



Home Office

# **Country Information and Guidance**

## **China: Contravention of national population and family-planning laws**

**Version 1.0**

**July 2015**

# Preface

This document provides guidance to Home Office decision makers on handling claims from – as well as country of origin information (COI) about – those contravening China’s population and family-planning laws. This includes whether claims are likely to justify the granting of asylum, humanitarian protection or discretionary leave and whether – in the event of a claim being refused – it is likely to be certifiable as ‘clearly unfounded’ under s94 of the Nationality, Immigration and Asylum Act 2002.

Decision makers must consider claims on an individual basis, taking into account the case specific facts and all relevant evidence, including: the guidance contained with this document; the available COI; any applicable caselaw; and the Home Office casework guidance in relation to relevant policies.

## Country Information

The COI within this document has been compiled from a wide range of external information sources (usually) published in English. Consideration has been given to the relevance, reliability, accuracy, objectivity, currency, transparency and traceability of the information and wherever possible attempts have been made to corroborate the information used across independent sources, to ensure accuracy. All sources cited have been referenced in footnotes. It has been researched and presented with reference to the [Common EU \[European Union\] Guidelines for Processing Country of Origin Information \(COI\)](#), dated April 2008, and the [European Asylum Support Office’s research guidelines, Country of Origin Information report methodology](#), dated July 2012.

## Feedback

Our goal is to continuously improve the guidance and information we provide. Therefore, if you would like to comment on this document, please [e-mail us](#).

## Independent Advisory Group on Country Information

The Independent Advisory Group on Country Information (IAGCI) was set up in March 2009 by the Independent Chief Inspector of Borders and Immigration to make recommendations to him about the content of the Home Office’s COI material. The IAGCI welcomes feedback on the Home Office’s COI material. It is not the function of the IAGCI to endorse any Home Office material, procedures or policy.

IAGCI may be contacted at:

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Information about the IAGCI’s work and a list of the COI documents which have been reviewed by the IAGCI can be found on the Independent Chief Inspector’s website at <http://icinspector.independent.gov.uk/country-information-reviews/>

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# Guidance

Date Updated: 30 June 2015

## 1. Introduction

### 1.1 Basis of Claim

- 1.1.1 Fear of harm or ill-treatment by the Chinese authorities due to having children in contravention of national population and family-planning laws.

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### 1.2 Summary of Issues to Consider

- 1.2.1 Is the person's account a credible one?
- 1.2.2 Do those from China who have children in contravention of national population and family-planning laws constitute a particular social group (PSG)?
- 1.2.3 Are those who have children in contravention of national population and family-planning laws at risk of mistreatment or harm amounting to persecution in China?
- 1.2.4 Are those at risk able to seek effective protection?
- 1.2.5 Are those at risk able to internally relocate within China?

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## 2. Consideration of issues

### 2.1 Is the person's account a credible one?

- 2.1.1 Decision makers must consider whether the material facts relating to the person's account of being in contravention of national population and family-planning laws in China and of their experiences as such are reasonably detailed, internally consistent (e.g. oral testimony, written statements) as well as being externally credible (i.e. consistent with generally known facts and the [country information](#)). Decision makers should take into account the possible underlying factors as to why a person may be inconsistent or unable to provide details of material facts.
- 2.1.2 Decision makers should ensure that each asylum application has been checked against previous UK visa applications. Where an asylum application has been biometrically matched to a previous visa application, details should already be in the Home Office file. In all other cases, the decision maker should satisfy themselves through CRS database checks that there is no match to a non-biometric visa. Asylum application matches to visas should be investigated prior to the asylum interview, including obtaining the Visa Application Form (VAF) from the visa post that processed the application. For further information on this see [Visa matches, asylum claims from UK visa applicants: instruction](#).
- 2.1.3 Following completion of standard actions, decision makers should, if necessary, consider the need to conduct language analysis testing. For further guidance on this see the Asylum Instruction on [Language Analysis](#).

- 2.1.4 For further information on these and assessing credibility more generally, see section 5 of the [Asylum Instruction on Assessing Credibility and Refugee Status](#).

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## 2.2 Do those from China who have children in contravention of national population and family-planning laws constitute a particular social group (PSG)?

- 2.2.1 In the country Guidance case of [AX \(Family Planning Scheme\) China CG \[2012\] UKUT 00097 \(IAC\)](#) (16 April 2012) it was accepted that ‘women who gave birth in breach of China’s family planning scheme’ constitute a particular social group within the meaning of the 1951 UN Refugee Convention [para 191(12)].
- 2.2.2 Although women who gave birth in breach of China’s family planning scheme form a PSG, this does not mean that establishing such membership will be sufficient to make out a case to be recognised as a refugee. The question to be addressed in each case will be whether the particular person will face a real risk of persecution on account of their membership of such a group.
- 2.2.3 For further information on particular social groups, see section 7.6 of the [Asylum Instruction on Assessing Credibility and Refugee Status](#).

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## 2.3 Are those who have children in contravention of national population and family-planning laws at risk of persecution or serious harm in China?

- 2.3.1 In the country guidance case of [AX \(Family Planning Scheme\) China CG \[2012\] UKUT 00097 \(IAC\)](#) (16 April 2012) the Upper Tribunal found that the Chinese family planning scheme expects childbirth to occur within marriage. It encourages ‘late’ marriage and ‘late’ first births. ‘Late’ marriages are defined as age 25 (male) and 23 (female) and ‘late’ first births from age 24. A birth permit is not usually required for the first birth, but must be obtained before trying to become pregnant with any further children. The Chinese family planning scheme also originally included a requirement for four-year ‘birth spacing.’ With the passage of time, province after province has abandoned that requirement. Incorrect birth spacing, where this is still a requirement, results in a financial penalty [para 191(3)]. Breach of the Chinese family planning scheme is a civil matter, not a criminal matter [para 191(4)].
- 2.3.2 The Upper Tribunal [AX](#) went on to make the following findings:
- ### Chinese family planning scheme
- In China, all state obligations and benefits depend on the area where a person holds their ‘hukou,’ the name given to the Chinese household registration system. There are different provisions for those holding an ‘urban hukou’ or a ‘rural hukou:’ in particular, partly because of the difficulties experienced historically by peasants in China, the family

planning scheme is more relaxed for those with a 'rural hukou.' [para 191(1)]

- It is unhelpful (and a mistranslation of the Chinese term) to describe the Chinese family planning scheme as a 'one-child policy' given the current vast range of exceptions to the 'one couple, one child' principle. Special provision is made for 'double-single' couples, where both are only children supporting their parents and their grandparents. The number of children authorised for a married couple ('authorised children') depends on the provincial regulations and the individual circumstances of the couple. Additional children are referred to as 'unauthorised children.' [para 191(2)]

### Single-child families

- Parents who restrict themselves to one child qualify for a 'Certificate of Honour for Single-Child Parents' (SCP certificate), which entitles them to a range of enhanced benefits throughout their lives, from priority schooling, free medical treatment, longer maternity, paternity and honeymoon leave, priority access to housing and to retirement homes, and enhanced pension provision [para 191(5)].

### Multiple-child families

- Any second child, even if authorised, entails the loss of the family's SCP certificate. Loss of a family's SCP results in loss of privileged access to schools, housing, pensions and free medical and contraceptive treatment. Education and medical treatment remain available but are no longer free. [para 191(6)].
- Where a second child is born who is unauthorised, the family will encounter additional penalties. Workplace discipline for parents in employment is likely to include demotion or even loss of employment. In addition, a 'social upbringing charge' is payable (SUC), which is based on income, with a down payment of 50% and three years to pay the balance. [para 191(7)]. [It should be noted that the Upper Tribunal in AX used the term 'social upbringing charge'; in various sources cited in the country information section this is referred to as a 'fine' or 'fee'.]
- There are hundreds of thousands of unauthorised children born every year. Family planning officials are not entitled to refuse to register unauthorised children and there is no real risk of a refusal to register a child. Payment for birth permits, for the registration of children, and the imposition of SUC charges for unauthorised births are a significant source of revenue for local family planning authorities. There is a tension between that profitability and enforcement of the nationally imposed quota of births for the town, county and province, exceeding which can harm the careers of officials [para 191(8)].
- The financial consequences for a family of losing its SCP (for having more than one child) and/or of having SUC imposed (for having unauthorised children) and/or suffering disadvantages in terms of access to education, medical treatment, loss of employment, detriment to future employment etc will not, in general, reach the severity threshold for persecution or serious harm or treatment in breach of Article 3. [para 191(8)].

