant being subjected to treatment amounting to persecution or serious harm, in breach either of the Refugee Convention, humanitarian protection or of Article 3 ECHR.

Article 8 ECHR: private and family life

206. We next considered Article 8 ECHR. We bear in mind that the appellant's husband has been in the United Kingdom, albeit unlawfully, for over 12 years. The appellant herself has been here since 2004, over seven years. The husband's application under the legacy scheme was under active consideration in March 2011 but does not appear to have been determined in his favour. It appears that the appellant herself made a backlog application in or about September 2010. She has been reporting regularly as required; the family are receiving NASS support.

207. We approached Article 8 ECHR via the five questions set in Razgar, R (on the application of) v Secretary of State for the Home Department [2004] UKHL 27, which we answer as follows: there is private and family life between the appellant, her children, and her husband in the United Kingdom. To separate them would be interference with such private and family life of sufficient gravity to engage Article 8 ECHR. Removal would be in accordance with law, and the control of migration is necessary in a democratic society. We therefore answer the first four questions in the affirmative. The appeal turns on the fifth question, that of the proportionality of removal.

208. The private life evidence before us under Article 8 was not extensive. Clearly the appellant and her husband have family life together, and have spent a number of years in the United Kingdom. Both their children were born here, but are not British citizens, and there was no evidence before us that the parties had any significant private and family life outside their immediate family circle.

209. In considering the best interests of the children under s.55 of the Borders, Citizenship and Immigration Act 2009, we were guided by the Upper Tribunal's decisions in E-A (Article 8 - best interests of child) Nigeria [2011] UKUT 315 (IAC), MK (best interests of child) India [2011] UKUT 475 (IAC) and in LD (Article 8 - best interests of child) Zimbabwe [2010] UKUT 278 (IAC). We have considered the best interests of the children as a primary consideration.

210. We bear in mind that, if the children return to China with the appellant, the family will not qualify for the privileges which attach to a couple holding an SCP Certificate, since they will present and register two children on arrival. The children are now six and four years old respectively. These are very young children and we are satisfied it is in their best interests to remain with their parents.

211. The guidance in E-A (Nigeria) was set out in the judicial headnote as follows:

“(i) The correct starting point in considering the welfare and best interests of a young child would be that it is in the best interests of a child to live with and be brought up by his or her parents, subject to any very strong contra-indication. Where it is in the best interests of a child to live with and be brought up by his or her parents, then the child’s removal with his parents does not involve any separation of family life.

(ii) Absent other factors, the reason why a period of substantial residence as a child may become a weighty consideration in the balance of competing considerations is that in the course of such time roots are put down, personal identities are developed, friendships are formed and links are made with the community outside the family unit. The degree to which these elements of private life are forged and therefore the weight to be given to the passage of time will depend upon the facts in each case.

(iii) During a child’s very early years, he or she will be primarily focused on self and the caring parents or guardian. Long residence once the child is likely to have formed ties outside the family is likely to have greater impact on his or her well being.

(iv) Those who have their families with them during a period of study in the UK must do so in the light of the expectation of return.

(v) The Supreme Court in ZH (Tanzania) [\[2011\] UKSC 4](#) was not ruling that the ability of a young child to readily adapt to life in a new country was an irrelevant factor, rather that the adaptability of the child in each case must be assessed and is not a conclusive consideration on its own.”

212. The appellant’s son had an offer of a nursery place from September 2011 from Doncaster Metropolitan Borough Council and presumably took it up. He is not yet of formal school age and is young enough to adapt to life in China. Her daughter is two years older and will have had some schooling already, but is also of an age still to be adaptable to life in China. There is no evidence before us which contradicts the view that these children are still at the stage where they are primarily focused on the home environment. Nor is there any real evidence of this family having engaged with British society, outside their own family circle. The appellant produced her UKBA signing-on card to show that she has complied with the respondent’s requirements in that respect.

213. On return to China, the loss of this family’s SCP will mean that the children will not have privileged access to schools. However, education and medical treatment will remain available, but will not be free, provided the children are registered. There is no real risk of the children not being registered.

214. In considering the proportionality of removal, we have placed considerable weight on the state’s interest in immigration control, but we have also had regard to the accepted delay on the part of the respondent in dealing with their legacy applications. Having balanced all the relevant factors, and giving such weight as we consider appropriate to each of the individual factors and the best interests of the children as a primary consideration, we find, that if the appellant is removed with her husband and children, such removal would be proportionate. However, in the light of what was effectively the (unusual) concession of Mr. Johnson, at para 129 above, we find that, if she were removed alone, such removal would be a disproportionate breach of her and the children’s family life protected under Article 8 ECHR.

Funding

215. The Tribunal is satisfied that, at the time the appellant made the Section 103A application and for the reasons indicated in the order for reconsideration, there was a significant prospect that the appeal would be allowed upon reconsideration. Accordingly it orders that the appellant's costs in respect of the application for reconsideration and in respect of the reconsideration are to be paid out of the relevant fund, as defined in Rule 33 of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

DECISION

216. The First-tier Tribunal Judge's determination contains a material error of law. We remake the decision.

217. The appellant's appeal is dismissed on Refugee Convention and humanitarian protection grounds but allowed under Article 8 ECHR.

Signed
Upper Tribunal Judge Gleeson

Dated: 16 April 2012

Appendix A

Documents before the Upper Tribunal

Undated	<i>Laogai Research Foundation</i>	“One-child policy”
Undated	<i>UN Economic and Social Commission for Asia and the Pacific (UNESCAP)</i>	“Database of population and family planning law, policies and Regulations: China”
Undated	<i>Stefan Landsberger</i>	“Chinese propaganda posters”
Undated	<i>Salvation Army World Service Office (SAWSO) Leaflet</i>	“Combating Human Trafficking”
<u>1948</u>		
10 December 1948	<i>United Nations General Assembly</i>	The Universal Declaration of Human Rights
<u>1966</u>		
16 December 1966	<i>United Nations General Assembly</i>	The International Covenant on Civil and Political Rights (Signed but not ratified by the People's Republic of China)
16 December 1966	<i>United Nations General Assembly</i>	The International Covenant on Economic, Social and Cultural Rights (Signed and ratified by the People's Republic of China)
<u>1968</u>		
13 May 1968	<i>United Nations General Assembly</i>	Proclamation of Teheran, Final Act of the UN International Conference on Human Rights UN Doc A/CONF 32/41
<u>1969</u>		
11 December 1969	<i>United Nations General Assembly</i>	Declaration on Social Progress and Development UN Res 2542 (XXIV) of the 24 th Session, Agenda item 48
<u>1979</u>		
18 December 1979	<i>United Nations General Assembly</i>	Convention on the Elimination of All Forms of Discrimination Against Women
<u>1994</u>		
18 October 1994	<i>United Nations Population Fund</i>	<i>International Conference on Population Development Summary of 1994 Programme of Action</i> <i>DPI/1618/POP--March 1995</i>
<u>1995</u>		

Summer 1995	<i>Political Environments 2</i>	Kay Johnson: "China's Population Policies"
September 1995	<i>UN Commission on Status of Women</i>	Beijing Declaration, Fourth World Conference on Women
<u>1996</u>		
1996	<i>United States Legislation</i>	Illegal Immigration Reform and Immigration Responsibility Act, s.601: Persecution for resistance to coercive population control methods.
<u>1999</u>		
22 September 1999	<i>Research Directorate, Immigration and Refugee Board of Canada (CIRB)</i>	Extended Response to Information Request, CHN32869.EX
1999	<i>UN Committee on the Elimination of Discrimination Against Women</i>	General Recommendation No. 24 concerning Article 12 (Women and Health)
<u>2000</u>		
2000	<i>California State University, Sacramento: Xin Ren</i>	"Protecting women and children against trafficking in China"
2000	<i>UNHCR Committee on Economic, Social and Cultural Rights</i>	General Comment no 14 (2000) "The right to the highest attainable standard of health" E/C.23/2000/4
<u>2001</u>		
5 August 2001	<i>The Telegraph</i>	"Chinese region 'must conduct 20,000 abortions'"
<u>2002</u>		
11 January 2002	<i>Population Research Institute</i>	"The Case Against UNFPA Funding"
18 March 2002	<i>JIL Note: Heather Schmidt</i>	"The cycle created by China's one-child policy"
May 2002	<i>Wang & Altmann</i>	"Social-demographic determinants of intrauterine device use and failure in China Human Reproduction"
7 May 2002	<i>UNHCR</i>	Guidelines on international protection No 2: "Membership of a particular social group" within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees (HCR/GIP/02/02)
September 2002	<i>US Congressional-Executive Commission on China (CECC)</i>	"Roundtable: Women's rights and China's new family planning law"
2 September 2002	<i>South China Morning Post</i>	"New family planning law might end abuses"
15 November 2001	<i>Council of the European Union legal service</i>	Contribution to the Asylum Working Party, (Brussels, 15 November 2002: 14348/02)

28 December 2002	<i>South China Morning Post</i>	“One-child policy should not be relaxed too fast, warns official”
<u>2003</u>		
18 June 2003	<i>State Council of the People's Republic of China</i>	“Detailed Implementing Rules for the Measures on the Administration of Aid to Indigent Vagrants and Beggars in Cities” http://www.cecc.gov/pages/selectLaws/ResidencySocWelfare/implementingRulesAdminAid.php
23 July 2003	UNHCR	Guidelines on international protection: “Internal Flight or Relocation Alternative” (HCR/GIP/03/04: 23 July 2003)
November 2003	<i>IMF Working Paper, WP March 21: Ray Brooks and Ran Tao</i>	“China's labour market performance and challenges”
<u>2004</u>		
2004	<i>The China Review, 52: Kenneth Roberts, et al</i>	“Patterns of temporary labor migration of rural women from Anhui and Sichuan”
12 April 2004	<i>China Daily</i>	“Single-parent families looking for love”
May 2004	<i>Journal of Population Research: Judith Banister</i>	“Shortage of girls in China today”
8 October 2004	<i>Amnesty International</i>	“China: Protester against forced abortion sent to prison camp”
13 December 2004	<i>US House of Representatives Committee on International Relations</i>	Hearing: “China: Human Rights Violations and Coercion in One Child Policy Enforcement”
18 December 2004	<i>China Daily</i>	“Single Chinese mothers beset with troubles”
27 December 2004	<i>Brooklyn Journal of International Law: Nicole M Skalla</i>	“China's one-child policy; Illegal children and the family planning law”
<u>2005</u>		
February 2005	<i>Immigration and Refugee Board of Canada</i>	“China: Reforms of the household registration system (<i>Hukou</i>) (1998-2004)”
10 June 2005	<i>People's Daily</i>	“Domestic violence, a growing woe for Chinese women prisoners”
23 July 2005	<i>The Epoch Times</i>	“Hong Kong Resident Rescued from a Forced Abortion”
20 September 2005	<i>BBC News</i>	“China ‘acts on forced abortions’”
7 October 2005	<i>Laurel Bosson</i>	“Forty million missing girls: land, population controls and sex imbalance in rural China”
7 October 2005	<i>US Congressional-Executive Commission on China (CECC)</i>	“China's household registration system: sustained reform needed to protect China's rural migrants”
8 October 2005	<i>The Lancet:</i>	“Chinese officials accused of forcing abortions in

