

Title: RRT Country Information Request - CHN37505

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To: Beijing; Guangzhou

Cc: RR : Hong Kong, Shanghai

From: Canberra (CHCH/DFAT/ILD/IOB/PRI)

From File:

EDRMS Files:

References: The cable has the following attachment/s -
Attachment A.doc
Attachment B.doc

Response: Routine, Information Only

Summary

Cable requests Post's assistance with a research request from the Refugee Review Tribunal RRT. Grateful response by 4 November 2010. Subject to the discretion of the Head of Mission, we suggest that DIAC undertake this task.

The Refugee Review Tribunal (RRT) would be grateful for Post's assistance in providing information relevant to the RRT's review of a visa matter. The RRT is an independent body set up by legislation to review applications for refugee status of persons in Australia. DFAT is responsible for assisting the RRT to obtain information relevant to cases heard by the Tribunal.

REFERENCE

2. For more information on the RRT and DFAT instructions for completing RRT requests, please refer to DFAT Policy Administrative Circular P0944 dated 8 January 2009.

BACKGROUND

s 47E(d)

RESEARCH COMPLETED BY THE MRT-RRT

s 47E(d)

s 47E(d) DFAT Reports 1104 (Attachment A) and 404 (Attachment B) have also been reviewed.

TIMEFRAME

5. The RRT asks that this information be provided to the Tribunal, in writing, on or before 4 November 2010.

QUESTIONS

6. The RRT would appreciate it if Post in Guangzhou and Beijing would contact specific family planning agencies in Fujian and Shandong respectively to seek information to provide answers to the following:

A. What procedures are followed by family planning officials with regard to poor households who have difficulty in paying social compensation fees? For example, do family planning officials allow social compensation fees to be waived or deferred in some circumstances or paid via instalments? If so, what procedures are followed in these cases and how are the instalments calculated?

B. Do family planning officials in these two provinces allow registration of children who are born to single, unwed mothers? If so, what documents from the parent are required for the registration? Is the registration process the same as for married couples (with the exception of presenting a marriage certificate)? If the father of the child is known/named, is his involvement required for the registration even if the parents are not a de facto marriage relationship?

C. Do family planning officials in these two provinces allow registration of children born to unwed parents? If so, what documents from the parents are required for the registration? Is the registration process the same as for married couples (with the exception of presenting a marriage certificate)?

D. Do family planning officials in these two provinces allow registration of children born to underage parents (under 22 for men and 20 for women)? If so, what documents from the parents are required for the registration? Is the registration process the same as for married couples (with the exception of presenting a marriage certificate)?

E. What was the average per capita disposable income for urban residents in Shandong each year since 2005 and what was the average per capita net income for rural residents in Shandong each year since 2005?

F. Given that the range of social compensation fees varies from half to ten times the average annual per capita disposable income for urban residents in Shandong and between four to six times the average annual per capita disposable income in Fujian, which level is applied in the following cases and are any additional restrictions placed on the parent(s):

- i) single, unwed mother 20 years or over;
- ii) unwed couples, both of marriage age (22 for men and 20 for women); and
- iii) couples under the legal age of marriage?

G. Please provide clarification on the concept of 'mature age' marriage (25 for men and 23 for women) contained in the Shandong Province Population and Family Planning Ordinance 2002, including whether any penalties are imposed for having children when a man is aged between 22 and 24 and a woman is aged 20 and 22.

C 7. Grateful response by **unclassified** cable. In responding to requests, posts should provide factual information to the extent possible and should not provide unsolicited comment. Posts should keep in mind that DFAT reports form only part of the information which contributes to decisions made by Tribunal members, or delegates of the Minister for Immigration and Citizenship. The information may be disclosed to applicants, their advisers, the Department of Immigration and Citizenship (DIAC), or otherwise become publicly available and attributed to post. *Please note that the Tribunals will now be publishing country-specific reports on their website, as announced recently by the Minister for Immigration and Citizenship. Information you provide in response to tribunal requests may be cited in these reports as DFAT-sourced material. At Post's recommendation, answers that impact on the bilateral relationship will not be published online, but will still be provided to the Tribunal member and the applicant. Please discuss with PRI in the first instance.*

8. Should Post require further information please contact s 47E(d) @dfat.gov.au). If Post foresees that it is unable to complete the request, please contact PRI so this advice can be relayed to the Tribunals.

text ends

s 22(1)(a)(ii)

The following report is from the Department of Foreign Affairs & Trade and is provided for the exclusive use of decision makers in the refugee determination process in the Migration/Refugee Review Tribunal. It is acknowledged that this document may be released to an applicant and/or their legal advisor.

DFAT REPORT: 1104

REPORT RELEASED TO THE MRT/RRT: 12 February 2010

MRT/RRT INFORMATION REQUEST: CHN36059

DFAT provides the following response to the questions contained in MRT/RRT Information Request: CHN36059

Questions

A. What are the official procedures that need to be undertaken for children born overseas when their parents return to China? To the extent that a fee is to be paid for having a child overseas, how much is that fee and/or how is it calculated?

In order to apply for the child's household registration, the parents would be required to provide the following documentation: a Chinese translation of the child's birth certificate; the parents' household registration; ID cards; passports; certificate of marriage; and a receipt issued by the local Family Planning Committee to demonstrate that a family planning fee (also known as a social compensation fee) has been paid. This list of requirements is not comprehensive; the local authority may request more information or identification on a case-by-case basis.

According to regulations published on the website of Long Hai City, Fujian Province, a marriage certificate for the parents should be prepared and presented when applying for a household registration for their child born out of wedlock. (<http://www.longhai.gov.cn/ReadNews.asp?NewsID=243>). Post has not been able to find any information specific to Fuqing City, Fujian Province.

Most provincial and municipal governments have stated that a family planning fee would be imposed for children born out of wedlock. The State Family Planning Commission authorises local governments to establish their own criteria when imposing family planning fees in each jurisdiction. According to a regulation published by the Fujian Government in September 2002, 60 to 100 per cent of the average local income should be imposed for those who give birth to their first child out of wedlock. If the parental annual income is higher than the average level, their actual annual income will be adopted, meaning wealthier parents are charged a higher penalty. Rates have been known to be negotiable in some remote regions.

B. Do children born overseas incur any official penalties (other than family planning penalties) upon return to China on the basis of being born overseas?

Apart from family planning penalties, Post is not aware of any other penalties that may be applied on the basis of being born overseas. However, penalties are likely to be applied on the basis of being born out of wedlock.

C. Are children who are born out of wedlock and have gained household registration subject to discrimination or harm in China? If so, what is the nature of the discrimination and harm and is state protection available (both legally and in practice) in such circumstances?

According to Chinese law, a child born out of wedlock, but who has subsequently gained household registration, is entitled to the same educational rights as other children. Article 25 of the Marriage Law of the People's Republic of China (sourced from the website of the Chinese Consulate-General, New York) states that "children born out of wedlock shall enjoy the same rights as children born from married parents." The Article states that no one may harm or discriminate against them.

(<http://www.nyconsulate.prchina.org/eng/lqz/laws/t42222.htm>).

However, to ensure the protection of children born out of wedlock, their legal status and the identity of their parents must be clarified. This is usually done by ensuring correct household registration for the child (which requires the parents to be married), and a written statement by the parents clarifying their relationship to the child, which should be lodged with the relevant notary office.

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. However, this situation is likely to have improved. If a local culture has difficulty accepting children in these circumstances, the parents may seek relocation to another region, or migration to another country. Post cannot comment on the cultural practices or values specific to Fuqing City in relation to children born out of wedlock.

Post has been unable to locate any Chinese government agency directly responsible for the care of a child being discriminated against on the basis of being born out of wedlock, and without a household registration. The agency with the most relevant remit for this case may be the Ministry of Civil Affairs, which deals with the protection of orphans and other vulnerable groups. However, Post has no specific information on what assistance the Ministry of Civil Affairs would be able to provide in this case.

D. If a couple were to marry after having a child out of wedlock, would this impact on the requirement to pay a social compensation fee?

The key consideration is the marital status of the parents prior to the birth of the child. 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. If a mother gives birth to a child out of wedlock, a social compensation fee is likely to be charged, even if the parents subsequently get married.

The Family Planning Commission state that the intention of imposing a fee to unmarried parents who give birth to a child is to encourage marriage. Marriage is required to ensure the lawful rights of the child, such as legal household registration.

E. Previous DFAT advice indicates that there are two circumstances in which couples returning to China are exempt from family planning fees for having an unauthorised second child. Do these exemptions also apply to individuals who have a child out of wedlock as opposed to an unauthorised second child?

It is likely that the parents in this case will be charged the family planning fee as the above exemptions do not apply to parents who have a child out of wedlock.

For information, conditions for the first exemption (Overseas Chinese) are listed below. 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.

Regarding the second exemption, according to an article published on the website of the State Family Planning Commission in June 2008, if the couple (both mother and father) are overseas students and have stayed in another country for more than one year, an unauthorised second child will not be charged the social compensation fee when they return to China.

F. In relation to the above family planning exemptions, what are the requirements for Chinese nationals who have returned to China after studying overseas? Is it relevant whether they have completed the course they undertook to complete, or is having being granted a student visa and having lived abroad on that visa sufficient?

Post cannot find any information outlining requirements for returned students. The only available information stipulates a one year timeframe of overseas study. Post cannot comment on a requirement to complete a course of study, or simply studying abroad for a year.

Post notes that the above exemptions apply to an unauthorised second child. These exemptions do not apply to a child born out of wedlock.

Comment

The above advice is Post's understanding of Chinese law and information relating to this issue, sourced from Chinese Government websites. Post's advice should be considered a general interpretation of these laws and information.

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.

The following report is from the Department of Foreign Affairs & Trade and is provided for the exclusive use of decision makers in the refugee determination process in the Refugee Review Tribunal. It is acknowledged that this document may be released to an applicant and/or their legal advisor.

DFAT REPORT 404

REPORT RELEASED TO THE RRT

6 September 2005

RRT INFORMATION REQUEST: CHN17471

The following information is in response to an RRT request regarding application of family planning regulations in Shandong province.

A. Chapter 6 of Shandong Province Family Planning Regulations covers penalties ("compensation fees") for out-of-plan births (see http://www.cpic.org.cn/zcfg/zcfg_detail.asp?id=1699 in Chinese only). For urban residents, the compensation fee is half to ten times the previous years average per capita disposable income for urban residents in the province or half to ten times the person's actual income in the previous year, whichever is higher. For rural residents, the fee is half to ten times the previous years average per capita net income for rural residents of the province or half to ten times the person's actual income in the previous year, whichever is higher. The size of the penalty depends on the nature of the case and severity of violation of the regulations.

B. The Shandong Family Planning Commission informed us that it strictly enforces family planning regulations in Shandong and it had no practice of waiving or reducing the compensation fee. But if the families are under a certain income threshold, the compensation fee can be postponed or paid by instalment. We have not been able to find any evidence of authorities waiving these penalties, but this does not rule out the possibility of waiver or reduction.

C. Articles 21 to 24 of the regulations stipulate 14 circumstances under which a family can have a second child, including if the husband and wife are both the only child in their respective families, if the first child of the family is diagnosed as disabled or if one of the couple has worked in the mining or ocean fishing industry for five years and is still working in the industry and the couple's first child is a girl. However, qualified couples must apply for a pre-birth certificate before the woman becomes pregnant with the second child. There are no provisions dealing with waiver or reduction of the penalty.

D. The Shandong Family Planning Commission told us that the National Family Planning Commission (NFPC) had separate regulations regarding Chinese nationals resident in other countries. The NFPC told us it had circulated an "internal regulation" (i.e. not for public distribution) to Chinese Embassies saying that students studying overseas were allowed a second child, but would have to pay penalties (at the level set by the province) for a third and any subsequent children. Regulations covering the application of the national Population and Family Planning Law to Chinese citizens who were permanent residents of other countries or were working overseas were yet to be finalised.

E. The child would be able to register for a residence permit ("hukou"), provided her parents paid the compensation fee outlined in paragraph A. The Shandong Family Planning Commission told us that all births must be registered with local public security authorities.

F. The regulations do not prescribe any penalty against children born out-of-plan.

G. China does not have a national medical health insurance system, thus registration is not relevant to accessing health care. We understand unregistered children can attend school in most cases, but may face restrictions on which schools they can attend and must pay higher tuition fees.

H. This information accords with information we provided in 2004 regarding family planning regulations in Fujian province (BJ550117L).

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Australian Government
Migration Review Tribunal • Refugee Review Tribunal

Background Paper

Protestants in China

Issue date:	21 March 2013 (update)
Review date:	21 September 2013
Contact:	s 47E(c) and s 47E(d)

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1. Overview

Protestant Christianity has been a prominent part of the general religious resurgence in China over the past three decades with the number of Protestants growing from fewer than one million in 1978 to more than 50 million today.¹ Protestants, usually referred to in China simply as 'Christians'², are permitted to worship at officially registered Protestant churches and many millions do so. A far greater number of Protestants, however, worship at churches which are not officially registered ('house churches') and their situation varies from toleration to repression. The authorities have periodically attempted to force some unregistered churches to affiliate with the registered bodies, but these attempts have not been uniform throughout the country. In a country the size of China, the situation for Christians is not uniform or unchanging.³ In addition, there are several Protestant fringe groups, such as the Local Church or 'Shouters', which are labelled dangerous 'evil cults' by the Government and whose leaders and members often face repression.⁴

2. History

Protestant Christianity was first introduced into China by missionaries at the beginning of the 19th century. In the minds of many Chinese nationalists, the missionary movements coincided with political and commercial attempts to 'open' China to the West.⁵ In the 20th Century, the Chinese Protestant Church became largely indigenised and produced its own charismatic preachers. Between 1912 and the outbreak of the Sino-Japanese War (1937), a number of indigenous churches were established including the Church of Christ, the True Jesus Church (1917), Jesus Family (1926) and Watchman Nee's Little Flock (from which the Local Church later evolved) (1928).⁶

Despite such indigenisation, at the time of the Communist victory in 1949, Christianity was still seen as a 'foreign religion' by many Chinese and by the Communists. In 1954, to make the Protestant churches in China conform to the ideology and organisation of the new political system, the new Communist government and representatives of the Chinese churches founded Three-Self Patriotic Movement (TSPM), on the principles of self-administration, self-financing

¹ Kindopp, Jason & Hamrin, Carol Lee (eds), 2004, *God and Caesar in China*, Brookings Institution Press, Washington D.C., pp.1-2; US Department of State 2012, *International Religious Freedom Report for 2011 - China*, 30 July <Attachment>; Schak, David 2011, 'Protestantism in China: A Dilemma for the Party-State', *Journal of Current Chinese Affairs*, Vol 40, No 2, p.73 <<http://hup.sub.uni-hamburg.de/giga/jcca/article/view/418/416>> Accessed 29 January 2013 <Attachment>.

² In China, Catholics are referred to as 'Catholics' whereas Protestant Christians are generally referred to as 'Christians' rather than 'Protestants'.

³ Bays, Daniel 2003, 'Chinese Protestant Christianity Today', *The China Quarterly*, Vol. 174, No. 3, June, pp.488-504 <Attachment>; US Department of State 2012, *International Religious Freedom Report for 2011 - China*, 30 July <Attachment>.

⁴ US Department of State 2012, *International Religious Freedom Report for 2011 - China*, 30 July <Attachment>.