- There are regular national campaigns to bring down the birth rates in provinces and local areas which have exceeded the permitted quota. Over-quota birth rates threaten the employment and future careers of birth control officials in those regions, and where there is a national campaign, it can result in large-scale, unlawful crackdowns by local officials in a small number of provinces and areas. In such areas, during such large-scale crackdowns, human rights abuses can and do occur, resulting in women and, sometimes, men, being forcibly sterilised, and pregnant women having their pregnancies forcibly terminated. The last such crackdown took place in spring 2010. [para 191(10)].

#### Returnees who have had permitted quotas of children

- In general, for female returnees, there is no real risk of forcible sterilisation or forcible termination in China. However, if a female returnee who has already had her permitted quota of children is being returned at a time when there is a crackdown in her 'hukou' area, accompanied by unlawful practices such as forced abortion or sterilisation, such a returnee would be at real risk of forcible sterilisation, or, if she is pregnant at the time, of forcible termination of an unauthorised pregnancy. Outside these times, such a female returnee may also be able to show an individual risk, notwithstanding the absence of a general risk, where there is credible evidence that she, or members of her family remaining in China, have been threatened with, or have suffered, serious adverse ill-treatment by reason of her breach of the family planning scheme. [para 191(11)].
- 2.3.3 Where a female returnee is at real risk of forcible sterilisation or termination of pregnancy in her 'hukou' area, such risk is of persecution [para 191(12)].
- 2.3.4 Male returnees do not, in general, face a real risk of forcible sterilisation, whether in their 'hukou' area or elsewhere, given the very low rate of sterilisation of males overall and the even lower rate of forcible sterilisation. [para 191(13)].
- 2.3.5 The country information available following the AX CG case indicates that regulations in 22 of 31 provincial-level administrative units explicitly prescribe abortions as an enforcement tool. Fujian, Guizhou, Guangdong, Gansu, Jiangxi, Qinghai, Shanxi, and Shaanxi require unspecified 'remedial measures' to deal with unauthorized pregnancies.
- 2.3.6 Although the Chinese Communist Party announced a new exception to its population planning policy in November 2013 to allow couples in which one parent was an only child to have a second child, this does not appear to have been uniformly implemented and Chinese officials reportedly have not relaxed their enforcement of the population planning policy, and have continued to use coercive measures such as forced abortion and sterilization. Since the announcement of the policy adjustment in November 2013, the Chinese Communist Party Central Committee and State Council jointly instructed local authorities to 'strictly control noncompliant births, particularly extra births, [and] seriously investigate and deal with illegal births.' Chinese and international media reports have documented abuses, including: the authority's refusal to register a child whose mother did not

want an intrauterine device (IUD); coercive IUD insertion; forced sterilization; and four forced abortions in the Xinjiang Uyghur Autonomous Region.

- 2.3.7 For further information on assessing risk, see section 6 of the [Asylum Instruction on Assessing Credibility and Refugee Status](#).

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## 2.4 Are those at risk able to seek effective protection?

- 2.4.1 As the person's fear is of ill treatment/persecution at the hands of the state, it is unreasonable to consider that they would be able to avail themselves of the protection of the authorities.

- 2.4.2 For further information on assessing the availability or not of state protection, see section 8.1 of the [Asylum Instruction on Assessing Credibility and Refugee Status](#).

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## 2.5 Are those at risk able to internally relocate within China?

- 2.5.1 The Country Guidance case of [AX \(Family Planning Scheme\) China CG \[2012\] UKUT 00097 \(IAC\)](#) stated that where a real risk exists in the 'hukou' area, it may be possible to avoid the risk by moving to a city. Millions of Chinese internal migrants, male and female, live and work in cities where they do not hold an 'urban hukou.' Internal migrant women are required to stay in touch with their 'hukou' area and either return for tri-monthly pregnancy tests or else send back test results. The country evidence does not indicate a real risk of effective pursuit of internal migrant women leading to forcible family planning actions, sterilisation or termination taking place in their city of migration. Therefore, internal relocation will, in almost all cases, avert the risk in the hukou area. However, internal relocation may not be safe where there is credible evidence of individual pursuit of the returnee or her family outside the 'hukou' area. Whether it is unduly harsh to expect an individual returnee and her family to relocate in this way will be a question of fact in each case [para 191(14) of determination]. The country information available following the AX CG case indicates that single mothers are subject to discrimination in relation to accessing housing, job opportunities, and hukou registration for their child, affecting access to education and medical services.

- 2.5.2 Decision makers must give careful consideration to the relevance and reasonableness of internal relocation on a case-by-case basis taking full account of the individual circumstances of the particular person. Decision makers must consider factors such as the age, gender, health, ethnicity, religion, financial circumstances and support network of the person, as well as the security, human rights and socio-economic conditions in the proposed area of relocation, including their ability to sustain themselves.

- 2.5.3 For further information on considering internal relocation, see section 8.2 of the [Asylum Instruction on Assessing Credibility and Refugee Status](#) and the [Asylum Instruction on Internal Relocation](#).

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### 3. Policy summary

- Under the national population and family-planning law, married couples have the right to have one child and may apply for permission to have a second child if they meet the conditions stipulated in provincial regulations.
- The consequences for a family of losing its ‘Single-Child Parents’ certificate (SCP) for having more than one child and/or of having a ‘social upbringing charge’ (SUC) imposed for having unauthorised children, and/or suffering disadvantages in terms of access to education, medical treatment, loss of employment, detriment to future employment etc will not, in general, reach the severity threshold for persecution or serious harm under the Refugee Convention or treatment in breach of Article 3.
- In general, for female returnees, there is no real risk of forcible sterilisation or forcible termination in China. However, if a female returnee who has already had her permitted quota of children is being returned at a time when there is a crackdown in her ‘hukou’ area, accompanied by unlawful practices such as forced abortion or sterilisation, such a returnee would be at real risk of forcible sterilisation, or, if she is pregnant at the time, of forcible termination of an unauthorised pregnancy.
- Outside these times, such a female returnee may also be able to show an individual risk, notwithstanding the absence of a general risk, where there is credible evidence that she, or members of her family remaining in China, have been threatened with, or have suffered, serious adverse ill-treatment by reason of her breach of the family planning scheme.
- Where a female returnee is at real risk of forcible sterilisation or termination of pregnancy, such risk is of persecution, serious harm and Article 3 ill-treatment. Such a risk would be by reason of a Refugee Convention reason, i.e. membership of a particular social group, ‘women who gave birth in breach of China’s family planning scheme.’
- Male returnees do not, in general, face a real risk of forcible sterilisation, given the very low rate of sterilisation of males overall and the even lower rate of forcible sterilisation.
- Where there is a real risk of harm in a person’s ‘hukou’ area, it may be possible to escape the risk by moving to a city, provided the risk is not present there and it would not be unduly harsh to expect them to do so.
- Where a claim falls to be refused, it is likely to be certifiable as ‘clearly unfounded’ under section 94 of the Nationality, Immigration and Asylum Act 2002.

For further information on making asylum decisions, see section 9 of the [Asylum Instruction on Assessing Credibility and Refugee Status](#), the [Asylum](#)

[Instruction on Humanitarian Protection](#), the [Asylum Instruction on Discretionary Leave](#) and [Gender issues in the asylum claim](#).

For further information on certification, see the [Asylum Instruction on Non-Suspensive Appeals: Certification Under Section 94 of the NIA Act 2002](#).

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# Country Information

Date Updated: 30 June 2015

## 4. Legal context

### 4.1 Legislation

4.1.1 The US Department of State's Country Report on Human Rights Practices for 2014, published in June 2015, stated:

'The national population and family-planning law standardized the implementation of the government's birth-limitation policies, although enforcement varied significantly.'<sup>1</sup>

4.1.2 Article 18 of the Population and Family Planning Law states, 'The State maintains its current policy for reproduction, encouraging late marriage and childbearing and advocating one child per couple.'<sup>2</sup> China's laws concerning delayed marriage are intended to help control and delay childbearing. The Marriage Law of the People's Republic of China 2001 sets the minimum marriage age at 20 years for women and 22 years for men. Consequently, the state will not recognise the marriage of younger individuals and where children are born to couples who are too young to marry, penalties are imposed.<sup>3</sup>

4.1.3 The Refugee Review Tribunal of Australia provided the following information in July 2006, citing the 2004 U.S. Department of State report:

'The law grants married couples the right to have one child and allows eligible couples to apply for permission to have a second child if they meet conditions stipulated in local and provincial regulations. Many provincial regulations require women to wait 4 years or more after their first birth before making such an application. According to the UN Population Fund (UNFPA), the spacing requirement was removed in 5 and relaxed in 10 of the 30 counties across 30 provinces participating in UNFPA's "Country Program V." The NPFPC [National Population and Family Planning Commission] reported that the spacing requirement was removed in the provincial regulations of

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<sup>1</sup> US Department of State. 'Country Reports on Human Rights Practices for 2014,' China; Section 6.Women. Reproductive rights. June 2015. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper> Date accessed: 30 June 2015.

