



Background Paper

China: Family Planning

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1. OVERVIEW

Since the 1970s the Chinese Government has institutionalised and regulated birth planning.² Under this system, Chinese couples have been required to adhere to a body of prescriptions regarding when and under what circumstances they may have a child (or children). These prescriptions include meeting a minimum age for marriage (before which couples are not permitted to have a child) and applying for permission to give birth to a second child. Children born outside the bounds of the family planning program are considered *out of plan* and their parents face penalties for violating the regulations.³

Since 1979, a key principle of the state's family planning program has been the one child policy, which has required couples to limit themselves to one child.⁴ While this is commonly referred to as the one child policy, this has been described by Greenhalgh⁵ and Winckler⁶ in a US Department of Justice report as a 'one-child ideal, not a one-child policy' since there are so many exemptions that the one child standard effectively applies only in urban areas and, notwithstanding this, second children are permitted in urban areas in some circumstances.⁷ While there are exceptions to the policy, it is estimated that two thirds of the population are restricted to having one child according to law.⁸ 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.⁹

² Greenhalgh, S & Winckler, E 2001, *Chinese State Birth Planning in the 1990s and Beyond*, Perspective Series, Immigration and Naturalization Service (INS), US Department of Justice, September, p.43

³ See for example US Department of State 2012, *Country Reports on Human Rights Practices for 2011 – China*, 23 May, Section 6 <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186268>> Accessed 6 February 2013; *Marriage Law of the People's Republic of China 1980* (China), c II art 6, adopted 10 September 1980, amended by Decision Regarding the Amendment of Marriage Law of the People's Republic of China 2001, 28 April 2001, Ministry of Foreign Affairs of the People's Republic of China <<http://www.fmprc.gov.cn/eng/3625/3630/t18322.htm>> Accessed 10 May 2006

⁴ Greenhalgh, S & Winckler, E 2001, *Chinese State Birth Planning in the 1990s and Beyond*, Perspective Series, Immigration and Naturalization Service (INS), US Department of Justice, September, p.43

⁵ Susan Greenhalgh is a Professor of Anthropology at the University of Harvard, United States.

⁶ Edwin A. Winckler is a Senior Research Scholar at Columbia University, United States.

⁷ Greenhalgh, S & Winckler, E 2001, *Chinese State Birth Planning in the 1990s and Beyond*, Perspective Series, Immigration and Naturalization Service (INS), US Department of Justice, September, p.3

⁸ Wang, F 2005, 'Can China Afford to Continue Its One-Child Policy?', *Asia Pacific Issues*, March <<http://www.eastwestcenter.org/fileadmin/stored/pdfs/api077.pdf>> Accessed 7 February 2013

⁹ Xiaofeng, G 2007 'Most people free to have more child', *China Daily*, 11 July <http://www2.chinadaily.com.cn/china/2007-07/11/content_5432238.htm> Accessed 16 June 2010; Greenhalgh, S & Winckler, E 2001, *Chinese State Birth Planning in the 1990s and Beyond*, Perspective Series, Immigration and Naturalization Service (INS), US Department of Justice, September, p.3; *Population and Family Planning Regulation of Fujian Province* (China), art 10, promulgated 26 July 2002 (effective 1 September 2002), UNHCR Refworld <<http://www.unhcr.org/refworld/pdfid/4242b7394.pdf>> Accessed 28 June 2011; *Population and Family Planning Regulations of the Province of Guangdong*, promulgated 28 November 2008 (effective 1 January 2009), Westlaw <<http://app.westlawchina.com/maf/china/app/document?&docguid=i3cf76ad3000001211b6676b2e9ddc691&hitguid=i3cf76ad3000001211b6676b2e9ddc691&srguid=ia744c0670000013d136c2e3a2b03e1a3&spos=1&epos=1&td=1&crumb-action=append&context=3&lang=en>> Accessed 13 March 2012; Department of Foreign Affairs and Trade 2007, *DFAT Report 691 – RRT Information Request CHN32173*, 31 August

Although there have been shifts in the policy and its implementation over the years, limits on births remain central to China's family planning program and are enforced across the country.¹⁰ Family planning policy in China is not, however, 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.¹¹ 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.¹²

In respect of family planning policies and their implications for RRT applicants, advice from the Department of Foreign Affairs and Trade (DFAT) of January 2010 notes that China's family planning policy is under continual revision and can change with little notice:

China's Family Planning Policy is under continual revision. The Central Government has permitted provincial and municipal authorities greater levels of policy planning autonomy in relation to this issue

The formulation, interpretation and application of family planning policies can change with little notice. Updated policies, or interpretations of policies, are usually enacted through internal documentation or edicts which are not publically available. Chinese authorities strongly recommend that individuals contact relevant authorities to confirm regulations specific to each case.¹³

As such, this paper reflects the tribunals' current understanding of Chinese law, drawing on publicly available information and DFAT reports.

2. FAMILY PLANNING LEGISLATION

National family planning legislation was first promulgated in China on 29 December 2001, with the law becoming effective on 1 September 2002. Prior to this, provincial legislation provided the main legal basis for family planning.¹⁴ The introduction of a national policy obliged, at least in principle, provincial legislatures to revise and amend local regulations to reflect national law.¹⁵

¹⁰ Department of Foreign Affairs and Trade 2007, *DFAT Report 691 – RRT Information Request CHN32173*, 31 August; Yardley, J 2008, 'China Sticking With One-Child Policy, *New York Times*, 11 March <http://www.nytimes.com/2008/03/11/world/asia/11china.html?_r=1> Accessed 16 June 2010

¹¹ Department of Foreign Affairs and Trade 2013, *DFAT Report 1473 – MRT/RRT Information Request: CHN41439*, 7 February; Department of Foreign Affairs and Trade 2010, *DFAT Report No. 1104 – China: RRT Information Request: CHN36059*, 12 February; DIAC Country Information Service 2009, *CIS Request CHN9645: Overseas born children of Chinese nationals*, (sourced from DFAT advice of 28 April 2009), 28 April; Winckler, E 2002, 'People's Republic of China Law on Population and Birth Planning (Documents)', *Population and Development Review*, vol. 28, no. 3; Greenhalgh, S & Winckler, E 2001, *Chinese State Birth Planning in the 1990s and Beyond*, Perspective Series, Immigration and Naturalization Service (INS), US Department of Justice, September, p.81; Greenhalgh, S & Winckler, E 2005, *Governing China's Population: From Leninist to Neoliberal Biopolitics*, Stanford University Press, Stanford, p.160

¹² Department of Foreign Affairs and Trade 2010, *DFAT Report 1210 – RRT Information Request: CHN37505*, 12 November; Department of Foreign Affairs and Trade 2013, *DFAT Report 1473 – MRT/RRT Information Request: CHN41439*, 7 February

¹³ Department of Foreign Affairs and Trade 2010, *DFAT Report No. 1104 – China: RRT Information Request: CHN36059*, 12 February

¹⁴ Winckler, E 2002, 'People's Republic of China Law on Population and Birth Planning (Documents)', *Population and Development Review*, vol. 28, no. 3

¹⁵ Greenhalgh, S & Winckler, E 2005, *Governing China's Population: From Leninist to Neoliberal Biopolitics*, Stanford University Press, Stanford, p.160

While the 2002 national family planning legislation establishes national principles and standards for family planning, it continues to devolve power over the implementation of family planning policy to provincial and county level governments.¹⁶ Sub-provincial governments – prefectures, counties and townships – may also have their own local family planning regulations. Regulations at this level are likely to describe how provincial regulations are to be adapted to a particular locality.¹⁷

The national legislation, *Population and Family Planning Law of the People's Republic of China*, is available in English translation at the Chinese Government's official web portal.¹⁸ The articles most relevant to the work of tribunal members are listed in the *Population and Family Planning Regulations in China Resource Guide*. The resource guide also provides links to provincial legislation.

Family planning is also mentioned in the *Constitution of the Peoples' Republic of China*. Article 25 of the Constitution allows the state to promote family planning initiatives for the benefit of population control and Article 49 obligates married couples to practise family planning.¹⁹

3. FAMILY PLANNING FUNDAMENTALS

DFAT has described China's national family planning policy as 'fundamentally consist[ing] of three elements: advocating delayed marriage and delayed child bearing, advocating one child per couple, and allowing eligible couples to have a second child'.²⁰ The official sanction for family planning violations, that is, for having unapproved children, is a social compensation fee.²¹ These fees apply for violations such as having a child out of wedlock and for having more than the approved number of children. Fees vary according to a range of factors such as province, type of violation, personal income, average income of the area, and so on. See Section 4.1 Family Planning Fines – Social Compensation Fees for more information on social compensation fees.

¹⁶ Department of Foreign Affairs and Trade 2013, *DFAT Report 1473 – MRT/RRT Information Request: CHN41439*, 7 February; Winckler, E 2002, 'People's Republic of China Law on Population and Birth Planning (Documents)', *Population and Development Review*, vol. 28, no. 3, Articles 5, 6, 9 & 10

¹⁷ Greenhalgh, S & Winckler, E 2001, *Chinese State Birth Planning in the 1990s and Beyond*, Perspective Series, Immigration and Naturalization Service (INS), US Department of Justice, September, p.82

¹⁸ *Population and Family Planning Law of the People's Republic of China* (China), promulgated 29 December 2001 (effective 1 September 2002) Chinese Government Official Web Portal <http://english.gov.cn/laws/2005-10/11/content_75954.htm> Accessed 2 April 2007

¹⁹ *Constitution of the People's Republic of China 2004* (China), art 25 & 49, promulgated 14 March 2004 (effective 14 March 2004), Westlaw

<<http://app.westlawchina.com/maf/china/app/document?&docguid=i3cf76ad30000011ef35193d7633f2fb8&hitguid=i3cf76ad30000011ef35193d7633f2fb8&srguid=ia744dc1e0000013cc638fada414dd86a&spos=1&epos=1&td=35&crumb-action=append&context=3&lang=en>> Accessed 11 February 2013

²⁰ Department of Foreign Affairs and Trade 2007, *DFAT Report 691 – RRT Information Request CHN32173*, 31 August

²¹ *Population and Family Planning Law of the People's Republic of China* (China), art 41, promulgated 29 December 2001 (effective 1 September 2002) Chinese Government Official Web Portal <http://english.gov.cn/laws/2005-10/11/content_75954.htm> Accessed 2 April 2007; US Department of State 2012, *Country Reports on Human Rights Practices for 2011 – China*, 23 May, Section 6

<<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186268>> Accessed 6 February 2013

3.1 Delayed Marriage

China's laws concerning delayed marriage are intended to help control and delay childbearing.²² 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.²³ 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.²⁴ According to the 2012 US Department of State's report on human rights practices in China, having children out of wedlock is illegal in 'almost all provinces' of China and doing so attracts a social compensation fee.²⁵ The phrasing of the report suggests that having a child out of wedlock may be legal in some provinces of China but it does not say which.