⁵ The History section is largely taken from China Online Study Centre 2010, 'Churches: Protestant', Churches Together in Britain and Ireland website <http://www.chinaonlinecentre.org/china_churches_protestant.html> Accessed 14 July 2011 <Attachment> with additional footnoted sources.

⁶ Cheng, M.M.C. 2003, 'House Church Movements and Religious Freedom in China', *China: An International Journal*, Vol. 1, No. 1, March, p.28 <Attachment>.

and self-evangelisation.⁷ Some Chinese Christians chose not to join the TSPM on theological, political or personal grounds.⁸

Denominations were criticised as 'relics of imperialism' and by 1958 churches were increasingly merged, ecclesiastical hierarchies were harmonised and united services were held as the TSPM announced a 'post-denominational era'.⁹ Financial and political constraints grew and many churches were closed during the late 1950s and early 1960s.

Religious freedom deteriorated further following the outbreak of the Cultural Revolution in 1966. Virtually all churches were closed from the early 1960s to 1979 and many church leaders and believers were sent to prison or labour camps.¹⁰ All religious life and thinking was suppressed for over ten years, as vestiges of 'feudal society' or 'imperialism'.¹¹

With the beginning of the 'opening and reform' economic policy which followed the death of Mao Zedong in 1976, churches were gradually refurbished and reopened and the China Christian Council (CCC) was formed under the leadership of Bishop K.H. Ting. Together, the CCC and TSPM form the *liang hui* (two committees) which supervise the registered Chinese churches throughout China.¹² Since 1978, Protestant Christianity has experienced a 'spectacular resurgence' in China, with the number of Protestants growing from less than one million in 1978 to more than 50 million today.¹³

3. Number of Adherents

There are probably between 50 and 90 million Protestants in China (estimates vary considerably), more of whom worship at unregistered churches rather than official churches. In 2010 the State Administration for Religious Affairs (SARA) announced there were over 16 million registered Christians in China, worshipping in over 50,000 registered Three-Self

⁷ The organisation was initially found in 1950 and became the TSPM in 1954. Hunter, Alan and Chan, Kim-Kwong, 1993, *Protestantism in Contemporary China*, Cambridge University Press, Cambridge, pp.23-24 <Attachment>.

⁸ China Online Study Centre 2010, 'Churches: Protestant', Churches Together in Britain and Ireland website <http://www.chinaonlinecentre.org/china_churches_protestant.html> Accessed 14 July 2011 <Attachment>. For the reasons churches refuse to join the TSPM, see the section 'Unregistered Churches/ Unregistered Protestant Groups'.

⁹ China Online Study Centre 2010, 'Churches: Protestant', Churches Together in Britain and Ireland website <http://www.chinaonlinecentre.org/china_churches_protestant.html> Accessed 14 July 2011 <Attachment>; Hunter, Alan and Chan, Kim-Kwong, 1993, *Protestantism in Contemporary China*, Cambridge University Press, Cambridge, p.25 <Attachment>.

¹⁰ Hunter, Alan and Chan, Kim-Kwong, 1993, *Protestantism in Contemporary China*, Cambridge University Press, Cambridge, pp.26,93,194 <Attachment>.

¹¹ China Online Study Centre 2010, 'Churches: Protestant', Churches Together in Britain and Ireland website <http://www.chinaonlinecentre.org/china_churches_protestant.html> Accessed 14 July 2011 <Attachment>.

¹² China Online Study Centre 2010, 'Churches: Protestant', Churches Together in Britain and Ireland website <http://www.chinaonlinecentre.org/china_churches_protestant.html> Accessed 14 July 2011 <Attachment>.

¹³ Kindopp, Jason & Hamrin, Carol Lee (eds), 2004, *God and Caesar in China*, Brookings Institution Press, Washington D.C., pp.1-2; US Department of State 2012, *International Religious Freedom Report for 2011 - China*, 30 July <Attachment>

Patriotic Movement (TSPM) churches¹⁴, though other sources claim there could be over 30 million TSPM Christians.¹⁵ The Pew Research Centre estimates 50 million to 70 million Christians practice without state sanction.¹⁶ One Chinese scholar estimated in a public lecture at Renmin University that the number of Christians in China, including those in TSPM churches and unregistered churches, is near 90 million.¹⁷ (This represents 6-7% of the Chinese population.) Tony Lambert, an expert on Christianity in China, however says no-one is able to make accurate surveys of all house-church believers at the national or even provincial level and all reports of numbers 'are partial, may be exaggerated and, in most cases, almost certainly cannot give a fair or accurate estimate of the many other networks, let alone individual fellowships, which exist outside the informants' own limited range of first-hand knowledge.'¹⁸

4. Official Government Policy on Religion

The Chinese government policy on religion has been described as 'toleration with restrictions'¹⁹, and allows freedom of religious belief with limitations on religious practice.²⁰ The Chinese Constitution states that Chinese citizens 'enjoy freedom of religious belief.' It also bans the state, public organisations, and individuals from compelling citizens to believe in, or not to believe in, any religion. The Constitution and laws protect only 'normal religious activities' that are overseen by the five (Buddhist, Taoist, Muslim, Catholic, and Protestant) state-sanctioned 'patriotic religious associations' (PRAs). Officials have wide latitude to interpret the phrase 'normal religious activities.'²¹ By law, only the PRAs may register religious groups and places of worship. The Government permits proselyting in registered places of worship and in private settings, but does not permit it in public, in unregistered places of worship, or by foreigners.²² The Constitution states that religious bodies and affairs are not

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- ¹⁴ China Online Study Centre 2010, 'Churches: Protestant', Churches Together in Britain and Ireland website <http://www.chinaonlinecentre.org/china_churches_protestant.html> Accessed 14 July 2011 <Attachment> US Department of State 2012, *International Religious Freedom Report for 2011 - China*, 30 July <Attachment>
- ¹⁵ Paul Hattaway claims that the SARA figures are a deliberate underestimate. Hattaway, Paul 2010, *How many Christians are there in China*, Asia Harvest website <<http://www.asiaharvest.org/pages/Christians%20in%20China/How%20Many%20Christians%20are%20There%20in%20China.pdf>> Accessed 24 February 2011. <Attachment>.
- ¹⁶ US Department of State 2012, *International Religious Freedom Report for 2011 - China*, 30 July <Attachment>
- ¹⁷ US Department of State 2010, *International Religious Freedom Report 2010 - China*, 17 November <Attachment>.
- ¹⁸ Lambert, Tony 2013, 'Religious Statistics in China', *ChinaSource Quarterly*, Vol.14, No. 4, 7 January <<http://www.chsource.org/en/articles/christianity-and-other-religions/item/224-religious-statistics-in-china>> Accessed 26 February 2013 <Attachment>
- ¹⁹ Huang, Jianbo and Yang, Fenggang 2005, 'The Cross Faces the Loudspeakers: A Village Church Perseveres Under State Power' in *State, Market and Religions in Chinese Societies*, eds Fenggang Yang and Joseph B Tamney, Brill, Leiden p.45 <Attachment>.
- ²⁰ US Department of State 2012, *International Religious Freedom Report for 2011 - China*, 30 July, Sec.II <Attachment>; Potter, P. 2003 'Belief in Control: Regulation of Religion in China', in Daniel L. Overmeyer (ed), *Religion in China Today*, Cambridge University Press, Cambridge. pp.317, 321, 326 <Attachment>.
- ²¹ US Department of State 2012, *International Religious Freedom Report for 2011 - China*, 30 July <Attachment>
- ²² US Department of State 2012, *International Religious Freedom Report for 2011 - China*, 30 July <Attachment>.

'subject to any foreign domination' and affirms the leading role of the, officially atheist, Chinese Communist Party (CCP).²³

In 1982, religious toleration was formally reinstated in a new edict of the CCP – 'The Basic Viewpoint and Policy on the Religious Affairs during the Socialist Period of Our Country' – which has become known as 'Document No. 19'.²⁴ This central document has served as the basis for the religious policy since then. 'Document No. 19' acknowledges that religion will exist for a long time before eventually withering away and that religious believers should be rallied for the central task of economic construction. It states that freedom of religious belief should be guaranteed as long as the believers love the country, support CCP rule, and observe the socialist laws. Since 1982, CCP and the government have issued a number of circulars and installed various formal ordinances and administrative orders, most notably the *Religious Affairs Regulations* in 2005. However, the basic policy remains the same— religious tolerance with restrictions.²⁵

5. Three Self Patriotic Movement (TSPM) and the China Christian Council (CCC)

The Three Self Patriotic Movement (TSPM)²⁶ and the China Christian Council (CCC) are the two organisations which lead the official Protestant Church in China. The TSPM is an overtly political organisation which oversees church policy and monitors foreign relations. The CCC is more pastoral and ecclesiastical in function. Together these are referred to as the 'Two Associations' (*liang hui*).²⁷ Many leading figures hold positions in both organisations concurrently.²⁸ The leadership of the TSPM/CCC is appointed by the government or the Party, but other members come from the local Christian community.²⁹

The TSPM/CCC is in turn supervised by the State Administration for Religious Affairs (SARA) (formerly called the Religious Affairs Bureau (RAB))³⁰ – a government organisation

²³ US Department of State 2012, *International Religious Freedom Report for 2011 – China*, 30 July <Attachment>.

²⁴ CCP Central Committee 1982, 'Document No. 19: The Basic Viewpoint and Policy on the Religious Question during our Country's Socialist Period', March, Purdue University Center on Religion and Chinese Society website <http://www.purdue.edu/crcs/itemResources/PRCDoc/pdf/Document_no_19_1982.pdf> <Attachment>.

²⁵ Huang, Jianbo and Yang, Fenggang 2005, 'The Cross Faces the Loudspeakers: A Village Church Perseveres Under State Power' in *State, Market and Religions in Chinese Societies*, eds Fenggang Yang and Joseph B Tamney, Brill, Leiden p.45 <Attachment>; Potter, P. 2003 'Belief in Control: Regulation of Religion in China', in Daniel L. Overmeyer (ed), *Religion in China Today*, Cambridge University Press, Cambridge <Attachment>.

²⁶ The term 'three-self' refers to self-support, self-government and self-propagation.

²⁷ Schak, David 2011, 'Protestantism in China: A Dilemma for the Party-State', *Journal of Current Chinese Affairs*, Vol 40, No 2, p.74 <<http://hup.sub.uni-hamburg.de/giga/jcca/article/view/418/416>> Accessed 29 January 2013 <Attachment>.

²⁸ Hunter, Alan and Chan, Kim-Kwong, 1993, *Protestantism in Contemporary China*, Cambridge University Press, Cambridge, pp.58-9 <Attachment>.

²⁹ Hunter, Alan and Chan, Kim-Kwong, 1993, *Protestantism in Contemporary China*, Cambridge University Press, Cambridge, p.59 <Attachment>.

³⁰ The RAB became the SARA in 1998, though local offices of the SARA from the provincial level down often still use the word 'bureau'. (Ashiwa, Yoshiko & Wank, David 2009, *Making Religion, Making the State: The Politics of Religion in Modern China*, Stanford University Press, p.18)

under the State Council – and the United Front Work Department (UFWD) – an organ of the Chinese Communist Party. The UFWD and the SARA are responsible for implementing government and Party policies on religion.³¹

The TSPM is not a Church organisation. It is a body set up specifically to act as an interface and conduit between the registered, and therefore government-recognised, churches and the offices of the Religious Affairs Bureau (government) and the United Front Work Department (Communist Party). The China Christian Council is 'less political and more 'pastoral' in function: it co-ordinates and assists the churches with training of lay leaders, published materials, etc.³²

6. Registered Churches

A registered church is a congregation that has chosen to comply with the government regulations for registration of places of worship and has met six general requirements. The six requirements for registration:

1. The congregation must have a fixed place
2. The congregation must have a fixed name.
3. There must be citizens who are religious believers regularly participating in religious activities.
4. They must have a management organisation composed of citizens who are religious believers.
5. They must have persons meeting the requirements of the particular religious group to lead religious services.
6. They must have their own legal source of income.³³

Although registration should not require a congregation to join either the TSPM or the CCC,³⁴ (Article 6 of the 2005 Religious Affairs regulations allows churches to register with the Ministry of Civil Affairs without the need to register with the appropriate patriotic association³⁵), in practice churches who refuse to join the TSPM have been refused registration.³⁶

³¹ Hunter, Alan and Chan, Kim-Kwong, 1993, *Protestantism in Contemporary China*, Cambridge University Press, Cambridge, pp.53-9 <Attachment>.

³² Bays, Daniel 2003, 'Chinese Protestant Christianity Today', *The China Quarterly*, Vol. 174, No. 3, June, p.490, footnote 9 <Attachment>.

³³ Sutterlin, J. 2005, 'Frequently asked questions about the Protestant church in China', *Amity News Service* website, June <<http://www.amitynewsservice.org/page.php?page=1150>> Accessed 18 February 2009 <Attachment>.

³⁴ Sutterlin, J. 2005, 'Frequently asked questions about the Protestant church in China', *Amity News Service* website, June <<http://www.amitynewsservice.org/page.php?page=1150>> Accessed 18 February 2009 <Attachment>.

³⁵ Fielder, Caroline 2007, 'Real change or mere rhetoric? – An evaluation of the 2005 Regulations on Religious Affairs a year on', *China Study Journal*, Spring/Summer, p.42 <Attachment>.

³⁶ Fielder, Caroline 2007, 'Real change or mere rhetoric? – An evaluation of the 2005 Regulations on Religious Affairs a year on', *China Study Journal*, Spring/Summer, p.42 <Attachment>.

TSPM churches are registered under the State Administration for Religious Affairs (SARA), hence they are legal. They are thus free to build chapels, which they do with the government's approval.³⁷ Government support comes in the form of training future pastors in two seminaries, but since many students reject the TSPM's liberal interpretations of theology, there is a shortage of pastors in official churches. The government also pays TSPM church pastors and other church workers. Salaries are not high, but they are adequate, and given the shortage of employment a job is guaranteed.³⁸ Being legal also means that there are no restrictions on the size of TSPM congregations, and numbers of 1,000 to 2,000 are not uncommon. It also means that TSPM churches can take active roles in society, and many individual churches do indeed carry out philanthropic projects.³⁹

The government also exercises control over registered churches. Seminary training is in accordance with government-approved theology and ideology, part of which is the stress on the mutual adaptation of socialism and religion as well as political study 'to train young patriotic religious personnel who support socialism and the leadership of the Party'. TSPM officials are also supposed to ensure that sermons delivered in recognised churches are in accordance with party proscriptions; this means avoiding taboo subjects such as the Armageddon and the Second Coming.⁴⁰

7. Unregistered Churches/ Unregistered Protestant Groups

A majority of Protestant house churches refuse to register or affiliate with the TSPM/CCC. Some groups believe the TSPM/CCC accepts rules imposed by the Government that conflict with their religious convictions. In particular, some house churches have objected to the TSPM/CCC's restrictions on evangelism, baptism, and receiving religious materials from abroad.⁴¹ Moreover, some groups disagree with the TSPM/CCC teachings that differences in the tenets of the various Protestant creeds can be reconciled or accommodated under one 'post-denominational' religious umbrella organisation. Others have not sought registration due to fear of adverse consequences if they reveal, as required, the names and addresses of church leaders or members. Unregistered groups also frequently do not affiliate with one of the PRAs for fear that doing so would allow government authorities to regulate sermon content and speakers.⁴²

³⁷ Schak, David 2011, 'Protestantism in China: A Dilemma for the Party-State', *Journal of Current Chinese Affairs*, Vol 40, No 2, p.75 <<http://hup.sub.uni-hamburg.de/giga/jcca/article/view/418/416>> Accessed 29 January 2013 <Attachment>.

