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Home Office

OPERATIONAL GUIDANCE NOTE

CHINA

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1. Introduction

1.1 This document provides Home Office caseworkers with guidance on the nature and handling of the most common types of claims received from nationals/residents of China, including whether claims are or are not likely to justify the granting of asylum, humanitarian protection or Discretionary Leave. Caseworkers must refer to the relevant Asylum Instructions for further details of the policy on these areas.

1.2 Caseworkers must not base decisions on the country of origin information in this guidance; it is included to provide context only and does not purport to be comprehensive. The conclusions in this guidance are based on the totality of the available evidence, not just the brief extracts contained herein, and caseworkers must likewise take into account all available evidence. It is therefore essential that this guidance is read in conjunction with the relevant COI Service country of origin information and any other relevant information.

COI Service information is published on Horizon and on the internet at:

http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

1.3 Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. Where a claim for asylum or humanitarian protection is being considered, caseworkers must consider any elements of Article 8 of the ECHR in line with the provisions of Appendix FM (Family Life) and

paragraphs 276 ADE to 276DH (Private Life) of the Immigration Rules. Where a person is being considered for deportation, caseworkers must consider any elements of Article 8 of the ECHR in line with the provisions of Part 13 of the Immigration Rules. Caseworkers must also consider if the applicant qualifies for Discretionary Leave in accordance with the published policy.

1.4 If, following consideration, a claim is to be refused, caseworkers should consider whether it can be certified as clearly unfounded under the case by case certification power in section 94(2) of the Nationality Immigration and Asylum Act 2002. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail.

2. Country Assessment

2.1 Caseworkers should refer the relevant COI Service country of origin information material. An overview of the human rights situation in certain countries can also be found in the FCO Annual Report on Human Rights which examines developments in countries where human rights issues are of greatest concern:

http://fcohrdreport.readandcomment.com/read-and-download-the-report/

2.2 Actors of Protection

2.2.1 Caseworkers must refer to section 7 of the Asylum Instruction - Considering the asylum claim and assessing credibility. To qualify for asylum, an individual must have a fear of persecution for a Convention reason and be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to seek protection in their country of origin or habitual residence. Caseworkers must take into account whether or not the applicant has sought the protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so. Effective protection is generally provided when the authorities (or other organisation controlling all or a substantial part of the State) take reasonable steps to prevent the persecution or suffering of serious harm by for example operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.

2.2.2 The People's Republic of China (PRC) is an authoritarian state in which the Chinese Communist Party (CCP) constitutionally is the paramount authority. CCP members hold almost all top government and security apparatus positions. Ultimate authority rests with the 25-member Political Bureau (Politburo) of the CCP and its seven-member Standing Committee. Xi Jinping holds two of the three most powerful positions as CCP general secretary and chairman of the Central Military Commission. Civilian authorities generally maintain effective control of the military and internal security forces.[1] Leaders in Beijing have confirmed Xi Jinping as president, completing China's 10-yearly transition of power.[2]

[1] US State Department China Country Report on Human Rights Practices 2012 Published on 19 April 2013 US State Department China Country Report on Human Rights Practices 2012 Published on 19 April 2013 Executive Summary http://www.state.gov/documents/organization/204405.pdf

[2] BBC News China - Xi Jinping named president of China – 14 March 2013

2.2.3 According to its constitution, China is a multi-party socialist state under the guidance of the Communist Party of China (CPC). China's leaders have consistently rejected the prospect of a separation of powers and China operates, fundamentally, as a single-party state. Direct elections take place only for village councils and local People's Congresses. Electoral lists are dominated by party members. The 18th Party Congress in November 2012 did not signal any movement towards representative democracy. The appointment of a new Politburo Standing Committee (PSC) was announced in November 2012. Its members will hold office for five years.[3]

2.2.4 China is not an electoral democracy. The CCP has a monopoly on political power and its PSC sets government and party policy. Party members hold almost all top posts in the government, military and internal security services, as well as in many economic entities and social organisations. The country's legislature, the 3,000-member NPC, is elected for five-year terms by sub-national congresses, formally elects the state president for up to two five-year terms and confirms the Premier after he is nominated by the President. However, the NPC is a largely symbolic body. Only its standing committee meets regularly, while the full congress convenes for just two weeks a year to approve proposed legislation.[4]

2.2.5 Citizens who attempt to form opposition parties or advocate for democratic reforms have been sentenced to long prison terms in recent years. In January 2012, Li Tie of Hubei Province was sentenced to 10 years in prison for being a member of the China Social Democracy Party and for his online writings. In October 2012, Cao Haibo of Yunnan Province was sentenced to eight years for starting online discussion groups about a possible political party. Democracy advocate and 2010 Nobel Peace Prize winner, Liu Xiaobo, remained behind bars in 2012, having been sentenced in 2009 to 11 years in prison. His wife, Liu Xia, was under strict house arrest throughout 2012. In addition to democracy advocates, tens of thousands of grassroots activists, petitioners, Falun Gong practitioners, Christians, Tibetans and Uighurs are believed to be in prison or extrajudicial forms of detention for their political or religious views, although complete figures are unavailable. In October 2012, the U.S Congressional-Executive Commission on China (CECC) published a partial list of over 1,400 political prisoners.[5]

2.2.6 The main domestic security agencies include the Ministry of State Security, the Ministry of Public Security (MPS) and the People's Armed Police. The People's Liberation Army is primarily responsible for external security but also has some domestic security responsibilities. Local jurisdictions also frequently used civilian municipal security forces, known as "urban management" officials, to enforce administrative measures. The MPS co-ordinates the country's civilian police force, which is organised into specialised police agencies and local, county and provincial jurisdictions. Corruption at the local level was widespread. Police and urban management officials engaged in extrajudicial detention, extortion and assault. In 2009 the Supreme People's Procuratorate acknowledged continuing

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http://www.bbc.co.uk/news/world-asia-china-21766622

[3] Foreign and Commonwealth (FCO) Human Rights and Democracy 2012, April 2013
http://www.hrdreport.fco.gov.uk/human-rights-in-countries-of-concern/china/

[4] Freedom House: Freedom in the World 2013 China, January 2013
http://www.freedomhouse.org/report/freedom-world/2013/china

[5] Freedom House: Freedom in the World 2013 China, January 2013
http://www.freedomhouse.org/report/freedom-world/2013/china

widespread abuse in law enforcement and domestic news media reported the convictions of public security officials who had beaten to death prisoners or suspects in their custody.[6] A report from the Australian Government notes that corruption is reportedly endemic in China's police force and sources report police involvement in cases of fraud, extortion, bribery, organised crime and the payment of illegal fees.[7]

2.2.7 Security forces work closely with the CCP at all levels. During 2012, the party continues to expand its apparatus for "stability maintenance," a term that encompasses maintaining law and order, suppressing peaceful dissent and closely monitoring the populace. Key components include state intelligence agencies, such as the Public Security Bureau, paramilitary forces like the People's Armed Police and extralegal CCP-based entities like the 610 Office, stability-maintenance units and administrative enforcers called "chengguan" who routinely engage in abusive conduct at the grassroots level. In March 2012, the government announced that it would allocate 702 billion yuan ($111 billion) that year for internal security forces, which was an increase of over 12 percent from 2011. The new total surpassed the military budget for the second consecutive year and the enormous spending has fuelled a lucrative market for outsourcing surveillance to civilians and private companies. As the CCP leadership transition continued during 2012, analysts said some party chiefs were pushing to restrain the growing power of the security apparatus.[8]

2.2.8 Arbitrary arrest and detention were serious problems in China during 2012. The law grants police broad administrative detention powers and the ability to detain individuals for extended periods without formal arrest or criminal charges. Throughout 2012 human rights activists, journalists, unregistered religious leaders and former political prisoners and their family members continue to be among those targeted for arbitrary detention or arrest.[9]

2.2.9 Police detention beyond 37 days requires prosecutorial approval of formal arrest. After arrest, police are authorised to detain a suspect for up to an additional seven months while the case is investigated. After the completion of a police investigation, an additional 45 days of detention are allowed for the procuratorate to determine whether to file criminal charges. If charges are filed, authorities can detain a suspect for an additional 45 days before beginning judicial proceedings. In practice, police sometimes detained persons beyond the period allowed by law. Pre-trial detention periods of a year or longer are common. The law stipulates that detainees be allowed to meet with defence counsel before criminal charges are filed. Police often violate this right.[10]

2.2.10 Courts are required by law to provide a lawyer to defendants who have not already retained one and who is blind, deaf, mute, a minor or who may be sentenced to death. The revised criminal procedure law scheduled to take effect

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[6] US State Department China Country Report on Human Rights Practices 2012 Published on 19 April 2013 Section 1 http://www.state.gov/documents/organization/204405.pdf

[7] Australian Government - Migration Review Tribunal & Refugee Review Tribunal, Background Paper China: Official corruption, 11 March 2013, http://www.ecoi.net/file_upload/1226_1369737571_china-corruption.pdf

[8] Freedom House: Freedom in the World 2013 China, January 2013 http://www.freedomhouse.org/report/freedom-world/2013/china

[9] US State Department China Country Report on Human Rights Practices 2012 Published on 19 April 2013 Section 1 http://www.state.gov/documents/organization/204405.pdf

[10] US State Department China Country Report on Human Rights Practices 2012 Published on 19 April 2013 Section 1 http://www.state.gov/documents/organization/204405.pdf

on 1 January, 2013, adds defendants facing a life sentence and who are mentally ill. This law applies whether or not the defendant is indigent. Courts may also provide lawyers to other criminal defendants who cannot afford them, although Courts often did not appoint counsel in such circumstances. The law requires notification of family members within 24 hours of detention, but individuals were often held without notification for significantly longer periods, especially in politically sensitive cases. Officials are not required to provide notification if doing so would "hinder the investigation" of a case. The revised criminal procedure law limits this exception to cases involving state security or terrorism.[11]

2.2.11 The CCP controls the judiciary especially in politically sensitive cases. In 2012, this was particularly evident in the opaque proceedings involving Bo Xilai, his wife, and their associates. Bo was held incommunicado after his detention in March 2012 and his case was transferred to prosecutors in October 2012, with charges of abuse of power, bribery and sexual misconduct. His trial was pending at the end of 2012. His wife, Gu Kailai, received a suspended death sentence for the murder of a British businessman following a one-day show trial in August 2012. In September 2012, former police chief Wang Lijun—whose flight to the U.S consulate in Chengdu sparked the scandal—was sentenced to 15 years in prison for abuse of power, defection and corruption. The cases featured blatant disregard for due process, use of the extralegal *shuanggui*[12] (a notoriously harsh form of a secretive system of imprisonment)[13] detention system for interrogating party officials in isolation and other violations of fundamental rights. Prosecutors also failed to pursue Bo and Wang for severe human rights abuses they reportedly oversaw in office, focusing instead on personal misconduct.[14]

2.2.12 The law states that the Courts shall exercise judicial power independently, without interference from administrative organs, social organisations and individuals. However, in practice the judiciary is not independent. Legal scholars interpreted President Hu Jintao's doctrine of the "Three Supremes" as stating that the interests of the CCP are above the law. Judges regularly received political guidance on pending cases, including instructions on how to rule, from both the government and the CCP, particularly in politically sensitive cases. The CCP Law and Politics Committee has the authority to review and influence Court operations at all levels of the judiciary.[15]

2.2.13 Corruption also influences Court decisions. Safeguards against judicial corruption is vague and poorly enforced. Local governments appoint and pay local Court judges and, as a result, often exerted influence over the rulings of judges in their districts. Courts are not authorised to rule on the constitutionality of legislation. The law permits organisations or individuals to question the constitutionality of laws and regulations, but a constitutional challenge can be directed only to the

[11] US State Department China Country Report on Human Rights Practices 2012 Published on 19 April 2013 Section 1 http://www.state.gov/documents/organization/204405.pdf
[12] Freedom House: Freedom in the World 2013 China, January 2013 http://www.freedomhouse.org/report/freedom-world/2013/china
[13] The Guardian – Fears for China's Shuanggui detainees after Wenzhou official dies – April 2013 http://www.theguardian.com/world/2013/apr/12/fears-china-shuanggui-detainees
The NY Times – Deaths of Chinese Officials Under Detention in Corruption Cases Raise Concern – June 2013 http://www.nytimes.com/2013/06/21/world/asia/detention-deaths-in-chinese-corruption-cases-stir-concern.html
[14] Freedom House: Freedom in the World 2013 China, January 2013 http://www.freedomhouse.org/report/freedom-world/2013/china
[15] US State Department China Country Report on Human Rights Practices 2012 Published on 19 April 2013 Section 1 http://www.state.gov/documents/organization/204405.pdf

promulgating legislative body. As a result, lawyers have little or no opportunity to use the constitution in litigation.[16]

2.2.14 There is no presumption of innocence and the criminal justice system is biased towards a presumption of guilt, especially in high-profile or politically sensitive cases. According to the Supreme People's Court, in 2011 the combined conviction rate for first- and second-instance criminal trials was 99.9 percent. Of 1,051,638 criminal defendants tried in 2011, 891 were acquitted. The CECC notes that most defendants in China face significant bias in the criminal justice system and do not have adequate legal assistance. One recent study found that approximately 95 percent of the criminal cases surveyed relied on defendant confession and that the vast majority of defence efforts failed to challenge confessions.[17]

2.2.15 Freedom House reports that criminal trials in China, which often amount to mere sentencing announcements, is frequently closed to the public and the conviction rate is estimated at 98 percent. In March 2012, the NPC enacted amendments to the Criminal Procedure Law. They include improvements for ordinary criminal defendants, including exclusion of evidence obtained through torture, access for lawyers to their clients and the possibility of witnesses being cross-examined. However, legal experts raised concerns that the revised law features exceptions for cases of "endangering state security," "terrorism," and "major bribery"—categories often employed to punish non-violent activism and political expression. The amendments allow such suspects to be secretly detained for up to six months, essentially legalizing the practice of enforced disappearances.[18]

2.2.16 Regulations of the Supreme People's Court require all trials to be open to the public, with the exceptions of cases involving state secrets, privacy issues and minors. Authorities use the state-secrets provision to keep politically sensitive proceedings closed to the public, sometimes even to family members and to withhold access to defence counsel. Court regulations state that foreigners with valid identification should be allowed to observe trials under the same criteria as citizens. In practice, foreigners are permitted to attend Court proceedings only by invitation. As in past years, foreign diplomats and journalists unsuccessfully sought permission to attend a number of trials. In some instances, the trials were reclassified as "state secrets" cases or otherwise closed to the public. Foreign diplomats were refused access to the 27 July 2012 appeal hearing of Ni Yulan, which reduced her sentence by two months but upheld convictions for "making trouble" and fraud.[19] Ni Yulan is a civil rights lawyer who has campaigned against forced evictions and other housing rights violations in China. She is known for providing legal help to people whose homes have been seized by the government. The lawyer has been in a wheelchair for the past decade after being beaten by police in detention in 2002.[20] Ni Yulan's fight against land seizures

[16] US State Department China Country Report on Human Rights Practices 2012 Published on 19 April 2013 Section 1 http://www.state.gov/documents/organization/204405.pdf
[17] Congressional Executive Commission on China Annual Report 2012, 10 October 2012, Barriers to Adequate Defense and a Fair Trial p. 74 http://www.gpo.gov/fdsys/pkg/CHRG-112shrg76190/pdf/CHRG-112shrg76190.pdf
[18] Freedom House: Freedom in the World 2013 China, January 2013 http://www.freedomhouse.org/report/freedom-world/2013/china
[19] US State Department China Country Report on Human Rights Practices 2012 Published on 19 April 2013 Section 1 http://www.state.gov/documents/organization/204405.pdf
[20] Amnesty International – China: Jail Sentence for Disabled Housing Activist 'Unacceptable' 10 April 2012 http://www.amnesty.org/en/news/china-jail-sentence-disabled-housing-activist-unacceptable-2012-04-10

began in 2002 after her home in central Beijing was requisitioned and later demolished. She was sentenced to a year in jail in 2002 for "obstructing official business" and to two years' imprisonment in 2008 for "harming public property". In April 2012 Ni Yulan was sentenced to two years and eight months, on charges of picking quarrels, provoking trouble and wilfully destroying private and public property. The European Union issued a statement saying it was "deeply concerned" about Ni Yulan's sentence and called for her immediate release given her poor health.[21]

