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OPERATIONAL GUIDANCE NOTE

CHINA

CONTENTS

1. Introduction

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

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

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

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

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

Source documents

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

2. Country assessment

2.1 The Chinese Communist Party (CCP) is the paramount source of power in China.[1] The current State leadership positions were announced at the National People's Congress (NPC), which met from 5-18 March 2003. Hu Jintao was named President and Wen Jiabao became Premier. Wu Bangguo replaced Li Peng as NPC Chairman. The leadership transition was completed in September 2004 when Hu Jintao assumed the Chairmanship of the Central Military Commission (CMC) to add to his roles as State President and Party General Secretary.[2]

2.2 The National People's Congress is China's legislative body. It has a five-year membership and meets once a year in plenary session. However, in practice it is the CCP who takes all key decisions. The supreme decision-making body in China is the CCP Politburo and its 9-member Standing Committee, which acts as a kind of 'inner cabinet', and is headed by the General Secretary of the Chinese Communist Party Hu Jintao.[3]

2.3 China is in practice a one party state. The National People's Congress is indirectly elected. Direct elections for village leaders have also been conducted since 1988. They take place every three years, although it is unclear how genuine and effective they are. The legislature remains subject to Party leadership. However, since 1987 the NPC has been building its oversight capacity over the actions of the Government.[4]

2.4 In March 2004, China amended its constitution to read 'The State respects and protects human rights.' Although the constitution is not directly enforceable, the amendment does offer some hope that human rights will be legally protected. The term human rights has now made its way into common discourse in China.[5] However, the government's human rights record remained poor during 2005, and it continued to commit numerous and serious abuses. There was a trend towards increased harassment, detention, and imprisonment by government and security authorities of those perceived as threatening to government authority. The government also adopted measures to more tightly control print, broadcast and electronic media, and censored online content.[6]

2.5 Protests by those seeking to redress grievances increased significantly and were suppressed, at times violently, by security forces. There were notable developments in legal reforms during 2005. However, some key measures to increase the authority of the judiciary and reduce the arbitrary power of police and security forces such as abolishing the system of re-education through labour stalled. The government adopted new religious affairs regulations expanding legal protection for some activities of registered religious groups but was criticised for failing to protect unregistered groups and for introducing additional restrictions in some areas e.g. receiving financial contributions from overseas organisations.[7]

3. Main categories of claims

3.1 This Section sets out the main types of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in China. It also contains any common claims that may raise issues covered by the API on Discretionary Leave. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/ punishment. It also provides guidance on whether or

[1] COIS China Country Report para 5.08
[2] COIS China Country Report para 5.13
[3] COIS China Country Report para 5.08
[4] COIS China Country Report para 5.11
[5] COIS China Country Report para 6.04
[6] COIS China Country Report para 6.01
[7] COIS China Country Report para 6.01

not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant API's, but how these affect particular categories of claim are set out in the instructions below.

3.2 Each claim should be assessed to determine whether there are reasonable grounds for believing that the claimant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in *Karanakaran* should be followed when deciding how much weight to be given to the material provided in support of the claim (see the API on Assessing the Claim).

3.3 If the claimant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the claimant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.

3.4 This guidance is **not** designed to cover issues of credibility. Caseworkers will need to consider credibility issues based on all the information available to them. (For guidance on credibility see para 11 of the API on Assessing the Claim)

3.5 All APIs can be accessed via the IND website at:
http://www.ind.homeoffice.gov.uk/ind/en/home/laws___policy/policy_instructions/apis.html

3.6 Falun Gong/Falun Dafa

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

3.6.2 ***Treatment.*** Estimates of the number of Falun Gong (or Wheel of the Law, also known as Falun Dafa) practitioners have varied widely; the Government claimed that prior to its crackdown on the Falun Gong beginning in 1999, there might have been as many as 2.1 million adherents of Falun Gong in the country. The number has declined as a result of the crackdown, but according to reliable estimates there are still hundreds of thousands of practitioners in the country.[8]

3.6.2 In 1999 the Chinese Government established the '610 Office' specifically to monitor and control Falun Gong.[9]

3.6.3 The arrest, detention, and imprisonment of Falun Gong practitioners continued during 2005, and there have been credible reports of deaths due to torture and abuse. There have also been reports that practitioners who refuse to recant their beliefs are sometimes subjected to harsh treatment in prisons, extra-judicial re-education through labour camps and 'legal education' centres. Due to the strength of the Government's campaign against Falun Gong there were very few public activities from Falun Gong activists within China during 2005.[10]

3.6.4 Given the lack of judicial transparency, the number and treatment of Falun Gong practitioners in confinement is difficult to confirm. Nevertheless, there is substantial evidence from foreign diplomats, international human rights groups, and human rights activists in Hong Kong that the crackdowns on the Falun Gong have been widespread and violent.[11] Overseas Falun Gong sources claim that more than 1,000 people detained in

[8] COIS China Country Report para 6.141
[9] COIS China Country Report para 6.163
[10] COIS China Country Report para 6.140
[11] COIS China Country Report para 6.144

connection with the Falun Gong have died since the organisation was banned in 1999, mostly as a result of torture or ill-treatment.[12]

3.6.5 In addition to reports of harassment and detention the Falun Gong movement has claimed that family members of practitioners are subject to harassment. The Falun Gong website provides accounts of family members allegedly being arrested in order to pressure adherents who are wanted by authorities into surrendering, or otherwise punished for the adherents' Falun Gong activities. It is unclear to what extent that these accounts are accurate it is also unclear whether they are part of a systemic national practice or are the work of zealous local officials.[13]