³⁸ Schak, David 2011, 'Protestantism in China: A Dilemma for the Party-State', *Journal of Current Chinese Affairs*, Vol 40, No 2, p.75 <<http://hup.sub.uni-hamburg.de/giga/jcca/article/view/418/416>> Accessed 29 January 2013 <Attachment>.

³⁹ Schak, David 2011, 'Protestantism in China: A Dilemma for the Party-State', *Journal of Current Chinese Affairs*, Vol 40, No 2, p.76 <<http://hup.sub.uni-hamburg.de/giga/jcca/article/view/418/416>> Accessed 29 January 2013 <Attachment>.

⁴⁰ Schak, David 2011, 'Protestantism in China: A Dilemma for the Party-State', *Journal of Current Chinese Affairs*, Vol 40, No 2, p.75 <<http://hup.sub.uni-hamburg.de/giga/jcca/article/view/418/416>> Accessed 29 January 2013 <Attachment>; Bays, Daniel 2003, 'Chinese Protestant Christianity Today', *The China Quarterly*, Vol. 174, No. 3, June, p.492 <Attachment>.

⁴¹ US Department of State 2009, *International Religious Freedom Report 2009 – China*, 17 November <Attachment>.

⁴² US Department of State 2009, *International Religious Freedom Report 2009 – China*, 17 November <Attachment>.

Unregistered churches are formally illegal.⁴³ However unregistered groups should not be equated with groups which have been declared 'evil cults' (see [section on Cults](#)). While, strictly speaking, both groups are illegal (as they operate outside the registration process), in practice unregistered religious groups are sometimes treated with a certain level of tolerance, while individuals belonging to 'cults' are ruthlessly pursued.⁴⁴

Some unregistered religious groups have significant membership, property, financial resources, and networks. Despite some instances of non-interference, house churches face more risks when their memberships grow, they arrange for regular use of facilities for religious activities, or they forge links with other unregistered groups or co-religionists overseas.⁴⁵

In some areas, government authorities pressure house churches to affiliate with one of the PRAs and to register with religious affairs authorities by organising registration campaigns and by detaining and interrogating leaders who refuse to register. In other parts of the country unregistered groups have grown rapidly and the authorities do not pressure them to register.⁴⁶

8. House Churches⁴⁷

The term 'house churches' (家庭教会 *jiating jiaohui*) in China usually refers to unregistered Protestant communities or congregations that conduct religious services without government approval in the homes of believers.⁴⁸ They are usually informal gatherings, usually in small groups of no more than fifty, although the size of house churches can vary considerably.⁴⁹ In most cities they are small – often under twenty people, because larger numbers attract hostile attention from the authorities. However, in rural areas they may be very large, numbering hundreds of people. Many house churches function as independent churches. Others consider themselves part of a large, organised network stretching across many provinces, or even the

⁴³ Schak, David 2011, 'Protestantism in China: A Dilemma for the Party-State', *Journal of Current Chinese Affairs*, Vol 40, No 2, p.76 <<http://hup.sub.uni-hamburg.de/giga/jcca/article/view/418/416>> Accessed 29 January 2013 <[Attachment](#)>;

⁴⁴ Fielder, Caroline 2007, 'Real change or mere rhetoric? – An evaluation of the 2005 Regulations on Religious Affairs a year on', *China Study Journal*, Spring/Summer, p.35 <[Attachment](#)>.

⁴⁵ US Department of State 2009, *International Religious Freedom Report 2009 – China*, 17 November <[Attachment](#)>.

⁴⁶ US Department of State 2009, *International Religious Freedom Report 2009 – China*, 17 November <[Attachment](#)>.

⁴⁷ Schak notes that most commentators prefer the term 'unregistered churches' to 'house churches' as some members of registered (TSPM-affiliated) churches also prefer to meet in each other's homes for convenience. (Schak, David 2011, 'Protestantism in China: A Dilemma for the Party-State', *Journal of Current Chinese Affairs*, Vol 40, No 2, p.74 <<http://hup.sub.uni-hamburg.de/giga/jcca/article/view/418/416>> Accessed 29 January 2013 <[Attachment](#)>).

⁴⁸ Cheng, M.M.C. 2003, 'House Church Movements and Religious Freedom in China', *China: An International Journal*, Vol. 1, No. 1, March, p.16. <[Attachment](#)>; Bays, Daniel 2003, 'Chinese Protestant Christianity Today', *The China Quarterly*, Vol. 174, No. 3, June, p.491 <[Attachment](#)>.

⁴⁹ Kindopp, Jason 2004, 'Fragmented yet Defiant: Protestant Resilience under Chinese Communist Party Rule' in Jason Kindopp and Carol Lee Hamrin (eds), *God and Caesar in China: Policy Implications of Church-State Tensions*, Brookings Institution Press, Washington DC, p.128 <[Attachment](#)>.

entire country.⁵⁰ The authorities label these churches as 'spontaneous private meetings', but they are called 'house churches' by the believers themselves.⁵¹

House churches have a long history in China. Before the Revolution many small groups of Christians used to meet together in the home for worship especially in areas where there were few believers and no regularised church buildings. Certain indigenous churches which sprang up in the 1920s and 1930s, such as the 'Little Flock' founded by Watchman Nee, stressed the importance of close fellowship in small group meetings. After the communist victory in 1949 they were better placed to survive under the new conditions than the more formal mainline denominations.⁵²

In many areas of China where the Church is strong, such as Henan, Zhejiang and Fujian, the situation can be quite complicated. There are large and small registered TSPM churches, as well as many 'meeting points'. Some of these have registered with the authorities, some await registration, some have been refused registration and been formally disbanded. (They usually disperse and spring up again meeting at a different location.) and yet others refuse to apply for registration.⁵³

May M.C. Cheng, in a significant paper on the house church movement in China, stresses that organisationally the movement does not form a coherent structure 'with a single leadership, purpose or ideology'.⁵⁴ House churches vary from Pentecostal, to conservative Evangelical type to some very exclusivist groups, which reject the validity of any other group. Some house churches, however, are more conciliatory and willing to work together, or even work with Three-Self churches.⁵⁵ In 2009, a one-year, government-commissioned study on house churches determined that Protestant house church members numbered between 45 and 60 million, with another 18 to 30 million attending government-approved churches.⁵⁶

9. Protestant Denominations in China

Traditional Protestant denominations, such as the Methodist, Anglican, Baptist and Presbyterian denominations, were abolished in China in the 1950s and the TSPM/CCC is officially 'post-denominational', meaning that it seeks to encourage unity and eliminate differences in belief among the various traditions. In some areas, different denominational traditions remain visible within the TSPM. For example, in some churches the style of worship is more ceremonial, in others it is more in the 'free church' tradition⁵⁷. One congregation may

⁵⁰ Lambert, T. 2006, *China's Christian Millions*, Monarch Books, Oxford, pp.55-6 <Attachment>.

⁵¹ Lambert, T. 2006, *China's Christian Millions*, Monarch Books, Oxford, p.56 <Attachment>.

⁵² Lambert, T. 2006, *China's Christian Millions*, Monarch Books, Oxford, p.54 <Attachment>.

⁵³ Lambert, T. 2006, *China's Christian Millions*, Monarch Books, Oxford, p.56 <Attachment>.

⁵⁴ Cheng, M.M.C. 2003, 'House Church Movements and Religious Freedom in China', *China: An International Journal*, Vol. 1, No. 1, March, p.18 & 29 <Attachment>.

⁵⁵ Tang, E. 2002, 'Yellers' and healers - 'Pentecostalism' and the study of grassroots Christianity in China', Geocities website, September <http://www.geocities.com/ccom_ctbi/ccom_AGM_files/020913-15_Edmund_Tang_CCOM_AGM.htm> Accessed 22 December 2008. <Attachment>.

⁵⁶ 'China: Office Becomes New Force For Religious Repression' 2009, *Compass Direct News*, 3 July <<http://www.compassdirect.org/english/country/china/4045>> Accessed 10 August 2009 <Attachment>.

⁵⁷ The free-church tradition does not have a fixed liturgy or rules for governing the context and conduct of worship. (Weaver, J. D. 2002, *Presbyterian Worship: A Guide for Clergy*, Louisville, KN, Geneva Press.p.30

even offer several different styles of worship. But the clear cut divisions and denominational boundaries which are commonplace in the West do not apply in China – in general the old denominations have disappeared leaving only traces in theology and ritual such as a few TSPM churches which still retain an Anglican or Methodist character.⁵⁸

There are a number of major indigenous churches, all founded after World War 1, which have managed to survive. These include the True Jesus Church, the Jesus Family and the Little Flock. Unlike the Western denominations these groupings have preserved their own strong identity and ethos. Even where they have joined the TSPM, they hold their own services in registered churches separately from other Christians. Many however prefer to meet independently as house churches.⁵⁹ There are also more recent indigenous churches, such as the Full Scope Church, New Testament Church, the Pure Heart Church, South China Church and the Henan Pentecostals, which have many believers. Lastly there are a number of Christian-inspired 'heretical cults' (in government parlance) such as Eastern Lightning and the Local Church which have a combined following into tens of millions (see the next two sections below).⁶⁰

Though house churches are ostensibly independent, many belong to one of several large, hierarchical religious groups.⁶¹ These large house church groupings (called 'networks' or 'streams') have developed over the last 30 years. The largest, the Fangcheng church based in Henan, claims to have a loosely-knit flock of 10 million believers.⁶² The World Christian Database estimates there are more than 300 such unofficial house church networks.⁶³

10. Protestant Beliefs and Practices

Protestant belief and practice in China is characterised by its diversity, by the prevalence of evangelical and charismatic beliefs, by the lack of biblical knowledge amongst many clergy, and by the influence of traditional Chinese culture on Christian practice. Theologically there is no split between registered and unregistered churches, the differences being mainly political.

cited in Tang, A 2007, 'Spiritual Formation Practices in the Early Church to the Reformed Tradition Period', Kairos Spiritual Formation website <http://www.kairos2.com/SF_church.htm – Accessed 17 January 2012 <Attachment>.

⁵⁸ Lambert, T. 2006, *China's Christian Millions*, Monarch Books, Oxford, pp.57-59 <Attachment>.

⁵⁹ Sutterlin, J. 2005, 'Frequently asked questions about the Protestant church in China', *Amity News Service* website, June <<http://www.amitynewsservice.org/page.php?page=1150>> Accessed 18 February 2009 <Attachment>.

⁶⁰ Tang, Edmond 2008, 'The changing landscape of Chinese Christianity', *China Study Journal*, Spring/Summer, p.33 <Attachment>.

⁶¹ Human Rights Watch 2006, *China: A Year After New Regulations, Religious Rights Still Restricted*, 1 March <Attachment>.

⁶² Lambert, T. 2006, *China's Christian Millions*, Monarch Books, Oxford, p.66 <Attachment>. The five largest house church networks in China are: China for Christ/Fang Cheng Church (Henan Province); The China Gospel Fellowship/Tanghe (Henan); The Li Xin Church (Anhui Province); the Yin Shang Church, (Anhui Province); and the Word of Life Church/Born Again Movement (of Peter Xu) – Wesley, Luke 2004, 'Is the Chinese Church Predominantly Pentecostal?', *Asian Journal of Pentecostal Studies*, Vol.7, No.2, p.230 <<http://www.aps.edu/ajps/04-2/04-2-LWesley.pdf>> Accessed 2 February 2007 <Attachment>.

⁶³ US Department of State 2009, *International Religious Freedom Report 2009 – China*, 17 November <Attachment>.

Theologically, Protestant churches in China are very diverse:

They range from the wildly charismatic to the ultra-conservative and all shades in between. All accept the Bible as the word of God and, although overseas categories do not always apply neatly, they may be regarded as 'evangelical' and sometimes even 'fundamentalist.' All believe that the sovereign God is alive and able to heal and work miracles in answer to prayer—however, this, again, does not mean that all can be neatly labelled 'charismatic' in the overseas sense.⁶⁴

Tony Lambert⁶⁵ notes certain characteristics which are common amongst many widely varying groups of Chinese Christians:

- Hunger for God's word and delight in in-depth exposition (sermons lasting 1-2 hours are common);
- Intensity in prayer, both private and communal;
- Zeal for personal evangelism;
- Belief in the supernatural which takes the Scriptures at face value;
- Concern for truth and right doctrine (often leading to acrimonious divisions);
- Willingness to suffer for the gospel;
- Centrality of the cross and atonement of Christ⁶⁶

No great theological differences exist between registered churches and unregistered churches and many Chinese Christians attend both, according to American theologian Dr K.K. Yeo.⁶⁷ Dr Yeo visited the official seminaries and Bible colleges of the Three-Self movement and found the sermons preached in registered churches were as biblical as any lectures and sermons of evangelical seminaries and churches in the U.S. He likewise noted that the great attention to biblical studies in the unregistered churches did not indicate high orthodoxy and that there were many heresies and superstitions in these churches, especially in rural areas. Yeo notes that the difference between registered and unregistered churches is in political attitude towards cooperation with the government. Most unregistered churches do not believe that Christianity should collaborate with a government that does not love or honour God. By and large, they don't find the communist government a trustworthy partner or think that the state's fallenness is redeemable. Many unregistered churches attempt to focus on theology and to be detached from politics.⁶⁸ Theological tensions remain between the supernatural-oriented teaching of many rural churches and the more social and academic oriented theology of the seminaries. Relations between registered and unregistered communities can be strained but in many places movement of believers between the two communities is fluid.⁶⁹

⁶⁴ Lambert, Tony 2006, 'House-Church Networks: An Overview', Global Chinese Ministries Newsletter, March, April & May (Parts 1, 2 & 3) <Attachment>.

⁶⁵ Commentator on Christianity in China and author of *China's Christian Millions*.

⁶⁶ Lambert, Tony 2006, 'House-Church Networks: An Overview', Global Chinese Ministries Newsletter, March, April & May (Parts 1, 2 & 3) <Attachment>.

⁶⁷ Yeo, K. K. 2006, 'Home Grown', *The Christian Century*, 10 January <Attachment>.

⁶⁸ Yeo, K. K. 2006, 'Home Grown', *The Christian Century*, 10 January <Attachment>.

⁶⁹ Chinese Christian Three-Self Movement Committee 2008, *Church Order of Protestant Churches in China* (Adopted January 8, 2008, at the Joint (National) Conference of the Seventh Standing Committee of the Chinese Christian Three-Self Movement Committee of the Protestant Churches in China and the Fifth Standing Committee of the China Christian Council), Amity News Service Website, 8 January <<http://www.amitynewsservice.org/page.php?page=1915&pointer=>> Accessed 22 July 2011 <Attachment>.