2.2.17 Efforts to silence and intimidate political activists and public interest lawyers continue to increase. Authorities resorted to extralegal measures such as enforced disappearance, “soft detention” and strict house arrest, including house arrest of family members, to prevent the public voicing of independent opinions. Public interest law firms that take on sensitive cases continue to face harassment, disbarment of legal staff and closure. There is severe official repression of the freedom of speech, religion and association; also harsh restrictions on the movement of ethnic Uighurs in the Xinjiang Uighur Autonomous Region (XUAR) and of ethnic Tibetans in the Tibet Autonomous Region (TAR) and other Tibetan areas. Abuses peaked around high-profile events, such as the visit of foreign officials, sensitive anniversaries and in the period leading up to the meeting of the 18th Party Congress in November 2012. Some other human rights problems during 2012 were extrajudicial killings, including executions without due process, enforced disappearance and incommunicado detention, including prolonged illegal detentions, torture and coerced confessions of prisoners.[22]

2.2.18 Torture remains widespread, security agents routinely disobey legal protections and impunity is the norm for police brutality and suspicious deaths in custody. Many citizens—including a large contingent of political and religious prisoners—are detained by “re-education through labour” (RTL) camps, which permit individuals to be held for up to four years without a judicial hearing. Overall, detention facilities hold an estimated three to five million people. Conditions are generally harsh, with reports of inadequate food, regular beatings and deprivation of medical care. The government generally did not permit visits by independent monitoring groups. New forms of extralegal detention have multiplied in recent years, including the “black jails” for petitioners, psychiatric confinement of citizen activists and disappearances of political dissidents for weeks or months at a time.[23]

2.3 Internal relocation.

2.3.1 Caseworkers must refer to the Asylum Instruction on Internal Relocation and in the case of a female applicant, the AI on Gender Issues in the Asylum Claim, for guidance on the circumstances in which internal relocation would be a ‘reasonable’ option, so as to apply the test set out in paragraph 339O of the Immigration Rules. It is important to note that internal relocation can be relevant

[21] BBC News - China Land Rights Lawyer Ni Yulan and Husband Jailed – 10 April 2012 http://www.bbc.co.uk/news/world-asia-china-17661224
[22] US State Department China Country Report on Human Rights Practices 2012 Published on 19 April 2013 Section 1 http://www.state.gov/documents/organization/204405.pdf
[23] Freedom House: Freedom in the World 2013 China, January 2013 http://www.freedomhouse.org/report/freedom-world/2013/china

in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a part of the country of return where the person would not have a well founded fear of being persecuted and the person can reasonably be expected to stay there, then they will not be eligible for a grant of asylum. Similarly, if there is a part of the country of return where the person would not face a real risk of suffering serious harm and they can reasonably be expected to stay there, then they will not be eligible for humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account. Caseworkers must refer to the Gender Issues in the asylum claim where this is applicable. The fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.

2.3.2 Where a category of applicants' fear is of ill-treatment/persecution by the state authorities, then internal relocation to escape that persecution will not generally be an option. Very careful consideration must be given to whether internal relocation would be a viable way to avoid a real risk of ill-treatment/persecution at the hands of, tolerated by, or with the connivance of, state agents. If an applicant who faces a real risk of ill-treatment/persecution in their home area would be able to relocate to a part of the country where they would not be at real risk, whether from state or non-state actors, and it would not be unreasonable to expect them to do so, then asylum or humanitarian protection should be refused.

2.3.3 The law in China provides for freedom of internal movement, foreign travel, emigration and repatriation, however, the government generally did not respect these rights in practice. While seriously restricting its scope of operations, the government occasionally co-operates with the Office of the UN High Commissioner for Refugees (UNHCR), which maintains an office in Beijing, to provide protection and assistance to refugees, asylum seekers and other persons of concern. Authorities heightened restrictions on freedom of movement in China, particularly to curtail the movement of individuals deemed politically sensitive, before key anniversaries, visits by foreign dignitaries or major political events and to hinder demonstrations. Freedom of movement continues to be very limited in the Tibet Autonomous Region (TAR) and other Tibetan areas. Police maintain checkpoints in most counties and on roads leading into many towns, as well as within major cities such as Lhasa.[24]

2.3.4 The government permits legal emigration and foreign travel for most citizens. Some academics and activists continue to face travel restrictions, especially around sensitive anniversaries. The government exercises exit control for departing passengers at airports and other border crossings and utilizes this exit control to deny foreign travel to dissidents and persons employed in sensitive government posts. Throughout 2012 lawyers, artists, authors and other activists are at times prevented from freely exiting the country. Border officials and police cited threats to "national security" as the reason for refusing permission to leave the country.[25]

[24] US State Department China Country Report on Human Rights Practices 2012 Published on 19 April 2013 Section 2 http://www.state.gov/documents/organization/204405.pdf
[25] US State Department China Country Report on Human Rights Practices 2012 Published on 19 April 2013 Section 2 http://www.state.gov/documents/organization/204405.pdf

2.3.5 The Chinese authorities retain the hukou system of registration. The hukou, a small red passbook, contains key information on every family, including marriages, divorces, births and deaths, as well as the city or village to which each person belongs and attached to the hukou are benefits including health care, a pension and free education for children. These benefits are only available if a Chinese citizen lives where he or she is registered. It is very difficult to get a driver's licence, buy a house or purchase a car without a hukou.[26]

2.3.6 Although the government maintains restrictions on the freedom to change one's workplace or residence, the ability of most citizens to move within the country to work and live continues to expand. Rural residents continue to migrate to the cities but many cannot officially change their residence or workplace within the country. Most cities have annual quotas for the number of new temporary residence permits that can be issued and all workers, including university graduates, had to compete for a limited number of such permits. It is particularly difficult for rural residents to obtain household registration in more-economically developed urban areas.[27]

2.3.7 Amnesty International is concerned that in its current state, China's household registration (hukou) system continues to enable and facilitate discrimination based on social origin –namely a person's birthplace and their "urban" or "rural" status. Individuals' access to education, health care and housing is tied to their permanent household registration status.[28] Human Rights Watch reports that one of the biggest challenges to political stability in China is internal migration, as millions of workers who move between the countryside and the city are increasingly vocal about the discrimination they endure through the outdated hukou system. This set of rules and policies join people's access to public benefits such as schools and state health care to their place of birth, meaning that migrant workers registered in the countryside, but living in the cities do not have access to the same quality of schools, hospitals or housing as their urban counterparts and some have no access to these services at all. By 2011, nearly one-fifth of the country had effectively become second-class citizens.[29] In June 2012, joint research by the official All-China Women's Federation and the Guangdong provincial judiciary reveals that thousands of children left behind in rural villages by their migrant worker parents due to restrictions of the hukou system are victims of sexual abuse. The government has pledged to abolish the hukou system, as it unfairly limits the access of China's 220 million migrant workers to social services.[30]

2.3.8 In the country guidance case of **AX** the upper Tribunal found that where a real risk exists of forced sterilisation 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

[26] Bloomberg China May Finally Let Its People Move More Freely, 15 March 2012 http://www.businessweek.com/articles/2012-03-15/china-may-finally-let-its-people-move-more-freely
[27] US State Department China Country Report on Human Rights Practices 2012 Published on 19 April 2013 Section 2 http://www.state.gov/documents/organization/204405.pdf
[28] Amnesty International, China: Submission to the UN Committee on Economic, Social and Cultural Rights, 51st Session (Pre-sessional Working Group 21-24 May 2013), 1 April 2013 http://www.refworld.org/docid/5174fcc44.html
[29] Human Rights Watch, Human Rights Now, 15 November 2012 http://www.hrw.org/news/2012/11/15/human-rights-now
[30] Human Rights Watch World Report 2013: China, 31 January 2013 http://www.ecoi.net/local_link/237037/346033_en.html

relocation may therefore be an option to avert risk in the 'hukou' area, although it will not be an option where there is credible evidence of individual pursuit of the returnee or his/her family, outside the 'hukou area'. Whether it is unduly harsh to expect an individual returnee and his/her family to relocate in this way will be a question of fact in each case.

2.3.9 Careful consideration must be given to the relevance and reasonableness of internal relocation on a case by case basis taking full account of the individual circumstances of the particular claimant. Case workers need to consider the ability of the persecutor to pursue the claimant in the proposed site of relocation, and whether effective protection is available in that area. Caseworkers will also need to consider the age, gender, health, ethnicity, religion, financial circumstances and support network of the claimant, as well as the security, human rights and socio-economic conditions in the proposed area of relocation, including the claimant's ability to sustain themselves.

2.4 Country Guidance Caselaw

Supreme Court: RT (Zimbabwe) & others *v* Secretary of State for the Home Department [2012] UKSC 38 (25 July 2012)

The Supreme Court ruled that the rationale of the decision in HJ (Iran) applies to cases concerning imputed political opinion. Under both international and European human rights law, the right to freedom of thought, opinion and expression protects non-believers as well as believers and extends to the freedom not to hold and not to express opinions. Refugee law does not require a person to express false support for an oppressive regime, any more than it requires an agnostic to pretend to be a religious believer in order to avoid persecution. Consequently an individual cannot be expected to modify their political beliefs, deny their opinion (or lack thereof) or feign support for a regime in order to avoid persecution.

AX (Family Planning Scheme) China CG [2012] UKUT 00097 (IAC)
Promulgated 16 April 2012

The determination made the following findings:

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.

LW (China) [2012] EWCA Civ.519, Promulgated 24 April 2012 This caselaw reconsidered the approach taken in LL, below, and upheld that CG case. The appeal decision made the following concluding points:

> [33] "I accept the respondent's submission that *LL* permits the consideration of the individual circumstances in a particular case. The Upper Tribunal's reference to the number of those who practise Falun Gong in China safely is accurately based on the 2010 COIR and does indeed indicate that "normally" there is not a real risk for someone who practises in private and with discretion (§35 of *LL*). However, it is implicit in the use of the word "normally" that there may be particular features in an individual case which

would give rise to risk. Furthermore, §38 of *LL* refers to the sort of activities that might bring someone to the adverse attention of the authorities in China and expressly recognises the potential existence of "special factors".

[34] Given the flexibility of the guidance in *LL*, it was in my view open to the Upper Tribunal to take the view that it remained appropriate and to conclude that the evidence in the COIR did not represent a change from the evidence summarised in *LL*. It then went on, as it was obliged to do, to consider how this particular appellant would behave on his return to China, which exercise provided it with the opportunity to put into its consideration of risk any individual features which would be likely to call attention to him, including matters such as his likely domestic circumstances, the circumstances of his return and so on. Its findings mean that it was not accepted that he would do anything which would bring him to the attention of the authorities as a possible Falun Gong practitioner and those findings are not open to challenge before us. He was found to be someone whose practice of Falun Gong "has always been discreet". As for the fact that he and his wife had had three children, the Upper Tribunal found that that was not a breach of the family planning policy in China as children born abroad are not counted.

[35] The second appeal ground identified by Sullivan LJ, concerning the appellant's attendance at Falun Gong demonstrations as a spectator and the implications of *HJ*, has not featured in the appeal in quite the format that it was originally drafted. However I have considered the issue in the terms presented to us. Whilst I accept that *HJ* may mean that the appellant should not in theory be expected to give up spectating at demonstrations on his return to China, I accept the respondent's argument that the point is academic as the movement is not now a public one in China and there is no evidence of public demonstrations of Falun Gong of the type that the appellant attended here. I also accept the respondent's argument that there is no evidence that were there to be such a demonstration, presence as a spectator only would be sufficient to give rise to a risk."

LL (Falun Gong - Convention Reason - Risk) China CG [9 August 2005] UKIAT 00122. This CG case which followed the earlier case of **L (China) [3 November 2004] EWCA (Civ.) 1441** made the findings listed below:

35. We view with caution the respective assertions by both the Chinese authorities and Falun Gong sources, both of whom have their own agendas. However our first conclusion as to risk, from the objective evidence as a whole, is that, absent 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. On any assessment the number of Falun Gong practitioners in China is very large indeed. The figures quoted range from 2 million to some 100 million. So far as can be gathered from the evidence before us, the number of people who have faced detention or re-education by the Chinese authorities as a consequence of Falun Gong activity, whilst large in absolute terms, is a relatively small proportion of the overall number of practitioners. This indicates that the large majority of those who practice Falun Gong in China in privacy and with discretion do not experience material problems with the authorities.

36. Our second conclusion is that the essential benefit of Falun Gong to an individual comes from the practice of meditation and Qi Gong exercises, which can be carried out alone or with a few friends in private. It appears to have some spiritual dimension. There does not appear however to be any duty or pressure on a Falun Gong practitioner to proselytise, even though some plainly do. We therefore endorse the view expressed by the Court of Appeal in paragraph 33 of their judgment in this case that: "We are not prepared to accept that authoritarian pressure to cease the practice of Falun Gong in public would involve the renunciation of core human rights entitlements."

37. Our third conclusion is that risk of material ill-treatment escalates significantly when a practitioner does engage in activities that are reasonably likely to bring him to the notice of the authorities. Such activities include the public practice of Falun Gong exercises, recruitment of new members, and dissemination of Falun Gong information. The risk of escalating ill-treatment also increases when a person who has previously come to the adverse attention of the authorities and has been detained/re-educated and warned against continuing Falun Gong activity, ignores that warning.

38. Our fourth conclusion, which follows from the previous paragraph, is that, absent special factors and credible motivation, a person displaying limited knowledge of Falun Gong or limited involvement with it, is unlikely to be committed to undertaking activities on return to China that would bring him to the adverse attention of the authorities and materially increase his risk.

JC (Double jeopardy: Art 10 CL) China CG [14 May 2008] UKIAT 00036
This was upheld by the Court of Appeal. See **JC (China) [19 February 2009] EWCA Civ.81** and found:

1."There is a risk of prosecution or re-prosecution under Articles 7 and 10 of the Chinese Criminal Law for overseas offenders returned to China. However, the use of those provisions is discretionary and extremely rare. Absent particular aggravating factors, the risk falls well below the level required to engage international protection under the Refugee Convention, the ECHR, or humanitarian protection. The risk of prosecution or re-prosecution will be a question of fact in individual cases but is more likely where:-

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

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

guidance are maintained directly by the Chinese Government and provides guidance for judges and lawyers on the use of these powers.

3. The burden of proof does not shift to the Secretary of State in double jeopardy cases. The Court of Appeal decision in **Adam v Secretary of State for the Home Department [2003] EWCA Civ 265, Promulgated 4 March 2003** is not authority for such a proposition, particularly where the decision to re-prosecute is discretionary.

4. In the light of our findings above, the decisions in **WC (no risk of double punishment) China [2004] UKIAT 00253, Promulgated 15 September 2004** and **SC (double jeopardy – WC considered) China CG [2006] UKAIT 00007, Promulgated 23 January 2006** are no longer factually accurate and SC should no longer be treated as country guidance."

