



Australian Government
Refugee Review Tribunal

Country Advice

China

China – CHN37269 – Corruption – Chinese Communist Party – Family disputes – State protection – Women – Single mothers – Domestic violence – Child custody

8 September 2010

1. Deleted.

2. Please provide current country information on: whether Chinese authorities may fail to protect people against harm because of their powerful relatives;

In relation to whether the Chinese authorities may fail to protect a person who fears harm from the relatives of a person with powerful family connections to the Chinese Communist Party, it has been reported that the Communist Party monopolises political power in China.¹ The relatives of senior Chinese government officials have used their family relationships to obtain access to privilege, power and wealth, and have become a significant political force in China.² The courts and the police remain under the Communist Party's supervision,³ and the government's control over judicial institutions and decisions reportedly make the courts a less attractive option for citizens seeking redress for official corruption and other abuses.⁴ It has also been reported that whether a person has *guanxi* (connections) in China can affect a person's access to justice and wealth.⁵

The Communist Party in China maintains a monopoly on political power, with its nine-member Politburo Standing Committee making most of the important political decisions and setting government policy. Members of the Communist Party hold most of the top posts in the government, military and internal security services, and in many economic entities and social organisations. China's security forces are reported to "work closely with the CCP [Chinese Communist Party] leadership at all levels, and special departments under the Ministry of Public Security are dedicated to maintaining the party's monopoly

¹ Freedom House 2010, 'Freedom in the World 2010 – China', UNHCR Refworld website, 1 June <http://www.unhcr.org/refworld/country....CHN..4c1a1eab5.0.html> – Accessed 2 September 2010 – Attachment 2

² Dumbaugh, K. & Martin, M.F. 2009, 'Understanding China's Political System', Congressional Research Service Report for Congress, UNHCR Refworld website, 31 December, pp. 6 & 14

<http://www.unhcr.org/refworld/country....CHN..4b73cd512.0.html> – Accessed 2 September 2010 – Attachment 3

³ Amnesty International 2009, *Amnesty International Report 2009 – China*, 28 May – Attachment 4

⁴ Human Rights Watch 2009, *World Report 2009 – China*, January – Attachment 5

⁵ Wingfield Hayes, R. 2005, 'China's modern power house', *BBC News*, 1 October

http://news.bbc.co.uk/2/hi/programmes/from_our_own_correspondent/4298284.stm – Accessed 3 September 2010 – Attachment 6

on political power.”⁶ The criminal justice system in China “remained highly vulnerable to political interference”, with the courts, the procuratorate and the police remaining under the Chinese Communist Party’s supervision.⁷ According to Human Rights Watch:

Fundamental rights and freedoms are not guaranteed in China, particularly as the government continues to control and direct judicial institutions and decisions. Such control raises serious concerns about the integrity of legal proceedings in controversial cases and has made courts a less attractive venue for citizens seeking redress for official corruption, illegal land seizures, labor rights violations, and other abuses.⁸

A 2005 *BBC News* article refers to a wealthy member of the Chinese Communist Party having *guanxi*, or connections. According to the article, “[i]n China who you have *guanxi* with can mean the difference between freedom and jail, justice or discrimination, wealth or poverty.”⁹

Relatives of senior Chinese government officials are reported to have used “their family relationship to obtain access to privilege, positions of power, and wealth – often by circumventing the official channels and procedures.” A Congressional Research Service paper on China’s political system refers to these relatives, usually the sons and daughters of senior government officials, as “princelings” and they “have become a significant political force in China.” Some have become important figures in the Communist Party or the government, while others have obtained economic power through private companies or by appointment to state-run enterprises. Although some have used their access to power for social causes, some others have been accused of corruption.¹⁰

China’s President Hu pledged during an early 2010 Chinese Communist Party Central Commission on Disciplinary Inspection address that the CCP would work harder at constructing an anti-corruption mechanism, but it has been reported that “[w]ith the cessation of political reform – and the resultant concentration of powers in the CCP – there are no checks and balances to prevent putatively virtuous officials from abusing their powers.”¹¹

Corruption reportedly remains endemic in China despite increased anti-corruption efforts by the government. Prosecution in corruption cases is reportedly often selective, with “informal personal networks and internal CCP power struggles” influencing the choice of targets.¹²

⁶ Freedom House 2010, ‘Freedom in the World 2010 – China’, UNHCR Refworld website, 1 June <http://www.unhcr.org/refworld/country,...CHN,.4c1a1eab5.0.html> – Accessed 2 September 2010 – Attachment 2

