



Upper Tribunal  
(Immigration and Asylum Chamber)

QH (Christians - risk) China CG [2014] UKUT 00086 (IAC)

THE IMMIGRATION ACTS

Heard at Field House  
On 6<sup>th</sup> June 2013

Determination Promulgated

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Before

UPPER TRIBUNAL JUDGE GLEESON  
UPPER TRIBUNAL JUDGE KING TD

Between

QH

[ANONYMITY ORDER MADE]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D O'Callaghan of Counsel, instructed by Howe and Co Solicitors  
For the Respondent: Mr S Allen, Senior Home Office Presenting Officer

*Risk to Christians in China*

- (1) *In general, the risk of persecution for Christians expressing and living their faith in China is very low, indeed statistically virtually negligible. The Chinese constitution specifically protects religious freedom and the Religious Affairs Regulations 2005 (RRA) set out the conditions under which Christian churches and leaders may operate within China.*

- (2) *There has been a rapid growth in numbers of Christians in China, both in the three state-registered churches and the unregistered or 'house' churches. Individuals move freely between State-registered churches and the unregistered churches, according to their preferences as to worship.*
- (3) *Christians in State-registered churches*
- (i) *Worship in State-registered churches is supervised by the Chinese government's State Administration for Religious Affairs (SARA) under the RRA.*
  - (ii) *The measures of control set out in the RRA, and their implementation, whether by the Chinese state or by non-state actors, are not, in general, sufficiently severe as to amount to persecution, serious harm, or ill-treatment engaging international protection.*
  - (iii) *Exceptionally, certain dissident bishops or prominent individuals who challenge, or are perceived to challenge, public order and the operation of the RRA may be at risk of persecution, serious harm, or ill-treatment engaging international protection, on a fact-specific basis.*
- (4) *Christians in unregistered or 'house' churches*
- (i) *In general, the evidence is that the many millions of Christians worshipping within unregistered churches are able to meet and express their faith as they wish to do.*
  - (ii) *The evidence does not support a finding that there is a consistent pattern of persecution, serious harm, or other breach of fundamental human rights for unregistered churches or their worshippers.*
  - (iii) *The evidence is that, in general, any adverse treatment of Christian communities by the Chinese authorities is confined to closing down church buildings where planning permission has not been obtained for use as a church, and/or preventing or interrupting unauthorised public worship or demonstrations.*
  - (iv) *There may be a risk of persecution, serious harm, or ill-treatment engaging international protection for certain individual Christians who choose to worship in unregistered churches and who conduct themselves in such a way as to attract the local authorities' attention to them or their political, social or cultural views.*
  - (v) *However, unless such individual is the subject of an arrest warrant, his name is on a black list, or he has a pending sentence, such risk will be limited to the local area in which the individual lives and has their hukou.*
  - (vi) *The hukou system of individual registration in rural and city areas, historically a rigid family-based structure from which derives entitlement to most social and other benefits, has been significantly relaxed and many Chinese internal migrants live and work in cities where they do not have an urban hukou, either without registration or on a temporary residence permit (see AX (family planning scheme) China CG [2012] UKUT 00097 (IAC) and HC & RC (Trafficked women) China CG [2009] UKAIT 00027).*

- (vii) *In the light of the wide variation in local officials' response to unregistered churches, individual Christians at risk in their local areas will normally be able to relocate safely elsewhere in China. Given the scale of internal migration, and the vast geographical and population size of China, the lack of an appropriate hukou alone will not render internal relocation unreasonable or unduly harsh.*

## **DETERMINATION AND REASONS**

*Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant has been granted anonymity throughout these proceedings and after their conclusion, absent any order to the contrary by the Upper Tribunal or any other Court seised of relevant proceedings. No report of these proceedings, in whatever form, either during the proceedings or thereafter, shall directly or indirectly identify the appellant or any member of her family. Failure to comply with this order could lead to a contempt of court.*

1. The appellant is a citizen of the People's Republic of China born on 10<sup>th</sup> June 1986. She appeals with permission against the decision of the First-tier Tribunal dismissing her appeal against the respondent's decision to set removal directions to China, after refusing her asylum, humanitarian protection or leave to remain on human rights grounds. The appellant claims to be the daughter of a pastor of an unregistered Church in China and that on return she would be at risk of persecution, serious harm, or breach of her fundamental human rights, by reason of her desire to proselytise on behalf of her father's church.
2. This appeal was identified for possible country guidance on the risk on return for Christians in China. Given the need for expert evidence on the risk to Chinese Christians in general, as well as this appellant in particular, the appeal was adjourned for further evidence and it is thus that it came before the Upper Tribunal, essentially on the issue of safety of return.

### **Issues for country guidance**

3. We clarified with the parties that the focus of our consideration in this appeal would be on asylum, humanitarian protection and/or Article 3 of the ECHR rather than Article 8 of the ECHR, in answer to the following question:

*'To what extent do Christians in China have the ability or freedom to openly or publicly profess and practise their faith? Such to encompass the ability to proselytise and to associate with others of their faith.'*

Inextricably linked with that question:-

*'To what extent and in what circumstances do Christians face persecution in China?'*

4. The following determination, to which we have both contributed, takes account of all the oral and documentary material before us, including the written and oral arguments of both parties.

## Country evidence

5. We had the benefit of a significant amount of both oral and written country evidence. The evidence before us is listed and set out more fully in the following Appendices:
- (a) **Appendix A.** A full list of all material before the Upper Tribunal, together with links to relevant websites on which that evidence may be found.
  - (b) **Appendix B.** Evidence regarding the number of Christians in China and the recent rapid growth of Christianity, in both the official state-registered churches and the unregistered 'house' churches.
  - (c) **Appendix C.** The evidence of Professor Mario Aguilar, Chair of Religion and Politics at the School of Divinity (St. Mary's College) of the University of St Andrews, which was given both in his expert report of 23<sup>rd</sup> May 2013 and orally at the hearing. The report and relevant attachments are contained within bundle A in the documents before the Upper Tribunal, and consist of some 109 folios.
  - (d) **Appendix D.** The evidence of the Very Reverend Dr Christopher Hancock, Chaplain of St Peter's College Oxford, in his February 2013 report, 'Risks to Christians in China Today'.
6. We have considered all the material to which our attention was specifically invited and we have had regard to all the documents and evidence before us at the hearing. Particular areas of evidence expressly considered in our determination can be found in the following paragraphs:

<b>Subject</b>	<b>Details</b>	<b>Paragraphs</b>
<b>Chinese legal framework</b>	<i>State Council of the People's Republic of China</i>	9-16
<b>US Commission on International Religious Freedom (USCIRF)</b>	<i>2013 Report on Religious Freedom in China</i>	17-23
<b>US Congressional-Executive Committee on China (CECC)</b>	<i>2013 Report</i>	24
<b>Voice of the Martyrs (VOM):</b>	<i>The Empty Cross [2001], revised [2008]</i>	25
<b>ChinaAid</b>	<i>Reports and publications generally</i>	29-49
<b><u>Information on incidents affecting Chinese Christians</u></b> <b>(in ChinaAid materials):</b>		50
<b>Chinese Municipal Cities</b>	<i>Beijing, Shanghai, Tianjin</i>	50(A)
<b>North East China</b>	<i>Heilongjiang and Jilin Provinces</i>	50(B)
<b>North China</b>	<i>Inner Mongolia, Hebei and Shanxi</i>	50(C)

	<i>Provinces</i>	
<b>Northwest China</b>	<i>Xinjiang and Shaanxi Provinces</i>	50(D)
<b>East China</b>	<i>Shandong, Anhui, Zhejiang, Jiangsu And Jianxi Provinces</i>	50(E)
<b>South China</b>	<i>Guangdong Province</i>	50(F)
<b>Central China</b>	<i>Henan, Hubei and Hunan Provinces</i>	50(G)
<b>Southwest China</b>	<i>Sichuan and Yunnan Provinces</i>	50(H)
<b><u>Country expert evidence</u></b>		
<b>Dr Christopher Hancock</b>	<i>Report dated 6 June 2013</i>	51-55
<b>Professor Mario Aguilar</b>	<i>Report dated 22 May 2013 and oral evidence</i>	56-64

## **Background**

- Christianity in China has long roots, dating back to the middle of the 7<sup>th</sup> century AD, and is now said to be the fastest growing religious group in China. The population of China now stands at between 1.6 and 2 billion people. It is very difficult to establish the number of people practising Christianity in China. The 2010 data published by China's State Administration for Religious Affairs (SARA) estimated that in the registered churches there were some 6 million Catholics and 23 million Protestants. We were not taken to more recent figures from the Chinese authorities.
- Other sources suggest much larger numbers of Christians, if the registered and unregistered ('house') churches are taken into account. An article by Fiscal News Service dated March 2012 indicated that there were some 20 to 40 million registered Christians in China. Other sources suggest, having regard to the registered and unregistered churches, that the real figure is between 70-80 million Christians, of whom approximately 10 million are Catholic and the remaining 60-70 million Protestant. We do not consider that overall much turns on these calculations, since the fact of large numbers of Christians and exponential growth in the Christian community, both registered and unregistered, is accepted in all the sources before us.

## **Chinese legal framework**

- The Chinese State recognises three Christian religious bodies, membership of which is open to adult Chinese citizens (aged over 18). There are two Protestant organisations, the China Christian Council (CCC) and the Three-Self Patriotic Movement (TSPM) and in addition, the Chinese Catholic Patriotic Association (CPA). Forms of worship in the State churches are prescribed and state-controlled by SARA, pursuant to the Religious Affairs Regulations 2005 (the RRA). Most of the evidence before us deals with the workings of the Protestant TSPM.

10. In addition, millions of Chinese practise Christianity in unregistered churches, which are by their nature untrammelled by the restrictions on forms and substance of worship which apply to the State-recognised churches.

### **Chinese Constitution**

11. The preamble to the constitution of the People's Republic of China, adopted on December 4 1982, says that:

“...This Constitution affirms the achievements of the struggles of the Chinese people of all nationalities and defines the basic system and basic tasks of the State in legal form; it is the fundamental law of the State and has supreme legal authority. The people of all nationalities, all state organs, the armed forces, all political parties and public organizations and all enterprises and undertakings in the country must take the Constitution as the basic norm of conduct, and they have the duty to uphold the dignity of the Constitution and ensure its implementation.”

12. At Article 36, the Constitution protects religious freedom:

**Article 36.** Citizens of the People's Republic of China enjoy freedom of religious belief. No state organ, public organisation or individual may compel citizens to believe in, or not to believe in, any religion; nor may they discriminate against citizens who believe in, or who do not believe in any religion. The State protects normal religious activities. No one may make use of religion to engage in activities that disrupt public order, impair the health of citizens or interfere with the educational system of the State. Religious bodies and religious affairs are not subject to any foreign domination.”

### **Regulations on Religious Affairs (no 426) 2005**

13. On 30 November 2004, the State Council of the People's Republic of China passed the Religious Affairs Regulations (No 426), which came into force on 1 March 2005. The religious structure there set out is administered by SARA. The Chinese government recognises five official religions: Buddhism, Catholicism, Islam, Protestantism, and Taoism. The Regulations do not as expressed limit the Christian organisations which can be registered; rather, they create a registration structure applicable to all religious bodies and places of worship, while protecting freedom of religion and of worship.
14. Article 2 of the Regulations provides for religious freedom in China, subject to registration of religious groups and to social controls. Article 3 distinguishes between 'normal religious activities' and the use of religion to 'upset social order, harm the health of citizens, or obstruct the State education system, or to engage in other activities that harm national interests, social welfare, or the lawful rights and interests of citizens '. Article 4 provides inter alia that religious groups, places of worship and religious affairs 'shall not be under the control of a foreign power'.
15. Articles 6-11 regulate the religious groups and provide for applications to register religious groups or academies to the religious affairs department of the province where the group wishes to operate.

16. Arts 12-26 and 30-37 provide what is essentially a planning system for places of religious worship, including the right of religious groups to own property; penalties for breach are set out at arts 38-46, including a provision at Article 46 for administrative reconsideration of the actions of SARA thereunder. Arts 27-29 require religious instructors to be certified by the religious group and to notify their appointment or resignation to the religious affairs department at the county level or higher. In presiding over religious activities, rites, and research, religious instructors 'shall receive the protection of the law'.

## **Country evidence**

### **US Commission on International Religious Freedom (USCIRF) 2013 Annual Report**

17. This report notes that the Chinese Constitution guarantees the freedom of religion, but protects only 'normal religious activities': it does not explicitly protect the right of individuals to manifest their beliefs without state interference. Reflecting the tight control which the Chinese government seeks to exercise on religious groups, USCIRF notes that the majority of religious practice in China falls within prohibited categories, creating large problems for the government's religion policies. Chinese government officials, at many levels, view religious organizations as an extension of state policy. Hostile remarks made by the head of the United Front Work Department (UFD) in an April 2012 speech, referred to removing the 'chaff' of religious practice so to better promote socialist society.

18. USCIRF expresses concerns as to religious freedom in China, which is listed as a Tier 1 country of particular international concern:

'Poor religious freedom conditions in China deteriorated significantly, particularly for Tibetan Buddhists and Uighur Muslims. To stem the growth of independent Catholic and Protestant groups, the government detained and arrested leaders, forcibly closed churches, and selected Catholic bishops without the approval of the Vatican. The Falun Gong, and other groups deemed 'evil cults', face long-term imprisonments, forced renunciations of faith, and torture in detention.'

19. USCIRF recorded that China is a signatory to the International Covenant on Civil and Political Rights<sup>1</sup> but considered that China's existing laws did not fully ratify or apply the Convention's legal framework, particularly freedom of religion or belief. That was not impeding the extraordinary growth in religion within China, however:

'Despite restrictions, harassment, arrests, and government oversight, the number of religious adherents continues to grow in China and the government continues to tolerate regular and public worship activities of both legally-approved and some unregistered religious groups. Tolerance for unregistered religious activity often varies, depending on province, locality, or relationship with provincial government officials. The government continues to use law to restrict religious activity and manage religious groups.'

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<sup>1</sup> The People's Republic of China signed the ICCPR on 5 October 1998; its predecessor, the Republic of China, signed the Convention on 5 October 1967.

20. USCIRF noted that the RRA continue to govern China's religion policy, having been further updated in 2007. The content of the Regulations has already been set out. During 2012, SARA had announced plans to issue new legal guidelines governing the religious activities of foreigners, the granting of degrees in religious training schools, and the management of the foreign relations of religious groups; in February 2012, SARA and five other government agencies issued a public opinion that appeared to encourage participation of religious organizations in charitable activities.
21. The U.S. Congressional-Executive Commission on China (CECC), in its February 2012 Opinion, emphasised the continuing supervision of religious groups, which China regarded as necessary in order to guide the mutual adaptation of religion and socialist society. The Chinese government aimed to guide unregistered Christian groups towards affiliation with government-sanctioned groups, to stop the proliferation of 'unregistered folk religion' groups, which were perceived as promoting superstition.
22. Members of the Christian community were said to have 'consistently... not joined officially-sanctioned religious organizations' in order to withhold the names and contact information of worshippers, the submission of leadership information to the government or local authorities, or the seeking of advance permission for 'all major religious activities or theological positions'. Government oversight was regarded with suspicion, 'given past persecution'.
23. The Chinese government continued to 'restrict peaceful religious expression and the expansion of religious ideas or worship on the Internet' and to confiscate or punish individuals for the distribution of unapproved Bibles and interpretations of religious texts but a wide array of religious materials and books was available for purchase without restriction in state-approved bookstores.

### **US Congressional-Executive Commission on China**

24. The United States China Congressional-Executive Commission report is published annually and is in the public domain. In its 2013 report, under the heading 'Freedom of Religion', the Commission reported as follows:

“• The Chinese government's legal and policy framework for religion violates international human rights standards for freedom of religion, including Article 18 of the Universal Declaration of Human Rights. Although the PRC Constitution states that all citizens enjoy “freedom of religious belief,” it limits citizens' ability to exercise their beliefs by protecting only “normal religious activities.” The government continued to recognize only five religions—Buddhism, Catholicism, Taoism, Islam, and Protestantism—for limited state protections for religious activity, and the government has continued to outlaw some belief systems, thereby denying members of these communities the right to practice their faith openly and without fear of government reprisal.

- Strict ideological control and government oversight over religious groups was maintained through religious affairs bureaus, the Communist Party's United Front Work Department, and the five “patriotic” religious associations, one for each of the



recognized religions. All clergy and religious organizations are required to be registered with the government. A top religious official announced that all clergy would be registered by the end of 2013. This past year, central government officials also announced a plan to loosen some registration and administrative hurdles on social organizations that explicitly excluded religious organizations. ...

- Observers contend Chinese policies have divided Chinese Catholics into “official” and “underground” churches. Catholics in China continue to be denied the freedom to accept the authority of the Holy See to select bishops, and a new regulation on the selection of bishops that took effect in April 2013 expands the State’s role in the selection process and explicitly requires bishop candidates to “endorse the Chinese Communist Party’s leadership and the socialist system.” Officials at state-run Catholic organizations announced in December a decision to revoke the title of auxiliary bishop from bishop Thaddeus Ma Daqin after he publicly withdrew from the State-run Catholic Patriotic Association at his ordination ceremony in July 2012. Clergy continue to be detained for their underground activity or refusal to join the patriotic association, including priest Song Wanjun. ...

- The Chinese government continued to control the doctrine and activities of its official Protestant church and target members of unregistered house churches for harassment, detention, and other forms of abuse. The government continued its efforts to prohibit worship gatherings of the Beijing Shouwang Church, a house church of over 1,000 congregants in Beijing municipality, denying the church’s appeal against local public security officials for preventing the church from moving into property it had purchased. State-sanctioned raids on house churches continued. In April 2013, local authorities raided a house church in Alxa League, Inner Mongolia Autonomous Region, firing tear gas, detaining members of the congregation, and beating others. Officials in Shenzhen municipality detained house church pastor Cao Nan and others for holding a religious gathering in a public park, and officials in Shanxi province sentenced Li Wenxi and Ren Lancheng for “illegal business operations” in connection with the printing and selling of religious publications. ...

- Despite lacking formal central government recognition, some religious communities have been able to operate inside China and continue to appeal to the Chinese government for greater recognition.”

### **Voice of the Martyrs (VOM) and ‘*The Empty Cross*’**

25. VOM’s publication *The Empty Cross* was written in 2001 and last updated in 2008. Its content underlies much of the other country evidence before us. In addition to setting out the Seven Rules, VOM in 2001 identified a number of perceived problems with China’s approach to Christianity:

- *Evangelising is illegal*
- *Parents cannot teach their children about Christ.*
- *Pastors are appointed by the Communist state.*
- *Pastors may not visit other TSPM churches.*
- *Pastors are required to submit copies of their sermons to the authorities for censoring.*
- *New churches are not permitted unless authorized by the State.*

26. The report criticised the theological training provided in the Christian theological schools run by the Protestant TSPM and CCC, saying that Chinese state seminaries aim at educating as pastors those who are politically in support of the leadership of the Communist Party, thereby seeking to adapt Christianity to socialism, causing the Chinese churches to lose their religious quality and dividing the Chinese Protestant church, in particular. Pastors with an evangelical style to their sermon presentations are routinely removed from prominent or visible positions or placed in the countryside.
27. When dealing with 'party members or true believers', the writer considered that the position of TSPM leaders was unclear, in particular as to whether they were true Communist Party members or true believers. The report stated that 'gangster pastors', without any faith, were being given leading positions such that the TSPM had reached a stage where it was unacceptable to both society and the true Church. TSPM Christianity was considered to be devoid of Christian theology. Registration of worshippers and churches was seen as a means whereby foreign influences could be restricted or controlled and public expression and worship monitored.
28. Part of the explanation offered by VOM in 2008 for the resurgence of unregistered churches was that the structure of the registered churches was insufficient to cater for the religious needs of those who wished to be associated with the wider Christian church, leading many to return to the less formal structure of worship at home in a 'house' church, despite the prohibition in the seventh Rule against preaching outside state-registered churches or receiving evangelists into homes, churches or meeting points.