The above case-law was further confirmed by the case of:
YF (Double jeopardy - JC confirmed) China CG [26 January 2011] UKUT 32 which added the following:

"The risk of prosecution or re-prosecution will be a question of fact in individual cases but is more likely where (a) there has been a substantial amount of adverse publicity within China about a case; (b) the proposed defendant has significantly embarrassed the Chinese authorities by their actions overseas; (c) the offence is unusually serious. Generally, snakehead cases do not have the significance they have in the West and are regarded as ordinary (but serious) crimes requiring no special treatment; (d) political factors (which may include the importance attached by the Chinese authorities to cracking down on drugs offenders) may increase the likelihood of prosecution or re-prosecution; and (e) the Chinese Government is also particularly concerned about corruption of Chinese officialdom."

"Re-prosecution/double punishment of a returnee through the administrative disciplinary procedure system is extremely unlikely, since for a person to be considered under this system by virtue of an overseas offence the Chinese authorities must have decided his case was not serious enough to justify re-prosecuting him through the criminal law system."

HJ (Iran) v Secretary of State for the Home Department (Rev 1) [7 July 2010] UKSC 31

In this case, the Supreme Court established the test which should be applied when assessing a claim based on fear of persecution because of an applicant's sexual orientation which is as follows:

(i) Is the applicant gay or someone who would be treated as gay by potential persecutors in the country of origin?

(ii) If yes, would gay people who live openly be liable to persecution in that country of origin?

(iii) How would the applicant behave on return? If the applicant would live openly and be exposed to a real risk of persecution, he has a well-founded fear of persecution even if he could avoid the risk by living discreetly.

(iv) If the applicant would live discreetly, why would he live discreetly? If the applicant would live discreetly because he wanted to do so, or because of social pressures (e.g. not wanting to distress his parents or embarrass his friends) then he is not a refugee. But if a material reason for living discreetly would be the fear of persecution that would follow if he lived openly, then he is a refugee.

SP and Others (Tibetan - Nepalese departure - illegal - risk) People's Republic of China CG [9 February 2007] UKAIT 00021. The AIT summarised its conclusions as follows:(paragraph 119):

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

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

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

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

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

(f) The Chinese regime in the Tibet region is repressive and the individual facts of each case must be considered carefully as it is a society where there is a considerable amount of surveillance. A Tibetan who is able to show he faces a real risk on return arising out of past adverse experiences in the Tibet region, should be able to succeed in his or asylum claim, irrespective of what the position is as regards failed asylum seekers generally.

(g) Unless the Secretary of State can show that their exit from China was lawful, and not on the Tibet/Nepal route, Tibetan returned to Beijing or Shanghai are reasonably likely to face persecution on return and therefore the issue of an internal relocation alternative does not arise.

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

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

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

LJ (China – Prison Conditions) [2005] UKIAT 00099 Heard 24 February 2005, Promulgated 10 May 2005.
The evidence adduced in this appeal did not support the conclusion that an individual returned to China, after making an unsuccessful claim to asylum in the United Kingdom, was reasonably likely to be
(a) imprisoned or subjected to administrative detention on his return for having left China unlawfully, and
(b) whilst imprisoned or being detained on that account, subjected to Art. 3 maltreatment.

Such a conclusion could not properly be based on the general statement in the US State Department Report to the effect that conditions in Chinese prisons and administrative detention facilities were "harsh and frequently degrading". To support such a conclusion, clear evidence would be required from bodies such as Amnesty International, Human Rights Watch or the Canadian Immigration and Refugee Board to the effect that other persons whose histories and circumstances were reasonably comparable with those of the individual concerned had, on their return in the comparatively recent past, been imprisoned or detained and subjected to such maltreatment in sufficient numbers and/or with sufficient frequency. Such evidence as there was pointed in the opposite direction.

The IAT found that before reaching a conclusion on whether prison conditions were inhuman and degrading, for a Chinese national who left China unlawfully and/or who had been involved in a minor assault on an official of the family planning authority, 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 of the prisoners who have been subjected to degrading treatment whilst in custody in China;

- Length of any sentence of imprisonment (as opposed to the maximum sentence) which is likely to be imposed for the individual regarding the offences in respect of which it is said that he is at risk to imprisonment; (para 11d);

- There is no indication that imprisonment for those unable to pay fines is either the normal course, or reasonably likely to be imposed where they have left illegally (para 15d).

3. Main categories of claims

3.1 This Section sets out the main types of asylum claim, humanitarian protection claim and discretionary leave claim on human rights grounds (whether explicit or implied) made by those entitled to reside in China. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/ punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, humanitarian protection, sufficiency of protection and internal relocation are set out in the relevant Asylum Instructions, but how these affect particular categories of claim are set out in the instructions below. All Asylum Instructions can be accessed via the Horizon intranet site. The instructions are also published externally on the Home Office internet site at:

http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/

3.2 Each claim should be assessed to determine whether there are reasonable grounds for believing that the applicant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in the Court of Appeal's judgment in Karanakaran should be followed when deciding how much weight to be given to the material provided in support of the claim (see the Asylum Instruction 'Considering the asylum claim and assessing credibility').

3.3 For any asylum cases which involve children either as dependents or as the main applicants, caseworkers must have due regard to Section 55 of the Borders, Citizenship and Immigration Act 2009. The Home Office instruction 'Every Child Matters; Change for Children' sets out the key principles to take into account in all Agency activities.

3.4 If the applicant does not qualify for asylum, consideration should be given as to whether a grant of humanitarian protection is appropriate. Where an application for asylum and humanitarian protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See Asylum Instruction on Discretionary Leave)

Consideration of Articles 15(a) and (b) of the Directive/Articles 2 and 3 ECHR

3.5 An assessment of protection needs under Article 15(c) of the Directive should only be required if an applicant does not qualify for refugee protection, and is ineligible for subsidiary protection under Articles 15(a) and (b) of the Directive (which broadly reflect Articles 2 and 3 of the ECHR). Caseworkers are reminded that an applicant who fears a return to a situation of generalised violence may be entitled to a grant of asylum where a connection is made to a Refugee Convention reason or to a grant of humanitarian protection because the Article 3 threshold has been met.

Other severe humanitarian conditions and general levels of violence

3.6 There may come a point at which the general conditions in the country – for example, absence of water, food or basic shelter – are unacceptable to the point that return in itself could, in extreme cases, constitute inhuman and degrading treatment. Decision makers need to consider how conditions in the country and

locality of return, as evidenced in the available country of origin information, would impact upon the individual if they were returned. Factors to be taken into account would include age, gender, health, effects on children, other family circumstances, and available support structures. It should be noted that if the State is withholding these resources it could constitute persecution for a Convention reason and a breach of Article 3 of the ECHR.

3.7 As a result of the Sufi & Elmi v UK judgment in the European Court of Human Rights (ECtHR), where a humanitarian crisis is predominantly due to the direct and indirect actions of the parties to a conflict, regard should be had to an applicant's ability to provide for his or her most basic needs, such as food, hygiene and shelter and his or her vulnerability to ill-treatment. Applicants meeting either of these tests would qualify for humanitarian protection.

Credibility

3.8 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 'Section 4 – Making the Decision in the Asylum Instruction 'Considering the asylum claim and assessing credibility'. Caseworkers must also ensure that each asylum application has been checked against previous UK visa applications. Where an asylum application has been biometrically matched to a previous visa application, details should already be in the Home Office file. In all other cases, the caseworkers should satisfy themselves through CRS database checks that there is no match to a non-biometric visa. Asylum applications matches to visas should be investigated prior to the asylum interview, including obtaining the Visa Application Form (VAF) from the visa post that processed the application.

3.9 Falun Gong/Falun Dafa

3.9.1 Some applicants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of the Chinese authorities due to their involvement with Falun Gong/Falun Dafa.

3.9.2 **Treatment**: During 2012, Falun Gong practitioners were tortured, harassed, arbitrarily detained, imprisoned and faced other serious restrictions on their right to freedom of religion.[31] Prior to the government's 1999 ban on Falun Gong, a self-described spiritual discipline, it was estimated that there were 70 million adherents.[32]

3.9.3 The Chinese government continues its fourteen-year campaign to eradicate Falun Gong activity and pressure practitioners to renounce their beliefs. Falun Gong adherents report, and official Chinese government statements confirm, long-term and arbitrary arrests, forced renunciations of faith and torture in detention. Reportedly, over 3,500 Falun Gong practitioners have died as a result of government-approved persecution. China maintains an extrajudicial security apparatus to stamp out Falun Gong activities and uses specialised facilities

[31] Amnesty International Annual Report – China 2013 – 23 May 2013
http://www.refworld.org/docid/519f51a96b.html
[32] US Department of State:2012 International Religious Freedom Report – China – 20 May 2013 – Section 1
http://www.ecoi.net/local_link/247441/357656_en.html

known as “transformation through re-education centres” to force practitioners to renounce their beliefs through the use of torture and medical experimentation. Falun Gong practitioners have documented dozens of deaths in these transformation centres.[33]

3.9.4 Provincial authorities are urged to conduct anti-cult campaigns, including public meetings and the signing of anti-cult “pledge cards,” according to the US CECC, a government website providing training materials for these campaigns. The government detains Falun Gong practioners under Article 300 of the Criminal Procedure Code, which deals with individuals accused of crimes associated with “evil cults.” Lawyers who have challenged the law and those who sought to defend Falun Gong have been harassed and detained.[34] Wang Yonghang, a lawyer who openly advocated for religious freedom and protects Falun Gong practitioners, was subjected to torture in prison, where he has been serving a seven-year sentence since 2009 for “using a cult to undermine implementation of the law.” As of June 2012, he was reportedly suffering from multiple ailments, including tuberculosis, internal fluid build-up and paralysis below the waist.[35]

3.9.5 It is difficult to determine how many Falun Gong practitioners are in detention because they are most often incarcerated in RTL camps and mental health institutions. However, the U.S Department of State notes that Falun Gong adherents may constitute half of the 250,000 officially verified inmates in RTL camps. The UN Special Rapporteur on Torture reports that practitioners make up two-thirds of the alleged victims of torture presented to him. As of December 2012, the CECC’s prisoner database lists 486 Falun Gong practitioners as currently serving prison sentences, though the actual number may be much higher. One such prisoner is Wei Jun, currently serving a five-year sentence at the Heilongjiang Women’s Prison, her fourth incarceration since 1999. According to her testimony of torture and abuse while in custody, which was smuggled from prison, she suffers from partial paralysis from being beaten by both prison guards and other prisoners. The Falun Dafa Information Centre (FDIC) claims evidence shows that over 50 Falun Gong practitioners died in custody since 2011. Numerous allegations of government-sanctioned organ harvesting and psychiatric experimentation also continues to surface, and both the UN Special Rapporteur on Torture and the UN Committee against Torture have highlighted these concerns. [36]

3.9.6 According to Legal Daily, the MPS directly administers 24 high-security psychiatric hospitals for the criminally insane (also known as *ankang* facilities). Unregistered religious believers and Falun Gong adherents are among those reported to be held solely for political or religious reasons in these institutions, along with mentally ill patients. Regulations for committing a person to an *ankang* facility are not clear and detainees or their families are offered few formal mechanisms for effectively challenging public security officials’ determinations of mental illness or the administrative sentencing of individuals to *ankang* facilities.

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[33] US Commission on International Religious Freedom Annual Report 2013, 30 April 2013 http://www.uscirf.gov/images/2013%20USCIRF%20Annual%20Report%20%282%29.pdf

[34] US Commission on International Religious Freedom Annual Report 2013, 30 April 2013 http://www.uscirf.gov/images/2013%20USCIRF%20Annual%20Report%20%282%29.pdf

[35] US Department of State:2012 International Religious Freedom Report – China – 20 May 2013 – Section 1 http://www.ecoi.net/local_link/247441/357656_en.html

[36] US Commission on International Religious Freedom Annual Report 2013, 30 April 2013 http://www.uscirf.gov/images/2013%20USCIRF%20Annual%20Report%20%282%29.pd

Some patients in these hospitals are reportedly given medicine against their will and sometimes forcibly subjected to electric shock treatment.[37]

3.9.7 It remains difficult to confirm some aspects of reported abuses of Falun Gong adherents. International Falun Gong-affiliated non-governmental organisations (NGOs) and international media report that detentions of Falun Gong practitioners continue to increase around sensitive dates. Authorities reportedly instruct some neighbourhood communities to report Falun Gong members to officials and offer monetary rewards to citizens who informed on Falun Gong practitioners. Falun Gong-affiliated NGOs allege that detained practitioners are subjected to various methods of physical and psychological coercion in attempts to force them to deny their belief in Falun Gong. Falun Gong sources estimate that since 1999, at least 6,000 Falun Gong practitioners have been sentenced to prison. Falun Gong adherents also have been subjected to administrative sentences of up to three years in RTL camps. Reports from overseas Falun Gong-affiliated advocacy groups estimate that thousands of adherents in the country have been sentenced to RTL. The media reports about allegations of Falun Gong practitioners held without trial at the Masanjia Labour Camp in Liaoning Province.[38]

3.9.8 In Wugang City, Hunan Province, local government officials held over 30 events relating to "evil cults" and disseminated publications during Chinese New Year, warning against Falun Gong and house churches. Officials require families to sign statements guaranteeing that they will not take part in the "evil cult" activities involving Falun Gong and house churches as a prerequisite for registering their children for school.[39]

See also: **Actors of protection (Section 2.2 above)**

Internal relocation (Section 2.3 above)

Caselaw (Section 2.4 above)

3.9.9 **Conclusion:** There is widespread repression of Falun Gong by the Chinese authorities and credible Falun Gong practitioners who have come to the attention of the authorities are likely to face ill-treatment amounting to persecution in China. They will therefore qualify for a grant of asylum under the 1951 Convention by reason of imputed political opinion.

3.9.10 The IAT found in **LL (Falun Gong, Convention Reason, Risk) China CG [2005] UKAIT 00122 (9 August 2005)** 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. This determination was upheld in the subsequent case of **LW (China) EWCA [2012] Civ. 519**.

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[37] US Department of State:2012 International Religious Freedom Report – China – 20 May 2013 – Section 1 http://www.ecoi.net/local_link/247441/357656_en.html

[38] US Department of State:2012 International Religious Freedom Report – China – 20 May 2013 – Section 1 http://www.ecoi.net/local_link/247441/357656_en.html

[39] US Department of State:2012 International Religious Freedom Report – China – 20 May 2013 – Section 1 http://www.ecoi.net/local_link/247441/357656_en.html

3.9.11 However, recent country information on the risk to practitioners, including those practising at home, suggests that there is a real risk of denunciation and a consequent risk of persecution. Caseworkers must consider whether the claimant would on return be at risk of such denunciation in their particular circumstances. Those who would be at such risk are likely to face persecution and will therefore qualify for asylum.

3.9.12 In cases where it is found that an adherent of Falun Gong will be "discreet" on return and not be at risk of denunciation, the reasons for such discretion will need to be considered in the light of HJ (Iran).