<sup>2</sup> Congressional-Executive Commission on China. Population and Family Planning Law of the People's Republic of China (Order of the President No.63), effective from 1 September 2002 (Article 18). <http://www.cecc.gov/resources/legal-provisions/population-and-family-planning-law-of-the-peoples-republic-of-china> Date accessed: 20 May 2015.

<sup>3</sup> Australia: Refugee Review Tribunal, China: Family Planning, 8 March 2013, 3.1 Delayed marriage p.6 available at: <http://www.refworld.org/docid/51f61ea04.html> Date accessed: 20 May 2015

Hainan, Jilin, and Shanghai, and UNFPA reported that the requirement was relaxed by 15 other provincial-level governments.<sup>14</sup>

4.1.4 The OECD Development Centre's Social Institutions and Gender Index for 2014 for China noted: 'In almost all provinces, it is illegal for an unmarried woman to give birth, and doing so can result in a fine.'<sup>15</sup>

4.1.5 The Refugee Review Tribunal of Australia provided the following information in March 2013:

'Generally, second children are permitted in the following situations:

- if both the husband and wife are only children (in urban areas)
- if the family is part of a minority group
- if the family is defined as a rural couple, in certain circumstances, including if the first baby was a girl. ...

'Family planning policy in China is not... uniformly applied. There are variations from one province or area to the next, since central government regulations specify that provincial and local governments can adapt and implement the national guidelines to the area. In addition to the capacity for local adaptation of policy, there is also evidence of variation within local areas with local officials having discretion to "decide, on a case-by-case basis, the applicable fees" for breaches of family planning policy.'<sup>16</sup>

See Penalties and incentives for further information about regional variations in the application of both penalties and incentives.

4.1.6 In December 2014, the Congressional-Executive Commission on China commented on the impact of the change in the law of November 2013 which allowed some couples to have a second child. It was noted that rural couples, ethnic minority couples, and couples where both parents were only children had already been permitted under previous exceptions to bear a second child. The CECC stated:

'In November 2013, the Chinese Communist Party announced a new exception to its population planning policy—couples in which one parent was an only child were now allowed a second child. One year later, reports indicate that the impact of this policy adjustment has been modest thus far. While every Chinese province except Xinjiang has implemented the policy adjustment, applications for birth permits for second children were generally lower than most Chinese government predictions. Moreover, Chinese officials reportedly have not relaxed their enforcement of the population planning policy, and have continued to use coercive measures such as

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<sup>4</sup> Australia: Refugee Review Tribunal, China: 1. Please advise about the implementation of the family planning policy (FPP) in Henan and how strictly the FPP is enforced, 18 July 2006, CHN30361, available at: <http://www.refworld.org/docid/4b6fe14f0.html> Date accessed: 20 May 2015.

<sup>5</sup> OECD Development Centre Social Institutions and Gender Index. China 2014; Restricted physical integrity <http://genderindex.org/country/china> Date accessed: 28 April 2015

<sup>6</sup> Australia: Refugee Review Tribunal, China: Family Planning, 8 March 2013 (Overview, p. 3-4) available at: <http://www.refworld.org/docid/51f61ea04.html> Date accessed: 20 May 2015.

forced abortion and sterilization, among others, that violate international law.<sup>7</sup>

4.1.7 The US Department of State's Country Report on Human Rights Practices for 2014, published in June 2015, stated:

'The law grants married couples the right to have one birth and allows couples to apply for permission to have a second child if they meet conditions stipulated in local and provincial regulations. In 2013 the NPC Standing Committee amended the one-child policy to allow couples in which at least one spouse is an only child to have two children. During the year implementing regulations for the amended policy were adopted on a province-by-province basis. The birth limit was more strictly applied in urban areas, where only couples meeting certain conditions were permitted to have a second child (e.g. if both of the would-be parents were only children). In most rural areas couples were permitted to have a second child in cases where their first child was a girl. Ethnic minorities were subject to less stringent rules.'<sup>8</sup>

4.1.8 The CECC further commented on the change to the law of November 2013:

'The new exception applies primarily to urban couples. ... According to the NHFPC [National Health and Family Planning Commission], over 800,000 couples had applied for permission to have a second child under the policy adjustment by the end of September 2014. Chinese officials previously estimated the adjustment would bring 1 to 2 million additional births per year...

'Despite the adjustment, China's population planning policy continues to restrict Chinese couples' freedom to build their families as they see fit. Shortly after central Party authorities announced the policy adjustment in November 2013, NHFPC Deputy Director Wang Pei'an stated at a press conference, "Adjusting and improving the birth policy is not the same as relaxing population planning work." In December 2013, the Chinese Communist Party Central Committee and State Council jointly issued the Opinions on Adjusting and Improving the Birth Policy, instructing local authorities to "strictly control noncompliant births, particularly extra births, [and] seriously investigate and deal with illegal births." Reports from provincial-level population and family planning commissions across the country indicate that local governments have followed central government

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<sup>7</sup> CECC - Congressional-Executive Commission on China: One Year Later, Initial Impact of China's Population Planning Policy Adjustment Smaller Than Expected, 09 December 2014. <http://www.cecc.gov/publications/commission-analysis/one-year-later-initial-impact-of-china%E2%80%99s-population-planning-policy> Date accessed: 01 May 2015.

<sup>8</sup> US Department of State. 'Country Reports on Human Rights Practices for 2014;' China; Section 6. Women. Reproductive rights. June 2015. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper> Date accessed: 30 June 2015.

instructions to continue strict enforcement of China's population planning policy...'<sup>9</sup>

See [Enforcement of population control](#) for further information on this subject.

- 4.1.9 The US Department of State's Country Report on Human Rights Practices for 2014, published in June 2015, stated:

'The National Population and Family Planning Commission reported that all provinces eliminated the birth-approval requirement before a first child is conceived, but provinces may still continue to require parents to "register" pregnancies prior to giving birth to their first child. This registration requirement could be used as a de facto permit system in some provinces, since some local governments continued to mandate abortion for single women who became pregnant. Provinces and localities imposed fines of various amounts on unwed mothers...'<sup>10</sup>

See also [Unmarried mothers](#) and [Penalties and incentives](#).

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## 4.2 [Contraventions of international law](#)

- 4.2.1 The Congressional-Executive Commission on China noted the following in a document dated December 2014:

- 4.2.2 '...any birth limits imposed on Chinese women and their families, as well as coercive measures used to implement these limits, violate standards set forth in the 1995 Beijing Declaration and Platform for Action and the 1994 Programme of Action of the Cairo International Conference on Population and Development. Acts of official violence committed in the implementation of population planning policies contravene Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Discriminatory actions such as refusing to register children born in violation of the population planning policy contravene the Convention on the Rights of the Child and the International Covenant on Economic, Social and Cultural Rights.'<sup>11</sup>

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# 5. [Enforcement of population control](#)

## 5.1 [Fertility rate](#)

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<sup>9</sup> CECC - Congressional-Executive Commission on China: One Year Later, Initial Impact of China's Population Planning Policy Adjustment Smaller Than Expected, 09 December 2014.

<http://www.cecc.gov/publications/commission-analysis/one-year-later-initial-impact-of-china%E2%80%99s-population-planning-policy> Date accessed: 01 May 2015.

<sup>10</sup> US Department of State. 'Country Reports on Human Rights Practices for 2014,' China; Section 6. Women. Reproductive rights. June 2015.

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper> Date accessed: 30 June 2015.

<sup>11</sup> CECC - Congressional-Executive Commission on China: One Year Later, Initial Impact of China's Population Planning Policy Adjustment Smaller Than Expected, 09 December 2014

<http://www.cecc.gov/publications/commission-analysis/one-year-later-initial-impact-of-china%E2%80%99s-population-planning-policy> Date accessed: 01 May 2015.

5.1.1 The US Department of State's Country Report on Human Rights Practices for 2014 stated:

'Nationwide 35 percent of families fell under the one-child restrictions, and more than 60 percent of families were eligible to have a second child, either outright or if they met certain criteria. The remaining 5 percent were eligible to have more than two children. According to government statistics, the average fertility rate for women nationwide was 1.8, and in the country's most populous and prosperous city, Shanghai, the fertility rate was 0.8.'<sup>12</sup>

5.1.2 The Congressional-Executive Commission on China noted the following in December 2014:

'Many urban areas in China have birth rates lower than the national average, attributed in part to the high cost of living. For example, according to an October 2014 report in Forbes, fertility rates in Shanghai are 0.7, or less than one child per couple.'<sup>13</sup>

5.1.3 The US Department of State's Country Report on Human Rights Practices for 2014 noted that the birth limit was more strictly applied in urban areas, where only couples meeting certain conditions were permitted to have a second child (e.g., if both of the would-be parents were only children). In most rural areas couples were permitted to have a second child in cases where their first child was a girl.<sup>14</sup>

See [Legislation](#) for further information about permission to have second children.