## **ChinaAid**

29. ChinaAid is an organisation based in Midland, Texas. Its mission statement describes it as an international non-profit Christian human rights organization committed to promoting religious freedom and the rule of law in China. ChinaAid's founder and President Pastor 'Bob' Xiqu Fu was one of the student leaders demonstrating in Tiananmen Square in 1989. In 1996, having founded his own house church in China with his wife, he was imprisoned for illegal evangelism and left China for America.
30. In 2002, Pastor Fu founded ChinaAid 'to promote religious freedom in China and raise worldwide awareness of the ongoing unjust persecution of religious believers in China'. He attended (by invitation) the Nobel Ceremony at which Liu Xiaobo received the Nobel Peace Prize and regularly gives evidence on reports of abuses in China, especially violations of Chinese citizens' right to religious freedom, to the United Nations, the CECC, and other influential agencies. ChinaAid now also supports legal defence in religious persecution incidents, academic research on the rule of law, and ministering to and training of house church leaders in China.
31. We were asked to consider a report published on 4 February 2013 by ChinaAid entitled '2012 Annual Report: Chinese Government Persecution of Christians and Churches in Mainland China, January-December 2012' and, as well as a number of

specific press reports from ChinaAid. The 2012 report is said to demonstrate a 42% increase in incidents of ‘persecution’<sup>2</sup> affecting Christians in China.

32. In 2006, there were 46 incidents, with 665 Christians ‘persecuted’, and 650 people detained<sup>3</sup>. That figure rose over the years to, in 2011, 93 incidents (4322 people ‘persecuted’ and 1289 people detained); in 2012, 132 incidents (4919 people ‘persecuted’ and 1441 people detained). In particular, the headline number of incidents rose between 2011 and 2012 by 41.9%, while the number of persons affected rose more slowly, with those ‘persecuted’ up by 13.8% and numbers detained up by 11.8%.
33. A table at page 4 of the report records that in China as a whole, 4 Christians were sentenced in 2011, and 9 in 2012. In 2011 there were 24 incidents described as ‘abuse’.<sup>4</sup> In tabular form, the information provided is as follows:

Number	2006	2007	2008	2009	2010	2011	2012	Comparison 2012/2011
Incidents	46	60	74	77	90	93	132	> 41.9%
Persons ‘persecuted’	665	788	2027	2935	3343	4322	4919	> 13.8%
Persons detained	650	693	764	389	556	1289	1441	> 11.8%
Persons sentenced	17	16	35	23	6	4	9	> 125%
‘Abuse’ incidents	4	17	19	9	18	24	28	> 16.7%
Persons ‘abused’	7	35	60	114	63	76	37	< 51.3%

34. Statistically, ‘persecution’ overall is said to be 13.1% worse in 2012 than 2011, 61.1% worse than in 2010, 85.1% worse than in 2009, 120.4% worse than in 2008, 308.1% worse than in 2007 and 372.7% worse than in 2006. However, during this period, there was a very large increase in the number of Christians in China. The figures are not tabulated as a percentage of the total number of known Christians in each year.
35. The six categories of statistics, with detail given most of the provinces and municipalities across China, reflect urban and rural house churches, state-registered

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<sup>2</sup> In considering the ChinaAid reports, we have used ‘persecution’ in parentheses since ChinaAid does not, it seems, analyse its data according to the autonomous international meaning of that term. Rather, any interference with services, church buildings, or worship generally, whatever its level of severity, is treated as ‘persecution’.

<sup>3</sup> The report does not make it clear whether the figures of those detained are included in the numbers ‘persecuted’, but it seems likely that the ‘persecution’ figure is a cumulative total of those detained and those who were otherwise affected by the actions of the authorities.

<sup>4</sup> Again, it is unclear what is the scope of and relative gravity used to denote ‘abuse’.

TSPM churches, Catholic churches, and also individual Christians, clergy, human rights lawyers, political dissidents and students. Of the 4919 people recorded as 'persecuted' in 2012, 442 were clergy. Of 1441 people detained, 236 were clergy.

36. The ChinaAid report states that in 2012, Christians and churches in China experienced a '... trend of worsening persecution [which] has persisted for the past seven years, with an average geometric annual increase of 24.5% in the total of all six categories of persecution statistics tracked by ChinaAid.' The report seeks to explain this strategic change, by reference to a September 2011 joint memorandum allegedly issued by SARA and the Ministries of Public Security and Civil Affairs, reflecting and revealing a 10-year plan to completely eradicate house churches. The document, which is not before us, is stated to have set out a three-phase process of actions to achieve this eradication:

Phase 1: From January to June 2012, conduct thorough, intensive and secret investigations of house churches throughout the country and create files on them.

Phase 2: For two to three years, concentrate on cleaning up the 'house churches' that have been investigated and have the files created.

Phase 3: In ten years time completely wipe out 'house churches'.

37. We deal later in this determination with the weight which can be given to the intentions set out in that memorandum, if genuine, today. The report's authors consider that the actions of the Chinese government were undertaken with a clear purpose, namely to stop churches from functioning, by forcibly banning them and sealing off church buildings, pressuring church groups to join the State-registered churches, detaining church leaders and sending them to labour camps, and acting to restrict the spread of the Christian faith amongst students.

38. ChinaAid states that the 'social management' method used in 2012 to break up churches was no longer as in the past employed only by the public security bureau. Instead, neighbourhood committees, village party committees, housing management departments, municipal administrators in charge of city appearance, public health department, industrial and commercial affairs departments and other functional agencies conducted coordinated crackdowns, using various excuses to harass, interfere with and ban church services. Churches whose buildings were sealed up were told to apply for a licence. 'In most incidents, they did not take anyone into custody, or detain or sentence, and even if a person was in custody, he was quickly released'.

39. The report cites the 'unrelenting persecution' of Shouwang Church in the past two years as being an example of that method. Landlords were pressurised to terminate lease agreements with church members, church members who had purchased real estate were unable to take possession of them, church leaders were placed under house arrest and church members were evicted.

40. So far as the crackdown on church leaders on the pretext of 'suspicion of organising and using a cult to undermine law enforcement', this was a ploy said to be used frequently in 2012: in February two Christians were sent to a labour camp, and in April seven leaders of a church in Henan province were arrested and tried, all on this charge.
41. As to the restriction of the spread of Christian faith amongst students, reference was made to a further secret Central Committee document jointly issued by the six ministries and commissions of the Central Committee of the Communist Party of China. This gave directions for preventing and cracking down on Christian evangelism on campuses using the excuse of 'resisting foreign infiltration'. One of the characteristics of the 2012 persecution was that summer camps for Christian students were raided and closed down.
42. A substantial volume of documentation was presented in relation to specific difficulties said to have been experienced by house churches (appellant's bundle F). A further report 'ChinaAid Association (USA), 'Xinjiang Kucha House Church Raided 27th September 2012'' is cited. It is said that on the afternoon of 13th September 2012 a house church was raided and suppressed by local police and agencies in charge of civil affairs. A church service was forced to stop. Four Christian brothers and sisters were taken to the police station, and property including Bibles, study materials, computers and cell phones were confiscated.
43. It seemed that the church has approximately 30 attendees. The group usually gathered in a home every Thursday to study the Bible, to preach from it and to sing worship songs. This particular meeting was said to have caught the attention of the authorities because three teachers had come from Urumqi to teach the Bible. Persons forced their way into the home, declaring the meeting to be illegal, confiscating material, checking identity of individuals at the meeting and taking away all Christian brothers and sisters for questioning, keeping them there until late at night. Of the items confiscated only the Bibles were returned.
44. Seemingly there were more than ten churches in Kucha similar to the one that was raided, and Government agencies in charge of religion and civil affairs increased their intensity in suppressing those house churches.
45. There is another report from ChinaAid Association, and an article from Radio Free Asia speaks of a raid on a Christian bookstore on 1st April 2012.
46. In a report dated 16 January 2013, entitled '2012's Top Ten Cases of Persecution of Churches and Christians in China' only one incident against a TSPM church was mentioned, a dispute not primarily about religious activity but rather the economics of a land dispute. The details given were that a property developer had made an offer to a church community, to demolish and remove church buildings, making the land available for redevelopment. The developer had offered to build a new church for the worshippers on a different site, which proposal had been acceptable to the congregation. The developer then resiled from the offer of a new church and the resulting legal dispute was pursued by the church over a two-year period through

the courts and by way of a public demonstration with six banners, for which they applied for a licence under the RRA. The litigation continued, and Beijing-based Christian lawyers had now submitted an application for administrative review.

47. There are a number of further items dealing with specific incidents of complaint, which would seem to be reflective of the incidents which were contained in the overall report and assessment.
48. In 2012, out of the many millions of Chinese Christians, a total of 9 were sentenced and 37 abused, in 28 incidents. That is an increase of 300% over a six year period 2006 but must be seen in the context of the 80 million or more Christians in China.
49. The various graphs in the ChinaAid report show variations of pattern within the various areas of China, which are reflective of what Dr Hancock had to say as to the variation of enforcement or administrative action between regions. We note that there are relatively few arrests, except in relation to the Shouwang Church and that most of those taken into custody were subsequently released, often after just a few hours. Few such arrests result in a prison sentence. Significantly, the vast majority of those affected by the actions of the officials were not ill-treated or abused when arrested or in custody.

#### **Incidents affecting Christians in China**

50. We have looked at the available evidence about incidents across China on a geographical basis, as follows:

##### **(A) Chinese metropolitan cities: Beijing, Shanghai and Tianjin**

The ChinaAid materials give separate consideration to three municipal cities: Beijing, Shanghai and Tianjin. Beijing has a population of 20.6, Shanghai 23.9 million and Tianjin 9.7 million (over 50 million in all). All three cities have large Christian populations, in both the house and state churches. We have considered the 'persecution' statistics given in the ChinaAid report. It remains unclear from reading the detail of those reports whether the cumulative total for 2012 of 4919 persons 'persecuted' includes the 1,441 persons detained, or whether the figures are separate. 900 of those 'persecuted', and 772 of those detained, arise from the events affecting the Shouwang Church, which is said has endured 'persecution' for 53 straight weeks, with church leaders being placed under house arrest or taken into police custody. In the densely populated city regions of Beijing, Shanghai and Tianjin, only the Shouwang Church and two other congregations have been cited in support of the 'persecution' of Christians. Reference is made to the following incidents in 2012:

- (a) The Beijing Shouwang Church's youth group was harassed, where a worship service was raided with arrests and interrogations.
- (b) Another house church group was raided and forced to have a 'chat', with the meeting halted. No arrests are recorded from that meeting.

- (c) A 'universal love clerical training' session organised by a Shanghai house church was halted by the government.
- (d) Ill-treatment of three Christian constitutional law experts, one being held under house arrest one sentenced, and a third beaten.
- (e) A house pastor was attacked by people suspected of being connected with the government.
- (f) A South Korean pastor was expelled from China.
- (g) A businesswoman from Canada was kidnapped from her home, and
- (h) A bishop of the Patriotic Catholic Church was detained for publicly expressing loyalty to the Vatican.

When services were raided, resulting in arrests and interrogation, the evidence is that those arrested normally suffer no more than verbal abuse and threats.

### **(B) Northeast China**

The northeast region of China comprises the provinces of Heilongjiang (population 38.4 million) and Jilin (population 27.5 million), a total population of almost 68 million people. The ChinaAid report speaks of a Bible training session for church leaders, arranged by a house church group, being raided with some 150 people taken into custody. The church building was forcibly demolished, and government and property developers put pressure on another street church to allow demolition of church property. Property was stolen, and facilities vandalised, but of the 300 persons who protested the demolitions, there seem to have been no arrests. Two women were beaten and injured.

### **(C) North China**

North China comprises Inner Mongolia (population 24.7 million), Hebei (population 71.9 million) and Shanxi (population 35.7 million), a total population of over 122 million, therefore, the following incidents are mentioned in the ChinaAid reports:

- (a) A church in Xilinhot was raided and the pastor and one believer detained.
- (b) Four house churches were raided and books were confiscated. In two incidents, very small numbers of people were placed in administrative detention or sent to labour camps. One house church was banned.
- (c) In Dafeng County, a state-registered TSPM church was forcibly demolished.
- (d) A Christian bookshop was sealed up and two managers interviewed. In a similar incident, a 'Christian dissident' running a bookshop was placed under house arrest.
- (e) In Inner Mongolia, in early April 2012, police broke up a meeting in a house church and confiscated worshippers' computers, mobile phones and cameras. No arrests seem to have been made.

Altogether, 223 persons are stated to have been involved in these incidents. In the 'abuse' column in the statistics table for this region, the table records that three people were beaten. The remaining Christians in this large area are not recorded as having experienced any hostility from the authorities either individually or collectively.

#### **(D) Northwest China**

Northwest China comprises Xinjiang (population 21.8 million) and Shaanxi (population 37.33 million), two provinces with a total population of over 59 million people. For this area, the ChinaAid reports recorded:

- (a) Raids upon eight house churches with property or items confiscated and significant numbers taken into custody and believers being verbally abused. There is a lack of clarity as to what happened to those who were taken into custody, but few sentences are recorded.
- (b) In July 2012, a Sunday school summer camp for 28 children of a house church in Xinjiang, held at the home of a Sunday school teacher, was raided. Seven or eight people broke into her home and took photographs of those present. They claimed that the meeting was an illegal gathering. A number of items were confiscated including computers, Christian books and other items. Teachers and students were taken to the police station. Students and adults who were unwilling to go to the police station were recorded as having been violently pushed, pulled and dragged there. The document states that some of the students were forcibly intimidated and assaulted by police at the police station. The home owner was allowed to return to her house, but the electricity was cut off. The three teachers were detained.
- (c) In the table on page 4 of the 2012 ChinaAid report, it records that an elderly person was pushed to the floor and three sisters slapped in the course of a raid on a Sunday school and summer camp (it is unclear whether this is the same incident). No other incidents of 'abuse' are recorded in that table.

#### **(E) East China**

East China comprises the provinces of Shandong (population 95.8 million), Anhui (population 59.5 million), Zhejiang (population 54.4 million), Jiangsu (population 78.7 million) and Jiangxi (population 44.6), a total population for the area of just under 290 million. In that area, the report records that two people were beaten, one a pastor, and several people received verbal abuse. 28 people were taken into custody and six administratively detained. Particular incidents in this area were as follows:

- (a) One church used legal means to petition higher authorities;
- (b) 17 people were arrested for distributing evangelical leaflets at a city train station;



- (c) Two church summer school classes were raided, the classes being banned, in one case teachers detained and items confiscated, and in the other, students pressured by the school authorities;
- (d) The office and warehouse of an organisation providing house church publications was searched, a pastor was taken into custody and forced to do five days of sight-seeing.
- (e) One house church was forcibly banned and sealed up.
- (f) Another was forcibly demolished, affecting 300 worshippers, but although they are recorded as 'persecuted' in the statistics, there is no indication that they came to any harm, other than losing their church building.
- (g) The head of a house church was invited to talk and pressured to join a registered church.
- (h) A worship service was raided, the worshippers forcibly dispersed, and the church ordered to join the State-registered TSPM church; and
- (i) Three lay members of a house church were summoned for police questioning and forbidden to hold services.

A ChinaAid Association news brief dated 26 April 2012 entitled, 'ChinaAid News Briefs: House Churches in Multiple Provinces Attacked by Local Government' speaks of a house church in Daqing, in Zhejiang province, which was raided by domestic security agents while holding a Bible training session. 150 church leaders were apprehended, including ten foreigners. How many remained in custody was not clear. The other province mentioned is Ye county, in Henan.

#### **(F) South China**

For South China, the only province mentioned is Guangdong (population 104 million). 774 persons are said to have been 'persecuted' but it is not recorded that any were detained for longer than a few days and none were said to have suffered any beatings or violence. As before, the attention of the authorities seems to have been directed to closing down churches and sealing them up or banning their activities. The following specific points are mentioned:

- (a) A training camp in Guangdong was raided and banned.
- (b) Three house churches were sealed up and in at least one case, public utilities cut off and the church ordered to join the State-registered TSPM church.
- (c) Six house church Christians were taken into custody whilst distributing evangelistic materials and detained for four days.
- (d) A church was raided and pressured to give up real estate that it had purchased for church services.
- (e) Nine members of another church were detained whilst holding an evangelistic activity in the park. The church leader was placed under thirteen days of administrative detention.
- (f) A report dated 11 March 2012 entitled 'Brief Report: House Church Evangelistic Team Detained in Shenzhen, Released Four Days Later',

concerned a house church evangelistic team which they had been travelling all across China preaching the gospel. Its members were taken into police custody for handing out tracts and preaching the gospel in the southern city of Shenzhen, in Guangdong province, but released after four days' detention. The report does not record any allegation of violence towards that preaching team.

### **(G) Central China**

Central China comprises the provinces of Henan (population 94 million), Hubei (population 57.2 million) and Hunan (population 65.7 million), a total population group of just less than 217 million people. The ChinaAid report records that 1500 Christians were 'persecuted', one church leader and one other having been beaten. The following incidents are mentioned in the report:

- (a) In spring 2012, in Henan, a ChinaAid news article records that 53 local house church leaders were arrested in Ye county while holding a Bible study group, of whom more than twenty remained in custody for longer than a few days.
- (b) The registered evangelist of a Henan TSPM church was expelled from his post and ordered to stop preaching after contacts with leaders of two local house groups.
- (c) In May 2012, a Henan house church was raided by more than 200 police and government officials who surrounded the meeting place where 54 young people were attending a Bible study class. The students were detained for half a day in the yard of a government office complex, and then moved to another area where they were held for a week. 46 of the detainees were released, with about 8 remaining in detention.
- (d) A group leader was fired from his job for evangelising and delivering sermons.
- (e) A church was raided and the offering confiscated,
- (f) A Bible class held in a house church was raided, with 54 persons taken into custody and 8 administratively detained.
- (g) A house church was labelled a cult church and property confiscated.
- (h) Two persons were taken into custody in relation to the Sunday worship in a house church, and in another, worship was dispersed.
- (i) Three churches were searched and sealed up.
- (j) A church building was forcibly demolished.
- (k) A further church was raided with twenty people taken into custody.
- (l) A Christian dissident is said to have been forced to commit suicide.
- (m) Christian News Brief recorded that in April 2012, in Hubei province, officials smashed open a donation box and stole the money of a local church, changed the locks of the church and forced all Christians to leave the church. It is said that the church leader was beaten and violence had previously been offered to one of the church's lay preachers over the last two years, on three occasions.

## **(H) Southwest China**

Southwest China comprises the provinces of Sichuan (population 80.4 million) and Yunnan (population 46 million), a total population of just over 126 million people. The authorities interfered with and banned certain church services, and in some incidents, harassed individuals. Churches which were sealed as unregistered were told to apply for a licence under the RRA and officials tried to persuade church leaders to join the TSPM Protestant church system. In most incidents, the authorities did not take anyone into custody, or detain or sentence them; where an individual was taken into custody, he was quickly released. The following incidents were recorded:

- (a) a church worship service was banned and a person taken into custody.
- (b) a church was searched and banned.
- (c) a church was threatened and harassed.
- (d) a church's Bibles were confiscated.
- (e) in February 2012, two leaders were sent to a labour camp on a charge of 'suspicion of organising and using a cult to undermine law enforcement'.