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

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

3.10.2 **Treatment:** There are 5.4 million Tibetans within China, accounting for 0.44 percent of the population. The total population of the Tibet Autonomous Region (TAR) is 2.6 million (based on the most recent census of 2000).[40]

3.10.3 During 2012, the government's respect for and protection of human rights in the TAR and other Tibetan areas deteriorated markedly. Under the banner of maintaining social stability, the government engaged in the severe repression of Tibet's unique religious, cultural and linguistic heritage by, among other means, strictly curtailing the civil rights of China's ethnic Tibetan population, including the freedom of speech, religion, association and movement. The government routinely vilifies the Dalai Lama and blames the "Dalai clique" and "other outside forces" for instigating the 83 self-immolations by Tibetan laypersons, monks, and nuns that occurred throughout 2012. In a 23 October 2012 article, the official Xinhua News Agency quotes a central party official as stating that Tibet-related issues are of paramount importance for the CCP, stability and development must be stressed in Tibetan regions and China should exert greater effort in combating the influence of the "Dalai Lama clique." Other serious human rights abuses includes extrajudicial killings, torture, arbitrary arrests, extrajudicial detentions and house arrests. There is a deepening perception among Tibetans that they are being systemically targeted for economic marginalisation and educational and employment discrimination.[41]

3.10.4 The security clampdown established after an uprising in 2008 was sustained during 2012 and increasingly extends to Tibetan areas outside the TAR. Over the course of the year, a total of 84 Tibetans set themselves on fire to protest Chinese Communist rule. The authorities responded with communications blackouts, "patriotic education" campaigns, travel restrictions and intrusive new controls on monasteries. Despite the repressive atmosphere, many Tibetans expressed solidarity with self-immolators, protested language policies and quietly maintained contact with the exile community. According to various overseas rights groups, on 14 November 2012, the government of Huangnan (Malho) TAP in Qinghai Province issued a notice to local party members and government

[40] Europa World http://www.europaworld.com (Subscription Only) Country Statistics: Area and Population Date accessed 14 August 2012

[41] US State Department China Country Report on Human Rights Practices 2012 Published on 19 April 2013 Tibet 2012 Human Rights Report http://www.state.gov/documents/organization/204405.pdf

officials ordering them to discipline bereaved family members of self-immolators by withholding public benefits, including disaster relief. The notice also calls for the punishment of laypersons, monastic personnel, family members and officials who organise or participate in burial or mourning activities. After the issuance of the 14 November notice, a number of friends, relatives and associates of self-immolators across the Tibetan Plateau were detained, arrested or sentenced.[42]

3.10.5 Freedom House reports that the authorities regularly suppress religious activities, particularly those seen as forms of dissent or advocacy of Tibetan independence. Possession of Dalai Lama-related materials can lead to official harassment and punishment. Freedom of assembly and association is severely restricted in practice. Independent trade unions and human rights groups are illegal and even non-violent protests are often harshly punished. In addition to the self-immolations, Tibetans stage periodic demonstrations or vigils to protest CCP rule or express solidarity with the immolators. Security forces sometimes react violently.[43] The Tibetan Centre for Human Rights and Democracy considers that the Chinese government continues to label all expressions of Tibetan aspirations and grievances as 'splittists' and locks them up on 'national security' grounds. Those who share information about human rights abuses in Tibet with outsiders are charged with violating State Secrets Law and imprisoned following dubious trials.[44]

3.10.6 The 2012 U.S State Department Report notes that authorities across Tibetan areas continue to arbitrarily detain Tibetan monks and laypersons for indefinite periods of time. Several of these detentions appeared to be linked to the government's attempts to punish those suspected of being associated with the self-immolations or those who refuse to co-operate with official demands to hand over the remains of self-immolation victims. In cases that authorities claim involved "endangering state security" or "separatism," trials are often cursory and closed. Authorities deny multiple requests from foreign diplomats to observe the trials of those charged with crimes related to political protests. Authorities sentenced Tibetans for alleged support of Tibetan independence regardless of whether they were alleged to have committed violent acts.[45]

3.10.7 Chinese authorities tightly restrict all media in Tibet. Such measures intensified in 2012 as the authorities sought to suppress information about self-immolations and related security crackdowns. International broadcasts are blocked and communications devices periodically confiscated. The online restrictions and monitoring in place across China is enforced even more stringently in the TAR. In July 2012, Human Rights Watch reports new media controls and invigorated state propaganda efforts, particularly in the TAR. These incorporated distribution of satellite receivers fixed to government channels and a pilot project for broadcasting official messages by the use of loudspeakers in 40 villages. A number of Tibetans who transmitted information abroad suffered repercussions including long prison sentences. Some internet and mobile-telephone users have

[42] Freedom House, Freedom in the World 2013 – Tibet – 24 May 2013
http://www.refworld.org/docid/51a75ec818.html
[43] Freedom House, Freedom in the World 2013 - Tibet, 24 May 2013
http://www.refworld.org/docid/51a75ec818.html
[44] Tibetan Centre for Human Rights and Democracy, Human Rights Situation in Tibet; Annual Report 2012, 17 January 2013, Executive Summary
http://www.ecoi.net/file_upload/1930_1361275901_120758305-annual-report-tchrd-2012.pdf
[45] US State Department, China Country Report on Human Rights Practices 2012, 19 April 2013, Tibet 2012 Human Rights Report , Executive Summary and Trial Procedures
http://www.state.gov/documents/organization/204405.pdf

been arrested solely for accessing banned information. On several occasions in 2012, the authorities cut off the internet and mobile-phone text-messaging near the sites of self-immolations in Sichuan and Gansu Provinces. Also during 2012, officials detained or imprisoned at least 10 cultural figures whose work, often circulated by hand within Tibet and shared with the outside world, emphasizes Tibetan identity. According to overseas Tibetan groups, more than 60 such writers, intellectuals and musicians have been arrested since 2008, with some sentenced to extensive prison terms.[46]

3.10.8 The judicial system in Tibet remains abysmal and torture is reportedly widespread. In March 2012, press watchdogs reports that public notices posted in eight counties in Gansu Province explicitly threatened "violent beating/torture" for those found distributing banned information. In June 2012, a Tibetan monk in Sichuan died due to torture in custody after being detained the previous month for putting up pro-independence posters. Defendants lack access to meaningful legal representation. Trials are closed if state security is invoked and sometimes even when no political crime is listed. Chinese lawyers who offer to defend Tibetan suspects are harassed or disbarred. Security forces routinely engage in arbitrary detention and detainees' families are often left uninformed as to their whereabouts or well-being. In December 2012 the central authorities unveiled guidelines indicating that engaging in self-immolations and organising, assisting or gathering crowds related to such acts should be considered criminal offences, including intentional homicide in some cases. A partial list of political prisoners published by the CECC incorporates over 600 Tibetans as of September 2012. The commission's Political Prisoner Database incorporates 267 cases of Tibetans detained in 2012.[47]

3.10.9 Heightened restrictions on freedom of movement was employed during 2012, particularly in areas where self-immolations takes place. New travel restrictions introduced in March 2012 inhibited many Tibetans from entering the TAR. It was reported in May 2012 that Tibetans without permanent residency permits are being forced to leave Lhasa. Increased security efforts kept the number of Tibetans who successfully crossed the border into Nepal at between 300 and 600 in 2012, continuing a trend of annual declines from over 2,000 in 2007. In February 2012, hundreds of Tibetans were interrogated and subjected to "re-education" sessions upon returning from India, where they went for religious teachings by the Dalai Lama. According to Radio Free Asia, new regulations introduced in April led to almost no passports being issued to TAR Tibetans for the rest of 2012.[48]

3.10.10 Tibetans receive preferential treatment in university admission examinations, but this is often not enough to secure entrance. The dominant role of the Chinese language in education and employment limits opportunities for many Tibetans. Private employers favour ethnic Chinese for many jobs and Tibetans reportedly find it more difficult to obtain permits and loans to open businesses**.**

3.10.11 An unknown number of Tibetans are detained, arrested and/or sentenced as a result of their political or religious activity. Many prisoners are held in extrajudicial

[46] Freedom House, Freedom in the World 2013 – Tibet – 24 May 2013
http://www.refworld.org/docid/51a75ec818.html
[47] Freedom House, Freedom in the World 2013 – Tibet – 24 May 2013
http://www.refworld.org/docid/51a75ec818.html
[48] Freedom House, Freedom in the World 2013 – Tibet – 24 May 2013
http://www.refworld.org/docid/51a75ec818.html

RTL prisons and never appear in public court. Based on information available from the CECC political prisoner database, as of 1 September 2012 a total of 626 Tibetan political prisoners are imprisoned, most in Tibetan areas. The actual number of Tibetan political prisoners and detainees is believed to be much higher but the lack of access to prisoners and prisons, as well as the dearth of reliable official statistics, made a determination difficult. An unknown number of persons continue to be held under the RTL system. Of the 626 Tibetan political prisoners tracked by the CECC, 597 were ethnic Tibetans detained on or after 10 March 2008 and 29 were Tibetans detained before to 10 March 2008. Of the 597 Tibetan political prisoners who were detained on or after 10 March 2008, a total of 308 were believed or presumed to be detained or imprisoned in Sichuan Province. There are 188 in the TAR, 66 in Qinghai Province, 33 in Gansu Province, one in the Xinjiang Uighur Autonomous Region and one in Beijing Municipality. There are 140 persons serving known sentences, which range from 18 months to life imprisonment. The average sentence length is seven years and two months. Of the 140 persons serving known sentences, 65 are monks, nuns or Tibetan Buddhist teachers.[49]

3.10.12 The government severely restricts travel by foreign journalists to Tibetan areas. The entire TAR and many Tibetan counties of Sichuan, Qinghai, and Gansu provinces were closed to foreigners through much of 2012. A few foreign journalists reports they can visit the TAR by participating in highly structured, government-organised tours, where the constant presence of government officials made independent reporting difficult. Outside the TAR foreign journalists are frequently barred from entering or were expelled from Tibetan areas despite government rules, adopted in 2008, which state that foreign journalists do not need the permission of local authorities to conduct reporting.[50]

3.10.13 In June 2013, Human Rights Watch reports that the Chinese government, under the rationale of a campaign to improve rural living standards, sent more than 20,000 officials and communist party cadres to Tibetan villages to undertake intrusive surveillance of people, carry out widespread political re-education and establish partisan security units.[51]

See also: **Actors of protection (Section 2.2 above)**

Internal relocation (Section 2.3 above)

Caselaw (Section 2.4 above)

3.10.14 **Conclusion:** It is clear that the Chinese authorities may take serious action against Tibetans expressing political or religious views and that this treatment is likely to 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.

3.10.15 The case of SP determines that Tibetans who have made their way to the West having left China unlawfully on the Tibet/Nepal route face a real risk on return of

[49] US State Department China Country Report on Human Rights Practices 2012 Published on 19 April 2013 Tibet 2012 Human Rights Report http://www.state.gov/documents/organization/204405.pdf
[50] US State Department China Country Report on Human Rights Practices 2012 Published on 19 April 2013 Tibet 2012 Human Rights Report http://www.state.gov/documents/organization/204405.pdf
[51] Human Rights Watch, China: 'Benefit the Masses' Campaign Surveilling Tibetans, 19 June 2013 http://www.hrw.org/news/2013/06/18/china-benefit-masses-campaign-surveilling-tibetans

detention and ill-treatment which amounts to persecution [paragraph 119d]. Case owners should be aware that, of the individual accounts considered in **SP and Others**, two were not found to be credible. The appeals were only allowed because the AIT was prepared to accept that the appellants had left Tibet illegally via Nepal and, on this basis alone, the AIT considered that there would be a real risk of treatment amounting to persecution on return. For cases potentially falling within the ambit of **SP and Others**, in addition to examining the credibility or otherwise of the substantive claim and whether or not an appellant had a well-founded fear of persecution before leaving China,(including ethnicity, nationality and place/country of origin or habitual residence), case owners should also take particular care in establishing both the circumstances of the applicant's exit from China (i.e. was it lawful?) and also, full details of the route to the UK (i.e. did the applicant travel via Nepal or did he leave China by another route?). Unless it can be shown that exit from China was lawful, and not on the Tibet/Nepal route, Tibetans returned to Beijing or Shanghai are reasonably likely to face persecution on return and therefore the issue of an internal relocation alternative does not arise [paragraph 119g]. Findings on all material aspects of the claim should be reflected in the written decision.

3.10.16 As regards to returns to Tibet from the UK, caseworkers should note that there are currently no direct routes and that any returns are likely to be affected via Nepal.

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

3.11 Involvement with illegal religious organisations

3.11.1 Some applicants apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of the Chinese authorities due to their religious beliefs and practices and/or involvement with illegal religious organisations.

3.11.2 **Treatment:** The constitution states that Chinese citizens enjoy "freedom of religious belief" but limits protections for religious practice to "normal religious activities." The government applies this term in a manner that does not meet international human rights standards for freedom of religion and routinely enforces other laws that restrict religious freedom. The constitution also proclaims the right of citizens to believe in or not believe in any religion. However, only religious groups belonging to one of the five state-sanctioned "patriotic religious associations" (Buddhist, Taoist, Muslim, Roman Catholic, and Protestant) are permitted to register with the government and legally hold worship services. The government's respect for religious freedom declined during 2012, particularly in Tibetan areas and the Xinjiang Uighur Autonomous Region (XUAR).[52]

[52] US Department of State:2012 International Religious Freedom Report – China – 20 May 2013 – Section 1 http://www.ecoi.net/local_link/247441/357656_en.html

3.11.3 The government emphasizes state control over religion and restricts the activities and personal freedom of religious adherents when these were perceived, even potentially, to threaten state or the CCP interests, including social stability. Local authorities often pressured unaffiliated religious believers to affiliate with patriotic associations and used a variety of means, such as administrative detention, including confinement and abuse at RTL camps, to punish members of unregistered religious or spiritual groups. In some parts of the country, however, local authorities tacitly approved of or did not interfere with the activities of unregistered groups. Guangdong officials, for example, increasingly allowed unregistered places of worship to hold services if they remain small in scale and did not disrupt social stability. In other areas, local officials punished the same activities by restricting meetings, confiscating and destroying property, physically assaulting and injuring participants or imprisoning leaders and worshippers. In some areas, the authorities charged religious believers not affiliated with a patriotic religious association with various crimes, including "illegal religious activities" or "disrupting social stability."[53]

3.11.4 The government has signed, but not ratified, the International Covenant on Civil and Political Rights (ICCPR), which provides all individuals the right to "adopt a religion or belief" of choice and manifest belief through "worship, observance and practice." The constitution provides for the right to hold or not hold a religious belief and individuals may not discriminate against citizens "who believe in, or do not believe in any religion." According to the US International Religious Freedom Report 2013, it is not possible to take legal action against the government on the basis of the religious freedom protections offered by the constitution. Criminal law allows the state to sentence government officials to up to two years in prison if they violate religious freedom. There were no reported cases of such prosecutions during 2012.[54]

3.11.5 The government continues to use the law to restrict religious activity and manage religious groups. The Chinese government's religion policy is governed by the National Regulations on Religious Affairs (NRRA), which was first issued in March 2005 and updated in 2007. The NRRA requires all religious groups to affiliate with one of seven government-approved associations and allows government control of every aspect of religious practice and related activities. The NRRA does allow registered religious groups to carry out some religious activities and charitable work. When registered, religious communities can apply for permission to possess property, accept donations from overseas, conduct religious education and training and host inter-provincial religious meetings. The NRRA permits only "normal religious activity" and contains ambiguous national security provisions that suppress the peaceful activity of unregistered religious groups, organisations deemed "cults" and Uighur Muslims and Tibetan Buddhists.[55]

3.11.6 The government seeks to "guide" unregistered Christian groups toward affiliation with government sanctioned groups and to stop the proliferation of unregistered Buddhist, Daoist or folk religion groups because they promote "superstition."