19 October 2005	Jonathan Watts UNESCO	Shandong" Universal Declaration on Bioethics and Human Rights
3 December 2005	<i>South China Morning Post</i>	"Paying hefty price for a second child"
25 December 2005	<i>Financial Express</i>	"China plans to abolish farmer tax"
 <u>2006</u>		
26 April 2006	<i>Immigration and Refugee Board of Canada</i>	"China: The <i>hukou</i> ; whether there remains a distinction between urban and rural <i>hukou</i> ; social services available to persons holding an urban or rural <i>hukou</i> ; the temporary <i>hukou</i> "
05 May 2006	<i>Immigration and Refugee Board of Canada</i>	"Organized crime or black society activity, particularly in Guangdong and Fujian, including links with government officials, repercussions associated with failing to meet demands of criminal gangs, and government efforts at tackling organized crime"
23 May 2006	<i>Amnesty International</i>	Amnesty International Report 2006: China
June 2006	<i>Human Rights in China</i>	"Implementation of the Convention on the elimination of all forms of discrimination against women in the People's Republic of China"
September 2006	<i>US Congressional-Executive Commission on China (CECC)</i>	2006 Annual Report: V(h) Population Planning.
November 2006	<i>Human Rights in China</i>	Monthly Brief
December 2006	<i>Stanford University Working Paper: De Brauw, et al</i>	"Is feminization of agriculture occurring in China? Debunking the myth and measuring the consequences of women's participation in agriculture"
December 2006	<i>Asian Development Bank</i>	"People's Republic of China: Country Gender Assessment"
Winter 2006	<i>Human Life Review: Steven W Mosher</i>	"China's one-child policy: twenty-five years later"
Winter 2006	<i>Demokratizatsiya: Emily E Schukman</i>	"Anti-trafficking Policies in Asia and the Russian Far East: A Comparative Perspective"
28 December 2006	<i>Asia News</i>	"Temporary residence permit system for migrants illegal"
 <u>2007</u>		
2007	<i>41 Fam LQ 197: Annie Y Wang</i>	"Unmarried cohabitation: what can we learn from a comparison between the United States and China?"
19 January 2007	<i>U.S. Department of State</i>	Trafficking in Persons Interim Assessment
1 March 2007	<i>BBC News</i>	"China 'to punish' two-child rich"
March 2007	<i>Population and Development Review: Gu, Wang, Guo & Zhang</i>	"China's local and national fertility policies at the end of the twentieth century"
06 March 2007	<i>US Department of State</i>	Country Reports on Human Rights Practices 2006: China (includes Tibet, Hong Kong, and Macau),

14 March 2007	<i>South China Morning Post</i>	"Poor outlook for the unemployed"
22 April 2007	<i>Radio Free Asia</i>	"Guanxi officials carry out mass forced abortions"
23 April 2007	<i>Louisa Lim</i>	"Cases of forced abortions surface in China"
10 May 2007	<i>Immigration and Refugee Board of Canada</i>	"China: Whether forced abortions or sterilizations are still occurring; prevalence and location of forced abortions or sterilizations; reports of forced sterilization of men"
20 June 2007	<i>The Guardian:</i> <i>Jonathan Watts</i>	"Going under"
03 December 2007	<i>UKBA Country of Origin Information Service</i>	China COI Report December 2007
13 December 2007	<i>China Daily</i>	"Action plan to fight human trafficking finalized"
13 December 2007	<i>State Council of China</i>	"China national Plan of Action on combating trafficking in women and children (2008-2012)"
<u>2008</u>		
4 February 2008	<i>Radio Free Asia</i>	"China's One-Child Policy Stays, Abuses Resurface"
11 March 2008	<i>US Department of State</i>	Country Reports on Human Rights Practices 2007: China (includes Tibet, Hong Kong, and Macau),
9 May 2008	<i>Danwei:</i> www.danwei.org <i>Posted by Joel Martinsen</i>	"Temporary residence permits hard to come by"
01 June 2008	<i>UKBA Country of Origin Information Service</i>	China COI Report June 2008
04 June 2008	<i>US Department of State</i>	Trafficking in Persons Report 2008: Hong Kong
12 July 2008	<i>Radio Free Asia</i>	"'Abuses' Under Population Policies"
28 July 2008	<i>UKBA Country of Origin Information Service</i>	Country of origin information request
July 2008	<i>The People's Republic of China</i>	Marriage law of the People's Republic of China
1 September 2008	<i>Hong Kong Trade Development Council</i>	"No jobs for people without temporary residence permits in Guangzhou"
3 September 2008	<i>Human Rights Watch</i>	"China: As Paralympics launch, disabled face discrimination"
September 2008	<i>China Quarterly 195: Chan & Buckingham</i>	"Is China abolishing the <i>Hukou</i> system?"
September 2008	<i>Journal of Human Resources,</i>	Avraham Ebenstein, Hebrew University of Jerusalem: "The 'missing girls' of China and the unintended consequences of the one child policy."
28 October 2008	<i>University of British Columbia</i>	"UBC Legal Expert Releases Canada's First Stats on Foreign Human Trafficking Victims"
31 October 2008	<i>US Congressional-Executive Commission on China (CECC),</i>	2008 Annual Report: Population planning
4 November 2008	<i>China Labour Bulletin</i>	"Shenzhen's residence card offers little new for migrant workers"
7 November 2008	<i>Vietnamese Workers Abroad</i>	"In the news: Chinese agency says human trafficking on the rise in Mekong countries"
18 November 2008	<i>Radio Free Asia</i>	"Uyghur woman released without forced abortion"

2009

Circa 2009	<i>Asia for educators</i>	"Issues and trends in China's demographic history."
5 February 2009	<i>China Brief: Peter Bottelier</i>	"China's economic downturn: Employment is the critical issue"
15 February 2009	<i>The Times: Michael Sheridan</i>	"Women rebel over forced abortions"
25 February 2009	<i>US Department of State</i>	2008 Human Rights Report: China (includes Tibet, Hong Kong, and Macau)
April 2009	<i>National Centre for Biotechnology Information</i>	"China's excess males, sex selective abortion, and one child policy: analysis of data from 2005 national intercensus survey"
17 April 2009	<i>South China Morning Post</i>	"31 held amid crackdown on child prostitution"
24 April 2009	<i>South China Morning Post</i>	"Child prostitution case withdrawn after public outcry"
4 May 2009	<i>China Today</i>	"Shanghai's Hukou System Reform"
11 May 2009	<i>South China Morning Post</i>	"Tax chief fined, then walks free after sex with girl aged under 14"
29 May 2009	<i>South China Morning Post</i>	"Two reporters beaten as gag on case tightens"
7 June 2009	<i>Human Rights in China</i>	"Population control continues to claim victims, Father John Flynn"
16 June 2009	<i>US Department of State</i>	Trafficking in Persons Report 2009: China
17 June 2009	<i>South China Morning Post</i>	"Court convicts, frees waitress who killed cadre"
24 June 2009	<i>China Labour Bulletin</i>	"Ridiculous family planning rules could cost migrant worker her job"
26 June 2009	<i>Modern Ghana News</i>	"Chinese traffickers in tears over jail sentence"
2 July 2009	<i>UN Economic and Social Council: Committee on Economic, Social and Cultural Rights</i>	General Comment no 20: Non-discrimination in economic, social and cultural rights (Article 2 (2)).
13 August 2009	<i>The Epoch Times</i>	"Of the 13 million abortions in China, most are forced"
20 August 2009	<i>South China Morning Post</i>	"How crime-busters reined in justice chief"
21 August 2009	<i>Radio Free Asia</i>	"Down and Out in China"
1 October 2009	<i>UKBA Country of Origin Information Service</i>	China COI Report October 2009
10 October 2009	<i>US Congressional-Executive Commission on China (CECC)</i>	2009 Annual Report: Chapter II. Human Rights
30 October 2009	<i>Radio Free Asia</i>	"Uyghur grandfather detained"
10 November 2009	<i>Women's Rights Without Frontiers</i>	"The consequences of coercion: China's one-child policy and violence against women and girls"
<u>2010</u>		
Undated	<i>Government of the People's Republic of China</i>	China Statistical Yearbook 2010
8 January 2010	<i>UKBA Country of Origin Information Service</i>	China COI Report January 2010

8 March 2010	<i>US Congressional-Executive Commission on China (CECC)</i>	"Migrant Workers' Children Face Barriers To Education: Activists Call For Fair Treatment"
11 March 2010	<i>US State Department</i>	Country Reports on Human Rights Practices 2009: China (includes Tibet, Hong Kong, and Macau)
20 April 2010	<i>Allianz</i>	"China: One nation, one child"
22 April 2010	<i>Amnesty International</i>	"Thousands at risk of forced sterilisation in China."
2007-May 2010	<i>Immigration and Refugee Board of Canada</i>	"Family planning laws, enforcement and exceptions; reports of forced abortions or sterilization of men and women, particularly in the provinces of Guangdong and Fujian"
17 August 2010	<i>Oxford bulletin of economics and statistics</i>	"China's one-child policy and the mystery of missing women: ethnic minorities and male-biased sex ratios"
10 October 2010	<i>US Congressional-Executive Commission on China (CECC)</i>	2010 Annual Report
14 October 2010	<i>China Daily</i>	"The problem of domestic violence"
24 October 2010	<i>The Guardian (website)</i>	"China's one-child policy is slowly being eased."
15 November 2010	<i>UKBA Country of Origin Information Service</i>	China COI Report November 2010
<u>2011</u>		
Undated	<i>All Girls Allowed</i>	Section on forced abortion and one child punishment in China.
19 January 2011	<i>CBN.COM</i>	"Group challenges China's one-child policy."
3 February 2011	<i>Radio Free Asia</i>	"Women forced to abort"
21 March 2011	<i>Women's Rights Without Frontiers</i>	"Reggie Littlejohn testifies on one-child policy at European and British parliaments."
22 March 2011	<i>Independent Catholic News</i>	Gay Mitchell MEP: "China's coerced abortions violate human rights."
1 April 2011	<i>UN Commission on the Status of Women</i>	Report on the 55 th session (12 March 2010, 22 February-4 March and 14 March 2011)
8 April 2011	<i>US State Department</i>	Country Reports on Human Rights Practices 2010: China (includes Tibet, Hong Kong, and Macau)
28 April 2011	<i>The Guardian (website)</i>	"China census figures reveal ageing and urbanised country."
1 May 2011	<i>American Enterprise Institute for Public Policy Research</i>	Nicholas Eberstadt: "A global war against baby girls: sex-selective abortion becomes a worldwide practice."
4 August 2011	<i>World Net Daily</i>	"Woman facing prison, sterilization over 1-child policy."
24 August 2011	<i>UKBA Country of Origin Information Service</i>	China COI Report August 2011
24 August 2011	<i>Fox News</i>	"Biden's office disputes assertion he's OK with China's 'one-child policy'."
21 September 2011	<i>US House of Representatives Committee on Foreign Affairs</i>	"China's one-child policy: the government's massive crime against women and unborn babies"
23 September 2011	<i>Radio Free Asia</i>	"Birth policy could destabilise China"
17 October 2011	<i>Life Site News</i>	"Chinese woman dies during forced abortion: was

