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RRT RESEARCH RESPONSE

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Questions

- 1. What is the birth control policy in Guangdong for females? Are women forced to have IUDs inserted?**
- 2. What is the birth control policy in Guangdong for males? Are men forced to have vasectomies?**
- 3. How much would a couple have to pay in Guangdong to register a second child?**
- 4. Is it possible for the eldest son not to be registered at birth and the couple to pay a fine for his registration in order for him to receive free education?**

RESPONSE

- 1. What is the birth control policy in Guangdong for females? Are women forced to have IUDs inserted?**
- 2. What is the birth control policy in Guangdong for males? Are men forced to have vasectomies?**

Information on the above questions is provided within the sub-headings of the Birth control policy of Guangdong and Forced sterilisation.

Birth control policy of Guangdong

The birth control policy of Guangdong, as set out in the 2002 provincial family planning regulations, state that provincial family planning includes public awareness, education and birth control. It indicates that it is the duty of a wife and husband to practise family planning. The regulations provide for family planning work to be coordinated with increased

educational and employment opportunities for women, improving their health and raising their status. Couples are encouraged to delay marriage and bearing children. The regulations provide for contraception to be a primary component of family planning. Family planning services agencies are responsible for contraceptive and birth control services and information services. The regulations also indicate that the first contraceptive choice for a woman who has given birth to one child is an intrauterine device (IUD). In a situation where there are already two or more children, the first choice is a ligation for either the husband or wife. Vasectomies are not mentioned in the 2002 Guangdong family planning regulations, however, the earlier 1998 provincial regulations refer to vasectomies, together with tubal ligations, as a form of contraception. In respect of regulations in China, however, sources note that their interpretation varies widely from place to place.

According to the 2002 Guangdong family planning regulations (translated by the Public Works and Government Services, Canada) both a wife and husband have a duty to practise family planning:

Article 3: Population and family planning work shall be centered on public awareness and education, birth control and consistently sustained activity and shall ensure procedural legality, self-management by villagers (residents), high-quality service, policy promotion and a comprehensive approach to issues.

Population and family planning work shall be coordinated with developing the economy, helping the population prosper through hard work and building strong [lit. “civilized”] and happy families.

Population and family planning work shall be coordinated with increasing educational and employment opportunities for women, improving women’s health and raising the status of women.

Article 4: Both husband and wife have the duty to practise family planning as prescribed by law, and their lawful rights in terms of carrying out family planning shall be protected by law. It is an offence not to practise family planning (*Population and Family Planning Regulations of the Province of Guangdong* (Promulgated 25 July 2002, Effective 1 September 2002), Articles 3- 4 – Attachment 1).

The Guangdong regulations encourage marriages to be delayed. A married woman who has her first child after 23 years of age is deemed to have delayed having a child:

Article 18: Citizens shall be encouraged to delay marrying and bearing children, and [the principle of] couples having [just] one child shall be advocated.

A person who marries for the first time at least three years past the legal marriage age shall be deemed to have delayed marriage. A married woman who has her first child after the age of 23 shall be deemed to have delayed bearing a child (*Population and Family Planning Regulations of the Province of Guangdong* (Promulgated 25 July 2002, Effective 1 September 2002), Article 18 – Attachment 1).

Articles 25-26 of the provincial regulations refer to contraception and family planning. It states that the first choice contraceptive for a woman of child-bearing age who has given birth to one child shall be “an intrauterine device” (IUD). In a situation where there are already two or more children the first choice, for either the wife or husband, shall be a ligation.

Article 26 also states that where a woman becomes pregnant outside the provisions of the regulations, unspecified “remedial measures” are to be taken. The articles are:

Article 25: Contraception shall be the primary component of family planning.

Operations for the purpose of contraception and birth control shall be conducted in such a way as to ensure the safety of the person being operation upon.

In order to prevent and decrease the number of unwanted pregnancies, the family planning administrative department at each level of government shall create the prerequisite conditions and advise couples of child-bearing age in how to make an informed choice about contraceptive measures. The first choice for a woman of child-bearing age who has given birth to one child shall be an intrauterine device. Where there are already two or more children, the first choice shall be a ligation for either the husband or wife.

Article 26: Couples of child-bearing ages shall consciously implement family planning measures for contraception and birth control and accept guidance in the field of family planning technical services.

Where a woman becomes pregnant outside the provisions of these Regulations, remedial measures shall be taken as early as possible (*Population and Family Planning Regulations of the Province of Guangdong* (Promulgated 25 July 2002, Effective 1 September 2002), Articles 25-26 – Attachment 1).

Although the 2002 Guangdong family planning regulations do not refer to vasectomies, Article 18 of the earlier 1998 regulations refer to undergoing vasectomies as follows:

In order to protect women’s health, couples who are fertile but have not planned to have children should adopt contraceptive measures. Women of reproductive age who have already had one child should choose Intra-uterine device (IUD) as their first choice of contraceptive measure; for couples (sic) who have 2 or more children, **either one of them should choose tubal ligation or vasectomy** as their first choice of contraceptive measure; corrective measures should be applied to pregnancy outside of planning as soon as possible.