### **Country expert evidence**

#### **Dr Christopher Hancock**

51. The Very Reverend Dr Christopher Hancock is Chaplain of St Peter's College, Oxford University. He is Director of Oxford House, an international agency providing consultancy on religion, social transformation and contemporary geopolitics. His evidence was received only in writing and is set out more fully at Appendix D below.
52. Dr Hancock has visited China regularly, three or four times a year, for the last 10 years, most recently in January 2013. His research focuses on religion and society in Asia, particularly China and India. Overall, his evidence was that Christians were able to practise their religion, in both registered and unregistered churches, without significant difficulty. In Wenzhou city in Zhejiang province in south-east China, Dr Hancock's evidence was that 40% of the population was estimated to be Christian.
53. A small number of individual Christians and unregistered churches had been subject to repressive action and threatening behaviour where they had 'finally crossed a generously drawn line'. Over the past 30 years the Chinese authorities had been more often tolerant than vindictive because 'Christians have been generally affirmed as peaceful, economically productive, responsible citizens - and their international links have been a price the Chinese government has been willing to pay to safeguard wherever possible their overseas standing'. Official pressure, where exerted, included police visits and the confiscation of Church property. The Shouwang Church in Beijing had been subject to official intimidation and disruption of services for a number of years, after it first bought the second floor of a building for use as an unlicensed church, and then, when obstructed in that purpose, met in a public park.

Members of the church's governing committee, two pastors and three elders, and other major co-workers, had been under house arrest for much of the time since April 2011. Other church members had been detained for periods between a few hours and two days.

54. Gatherings of 10-25 Christians would usually be tolerated, if known, despite technically being illegal. Consistent and public opposition to central or local injunctions on Christians, meetings and so on could lead to censure, intimidation, detention, house arrest or imprisonment, especially if it were thought to contribute to social instability locally, but on the other hand, there had been a huge internal migration in China in the last ten years, with about 300,000 Chinese moving to the cities, many of them Christians. Only those who were particularly notorious or had been blacklisted by the security services were likely to be tracked within China and experience further difficulties.
55. Dr Hancock's report concluded that:

'...the Chinese government's permissive acceptance of 'unregistered' churches continues. Christians themselves have power to limit or increase risk in line with their perception of obedient faith and government power. ... Some Chinese Christians continue to interpret faithfulness to God as acceptance of the limitations imposed by the divinely sanctioned state authority; others question the legitimacy of an atheistic state to control, interpret or restrict the actions of churches or individual Christians. Evaluating the relative truth of these claims and resolving anomalies in accounts of Christianity in China is a subtle and perplexing task.'

### **Professor Mario Aguilar**

56. Professor Mario Aguilar is Professor of Religion and Politics at St Andrews' University in Scotland. His research field is the social history of the Catholic Church in Chile, and religion and politics in Tibet. He told us that although his studies have been in Roman Catholicism, he is familiar with the theological development of other churches. He has often assisted the First-tier Tribunal and Upper Tribunal with expert evidence, both in writing and at hearings. Professor Aguilar has not travelled to China at all, though he has worked in Tibet.
57. Professor Aguilar's report relied heavily on *The Empty Cross* report and asserted that China's religious laws are aimed at removing any power for Christianity to challenge the Chinese state. The provisions of the RRA now permitted state-registered religious organisations to own property, publish literature, train and improve clergy and collect donations (including the Catholic and Protestant Christians, Buddhists, Taoists and Muslims). Only the PCC, TSPM and CCC were permitted to register as Christian churches thereunder. He considered that members of those churches were unable to practise religion in public without being subject to arrest and that the purpose of the NRRA was to bring all religious practice under state control.
58. The house churches were popular because they offered freedom of expression and ease of communication; they were particularly attractive to those under 40 who were already more likely to raise questions about democracy in China and challenge the

status quo. The evangelical and charismatic Protestant churches, the so-called 'reformed' movement, were unaccountable other than to themselves and had no history of hierarchical control. They were multiplying fast based on enthusiasm alone, and enabled students to meet and discuss new ideas, which was considered a challenge to the stability of the Chinese establishment, particularly where it was linked to an internet presence. He considered that it was difficult to obtain objective data concerning the treatment of the unregistered churches because of the geographical and population size of China and its central government's acknowledged lack of local control over the actions of officials.

59. Professor Aguilar considered that there was a storm brewing. In a joint memorandum issued by SARA and the Ministries of Public Security and Civil Affairs, those bodies had expressed their intention to adopt a three-phase approach to ensure that all religious bodies were registered. Between January-June 2012, SARA had drawn up files on as many unregistered house churches as possible, across China. From June 2012-2013, SARA began actively encouraging the house churches to register under the RRA. The third phase, originally said to be due to begin in 2015 and continue for ten years, would involve closing down any house churches which had not registered under the Regulations.
60. The leaked joint memorandum is referred to in many of the American Christian publications but no copy of it is among the papers before us. All the publications we have seen refer to it in identical, or near-identical terms, based on a ChinaAid report which recorded that there were between 45 and 60 million house church Christians in China, with 132 incidents of government 'persecution' (a term which in this context includes harassment) affecting approximately 5000 people during 2012. Some church leaders had been detained and sent to labour camps, including re-education through labour camps<sup>5</sup>. The vast majority of the incidents and numbers of affected individuals arose from the treatment of the Shouwang Church in Beijing, which had attempted to hold a weekly unlicensed outdoor service. Members of that congregation had been detained 1600 times during 2012, at least 60 had been evicted from their homes, and nearly a dozen lost their jobs for attending the open air services.
61. In his oral evidence, Professor Aguilar stated that although he had relied on the contents of the ChinaAid report, he had not actually read it when preparing his written report. His information came principally from documents in the German Institute which were linked with certain Chinese journals, and from about fourteen individuals known to Professor Aguilar, Chinese nationals who worked in Europe or had retired here, and who were under 40 years old. He preferred not to name them, but indicated that all but two of them were important, influential people. Most of the group were disappointed with the slow pace of change in China, and the limited freedoms available there, less than they considered might reasonably be expected. Only five of them were house church members and none had experienced any difficulties, still less persecution, since they had strong families to protect them.

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<sup>5</sup> RETL camps were abolished in December 2013.

62. Professor Aguilar was asked about paragraph 39 of his report in which he stated that all arrested unregistered Christians would suffer 'certainly beatings and torture at police stations, fines and ongoing harassment, including the loss of employment and state benefits'. He based that on years of reports and said he knew a number of prominent people who had been beaten.
63. He was asked to comment on the closing remarks in the ChinaAid report of April 2013, which stated that in China, the church was 'standing firm, flourishing like the cedars of Lebanon and food trees planted by the streams, bearing much fruit at the appointed time', and more prosaically, that the suppression of unregistered churches announced in 2011 had fallen foul of a power struggle within the Chinese communist government and that it had eased for the time being. In his evidence, Professor Aguilar stated that he disagreed with ChinaAid on that point, but did not say why.
64. Professor Aguilar was aware of large numbers of bibles sold by the Bible Society to Chinese Christians, at the rate of about 40 million copies a year. He was confident of the number, by reason of the source of his information, which he did not disclose. The appellant herself gave limited additional oral evidence, the nature of which is set out at paragraphs 139 and 140 of this determination.

### **Submissions**

65. At the conclusion of the oral evidence both parties made submissions, referring to their respective skeleton arguments and to the background material. For the appellant, Mr O'Callaghan invited our attention to his detailed skeleton argument dated 4 June 2013. For the respondent, Mr Allen relied on his skeleton argument of 3 June 2013. We mean no disrespect to Mr O'Callaghan or Mr Allen in summarising their submissions as follows.
66. Mr Allen invited us to find that there are at least 80 million Christians in China, and that Christianity is growing as a religion and in all forms. Given those large numbers of Christians, he contended that the incidence of discrimination, violence or harassment set out in the ChinaAid report and elsewhere in the material before us was statistically insignificant and not indicative of a systemic or widespread persecution of Christians in China. We were asked to give little weight to the report of Dr Aguilar on the basis that it is partisan in places and badly researched in others. We were invited to find that the generality of the background material as presented to us does not paint the dark picture which Professor Aguilar seeks to paint in his report. Indeed, there are specific examples set out in the background material which show a much more positive approach by the authorities to Christian groups and to individuals.
67. On behalf of the appellant, Mr O'Callaghan invited us to take a contrary view. He asked us to find that the Chinese state authorities have set up a controlling structure to limit the ability of Christians to express themselves or to meet freely. He invited our attention particularly to the ChinaAid report and to that of Dr Hancock. Whilst he accepted that there had been a flowering and development of the church in China over the last 20 years, and particularly as far as charismatic religion is concerned, he

argued that such development continued to pose a real threat to the authority of the Chinese state and its desire or ability to control thought and action among its citizens. We were asked to bear in mind in particular the public statements made regarding a ten-year plan for the destruction of the unregistered churches. Although the future might see a change in attitude in the response of China to Western influence and to changing ideas, this was still a long way off.

68. Although treatment of Christians varied from area to area, because of the wide diversity of local and regional authority, nevertheless Mr O'Callaghan asked us to find that a consistent pattern emerged in which unregistered churches whose leaders and members spoke openly about their faith would suffer treatment amounting to persecution personally, as well as the destruction of their churches. Indeed on a wider perspective, he argued that the tight controls upon the registered churches were such as to make difficult the proper and full expression of Christian faith for the followers of those churches, though possibly less so than for the authorised churches. We were asked to conclude that there is indeed a continuing risk to persons such as this appellant, and that were she to return to China and seek to publicly proclaim her faith, she would fall foul of the authorities. We are asked to find that in those circumstances *HJ (Iran) v SSHD; HT (Cameroon) v SSHD* [2010] UKSC 31 remains a particularly important case in this context.

### **The law**

69. The ChinaAid reports and indeed, many of the background material reports emanating from a similar source to ChinaAid, refer indiscriminately and universally to 'persecution' as describing any adverse activities of the authorities towards Christians in Chinese congregations.
70. While there is no definition of persecution in the Refugee Convention, the use by ChinaAid in its reports is wider than the autonomous international meaning of 'persecution' for the purposes of the Refugee Convention and Qualification Directive. In this determination, the risk will be assessed against the international protection standard, that is to say, whether the risk on return is sufficient to amount to a well-founded fear of persecution under the Refugee Convention and/or the Qualification Directive and the Refugee or Person in Need of International Protection (Qualification) Regulations 2006, which implemented the Qualification Directive 2004/83/EC of 29 April 2004 in United Kingdom law.
71. The conduct which an individual fears must be of sufficient gravity to require international protection and there must be a real risk or a reasonable degree of likelihood that it will occur. It is axiomatic that where there is physical ill-treatment of sufficient gravity by the State, the persecution threshold will be reached. We have reminded ourselves of the definition in the Qualification Directive Regulations and in particular to Regulation 5 thereof, which mirrors Article 9 of the Qualification Directive:-

'5(1) In deciding whether a person is a refugee an act of persecution must be:

- (a) sufficiently serious by its nature or repetition as to constitute a severe violation of a basic human right, in particular a right from which derogation cannot be made under Article 15 of the Convention for the Protection of Human Rights and Fundamental Freedoms; or
  - (b) an accumulation of various measures, including a violation of a human right which is sufficiently severe as to affect an individual in a similar manner as specified in (a).
- (2) An act of persecution may, for example, take the form of:
- (a) an act of physical or mental violence, including an act of sexual violence;
  - (b) a legal, administrative, police, or judicial measure which in itself is discriminatory or which is implemented in a discriminatory manner;
  - (c) prosecution or punishment, which is disproportionate or discriminatory;
  - (d) denial of judicial redress resulting in a disproportionate or discriminatory punishment;
  - (e) prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling under regulation 7.'

72. In human rights terms, as well as Article 3 ECHR, a non-derogable and unqualified right, which protects against cruel, inhuman or degrading treatment or punishment, cases where religion is in issue also engage the derogable right to freedom of thought, conscience and religion in Article 9 ECHR:

**“ARTICLE 9 - Freedom of thought, conscience and religion**

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.”

73. The House of Lords in *Ullah v SSHD, SSHD v Do* [2004] UKHL 26, and the European Court of Human Rights in *Z and T v the United Kingdom* - 27034/05 [2006] ECHR 1177 have both taken the view that in practice, any threatened breach of Article 9 which was sufficiently flagrant to engage the international responsibility of the returning state would also breach Article 3. In *Z and T* the court said this:

“The Court's case-law indeed underlines that freedom of thought, religion and conscience is one of the foundations of a democratic society and that manifesting one's religion, including seeking to convince one's neighbour, is an essential part of that freedom (*Kokkinakis*, § 31). ... [P]rotection is offered to those who have a substantiated claim that they will either suffer persecution for, *inter alia*, religious reasons or will be at real risk of death or serious ill-treatment, and possibly flagrant denial of a fair trial or arbitrary detention, because of their religious affiliation (as for any other reason). Where however an individual claims that on return to his own country he would be impeded in his religious worship in a manner which falls short of those proscribed levels, the Court considers that very limited assistance, if any, can be derived from



Article 9 by itself. ... While the Court would not rule out the possibility that the responsibility of the returning State might in exceptional circumstances be engaged under Article 9 of the Convention where the person concerned ran a real risk of flagrant violation of that Article in the receiving State, the Court shares the view of the House of Lords in *Ullah* that it would be difficult to visualise a case in which a sufficiently flagrant violation of Article 9 would not also involve treatment in violation of Article 3 of the Convention."

74. The leading case on discretion on return remains *HJ (Iran) and HT (Cameroon) v Secretary of State for the Home Department* [2010] UKSC 31 in which Lord Hope set out the test to be applied, in the context of a requirement of discretion for homosexuals:

"35. This brings me to the test that should be adopted by the fact-finding tribunals in this country. As Lord Walker points out in para 98, this involves what is essentially an individual and fact-specific inquiry. Lord Rodger has described the approach in para 82, but I would like to set it out in my own words. It is necessary to proceed in stages.

(a) The first stage, of course, is to consider whether the applicant is indeed gay. Unless he can establish that he is of that orientation he will not be entitled to be treated as a member of the particular social group. But I would regard this part of the test as having been satisfied if the applicant's case is that he is at risk of persecution because he is suspected of being gay, if his past history shows that this is in fact the case.

(b) The next stage is to examine a group of questions which are directed to what his situation will be on return. This part of the inquiry is directed to what will happen in the future. The Home Office's Country of Origin report will provide the background. ... The question is how each applicant, looked at individually, will conduct himself if returned and how others will react to what he does. Those others will include everyone with whom he will come in contact, in private as well as in public. The way he conducts himself may vary from one situation to another, with varying degrees of risk. But he cannot and must not be expected to conceal aspects of his sexual orientation which he is unwilling to conceal, even from those whom he knows may disapprove of it. If he fears persecution as a result and that fear is well-founded, he will be entitled to asylum however unreasonable his refusal to resort to concealment may be. The question what is reasonably tolerable has no part in this inquiry.

(c) On the other hand, the fact that the applicant will not be able to do in the country of his nationality everything that he can do openly in the country whose protection he seeks is not the test. As I said earlier (see para 15), the Convention was not directed to reforming the level of rights in the country of origin. ... It does not guarantee to everyone the human rights standards that are applied by the receiving country within its own territory. The focus throughout must be on what will happen in the country of origin.

(d) The next stage, if it is found that the applicant will in fact conceal aspects of his sexual orientation if returned, is to consider why he will do so. If this will simply be in response to social pressures or for cultural or religious reasons of his own choosing and not because of a fear of persecution, his claim for asylum must be rejected. But if the reason why he will resort to concealment is that he

genuinely fears that otherwise he will be persecuted, it will be necessary to consider whether that fear is well founded.

(e) This is the final and conclusive question: does he have a well-founded fear that he will be persecuted? If he has, the causative condition that Lord Bingham referred to in *Januzi v Secretary of State for the Home Department* [2006] 2 AC 426, para 5 will have been established. The applicant will be entitled to asylum.

36. It should always be remembered that the purpose of this exercise is to separate out those who are entitled to protection because their fear of persecution is well founded from those who are not. The causative condition is central to the inquiry. This makes it necessary to concentrate on what is actually likely to happen to the applicant. As Lord Walker says in para 88, the inquiry is directed to what will happen in the future if the applicant is returned to his own country. An approach which disregards what is in fact likely to occur there in the case of the particular applicant is wrong and should not be adopted.”

75. The question of what constitutes persecution has been considered again, in the context of the risk of prosecution of homosexuals, by the Court of Justice of the European Union in *Minister voor Immigratie en Asiel v X, Y (Hoog Commissariaat van de Verenigde Naties voor de Vluchtelingen interventie)*, *Z v Minister voor Immigratie en Asiel* (Joined Cases C-199/12 to C-201/12), [2013] WLR (D) 427, in which, applying arts 10(1)(d) and 9(1) of the Refugee Qualification Directive 2004/83/EC held, inter alia, that:

“Article 9(1) of Directive 2004/83, read together with Article 9(2)(c) thereof, must be interpreted as meaning that the criminalisation of homosexual acts per se does not constitute an act of persecution. However, a term of imprisonment which sanctions homosexual acts and which is actually applied in the country of origin which adopted such legislation must be regarded as being a punishment which is disproportionate or discriminatory and thus constitutes an act of persecution.”

76. It is clear, therefore, that it is important to consider not only what Chinese law permits or prohibits as to religious observance, but how it is implemented. In *MN and others (Ahmadis - country conditions - risk) Pakistan* CG [2012] UKUT 389 (IAC), the Upper Tribunal considered legislation and practice restricting the proselytising and practice of the Ahmadi Muslim faith. The Upper Tribunal considered all the recent case law and summarised the proper approach to be taken to the level at which difficulties for adherents of a religion are capable of engaging international protection:

“100. We draw the following principles from the various authorities we have referred to.

- (a) For interference with the right to the freedom of religion guaranteed by Art 10(1) of the Charter and Art 9(1) of the Human Rights Convention to constitute an act of persecution within the meaning of Art 2(d) of the Directive, there must be a significant effect on the person concerned.
- (b) Acts which interfere with the right to the freedom of religion, if not of the gravity equivalent to the protected human rights from which there can be no derogation under Art 15(2) of the Human Rights Convention, will not constitute persecution within the meaning of Art 9(1) of the Directive and the Refugee Convention.

- (c) Limitations on the exercise of the Freedom of Religion must be provided for by law and respect the essence of the rights and freedoms recognised by the Charter. They must be proportionate and made only if necessary and genuinely meet the objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others. (Art 52 of the Charter)
- (d) There is no basis for distinguishing interference with core aspects from interference with marginal areas of the right to freedom of religion. This is because of the broad definition of religion in Art 10(1)(b) of the Directive.
- (e) Nevertheless it is only serious violation of the right to freedom of religion that will give rise to persecution or serious harm or ill-treatment and that will be determined by the nature of the repression on the individual concerned and its consequences with reference to the severity of the measures and sanctions likely to be adopted.
- (f) If it is reasonably thought that an individual will engage in religious practices (which may include public manifestations of that religion) or would wish to do so because of the particular importance to the person concerned in order to preserve his religious identity, the fact that an individual could avoid a risk by abstaining from certain religious practices which will expose him to a real risk of persecution is irrelevant.”

## **Discussion**

77. Chinese law expressly provides for freedom of religion but manifestation of all religions, including Christianity, is restricted. The Chinese state seeks to manage the co-existence of atheist communism with the enormous and growing return to religion, and in particular to Christianity, by Chinese citizens. The RRA codifies the operation of religious groups, including provision for management of their public activities, records of the appointment, transfer and resignation of their leaders, and regulation of the buildings used for worship.
78. As to the number of Christians in China: a fair flavour of that which we have seen, would be that now there are over 40 million Christians in registered churches and some 70-80 million in unregistered churches, and that this dramatic increase both in the registered and unregistered churches continues, with in excess of 40 million bibles being distributed in China each year.
79. In assessing the risk to Chinese Christians in general, in both the registered and unregistered churches, we have considered the weight we can give to the expert evidence and to *The Empty Cross* document and other background evidence set out in this determination.