25 October 2011	<i>The Guardian (website)</i>	six months pregnant.” “China’s family planning policy enforced with heavy-handed tactics.”
25 October 2011	<i>The Guardian (website)</i>	“China’s one-child policy means benefits for parents – if they follow the rules.”
25 October 2011	<i>International Federation for Human Rights</i>	“Steadfast in Protest – Annual Report 2011 – China”
28 October 2011	<i>LifeNews.com</i>	“China: Forced abortion opponent endured beating may be dead.”
5 November 2011	<i>ABC News</i>	“New Jersey Congressman pushes bill to target human rights offenders in China.”
10 November 2011	<i>Freedom House</i>	“Countries at the crossroads 2011: China.”
November 2011	<i>International Planned Parenthood Foundation</i>	Annual Performance Report, 2010-2011

Appendix B

SIJ Southern's error of law decision

FINDINGS & INSTRUCTIONS

FOR THE ATTENTION OF THE TRIBUNAL AT THE ADJOURNED HEARING

APPELLANT: Ms AX

CASE NO:

DATE OF RECONSIDERATION HEARING: 20th February 2007

PANEL: Senior Immigration Judge Southern

REASONS FOR THE DECISION THAT THERE IS AN ERROR OF LAW IN THE DETERMINATION

1. Reconsideration has been ordered of the determination of Immigration Judge FitzGibbon who, by a determination promulgated on 19th January 2006, dismissed the appellant's appeal. That appeal was against a decision of the respondent made on 11th October 2005 to refuse leave to enter after the respondent had rejected the appellant's asylum and human rights claim.
2. The appellant, who is a citizen of the People's Republic of China ("China"), was born on 7th April 1977. Her claim is based upon her claimed risk of being subjected upon return to China to persecutory ill-treatment, including forced sterilisation, as a consequence of the "one child policy" enforced in China, a policy which she had breached by having more than one child. It may be that there is a second strand to her claim in that as her marriage in China had broken down and her husband had deserted her she would be at risk as a vulnerable single mother.
3. The appellant's evidence may be summarised, briefly, as follows. She lived in a rural area of China, in Hunan Province, where she worked as a weaver in a factory. She had two young children. Her husband left her in the early part of 2004. In August 2004 officials visited the appellant's home. She was elsewhere at the time but the officials told her mother-in-law that because the appellant had breached the one child policy she would have to undergo a sterilisation operation in two days time. If she refused her house would be destroyed and her belongings confiscated. As a consequence she left home and after some travelling within China she left China on an unknown date in August 2004 and travelled with the assistance of an agent via Singapore and Malaysia to the United Kingdom, arriving on 23rd September 2004.
4. The respondent refused the claim because it was not accepted that the appellant was at real risk in Hunan Province because the one child police was not, according to the respondent's reading of the objective evidence, strictly enforced in the rural areas. The appellant could safely relocate to a rural area in China were there would be no such risk.

5. When the appeal came before the immigration judge the appellant simply adopted her witness statement. There was no other examination in chief. Cross examination was extremely brief. Only five responses by the appellant are recorded in the record of proceedings. The appellant confirmed that officials had come to her home and demanded that she undergo the operation. She travelled on a passport supplied by the agent. She had been unable to contact her mother-in-law since her departure because there were no telephones there. The appellant confirmed that she had travelled outside China once before. This was in 2003 when her parents-in-law paid for a holiday.
6. The immigration judge then asked a large number of questions that gave rise to answers from the appellant upon which the immigration judge was to base his finding that the appellant was not a credible witness and to reject her entire account as untrue. These were issues not raised in the reasons for refusal letter or by the Home Office Presenting Officer in the course of his brief cross examination.
7. In the grounds upon which the appellant sought and was granted an order for reconsideration the appellant's representative said that the questioning by the immigration judge of the appellant lasted for more than 50 minutes. There was no re-examination by either representative after the lengthy examination conducted by the immigration judge. However, the respondent's representative, in his closing submissions, noted that credibility issues arose from the questioning conducted by the immigration judge.
8. As can be seen from the determination it was the evidence elicited from the appellant by the immigration judge's questions that founded his adverse credibility findings. At paragraph 9 of the determination he said:

"As can be seen, her evidence to me differed in many respects from her written evidence."

And having gone through those contradictions he said, at paragraph 49:

"Taking all the difficulties into account and having regard to the well-known principles in **Chiver**, I am driven to conclude that the appellant has made up this account in its entirety. I do not believe she was threatened with compulsory sterilisation."

9. This was not the case the appellant had expected to meet. There had been no direct challenge to her credibility either in the refusal letter or in the cross examination by the respondent's representative at the appeal hearing. In the refusal letter the respondent said that it was "highly unlikely" that the appellant would be of interest to the authorities in Hunan Province and that she did not qualify for recognition as a refugee because the appellant had a reasonable internal flight option within China.
10. There is ample guidance available as to how an immigration judge should conduct himself if not content with the extent to which the evidence has been elicited in examination in chief and cross-examination. It is clear that the immigration judge did not follow this guidance and did not conduct the proceedings in accordance with it.
11. The immigration judge was bound by the starred decision MNM (Surendran guidelines for Adjudicators) Kenya * [2000] UKIAT 0005 in which the Tribunal said this:

19. The tribunal in June 1999 sought to give guidance to adjudicators how to act if there was no-one representing the Home Office. It is unfortunate that that guidance was not widely reported, although we are aware that it was circulated by the Chief Adjudicator to all adjudicators. In *Muwyinyi v Secretary of State for the Home Department (Immigration Law Update Vol 3 No 3 p.13)* the President observed that adjudicators were not bound to accept accounts at face value but could and should probe apparent improbabilities. However, they must not involve themselves directly in questioning appellants or witnesses save as was absolutely necessary to enable them to ascertain the truth and must never adopt or appear to adopt a hostile attitude. That is wholly consistent with the *Surendran* guidelines which show how the adjudicator should conduct such an exercise. We have decided to incorporate those guidelines in this determination and append them as an annex to it. They must be observed. If they are not, there is a real danger that the hearing will be regarded as having been conducted unfairly.

20. In this case, the special adjudicator did not follow the procedure set out in Paragraph 5 of the Guidelines. The course she adopted did give rise to the impression that she was putting the Home Office case and was conducting her own examination of the appellant. That in our view was not fair and is sufficient in itself to vitiate the findings she reached that the appellant's account was in certain material respects not credible.

12. Of course, here the respondent was represented, but had chosen not to challenge the appellant's evidence in cross-examination beyond what is set out above. Paragraph 5 of the *Surendran* guidelines says this:

5. Where no matters of credibility are raised in the letter of refusal but, from a reading of the papers, the special adjudicator himself considers that there are matters of credibility arising therefrom, he should similarly point these matters out to the representative and ask that they be dealt with, either in examination of the appellant or in submissions.

13. This does not mean that the immigration judge cannot pursue issues that are troubling him, provided he does it in a way that does not give rise to a perception of unfairness. This was considered more recently in *XS (Kosovo-Adjudicator's conduct-psychiatric report) Serbia and Montenegro* [2005] UKIAT 00093:

31. It was not illegitimate for the Adjudicator to ask questions about the mode of travel and nationality of the Appellant, even though those issues were not pursued by the Home Office Presenting Officer. An Adjudicator is entitled to raise issues which trouble him. However, where there is a Home Office Presenting Officer, who does cross-examine, an Adjudicator should sense warning bells ringing over what he then does

32. The questions should be asked after cross-examination has concluded except for clarification. Otherwise, there is an appearance of a dual cross-examination. It may be otherwise if there is no Home Office Presenting Officer and an issue arises unexpectedly in evidence in chief. Here some questions were asked by the Adjudicator during cross-examination by the Home Office Presenting Officer.

33. The questions should not be too long. There is no precise permissible ratio, but asking significantly more questions than the Home Office Presenting Officer is

again an indication of apparently excessive intervention with the attendant risk of apparent bias.

14. It seems to me to be the inescapable conclusion that the appellant and her representative would be left with the clear impression that the immigration judge had taken over from the respondent's representative the task of testing the appellant's evidence. He was wrong to do so. He did not seek the assistance of the representatives to explore the matters that troubled him and there is no indication from the record of proceedings as to whether he invited the appellant's representative to re-examine.

15. The appellant was represented before the immigration judge by her solicitor, Mr R. Batram, who is a partner in the firm of Luqmani Thompson & Partners. He has confirmed, in a Statement of Truth prepared for the reconsideration hearing, that he felt disadvantaged in his presentation of the appellant's case by the way in which the appeal had been conducted:

"I took a view that the questions posed by the adjudicator which introduced an element of credibility to the appeal, where no issues of credibility were raised by the Home Office in the refusal letter, could not fairly and properly be addressed on the day of the hearing. To do so I would need to take detailed further instructions with an interpreter and canvass a whole raft of areas which had never been raised previously by the Secretary of State in his refusal letter. I took the view that it was neither possible nor appropriate for me to seek to address all the potential points arising from the immigration judge's examination in re-examination for two reasons. Firstly, the immigration judge's examination raised implicit criticisms however, I had no means of being sure if my interpretation of the implicit criticisms were correct. In short in re-examination I would have to go on a fact finding trawl which would be impossible to deal with without asking leading questions and without any idea of where re-examination should be going in order to satisfy newly raised concerns of the immigration judge."

16. In those circumstances there has been a sufficiently serious breach of the procedural fairness to which the appellant was entitled as to vitiate the decision. It is not appropriate for me to substitute a fresh decision on the basis of the appellant's unchallenged account because the respondent's representative has adopted the credibility points that emerged during the examination of the appellant conducted by the immigration judge even though those points had not been taken by the respondent previously.

17. That being the case the determination shall be set aside and the Tribunal shall consider the evidence afresh at a hearing at which all issues shall be at large. At that hearing the appellant will be aware that her credibility is in issue generally and that it is for her to establish all the facts upon which she seeks to rely.