3.6.6 The UNHCR reported that there is no evidence to suggest that all Falun Gong members are being systematically targeted by the Chinese authorities (especially in view of the large numbers involved). Therefore, membership of Falun Gong alone would not give rise to refugee status, although a prominent role in certain overt activities (such as proselytising or organising demonstrations) which brings the member to the attention of the authorities may do so.[14]

3.6.7 Members are not 'sought out' at home by the Chinese authorities; however, even lower level members may risk longer-term detention if they go out and practice in public. Likely punishment would be detention in 're-education through labour' camps and (extra-judicial) police beatings that often accompany such detention. Thus, the likelihood of members/practitioners returning to China and engaging in public activities is low.[15]

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

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

3.6.10 ***Caselaw.***

> **[2004] EWCA (Civ) 1441** The Court of Appeal found that there are no Falun Gong membership lists and anyone can become a member or cease to be a member at any time and practise Falun Gong exercises by him/herself in the privacy of his/her home without significant risk of being ill-treated.
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> **[2005] UKIAT 00122 LL (Falun Gong – Convention Reason – Risk) China CG Heard: 29 July 2005 Promulgated: 9 August 2005** The AIT found that in the absence of special factors, there will not normally be any risk sufficient to amount to "real risk" from the Chinese authorities for a person who practices Falun Gong in private and with discretion. The IAT also found that if on the established facts it is held that there is a real risk of persecutory ill-treatment by reason of Falun Gong activities, then it is by reason of imputed political opinion and thus engages a 1951 Convention reason as well as Article 3.
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> **[2002] UKIAT 04134 MH (Risk-Return-Falun Gong) China CG Heard: 25 July 2002 Notified 3 September 2002** The IAT accepted that ordinary Falun Gong practitioners have on a significant number of occasions been subjected to human rights abuses of various kinds, however, it is only in respect of Falun Gong activists that the scale and level of interference with their human rights has been sufficient to warrant a conclusion that upon return they would face a real risk, as opposed to a possible risk, of persecution or serious harm.

3.6.11 ***Conclusion.*** There is widespread repression of Falun Gong by the Chinese authorities and Falun Gong practitioners/activists may face ill-treatment in China if they come to the

[12] COIS China Country Report para 6.143
[13] COIS China Country Report para 6.169
[14] COIS China Country Report para 6.145
[15] COIS China Country Report para 6.167

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

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

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

3.7.1 Some claimants 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.

3.7.2 ***Treatment.*** There are 5.4 million Tibetans within China, accounting for 0.44 per cent of the population. The total population of the Tibetan autonomous Area (TAR) is 2.6 million (based on the 2000 census). [16] There are also significant numbers of Tibetans in Qinghai, Gansu, Sichuan and Yunnan provinces.[17]

3.7.3 The government's human rights record in Tibetan areas of China remained poor during 2005, and the level of repression of religious freedom remained high. The government continued to view the Dalai Lama with suspicion and tended to associate Tibetan Buddhist religious activity with separatist sympathies. Authorities continued to commit serious human rights abuses, including torture, arbitrary arrest and detention, house arrest and other non-judicial surveillance of dissidents, detention without public trial, repression of religious freedom, and arbitrary restrictions on free movement.

3.7.4 However there were some positive developments in Tibetan areas including further rounds of dialogue between the government and envoys of the Dalai Lama. In August 2005 the government permitted an international delegation to meet with released political prisoner Phuntsog Nyidrol in the TAR. In November 2005 the UN special rapporteur on torture visited China for the first time. This included a visit to Tibet.[18]

3.7.5 The main group at risk in the Tibetan areas is active political dissidents, especially those seeking Tibetan independence. Activities attracting prison terms are those classified as endangering state security or promoting separatism, but they range from espionage and even bomb blasts through distributing leaflets advocating independence to possessing the Dalai Lama's picture or reading the Dalai Lama's works. Among the dissidents the majority belong to the clerical order.[19]

3.7.6 Government officials maintained that possessing or displaying pictures of the Dalai Lama was not illegal. Nevertheless, authorities appeared to view possession of such photos as evidence of separatist sentiment when detaining individuals on political charges. Pictures of the Dalai Lama were not openly displayed in major monasteries and could not be purchased openly in the TAR. The Government also continued to ban pictures of Gendun Choekyi Nyima, the boy recognized by the Dalai Lama as the Panchen Lama. Photos of the

[16] COIS China Country Report para 6.287
[17] COIS China Country Report para 6.219
[18] COIS China Country Report para 6.295
[19] COIS China Country Report para 6.300

'official' Panchen Lama, Gyaltsen Norbu, were not publicly displayed in most places, most likely because most Tibetans refuse to recognise him as the Panchen Lama.[20]

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

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

3.7.9 ***Caselaw.***

> **[2004] UKIAT 00051 Heard 4th November 2004 Promulgated 13 January 2005**
> The IAT found that there is no evidence that a Tibetan who left China illegally is likely to suffer imprisonment or a fine. In the absence of very clear evidence as to what is likely to happen to the appellant on return to China, the IAT were unable to find that there is a real risk that the appellant would suffer persecution or ill-treatment on return to China. There is no reason why the appellant should not become part of the floating population of between 100 and 150 million economic migrants who lack official residence status in cities.