For women of reproductive age who have been assessed by higher than village (town) level health care organisations or family planning technical service organisations as not suitable for IUD, **and for couples who have been assessed by higher than county level health care organisations or family planning technical service organisations as not suitable for either tubal ligation or vasectomy**, and have been assessed by higher than county level family planning administrative departments as couples with special considerations, they can use other contraception measures (*Guangdong Province Revised Family Planning Regulations* (Promulgated 18 September 1998, Effective 18 October 1998), Article 18 – Attachment 2).

The 2002 Guangdong family planning regulations (Articles 29-34) refer to “technical services” adopted in connection with family planning and complications arising from birth control operations. The articles state:

Article 29: The people’s government at each jurisdictional level shall adopt measures to set up and enhance a system of pregnancy checks and regular medical contact services, safeguard the rights of citizens to family planning technical services and raise the level of reproductive health among citizens.

Article 30: The family planning technical services network shall consist of family planning technical services agencies (including management stations for family planning devices) and medical and health agencies involved in family planning technical services and shall be incorporated into the regional health plan.

Only after a family planning technical services agency has obtained the Family Planning Technical Services Agency Operating Licence, or a medical or health agency involved in family planning technical services has obtained the Medical Agency Operating Licence may it carry out its particular family planning technical services work within the scope permitted to it.

Individually operated health agencies and persons who do not meet nationally prescribed standards are forbidden from carrying out family planning operations.

Article 31: Family planning technical services agencies and medical and health agencies involved in family planning technical services shall provide persons of child-bearing age **with safe, effective and appropriate contraceptive and birth control services** as well as information and technical services related to producing and raising better babies and ensuring reproductive health. Family planning technical services agencies shall also be responsible for raising public awareness and understanding of the basics of family planning, distributing contraceptive devices and training management personnel.

Article 32: Couples who practise family planning shall have free access to the basic program of family planning technical services prescribed by the state. The particular manner in which they are provided shall be determined by the province.

Where a person puts birth control measures into place after having a child counter to the provisions of these Regulations, the costs of the contraceptive operation shall be borne by that person.

Article 33: The people's government at the county or higher level shall establish a Medical Determination Organization for Complications from Birth Control Operations, which shall be responsible for the work of making determinations concerning birth control operation complications.

The people's government of a local or higher-level city shall establish a Children's Health and Handicap Medical Determination Organization, which shall be responsible for the work of making medical determinations on whether a child has a debilitating disease or handicap.

Article 34: Where complications appear from a birth control operation and these are authenticated by a medical determination organization for complications from birth control operations at the county or higher level and reviewed and confirmed by a county or higher-level family planning administration department, the person shall be treated at a designated medical or health agency or family planning technical services agency, and medical costs shall be covered as stipulated in the first paragraph of Article 32.

Where an employee loses the capacity to work as the result of complications from a birth control operation, this shall be treated in the same manner as an industrial accident. Persons other than the employee who face financial hardship as a consequence shall receive appropriate financial assistance from the local people's government. If a medical accident occurs as a result of the birth control operation or of the treatment of complications from the birth control operation, this shall be handled in accordance with state provisions on dealing with medical accidents (*Population and Family Planning Regulations of the Province of Guangdong* (Promulgated 25 July 2002, Effective 1 September 2002), Articles 29-34 – Attachment 1).

In respect of family planning policy generally in China, the US State Department noted that the law standardises birth limitation policies. However, enforcement varies significantly between regions (US Department of State 2009, 'Arbitrary Interference with Privacy, Family, Home, or Correspondence' in *Country Reports on Human Rights Practices for 2008 – China*, 25 February – Attachment 3).

DFAT has also noted that:

...as with any regulations in China, requirements, interpretation and application of regulations vary widely from place to place or even between different officials at the same office (Department of Foreign Affairs and Trade 2007, *DFAT Report No. 604 – RRT Information Request CHN31325*, 19 February – Attachment 4).

Forced sterilisation

Recent information was not found in the sources consulted of forced sterilisation, including vasectomies, in Guangdong. In China, forcible sterilisation is illegal. For information on forced sterilisation in Guangdong and China see question 2 in: RRT Research & Information 2008, *Research Response CHN33083*, 31 March, pp.3-8/quest. 2 – Attachment 5).

The US State Department reports that forcible sterilisation is illegal by law:

The law prohibits the use of physical coercion to compel persons to submit to abortion or sterilization. However, intense pressure to meet birth limitation targets set by government regulations resulted in instances of local birth-planning officials using physical coercion to meet government goals... Such practices required the use of birth control methods (particularly intrauterine devices and female sterilization, which according to government statistics, accounted for more than 80 percent of birth control methods employed), and the abortion of certain pregnancies (US Department of State 2009, 'Women' in *Country Reports on Human Rights Practices for 2008 – China*, 25 February – Attachment 3).