Signed: Senior Immigration Judge Southern

Date 20th February 2007

Appendix C

Summary of witness evidence

Appellant's evidence

1. The appellant is originally from Hunan Province, from a rural area outside Jing Jie town. She was poorly educated and lived with her husband's parents. She worked in a knitwear factory. She was born on 7 April 1977 (making her age 33) in Hunan, and in January 1999 she went through a ceremony of marriage in front of relatives. The couple had two children, a son, born in June 2000 when she was 23 and a daughter, born in April 2002 when she was 25. The appellant can produce no marriage certificate or birth certificates for the claimed events in China. The daughter was unregistered and was born at home with the help of a private midwife.
2. The Chinese marriage was in difficulty by the time the second child was born, and the appellant's husband left her shortly after Chinese New Year 2004 (which fell on January 22 in that year). He was said to fear being sterilised and also, he was having an affair. The appellant remained with her in-laws and children until August 2004 when the authorities visited her home and pressured her mother in law to ensure the appellant underwent sterilisation. The appellant worked one more shift, to ensure she got her month's pay, and then left China, with the help of a man she met at a bus stop and a friend with a shop, who was able to lend her the down payment for her journey.
3. The appellant arrived in the United Kingdom on 23 September 2004, and was arrested for a criminal offence (false documents). She served a prison sentence.
4. On 22 February 2005, she was released and taken to Heathrow airport where she received temporary admission documents and a Statement of Evidence form, which she did not return. She went to the Refugee Arrivals Project and was able to telephone Hui Lin, a contact name given to her by a friend before she left China. He collected her and took her to live at his home, but he locked the form in his room and went away for several weeks. The Statement of Evidence form was not returned until 26 May 2005; the respondent refused the appellant's asylum claim on 7 October 2005.
5. In March 2009, having been advised that her Chinese marriage ceremony was of no legal effect, the appellant married a Chinese citizen living in the United Kingdom. Her husband's appeal rights had then been exhausted for nine years and he had no status in the United Kingdom. Her husband is of the majority Han ethnicity, and before coming to the United Kingdom he held a rural *hukou* in Anhui Province. While in the United Kingdom, the appellant has had two children, a daughter, born 26 November 2005, and a son, born 17 September 2007, both of whose births are registered in the joint names of the appellant and her husband. There are birth and marriage certificates to support the United Kingdom family events and it seems, therefore, that the appellant must have been in a relationship with her husband since early 2005, not long after her release in February 2005. The appellant therefore presents as a person who certainly has a lawful husband and two foreign-born children, and who may also have a customary marriage husband and two children, living with their grandparents, in China.

Oral evidence

6. The appellant relied on her statement of 9 November 2009 as her primary evidence. It amended and updated her two previous witness statements.

26 May 2005: Statement of Evidence form and statement

7. The appellant stated she was born on 7 April 1977 in Hunan, and entered into a customary marriage in China in January 1999. Details were given of her two claimed Chinese children. The appellant's screening interview gave incorrect details of her father's name and her parents' address. In China, the appellant had lived with her in-laws and the Chinese children were still living with their grandparents.
8. The appellant described a holiday in Singapore in 2003, which her mother in law had paid for, to try and stop her quarrelling with her Chinese husband. The tour guide had a group pass and the appellant did not have a personal passport. She became ill on the trip and he arranged a visa extension; the appellant flew back later on that document.
9. The appellant claimed to have been unaware of the family planning policy until after she had her daughter in China, the second child. The elder, a boy, was born in hospital: the second child, a daughter, was born at home, privately, with the services of a midwife paid for by her parents-in-law. The appellant had refused to agree to sterilisation after the second child, because her husband had run away and left her for another woman.
10. When she learned that family planning officials had visited while she was out and that the second birth was unlawful, the appellant left her parents-in-law's home for good. She packed some clothes, her identity card, some photographs, and RMB 2000 or 3000 and walked for two days to reach Jing Xie city. There she met a man who advised her to go abroad, since wherever she went in China she would have the same problem. She gave him her money and borrowed more from a friend who lived near the city, to make up RMB 20000, which was half the price of her travel. She has not paid the rest. The agent did not give his name; he threatened to take her son away if she did not pay the balance after her initial detention and release in the United Kingdom. The appellant went back to the home of her in-laws, then left again on 16 August 2004, walked to the city, travelled with the agent to Singapore, where they spent about a week, then went by coach to Malaysia for just over a week, where the agent left her. The appellant travelled on by plane to 'some strange city' where she changed planes for the United Kingdom. She travelled on her own passport: the Chinese immigration guards did not know she had breached the family planning policy.
11. Her account of the circumstances of her detention, release, and claim in the United Kingdom are as already set out. There was no mention of her relationship with her present husband in the screening interview or in the appellant's asylum statement.

11 November 2005: witness statement for hearing

12. The appellant's next witness statement was prepared for the January 2006 hearing. It was a response to the letter of refusal. The appellant stated that internal relocation was no use in China because of the *hukou* system. She would be 'condemned to a life as one of the many internally displaced and documented persons with no access to civil, political or economic rights' which was why, when in prison here, she had not applied for early release in order to return to China. The appellant referred to the respect for living ascendants and ancestors in China; the concept of preserving face; and the marital difficulties already mentioned. She stated it was quite common in her area at that time for people to have a second child hoping it was a boy; in her area, the family planning policy was not mentioned and it was perhaps not enforced, or was interpreted loosely. Almost everyone she knew underwent voluntary sterilisation after the birth of their second child. The subject was only discussed in general terms, not individual ones.

13. The appellant had a second child for her Chinese partner, although it was not a boy. She and her parents-in-law were happy with two children. She was convinced that if she had stayed, she would have been coerced into sterilisation by the authorities, or by pressure on the family, which she was not prepared to accept. The appellant was not prepared to be sterilised because her marriage was failing and any new husband would want her to have children for him. She decided to leave the family; the children belonged to her husband's family and they remained there. The statement says that by the date of hearing, she would have a United Kingdom-born child from a relationship with a person, also of Chinese origin, who had not stuck by her, and to whom she was not married.

4 November 2009: witness statement for reconsideration hearing

14. The appellant prepared a new statement for the present hearing. Subject to clarifications therein, she stated that she relied also on the earlier statements. Her Chinese husband's family lived in Jing Jie Town, in Hunan province, about thirty minutes by bicycle outside the town. Her own parents lived there too, and both families grew rice; there were about sixty homes in this rural area and they did not have the type of *hukou* which gave them access to health services. She did not know what type of *hukou* they had. The appellant's parents had good years and bad. In bad years, they only grew enough rice for themselves, whereas in good years there might be a small surplus. Her father occasionally did a bit of building work. The appellant and her husband were both only children.
15. The appellant's Chinese partner was a gambler; she did not know what he earned because he never gave her any money. He worked as a motorcycle taxi when he could be bothered to work. The appellant's factory job brought in RMB 500-600 dependent on her productivity. Her first child was born in hospital, and properly registered. The second, a daughter, was born at home and not registered. The account of her finding the agent is very similar; in this case, the appellant went home and got some money, photographs of herself and of her with her son, and her identity card. Then she went back to work, finished her shift, collected her pay and left. The person who lent her the money to pay the agent was Zhang Fei, her best friend, who lived in Jing Jie, not in the city where the agent lived.
16. The appellant stated she had travelled out of China on a passport which bore her name, but was not necessarily her own or a genuine passport. The passport was red but she had never stated that it was Malaysian, or that it had been stolen. She did not know why her screening interview said that. Someone was going to meet her in the United Kingdom and arrange work so that she could repay the agent. Instead she was arrested and imprisoned. The agent wrote to her in prison, asking for the money. She had not heard from him since.
17. The appellant explained that she had had another child with her husband, a son. She had four children. She refuted her earlier statement that she was having difficulties with her husband; the difficulties were with accommodation, not with him, they were still together and he was the father of both her United Kingdom-born children. She had been advised that the marriage in China was not lawful and she had therefore gone through a form of marriage with her present husband. She did not know if he would stand by her if she returned to China and took responsibility for all four children.
18. The appellant had a photograph of herself with her eldest child, taken in Jing Jie in or about October 2002. She was almost illiterate, able to read a little and to print her own and her husband's names. She was unable to contact her family in China, as she could not write a letter and there was no telephone number. She felt guilty and in debt to her Chinese children for leaving.

Oral evidence

19. After adopting her latest witness statement, the appellant was tendered for cross-examination. She stated that she had not known how many children she could have until she was asked to accept sterilisation, just before she left home. She was not an educated woman and had no idea that there were rules about how many children she could have. Her husband had left her in 2004, just after Chinese New Year, and her mother in law stated that it was because he had been approached about the family planning policy. He ran away because he was scared of being sterilised himself. He was also having an affair.
20. The appellant went into work the next day but did not sleep at home. She discussed voluntary sterilisation with her workmates during her overtime at work: they recommended it, stating that it was 'nothing special'. The chronology as to when the appellant discovered that she was not permitted to have two children in China was very confused: at the previous hearing she had told the Tribunal that her colleagues would not discuss these matters with her.
21. The appellant's evidence about whether she left her home area and then China with or without documents was hopelessly discrepant. In her asylum interview, she stated that she had no documents and had left her identity card at home when fleeing. In her evidence to us she stated she took clothing, money, and her identity card. She claimed to have been lent the down payment of RMB 20,000, at a time when she was earning RMB 500 in a good month, and that the loan was by a 'friend' whose address she never knew but who ran a fast food business in the town. She did not know how much the friend earned. The loan was equivalent to four and a half years' income and the vagueness of this part of her account did not assist the appellant's credibility.
22. The appellant stated that she used a passport with her photograph on it to leave China, and then threw it away. She did not know whether it was genuine. It was put to the appellant that in her asylum interview she had stated specifically that her passport was stolen at gate 4 in Singapore airport on the way to Departures. She really could not remember why she had been so specific, when now she was saying she threw it away. The interpreter intervened at this point to state that 'lost' and 'thrown away' are the same in Mandarin Chinese, but that does not help explain the appellant's precision at interview, and her present, much vaguer account. The appellant had stated later that she threw the passport down the toilets at the rear of the plane: she now said that 'they' had provided an additional passport after hers was stolen, to enable her to board the plane, and apparently had been able to give her another passport immediately.
23. In relation to the journey, the appellant stated that she transited first Singapore and then Malaysia and then a third country of which she never knew the name. She met the man who introduced her to the agent at a bus stop in her home town but she never knew the agent's name or his contact details: he stated that he would find her for the rest of the money. Nobody had ever approached her in the United Kingdom save that in prison, she received a letter with no name on it, saying that she had money and should repay them or her children would be in danger. She did not know who to pay; she had not got the money anyway. The Tribunal was left with the clear impression that the appellant did not intend to disclose details of her journey to the United Kingdom and that nothing in this part of her account could be treated as reliable.
24. The appellant had no contact with her family in China since coming to the United Kingdom. She did not write to them; she was not a good writer. She only had two photographs of her children there, and no other evidence of their birth in China. She was puzzled by questions as to why she had left her children behind when fleeing; she could do nothing about it. Her

husband had been with another woman; she had no concerns about the children, whom she did not regard as her responsibility. The appellant had travelled before to Singapore in 2003 but did not take the children with her, and could not remember if she had used a visa or passport; she just paid the travel agent and they organised it all. Her visa had to be extended because she was ill in Singapore; the travel agent had organised all that and she did not know what had been required.