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

3.8 Involvement with religious organisations

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

3.8.2 ***Treatment.*** The Constitution provides for freedom of religious belief; however, during 2005, the Government sought to restrict religious practice to government-sanctioned organizations and registered places of worship and to monitor and control the growth and scope of activities of religious groups. Despite these efforts at government control, membership in many faiths is continuing to grow rapidly.[21]

3.8.3 The country has five main religions: Buddhism, Taoism, Islam, Catholicism, and Protestantism. While these are the primary religions, the 2005 religious affairs regulations no longer identify 'official' religions. The Russian Orthodox Church also operates in some regions and other religions exist in the country's expatriate community. Some ethnic groups also practice folk religions. Most of the country's population does not formally practice any religion. Approximately 8 percent of the population is Buddhist, approximately 1.5 percent is Muslim, an estimated 0.4 percent belongs to the official Catholic Church, an estimated 0.4 to 0.6 percent belongs to the unofficial Vatican-affiliated Catholic Church, an estimated 1.2 to 1.5 percent is registered as Protestant, and perhaps 2.5 percent worships in Protestant house churches that are independent of government control.[22]

3.8.4 The Government's State Administration for Religious Affairs (SARA) oversees religious affairs in China. A key function of the SARA and its subordinate offices is registering religious groups and venues. In general, these offices are tasked with ensuring that individual believers and groups comply with state regulations in particular the requirement to register. To meet this objective there are provincial and local SARA offices, allowing the agency to keep an eye on all religious organisations, individuals and activities throughout

[20] COIS China Country Report para 6.310
[21] COIS China Country Report para 6.48
[22] COIS China Country Report para 6.52

the country. However, it is important to note that SARA lacks enforcement powers. Once SARA has determined that religious groups are either illegal – meaning unregistered – or that they or individual believers are conducting illegal activities, the matter would then be turned over to the law enforcement agency – namely, the Public Security Ministry and its subordinate offices.[23]

3.8.5 Religious organisations that either cannot or are unwilling to obtain government approval are automatically deemed illegal. Once an organisation has been classified as illegal, all its activities are automatically considered to be illegal and subversive. As Joseph Kung, an overseas advocate of the underground Catholic community in China, stated, activities such as celebrating the mass and prayers for the dying – which are orthodox Catholic practices – immediately become illegal and unorthodox if they are undertaken by a priest who has not been permitted by the state to perform these activities. Through these repressive measures, the regime creates an atmosphere that indirectly promotes religious distortions.[24]

3.8.6 Within the last two years, Chinese leaders have continued a campaign to root out what they view as 'foreign infiltration,' a campaign that has, in some cases, targeted religious organisations that attempt to maintain affiliation with co-religionists abroad, although such contact is specifically affirmed in the UN Declaration on the Elimination of Intolerance. The campaign originates from Politburo level leadership and has been carried out more intensively in areas with a greater presence of unregistered religious activity and in certain ethnic minority areas, such as the Tibet Autonomous Region (TAR) and the Xinjiang Uighur Autonomous Region (XUAR). In autumn 2005, reports indicated that Chinese officials considered the case against Protestant house church run by Pastor Cai Zhuohua, as an important part of the campaign to root out 'foreign infiltration.[25]

Buddhists and Taoists

3.8.7 Official tolerance for Buddhism and Taoism has been greater than that for Christianity, and these religions often face fewer restrictions. However, as these non-Western religions have grown rapidly in recent years, there were signs of greater government concern and new restrictions, especially on groups that blend tenets from a number of religious beliefs.[26]

Tibetan Buddhism

3.8.8 The Government remains suspicious of Tibetan Buddhism in general and its links to the Dalai Lama, and it maintained tight controls on religious practices and places of worship in Tibetan areas during 2005. Although the authorities permitted many traditional religious practices and public manifestations of belief, they promptly and forcibly suppressed those activities viewed as vehicles for political dissent, such as religious activities that are perceived as advocating Tibetan independence.[27] Officials confirm that monks and nuns continue to undergo political training known as 'patriotic education' on a regular basis at their religious sites. Political training has become a routine, and officially mandatory, feature of monastic life. However, the form, content, and frequency of such training appear to vary widely from monastery to monastery.[28]

Christians

3.8.9 Both Catholics and Protestants have long complained of persecution by the Communist authorities, and human rights groups claim that the problem is getting worse. According to the same source, about 300 Christians are detained in China at any one time. China's Christian population – especially those who refuse to worship in the regulated state-registered churches – is seen as a threat. Those Christians who want to avoid the state-controlled religious movements meet in unofficial buildings or even each others' homes –

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[23] COIS China Country Report para 6.65
[24] COIS China Country Report para 6.57
[25] USCIRF May 2006
[26] COIS China Country Report para 6.68
[27] COIS China Country Report para 6.306
[28] COIS China Country Report para 6.307

hence their description as 'house churches' – risking fines, imprisonment, torture and even, in some cases, death.[29]

Muslims

3.8.10 According to government figures, there are 20 million Muslims, more than 40,000 Islamic places of worship (more than half of which are in Xinjiang), and more than 45,000 imams nationwide. The country has 10 predominantly Muslim ethnic groups, the largest of which are the Hui, estimated to number nearly 10 million. China also has over 1 million Kazakh Muslims and thousands of Dongxiang, Kyrgyz, Salar, Tajik, Uzbek, Baoan, and Tatar Muslims.[30]

