



Flygtningenævnets baggrundsmateriale

Bilagsnr.:	189
Land:	Kina
Kilde:	Home Office
Titel:	"Original Guidance Note"
Udgivet:	29. november 2005
Optaget på baggrundsmaterialet:	27. januar 2006



OPERATIONAL GUIDANCE NOTE

CHINA

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1. Introduction

- 1.1** This document summarises the general, political and human rights situation in China and provides information on the nature and handling of claims frequently received from nationals/residents of that province. It must be read in conjunction with the COI Service China Country of Origin Information Report of October 2005 and any COI Service China Bulletins at:

http://www.homeoffice.gov.uk/rds/country_reports.html

- 1.2** This document is intended to provide clear guidance on whether the main types of claim are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Caseworkers should refer to the following Asylum Policy Instructions for further details of the policy on these areas:

API on Assessing the Claim
 API on Humanitarian Protection
 API on Discretionary Leave
 API on the European Convention on Human Rights

- 1.3** Claims should be considered on an individual basis, but taking full account of the information set out below, in particular Part 3 on main categories of claims.

Source documents

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

2. Country assessment

- 2.1** The Chinese Communist Party (CCP) is the paramount source of power in China.¹ The President (Head of State) is Hu Jintao, elected by the 10th National People's Congress (NPC) on 15 March 2003. The Premier (Prime Minister) is Wen Jiabao elected in September 2003. The Chairman of the Standing Committee of the NPC is Wu Bangguo, elected in March 2003. President Hu is also General Secretary of the CCP and head of the armed forces.²
- 2.2** The National People's Congress (NPC) is China's legislative body. It has a five-year membership and meets once a year in plenary session. However, in practice it is the CCP who takes all key decisions. The supreme decision-making body in China is the CCP Politburo and its 9-member Standing Committee, which acts as a kind of 'inner cabinet', and is headed by the General Secretary of the Chinese Communist Party Hu Jintao.³
- 2.3** China is in practice a one party state. The National People's Congress (NPC) is indirectly elected. Direct elections for village leaders have also been conducted since 1988. They take place every three years, although it is unclear how genuine and effective they are. The legislature remains subject to Party leadership. However, since 1987 the NPC has been building its oversight capacity over the actions of the Government.⁴
- 2.4** The Government's human rights record remained poor in 2004, and it continued to commit numerous and serious abuses. Citizens did not have the right to change their government, and many who openly expressed dissenting political views were harassed, detained, or imprisoned.⁵ The Foreign and Commonwealth Office reported, in September 2005, the human rights situation in China to be a matter of serious concern. The detention and harassment of democracy activists, religious practitioners and Falun Gong adherents ran contrary to international human rights norms and religious belief, freedoms of association, expression and of media were routinely restricted.⁶
- 2.5** Throughout 2004 the authorities were quick to suppress religious, political, and social groups that they perceived as threatening to government authority or national stability, especially before sensitive dates such as the 15th anniversary of the 1989 Tiananmen massacre and other significant political and religious occasions.⁷
- 2.6** The CCP's 2004 promise to uphold the rule of law has been compromised by continuing widespread official corruption, Party interference in the justice system, and a culture of impunity for officials and their families. Authorities continue to censor news media. Civil society is also constrained and most NGOs are government-controlled. China prohibits independent domestic human rights organisations and does not allow international human rights organizations to operate. Chinese citizens who contact international rights groups risk imprisonment.⁸
- 2.7** Despite a few positive steps, no attempt was made during 2004 to introduce the fundamental legal and institutional reforms necessary to bring an end to serious human rights violations. Tens of thousands of people continued to be detained or imprisoned in violation of their rights to freedom of expression and association, and were at serious risk of torture or ill-treatment. In addition thousands of people were sentenced to death or executed.⁹
- 2.8.** China continued to use the global 'war on terrorism' to increase restrictions on the cultural and religious rights of the mainly Muslim Uighur community in Xinjiang during 2004. In Tibet

¹ USSD 2004 introduction

² COIS China Country Report para 5.15

³ COIS China Country Report para 5.10

⁴ COIS China Country Report para 5.13

⁵ COIS China Country Report para 6.01

⁶ FCO Country Profile 2005

⁷ COIS China Country Report para 6.01

⁸ COIS China Country Report para 6.04

⁹ COIS China Country Report para 6.03

and other ethnic Tibetan areas, freedom of expression and religion continued to be severely restricted.¹⁰