The US State Department also noted that:

The country's population control policy relied on education, propaganda, and economic incentives, as well as on more coercive measures. Those who violated the child limit policy by having an unapproved child or helping another do so faced disciplinary measures such as social compensation fees, job loss or demotion, loss of promotion opportunity, expulsion from the party (membership in which was an unofficial requirement for certain jobs), and other administrative punishments, including in some cases the destruction of private property. In the case of families that already had two children, one parent was often pressured to undergo sterilization. The penalties sometimes left women with little practical choice but to undergo abortion or sterilization (US Department of State 2009, 'Arbitrary Interference with Privacy, Family, Home, or Correspondence' in *Country Reports on Human Rights Practices for 2008 – China*, 25 February – Attachment 3).

According to the Canadian Immigration and Refugee Board:

According to a China expert from Germany, cited in a 17 March 2006 report on China of the 10th European Country of Origin Information Seminar, the penalties for "unauthorized" pregnancies may include fines as well as loss of employment, housing, or other property (ACCORD 17 Mar. 2006, 15). The expert also states that

[t]he provinces [of] Anhui, Hebei, Heilongjiang, Hubei, Hunan, Jilin, and Ningxia require the termination of pregnancy if the pregnancy violates the family-planning law. The regulations of Fujian, Guizhou, Guangdong, Gansu, Jiangxi, Qinghai, Sichuan, Shanxi, Shaanxi, and Yunnan have other [unspecified] punishments for contraventions. It is very common not only to terminate out-of-plan pregnancies, but also to sterilize one of the parents. (ibid.; see also US 6 Mar. 2007)

... Information on the forced sterilization of men in China was scarce among the sources consulted by the Research Directorate. As previously noted, a China expert from Germany, cited in the China report of the 10th European Country of Origin Information Seminar, stated that “[i]t is very common not only to terminate out-of-plan pregnancies, but also to sterilize one of the parents” (ACCORD 17 Mar. 2006, 15). However, according to a 3 August 2006 report by the Center for Reproductive Rights, “a nonprofit legal advocacy organization dedicated to promoting and defending women’s reproductive rights worldwide” (Center for Reproductive Rights n.d.), sterilization rates among women in China are “significantly” higher than those for males (ibid. 3 Aug. 2006, 7) (Immigration and Refugee Board of Canada 2007, CHN102495.E – *China: Whether forced abortions or sterilizations are still occurring; prevalence and location of forced abortions or sterilizations; reports of forced sterilization of men (2005 – 2007)*, 10 May http://www.irb-cisr.gc.ca/en/research/rir/index_e.htm?action=record.viewrec&gotorec=451207 – Accessed 14 August 2007 – Attachment 6).

Of interest is a 2001 publication in which Susan Greenhalgh and Edwin Winckler refer to people fearing harm from sterilisation:

Until recently, once a couple had a second child (for whatever reason), in principle, sterilization became mandatory for one member of the couple. In many parts of the country, that policy was widely enforced. Birth planning officials follow the same process of persuading or mobilizing couples for sterilization as they do for abortion, but people are much more averse to sterilization than to abortion. In the past, particularly in rural areas, birth planning workers have preferred sterilization as a means of contraception because the operation is effective, permanent, and not reliant on the vigilance and cooperation of the woman herself. **However, especially in the countryside, sterilization is highly unpopular, because people fear practical harm to their health and symbolic diminution of their bodily powers.** Accordingly, in practice, if a couple clearly seemed likely to adhere to the birth planning regulations, the couple might be able to avoid sterilization. However, repeated deliberate attempts to have a third child, or success at having a third child, almost certainly demanded sterilization. In the late 1990s, many provinces revised their birth planning regulations, and reportedly all of those provinces dropped mandatory sterilization of couples with two children, requiring only that they practice “safe and effective” contraception (Greenhalgh, Susan & Winckler, Edwin 2001, *Chinese State Birth Planning in the 1990s and Beyond*, September, Immigration and Naturalization Service, p.7 – Attachment 7).

3. How much would a couple have to pay in Guangdong to register a second child?

Definitive information on payments to register a second child in Guangdong was not found in the sources consulted. Sources suggest that there may be some fee, as distinct from penalties for having an out of plan child, in Guangdong to register a second child. However, no information was found in the sources consulted on the quantum of such an amount.

In a May 2007 report the US State Department reported a case in Guangdong where officials would not register an unauthorised second child in the family’s residency booklet until she

paid a fee even though there are no provisions in the provincial regulations to withhold registration until social compensation fees are fully paid. According to the report:

[104] Guangdong no longer requires couples to obtain a permit before having their first child. However, newly wed couples must attend a birth planning education course within the first three months of their marriage. Afterwards, they submit a form stating that they have completed the course to their local birth planning committee and receive a birth service card.

[105] U.S. Consulate General officers are aware of one case in which a woman pregnant with an **unauthorized second child** lost her job at a local market due to pressure from a local birth planning committee. **After the child was born, officials would not register her child in the family's residency booklet...until she paid a fee, even though there are no provisions in the provincial birth planning regulations that permit local authorities to withhold registration until social compensation fees are paid in full** (US Department of State 2007, *China Profile of Asylum Claims and Country Conditions*, May, paras. 104-106 – Attachment 8).