Some provincial governments (including Shandong and Fujian) have established incentives for mature age marriage (defined as marriage between a woman aged at least 23 years and a man aged at least 25 years).²⁶ These incentives are used by the authorities to encourage people to defer marriage and childbirth and may include financial subsidies or the provision of extra leave for government employees.²⁷

3.2 Delayed Childbearing

Family planning regulations at both the national level and at the provincial level for some provinces encourage delayed childbearing. The national regulations offer incentives such as longer maternity leave and 'other welfare benefits' for delayed childbirth.²⁸ With respect to Fujian Province, couples who have been approved to have a second child can only do so four years after the first child was born and after the wife has reached 25 years of age.²⁹ The regulations in Guangdong Province 'encourage' late childbirth but do not specify a time span between births.³⁰

²² US Department of State 2012, *Country Reports on Human Rights Practices for 2011 – China*, 23 May, Section 6 <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186268>> Accessed 6 February 2013

²³ *Marriage Law of the People's Republic of China 1980* (China), c II art 6, adopted 10 September 1980, amended by Decision Regarding the Amendment of Marriage Law of the People's Republic of China 2001, 28 April 2001, Ministry of Foreign Affairs of the People's Republic of China

<<http://www.fmprc.gov.cn/eng/3625/3630/t18322.htm>> Accessed 10 May 2006; see also US Department of State 2012, *Country Reports on Human Rights Practices for 2011 – China*, 23 May, Section 6

<<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186268>> Accessed 6 February 2013

²⁴ Department of Foreign Affairs and Trade 2010, *DFAT Report 1210 – RRT Information Request: CHN37505*, 12 November

²⁵ US Department of State 2012, *Country Reports on Human Rights Practices for 2011 – China*, 23 May, Section 6 <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186268>> Accessed 6 February 2013

²⁶ Department of Foreign Affairs and Trade 2010, *DFAT Report 1210 – RRT Information Request: CHN37505*, 12 November

²⁷ Department of Foreign Affairs and Trade 2010, *DFAT Report 1210 – RRT Information Request: CHN37505*, 12 November; *Population and Family Planning Regulation of Fujian Province* (China), art 38, promulgated 26 July 2002 (effective 1 September 2002), UNHCR Refworld <<http://www.unhcr.org/refworld/pdfid/4242b7394.pdf>> Accessed 28 June 2011

²⁸ *Population and Family Planning Law of the People's Republic of China* (China), art 25, promulgated 29 December 2001 (effective 1 September 2002) Chinese Government Official Web Portal <http://english.gov.cn/laws/2005-10/11/content_75954.htm> Accessed 2 April 2007

²⁹ *Population and Family Planning Regulation of Fujian Province*, art 13, promulgated 26 July 2002 (effective 1 September 2002), UNHCR Refworld <<http://www.unhcr.org/refworld/pdfid/4242b7394.pdf>> Accessed 28 June 2011

³⁰ *Population and Family Planning Regulations of the Province of Guangdong*, art 18, promulgated 28 November 2008 (effective 1 January 2009), Westlaw

<<http://app.westlawchina.com/maf/china/app/document?&docguid=i3cf76ad3000001211b6676b2e9ddc691&hitguid=i3cf76ad3000001211b6676b2e9ddc691&sruid=ia744c0670000013d136c2e3a2b03e1a3&spos=1&epos=1&td=1&crumb-action=append&context=3&lang=en>> Accessed 13 March 2012

Couples wishing to have a child must first ‘register’ their intent with local family planning authorities. It is unclear whether couples must register before the pregnancy or before the birth. While most reports indicate that a ‘birth permit’ system is currently in place, one report states that this requirement has been removed and replaced with a ‘registration’ system. Freedom House noted in 2013 that ‘couples are required to obtain government permission before conceiving’.³¹ The US Department of State reported in 2012 that the National Population and Family Planning Commission of China stated that all provinces have removed the requirement for couples to obtain permission before conceiving; however, provinces may require parents to ‘register’ their pregnancy with local authorities.³² The US Department of State reports that this ‘registration’ requirement ‘can be used as a de facto permit system in some provinces, as some local governments continued to mandate abortion for single women who become pregnant’.³³ The National Population and Family Planning Commission announced in December 2012 that the procedure for applying for a ‘birth permit’ will be simplified for migrant workers (individuals who live and work outside their registered home address).³⁴ Prior to this announcement, couples were required to obtain a ‘birth permit’ from family planning offices in their hometown.³⁵ In 2010, Chinese Human Rights Defenders³⁶ reported that ‘[m]any, if not all, provincial regulations explicitly stipulate that once a couple decide to have their first child, they must obtain a birth permit’.³⁷

Two sources indicate that the annual quota system has now been removed.³⁸ The quota system had previously required some couples to delay pregnancies if the allotted quota for that locality had been exceeded.³⁹ According to Greenhalgh and Winckler, by 2004 ‘all provinces except Tibet had dropped that requirement’.⁴⁰

3.3 Restrictions on Bearing Children out of Wedlock

According to the US Department of State, having children out of wedlock is illegal in almost all provinces of China and attracts a social compensation fee.⁴¹ Furthermore, ‘some local

³¹ Freedom House 2013, *Freedom in the World 2013 – China*, 16 January

<<http://www.freedomhouse.org/report/freedom-world/2013/china>> Accessed 31 January 2013

³² US Department of State 2012, *Country Reports on Human Rights Practices for 2011 – China*, 23 May, Section 6 <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186268>> Accessed 6 February 2013

³³ US Department of State 2012, *Country Reports on Human Rights Practices for 2011 – China*, 23 May, Section 6 <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186268>> Accessed 6 February 2013

³⁴ ‘Birth permit application reform needs to go further’ 2012, *China Daily*, 5 December <http://www.chinadaily.com.cn/opinion/2012-12/05/content_15990074.htm> Accessed 4 February 2013; Yin, L 2013, ‘Birth controlled’, *Global Times*, 27 January <<http://www.globaltimes.cn/content/758452.shtml>> Accessed 4 February 2013

³⁵ ‘Birth permit application reform needs to go further’ 2012, *China Daily*, 5 December <http://www.chinadaily.com.cn/opinion/2012-12/05/content_15990074.htm> Accessed 4 February 2013; Yin, L 2013, ‘Birth controlled’, *Global Times*, 27 January <<http://www.globaltimes.cn/content/758452.shtml>> Accessed 4 February 2013

³⁶ Chinese Human Rights Defenders describes itself as a China-based non-governmental network that promotes human rights and grassroots activism in China.

³⁷ Chinese Human Rights Defenders 2010, “*I Don’t Have a Choice over My Own Body*”, 21 December, p.14 <<http://chrnet.org/wp-content/uploads/2010/12/%E2%80%9CI-Don%E2%80%99t-Have-a-Choice-over-My-Own-Body%E2%80%9D.pdf>> Accessed 13 January 2011

³⁸ US Department of State 2011, *Country Reports on Human Rights Practices 2010 – China*, 8 April, Section 6 <www.state.gov/g/drl/rls/hrrpt/2010/eap/154382.htm> Accessed 22 June 2011; Greenhalgh, S & Winckler, E 2005, *Governing China’s Population: From Leninist to Neoliberal Biopolitics*, Stanford University Press, Stanford, p.154

³⁹ US Department of State 2011, *Country Reports on Human Rights Practices 2010 – China*, 8 April, Section 6 <www.state.gov/g/drl/rls/hrrpt/2010/eap/154382.htm> Accessed 22 June 2011

⁴⁰ Greenhalgh, S & Winckler, E 2005, *Governing China’s Population: From Leninist to Neoliberal Biopolitics*, Stanford University Press, Stanford, p.154

⁴¹ US Department of State 2012, *Country Reports on Human Rights Practices for 2011 – China*, 23 May, Section 6 <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186268>> Accessed 6 February 2013

governments continued to mandate abortion for single women who become pregnant'.⁴² See [Section 4.2 Forced Abortion and Sterilisation](#) for more information on forced abortion.

Whether social compensation fees are waived if couples marry after the birth of a child varies by province. For example, in November 2010, DFAT reported that in Shandong province unmarried couples can marry within 60 days of the birth of their first child to avoid a social compensation fee. If they wed later than 60 days, the couple is required to pay half of the social compensation fee.⁴³ While in Fujian province, DFAT advised in February 2010 that if a couple marries after the birth of a child they will most likely still be charged a social compensation fee. DFAT further noted, however, that in Fujian 'If a child is conceived out of wedlock, but the parents marry prior to the birth of the child, no social compensation fee is charged'.⁴⁴

Parents of children born out of wedlock, particularly young single mothers, may experience social stigmatisation;⁴⁵ however, according to Article 25 of the *Marriage Law of the People's Republic of China*, children who are born out of wedlock should not be discriminated against. The article states that 'Children born out of wedlock shall enjoy the same rights as children born in wedlock. No one may harm or discriminate against them'.⁴⁶ See [Section 5 Unregistered Children \('Black Children'\)](#) for more information on unregistered children.

3.4 Restrictions on the Number of Births – One Child Policy

National family planning legislation advocates that couples should have no more than one child unless they meet certain criteria permitting them to have more.⁴⁷ DFAT has advised that the social compensation fee is implemented by family planning authorities in the case of excess births as 'a second child consumes extra social resources and national investment'.⁴⁸ In some cases, repercussions for family planning violations have been harsh, for example forced sterilisation or abortion (see [Section 4.2 Forced Abortion and Sterilisation](#)). While this policy is referred to as the one child policy, Greenhalgh and Winckler in their September 2001 paper prepared for the US Department of Justice describe this as a 'one-child ideal, not a one-child policy' due to the number of exemptions.⁴⁹ Nevertheless, while there have been shifts in the

⁴² US Department of State 2012, *Country Reports on Human Rights Practices for 2011 – China*, 23 May, Section 6 <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186268>> Accessed 6 February 2013

⁴³ Department of Foreign Affairs and Trade 2010, *DFAT Report 1210 – RRT Information Request CHN37505*, 12 November

⁴⁴ Department of Foreign Affairs and Trade 2010, *DFAT Report No. 1104 – China: RRT Information Request: CHN36059*, 12 February

⁴⁵ Ma, Q, Ono-Kihara, M, Cong, L, Xu, G, Pan, X, Zamani, S, Ravari, S M & Kihara, M 2008, 'Unintended pregnancy and its risk factors among university students in eastern China', *Contraception*, vol. 77, no. 2, p.111; Chang, A 2008, 'China hooking up with love hotels, bars; Young Chinese are embracing their own version of the sexual revolution', *The Toronto Star*, 5 March; Yardley, J 2007 'Today's Face of Abortion in China Is a Young, Unmarried Woman', *The New York Times*, 13 May

<<http://www.nytimes.com/2007/05/13/world/asia/13abortion.html>> Accessed 23 February 2009; Liu, J 2007, 'Mother load Being a single mother is tough – and on the mainland it's even tougher as women battle official discrimination', *South China Morning Post*, 12 March

⁴⁶ *Marriage Law of the People's Republic of China 1980* (China), c II art 6, adopted 10 September 1980, amended by Decision Regarding the Amendment of Marriage Law of the People's Republic of China 2001, 28 April 2001, Ministry of Foreign Affairs of the People's Republic of China

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

⁴⁷ *Population and Family Planning Law of the People's Republic of China* (China), promulgated 29 December 2001 (effective 1 September 2002) Chinese Government Official Web Portal <http://english.gov.cn/laws/2005-10/11/content_75954.htm> Accessed 2 April 2007

⁴⁸ Department of Foreign Affairs and Trade 2007, *DFAT Report 691 – RRT Information Request CHN32173*, 31 August

⁴⁹ Greenhalgh, S & Winckler, E 2001, *Chinese State Birth Planning in the 1990s and Beyond*, Perspective Series, Immigration and Naturalization Service (INS), US Department of Justice, September, p.3

policy and its implementation over the years, limits on births remain central to China's family planning program and are enforced across the country.⁵⁰

3.4.1 *Special Circumstances and Exemptions*

The limit on having one child may be relaxed in certain circumstances. For example, DFAT has advised:

- Since 2001 in urban areas, if both the father and mother are themselves single children, they are allowed to have a second child.
- Ethnic minorities are allowed two or more children.
- Families who have a child with mental or physical disabilities are sometimes allowed a second child.⁵¹

Overseas Chinese

Chinese people who are permanent residents of foreign countries (that is, *Overseas Chinese*⁵²), may be permitted to have a second child in some circumstances. DFAT advises that:

Couples meeting any one of these criteria will be exempt from a family planning fee for the birth of their second unauthorised child:

- Both members of the couple are overseas Chinese and the pregnancy occurs prior to their return to China;
- Both members of the couple are overseas Chinese and have returned to China for less than 6 years;
- Both members of the couple are overseas Chinese, their children remain in another country, and no other children from this couple live in China.⁵³

Returning Student Couples

Returning student couples are exempt from the social compensation fee when they return to China with a second child if both parents have studied in another country for more than a year. In 2010 DFAT advised in relation to Fujian that to qualify for the exemption, both the mother and father need to be overseas Chinese students.⁵⁴ This is further to DFAT advice of 2004 which stated for Fujian that in cases where 'one or both of the parents had travelled overseas for study', a couple is 'allowed to have two children, but fees would be charged on return to China for the third and any subsequent children'.⁵⁵ No information has been located to indicate that different approaches are adopted in other provinces.⁵⁶ DFAT advised in February 2010 in

⁵⁰ Department of Foreign Affairs and Trade 2007, *DFAT Report 691 – RRT Information Request CHN32173*, 31 August; Yardley, J 2008, 'China Sticking With One-Child Policy', *New York Times*, 11 March <http://www.nytimes.com/2008/03/11/world/asia/11china.html?_r=1> Accessed 16 June 2010

⁵¹ Department of Foreign Affairs and Trade 2007, *DFAT Report 691 – RRT Information Request CHN32173*, 31 August

⁵² Department of Foreign Affairs and Trade 2007, *DFAT Report No. 746 – China: RRT Information Request: CHN32483*, 6 December

⁵³ Department of Foreign Affairs and Trade 2010, *DFAT Report No. 1104 – China: RRT Information Request: CHN36059*, 12 February

⁵⁴ Department of Foreign Affairs and Trade 2010, *DFAT Report No. 1196 – China: RRT Information Request: CHN37198*, 13 September