## **Professor Aguilar’s evidence**

80. Professor Aguilar has assisted the Tribunal on many occasions in the past. We received his evidence both orally and in writing, but having considered it carefully, we find that we have serious reservations as to the weight we can give it in this case, save where it is in line with other evidence we have received. We note that Professor

Aguilar has never visited China and that although he relied heavily on excerpts from the ChinaAid report, he admitted that he had not read it.

81. Professor Aguilar confirmed for us the very large number of Chinese citizens in both the registered and unregistered Christian churches, and it was also his evidence that annually some 40 million Bibles were sold in China, in the registered and unregistered churches. We accept and place weight on those findings.
82. The rest of his evidence derives from excerpts from the ChinaAid report, unspecified documents in the German Institute, and the opinion a small group of 14 unnamed Chinese expatriates in Europe, known personally to him, who were said to be in strong financial and family positions. Other reports relied upon by Professor Aguilar are rather dated. As far as the ChinaAid report is concerned, we have a full copy of it before us and have had the opportunity to read it for ourselves.
83. Professor Aguilar mentions the RRA but does not deal with it, or with the role of SARA, in any great detail: after commenting that paragraph 9 of the RRA permits state-registered religious organisations to possess property, publish literature, train and approve clergy, and collect donations, Professor Aguilar at paragraph 17 stated:-

‘Despite the ‘regulations’, religious freedom as such does not exist but only citizens registered in these five state bodies can practice their religion in public.’

It is far from clear to us what is meant by that particular paragraph. The phrase ‘public’, used in the RRA, is also used here but without clarification as to the meaning which Professor Aguilar ascribes to it, and in particular, whether he means ‘openly’, or perhaps ‘in public places’. The RRA restricts or requires approval for large scale religious meetings. We detect nothing therein, however, which limits the abilities of Christians to worship within registered church buildings.

84. In an attempt to explain the operation of the RRA, at paragraph 18 Professor Aguilar sets out the situation facing the Mormon church in China. That is unhelpful for our purposes: the Mormons are not a registered church and their worship is therefore unaffected by the operation of SARA and the RRA. It would have been more helpful for the purposes of our enquiry to have examples illustrating the effect of state control on day-to-day worship conducted in the registered Christian churches, which are regulated by SARA under the RRA.

### **Dr Hancock’s evidence**

85. Dealing next with Dr Hancock’s evidence, we note that he is a regular visitor to China, where he has had close contact over a number of years with many local churches and Christian communities and we consider that he is therefore better placed to assist us with an assessment of the current circumstances for Chinese Christians. We did not have the opportunity of seeing Dr Hancock give oral evidence, which reduces somewhat the weight which can be given to a witness’ evidence, particularly if it is not consistent with the other materials before the Tribunal. However, in the case of Dr Hancock’s report, we are impressed with the balanced approach he takes and we consider that it is appropriate to treat his evidence as reliable.

## Other country materials

86. We note that the CECC in its 2013 report on China, expressed concerns about freedom of religion, among other matters. In the executive summary to the report, it stated as follows:

“The Commission notes in the Freedom of Religion section that the Chinese government’s legal and policy framework for religion violates international standards for freedom of religion, including Article 18 of the UDHR. The PRC Constitution limits citizens’ ability to exercise their beliefs by protecting only “normal religious activities,” and the government continued to recognize only five religions—Buddhism, Catholicism, Taoism, Islam, and Protestantism— for limited state protections for religious activity. The government and Party maintained strict ideological control and oversight over religious groups, and a top official announced all clergy would be registered with the government by the end of 2013. Chinese citizens who sought to practice their faith outside of state-approved parameters continued to face harassment and detention. For example, Chinese officials revoked the title of auxiliary bishop from bishop Thaddeus Ma Daqin after he publicly withdrew from the State-run Catholic Patriotic Association of China at his ordination ceremony. In April 2013, a China-based magazine reported on claims of torture and severe maltreatment of inmates at the Masanjia Women’s Re-education Through Labor (RTL) Center in Liaoning province, many of whom are believed to be Falun Gong practitioners. Muslims were warned against going on Hajj pilgrimages not organized by the government. The government also continued to harass members of the Beijing Shouwang Church, a Protestant house church in Beijing municipality, and detained house church pastor Cao Nan and others for holding a religious gathering in a public park in Shenzhen municipality.”

87. The report gives no real indication of the frequency of harassment or detention of ordinary ‘house’ church worshippers, nor the overall levels of interference in religious observance, particularly in the unregistered churches. The emphasis is on difficulties experienced by leaders and by those engaging in public religious celebrations, for example, the public park in Shenzhen, and the longstanding problems for the Shouwang Church in Beijing. It seems that the more serious government concerns relate to Falun Gong practitioners and Muslim Chinese.

88. Turning next to the USCIRF report, China is stated to be a country of ‘particular international concern’ although there is a general statement that religious freedom conditions deteriorated significantly during the reporting period, that seems to be directed particularly at the situation of Tibetan Buddhists and Uighur Muslims. The chapter on Christianity reflects the continuing growth of the religion, stating that

“...the government continues to tolerate regular and public worship activities of both legally-approved and some unregistered religious groups. Tolerance for unregistered religious activity often varies, depending on province, locality, or relationship with provincial government officials.”

89. In 1989, the Chinese government recorded 4.5 million registered Christians, which has now risen to approximately 40 million (see, in particular, the UNHCR 2012 report). We have set out above the evidence as to the restrictions on the official churches, both in 2001/2008 (*The Empty Cross* document) and in the RRA, which expressly recognise

religious freedom and the right of congregations to choose their pastors and leaders, but seek to put in place a structure of notification of such leaders and a planning system for large demonstrations and church buildings, for the protection of social order in China. For our part, having considered those Regulations, we consider that they represent a significant shift away from the draconian Seven Rules set out in *The Empty Cross* document.

90. As has been identified in previous country guidance cases regarding China, in both 2005 and 2010 in China there was a move away from policy and towards more structured regulation of a number of politically sensitive areas. The situation concerning Christians and house churches was regulated (and eased, to a significant extent, so far as registered churches were concerned) by the RRA. Religion was considered again in 2010-11, if we treat as reliable ChinaAid's report of a leaked joint memorandum with a 10-year plan to encourage and pressurise unregistered congregations to register their churches and bring themselves within the RRA. ChinaAid is the only source of that document and at least one witness cast doubt on its authenticity.
91. We reject Professor Aguilar's assertion that the Chinese authorities still have an active ten-year plan to force those in the unregistered churches to become members of the existing registered churches. We prefer the evidence of Dr Hancock that such a plan, if it existed, has been disrupted by political changes within China and is not now being pursued with the anticipated vigour, if at all, although the authorities continue to seek to persuade the house churches to bring themselves within the registration structure set out in the Regulations.
92. It has been suggested that the reason for the growth of the unregistered churches is that many Chinese, including the present appellant, found the State-registered church's rules and regulations to be unduly restrictive for the freedom of her faith. We are not persuaded that that is, in the circumstances, a generally valid explanation of the reason for the popularity of the unregistered churches, since large numbers of Chinese Christians have continued to join the official churches as well as the house churches. We do note that students and young people are said to prefer the house churches, but we also note that there is fluidity between the registered and unregistered church congregations, with members choosing to move between the churches, in both directions.
93. The RRA were the harbinger of a more liberal approach, recognising the strength of the Christian movement within China. Even Professor Aguilar, whose approach was pessimistic, stated that:

'The top heavy structure for controlling religious affairs seems to be creaking at the seams. Greater freedom for China's hard pressed religious believes seems to be only a matter of time as economic and social forces converge to loosen the CCP's control.'

## The registered churches

94. The focus of our consideration of the operation and regulation of the registered churches is on whether or not those who attend those churches would be the subject of treatment so serious as to engage international protection under the Refugee Convention, Qualification Directive, or a flagrant breach of a non-derogable fundamental human right set out in the ECHR.
95. Mr Allen, on behalf of the respondent, invited us to find that the substantial and extensive background material before us did not contain sufficient evidence to support a finding that the incidence of ill treatment of Christians in China is capable of being so regarded. In his skeleton argument, Mr Allen argued that, at least in part, the growth of house churches in China is attributable to the failure of the registered church to keep pace with the growth of Christianity and that there is no absolute theological divide between the registered church and the unofficial churches. The scale of the growth was incapable of being contained in the buildings currently available for use by the State-registered churches. He argued that the detention of a small number of Catholic bishops and priests was on doctrinal grounds. The question was one of authority, that is to say, whether the Chinese authorities or the Pope were competent to appoint or register cardinals, bishops and priests in China.
96. In particular, Mr Allen directed our attention to a ChinaAid publication of 16 January 2013, entitled '2012's Top Ten Cases of Persecution of Churches and Christians in China' which, for the period under consideration, mentioned only one incident against a TSPM church, a dispute not primarily about religious activity but rather the economics of a land dispute. The details given were that a property developer had made an offer to a church community, to demolish and remove church buildings, making the land available for redevelopment. The developer had offered to build a new church for the worshippers on a different site, which proposal had been acceptable to the congregation. The developer then resiled from the offer of a new church and the resulting legal dispute was pursued by the church over a two-year period through the courts and by way of a public demonstration with six banners, for which they applied for a licence under the RRA. The litigation continued, and Beijing-based Christian lawyers had now submitted an application for administrative review.
97. We have considered what weight we can give to the evidence in *The Empty Cross* document. It was drafted in 2001, but updated in 2008. The report's premise is that the Regulations and controls employed in relation to the registered churches are unduly restrictive of the ability of Christians to worship properly in such churches and that the purpose of registration and control is to empty the church of any meaningful theological content and render it merely reflective of the wishes of the Communist Party. The author of *The Empty Cross* document focused upon the Protestant aspect of a church devoid of theological content, or at least content that was modified or interfered with by SARA. We note that the article is of some antiquity and may not necessarily reflect the changes that have happened in the decade since it was written, in particular, the practical effect of the RRA and the rapid growth of Christianity in both state-registered and unregistered congregations.

98. Where there is a conflict, we preferred the evidence in the report of Dr Hancock. For Dr Hancock, 'normal' religion as referred to in the RRA is that of worship within authorised church buildings. There is little in the material before us to indicate that any restriction is placed upon Christians attending such churches to express themselves as they would, and to worship in the manner in which they would wish to do. They have priests and pastors trained at seminaries.
99. Even if, which we do not necessarily accept, the gospel as preached in such churches varies to a significant extent from the gospel preached in the unofficial churches, within Christianity worldwide there exists a very wide spectrum of practice and belief. There are many traditions within the Protestant churches and many variations of approach within the Catholic wing. We note that the Vatican does appoint bishops to the registered churches.
100. Given the relative fluidity and freedom of a worshipper in China to move between the registered and unregistered churches, and between different unregistered churches, we consider that there is sufficient scope for such worshippers to ensure that they can worship where their spiritual needs are met. There seems to be nothing to prevent a congregation from worshipping in its church buildings as it wishes, led by the authorised priests and bishops so appointed. When, however, larger gatherings of the faithful are desired, which outstrip the capacity of the buildings to accommodate them, the RRA require permission to be sought in advance.
101. The reason stated in the RRA for the control of more widespread expression is twofold, namely public order and also so as not to cause offence to others with different views. All states have the right to regulate large demonstrations or activities, particularly those in public places, with a view in particular to the maintenance of public order. Such control as is exercised by the Chinese state over public manifestations outside registered buildings is not sufficient in general to amount to persecution; indeed, in the United Kingdom also large demonstrations and marches require advance permission and a degree of regulation.
102. We remind ourselves of the expressed desire of the Chinese authorities to manage the reconciliation of socialism and religion in public life, with adaptation on both sides, in the interests of public order. The dichotomy between the protected Article 9.1 right to hold, change, and manifest one's religion or belief, and the restriction in Article 9.2 on freedom to manifest, appears to us to reflect, at least broadly, the approach of the Chinese authorities. The RRA do not in terms restrict the holding or changing of religious beliefs, but they do to some extent restrict public manifestations, for the protection of public order and the rights and freedoms of those holding other views. We are not satisfied that such restriction approaches the level required for international protection under the Refugee Convention, humanitarian protection or Article 3 ECHR.
103. Further, the UNHCR report seems to indicate that more Protestants are members of the registered churches than unregistered. If correct, that would give the lie to any suggestion that the faith proclaimed in such registered churches was bereft of spiritual content or theological meaning, or in some ways unduly limited to the charismatic and evangelical expression. In any event, we detect no material which supports either



conduct amounting to direct persecution by the State of Christians worshipping within the registered churches or indeed any indirect treatment by unfair or undue curbs on the expression of faith by registered Christian congregations or the limits placed on 'normal religious activity' capable of amounting to persecution, serious harm, or ill-treatment which would breach Article 3.

### **Unregistered churches**

104. In considering the situation facing the unregistered churches, we have been greatly assisted by Dr Hancock's February 2013 report, derived from information received during his visits to church members and congregations in China. He records a flexible interface between the registered and the unregistered churches and the fluidity of movement between the two. Dr Hancock also refers to the recent evidence from ChinaAid, with which we now deal.

### **ChinaAid**

105. The ChinaAid report of March 2013 is the source of much of the background material which has been cited to us. ChinaAid trains and supports house church leaders in China and its founder and President is a former Chinese house church leader himself. The term 'persecuted' in its reports seems to be used to describe any difficulty experienced by a Christian in China, rather than the more stringent autonomous international meaning applied to Article 1A(2) of the Refugee Convention, serious harm under Article 15 of the Qualification Directive, or Article 3 of the ECHR. When considering ChinaAid's record of 'persecutions' we have approached them with caution, seeking to establish which events meet those standards and may therefore require either internal relocation (if available, and not unduly harsh) or international protection.

106. The use in the ChinaAid report of the term 'persecution' does not accord with its meaning in the Refugee Convention: instead, any disruption of worship, and in particular, the demolition of any church, even one constructed without the permission of the authorities, is regarded as persecutory of the congregation using that church. Although the ChinaAid report seeks to suggest that the incidents reported are 'the tip of the iceberg', it is clear that they have been assiduous in obtaining from every province across China detailed information of instances involving churches, individuals, house groups, seminars, lawyers and the like. The ChinaAid headline figure of 42% growth must be understood on that basis: it represents a small growth in a small figure of recorded incidents, increasing to 137 incidents nationally, which must be viewed in context against the rapidly growing Christian population, with at least 40 million worshippers in the unregistered communities alone. Such a statistically insignificant level of recorded incidents is insufficient to demonstrate systemic persecution of Christians at the level of a Refugee Convention breach, a risk requiring humanitarian protection, or a real risk of Article 3 ECHR serious harm.

## Assessing the risk

107. We must consider first whether there is any risk at the level of persecution, humanitarian protection under the Qualification Directive, or a breach of the non-derogable right set out in Article 3 ECHR. Disproportionate or discriminatory actions or punishments are capable of constituting persecution, on the *X, Y and Z* basis, in particular where individuals are punished or sentenced for their belief.
108. We have also considered whether the appellant can derive any benefit from Article 9 ECHR, which protects a derogable right to freedom of thought, conscience and religion, limited as prescribed by law and necessary in a democratic society.

### "Article 9

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

109. Breaches of derogable human rights such as Article 9 must be 'flagrant' before they can outweigh the right to immigration control, as established in *Ullah and Do v Special Adjudicator* [2002] EWCA Civ 1856.

"62. ...What we are currently considering is, in effect, a submission that the HRA and the Convention require this country to grant asylum to anyone who can demonstrate that his freedom to practice his religion is not respected in his home country, though Mr Blake adds the proviso that the interference with that freedom must be 'severe'.

63. Mr Blake accepted that the Strasbourg Court has not gone this far. He submitted, however, that this Court should take the lead in recognising that removal in the interests of immigration control can engage Article 9. In our judgment there are compelling reasons why this Court should not do so. The Refugee Convention and Article 3 of the Convention already cater for the more severe categories of ill-treatment on the ground of religion. The extension of grounds for asylum that Mr Blake and Mr Gill seek to establish would open the door to claims to enter this country by a potentially very large new category of asylum seeker. It is not for the Court to take such a step. It is for the executive, or for Parliament, to decide whether to offer refuge in this country to persons who are not in a position to claim this under the Refugee Convention, or the Human Rights Convention as currently applied by the Strasbourg Court. ...

64. For these reasons we hold that a removal decision to a country that does not respect Article 9 rights will not infringe the HRA where the nature of the interference with the right to practice religion that is anticipated in the receiving state falls short of Article 3 ill-treatment. It may be that this does not differ greatly, in effect, from holding that interference with the right to practice religion in such circumstances will not result in the engagement of the Convention unless the interference is 'flagrant'."

110. The Article 9 question was further considered by the European Court of Human Rights in *Z and T v the United Kingdom* - 27034/05 [2006] ECHR 1177, which upheld the approach taken by the House of Lords in *Ullah and Do*:

“This case raises the question of what approach should be applied to Article 9 rights allegedly at risk on expulsion. ... The Court’s case-law indeed underlines that freedom of thought, religion and conscience is one of the foundations of a democratic society and that manifesting one’s religion, including seeking to convince one’s neighbour, is an essential part of that freedom (*Kokkinakis*, § 31). This is however first and foremost the standard applied within the Contracting States, which are committed to democratic ideals, the rule of law and human rights. The Contracting States nonetheless have obligations towards those from other jurisdictions, imposed variously under the 1951 United Nations Convention on the Status of Refugees and under the above-mentioned Articles 2 and 3 of the Convention. As a result, protection is offered to those who have a substantiated claim that they will either suffer persecution for, *inter alia*, religious reasons or will be at real risk of death or serious ill-treatment, and possibly flagrant denial of a fair trial or arbitrary detention, because of their religious affiliation (as for any other reason).

Where however an individual claims that on return to his own country he would be impeded in his religious worship in a manner which falls short of those proscribed levels, the Court considers that very limited assistance, if any, can be derived from Article 9 by itself. Otherwise it would be imposing an obligation on Contracting States effectively to act as indirect guarantors of freedom of worship for the rest of world. ...

While the Court would not rule out the possibility that the responsibility of the returning State might in exceptional circumstances be engaged under Article 9 of the Convention where the person concerned ran a real risk of flagrant violation of that Article in the receiving State, the Court shares the view of the House of Lords in the *Ullah* case that it would be difficult to visualise a case in which a sufficiently flagrant violation of Article 9 would not also involve treatment in violation of Article 3 of the Convention.”

111. The Court took a similar approach to Articles 5 and 6 ECHR in *Othman (Abu Qatada) v United Kingdom* 8139/09 [2012] ECHR 56, summarised by the Court of Appeal in *Othman (aka Abu Qatada) v Secretary of State for the Home Department* [2013] EWCA Civ 277 thus:

“11. The [European Court of Human Rights] set out the now familiar "flagrant denial of justice" test at paras 258 to 262 of its judgment. The principle was first stated by the court in *Soering v United Kingdom* ([1989](#)) [11 EHRR 439](#) at para 113:

"It is for the applicant to adduce evidence capable of proving that there are substantial grounds for believing that, if he is removed from a Contracting State, he would be exposed to a real risk of being subjected to a flagrant denial of justice. Where such evidence is adduced, it is for the Government to dispel any doubts about it."

12. It noted that in the 22 years since the *Soering* judgment the court had never found an expulsion which would be a violation of article 6. "Flagrant denial of justice" is a "stringent test of unfairness". What is required is a breach of the principles of fair trial

guaranteed by article 6 which is "so fundamental as to amount to a nullification, or destruction of the very essence, of the right guaranteed by that article."

13. The court then considered whether the admission of evidence obtained by torture amounts to a flagrant denial of justice. It answered this question in the affirmative at para 263 and gave its reasons at paras 264 to 267: the admission of torture evidence is "manifestly contrary, not just to the provisions of art 6, but to the most basic international standards of a fair trial".

112. It is clear that the bar is set very high indeed for the derogable Articles of the ECHR and we bear in mind the observation of the European Court of Human Rights that there will be few, if any, cases where Article 9 alone avails an appellant if the treatment feared falls below the Article 3 threshold.