3. **Main categories of claims**

- 3.1** This Section sets out the main types of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in China. It also contains any common claims that may raise issues covered by the API on Discretionary Leave. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/ punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant API's, but how these affect particular categories of claim are set out in the instructions below.
- 3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the claimant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in *Karanakaran* should be followed when deciding how much weight to be given to the material provided in support of the claim (see the API on Assessing the Claim).
- 3.3** If the claimant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the claimant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.
- 3.4** This guidance is **not** designed to cover issues of credibility. Caseworkers will need to consider credibility issues based on all the information available to them. (For guidance on credibility see para 11 of the API on Assessing the Claim)
- 3.5** Also, this guidance does not generally provide information on whether or not a person should be excluded from the Refugee Convention or from Humanitarian Protection or Discretionary Leave. (See API on Humanitarian Protection and API on Exclusion under Article 1F or 33(2) and API on DL)

All APIs can be accessed via the IND website at:

http://www.ind.homeoffice.gov.uk/ind/en/home/laws_policy/policy_instructions/apis.html

3.6 **Falun Gong/Falun Dafa**

- 3.6.1** Most claimants will claim asylum based on ill treatment amounting to persecution at the hands of the Chinese authorities due to their involvement with Falun Gong/Falun Dafa.
- 3.6.2** **Treatment.** The Government continued its repression of groups that it categorized as 'cults' and of the Falun Gong in particular and the arrest, detention, and imprisonment of Falun Gong practitioners continued. Practitioners who refused to recant their beliefs were sometimes subjected to harsh treatment in prisons and re-education-through-labour camps and there were credible reports of deaths due to torture and abuse.¹¹
- 3.6.3** The number and treatment of Falun Gong practitioners in confinement is difficult to confirm. Nevertheless, there is substantial evidence from foreign diplomats, international human

¹⁰ COIS China Country Report para 6.03

¹¹ COIS China Country Report para 6.133

rights groups, and human rights activists in Hong Kong that the crackdowns on the Falun Gong are widespread and violent.¹²

- 3.6.4** Detained Falun Gong practitioners, including large numbers of women, are at risk of torture, including sexual abuse, particularly if they refuse to renounce their beliefs. According to overseas Falun Gong sources, more than 1,000 people detained in connection with the Falun Gong have died since 1999, mostly as a result of torture or ill-treatment.¹³
- 3.6.5** The '610 Office' is a bureau specifically created by the Chinese Government to persecute Falun Gong, with absolute power over each level of administration in the Party, as well all other political and judiciary systems.¹⁴
- 3.6.6** The Chinese authorities have at times pressured family and relatives of Falun Gong practitioners to isolate the practitioners from other adherents, sometimes harassing family members who refuse to comply.¹⁵ However, it is unclear whether this is part of a systemic national practice or the work of zealous local officials.¹⁶
- 3.6.7** According to the UNHCR position paper on Falun Gong dated 1 January 2005, there is no evidence to suggest that all Falun Gong members are being systematically targeted by the Chinese authorities. Therefore, although membership of Falun Gong alone would not give rise to refugee status, a prominent role in certain overt activities (such as proselytising or organising demonstrations) which bring the membership to the attention of the authorities, may do so.¹⁷
- 3.6.8** **Sufficiency of protection.** As this category of claimants' fear is of ill treatment/persecution by the state authorities they cannot apply to these authorities for protection.
- 3.6.9** **Internal relocation.** As this category of claimants fear is of ill treatment/persecution by the state authorities, relocation to a different area of the country to escape this threat is not feasible.
- 3.6.10** **Caselaw.**

Court of Appeal

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

IAT/AIT Determinations

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

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

¹² COIS China Country Report para 6.136

¹³ COIS China Country Report para 6.135

¹⁴ COIS China Country Report para 6.156

¹⁵ COIS China Country Report para 6.160

¹⁶ COIS China Country Report para 6.161

¹⁷ COIS China Country Report para 6.137

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

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

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

3.7.1 Some claimants will claim asylum based on ill treatment amounting to persecution at the hands of the Chinese authorities due to their involvement with pro-Tibetan/pro-independence political organisations.