⁷ Amnesty International 2009, *Amnesty International Report 2009 – China*, 28 May – Attachment 4

⁸ Human Rights Watch 2009, *World Report 2009 – China*, January – Attachment 5

⁹ Wingfield Hayes, R. 2005, ‘China’s modern power house’, *BBC News*, 1 October http://news.bbc.co.uk/2/hi/programmes/from_our_own_correspondent/4298284.stm – Accessed 3 September 2010 – Attachment 6

¹⁰ Dumbaugh, K. & Martin, M.F. 2009, ‘Understanding China’s Political System’, Congressional Research Service Report for Congress, UNHCR Refworld website, 31 December, pp. 6 & 14 <http://www.unhcr.org/refworld/country,...CHN,.4b73cd512.0.html> – Accessed 2 September 2010 – Attachment 3

¹¹ ‘China’s New Aristocracy: Red Cadres and Red-Hat Businessmen’ 2010, Jamestown Foundation, China Brief, Volume 10, Issue 13, UNHCR Refworld website, 24 June <http://www.unhcr.org/refworld/country,...CHN,.4c7c94d22.0.html> – Accessed 2 September 2010 – Attachment 7

¹² Freedom House 2010, ‘Freedom in the World 2010 – China’, UNHCR Refworld website, 1 June <http://www.unhcr.org/refworld/country,...CHN,.4c1a1eab5.0.html> – Accessed 2 September 2010 – Attachment 2

3. Whether Chinese authorities may fail to protect a Chinese woman against violence or other serious harm perpetrated by her former de facto husband's family members if the former de facto's family is considered to be "powerful" (ie well-connected);

As previously mentioned, the Communist Party monopolises political power in China,¹³ and the relatives of senior Chinese government officials have used their family relationships to obtain privilege, power and wealth.¹⁴ The courts and the police remain under the Communist Party's supervision,¹⁵ and the government's control over judicial institutions and decisions was reported to have made the courts a less attractive option for citizens seeking redress for official corruption and other abuses.¹⁶ It has also been reported that whether a person has guanxi or connections in China can affect a person's access to justice and wealth.¹⁷

In relation to whether the Chinese authorities may fail to protect a Chinese woman against violence or other serious harm perpetrated by her former de facto husband's family members, violence against women reportedly remains a significant problem in China.¹⁸ In relation to domestic violence, in June 2008, China's "Domestic Violence Ordinance was expanded to include abuses at the hands of present or former cohabitants and relatives who do not live in the same premises."¹⁹ A 2008 survey by the All-China Women's Federation indicated that domestic violence affected one-third of China's families. Domestic violence tended to be more common in rural areas, but also occurred among the highly educated urban population. The government supports shelters for domestic violence victims and some courts were beginning to provide protection for victims. A district court in Zhejiang Province issued the province's first anti-domestic violence court order to a female victim in June 2009, following similar orders granted in Jiangsu and Hunan in 2008. There was also an increase in the number of victims' shelters. Official assistance, however, did not always reach victims, and the "public security forces often ignored situations of domestic violence."²⁰

In recent years, the government has taken steps to improve the legal framework in relation to violence against women, but its implementation remains weak.²¹ Domestic violence offenders can be punished under Articles 234, 236, and 260 of the PRC Criminal Law, and at least 69 local regulations in China reportedly refer to domestic violence.²² China's Marriage Law and the Law on the Protection of Women's Rights and Interests include

¹³ Freedom House 2010, 'Freedom in the World 2010 – China', UNHCR Refworld website, 1 June <http://www.unhcr.org/refworld/country,...CHN,.4c1a1eab5.0.html> – Accessed 2 September 2010 – Attachment 2

¹⁴ Dumbaugh, K. & Martin, M.F. 2009, 'Understanding China's Political System', Congressional Research Service Report for Congress, UNHCR Refworld website, 31 December, p. 14 <http://www.unhcr.org/refworld/country,...CHN,.4b73cd512.0.html> – Accessed 2 September 2010 – Attachment 3

¹⁵ Amnesty International 2009, *Amnesty International Report 2009 – China*, 28 May – Attachment 4