25. There was no re-examination.

Evidence of appellant's husband

4 November 2009: Witness statement

26. In his witness statement, the husband confirmed his name and his date of birth. He is currently 36 years old. He lived with the appellant and their two children at an address in Doncaster. He was a Chinese citizen from a rural part of Anhui province, 5 or 6 kilometres outside Ji Nan city, where he had lived with his parents. They had a rural *hukou*. He was an only child and his parents grew rice, earning only enough to survive. The husband had a job in China, in a clothes factory, an hour by bicycle from his home.

27. The husband had made an asylum claim in 2000 which was unsuccessful. He understood that his appeal was being considered in the latest legacy exercise. He did not wish to return to China, because his wife 'had huge debts' and he could not possibly pay them. He could not predict whether they would stay together in those circumstances; he simply did not know what he would do.

Oral evidence

28. At the hearing, the husband adopted his witness statement and confirmed, after asking to see the signature, that he wished to rely on it as his evidence-in-chief and that he had understood the contents when he signed it. There was a supplementary question in chief: he was asked what he would do if the appellant's claim was unsuccessful and she was required to return to China. He had not thought about it yet; he reminded the Tribunal that there was a problem or a burden in that she had other children in China.

29. In cross-examination, the witness confirmed that he had been in the United Kingdom since 2000, when he unsuccessfully claimed asylum. He had not understood English on arrival. He had not showed up at the hearing of his own appeal. He met the appellant in or about March 2005. If returned to China, he feared being incarcerated by the authorities because he was a failed asylum seeker. He would not be able to afford to bring up four children. He had no idea how old the Chinese children were, though his wife said she missed them and he understood that the boy was older than the girl. His wife was from somewhere in Hunan Province, but he did not know where, or whether she had worked when she was there. He had not asked. He was aware that she owed some money for the arrangement fee to bring her to the United Kingdom, but he had no idea how much.

30. He was asked about the close similarities between the names of the claimed Chinese children and the children born to the appellant in England. He stated that such close naming was normal.

31. There was no re-examination. In answer to a question from Judge Gleeson, the husband said that he had worked sometimes in the United Kingdom as a cleaner but was not working at the moment. He had primary school education and his parents were still in China. He was in contact with them, but he and his wife would have to look for their own place, since the

appellant would not live with her in-laws and his parents' place was only just big enough for them.

32. Attempts to locate the husband's asylum determination were unsuccessful. It bears a CC file number from the year 2000, which suggests that it was a certified appeal. Her husband accepted that his asylum appeal had been finally disposed of and that his claimed fear of return arose from his status as a former asylum seeker, rather than any other reason.

Appendix D

Respondent's Country of Origin evidence

1. We have taken into account the current Country of Origin Report on China (24 August 2011). Family planning is dealt with in section 28 and includes consideration of evidence given to the October 2010 US Congressional-Executive Committee on China (CECC):

“28.02. ...

—During the Commission’s 2010 reporting year, central and local authorities continued to interfere with and control the reproductive lives of Chinese women through an all-encompassing system of population planning Regulations. Population planning policies limit most women in urban areas to bearing one child, while permitting slightly more than half of Chinese women—located in many rural areas—to bear a second child if their first child is female. The Commission notes the emergence of a growing debate in the Chinese media about possible reform of these policies, but has not yet seen government action to introduce national reform measures.

—Local officials continue to monitor the reproductive cycles of Chinese women in order to prevent unauthorized births. The Chinese government requires married couples to obtain a birth permit before they can lawfully bear a child and forces them to employ contraceptive methods at other times. Although Chinese law prohibits officials from infringing upon the rights and interests of citizens while promoting compliance with population planning policies, reports from recent years indicate that abuses continue.

Violators of the policy are routinely punished with fines, and in some cases, subjected to forced sterilization, forced abortion, arbitrary detention, and torture. In some cases surgical sterilization may be required of Chinese women following the birth of their second child. Mandatory abortion, which is often referred to as 'remedial measures' (*bujiu cuoshi*) in government reports, is endorsed explicitly as an official policy instrument in the Regulations of 18 of China’s 31 provincial-level jurisdictions. In 2010, the Commission found that local officials continued to coerce women with unauthorized pregnancies to undergo abortions in both urban and rural areas across China’s major regions.

—China’s population planning policies in both their nature and implementation violate international human rights standards. Although implementation tends to vary across localities, the government’s population planning law and Regulations contravene international human rights standards by limiting the number of children that women may bear and by coercing compliance with population targets through heavy fines.”

2. At paragraph 28.03, the COI records that in February 2009 the Chinese Government's website, www.china.org, stated that double-single families whose first child was a girl could have a second child, even those living in cities. In rural areas, families who were not double-singles could have a second child if the first was a girl. People who remarried a childless person could also have a second child. Also in February 2009, The Guardian reported the criminal conviction of a Chinese woman who hired a man to strangle her nine-year-old son when she remarried, so that she could have a child with her new husband.
3. At paragraph 28.04, based on a BBC report, the COI noted that the concessions were less generous than they at first appeared. Many families would have a first boy, rather than a first girl, so that there would be only 36% of families in China with two children and only 1% with three. 36% is a statistically significant proportion. Extracts from the US State Department

Report for 2010, published on 8 April 2011, confirm that the penalties were generally financial, but that:

“28.05. ...The law requires family-planning officials to obtain court approval before taking ‘forcible’ action, such as detaining family members or confiscating and destroying property of families who refuse to pay social compensation fees. However, in practice this requirement was not always followed, and national authorities remained ineffective at reducing abuses by local officials.”

4. The 12th 5-year plan, for 2011-2015, confirmed the continuation of the family planning policy but indicated that adjustments would be made for 'the problem of unequal birth sex ratios'. The policy is not inflexible in times of national emergency, for instance:

“ 28.11. On 27 May 2008 The Telegraph reported:

“China has said it will drop its one-child policy for the parents of children who died in the Sichuan earthquake [on 12 May 2008]. The Population and Family Planning Committee in Chengdu, the capital of Sichuan province, said the exemption could also apply to those whose children were disabled or seriously injured. The announcement, which applies to Chengdu and neighbouring cities Dujiangyan and Pengzhou, may have been timed in an effort to calm the mounting anger among parents whose children died in the disaster... The Chinese government said yesterday that more than 65,000 people died in the disaster, and has previously said that at least 9,000 of those were children and teachers who were in class when the earthquake struck. The government is also struggling to deal with 5,500 children who were orphaned by the earthquake.””

5. The COI confirmed the monitoring and constant surveillance of married women in rural areas, including regular pregnancy tests to ensure early termination of unauthorised pregnancies. In section 27 concerning Child Abduction, the COI records China's historical problem with abduction of boy children and child farming, for illegal adoption, particularly in poor rural areas. Up to 20,000 children a year were abducted or sold to meet the needs of childless couples for a son. In 2009, the Ministry of Public Security started a DNA database of missing children and children recovered in law enforcement operations, to try to reunite parents with missing children.
6. The COI quotes an article in The Times newspaper (31 May 2009) regarding child abduction:

“27.15 ...”Small boys have long been abducted for sale in China, but in recent years the country’s strict birth control policy, which has led to abortions of girls in families intent on having a boy, has left the countryside short of female babies. According to a recent report in the British Medical Journal, 124 boys are born for every 100 girls in the country as a whole, and in one province the figure has risen to 192. Stolen girls have therefore become increasingly valuable commodities in an [sic] cruel trade. Many are bought by farmers who want wives for their small sons when they come of age or by men who want a child bride without a dowry, say police and the state media. The public security ministry says that between 2,000 and 3,000 children and young women are kidnapped every year, but the state-controlled newspapers have put the figure as high as 20,000. Only a handful of cases are solved... The Chinese government accepts that child abductions are growing... In raids over the past month, police have freed 51 girls from kidnappers, according to official media reports. This is a complex criminal challenge. Police who raided one village in Guangnan county in southern Yunnan found that babies were being raised for sale and families were acting as brokers for other peasants who wanted to sell off surplus’ infants.”

7. At paragraph 28.23-28.24, BBC news reports are set out, with the following information. On 2 July 2009, the state-owned Chinese Southern Metropolitan News reported that in one county in Guizhou province, about 80 baby girls had been seized when parents could not pay the steep fine (about £1800) for their unauthorised birth. The BBC understood that the girls were taken into orphanages and adopted by American and European couples, with the adoption fee split between the orphanages and local officials. Child trafficking was widespread and state protection ineffective. At 28.24, a more recent report by the BBC stated that:

“28.24. On 10 May 2011 the BBC reported:

“China is investigating reports that about 20 babies were seized under the country’s one-child-per-family policy and put up for international adoption. Chinese media say family planning officials in Hunan province took the children from poor homes unable to pay fines for having more than one child. The children were allegedly listed as orphans and adopted by foreigners for fees of about \$3,000 (£1,800) each. Xinhua news agency said some were now in the US, the Netherlands and Poland. The reports first appeared in Caixin magazine and caused such outrage that the Hunan provincial government has launched a formal investigation... Caixin reported that when some families in poorer parts of Hunan were unable to pay their fines, authorities would tear down their houses. Then - about 10 years ago - officials started confiscating their children, it is claimed.”

8. On 17 April 2010, The Independent newspaper reported that in the province of Puning, 'extraordinary measures' were taken to deal with actual or intended breach of the family planning regime. However, that report failed to distinguish between detention of elderly parents until sterilisation is carried out, all of which are plainly unlawful, and excluding additional children from state schooling and health insurance, which, as already set out, forms part of the core group of economic sanctions for those who are no longer holders of a SCP. The CECC for 2010 recorded similar practices in Jiangxi, Jiangsu, Anhui, Gansu, and the Guangxi Zhuang Autonomous Region, as well as other unlawful actions such as nullification of hukou for unsterilised women, refusal to register the unauthorised children, or cancellation of state benefits and permits for other family members.
9. The COI also deals with methods of evasion by parents who can afford either to travel abroad (mainly to Hong Kong and Macao) to have additional children, or by in vitro fertilisation (IVF), which leads to multiple births from a single authorised pregnancy. On 14 February 2006, China Daily reported on the multiple IVF birth stratagem, noting that there were no penalties for multiple births (paragraph 28.38), apart from the loss of the SCP Certificate.
10. Information on returning overseas Chinese in the material before us is sparse and out of date. Such information as is available dates back to 2001-2005 and is summarised in the respondent's Country of Origin Report, which deals principally with parents returning from Hong Kong and Macao. After a landmark decision in 2007, Hong Kong has been flooded with 'mainland mothers' seeking to evade the family planning scheme by giving birth in Hong Kong, to the extent that the Hong Kong administration is now seeking to limit the number of mainland births, which now represent almost half the number of children born in Hong Kong. Parents travelling to Hong Kong to have additional children regard it as 'fashionable and a proof of your status'. Packages including the necessary hospital treatment are available at HK\$ 50000 (about £4100). That is more than twice the fine for the additional child. The scale of overseas travel for additional births supports our understanding that the greatest risk is during pregnancy, and that Chinese women do not fear returning with the additional children.
11. Other information on the risk to returning overseas Chinese is extracted from Canadian IRB research responses in 2005. The lack of concrete information as to any penalties or treatment of

such parents, in the light of the international interest in this question, does not suggest that significant difficulties are in fact experienced. At paragraph 28.47, the COI summarises Fujian Province's family planning Regulations. Fujian is China's most outward-facing province and the source of the vast majority of its migrants abroad. Couples with a Fujian-based *hukou* are permitted a second child if the wife is pregnant on return; if they returned with one child less than six years earlier; where all their other children are overseas; and so on. Foreign-born children who remain outside China are not counted among the number of children to which a couple has given birth. Specific Regulations are not available for other provinces.