## Summary

113. For the most part, whether in registered or unregistered churches, the evidence before us indicates that Chinese Christians worship together in the way that they wish to do, despite certain difficulties in local areas. Given the constitutional protection for freedom of religion in China, the terms of the RRA, and the rapid growth of Christianity, both in the official and in the unofficial churches, there is insufficient evidence before us to lead us to conclude that the concepts of Christianity per se are anathema to the authorities; the evidence does not support a general finding that there exists in China any systemic or planned assault on Christian worship and congregations. Rather, the Chinese authorities' concern goes to reconciling an atheist, communist political structure with a large and rapidly growing resurgence of organised religion, in both registered and unregistered churches, which presents difficulties linked to sociological, economic and other issues within Chinese society and requires tolerance and adaptation on both sides.

114. Our general conclusion is that the expression and experience of faith, rather than being repressed, is flourishing. Many millions of unregistered Christians, indeed possibly the majority, continue to worship as they would wish, in homes or buildings of their choice. They move freely between the state and unregistered or house churches, joining the latter because of religious conviction or for the relative freedom which the 'house church' movement offers; the unregistered churches are perceived as less stuffy and more youthful. Particular house churches may be reflective of a particular community.

115. The RRA reflects state measures to control the size and location of public meetings, to promote social order and ensure civic responsibility, notwithstanding disagreements with that view expressed publicly by individuals or church groups. How far the open celebration of the activities of an unregistered church is integral to the proper and fair expression of its members' Christian faith must to be determined on a factual consideration of their particular situation and circumstances.

116. In any society there are activities which citizens are restricted in performing in a public or cultural setting, the non-performance of which cannot be said to be so integral to fundamental human rights as to amount to persecution or reach the Article

3 standard. Certain religious groups perceive themselves as called to express condemnation to those who do not share their faith, which, if expressed in a public forum, could result in violence or offence. In the present political situation in China, so long as such restriction falls below the level of Article 3 or persecution (whether in the Refugee Convention or Qualification Directive), the State is entitled to set and enforce proper and fair restrictions on behaviour which may lead to violence, public order breaches or cause significant offence to others.

117. On the evidence before us, the number of individual Christians prosecuted or sentenced for religious reasons is very low indeed, and in general, those affected are house church leaders. Clearly such acts are capable of amounting to a risk of treatment requiring international protection, on a case by case basis, but overall, the documentary evidence as presented does not support a finding that such difficulties are as widespread as Dr Aguilar would have us believe, nor do we consider that they indicate for Christians in China that there is, in general, a real risk of persecution or treatment contrary to Article 3 ECHR. A fact-specific assessment is necessary in each case where a church or individual is said to be experiencing difficulties.

118. The central issue, therefore, in this case is to determine whether the restrictions and controls imposed by SARA and the RRA upon the unregistered churches are such that by their nature or repetition they constitute a sufficiently severe violation of the right of a believer, to practise his or her faith without fear of retribution or punishment. In the majority of the recorded cases, the action of the authorities was, in relation to the use of unregistered buildings as churches, to ban such use and in rare cases, to order demolition of the unlicensed building, applying the provisions of the RRA to that effect. Even in the United Kingdom, permission is required to build or use buildings for religious purposes, and demolition of unregistered churches under the RRA is relatively rare, on the evidence before us. We note that in at least one case, the church in question used legal remedies in response to threatened destruction of their church building by a developer. There is very little evidence in the material before us, in particular the ChinaAid report and other reports which derive from it, that once the authorities have prevented further use of unauthorised premises, they direct other persecutory or punitive action against the congregations who were using them. Equally it is entirely clear that the action of closing churches and dispersing meetings are discriminatory measures, and implemented in a discriminatory manner. They apply only to the unregistered congregations and unlicensed churches, where there are breaches of the RRA.

119. The statistics in the ChinaAid report do not demonstrate any large scale crackdown or persecution of the millions of members of unregistered churches which continue to exist. Christians continue to meet, worship and celebrate their particular distinctive faith. There are mentions within the ChinaAid report of isolated instances of acts of physical or mental violence going further than mere harassment. There is no credible evidence overall that Christians in unregistered communities have to live 'secretly' for fear of detection or punishment or indeed, that they are doing so. We recognise that church leaders and those who knowingly breach the Regulations may have more difficulty.

120. The evidence indicates that the authorities may confiscate Bibles, property and goods when interrupting unlicensed services, but the number of instances in which that occurs is insignificant, in proportion to the 80 million house church membership. There was little evidence before us of particular difficulties for evangelical churches; some interruptions of meetings involved the seizing of bibles, but equally, we note that about 40 million bibles are supplied to Chinese churches every year.

121. We recall ChinaAid's assertion in 2011 that there was a 10-year plan to eradicate the house churches. The only source for that in the documents before us is ChinaAid's report and reports based thereon; we have not seen the SARA joint memorandum. We are not satisfied that the risk revealed by the modest statistics set out in the ChinaAid report is sufficient to demonstrate a significant motivation or interest by the Chinese authorities in implementing any such intent. Dr Hancock in his report, and particularly in footnote 28 to that report, describes the leaked SARA joint memorandum as an unsubstantiated report that the Chinese government intended wholesale closure of unregistered churches, commenting thus:

'If true, the Chinese government has not acted on the report's recommendation (the aim being as unimaginable as the means); if untrue - which I consider more likely - the source of the report may have been ill-advised Christian groups seeking external sympathy and support.'

Dr Hancock has close connections with the churches in China and the comment he makes bears more weight for that reason.

122. We do not consider that the figures which have been presented support any systematic or wholesale campaign to implement the closure of unregistered churches. Put at its highest, the ChinaAid evidence is that the number of adverse incidents for the whole of China increased between 2011 and 2013 from 96 to 137 incidents, in the context of an unauthorised or unregistered Christian population estimated in the figure of some 40 to 80 million persons. One of the reports before us spoke of the raid upon a single unregistered church, in a region where there were more than ten other such churches. No suggestion has been made in that report that the other ten churches were the subject of any adverse attention.

123. We accept Dr Hancock's evidence that any renewed interest by the authorities in a particular house church will be more closely related to the political struggles within the Chinese government and its need to establish social controls. His evidence was that an unregistered church may well come under close scrutiny because of a public articulation of opposition to government policy, local directive, or police treatment. If the behaviour of a Christian or the Christian community is deemed sufficiently provocative, disruptive, illegal or dangerous then there may be a risk that persecution, discriminatory, legal, administrative, police and judicial acts or more serious human rights violations will occur. The extent to which in an individual case this will entail a risk of persecution, serious harm, or ill-treatment engaging international protection will depend on how strongly such individual considers that public protest or proselytisation is central to his or her faith.

124. Considering the evidence as a whole and the reports from the experts in particular, we find that the focus of concern of the Chinese authorities towards the unregistered churches arises not so much because of the theology, denomination or theological content of any particular Christian group, but instead is based on whether a particular church's activities are seen as mounting criticism or opposition to a particular state policy or purpose.
125. Some churches which seek to construct, or possess, buildings in support of their worship without applying for permission to do so under the RRA may incur the displeasure of the authorities for that reason. Some churches whose members distribute Bibles, preach publicly or manifest their opinions more openly than others may be perceived by so doing as challenging the status quo. We consider that it is these churches which are the more likely to come to the adverse attention of the authorities, and to face closure of unlicensed church buildings and interruption of services. The demolition of a building which has been used as a church, but which was so designated or constructed without planning approval, while certainly inconvenient, does not of itself constitute such an interference with the right to worship that it undermines the fundamental expression of faith by the congregation which uses it. The congregation and its pastor have the option to seek permission for a different venue, to relocate to a less public place or to register their church's overall activity.
126. The evidence before us indicates that local authorities in different areas of China have different approaches to Christians and Christianity. China is a country with a very large internal migrant population and in general, the evidence before us does not indicate that internal relocation will be unreasonable or unduly harsh for the great majority of Christians. We remind ourselves, for example, that in Wenzhou city in Zhejiang province in south-eastern China, 40% of the population are said to be Christian and that celebration of Christian festivals takes place publicly. We accept that there may be exceptional personal factors indicating that internal relocation for a particular individual or family would be unreasonable or unduly harsh, but we consider that such cases will be relatively rare. In general, we consider that internal relocation within China will be a safe solution to a local risk affecting individual Christians.

### **Particular Risk Factors**

127. Having regard to the various incidents referred to in the background material and particularly those cited in the ChinaAid documentation, some activities seem more likely than others to provoke official interest and response. In particular, we consider that the following matters may cause difficulty for some Christian groups:

#### **(a) Worshipping in Unauthorised Church Buildings**

128. A number of unregistered churches have built or acquired dedicated Church premises, without seeking the permission of the Chinese authorities to do so as the RRA require. The response of the authorities to such an event, as set out within the Regulations themselves, may be to close down the building, to demolish it and/or to confiscate property within it.

129. Generally, the response of the authorities to those within the building is either to exclude the unregistered worshippers from further use of that building, or to detain them for a short while before releasing them. From the examples given, it seems that relatively few individuals are detained on those occasions and that normally those detained are the leaders or those who authorised the use of the buildings without applying for permission as the Regulations require. The many examples cited by ChinaAid are remarkable for the absence of any suggestion of physical violence towards unregistered congregations, although it seems that on occasion, the authorities have been angered by resistance from such congregations against the demolition of their Church or their own removal from the premises.

**(b) Overt Public Behaviour**

130. Holding unauthorised meetings in public places, preaching or distributing Bibles in parks or areas in the public domain has provoked the adverse interest of the authorities, and such meetings, if unauthorised, are broken up. Dr Hancock's evidence was that denominational differences within the house church movement would not increase an individual's risk on return, save where there was a particularly strong local expectation, whether imposed by church leaders, assumed by church members or instigated by outside bodies, that Christian behaviour and practice must include overt and thence potentially provocative social or political activity. Examples which have on occasion brought a particular unregistered church or meeting to the adverse attention of the authorities include (again, in rare cases) holding large scale Bible studies or inviting outside speakers or teachers, bringing a particular unregistered church or meeting to the adverse attention of the authorities.

131. Other than the breaking up of such meetings and their dispersal, there would seem to be little to indicate that those attending are at risk of anything beyond a short period of detention, questioning and release. No examples were cited of refusal to authorise meetings when permission had been sought, or of interference with, or disruption of, properly conducted authorised meetings or demonstrations.

**(c) Offering Physical and Verbal Challenge to the Actions of the Authorities**

132. The ChinaAid report gives multiple examples of detention of leaders of unregistered churches, but for the most part they do not seem to be ill-treated and are soon released. It seems that those most vulnerable to arrest and/or ill-treatment are those who seek to resist the actions of the authorities in closing unauthorised churches or dispersing those attending at unauthorised public meetings. The situation facing the Shouwang Church, which has been running frequent unlicensed and unregistered large open-air services, is a case in point and has resulted in the repeated detention and release of its leaders and members of the congregation. The 1500 or so affected individuals, and the large number of incidents, distort the overall statistics in the ChinaAid report.

**(d) Particular Personal Profiles**

133. Some individual church leaders who have been vocal in their criticism, and some human rights activists, have incurred the displeasure of the Chinese authorities and



have been dealt with by way of sentence or a lengthy detention and/or ill-treatment. Whether such persons face a similar risk on return, and whether they can reasonably be expected to avail themselves of an internal relocation option, is a fact-specific question: where, given the circumstances of a particular individual, there remains a real risk or a reasonable degree of likelihood that such individual would be imprisoned, or ill-treated in detention, such risk engages international protection and will amount to persecution, following the ruling of the European Court of Justice ruling in *X, Y and Z*.

**(e) Links to International Groups and Individuals**

134. The Chinese authorities continue to be concerned about foreign influences in the house churches; Dr Hancock in his report observes that known links to international groups and individuals, and their consequent capacity to raise funds from overseas bodies, to amplify their views or wishes through international networks, and to invoke international support, may present a profile of interest to the local authorities. The examples given indicate possible interest by the Chinese authorities in certain house groups where foreigners or those from another area have become involved. However, we note also that the Chinese authorities are aware that the links between Christian churches in China and abroad can affect the international perception of China and are therefore cautious in their approach to such situations.

**(f) Socio-economic and Educational Profile**

135. Dr Hancock's report highlighted changing demographics in membership of 'unregistered churches' from the 1970s and 1980s, when they were primarily socially weak blue collar or rural communities, to the present day, when members in urban churches are mainly young, 'white collar' professionals, and in particular, students, whose discussions in the house churches have been a cause of concern to the Chinese authorities who regard them, rightly, as China's future. However, as Dr Hancock's report also reflects, there is sympathy for Christianity in the higher echelons of both national and regional government. Overall, Christians are regarded as useful members of society and a force for good rather than for social disruption; such sympathy often seems to have been a determinative factor in relation to risk for individual unregistered churches and Christians.

136. Given the 'patchwork quilt' nature of local government and local authority across China, inevitably some local authorities have a more negative attitude towards the unregistered churches; on the other hand, in some areas the presence and influence of Christianity is accepted and public celebration of Christian festivals. In some areas Christian churches are perceived by the local authorities and potential actors of persecution as a force for social good, while in others, they may be seen as challenging the authorities and therefore attract adverse attention. It seems to us that there is little evidence in the materials before us which demonstrates a coordinated hostile approach to the unregistered churches.

## Conclusions

137. The following is our country guidance on conditions for Christians in China. We have divided our conclusions to distinguish between the registered state churches and the unregistered churches, identifying any risk for each group of worshippers.

### **Risk to Christians in China**

- (1) In general, the risk of persecution for Christians expressing and living their faith in China is very low, indeed statistically virtually negligible. The Chinese constitution specifically protects religious freedom and the Religious Affairs Regulations 2005 (RRA) set out the conditions under which Christian churches and leaders may operate within China.
- (2) There has been a rapid growth in numbers of Christians in China, both in the three state-registered churches and the unregistered or 'house' churches. Individuals move freely between State-registered churches and the unregistered churches, according to their preferences as to worship.
- (3) Christians in State-registered churches
  - (i) Worship in State-registered churches is supervised by the Chinese government's State Administration for Religious Affairs (SARA) under the RRA.
  - (ii) The measures of control set out in the RRA, and their implementation, whether by the Chinese state or by non-state actors, are not, in general, sufficiently severe as to amount to persecution, serious harm, or ill-treatment engaging international protection.
  - (iii) Exceptionally, certain dissident bishops or prominent individuals who challenge, or are perceived to challenge, public order and the operation of the RRA may be at risk of persecution, serious harm, or ill-treatment engaging international protection, on a fact-specific basis.
- (4) Christians in unregistered or 'house' churches
  - (i) In general, the evidence is that the many millions of Christians worshipping within unregistered churches are able to meet and express their faith as they wish to do.
  - (ii) The evidence does not support a finding that there is a consistent pattern of persecution, serious harm, or other breach of fundamental human rights for unregistered churches or their worshippers.
  - (iii) The evidence is that, in general, any adverse treatment of Christian communities by the Chinese authorities is confined to closing down church buildings where planning permission has not been obtained for use as a

church, and/or preventing or interrupting unauthorised public worship or demonstrations.

- (iv) There may be a risk of persecution, serious harm, or ill-treatment engaging international protection for certain individual Christians who choose to worship in unregistered churches and who conduct themselves in such a way as to attract the local authorities' attention to them or their political, social or cultural views.
- (v) However, unless such individual is the subject of an arrest warrant, his name is on a black list, or he has a pending sentence, such risk will be limited to the local area in which the individual lives and has their *hukou*.
- (vi) The *hukou* system of individual registration in rural and city areas, historically a rigid family-based structure from which derives entitlement to most social and other benefits, has been significantly relaxed and many Chinese internal migrants live and work in cities where they do not have an urban *hukou*, either without registration or on a temporary residence permit (see *AX (family planning scheme) China* CG [2012] UKUT 00097 (IAC) and *HC & RC (Trafficked women) China* CG [2009] UKAIT 00027).
- (vii) In the light of the wide variation in local officials' response to unregistered churches, individual Christians at risk in their local areas will normally be able to relocate safely elsewhere in China. Given the scale of internal migration, and the vast geographical and population size of China, the lack of an appropriate *hukou* alone will not render internal relocation unreasonable or unduly harsh.

### **Application of country guidance to this appellant**

- 138. The appellant arrived in the United Kingdom on 25th August 2009, but did not claim asylum until 21st March 2011. The nature of her claim is set out in her interview conducted on 14th July 2011 and in the contents of her statements dated 18th July 2011 and 26th September 2011. She also gave oral evidence before the First-tier Tribunal.
- 139. The appellant's case is as follows: she was born and lived with her parents in a city in Jiangxi province in East China, where only three cases of ill-treatment of Christians are recorded in the country evidence. The appellant had been a Christian since she was six years old. For a time she attended the official TSPM church in her area. She was baptised at the age of 13, and from 2003 she practised her Christianity in a house Church at her home, set up by her father, of which he was the pastor. In 2008, her father's church members built a new building for the church and meetings were held there. It does not appear that they sought permission under the RRA for that church building. The appellant claimed that she and the congregation had experienced difficulties as a result of the authorities seeking to demolish the church.

140. There is no suggestion in the appellant's account that during the period when she worshipped at her home, her faith and its proper expression was in any sense curtailed or incomplete, because of any secrecy that she felt it necessary to employ. The difficulties which the church experienced were connected to their failure to obtain proper permission under the RRA to build a church, and the holding of meetings in an unlicensed building.
141. The appellant's case is that she would be driven to proselytise her particular evangelical Christianity on return China. That part of her account was found to lack credibility in the First-tier Tribunal determination. The Judge, for the reasons set out in paragraph 11.1 of the determination, came to the conclusion that the account of the appellant lacked credibility. Save for accepting the fact that the appellant was a Christian, the Judge did not accept any other aspect of her evidence, including her claim that she would wish to proselytise were she to return. He considered, on the contrary, that she was likely to continue to practise her Christianity discreetly, not out of fear but because that was normal for her.
142. Since coming to the United Kingdom, the appellant has had an intermittent relationship with a refused asylum seeker, who is a Chinese citizen with no other basis of stay in the United Kingdom. They have two very young children, both Chinese citizens. In her asylum interview, she indicated that the relationship started in November 2009 and ended in August 2010. It restarted after their son was born in April 2011.
143. The appellant does not live with the child's father and maintains contact with him by occasional telephone calls. There is little detail presented as to the current state of that relationship or the circumstances giving rise to the birth of the appellant's second child. We recognise that the best interests of those children must be a primary consideration in this appeal, under s.55 of the Borders, Citizenship and Immigration Act 2009, but they are still of an age where their principal relationship is with their mother, and there is no evidence before us of any strong links outside their immediate family.
144. Following the decision of the Upper Tribunal in *AX (family planning scheme) China* CG [2012] UKUT 97 (IAC), the appellant did not seek to argue that returning to China with foreign-born children would present a risk of persecution or serious harm engaging the international protection Conventions. We see no reason why the father of the children cannot return with them to China, if the parties wish to live together and to enjoy private and family life as a unit. In any event, no issue has been raised in the appellant's skeleton argument or in the course of this appeal that the relationship between them, if indeed it continues, constitutes a factor rendering removal disproportionate.

### **First-tier Tribunal determination**

145. The First-tier Tribunal Judge did not find the appellant's core account credible, though it was accepted that she was a Christian and was Chinese. In particular, he found that she would practise her Christianity discreetly on return to China, and

would not seek to proselytise, despite her assertion to the contrary, and that therefore she did not fall into one of the risk categories identified in *HJ (Iran)*.

146. The First-tier Tribunal judge also found as a fact that that it did appear that in China those who were openly Christian were liable to persecution, but his finding did not engage with the recognition by the Chinese state of a number of State-sponsored Christian churches: the China Christian Council (CCC) and the Three-Self Patriotic Movement (TSPM), both Protestant organisations, and the Chinese Catholic Patriotic Association (CPA). Churches outside these organisations, described in this determination as unregistered churches, are also known as 'underground' or 'house' churches, the latter description arising out of the places where their worship is often conducted.
147. He dismissed the appellant's appeal on the basis of his finding that she herself would not practise her Christianity openly and thus would not be at risk.