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## 5.2 Availability of abortion, contraception and family planning

5.2.1 The OECD Development Centre's Social Institutions and Gender Index for 2014 noted:

'Abortion is available on request in China. The US State Department cites a National Population and Family Planning Commission reported [sic] that 13 million women annually underwent abortions caused by unplanned pregnancies. Women and men have equal rights to use and access information about contraception, and the State has a legal responsibility to provide family planning services. As such, there is a comprehensive network of family planning and reproductive health clinics across the country. In 2012

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<sup>12</sup> US Department of State. 'Country Reports on Human Rights Practices for 2014,' China; Section 6. Women. Reproductive rights. 30 June 2015.

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper> Date accessed: 30 June 2015.

<sup>13</sup> CECC - Congressional-Executive Commission on China: One Year Later, Initial Impact of China's Population Planning Policy Adjustment Smaller Than Expected, 09 December 2014.

<http://www.cecc.gov/publications/commission-analysis/one-year-later-initial-impact-of-china%E2%80%99s-population-planning-policy> Date accessed: 01 May 2015.

<sup>14</sup> US Department of State. 'Country Reports on Human Rights Practices for 2014,' China; Section 6. Women. Reproductive rights. June 2015.

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper> Date accessed: 30 June 2015.

the Government reported that 85% of women of childbearing age used some form of contraception.<sup>15</sup>

5.2.2 The US Department of State's Country Report on Human Rights Practices for 2014 in China stated:

'The National Population and Family Planning Commission reported that 13 million women annually terminated unplanned pregnancies. An official news media outlet also reported at least an additional 10 million chemically induced abortions were performed in nongovernment facilities. Government statistics on the percentage of all abortions that were nonelective was not available. According to Health Ministry data released in 2012, a total of 336 million abortions and 222 million sterilizations had been carried out since 1971.

'The national family-planning authorities shifted their emphasis from lowering fertility rates to maintaining low fertility rates and emphasized quality of care in family-planning practices. State media reported that 85 percent of women of childbearing age used contraception. Of those, 70 percent used a reversible method. A 2010 survey, however, found that only 12 percent of women between the ages of 20 and 35 had a proper understanding of contraceptive methods. A 2013 survey published by the China World Contraception Day Organization showed more than 68 percent of women were confused about contraceptive methods and that 1.2 percent of women took oral contraceptives.<sup>16</sup>

5.2.3 The United Nations Committee on the Elimination of Discrimination against Women noted the following in November 2014:

'The Committee is further concerned that free family planning measures are only available for married women, and effective age-appropriate education on sexual and reproductive health does not take place at school.'<sup>17</sup>

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### 5.3 Officials

5.3.1 The US Department of State's Country Report on Human Rights Practices for 2014 stated:

'Officials at all levels remained subject to rewards or penalties based on meeting the population goals set by their administrative region. Promotions

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<sup>15</sup> OECD Development Centre Social Institutions and Gender Index. China 2014; Restricted physical integrity <http://genderindex.org/country/china> Date accessed: 28 April 2015

<sup>16</sup> US Department of State. 'Country Reports on Human Rights Practices for 2014,' China; Section 6. Women. Reproductive rights. June 2015. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper> Date accessed: 30 June 2015.

<sup>17</sup> United Nations. Committee on the Elimination of Discrimination against Women; Concluding observations on the combined seventh and eighth periodic reports of China (paragraph 38); dated 7 November 2014. [http://globalcenters.columbia.edu/beijing/beijing/files/globalcenters\\_eastasia/CEDAW-C-CHN-CO-7-8%20Concluding%20Observations%20China%207Nov2014.pdf](http://globalcenters.columbia.edu/beijing/beijing/files/globalcenters_eastasia/CEDAW-C-CHN-CO-7-8%20Concluding%20Observations%20China%207Nov2014.pdf) Date accessed: 1 May 2015.

for local officials depended in part on meeting population targets. Linking job promotion with an official's ability to meet or exceed such targets provided a powerful structural incentive for officials to employ coercive measures to meet population goals. An administrative reform process initiated pilot programs in some localities that removed this criterion for evaluating officials' performance.<sup>18</sup>

- 5.3.2 An Immigration and Refugee Board of Canada response of October 2014, citing a professor of political science at The City University of New York, whose research interests include human rights and political governance in China, stated that 'family-planning enforcement forces include local police and Party disciplinary committee; they can arrest people, remove family belongings, and destroy the property, apartment and house of the violators.'<sup>19</sup>

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### **Accountability for abuses committed by officials**

- 5.3.3 The US Department of State's Country Report on Human Rights Practices for 2014 in China stated:

'Although the family-planning law states that officials should not violate citizens' rights in the enforcement of family-planning policy, these rights, as well as penalties for violating them, were not clearly defined. By law citizens may sue officials who exceed their authority in implementing birth-planning policy, but few protections for whistleblowers against retaliation from local officials exist. The law provides significant and detailed sanctions for officials who help persons evade the birth limitations.'<sup>20</sup>

- 5.3.4 A submission dated February 2015 by Network of Chinese Human Rights Defenders on the implementation of the Convention Against Torture stated:

'In light of the Committee's previous concluding observations..., we would like to report that the government has taken some steps in response to criticism of officials' use of coercive and violent measures for implementing the government's population control policy, such as the relaxation of the "one birth" policy to "two births" per couple if one of the parents is an only child.

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<sup>18</sup> US Department of State. 'Country Reports on Human Rights Practices for 2014;' China; Section 6. Women. Reproductive rights. June 2015.  
<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper> Date accessed: 30 June 2015.

<sup>19</sup> Canada: Immigration and Refugee Board of Canada, China: Family planning laws, enforcement and exceptions, particularly in the provinces of Guangdong and Fujian; reports of forced sterilization of men and women; consequences to officials who force women to have an abortion; whether family planning authorities interact with the Public Security Bureau in enforcing their decisions (October 2012-September 2014), 16 October 2014, CHN104963.E, <http://irb-cisr.gc.ca/Eng/ResRec/RirRdi/Pages/index.aspx?doc=455557&pls=1> Date accessed: 1 May 2015.

<sup>20</sup> US Department of State. 'Country Reports on Human Rights Practices for 2014.' China; Section 6. Women. Reproductive rights. June 2015.  
<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper> Date accessed: 30 June 2015.

However, most allegations of abuses of family planning regulations have not been investigated. Except in very rare cases, officials responsible for resorting to coercive and violent measures to implement the family planning policy (and violating Article 19 of the Law on Population and Family Planning) have not been investigated or held accountable...'<sup>21</sup>

See also [Enforced abortion and birth control and Officials](#).

5.3.5 The Immigration and Refugee Board of Canada stated the following in a document dated October 2014:

'...there are specific laws and Communist Party regulations to discipline officials who breach the family planning policies. As examples, the Professor [of political science at The City University of New York] mentioned that the Civil Service Law provides penalties for civil servants, while the Party Disciplinary Code deems the violation of the family planning policy as misconduct by a party member. He explained that civil servants who breach the family planning policies would probably be "criticized, reduced in salary, downgraded in administrative rank," removed from a position of responsibility, and "possibly" expelled from the civil service. The Professor added that a member of the Party would "certainly" receive a disciplinary penalty and may face expulsion from the Party. However, the Professor also explained that penalties may vary depending on the relationship between the offender and higher level-officials, as well as with colleagues. The Professor also added that authorities in the country "increasingly" use violations to procedures "as an excuse to punish ...officials who have shown dissenting voices or expressed critical opinions" about the workplace or management.

'The Professor added that "there are tremendous regional variations" in applying sanctions to officials, explaining that,

'[f]or example, if the local government is weak and law enforcement is lax, it is easier to get away with [violations of] family planning policy. However, a corrupt ... [and] bullying local government can enforce the family planning law with coercion and brutality.'<sup>22</sup>

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## 5.4 Penalties and incentives for birth control

### 5.4.1 Article 27 of the Population and Family Planning Law of 2001 stated:

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<sup>21</sup> 'Chinese Human Rights Defenders: Specific Information on the Implementation of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,' 9 February 2015 (published by CAT). (Paragraph 15)  
[http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/CHN/INT\\_CAT\\_NGO\\_CHN\\_19726\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/CHN/INT_CAT_NGO_CHN_19726_E.pdf) Date accessed: 1 May 2015

<sup>22</sup> Canada: Immigration and Refugee Board of Canada, China: Family planning laws, enforcement and exceptions, particularly in the provinces of Guangdong and Fujian; reports of forced sterilization of men and women; consequences to officials who force women to have an abortion; whether family planning authorities interact with the Public Security Bureau in enforcing their decisions (October 2012-September 2014), 16 October 2014, CHN104963.E.<http://irb-cisr.gc.ca/Eng/ResRec/RirRdi/Pages/index.aspx?doc=455557&pls=1> Date accessed: 1 May 2015.