3.7.2 Treatment. The Government's human rights record in Tibetan areas of China remained poor during 2004. The authorities continued to commit serious human rights abuses, including extra-judicial killing, torture, arbitrary arrest, detention without public trial, and lengthy detention of Tibetans for peacefully expressing their political or religious views. The overall level of repression of religious freedom in Tibet remained high, however, conditions were generally less restrictive in Tibetan areas outside of the territory of Tibet.¹⁸

3.7.3 Based on the 2000 census the total population of Tibet is 2.6 million. However, there are 5.4 million Tibetans within China, accounting for 0.44 per cent of the population.¹⁹ Tibetans also live in the Qinghai, Sichuan and Yunnan provinces.²⁰

3.7.4 During 2004 individuals accused of political activism faced ongoing harassment and there were reports of imprisonment and abuse of some nuns and monks accused of political activism.²¹ The Government remains suspicious of Tibetan Buddhism in general and its links to the Dalai Lama, and it maintains tight controls on religious practices and places of worship in Tibetan areas. Although the authorities permit many traditional religious practices and public manifestations of belief, they promptly and forcibly suppress those activities viewed as vehicles for political dissent, such as religious activities that are perceived as advocating Tibetan independence.²²

3.7.5 In its Annual Report the Tibetan Centre for Human Rights and Democracy (TCHRD) stated that the human rights situation in Tibet did not improve in 2004. The resumption of the 'Strike Hard Campaign', the renewed emphasis on the 'Patriotic Re-Education Campaign' and the establishment of a re-education-through-labour camp in Ngari County in the Tibet Autonomous Region to check refugee flow are clear indications of continued suppression of the Tibetan people.²³

¹⁸ COIS China Country Report para 6.271

¹⁹ COIS China Country Report para 6.268

²⁰ COIS China Country Report para 6.269

²¹ COIS China Country Report para 6.271

²² COIS China Country Report para 6.285

²³ COIS China Country Report para 6.373

- 3.7.6** However, in positive developments, the Government permitted a third visit to the country by the Dalai Lama's representatives and released some political prisoners, including Tibetan Buddhist nun Phuntsog Nyidrol.²⁴
- 3.7.7** **Sufficiency of protection.** As this category of claimants' fear is of ill treatment/persecution by the state authorities they cannot apply to these authorities for protection.
- 3.7.8** **Internal relocation.** As this category of claimants fear is of ill treatment/persecution by the state authorities relocation to a different area of the country to escape this threat is not feasible.
- 3.7.9** **Caselaw.**

IAT/AIT Determinations

[2004] UKIAT 00051 Heard 4th November 2004 Promulgated 13 January 2005

The IAT found that there is no evidence that a Tibetan who left China illegally is likely to suffer imprisonment or a fine. In the absence of very clear evidence as to what is likely to happen to the appellant on return to China, the IAT were unable to find that there is a real risk that the appellant would suffer persecution or ill-treatment on return to China. There is no reason why the appellant should not become part of the floating population of between 100 and 150 million economic migrants who lack official residence status in cities.

- 3.7.10** **Conclusion.** It is clear that the Chinese authorities may take serious action against Tibetans expressing political or religious views and that this treatment will amount to persecution. Where an individual is able to demonstrate that they are at serious risk of facing such persecution on account of their activities a grant of asylum will be appropriate. However a grant of asylum will not be appropriate solely on the basis of being an ethnic Tibetan.

3.8 Involvement with religious organisations

- 3.8.1** Some claimants will claim asylum based on ill treatment amounting to persecution at the hands of Chinese authorities due to their involvement with religious organisations.
- 3.8.2** **Treatment.** The Constitution provides for freedom of religious belief; however, during 2004, the Government sought to restrict religious practice to government-sanctioned organizations and registered places of worship and to control the growth and scope of activities of religious groups. Despite these efforts at government control, membership in many faiths is growing rapidly.²⁵
- 3.8.3** China is officially atheistic, but there are five State-Registered Religions: Daoism, Buddhism, Islam, Catholic and Protestant Christianity.²⁶ Within China it is estimated that there are 100 million Buddhists, 5–10 million Catholics, 50–90 million Protestants, 20 million Muslims and an indeterminate number of Taoists.²⁷ Religious groups deemed to be 'evil cults' are banned under article 300 of the Criminal Law.²⁸
- 3.8.4** The extent of religious freedom varied widely within China during 2004. Unregistered religious groups continued to experience varying degrees of official interference and harassment. Members of some unregistered religious groups, including Protestant and Catholic groups, were subjected to restrictions, including intimidation, harassment, and detention during 2004.²⁹ In some localities, 'underground' religious leaders reported ongoing pressure either to register with the State Administration for Religious Activities

²⁴ COIS China Country Report para 6.271

²⁵ COIS China Country Report para 6.44

²⁶ FCO Country Profile 2005

²⁷ USIRF 2005 section I

²⁸ COIS China Country Report para 6.131

²⁹ COIS China Country Report para 6.44

(SARA) or its provincial and local offices. They also reported facing pressure to be affiliated with and supervised by official party organizations linked to the legally recognised churches.³⁰