### **The error of law**

148. The appellant challenged the determination on the basis, inter alia, that the factual finding as to risk was inadequately reasoned and that *HJ (Iran)* had not been properly applied to the facts of her case. She challenged the negative credibility findings made by the First-tier Tribunal judge.
149. At an error of law hearing before Upper Tribunal Judge Gleeson, all parties agreed that the First-tier Tribunal's finding of a generic risk of persecution to all Chinese Christians, was unreasoned and unsustainable. It was also common ground that the error in reasoning amounted to a material error of law, since the First-tier Tribunal determination did not engage with whether those at risk were practising in State-recognised churches or unrecognised 'house' churches.
150. In consequence, the Upper Tribunal found, and the parties agreed, that the decision would need to be set aside and remade. The Upper Tribunal upheld the negative credibility findings made in the First-tier Tribunal and directed that the First-tier Tribunal Judge's findings of credibility and fact should be preserved when the decision was remade.

### **Upper Tribunal hearing**

151. The appellant gave further evidence, amplifying her account given before the First-tier Tribunal. She relied upon her supplementary statement of 12 February 2013, in which she stated that when in China, unlike her father, she did not proselytise by going door-to-door to spread God's news. The highest the appellant put her case in her statement was that she did speak to friends. She would visit the elderly in their homes to help pray for them and to provide them with necessary practical assistance.
152. In the United Kingdom she began attending the Liverpool Chinese Gospel Church in August 2011. She considered that it was important for her to attend church regularly, whether in the United Kingdom or in China. Her evidence was that she

went to church every Sunday, worshipping, singing hymns and listening to the pastor preaching. She and others made donations to the church for charity work.

153. In her oral evidence before us, the appellant stated that she had in the past attended the State-registered TSPM church in her city, before her father started a local 'house' church. She found it somewhat restrictive: members of the congregation were not permitted to preach in the street or to preach to those under 18 years of age, and there were limitations as to membership numbers. She did not think that the TSPM church which she attended gave sufficient emphasis to the Holy Spirit. She had last attended that church in 2005.
154. The appellant felt more comfortable in the church founded by her father and friends, which was in the same city in Jiangxi province. In her father's church, there were two ministers who came each week to take the services. They had been trained properly at a parent church, the Jian Chinese Gospel Church. The appellant stated that if returned to China, she would be frightened to proclaim her faith openly, and would have a problem if she preached or expressed her belief. She would preach to a neighbour or a friend, as she had done before coming to the United Kingdom, but not in a public place.

## **Discussion**

155. The appellant is a young Chinese woman from the 'house' church movement, who has always been discreet in her practice of Christianity. We accept that the appellant is a Christian. Her practice of Christianity while in the United Kingdom takes place in an evangelical church, the Liverpool Chinese Gospel Church, which she has attended since August 2011.
156. It is not the appellant's evidence that her religious feeling would impel her to confront the Chinese authorities by public proselytisation if returned. The appellant has in the past attended both registered and unregistered churches in China. We recall that the authorised and unauthorised congregations are fluid, as Dr Hancock's evidence explained: it would be open to the appellant to worship in either way, depending on what will meet her religious needs.
157. We have considered her further evidence but we find nothing in it which persuades us that we should not uphold the finding of the First-tier Tribunal that she would return to discreet practice of Christianity in a house church in China. The risk to those in the unregistered church, unless they are much more confrontational than this appellant, is vanishingly small. We are not satisfied that her faith is such that it is integral to it that she publicly proclaim herself, in defiance of any government control or regulation.
158. In the particular circumstances of this appellant's claim, therefore, we consider that she could safely return to China and practise her faith as part of her local community in her city, whether within the registered church or within the unregistered church system. If there were any difficulty, she would have a safe internal relocation option to other parts of China where the authorities had a more relaxed attitude to Christian

practice, within or without the registered churches. The appellant has been prepared to travel to the opposite side of the world to re-establish herself in the United Kingdom, and relocation within China is well within her capabilities.

159. We must consider also the best interests of the appellant's children pursuant to s.55. There is no evidence before us about these children, save for their existence: they are young children and are Chinese citizens. Nothing in the appellant's evidence suggests that these children cannot properly be returned to China with their mother, where they can grow up in their own culture and within their own traditions. We remind ourselves of the importance of cultural context while a child is growing up, as described by Lady Hale in *ZH (Tanzania)* in the context of United Kingdom citizen children:

"32. Nor should the intrinsic importance of citizenship be played down. As citizens these children have rights which they will not be able to exercise if they move to another country. They will lose the advantages of growing up and being educated in their own country, their own culture and their own language. They will have lost all this when they come back as adults. As Jacqueline Bhaba (in 'The 'Mere Fortuity of Birth'? Children, Mothers, Borders and the Meaning of Citizenship', in *Migrations and Mobilities: Citizenship, Borders and Gender* (2009), edited by Seyla Benhabib and Judith Resnik, at p 193) has put it:

'In short, the fact of belonging to a country fundamentally affects the manner of exercise of a child's family and private life, during childhood and well beyond. Yet children, particularly young children, are often considered parcels that are easily movable across borders with their parents and without particular cost to the children.'

Such cultural considerations have relevance also for children who are citizens of third countries, such as China. The appellant's children are still at an age where their primary links are to the appellant as their mother and, absent any evidence to the contrary, we are satisfied that it is in their best interests to return to China with their mother, where they will be able to grow up in their own cultural background.

## Decision

160. The previous determination was set aside. We substitute a decision dismissing this appellant's appeal on asylum, humanitarian protection and human rights grounds.

Signed

Date

Upper Tribunal Judge King TD

## Appendix A

### Documents before the Upper Tribunal

<u>Date</u>	<u>Source</u>	<u>Description</u>
<u>1958</u>		
29 June 1958	<i>Papal Encyclicals Online</i>	AD Apostolorum Principis: Encyclical of Pope Pius XII on Communism and the Church in China
<u>1982</u>		
4 Dec 1982	<i>People's Daily Online</i>	Constitution of the People's Republic of China (Last updated 22 March 2004)
<u>2003</u>		
2003	<i>Society of St Pius X District of Asia</i>	News Archive: China
<u>2004</u>		
30 November	<i>Congressional-Executive Commission on China</i>	Regulations on Religious Affairs
<u>2005</u>		
October	<i>Christian Solidarity Worldwide</i>	Religious Freedom in China
<u>2006</u>		
8 March	<i>Forum 18 News Service</i>	China: Despite new Regulations, religious policy still under strain
<u>2008</u>		
2008	<i>The Three-Self Patriotic Movement</i>	<i>The Empty Cross</i> : The False Doctrine of China's Official Church
<u>2009</u>		
10 June	UKBA	Operational Guidance Note : China
10 June	<i>Christian News Wire</i>	3 Chinese Christians Sentenced for illegal proselytizing
27 October	<i>Immigration and Refugee Board of Canada</i>	China: Whether proselytizing is legal in China
<u>2010</u>		
1 September	<i>The Seattle Times Newspaper (online)</i>	Mormons aim to 'regularize' their churches in China
12 October	<i>Immigration and Refugee Board of</i>	China: The activities of underground Christian



	<i>Canada</i>	churches in Shanghai; how they are treated by the authorities; the position and practice of patriotic and underground churches with respect to baptism
<b>1 December</b>	<i>Australian Government Refugee Review Tribunal</i>	Country Advice - China: Christians - unofficial churches
<b><u>2011</u></b>		
<b>24 January</b>	<i>Human Rights Watch</i>	World Report 2011: China
<b>1 April</b>	<i>ChinaAid Association (USA)</i>	2010 Annual report: Chinese Government persecution of Christians and churches in mainland China
<b>10 April</b>	<i>Voice of America News</i>	China Breaks Up Christian Worship Services
<b>13 May</b>	<i>Amnesty International</i>	Annual Report 2011: China
<b>9 August</b>	<i>Australian Government Refugee Review Tribunal</i>	Country Advice - China: Local Church
<b>24 August</b>	<i>UKBA</i>	China Country of Origin Information (COI) Report
<b>6 September</b>	<i>US State Department</i>	Background Note: China
<b>12 September</b>	<i>BBC News</i>	Christians in China: Is the country in spiritual crisis?
<b>15 September</b>	<i>Radio Free Asia</i>	Pastor Freed, others still held
<b>22 September</b>	<i>Australian Government Refugee Review Tribunal</i>	Country Advice - China: Treatment of Christians
<b><u>2012</u></b>		
<b>2012</b>	<i>Amnesty International</i>	Amnesty International Report 2012: China
<b>22 January</b>	<i>Human Rights Watch</i>	World Report 2012 (Events of 2011)
<b>22 January</b>	<i>Human Rights Watch</i>	World Report 2012: China
<b>26 January</b>	<i>Sunday Examiner</i>	Bishops and Priests currently being held in China
<b>February</b>	<i>ChinaAid Association</i>	2011 Annual Report: Chinese Government Persecution of Christians and Churches in Mainland China January - December 2011
<b>6 March</b>	<i>Protestants in China (Webpage)</i>	Christianity in China & Confessions of Faith
<b>9 March</b>	<i>ChinaAid Association (USA)</i>	House church in Hebei repeatedly targeted for persecution; members detained, sent to labor camp
<b>11 March</b>	<i>ChinaAid Association</i>	Brief Report: House Church Evangelistic Team

		Detained in Shenzhen, Released four days later
<b>20 March</b>	<i>ChinaAid Association (USA)</i>	Police raid house church in Xinjiang, detain 70 Christians
<b>27 March</b>	<i>Radio Free Asia</i>	House church publications raided
<b>April</b>	<i>Foreign and Commonwealth Office</i>	Human Rights and Democracy: 2011 Report
<b>1 April</b>	<i>Radio Free Asia</i>	Police raid Christian bookstore, house church
<b>24 April</b>	<i>Compass Direct (USA)</i>	China plans to eradicate house churches
<b>26 April</b>	<i>ChinaAid Association (USA)</i>	News Brief: House churches in multiple provinces attacked by local government
<b>May</b>	<i>Christian Solidarity Worldwide</i>	Briefing - China: Religious Freedom
<b>24 May</b>	<i>Amnesty International</i>	Annual Report 2012: China
<b>29 May</b>	<i>ChinaAid Association (USA)</i>	Henan province house church raided, more than 50 Christians detained
<b>22 June</b>	<i>The Guardian (online)</i>	China should embrace house churches
<b>10 July</b>	<i>BBC News: China</i>	China 'detains' Shanghai bishop who quit official post
<b>30 July</b>	<i>ChinaAid Association (USA)</i>	Two house churches in Xinjiang persecuted; three Sunday School teachers detained
<b>30 July</b>	<i>US State Department</i>	International Religious Freedom Report 2011: China
<b>30 July</b>	<i>US State Department</i>	International Religious Freedom Report 2011: China
<b>29 August</b>	<i>UKBA</i>	China Operational Guidance Note
<b>11 September</b>	<i>ChinaAid Association (USA)</i>	'Shaanxi Christians sentenced to labor camp for 'cult' activities, file suit against local authorities'
<b>27 September</b>	<i>ChinaAid Association (USA)</i>	'Xinjiang Kucha House Raided'
<b>October</b>	<i>UKBA</i>	China Country of Origin Information (COI) Report
<b>10 October</b>	<i>US Congressional-Executive Commission on China</i>	Annual Report 2012
<b>19 October</b>	<i>Immigration and Refugee Board of Canada</i>	China: Estimates of the number of Christians, particularly in the provinces of Fujian, Guangdong and Liaoning
<b>11 November</b>	<i>ChinaAid Association</i>	Shanghai House Church Christian and Advocate for Petitioners Sentenced to Labour Camp for Third Time

<b>18 November</b>	<i>BBC News</i>	China Country Profile
<b>20 November</b>	<i>Christianity Today</i>	What China's Seven New Rules Mean for its 80 Million Christians
<b>30 November</b>	<i>Patheos</i>	Christian Persecution: Chinese House Church Christian Sentenced to 'Re-Education Through Labour'
<b>11 December</b>	<i>Radio Free Asia</i>	House church Christians detained
<b>22 December</b>	<i>International Christian Concern</i>	Arrests of Christians in China remained high in 2012
<b>26 December</b>	<i>Radio Free Asia</i>	Clampdown on Memorials, Christians
<b>28 December</b>	<i>Radio Free Asia (RFA)</i>	Shanghai Cracks Down on Churches
<b><u>2013</u></b>		
<b><u>2013</u></b>	<i>Amnesty International</i>	Amnesty International Report 2013: China
<b>January</b>	<i>Open Doors USA</i>	World Watch List: China
<b>January</b>	<i>Freedom House</i>	Freedom in the World, 2013, China (Covering 2012)
<b>8 January</b>	<i>Huffington Post</i>	Christian Persecution List: Africa Rises, China Falls on Open Doors' 2012 Roundup
<b>16 January</b>	<i>Central Intelligence Agency (CIA)</i>	World Factbook: China
<b>16 January</b>	<i>ChinaAid Association (USA)</i>	2012's top 10 cases of persecution of churches and Christians in China
<b>19 January</b>	<i>Rescue Christians</i>	China: 2012 Christian Persecution, 10 cases based on severity, impact and significance
<b>31 January</b>	<i>Open Doors UK</i>	China's Christians seize internet opportunities
<b>31 January</b>	<i>Human Rights Watch</i>	World Report 2013: China
<b>February</b>	<i>Wolfson College, Oxford</i>	Expert Report by The Very Revd Dr Christopher Hancock: Risks to Christians in China today
<b>4 February</b>	<i>ChinaAid Association (USA)</i>	2012 Annual Report: Chinese Government Persecution of Christians and Churches in Mainland China, January - December 2012
<b>16 February</b>	<i>Morning Star News (online)</i>	Persecution Rises in China as Plan Begins to End House Churches
<b>4 March</b>	<i>The New American</i>	China's Churches Face Renewed Government Persecution

<b>28 March</b>	<i>ChinaAid</i>	Exclusive Report – Radio Free Asia House Churches face emergencies in various places in China
<b>31 March</b>	<i>The Christian Post: CP World</i>	Christian Church in China Needs Mentors, Says Persecution Watchdog
<b>April</b>	<i>Foreign and Commonwealth Office</i>	Human Rights and Democracy: 2012 Report
<b>9 April</b>	<i>US House of Representatives Committee on Foreign Affairs</i>	Subcommittee Hearing: Chen Guangcheng and Gao Zhisheng: Human Rights in China (Testimony of Bob Fu, ChinaAid Association)
<b>30 April</b>	<i>US Commission on International Religious Freedom</i>	Annual Report 2013: China
<b>15 May</b>	<i>Forum 18 News Service</i>	China: tight state controls on religious education
<b>23 May</b>	<i>University of St. Andrews, Fife</i>	Expert Report by Professor Mario I. Aguilar
<b>23 May</b>	<i>Christianity Today</i>	How China Plans to Wipe Out House Churches
<b>24 May</b>	<i>The Catholic World Report</i>	China renews tension with the Vatican
<b>10 October</b>	<i>US Congressional-Executive Committee on China</i>	Annual Report 2013

#### **Web sources**

Amnesty International : <http://amnesty.org/en>

British Broadcasting Corporation (BBC): <http://www.bbc.co.uk/news>

Central Intelligence Agency (CIA): <https://www.cia.gov>

Congressional-Executive Committee on China (CECC): <http://www.cecc.gov>

ChinaAid Association: <http://www.chinaaid.org/>

Christian News Wire: <http://www.opposingviews.com>

Christian Solidarity Worldwide: [www.csw.org.uk](http://www.csw.org.uk)

Christianity Today: <http://www.christianitytoday.com/>

Electronic Immigration Network: <http://www.ein.org.uk/>

Foreign and Commonwealth Office (FCO): <https://www.gov.uk/government/organisations/foreign-commonwealth-office>

Forum 18 News Service: <http://forum18.org>

Freedom House: <http://www.freedomhouse.org/>

Huffington Post: <http://www.huffingtonpost.com/>

Human Rights Watch: [www.hrw.org](http://www.hrw.org)

Immigration and Refugee Board of Canada (CIRB): <http://www.irb-cisr.gc.ca/eng/Pages/index.aspx>

International Christian Concern: <http://www.persecution.org/>

Morning Star News (online): <http://morningstarnews.org/>

Open Doors United Kingdom: <http://www.opendoorsuk.org/>

Papal Encyclicals Online: <http://www.papalencyclicals.net/>

Patheos: <http://www.patheos.com/>

People's Daily Online: <http://english.people.com.cn/>

Protestants in China: <http://www.Bibleinchina.org/>

Radio Free Asia (RFA): <http://www.rfa.org/english/>

RefWorld: <http://www.refworld.org/>

Rescue Christians: <http://www.rescuechristians.org/>

Society of St Pius X District of Asia: <http://www.sspxasia.com/>

Sunday Examiner: <http://sundayex.Catholic.org.hk>

The Catholic World Report: <http://www.Catholicworldreport.com/>

The Christian Post: CP World: <http://www.christianpost.com/>

The Guardian (Online): <http://www.guardian.co.uk/>

The New American: <http://www.thenewamerican.com/>

The Seattle Times Newspaper (online): <http://seattletimes.com/>

United Kingdom Border Agency (UKBA): <http://www.ukba.homeoffice.gov.uk/>

United Nations High Commissioner for Refugees (UNHCR): <http://www.unhcr.org/>

US Commission on International Religious Freedom: <http://www.uscirf.gov/>

US House of Representatives Committee on Foreign Affairs: <http://foreignaffairs.house.gov/>

US State Department: <http://www.state.gov/>

World Watch List: <http://www.worldwatchlist.us/>

## Appendix B

### Christianity in China - the Churches and their congregations

#### **Evidence relating to the number of Christians in China**

1. A helpful starting point in our consideration of this matter is the report published by the Immigration and Refugee Board of Canada 'China: Estimates of the Number of Christians, Particularly in the Provinces of Fujian, Guangdong and Liaoning' published on 19<sup>th</sup> October 2012.
2. It provides an estimate of between 40 to 130 million Christians. Various sources are cited in the body of the report. One particular report on Christianity published by Pew Research Centre 2011 indicated that there were significant challenges in estimating the size of the Christian population, with numbers ranging between 1% and 8% of the population as a whole. There were a lack of questions regarding religion on the national census and the membership in unofficial churches. Statistics on religion were a sensitive topic for local officials as well as indeed for believers who did not want to be identified.
3. The estimate of Christians in Fujian is based on an assessment of Asia Harvest, a US non-profit organisation, which identifies in excess of 5 million Christians in the province, which represented 14.31% of the population of the province. The same source reported that there were nearly 3.5 million Protestants and almost 2 million Catholics within that figure.
4. In Guangdong, the Asia Harvest survey noted just over 4 million Christians or 4.55% of the population of the province, comprising nearly 3.5 million Protestants and approaching 800,000 Catholics. In Liaoning province, Asia Harvest noted over 3 million Christians, representing 7.11% of the provincial population, of whom nearly 3 million were Protestants and some 423,000 were Catholics.
5. Corroboration of the above information could not be found in other materials before the Upper Tribunal for this appeal.

#### **Constitutional provisions**

6. The constitution of the People's Republic of China makes specific reference to religious freedom:

'Article 36

Citizens of the People's Republic of China enjoy freedom of religious belief. No state organ, public organisation or individual may compel citizens to believe in, or not to believe in, any religion; nor may they discriminate against citizens who believe in, or who do not believe in any religion. The State protects normal religious activities. No one may make use of religion to engage in activities that disrupt public order, impair the health of citizens or interfere with the educational system of the State. Religious bodies and religious affairs not subject to any foreign domination.'