In February 2007 DFAT, in the context of unmarried mothers registering out of plan children, advised:

The hospital said that they would not issue a birth certificate to a child born in contravention of the family planning policy. However, in China, the birth certificate is not a very important document. A person's ID card and Hukou book are the most crucial for proving identity. **Information from the Guangdong Provincial Population and Family Planning Committee reveals that even if a child born out of plan doesn't have a birth certificate or a family planning card, he can still be legally registered with a Hukou, which is the right of all Chinese citizens. An unmarried mother would be able to register her child as long as she paid the prescribed penalty, which for a first child would include a fine of 3 – 6 times the local annual per capita disposable income** (around RMB100,000 in Guangzhou in 2006) (Department of Foreign Affairs and Trade 2007, *DFAT Report No. 604 – RRT Information Request CHN31325*, 19 February – Attachment 4).

An earlier 2004 DFAT advice concerning unmarried mothers and registering children in Guangdong stated that:

The Guangdong's family planning regulations do not specify penalties or discriminatory treatment directed at children born outside of marriage. **The penalties are directed at the parents...** Following payment of these penalties, all registered children are entitled to access health and educational facilities. **If the penalties are not paid, the child remains unregistered.** Unregistered children may be able to access these services but may be required to pay an extra fee. As with unmarried mothers, being a child born out of wedlock still attracts some degree of social stigma in Guangdong. Children might be subject to bullying or teasing at school, but are unlikely to suffer serious social disadvantage (Department of Foreign Affairs and Trade 2004, *DFAT Report No. 330 – RRT Information Request: CHN16967*, 15 October – Attachment 9).

In China generally, the 1958 household registration regulations refer to citizens who receive registration booklets shall pay the cost of production costs:

Article 22. Residence registration booklets, registers, forms, and certifications shall have their formats regulated in a unified manner by the Ministry of Public Security of the People's Republic of China, and shall be printed under unified dispositions by the public security organs of provinces, autonomous regions, and city districts.

Citizens who receive residence registration booklets and transfer certificates shall pay the costs of production (*Regulations of the People's Republic of China on Residence Registration* 2001, *Chinese Law and Government*, Vol.34, No.3, pp. 52–57, Article 22 – Attachment 10).

On the cost of permanent and temporary household registration in China generally, Fei-Ling Wang, in the book *Organizing Through Division and Exclusion: China's Hukou System*, writes:

Cost of basic registration. Permanent *hukou* registration is often a routine formality, normally requiring only a trip to the local police station or *hukou* office. An uncomplicated registration usually takes a few hours to complete. It is similar to the time needed for the *propiska* (registration permit) in the former Soviet Union: some four to twenty hours to prepare the documents and get to the police station, and another three or four hours to register with the police. The cost for the paperwork and the documents issued, which can be as low as 6 Yuan RMB for a simple registration and a new *hukou* booklet, is largely nominal and nationally uniform. Temporary *hukou* registration, however, carries additional fees and is more costly, often complicated, and thus time-consuming. The penalties for not registering properly or for committing fraud include detention, fines, forced repatriation, and public denunciation (Wang, Fei-Ling 2005, *Organizing Through Division and Exclusion: China's Hukou System*, Stanford University Press, Stanford, pp.78, 226/footnote 72 – Attachment 11).

The Canadian Immigration and Refugee Board, on unregistered children obtaining a *hukou*, states:

In her book *Wanting a Daughter, Needing a Son*, Kay Ann Johnson, professor of Asian studies and politics at Hampshire College, Massachusetts, states that whether an unregistered child is able to obtain a *hukou*, “and with what consequences,” depends on local practice (Johnson 2004, 121). The author notes that in many places in China, it is “relatively easy” to purchase a *hukou*, though these *hukou* may not be recognized in all places as equivalent to the regular *hukou* (ibid.). She further indicates that in some places, *hukou*-less children may be able to attend school without additional fees and obtain medical care (ibid, 122) (Immigration and Refugee Board of Canada 2007, *CHN102496.E – China: Treatment of “illegal,” or “black,” children born outside the one-child family planning policy; whether unregistered children are denied access to education, health care and other social services (2003 – 2007)*, 26 June http://www.irb-cisr.gc.ca/en/research/rir/index_e.htm?action=record.viewrec&gotorec=451354 – Accessed 19 July 2007 – Attachment 12).

According to a 2005 article in the *Reproductive Health* journal:

The Chinese family planning regulations do not include the concept of an “illegal child” (i.e. a child born out of an “illegal pregnancy”), and the law prohibits discrimination against children born outside marriage. However, children from illegal pregnancies may not be registered or treated equally until their parents pay the fines imposed as punishment... (Hemminki, Elina et al. 2005, ‘Illegal births and legal abortions – the case of China’, *Reproductive Health*, 11 August, p.3 – Attachment 13).