⁵⁵ Department of Foreign Affairs and Trade 2004, *DFAT Report No. 327 – China: RRT Information Request: CHN17017*, 7 October

⁵⁶ Searches were conducted in family planning regulations from other provinces as well as Chinese law websites and general internet searches.

relation to returning student couples that the above exemptions ‘do not apply to parents who have a child out of wedlock’.⁵⁷

Rural Couples

Rural couples may be permitted to have a second child after a specified period of time, in certain circumstances, especially if the first baby was a girl.⁵⁸

3.4.2 *Mandatory Gynaecological and Pregnancy Checks*

Mandatory gynaecological checks of women of child bearing age by family planning officials have been part of China’s family planning policy since at least the 1990s. During these checks, held annually, semi-annually, or even quarterly, medical personnel check for reproductive health problems, monitor contraceptive use, and detect unauthorised pregnancies.⁵⁹ The US Department of State reported in May 2012 that in 2011 ‘some provinces fined women who did not undergo periodic pregnancy tests’, but did not provide information on the size of the fines that have been imposed.⁶⁰

A 2010 report published by Chinese Human Rights Defenders⁶¹ notes that gynaecological test results are recorded using the national database *Women of childbearing age Information System (WIS)*. According to the report, the frequency of gynaecological tests, including pregnancy checks, varies locally and depends on the woman, for example, whether she has been sterilised or is approaching the end of her childbearing years. The report also states that women who fail to appear for tests within the specified period could be punished by the local government.⁶² While the report does not list the range of punishments, it does provide the example of an

⁵⁷ Department of Foreign Affairs and Trade 2010, *DFAT Report No. 1104 – China: RRT Information Request: CHN36059*, 12 February

⁵⁸ Xiaofeng, G 2007 ‘Most people free to have more child’, *China Daily*, 11 July <http://www2.chinadaily.com.cn/china/2007-07/11/content_5432238.htm> Accessed 16 June 2010; Greenhalgh, S & Winckler, E 2001, *Chinese State Birth Planning in the 1990s and Beyond*, Perspective Series, Immigration and Naturalization Service (INS), US Department of Justice, September, p.3; *Population and Family Planning Regulation of Fujian Province* (China), art 10, promulgated 26 July 2002 (effective 1 September 2002), UNHCR Refworld <<http://www.unhcr.org/refworld/pdfid/4242b7394.pdf>> Accessed 28 June 2011; *Population and Family Planning Regulations of the Province of Guangdong*, promulgated 28 November 2008 (effective 1 January 2009), Westlaw <<http://app.westlawchina.com/maf/china/app/document?&docguid=i3cf76ad3000001211b6676b2e9ddc691&hitguid=i3cf76ad3000001211b6676b2e9ddc691&srguid=ia744c0670000013d136c2e3a2b03e1a3&spos=1&epos=1&td=1&crumb-action=append&context=3&lang=en>> Accessed 13 March 2012

⁵⁹ Greenhalgh, S & Winckler, E 2001, *Chinese State Birth Planning in the 1990s and Beyond*, Perspective Series, Immigration and Naturalization Service (INS), US Department of Justice, September, p.19; US Department of State 2012, *Country Reports on Human Rights Practices for 2011 – China*, 23 May, Section 6 <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dlid=186268>> Accessed 6 February 2013; Immigration and Refugee Board of Canada 2001, *China: Whether unmarried women are obliged to undergo pregnancy tests by family planning officials*, CHN36803.E, 30 March; Chinese Human Rights Defenders 2010, “I Don’t Have a Choice over My Own Body”, 21 December, pp.14-15 <<http://chrdnet.org/wp-content/uploads/2010/12/%E2%80%99CI-Don%E2%80%99t-Have-a-Choice-over-My-Own-Body%E2%80%9D.pdf>> Accessed 13 January 2011

⁶⁰ US Department of State 2012, *Country Reports on Human Rights Practices for 2011 – China*, 23 May, Section 6 <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dlid=186268>> Accessed 6 February 2013

⁶¹ Chinese Human Rights Defenders describes itself as a China-based non-governmental network that promotes human rights and grassroots activism in China.

⁶² Chinese Human Rights Defenders 2010, “I Don’t Have a Choice over My Own Body”, 21 December, pp.13-15 <<http://chrdnet.org/wp-content/uploads/2010/12/%E2%80%99CI-Don%E2%80%99t-Have-a-Choice-over-My-Own-Body%E2%80%9D.pdf>> Accessed 13 January 2011

individual's land being confiscated 'for failing to return in 2001 when summoned by the local government [Suixi County, Anhui province] to have his wife tested for pregnancy'.⁶³

4. PENALTIES FOR VIOLATIONS

Chinese family planning officials use a variety of methods to enforce the regulations, including issuing fines and coercive methods like terminating the employment of parents, forced abortion, sterilisation, detention, beatings and land confiscation. Policies are often enforced unequally throughout the country. Chinese Human Rights Defenders reported in 2010 that enforcement of family planning policies is 'highly arbitrary and uneven', and that:

Not only do provincial governments adopt different regulations, but the work of implementing the policy is subject to various local policy directives, as well as the interpretations of local officials. A woman bearing her second son might be forced to abort the fetus in some areas, while a similarly situated woman might be asked to pay a fine in another area.⁶⁴

In September 2012, the Immigration and Refugee Board of Canada corresponded with a senior research scholar at the Weatherhead East Asian Institute of Columbia University, who has authored several publications on Chinese reproductive policy. This scholar stated that enforcement is 'more thorough but less brutal in cities, and vice versa in the countryside'.⁶⁵

4.1 Family Planning Fines – Social Compensation Fees

The standard penalty for family planning violations is a fine, often referred to as a social compensation fee. Specific guidelines on the collection of social compensation fees are described in the *Measures for Administration of Collection of Social Maintenance Fees*. As specified in Article 3 of this law, citizens who 'bear children out of line' with family planning law must pay social compensation fees which are determined according to whether offenders are urban or rural residents. The fines for urban and rural residents are based on 'the urban residents' [average] annual per capita disposable income' and the 'rural residents' [average] annual per capita net income', respectively.⁶⁶ The calculation of the social compensation fee is also determined by:

- the average incomes (mentioned above) for the district in which the *hukous* are registered
- the 'actual income level' of the parents
- the fee structure imposed at the provincial level

⁶³ Chinese Human Rights Defenders 2010, "*I Don't Have a Choice over My Own Body*", 21 December, p.15 <<http://chrdnet.org/wp-content/uploads/2010/12/%E2%80%9CI-Don%E2%80%99t-Have-a-Choice-over-My-Own-Body%E2%80%9D.pdf>> Accessed 13 January 2011

⁶⁴ Chinese Human Rights Defenders 2010, "*I Don't Have a Choice over My Own Body*", 21 December, p.14 <<http://chrdnet.org/wp-content/uploads/2010/12/%E2%80%9CI-Don%E2%80%99t-Have-a-Choice-over-My-Own-Body%E2%80%9D.pdf>> Accessed 13 January 2011

⁶⁵ Immigration and Refugee Board of Canada 2012, *China: Family planning laws, enforcement and exceptions in the provinces of Guangdong and Fujian; reports of forced abortions or 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 (2010-September 2012)*, CHN104185.E, 1 October <http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=454183&l=e> Accessed 15 February 2013

⁶⁶ *Measures for Administration of Collection of Social Maintenance Fees* (China), promulgated 2 August 2002 (effective 1 September 2002), National People's Congress of the People's Republic of China <http://www.npc.cn/englishnpc/Law/2007-12/14/content_1384253.htm> Accessed 20 November 2008

- the manner in which they have breached the family planning regulations (e.g. by having one or more children over the limit, out of wedlock, or through an extra marital affair).⁶⁷

A separate social compensation fee is imposed on each parent. The US Department of State notes in its 2012 report on human rights practices in China that ‘each person in a couple that has an unapproved child’ is required to pay the social compensation fee.⁶⁸ In regards to Fujian Province, DFAT advised in January 2013 that ‘According to the Fujian Provincial Family Planning Bureau, individuals would be fined separately, regardless of marital status’.⁶⁹ In March 2012 DFAT stated:

[T]he Fujian Population and Family Planning Commission advised that the family planning policy shall apply to both the male and female party when found in breach of regulations, with the social compensation fee imposed on each parent separately.⁷⁰

Under national law, offenders have 30 days to pay via lump sum after being served notice by local authorities. Those unable to pay in a lump sum have 30 days to apply for approval to pay in instalments ‘to the family planning administrative department of the people’s government at the county level’.⁷¹ The county level family planning unit should then decide the outcome within 30 days of receiving the application and notify the person in writing. The national law also states that individuals who fail to pay on time are penalised with a ‘surcharge fine on a monthly basis at the rate of 0.2 per cent of the unpaid social maintenance fee’, and those who persist in not paying face the possibility that the family planning administrative department could ‘file an application with the people’s court for compulsory enforcement according to law’.⁷² DFAT advice indicates that the number of instalments permitted for payment of social compensation fees varies between provinces. The Shandong Population and Family Planning Committee limits the number of instalments to approximately three. In Fujian province the period for the payment of instalments shall not exceed three years.⁷³ In 2013, DFAT advised that where a fine is paid in instalments in Fujian, ‘a hukou [household registration] would be issued prior to the full repayment; and there would be no effect on access to public schools or other services’.⁷⁴

⁶⁷ Department of Foreign Affairs and Trade 2013, *DFAT Report 1473 – MRT/RRT Information Request: CHN41439*, 7 February; *Measures for Administration of Collection of Social Maintenance Fees* (China), Promulgated 2 August 2002, (Effective 1 September 2002), National People’s Congress of the People’s Republic of China <http://www.npc.cn/englishnpc/Law/2007-12/14/content_1384253.htm> Accessed 20 November 2008; *Population and Family Planning Law of the People’s Republic of China* (China), promulgated 29 December 2001 (effective 1 September 2002) Chinese Government Official Web Portal <http://english.gov.cn/laws/2005-10/11/content_75954.htm> Accessed 2 April 2007

⁶⁸ US Department of State 2012, *Country Reports on Human Rights Practices for 2011 – China*, 23 May, Section 6 <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186268>> Accessed 6 February 2013

⁶⁹ Department of Foreign Affairs and Trade 2013, *DFAT Report 1473 – MRT/RRT Information Request: CHN41439*, 7 February

⁷⁰ Department of Foreign Affairs and Trade 2012, *DFAT Report 1368 – RRT Information Request CHN39875*, 9 March

⁷¹ *Measures for Administration of Collection of Social Maintenance Fees* (China), art 6A, Promulgated 2 August 2002, (Effective 1 September 2002), National People’s Congress of the People’s Republic of China <http://www.npc.cn/englishnpc/Law/2007-12/14/content_1384253.htm> Accessed 20 November 2008

⁷² *Measures for Administration of Collection of Social Maintenance Fees* (China), Promulgated 2 August 2002, (Effective 1 September 2002), National People’s Congress of the People’s Republic of China <http://www.npc.cn/englishnpc/Law/2007-12/14/content_1384253.htm> Accessed 20 November 2008

⁷³ Department of Foreign Affairs and Trade 2010, *DFAT Report 1210 – RRT Information Request CHN37505*, 12 November

⁷⁴ Department of Foreign Affairs and Trade 2013, *DFAT Report 1473 – MRT/RRT Information Request: CHN41439*, 7 February

4.1.1 Variations in the Issuance of Social Compensation Fees

It is important to note that social compensation fees, which as mentioned above are based on the average income of residents in rural or urban areas, can vary widely between provinces, prefectures and even districts. This is because the average income can be calculated for specific areas, rather than for a province or for the country as a whole. Local authorities issue notices directing local officials in how to apply the regulations for their particular area, and as a result DFAT advised in 2013 that ‘The social compensation fee differed across districts’.⁷⁵ Further to this, DFAT advice indicates that local family planning officials have some discretion in determining fees. DFAT post in Beijing advised in November 2010, that ‘where a range of penalties is applicable, there is anecdotal evidence that local officials have discretion to decide, on a case-by-case basis, the applicable fees’.⁷⁶ For information about local variation of social compensation fees in Fujian, see [Section 6.2 Social Compensation Fees in Fujian](#).