- 3.8.5** In other localities, however, officials worked closely with registered and unregistered Buddhist, Muslim, Catholic, and Protestant groups to accomplish religious and social goals during 2004. The Government increased scrutiny of contacts between some citizens and foreigners involved in religion and detained some citizens for providing religious information to foreigners. Nonetheless, some local officials encouraged foreign religious groups to work in their communities to supply social services, provided that the groups did not proselytise openly. Many religious adherents reported that they were able to practice their faith in officially registered places of worship without interference from the authorities. Official sources, religious professionals, and persons who attend services at both officially sanctioned and underground places of worship all reported that the number of believers in the country continued to grow during 2004.³¹

Buddhists and Taoists

- 3.8.6** Official tolerance for Buddhism and Taoism has been greater than that for Christianity, and these religions often face fewer restrictions.³² However, as these non-Western religions have grown rapidly in recent years, there were signs of greater government concern and new restrictions, especially on groups that blend tenets from a number of religious beliefs.³³

Tibetan Buddhism

- 3.8.7** The Government remains suspicious of Tibetan Buddhism in general and its links to the Dalai Lama, and it maintained tight controls on religious practices and places of worship in Tibetan areas during 2004. Although the authorities permitted many traditional religious practices and public manifestations of belief, they promptly and forcibly suppressed those activities viewed as vehicles for political dissent, such as religious activities that are perceived as advocating Tibetan independence. Officials confirm that monks and nuns continue to undergo political training known as 'patriotic education' on a regular basis at their religious sites. Political training has become a routine, and officially mandatory, feature of monastic life. However, the form, content, and frequency of such training appear to vary widely from monastery to monastery.³⁴

Christians

- 3.8.8** Both Catholics and Protestants have long complained of persecution by the Communist authorities, and human rights groups claim that the problem is getting worse.³⁵ Patriotic churches (ie Government churches) display crosses, crucifixes and portraits of Jesus and it is similarly legal for Chinese citizens to possess these and display them in their homes.³⁶
- 3.8.9** Members of the unregistered Roman Catholic Church in China continue to face problems with the Chinese authorities. Currently, every one of the approximately 50 bishops of the underground Roman Catholic Church is either in jail, under house arrest, under strict surveillance or in hiding.³⁷ Conditions for unregistered Protestant groups have also deteriorated. In some regions of China, members of Protestant house church groups that refuse to register, on either theological or political grounds, are subject to intimidation, extortion, harassment, detention and the closing of their churches.³⁸

³⁰ USIRF 2005 Introduction

³¹ USIRF 2005 Introduction

³² COIS China Country Report para 6.63

³³ USIRF 2005 section II

³⁴ COIS China Country Report para 6.285

³⁵ COIS China Country Report para 6.66

³⁶ COIS China Country Report para 6.69

³⁷ COIS China Country Report para 6.76

³⁸ COIS China Country Report para 6.80

Muslims

- 3.8.10** Government sensitivity to Muslim communities varied widely during 2004. In some predominantly Muslim areas where ethnic unrest has occurred, especially in Xinjiang among the Uighurs, officials continued to restrict or tightly control religious expression and teaching. However, the Government permits, and in some cases subsidises, Muslim citizens who make the hajj (pilgrimage) to Mecca. In the first half of 2004, a record of over 10,000 Chinese Muslims made the hajj, half of them on government-organized delegations.³⁹
- 3.8.11** Since September 2001 the Government has used concerns about international terrorism as a pretext for the ongoing crackdown on Muslim religious leaders and activities. Uighur Muslim clerics and students have been detained for 'illegal' religious activities, 'illegal religious centres' have been closed, and minors have been banned from attending mosque. Growing numbers of religious leaders have received death sentences and prolonged prison terms on charges of 'separatism' and 'endangering social order'.⁴⁰
- 3.8.12** ***Sufficiency of protection.*** As this category of claimants' fear is of ill treatment/persecution by the state authorities they cannot apply to these authorities for protection.
- 3.8.13** ***Internal relocation.*** As this category of claimants fear is of ill treatment/persecution by the state authorities relocation to a different area of the country to escape this threat is not feasible.
- 3.8.14** ***Conclusion.*** Although there are restrictions on religious freedom and the Chinese authorities seek to control religious groups, the treatment individual members of officially registered religious groups suffer on account of these restrictions does not generally amount to persecution. The majority of claimants from this category of claim are therefore unlikely to qualify for asylum or Humanitarian Protection.
- 3.8.15** Members of unregistered religious groups face more difficulties than members of registered communities and individuals may face intimidation and serious harassment which in some cases may amount to persecution. Where an individual is able to demonstrate that they are at serious risk of facing such persecution on account of their activities a grant of asylum will be appropriate. However, the levels of ill-treatment suffered will vary depending on region and the attitude of local officials and will not always reach the level of persecution. Therefore a grant of asylum will not be appropriate in many cases.
- 3.9 Involvement with illegal political organisations**
- 3.9.1** Some claimants will claim asylum based on ill treatment amounting to persecution at the hands of Chinese authorities due to their involvement with illegal political organisations.
- 3.9.2** ***Treatment.*** The Chinese authorities use a range of measures to silence public dissent, criticism and protest in China. These can include the imposition of prison terms, administrative detention, house arrest, close surveillance and in extreme cases internal or external exile.⁴¹
- 3.9.3** In 2004 the number of individuals serving sentences for the now-repealed crime of counter-revolution was estimated at 500 to 600; many of these persons were imprisoned for the non-violent expression of their political views. Non-governmental organizations (NGOs) estimated that during 2004 as many as 250 persons remained in prison for political activities connected to the 1989 Tiananmen demonstrations.⁴²