12. The November 2011 OGN deals with the question of family planning at section 3.10. The overall position is summarised at paragraphs 3.10.13-3.10.15:

“3.10.15 **Conclusion.** 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 severe disciplinary measures such as heavy fines, known as social compensation fees, job loss or demotion, loss of career opportunities, expulsion from the CPP and other administrative punishments, including in some cases the destruction of private property. There are also some reports of forced sterilisation and abortion. Although the one child policy is well established nationally, there are a number of exemptions that allow couples to have more than one child and also regional variations in enforcement of the policy. Case owners are advised to consider each case on its individual merits, since not all applicants will necessarily face penalties.

3.10.16 Where applicants are likely to incur penalties, consideration should be given to the type and severity of the likely penalty, based on the particular circumstances of the applicant. Given the variation in enforcement from province to province, case owners should consult Country of Origin Information Service for details of application of the policy in the claimants home area in individual cases. Where there is a real risk of enforced termination of pregnancy or enforced sterilisation, a grant of asylum as a member of a particular social group will be appropriate. Asylum should also be granted in cases where even though the punishment is less harsh, it is likely to have severe consequences for the individual concerned and his or her family.”

13. Further guidance at paragraphs 3.10.1–3.10.14 emphasises the variations in enforcement of the policy, the real risk of compulsory termination of pregnancy in 18 of China's 31 provinces, and the pressure to undergo sterilisation. The Guidance notes variations in the enforcement of the policy and in the enthusiasm of different provinces for its retention:

“3.10.2 ...While the national family planning authorities have shifted their emphasis from lowering fertility rates to maintaining low fertility rates and claim to emphasise quality of care in family planning practices, the country's birth limitation policies have retained harshly coercive elements in law and practice. Although the government announced adjustments would be implemented to address the problem of unequal birth sex ratios, it has affirmed the orientation of its family planning policy at the highest levels, including maintaining the policy as part of the 12th Five-Year Plan that will be in effect 2011-15. ...

3.10.5 The government announced it would drop its one-child policy for the parents of children who died in the Sichuan earthquake in 2008. The Population and Family Planning Committee in Chengdu, capital of Sichuan Province, said the exemption could also apply to those whose children were seriously injured or disabled. In addition, recognised ethnic minorities are partially exempt from the 'one child policy'. 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.

3.10.6 Female infants in China have a higher mortality rate than male infants, contrasting with global rates. Although the Law on the Protection of Juveniles forbids infanticide, there is evidence that female infanticide, sex-selective abortions, and abandonment and neglect of infant girls and disabled children continues, due to cultural preferences for sons combined with the one child policy. Authorities are investigating reports that in 2011 about 20 babies were seized under the policy and put up for international adoption. Chinese media say family planning officials in Hunan province took the children from poor homes unable to pay fines for having more than one child. The Hunan provincial government is investigating the claims.

3.10.7 Penalties for violating family planning laws are strict, leaving many women little choice but to abort pregnancies. In the case of families that already had two children, one parent was often pressured to undergo sterilisation. (28.27 and 28.28). Reports of physical coercion by officials trying to meet birth targets continued through 2010. ...

3.10.8 Although the law standardises implementation of the policy, enforcement varies significantly. ... Mandatory abortion (sometimes referred to as 'remedial measures' in government reports) is explicitly endorsed as an official policy within the Regulations of 18 of China's 31 provincial-led jurisdictions. In 2010, it was found that local officials continue to coerce women with unauthorised pregnancies to undergo abortions in both urban and rural areas across China.

3.10.9 Regulations requiring women who violate family planning policy to terminate their pregnancies still exist in the provisions of the Population and Family Control Regulations of Liaoning, Jilin and Heilongjiang provinces respectively. An additional 10 provinces: Fujian, Guizhou, Guangdong, Gansu, Jiangxi, Qinghai, Sichuan, Shanxi, Shaanxi and Yunnan require unspecified "remedial measures" to deal with out-of-plan pregnancies. ...

3.10.12 It was reported in July 2011 that Guangdong, China's richest and most populous province, has asked the central government to relax family planning laws. Guangdong has asked to lead a pilot project that will allow some families to have a second child. Officials are concerned about a rapidly aging population which could affect social and economic development. There is speculation that a gradual roll-back of the policy will start with pilot schemes in the five provinces of Heilongjiang, Jilin, Liaoning, Zhejiang and Jiangsu. An official at the Population and Family Planning Committee acknowledge that a change in the rules was being discussed.

3.10.13 With regard to returnees from overseas, information is scarce but some reports suggest that Chinese nationals who have children while abroad may not be subject to the one-child policy. Chinese citizens studying or working in foreign countries can return with more than one child without serious problems. A specialist stated that the policy varies considerably throughout the country and that some people in southern Fujian and Guangdong provinces had reported no problems in returning after having children abroad. However, another analyst believed "there is no reason to expect" that women who have children abroad will be treated differently than those who give birth in China" although no specific information was cited."

Appendix E

The 2010/2011 documents

14. In November 2010, the Tribunal received from the appellant the following further documents: the respondent's November 2010 Country of Origin Report on China; the Congressional-Executive Committee on China Annual Report for 2010; a document from the same committee dated March 2010 entitled "Migrant Workers' Children Face Barriers to Education, Activists Call for Fair Treatment"; and a document from the Canadian IRB entitled, "Family planning laws, enforcement and exceptions; reports of forced abortions or sterilization of men and women, particularly in the Provinces of Guangdong and Fujian" (2007-May 2010).
15. For the December 2011 hearing, the respondent sent the Tribunal a further copy of Professor Fu's 30 June 2011 report (which is considered as part of his evidence in the body of the determination), extracts from the August 2011 COI on China, the 11 October 2011 Operational Guidance Note (which takes account of much of the expert evidence and country evidence presented during the hearing of this appeal), and a document entitled 'Summary of Background Evidence in Support of China One-Child Policy and Forced Sterilisation' dated 12 December 2011, which contained excerpts and web links for a significant number of further documents.
16. The appellant presented a bundle of evidence concerning consideration of her situation under the respondent's legacy policy, which did not appear to have reached a conclusion, despite her pursuing it through her solicitors vigorously; and a bundle of further documents which are set out in the Schedule to this determination, dealing with current evidence on the risk to the appellant on return. We also had written submissions from both parties, and heard oral submissions at the hearing on 19 December 2011.
17. A CECC press release, produced by the appellant but not considered in the August 2011 COI, concerned the children of migrant workers. The following is an extract from its executive summary:

"China's household registration system places strict limits on where its citizens may legally reside. Given that access to social services is tied to household registration, some migrant workers' children face discrimination and are turned away from urban schools. In light of this, two Beijing-based activists have asked the city's authorities to allocate more money to increase the number of state-run kindergartens in order to accommodate the children of migrant workers who, already facing discrimination in an environment where slots are severely limited, often are denied admission to schools. Some migrant children end up in unlicensed kindergartens that may lack proper oversight. Recent articles and studies have highlighted migrants' difficulties in obtaining equal access to schools for their children, and the factors that discourage many urban state-run schools from accepting migrant children."
18. The statistics for schools in Beijing indicate that there is substantially more non-state kindergarten provision, but that there is an ever-increasing need for kindergarten provision for the children of migrants:

"In Beijing, demand for kindergarten is high, and if no action is taken to accommodate more students, the number of students will continue to outpace available school slots in coming years. Between 2006 and mid-2009, more than 460,000 babies were born in Beijing, and about 51 percent of them did not hold Beijing household registration, according to a June 30, 2009, Xinhua report. As Li Fangping told Radio Free Asia (RFA) in a January 29, 2010, article, the birthrate of migrant children in Beijing had already exceeded the city-wide children population by 50 percent. Of the city's migrant children population, RFA notes that about 200,000 are in the pre-school age range. Still, according to the June 30 Xinhua piece and the February 2 CLB report, as it stands, there are 1,266

legally registered kindergartens in Beijing, of which over 300 are state-run, and an additional 1,298 "self-organized kindergartens" not registered with the government; the legal ones—both state-run and private—only can accommodate half of the admissions demand. A Beijing Municipal Political Consultative Conference study cited in the RFA article indicates that 90 percent of parents prefer to enroll their children in the state-run schools, since these institutions are cheaper and have a lower turnover of teachers."

19. That indicates that State-run provision of pre-school education is substantially in the minority, standing at 10-15% of the overall provision, although, naturally, most parents would prefer to use the free state schooling. Overall, education is available for half of the children whose parents wish to enroll them, albeit on a fee paid basis. The levels of children born to those without a Beijing *hukou* are very high. The COI notes that the highest concentrations of migrant children are in Henan, Guangdong, Anhui and Sichuan provinces, with a 25% increase in migrant children in Henan during the years 2000-2006. It is unclear, however, whether the other statistics in the article are recent, or relate to that earlier period.
20. A Canadian IRB Research Response entitled: "Family planning laws, enforcement and exceptions; reports of forced abortion or sterilization of men and women particularly in the provinces of Guangdong or Fujian" covers a two and a half year period from 2007 to May 2010. It records that double-single couples are permitted second children in every province but Henan, according to a March 2010 New York Times article. Guangdong province began permitting such couples two children as long ago as 1986; in Shanghai, the policy had only been adopted in 2004 and, since 2009, was positively encouraged because Shanghai had a low birth rate and an ageing population.
21. In 2010, the United States CIA World Factbook estimate of the number of children per woman in the population of China was 1.54, as against 1.58 in Canada. According to the 2011 report, the figures for China and Canada are the same: the 2011 report gives a figure of 1.91 children per woman in the United Kingdom.
22. The most relevant parts of the Canadian IRB Response are as follows:

"Sources report that forced abortions and forced sterilizations still occur in China (AI 22 Apr. 2010; US 11 Mar. 2010, Sec. 1f; Freedom House 2010) although Freedom House states that "compulsory abortion and sterilization by local officials are less common than in the past" (Freedom House 2010). The use of forced abortion and sterilization is banned by Chinese law; however, sources report some local officials resort to coercion due to pressure to meet government-regulated birth targets (AI 22 Apr. 2010; US 11 Mar. 2010, Sec. 1f; CHRD 5 Nov. 2008, 8). A report by the Chinese Human Rights Defenders (CHRD), a network of Chinese and international human rights activists (CHRD n.d.), indicates that relatives of women facing sanctions may be "questioned, fined, detained, beaten or have their property confiscated" unless they help persuade the women to comply (CHRD 5 Nov. 2008, 8). Sources report that officials are rarely prosecuted or punished for those types of abuses (AI 22 Apr. 2010; CHRD 5 Nov. 2008, 8).