¹⁶ Human Rights Watch 2009, *World Report 2009 – China*, January – Attachment 5

¹⁷ Wingfield Hayes, R. 2005, 'China's modern power house', *BBC News*, 1 October http://news.bbc.co.uk/2/hi/programmes/from_our_own_correspondent/4298284.stm – Accessed 3 September 2010 – Attachment 6

¹⁸ US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – China (includes Tibet, Hong Kong, and Macau)*, March, Section 6 – Attachment 8

¹⁹ Amnesty International 2009, *Amnesty International Report 2009 – China*, 28 May – Attachment 4

²⁰ US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – China (includes Tibet, Hong Kong, and Macau)*, March, Section 6 – Attachment 8

²¹ Freedom House 2010, 'Freedom in the World 2010 – China', UNHCR Refworld website, 1 June <http://www.unhcr.org/refworld/country,...CHN,.4c1a1eab5.0.html> – Accessed 2 September 2010 – Attachment 2

²² Congressional-Executive Commission on China 2009, *Annual Report 2009*, 10 October, p. 168 – Attachment 9

stipulations that directly prohibit domestic violence, but there were some experts who criticised the stipulations as being too general, failing to define domestic violence, and being difficult to implement.²³ The laws and regulations against domestic violence have also been criticised for being too abstract or narrow and not assigning legal responsibilities clearly and concretely.²⁴

A case from 2009 was reported to have “helped raise public awareness about women’s rights and the prevalence of sexual violence against women” in China. In May 2009, Deng Yujiao, a 21-year-old worker at the Xiongfeng Hotel in Badong county, Hubei province, stabbed a local official to death and injured another when defending herself against an attempted rape. “The case unleashed a torrent of sympathy and support for Deng within China and especially on the Internet.”²⁵ Deng was held on murder charges and put in a psychiatric hospital. She was subsequently convicted of causing bodily harm, but then set free. The case was widely followed on online forums and social media.²⁶

An RRT research response dated 15 September 2009 provides information on domestic violence in China, including relevant legislation, state protection and cultural attitudes towards domestic violence.²⁷

4. Whether Chinese authorities fail to provide protection to women against their former de facto husbands and/or their former de facto’s family members because they are ‘women’ (ie because of their gender) or because they are ‘women who have had a child’;

As previously mentioned, violence against women reportedly remains a significant problem in China and incidents of domestic violence are often ignored by the public security forces.²⁸ In recent years, the government has taken steps to improve the legal framework in relation to violence against women, but its implementation remains weak.²⁹

In relation to the status of women in China generally, under China’s constitution, women have equal rights with men. The Law on the Protection of Women’s Rights and Interests provides for equality in property ownership, access to education and inheritance rights.³⁰ During 2009, Chinese officials were reported to continue to pursue policies that aimed to protect women’s rights, including improvements in China’s sexual harassment and domestic violence-related legal framework, promotion of women’s employment and steps to eliminate gender-based workplace discrimination. Gender-based discrimination in China in relation to issues including wages, retirement age, recruitment and sexual harassment, however, remained widespread. Government implementation of some

²³ US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – China (includes Tibet, Hong Kong, and Macau)*, March, Section 6 – Attachment 8

²⁴ Congressional-Executive Commission on China 2009, *Annual Report 2009*, 10 October, p. 168 – Attachment 9

²⁵ Congressional-Executive Commission on China 2009, *Annual Report 2009*, 10 October, p. 167 – Attachment 9

²⁶ ‘Activist detained in Beijing’ 2010, *States News Services*, 19 August – Attachment 10

²⁷ RRT Research & Information 2009, *Research Response CHN35378*, 15 September – Attachment 11

²⁸ US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – China (includes Tibet, Hong Kong, and Macau)*, March, Section 6 – Attachment 8

²⁹ Freedom House 2010, ‘Freedom in the World 2010 – China’, UNHCR Refworld website, 1 June <http://www.unhcr.org/refworld/country,...CHN,.4c1a1eab5.0.html> – Accessed 2 September 2010 – Attachment 2

³⁰ US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – China (includes Tibet, Hong Kong, and Macau)*, March, Section 6 – Attachment 8

domestic laws and policies regarding women's rights was reported to fall short of international standards. Gender inequalities continued to be reflected in women's lower levels of political participation, limited access to healthcare, unequal access to education, and relatively weaker protection of property and inheritance rights.³¹