³⁹ COIS China Country Report para 6.103

⁴⁰ COIS China Country Report para 6.110

⁴¹ COIS China Country Report para 6.370

⁴² COIS China Country Report para 6.371

- 3.9.4** The Chinese authorities have recently introduced some legal reforms with the stated aim of ensuring greater protection for human rights. These include adding the clause, 'the state respects and protects human rights' to the Chinese constitution in March 2004. However, other laws which continue to facilitate the arbitrary detention and imprisonment of human rights defenders remain on the statute book and continue to be used to put activists behind bars.⁴³
- 3.9.5** Most opposition groups are small and localized, but from time to time groups that have developed national networks are uncovered.⁴⁴ The China Democratic Party (CDP) was set up by dissidents in 1998 and was the first attempt to legally register an opposition party. The Communist Party quickly crushed it and at least 40 current or former CDP members remained imprisoned or held in re-education-through-labour camps. The Government continued to suppress the China Democracy Party (CDP) during 2004.⁴⁵
- 3.9.6** The CDP is based on the principles of openness, peace, reason and legality. Its aim was to establish direct elections and the formation of a multi-party system.⁴⁶
- 3.9.7** **Sufficiency of protection.** As this category of claimants' fear is of ill treatment/persecution by the state authorities they cannot apply to these authorities for protection.
- 3.9.8** **Internal relocation.** As this category of claimants fear is of ill treatment/persecution by the state authorities relocation to a different area of the country to escape this threat is not feasible.
- 3.9.9** **Conclusion.** It is clear that the Chinese authorities may take serious action against individuals involved with opposition political parties/organisations who they believe pose a threat to the state and that this treatment may amount to persecution. Where an individual is able to demonstrate that they are at serious risk of facing such persecution on account of their activities a grant of asylum will be appropriate.
- 3.10** **Forced abortion(s)/sterilisation under 'one child policy'**
- 3.10.1** Some claimants will claim asylum based on ill treatment amounting to persecution at the hands of Chinese authorities due to them having more than one child.
- 3.10.2** **Treatment.** Article 25 of the State Constitution (adopted 4 December 1982) states that the State promotes family planning so that population growth may fit the plans for economic and social development. Article 49 states that both husband and wife have the duty to practise family planning.⁴⁷
- 3.10.3** Under the country's family planning law and policies, citizens in 6 of the country's 31 provinces were required to apply for government permission before having a first child, and the Government continued to restrict the number of births. Penalties for out-of-plan births still included social compensation fees (fines) and other coercive measures.⁴⁸
- 3.10.4** Under China's family-planning policy each couple may have only one child; in rural areas a couple may have a second child if the first child happens to be a girl; a national minority couple may also have two children. All births must be approved in advance, with the state allotting birth quotas in a unified way; children in all areas of the nation should be borne by the quotas allotted for the given year; offenders face being punished.⁴⁹