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[53] US Department of State:2012 International Religious Freedom Report – China – 20 May 2013 – Section 1 http://www.ecoi.net/local_link/247441/357656_en.html

[54] US Department of State:2012 International Religious Freedom Report – China – 20 May 2013 – Section 1 http://www.ecoi.net/local_link/247441/357656_en.html

[55] United States Commission on International Religious Freedom 2013 Annual Report – China – 30 April 2013 http://www.uscirf.gov/images/2013%20USCIRF%20Annual%20Report%20(2).pdf

Catholics, Protestants, Buddhists and spiritual movements consistently have not joined officially-sanctioned religious organisations because they refuse, amongst other things, to provide the names and contact information of their followers, submit leadership decisions to the government or to one of the government-approved religious organisations, or seek advance permission for all major religious activities or theological positions. They also do not trust government oversight, given past persecution. The Chinese government, as part of official policy, continues to restrict peaceful religious expression and the expansion of religious ideas or worship on the Internet. It confiscates or punishes individuals for the distribution of unapproved Bibles, Muslim books, Falun Gong documents and interpretations of religious texts. It also blocks access to Internet sites of religious groups or those with "illegal" religious content. Nevertheless, a wide array of religious materials and books is available for purchase without restrictions in state-approved bookstores.[56]

3.11.7 The religious freedom conditions in Tibetan Buddhist areas of China are worse now than at any time over the past decade. Since 2008 protests in Tibetan areas, the government's control of the doctrines, worship sites and selection of religious leaders of Tibetan Buddhism, and its arrests and detentions of individuals who oppose government policy or support the Dalai Lama, have nurtured deep resentments among Tibetans.[57]

3.11.8 During 2012, the Chinese government continues efforts not only to strengthen control over Tibetan Buddhism but also to chart its future development, including new regulations, new oversight bureaucracy and the opening of a government approved Tibetan Theological Institute. Zhu Weiqun, United Front Work Department's deputy director and director of the Communist Party's General Office for Tibet Affairs, said the goal of the new institute is to "conform Tibetan Buddhism to the development of our times, and to resist the Dalai clique's religious infiltration and remove the unsophisticated customs and habits that are not in line with social progress.[58]

3.11.9 The Chinese government continues to restrict the religious activities of Protestants who worship in the government-approved church and to harass, intimidate, detain and arrest unregistered Protestants for religious activities protected by China's constitution. In 2012, police and security officials detained almost 1,500 Protestants, some in long-term home detention, sentenced as many as 18 religious leaders to prison or RTL camps, harassed and closed churches and curtailed both public worship activities and outreach to students. Members of unregistered Protestant groups that the government arbitrarily deems "evil cults" are the most vulnerable to detention, arrest and harassment. Examples of banned groups include the Disciples Association, the "Shouters," and the Local Church, a group that was established by Chinese church leader Watchman Nee.[59]

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[56] United States Commission on International Religious Freedom 2013 Annual Report – China – 30 April 2013 http://www.uscirf.gov/images/2013%20USCIRF%20Annual%20Report%20(2).pdf
[57] United States Commission on International Religious Freedom 2013 Annual Report – China – 30 April 2013 http://www.uscirf.gov/images/2013%20USCIRF%20Annual%20Report%20(2).pdf
[58] United States Commission on International Religious Freedom 2013 Annual Report – China – 30 April 2013 http://www.uscirf.gov/images/2013%20USCIRF%20Annual%20Report%20(2).pdf
[59] United States Commission on International Religious Freedom 2013 Annual Report – China – 30 April 2013 http://www.uscirf.gov/images/2013%20USCIRF%20Annual%20Report%20(2).pdf

3.11.10 The majority of Protestants in China, estimated to be at least 70 million, are affiliated with the "house church" movement, which refuses, both for theological and political reasons, to affiliate with the government-sanctioned Three-Self Protestant Movement (TSPM) or China Christian Council (CCC). The government requires all Protestant groups to register and join one of these officially-recognized religious organisations. Those that do not, are technically illegal, though there is uneven enforcement of this provision, with some churches meeting openly and regularly with memberships of several hundred to a thousand. The government largely tolerates groups that meet in homes or in small groups, but continues to view with suspicion religious organisations with extensive foreign ties, whose memberships grow too quickly, whose leadership becomes too popular or organises across provincial lines, or whose religious activities allegedly disrupt ethnic or social "harmony."[60]

3.11.11 During 2012, the government attempted to force unregistered groups to either join the TSPM or face harassment, closure or other penalties. In Xilinhot city, Xilingol league, Inner Mongolia Autonomous Region, local authorities demanded that the New Canaan Church affiliate with the TSPM. In January 2012, public security officials raided the house church, confiscated Bibles and hymnals, installed new locks, pressured the landlord to terminate the lease and interrogated the Pastor and two members of the congregation for several hours before releasing them. In May 2012, police interrupted services at house churches in Shijiazhuang city, Hebei province and Langzhong city, Nanchong municipality, Sichuan province and told parishioners to worship only at a TSPM church. In August 2012, three churches in Dongguan, Guangdong province were closed after they refused to join the TSPM. Also in August 2012, a house church in Gushi county, Henan province, was raided, the church's Pastor beaten and the police said the church must join the TSPM if it was to remain open.[61]

3.11.12 In the Xinjiang Uighur Autonomous Region (XUAR) and other areas of Xinjiang province, there continues to be severe religious freedom abuses affecting both Uighur Muslims and others engaged in independent religious activity. In an effort to eradicate "extremism and terrorism" the XUAR authorities view independent religious activities as evidence of "extremism" and prohibit outward manifestations of Islamic piety among students and government employees.[62] The CECC notes that authorities continue to identify ''religious extremism'' as one of the ''three forces'' threatening stability in the region and targeted religious practice in security campaigns. A new plan to deploy 8,000 public security officers to XUAR villages incorporated ''cracking down on illegal religious activities'' among its aims.[63] The United States Commission on International Religious Freedom reports that Uighur Muslims continues to serve prison sentences for engaging in independent religious activity. In May 2012, nine Uighurs were sentenced to prison on charges related to their "illegal religious

[60] UNHCR Refworld – USCIRF Annual Report 2013 – Countries of Particular Concern: China
United States Commission on International Religious Freedom, 2013 Annual Report – China , 30 April 2013 http://www.uscirf.gov/images/2013%20USCIRF%20Annual%20Report%20(2).pdf

[61] UNHCR Refworld – USCIRF Annual Report 2013 – Countries of Particular Concern: China
United States Commission on International Religious Freedom, 2013 Annual Report – China , 30 April 2013 http://www.uscirf.gov/images/2013%20USCIRF%20Annual%20Report%20(2).pdf

[62] UNHCR Refworld – USCIRF Annual Report 2013 – Countries of Particular Concern: China
United States Commission on International Religious Freedom, 2013 Annual Report – China , 30 April 2013 http://www.uscirf.gov/images/2013%20USCIRF%20Annual%20Report%20(2).pdf

[63] Congressional Executive Commission on China Annual Report 2012, 10 October 2012, IV Xinjiang, Freedom of Religion P. 151 http://www.gpo.gov/fdsys/pkg/CHRG-112shrg76190/pdf/CHRG-112shrg76190.pdf

activities." Qahar Mensur and Muhemmed Tursun continue to serve three-year terms for allegedly distributing "illegal religious publications," although the charge is disputed.[64]

3.11.13 Amnesty International reports that during 2012 the authorities maintained their "strike hard" campaign, criminalizing what they labelled "illegal religious" and "separatist" activities and clamping down on peaceful expressions of cultural identity.[65] The US State Department notes that the authorities often failed to distinguish between peaceful religious practice and criminal or terrorist activities.[66]

3.11.14 The United States Commission on International Religious Freedom reports that the Chinese government continues to interfere in the religious activities of Chinese Catholics, including the ability of priests and bishops to affiliate with the Holy See. Tensions between the government-approved "Catholic Patriotic Association" (CPA) and so-called "underground" Catholics continues and priests and bishops continue to be imprisoned. Governmental efforts to convince or coerce Catholic clergy to join the CPA are particularly intense in the two provinces with the largest Catholic communities, Hebei and Shaanxi. Priests, seminarians and some laity were forced to attend political "education" sessions in 2012.[67] The CECC also notes that the pressures on Catholic clergy to affiliate with the CPA and recognise its leaders continued during 2012.[68]

See also: **Actors of protection (Section 2.2 above)**

Internal relocation (Section 2.3 above)

Caselaw (Section 2.4 above)

3.11.15 **Conclusion:** Although there are serious 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 applicants from this category of claim are therefore unlikely to qualify for asylum or humanitarian protection.

3.11.16 Members of unregistered religious groups face more difficulties than members of registered communities. While the level of ill-treatment suffered by unregistered religious groups is subject to regional variation and the attitude of local officials, individuals from these groups do face restrictions of their ability to worship, intimidation and serious harassment, assault, arrest, political indoctrination, criminal detention and administrative detention in abusive conditions which in many cases will amount to persecution. Where an individual is able to

[64] United States Commission on International Religious Freedom 2013 – China –30 April 2013 http://www.uscirf.gov/images/2013%20USCIRF%20Annual%20Report%20(2).pdf
[65] Amnesty International Annual Report 2013– China, 23 May 2013 http://www.amnesty.org/en/region/china/report-2013
[66] US Department of State:2012 International Religious Freedom Report – China – 20 May 2013 – Section II http://www.ecoi.net/local_link/247441/357656_en.html
[67] United States Commission on International Religious Freedom 2013 – China –30 April 2013 http://www.uscirf.gov/images/2013%20USCIRF%20Annual%20Report%20(2).pdf
[68] Congressional Executive Commission on China Annual Report 2012, 10 October 2012, Catholicism p. 80 http://www.gpo.gov/fdsys/pkg/CHRG-112shrg76190/pdf/CHRG-112shrg76190.pdf

demonstrate that they are at serious risk of persecution on account of their beliefs and activities a grant of asylum will be appropriate.

3.12 Involvement with illegal political organisations or perceived political opposition

3.12.1 Some applicants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of Chinese authorities due to their involvement with illegal political organisations or because they are perceived as political opponents or dissidents by the government (e.g. human rights activists and journalists).

3.12.2 **Treatment:** The constitution states that "all power in the People's Republic of China belongs to the people" and that the organs through which the people exercise state power are the National People's Congress and the people's congresses at provincial, district and local levels. While the law provides citizens the right to change their government peacefully, citizens cannot freely choose or change the laws or officials that govern them. In practice the CCP controls virtually all elections. The CCP continues to control appointments to positions of political power.[69] Freedom House reports that citizens who attempt to form opposition parties or advocate for democratic reforms have been sentenced to long prison terms in recent years.[70] The US State Department notes that throughout 2012 human rights activists, journalists, unregistered religious leaders and former political prisoners and their family members continue to be among those targeted for arbitrary detention or arrest. Repression and coercion, particularly against organisations and individuals involved in rights advocacy and public interest issues, were routine. Efforts to silence and intimidate political activists and public interest lawyers continue to increase. Authorities resort to extralegal measures such as enforced disappearance, "soft detention" and strict house arrest, including house arrest of family members, to prevent the public voicing of independent opinions.[71]

3.12.3 Amnesty International reports that the state continues to use the criminal justice system to punish its critics. Hundreds of individuals are sentenced to long prison terms or sent to RTL camps for peacefully exercising their rights to freedom of expression and freedom of belief. People are frequently charged with "endangering state security", "inciting subversion of state power" and "leaking state secrets" and are sentenced to long prison terms, in many cases, for posting online or communicating information overseas that was deemed sensitive. Lawyers who take on controversial cases face harassment and threats from the authorities and, in some cases, the loss of professional licences, severely curtailing people's access to justice.[72] The CECC notes that officials continue to use ambiguous criminal charges to imprison rights advocates, writers, Internet essayists, democracy advocates and journalists who engage in peaceful expression and assembly.[73] Officials continue to detain and harass Chinese

[69] US State Department China Country Report on Human Rights Practices 2012 Published on 19 April 2013 Section 3 http://www.state.gov/documents/organization/204405.pdf
[70] Freedom House – Freedom in the World 2013 China, January 2013 http://www.freedomhouse.org/report/freedom-world/2013/china
[71] US State Department China Country Report on Human Rights Practices 2012, 19 April 2013 Section 1 http://www.state.gov/documents/organization/204405.pdf
[72] Amnesty International Annual Report 2013– China, 23 May 2013 http://www.amnesty.org/en/region/china/report-2013
[73] Congressional Executive Commission on China Annual Report 2012, 10 October 2012, Abuse of Criminal

citizens who sought to share online material that authorities deem to be politically sensitive.[74]

3.12.4 The authorities maintained a stranglehold on political activists, human rights defenders and online activists, subjecting many to harassment, intimidation, arbitrary detention and enforced disappearance. At least 130 people were detained or otherwise restricted to stifle criticism and prevent protests ahead of the leadership transition initiated at the18th Chinese Communist Party Congress in November 2012.[75] According to the Ministry of Civil Affairs' statistics, almost all of the country's more than 600,000 villages had implemented direct elections for members of local sub-government organisations known as village committees. The direct election of officials by ordinary citizens remains narrow in scope and strictly confined to the local level. The government estimates that serious procedural flaws blemished one-third of all elections. Corruption, vote buying and interference by township-level and CCP officials continue to be a problem. The law permits each voter to cast proxy votes for up to three other voters.[76]

3.12.5 Government officials continue to deny holding any political prisoners, asserting that authorities detained persons not for their political or religious views but because they violated the law. However, authorities continue to imprison citizens for reasons related to politics and religion. Tens of thousands of political prisoners remain incarcerated, some in prisons and others in RTL camps or administrative detention. The government did not grant international humanitarian organisations access to political prisoners.[77] In October 2012, the CECC published a partial list of over 1,400 political prisoners.[78]

3.12.6 Foreign NGOs estimates that several hundred persons remain in prison for "counter-revolutionary crimes," which were removed from the criminal code in 1997. Thousands of others are serving sentences under state security statutes. The government apparently has not reviewed the cases of those charged before 1997 with counter-revolutionary crimes or released persons jailed for non-violent offences under repealed provisions of the criminal law. The government maintains that prisoners serving sentences for counter-revolutionary crimes and endangering state security are eligible to apply for sentence reduction and parole. However, political prisoners are granted early release at lower rates than prisoners in other categories. Observers believe that persons remained in prison for crimes in connection with their involvement in the 1989 Tiananmen pro-democracy movement, although the number was unknown because related official statistics were never made public.[79]

Law To Punish Free Expression p. 54
http://www.gpo.gov/fdsys/pkg/CHRG-112shrg76190/pdf/CHRG-112shrg76190.pdf
[74] Congressional Executive Commission on China Annual Report 2012, 10 October 2012, Internet and Other Electronic Media p. 51 http://www.gpo.gov/fdsys/pkg/CHRG-112shrg76190/pdf/CHRG-112shrg76190.pdf
[75] Amnesty International Annual Report 2013 – China, 23 May 2013
http://www.amnesty.org/en/region/china/report-2013
[76] US State Department China Country Report on Human Rights Practices 2012 Published on 19 April 2013 Section 3 http://www.state.gov/documents/organization/204405.pdf
[77] US State Department China Country Report on Human Rights Practices 2012 Published on 19 April 2013 Section 1 http://www.state.gov/documents/organization/204405.pdf
[78] Freedom in the World Annual Report 2013 China, January 2013
http://www.freedomhouse.org/report/freedom-world/2013/china
[79] US State Department China Country Report on Human Rights Practices 2012 Published on 19 April 2013 Section 1 http://www.state.gov/documents/organization/204405.pdf

3.12.7 In 2010 activist Liu Xianbin, signatory of Charter '08 (a manifesto calling for human rights and democracy), was indicted for subversion for an article he wrote following his 2009 release from a previous prison term. In March 2011 he was sentenced to 10 years in prison for inciting "subversion of state power." Formally detained in 2010, Liu was charged for articles he wrote and posted on overseas websites, as well as for involvement with a Beijing seminar regarding three Fujian persons imprisoned for Internet postings. Liu was reportedly denied access to his lawyers during his detention.[80] Criminal punishments continue to include "deprivation of political rights" for a fixed period after release from prison, during which time the individual is denied rights of free speech, association and publication. Former prisoners report that their ability to find employment, travel, obtain residence permits, rent residences and access social services is severely restricted. Former political prisoners and their families are frequently subjected to police surveillance, telephone wiretaps, searches and other forms of harassment or threats.[81]

3.12.8 The FCO notes that use of unlawful and arbitrary measures to target human rights defenders continued during 2012. These incorporated enforced disappearance, house arrest, restrictions on freedom of movement, communication and association, extrajudicial detention (including RTL, "black jails"[82] (used to detain those who complain to higher levels of government about local officials)[83] and involuntary psychiatric committal) and harassment of family members. Human rights defenders also continue to be subjected to criminal charges and procedurally inconsistent trials, often involving the poorly defined category of offences encompassing "endangering state security." Diplomats and media are repeatedly refused access to their trials.[84]

3.12.9 Amnesty International reports that at the end of 2011 and the beginning of 2012, several human rights defenders who called for political reform were sentenced to long jail terms for "inciting subversion of state power" through articles and poems they wrote and distributed. Sentences comprised of ten years for Guizhou human rights forum leader Chen Xi and activist Li Tie, nine years for Sichuan human rights activist Chen Wei, seven years for Zhejiang Democratic Party member Zhu Yufu and, at the end of 2012, eight years for Jiangsu internet activist Cao Haibo, who set up an online group to discuss constitutional law and democracy. Human rights defenders working on economic, social and cultural rights were also targeted. They were either placed under surveillance, harassed or charged with vaguely worded offences.[85]

See also: **Actors of protection (Section 2.2 above)**

Internal relocation (Section 2.3 above)

[80] US State Department China Country Report on Human Rights Practices 2012 Published on 19 April 2013 Section 1 http://www.state.gov/documents/organization/204405.pdf
[81] US State Department China Country Report on Human Rights Practices 2012 Published on 19 April 2013 Section 1 http://www.state.gov/documents/organization/204405.pdf
[82] Foreign and Commonwealth (FCO) Human Rights and Democracy 2012, April 2013 http://www.hrdreport.fco.gov.uk/human-rights-in-countries-of-concern/china/
[83] Radio Free Asia - Chinese Rights Group Launches Campaign to Abolish 'Black Jails' – 8 July 2013 http://www.rfa.org/english/news/china/campaign-07082013111742.html
[84] Foreign and Commonwealth (FCO) Human Rights and Democracy 2012, April 2013 http://www.hrdreport.fco.gov.uk/human-rights-in-countries-of-concern/china/
[85] Amnesty International Annual Report 2013– China, 23 May 2013 http://www.amnesty.org/en/region/china/report-2013

Caselaw (Section 2.4 above)

3.12.10 **Conclusion:** The Supreme Court held in **RT (Zimbabwe)** that the rationale of the decision in **HJ (Iran)** extends to the holding of political opinions. An individual should not be expected to modify or deny their political belief, or the lack of one, in order to avoid persecution.