'The State shall award a "Certificate of Honor for Single-Child Parents" to couples who volunteer to have one child in their lifetime.

'Couples awarded such a certificate shall enjoy the incentives provided for in State regulations and in the regulations of their respective provinces, autonomous regions, or municipalities.

'Employers shall obligatorily implement those incentive measures, stipulated by law and regulation, favoring couples in their employ who have one child over a lifetime. Local people's governments shall provide necessary assistance to couples whose only child is disabled or killed in accidents, and who decide not to bear or adopt another child.'<sup>23</sup>

- 5.4.2 In the country guidance case of AX, the UK Upper Tribunal (Immigration and Asylum Chamber) noted, based on the evidence available to it, that, 'Further children were permitted, in a variety of circumstances, with considerable regional discretion and differences in implementation, but in each case, the birth of the second child entailed the loss of the SCP Certificate and the benefits it entailed.'<sup>24</sup>

See Legislation for further information about both the circumstances when a second child is permitted and regional variation in the implementation of the family planning policy.

- 5.4.3 The OECD Development Centre's Social Institutions and Gender Index for 2014 noted:

'Couples who had an unapproved child faced disciplinary measures such as social compensation fees (which can be as much as 10 times the person's annual disposable income), job loss or demotion, loss of promotion opportunity, expulsion from the Communist Party (membership is an unofficial requirement for certain jobs), and other administrative punishments, including in some cases the destruction of private property. In some provinces, regulations requiring women who violate family-planning policy to terminate their pregnancies or undergo unspecified "remedial measures" to deal with unauthorized pregnancies still exist. It is also reported that intense pressure to meet birth-limitation targets set by government regulations resulted in instances of local family-planning officials' using coercion, such as mandatory use of birth control and forced sterilization.'<sup>25</sup>

- 5.4.4 The US Department of State's Country Report on Human Rights Practices for 2014 stated:

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<sup>23</sup> China: Law of 2001, Population and Family Planning Law [], 29 December 2001, available at: <http://www.refworld.org/docid/42417cb54.html> Date accessed: 20 May 2015.

<sup>24</sup> UK Upper Tribunal (Immigration and Asylum Chamber). AX (Family Planning Scheme) China CG [2012] UKUT 00097 (IAC), promulgated 16 April 2012 (paragraph 24) [http://www.bailii.org/uk/cases/UKUT/IAC/2012/00097\\_ukut\\_iac\\_2012\\_ax\\_china\\_cg.html](http://www.bailii.org/uk/cases/UKUT/IAC/2012/00097_ukut_iac_2012_ax_china_cg.html) Date accessed: 21 May 2015

<sup>25</sup> OECD Development Centre Social Institutions and Gender Index. China 2014; Restricted physical integrity <http://genderindex.org/country/china> Date accessed: 28 April 2015

'The law requires each parent of an unapproved child to pay a "social compensation fee," which can reach 10 times a person's annual disposable income.

'Social compensation fees were set and assessed at the local level. The law requires family-planning officials to obtain court approval before taking "forcible" action, such as detaining family members or confiscating and destroying property of families who refuse to pay social compensation fees. This requirement was not always followed, and national authorities remained ineffective at reducing abuses by local officials.'<sup>26</sup>

5.4.5 In the country guidance case of AX, the UK Upper Tribunal (Immigration and Asylum Chamber) noted:

'The administration scheme for the Social Upbringing Charge [also referred to as a "fee" or "fine" in other sources of country information] is set out in State Council Order no 357... Article 3 sets out the method of calculating the Income Multiplier which is used when setting the SUC [Social Upbringing Charge] for an unauthorised birth. SUC is to be imposed taking into account the actual income of the parties and the detailed circumstances of the breach. No unit or individual may without authority establish additional charges or increase the Income Multiplier used. All SUC decisions are to be in writing (Article 4) and there is a right of appeal (Article 9) with suspensive effect. Decisions take effect when delivered to the parties, and SUC is to be paid within 30 days of receiving the decision... Each province, working from those principles, has its own family planning scheme Regulations governing the imposition and enforcement of SUC in that province. The SCP Certificate gives access to enhanced medical, pension, housing and employment benefits which are withdrawn, and additional SUC penalties imposed, where an individual or family breaches the policy. Employers are also expected to penalise the employee by penalties ranging between demotion and dismissal. Breach of the policy disentitles the individual and those in his or her work unit to government contracts, government employment, or local recognition of various types, in some cases on a discretionary basis, in some cases permanently, and in some cases for a fixed period of years.'<sup>27</sup>

5.4.6 The US Department of State's Country Report on Human Rights Practices for 2014 stated:

'The government continued to impose "child-raising fees" on violators of the one-child policy. On December 3, the National Health and Family Planning Commission announced it would continue to charge "social maintenance fees" for family-planning policy violations. According to state media, local

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<sup>26</sup> US Department of State. 'Country Reports on Human Rights Practices for 2014,' China; Section 6. Women. Reproductive rights. June 2015.  
<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>. Date accessed: 30 June 2015.

<sup>27</sup> UK Upper Tribunal (Immigration and Asylum Chamber). AX (Family Planning Scheme) China CG [2012] UKUT 00097 (IAC), promulgated 16 April 2012 (paragraphs 36-38)  
[http://www.bailii.org/uk/cases/UKUT/IAC/2012/00097\\_ukut\\_iac\\_2012\\_ax\\_china\\_cg.html](http://www.bailii.org/uk/cases/UKUT/IAC/2012/00097_ukut_iac_2012_ax_china_cg.html) Date accessed: 21 May 2015.

governments collect more than RMB20 billion (\$3.26 billion) annually in fees. On July 29, the Guangdong provincial government publicly released an audit of its social maintenance fees and reportedly collected RMB2.45 million (\$400 million) in fines between 2012 and 2013. The report found cases of misconduct by authorities in managing the fees.<sup>28</sup>

- 5.4.7 The Congressional-Executive Commission on China noted in December 2014 that the adjustment to the population control policy of November 2013, allowing some couples to have a second child, did not change the authorities' attitude to collecting fines in cases of violation of policies:

'A November 2014 Bloomberg report cited the example of a couple in Shenzhen municipality—neither of whom were only children—fined 267,918 yuan (US\$43,450) over the birth of their second child. Also in November 2014, Chinese media reported the case of a villager from Shangrao county, Jiangxi province, whom authorities detained for 15 days for refusing to pay a population planning fine. According to the non-governmental organization Chinese Human Rights Defenders, these "social maintenance fees" provide local officials with "strong financial incentives to be overly aggressive in enforcing birth-control policies."<sup>29</sup>

- 5.4.8 The Network of Chinese Human Rights Defenders and a Coalition of NGOs published the following in September 2014:

'Many couples who refuse or are financially unable to pay the fines ['social compensation fees'] are subjected to a wide range of abuses, including forced abortion, torture, and detention. It is reported that hundreds of women flee their home provinces of Hubei and Guangxi to escape from zealous family planning officials and go into hiding in remote areas of neighboring provinces, becoming known as "family planning fugitives".<sup>30</sup>

See also [Officials](#) for further information about the role of the authorities.

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## 5.5 Enforced abortion, sterilisation and birth control

- 5.5.1 The Foreign and Commonwealth Office's Human Rights and Democracy Report published in March 2015 stated that 'Family planning policies continued to be enforced. Despite the relaxation of some family planning

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<sup>28</sup> US Department of State. 'Country Reports on Human Rights Practices for 2014,' China; Section 6. Women. Reproductive rights. June 2015.  
<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper> Date accessed: 30 June 2015.

<sup>29</sup> CECC - Congressional-Executive Commission on China: One Year Later, Initial Impact of China's Population Planning Policy Adjustment Smaller Than Expected, 09 December 2014.  
<http://www.cecc.gov/publications/commission-analysis/one-year-later-initial-impact-of-china%E2%80%99s-population-planning-policy> Date accessed: 01 May 2015.