⁴³ COIS China Country Report para 6.374

⁴⁴ COIS China Country Report para 6.392

⁴⁵ COIS China Country Report para 6.392

⁴⁶ COIS China Country Report para 6.394

⁴⁷ COIS China Country Report para 6.333

⁴⁸ COIS China Country Report para 6.333

⁴⁹ COIS China Country Report para 6.334

- 3.10.5** The one-child limit is more strictly applied in the cities, where only couples meeting certain conditions (e.g. both parents are only children) were permitted to have a second child. In most rural areas (including towns of under 200,000 persons), where approximately two-thirds of citizens lived, the policy was more relaxed, generally allowing couples to have a second child if the first was a girl or disabled. Local officials, caught between pressures from superiors to show declining birth rates, and from local citizens to allow them to have more than one child, frequently made false reports. Ethnic minorities, such as Muslim Uighurs and Tibetans, were subject to much less stringent population controls. In remote areas, limits were often not enforced, except on government employees and Party members.⁵⁰
- 3.10.6** Seven provinces--Anhui, Hebei, Heilongjiang, Hubei, Hunan, Jilin, and Ningxia--require 'termination of pregnancy' if the pregnancy violates provincial family planning regulations. An additional 10 provinces--Fujian, Guizhou, Guangdong, Gansu, Jiangxi, Qinghai, Sichuan Shanxi, Shannxi, and Yunnan--require unspecified 'remedial measures' to deal with out-of-plan pregnancies. Article 33 of the 2002 law states that family planning bureaus will conduct pregnancy tests and follow-up on married women. Some provincial regulations provide for fines if women do not undergo periodic pregnancy tests.⁵¹
- 3.10.7** Since March 2005 township authorities have reportedly forced hundreds of women in Chewang Township, Cangshan County, Shandong Province to undergo abortions.⁵² On 9 September 2005, the official news agency Xinhua reported that the National Population and Family Planning Commission (NPFPC), China's watchdog of population issues, had started to investigate media reported illegal family planning practices in east China's Shandong Province. The NPFPC promised a thorough probe and urged those personnel from family planning authorities to take the lead in enforcing the law and other relevant laws and regulations.⁵³

Family Planning Regulations in Guangdong

- 3.10.8** Article 49 of the Population and Family Planning Regulations of Guangdong Province 2002 (effective from 1 September 2002) states that where a birth is not in conformity with the Regulations, a social support fee [also known as 'social compensation fee'] ie a fine shall be levied. If the party in question has real difficulty paying the social support fee 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.⁵⁴

Family Planning Regulations in Beijing and Shanghai

- 3.10.9** Under new regulations (effective from 1 September 2003) nine types of household in Beijing are permitted a second child.⁵⁵ 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.⁵⁶
- 3.10.10** Shanghai has 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 the first child is disabled.⁵⁷

⁵⁰ COIS China Country Report para 6.340

⁵¹ COIS China Country Report para 6.341

⁵² China Information Center 2005

⁵³ Xinhuanet: 'Population watchdog investigates family planning abuses'

⁵⁴ COIS China Country Report para 6.355

⁵⁵ COIS China Country Report para 6.356

⁵⁶ COIS China Country Report para 6.357

⁵⁷ COIS China Country Report para 6.358

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

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

3.10.13 Caselaw.

IAT/AIT Determinations

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

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

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

3.10.14 Conclusion. The Chinese authorities restrict the number of children that couples may have and impose punishments on those who breach the regulations. However, the one child policy is not universally enforced throughout China, especially in the more rural areas and towns of less than 200,000 people. Even for those that live in the larger cities there are a number of exemptions that allow couples to have more than one child. Even if couples are punished in the majority of cases the punishment is a simple fine which even if it amounts to a significant proportion of a claimants annual salary would not be a breach of Article 3. Therefore in the majority of cases claimants are unlikely to qualify for asylum or Humanitarian Protection.

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

3.11 Double Jeopardy

3.11.1 Treatment. Articles 8 to 12 of the Criminal Law covers the circumstances in which an individual who commits crimes outside the Peoples Republic of China (PRC) can be retried upon return to China.⁵⁸

3.11.2 Article 10 states: Any person who commits a crime outside the territory and territorial waters and space of the PRC, for which according to the law he should bear criminal responsibility, may still be investigated for criminal responsibility according to this Law,

⁵⁸ COIS China Country Report para 5.33

even if she or he has already been tried in a foreign country. However if he has already received criminal punishment in the foreign country he may be exempted from punishment or given mitigated punishment.⁵⁹

3.11.3 The circumstances under which an individual would be punished in China for a crime committed in a foreign country for which he had already been punished in that country, are unstipulated. The Chinese authorities are most likely to take this action if the crime had received a lot of publicity in China, if the victims were well-connected in China, if there were a political angle to the original crime or if the crimes were of a particular type that the authorities wanted to make an example of. As of July 2005 the British Embassy in Beijing is unaware of any such instances. The specific inclusion in the Criminal Law of 'exemptions' from second punishment in China for crimes committed abroad suggests that the authorities would not take further action against those convicted abroad for ordinary criminal offences.⁶⁰

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

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

3.11.6 Caselaw.

IAT/AIT Determinations

[2004] UKIAT 000253 (WC) Heard 24 February 2004. Promulgated 15 September 2004. The appellant in this instance was sentenced in the UK to three terms of six years imprisonment to run concurrently for kidnapping, false imprisonment and blackmail. The appellant had used the services of Snakeheads to exit China and his offences in the UK were committed, so he claims, out of desperation to repay them.