Sources also state that authorities rely on meeting family planning targets for monetary and career incentives, which could result in local or regional variation of the fees that are issued. In January 2013 DFAT advised that ‘there is anecdotal evidence to suggest that meeting family planning targets is an important performance indicator for local officials’.⁷⁷ According to DFAT, ‘This contributes to further variability in enforcement of regulations across districts and may motivate local officials to levy fines’.⁷⁸ The 2012 US Department of State report on China similarly notes that ‘Officials at all levels remained subject to rewards or penalties based on meeting the population goals set by their administrative region’.⁷⁹

4.2 Forced Abortion and Sterilisation

In order to meet family planning targets, officials have resorted to such measures as forced abortion and sterilisation. Freedom House reported in 2013 that ‘Compulsory abortion and sterilization, though less common than in the past, still occur fairly frequently’, though the report did not specify any provinces in particular.⁸⁰ The 2013 Human Rights Watch *World Report – China* states that ‘The government continues to impose...coercive measures, including forced abortion’.⁸¹ The US Department of State similarly noted in 2012 in its report on human rights practices in China that the Chinese ‘coercive birth limitation policy’ had ‘in some cases result[ed] in forced abortion or forced sterilization’.⁸² The US Congressional-Executive Commission on China’s *Annual Report 2012* reported that violators of family planning policy are in some cases subjected to forced sterilisation and forced abortion.⁸³ Reports indicate that

⁷⁵ Department of Foreign Affairs and Trade 2013, *DFAT Report 1473 – MRT/RRT Information Request: CHN41439*, 7 February

⁷⁶ Department of Foreign Affairs and Trade 2010, *DFAT Report 1210 – RRT Information Request: CHN37505*, 12 November

⁷⁷ Department of Foreign Affairs and Trade 2013, *DFAT Report 1473 – MRT/RRT Information Request: CHN41439*, 7 February

⁷⁸ Department of Foreign Affairs and Trade 2013, *DFAT Report 1473 – MRT/RRT Information Request: CHN41439*, 7 February

⁷⁹ US Department of State 2012, *Country Reports on Human Rights Practices for 2011 – China*, 23 May, Section 6 <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186268>> Accessed 6 February 2013

⁸⁰ Freedom House 2013, *Freedom in the World 2013 – China*, 16 January

<<http://www.freedomhouse.org/report/freedom-world/2013/china>> Accessed 31 January 2013

⁸¹ Human Rights Watch 2013, *World Report – China*, January <<http://www.hrw.org/world-report/2013/country-chapters/china>> Accessed 15 February 2013

⁸² US Department of State 2012, *Country Reports on Human Rights Practices for 2011 – China*, 23 May, Section 6 <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186268>> Accessed 6 February 2013

⁸³ US Congressional-Executive Commission on China 2012, *Annual Report 2012*, 10 October, p.91

<<http://www.gpo.gov/fdsys/pkg/CHRG-112shrg76190/pdf/CHRG-112shrg76190.pdf>> Accessed 6 March 2013

men in China may also be subject to forced sterilisation. This, however, appears to be less common than forced female sterilisation.⁸⁴

Recent reports by the US Department of State and the US Congressional-Executive Commission on China indicate that several provincial family planning regulations require abortions for out of plan pregnancies.⁸⁵ The US Department of State's 2012 report on China states that in 2011:

Regulations requiring women who violate family-planning policy to terminate their pregnancies still exist in the 25th, 42nd, and 22nd provisions of the Population and Family Control Regulation of Liaoning, Jilin, and Heilongjiang provinces, respectively. An additional 10 provinces – Fujian, Guizhou, Guangdong, Gansu, Jiangxi, Qinghai, Sichuan, Shanxi, Shaanxi, and Yunnan – require unspecified “remedial measures” to deal with unauthorized pregnancies.⁸⁶

The US Congressional-Executive Commission on China's *Annual Report 2012* states that mandatory abortion is often referred to as ‘remedial measures’ in government reports.⁸⁷

The national family planning regulations stipulate that family planning authorities must not infringe on a person's ‘personal rights, property rights or other legitimate rights and interests’.⁸⁸ These rights, however, are not defined in the legislation.

4.3 Termination of Employment

If the violator of family planning regulations is a government employee, they may also face an administrative punishment by their employer, including potential termination of employment. The national law states that state functionaries who are required to pay social compensation fees are also subject to administrative sanction.⁸⁹ The Fujian Regulations refer to administrative punishments being imposed on ‘State functionaries who give birth to a child in violation of...[the] Regulation’.⁹⁰ While the Guangdong Regulations state that government organisations ‘shall dismiss or rescind employment contracts with employees that bear excessive children’.⁹¹

⁸⁴ See for example Chinese Human Rights Defenders 2010, “*I Don't Have a Choice over My Own Body*”, 21 December, p.16 <<http://chrndnet.org/wp-content/uploads/2010/12/%E2%80%9CI-Don%E2%80%99t-Have-a-Choice-over-My-Own-Body%E2%80%9D.pdf>> Accessed 13 January 2011; Chou, J 2005 ‘The People vs. Beijing’, *The Weekly Standard*, 24 October; Jingjing, H 2010, ‘City cracks down on couples’, *Global Times*, 16 April <<http://china.globaltimes.cn/society/2010-04/522789.html>> Accessed 27 June 2011; Macartney, J 2010, ‘China tries to sterilise 10,000 parents over one-child rule’, *The Times Online*, 17 April <<http://www.timesonline.co.uk/tol/news/world/asia/article7099417.ece>> Accessed 27 June 2011

⁸⁵ US Department of State 2012, *Country Reports on Human Rights Practices for 2011 – China*, 23 May, Section 6 <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186268>> Accessed 6 February 2013; US Congressional-Executive Commission on China 2010, *Annual Report 2010*, 10 October, p.117

⁸⁶ US Department of State 2012, *Country Reports on Human Rights Practices for 2011 – China*, 23 May, Section 6 <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186268>> Accessed 6 February 2013

⁸⁷ US Congressional-Executive Commission on China 2012, *Annual Report 2012*, 10 October, p.19 <<http://www.gpo.gov/fdsys/pkg/CHRG-112shrg76190/pdf/CHRG-112shrg76190.pdf>> Accessed 6 March 2013

⁸⁸ *Population and Family Planning Law of the People's Republic of China* (China), art 39(1), promulgated 29 December 2001 (effective 1 September 2002) Chinese Government Official Web Portal <http://english.gov.cn/laws/2005-10/11/content_75954.htm> Accessed 2 April 2007

⁸⁹ *Population and Family Planning Law of the People's Republic of China* (China), art 42, promulgated 29 December 2001 (effective 1 September 2002) Chinese Government Official Web Portal <http://english.gov.cn/laws/2005-10/11/content_75954.htm> Accessed 2 April 2007

⁹⁰ *Population and Family Planning Regulation of Fujian Province*, art 44, promulgated 26 July 2002 (effective 1 September 2002), UNHCR Refworld <<http://www.unhcr.org/refworld/pdfid/4242b7394.pdf>> Accessed 28 June 2011

⁹¹ *Population and Family Planning Regulations of the Province of Guangdong*, art 48, promulgated 28 November 2008 (effective 1 January 2009), Westlaw

<<http://app.westlawchina.com/maf/china/app/document?&docguid=i3cf76ad3000001211b6676b2e9ddc691&hitguid>

4.4 Other Punitive Measures

There are reports of authorities using other punitive measures as punishment for breaching family planning regulations or to force individuals to undergo pregnancy testing.⁹² According to the US Department of State's 2012 report on China, family planning officials can detain family members or confiscate and destroy property of families who refuse to pay social compensation fees.⁹³ By law, officials are required to obtain court approval before they undertake such 'forcible' actions; however, 'in practice this requirement was not always followed, and national authorities remained ineffective at reducing abuses by local officials'.⁹⁴ Freedom House also noted in its 2013 *Freedom in the World* report that 'relatives of unsterilized women or couples with unapproved pregnancies were subjected to high fines, job dismissal, and detention in 2012'.⁹⁵ Similarly, according to Chinese Human Rights Defenders, men and women who have violated the family planning regulations have been 'punished with arbitrary detention, beatings...and loss of property'.⁹⁶

In 2011, officials from the Family Planning Department of Shaoyang City, Hunan Province, were found by the Chinese Government to have forcibly taken out of plan children from families who failed to pay the social compensation fee and placed the children in orphanages.⁹⁷ The parents of the children alleged that the children were adopted to foreign nationals overseas for a fee of reportedly US\$3,000.⁹⁸ This practice has been described as 'child-selling' in one report,⁹⁹ although an official investigation concluded that officials had no 'financial relations' with the orphanage.¹⁰⁰ The officials involved were removed from their duties at the Family Planning Department, but were not charged with any crimes.¹⁰¹

[=i3cf76ad3000001211b6676b2e9ddc691&srguid=ia744c0670000013d136c2e3a2b03e1a3&spos=1&epos=1&td=1&crumb-action=append&context=3&lang=en](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dlid=186268)> Accessed 13 March 2012; Department of Foreign Affairs and Trade 2004, *DFAT Report 330 – RRT Information Request CHN16967*, 15 October

⁹² US Department of State 2012, *Country Reports on Human Rights Practices for 2011 – China*, 23 May, Section 6 <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dlid=186268>> Accessed 6 February 2013; Freedom House 2013, *Freedom in the World – China*, 16 January <<http://www.freedomhouse.org/report/freedom-world/2013/china>> Accessed 31 January 2013; Chinese Human Rights Defenders 2010, "I Don't Have a Choice over My Own Body", 21 December, p.15 <<http://chrdnet.org/wp-content/uploads/2010/12/%E2%80%9CI-Don%E2%80%99t-Have-a-Choice-over-My-Own-Body%E2%80%9D.pdf>> Accessed 13 January 2011

⁹³ US Department of State 2012, *Country Reports on Human Rights Practices for 2011 – China*, 23 May, Section 6 <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dlid=186268>> Accessed 6 February 2013

⁹⁴ US Department of State 2012, *Country Reports on Human Rights Practices for 2011 – China*, 23 May, Section 6 <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dlid=186268>> Accessed 6 February 2013

⁹⁵ Freedom House 2013, *Freedom in the World – China*, 16 January <<http://www.freedomhouse.org/report/freedom-world/2013/china>> Accessed 31 January 2013

⁹⁶ Chinese Human Rights Defenders 2010, "I Don't Have a Choice over My Own Body", 21 December, p.14 <<http://chrdnet.org/wp-content/uploads/2010/12/%E2%80%9CI-Don%E2%80%99t-Have-a-Choice-over-My-Own-Body%E2%80%9D.pdf>> Accessed 13 January 2011

⁹⁷ La Franiere, S 2011 'China Fires 12 After Inquiry on Adoptions', *New York Times*, 29 September <<http://www.nytimes.com/2011/09/30/world/asia/china-fires-12-government-workers-in-illegal-adoption-scandal.html>> Accessed 21 May 2012; Jiaoming, S 2011 'In Hunan, Family Planning Turns to Plunder', *Caixin*, 5 October <http://english.caixin.com/2011-05-10/100257756_all.html> Accessed 16 May 2012

⁹⁸ Jiaoming, S 2011 'In Hunan, Family Planning Turns to Plunder', *Caixin*, 5 October <http://english.caixin.com/2011-05-10/100257756_all.html> Accessed 16 May 2012

⁹⁹ Jiaoming, S 2011 'In Hunan, Family Planning Turns to Plunder', *Caixin*, 5 October <http://english.caixin.com/2011-05-10/100257756_all.html> Accessed 16 May 2012

¹⁰⁰ 'China's one-child policy leads to racket of fines, kidnapping, foreign adoptions' 2011, *World Crunch*, 3 October <<http://www.worldcrunch.com/china-s-one-child-policy-leads-racket-fines-kidnapping-foreign-adoptions/3864>> Accessed 16 May 2012

¹⁰¹ 'China's one-child policy leads to racket of fines, kidnapping, foreign adoptions' 2011, *World Crunch*, 3 October <<http://www.worldcrunch.com/china-s-one-child-policy-leads-racket-fines-kidnapping-foreign-adoptions/3864>> Accessed 16 May 2012

The US Department of State reported that in 2010, Guangdong authorities detained 1,300 people during a sterilisation program. The individuals were detained until at least one member of each couple in violation of family planning policies submitted to a sterilisation procedure.¹⁰²

5. UNREGISTERED CHILDREN ('BLACK CHILDREN')

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.¹⁰³ Reports dated from 2005 through to 2010 in relation to several provinces indicate that payment of social compensation fees is required to register out of plan children and this is because the documents needed for registration include documents from family planning authorities.¹⁰⁴ DFAT has also advised that family planning authorities will find out about out of plan children when parents seek to register their children with the local Public Security Bureau (PSB).¹⁰⁵

Reports note that there are a significant number of children who have not been registered for various reasons. A 2001 report estimated that the number of unregistered children in China could be as high as six million.¹⁰⁶ Some parents choose not to register out of plan children in order to avoid 'punishment for unsanctioned births',¹⁰⁷ or because they 'may be worried about being fined'.¹⁰⁸ Strict family planning policies greatly affected the number of children being registered from the 1970s to the 1990s, but due to changes in birth registration laws during this time, this effect has reportedly diminished in recent years.¹⁰⁹ Other factors that are associated with non-registration of a child include the mother being unemployed, the mother being