<sup>30</sup> CHR - Chinese Human Rights Defenders; Rights Defense Network; Civil Rights & People's Livelihood Watch; Human Rights Campaign in China; Women Rights Defenders Support Group; Smiley Public Interest Group et al.: Civil Society Report Submitted to the Committee on the Elimination of Discrimination Against Women, 30 September 2014, paragraph 39  
[http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/CHN/INT\\_CEDAW\\_NGO\\_CHN\\_18362\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/CHN/INT_CEDAW_NGO_CHN_18362_E.pdf) Date accessed: 6 May 2015.

regulations in 2013, reports of forced abortions and sterilisations continued. We raised our concerns during the UK-China Human Rights Dialogue.<sup>31</sup>

5.5.2 The concluding observations of the UN Committee on Economic, Social and Cultural Rights in June 2014 similarly stated that ‘while noting information provided by the State party that the Population and Family Planning Law prohibits the use of coercive measures for the implementation of the birth quota, remains seriously concerned about reported instances of the use of coercive measures, including forced abortion and forced sterilization, with a view to limiting births (arts. 10 and 12).’<sup>32</sup>

5.5.3 The US Department of State’s Country Report on Human Rights Practices for 2014 stated:

‘Although national law prohibits the use of physical coercion to compel persons to submit to abortion or sterilization, intense pressure to meet birth-limitation targets set by government regulations resulted in instances of local family-planning officials using physical coercion to meet government goals. Such practices included the mandatory use of birth control and the abortion of unauthorized pregnancies. In the case of families that already had two children, one parent was often pressured to undergo sterilization.’<sup>33</sup>

5.5.4 Freedom House noted the following in its report, Freedom in the World 2015:

‘According to the U.S. Congressional-Executive Commission on China, regulations in 22 of 31 provincial-level administrative units explicitly prescribe abortions as an enforcement tool. Relatives of unsterilized women or couples with unapproved births are subject to high fines, job dismissal, reduced government benefits, and occasionally detention.’<sup>34</sup>

5.5.5 The 2014 U.S. Congressional-Executive Commission on China report covering the situation in autumn 2013 to autumn 2014, noted:

‘Language used in official speeches and government reports from jurisdictions across China continued to reflect an emphasis on harsh enforcement measures with an apparent disregard for restraint. The Commission noted that during this reporting year, as in previous years, official reports from several provinces and municipalities across China (e.g., Anhui, Beijing, Fujian, Guizhou, Hebei, Henan, Hunan, Jiangxi, Shandong, and Zhejiang ) continued to promote “family planning implementation work”

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<sup>31</sup> Foreign and Commonwealth Office. Human Rights and Democracy Report 2014. 12 March 2015. <https://www.gov.uk/government/publications/china-country-of-concern--2/china-country-of-concern> date accessed 19 May 2015.

<sup>32</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), Concluding observations on the second periodic report of China, including Hong Kong, China, and Macao, China, 13 June 2014, paragraph 26 <http://www.refworld.org/docid/53c77e524.html> date accessed 10 June 2015

<sup>33</sup> US Department of State. ‘Country Reports on Human Rights Practices for 2014;’ China; Section 6. Women. Reproductive rights. June 2015. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>, Date accessed: 30 June 2015.

<sup>34</sup> Freedom House. ‘Freedom in the World 2015;’ China; Personal autonomy and individual rights. 28 January 2015 <https://freedomhouse.org/report/freedom-world/2015/china> Date accessed: 28 April 2015

using phrases such as “spare no efforts” (quanli yifu or fenli) and “use all means necessary” (qian fang bai ji) to urge officials to implement harsh and invasive family planning measures. Implementation targets promoted in these reports were unrelenting, including some reports calling for a 100-percent implementation rate in compelling policy offenders to undergo “remedial measures” or the “four procedures” (i.e., intrauterine device (IUD) implants, first trimester abortions, mid- to late-term abortions, and sterilization).<sup>35</sup>

5.5.6 The US Department of State’s Country Report on Human Rights Practices for 2014 stated:

‘Regulations requiring women who violate family-planning policy to terminate their pregnancies still exist in Liaoning and Heilongjiang provinces. Other provinces – Fujian, Guizhou, Guangdong, Gansu, Jiangxi, Qinghai, Shanxi, and Shaanxi – require unspecified “remedial measures” to deal with unauthorized pregnancies...

‘In December 2013 overseas media reported that officials at Nurluq Hospital in Keriye County of Xinjiang’s Hotan Prefecture carried out forced abortions on four pregnant women. According to the report, the deputy chief of Hotan’s Arish Township confirmed that authorities had carried out four of six planned abortions utilizing abortion-inducing drugs. The head of the township’s Family Planning Department stated the abortions were carried out following orders from higher authorities because the women had exceeded the legal limit. The husband of one victim stated that his wife had been seven months’ pregnant when the procedure was performed and that the baby had been born alive before succumbing hours later to the effects of the chemical toxins. According to RFA, Arish Township Party Secretary Sun Jibing apologized to the family of Qembarnisahanim, and the county government fined the hospital RMB100,000 (\$16,300). Heyrinsa Mamut, a government employee at the Kalpin County Statistics Bureau in Aksu Prefecture, was forced to abort her pregnancy at five-months’ gestation on February 15, under pressure by the family-planning commission officer and her supervisor at the statistics bureau, who threatened her with dismissal and heavy financial penalties unless she aborted her child.’<sup>36</sup>

5.5.7 The US Department of State’s Country Report on Human Rights Practices for 2014 stated:

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<sup>35</sup> 2014 U.S. Congressional-Executive Commission on China, Annual report, 9 October 2014, Population Planning, Official Campaigns (p. 2) [http://www.cecc.gov/sites/chinacommission.house.gov/files/documents/AR14Population%20Planning\\_final.pdf](http://www.cecc.gov/sites/chinacommission.house.gov/files/documents/AR14Population%20Planning_final.pdf) Date accessed: 10 June 2015

<sup>36</sup> US Department of State. ‘Country Reports on Human Rights Practices for 2014;’ China; Section 6. Women. Reproductive rights. June 2015. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper> Date accessed: 30 June 2015.

'A number of online media reports indicated that migrant women applying for household registration in Guangzhou were required to have an intrauterine contraceptive device (IUD) implanted.'<sup>37</sup>

5.5.8 The US Department of State's Country Report on 2014 further stated:

'The law states that family-planning bureaus conduct pregnancy tests on married women and provide them with unspecified "follow-up" services. Some provinces fined women who did not undergo periodic pregnancy tests.'<sup>38</sup>

5.5.9 The Immigration and Refugee Board of Canada noted the following in a document produced in October 2014:

'...a first-born child in Shandong province was denied hukou [household registration] because his mother had not yet had an intra-uterine device (IUD) fitted after his birth... according to a local news source, attempts by the parents to appeal the case before the local Public Security Bureau were "in vain, as bureau staff blocked the door and hung up during a phone conversation"... while the National Population and Family Planning Commission stipulated that according to national laws and regulations, the fitting of IUDs is not a requirement for obtaining a hukou for the child, the "forced bundling of IUD operations with the hukou system" is "virtually an unspoken rule" in several places of China.'<sup>39</sup>

See also [Penalties and incentives for birth control](#) for the impact on a child's hukou status when parents may not have paid a fine.

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## 5.6 Unmarried mothers

5.6.1 The OECD Development Centre's Social Institutions and Gender Index for 2014 for China noted: 'In almost all provinces, it is illegal for an unmarried woman to give birth, and doing so can result in a fine.'<sup>40</sup>

5.6.2 The Network of Chinese Human Rights Defenders and a Coalition of NGOs provided the following information in April 2014:

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<sup>37</sup> US Department of State. 'Country Reports on Human Rights Practices for 2014;' China; Section 6. Women. Reproductive rights. June 2015. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper> Date accessed: 30 June 2015.

<sup>38</sup> US Department of State. 'Country Reports on Human Rights Practices for 2014;' China; Section 6. Women. Reproductive rights. June 2015. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper> Date accessed: 30 June 2015.

<sup>39</sup> Canada: Immigration and Refugee Board of Canada. 'China: Family planning laws, enforcement and exceptions, particularly in the provinces of Guangdong and Fujian; reports of forced sterilization of men and women; consequences to officials who force women to have an abortion; whether family planning authorities interact with the Public Security Bureau in enforcing their decisions (October 2012-September 2014),' 16 October 2014, CHN104963.E, <http://irb-cisr.gc.ca/Eng/ResRec/RirRdi/Pages/index.aspx?doc=455557&pls=1> Date accessed: 1 May 2015.