The IAT found that whilst Chinese law does allow for the possibility of double punishment its application is not mandated. Similarly following close examination of the evidence before them the Tribunal found that it does not support the claim that the Chinese authorities do enforce re-prosecutions and double punishment in the context of offences wholly committed abroad. The Tribunal further found that since the revised law on double punishment was revised in 1997 there is a 'striking' lack of any example of it having been enforced.

Whilst accepting that the appellant in this case would be apprehended by the Chinese authorities upon his return and would face conviction and punishment for illegal exit this would not result in treatment contrary to Article 3.

3.11.7 Conclusion. The Chinese legal system allows for double jeopardy in which Chinese citizens can be punished/imprisoned on return to China for crimes they have committed and been punished for in other countries. However, the IAT found in **[2004] UKIAT 000253 (WC)** that since the law on double jeopardy was revised in 1997 there is a 'striking' lack of any example of it having been enforced. Therefore claimants from this category of claim are unlikely to qualify for asylum or Humanitarian Protection.

3.12 Prison conditions

3.12.1 Claimants may claim that they cannot return to China due to the fact that there is a serious risk that they will be imprisoned on return and that prison conditions in China are so poor as to amount to torture or inhuman treatment or punishment.

3.12.2 Consideration. During 2004 conditions in penal institutions for both political prisoners and common criminals were generally harsh and frequently degrading. Prisoners and detainees

⁵⁹ COIS China Country Report para 5.33

⁶⁰ COIS China Country Report para 5.35

were often kept in overcrowded conditions with poor sanitation. Prison capacity became an increasing problem in some areas during 2004, including Guangdong Province. Food was often inadequate and of poor quality, and many detainees relied on supplemental food and medicines provided by relatives however, some prominent dissidents were not allowed to receive outside assistance. Political prisoners were often kept segregated from each other and placed with common criminals, who sometimes beat political prisoners at the instigation of guards.⁶¹

3.12.3 Sexual and physical abuse and extortion were reported in some detention centres in 2004 and forced labour in prisons and re-education-through-labour camps was also common.⁶²

3.12.4 Torture and ill-treatment continued to be reported in a wide variety of state institutions during 2004 despite the introduction of several new regulations aimed at curbing the practice. Common methods included kicking, beating, electric shocks, suspension by the arms, shackling in painful positions and sleep and food deprivation. Political interference in the rule of law, restricted access to the outside world for detainees and a failure to establish effective mechanisms for complaint and investigation continued to be key factors allowing the practice to flourish.⁶³

3.12.5 According to the most recent data from China's public security and judicial authorities, 1.12 million people are currently serving time in China's prisons, and the total number of prisoners exceeds jail capacity by 18 percent. Many prisoners are able to negotiate a reduction in their prison time by bribing the authorities. Also, a large number of criminal cases are backed up, due to both a shortage of judicial manpower and a lack of funding.⁶⁴

Re-education through Labour (RTL)

3.12.6 Chinese law permits committees made up of police and local authorities to send prostitutes, drug addicts and others suspected of minor offences to re-education through labour camps for up to three years without receiving a trial. Critics say the system locks up many who are innocent, denies due process, and is frequently used to punish political dissidents, labour organisers and others the Communist Party considers a threat to its authority. Because inmates are not formally considered criminals, they have little right to appeal their sentences.⁶⁵

3.12.7 According to 2003 official government statistics, more than 250,000 persons were in re education-through-labour camps. Other experts reported that more than 310,000 persons were serving sentences in these camps in 2003. According to published reports of the Supreme People's Procuratorate, the country's 340 re education-through-labour facilities had a total capacity of about 300,000 people.⁶⁶

Other Forms of Administrative Detention

3.12.8 In addition, special administrative detention facilities existed for drug offenders and prostitutes. In 2002, these facilities held over 130,000 offenders, and the number reportedly had increased in 2004. An additional form of administrative detention for migrants and homeless persons, known as custody and repatriation, was abolished in 2003 and converted into a system of over 900 voluntary humanitarian aid shelters. According to official statistics, those facilities had served more than 670,000 people from 1 August 2003 to 30 November 2004. The Government also confined some Falun Gong adherents, petitioners, labour activists, and others to psychiatric hospitals.⁶⁷