¹⁰² US Department of State 2011, *Country Reports on Human Rights Practices 2010 – China*, 8 April, Section 6

¹⁰³ See the RRT Country Advice Background Paper *China: The Hukou*. US Department of State 2012, *Country Reports on Human Rights Practices for 2011 – China*, 23 May, Section 6
<<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186268>> Accessed 6 February 2013;
Huawen, L 2004, *The Child's Right to Birth Registration – International and Chinese Perspectives*, Norwegian Centre for Human Rights, pp.15-16 <<http://www.humanrights.uio.no/forskning/publ/rn/2004/0504.pdf>> Accessed 4 December 2006

¹⁰⁴ Department of Foreign Affairs and Trade 2010, *DFAT Report 1210 – RRT Information Request CHN37505*, 12 November; Department of Foreign Affairs and Trade 2007, *DFAT Report 691 – RRT Information Request CHN32173*, 31 August; Department of Foreign Affairs and Trade 2005, *DFAT Report 404 – RRT Information Request CHN17471*, September; Zhou, Y 2005 *Uncovering Children in Marginalization: Explaining Unregistered Children in China*, 14 June, International Union for the Scientific Study of Population, p.5
<<http://iussp2005.princeton.edu/download.aspx?submissionId=50479>> Accessed 2 August 2007

¹⁰⁵ Department of Foreign Affairs and Trade 2010, *DFAT Report 1210 – RRT Information Request CHN37505*, 12 November; Department of Foreign Affairs and Trade 2007, *DFAT Report 691 – RRT Information Request CHN32173*, 31 August; Department of Foreign Affairs and Trade 2005, *DFAT Report 404 – RRT Information Request CHN17471*, September

¹⁰⁶ Pomfret, J 2001, 'In China's Countryside, 'It's a Boy!' Too Often', *Washington Post Foreign Service*, 29 May
<<http://www.freewebs.com/kleinester/In%20China's%20countryside.%20It's%20a%20boy!%20too%20often.doc>>
Accessed 6 March 2013

¹⁰⁷ Zhou, Y 2005, *Uncovering Children in Marginalization: Explaining Unregistered Children in China*, 14 June, International Union for the Scientific Study of Population, p.6
<<http://iussp2005.princeton.edu/download.aspx?submissionId=50479>> Accessed 2 August 2007

¹⁰⁸ Huawen, L 2004, *The Child's Right to Birth Registration – International and Chinese Perspectives*, Norwegian Centre for Human Rights, pp.15-16 <<http://www.humanrights.uio.no/forskning/publ/rn/2004/0504.pdf>> Accessed 4 December 2006

¹⁰⁹ Li, S, Zhang, Y & Feldman, MW 2010, 'Birth Registration in China: Practices, Problems and Policies', *Population Research and Policy Review*, vol. 29, pp.297-317
<<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2990197/>> Accessed 28 September 2010

educated up to middle school, the family living in an urban area,¹¹⁰ the family living in a remote mountainous area or not being able to afford registration.¹¹¹

In some cases local governments may refuse to register unsanctioned births in order to meet family planning objectives.¹¹² This practice is however inconsistent with national policy and in 2000 the National Family Planning Committee stated that it was only ‘incorrect local policy’ that denied registration to out of plan children.¹¹³ It is also relevant to note that the *Regulation on Household Registration of the People’s Republic of China 1958* is silent on the requirement that social compensation fees be paid to register out of plan children as this law pre-dates family planning policies.¹¹⁴

Unregistered children, commonly known as *black children*, do not have the full rights of a registered child.¹¹⁵ In particular, they are not entitled to public education and, as a result, their parents must pay for private education.¹¹⁶ Fees charged by private education providers are usually higher than for public schools.¹¹⁷ The extent to which registration can affect access to other public services, such as healthcare and welfare, will be discussed in an upcoming issues paper about services and benefits linked to the *hukou* (due to be published in April 2013).

Regarding societal attitudes towards children born out of wedlock, DFAT advised in February 2010, that ‘in remote regions, children born out of wedlock without a household registration may have experienced discrimination in the past due to traditional and cultural disapproval’. DFAT assessed, however, that social acceptance of children born out of wedlock is ‘likely to have improved’. DFAT also advised that such children may be entitled to the same educational rights as others if they have gained household registration since birth.¹¹⁸ In 2010, the tribunals contacted Dr Alice de Jonge, a Senior Lecturer of Business Law and Taxation at Monash University, for information about children born out of wedlock in China. According to information provided on the Monash University website Dr de Jonge has ‘lived and studied in

¹¹⁰ Zhou, Y 2005, *Uncovering Children in Marginalization: Explaining Unregistered Children in China*, 14 June, International Union for the Scientific Study of Population, p.17-19

<<http://iussp2005.princeton.edu/download.aspx?submissionId=50479>> Accessed 2 August 2007

¹¹¹ Li, S, Zhang, Y & Feldman, MW 2010, ‘Birth Registration in China: Practices, Problems and Policies’, *Population Research and Policy Review*, vol. 29, pp.297-317

<<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2990197/>> Accessed 28 September 2010

¹¹² Zhou, Y 2005, *Uncovering Children in Marginalization: Explaining Unregistered Children in China*, 14 June, International Union for the Scientific Study of Population, p.6

<<http://iussp2005.princeton.edu/download.aspx?submissionId=50479>> Accessed 2 August 2007

¹¹³ Huawen, L 2004, *The Child’s Right to Birth Registration – International and Chinese Perspectives*, Norwegian Centre for Human Rights, pp.15-16 <<http://www.humanrights.uio.no/forskning/publ/rn/2004/0504.pdf>> Accessed 4 December 2006

¹¹⁴ *Regulation on Household Registration of the People’s Republic of China 1958* (China), promulgated 9 January 1958 (effective 9 January 1958), Westlaw, Accessed 29 January 2013

¹¹⁵ Zhou, Y 2005, *Uncovering Children in Marginalization: Explaining Unregistered Children in China*, 14 June, International Union for the Scientific Study of Population, p.2 & 5

<<http://iussp2005.princeton.edu/download.aspx?submissionId=50479>> Accessed 2 August 2007

¹¹⁶ Zhou, Y 2005, *Uncovering Children in Marginalization: Explaining Unregistered Children in China*, 14 June, International Union for the Scientific Study of Population, pp.4-5

<<http://iussp2005.princeton.edu/download.aspx?submissionId=50479>> Accessed 2 August 2007; Department of Foreign Affairs and Trade 2007, *DFAT Report 691 – RRT Information Request CHN32173*, 31 August; Department of Foreign Affairs and Trade 2004, *DFAT Report No. 327 – China: RRT Information Request: CHN17017*, 7 October

¹¹⁷ Department of Foreign Affairs and Trade 2007, *DFAT Report 691 – RRT Information Request CHN32173*, 31 August; Department of Foreign Affairs and Trade 2004, *DFAT Report No. 327 – China: RRT Information Request: CHN17017*, 7 October

¹¹⁸ Department of Foreign Affairs and Trade 2010, *DFAT Report No. 1104 – China: RRT Information Request: CHN36059*, 12 February

China and was a Visiting Scholar at Nanjing University, China'.¹¹⁹ In her response, Dr de Jonge stated:

[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.¹²⁰

More recent information about social attitudes towards children born out of wedlock could not be found.¹²¹

6. FAMILY PLANNING IN FUJIAN

6.1 Historical Context

The implementation of family planning policies in Fujian has changed over recent decades. Prior to the 1990s, officials took a somewhat relaxed approach and there were many multi-child families in the province.¹²² Indeed, family planning implementation is described by Greenhalgh and Winckler as 'lax' between 1970 and 1990, with Fujian performing poorly compared to other provinces with respect to population growth and the number of children born 'within plan'.¹²³ One report from DFAT, however, states that compulsory abortions and sterilisations occurred more frequently during the 1980s than in later years.¹²⁴ During the 1990s, Fujian's family planning program received higher priority and more funding, which resulted in implementation becoming both 'more strict and more lawful'.¹²⁵ In the 1990s family planning officials were given more training and were also more frequently charged with criminal liability for family planning matters than were 'the masses'.¹²⁶ According to Winckler, these charges had a deterrent effect 'that mitigated against continued abuses'.¹²⁷ Overall, it appears that the trend during the 1990s was towards a more consistent, professional and lawfully enforced family planning policy in Fujian.¹²⁸

In April 2004, DFAT advised that family planning rules in Fujian were enforced more strictly in the larger cities than in the poorer countryside, but in general, Fujian had 'one of the least

¹¹⁹ 'Dr Alice de Jonge' 2009, Monash University, 14 October <<http://www.buseco.monash.edu.au/blt/staff/a-de-jonge.html>> Accessed 18 February 2010

¹²⁰ De Jonge, A 2010, Email to RRT, RE: *Request for assistance from Refugee Review Tribunal, Sydney (RRT ref: CHN36060)*, 15 January; De Jonge, A 2010, Email to RRT, RE: *Request for assistance from Refugee Review Tribunal, Sydney (RRT ref: CHN36060)*, 20 January

¹²¹ Searches include news and commentary websites, tribunal and DIAC resources (CISNET, ISYS, and Country Portals), academic journals and general internet searches.

¹²² Greenhalgh, S & Winckler, E 2001, *Chinese State Birth Planning in the 1990s and Beyond*, Perspective Series, Immigration and Naturalization Service (INS), US Department of Justice, September, pp.127-61

¹²³ Greenhalgh, S & Winckler, E 2001, *Chinese State Birth Planning in the 1990s and Beyond*, Perspective Series, Immigration and Naturalization Service (INS), US Department of Justice, September, p.133, 135-6

¹²⁴ Department of Foreign Affairs and Trade 2004, *DFAT Report No. 317 – China: RRT Information Request: CHN16905*, 2 September

¹²⁵ Greenhalgh, S & Winckler, E 2001, *Chinese State Birth Planning in the 1990s and Beyond*, Perspective Series, Immigration and Naturalization Service (INS), US Department of Justice, September, p.xvii

¹²⁶ Immigration and Refugee Board of Canada 1999, *China: Update to various aspects of family and family planning law and policy, particularly as it affects Fujian province*, CHN33035.EX, 18 October

¹²⁷ Immigration and Refugee Board of Canada 1999, *China: Update to various aspects of family and family planning law and policy, particularly as it affects Fujian province*, CHN33035.EX, 18 October

¹²⁸ Immigration and Refugee Board of Canada 1999, *China: Update to various aspects of family and family planning law and policy, particularly as it affects Fujian province*, CHN33035.EX, 18 October

coercive family planning regimes in China'.¹²⁹ DFAT also reported that it understood that compulsory abortions and sterilisations occurred in Fujian, but were much rarer than in the 1980s.¹³⁰ Nonetheless, there have been some reports of forced sterilisations and abortions occurring in Fujian province in recent years.¹³¹ There is limited recent information on current trends in enforcement at the provincial level; however, DFAT advised in 2013 that 'meeting family planning targets is an important performance indicator for local officials', which contributes to 'variability in enforcement of regulations across districts [in Fujian]'.¹³²

6.2 Social Compensation Fees in Fujian

Fujian family planning regulations set out guidelines for social compensation fees for out of plan children.¹³³ The social compensation fees are based on:

- the average per capita urban annual disposable income (in the year prior to the birth) or
- the average per capita rural net income (in the year prior to the birth).¹³⁴

The following sections outline how the fees are calculated for each type of family planning violation. For an approximation of the fines applicable in Fujian for parents who breach family planning regulations, see the Fujian Family Planning Fines 1991-2012 – Tables. It is important to note, however, that DFAT advice of January 2013 states the 'social compensation fee[s] differed across districts'.¹³⁵ This is because the average income levels differ between districts.¹³⁶ It is also because local authorities issue 'notices' that 'guide local officials in their application of relevant regulations'.¹³⁷ As such, the fees listed in the Fujian Family Planning Fines tables should be used as a guide only, as the actual fee depends on the district in which the parents' *hukou* is

¹²⁹ Department of Foreign Affairs and Trade 2004, *DFAT Report No. 287 – China: RRT Information Request: CHN16609*, 22 April

¹³⁰ Department of Foreign Affairs and Trade 2004, *DFAT Report No. 317 – China: RRT Information Request: CHN16905*, 2 September