In an earlier 2001 publication Susan Greenhalgh and Edwin Winckler write the following on registering unplanned children:

Because “unplanned children” is not a bureaucratic category for data collection, we have little idea how many unplanned children there are, though their numbers are certainly large. But we do have some sense of who they are. Given the strong son preference in rural China, the vast majority are probably girls. The evidence available suggests that most of the unplanned children are farm children who still live in the rural areas or have migrated, alone or with their families, to the cities. In a reversal of the usual situation, the urban children may fare more poorly than the rural. In the countryside, the household register is a less central mediator of state services than in the past; **in addition, registration for the unplanned child may be negotiated with sympathetic local officials. Reports from China suggest that some are “legalized” – or entered in the register – after payment of a fine, while in other cases cadres prefer to keep unplanned children out of the register to make their localities’ planned birth rates look higher than they really are.** In the cities, however, registration continues to provide access to the full range of state services and welfare benefits. The result is that unregistered persons, in particular, rural members of the “floating population,” enjoy much less than full citizenship rights (Greenhalgh, Susan & Winckler, Edwin 2001, *Chinese State Birth Planning in the 1990s and Beyond*, September, Immigration and Naturalization Service, pp.38-39 – Attachment 14).

A 1998 study states in connection with adopted children obtaining a *hukou*:

In fact, whether or not a child can get a household registration, and with what consequences, depends on local practice and varies greatly. In major urban areas, having a household registration is particularly important in all of these respects; without it, obtaining a formal education may be virtually impossible. It is also particularly difficult for urban adoptive parents to obtain this legal status for their adopted children even when they acknowledge the adoption to the authorities and try to register the child. Even adoptive parents who registered adoptions, sometimes paying fines to do so, reported that authorities made it difficult for them to obtain a household registration for the adopted child. **Yet in some of our cases, children whose adoptions did not fit the legal requirements nonetheless got properly registered. In most cases outside of urban areas, after paying a fine, parents were allowed to register the child, although sometimes the household registration cost an additional large sum and parents might still be required to pay additional fees to send the child to school. Some parents eventually found it possible to simply buy a household registration in another place or in their own place, without paying a birth planning fine or even notifying local cadres of the adoption. “Purchasing a hukou” has become relatively easy in many places, if one can afford the price. The going price for an urban/county town (chengzhen) household registration in the areas we investigated was between 3,000 and 5,000 yuan.** Also in some cases, children without household registration can still attend school without additional fees and get inoculations at local clinics. Nonetheless, the difficulties entailed in being a “hidden child” are serious and widespread enough to constitute a new social problem, creating a class of mostly female children who lack the full protection of the law and equal access to various basic social entitlements (Johnson, Kay et al. 1998, ‘Infant abandonment and adoption in China’, *Population and Development Review*, Vol. 24, No. 3, September, pp. 469-510 – Attachment 15).

The following two reports refer to payments made in registering an out of plan child in Hunan and buying a temporary hukou in Beijing.

The Canadian Immigration and Refugee Board cites a November 2000 article which reported that:

A 16 November 2000 article reported that census takers in China were “squealing on people who [had] violated that ‘one child’ policy” (AFP). According to the article, which was referring to information contained in a report in the *Hunan Commercial Post*, census takers in

Hunan province had provided information to family planning workers who then charged a family 3,500 yuan for “having one child too many” (ibid.). The same article reported that another family had been made to pay 6,000 yuan before census takers would register their “illegally-born child” (ibid.) (Immigration and Refugee Board of Canada 2002, *CHN38921.E – China: The “out-of-plan” birth penalties meted out to residents of Guangdong province generally, or Guangzhou City in particular, arising as a result of the national census of 1-15 November 2000*, 22 April – Attachment 16).

A March 2008 *China Daily* article reported the high cost of buying a *hukou* in Beijing. According to the article the cost of buying a Beijing *hukou* could be “tens of thousands of RMB”. The price for one couple was 200,000 RMB (‘Where should we register our son’s *hukou*?’ 2008, *China Daily*, 6 March http://www.chinadaily.com.cn/china/2008-03/06/content_6513573.htm – Accessed 2 April 2008 – Attachment 17).

4. Is it possible for the eldest son not to be registered at birth and the couple to pay a fine for his registration in order for him to receive free education?

Reports indicate that parents must register their children within one month of birth. Sources indicate that the lack of registration is mainly due to parents seeking to avoid punishment for out of plan births. However, one source notes that *hukou* registration may be the subjective choice of the parents. Unregistered children are reportedly usually registered later. Sources also report that unregistered children do not officially have access to public schools but are able to attend private schools which charge fees.

Sources indicate that parents must register their children in compliance with the national registration system within one month of birth (US Department of State 2009, ‘Children’ in *Country Reports on Human Rights Practices for 2008 – China*, 25 February – Attachment 3; Wang, Fei-Ling 2005, *Organizing Through Division and Exclusion: China’s Hukou System*, Stanford University Press, Stanford, p.70 – Attachment 11; *Regulations of the People’s Republic of China on Residence Registration* 2001, *Chinese Law and Government*, Vol.34, No.3, pp. 52–57, Article 7 – Attachment 10).