3.12.11 The principle established in RT applies with regard to those with no political opinion in addition to those who hold political views opposing the Chinese Communist Party. Internal relocation is not likely to be an option for such claimants, but case owners should give careful consideration to the individual circumstances and details of the case.

3.12.12 It is clear that the Chinese authorities may take serious action against individuals involved with opposition political parties, perceived government critics and organisations and individuals involved in rights advocacy and public interest issues, who they believe pose a threat to the state, and that this treatment is likely to 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.

3.13 Forced abortion/sterilisation under 'one child policy'

3.13.1 Some applicants will apply for asylum or make a human rights claim based on ill-treatment amounting to persecution at the hands of Chinese authorities due to them having more than one child.

3.13.2 **Treatment:** 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. The government restricts the rights of parents to choose the number of children they have. National law prohibits the use of physical coercion to force persons to submit to abortion or sterilization. However, intense pressure to meet birth-limitation targets set by government regulations results in instances of local family-planning officials' using physical coercion to meet government goals. Such practices incorporated the mandatory use of birth control and the abortion of unauthorised pregnancies. In the case of families that already had two children, one parent was often pressured to undergo sterilization.[86]

3.13.3 According to the CECC, Chinese officials continue to actively promote and implement population planning policies which, in both their nature and implementation, violate international standards. During the CECC's 2012 reporting year, central and local authorities continued to monitor and control the reproductive lives of Chinese citizens, and in some cases inflicted harassment and abuse in violation of Chinese law. Officials in some localities experimented with policy reform, while at least one top-level official publicly ruled out national-level reform for at least the next five years.[87]

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[86] US State Department China Country Report on Human Rights Practices 2012 Published on 19 April 2013 Section 6 http://www.state.gov/documents/organization/204405.pdf

[87] CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA ANNUAL REPORT 2012, ONE HUNDRED TWELFTH CONGRESS SECOND SESSION, OCTOBER 10, 2012 http://www.gpo.gov/fdsys/pkg/CHRG-112shrg76190/pdf/CHRG-112shrg76190.pdf

3.13.4 The 2002 national population and family-planning law standardizes the implementation of the government's birth-limitation policies, however, enforcement varies significantly. The law grants married couples the right to have one birth and allows eligible couples to apply for permission to have a second child if they meet conditions stipulated in local and provincial regulations. The one-child limit was more strictly applied in urban areas, where only couples meeting certain conditions are permitted to have a second child (e.g., if each of the would-be parents was an only child). In most rural areas, the policy was more relaxed, with couples permitted to have a second child in cases where their first child was a girl. For those who become pregnant but do not meet the necessary requirements to bear the child, officials in some cases impose heavy fines, threaten or execute eviction or home demolition or perform forced abortions or sterilizations. Ethnic minorities were subject to less stringent rules. Nationwide, 35 percent of families fell under the one-child restrictions and more than 60 percent of families are eligible to have a second child, either outright or if they meet certain criteria. The remaining 5 percent are eligible to have more than two children. According to government statistics, the average fertility rate for women nationwide was 1.8. In the country's most populous and prosperous city, Shanghai, the fertility rate was 0.8.[88]

3.13.5 Chinese officials have allowed for limited relaxation of local population planning policies, yet continue to rule out the near-term possibility of major nationwide population planning policy reform or cancellation. In November 2011, Henan province became the last of China's 31 provincial-level jurisdictions to implement a ''two-child policy'' (shuang du), permitting married couples to have two children if both parents are only children themselves. Citizens have increased calls for population policy reform. In July 2012, for example, a group of Chinese scholars issued an open letter calling on the NPC to ''begin the important work of comprehensively revising the 'Population and Family Planning Law' as soon as possible.'' While the National Population and Family Planning Commission (NPFPC) led a special campaign in 2012 to ''tidy up'' offensive and in some cases violent, family planning propaganda slogans that had been displayed around the country for decades. Top Communist Party and government leaders, as well as state media outlets, continue to publicly defend the national-level policy and rule out the possibility of its cancellation.[89]

3.13.6 The national family-planning authorities shifted their emphasis from lowering fertility rates to maintaining low fertility rates and emphasized quality of care in family-planning practices. In 2010 a representative of the National Population and Family Planning Commission reported that 85 percent of women of childbearing age used some form of contraception. Of those, 70 percent used a reversible method, however, a survey taken in September 2012 found that only 12 percent of women between ages 20 to 35 had a proper understanding of contraceptive methods. The country's birth-limitation policies retains harshly coercive elements in law and practice. The National Population and Family Planning Commission reported that 13 million women annually underwent abortions caused by

[88] US State Department China Country Report on Human Rights Practices 2012 Published on 19 April 2013 Section 6 http://www.state.gov/documents/organization/204405.pdf

[89] CONGRESSIONAL EXECUTIVE COMMISSION ON CHINA ANNUAL REPORT 2012, ONE HUNDRED TWELFTH CONGRESS, SECOND SESSION, OCTOBER 10, 2012 http://www.gpo.gov/fdsys/pkg/CHRG-112shrg76190/pdf/CHRG-112shrg76190.pdf

unplanned pregnancies as the financial and administrative penalties for unauthorised births are strict.[90]

3.13.7 Despite increasing discussion of potential reforms, China's population controls remain in place. Compulsory abortion and sterilization, though less common than in the past, still occur fairly frequently, and high-profile cases sparked public outrage during 2012. According to the CECC, regulations in 18 of 31 provincial-level administrative units explicitly endorse mandatory abortions as an enforcement tool. Officials who fail to meet birth and sterilization quotas risk disciplinary action and relatives of unsterilized women or couples with unapproved pregnancies are subjected to high fines, job dismissal and detention in 2012. These controls, combined with commercial ultrasound technology and cultural and economic pressures favouring boys, have led to sex-selective abortion and a general shortage of females, exacerbating the problem of human trafficking.[91]

3.13.8 Regulations requiring women who violate family-planning policy to terminate their pregnancies still exist in the 25th and 22nd provisions of the Population and Family Control Regulation of Liaoning 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 unauthorised pregnancies.[92]

3.13.9 According to the CECC, during 2012 authorities in a wide range of localities implemented population planning enforcement campaigns that employs coercive measures to prevent or terminate ''out-of-plan'' pregnancies. In a March 2012 announcement of one such campaign, the Luxi town government in Pingxiang city, Jiangxi province, outlines ''focal points'' for population planning work, including sterilizing couples in ''rural two-daughter households,'' collecting social maintenance fees, and terminating ''out-of-plan'' pregnancies. Between October 2011 and August 2012, the Commission noted township, county and city government reports from at least eight provinces (Jiangxi, Hubei, Hunan, Guangdong, Anhui, Guizhou, Fujian, and Shandong) using phrases such as ''spare no efforts'' and ''use all means necessary'' to urge officials to implement family planning measures, including ''remedial measures,'' the ''two inspections'' (intrauterine device (IUD) inspections and pregnancy inspections), and the ''four procedures'' (IUD implants, first-trimester abortions, mid- to late-term abortions and sterilization).[93] Human Rights Watch reports that in recent years coercive birth control policies increasingly extends to ethnic minority areas such as Tibet and Xinjiang.[94]

3.13.10 The Immigration and Refugee Board of Canada notes that when describing some of the "coercive" tactics involved in "mandated abortion," Yang Zhizhu, a law professor at China Youth University of Political Science who has written extensively on birth quotas, explains that "there are 'population schools' that illegally detain the parents, grandparents and husband of the pregnant woman, or

[90] US State Department China Country Report on Human Rights Practices 2012 Published on 19 April 2013 Section 1 http://www.state.gov/documents/organization/204405.pdf
[91] Freedom House, Freedom in the World Annual Report 2013 China, January 2013 http://www.freedomhouse.org/report/freedom-world/2013/china

[93] Congressional Executive Commission on China Annual Report 2012, 10 October 2012, Population planning p.90 http://www.gpo.gov/fdsys/pkg/CHRG-112shrg76190/pdf/CHRG-112shrg76190.pdf
[94] Human Rights Watch, World Report 2013 China, 31 January 2013 http://www.hrw.org/world-report/2013/country-chapters/china?page=1

even the woman herself, in order to force them into 'willingness' to have an abortion. Neighbours, too, will scare the pregnant woman and there are even damages incurred to residences in order to scare the woman into 'willingness'."

3.13.11 Similarly, the Executive Director of All Girls Allowed explains that while it is very difficult to determine how often abortions are performed under the threat of violence, it is "very common" for women to be threatened with a "very strong punishment… to incentivise a 'voluntary' abortion" Additionally, China Human Rights Defenders, an international NGO, indicates that women who do not pay the mandated fee for unauthorised pregnancies may be forced by the authorities to have an abortion.[95]

3.13.12 In April 2012 government officials in Fujian City seized a woman and forced her to abort her child. In June 2012 authorities forcefully took a seven-month pregnant woman, Feng Jianmei, from her home to a hospital in Shaanxi Province and induced the abortion of her child. In response to national and international media attention, the government launched an investigation, which determined that the local family planning bureau had violated her rights. Two local officials were fired and five otherwise sanctioned. Feng was awarded 70,000 RMB ($11,230) in compensation.[96] However, in March 2013, China Aid reported that a forced abortion had again been perpetrated on a woman who was seven months pregnant in Anhui province for having exceeded her childbirth quota. [97] In 1983, 14 million women had abortions organised by family-planning committees (many of them coerced). In 2009, there were 6 million. The number has declined in recent years as local officials have more incentives to impose fines on extra births rather than prevent them altogether.[98]

3.13.13 Another reason the hold of the one-child policy has been weakening is that it is so full of loopholes. In 2007 a family-planning official estimated that the one-child policy applied to less than 40% of the population. The right personal connections can secure discounts on fines. Couples in rural areas have long been allowed to have a second child if the first is a girl and many other rules seem almost arbitrary. In Shanghai if either man or wife works in the fishing industry and has been going to sea for five years, the couple may have a second child without facing punishment.[99]

3.13.14 The CECC reports that the law requires each person in a couple that has an unapproved child to pay a "social compensation fee" which can reach 10 times a person's annual disposable income. Social compensation fees are set and assessed at the local level. The law requires family-planning officials to obtain court approval before taking "forcible" action, such as detaining family members

[95] Immigration and Refugee Board of Canada: China: Family planning laws, enforcement and exceptions in the provinces of Guangdong and Fujian; reports of forced abortions or sterilization of men and women; consequences to officials who force women to have an abortion; whether family planning authorities interact with the Public Security Bureau in enforcing their decisions (2010-September 2012) [CHN104185.E], 1 October 2012
http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=454183&l=e
[96] US State Department China Country Report on Human Rights Practices 2012 Published on 19 April 2013 Section 6 http://www.state.gov/documents/organization/204405.pdf
[97] Radio Free Asia, China: Forced abortion at seven months prompts outcry, 26 March 2013
http://www.rfa.org/english/news/china/baby-03262013144155.html
[98] The Economist – The Brutal Truth – 23 June 2012
http://www.economist.com/node/21557369
[99] The Economist – The Brutal Truth – 23 June 2012
http://www.economist.com/node/21557369

or confiscating and destroying property of families who refuse to pay social compensation fees. However, this requirement was not always followed and national authorities remained ineffective at reducing abuses by local officials. Additionally, some children may go without household registration (hukou) in China because they are born ‘‘out-of-plan’’ and their parents did not pay the necessary fines. Lack of a valid hukou raises barriers to access to social benefits typically given to registered citizens, including health insurance, public education and pensions.[100]

3.13.15 China's fertility rate is one of the lowest in the world, in part because of the one-child policy. As a result, China has fewer and fewer young people to pay for the pensions and healthcare of more and more of the elderly. The working-age population is set to start shrinking from 2015, adding to pressure on wages. China will also soon have more senior citizens than the EU. The one-child policy has also created anomalies. Some parents who want boys abort fetuses which ultrasound scans show to be female. China now has about 120 male births for every 100 female births and there are estimates that by 2020, 24 million single men will be left without potential partners. Academics have called for the policy to be scrapped, which would be popular with young Chinese and could help restore China's fertility rate. But no senior leader has publicly backed any changes, which some officials appear to worry could lead to a population explosion.[101]

See also: **Actors of protection (Section 2.2 above)**

Internal relocation (Section 2.3 above)

Caselaw (Section 2.4 above)

3.13.16 **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, eviction, loss of career opportunities, expulsion from the CPP and other administrative punishments, including in some cases the destruction of private property. There are also reports of threats and detention to coerce abortions, as well as forced sterilisation and abortion, including in very late pregnancy. Women were also forced to use birth control, undergo intrauterine device (IUD) inspections and pregnancy inspections. Although the population control 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.

3.13.17 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 claimant’s home area in individual cases. The recent judgment of **AX (family planning scheme) China CG [2012] UKUT**

[100] US State Department China Country Report on Human Rights Practices 2012 , 19 April 2013 Section 1 http://www.state.gov/documents/organization/204405.pdf

[101] BBC News – China New Leaders – Challenges Ahead – 15 November 2012 http://www.bbc.co.uk/news/world-asia-20030681

00097 (IAC) confirmed the variation in enforcement that pertains in different regions. Case owners should consider the protection needs of the claimant and the possibility of internal relocation in light of **AX** (Paragraph 14).