¹³¹ 'New "late-term abortion" row in China's Fujian province' 2012, *BBC*, 10 July <<http://www.bbc.co.uk/news/world-asia-china-18778597>> Accessed 8 February 2013; 'Another Forced Abortion Tragedy— "My poor wife, my poor child"' 2012, *China Aid*, 9 July <<http://www.chinaaid.org/2012/07/another-forced-abortion-tragedymy-poor.html>> Accessed 8 February 2013; US Congressional-Executive Commission on China 2009, *Annual Report 2009*, 10 October, pp. 154-6 <<http://www.cecc.gov/pages/annualRpt/annualRpt09/CECCannRpt2009.pdf>> Accessed 15 October 2009; China Aid Association and Women's Rights Without Frontiers 2009, *New Evidence Regarding China's One-Child Policy Forced Abortion, Involuntary Sterilization, Infanticide and Coercive Family Planning*, 10 November, Case 5 <http://www.unitedstatesaction.com/documents/china/Littlejohn_and_Fu_Report_1.doc> Accessed 19 February 2010; Human Rights in China n.d., *Spotlight: Women's Rights and Reproductive Health in China* <<http://www.ir2008.org/03/spotlight.php#8>> Accessed 22 February 2010; DIAC Country Information Service 2009, *Country Information Report No. 09/38 – CIS Request No. 9656; Economic sanctions applied to breaches of the One Child Policy, Fujian Province*, (sourced from DFAT advice of 28 April 2009), 28 April

¹³² Department of Foreign Affairs and Trade 2013, *DFAT Report 1473 – MRT/RRT Information Request: CHN41439*, 7 February

¹³³ *Population and Family Planning Regulation of Fujian Province* (China), art 39, promulgated 26 July 2002 (effective 1 September 2002), UNHCR Refworld <<http://www.unhcr.org/refworld/pdfid/4242b7394.pdf>> Accessed 28 June 2011

¹³⁴ *Population and Family Planning Regulation of Fujian Province* (China), art 39, promulgated 26 July 2002 (effective 1 September 2002), UNHCR Refworld <<http://www.unhcr.org/refworld/pdfid/4242b7394.pdf>> Accessed 28 June 2011

¹³⁵ Department of Foreign Affairs and Trade 2013, *DFAT Report 1473 – MRT/RRT Information Request: CHN41439*, 7 February

¹³⁶ Department of Foreign Affairs and Trade 2013, *DFAT Report 1473 – MRT/RRT Information Request: CHN41439*, 7 February

¹³⁷ Department of Foreign Affairs and Trade 2013, *DFAT Report 1473 – MRT/RRT Information Request: CHN41439*, 7 February

registered.¹³⁸ The tribunals currently only have access to data at that level, in Chinese language, for Nanping Prefecture and Fuqing City.¹³⁹

DFAT also advised in January 2013 that for Chinese nationals who breach the family planning regulations while outside the country, and who are not eligible for an exemption, their social compensation fee will be calculated using the average income of the district in which their *hukou* is registered.¹⁴⁰ In September 2010, DFAT advised that social compensation fees are strictly implemented in relation to families returning to Fujian with additional children born overseas, unless waived by relevant authorities.¹⁴¹ See [Section 6.4 Special Circumstances and Exemptions in Fujian](#) for a list of those eligible for exemptions.

Since 2002, social compensation fees in Fujian have been issued to each parent separately, based on the average income for their district or each parent's actual income.¹⁴² Prior to 2002, the *Population and Family Planning Regulation of Fujian Province* stipulated that the couple would be fined based on their combined total income.¹⁴³

6.2.1 Fines for Having Additional Children

Depending on whether members of a couple are urban or rural residents and how many children they already have, those who have more than one child without authorisation must pay a fee equivalent to:

- Urban residents: from two to more than six times the average urban Fujian annual disposable income (in the year prior to the birth) or
- Rural residents: from two to more than six times the average rural Fujian per capita net income (in the year prior to the birth).¹⁴⁴

If the individuals concerned earn more than this amount, the fee would be calculated with reference to their actual incomes. In general, the greater the number of children a couple already has, the higher the fee.¹⁴⁵

¹³⁸ Department of Foreign Affairs and Trade 2013, *DFAT Report 1473 – MRT/RRT Information Request: CHN41439*, 7 February

¹³⁹ DFAT has provided the fines structure for Nanping Prefecture (in Fujian Province) in Chinese. See: Department of Foreign Affairs and Trade 2013, *DFAT Report 1473 – MRT/RRT Information Request: CHN41439*, 7 February. For the fine structure for Fuqing City for 2008-2012 in Chinese see: Fuqing Population and Family Planning Committee 2012, *Fuqing City social compensation fee* <<http://www.fqjsj.gov.cn/UploadFiles/2012-2-9/20120209170338964.xls>> Accessed 7 March 2013

¹⁴⁰ Department of Foreign Affairs and Trade 2013, *DFAT Report 1473 – MRT/RRT Information Request: CHN41439*, 7 February

¹⁴¹ Department of Foreign Affairs and Trade 2010, *DFAT Report No. 1196 – China: RRT Information Request: CHN37198*, 13 September

¹⁴² Department of Foreign Affairs and Trade 2013, *DFAT Report 1473 – MRT/RRT Information Request: CHN41439*, 7 February; *Population and Family Planning Regulation of Fujian Province*, art 39, promulgated 26 July 2002 (effective 1 September 2002), UNHCR Refworld <<http://www.unhcr.org/refworld/pdfid/4242b7394.pdf>> Accessed 28 June 2011

¹⁴³ *Fujian Province Family Planning Regulations* (China), art 36, promulgated 28 June 1991 (effective 10 July 1991), Immigration and Refugee Board Canada

¹⁴⁴ *Population and Family Planning Regulation of Fujian Province* (China), art 39, promulgated 26 July 2002 (effective 1 September 2002), UNHCR Refworld <<http://www.unhcr.org/refworld/pdfid/4242b7394.pdf>> Accessed 28 June 2011

¹⁴⁵ *Population and Family Planning Regulation of Fujian Province* (China), art 39, promulgated 26 July 2002 (effective 1 September 2002), UNHCR Refworld <<http://www.unhcr.org/refworld/pdfid/4242b7394.pdf>> Accessed 28 June 2011

6.2.2 Fines for Having a Child ‘Before the Stipulated Time’ (Out of Wedlock/ Before Marriageable Age)

In Fujian it is forbidden to give birth ‘before the stipulated time’.¹⁴⁶ Article 14(1) of the 2002 *Population and Family Planning Regulation of Fujian Province* states that ‘a child is regarded as born before the stipulated time’ in the case where ‘those who give birth to a child before they get married (including those who become pregnant before they reach legally marrying age)’.¹⁴⁷ The legal marrying age is 20 years for women and 22 years for men.¹⁴⁸

The penalty for having a child ‘before the stipulated time’ is outlined in Article 39(1) of the 2002 *Population and Family Planning Regulation of Fujian Province*, which calls for a social compensation fee of 60 to 100 per cent of the average local annual income¹⁴⁹ (or a greater fine for those with a higher than average actual income).¹⁵⁰

There has previously been conflicting advice in the literature as to whether Article 39(1) or Article 39(3) (see [Section 6.2.3 Having a Child from an Extramarital Affair](#)) applies to parents of a child born out of wedlock.¹⁵¹ To clarify this, in January 2012 DFAT provided information from the Policy Section of the Fuzhou Family Planning Commission which verified that Article 39(1) applies when a child is born out of wedlock.¹⁵² Therefore, the fine is 60 to 100 per cent of the average local annual income (or a greater fine for those with a higher than average actual income).¹⁵³

DFAT advice of February 2010 on Fujian province states that if a couple marries after the birth of a child they will most likely still be charged a social compensation fee. However, ‘if a child is conceived out of wedlock, but the parents marry prior to the birth of the child, no social compensation fee is charged’.¹⁵⁴ DFAT advice also indicates that to apply for a child’s

¹⁴⁶ *Population and Family Planning Regulation of Fujian Province*, art 14, promulgated 26 July 2002 (effective 1 September 2002), UNHCR Refworld <<http://www.unhcr.org/refworld/pdfid/4242b7394.pdf>> Accessed 28 June 2011

¹⁴⁷ *Population and Family Planning Regulation of Fujian Province*, art 14, promulgated 26 July 2002 (effective 1 September 2002), UNHCR Refworld <<http://www.unhcr.org/refworld/pdfid/4242b7394.pdf>> Accessed 28 June 2011

¹⁴⁸ *Marriage Law of the People’s Republic of China 1980* (China), c II art 6, adopted 10 September 1980, amended by Decision Regarding the Amendment of Marriage Law of the People’s Republic of China 2001, 28 April 2001, Ministry of Foreign Affairs of the People’s Republic of China <<http://www.fmprc.gov.cn/eng/3625/3630/t18322.htm>> Accessed 10 May 2006

¹⁴⁹ Defined by the Regulations as ‘the average annual disposable income of the urban residents or the net average annual income of the rural peasants of the county in the previous year when the child is born’. See: *Population and Family Planning Regulation of Fujian Province*, art 39, promulgated 26 July 2002 (effective 1 September 2002), UNHCR Refworld <<http://www.unhcr.org/refworld/pdfid/4242b7394.pdf>> Accessed 28 June 2011

¹⁵⁰ *Population and Family Planning Regulation of Fujian Province*, art 39, promulgated 26 July 2002 (effective 1 September 2002), UNHCR Refworld <<http://www.unhcr.org/refworld/pdfid/4242b7394.pdf>> Accessed 28 June 2011

¹⁵¹ Immigration and Refugee Board of Canada 2009, *China: treatment of pregnant, unmarried women by state authorities, particularly in Guangdong and Fujian; whether unmarried women are obliged to undergo pregnancy tests by family planning officials (2005 – April 2009)*, CHN103135.E, 23 June <http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?l=e&id=452415> Accessed 24 January 2012; US Department of State 2007, *China Profile of Asylum Claims and Country Conditions*, May, pp. 97 – 98 <http://cdjp.org/gb/fileupload/China_May_2007.pdf> Accessed 12 August 2008. This source translates Article 39(3) as: ‘For the birth of a child outside wedlock, a fine from four to six times this figure. For the birth of a second or subsequent child outside of wedlock, a higher fine will be levied’.

¹⁵² Department of Foreign Affairs and Trade 2012, *DFAT Report No. 1354 – RRT Information Request: CHN39817*, 23 January

¹⁵³ *Population and Family Planning Regulation of Fujian Province*, art 39, promulgated 26 July 2002 (effective 1 September 2002), UNHCR Refworld <<http://www.unhcr.org/refworld/pdfid/4242b7394.pdf>> Accessed 28 June 2011

¹⁵⁴ Department of Foreign Affairs and Trade 2010, *DFAT Report No. 1104 – China: RRT Information Request: CHN36059*, 12 February

household registration in Fujian province, the parents are required to provide, among other documentation, a certificate of marriage.¹⁵⁵

DFAT advice of November 2010 states that if the parents do not marry and the child is to be registered in the mother's *hukou*, the mother would be required to submit:

- a written application
- birth certificate and
- her own household registration details.¹⁵⁶

In the event that the child is to be registered on the father's *hukou*, in addition to the abovementioned documentation, the father would need to provide documents proving fatherhood, which may include 'a DNA report, official Court Judgement, notarial certificate etc'.¹⁵⁷

6.2.3 Fines for Having a Child from an Extramarital Affair

Where a child is born from an extramarital affair (where one or both parties are married to other people¹⁵⁸), the penalty is much heavier than for a child born to unmarried parents. Under Article 39(3) of the 2002 *Population and Family Planning Regulation of Fujian Province* the social compensation fee for having one child from an extramarital affair is:

- between four to six times the average annual per capita disposable income for an urban resident in the year prior to the birth of the child, or
- between four to six times the average annual per capita net income for a rural resident in the year prior to the birth of the child.¹⁵⁹

The social compensation fee for having two or more children from an extramarital affair is a heavier, but unspecified, sum.¹⁶⁰ Once again, if a member of a couple earns more than the average, the fee would be calculated based on their actual personal income.¹⁶¹

6.3 Special Circumstances and Exemptions in Fujian

Articles 9 – 12 of the *Population and Family Planning Regulation of Fujian Province* list the circumstances under which couples may apply for permission to have a second child.¹⁶² This information is obtained from a translation of the Regulations sourced from the UNHCR Refworld database.