Charismatic beliefs⁷⁰ and Pentecostal Christianity⁷¹ are also popular among house churches.⁷² Luke Wesley claims the overwhelming majority of the Christians in China today are at least charismatic, and that a significant majority of the Christians in China today are not only charismatic, but also Pentecostal in their theological orientation.⁷³ Jason Kindopp in his 2004 paper on Protestant resilience under the PRC notes that a division between evangelical and charismatic exists within the house churches:

An evangelical-charismatic rift further divides the house church movement. Evangelicals, who trace their roots to the evangelical doctrines of Western missionaries and to conservative Chinese pastors such as Wing Mingdao, hold literalist views of the Bible and emphasise expository preaching in their worship. China's charismatic Protestants, by contrast, are doctrinally subjective, stressing demonstrations of the Spirit over theological rigor. They are also supernaturalist, relying heavily on faith healings to attract new converts.⁷⁴

Similarly Schak identifies three major divisions in present-day Protestantism in China: Pentecostals (*ling'enpai*), evangelicals (*fuyinpai*), and "reform" or new city churches (*gaigepai* or *chengshi xinxing jiaohui*):

They differ in style of worship and orientation toward religion. The largest are the evangelicals, subdivided into conservative, likened to conservative evangelical Christians in the US, and liberal, likened to Billy Graham. Next largest are the Pentecostals. Both of these are predominantly rural, which also means that members and leaders are less educated. Evangelicals are less studied, but one thing known about them is that they take a very literalist view of scripture, though they often interpret it allegorically. They also tend to be theologically conservative.

⁷⁰ Charismatics believe in spiritual healing, miracles, casting out of demons, prophecy, speaking in tongues, interpretation of tongues, and that signs and wonders should accompany the preaching of the gospel. Wesley describes them as 'those Christians who believe that all of the gifts of the Holy Spirit listed in 1 Cor 12:8-10, including prophecy, tongues, and healing, are available to the Church today'. (Wesley, Luke 2004, 'Is the Chinese Church Predominantly Pentecostal?', *Asian Journal of Pentecostal Studies*, Vol.7, No.2, p.228 <http://www.aps.edu/aeimages/File/AJPS_PDF/04-2-LWesley.pdf> <Attachment>.

⁷¹ Pentecostals are closely associated and affiliated with Charismatics, the two terms often being used interchangeably. Wesley describes Pentecostals as 'those Christians who believe that all of the gifts listed in 1 Cor 12:8-10 are available to the Church today and who also believe that the Bible encourages every believer to experience a 'Baptism in the Spirit', an empowering for service distinct from regeneration.¹⁰ (Wesley, Luke 2004, 'Is the Chinese Church Predominantly Pentecostal?', *Asian Journal of Pentecostal Studies*, Vol.7, No.2, p.228 <http://www.aps.edu/aeimages/File/AJPS_PDF/04-2-LWesley.pdf> <Attachment>. Pentecostals believe that all Christians should seek to be filled with him. The Spirit's 'filling', 'falling upon', 'coming upon', or being 'poured out upon' believers is called the baptism with the Holy Spirit. – Guy P. Duffield and Nathaniel M. Van Cleave, *Foundations of Pentecostal Theology*, 1983, (Los Angeles: Foursquare Media, 2008), pp.308-9.

⁷² US Department of State 2010, *International Religious Freedom Report 2010 – China*, 17 November. Sec.2 <Attachment>.

⁷³ Wesley, Luke 2004, 'Is the Chinese Church Predominantly Pentecostal?', *Asian Journal of Pentecostal Studies*, Vol.7, No.2, pp.251-2 <http://www.aps.edu/aeimages/File/AJPS_PDF/04-2-LWesley.pdf> <Attachment>.

⁷⁴ Kindopp, Jason 2004, 'Fragmented yet Defiant: Protestant Resilience under Chinese Communist Party Rule' in Kindopp, Jason & Hamrin, Carol Lée (eds), 2004, *God and Caesar in China*, Brookings Institution Press, Washington D.C., p.135 <Attachment>.

Pentecostal churches are also conservative and are strongly egalitarian. Their religious focus is on the Holy Spirit and on spiritual gifts, a major difference between them and evangelicals. Aside from loud prayer and speaking in tongues during worship, they also engage in spirit singing and dancing, and they believe very strongly in faith healing through prayer or laying on of hands. Several observers have likened their form of Christianity to folk religion in its egalitarianism and utilitarianism. They stress the miraculous and the supernatural, healing and prophecy; their religion is intensely millenarian, giving its followers both a hope and an assurance in times of uncertainty caused by natural calamities and poverty, political tension, and a sense of meaninglessness of life.

...

The reform congregations are exclusively urban and well-educated. They tend toward a more Calvinist theology. In terms of religious orientation, we can classify the evangelicals as conservative and strongly literalist believers, the Pentecostals as folk believers who worship Jesus as a powerful or efficacious deity who can answer prayers and grant requests, and the reformed as ethical Christians for whom the ethical aspects of Christianity – Christian values and leading a Christian life – are shared alongside notions of salvation. The reform approach is probably closer to that of TSPM leaders, whose championing of Christianity is also for its ethics and values but which plays down faith and the need for belief.⁷⁵

Part of the house church sector of Protestants descends from Chinese independent churches founded early in the 20th century as a reaction against the missionary-run churches. These churches, such as Watchman Nee's 'Little Flock' or the True Jesus Church, were critical of the hierarchy and institutional complexity of Western denominations. Most sought a return to primitivist Christianity, and put stress on direct spiritual experience of conversion or supernatural acts such as healing or prophecy, as well as practising considerable autonomy for local congregations. Today, many in the autonomous Christian communities preserve the theological traditions and practices of these independent churches, especially Pentecostals, whose overt manifestations of being moved by the Holy Spirit (such as speaking in tongues, praying loudly en masse, healing practices) are frowned on in most TSPM churches because in their view they appear too much like superstition rather than religion.⁷⁶

The influence of Chinese traditional culture on Christian practice is also great. The great majority of Chinese Protestants live in rural areas, and many have only minimal knowledge of the Christian doctrines and ritual behaviour that would be familiar to most urban Christians. In their 1993 study, Hunter and Chan claimed that in understanding the appeal of Christianity to many Chinese, especially in the countryside, we must realise that in practical terms 'many Christian activities ... are closely related to traditional cultural patterns.' They went on to specify many of those linkages to traditional popular culture, such as in the function of prayer, requests for healing, charismatic phenomena like shamanism, moral norms, ideas about sin and salvation, and the pragmatic aspects of conversion. In many ways, the tone of Chinese

⁷⁵ Schak, David 2011, 'Protestantism in China: A Dilemma for the Party-State', *Journal of Current Chinese Affairs*, Vol 40, No 2, pp.77-78 <<http://hup.sub.uni-hamburg.de/giga/jcca/article/view/418/416>> Accessed 29 January 2013 <Attachment>.

⁷⁶ Bays, Daniel 2003, 'Chinese Protestant Christianity Today', *The China Quarterly*, Vol. 174, No. 3, June, pp.494-5 <Attachment>.

Protestantism on the local level of practice is very different from that of the West; despite having similar doctrinal tenets.⁷⁷

The Economist gave this example of house church practice in China, which indicates both the variety of religious practice and the varying quality of religious leadership in Chinese Protestant churches:

In a suburb of Shanghai, neighbours peer warily across the hallway as visitors file into a living room, bringing the number to 25, the maximum gathering allowed by law without official permission. Inside, young urban professionals sit on sofas and folding chairs. A young woman in a Che Guevara T-shirt blesses the group and a man projects material downloaded from the internet from his laptop onto the wall. Heads turn towards the display and sing along: 'Glory, Glory Glory; Holy, Holy, Holy; God is near to each one of us.' It is Sunday morning, and worship is beginning in one of thousands of house churches across China... Because most Protestant house churches are non-denominational (that is, not affiliated with Lutherans, Methodists and so on), they have no fixed liturgy or tradition. Their services are like Bible-study classes. This puts a heavy burden on the pastor. One of the Shanghai congregation who has visited a lot of house churches sighs with relief that 'this pastor knows what he is talking about.'⁷⁸

11. Cults, sects and heterodox Protestant groups

Chinese law criminalises some Christian groups⁷⁹ as 'evil cults'⁸⁰, judicially defined in 1999 as 'those illegal organisations that have been established under the guise of religion, Qigong or other forms, deifying their leading members, enchanting and deceiving others by concocting and spreading superstitious fallacies, recruiting and controlling their members and endangering the society.'⁸¹ The following 'Christian-related' groups are banned as 'cults': the Local Church (also called the 'Shouters'), Established King, Lightning From the East, Lord God Sect, Lingling Sect, All Scope Church, South China Church, Disciples Sect (Narrow Gate), Three Ranks of Servants, Cold Water Sect, Commune Sect, New Testament Church/Apostles Faith Sect, Resurrection Sect, Dami Evangelization Association, and World Elijah Evangelism Association.⁸²

⁷⁷ Bays, Daniel 2003, 'Chinese Protestant Christianity Today', *The China Quarterly*, Vol. 174, No. 3, June, pp.495-6 <Attachment>.

⁷⁸ 'Christianity in China - Sons of heaven' 2008, *The Economist*, 2 October <http://www.economist.com/world/asia/displaystory.cfm?story_id=12342509> <Attachment>

⁷⁹ Many non-Christian groups, such as the Falun Gong, have also been classified as 'evil cults'.

⁸⁰ The term *xie jiao* is now translated 'evil cult'. Though *xie jiao* was translated as 'heterodox teaching' in other periods of Chinese history, in the 21st century the notion of 'evil cult' has been increasingly used as the official translation. (Chen, Nancy N. 2003, 'Healing Sects and Anti-Cult Campaigns', *The China Quarterly*, Vol. 47, No.2, p.510 <Attachment>)

⁸¹ US Congressional-Executive Commission on China 2012, *Annual Report 2011*, 10 October, p.85 <<http://www.gpo.gov/fdsys/pkg/CHRG-112shrg76190/pdf/CHRG-112shrg76190.pdf>> & <Attachment>

⁸² Yang Fenggeng 2012, *Religion in China: Survival and Revival Under Communist Rule*, New York, Oxford University Press, pp.103-5 <Attachment>. The US Department of State gives variations of these names: the Local Church ('Shouters'), Eastern Lightning, the Society of Disciples (Mentu Hui), Full Scope Church, Spirit Sect, New Testament Church, Three Grades of Servants (or San Ban Pu Ren), Association of Disciples, Lord God Sect, Established King Church, Unification Church, Family of Love, and the South China Church (US Department of State 2012, *International Religious Freedom Report for 2011 - China*, 30 July <Attachment>).

Groups banned as 'evil cults' are seen as a serious danger to society and to government control, and both leaders and followers of these groups have been subject to arrest and imprisonment. As Kindopp points out, the government is more concerned with suppressing organisations with the capacity of staging large-scale actions than it is with the putative antisocial nature of these organisations.⁸³ Kindopp further notes: "The common denominator of the listed "cults" is their size and organizational virtuosity. Most have built up astonishingly large followings in a short period of time."⁸⁴ The government launched major eradication campaigns against the Local Church in the 1980s⁸⁵, and its offshoot Eastern Lightning in the early 2000s⁸⁶, in which thousands of members were arrested, and the leaders subjected to long prison terms. Despite official repression, both groups have proved resilient, continuing to attract new converts and expand their operations in China.⁸⁷

One of the major pressures faced by autonomous Protestant communities is the fear that the authorities can brand any group outside the registered churches as a cult. Once a group receives such a label it is virtually impossible to remove it.⁸⁸ There are no public criteria for determining, nor procedures for challenging, such a designation.⁸⁹ The results can be severe – arrest, fines and even imprisonment. Thus it is a concern of the major house church networks to protest their orthodoxy.⁹⁰ Protestant communities have been concerned by some of the new 'cults', and particularly by Eastern Lightning because they consider it heretical, and because the vast majority of its converts are drawn from Protestant house-church congregations.⁹¹ Eastern Lightning focuses on evangelising Christians because they are thought less likely than the general population to inform the authorities of their activities.⁹²

⁸³ Kindopp, Jason 2002, 'China's war on "cults"', *Current History*, Vol. 101, September, p.262
<Attachment>

⁸⁴ Kindopp, Jason 2002, 'China's war on "cults"', *Current History*, Vol. 101, September, p.262
<Attachment>

⁸⁵ Kindopp, Jason 2004, *The Politics of Protestantism in Contemporary China: State Control, Civil Society, and Social Movement in a Single Party-State*, 16 May, George Washington University Thesis, p.454. <Attachment>

⁸⁶ Forney, M 2001, 'Jesus Is Back, and She's Chinese', *Time*, 5 November
<<http://www.time.com/time/magazine/article/0,9171,181681.00.html>> Accessed 14 March 2013
<Attachment>

⁸⁷ Kindopp, Jason 2004, *The Politics of Protestantism in Contemporary China: State Control, Civil Society, and Social Movement in a Single Party-State*, 16 May, George Washington University Thesis, p.430. <Attachment>; Anderlini, J. 2012, 'China cult targeted as 'doomsday' nears', *The Financial Times*, 20 December <<http://www.ft.com/cms/s/0/b23f7d90-4a95-11e2-968a-00144feab49a.html#axzz2NUEOTkdz>> Accessed 14 March 2013 <Attachment>

⁸⁸ Lambert, Tony 2006, *China's Christian Millions*, 2nd edn, OMF Publishing, Monarch Books, London p.69
<Attachment>

⁸⁹ US Department of State 2012, *International Religious Freedom Report for 2011 – China*, 30 July
<Attachment>

⁹⁰ Lambert, Tony 2006, *China's Christian Millions*, 2nd edn, OMF Publishing, Monarch Books, London p.69
<Attachment>

⁹¹ Dunn, Emily C. 2009, "'Cult,' Church, and the CCP: Introducing Eastern Lightning', *Modern China*, Vol. 35, No. 1, Jan, p.107 <Attachment>

⁹² Dunn, Emily C. 2009, "'Cult,' Church, and the CCP: Introducing Eastern Lightning', *Modern China*, Vol. 35, No. 1, Jan, p.107 <Attachment>

12. The Local Church ('Shouters')⁹³

The Local Church (pejoratively referred to by the government and other groups as the 'Shouters') was one of the first Protestant groups to be labelled as an 'evil cult' by authorities and targeted in a nationwide crackdown in the early 1980s. An offshoot of the biblically-based Little Flock, the Local Church looks to Witness Lee – Li Changshou – for inspiration. Li, based first in Taiwan and then California, 'made no secret of his virulent anti-Communism' and his close political ties with the Kuomintang government in Taiwan. According to Tony Lambert in *China's Christian Millions*:

The movement in China was characterised by strong hostility to both the Three Self movement and the government. Lee had developed close political ties with the Nationalist authorities in Taiwan and made no secret of his virulent anti-Communism. In China his followers sought to take over assemblies, indulged in aggressive evangelism and denounced the government. In July 1983 the authorities responded by launching a nationwide crackdown. Thousands were arrested and many key leaders imprisoned for long periods of time. However, this, and the death of Lee himself on 9 June 1997, has not destroyed the movement which still remains strong in many areas.⁹⁴

While Local Church repression was particularly harsh during the 1980s and 1990s, over the last ten years official tactics have evolved, lengthy judicial sentences giving way to short-term administrative detentions and large fines often imposed on unrepentant church figures.⁹⁵

13. Treatment of Protestants in China

Protestants in China are permitted to worship at officially registered Protestant churches and many millions do so unhindered by the government. A larger number of Protestants however worship at churches which are not officially registered and there are periodic attempts by the authorities to force some of these churches to join the registered bodies. These attempts are not identical throughout the country and have varied in intensity in different places at different times. In a country the size of China, the situation for Christians is not uniform or unchanging.⁹⁶

According to David Schak, here are tens of thousands of unregistered churches in China, most of which carry out their business with little if any trouble from the local authorities.⁹⁷ However, in a small number of cases, governments have taken sometimes quite severe actions against particular churches resulting in their closure; the destruction of church property; the

⁹³ For more detailed information about the situation of the Local Church, see RRT Country Advice Local Church in China Background Paper (January 2013)

⁹⁴ Lambert, Tony 2006, *China's Christian Millions*, 2nd edn, OMF Publishing, Monarch Books, London p.136 <Attachment>.