3.8.11 There are large Muslim populations in many areas, but government sensitivity to these communities varied widely. Generally speaking, the country's Hui Muslims, who often live in Han Chinese communities throughout the country, have greater religious freedom than Turkic Muslims such as the Uighurs, who are concentrated in the western part of the country. In areas where ethnic unrest has occurred, especially among the Uighurs in Xinjiang, officials continued to restrict the building of mosques and the training of clergy and prohibited the teaching of Islam to children. However, in other areas, particularly in areas populated by the Hui ethnic group, there was substantial mosque construction and renovation and also apparent freedom to worship. After a series of violent incidents, including bombings attributed to Uighur separatists, beginning in 1997, police cracked down on Muslim religious activity and places of worship accused of supporting separatism in Xinjiang.[31]

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

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

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

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

3.9 Involvement with illegal political organisations

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

3.9.2 ***Treatment*** Government officials deny holding any political prisoners, asserting that authorities detained persons not for their political or religious views, but because they violated the law; however, during 2005 the authorities continued to confine citizens for reasons related to politics and religion. Tens of thousands of political prisoners remained

[29] COIS China Country Report para 6.71
[30] COIS China Country Report para 6.108
[31] COIS China Country Report para 6.109

incarcerated, some in prisons and others in re-education through labour camps and other forms of administrative detention. Western NGOs estimated that approximately 500 persons remained in prison for the repealed crime of 'counter-revolution,' and thousands of others were serving sentences for offences relating to 'state security', which Chinese authorities stated covers crimes similar to counter-revolution.[32]

3.9.3 No substantial political opposition groups exist, although the government has identified the Falun Gong spiritual movement and the China Democracy Party (CDP) as subversive groups. The CCP retained a monopoly on political power and maintained its prohibition on the creation of new political parties.[33]

3.9.4 The CDP (established in 1998) was to be based on the principles of openness, peace, reason, and legality. Its aim was to establish direct elections and the formation of a multi-party system.[34] More than 40 current or former CDP members continued to remain imprisoned or held in re-education through labour camps in 2005.[35]

3.9.5 In 1998 CDP founders Xu Wenli, Wang Youcai, and Qin Yongmin were sentenced to prison terms of 13, 12, and 11 years, respectively. Xu Wenli and Wang Youcai were released on medical parole to a foreign country in December 2002 and March 2004, respectively. Qin remained in prison, as did others connected with a 2002 open letter calling for political reform and a reappraisal of the official verdict on the 1989 Tiananmen massacre signed by 192 activists.[36] According to some NGOs between 80 and 200 people still remain detained for their part in the Tiananmen Square protests of 1989.[37]

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

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

3.9.8 ***Conclusion.*** It is clear that the Chinese authorities may take serious action against individuals involved with opposition political parties/organisations who they believe pose a threat to the state and that this treatment may amount to persecution. Where an individual is able to demonstrate that they are at serious risk of facing such persecution on account of their activities a grant of asylum will be appropriate.

3.10 Forced abortion(s)/sterilisation under 'one child policy'

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

3.10.2 ***Treatment.*** Article 25 of the State Constitution states that "The State promotes family planning so that population growth may fit the plans for economic and social development." Article 49 states, "Both husband and wife have the duty to practise family planning."[38] Coercive fines are the main enforcement mechanism, although there were reports of local officials using physical coercion to ensure compliance, even though this practice violates Chinese law.[39]

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[32] COIS China Country Report para 6.411
[33] COIS China Country Report para 6.415
[34] COIS China Country Report para 6.421
[35] COIS China Country Report para 6.417
[36] COIS China Country Report para 6.419
[37] COIS China Country Report para 6.425
[38] COIS China Country Report para 6.358
[39] COIS China Country Report para 6.359

3.10.3 However, the 'one-child policy' does not restrict every couple to only one child. The fertility rate in China is 1.72 indicating that most couples have more than one child. In urban areas, if both husband and wife are only children in their families, they can have two children. In most rural areas, if a family only has one girl, the couple can have another child. In some remote and poor mountainous areas, farmers are allowed to have two children.[40]

3.10.4 The one-child limit was more strictly applied in the cities. In most rural areas (including towns of under 200,000 persons), which included approximately two-thirds of the country's population, the policy was more relaxed, generally allowing couples to have a second child if the first was a girl or had a disability.[41]

3.10.5 In addition recognised minorities are partially exempt from the 'one child policy'. Those in urban areas are allowed two children (or three if both are girls or one is disabled); those in rural areas, generally three. In ethnic minority areas, more preferential policies permit some families to have three children, and in the farming and pastoral areas in Xinjiang Uygur Autonomous Region, families are allowed to have four children. In Tibet's farming and pastoral areas, there is no restriction on childbirth.[42]

Forced abortions

3.10.6 Pregnancies for a second child without government approval or in violation of local laws and regulations must be terminated under the directives of family planning technical service personnel. In some provinces, the local villagers' or residents' committee are permitted to 'take measures' and establish a deadline for terminating the pregnancy. Couples who refuse to undergo an abortion are given a warning, and if the abortion is not performed, the couple may be fined up to CNY 2,000 ($242). Citizens who have children without permission from the government must pay social compensation fees, must assume financial responsibility for all maternal health-care costs, and are denied maternity insurance benefits for leave and subsidies; rural citizens are refused future increases in land allocation.[43]