Freedom House reports that "[a]ccording to official websites, authorities in some areas of Yunnan and Fujian mandated the use of abortion in 2009" (2010). *Country Reports 2009* states that, "[s]everal provinces - Anhui, Hebei, Heilongjiang, Hubei, Hunan, Jilin, Liaoning, and Ningxia - require 'termination of pregnancy' if the pregnancy violates provincial family-planning Regulations (US 11 Mar. 2010, Sec. 1f). As well, *Country Reports 2009* adds that ten provinces, which include Guizhou, Gansu, Jiangxi, Qinghai, Sichuan, Shanxi, Shaanxi, and Yunnan in addition to Fujian and Guangdong provinces, "require unspecified 'remedial measures' to deal with unauthorized pregnancies" (ibid.). According to the CECC's *Annual Report 2009*, the term "remedial measures" (*bujiu cuoshi*), found in official reports from local governments, "is used synonymously with compulsory abortion" (US 10 Oct. 2009, 153).

Information on the forced sterilization of men was scarce among the sources consulted by the Research Directorate. However, a 2 June 2010 article by *Xinhuanet*, translated by the Women of China website, which is operated by the All-China's Women Federation (ACWF) states that 37.5 million Chinese men (7.39 percent) have had vasectomies in comparison to the 221.5 million women who have had tubal ligation.

Guangdong and Fujian

According to the *Xinhuanet* article, [t]he Family Planning Regulations of Guangdong Province advise women of childbearing age with one child to use intrauterine contraceptive devices, and either the wife or husband in a couple with two children to undergo sterilization (*Xinhuanet* 2 June 2010).

Several sources report that in April 2010, according to Chinese media, officials in Puning City in Guangdong conducted a campaign to sterilize almost 10,000 people who had violated family planning rules (*Sky News* 23 Apr. 2010; AI 22 Apr. 2010; *Times Online* 17 Apr. 2010). Sources reported that relatives of those being targeted for sterilization were detained to persuade the targeted individuals to comply, although such action is a contravention of official Chinese policy (AI 22 Apr. 2010; *Times Online* 17 Apr. 2010). According to *Times Online*, the website of British newspapers *The Times* and *The Sunday Times*, officials in Puning were under pressure due to the city's high birth rate (*ibid.*). The article quoted one man as agreeing to undergo the procedure (*ibid.*).

Sources report that in 2009, three women acting as surrogate mothers were forced to undergo abortions in Guangzhou (US 11 Mar. 2010, Sec. 1f; Reuters 30 Apr. 2009). The CECC's *Annual Report 2009* states that a woman in Shenzhen in Guangdong province was forced to undergo an abortion six days before the due date of a second child because the officially mandated waiting period for her to have a second child had not been observed (US 10 Oct. 2009, 153). The COI provided details on several other cases of forced abortion (*ibid.*, 153-156).

According to a December 2009 online article by the Beijing-based *Global Times*, Fujian province announced it would implement a "real-name abortion system" by starting to require women to show their identity cards for abortions (29 Dec. 2009). The policy was being implemented "in order to monitor abortion trends and improve family planning policies" and counter illegal gender-based abortions (*Global Times* 29 Dec. 2009). The article also states that "[t]he province will continue implementing the family planning policy, and crack down on illegal child bearing", without providing further details (*ibid.*)."

23. The appellant's updated material in December 2011 included a report from the US House of Representatives Committee on Foreign Affairs entitled, 'China's One-Child Policy: The Government's Massive Crime against Women and Unborn Babies', 21 September 2011. The testimony given was anti-abortion, in support of a bill which would permit the US President to exclude from entry to the United States '...any Chinese official involved in forcing abortions and sterilisation on unwilling women in China, an act that would be a clear crime in [the United States]', together with the family members of such persons.
24. The evidence includes the testimony of Chai Ling, who converted to Christianity after reaching the United States. When in China, before she was married, Ms Chai had three abortions. She had then regarded abortion as the right choice if circumstances made keeping the baby difficult. Abortion was simply a way of life: it had not occurred to her that she could give the babies away instead, or that she might try to keep them.
25. The testimony of Reggie Littlejohn noted that because of the effect of the family planning policy over time, China now had 37 million 'bare branch' young men who could not find wives within China. Her evidence concluded:

“In China, a woman's body is not her own. It belongs to the state. A woman's womb is the most intimate part of her body – physically, emotionally and spiritually. For the Chinese Communist Party to act as 'womb police' and crush the life inside her is a heinous crime against humanity.”

26. The evidence of Valerie M Hudson, Professor of Political Science at Brigham Young University concentrated on the female sex deficit, speculating that a significant number of 'bare branches', that is, men with no issue, would lead to social and economic instability over the next thirty years. Her evidence concluded:

“Whilst it is true that the demographic die has been cast for the next few decades in China, it is also true that relinquishing the One-Child Policy would positively affect China's future prospects for stability, security and prosperity. That the Chinese Government is now pondering whether to turn to a Two-Child Policy is an interesting development, indicating that the Government now sees more clearly the security issues that the One-Child Policy has raised. Even so, steering the ship of culture to a new heading is a very difficult undertaking. In experiments performed by the Government in selected areas, institution of a Two-Child Policy did not change the fertility rate. Most families still preferred to have only one child. And son preference did not abate, either. On the basis of these experimental findings, we are now forced to wonder whether the One-Child Policy will have significant cultural effects that will long outlast the policy itself. If that is the case, that will truly be a tragedy for China.”

27. The evidence of Ji Yeqing related the experiences she and her husband had. She had a daughter first, but chose not to have an IUD inserted. She bought contraceptive pills, then stopped doing so, and tried for a baby, after four years (there is no indication that she applied for a birth permit). The account of the two successive forced abortions she endured all predated the change of approach in 2005. It is interesting to note that her parents in law encouraged the couple to keep trying, even after the first abortion, promising to make the SUC payments on their behalf. The family were determined and regarded the SUC as just necessary to achieve the desired son. In 2008, her Chinese husband divorced her, the appellant met another man, and came with him to the United States. She had no children yet with him; she suffered medical problems which she ascribed to her forced abortions.
28. The evidence of Ping Liu again concerned the pre-2005 regime. Ms Ping had five abortions, followed by the insertion of an IUD, which she endured for ten years before coming to the United States where she became a Christian. Her husband joined her there and the marriage failed. In due course, however, they were reconciled, with the help of the church. They had no children together.
29. The evidence of these Chinese women indicates that abortions were regarded by them as routine, before they were exposed to American Christianity, which as they describe it seems to have a strong anti-abortion bias. It also seems that these women did have pre-marital sex when they were younger than the age for marriage. A report from Radio Free Asia recorded at least one forced abortion in February 2011. The full report of Reggie Littlejohn which formed the basis of her evidence to the committee completed the appellant's new evidence. It is strongly worded but adds little to the information already before us.

Appendix F

Chinese Guidance Documents and Case law

Professor Fu produced with his report a number of guidance documents issued by the Chinese authorities.

The first, a Ministry of Public Security notice concerning the Treatment of Persons Entering and Leaving China Unlawfully (Gong Tong [1992] no 32, 21 May 1991), shows inward migration from Sri Lanka, Bangladesh, Thailand, Venezuela, Pakistan, Iran and Afghanistan, as well as difficulties with Chinese leaving unlawfully or having their return lawfully delayed for a variety of reasons. Embassies, consulates and representative offices abroad are required to make strict checks of passports; passports are to be carefully inspected on entry, to ensure no part of the passport or the entry visa has been replaced or tampered with. Persons seeking to transit China, with no visa for the next country to which they wish to travel, are to be refused entry. The document deals with the return of Chinese citizens who have left unlawfully:

“V. The border inspection authorities should accept and investigate Chinese citizens who, having left China with forged passports and/or visas, are refused entry by the relevant authorities at their destination country and return to China on their original means of transport. *Those who have not committed any other crime are to be dealt with as ordinary illegal migrants.* ...Where persons claim to be Chinese citizens but do not have sufficient evidence to prove their identities the Chinese embassies or consulates abroad should verify the identities through the public security departments of bureaus in the relevant provinces, autonomous regions or cities under the direct jurisdiction of the central government. If such persons are confirmed to be Chinese citizens the embassies or consulates are to issue single-use “People’s Republic of China Travel Documents”. The border inspection authorities are to investigate repatriated persons after their entry into China. ...Chinese citizens who are found when leaving China to be holding forged passports, visas or documents are also to be treated in accordance with these principles if they do not fall within the range of those to be inspected or controlled.

VI. Persons returned to China by the relevant authorities of foreign countries are in principle to be refused entry if they do not have sufficient documents to prove that they are Chinese citizens and their identities have not been verified by Chinese embassies or consulates abroad and the original means of transport is to be responsible for carrying them back to the country they departed from. If they remain in China because they cannot be carried back on the day of their arrival the border inspection authorities are to be responsible for their custody and liability for the costs of their food, accommodation and custody are to be borne by the persons in charge of original means of transport. If it is necessary for them to change the means of transport the costs thereof are also to be borne by the persons in charge of original means of transport.”

That accords with the background evidence as to what actually happens on return. Chinese citizens must prove their citizenship but, as long as there is no other criminal offence involved, they will be processed as illegal migrants and, it appears, allowed to proceed.

The next document is a Notice from the Ministry of Foreign Affairs and Ministry of Public Security regarding the Better Performance of Verifications of Repatriation (Gong Bian (2001) No. 9, 1 June 2001), sets out the procedures, including a principle of permitting repatriation, and a requirement to verify whether any serious criminal charges are outstanding in the hukou area:

“In recent years it has been impossible to stop Chinese citizens from going abroad unlawfully and the departments concerned in foreign countries have requested repatriation of increasing numbers of illegal migrants. At the same time many areas met with problems

when implementing the Notice, such as the channels for verifying repatriation being obstructed or unclear, the operability of some rules being weak and verification being slow, all affecting normal repatriation work. Verifying repatriation is an important phase in attacking the problem of illegal migration, and notice regarding the requirements for the verification work is given as below, for its further standardisation:

...When arranging repatriation Embassies and consulates abroad should first and in good time inform the public security departments and bureaus of the relevant provinces, autonomous regions and cities under the direct jurisdiction of the central government and those of the ports of entry of the flights, ports of arrival and documents held, etc., and at the same time report to the Border Control Bureau of the Ministry of Public Security, the Border Entry and Exit Administration and the Consular Department of the Ministry of Foreign Affairs. If the entry is to be through Beijing, Tianjin, Shanghai Xiamen, Guangzhou, Shenzhen, Zhuhai, Shantou or Haikou, the Entry and Exit Inspection Headquarters at those places should also be informed. If repatriation must be via a third country then depending on circumstances the embassy or consulate concerned may provide co-ordination."