#### **The official churches**

7. The Chinese government recognised three Christian groups among the five official religions, which were required to register and operate through the sanctioned state authorities. An article by Fiscal News Service dated March 2012 indicated that there were

some 20 to 40 million registered Christians in China. Estimates for unregistered Christians varied wildly from 40 million, which were the government figures, to 80 million from other sources. It was estimated that there were 70 million Protestants and 10 million Catholics in the unregistered churches.

8. The data published from China's state administration for religious affairs estimated some 6 million registered Catholics and 23 million registered Protestants. Such were figures in 2010 rather than more recently.

### **The Seven Rules: Christianity or socialism**

9. The Seven Rules for Christians in registered churches in China are conveniently set out in *The Empty Cross* report by Dr Tom White of Voice of the Martyrs (VOM) in Bartlesville, Oklahoma, and referred to in other publications we have seen. They reflect the concerns of the Communist authorities as to the perceived conflict between the aims of socialism and Christianity, and are as follows:

- (1) (Christian believers) must fervently love the People's Republic of China, support the leadership of the Chinese Communist Party and the people's government, uphold the unification of the motherland and the harmony among ethnic groups, and work steadfastly on the road to socialism.
- (2) (Christian believers) must strictly abide by all the laws, regulations, politics of the Communist Party and the State and strive to be patriotic and law abiding citizens.
- (3) (Christian believers) must actively work to increase the material wealth and cultivate good spiritual morals of the socialist civilisation. They must comply with the government's labour codes and strive to contribute to the development of the 'four modernisations' established by the Communist Party. If such scheduled religious activities are in conflict with production and work schedules, the economic activities must take priority.
- (4) A permit must be obtained from the country State Administration for Religious Affairs (Community Party members) in order to establish religious meeting points. No unauthorised meeting points are allowed.
- (5) (Christian believers) must actively cooperate with the government to thoroughly carry out the party's religious policies to the letter. (They) shall not persuade and force others to believe in Christianity. (They) shall not brainwash teenagers under 18 with religious beliefs. (They) shall not bring children (under 18) to religious activities.
- (6) One should see a doctor for medication when sick. (Christian believers) must not resort to prayer alone for healing so not as to endanger people's health and lives.
- (7) (Christian believers) shall not preach their religion outside the church building and specific places which have been designated for religious activities. They shall not preach itinerantly. They shall not receive self-proclaimed evangelists into their homes, churches or meeting points.

10. Having set out the seven rules, VOM refers to a publication by Carl Lawrence, 'The Coming Influence of China'<sup>6</sup>, and observes that TSPM Christians are forced to value socialism above their faith, and identifies the following problems within the Seven Rules and China's approach to Christianity:

- *Evangelising is illegal*

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<sup>6</sup> Lawrence, Carl. *Coming Influence of China*, Sisters OR: Multnomah Publishers, Inc., 1996.

- *Parents cannot teach their children about Christ.*
  - *Pastors are appointed by the Communist state.*
  - *Pastors may not visit other TSPM churches.*
  - *Pastors are required to submit copies of their sermons to the authorities for censoring.*
  - *New churches are not permitted unless authorized by the State.*
11. The report criticised the theological training provided in the Christian theological schools run by the TSPM and CCC, saying that the seminaries aim at educating as pastors those who are politically in support of the leadership of the Chinese Community Party, thereby seeking to adapt Christianity to socialism, causing the Chinese churches to lose their religious quality and dividing the Chinese Protestant church, in particular. Pastors with an evangelical style to their sermon presentations are routinely removed from prominent or visible positions or placed in the countryside.
  12. When dealing with 'party members or true believers', the writer considered that the leaders of the TSPM have a confusing identity and no one knows who they are, whether they are true Communist Party members or true believers. It is said that 'gangster pastors', without any faith, are being given leading positions such that the TSPM has reached a stage where it is unacceptable to both society and the true Church.

### **Regulations on Religious Affairs (no 426) 2005**

13. China's Regulations on Religious Affairs (number 426) were promulgated on 1st March 2005. They are within the public domain and we refer to them henceforth as the RRA. They explicitly stress the right of freedom of religious belief and prohibit discrimination against Chinese citizens who have a religion.
14. Article 8 of the Regulations stresses that all religions shall adhere to the principle of independence and self-governance. Religious bodies' religious affairs should not be subject to any foreign domination and may develop external exchange on the basis of friendship and equality.
15. Article 7 provides that publications involving religious contents should not jeopardise the harmonious coexistence between religious and non-religious citizens or jeopardise the harmony between different religions.
16. The establishment of an institution for religious education should be by application for approval. The Regulations set out the conditions that are required for such a religious education. It essentially requires proper training objectives, necessary funding and proper site and equipment.
17. Article 22 provides that in the case of large scale religious activities permission to hold such large scale activities should be obtained in advance. This is essentially to ensure safety and good order. There are also regulations concerning religious personnel, religious property and legal liability.



## **United States Commission on International Religious Freedom Annual Report 2013**

18. Our attention was drawn to the US International Religious Freedom Report for 2013, and to three paragraphs of that report in particular. The first at page 2 is as follows:-

'Millions of Chinese manifest their beliefs openly and senior government officials have praised religious communities' positive role in society and urged approved religious groups to promote 'economic and social development' and 'socialist principles'. New directives we issued last year to allow approved religious groups to conduct some charitable activities. These are positive developments that were unthinkable just two decades ago. Nevertheless, the government continues to see the growth of religious communities who resist its oversight as potential threats to social 'harmony' or to its 'core interests'. Peaceful public protest or worship activities are criminalised, and both Christian and Muslim missionary activities are curtailed. Government authorities praised religious groups who resist 'foreign infiltration', prohibiting religious affiliation among Communist Party members and some government employees, and restrict the amount of religious materials available. The Chinese government also restricts online access on religious information and the authority of religious communities to choose their own leadership and parents to teach their children religion, particularly in the Uighur and Tibetan areas.'

19. At page 3, the Report states as follows:-

'Despite restrictions, harassment, arrests and government oversight, the number of religious adherents continues to grow in China and the government continues to tolerate regular and public worship activities of both legally approved and some unregistered religious groups. Tolerance for unregistered religious activity often varies, depending on province, locality, or relationship with provincial government officials. The government continues to use law to restrict religious activity and manage religious groups. The Chinese government's religion policy is governed by the National Regulations on Religious Affairs (RRA) first issued in March 2005 and updated in 2007. The RRA 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 RRA does allow registered religious groups to carry out some religious activities and charitable work. When registered, religious communities can apply or permission to possess property, accept donations from overseas, conduct religious education and training and host inter-provincial religious meetings. The RRA permits only 'normal religious activity' and contains vague national security provisions that suppress the peaceful activity of unregistered religious groups, organisations deemed cults.

For the past year, State Administration for Religious Affairs (SARA) announced plans to issue new legal guidelines governing the religious activities of foreigners, the granting of decrees of religious training schools, and the management of the foreign relations of religious groups. In February 2012, SARA and five other government agencies issued a public opinion that appeared to encourage participation of religious organisations in charitable activities. Nevertheless, according to the US Congressional-Executive Commission on China (CECC), the opinion emphasises 'supervision' and 'guiding religion and socialist society to mutually adapt' remains difficult for approved religious groups to establish a charity and legally impossible for unregistered groups.

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.'

It is difficult to understand what is meant by 'normal religious activity' and what its ambit might be in practice.

20. The report goes on to say:

'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 ... 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.'

21. At paragraph 11 of the report it is stated:-

'Members of the officially-approved religious groups are subject to similar government oversight and restrictions, including on issues of doctrine, clergy, religious activities, and religious sites. All agree to 'uphold the leadership of the Communist Party and the socialist system,' 'participate in socialist material, political, and spiritual civilization,' and protect 'religious harmony, national unity ... and world peace.'

### **Catholic Christianity in China**

22. The US Religious Freedom Report for 2013 at page 7 indicates that there are tensions between the government-approved 'Catholic Patriotic Association' (CPA) and the so-called 'underground' Catholics. Certain priests and bishops continued to be imprisoned. There are government efforts to convince or coerce Catholic clergy to join the CPA, particularly in the two provinces with the largest Catholic communities, Hebei and Shaanxi. The Chinese government continues to nominate bishops not recognised by the Holy See, and to place these bishops in charge of both the CPA and the Catholic Bishops Council of China.

23. Notwithstanding that fact, an estimated 90% of CPA bishops and priests are also secretly ordained by the Vatican, and in many provinces, CPA and unregistered Catholic clergy and congregations work closely together. In 2006, the Vatican and CPA worked together to select eleven bishops, reversing a previous trend of the government appointing all bishops without Vatican approval. However, beginning in late 2010, the CPA ordained seven bishops without Vatican approval, and the Vatican ex-communicated four of them. Three bishops received prior Vatican approval, though the Chinese government is now detaining two of these bishops for secretly contacting the Holy See.

24. It is said the Chinese authorities continue to pressure Catholic clergy to affiliate with the CPA and recognise its leadership. Priests, seminarians and some laity were forced to attend political 'education' sessions in the past year. In January 2012, six priests from the Inner Mongolian city of Erenhot were arrested whilst attempting to meet to discuss pastoral care and leaderships issues for unregistered Catholics in the Suiyuan dioceses. Four of the six were released within several days but the whereabouts of the other two are unknown. According to the CECC, at least forty Roman Catholic bishops remain in prison or detained, or were forcibly disappeared since the 1970s.

### **Protestant Christianity in China**

25. The picture in relation to the Protestant churches also seems to be somewhat mixed according to the US Religious Freedom Report, at page 8. In particular we note a passage as follows:-

'The government requires all Protestant groups to register and join one of these officially-recognized religious organizations; 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 organizations with extensive foreign ties, whose memberships grow too quickly, whose leadership becomes too popular or organizes across provincial lines, or whose religious activities allegedly disrupt ethnic or social 'harmony.'

26. The US Religious Freedom Report for 2011 noted that a case study indicated that 70% of Protestants worship in registered churches while 30% do so in unregistered churches or private residences. Pew Research Centre seeks to attribute regional distribution of Protestants into various areas. Various reports cited concerning Catholics which would seem to show over 6 million registered, 12 million unregistered. It is noted that those come from imprecise independent estimates. As with the Protestant churches, the number of registered Catholics is less than the number of unregistered.

### ***The Empty Cross document***

27. Professor Aguilar relied heavily on a report, published in 2001 and updated in 2008, by an organisation calling itself The Voice of the Martyrs (VOM), based in Bartlesville Oklahoma, in the United States. The report is entitled '*The Empty Cross : The False Doctrine of China's Official Church, the State TSPM Patriotic Movement*'. It contains a foreword by a Dr Tom White, the controversial executive director of VOM, who committed suicide in April 2012. The organisation was previously known as 'Jesus to the Communist World' and in the 1970s Dr White was imprisoned in Cuba for 17 months for dropping Bibles into Cuba. Dr White had travelled to China to meet underground Bible students just a few weeks before his death.
28. The 2008 *Empty Cross* document sets out a historic timeline in relation to the official Protestant church: the State TSPM Patriotic Movement (TSPM), the State TSPMs being self-government, self-propagation and self-support. The TSPM began in 1951 and originated from Community Party officials who realised that Christianity was experiencing astonishing growth in China. In charge of church leadership at that time were three foreign Christian agencies. The Communists believed that they needed to get rid of this 'socially disabling' force. By forming a state church, government officials hoped that the State church too would eventually disappear and that the interest in Christianity would fade away. However, quite the reverse would seem to have happened.
29. To control the content of Christian resources and materials, the Communist Party established the Amity Printing Company in 1987 in partnership with United Bible Societies. Amity Printing produced Bibles and other commentaries and materials for distribution to TSPM churches. Bibles printed at Amity were for export rather than for inside China. In December 2007, that particular publisher produced 15 million Bibles.
30. The report provides some help as to the size of the official church in 2008 and its growth before then. In 1989 the government listed 4.5 million registered Christians meeting in 6,375 churches and 2,600 meeting points and thirteen seminaries. In 2008 the Amity News Service listed 32,000 churches and 16,000 meeting points. There would seem also to be an increased growth rate of over 300% in the number of baptised TSPM Christians (4.5 million in 1989 to 13 million in 1999). It is said that about six churches are reopened or newly built somewhere in China nearly every day.
31. The same reporting agency also detailed that every year more than 500,000 new converts are baptised in TSPM churches. At that rate the number of TSPM Christians would double

before the end of the next decade. According to TSPM, Wenzhou in Zhejiang Province, south-east China, has the highest concentration of Christians in China with 600,000 Christians in a population of 7 million which is about 8.5%. However, these figures come from a 1997 report and are not, therefore, current. *The Empty Cross* document cannot assist us as to the numbers of Christians after 2008, but paints a very vivid picture as to the rapid growth of Christianity within China. The registered churches are said to be growing, at such a rate as to find difficulty in acquiring buildings to provide sufficient religious support for its followers. There is also a very rapid growth in the house churches.

### **FCO Report April 2011: 'Human rights and Democracy'**

32. Our attention was drawn to a report 'Human Rights and Democracy', a publication of the 2011 Foreign and Commonwealth Office, sent to Parliament and dated April 2012. That was a lengthy report but at page 332 was a passage dealing with freedom of religion and belief in China. The report states that the number of people practising religious belief in China is growing rapidly, both within officially sanctioned religious organisations and in informal house church movements. It considers that the official religions do not have the capacity to serve the demands of the religious population. For example, in Beijing there were only twenty registered buildings serving 150,000 registered Christians. This had led to a large growth in the unofficial house churches.

### **The Guardian Newspaper**

33. Our attention was also drawn to an article in The Guardian newspaper, dated 22<sup>nd</sup> June 2012, suggesting that China should embrace house churches rather than try to curtail their growth. The article noted that in the past three decades the economy in China has flourished, personal freedoms have increased, and religions of all forms started to thrive. The Chinese have been flocking to unofficial houses of worship with up to 1 million members of unregistered churches, which, whilst technically illegal, have been largely tolerated in recent months thanks to relaxed control and the government's realisation that religion can be a moral force to be reckoned with. Statistics are hard to come by, but the report notes that Protestantism is generally regarded as the fastest growing religion.
34. According to Frank Lee, a Chinese academic, the house churches boast 10 million Catholics and up to 70 million Protestants. Others put the figures even higher. In an article by Lijia Zhang, it is asserted that the Chinese Communist Party has been struggling as it tries to balance the making use of religion as a moral force with its inclination to control it. Her experience or sources are not cited.

### **BBC News**

35. We note also an article from the BBC News Magazine dated 12th September 2011 'Christians in China: Is the Country in a Spiritual Crisis?' That article by one Tim Garden notes that many of China's churches are overflowing as the number of Christians in the country multiplies. It said 'in the past, the repression drove people to convert – is the cause now rampant capitalism?' The article indicates that it is impossible to say how many Christians there are in China but the numbers are exploding. The government says 24 million, 18 million Protestants and 6 million Catholics, but independent estimates agree that that is a vast underestimate, with a conservative figure of 60 million.

## Appendix C

### Evidence of Professor Aguilar

#### **Written evidence**

1. Professor Mario Aguilar is Professor of Religion and Politics at the School of Divinity at the University of St Andrews, Scotland. He has a particular interest in the Churches, theology, religion, ritual, and politics of Latin America and Africa, and the relation between anthropology and biblical studies. He is currently writing a nine volume work on the social history of the Catholic Church in Chile and is involved in ongoing research in respect of religion and politics in Tibet. He has not been to China. In part of his report he sets out his publications and general experience. He said that he had studied Roman Catholicism and was familiar with the theological development of other churches.
2. Professor Aguilar has assisted the First-tier Tribunal and the Upper Tribunal with over 100 expert reports since 1994 and had prepared reports in connection with a country guidance case. In his oral evidence, Professor Aguilar said that he himself had not been to China but had worked in Tibet. His focus of enquiry was largely from an historical perspective, as the historical narrative shed light upon current situations and circumstances. The overriding theme of his report and his oral evidence was that China is a totalitarian state and that for the authorities, religion generally, and Christianity in particular, is of concern because of the potential influence of foreign ideas and for the potential of dissident ideas within community. He stresses that the authorities in China seek to monitor and control expression of such ideas and limit the occasions and numbers of people meeting together. It was difficult to quantify the number of Christians in China. The population of China had risen from 1.3 billion in 2004 to about 2 billion today. Among these were 40 million state-recognised Christians and, it was likely, many more than that who were not.
3. Dealing with the RRA, Professor Aguilar noted in his report dated [] that the RRA permits state registered religious organisations to possess property, publish literature, train and improve clergy and collect donations. The RRA sanctions five religious bodies in their patriotic State-sponsored form: Buddhist, Taoist, Muslim, Catholic and Protestant who were allowed to register under the 2005 religious laws, those religious bodies being. In his opinion, the Regulations were developed in response to the growing number of ‘unofficial’ and house churches that were arising, many of them challenging the State and the power of the State via the internet.
4. Within Christianity the People’s Republic of China (PRC) recognised three large umbrella organisations that were sanctioned by the State: the Patriotic Catholic Church (PCC) and the two organisations which embraced the reform churches, namely the State TSPM-Patriotic Movement (TSPM) and the China Christian Council (CCC). Foreigners are not to engage in religious activities with their Chinese counterparts; proselytisation by foreigners and by unregistered religious bodies is also illegal. Professor Aguilar’s opinion is that even Chinese citizens attending state-registered religious ceremonies were not entitled to practise their religion in public. Those who do so are subject to arrest.
5. Professor Aguilar contended that the religious laws of China remove from Christianity any power to challenge the State. Religion is made an activity rather than a way of life. In support of that proposition he invites our attention to a document attached to his report entitled *The Empty Cross*, which we consider in Appendix B.

6. The Chinese authorities sought to bring all religious practice under state control, including state oversight of religious doctrine, appointment of religious leaders, registration of religious groups and the construction of sites of worship. Professor Aguilar went on to say that indeed the registration of Christian churches was an attempt by the authorities to limit their effectiveness so far as criticism or gospel was concerned. The ministers in such churches were trained in particular seminars and bound by certain rules. Regulations were devoid of the social gospel, seeking to prevent any possibility of challenge. Although the Roman Catholic Church was one that had a very social gospel involving community activities, schools, orphanages and hospitals, such did not apply in the Catholic Patriotic Church.
7. Professor Aguilar noted a joint memorandum issued in September 2011 by SARA and the Ministries of Public Security and Civil Affairs, the Chinese authorities stated that they would adopt a new three-phase approach to wipe out unregistered house churches, and force them to join the official church system. In the first phase, from January 2012 to June 2012, the State Administration for Religious Affairs (SARA) secretly investigated house churches across the country and created files on them. This was followed by a wave of crackdowns on house churches which have continued into 2013 as part of the second phase. Such phase entailed encouraging unregistered churches to become part of the official church structure. The third phase is said to be due to begin in 2015 and continue until 2025: the government will shut down house churches that do not comply with the requirement to join the TSPM.
8. Professor Aguilar stated that it was very difficult to obtain objective data concerning the treatment of the unregistered churches because China was a very large country where the local official functionaries were often a law unto themselves. It is the dramatic growth of the unregistered churches and in particular the house churches which remains of particular concern to the authorities: they present a threat to the authorities by reason of the freedom of expression which they support and the ease of communication which they enjoy.
9. Professor Aguilar considered that the evangelical and charismatic Protestant churches, so-called 'Reformed', posed perhaps the greatest problem for the Chinese authorities because they were not churches which were historically accountable to other bodies or indeed used to a hierarchical control. Reformed churches were unaccountable except to themselves and grew everywhere, multiplying themselves by enthusiasm alone, and thus presented a challenge to control by the State. Indeed they enabled young students in particular to meet together to express new ideas and challenge the establishment, which was considered to threaten the stability of the Chinese establishment.
10. People under 40 would be those most likely to raise questions about democracy in China and challenge the status quo. The authorities would naturally be concerned if such ideas were shared amongst more organised groups, particularly those linked to an internet website. There was a real fear, Professor Aguilar contended, amongst the authorities in China that young people with new ideas would become organised and structured and therefore dangerous.
11. Given the practical restrictions that were imposed by the authorities in the State-registered churches, it was not surprising that many chose greater freedom by joining the house churches. That in turn simply compounded the problem.
12. Professor Aguilar maintained that from his research and understanding there was a real storm brewing in terms of the authorities targeting unregistered house churches, and indeed that persecution was active in China currently against such churches. In paragraph 37 of his

report he makes reference to the article in Christianity Today of 18<sup>th</sup> February 2013 speaking of persecution being high, with some 1,056 Christians affected and the further harassment of some 750 more. The latest 2013 report by Human Rights Watch is also prayed in aid in that connection.