On a child not being registered within a month of birth, Yingying Zhou, in a paper presented at a conference in 2005 based on his Master thesis at the University of Washington, states:

...The residence registration organ also permits the registration of an infant should he or she fails to be registered within one month of birth, or should the newborn be in excess of family planning. But the application in the latter case should be in accordance with the relevant regulations (Zhang 2001)... (Zhou, Yingying 2005 ‘Uncovering children in marginalization: Explaining unregistered children in China’, International Union for the Scientific Study of Population XXV International Population Conference Tours, France, July 18-23, 2005 website, 14 June, Part II <http://iussp2005.princeton.edu/abstractViewer.aspx?submissionId=50479> – Accessed 5 December 2008 – Attachment 18).

The “residence registration organ” mentioned above is in Article 3 of the *Regulations of the People’s Republic of China on Residence Registration* as follows:

...Township and town people’s committees and public security substations shall serve as residence registration organs (*Regulations of the People’s Republic of China on Residence Registration* 2001, *Chinese Law and Government*, Vol.34, No.3, pp. 52–57, Article 3 – Attachment 10).

Zhou also writes on situations where children are not registered:

I categorize two types of factors that might deter the hukou registration of infants: **one has to do with the subjective choice of parents – parents intentionally want to avoid the registration of their children, which may suggest that the child is of unwanted birth**; the other has to do with the objective, mostly the institutional barriers that make registration inaccessible. Then community, parent, and child characteristics exert various effects that can be classified into the two types... (Zhou, Yingying 2005 'Uncovering children in marginalization: Explaining unregistered children in China', International Union for the Scientific Study of Population XXV International Population Conference Tours, France, July 18-23, 2005 website, 14 June, Part III <http://iussp2005.princeton.edu/abstractViewer.aspx?submissionId=50479> – Accessed 5 December 2008 – Attachment 18).

And:

Analyses specifically focusing on “black children”, or in another word, unregistered children, as introduced above, attribute un-registration mainly to out-of-plan births (Zhang 1988, Fan and Huang 1989). It is argued that, in order to avoid punishment for non-sanctioned births, some parents try to hide the illegitimately born infants by circumventing the birth registration. According to a report in the People’s Daily (Zhang 1988), Hebei, Shandong, Jiangxi, and Guizhou province, each had more than thousands kids with their registration unsettled due to out-of-plan births, as far back as in the late 1980s. Another report in Xin Guancha [New Observance] estimated that the “black population” in China totaled almost 20 million (Fan and Huang 1989). Both the two articles relate the large unregistered population to births given in excess of the family planning regulations. Apart from individual intentional concealment of out-of-plan births, it was reported in the articles that some local governments, in order to “achieve” their family planning objectives, refuse to register children born in excess of birth planning regulations. Even though such measures were criticized by the Central Disciplinary Commission of the Party, refusing household registration for unauthorized children continued to be practiced in many regions as unwritten laws (Scharping 2003).

According to these reports in national media, **three situations mainly shape unregistration. Firstly**, in order to avoid punishment, parents of higher-order births intentionally refuse to apply for registration for their out-of-plan children. **Secondly**, surging rural-urban migration results in a large number of floating population left unattended by the state system of both family planning and household registration. They usually have multiple births, and have difficulty accessing the registration sites, thus may unintentionally fail to report their births. **Thirdly**, given the autonomy of local governments in terms of family planning implementation, many officials reject applications of registration for out-of-plan births, either as a punishment or as a means of improving their record of family planning work (Zhou, Y. 2005 'Uncovering children in marginalization: Explaining unregistered children in China', International Union for the Scientific Study of Population XXV International Population Conference Tours, France, July 18-23, 2005 website, 14 June <http://iussp2005.princeton.edu/abstractViewer.aspx?submissionId=50479> – Accessed 5 December 2008 – Attachment 18).

Zhou also notes that local officials may block the household registration of unplanned births:

Household registration is connected to birth planning because local officials tend to block the registration of unplanned births. The census, in principle, counts all persons regardless of registration status, and thus should contain a more complete count of population than the household registers. Nonetheless, Chinese census counts are closely linked to the household registration system (Lavely 2001). And both parents and officials may have reasons to hide

unregistered children from census enumerators...(Zhou, Yingying 2005 'Uncovering children in marginalization: Explaining unregistered children in China', International Union for the Scientific Study of Population XXV International Population Conference Tours, France, July 18-23, 2005 website, 14 June, Part I <http://iussp2005.princeton.edu/abstractViewer.aspx?submissionId=50479> – Accessed 5 December 2008 – Attachment 18).

Various sources report that the lack of registration is mainly due to parents seeking to avoid punishment for out of plan births.

Wang notes that:

The strict family planning and birth control policy that commonly levies heavy fines against those who exceed their authorized birth quota is chiefly responsible for nonregistration of newborns, especially in rural areas...(Wang, Fei-Ling 2005, *Organizing Through Division and Exclusion: China's Hukou System*, Stanford University Press, Stanford, p.224/footnote 44 – Attachment 11).