According to Human Rights Watch, "Chinese women continue to be victims of entrenched gender-based discrimination and violence." In rural areas, women are particularly vulnerable to abuses which include gender-based discrimination, violence, unequal access to services and employment, and sexual trafficking.³² The Chinese authorities reportedly often did not enforce laws that protected women's rights. Legal experts indicate that sex discrimination cases are difficult to litigate because the vague legal definition made damages difficult to quantify, and very few cases went to court. It was noted by some observers "that the agencies tasked with protecting women's rights tended to focus on maternity-related benefits and wrongful termination during maternity leave rather than on sex discrimination, violence against women, and sexual harassment."³³

In relation to women who have had a child, China's policy of allowing couples to have only one child is reported to remain in place, although many rural families are allowed to have a second child if the first child is female.³⁴ A 2006 article on China's one-child policy indicates that "[t]he one-child policy does not apply to couples who are, in the view of the Chinese state, merely cohabiting. For them – and for single mothers of all ages – there is a zero-child policy."³⁵ In most provinces, it is illegal for a single woman to have a child.³⁶ DFAT advice indicates that most provincial and municipal governments in China have stated that there would be a family planning fee imposed for children born out of wedlock. Local governments are authorised by the State Family Planning Commission "to establish their own criteria when imposing family planning fees in each jurisdiction."³⁷

In January 2010, the Tribunals obtained the following information from Dr. Alice de Jonge of Monash University in relation to the situation for mothers who have children out of wedlock in China:

1. Would a woman face any risk of harm in China for having a child out of wedlock (beyond payment of the social compensation fee)?

[T]his very much depends on the circumstances of the woman.

In more remote villages, social ostracism can have very real human rights impacts on its victims, including [sic] discrimination in access to basic amenities.

³¹ Congressional-Executive Commission on China 2009, *Annual Report 2009*, 10 October, pp. 20 & 165 – Attachment 9

³² Human Rights Watch 2010, *World Report 2010 – China*, January – Attachment 12

³³ US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – China (includes Tibet, Hong Kong, and Macau)*, March, Section 6 – Attachment 8

³⁴ Freedom House 2010, 'Freedom in the World 2010 – China', UNHCR Refworld website, 1 June <http://www.unhcr.org/refworld/country,...CHN,,4c1a1eab5,0.html> – Accessed 2 September 2010 – Attachment 2

³⁵ Mosher, S.W. 2006, 'China's One-Child Policy: Twenty-five Years Later', *Human Life Review*, Winter – Attachment 13

³⁶ US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – China (includes Tibet, Hong Kong, and Macau)*, March, Section 6 – Attachment 8

³⁷ Department of Foreign Affairs and Trade 2010, *DFAT Report No. 1104 – China: RRT Information Request: CHN36059*, 12 February – Attachment 14

In urban contexts, again the individual circumstances of the woman and her child must be considered. Social connections and networks are essential. With them, almost anything is possible. Without access to social supports, life can be very hard indeed to the extent that access to basic amenities such as housing and access to job opportunities can be denied.

Women pregnant out of wedlock typically face discrimination in obtaining appropriate medical care.

Single mothers are often discriminated against when seeking housing, education for their child, job opportunities and more generally in the context of social interactions.

Does the child have a full set of registration papers? Typically the child would not have a full set of entitlements - eg. access to free education - a fee for entry may be charged or the child may be denied entry to a state school and be forced to seek entry to a private school. Healthcare may require a fee not normally charged.

[It]

2. Is this situation different for a woman who has a child out of wedlock but remains in a relationship with the father of the child?

Having the father around certainly helps. Two people are more likely to earn a decent income than one. Two people are better at looking after a child than one. Two people are more likely to have access to the social supports and networks that are so vital in China.

3. Could any harm be mitigated by marriage subsequent to the birth of the child?

Yes. Having the marriage certificate makes many things much easier.

Obtaining a passport for the child becomes easier. Travelling becomes easier and staying at hotels becomes easier. Without a marriage certificate, extra room payment is often required.

When the child grows up, it becomes easier for him/her to go through the formalities for getting married and having a child. Marriage certificates help also when things go wrong. If a partner is ill, visiting is easier, donating blood etc. is easier. If a partner dies, a wedding certificate is needed to inherit property - otherwise the deceased partner's relatives may inherit.³⁸

An RRT research response dated 17 February 2010 sets out all correspondence between the Tribunals and Dr. de Jonge.³⁹

5. Where the father of a child takes action (or threatens to take action) to remove the child from the child's mother, and to prevent the mother from seeing the child, whether Chinese law and/or Chinese authorities assist the mother of the child to prevent this from occurring, or to re-gain custody of the child, or to obtain reasonable access to the child.