3.10.7 In addition, those who violated the child limit policy by having an unapproved child or helping another to do so faced disciplinary measures such as job loss or demotion, loss of promotion opportunity, expulsion from the party (membership in which was an unofficial requirement for certain jobs), and other administrative punishments, including in some cases the destruction of property. These penalties sometimes left women with little practical choice but to undergo abortion or sterilisation.[44]

3.10.8 Reports of physical coercion by officials trying to meet birth targets continued in 2005. While the central government has moved towards persuasion and fines to enforce limits on family size, many local officials overstep the law.[45]

Forced Sterilisation

3.10.9 The Chinese government formally prohibits the use of physical coercion to compel persons to submit to abortion or sterilisation. However, the government offers a number of incentives designed to encourage individuals to undergo sterilisation. These can include extended leave and extra benefits in the workplace and the right to marry if they are at risk of transmitting certain congenital defects.[46] However, forced sterilisations continue to occur, most frequently when couples have more children than the allowable number. Women may be allowed to carry the 'excess' child to term, but then one member of a couple is strongly pressured to be sterilised. In some cases, they may be asked to go to a hospital under other pretences, or sterilised without consent. Additionally, if doctors find that a couple is at

[40] COIS China Country Report para 6.360
[41] COIS China Country Report para 6.361
[42] COIS China Country Report para 6.362
[43] COIS China Country Report para 6.365
[44] COIS China Country Report para 6.367
[45] COIS China Country Report para 6.368
[46] COIS China Country Report para 6.369

risk of transmitting disabling congenital defects to their children, the couple may marry only if they agree to use birth control or undergo sterilisation.[47]

3.10.10 In was reported that in March 2005 the township authorities forced hundreds of women in Chewang Township, Cangshan County, Shandong Province to undergo abortions. Many of these women were apparently beaten and illegally detained for resisting the authorities, and this mistreatment even resulted in the death of one woman.[48] The National Population and Family Planning Commission (NPFPC), China's watchdog of population issues, has started to investigate media reported illegal family planning practices in east China's Shandong Province.[49]

3.10.11 In September 2005 it was reported that several Chinese health workers had been arrested or sacked over claims that they forced people to have abortions or sterilisations. China's National Population and Family Planning Commission said it had received 'successive complaints' about illegal practices in Linyi [Shandong province].[50]

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

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

3.10.14 ***Caselaw.***

> **[2004] UKIAT 00138 TC (China) Heard 27 February 2004, Promulgated 10 June 2004**
> The IAT accepted that the appellant who had four children had been fined 30,000 Yen for breaching the One Child Policy. He had been beaten by the police and officials had damaged his house and taken his furniture. In the course of the encounter, the appellant had hit a police officer. As he was unable to pay the fine, he went into hiding and left China illegally.
>
> The IAT found that even if the appellant was arrested and detained, they do not consider that the resultant pre-trial detention, the sentence and the post-trial detention would give rise to serious harm to the appellant that would breach Article 3. Conditions in both the prison system and the administrative detention system facilities are harsh and ill-treatment does occur. However, there was no evidence as to what proportion of prisoners in China are estimated to experience ill-treatment. In order to be satisfied there is a real risk, the objective evidence considered as a whole needs to demonstrate a consistent pattern of gross, flagrant or mass violations of the human rights of the prisoners. If there was such a consistent pattern, the Tribunal would expect to find more evidence than there is of the scale and frequency of human rights abuses.
>
> The fact that the appellant's wife had not met with any adverse consequences since his departure was rightly treated by the adjudicator as a strong indication that the authorities were not continuing to pursue his family for violation of the One Child policy. If however the appellant was to return and there was a renewed requirement to pay the fine, even if this amounted to a significant proportion of his annual wage, this could not be considered to be so disproportionate as to give rise to a violation of Article 3.

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

[47] COIS China Country Report para 6.373
[48] COIS China Country Report para 6.379
[49] COIS China Country Report para 6.383
[50] COIS China Country Report para 6.385

are punished in the majority of cases the punishment is a simple fine which even if it amounts to a significant proportion of a claimants annual salary would not be a breach of Article 3. Therefore in the majority of cases claimants are unlikely to qualify Humanitarian Protection.

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

3.11 Double Jeopardy

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

3.11.2 ***Treatment.*** Articles 8 to 12 of the Criminal Law covers the circumstances in which an individual who commits crimes outside the Peoples Republic of China (PRC) can be retried upon return to China.[51]

3.11.3 Article 10 states: Any person who commits a crime outside the territory and territorial waters and space of the PRC, for which according to the law he should bear criminal responsibility, may still be investigated for criminal responsibility according to this Law, even if she or he has already been tried in a foreign country. However if he has already received criminal punishment in the foreign country he may be exempted from punishment or given mitigated punishment.[52]

3.11.4 The circumstances under which an individual would be punished in China for a crime committed in a foreign country for which he had already been punished in that country, are unstipulated. The Chinese authorities are most likely to take this action if the crime had received a lot of publicity in China, if the victims were well-connected in China, if there were a political angle to the original crime or if the crimes were of a particular type that the authorities wanted to make an example of. As of July 2005 the British Embassy in Beijing is unaware of any such instances. The specific inclusion in the Criminal Law of `exemptions' from second punishment in China for crimes committed abroad suggests that the authorities would not take further action against those convicted abroad for ordinary criminal offences.[53]

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

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

3.11.7 ***Caselaw.***

> **[2006] UKAIT 00007 SC (Double jeopardy – *WC* considered) China CG heard 10 August 2005, Promulgated 23 January 2006** The AIT found that for a Chinese citizen convicted of a crime in the United Kingdom on return to China there is not a real risk of a breach of protected human rights whether by way of judicial or extra-judicial punishment, even if the crime has a Chinese element. WC (no risk of double punishment) China [2004] UKIAT00253 applied and considered.