3.14 Double Jeopardy

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

3.14.2 **Treatment:** Articles 8 to 12 of the Criminal Law cover the circumstances in which an individual who commits crimes outside the People's Republic of China (PRC) can be retried upon return to China. Article 10 states: Any person who commits a crime outside the PRC, and according to this law bears criminal responsibility, may still be dealt with under this law, even if they have 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.[102]

3.14.3 According to a 2005 FCO letter, 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 not stipulated. 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.[103]

3.14.4 The practice of hiring "body doubles" or "stand-ins" to attend court hearings and serve a criminal sentence in one's place has been widely reported in China. As an example, an article by China Digital Times in August 2012 reports that in 2009, a hospital president who caused a deadly traffic accident hired an employee's father to "confess" and serve as his stand-in. A company chairman is currently charged with allegedly arranging criminal substitutes for the executives of two other companies. In another case, after hitting and killing a motorcyclist, a man driving without a licence hired a substitute for roughly $8,000. The owner of a demolition company that illegally demolished a home earlier in 2012 hired a destitute man, who made his living scavenging in the rubble of razed homes and promised him $31 for each day the "body double" spent in jail. In China, the practice is so common that there is even a term for it: ding zui. Ding means "substitute," and zui means "crime"; in other words, "substitute criminal." [104]

3.14.5 While reporting on the Gu Kailai trial, wife of former high-profile Chinese politician Bo Xilai, who was given a suspended death sentence in August 2012 for the murder of British business man Neil Heywood. The Huffington Post observed in

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[102] National Legislative Bodies, Criminal Law of the People's Republic of China, 1 October 1997 http://www.refworld.org/docid/3ae6b5cd2.html Date accessed 13 June 2012
[103] Foreign and Commonwealth Office (FCO), Letter from FCO of 15 July 2005
[104] China Digital, Double Jeopardy: China's Fake Prisoners, 6 August 2012 http://chinadigitaltimes.net/2012/08/double-jeopardy-chinas-fake-prisoners/

August 2012, that she hired a body double to appear in court and serve her suspended death sentence according to rumours circulating on social networks. Although hiring a body double to serve jail time is an outlandish concept to Western society, the idea of replacing oneself with a hired substitute is a common practice in China according to The Daily Herald.[105]

See also: **Actors of protection (Section 2.2 above)**

Internal relocation (Section 2.3 above)

Caselaw (Section 2.4 above)

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

3.14.7 The risk of prosecution should be considered on the individual circumstances of a case and case owners should have particular regard to the factors set out at Paragraph 273 (19) (headnote paragraph 1)of the determination. This position has been further confirmed and expanded on by the recent country guidance case, **YF (Double jeopardy – JC confirmed) China CG [2011] UKUT 32 (IAC)** (headnote paragraph 1)**, and also YF (China) [2012] EWCA Civ. 77.** Therefore, citizens who have not come to the attention of the Chinese authorities are unlikely to qualify for a grant of asylum or humanitarian protection.

3.15 Civil protests and petitioners

3.15.1 Some applicants will apply for asylum or make a human rights claim based on ill-treatment amounting to persecution at the hands of private security firms working in co-operation with corrupt police officers, and/or the Chinese authorities due to their involvement in civil unrest or petitions.

3.15.2 **Treatment:** .The law provides for freedom of peaceful assembly, however, the government severely restricted this right in practice. The law stipulates that such activities may not challenge “party leadership” or infringe upon the “interests of the state.” Protests against the political system or national leaders are prohibited. Authorities deny permits and quickly suppress demonstrations involving expression of dissenting political views. Citizens continue to gather publicly to protest evictions, relocations and compensation in locations throughout the country, often resulting in conflict with authorities or other charges.[106]

3.15.3 Freedom of assembly and association are severely restricted. Citizens risk punishment for organising demonstrations without prior government approval,

[105] Huffington Post, Neil Heywood Murder: Gu Kailai 'Hired Body Double To Serve Her Prison Sentence', 21 August 2012 http://www.huffingtonpost.co.uk/2012/08/21/gu-kailai-lookalike-murder-body-double-bo-xailai_n_1816468.html

[106] US State Department China Country Report on Human Rights Practices 2012 Published on 19 April 2013 Section 2 http://www.state.gov/documents/organization/204405.pdf

which is rarely granted. Nevertheless, workers, farmers and urban residents held tens of thousands of protests during 2012, reflecting growing public anger over unlawful activity by officials, especially land confiscation, corruption, pollution and fatal police beatings. In July 2012, thousands of people peacefully protested against the construction of a copper plant in Shifang, Sichuan Province. Police took action with tear gas, stun grenades and beatings. After photographs were circulated by social media sites, the authorities announced that they would cancel the project and release detained protesters, though residents expressed fears that the project would resume once attention died down.[107]

3.15.4 The law protects an individual's ability to petition the government, however, persons petitioning the government faced restrictions on their rights to assemble and raise grievances. Most petitions addressed grievances about land, housing, entitlements, the environment or corruption. Most petitioners sought to present their complaints at national and provincial "letters and visits" offices. Although banned by regulations, retaliation against petitioners reportedly continues. This was partly due to incentives the central government offered to local officials to prevent petitioners from raising complaints to higher levels.[108] Local officials face penalties if they fail to limit the flow of petitioners travelling to Beijing to report injustices to the central government. As a result, petitioners are routinely intercepted, harassed and detained in illegal "black jails" or sent to labour camps without trial. Detained petitioners are reportedly subjected to beatings, psychological abuse and sexual violence but in some cases, officials tolerated demonstrations or agreed to protesters' demands.[109]

3.15.5 The CECC stated that anecdotal accounts indicate that private security firms run numerous sites as ''ad-hoc prisons'' to detain and punish petitioners seeking redress for their grievances against the government.[110] On 6 November 2012, Zhang Yaodong, a petitioner from Henan Province, died after "black security guards" (agents employed unofficially or indirectly by local and provincial authorities to prevent persons from their jurisdictions from petitioning central authorities in Beijing about a variety of grievances) beat him to death in a van returning him home from Beijing. Beijing police restricted the medical examination of Zhang's body to an external one, which could not determine the cause of death. Officials in Henan offered to pay compensation of 3.3 million RMB ($530,000) to the family if it conceded that Zhang had died of disease and agreed not to seek further compensation or petition the central government on the matter.[111]

3.15.6 The 2012 Foreign and Commonwealth Office report notes that public security organs can order the administrative detention of an individual without trial for RTL for up to three years, with the possibility of up to a year's extension. Although RTL is meant to be used to punish minor offences, it is also used to silence

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[107] Freedom House – Freedom in the World 2013 China, January 2013 http://www.freedomhouse.org/report/freedom-world/2013/china

[108] US State Department China Country Report on Human Rights Practices 2012 19 April 2013 Section 2b http://www.state.gov/documents/organization/204405.pdf

[109] Freedom House – Freedom in the World 2013 China, January 2013 http://www.freedomhouse.org/report/freedom-world/2013/china

[110] Congressional Executive Commission on China Annual Report 2012, 10 October 2012, *"Black jails" p. 73* http://www.gpo.gov/fdsys/pkg/CHRG-112shrg76190/pdf/CHRG-112shrg76190.pdf

[111] US State Department China Country Report on Human Rights Practices 2012 19 April 2013 Section 1a http://www.state.gov/documents/organization/204405.pdf

petitioners, Falun Gong practitioners and human rights defenders. There continues to be reports of abuse, mistreatment and torture in RTL facilities.[112]

3.15.7 Forced relocation because of urban development continues and in some locations increased during 2012. Protests over relocation terms or compensation were common and some protest leaders were prosecuted. In rural areas, relocation for infrastructure and commercial development projects resulted in the forced relocation of millions of persons.[113] Amnesty International reports that sudden and violent evictions are widespread, and are typically preceded by threats and harassment. Consultation with affected residents was rare. Compensation, adequate alternative housing and the ability to access legal remedies were severely limited. In many cases, corrupt village leaders signed deals with private developers, handing over land without residents knowing. Those who peacefully resisted forced eviction or sought to protect their rights through legal channels risked detention, imprisonment and RTL. Some resorted to drastic measures, setting themselves on fire or resorting to violent forms of protest.[114]

3.15.8 Human Rights in China reports that evictees are repeatedly subjected to the "Anyuanding" treatment—forced back to their hometowns by "black security forces" hired by local governments only to be sent away to attend "rule of law education classes," a euphemism for black jails. [115]

3.15.9 Property-related disputes between citizens and government authorities, which often turned violent, were widespread in both urban and rural areas. These disputes were frequently created by local officials' collusion with property developers to pay little or no compensation to displaced residents, combined with a lack of effective government oversight or media scrutiny of local officials' involvement in property transactions, as well as a lack of legal remedies or other dispute resolution mechanisms for displaced residents. The problem persists despite the central government's efforts to impose stronger controls over illegal land takings and to standardize compensation. The redevelopment in traditional Uighur neighbourhoods in cities throughout the XUAR, such as the Old City area in Kashgar, results in the destruction of historically or culturally sensitive areas.[116]

3.15.10 The law does not protect freedom of association, since workers are not free to organise or join unions of their own choosing. Independent unions are illegal and the right to strike is not protected in law.[117] While work stoppages are not expressly prohibited in law, Article 53 of the constitution has been interpreted as a ban on labour strikes by obligating all citizens to "observe labour discipline and public order." Local government interpretations of the law varies, with some jurisdictions showing tolerance for strikes while others continue to treat worker protests as illegal demonstrations. Without a clearly defined right to strike,

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[112] Foreign and Commonwealth (FCO) Human Rights and Democracy 2012, April 2013 http://www.hrdreport.fco.gov.uk/human-rights-in-countries-of-concern/china/
[113] US State Department China Country Report on Human Rights Practices 2012 Published on 19 April 2013 Section 1 http://www.state.gov/documents/organization/204405.pdf
[114] Amnesty International Annual Report 2013, 23 May 2013 http://www.amnesty.org/en/region/china/report-2013
[115] Human Rights in China, Taming Lawless Officials with Citizen Oversight, December 2012 http://www.hrichina.org/crf/article/6403
[116] US State Department China Country Report on Human Rights Practices 2012 Published on 19 April 2013 Section 1 http://www.state.gov/documents/organization/204405.pdf
[117] US State Department China Country Report on Human Rights Practices 2012 Published on 19 April 2013 Section 7 http://www.state.gov/documents/organization/204405.pdf

workers have only a limited capacity to influence labour negotiations. Concerned with the effect of worker actions on ‘‘harmony’’ and ‘‘stability,’’ officials in some cases used force against or detained demonstrating workers while seeking to stop worker demonstrations.[118]

3.15.11 The All-China Federation of Trade Unions (ACFTU), which the CCP controls and a member of the Politburo chairs, is the sole legal workers' organisation. The Trade Union Law gives the ACFTU control over all union organisations and activities, including enterprise-level unions and requires the ACFTU to "uphold the leadership of the Communist Party." ACFTU constituent unions are generally ineffective in protecting the rights and interests of members. In response to widespread criticism of the ACFTU's response following several high-profile labour disputes in 2010, the ACFTU advocated for government policies and legal reform to better prepare the union to protect workers' rights. The ACFTU plays a visible role in revisions to the Labour Contract Law intended to enhance protection of misclassified workers. On 28 December 2012, the NPC adopted amendments to the Labour Contract Law to limit the use of dispatch (contract) workers.[119]

3.15.12 The Trade Union Law provides specific legal remedies against anti-union discrimination and specifies that union representatives may not be transferred or terminated by enterprise management during their term of office. Collective contract regulations provide similar protections for employee representatives during collective consultations. While there was no publicly available official statistics on the enforcement of these laws, there were periodic domestic media reports of courts awarding monetary compensation for wrongful terminations of union representatives.[120]

3.15.13 Corruption remains endemic despite increased government anti-graft efforts and top party leaders acknowledged growing public resentment over the issue in 2012. Thousands of officials are investigated and punished each year by government or CCP entities, but prosecution is selective and highly opaque, with informal personal networks and internal CCP power struggles influencing both the choice of targets and the outcomes. During 2012, dozens of lower- and mid-level officials were disciplined, demoted, dismissed or prosecuted after bloggers and journalists exposed evidence of corruption online. The highest-level targets in 2012 were former Chongqing party chief Bo Xilai, charged with bribery in September 2012, and Sichuan Province deputy party secretary Li Chuncheng, who was dismissed in December 2012 for influence peddling and questionable real-estate deals. Investigations by Bloomberg News and the *New York Times* found that the family members of Xi Jinping and outgoing premier Wen Jiabao held assets worth $376 million and $2.7 billion, respectively, raising questions about corruption and conflict of interest. However, the reports were suppressed in China, and both outlets' websites were blocked shortly after the articles' publication. China was ranked 80 out of 176 countries surveyed in Transparency International's 2012 Corruption Perceptions Index.[121]

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[118] Congressional Executive Commission on China Annual Report 2012, 10 October 2012, *Worker rights p. 9* http://www.gpo.gov/fdsys/pkg/CHRG-112shrg76190/pdf/CHRG-112shrg76190.pdf

[119] US State Department China Country Report on Human Rights Practices 2012 Published on 19 April 2013 Section 7 http://www.state.gov/documents/organization/204405.pdf

[120] US State Department China Country Report on Human Rights Practices 2012 Published on 19 April 2013 Section 7 http://www.state.gov/documents/organization/204405.pdf

[121] Freedom House, Freedom in the World 2013 China, January 2013 http://www.freedomhouse.org/report/freedom-world/2013/china

See also: **Actors of protection (Section 2.2 above)**

Internal relocation (Section 2.3 above)

Caselaw (Section 2.4 above)

3.15.14 **Conclusion:** In recent years there has been a significant increase in petitioning and civil unrest in China mainly related to the issues of unpaid wages, land confiscation, forced evictions and corruption. Many of these protests have involved thousands of people and some have turned violent, resulting in deaths and serious injury.

3.15.15 Although the Chinese government is wary of any form of popular protest and is likely to respond harshly to protests that challenge the state's authority, the majority of these land and industrial protests are based on local issues and directed against local officials. Even when the protests are directed against the state they rarely challenge the state's authority or right to govern but instead protest against its specific policy as regards wages or land. In general, applicants from this category of claim are unlikely to be seen by the Chinese authorities as having engaged in a political act and are therefore unlikely to engage the United Kingdom's obligations under the Refugee Convention. However, each case should be considered on its individual merits as protestors or petitioners may be subject to criminal or administrative detention in RTL camps or 'black jails' where they are at risk of torture, abuse and mistreatment.

3.15.16 In cases where the applicant fears the Chinese authorities, internal relocation is unlikely to be an option.

3.16 Prison conditions

3.16.1 Applicants 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.

3.16.2 The guidance in this section is concerned solely with whether prison conditions are such that they breach Article 3 of ECHR and warrant a grant of humanitarian protection. If imprisonment would be for a Refugee Convention reason or in cases where for a Convention reason a prison sentence is extended above the norm, the asylum claim should be considered first before going on to consider whether prison conditions breach Article 3 if the asylum claim is refused.