The provisions of the Marriage Law of the People's Republic of China, as amended in 2001, provide for a child born out of wedlock to enjoy the same rights as a child born in wedlock. Under Article 25 of the Law, the natural father or mother of a child born out of

³⁸ de Jonge, A. 2010, Email to RRT Country Advice 'RE: Request for assistance from Refugee Review Tribunal, Sydney (RRT ref: CHN36060)', 20 January – Attachment 15

³⁹ RRT Country Advice 2010, *Research Response CHN36060*, 17 February – Attachment 16

wedlock who does not directly rear the child shall pay the child's educational and living expenses until the child is self-supporting. The provisions of the Law that relate to divorce also provide for a continuing relationship between parents and their children after a divorce, and allow for a people's court to make a judgment in a child's interests in relation to custody issues between the child's parents. Under Article 36 of the Law, after divorce, the children "remain the children of both parents", and both parents "still have the right and duty to bring up and educate their children." In principle, a breast-fed infant shall be put in the custody of the mother after a divorce. If the parents fail to reach an agreement where a dispute arises over the custody of their child who has been weaned, "the people's court shall make a judgment in accordance with the rights and interests of the child and the actual conditions of both parents." Article 37 indicates that if one party is granted custody, the other parent shall pay part or all of the child's educational and living expenses. Article 38 provides for visiting rights for non-custodial parents.⁴⁰

DFAT advice from July 2001 refers to de facto relationships not being recognised under the Marriage Law in China, and those in de facto relationships having no legal protection in the event of any custody or property dispute.⁴¹ An August 2003 article on new marriage registration regulations in China also refers to persons cohabiting without legal registration not being "protected effectively by the law."⁴² An opinion issued in December 2003 by the Supreme People's Court in China, however, provided that although courts generally should not grant dissolution of cohabitation relationships, courts could adjudicate disputes involving child rearing or property division arising from such relationships.⁴³

A flyer prepared by the US Department of State Bureau of Consular Affairs indicates that in China, legally married parents share the custody of their children, and "[i]f they are not married and the parents cannot reach an agreement, custody is granted by the courts in the best interests of the child."⁴⁴ Chinese courts, however, are reported to fail to meet the expectations of impartiality usually associated with courts "in broad swaths of cases", and "[e]ven a mundane child-custody battle can generate a contest over which of the divorcing parents can muster superior guanxi (connections) with the court."⁴⁵

⁴⁰ 'Marriage Law of the People's Republic of China', Adopted at the Third Session of the Fifth National People's Congress on September 10, 1980, and amended in accordance with "Decision Regarding the Amendment (of Marriage Law of the People's Republic of China)" passed at 21st Session of the Standing Committee of the Ninth National People's Congress on April 28, 2001', Ministry of Foreign Affairs of the People's Republic of China website <http://www.fmprc.gov.cn/eng/3625/3630/t18322.htm> - Accessed 10 May 2006 – Attachment 17

⁴¹ DIMA Country Information Service 2001, *Country Information Report No. 208/01 – De Facto Relationships*, (sourced from DFAT advice of 10 July 2001), 17 July – Attachment 18

⁴² Zhu, L. 2003, 'Chinese Marriage & Divorce Registration to Be Easier & More Convenient', *People's Daily Online*, 22 August http://english.peopledaily.com.cn/200308/22/eng20030822_122866.shtml - Accessed 7 September 2010 – Attachment 19

⁴³ Wang, Y. 2006, 'Unmarried Cohabitation: What Can We Learn From A Comparison Between The United States and China?', *Family Law Quarterly*, Vol. 40, Social Science Research Network website, p.10 http://papers.ssrn.com/sol3/papers.cfm?abstract_id=896860 – Accessed 25 August 2009 – Attachment 20

⁴⁴ US Department of State Bureau of Consular Affairs (undated), 'International Parental Child Abduction China', Travel.State.Gov website http://travel.state.gov/abduction/country/country_540.html# - Accessed 7 September 2010 – Attachment 21

⁴⁵ Cohen, J.A. 2008, 'Law: China's Reform Era Legal Odyssey', *Far Eastern Economic Review*, 5 December – Attachment 22

Attachments

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China website <http://www.fmprc.gov.cn/eng/3625/3630/t18322.htm> - Accessed 10 May 2006.

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