[51] COIS China Country Report para 5.52
[52] COIS China Country Report para 5.52
[53] COIS China Country Report para 5.54

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

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

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

3.11.8 ***Conclusion.*** The Chinese legal system allows for double jeopardy in which Chinese citizens can be punished/imprisoned on return to China for crimes they have committed and been punished for in other countries. However, the IAT found in **[2004] UKIAT 000253 (WC)** that since the law on double jeopardy was revised in 1997 there is a 'striking' lack of any example of it having been enforced. This was further supported by the AIT in **[2006] UKAIT 00007 SC.** Therefore claimants from this category of claim are unlikely to qualify for Humanitarian Protection.

3.12 Rural and industrial unrest

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

3.12.2 **Treatment** In recent years China has had to face serious challenges stemming from growing disparities between rich and poor, and urban and rural populations. Along with official corruption, such disparities in 2005 fuelled a rise in protests and demonstrations from workers, farmers, people forcibly evicted from their homes, victims of police abuse, and HIV/AIDS activists, among others. According to official figures, there were 74,000 protests in China in 2004 involving 3.5 million people, up from 58,000 protests in 2003.[54]

3.12.3 At times police used excessive force against demonstrators during 2005. Demonstrations with political or social themes were often broken up quickly and violently. However, the vast majority of demonstrations during 2005 concerned land disputes, housing issues, industrial, environmental, and labour matters, and other economic and social concerns. During 2005 over 87,000 'public order disturbances' were reported, up 6.6 percent from 2004. Some of these demonstrations included thousands of participants. Incidents described as mob violence rose by 13 percent over 2004, according to the Ministry of Public Security, which said that the number of demonstrations continued to grow and protesters were becoming more organised. [55]

3.12.4 Corruption in China remained an endemic problem in 2005. The National Audit Office determined that approximately $400 million (RMB 3.21 billion) from the central government's 2004 budget was misused or embezzled, nearly triple the amount reported in 2003. Corruption plagued courts, law enforcement agencies and other government agencies. In 2004 economists estimated that the cost of corruption might exceed 14 percent of gross domestic product.[56] In October 2005, 10,000 workers in Chongqing took to the streets to protest corruption surrounding the bankruptcy of a local steel plant. [57]

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[54] COIS China Country Report para 6.195
[55] USSD 2005 (Section 2)
[56] USSD 2005 (Section 4)
[57] USSD 2005 (Section 2)

Rural unrest

3.12.5 Several recent rural protests have turned violent, notably those in the townships of Shanwei and Dingzhou (in Guangdong and Hebei provinces respectively) in 2005, which were sparked by official seizure of land and inadequate compensation levels. Complaints about issues such as these have grown as villagers have become more aware of their legal rights. Violent disputes over land are common in China, where competition for useable land is fierce.[58]

3.12.6 In June 2005 there were violent clashes between protesting villages and hired thugs in the village of Shengyou, Hebei province that left six people dead. The clashes were related to land rights and lead to the sacking of the mayor and Communist Party chief in the nearby city of Dingzhou. The ex-Party Chief, He Feng was amongst the 27 people charged with causing 'intentional injuries'. He Feng was sentenced to life imprisonment for his part in the clashes in Shengyou. Four co-defendants were sentenced to death. One farmer was sentenced to five and a half year's imprisonment and another five year's imprisonment.[59]

Industrial unrest

3.12.7 Although the law provides for the freedom of association, in practice workers were not free to organise or join unions of their own choosing. The All-China Federation of Trade Unions (ACFTU), which was controlled by the CCP and headed by a high-level party official, was the sole legal workers' organisation. The trade union law gives the ACFTU control over all union organisations and activities, including enterprise-level unions. Independent unions are illegal. The ACFTU and its constituent unions influenced and implemented government policies on behalf of workers. The CCP used the ACFTU to communicate with and control workers.[60]

3.12.8 Worker protests occurred throughout 2005. Most involved actual or feared job loss, wage or benefit arrears, allegations of owner/management corruption, dissatisfaction with new contracts offered in enterprise restructuring, or discontent over substandard conditions of employment. While some were tolerated, the government took swift action to halt protests that became large or that officials deemed embarrassing. Police sometimes detained protest leaders and dispersed demonstrations. In some cases workers were offered payments that met at least a portion of their demands.[61]

3.12.9 For China's migrant workers, confrontation is often the only way to obtain their wages. Arbitration is a complicated and time-consuming process, impossible to initiate when one works all day and irrelevant if no labour contract is signed. The problem of unpaid wages is particularly acute during the lead up to the Lunar New Year (Spring Festival) when migrant workers traditionally return to their home villages with the money they have earned during the year.[62]

3.12.10 Social unrest is on the rise in China as state-owned enterprises (SOEs) shed labour, rural incomes stagnate and corruption remains rife. Protests by tens of thousands of unemployed workers in the north-eastern cities of Liaoyang and Daqing in 2002 are thought to have been the biggest in China since the huge nationwide demonstrations of 1989, and were perhaps the largest worker-initiated protests in the history of the People's Republic of China.[63]