3.16.3 **Treatment:** Conditions in penal institutions for both political prisoners and criminal offenders are generally harsh and frequently degrading. Prisoners and detainees are regularly held in overcrowded conditions with poor sanitation. Food often was inadequate and of poor quality and many detainees relied on supplemental food, medicines and warm clothing supplied by relatives. Prisoners often reported sleeping on the floor because there were no beds or bedding. Adequate, timely medical care for prisoners remains a serious problem, despite official assurances that prisoners have the right to prompt medical treatment. Numerous former prisoners and detainees report that they were beaten, subjected to electric shock, forced to sit on stools for hours on end, deprived of

sleep, and otherwise subjected to physical and psychological abuse. Although ordinary prisoners are subjects of abuse, political and religious dissidents were singled out for particularly harsh treatment. In some instances close relatives of dissidents were also singled out for abuse. Advocacy groups continue to report instances of organ harvesting from prisoners. Pre-trial detention periods of a year or longer are common. The law stipulates that detainees be allowed to meet with defence counsel before criminal charges are filed. Police often violate this right.[122]

3.16.4 The law requires juveniles to be held separately from adults, unless facilities are insufficient. In practice, children are sometimes held with adult prisoners and are required to work. Political prisoners are held with the general prison population and report being beaten by other prisoners at the instigation of guards. Some prominent dissidents are not allowed to receive supplemental food, medicine and warm clothing from relatives.[123]

3.16.5 The law mandates that a prison shall be ventilated, allow for natural light and be clean and warm. The law further provides that a prison "shall set up medical, living and sanitary facilities and institute regulations on the life and sanitation of prisoners." It also states that the medical and health care of prisoners shall be put into the public health and epidemic prevention program of the area in which the prison is located. However, in many cases provisions for sanitation, ventilation, heating, lighting, basic and emergency medical care and access to potable water are inadequate. In May 2012 the Ministry of Supervision, the Ministry of Human Resources and Social Security, and the Ministry of Justice jointly issued regulations stating that police in prisons and RTL facilities face dismissal if they are found to have beaten, applied corporal punishment, abused inmates, or instigated such acts.[124]

3.16.6 Information about prisons, including associated labour camps and factories, was considered a state secret and the government generally did not permit independent monitoring of prisons or RTL camps. Prisoners remain inaccessible to local and international human rights organisations and media groups. Authorities did not allow the International Committee of the Red Cross to have access to prisoners or perform authentic prison visits in the country.[125]

3.16.7 Government officials continue to deny holding any political prisoners, asserting that authorities detained persons not for their political or religious views but because they violated the law. However, authorities continue to imprison citizens for reasons related to politics and religion. Tens of thousands of political prisoners remain incarcerated, some in prisons and others in RTL camps or administrative detention. The government did not grant international humanitarian organisations access to political prisoners.[126]

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[122] US State Department China Country Report on Human Rights Practices 2012 Published on 19 April 2013 Section 1 http://www.state.gov/documents/organization/204405.pdf
[123] US State Department China Country Report on Human Rights Practices 2012 Published on 19 April 2013 Section 1 http://www.state.gov/documents/organization/204405.pdf
[124] US State Department China Country Report on Human Rights Practices 2012 Published on 19 April 2013 Section 1 http://www.state.gov/documents/organization/204405.pdf
[125] US State Department China Country Report on Human Rights Practices 2012 Published on 19 April 2013 Section 1 http://www.state.gov/documents/organization/204405.pdf
[126] US State Department China Country Report on Human Rights Practices 2012 Published on 19 April 2013 Section 1 http://www.state.gov/documents/organization/204405.pdf

3.16.8 Forced labour in penal institutions remains a serious problem according to the International Trade Union Confederation. Many prisoners and detainees in RTL facilities are required to work, often with no remuneration. In addition, there are credible allegations that prisoners are forced to work for private production facilities associated with prisons. These facilities often operate under two different names, a prison name and a commercial enterprise name. No effective mechanism prevents the export of goods made under such conditions. Goods and materials likely to be produced by forced labour comprised of toys, garments and textiles, electronics, bricks and coal.[127]

3.16.9 **'**RTL' is an administrative, rather than criminal, punishment of up to three years with the possibility of a one-year extension for alleged minor offences. Human rights advocates and legal experts in China have long debated the merits of RTL, (also known as laojiao), which empowers public security authorities to hold individuals in custody without judicial review. The case of Tang Hui, the mother of a young victim of rape and forced prostitution whose efforts to petition the government about her daughter's case resulted in her confinement to an RTL centre in August 2012, helped bring the debate back into the spotlight. On 14 August 2012, a group of 10 Chinese lawyers sent an open letter to the MPS and the Ministry of Justice, calling for greater transparency and legal protections in the RTL decision making process. State media have since criticized the RTL system as a tool that has been abused by local authorities to retaliate against petitioners. Previous attempts to reform the RTL system delayed in 2005 and 2010 and media sources attribute the ongoing impasse to disagreements between public security and judicial agencies over who should hold the decision making power.[128]

3.16.10 Conditions in administrative detention facilities, such as RTL camps, were similar to those in prisons. Beating deaths occurs in administrative detention and RTL facilities. Detainees report beatings, sexual assaults, lack of proper food and no access to medical care.[129]

3.16.11 Black jails operate outside of China's official criminal justice system. The Chinese government repeatedly deny their existence, but anecdotal accounts indicate that private security firms run numerous such sites as ''ad-hoc prisons'' to detain and punish petitioners seeking redress for their grievances against the government. In August 2011, public security officials shut down a ''black jail'' in Changping district, Beijing municipality, which reportedly held petitioners who had been intercepted en route to Beijing from five other provinces and municipalities. Beijing's public security bureau launched a six-month crackdown effective December 2011, which targets firms that illegally operated ''black jails'' at the behest of local officials in other parts of China.[130]

3.16.12 Other forms of administrative detention include "custody and education" (for women engaged in prostitution and those soliciting prostitution) and "custody and

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[127] US State Department China Country Report on Human Rights Practices 2012 Published on 19 April 2013 Section 1 http://www.state.gov/documents/organization/204405.pdf

[128] CONGRESSIONAL EXECUTIVE COMMISSION ON CHINA ANNUAL REPORT 2012, ONE HUNDRED TWELFTH CONGRESS, SECOND SESSION, OCTOBER 10, 2012 http://www.gpo.gov/fdsys/pkg/CHRG-112shrg76190/pdf/CHRG-112shrg76190.pdf

[129] US State Department China Country Report on Human Rights Practices 2012 Published on 19 April 2013 Section 1 http://www.state.gov/documents/organization/204405.pdf

[130] CONGRESSIONAL EXECUTIVE COMMISSION ON CHINA ANNUAL REPORT 2012, ONE HUNDRED TWELFTH CONGRESS, SECOND SESSION, OCTOBER 10, 2012 http://www.gpo.gov/fdsys/pkg/CHRG-112shrg76190/pdf/CHRG-112shrg76190.pdf, Re-education Through Labour, P.73.

training" (for minor criminal offenders). The law establishes a system of "compulsory isolation for drug rehabilitation." The minimum stay in such centres is two years and the law states that treatment can include labour. Public security organs authorise detention in these centres and it was often meted out as an administrative rather than criminal measure. Authorities use administrative detention to intimidate political activists and prevent public demonstrations. There are widespread reports of activists and petitioners being committed to mental health facilities and involuntarily subjected to psychiatric treatment for political reasons. According to Legal Daily, the MPS directly administers 24 high-security psychiatric hospitals for the criminally insane (also known as ankang facilities). From 1998 to May 2010, more than 40,000 persons were committed to ankang hospitals. In 2010, an official of the MPS stated in a media interview that detention in ankang facilities was not appropriate for patients who did not demonstrate criminal behaviour. However, political activists, underground religious believers, persons who repeatedly petitioned the government, members of the banned Chinese Democracy Party (CDP) and Falun Gong practitioners are among those housed with mentally ill patients in these institutions.[131]

3.16.13 The Death Penalty is only to be applied to criminal elements who commit the most heinous crimes. In the case of a criminal element who should be sentenced to death, if immediate execution is not essential, a two-year suspension of execution may be announced at the same time the sentence of death is imposed. Except for judgments made by the Supreme People's Court according to law, all sentences of death shall be submitted to the Supreme People's Court for approval. Sentences of death with suspension of execution may be decided or approved by a high people's court. [132]

3.16.14 Death sentences continue to be imposed after unfair trials. More people are executed in China than in the rest of the world put together. Statistics on death sentences and executions remain classified. Under current Chinese laws, there are no procedures for death row prisoners to seek pardon or commutation of their sentence. In May 2012, the authorities rescinded the death sentence imposed on business woman Wu Ying for "fraudulently raising funds", adding to debates about the abolition of capital punishment for economic crimes. Amendments to the Criminal Procedure Law would allow the Supreme People's Court to amend death sentences in all cases. These would make it mandatory to record or videotape interrogations of suspects potentially facing the death penalty or life imprisonment. The amendments would require the Courts, prosecutors and the police to notify legal aid offices to assign a defence lawyer to all criminal suspects and defendants who face potential death sentences or life imprisonment and who have not yet appointed legal counsel. Chinese legal scholars called for legal aid to be assured at all stages of a criminal process which may lead to the death penalty.[133]

3.16.15 The CECC notes that Chinese law prohibits the torture and abuse of individuals in custody. Despite the central government's efforts to address this longstanding problem, abusive practices remain widespread.[134] Amnesty International reports

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131 US State Department China Country Report on Human Rights Practices 2012 Published on 19 April 2013 Section 1 http://www.state.gov/documents/organization/204405.pdf

132 National Legislative Bodies Criminal Law of the People's Republic of China, 1 October 1997, Article 48 http://www.refworld.org/docid/3ae6b5cd2.html

133 Amnesty International Annual Report 2013, 23 May 2013 http://www.amnesty.org/en/region/china/report-2013

134 Congressional Executive Commission on China Annual Report 2012, 10 October 2012, Torture and

that criminal defendants face routine violations of the right to a fair trial and other rights, including denial of access to their lawyers and family, detention beyond legally allowed time frames and torture and other ill-treatment in detention. The use of torture to extract confessions remains widespread.[135] Human Rights Watch similarly reports that forced confessions under torture remain prevalent and miscarriages of justice frequent due to weak Courts and tight limits on the rights of the defence.[136]

3.16.16 Amnesty International states that it continues to receive reports of deaths in custody, some of them caused by torture, in a variety of state institutions, including prisons and police detention centres.[137] In 2013, the U.S State Department notes that while the government did not report official statistics regarding deaths in custody, some cases garnered media coverage.[138]

3.16.17 **Conclusion:** Prison conditions in China are described as harsh and often degrading, both for political prisoners and for criminal offenders, who are often housed together. There is objective evidence of security officials severely ill-treating prisoners and detainees, that the use of torture to extract forced confessions is widespread and the number of deaths in custody, some due to torture, is a matter for concern. Evidence indicates that some of the worst treatment is extended to political dissidents, religious dissidents and human rights activists, although not exclusively. This treatment may include forced psychiatric incarceration/treatment, sexual, physical and psychological abuse.

3.16.18 In many cases, conditions in both criminal and administrative detention are likely to reach the Article 3 threshold. Therefore, where an applicant can demonstrate a real risk of imprisonment on return to China, a grant of humanitarian protection will 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 to consider include the likely length of detention, the likely type of detention facility and the individual's age, gender and state of health. Where in an individual case, treatment does reach the Article 3 threshold a grant of humanitarian protection will be appropriate.

4. Minors claiming in their own right

4.1 Minors claiming in their own right who have not been granted asylum or HP can only be returned where the Secretary of State is satisfied that safe and adequate reception arrangements are in place in the country to which the child is to be returned.

4.2 At present there is insufficient information to be satisfied that there are adequate alternative reception, support and care arrangements in place for minors with no

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abuse in custody p. 75 http://www.gpo.gov/fdsys/pkg/CHRG-112shrg76190/pdf/CHRG-112shrg76190.pdf

[135] Amnesty International Annual Report 2013, 23 May 2013 http://www.amnesty.org/en/region/china/report-2013

[136] Human Rights Watch, World Report 2013 China, 31 January 2013 http://www.hrw.org/world-report/2013/country-chapters/china?page=1

[137] Amnesty International, Human rights in China, 2 November 2012 http://www.amnesty.org/en/library/asset/ASA17/051/2012/en/01a3a8fb-97c3-483d-8195-bc1153735abd/asa170512012en.html

[138] US State Department China Country Report on Human Rights Practices 2012 19 April 2013 Section 1a http://www.state.gov/documents/organization/204405.pdf

family in China. Those who cannot be returned should be considered for leave as a Unaccompanied Asylum Seeking Children (UASC).

4.3 Regulation 6 of the Asylum Seekers (Reception Conditions) Regulations 2005 imposes a duty on the Secretary of State to endeavour to trace the families of UASC as soon as possible after the claim for asylum is made, while ensuring that those endeavours do not jeopardise the child's and/or their family's safety. Information on the infrastructure within China which may potentially be utilised to assist in endeavouring to trace the families of UASC, can be obtained from the Country of Origin Information Service (COIS).

4.4 Caseworkers should refer to the Asylum Instruction: Processing an Asylum Application from a Child, for further information on assessing the availability of safe and adequate reception arrangements, UASC Leave and family tracing. Additional information on family tracing can be obtained from the interim guidance on Court of Appeal judgment in KA (Afghanistan) & Others [2012] EWCA civ1014.

5. Medical treatment

5.1 Individuals whose asylum claims have been refused and who seek to remain on the grounds that they require medical treatment which is either unavailable or difficult to access in their countries of origin, will not be removed to those countries if this would be inconsistent with our obligations under the ECHR. Caseworkers should give due consideration to the individual factors of each case and refer to the latest available country of origin information concerning the availability of medical treatment in the country concerned. If the information is not readily available, an information request should be submitted to the COI Service (COIS).

5.2 The threshold set by Article 3 ECHR is a high one. It is not simply a question of whether the treatment required is unavailable or not easily accessible in the country of origin. According to the House of Lords' judgment in the case of N (FC) v SSHD [2005] UKHL31, it is "whether the applicant's illness has reached such a critical stage (i.e. he is dying) that it would be inhuman treatment to deprive him of the care which he is currently receiving and send him home to an early death unless there is care available there to enable him to meet that fate with dignity". That judgment was upheld in May 2008 by the European Court of Human Rights.

5.3 That standard continues to be followed in the Upper Tribunal (UT) where, in the case of GS and EO (Article 3 – health cases) India [2012] UKUT 00397(IAC) the UT held that a dramatic shortening of life expectancy by the withdrawal of medical treatment as a result of removal cannot amount to the highly exceptional case that engages the Article 3 duty. But the UT also accepted that there are recognised departures from the high threshold approach in cases concerning children, discriminatory denial of treatment, the absence of resources through civil war or similar human agency.

5.4 The improvement or stabilisation in an applicant's medical condition resulting from treatment in the UK and the prospect of serious or fatal relapse on expulsion will therefore not in itself render expulsion inhuman treatment contrary to Article 3 ECHR. All cases must be considered individually, in the light of the conditions in

the country of origin, but an applicant will normally need to show exceptional circumstances that prevent return, namely that there are compelling humanitarian considerations, such as the applicant being in the final stages of a terminal illness without prospect of medical care or family support on return.

5.5 Where a caseworker considers that the circumstances of the individual applicant and the situation in the country would make 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. Caseworkers must refer to the Asylum Instruction on Discretionary Leave for the appropriate period of leave to grant.

6. Returns

6.1 There is no policy which precludes the enforced return to China of failed asylum seekers who have no legal basis of stay in the United Kingdom.

6.2 Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules.

6.3 Any medical conditions put forward by the person as a reason not to remove them and which have not previously been considered, must be fully investigated against the background of the latest available country of origin information and the specific facts of the case. A decision should then be made as to whether removal remains the correct course of action, in accordance with Chapter 53.8 of the Enforcement Instructions and Guidance.

6.4 Chinese nationals may return voluntarily to any region of China at any time in one of three ways: (a) leaving the UK by themselves, where the applicant makes their own arrangements to leave the UK, (b) leaving the UK through the voluntary departure procedure, arranged through the UK Immigration service, or (c) leaving the UK under one of the Assisted Voluntary Return (AVR) schemes.

6.5 The AVR scheme is implemented on behalf of Home Office by Refugee Action which will provide advice and help with obtaining any travel documents and booking flights, as well as organising reintegration assistance in China. The programme was established in 1999, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Chinese nationals wishing to avail themselves of this opportunity for assisted return to China should be put in contact with Refugee Action Details can be found on Refugee Action's web site at: www.choices-avr.org.uk.

Country Specific Litigation Team
Immigration and Border Policy Directorate
Home Office
October 2013

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