3.12.9 Caselaw:

⁶¹ COIS China Country Report para 5.77

⁶² COIS China Country Report para 5.78

⁶³ COIS China Country Report para 5.79

⁶⁴ COIS China Country Report para 5.73

⁶⁵ COIS China Country Report para 5.86

⁶⁶ COIS China Country Report para 5.88

⁶⁷ COIS China Country Report para 5.88

IAT/AIT Determinations

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

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

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

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

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

3.12.10 Conclusion. Whilst prison conditions in China are poor with overcrowding, poor sanitation and a lack of food and medical supplies being particular problems conditions are unlikely to reach the Article 3 threshold. Therefore even where claimants can demonstrate a real risk of imprisonment on return to China a grant of Humanitarian Protection will not generally be appropriate. However, the individual factors of each case should be considered to determine whether detention will cause a particular individual in his particular circumstances to suffer treatment contrary to Article 3, relevant factors being the likely length of detention the likely type of detention facility and the individual's age and state of health.

4. Discretionary Leave

4.1 Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See API on Discretionary Leave)

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

4.3 Minors claiming in their own right

4.3.1 Minors claiming in their own right who have not been granted asylum or HP can only be returned where they have family to return to or there are adequate reception, care and support arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception, care and support arrangements in place.

4.3.2 Minors claiming in their own right without a family to return to, or where there are no adequate reception, care or support arrangements, should if they do not qualify for leave on any more favourable grounds be granted Discretionary Leave for a period of three years or until their 18th birthday, whichever is the shorter period.

4.4 Medical treatment

4.4.1 Claimants may claim they cannot return to China due to a lack of specific medical treatment. See the IDI on Medical Treatment which sets out in detail the requirements for Article 3 and/or 8 to be engaged.

4.4.2 By the end of 2003, there were 305,000 health care institutions in China, including 64,000 hospitals and health care stations, 3,058 maternal and child health care institutions, and 1,811 specialized health institutions or stations. Hospitals and health care institutions in China had a total capacity of 2.9 million beds. There were 4.24 million health workers in China, including 1.83 million practising doctors and assistant doctors and 1.24 million registered nurses.⁶⁸

Psychiatric Treatment

4.4.4 According to Ministry of Health figures, China has 16,055 psychiatrists - one for every 87,500 people. This figure doesn't reflect disparities in rural areas, where qualified psychiatric care is non-existent.⁶⁹ According to the same source many hospitals don't have real psychiatrists. Instead they have neurologists and other doctors who have been briefly retrained and then sit and listen to patients before writing prescriptions.⁷⁰

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

HIV/AIDS

4.4.6 China has made good progress in responding to HIV and AIDS in 2004 on several key areas: leadership and political commitment; information and surveillance systems; HIV-prevention efforts; treatment care and support; investments in HIV and AIDS programmes and international collaboration. It is feared that the number of people living with AIDS in China could reach 10 million by 2010 if the epidemic is left unchecked.⁷²

4.4.7 The Chinese Government has begun making anti-retroviral drugs available free of charge to all rural residents and to those in urban areas unable to pay for the treatment themselves.⁷³

4.4.8 More than 10,000 AIDS patients were provided with free anti-retroviral therapy, a kind of anti-virus treatment in 2004. The total central government investment on HIV/AIDS amounted to about 390 million yuan (US\$47 million) in 2003. The budget for 2004 was 810 million yuan (US\$98 million), while budgeted international support reached to 421 million (US\$51 million) in 2004.⁷⁴

4.4.9 Where a caseworker considers that the circumstances of the individual claimant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 a grant of discretionary leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

5. Returns

⁶⁸ COIS China Country Report para 5.101

⁶⁹ COIS China Country Report para 5.108

⁷⁰ COIS China Country Report para 5.109

⁷¹ COIS China Country Report para 5.111

⁷² COIS China Country Report para 5.115

⁷³ COIS China Country Report para 5.119

⁷⁴ COIS China Country Report para 5.123

- 5.1** Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim.
- 5.2** Chinese nationals may return voluntarily to any region of China at any time by way of the Voluntary Assisted Return and Reintegration Programme run by the International Organisation for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining travel documents and booking flights, as well as organising reintegration assistance in China. The programme was established in 2001, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Chinese nationals wishing to avail themselves of this opportunity for assisted return to China should be put in contact with the IOM offices in London on 020 7233 0001 or www.iomlondon.org.

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**Asylum and Appeals Policy Directorate
November 2005**