3.12.11 ***Sufficiency of protection.*** Corruption in China remained an endemic problem in 2005 and plagued the courts, law enforcement agencies and other government agencies.[64] Organised

[58] COIS China Country Report para 6.199
[59] COIS China Country Report para 6.200
[60] COIS China Country Report para 6.213
[61] USSD 2005 (Section 6)
[62] COIS China Country Report para 6.217
[63] COIS China Country Report para 6.218
[64] USSD 2005 (Section 4)

criminal gangs usually have solid connections with some local officials and police officers in certain areas.[65] The high levels of corruption within China may limit the effectiveness of any protection that the authorities are able or willing to offer to those that fear organised crime or corrupt officials. In cases where the claimant fears the Chinese authorities then he can not approach them to seek protection.

3.12.12 ***Internal relocation.*** Hukous (residence permits) are issued for all Chinese citizens and are inscribed to identify the carrier as a rural or urban, resident. Each urban administrative entity (towns, cities, etc.) issues its own hukou, which entitles only registered inhabitants of that entity full access to social services, like education.[66] However, not all citizens were officially registered and there remained a floating population of between 100 and 150 million economic migrants who lacked official residence status in cities.[67]

3.12.13 Organised criminal gangs are usually strong and have solid connections with some officials and police officers in certain areas, but their influence does not usually go beyond their own province or often their own city.[68] In general it would not be unduly harsh for a claimant who feared organised criminal gangs/corrupt officials in their local area to move to another part of China even if they were not able to officially register. However, in cases where the claimant fears the Chinese authorities then internal relocation is not an option.

3,12.14 Conclusion In recent years there has been a significant increase in rural and industrial unrest in China mainly related to the issues of unpaid wages and land. Depending on the circumstances of the unrest these protests may be directed against the Chinese government or against corrupt local officials (often supported by organised criminal gangs). Many of these protests have involved thousands of people and some have turned violent, resulting in deaths and serious injury.

3.12.15 Although the Chinese government is wary of any form of popular protest and is likely to respond harshly to protests that challenge the states 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 states authority or right to govern but instead protest against its specific policy as regards wages or land. In general claimants from this category of claim are unlikely to be seen by the Chinese authorities as having engaged in a political act and are therefore unlikely to engage the United Kingdoms obligations under the Refugee Convention and therefore are unlikely to qualify for asylum or Humanitarian Protection. In addition for those claimants who fear organised gangs there is the option to internally relocate to another province.

3.13 Prison conditions

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

3.13.2 ***Consideration.*** According to the most recent data from China's public security and judicial authorities, 1.12 million people are currently serving time in China's prisons, and the total number of prisoners exceeds jail capacity by 18 percent. However, many prisoners are able to negotiate a reduction in their prison time by bribing the authorities.[69]

3.13.3 Conditions in penal institutions for both political prisoners and common criminals in 2005 were generally harsh and sometimes degrading. Prisoners and detainees were often kept in overcrowded conditions with poor sanitation. Food was often inadequate and of poor quality, and many detainees relied on supplemental food and medicines provided by

[65] COIS China Country Report para 5.76
[66] COIS China Country Report para 6.252
[67] COIS China Country Report para 6.251
[68] COIS China Country Report para 5.76
[69] COIS China Country Report para 5.78

relatives; however, some prominent dissidents were not allowed to receive such goods. Political prisoners were segregated from each other and placed with common criminals, who sometimes beat political prisoners at the instigation of guards. Newly arrived prisoners or those who refused to acknowledge committing crimes were particularly vulnerable to beatings.[70]

3.13.4 Acknowledging guilt was a pre-condition for receiving certain prison privileges, including the ability to purchase outside food, make telephone calls, and receive family visits. Prison officials often denied privileges to those, including political prisoners, who refused to acknowledge guilt or obey other prison rules. Sexual and physical abuse and extortion were reported in some detention centres. Forced labour in prisons and re-education through labour camps was common. Juveniles were required by law to be held separately from adults, unless facilities were insufficient. In practice, children sometimes were detained without their parents, held with adults, and required to work.[71]

3.13.5 The UN Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment visited a total of 10 detention facilities in 2005. In general, the Special Rapporteur found that although the specific conditions of the facilities varied, in terms of basic conditions, such as food, medicine and hygiene, they were generally satisfactory. However, the Special Rapporteur noticed a palpable level of fear when talking to detainees. He also was struck by the strict level of discipline exerted on detainees in different facilities. He reported that time and again, he entered cells and found all detainees sitting cross legged on a mattress or in similar forced positions reading the CL [criminal law] or prison rules. According to information provided by detainees, such forced re-education, in particular in pre-trial detention centres, goes on for most of the day. Even when serving long prison sentences, persons convicted of political offences usually have no right to work and very little time for recreation. They are not allowed to practise their religion (e.g. Buddhism in Tibet, Islam in Xinjiang).[72]

Re-education through Labour (RTL)

3.13.6 Re-education through Labour (RTL) is one type of administrative detention.[73] The re-education through labour system allows non-judicial panels of police and local authorities, called labour re-education committees, to sentence persons to up to three years in prison-like facilities. The committees can also extend an inmate's sentence for an additional year. Defendants were legally entitled to challenge re-education through labour sentences. They could appeal for a reduction in, or suspension of, their sentences; however, appeals were rarely successful.[74] Conditions in administrative detention facilities, such as re-education through labour camps, were similar to those in prisons.[75]