13. Fundamental to Professor Aguilar's contention of persecution is his assessment of a recent report by ChinaAid (March 2013) which suggests that there has been an increase of the government's crackdown of illegal churches by some 42% over the past two years. An article in the New American of 4<sup>th</sup> March 2013 is also cited. ChinaAid documented 132 cases of government persecution involving 4,919 persons in 2012, noting a 125% jump in the number of people arrested and sentenced for involvement in unauthorised Christian worship over the previous years. ChinaAid noted that the Chinese authorities had launched a focused program to wipe out the underground church movement, and details the three-pronged government attack against the Church, designed to force congregations either to register with the government or to disband. Such has resulted, according to Professor Aguilar, in much more aggressive prosecution, including detaining church leaders, sending them to labour camps and cracking down on the Christian outreach to students.
14. It was his view that the authorities were indeed seeking to crack down on unregistered churches. Reference was made to page 108 to 109 of bundle A, which is an article from Christianity Today dated 23<sup>rd</sup> May 2013, based on the ChinaAid report. The article estimated that the number of Protestant house church Christians was between 45 million and 60 million.
15. In his report Professor Aguilar cites reports of 40 Catholic bishops who remain missing. He referred us to the 2009 Amnesty International report which speaks of the authorities harassing, detaining and ill-treating members of unsanctioned Christian house churches, and confiscating or destroying their church property. Detention, including re-education through labour camps, was also a feature of the authorities' response.
16. A substantial proportion of Professor Aguilar's report repeats the contents of an article in the New American concerning the experiences of the underground Shouwang Church in Beijing, which had attempted to hold a weekly outdoor Sunday service in Beijing. Its members were arrested and detained for short periods in police stations or under house arrest to prevent the service taking place. Members of the congregation were detained 1,600 times in 2012, and at least sixty members had been evicted from their homes and nearly a dozen lost their jobs because they attended the church.

### **Oral evidence**

17. Professor Aguilar was questioned on behalf of the respondent and his attention was drawn to the report of Christian Aid and in particular to paragraphs 50 and 52 concerning Jiangxi Province: the population of Jiangxi was 40 million people and yet ChinaAid had quoted but three cases arising there. Professor Aguilar stated that he had not read the ChinaAid report in preparing his report. He formed his opinion solely from base documents, particularly those in the German Institute which were linked with certain Chinese journals.
18. He had relied largely for his information as to what was happening in China on some fourteen individuals who he would not name. They were younger people under 40, working with Chinese companies, and others who had retired or were still working in Europe. Such individuals had told him that they wished for change in the Chinese leadership, noting that Chinese society was offering less freedom than might reasonably be expected. Five of the

fourteen individuals attended house churches. None had experienced any difficulties with the authorities as they had strong families to protect them. Professor Aguilar said that much of his information came from conversation with these fourteen contacts and that twelve of them were significantly important and influential.

19. He was asked about paragraph 39 of his report in which he writes as follows:-

'The consequences of arrest for unregistered Christians in the PRC is certainly beatings and torture at police stations, fines and ongoing harassment by police and government functionaries, including the loss of employment and state benefits for those arrested.'

20. It was suggested to Professor Aguilar that that was a somewhat bold and general statement to make but he continued to maintain that anyone arrested in China would be beaten and tortured. He said he based that comment upon the years of reports, particular those of Amnesty International relating to the response to the authorities to those who stood against them. He said that abuse by Chinese police was taken for granted and he knew a number of prominent people who had been beaten.

21. Given the heavy reliance which Professor Aguilar placed upon the ChinaAid report dated 2<sup>nd</sup> April 2013, his attention was drawn to its conclusion, in these terms:-

'China's churches, especially house churches and church leaders, suffered great oppression and persecution last year; they also demonstrated great endurance and perseverance. In this police state where domestic security protection agents run amok, in a society suffering a serious loss of ethic and morals, and where spiritual pollution is worse than Beijing's air pollution, only Christ's church stands out like a lamp in the dark, preserving light, hope and peace like a light in the darkness. Encouragingly, the church's approach of using the law to defend its rights has become popularised, and the awareness among Christians of using the law to protect their religious rights has risen to an all-time high, both of which can powerfully advance the development of citizenship rights and a civil society in China, as well as bring about improvements in the rule of law. As a Christian human rights organisation, ChinaAid's positive influence on the overall situation has grown day by day, bringing glory to the holy name of our Lord Jesus Christ.

By contrast, less than six months into the so-called ten year plan to eradicate house churches, a power struggle within the Chinese communist government, ignited by internal factional conflicts in the Bo Xilai-Wang Lijun Alliance ultimately resulted in a great shuffle in the power structure and the purging at the end of last year of the ultra-leftist political forces. Like grass in a wildfire they withered up in the blink of an eye. The church however is still standing firm, flourishing like the cedars of Lebanon and food trees planted by the streams, bearing much fruit at the appointed time.'

The conclusion went on to note that the suppression of Christian churches had been temporarily eased and ended on a positive note. Professor Aguilar, having noted those comments nevertheless indicated that he was less optimistic as to any progress.

22. Asked about the availability of Bibles in China, Professor Aguilar indicated that he understood that the Bible Society sells some 40 million Bibles in China every year: he considered that the Chinese authorities encouraged the sale of Bibles because, although some Bibles will be bought by the registered churches, others will be bought by the unregistered churches and the authorities will be able to trace the Bibles to those particular groups and organisations.



23. Professor Aguilar explained that there was a tension between the official and unofficial churches, also indeed within the official churches themselves. The authorities continued to be controlling as to the activities which registered Christians could carry out. For example there was no preaching and the number of Christians meeting together was restricted.
24. Indeed it was the increasing concern about freedom to worship and freedom to develop theology which had fuelled the ongoing debate and the growth of the house churches as a move away from the registered churches. Professor Aguilar said that the problem is particularly acute in the Protestant or Reform churches, because the Catholic church had a more developed sense of authority.
25. The registered churches are restricted in their ability to run schools or charities at a time when there is a demand in China for more education and more choice in education. The restriction on community involvement comes at a time when the young people are more educated and demanding a greater influence in local and national affairs.
26. When pressed upon the figure of 40 million Bibles being sold in China every year, Professor Aguilar said he was confident of that number, by reason of the sources of his information.

## Appendix D

### Evidence of Dr Christopher Hancock

1. The Very Reverend Dr Christopher Hancock is Chaplain of St Peter's College, Oxford University. In addition to his work as College Chaplain, Dr Hancock, a former Dean of Bradford and Professor of theology, directs Oxford House an international agency providing a consultancy service to government agencies, corporations and NGOs in the area of religion, social transformation and contemporary geo-politics. His research focuses on religion and society in Asia, particularly China and India where he is a visiting Professor at a number of leading universities. He is working on a new book, 'Christianity & Confucianism: a dialogue between traditions'.
2. Dr Hancock's evidence is set out in his report, dated 6 June 2013, 'Risks to Christians in China Today'. Dr Hancock has visited China regularly, on average three or four times a year since 2004, to attend academic conferences and to lecture on Christian theology. His most recent trip to China was in late January 2013 and his report seeks to reflect the information that was gained on that occasion.
3. Dr Hancock sets out some of the history. He seeks to clarify the meaning of 'normal religious activity' to be such activities occurring within government-sanctioned religious organisations and registered places of worship. He makes specific reference to the RRA and to the constitution of China. In his report, Dr Hancock sought to address the following statement:-

'Chinese law permits official registered churches to function, but (there are) restrictions on (inter alia) training of clergy, appointment of bishops, location of venues, publication of literature, finances, relationships with religious groups abroad. As a result of the control exercised by the atheistic government, most Christians in China choose to worship in unregistered churches.'

4. Dr Hancock considered that expression to be somewhat misleading given his experience and from conversations with academic colleagues and Chinese pastors in a number of areas, which indicated that there were many reasons why people choose to attend unregistered churches. Such reasons include friendship, size, locality, pastoral support, ethos, spirituality, Bible teaching, and a desire to protest against the Chinese government, all of which were common factors drawing people to the generally-smaller units of unregistered Christians using homes, offices, halls and sometimes purpose-specific church buildings in which to worship.
5. Significantly, Dr Hancock continues in these terms:-

'Despite some persistence of historic tension, cross-fertilisation between 'registered' and 'unregistered' churches has become more common in the last 15 to 20 years. I have met undergraduate students at Fudan University in Shanghai who have moved from 'unregistered' Protestant churches to 'registered' Catholic churches, and established professionals who have left large 'registered' churches in Beijing for the more supportive ethos and Bible teaching of 'unregistered' churches. Likewise, I have met 'unregistered' pastors who have transferred to 'registered' churches and members of the 'unregistered' rural churches who have moved and joined 'registered' urban churches. Christianity in China is, for all its vibrancy and scale, a fluid, complex, sometimes heterodox, often internally conflicted reality. Talk of 'the control exercised by the atheistic government' leading 'most Christians to choose worship in unregistered churches', risks presenting the government as uniformly hostile to Christianity (when by policy and practice its ethos has been permission - if not proactively supportive - of

Christianity as an officially accredited social 'good' that is conducive of a more 'harmonious' society). ...Indeed, it has often been pointed out to me that it requires more courage to be 'registered' and 'known' than to remain 'unregistered' and possibly 'unseen.'

6. Dr Hancock at paragraph 1.4.a of his report cites an article from 2011, Christian Solidarity Worldwide (CSW), which noted that:-

'In the last few months, the Chinese government has largely tolerated the unofficial house church movement. Many 'average' Christians can practise their faith so long as they live 'quietly' - a very different scenario compared to the China we heard about twenty years ago.'

The CSW article, however, went on to express concern about the increasing and recent harassment of members of a specific house church.

7. As Dr Hancock indicates, that statement from CSW invites reflection on 'the potential consequences/likely risk for members of the unofficial house church movement if they were to practise their faith openly', and in particular, at what point in a person's expression of their Christian faith are they more or less likely to attract censure or to be at some kind of risk from the Chinese authorities. Dr Hancock agreed with the Statement in the CSW article that for much of the past 30 years, the Chinese government's religious affairs bureau (SARA) have allowed members of unofficial churches to practise their religion and to live 'quietly'; indeed, there has been substantial acceptance at the heart of China's ruling elite that Christianity constitutes an important aid to social cohesion, family life, private morality and economic flourishing.
8. Dr Hancock comments from his personal knowledge over the past ten years of teaching Christian Studies in many of China's leading universities, that Christianity has been interpreted in influential circles in China as the key to the economic success of Western Christendom. Thus cities such as Wenzhou, the wealthiest city in China with an estimated 40% Christian population, has many pastoral Christian family companies, which have been studied as an exemplar for other Chinese cities.
9. That having been said, Dr Hancock considered that there was clear evidence of individual Christians and unregistered churches being variously subject to repressive action and threatening behaviour. Dr Hancock comments in these terms:-

'In my experience and from narrative reports from Christian NGOs (i.e. China Source, ChinaAid and the Overseas Missionary Fellowships Monthly Updates) the causes and forms of this hostility cannot be neatly summarised: Christian exuberance and folly, provocation of local authorities in the name of 'faithful Christian witness', harsh and unpredictable local officials, central government policy and/or paranoia, inflammatory rhetoric from church leaders, jealous slandering by other religious figures and members of 'registered' churches, have all been seen. China's way of pressurising an individual or a community is as subtle in its cultural forms as it can be brutal in its physical manifestation. The Chinese dictum (aptly translated), 'kill the chicken to frighten the money', captures the spirit and purpose of the vindictive abuse meted out to those who, for whatever reason, are deemed to have finally crossed a generously-drawn line ... My own sense is that over the past 30 years the Chinese authorities have been more often tolerant than vindictive, and turned a blind eye to international implication more readily than blatant oppression. Why? Because, as indicated above, Christians as have been generally affirmed as peaceful, economically productive, responsible citizens - and their international links have been a price the Chinese government has been willing to pay to safeguard wherever possible their overseas standing.'

10. Unpredictable local or national factors affect the risks and threats to Christians in unregistered churches. The run up to major political events – including a change in leadership – was almost always accompanied by repression of potential dissenters, including Christians. Dr Hancock, however, noted that paradoxes abound:

‘Three years ago, in one northern city, large numbers of Christians were found celebrating Christmas publicly on the street; in other places (Beijing and Shanghai) ‘unregistered’ church Christmas services were visited by the police and property was confiscated.’

11. He continues to say:

‘Whereas in many situations, the sharing of faith privately is risk-free for ‘unregistered’ Christians, street evangelism, worship in public places (parks, shopping malls, street corners) will almost always be monitored by the local police even if it is not stopped. The private evangelism (versus the deliberate presentation to another person of the Christian’s faith through word and/or deed) can itself be risky if undercover police have threatened individual Christians (for whatever reason) and persuaded them to report on their Christian brethren. ‘Divide and conquer’ is a common tactic in the exercise of China’s political and social power. Official pressure against a particular ‘unregistered’ Christian or Christian group can cause another ‘unregistered’ or ‘registered’ Christians to keep their distance or to be more intentional in cooperating with the authorities. ... The size and social reach of China’s ‘unregistered’ churches suggests, however, that either through Christian passion and evangelistic skill, or political ineptitude and/or toleration, the church has generally weathered well the unpredictable storms of opposition and flourished.’

12. In his report, Dr Hancock set out two factors which may have some significant bearing upon the present attitude of the authorities towards religion in general and Christianity in particular:

- (1) **Rapid growth in Christianity.** Between 2009 and 2012, there were three government-sponsored surveys of religion in China (including the annual Blue Book on religion produced by the world religion section of the Chinese Academy of Science), which revealed that the number of Christians far exceeded previous official estimates.

The concept of ‘registration’ was put under review and overtures were made to ‘unregistered’ churches and church leaders to meet and accept an amnesty or alternative form of registration. The intention was to circumvent the system managed by the religious affairs bureau (SARA). Tension mounted between government departments and the TSPM/CCC leadership who had consistently been resistant to any Christian activity or theological teaching which they had not controlled or accredited. Accordingly, as reported in the United States Commission on International Religious Freedom (USCIRF) Annual Report 2012, SARA appears to have won the behind-the-scenes battle and reasserted their right to control and monitor religious activity in China. In consequence, since 2012 ‘risks to ‘unregistered’ Christian congregations of potentially hostile activity by the government and religious authorities has increased’.

There had been widely-publicised trials of strength between religion and state, particularly of the Shouwang Church in Beijing, which had been subject to official intimidation and disruption of services for a number of years. There has been much media attention on the Shouwang affair.

The facts appeared to be as follows: in 2009 Shouwang paid for the second floor of a building to be used as a church. The authorities interfered to prevent the church from using the building, by pressuring the property developer to hand over the key to the church. Since then, tension between the government and the church leaders and members has mounted. Having been excluded from its buildings, the church ignored police instructions and met in a local park for more than six months. Members of the church's governing committee, two pastors and three elders, and other major co-workers have been under house arrest for all or much of the time since April 2011. The evidence was that other church members in Beijing, from Shouwang and other churches, had been detained for between a few hours and two days.

- (2) **Religious tensions.** From 2010 - 2011, the Chinese government experienced a number of problems associated with religious communities. This included the violent Muslim unrest in Xianjiang province, and a growing number of radical Buddhist self-immolations. Having been considered a 'social group', the Chinese authorities' perceptions about religion had developed, and religion in general, but Buddhism and Islam in particular, were now regarded as a potentially dangerous political aberration.

This revised assessment of religion and the tense situation surrounding religious activity as a whole in China remained. There was closer monitoring of Chinese society and dissenting groups within it, associated with a recent change in political leadership. The re-emergence of the military at the heart of China's political process was not a ground for hope to a return of the liberalism of previous years.

13. Dr Hancock went on to say as follows:-

'Like many commentators, I believe China's long game is personal, political and social liberalisation: paradoxically, religious groups with strong political instincts and a will to provoke or proclaim their 'freedom' may be among the greatest hindrances to that liberalisation process.'

He commented that recent events had, for the time being, increased tension between the Chinese authorities and religious communities.

14. Dr Hancock noted that so far as not all Christians in unregistered churches are equally at risk. It remains possible for an unregistered Chinese Christian to worship without risk or fear, despite technically acting illegally. Gatherings of less than 10 to 25 in many areas are unknown, ignored or reluctantly tolerated. But unregistered Chinese Christians who consistently and publicly take risks by questioning, resisting or publicly defying central or local injunctions on Christians, meetings, publications and so on, in his opinion expose themselves to possible censure, intimidation, detention, physical abuse and house arrest or imprisonment. This is as true in rural settings as in urban areas. Public evangelism and active proselytising may attract particular attention in opposition, especially if this is reckoned to contribute to local social instability.

15. Dr Hancock commented in his report:-

'Though some 'unregistered' churches respond to official pressure by flaunting guidelines and promoting government hostility others have faithfully melted into the web and waft of a local community to await a more conducive political atmosphere. In some 'unregistered' churches' 'secrecy' is cherished as a particular virtue, in others excessive 'privacy' in matters of faith is a vice; for them faith and public witness go hand in hand. There is no one principle that united

China's 'unregistered' churches; both in nature and in definition, in China's 'family churches' shared principles are as uncommon as shared leaders.'

16. Dr Hancock has stressed that China continues to experience one of the most significant internal population migrations that the world has ever seen. In the last ten years or so some 300,000 million Chinese have migrated to China's cities. Bureaucratic systems to monitor and control this process have struggled to keep pace with it. Among those migrating from rural communities to the cities are many of China's Christians: the size of China's urban migrant churches - some associated with particular minority communities and social care programs - is only explained in part by the arrival of Christians from rural areas. Many migrants find community and identity in new ways from Christian associations in their cities.
17. Dr Hancock comments that an unregistered Christian will not necessarily be closely tracked from place to place in China, unless they have gained a particular notoriety or have been blacklisted by the security services. The Christian will, as always, have to make personal decisions about the degree to which they practise their faith openly and deliberately provoke the authorities. Not all Chinese Christians agree that certain forms of open Christian living and witnessing are necessary adjuncts of Christian faithfulness and/or obedience. Indeed, there is also variance in the patterns to which the authorities will respond to such openness. Some authorities will be less efficient in monitoring and controlling or more tolerant.
18. Thus, as Dr Hancock finally concludes, China is an intensely complex place, as is the monitoring or predicting of official attitudes towards religion. Simplification is a natural temptation and exaggeration too easy. A Christian who openly and provocatively engages in public acts of worship, evangelism, publishing, protest or litigation will generally attract the attention of the officials and may suffer censure, threat, violence or detention. However, Dr Hancock concludes:

'...the Chinese's government permissive acceptance of 'unregistered' churches continues. Christians themselves have power to limit or increase risk in line with their perception of obedient faith and government power. Not all Chinese Christians agree to interpret official dictates as requiring conformity or repudiation. Some Chinese Christians continue to interpret faithfulness to God as acceptance of the limitations imposed by the divinely sanctioned state authority; others question the legitimacy of an atheistic state to control, interpret or restrict the actions of churches or individual Christians. Evaluating the relative truth of these claims and resolving anomalies in accounts of Christianity in China, is a subtle and perplexing task.'