¹⁵⁵ Department of Foreign Affairs and Trade 2010, *DFAT Report No. 1104 – China: RRT Information Request: CHN36059*, 12 February; Department of Foreign Affairs and Trade 2010, *DFAT Report 1210 – RRT Information Request CHN37505*, 12 November

¹⁵⁶ Department of Foreign Affairs and Trade 2010, *DFAT Report 1210 – RRT Information Request CHN37505*, 12 November

¹⁵⁷ Department of Foreign Affairs and Trade 2010, *DFAT Report 1210 – RRT Information Request CHN37505*, 12 November

¹⁵⁸ Department of Foreign Affairs and Trade 2012, *DFAT Report No. 1354 – RRT Information Request: CHN39817*, 23 January

¹⁵⁹ *Population and Family Planning Regulation of Fujian Province*, art 39, promulgated 26 July 2002 (effective 1 September 2002), UNHCR Refworld <<http://www.unhcr.org/refworld/pdfid/4242b7394.pdf>> Accessed 28 June 2011

¹⁶⁰ *Population and Family Planning Regulation of Fujian Province*, art 39, promulgated 26 July 2002 (effective 1 September 2002), UNHCR Refworld <<http://www.unhcr.org/refworld/pdfid/4242b7394.pdf>> Accessed 28 June 2011

¹⁶¹ *Population and Family Planning Regulation of Fujian Province*, art 39, promulgated 26 July 2002 (effective 1 September 2002), UNHCR Refworld <<http://www.unhcr.org/refworld/pdfid/4242b7394.pdf>> Accessed 28 June 2011

¹⁶² *Population and Family Planning Regulation of Fujian Province*, art 9-12, promulgated 26 July 2002 (effective 1 September 2002), UNHCR Refworld <<http://www.unhcr.org/refworld/pdfid/4242b7394.pdf>> Accessed 28 June 2011

Couples in Fujian may apply for permission to have a second child if they meet any one of the following criteria (Article 9):

- the husband and wife are both only children
- either partner is the only child of a martyr, i.e., an individual who died bringing about the communist revolution
- the couple were once diagnosed as sterile, adopted a child and then fell pregnant
- the first child has a non-inherited disability, as appraised by appropriate officials, and the couple are 'medically proved to be able to give birth to a normal infant'
- either partner becomes disabled to a particular degree due to a work accident
- both partners are residents of Hong Kong, Macao or Taiwan who have returned to Fujian and resided in the province for less than six years
- the couple is a remarried couple with one party never having had a child and the other having one child, or one party of the remarried couple has lost a spouse and each partner of the remarried couple had an in plan child before remarriage.¹⁶³

Rural couples in Fujian may be allowed to have a second child if they meet any one of the following criteria (Article 10):

- either the husband or the wife is the only child in the family
- the husband's brothers have no children and are all sterile
- the wife has no brother and only one sister and the husband goes to reside with the wife's family and support her parents
- both partners live in a township whose population density is less than fifty people per square kilometre and the average arable land for each person is more than a certain amount
- the couple has only one daughter.¹⁶⁴

In addition, under Article 10, couples in which (a) both partners are a fisherman and fisherwoman or (b) either partner is a mine worker working underground for over five years and is still working underground and only has one daughter, may apply for approval for a second child.¹⁶⁵

Returned *Overseas Chinese* (that is, Chinese people who are permanent residents of foreign countries) may have a second child in certain circumstances, if approved by authorities. Here Fujian rules reflect the situation nationally (see [Section 3.4.1 Special Circumstances and Exemptions](#)).¹⁶⁶

Returning student couples in Fujian are exempt from the social compensation fee when they return to China with a second child if both parents have studied in another country for more than

¹⁶³ *Population and Family Planning Regulation of Fujian Province*, art 9, promulgated 26 July 2002 (effective 1 September 2002), UNHCR Refworld <<http://www.unhcr.org/refworld/pdfid/4242b7394.pdf>> Accessed 28 June 2011

¹⁶⁴ *Population and Family Planning Regulation of Fujian Province*, art 10, promulgated 26 July 2002 (effective 1 September 2002), UNHCR Refworld <<http://www.unhcr.org/refworld/pdfid/4242b7394.pdf>> Accessed 28 June 2011

¹⁶⁵ *Population and Family Planning Regulation of Fujian Province*, art 10, promulgated 26 July 2002 (effective 1 September 2002), UNHCR Refworld <<http://www.unhcr.org/refworld/pdfid/4242b7394.pdf>> Accessed 28 June 2011

¹⁶⁶ *Population and Family Planning Regulation of Fujian Province*, art 11, promulgated 26 July 2002 (effective 1 September 2002), UNHCR Refworld <<http://www.unhcr.org/refworld/pdfid/4242b7394.pdf>> Accessed 28 June 2011

a year. In 2010 DFAT advised that to qualify for the exemption, both the mother and father need to be overseas Chinese students.¹⁶⁷ This is further to DFAT advice of 2004 which stated that in cases where ‘one or both of the parents had travelled overseas for study’, a couple is ‘allowed to have two children, but fees would be charged on return to China for the third and any subsequent children’.¹⁶⁸ In relation to returning student couples to Fujian, DFAT advised in February 2010 that the above exemptions ‘do not apply to parents who have a child out of wedlock’.¹⁶⁹

Minority groups in Fujian (with the exception of those of ‘Zhuang nationality’¹⁷⁰) may have a second child if both partners are rural peasants or if both parents lived or worked in a national minority township or village for more than five years. They may have a further child if both the husband and wife are the only child in their own family, one of their two children is disabled, or if they are a remarried couple who ‘meet the requirement of giving birth to a total of two children...before their remarriage’ (Article 12).¹⁷¹

6.4 Forced Abortion and Sterilisation in Fujian

The *Population and Family Planning Regulation of Fujian Province* do not explicitly state that mandatory abortion or sterilisation is required for out of plan births. Article 18 of the Regulations states that individuals who have unauthorised pregnancies should ‘take remedial measure in time’ and that local committees ‘should urge them to take remedial measures in time’.¹⁷² The Regulations do not however provide further information as to what constitutes ‘remedial measures’. As noted previously, the US Congressional-Executive Commission on China’s *Annual Report 2012* states that mandatory abortion is often referred to as ‘remedial measures’ in government reports.¹⁷³ Older DFAT advice from 2004 noted that forced abortions and sterilisations occurred in Fujian province at that time, however:

Fujian’s provincial regulations on population and family planning do not impose compulsory abortion or sterilisation for people with a history of out-of-quota births, but rather observe that guidance on birth control methods and family planning should be available to all to prevent out-of-quota births.¹⁷⁴

One reported case of forced abortion occurring in Fujian in 2012 was located.¹⁷⁵ Wu Liangjie claimed that his wife, Pan Chunyan, had her pregnancy terminated by family planning officials

¹⁶⁷ Department of Foreign Affairs and Trade 2010, *DFAT Report No. 1196 – China: RRT Information Request: CHN37198*, 13 September

¹⁶⁸ Department of Foreign Affairs and Trade 2004, *DFAT Report No. 327 – China: RRT Information Request: CHN17017*, 7 October

¹⁶⁹ Department of Foreign Affairs and Trade 2010, *DFAT Report No. 1104 – China: RRT Information Request: CHN36059*, 12 February

¹⁷⁰ The Zhuang nationality is the largest ethnic minority group in China with a population of over 16 million, the majority of which live in the Guangxi Zhuang Autonomous Region. The provinces of Yunnan and Guangdong have ‘a Zhuang population of more than 100,000 and each of Guizhou, Hainan, Hunan and Hebei provinces has more than 10,000 Zhuang people’. See: ‘Basic facts of various ethnic groups’ 2009, *China Daily*, 18 August

<http://www.chinadaily.com.cn/ethnic/2009-08/18/content_8582984.htm> Accessed 25 November 2010

¹⁷¹ *Population and Family Planning Regulation of Fujian Province*, art 12, promulgated 26 July 2002 (effective 1 September 2002), UNHCR Refworld <<http://www.unhcr.org/refworld/pdfid/4242b7394.pdf>> Accessed 28 June 2011

¹⁷² *Population and Family Planning Regulation of Fujian Province*, art 18, Promulgated 26 July 2002, (Effective 1 September 2002), UNHCR <<http://www.unhcr.org/refworld/pdfid/4242b7394.pdf>> Accessed 28 June 2011

¹⁷³ US Congressional-Executive Commission on China 2012, *Annual Report 2012*, 10 October, p.19

<<http://www.gpo.gov/fdsys/pkg/CHRG-112shrg76190/pdf/CHRG-112shrg76190.pdf>> Accessed 6 March 2013

¹⁷⁴ Department of Foreign Affairs and Trade 2004, *DFAT Report No. 317 – China: RRT Information Request: CHN16905*, 2 September

¹⁷⁵ ‘New ‘late-term abortion’ row in China’s Fujian province’ 2012, *BBC*, 10 July

<<http://www.bbc.co.uk/news/world-asia-china-18778597>> Accessed 8 February 2013; ‘Another Forced Abortion

at almost eight months in April 2012 because the couple had breached the family planning regulations.¹⁷⁶ The couple was from Xianyou County, Fujian Province.¹⁷⁷ There have also been other reports of incidents of forced sterilisations and abortions occurring in Fujian province in recent years (2007-2009).¹⁷⁸ No recent information was found in the sources consulted on the prevalence of forced sterilisation and abortion within the province as a whole.¹⁷⁹

7. FAMILY PLANNING IN GUANGDONG

7.1 Historical Context

Historically, authorities in Guangdong have taken a somewhat relaxed approach to family planning. In the 1980s, the one child policy was not being ‘pursued rigorously’ by provincial authorities and there were many two- and three-child families.¹⁸⁰ Despite national government pressure on Guangdong to tighten its approach,¹⁸¹ news sources report that the province had by 2008 experienced population growth linked to a baby boom.¹⁸² One article from 2008 reported a Guangdong official as saying that relevant authorities had been encouraged to ‘properly enforce’ the family planning policy in order to tackle the issue,¹⁸³ suggesting that such policies had not been implemented effectively. In 2011, it was reported that the director of Guangdong’s Population and Family Planning Commission said he had applied for ‘approval to be the leader in the country in the relaxation of the family-planning policy’.¹⁸⁴ Under the request sought by the director, couples would be allowed an extra child if only one parent was an only child, rather

Tragedy—‘My poor wife, my poor child’ 2012, *China Aid*, 9 July <<http://www.chinaaid.org/2012/07/another-forced-abortion-tragedymy-poor.html>> Accessed 8 February 2013; Wong, E 2012, ‘Reports of Forced Abortions Fuel Push to End Chinese Law’, *New York Times*, 22 July <http://www.nytimes.com/2012/07/23/world/asia/pressure-to-repeal-chinas-one-child-law-is-growing.html?pagewanted=all&_r=0> Accessed 8 February 2013

¹⁷⁶ ‘New ‘late-term abortion’ row in China’s Fujian province’ 2012, *BBC*, 10 July <<http://www.bbc.co.uk/news/world-asia-china-18778597>> Accessed 8 February 2013; ‘Another Forced Abortion Tragedy—‘My poor wife, my poor child’ 2012, *China Aid*, 9 July <<http://www.chinaaid.org/2012/07/another-forced-abortion-tragedymy-poor.html>> Accessed 8 February 2013

¹⁷⁷ ‘New ‘late-term abortion’ row in China’s Fujian province’ 2012, *BBC*, 10 July <<http://www.bbc.co.uk/news/world-asia-china-18778597>> Accessed 8 February 2013; ‘Another Forced Abortion Tragedy—‘My poor wife, my poor child’ 2012, *China Aid*, 9 July <<http://www.chinaaid.org/2012/07/another-forced-abortion-tragedymy-poor.html>> Accessed 8 February 2013

¹⁷⁸ US Congressional-Executive Commission on China 2009, *Annual Report 2009*, 10 October, pp. 154-6 <<http://www.cecc.gov/pages/annualRpt/annualRpt09/CECCannRpt2009.pdf>> Accessed 15 October 2009; China Aid Association and Women’s Rights Without Frontiers 2009, *New Evidence Regarding China’s One-Child Policy Forced Abortion, Involuntary Sterilization, Infanticide and Coercive Family Planning*, 10 November, Case 5 <http://www.unitedstatesaction.com/documents/china/Littlejohn_and_Fu_Report_1.doc> Accessed 19 February 2010; Human Rights in China n.d., *Spotlight: Women’s Rights and Reproductive Health in China* <<http://www.ir2008.org/03/spotlight.php#8>> Accessed 22 February 2010; DIAC Country Information Service 2009, *Country Information Report No. 09/38 – CIS Request No. 9656; Economic sanctions applied to breaches of the One Child Policy, Fujian Province*, (sourced from DFAT advice of 28 April 2009), 28 April

¹⁷⁹ Searches were conducted of human rights organisations, foreign government reports, international news agencies, tribunal and DIAC resources (ISYS, CISNET and Country Portals).