⁹⁵ For more detailed information about the situation of the Local Church, see RRT Country Advice Local Church in China Background Paper (January 2013).

⁹⁶ US Department of State 2012, *International Religious Freedom Report for 2011 – China*, 30 July <Attachment>.

⁹⁷ Schak, David 2011, 'Protestantism in China: A Dilemma for the Party-State', *Journal of Current Chinese Affairs*, Vol 40, No 2, p.85 <<http://hup.sub.uni-hamburg.de/giga/jcca/article/view/418/416>> Accessed 29 January 2013 <Attachment>.

confiscation (or looting) of church assets or materials; their fragmenting into much smaller congregations; and even the jailing of leadership personnel. Although actions taken are couched in legal justifications, the present relationship between house churches and government is not governed by law but is best described as closer to a 'metaphorical social contract based on incomplete or unarticulated understandings of what is and is not permissible'.⁹⁸

Some unregistered Protestant Churches deemed by the Chinese government to threaten national security or social harmony can face severe restrictions. The government actively but arbitrarily restricts, harasses, intimidates, detains, and imprisons: groups that are not registered, or will not register, for political or theological reasons; individuals who publicly organise legal, media, or popular defence of religious freedom; and groups or leaders deemed to threaten the Communist Party. Variations in implementation allows most unregistered groups to function in China, but this limited tolerance did not amount to official recognition of these groups' rights..⁹⁹

It is difficult to assess the extent of government pressure on unregistered Protestant churches in China, due to restrictions on reporting in official media. The most comprehensive attempt to provide statistics on Christians detained or imprisoned is the annual report of ChinaAid, a Christian advocacy group.¹⁰⁰ The most recent report claims that 1,441 Protestants were detained (most for quite short periods) and nine sentenced to prison terms in 2012.¹⁰¹ In all the report claims that nearly 5,000 Protestant were 'persecuted' in some way – most of whom were members of churches closed down by the local authorities.¹⁰² As other commentators on Christianity in China such Mike Falkenstine¹⁰³ and Brent Fulton¹⁰⁴ have pointed out, although ChinaAid claims their figures indicate a 'serious comprehensive escalation of government

⁹⁸ Schak, David 2011, 'Protestantism in China: A Dilemma for the Party-State', *Journal of Current Chinese Affairs*, Vol 40, No 2, p.85 <<http://hup.sub.uni-hamburg.de/giga/jcca/article/view/418/416>> Accessed 29 January 2013 <Attachment>.

⁹⁹ US Commission on International Religious Freedom 2012, 'China', *Annual Report 2012*, March, p.146 <[http://www.uscifr.gov/images/Annual%20Report%20of%20USCIRF%202012\(2\).pdf](http://www.uscifr.gov/images/Annual%20Report%20of%20USCIRF%202012(2).pdf)> Accessed 18 March 2013 <Attachment>; US Congressional-Executive Commission on China 2012, *Annual Report 2011*, 10 October, pp.14-15 <<http://www.gpo.gov/fdsys/pkg/CHRG-112shrg76190/pdf/CHRG-112shrg76190.pdf>> Accessed 18 March 2013 <Attachment>

¹⁰⁰ This Christian group was founded by Bob Fu in 2002 'to serve the persecuted church and advance religious freedom in China.'

¹⁰¹ China Aid Association 2013, *2012 Annual Report: Chinese Government Persecution of Christians & Churches in Mainland China: January – December 2012*, February, p.9 <<http://www.chinaaid.org/p/chinaaid-annual-reports.html>> Accessed 18 March 2013 <Attachment>

¹⁰² China Aid Association 2013, *2012 Annual Report: Chinese Government Persecution of Christians & Churches in Mainland China: January – December 2012*, February, pp.9-28 <<http://www.chinaaid.org/p/chinaaid-annual-reports.html>> Accessed 18 March 2013 <Attachment>

¹⁰³ Founder and CEO of China Resource Center 'a Christian organization that exists to serve the rapid growth and development of the Church in China through rural Bible Distribution Events, Church Building and Theological Training. <<http://www.chinaresourcecenter.org/about/>> Accessed 18 March 2013

¹⁰⁴ The editor of the ChinaSource website 'a trusted resource for the Christian community providing critical knowledge on serving the Chinese church and society' <<http://www.chsource.org/en/about-us/the-chinasource-story>> Accessed 18 March 2013

persecution'¹⁰⁵, 5000 Christians alleged to have suffered some type of persecution out of perhaps 80 million Chinese Christians, is a very small percentage – only 0.00625% of all Protestants in China.¹⁰⁶ As Fulton further points out, of the nearly 5,000 Christians reported by China Aid to have suffered persecution in 2012, more than two-thirds were involved in cases where the Christians were either engaged in activity which the government perceived as a threat, or they ran afoul of the economic or political interests of corrupt local leaders.¹⁰⁷ (see also Sec. 14. Which Christians are subject to government pressure?)

Members of unregistered Protestant groups that the government arbitrarily deems 'evil cults' were the most vulnerable to detention and harassment.¹⁰⁸ Such a designation by the government strictly prohibits that group. The government has banned at least 18 Protestant groups with adherents in multiple provinces, as well as many more congregations and movements that are active in only one province.¹⁰⁹ The Chinese government continues to reserve for itself the final right to determine a religious group's theological legitimacy.¹¹⁰

The attitude of the local officials is a crucial factor in the treatment of unregistered Protestants, and this varies across the country.¹¹¹ In some parts of the country local authorities tacitly approve of the activities of unregistered groups and do not interfere with them.¹¹² In some rural areas, unregistered churches hold worship services attended by hundreds. In other areas, local officials punish the same activities by confiscating and destroying property or imprisoning leaders and worshippers.¹¹³ DFAT has noted that authorities in larger and more

¹⁰⁵ China Aid Association 2013, *2012 Annual Report: Chinese Government Persecution of Christians & Churches in Mainland China: January – December 2012*, February, p.3 <<http://www.chinaaid.org/p/chinaaid-annual-reports.html>> Accessed 18 March 2013 <Attachment>

¹⁰⁶ See Falkenstine, Mike 2013, 'Eradicate Chinese House Churches?' China Resource Center, 25 February <<http://www.chinaresourcecenter.org/truth/>> Accessed 18 March 2013 <Attachment> and Fulton, Brent 2013, 'Is China Persecuting More Christians for their Faith?', ChinaSource website, 22 February <<http://www.chsource.org/en/blog/item/266-is-china-persecuting-more-christians-for-their-faith>> Accessed 18 March 2013 <Attachment>. Please note that Falkenstine's maths is faulty and he included too many zeros – the figure of 0.00625% is correct.

¹⁰⁷ Fulton, Brent 2013, 'Is China Persecuting More Christians for their Faith?', ChinaSource website, 22 February <<http://www.chsource.org/en/blog/item/266-is-china-persecuting-more-christians-for-their-faith>> Accessed 18 March 2013 <Attachment>.

¹⁰⁸ See Sec.11. 'Cults, sects and heterodox Protestant groups'

¹⁰⁹ US Commission on International Religious Freedom 2012, 'China', *Annual Report 2012*, March, p.147 <[http://www.uscifr.gov/images/Annual%20Report%20of%20USCIRF%202012\(2\).pdf](http://www.uscifr.gov/images/Annual%20Report%20of%20USCIRF%202012(2).pdf)> Accessed 18 March 2013 <Attachment>

¹¹⁰ US Commission on International Religious Freedom 2012, 'China', *Annual Report 2012*, March, p.147 <[http://www.uscifr.gov/images/Annual%20Report%20of%20USCIRF%202012\(2\).pdf](http://www.uscifr.gov/images/Annual%20Report%20of%20USCIRF%202012(2).pdf)> Accessed 18 March 2013 <Attachment>

¹¹¹ 'Desensitization and Social Reforms: Taking House Churches as an Example' 2009, *Speech by Yu Jianrong at Peking University on December 11, 2008*, China Aid Association website, 31 July <http://www.chinaaid.org/grv/page.taf?id=135&function=detail&sbtblct_uid1=1261&nc=2dd7f4fb0d49d99189a24d054098ffac> <Attachment>. See also Section 14 for more on the role of local officials.

¹¹² US Department of State 2012, *International Religious Freedom Report for 2011 – China*, 30 July <Attachment>.

¹¹³ US Department of State 2012, *International Religious Freedom Report for 2011 – China*, 30 July <Attachment>.

wealthy cities tended to turn a blind eye to underground churches, while at the same time encouraging them to become part of the mainstream, government-controlled churches.¹¹⁴

Despite restrictions, harassment, arrests, and government oversight the number of Christian adherents continues to grow in China and the government continues to tolerate worship and some charitable activities by approved religious groups.¹¹⁵

The government has denied detaining or arresting anyone solely because of his or her religion. Local authorities often use administrative detention, such as confinement at re-education through labour (RTL) camps, to punish members of unregistered religious groups. The government has also disbarred a number of attorneys who advocated on behalf of religious freedom and imprisoned other religious freedom activists. The family members of some religious leaders and religious freedom activists are also harassed or detained.¹¹⁶

14. Which Christian groups are subject to government pressure?

As noted in the previous section, not all unregistered churches are subject to government pressure. While the registered churches are legal, and organisations which the government has declared 'evil cults' are banned, most Protestant churches exist in a 'grey' area where they are not legal, but neither are they interfered with by the government.¹¹⁷ While groups designated as 'evil cults' are subject to suppression¹¹⁸, the vast majority of unregistered Protestant churches are left alone.¹¹⁹ In a small number of cases however, governments have taken sometimes quite severe actions against particular unregistered churches, as detailed in the previous section.¹²⁰ This section examines the factors which can lead to some churches being targeted by government authorities.

¹¹⁴ DIAC Country Information Service 2011, *Country Information Report No. 11/15 – CHN11513 Falun Gong Update*, (sourced from DFAT advice of 6 April 2011), 8 April <Attachment>.

¹¹⁵ US Commission on International Religious Freedom 2012, 'China', *Annual Report 2012*, March, p.137 [http://www.uscifr.gov/images/Annual%20Report%20of%20USCIRF%202012\(2\).pdf](http://www.uscifr.gov/images/Annual%20Report%20of%20USCIRF%202012(2).pdf) Accessed 18 March 2013 <Attachment>

¹¹⁶ US Department of State 2012, *International Religious Freedom Report for 2011 – China*, 30 July <Attachment>.

¹¹⁷ Yang, F. 2007, 'The Red, Black and Gray Markets of Religion in China', *The Sociological Quarterly*, Vol. 47, 2007, pp. 92-122. <Attachment>; Fulton, Brent 2010, 'Policy, Implementation, and Shifting Official Perceptions of the Church in China', *ChinaSource*, 6 January <http://www.chsource.org/en/articles/government-and-policy/item/2-policy-implementation-and-shifting-official-perceptions-of-the-church-in-china> Accessed 31 January 2013 <Attachment>.

¹¹⁸ See section 11 for details

¹¹⁹ Schak, David 2011, 'Protestantism in China: A Dilemma for the Party-State', *Journal of Current Chinese Affairs*, Vol 40, No 2, pp.84-85 <<http://hup.sub.uni-hamburg.de/giga/jcca/article/view/418/416>> Accessed 29 January 2013 <Attachment>.

¹²⁰ Schak, David 2011, 'Protestantism in China: A Dilemma for the Party-State', *Journal of Current Chinese Affairs*, Vol 40, No 2, p.85 <<http://hup.sub.uni-hamburg.de/giga/jcca/article/view/418/416>> Accessed 29 January 2013 <Attachment>.

According to Brent Fulton, the editor of the ChinaSource website¹²¹, there are a handful of triggers which greatly increase the likelihood of official action against a particular Protestant church group. These are:

- Foreign involvement (real or perceived) in religious activities, such as the presence of foreign personnel or foreign funds, which suggests to Chinese officials that these activities are being engineered or at least supported from abroad.
- Whether the Chinese group or individual in question is perceived as having political motives. Criticising the government, taking an activist stance on sensitive issues would likely attract government attention and provoke a negative response.
- The size and scope of the unofficial group and its activities is also a factor. It is generally considered safe to have unofficial "house" meetings of 30-40 people. Beyond that most groups choose to divide and then continue to grow (although there are some unofficial urban groups meeting on a regular basis that number several hundred or more). A group that is part of a larger network, particularly if the network spans several provinces, is also much more likely than an isolated entity to draw official attention.
- Finally, the degree of corruption and greed among local officials will have considerable bearing on how Christians are treated. If Christians are seen as an easy mark for fines—particularly when it is known that the believers in question can attract funds from overseas—then local officials may prey upon them for personal gain.¹²²

David Schak studied a number of cases of government actions against churches, asking why the authorities cracked down on these particular churches when there are tens of thousands of others against which no actions were taken, and why, even in the cities in which crackdowns occurred, one or a few house churches were harassed but far more were left alone. Schak concluded the following factors can lead to interference in a church's activities:

- Perceived threat. Providing a threat (real or perceived) to social stability and party control can lead the government to interfere in a church's affairs. Schak believes the Chinese government is obsessed with stability and control, and does not generally interfere with unregistered churches unless it perceives a threat.¹²³

¹²¹ The website describes itself as 'ChinaSource – a trusted resource for the Christian community providing critical knowledge on serving the Chinese church and society. ... ChinaSource was founded in 1997 as a cooperative effort of the Evangelical Fellowship of Mission Agencies, Interdenominational Foreign Missions Association, World Evangelical Fellowship and the Billy Graham Center, who foresaw the need for a non-profit organization devoted to being a catalyst and connector among China-serving leaders.' <<http://www.chsource.org/en/about-us/the-chinasource-story>> Accessed 18 March 2013

¹²² Fulton, Brent 2010, 'Policy, Implementation, and Shifting Official Perceptions of the Church in China', *ChinaSource*, 6 January <<http://www.chsource.org/en/articles/government-and-policy/item/2-policy-implementation-and-shifting-official-perceptions-of-the-church-in-china>> Accessed 31 January 2013 <Attachment>

¹²³ Schak, David 2011, 'Protestantism in China: A Dilemma for the Party-State', *Journal of Current Chinese Affairs*, Vol 40, No 2, p.92 <<http://hup.sub.uni-hamburg.de/giga/jcca/article/view/418/416>> Accessed 29 January 2013 <Attachment>.