The Canadian Immigration and Refugee Board cites sources as follows:

In general, China's family planning regulations limit parents in urban areas to one child and those in rural areas to two, if the first child is a girl (*China Daily* 2 Mar. 2007; *The Christian Science Monitor* 27 Feb. 2007; *The Guardian* 24 Jan. 2007; IPS 21 Mar. 2006). **Couples exceeding their birth quota may face penalties, including "stiff" fines** (*The Guardian* 16 Dec. 2004; Wang 2005, 224; Freedom House 2006). For example, in the province of Guangdong, urban couples with "one more child than permitted" may have to pay up to six times the average annual per capita disposable income of their city or district, while rural parents may have to pay up to six times the average per capita net income of their township (China 25 July 2002). **As a result, many births in China are not registered** (*The Guardian* 16 Dec. 2004; Wang 2005, 224; Johnson 2004, 120) (Immigration and Refugee Board of Canada 2007, CHN102496.E – *China: Treatment of "illegal," or "black," children born outside the one-child family planning policy; whether unregistered children are denied access to education, health care and other social services (2003 – 2007)*, 26 June http://www.irb-cisr.gc.ca/en/research/rir/index_e.htm?action=record.viewrec&gotorec=451354 – Accessed 19 July 2007 – Attachment 12).

The *Reproductive Health* states that "Hidden children are usually registered later, sometimes as immigrants" (Hemminki, Elina et al. 2005, 'Illegal births and legal abortions – the case of China', *Reproductive Health*, 11 August, p.4 – Attachment 13).

Sources have commented on the relationship between household registration and receiving an education.

According to Canadian Immigration and Refugee Board sources an unregistered child may not be able to access education. It states:

As a consequence of not being registered at birth, "black" children are not entered into their family's *hukou* [household registration] records (Wang 2005, 71). According to an expert on China who lives in Germany, cited in the report on China of the 10th Country of Origin Information Seminar in Budapest, Chinese authorities often do not allow "black" children to register and do not issue them identity documents (ACCORD 17 Mar. 2006, 15; see also *Brooklyn Journal of International Law* 27 Dec. 2004, 355). An 11 August 2005 article in *Reproductive Health*, a "peer-reviewed online journal focusing on all aspects of human

reproduction” (*Reproductive Health* n.d.), similarly notes that children born outside of China’s family planning regulations may not be registered by the authorities or be “treated equally,” unless their parents pay a fine (ibid. 11 Aug. 2005, 3). **Without registration, “black children” may not be able to access** medical care, **education** or employment, particularly in urban areas (ibid.; see also France 27 Jan. 2003, 10; Johnson 2004, 121; *Brooklyn Journal of International Law* 27 Dec. 2004, 356). They may also not have access to other state benefits and services, or be entitled to land allotments (Johnson 2004, 121) (Immigration and Refugee Board of Canada 2007, *CHN102496.E – China: Treatment of “illegal,” or “black,” children born outside the one-child family planning policy; whether unregistered children are denied access to education, health care and other social services (2003 – 2007)*, 26 June http://www.irb-cisr.gc.ca/en/research/rir/index_e.htm?action=record.viewrec&gotorec=451354 – Accessed 19 July 2007 – Attachment 12).

Wang writes:

Chinese citizens need their *hukou* documentation for **education**, marriage, passports, travel, employment, business licenses, and even to open an account for a public utility, a fixed telephone line, or cellular telephone service. Couples need to show their *hukou* documentation to acquire birth quota (*shengyu zhibiao*) so as not to violate the state policy on family planning and birth control....(Wang, Fei-Ling 2005, *Organizing Through Division and Exclusion: China’s Hukou System*, Stanford University Press, Stanford, p.67 – Attachment 19).

Zhou states:

The household registration system also serves the role of state control through authorizing basic rights to each person registered, entitling them to social welfare and benefits, including access to health care, **education**, or even employment and so forth. Thus, while avoidance of registration becomes somewhat a way to circumvent the family planning regulations and migration controls, it also represents a surrender of basic rights (Zhou, Yingying 2005 ‘Uncovering children in marginalization: Explaining unregistered children in China’, International Union for the Scientific Study of Population XXV International Population Conference Tours, France, July 18-23, 2005 website, 14 June <http://iussp2005.princeton.edu/abstractViewer.aspx?submissionId=50479> – Accessed 5 December 2008 – Attachment 18).

DFAT has also advised that although unregistered children do not officially have access to public schools they are able to attend private schools which usually charge higher tuition fees:

E. *Unregistered children do not officially have access to public schools, but can go to private schools, which usually charge higher tuition fees.* China does not have a national health insurance system for children, so children being registered or unregistered is not relevant to access to medical services. Children’s medical expenses in China are, for the most part, covered by their parents, except if one parent works for a government organisation or state-owned enterprise, in which case the “danwei” (employer) will cover half of the child’s medical expenses in most cases. If the child is an unregistered second child, the parents are not eligible for this benefit (Department of Foreign Affairs and Trade 2007, *DFAT Report 691 – RRT Information Request: CHN32173*, 31 August – Attachment 20).

A previous 2004 DFAT advice concerning unmarried mothers and registering children in Guangdong stated that:

The Guangdong's family planning regulations do not specify penalties or discriminatory treatment directed at children born outside of marriage. The penalties are directed at the parents... Following payment of these penalties, all registered children are entitled to access health and **educational facilities**. If the penalties are not paid, the child remains unregistered. Unregistered children may be able to access these services but may be required to pay an extra fee... (Department of Foreign Affairs and Trade 2004, *DFAT Report No. 330 – RRT Information Request: CHN16967*, 15 October – Attachment 9).