3.13.7 Political prisoners constitute 5 -10 percent of the total re-education through labour inmate population, while as much as 40 percent of inmates are drug offenders. Drug users are expected to kick their habits while in the camps. The expense of creating those programmes, and the question of what would be done with the 300,000 people in the camp system, are issues slowing efforts for change. Another is the absence of any broad public outcry or anger about the system.[76]

Other Forms of Administrative Detention

3.13.8 The following forms of administrative detention are also used in China:

- Custody and Education – intended to treat prostitutes and their clients, periods of detention range from six months to two years;

[70] COIS China Country Report para 5.82
[71] COIS China Country Report para 5.83
[72] COIS China Country Report para 5.81
[73] COIS China Country Report para 5.95
[74] COIS China Country Report para 5.98
[75] COIS China Country Report para 5.99
[76] COIS China Country Report para 5.97

- Coercive Drug Rehabilitation – used to treat drug addicts;
- Legal Education – used to incarcerate people who have failed drug rehabilitation as well as "seriously poisoned" Falun Gong practitioners who have already gone through RTL;
- Custody and Repatriation – was used to hold migrant workers without papers until it was abolished in the summer of 2003.[77]

3.13.9 ***Caselaw:***

[2005] UKIAT 00099 LJ (China) Heard 24 February 2005, Promulgated 10 May 2005.
The IAT found that before reaching a conclusion on whether prison conditions were inhuman and degrading more detailed evidence would be required regarding:

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

[2004] UKIAT 00138 TC (China) Heard 27 February 2004, Promulgated 10 June 2004
The IAT found that even if the appellant was arrested and detained, they do not consider that the resultant pre-trial detention, the sentence and the post-trial detention would give rise to serious harm to the appellant that would breach Article 3. Conditions in both the prison system and the administrative detention system facilities are harsh and ill-treatment does occur. However, there was no evidence as to what proportion of prisoners in China are estimated to experience ill-treatment. In order to be satisfied there is a real risk, the objective evidence considered as a whole needs to demonstrate a consistent pattern of gross, flagrant or mass violations of the human rights of the prisoners. If there was such a consistent pattern, the Tribunal would expect to find more evidence than there is of the scale and frequency of human rights abuses.

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

4. Discretionary Leave

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

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

[77] COIS China Country Report para 5.103

4.3 Minors claiming in their own right

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

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

4.4 Medical treatment

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

4.4.2 By the end of 2003, there were 305,000 health care institutions in China, including 64,000 hospitals and health care stations, 3,058 maternal and child health care institutions, and 1,811 specialized health institutions or stations. Hospitals and health care institutions in China had a total capacity of 2.9 million beds. There were 4.24 million health workers in China, including 1.83 million practising doctors and assistant doctors and 1.24 million registered nurses.[78]

Psychiatric Treatment

4.4.3 According to Ministry of Health figures, China has 16,055 psychiatrists - one for every 87,500 people. This figure doesn't reflect disparities in rural areas, where qualified psychiatric care is non-existent. According to the same source many hospitals don't have real psychiatrists. Instead they have neurologists and other doctors who have been briefly retrained and then sit and listen to patients before writing prescriptions.[79]

4.4.4 Among all the cities of China, Shanghai has the most developed psychiatric setup. It includes community follow-up programmes, guardianship networks, work therapy stations, mental health services in factories, day hospitals, night hospitals, family support groups. Services at each of the three levels-municipal, district and grass-root level are available.[80]

HIV/AIDS

4.4.5 China has made good progress in responding to HIV and AIDS in 2004 on several key areas: leadership and political commitment; information and surveillance systems; HIV-prevention efforts; treatment care and support; investments in HIV and AIDS programmes and international collaboration. It is feared that the number of people living with AIDS in China could reach 10 million by 2010 if the epidemic is left unchecked.[81]

4.4.6 The Chinese Government has begun making anti-retroviral drugs available free of charge to all rural residents and to those in urban areas unable to pay for the treatment themselves.[82]

4.4.7 More than 10,000 AIDS patients were provided with free anti-retroviral therapy, a kind of anti-virus treatment in 2004. The total central government investment on HIV/AIDS amounted to about 390 million yuan (US$47 million) in 2003. The budget for 2004 was 810 million yuan (US$98 million), while budgeted international support reached to 421 million (US$51 million) in 2004.[83]

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[78] COIS China Country Report para 5.111
[79] COIS China Country Report para 5.117
[80] COIS China Country Report para 5.118
[81] COIS China Country Report para 5.122
[82] COIS China Country Report para 5.124
[83] COIS China Country Report para 5.126

4.4.8 The Article 3 threshold will not be reached in the majority of medical cases and a grant of Discretionary Leave will not usually be appropriate. Where a caseworker considers that the circumstances of the individual claimant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 a grant of Discretionary Leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

5. Returns

5.1 Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim.

5.2 Chinese nationals may return voluntarily to any region of China at any time by way of the Voluntary Assisted Return and Reintegration Programme run by the International Organisation for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining travel documents and booking flights, as well as organising reintegration assistance in China. The programme was established in 2001, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Chinese nationals wishing to avail themselves of this opportunity for assisted return to China should be put in contact with the IOM offices in London on 020 7233 0001 or www.iomlondon.org.

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