- Size. The government does not fear small groupings, but it does not want large organisations of people that might become a force against it.¹²⁴
- Visibility. The authorities also prefers house churches to be inconspicuous. This is partly a matter of congregations remaining small and meeting in someone's home and partly one of avoiding central locations.¹²⁵
- Local officials' attitudes. Schak approaches this issue in a slightly different manner from Fulton (above). According to Schak, it is usually local officials who decide whether to initiate actions against particular churches, and local officials have their own agendas. Schak states 'if a bond of trust exists between local officials and house churches, there is no reason for the authorities to do any more than is absolutely necessary. Where house churches have been operating for several years and are not seen as threats to social stability or may even be regarded as beneficial to it, most local officials will leave them alone.'¹²⁶ Schak does concede that officials do differ from place to place and some officials are more prone than others to view unregistered churches as a threat to stability, or to attack churches for financial or personal reasons.¹²⁷

The US Commission on International Religious Freedom agrees noting that 'the Chinese government continues to view with suspicion religious organisations with extensive foreign ties, whose memberships grow too quickly, whose leadership becomes too popular, or whose religious activities disrupt ethnic or social "harmony."'¹²⁸

15. Situation of Protestants in Fujian Province.

Fujian is a province on the south-eastern coast of China, and is the province from which most asylum seekers have come to Australia. They have particularly come from the county of Fuqing City¹²⁹, which is part of the prefectural city of Fuzhou in the north of the province. Although both the province and the county contain relatively large numbers of Protestants, there are few reports of repression of house-church Christians in the province and the county. In the 2006 edition of *China Christians Millions* Lambert also describes religious policy in Fujian as 'relatively liberal' however, he also notes the occurrence of 'occasional crackdowns

¹²⁴ Schak, David 2011, 'Protestantism in China: A Dilemma for the Party-State', *Journal of Current Chinese Affairs*, Vol 40, No 2, p.92 <<http://hup.sub.uni-hamburg.de/giga/jcca/article/view/418/416>> Accessed 29 January 2013 <Attachment>.

¹²⁵ Schak, David 2011, 'Protestantism in China: A Dilemma for the Party-State', *Journal of Current Chinese Affairs*, Vol 40, No 2, p.93 <<http://hup.sub.uni-hamburg.de/giga/jcca/article/view/418/416>> Accessed 29 January 2013 <Attachment>.

¹²⁶ Schak, David 2011, 'Protestantism in China: A Dilemma for the Party-State', *Journal of Current Chinese Affairs*, Vol 40, No 2, p.93 <<http://hup.sub.uni-hamburg.de/giga/jcca/article/view/418/416>> Accessed 29 January 2013 <Attachment>.

¹²⁷ Schak, David 2011, 'Protestantism in China: A Dilemma for the Party-State', *Journal of Current Chinese Affairs*, Vol 40, No 2, pp.94-98 <<http://hup.sub.uni-hamburg.de/giga/jcca/article/view/418/416>> Accessed 29 January 2013 <Attachment>.

¹²⁸ US Commission on International Religious Freedom 2012, 'China', *Annual Report 2012*, March, p.146 <[http://www.uscirf.gov/images/Annual%20Report%20of%20USCIRF%202012\(2\).pdf](http://www.uscirf.gov/images/Annual%20Report%20of%20USCIRF%202012(2).pdf)> Accessed 18 March 2013 <Attachment>

¹²⁹ Fuqing is a 'county-level' city and is largely agricultural with over 90% of its one million population living in rural areas. It has a long history of legal and illegal emigration abroad.

on house churches'. Lambert provides the following information on the Christian community in Fujian and the treatment house churches:

Fujian has a thriving and rapidly growing Christian community. As a coastal province in the south east, it was one of first to be evangelised from the early 19th century. By 1949 there were about 10,000 Protestants. Official estimates of Protestant Christians in 2004 were 1,179,000 – a twelve-fold growth after fifty-five years of Communism. In early 1999 a TSPM spokesman stated there were 4,000 registered churches and meeting points. In 2000 the TSPM magazine *Tianfeng* revealed there were over 1,200 pastoral workers in Fujian.

Fuzhou, the capital, with its six surrounding rural counties and two smaller municipalities had at least 350,000 Protestants in 2002, meeting in 300 registered churches and 2,000 meeting points. In 2004 Fuqing City had 350,000 believers meeting in 520 churches, according to a Hong Kong Pastor. After Wenzhou, it is the area with the second greatest number of churches in the whole country and has been dubbed 'China's Second Jerusalem'. About 26 per cent of the population are Christian. Pingtan, a large island off the coast, has also seen incredible growth, from under 5,000 Christians in 1959 to 60,000 today, divided equally between registered and unregistered congregations. At least 15 per cent of the island's population are Christians.

The 'Little Flock' or 'Assemblies' were started by Watchman Nee in the 1930s and are still strong in Fujian, especially in the Fuzhou and Fuqing areas where they number many thousands. Many of them prefer to have no links with the TSPM. In Xiamen at least one third of the believers meet in over 100 independent house churches, according to a knowledgeable Hong Kong Christian. The 'True Jesus Church', another indigenous church is also strong in the province with some 70,000 members in total. They are very strong in Putian County, numbering about 20, 000 there. There are about 210, 000 Roman Catholics in Fujian. In general, the official religious policy has been applied relatively liberally in Fujian, although there have been occasional crackdowns on house churches and 'underground' Catholics.¹³⁰

Lambert's characterisation of Fujian as a relatively liberal province in relation to religious policy was supported by a Canadian government fact-finding mission to the province in 2000¹³¹ and the executive secretary of the Hong Kong Christian Council in 2005.¹³² A 2009 report on the Protestant Church in Fujian Province in a Global Chinese Ministries newsletter confirms that there are large numbers of independent house churches in Fujian. The report also indicates that '[i]n general, local government in Fujian seems fairly tolerant of unregistered believers as it is rare that one reads of cases of persecution of house-church Christians in this province'. It should be noted that one of the sources for this report is the TSPM/CCC.¹³³

¹³⁰ Lambert, T. 2006, *China's Christian Millions*, Monarch Books, Oxford, pp.240-1 <Attachment>.

¹³¹ Immigration and Refugee Board of Canada 2000, CHN34099.E 'China: Report of a fact finding mission to Fuzhou by political counsellor, Canadian Embassy, Beijing', 23 March <Attachment>.

¹³² In comments to the Immigration and Refugee Board of Canada (Immigration and Refugee Board of Canada 2005, CHN100387.E – China: Situation of Protestants and treatment by authorities, particularly in Fujian and Guangdong (2001-2005), 1 September <Attachment>.

¹³³ Global Chinese Ministries 2009, 'The Protestant Church in Fujian Province', OMF (Overseas Missionary Fellowship) International website, April <http://www.omf.org/omf/us/resources/1/newsletters/global_chinese_ministries/gcm_newsletter_2009/global_chinese_ministries_apr_09/the_protestant_church_in_fujian_province> Accessed 2 November 2009 <Attachment>. The information is said to be taken from information has been taken from November 2008

Fujian is rarely mentioned in reports on breaches of religious freedom by the US Department of State, the United States Commission on International Religious Freedom, Amnesty International, Human Rights Watch or the various Christian NGOs that report on China. In November 2007 the Department of Foreign Affairs and Trade (DFAT) advised that they had no information on the treatment of unregistered churches in Fujian and reported on the difficulty in gaining politically sensitive information in China.¹³⁴ Nevertheless a few actions against local Protestants in Fujian have been reported. These are all the incidents reported since 2006:

- In December 2012, Fujian was mentioned in relation to a nationwide crackdown on members of a Christian sect, the so-called Church of Almighty God, also known as Eastern Lightning.¹³⁵ This well known sect has been declared an 'evil cult' and its members been subject to waves of arrest since the late 1990s. It has also been condemned by other Christian groups.¹³⁶
- In October 2010, the authorities reportedly took away a worker and sealed three venues used for church gatherings of a church in Lianjiang county in Fujian described as having 'a strong heart for evangelism'.¹³⁷
- The Congressional Executive Commission on China annual report for 2009 refers to reports from two localities in Fujian province that the Local Church, which is a banned Protestant group that officials refer to as the 'Shouters', was a target for public security forces to 'strike hard' against.¹³⁸
- In 2006 police closed unregistered places of worship in various provinces including Fujian, according to the US Department of State.¹³⁹ The 2006 annual report of the China Aid Association also reports on the demolition of house churches in Jilin and Fujian. The report cites an incidence in September 2006 in which a house church was destroyed in Pingtan County, Fujian. A September 2006 report from *Asia News* provides more detailed information on the demolition of the unofficial church in Pingtan County..¹⁴⁰

Tianfeng and History of Christian Missions in China by K.S. Latourette. *Tianfeng* is a Protestant magazine published by the TSPM/CCC and can therefore not be taken to be unbiased in relation to house churches.

¹³⁴ US Department of Foreign Affairs and Trade 2007, *DFAT Report No.07/83 – China: 'Shouters' Christian group and Fujian Province*, 28 November <Attachment>.

¹³⁵ Li, Yao 2012, 'Christians warn against cult influence', *China Daily*, 20 December <http://www.chinadaily.com.cn/china/2012-12/20/content_16033787.htm> Accessed 18 March 2013 <Attachment>

¹³⁶ See Sec.11. 'Cults, sects and heterodox Protestant groups'

¹³⁷ 'Abduction and Building Closures in Fujian' 2010, China Aid website, 19 October <http://www.chinaaid.org/qry/page.taf?id=105&function=detail&sbtlbct_uid1=1582&nc=8e483cd76c2e159254f7a7430ec53b24> Accessed 14 October 2010 <Attachment>.

¹³⁸ Congressional Executive Commission on China 2009, *Annual Report 2009*, 10 October, pp. 138-139 <Attachment>.

¹³⁹ US Department of State 2007, *International Religious Freedom Report 2007: China (includes Tibet, Hong Kong, and Macau)*, 14 September, Introduction & Section 2 <Attachment>.

¹⁴⁰ China Aid Association 2007, *Annual Report on Persecution of Chinese House Churches by Province: From January 2006 to December 2006*, January, pp. 4,12<<http://chinaaid.org/wp->

[content/uploads/2007/04/2006_persecution_report.pdf](#)> Accessed 12 June 2007 <Attachment>; 'Church destroyed in Fujian, another to follow shortly' 2006, *Asia News*, 4 September
<<http://www.asianews.it/view.php?l=en&art=7112#>> Accessed 6 December <Attachment>.



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¹ Originally published in August 2011. The January 2013 update added new information, updated formatting, added Sections 4.4 and 4.1.1, and removed the Key Sources sections and Attachment A

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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 <Attachment>

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?dlid=186268>> Accessed 6 February 2013 <Attachment>; *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 <Attachment>

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 <Attachment>

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 <Attachment>

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 <Attachment>

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 <Attachment>; 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 <Attachment>; *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 <Attachment>; *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&sruid=ja744c0670000013d136c2e3a2b03e1a3&spos=1&epos=1&td=1&crumb-action=append&context=3&lang=en>> Accessed 13 March 2012 <Attachment>; Department of Foreign Affairs and Trade 2007, *DFAT Report 691 – RRT Information Request CHN32173*, 31 August <Attachment>

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 <Attachment>; 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 <Attachment>

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

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

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

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

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

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 <Attachment>; 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 <Attachment>

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 <Attachment>

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 <Attachment>

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/nafl/china/app/document?&docguid=i3cf76ad30000011ef35193d7633f2fb8&hitguid=i3cf76ad30000011ef35193d7633f2fb8&sruid=ia744dc1e0000013cc638fada414dd86a&spos=1&epos=1&td=35&crumb-action=append&context=3&lang=en>> Accessed 11 February 2013 <Attachment>

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

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 <Attachment>; 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 <Attachment>

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 <Attachment>

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 <Attachment>; 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 <Attachment>

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

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 <Attachment>

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

²⁷ Department of Foreign Affairs and Trade 2010, *DFAT Report 1210 – RRT Information Request: CHN37505*, 12 November <Attachment>; *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 <Attachment>

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 <Attachment>

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 <Attachment>

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/ma/f/china/app/document?&docguid=i3cf76ad3000001211b6676b2e9ddc691&hitguid>>

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

=i3cf76ad3000001211b6676b2e9ddc691&srguid=ia744c0670000013d136c2e3a2b03e1a3&spos=1&epos=1&td=1&crumb-action=append&context=3&lang=en> Accessed 13 March 2012 <Attachment>

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 <Attachment>

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 <Attachment>

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 <Attachment>

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

<Attachment>; Yin, L 2013, 'Birth controlled', *Global Times*, 27 January

<<http://www.globaltimes.cn/content/758452.shtml>> Accessed 4 February 2013 <Attachment>

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

<Attachment>; Yin, L 2013, 'Birth controlled', *Global Times*, 27 January

<<http://www.globaltimes.cn/content/758452.shtml>> Accessed 4 February 2013 <Attachment>

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://chrndnet.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 <Attachment>

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 <Attachment>; Greenhalgh, S & Winckler, E 2005, *Governing China's Population: From Leninist to Neoliberal Biopolitics*, Stanford University Press, Stanford, p.154 <Attachment>

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 <Attachment>

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

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 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

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 <Attachment>

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 <Attachment>

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

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

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 <Attachment>; 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 <Attachment>; 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 <Attachment>; 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 <Attachment>

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 <Attachment>

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 <Attachment>

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

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 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

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 <Attachment>

⁵⁰ Department of Foreign Affairs and Trade 2007, *DFAT Report 691 – RRT Information Request CHN32173*, 31 August <Attachment>; 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 <Attachment>

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

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

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

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

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 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

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

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

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

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 <Attachment>; 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 <Attachment>; *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/pd/fid/4242b739a.pdf>> Accessed 28 June 2011 <Attachment>; *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 <Attachment>

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 <Attachment>; 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 <Attachment>; 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 <Attachment>; Chinese Human Rights Defenders 2010, "I Don't Have a Choice over My Own Body", 21 December, pp.14-15 <<http://chrndnet.org/wp-content/uploads/2010/12/%E2%80%99CI-Don%E2%80%99t-Have-a-Choice-over-My-Own-Body%E2%80%99D.pdf>> Accessed 13 January 2011 <Attachment>

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?dliid=186268>> Accessed 6 February 2013 <Attachment>

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

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 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:

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%99D.pdf>> Accessed 13 January 2011 <Attachment>

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%99CI-Don%E2%80%99t-Have-a-Choice-over-My-Own-Body%E2%80%99D.pdf>> Accessed 13 January 2011 <Attachment>

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%99CI-Don%E2%80%99t-Have-a-Choice-over-My-Own-Body%E2%80%99D.pdf>> Accessed 13 January 2011 <Attachment>

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 <Attachment>

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 <Attachment>

- 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
- 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

⁶⁷ Department of Foreign Affairs and Trade 2013, *DFAT Report 1473 – MRT/RRT Information Request: CHN41439*, 7 February <Attachment>; *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 <Attachment>; *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 <Attachment>

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?dlid=186268>> Accessed 6 February 2013 <Attachment>

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

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

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 <Attachment>

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 <Attachment>

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

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

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

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

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

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

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

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

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 <Attachment>

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 <Attachment>

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

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 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

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?dlid=186268>> Accessed 6 February 2013 <Attachment>

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 <Attachment>

⁸⁴ See for example Chinese Human Rights Defenders 2010, "I Don't Have a Choice over My Own Body", 21 December, p.16 <<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 <Attachment>; Chou, J 2005 'The People vs. Beijing', *The Weekly Standard*, 24 October <Attachment>; 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 <Attachment>; 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 <Attachment>

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?dlid=186268>> Accessed 6 February 2013 <Attachment>; US Congressional-Executive Commission on China 2010, *Annual Report 2010*, 10 October, p.117 <Attachment>

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?dlid=186268>> Accessed 6 February 2013 <Attachment>