However, a source cited by the Canadian Immigration and Refugee Board on unregistered children obtaining a *hukou* states that “in some places, *hukou*-less children may be able to attend school without additional fees and obtain medical care” (Immigration and Refugee Board of Canada 2007, *CHN102496.E – China: Treatment of “illegal,” or “black,” children born outside the one-child family planning policy; whether unregistered children are denied access to education, health care and other social services (2003 – 2007)*, 26 June http://www.irb-cisr.gc.ca/en/research/rir/index_e.htm?action=record.viewrec&gotorec=451354 – Accessed 19 July 2007 – Attachment 12).

List of Sources Consulted

Internet Sources:

Google search engine <http://www.google.com.au/>
Population and Development Review <http://www.popcouncil.org/publications/pdr/default.htm>
Reproductive Health <http://www.reproductive-health-journal.com/>

Databases:

FACTIVA (news database)
BACIS (DIAC Country Information database)
REFINFO (IRBDC (Canada) Country Information database)
ISYS (RRT Research & Information database, including Amnesty International, Human Rights Watch, US Department of State Reports)
RRT Library Catalogue
Winckler, E. 2002, ‘People’s Republic of China Law on Population and Birth Planning (Documents)’ *Population and Development Review*, Vol. 28, No. 3

List of Attachments

1. *Population and Family Planning Regulations of the Province of Guangdong* (Promulgated 25 July 2002, Effective 1 September 2002).
2. *Guangdong Province Revised Family Planning Regulations* (Promulgated 18 September 1998, Effective 18 October 1998).

3. US Department of State 2009, *Country Reports on Human Rights Practices for 2008 – China*, 25 February.
4. Department of Foreign Affairs and Trade 2007, *DFAT Report No. 604 – RRT Information Request CHN31325*, 19 February.
5. RRT Research & Information 2008, *Research Response CHN33083*, 31 March.
6. Immigration and Refugee Board of Canada 2007, *CHN102495.E – China: Whether forced abortions or sterilizations are still occurring; prevalence and location of forced abortions or sterilizations; reports of forced sterilization of men (2005 – 2007)*, 10 May http://www.irb-cisr.gc.ca/en/research/rir/index_e.htm?action=record.viewrec&gotorec=451207 – Accessed 14 August 2007.
7. Greenhalgh, Susan & Winckler, Edwin 2001, *Chinese State Birth Planning in the 1990s and Beyond*, September, Immigration and Naturalization Service.
8. US Department of State 2007, *China Profile of Asylum Claims and Country Conditions*, May.
9. Department of Foreign Affairs and Trade 2004, *DFAT Report No. 330 – RRT Information Request: CHN16967*, 15 October.
10. *Regulations of the People’s Republic of China on Residence Registration 2001*, *Chinese Law and Government*, Vol.34, No.3, pp. 52–57.
11. Wang, Fei-Ling 2005, *Organizing Through Division and Exclusion: China’s Hukou System*, Stanford University Press, Stanford.
12. Immigration and Refugee Board of Canada 2007, *CHN102496.E – China: Treatment of “illegal,” or “black,” children born outside the one-child family planning policy; whether unregistered children are denied access to education, health care and other social services (2003 – 2007)*, 26 June http://www.irb-cisr.gc.ca/en/research/rir/index_e.htm?action=record.viewrec&gotorec=451354 – Accessed 19 July 2007.
13. Hemminki, Elina et al. 2005, ‘Illegal births and legal abortions – the case of China’, *Reproductive Health*, 11 August.
14. Greenhalgh, Susan & Winckler, Edwin 2001, *Chinese State Birth Planning in the 1990s and Beyond*, September, Immigration and Naturalization Service.
15. Johnson, Kay et al. 1998, ‘Infant abandonment and adoption in China’, *Population and Development Review*, Vol. 24, No. 3, September, pp. 469-510.
16. Immigration and Refugee Board of Canada 2002, *CHN38921.E – China: The “out-of-plan” birth penalties meted out to residents of Guangdong province generally, or Guangzhou City in particular, arising as a result of the national census of 1-15 November 2000*, 22 April.

17. 'Where should we register our son's hukou?' 2008, *China Daily*, 6 March http://www.chinadaily.com.cn/china/2008-03/06/content_6513573.htm – Accessed 2 April 2008.
18. Zhou, Yingying 2005 'Uncovering children in marginalization: Explaining unregistered children in China', International Union for the Scientific Study of Population XXV International Population Conference Tours, France, July 18-23, 2005 website, 14 June <http://iussp2005.princeton.edu/abstractViewer.aspx?submissionId=50479> – Accessed 5 December 2008.
19. Wang, Fei-Ling 2005, *Organizing Through Division and Exclusion: China's Hukou System*, Stanford University Press, Stanford.
20. Department of Foreign Affairs and Trade 2007, *DFAT Report 691 – RRT Information Request: CHN32173*, 31 August.