¹⁸⁰ RRT Country Research 1994, *Record of Conversation with Dr Terence Hull*, 15 August; RRT Country Research 1994, *Record of Conversation with Ms Penny Kane*, 15 August

¹⁸¹ Department of Foreign Affairs and Trade 1999, *Family Planning in China Budget estimates hearing*, 9 June, Hansard Page 310, 313-4

¹⁸² Qiwen, L 2008, ‘Baby overload in Guangdong’, *China Daily*, 16 October <http://www.chinadaily.com.cn/cndy/2008-10/16/content_7110365.htm> Accessed 13 January 2009; Qiwen, L 2008, ‘Population boom poses problems for Guangdong’, *China Daily*, 16 April <http://www.chinadaily.com.cn/cndy/2008-04/16/content_6619764.htm> Accessed 13 January 2009

¹⁸³ Qiwen, L 2008, ‘Baby overload in Guangdong’, *China Daily*, 16 October <http://www.chinadaily.com.cn/cndy/2008-10/16/content_7110365.htm> Accessed 13 January 2009

¹⁸⁴ ‘China’s population: Only and lonely’ 2011, *The Economist*, 21 July <<http://www.economist.com/node/18988926>> Accessed 8 February 2013

than both.¹⁸⁵ This would be a relaxation of the requirement under current regulations which requires both parents to be only children.¹⁸⁶ No reports were located of the outcome of this request.¹⁸⁷

7.2 Social Compensation Fees in Guangdong

Article 53 of the *Population and Family Planning Regulations of Guangdong Province* outlines the social compensation fees that are imposed for different types of breaches of the Regulations.¹⁸⁸

7.2.1 Fines for Having Additional Children

Under Guangdong family planning regulations, urban residents who have one more child than permitted are subject to a social compensation fee of between three to six times the average annual per capita disposable income of urban residents in the year prior to the birth. Where urban residents have two or more children than permitted, the social compensation fee described above is multiplied by the total number of additional children. If an individual earns more than the average, an additional social compensation fee is levied on the excess portion 'that is at least equal to but no more than twice the excess amount.'¹⁸⁹

Rural residents who have one more child than permitted are subject to a social compensation fee of between three to six times the average annual per capita net income in 'the local township, ethnic township or town' in the year prior to the birth. The social compensation fee is imposed on 'both husband and wife'. Again, if the individual earns more than the average, an additional social compensation fee is levied on the excess portion 'that is at least equal to but no more than twice the excess amount'.¹⁹⁰

¹⁸⁵ 'China's population: Only and lonely' 2011, *The Economist*, 21 July

<<http://www.economist.com/node/18988926>> Accessed 8 February 2013

¹⁸⁶ *Population and Family Planning Regulations of the Province of Guangdong*, chap 3, promulgated 28 November 2008 (effective 1 January 2009), Westlaw

<<http://app.westlawchina.com/maf/china/app/document?&docguid=i3cf76ad3000001211b6676b2e9ddc691&hitguid=i3cf76ad3000001211b6676b2e9ddc691&srguid=ia744c0670000013d136c2e3a2b03e1a3&spos=1&epos=1&td=1&crumb-action=append&context=3&lang=en>> Accessed 13 March 2012

¹⁸⁷ Searches were conducted of international and Chinese news agencies, Chinese law websites and general internet searches.

¹⁸⁸ *Population and Family Planning Regulations of the Province of Guangdong*, art 53, promulgated 28 November 2008 (effective 1 January 2009), Westlaw

<<http://app.westlawchina.com/maf/china/app/document?&docguid=i3cf76ad3000001211b6676b2e9ddc691&hitguid=i3cf76ad3000001211b6676b2e9ddc691&srguid=ia744c0670000013d136c2e3a2b03e1a3&spos=1&epos=1&td=1&crumb-action=append&context=3&lang=en>> Accessed 13 March 2012

¹⁸⁹ *Population and Family Planning Regulations of the Province of Guangdong*, art 53, promulgated 28 November 2008 (effective 1 January 2009), Westlaw

<<http://app.westlawchina.com/maf/china/app/document?&docguid=i3cf76ad3000001211b6676b2e9ddc691&hitguid=i3cf76ad3000001211b6676b2e9ddc691&srguid=ia744c0670000013d136c2e3a2b03e1a3&spos=1&epos=1&td=1&crumb-action=append&context=3&lang=en>> Accessed 13 March 2012

¹⁹⁰ *Population and Family Planning Regulations of the Province of Guangdong*, art 53, promulgated 28 November 2008 (effective 1 January 2009), Westlaw

<<http://app.westlawchina.com/maf/china/app/document?&docguid=i3cf76ad3000001211b6676b2e9ddc691&hitguid=i3cf76ad3000001211b6676b2e9ddc691&srguid=ia744c0670000013d136c2e3a2b03e1a3&spos=1&epos=1&td=1&crumb-action=append&context=3&lang=en>> Accessed 13 March 2012

7.2.2 Fines for Having a Child out of Wedlock

The 2008 *Population and Family Planning Regulations of Guangdong Province* state that social compensation fees are imposed when a child is born out of wedlock.¹⁹¹ Article 53 of the Regulations state that for urban residents, the social compensation fee for the first child born out of wedlock is twice the amount calculated for urban residents who have more children than permitted (three to six times the average annual per capita disposable income of urban residents in the year prior to the birth).¹⁹²

For rural residents the same principles apply for the calculation of fees for children born out of wedlock: twice the amount calculated for rural residents who have more children than permitted (three to six times the average annual per capita net income in ‘the local township, ethnic township or town’ in the year prior to the birth).¹⁹³

7.3 Special Circumstances and Exemptions in Guangdong

Chapter Three (Articles 19-23) of the *Population and Family Planning Regulations of Guangdong Province* outlines the circumstances in which couples may have more than one child. Circumstances can include the following:

- if a couple already has a child and that child has a debilitating disease or handicap
- if there is a remarriage and the husband or wife has no more than two children while the other party has no children
- if both the husband and wife have one child each from a previous marriage but the newly constituted family has no children because the child/ren of the previous marriage(s) live with the former spouse(s)
- if both the husband and wife have one child each from a previous marriage but the child/ren of the previous marriage(s) live with the former spouse(s) AND the newly constituted marriage has a child with a debilitating disease or handicap
- if the wife becomes pregnant after the couple has adopted a child as the result of a determination of infertility
- if both the husband and wife are from single child families
- if either the husband or wife has worked continuously for at least five years in an underground mining job or in an undersea job and that person continues to do the same work

¹⁹¹ *Population and Family Planning Regulations of the Province of Guangdong*, art 53, promulgated 28 November 2008 (effective 1 January 2009), Westlaw

<<http://app.westlawchina.com/maf/china/app/document?&docguid=i3cf76ad3000001211b6676b2e9ddc691&hitguid=i3cf76ad3000001211b6676b2e9ddc691&srguid=ia744c0670000013d136c2e3a2b03e1a3&spos=1&epos=1&td=1&crumb-action=append&context=3&lang=en>> Accessed 13 March 2012

¹⁹² *Population and Family Planning Regulations of the Province of Guangdong*, art 53, promulgated 28 November 2008 (effective 1 January 2009), Westlaw

<<http://app.westlawchina.com/maf/china/app/document?&docguid=i3cf76ad3000001211b6676b2e9ddc691&hitguid=i3cf76ad3000001211b6676b2e9ddc691&srguid=ia744c0670000013d136c2e3a2b03e1a3&spos=1&epos=1&td=1&crumb-action=append&context=3&lang=en>> Accessed 13 March 2012

¹⁹³ *Population and Family Planning Regulations of the Province of Guangdong*, art 53, promulgated 28 November 2008 (effective 1 January 2009), Westlaw

<<http://app.westlawchina.com/maf/china/app/document?&docguid=i3cf76ad3000001211b6676b2e9ddc691&hitguid=i3cf76ad3000001211b6676b2e9ddc691&srguid=ia744c0670000013d136c2e3a2b03e1a3&spos=1&epos=1&td=1&crumb-action=append&context=3&lang=en>> Accessed 13 March 2012

- if both husband and wife are rural residents and the couple has only one child and that child is female
- if the couple is of ethnic minority origin and live in an area where there is a concentration of an ethnic minority in an ethnic minority autonomous county (in certain circumstances, see Article 22 for more information).¹⁹⁴

In addition, Article 20 lists the circumstances in which no further births are permitted, for example, if a request is made to give birth again after a child has been abandoned or given up for adoption.¹⁹⁵

7.4 Forced Abortion and Sterilisation in Guangdong

The *Population and Family Planning Regulations of Guangdong Province* do not specifically state that mandatory abortion or sterilisation is required for out of plan births. However, Article 25 of the Regulations states that individuals who have unauthorised pregnancies should take ‘emergency contraception in a timely manner’.¹⁹⁶

No recent information was found in the sources consulted specifically as to the prevalence of forced sterilisation and abortion within Guangdong province as a whole.¹⁹⁷ There have, however, been some reports of forced abortions (in 2009) and sterilisations (in 2010) occurring in parts of Guangdong in recent years.¹⁹⁸ For example, a major coercive sterilisation program was carried out by family planning authorities in Puning City, Guangdong Province, during April 2010.¹⁹⁹ The US Department of State referred to 8,916 sterilisation procedures being eventually completed during the Puning City program with 1,300 people reportedly being detained until at least one member of the couple in violation of family planning policies submitted to a sterilisation procedure.²⁰⁰

¹⁹⁴ *Population and Family Planning Regulations of the Province of Guangdong*, chap 3, promulgated 28 November 2008 (effective 1 January 2009), Westlaw

<<http://app.westlawchina.com/maf/china/app/document?&docguid=i3cf76ad3000001211b6676b2e9ddc691&hitguid=i3cf76ad3000001211b6676b2e9ddc691&srguid=ia744c0670000013d136c2e3a2b03e1a3&spos=1&epos=1&td=1&crumb-action=append&context=3&lang=en>> Accessed 13 March 2012

¹⁹⁵ *Population and Family Planning Regulations of the Province of Guangdong*, art 20, promulgated 28 November 2008 (effective 1 January 2009), Westlaw

<<http://app.westlawchina.com/maf/china/app/document?&docguid=i3cf76ad3000001211b6676b2e9ddc691&hitguid=i3cf76ad3000001211b6676b2e9ddc691&srguid=ia744c0670000013d136c2e3a2b03e1a3&spos=1&epos=1&td=1&crumb-action=append&context=3&lang=en>> Accessed 13 March 2012

¹⁹⁶ *Population and Family Planning Regulations of the Province of Guangdong*, art 25, promulgated 28 November 2008 (effective 1 January 2009), Westlaw

<<http://app.westlawchina.com/maf/china/app/document?&docguid=i3cf76ad3000001211b6676b2e9ddc691&hitguid=i3cf76ad3000001211b6676b2e9ddc691&srguid=ia744c0670000013d136c2e3a2b03e1a3&spos=1&epos=1&td=1&crumb-action=append&context=3&lang=en>> Accessed 13 March 2012

¹⁹⁷ Searches were conducted of human rights organisations, foreign government reports, international news agencies, tribunal and DIAC resources (ISYS, CISNET and Country Portals).

¹⁹⁸ US Congressional-Executive Commission on China 2009, *Annual Report 2009*, 10 October, pp. 154-6 <<http://www.cecc.gov/pages/annualRpt/annualRpt09/CECCannRpt2009.pdf>> Accessed 15 October 2009; US Congressional-Executive Commission on China 2010, *Annual Report 2010*, 10 October, p.119; Amnesty International 2010, *Thousands at risk of forced sterilization in China*, 22 April <<http://www.amnesty.org/en/news-and-updates/thousands-risk-forced-sterilization-china-2010-04-22>> Accessed 20 June 2011

¹⁹⁹ US Congressional-Executive Commission on China 2010, *Annual Report 2010*, 10 October, p.119; Amnesty International 2010, *Thousands at risk of forced sterilization in China*, 22 April <<http://www.amnesty.org/en/news-and-updates/thousands-risk-forced-sterilization-china-2010-04-22>> Accessed 20 June 2011; Jingjing, H 2010, ‘City cracks down on couples’, *Global Times*, 16 April <<http://china.globaltimes.cn/society/2010-04/522789.html>> Accessed 21 June 2011; Macartney, J 2010, ‘China tries to sterilise 10,000 parents over one-child rule’, *The Times Online*, 17 April <<http://www.timesonline.co.uk/tol/news/world/asia/article7099417.ece>> Accessed 20 June 2011

²⁰⁰ US Department of State 2011, *Country Reports on Human Rights Practices 2010 – China*, 8 April, Section 6

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