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 <Attachment>

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 <Attachment>

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

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

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 <Attachment>

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 <Attachment>

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=i3cf76ad3000001211b6676b2e9ddc691&srguid=ja744c0670000013d136c2e3a2b03e1a3&spos=1&epos=1&td=1&crumb-action=append&context=3&lang=en>> Accessed 13 March 2012 <Attachment>; Department of Foreign Affairs and Trade 2004, *DFAT Report 330 – RRT Information Request CHN16967*, 15 October <Attachment>

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 <Attachment>; Freedom House 2013, *Freedom in the World – China*, 16 January

<<http://www.freedomhouse.org/report/freedom-world/2013/china>> Accessed 31 January 2013 <Attachment>; 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%99CI-Don%E2%80%99t-Have-a-Choice-over-My-Own-Body%E2%80%9D.pdf>> Accessed 13 January 2011 <Attachment>

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 <Attachment>

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 <Attachment>

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

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%99CI-Don%E2%80%99t-Have-a-Choice-over-My-Own-Body%E2%80%9D.pdf>> Accessed 13 January 2011 <Attachment>

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 <Attachment>; Jiaoming, S 2011 'In Hunan, Family Planning Turns to

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

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

Plunder', *Caixin*, 5 October <http://english.caixin.com/2011-05-10/100257756_all.html> Accessed 16 May 2012 <Attachment>

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 <Attachment>

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 <Attachment>

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 <Attachment>

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 <Attachment>

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

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. <Attachment>; 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 <Attachment>

¹⁰⁴ Department of Foreign Affairs and Trade 2010, *DFAT Report 1210 – RRT Information Request CHN37505*, 12 November <Attachment>; Department of Foreign Affairs and Trade 2007, *DFAT Report 691 – RRT Information Request CHN32173*, 31 August <Attachment>; Department of Foreign Affairs and Trade 2005, *DFAT Report 404 – RRT Information Request CHN17471*, September <Attachment>; 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 <Attachment>

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

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 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

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 <Attachment>

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 <Attachment>

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 <Attachment>

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 <Attachment>

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 <Attachment>

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 <Attachment>

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 <Attachment>

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 <Attachment>

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 <Attachment>

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 <Attachment>

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

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 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

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

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

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 <Attachment>

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

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 <Attachment>

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 <Attachment>

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 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:

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

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 <Attachment>

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 <Attachment>

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 <Attachment>

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 <Attachment>

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

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

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 <Attachment>; '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 <Attachment>; 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 <Attachment>; 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 <Attachment>; 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 <Attachment>; 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 <Attachment>

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

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 <Attachment>

- 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 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

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 <Attachment>

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

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

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

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

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 <Attachment>. 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.fqjsi.gov.cn/UploadFiles/2012-2-9/20120209170338964.xls>> Accessed 7 March 2013 <Attachment>

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

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

¹⁴² Department of Foreign Affairs and Trade 2013, *DFAT Report 1473 – MRT/RRT Information Request: CHN41439*, 7 February <Attachment>; *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 <Attachment>

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

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

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

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 <Attachment>

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 <Attachment>

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 <Attachment>

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 <Attachment>

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 <Attachment>

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 <Attachment>

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 <Attachment>

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 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:

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 <Attachment>; 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 <Attachment>. 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 <Attachment>

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 <Attachment>

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

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

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

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

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

- 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.

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

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 <Attachment>

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 <Attachment>

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 <Attachment>

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 <Attachment>

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 <Attachment>

- 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 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

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 <Attachment>

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 <Attachment>

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 <Attachment>

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

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

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

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 <Attachment>

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 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

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 <Attachment>

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 <Attachment>

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 <Attachment>

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

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 <Attachment>; '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 <Attachment>; 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 <Attachment>

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 <Attachment>; '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 <Attachment>

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 <Attachment>; '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 <Attachment>

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 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

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 <Attachment>; 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 <Attachment>; 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 <Attachment>; DIAC Country Information Service 2009, *Country Information Report No. 09/38 - CIS Request No. 9636; Economic sanctions applied to breaches of the One Child Policy, Fujian Province*, (sourced from DFAT advice of 28 April 2009), 28 April <Attachment>

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 <<http://www.melbourn.gov.au/library/First.links/4143.pdf>>; RRT Country Research 1994, *Record of Conversation with Ms Penny Kane*, 15 August <Attachment>

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

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 <Attachment>;

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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 <Attachment>

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

¹⁸⁵ 'China's population: Only and lonely' 2011, *The Economist*, 21 July <<http://www.economist.com/node/18988926>> Accessed 8 February 2013 <Attachment>

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=ja744c0670000013d136c2e3a2b03e1a3&spos=1&epos=1&td=1&crumb-action=append&context=3&lang=en>> Accessed 13 March 2012 <Attachment>

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

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

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

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 <Attachment>

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 <Attachment>

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 <Attachment>

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 <Attachment>

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 <Attachment>

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
- 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

=i3cf76ad3000001211b6676b2e9ddc691&srguid=ia744c0670000013d136c2e3a2b03e1a3&spos=1&epos=1&td=1&crumb-action=append&context=3&lang=en> Accessed 13 March 2012 <Attachment>

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 <Attachment>

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

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

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

<http://app.westlawchina.com/mafi/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 <Attachment>

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/mafi/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 <Attachment>

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

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

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(\\ntssyd\refer\research\internet\eastasia\chn32065.web11.pdf)

From: s 47E(c) and s 47E(d) @IMMI.gov.au>
Sent: Wednesday, 11 June 2014 6:37 PM
To: s 47E(c) and s
Cc: s 47E(c) and s 47E(d) [IMMI]
Subject: China Papers [SEC= [REDACTED]]
Attachments: CHINA Protestants and Catholics Update Paper March 2013. doc.doc; CHN Family Planning - Background Paper March 2013.doc; CHN Protestants in China.doc; China Human Rights Paper 2011.doc

[REDACTED]

Hello s 47E(c) and s 47E(d)

It was nice to have the opportunity to speak with you again today.

As requested, I have attached for you the papers referred to in the Framework documents for papers on China proposed by CIS – the China Human Rights Paper, Family Planning Background Paper, paper on Protestants in China and the Protestants and Catholics Update Paper.

s 22(1)(a)(ii)

If you have any questions or would like to discuss any issues, please don't hesitate to contact me.

Regards

s 47E(d)

COI Researcher, Country of Origin Information Section, Humanitarian Branch
Department of Immigration and Border Protection
Telephone: (02) s 47E(d)
Email: [REDACTED]@immi.gov.au

s 47E(d)

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<http://www.immi.gov.au/functional/privacy.htm>

From: s 47E(c) and s 47E(d) @IMMI.gov.au>
Sent: Monday, 4 August 2014 12:20 PM
To: s 47F(1) and
47E(d)
Cc: [IMMI]
Subject: RE: COIS Document? [SEC= [REDACTED]]
Attachments: CHN Fujian-Family-Planning-Fines.v6.pdf

[REDACTED]
Hi s 47F(1) and 47E(d)

A copy of the document is attached.

I would draw to your attention the caveats outlined in the first section which indicate why the figures are a guide only.

Happy to discuss.

Regards

s 47E(c) and s
47E(d)

Country of Origin Information Section (COIS)
Humanitarian Branch
Department of Immigration and Border Protection
Telephone: (02) s 47E(c) and s 47E(d)
Email: s 47E(c) @immi.gov.au
and s
47E(d)

[REDACTED] s 47E(c) and s 47E(d)

From: (DFAT)
Sent: Monday, 4 August 2014 11:37 AM
To:
Subject: COIS Document? [SEC= [REDACTED]]

Hi s 47E(c) and s 47E(d) s 47E(c) and s 47E(d)

I hope this email finds you well.

I was wondering if you could help me track down COIS's *Fujian Family Planning Fines 1991 – 2013* document available on CISNET s 22(1)(a)(ii)

Any assistance you could provide would be very much appreciated.

Many thanks,

s 47E(c) and s 47E(d)

Officer | Country Information Section
Human Rights and Gender Equality Branch | Multilateral Policy Division
Department of Foreign Affairs and Trade
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From: s 47E(c) and s 47E(d)
Sent: Wednesday, 4 March 2015 5:12 PM
To: s 47E(c) and s 47E(d) [IMMI]
Subject: FW: Error in DFAT Country Report China [SEC= [REDACTED]]
Attachments: DFAT Country Report China - Final.pdf

s 47E(c) and s 47E(d)

s 22(1)(a)(ii)

We strive for complete accuracy in our reports, however errors can occur and rectification prior to publication is preferable.s 22(1)(a)(ii)

On the substantive point, our reference for this section is UNDP's Human Development Report for 2014 (see p.217 of <http://hdr.undp.org/en/content/human-development-report-2014>). The format which we used to present the statistic – male to female births of 1.16 – reproduces that of UNDP. On this basis, I am satisfied with how we have presented the statistic. However the case officer is correct to point out that the reference should be to 1.16, rather than 1:16, and I regret this error.

Nonetheless, I do not believe a decision maker would have been misled as the meaning of the section was not affected – that there is a sex imbalance in favour of boys. This section was contained in the overview, rather than being directly related to an assessment. I am attaching a new version of the China Report with the updated statistic. Can you please arrange for uploading onto CISNET?

Thanks – happy to discuss further.

Regards
 s 47E(c) and s 47E(d)

From: s 47E(c) and s 47E(d) @IMMI.gov.au
Sent: Wednesday, 4 March 2015 12:56 PM
To: Country Information Section s 47E(c) and s 47E(d)
Cc: [IMMI]
Subject: FW: Error in DFAT Country Report China [SEC= [REDACTED]]

Dear s 47E(c) and s 47E(d)

A case officer has drawn our attention to an apparent error in the recent China country report. I copy extract of his message below.

s 47C

It is easy to miss

sometimes the most obvious errors.

Regards,

s 47E(c) and
s 47E(d)

Assistant Director
Country of Origin Information Section, Refugee & Humanitarian Visa Management Division
Department of Immigration and Border Protection
GPO Box 241, Melbourne, Victoria, 3001
Phone 03 | Fax TBA | Email [@immi.gov.au](mailto:immigration@immi.gov.au)

s 47E(c) and s 47E(d)

s 47E(c) and s 47E(d)

I was just reading the new DFAT country report for China and noticed an error with one of their ratios. Under point 2.13 on page 5 they state '...has contributed to a sex ratio of male to female births of 1:16.' Meaning that for every 1 male birth there are 16 female births.

I've only briefly looked up a couple of documents online regarding the birth sex ratio, but the estimates I've seen are generally around 1.2:1 male to female births, so I think what the author may have meant was 1.16:1 male to female births.

Let me know if my explanation isn't clear, or if my reasoning is flawed.

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From: s 47E(c) and s 47E(d)
To: [IMMI]
Cc: s 47E(c) and s 47E(d) [IMMI]; s 47E(c) and s 47E(d)
Subject: RE: Your request for all DFAT Country Information reports [SEC=]
Date: Tuesday, 28 April 2015 11:21:03 AM
Attachments: DFAT Country Report China - Final.pdf

Dear [redacted] attaching again the correct version of the China Country Report for uploading to CISNET. Thanks for your assistance.

s 47E(c) and s 47E(d) [redacted] s 47E(c) and s 47E(d)

A/g Director
 Country Information Section
 Human Rights and Gender Equality Branch | Multilateral Policy Division
 Department of Foreign Affairs and Trade
 Email: s 47E(c) and s [redacted]dfat.gov.au
 Phone 47E(d)
www.dfat.gov.au
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From: s 47E(c) and s 47E(d) [redacted] @immi.gov.au]
Sent: Tuesday, 28 April 2015 11:16 AM
To: s 47E(c) and s 47E(d)
Cc: [IMMI]; s 47E(c) and s 47E(d)
Subject: RE: Your request for all DFAT Country Information reports [SEC=]

[redacted]
 s 47E(c) and s 47E(d)

[redacted] s 47E(c) and s 47E(d)

Thanks. Can you resend the correct version to [redacted] please.

s 47E(c) and s 47E(d) could you load and take the old version down.

Thanks

s 47E(c) and s 47E(d)

[redacted]
 s 47E(c) and s 47E(d)
From: 47E(d) (DFAT)
Sent: Tuesday, 28 April 2015 11:13 AM
To: s 47E(c) and s 47E(d)
Cc: (DFAT)
Subject: RE: Your request for all DFAT Country Information reports [SEC=]

Hi [redacted] thank you for seeking our views.

[redacted] s 47E(c) and s 47E(d)

DFAT is happy for DIBP to share the two China reports with the requesting firm. However, I note that as of this morning CISNET still lists the initial version of the Country Report on China that inadvertently contained a typo. Grateful if the version on CISNET and that shared with the firm please reflect the corrected version – as requested in ^s original email dated 4 March 2015.

47E(c)

and s

47E(d)

Thank you for your assistance.

s 47E(c) and s

47E(d)

A/g Director

Country Information Section

Human Rights and Gender Equality Branch | Multilateral Policy Division

Department of Foreign Affairs and Trade

Email: [@dfat.gov.au](mailto:dfat.gov.au)

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s 22(1)(a)(ii)

s 22(1)(a)(ii)

s 22(1)(a)(ii)

From: s 47E(d) and s 47E(c) @border.gov.au>
Sent: Wednesday, 1 March 2017 12:34 PM
To: Country Information Section
Cc: s 47E(d) and s 47E(c)
Subject: Fujian Thematic Report

Dear s 47E(d) and s 47E(c)

I hope you are well.

I am writing to raise a couple of queries in relation to the Fujian Thematic Report released in December, which have been directed to us. We have considered and reviewed the issues and there are two in particular we would like to draw to your attention.

s 47E(d)

s 47E(d)

Would DFAT be able to consider these issues?

Regards,

s 47E(c) and
s 47E(d)

| Assistant Director – Research (Melbourne)
Country of Origin Information Services Section
Refugee & Humanitarian Visa Management Division
Department of Immigration and Border Protection

Phone s 47E(c) Email s 47E(c) @border.gov.au
and s and s
47E(d) 47E(d)

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Australian Government
Department of Immigration
and Border Protection

Data Currency Date: 30/04/2017

About this Report: Draft - COISS / DFAT Framework Report

Description	This report automatically refreshes upon opening
Update Frequency (Data Latency)	
Caveat	<ul style="list-style-type: none">• This information provided by the Department of Immigration and Border Protection was extracted from Department systems as at the Data Currency Date contained in this report. As data has been drawn from a dynamic system environment, the information is correct at the time of publication and figures may differ slightly from previous or future reporting.• The attached information has been verified by Refugee and Humanitarian Programme Management Branch. Please note that this information has been provided for internal use only. External use of the information provided will require clearance through Data Clearance (data.clearance@border.gov.au). It is your responsibility to ensure that disclosure of this information accords with the relevant provisions of the ABF Act, the Australian Privacy Principles and/or other relevant legislation.o External use includes media requests, non-government agencies and academics, other government departments and the Minister's Office. Data for Senate estimates and FOI requests is also considered to be external requests.• Any dataset that may allow for the identification of individuals and their circumstances (e.g. case lists or figures less than five) need to be de-identified before they can be provided externally. Figures less than five need to be represented as "less than 5" if these figures are to be provided publicly.