Professor Fu had also been able to identify a number of decisions in the university database, bearing on the issues in the present appeal. He produced six reported decisions. Two of them predated the present régime. The actions of local authorities in these cases clearly illustrated the mixture of aggression and corruption which local Regulation entailed, and which in 2002 led to the introduction of a national scheme.

In *HUANG Huanghui v People's Government of Fengzhou Township, Nan'an City*, (Quanzhou People's Intermediate Court, Fujian, Administrative Judgment), Mr Huang sued the People's Government of Fengzhou Township for limiting his personal freedom and for compensation. He and his wife had four children, and had concealed the third. In July 1998, during the 'Five Cleanups' programmed, the local authorities detained him for what they described as 'study of national family planning policy', along with others in the same position. No 'study' was provided. He was detained without trial for 166 days. The first instance court rejected the claimant's application for damages and a declaration of unlawfulness. The claimant appealed.

The appellate court held that while it was proper for the family planning authorities to arrange compulsory study for those in breach of the rules, on the facts:

"... The Respondent had not followed the law and policy strictly; there was clear subjectivity and action on a whim, ... such acts were not implementation of the family planning laws but unlawful acts both beyond and abusing the respondent's authority."

The court declared the detention of 166 days unlawful and ordered the respondent to pay the claimant damages of RMB 6096.78 and costs. It dismissed his claims for emotional damage (not well founded) and for loss of earnings (no supporting evidence).

In *Xishan Neighbourhood Office, Ezhou, v Yu M.* (People's Higher Court, Hubei Administrative Judgment (2000) E Xing Zhong No. 32), Mr Yu's wife, Mrs Yin, was suspected of having an out of plan child. In July 1998, she went with the new baby for a lengthy visit to her brother-in-law and other relations. Employees of the Xishan Neighbourhood Office went to pick her up at her brother-in-law's house about three weeks later, taking her to their 7th floor offices 'to investigate the birth'. Mrs Yin could not produce the child's 'Permit to have a Child' on the spot. After being held for five hours, during which her brother-in-law and his works health officer attempted to negotiate a financial settlement, she fell from the 7th floor offices of the Neighbourhood Office building. She was badly injured (cranio-cerebral injury and fractures of both legs, grade 1 permanent

disability). She died eight months later, and her husband was joined into the proceedings in her stead.

The first instance court had awarded the widower RMB 263406 in damages, together with RMB 180 per month for three persons formerly supported by the couple, and costs of RMB 17510. The Neighbourhood Office appealed, arguing that its actions were lawful and there was no direct causal link between its actions and Mrs Yin falling out of the window, becoming disabled and dying. The widower appeared in person, seeking payment of his wife's funeral expenses and the costs of educating her two daughters. The court considered that the authorities in Xishan were 70% rather than 100% responsible. They set aside the original decision, found that the Xishan Office had acted unlawfully, gave credit for the sums already paid and the adjusted level of responsibility, and ordered the office to pay RMB 163,675 within one month. The claimant's claims for funeral and education expenses were rejected.

The cases which apply the present scheme were as follows:

In *Wang Jun v People's Government of Qiangbai Township, Dali County* (People's Court of Qiangbai Township, Dali County, Administrative Judgment (2004) Li Xing Chu No. 002, the claimant husband, Mr Wang, had been married twice. He had a child with his first wife, from whom he was divorced. He remarried, and went on to have two children with his second wife, four years apart. The Dali County Family Planning Bureau fined him for unauthorised birth of his second child with his second wife. He paid RMB 6000 of an RMB 8000 fine.

A year later, the Qiangbai Township Government purported to levy SUC, this time of RMB 18000, for the same child. They issued a seizure notice and seized 36 rolls of cloth and 17 bed sheets from the claimant's shop. He applied to the People's Court to set aside the SUC, for the return of his goods and for damages. During the hearing, a settlement was reached whereby the seized goods were returned 'with the exception of ten or so bed sheets'. The claimant was successful in his civil claim that imposition of SUC for his second child with his second wife included an element of unlawful double imposition in respect of the fine he had already paid to the Dali County Family Planning Bureau for the same child. The People's Court quashed the first instance decision and ordered restitution and costs.

In *HUAI Yonghong and others v Family Planning Bureau of the Shilin Yizu Autonomous County, Hunnan Province* (People's Court of Shilin Yizu Autonomous County, Yunnan, Administrative Judgment (2004) Shi Xing Chu No. 2), Mr Huai and his wife were both unemployed and on minimum benefits. They had paid a fine for unlawful pregnancy before the coming into force of the new statutory régime. The child who was the subject of the unlawful pregnancy was born, very soon after 1 September 2002 when the national régime came into force. The appellant's local authority imposed a fine for the birth of the child, disregarding the unlawful pregnancy fine for the same child *in utero*, of which RMB 9000 had already been paid. The fine was huge: maximum SUC (10 x average local income) and no adjustment was made for the low income of the parties. The People's Court quashed the SUC imposed and required the local authority to remake the decision, having regard to the earlier pregnancy fine and the couple's financial position.

The local authority appealed. The Court's reasoning noted the change from local implementation of family planning Regulations to the overarching national Legislation Law of 2000, under which the Family Planning Law and Regulations were made and implemented. The national statutory scheme was designed to bring the responsibility to control fertility to public attention, and to regulate it.

"1. ... In the 1980s family planning underwent a change from "punishing too many births" to "charging for births outside the plan" and the Population and Family Planning Law of the People's Republic of China passed on 29 December 2001 explicitly provided for "social upbringing charges", which was the same in nature as earlier charges though different in name.

In this case the Claimants gave birth unlawfully on 15 September 2002, that is, the unlawful act occurred after [the implementation of SUC]. The Claimants had been charged for an unlawful pregnancy before the new legislation was implemented; but after they were implemented what law should be applied when making a levy against them? And how was the amount of the levy to be determined? And should the earlier levy be deducted?... [We find that] the charge for an unauthorised birth first levied by the Respondent is in essence the same as the Social Upbringing Charges and should therefore have been deducted from the Social Upbringing Charges.

2.... In essence, the Respondent's failure to determine the amount of the levy in accordance with the levy principles in the administrative rules promulgated by the State Council was a breach of the law, and the Respondent's specific administrative acts should be seen as unlawful, and this should not be seen as a question of the reasonableness of lawful administrative acts on the part of the Respondent. For these reasons the judgment cancelling the Respondent's specific administrative act and requiring the Respondent to make another specific administrative act is correct.

In administrative law there is no clear specific boundary between reasonableness and lawfulness, and severe unreasonableness may amount to unlawfulness. But it can be seen from the principles in the *Administrative Proceedings Law* regarding People's Courts' investigations of the lawfulness of specific administrative acts that People's Courts have no right to enquire into the reasonableness of such acts. Therefore how judges hearing a case decide whether a defect in an administrative act is one of law or one of reasonableness has become a key question in their judgments. In this case the judges dealing with it have applied the principles laid down by the law and their making a judgment as to the lawfulness of the Respondent's specific legal acts may be seen as a courageous attempt."

The decision by the lower court to remit the second SUC levy for decision afresh was upheld.

In *WANG Jiasheng v People's Government of Zhengping Township, Xinfeng County*, (Intermediate People's Court of Ganzhou, Jiangxi, Administrative Judgment (2006) Gan Zhong Xing Zhong No. 17), Mr Wang appealed against the level of administrative compensation awarded to him for being publicly accused of breaching family planning rules in relation to a recent birth, which in fact was not an out of plan birth. Eight of the respondent's employees went to the claimant's house, where he explained that there was no breach of the family planning rules, but 'tempers rose on both sides'. The claimant picked up a knife and threatened the officials, who responded by beating him. The claimant received soft tissue injuries in a number of places on his body which were described as 'slight injuries grade 1'. He needed hospital and outpatient treatment. The Xinfeng Population and Family Planning Committee published a circular criticising the officials and pointing out that beating citizens was unlawful. Negotiations on compensation failed due to a 'comparatively great dispute' as to quantum. The matter went to court.

The court of first instance awarded the claimant loss of income and primary treatment costs, but nothing for emotional damage, nursing fees, transport to hospital and additional food costs which he had claimed. The claimant appealed. The appellate court established the appropriate level of transport and nutrition costs, and awarded costs. They rejected the claims for emotional damage and nursing fees.

In *People's Government of Chongxing Rural District, Fengdu County v ZHANG Guoliang* (People's Third Intermediate Court, Chongqing, Administrative Judgment (2006) Yu San Zhong Xing Zhong No. 46), Mr Zhang and his wife Mrs Xiang had an out of plan second child, a son. The officials who attended his home to 'carry out family planning work' consisted of four or more Chongxing Government employees, four Village Committee officials, and the leader of his workplace team. The appellant, his wife, and their two children were not home when these nine or so officials arrived. They lit a fire to keep warm, and put some rice on to boil. It was late December 2005. When the appellant came home, he was understandably upset to find at least nine assorted officials in his home, burning a fire and boiling rice. There was a scuffle in which he kicked one of the officials on the leg, causing slight injuries. The official was taken to hospital and a Deputy Secretary of the Chongxing Township Party Committee was called upon. The following paragraphs from the judgment explain what happened next:

"... it was decided to take away 615 kg of grain, 10 pigs, 1 large table, 16 stools, a rice thresher and a pulveriser by force. Later Zhang GL bought the rice thresher and pulveriser back for 100 Yuan and the other property was sold for 2,259 Yuan."

The reason given for such extensive seizure was to pay the medical expenses of the injured official.

Mr Zhang took the local officials to court for restitution and damages. The first instance court found for the claimant; the Chongxing Government appealed, arguing that the officials were acting in the pursuance of their family planning work duties. On appeal, the court found that:

"...The Chongxing Government should have complied strictly with the law and behaved in a civilised manner in the performance of their work and should not have infringed the lawful rights and interests of a citizen. In this case the actions of the Chongxing Government, on the grounds that Zhang GL's son was a second child born in breach of family planning rules, in organising personnel to go to the home of Zhang GL and Xiang DH to carry out family planning work but on arrival lighting a fire, without authority, to keep warm and boiling some rice, and then taking assets by force from the home of Zhang GL and Xiang DH had no basis in law; they were an abuse of authority, and such actions were an infringement upon the lawful rights and interests of Zhang GL and Xiang DH; the judgment of the court of first instance and the law the court applied were correct."

The original judgment of the first instance court was upheld and the Chongxing government was ordered to pay costs for both hearings.