<sup>40</sup> OECD Development Centre Social Institutions and Gender Index. China 2014; Restricted physical integrity <http://genderindex.org/country/china> Date accessed: 28 April 2015

‘Although the Population and Family Planning Law does not include reproduction regulations for unmarried females, such women who give birth to children are considered to have violated family planning regulations, according to the Methods for Social Rearing Fee Collection and Management. Their children are considered “illegitimate” and cannot obtain legal registration status, a discriminatory policy that violates the birth registration rights of children; hence, they are unable to access social services and benefits.’<sup>41</sup>

- 5.6.3 A March 2013 Australia Refugee Review Tribunal report cites Dr Alice de Jonge, a Senior Lecturer of Business Law and Taxation at Monash University as stating that:

‘[Children born out of wedlock] are still regarded with pity and disdain. They are teased at school. Single mothers are subject to discrimination when it comes to accessing housing, education and medical services...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.’<sup>42</sup>

- 5.6.4 The Network of Chinese Human Rights Defenders and a Coalition of NGOs published the following in September 2014:

‘China’s birth-control policies discriminate against unmarried pregnant women, who, with limited exceptions, are not allowed to lawfully have children, placing them under duress. In a widely publicized case from 2013, an unmarried 22-year-old who had sought to conceal her pregnancy secretly delivered the baby in a bathroom. It was later revealed that the young mother was unable to afford an abortion and “was terrified about the illegitimacy of her child,” one reason being that she would face additional fines for giving birth out of quota. In 2009, a young woman who became pregnant before she reached the legal age for marriage was seized inside her home by officials from the township family planning bureau and forced to undergo an abortion. The woman and her unborn child died on the operating table. The number of unmarried women who are subjected to such treatment is difficult to estimate, since family-planning laws so often compel unmarried

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<sup>41</sup> CHRD - Chinese Human Rights Defenders; Rights Defense Network; Civil Rights & Livelihood Watch; Civil and Political Rights Monitor; Smiley Gongyi Group; Justice Policy Institute; Rights Defenders Co-op Support Group et al.: Report Submitted to the Committee on Economic, Social and Cultural Rights for its Review at the 52nd Session of the Second Report by the People’s Republic of China on Its Implementation of the International Covenant on Economic, Social and Cultural Rights, April 2014 (published by CESCR). (Paragraph 25)  
[http://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/CHN/INT\\_CESCR\\_CSS\\_CHN\\_17006\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/CHN/INT_CESCR_CSS_CHN_17006_E.pdf) Date accessed: 6 May 2015.

<sup>42</sup> Australia: Refugee Review Tribunal, China: Family Planning, 8 March 2013, 5. Unregistered children (‘Black children’) p.18 <http://www.refworld.org/docid/51f61ea04.html> Date accessed: 10 June 2015

women to conceal their pregnancies, which also makes it difficult for social service organizations and health workers to render assistance to them.<sup>43</sup>

5.6.5 The Guardian reported the following in January 2014:

'Like others who break the country's strict family-planning laws, an unmarried mother must pay a fine, even if it is her first child. But there was widespread outrage last summer when Wuhan, the capital of Hubei province, announced a massive rise in fines for births outside marriage to double the rate for married couples who breach the one-child policy. Officials appeared to water down the plans after the backlash, and a health and family-planning official said this week that she believed the increase had never been implemented.

'Until 1997, sex outside marriage was illegal and classed as "hooliganism", according to the sociologist and sexologist Li Yinhe. Having children outside wedlock "was regarded as heinous". Even now it is stigmatised: Xiao, then living in Shenzhen, told neighbours she was married and her husband was travelling...

'She struggled to find work, with one company stating point-blank that it could not hire her because she was unmarried. "I said, I am not ashamed. But the human-resources person said: 'People will think you did something wrong and talk about you. It's not good for the company,'" she recalled.

'Such prejudice compounds the financial burden of many single mothers. While men should normally pay about 20-30% of their income in maintenance, enforcement is often difficult, said Ming Li, a lawyer who has acted for Zhang.

'Xiao, who received no child support from her ex-boyfriend, said she thought she would have to sell her kidney to pay her son's medical fees after he caught pneumonia. "Many times, I felt I had lost the confidence to live," she said. She was found by Little Bird, a grassroots organisation for migrant workers, which subsidised the hospital bill and referred her to a counsellor. Later, it helped her find a husband who accepted the baby. Her marriage led to reconciliation with her parents, who had refused to see her.

'There are hints of a shift in official attitudes. Perhaps as a result of last year's controversy, Hubei has now taken one step towards fairer treatment of unmarried mothers. It has ordered health authorities to issue free birth certificates, even if the mother is not married. It is thought to be the first province to guarantee this right, rather than leaving it to officials' discretion. Children need the birth certificate to obtain a hukou, or household registration, which is key to accessing basic services such as health and education.

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<sup>43</sup> CHRD - Chinese Human Rights Defenders; Rights Defense Network; Civil Rights & People's Livelihood Watch; Human Rights Campaign in China; Women Rights Defenders Support Group; Smiley Public Interest Group et al.: Civil Society Report Submitted to the Committee on the Elimination of Discrimination Against Women, 30 September 2014, paragraph 40 [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/CHN/INT\\_CEDAW\\_NGO\\_CHN\\_18362\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/CHN/INT_CEDAW_NGO_CHN_18362_E.pdf) Date accessed: 6 May 2015.

'Gu Baochang, an expert on demographics at Renmin University, said the announcement showed that family-planning authorities were gradually making more efforts to serve unmarried parents.

"It is not meant to encourage women to give birth outside marriage but to protect the rights of unmarried mothers and their children," said Lu Ying, a gender research expert from Sun Yatsen University.

'Xiao said she would never encourage women to become single mothers: "It is really, really tough," she said. But prejudice led to mothers abandoning their babies, she warned, calling for sympathy and understanding for women in her situation. "We already have so much pressure in life. If society discriminates against us too, it is really hard to live," she said.'<sup>44</sup>

- 5.6.6 A 'Women News Network' article of June 2013 referred to Wei Wei, a social worker with Little Bird, an NGO that provides help for migrant workers, stating, 'The biggest problem they [unmarried mothers] face once their partner abandons them is the issue of hukou, they are not able to get a household registration for the child. They also find themselves in very hard economic condition, because the original family excludes them, they do not have any income and it's hard for them to find a job.' The same article described the situation for a single mother, Yi Ran, whose son was three years old, stating, 'Without the household registration he will not be allowed into kindergarten and each time he falls ill, medical fees are higher than average. But as she does not possess any marriage certificate, the young woman is not able to apply for registration.' The same article also referred to Yang, an officer at the All China Women's Federation in Beijing's Dongcheng District, who stated that unwed mothers rarely seek help at government-sponsored agencies like theirs, saying, 'We basically do not have a service for unmarried mothers because there is not this need in society and nobody asks us for this kind of help.'<sup>45</sup>

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## 5.7 Unregistered children ('black children')

- 5.7.1 The Australia Refugee Review Tribunal noted in a report dated May 2013 that "China has a comprehensive system for birth registration" which requires parents (or other responsible persons) to report new children to the appropriate "household registration [hukou] organ" within a month of their birth. ...Reports note that there are a significant number of children who have not been registered for various reasons. ...Some parents choose not to

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<sup>44</sup> The Guardian. For Chinese women, unmarried motherhood remains the final taboo, dated 20 January 2014 <http://www.theguardian.com/world/2014/jan/20/china-unmarried-motherhood-remains-final-taboo> Date accessed: 6 May 2015.

<sup>45</sup> Women News Network Secrecy, guilt & survival under pregnancy & childbirth haunt China's single women, 30 June 2013 <http://womennewsnetwork.net/2013/06/30/secrecy-pregnancy-chinas-single-women/> Date accessed: 10 June 2015

register out of plan children in order to avoid “punishment for unsanctioned births” or because they may be worried about being fined.’<sup>46</sup>

5.7.2 Freedom House noted in its report, ‘Freedom in the World 2015,’ that unregistered children could not obtain hukou status [household registration] without the payment of substantial fines.<sup>47</sup>

5.7.3 The Network of Chinese Human Rights Defenders and a Coalition of NGOs provided the following information in April 2014:

‘We are gravely concerned about the lack of legal status of many individuals in China who are not allowed to be registered and hence have no household registration permits of any kind (known as the so-called “black household” or “black population”). They are effectively deprived of the right to social security benefits and services. Children without household registration are not entitled to state-provided social benefits, including medical care, education, housing, and poverty alleviation subsidies. Individuals who lack registration may even be prohibited from traveling outside the area where they live or obtaining a marriage license. Children are barred from obtaining any household registration permit if they are orphans (or have no legal documentation establishing parentage), have parents who lack household registration, or are born “out of birth quota” under the family planning policy, while their families cannot afford to pay fines required for obtaining a birth certificate. Even those born outside of a birth quota and have obtained a birth certificate may still not be allowed to register later, since their families may be unable to afford to pay a huge fine for violating the family planning policy. The fine is known as a “social rearing fee.” The “social rearing fee” system lacks transparency and is highly vulnerable to corruption, with collected fines often ending up in the coffers of local governments instead of being made available to the penalized children and their families.’<sup>48</sup>

5.7.4 An Immigration and Refugee Board of Canada document of October 2014, citing the annual report 2013 by the US Congressional-Executive Commission on China, reported that unregistered children are commonly referred to as ‘illegal residents’ (‘heihu’) and face considerable difficulty

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<sup>46</sup> Australia: Refugee Review Tribunal, China: Family Planning, 8 March 2013, 5. Unregistered children (black children) p.16  
<http://www.refworld.org/docid/51f61ea04.html> Date accessed: 10 June 2015.