Non-IMA

Total Applications Received s 33(a)(iii)

Latest Ethnicity

Han Chinese

Chinese (NFD)

Not Stated/Refused

Latest Religion

Not Stated

Christian (NFD)

Not Recorded

Language

Mandarin

Chinese, nfd

Not Recorded

Previous Residential Country

Not Recorded

CHINA, PEOPLES REPUBLIC OF
HKSAR OF THE PRC

THAILAND

Country of Birth

CHINA, PEOPLES REPUBLIC OF

AUSTRALIA

Not Recorded / Unknown

Gender

Female

Male

Refugee Claim

Non-Convention-related claims

Not Recorded

Political Opinion

PSG

Religion

IMA* & UAA

Total Applications Received s 33(a)(iii)

Latest Ethnicity

Not Stated/Refused

Latest Religion

Christian (NFD)

Language

Mandarin

Previous Residential Country

Not Recorded

Country of Birth

CHINA, PEOPLES REPUBLIC OF

Gender

Male

Refugee Claim

Not Recorded

Primary Outcomes

Service Type	Primary Outcome	s 33(a)(iii)
Permanent Protection	Granted	
	Refused	
Temporary Protection	Refused	

Review Lodgements

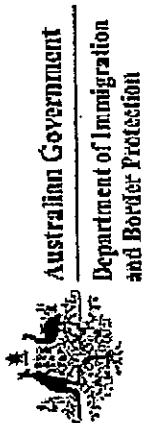
Service Type	Latest Review Type	s 33(a)(iii)
Permanent Protection	Merits Review Tribunal	
Temporary Protection	Refugee Review Tribunal	

Review Outcomes

Service Type	Latest Review	s 33(a)(iii)
Permanent Protection	Review Affirmed - Migration Refugee	
	Review No Jurisdiction - Migration	
	Review No Jurisdiction - Refugee Migration Refugee	
Temporary Protection	Review Affirmed - Refugee	

Final Outcomes s 33(a)(iii)

Service Type	Final Outcome
Permanent Protection	Granted
	Refused
Temporary Protection	Refused



Data Currency Date: 30/04/2017

s 33(a)(iii)

Total Onhand:

About this Report: Onhand at Primary Caselist - Drillable

Description: Measure business rule: Update Frequency (Data Latency) Caveat	Onhand at Primary Caselist Application has been received, but no primary outcome recorded This report automatically refreshes upon opening This information provided by the Department of Immigration and Border Protection was extracted from Department systems as at the "Data Currency Date" contained in this report. As information has been drawn from dynamic system environments the information provided may differ from previous or future reporting.
---	---

From: s 47E(c) and s 47E(d)
Sent: Monday, 8 May 2017 5:38 PM
To: s 47E(c) and s 47E(d)
Cc: [DIBP]
Subject: FW: DFAT Framework report PRC [SEC=REDACTED]
Attachments: DFAT framework Report on China.docx; PRC Onhand.pdf; PRC DFAT Framework.pdf

[REDACTED] s 47E(c) and s 47E(d)
 see attached. s 47E(c) and s 47E(d) s 47E(c) and s 47E(d)
 many thanks for this. will be drafting the updated China report.

s 47E(c) and s 47E(d)


Director | Country Information Section
 Human Rights Branch | Multilateral Policy Division
 Department of Foreign Affairs and Trade
 Phone +61 s 47E(d) | Mobile +61 s 47E(d)

From: s 47E(c) and s 47E(d) @border.gov.au]
Sent: Monday, 8 May 2017 5:37 PM
To: s 47E(c) and s 47E(d) @dfat.gov.au>; s 47E(c) and s 47E(d) @dfat.gov.au>
Cc: s 47E(c) and s 47E(d) [DIBP] s 47E(c) and s 47E(d) @border.gov.au>; s 47E(c) and s [DIBP] s 47E(c) and s 47E(d)@immi.gov.au> 47E(d)
Subject: DFAT Framework report PRC [SEC=REDACTED]

Good afternoon s 47E(c) and s 47E(d)
 Please find attached the our framework document for PRC. You will notice it has a slightly different look and feel. We are trying to be more targeted in what the claim sets currently are and the information gaps which should assist you in your site visits. Please let me know if there are any areas you would like to see covered in more detail or other issues to be explored.

Regards
 s 47E(c) and s 47E(d)

s 47E(c) and s 47E(d) s 47E(c) and s 47E(d)
 A/g Director, Country of Origin Information Services Section (COISS)
 Refugee and Humanitarian Programme Branch
 Department of Immigration and Border Protection
 Telephone: 02 Mobile: s 47E(c) and s 47E(d)
 Email: @border.gov.au s 47E(c) and s 47E(d)


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s 22(1)(a)(ii)

From: s 47E(c) and 47E(d) @border.gov.au]
Sent: Friday, 10 November 2017 5:11 PM
To: s 47E(c) and 47E(d) @dfat.gov.au>
Cc: s 47E(c) and 47E(d) @border.gov.au>
Subject: RE: Draft China report [SEC= [REDACTED]

Dear s 47E(c) and 47E(d)

s 47C

We are working through the updated draft
China country information report and will have comments ready next week.

Regards,

s 47E(c) and 47E(d)

From: s 47E(c) and 47E(d) @dfat.gov.au]
Sent: Friday, 10 November 2017 10:41 AM
To: s 47E(c) and 47E(d) @border.gov.au>
Cc: s 47E(c) and 47E(d) @border.gov.au>; s 47E(c) and 47E(d)
@border.gov.au>; s 47E(c) and 47E(d) @dfat.gov.au>

Subject: Draft China report [SEC- [REDACTED]

[REDACTED]
Dear s 47E(c) and s 47E(d)

s 47E(d), s 47C and s 33(a)(iii)

s 47E(c) and s 47E(d)

s 47E(d)

s 22(1)(a)(ii)

Cheers

s 47E(c) and s
47E(d)

Director | Country Information Section
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From: s 47E(c) and s 47E(d) :@border.gov.au>
Sent: Wednesday, 22 November 2017 9:54 AM
To: s 47E(c) and s 47E(d)
Cc: [DIBP]
Subject: RE: Draft China CIR - DIBP comments [SEC=REDACTED]
Attachments: DFAT country information report - China 2017 -20NOV.docx

Dear s 47E(c) and s 47E(d)

Apologies for the delay in getting these comments back to you, s 22(1)(a)(ii)

I think it is all constructive, it is up to you and your colleagues to consider how useful it is.

There are comments and some in-text suggestions and queries in track change mode.

The inclusion of the new glossary with the risk definitions is good to see.

Regards,

s 47E(c) and s 47E(d)

Assistant Director – Research (Melbourne)
 Country of Origin Information Services Section
 Refugee & Humanitarian Visa Management Division
 Department of Immigration and Border Protection
 Phone 03 Email :@border.gov.au

s 47E(c) and s 47E(d)

s 47E(c) and s 47E(d)

From: s 47E(c) and s 47E(d) @dfat.gov.au]
Sent: Wednesday, 22 November 2017 9:41 AM
To: s 47E(c) and s 47E(d) @border.gov.au>
Subject: Draft China CIR - DIBP comments [SEC=REDACTED]

Dear s 47E(c) and s 47E(d)

You mentioned you had some comments on the China CIR. I need to get this back to Beijing for HOM clearance by the end of the week, so would be very grateful for any comments by cob today. We are not seeking a DIBP position on the report, just seeking your comments as COISS researchers with considerable knowledge, experience and expertise on the subject matter and also a good understanding of what the decision makers need. So if you are not in a position to clear your comments, I am happy to take them as individual contributions from subject matter experts rather than DIBP input.

Cheers
 s 47E(c) and s 47E(d)

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From: s 47E(c) and s 47E(d)
To:
Cc:
Subject: RE: COISS enquiry re DFAT China reports - clarification around the ability of the child of a single mother to obtain a hukou [SEC= [REDACTED]]
Date: Wednesday, 10 January 2018 5:03:09 PM

Dears 47E(c) and s 47E(d)

Thank you for those comments, all noted.

Regards,

s 47E(c) and s
47E(d)

From: s 47E(c) and s 47E(d) @dfat.gov.au]
Sent: Wednesday, 10 January 2018 12:47 PM
To: s 47E(c) and s 47E(d) @HOMEAFFAIRS.GOV.AU>; s 47E(c) and s 47E(d)
@HOMEAFFAIRS.GOV.AU>
Cc: s 47E(c) and s 47E(d) @HOMEAFFAIRS.GOV.AU>; s 47E(d)
@HOMEAFFAIRS.GOV.AU>; s 47E(c) and s 47E(d) @dfat.gov.au>
Subject: RE: COISS enquiry re DFAT China reports - clarification around the ability of the child of a single mother to obtain a hukou [SEC= [REDACTED]]

[REDACTED]

Dears 47E(c) and s 47E(d)

s 47E(d), s 47C and s 33(a)(iii)

Hope this helps and apologies again for the confusion. We will try to fix it in the next report.

s 47E(c) and s
47E(d)

Director | Country Information Section
Human Rights Branch | Multilateral Policy Division
Department of Foreign Affairs and Trade
Phone s 47E(c) and s | Mobile s 47E(c) and s 47E(d)
47E(d)

From: s 47E(c) and s 47E(d) @HOMEAFFAIRS.GOV.AU]

Sent: Wednesday, 10 January 2018 12:32 PM

To: s 47E(c) and s 47E(d) @dfat.gov.au>; s 47E(c) and s 47E(d)
@HOMEAFFAIRS.GOV.AU>

Cc: s 47E(c) and s 47E(d) @HOMEAFFAIRS.GOV.AU>; s 47E(c) and s 47E(d)
@HOMEAFFAIRS.GOV.AU>

Subject: RE: COISS enquiry re DFAT China reports - clarification around the ability of the child of a single mother to obtain a hukou [SEC= [REDACTED]]

Dear s 47E(c) and s 47E(d)

s 22(1)(a)(ii)

s 47E(d) and s 47C

Just by way of background, would you be able to let us know whether there are any open sources relied upon in para 3.112 that we might not have referred to, so that we could add these to CISNET?

s 47E(d)

For example a Xinhua January 2016 news report explicitly mentions this group in the drive to register 'black' citizens (https://www.chinadailyasia.com/nation/2016-01/14/content_15372538.html)

However, we can see varying views, and some sources that have reported on this include:

The 2017 Annual CECC report states that notwithstanding hukou reform and the push to register 'illegal residents', children of unmarried parents continued to face difficulties:

Some "illegal residents," however, reportedly continued to face difficulty in registering for hukou, including those born to unmarried parents.¹⁰²

("Congressional-Executive Commission on China Annual Report 2017", *Congressional-Executive Commission on China*, 5 October 2017, CISED50AD5904, p.158)

An article about unwed mothers in China published by the Economist in February 2016 reported that, for an unwed mother where the father does not cooperate in registering the child, she is 'out of luck' and '[t]he child cannot be registered' (bolding added) :

'The government imposes stringent penalties on the very few unmarried women brave enough to have children. Giving birth requires permission from family-planning authorities. They will not give it without proof of marriage. Violators usually have to pay the equivalent of several years' working-class income.

'Then there is the problem of registering the child. Until last month it was impossible for many of those born in violation of family-planning rules to get identity papers. Now it is easier, as long as both parents can prove they are related to the child. But a mother who does not know who the baby's father is, or who cannot convince the father to submit to a DNA test, is out of luck. The child cannot be registered. Hence it cannot obtain other vital documents such as an identity card (essential, not least, for travel on long-distance transport).'⁴⁶

("Pariahs", *Economist*, 27 February 2016, CX6A26A6E17197)

In November 2016, Deutsche Welle stated in a news article <http://www.dw.com/en/chinas-unmarried-women-struggle-to-overcome-barriers-to-having-babies/a-36488553>):

Last year, unmarried couple Shen Bolun and Wu Xia gave birth to their little girl and was fined a "social maintenance fee" of 43,910 renminbi (\$7,100). The couple asked the public for donations to pay the fine and, at the same time, use their own example to start a discussion on the current family planning policies.

These fines, however, are only the beginning of a long list of challenges unmarried mothers and their children encounter, as children born without a birth permit will not be

able to legally register to get a "hukou" – a crucial document that all Chinese citizens need to get access to education, health care, to marry or even to open a bank account.

Although the government eased the restrictions a bit earlier this year - now a single mother or a single father can register their child with their own account as long as they can provide a DNA proof - it is still not possible for both partners in an unmarried intimate relationship to get themselves registered as the parents of their child.

"If both the mother and the father want to register as the child's parents, they need to provide a marriage certificate," lawyer Ding said.

Information in a Canadian Immigration and Refugee Board June 2016 response to information request reflects the lack of consistency in the implementation of policy across different provinces that you refer to in your reply
(<http://www.irb.gc.ca/Eng/ResRec/RirRdi/Pages/index.aspx?doc=456586&pls=1> – CHN105545.E)

Regards,

s 47E(c) and s 47E(d)

From: s 47E(c) and s 47E(d) @dfat.gov.au
Sent: Monday, 8 January 2018 3:23 PM
To: s 47E(c) and s 47E(d) @HOMEAFFAIRS.GOV.AU>
Cc: s 47E(c) and s 47E(d) @HOMEAFFAIRS.GOV.AU>; s 47E(c) and s 47E(d) @HOMEAFFAIRS.GOV.AU>; s 47E(c) and s 47E(d) @HOMEAFFAIRS.GOV.AU>
Subject: RE: COISS enquiry re DFAT China reports - clarification around the ability of the child of a single mother to obtain a hukou [SEC=]

Dear s 47E(c) and s 47E(d)

Apologies for the confusion. The reference to children being able to obtain registration relates to second children born to married parents under the previous policy. Even so, as the report and post reporting indicates, implementation of this (and the de-linking of registration and compensation fees) is not consistent, even in provinces that have clear regulations.

Our understanding is that children of mothers who never married are still considered to be out of plan and hence not eligible for registration without payment of social compensation fees. As noted in the reports, mothers who have never married can find it difficult to obtain birth certificates and to register their child or obtain services even if the relevant fees are paid. Note that such restrictions apply to mothers who have never married, and not widows or divorcees (although the latter may require a degree of cooperation from their former husbands to secure relevant documentation).

I hope this helps.

s 47E(c) and s 47E(d)

s 47E(c) and s 47E(d)

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Human Rights Branch | Multilateral Policy Division
Department of Foreign Affairs and Trade
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47E(d)

From: s 47E(c) and s 47E(d) @HOMEAFFAIRS.GOV.AU
Sent: Friday, 5 January 2018 4:41 PM
To: s 47E(c) and s 47E(d) @dfat.gov.au
Cc: s 47E(c) and s 47E(d) @HOMEAFFAIRS.GOV.AU; s 47E(c) and s 47E(d) @HOMEAFFAIRS.GOV.AU; s 47E(c) and s 47E(d) @HOMEAFFAIRS.GOV.AU
Subject: COISS enquiry re DFAT China reports - clarification around the ability of the child of a single mother to obtain a hukou [SEC=]

His 47E(c) and s 47E(d)

A decision maker has raised a query with us about s 47E(d)

s 47E(d)

Please advise if you would like to discuss.

Thanks,

s 47E(c) and s
47E(d)

Acting Assistant Director
Country of Origin Information Services Section (COISS)
Humanitarian Programme Capabilities Branch | Refugee and Humanitarian Visa Management Division
Department of Home Affairs
P: s 47E(c) and | E: s 47E(c) and [@homeaffairs.gov.au](mailto:homeaffairs.gov.au)
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