<sup>47</sup> Freedom House. Freedom in the World 2015. China; Personal autonomy and individual rights; published 28 January 2015 <https://freedomhouse.org/report/freedom-world/2015/china> Date accessed: 28 April 2015

<sup>48</sup> Chinese Human Rights Defenders; Rights Defense Network; Civil Rights & Livelihood Watch; Civil and Political Rights Monitor; Smiley Gongyi Group; Justice Policy Institute; Rights Defenders Co-op Support Group et al.: Report Submitted to the Committee on Economic, Social and Cultural Rights for its Review at the 52nd Session of the Second Report by the People's Republic of China on Its Implementation of the International Covenant on Economic, Social and Cultural Rights, April 2014 (published by CESCR) paragraphs 22-23. <http://www.chrdnet.com/2014/04/report-submitted-by-the-network-of-chinese-human-rights-defenders-a-coalition-of-ngos-to-the-committee-on-economic-social-and-cultural-rights-for-its-review-at-the-52nd-session-of-the-second-report/> Date accessed: 22 June 2015.

accessing social benefits typically afforded to registered citizens, including health insurance, public education, and pensions.<sup>49</sup>

5.7.5 However, one of the country experts providing country information for the Upper Tribunal in the AX Country Guidance case, Dr Sheehan, stated that the authorities no longer refused to register a child on the family hukou when the birth had been unauthorised as it was recognised that this would mean punishing a child unfairly. However, parents sometimes did not register a birth because a fee would have to be paid for an unauthorised child. If the parents paid the fee for an unauthorised birth, the child would be registered on the family hukou. She further noted that, 'It was the absence of a hukou which caused the educational and other difficulties relied upon: if the parents were prepared or able to discharge the SUC for any unauthorised births, the child would be registered and the difficulties would not occur, although parents with more than one child would not be entitled to the additional benefits which a SCP Certificate attracted.'<sup>50</sup>

5.7.6 The 2014 U.S. Congressional-Executive Commission on China report noted: 'During this reporting year [autumn 2013 to autumn 2014], authorities in some localities denied birth permits and hukous for children whose parents disobeyed local family planning requirements. In one such example, an April 2014 Shanghai Daily article reported that officials in Guangzhou municipality withheld birth permits for families who were eligible to have a second child, requiring that mothers agree to be sterilized after the birth before they would issue the permit. Higher level officials later reported that this requirement was not in accordance with the law and that family planning staff needed additional training.'<sup>51</sup>

See Legislation for further information about the registration process.

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## 5.8 Sex selection

5.8.1 The OECD Development Centre's Social Institutions and Gender Index for 2014 noted, 'one-child policies, combined with a social preference for sons, are also reported to result in sex-selective abortions, where women may be

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<sup>49</sup> Canada: Immigration and Refugee Board of Canada. 'China: Family planning laws, enforcement and exceptions, particularly in the provinces of Guangdong and Fujian; reports of forced sterilization of men and women; consequences to officials who force women to have an abortion; whether family planning authorities interact with the Public Security Bureau in enforcing their decisions.' (October 2012-September 2014), 16 October 2014, CHN104963.E. <http://irb-cjsr.gc.ca/Eng/ResRec/RirRdi/Pages/index.aspx?doc=455557&pls=1> Date accessed: 1 May 2015.

<sup>50</sup> UK Upper Tribunal (Immigration and Asylum Chamber). AX (Family Planning Scheme) China CG [2012] UKUT 00097 (IAC), promulgated 16 April 2012 (paragraph 79). [http://www.bailii.org/uk/cases/UKUT/IAC/2012/00097\\_ukut\\_iac\\_2012\\_ax\\_china\\_cg.html](http://www.bailii.org/uk/cases/UKUT/IAC/2012/00097_ukut_iac_2012_ax_china_cg.html) Date accessed: 21 May 2015.

<sup>51</sup> 2014 U.S. Congressional-Executive Commission on China, Annual report, 9 October 2014, Population Planning, Punishments for Noncompliance (p. 4) [http://www.cecc.gov/sites/chinacommission.house.gov/files/do/ARcuments14Population%20Planning\\_final.pdf](http://www.cecc.gov/sites/chinacommission.house.gov/files/do/ARcuments14Population%20Planning_final.pdf) Date accessed: 10 June 2015

forced by their family or community to have an abortion when it is discovered that they are carrying a female foetus.<sup>52</sup>

#### 5.8.2 The same report stated:

'China has an abnormally high ratio of men to women in its population. The sex ratio at birth is 1.12 male-to-female; which increases to 1.17 male(s)/female for children 0-14 years. The sex-ratio for the working age population (15-64) is 1.06. This is primarily the result of a combination of the one-child policy and skewed economic growth, which has been linked to a social preference for sons that in turn has resulted in female sex-selective abortions, female infanticide or general neglect of girls in early childhood. While these practices are more prevalent in rural areas, they are also increasing in urban centres. A United Nations multi-agency publication reports that, in one survey in rural China, 36% of married women acknowledged undergoing sex-selective abortions. While there is some evidence of a gradual shift in attitudes, women in China continue to face enormous pressure to give birth to sons, particularly in rural areas.

'The abnormally high sex ratio data across age groups, the highest in South East Asia, indicates that China is a country of still very high concern in relation to missing women, exacerbated by the one-child policy, although it has been improving. The United Nations Development Programme (UNDP) reports that as of 2007, China had approximately 42.6 million missing women and numbers increased in absolute terms; with over one million missing in 2008 alone.

'The Chinese government has taken measures to try and address this imbalance and reduce son bias. These include provisions in the 2002 National Population and Family-planning Law banning the use of ultrasounds to determine the sex of a foetus, and sex-selective abortions, as well as mistreatment and abandonment of female infants, and discrimination against women who give birth to girls. The Government also reports that it has instituted national and local-level campaigns to encourage people to change their attitudes regarding the benefits of male over female offspring, and providing financial assistance to couples who only have girl children. However, the US Department of State notes that the bans on misusing ultrasounds to determine the sex of a foetus, and on sex-selective abortion, only carry administrative (rather than criminal) penalties; and a recent evaluation indicated that in some counties the campaign was introduced without local support and contradicted existing social policies such as those relating to land and inheritance rights.<sup>53</sup>

#### 5.8.3 The U.S. Congressional-Executive Commission on China report 2014, covering the situation from autumn 2013 to autumn 2014, further noted:

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<sup>52</sup> OECD Development Centre Social Institutions and Gender Index: China 2014; Restricted physical integrity <http://genderindex.org/country/china> Date accessed: 28 April 2015

<sup>53</sup> OECD Development Centre Social Institutions and Gender Index. China 2014; Son bias <http://genderindex.org/country/china> Date accessed: 28 April 2015

'Reports have also suggested a link between China's large number of "surplus males" and an increase in the trafficking of women and children for forced marriage or commercial sexual exploitation. ... Reports indicate that China's population planning policies have contributed in part to what the state-controlled Global Times has called China's "massive and lucrative baby market," as a traditional preference for sons combined with birth limits is thought to encourage a black market for adoptions. In January 2014, a court in Shaanxi province handed down a suspended death sentence to an obstetrician involved in the illegal acquisition and sale of seven babies under her care. The doctor allegedly convinced parents to relinquish their newborn children, claiming they were seriously ill, and then sold them to brokers. Further contributing to illicit adoptions, parents who are unable to afford "social maintenance fees" for "out-of-plan" pregnancies, in some cases, give away their children. In one such case, in Jiangxi province, a couple pregnant with their third child attempted to give away their baby through an online adoption forum after determining they could not afford to pay the necessary family planning fines to secure the child's hukou. The adoption forum was later shut down, and its founder arrested, during a February 2014 crackdown on fraudulent adoptions.'<sup>54</sup>

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<sup>54</sup> 2014 U.S. Congressional-Executive Commission on China, Annual report, 9 October 2014, Population Planning, Official Campaigns (p. 2) [http://www.cecc.gov/sites/chinacommission.house.gov/files/documents/AR14Population%20Planning\\_final.pdf](http://www.cecc.gov/sites/chinacommission.house.gov/files/documents/AR14Population%20Planning_final.pdf) Date accessed: 10 June 2015

# Version Control and Contacts

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