



Home Office

# **Country Policy and Information Note**

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

**Version 2.0**

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# Preface

This note provides country of origin information (COI) and policy guidance to Home Office decision makers on handling particular types of protection and human rights claims. This includes whether claims are likely to justify the granting of asylum, humanitarian protection or discretionary leave and whether – in the event of a claim being refused – it is likely to be certifiable as ‘clearly unfounded’ under s94 of the Nationality, Immigration and Asylum Act 2002.

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

## Country information

COI in this note has been researched in accordance with principles set out in the [Common EU \[European Union\] Guidelines for Processing Country of Origin Information \(COI\)](#) and the [European Asylum Support Office’s research guidelines, Country of Origin Information report methodology](#), namely taking into account its relevance, reliability, accuracy, objectivity, currency, transparency and traceability.

All information is carefully selected from generally reliable, publicly accessible sources or is information that can be made publicly available. Full publication details of supporting documentation are provided in footnotes. Multiple sourcing is normally used to ensure that the information is accurate, balanced and corroborated, and that a comprehensive and up-to-date picture at the time of publication is provided. Information is compared and contrasted, whenever possible, to provide a range of views and opinions. The inclusion of a source is not an endorsement of it or any views expressed.

## Feedback

Our goal is to continuously improve our material. Therefore, if you would like to comment on this note, please email [the Country Policy and Information Team](#).

## Independent Advisory Group on Country Information

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

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

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# Policy guidance

Updated: 6 November 2017

## 1. Introduction

### 1.1 Basis of claim

1.1.1 Fear of persecution or serious harm by the state because the person has contravened the national population and family-planning laws.

### 1.2 Points to note

1.2.1 The so-called 'one-child policy' forms part of the national population and family-planning laws.

1.2.2 Decision makers should take into account amendments to the family planning policy, allowing married couples to have two children, which came into effect in January 2016.

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## 2. Consideration of issues

### 2.1 Credibility

2.1.1 For information on assessing credibility, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#).

2.1.2 Decision makers must also check if there has been a previous application for a UK visa or another form of leave. Asylum applications matched to visas should be investigated prior to the asylum interview (see the [Asylum Instruction on Visa Matches, Asylum Claims from UK Visa Applicants](#)).

2.1.3 Decision makers should also consider the need to conduct language analysis testing (see the [Asylum Instruction on Language Analysis](#)).

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### 2.2 Particular social group

2.2.1 In the country Guidance case of [AX \(Family Planning Scheme\) China CG \[2012\] UKUT 00097 \(IAC\)](#) (16 April 2012), heard on 8-9 December 2009, 29 November 2010 and 19 December 2011, it was accepted that 'women who gave birth in breach of China's family planning scheme' constitute a particular social group within the meaning of the 1951 UN Refugee Convention (paragraph 191(12)).

2.2.2 Although women who give birth in breach of China's family planning scheme form a PSG, this is not sufficient to be recognised as a refugee. The question in each case is whether the particular person will face a real risk of persecution on account of their membership of such a group.

2.2.3 For further guidance on particular social groups, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#).

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## 2.3 Assessment of risk

### a. General points

- 2.3.1 In [AX](#), the Upper Tribunal held that the Chinese family planning scheme expects childbirth to occur within marriage. It encourages 'late' marriage and 'late' first births. 'Late' marriages are defined as age 25 (male) and 23 (female) and 'late' first births from age 24. A birth permit is not usually required for the first birth, but must be obtained before trying to become pregnant with any further children. The Chinese family planning scheme also originally included a requirement for four-year 'birth spacing.' With the passage of time, province after province has abandoned that requirement. Incorrect birth spacing, where this is still a requirement, results in a financial penalty (para 191(3)).
- 2.3.2 In [AX](#), the Upper Tribunal also held that breach of the Chinese family planning scheme is a civil matter, not a criminal matter (para 191(4)).
- 2.3.3 Since the promulgation of [AX](#), China has amended the law. Financial and administrative penalties for births that exceed birth limits continue under the new policy. Where a person has contravened the national population and family-planning laws either by being unmarried or having a child overseas, they are likely to be subject to pay a fine, referred to as a 'social compensation fee' (see [Enforcement of the family planning policy](#), [Single mothers](#) and [Children born overseas](#)).
- 2.3.4 In [AX](#), the Upper Tribunal also held:
- In China, all state obligations and benefits depend on the area where a person holds their 'hukou,' the name given to the Chinese household registration system. There are different provisions for those holding an 'urban hukou' or a 'rural hukou' in particular, partly because of the difficulties experienced historically by peasants in China, the family planning scheme is more relaxed for those with a 'rural hukou' (para 191(1)) (see [Hukou \(registration\) system](#)).

### b. Single-child families

- 2.3.5 In [AX](#), the Upper Tribunal held that parents who restrict themselves to one child qualify for a 'Certificate of Honour for Single-Child Parents' (SCP certificate), which entitles them to a range of enhanced benefits throughout their lives, from priority schooling, free medical treatment, longer maternity, paternity and honeymoon leave, priority access to housing and to retirement homes, and enhanced pension provision (para 191(5)).
- 2.3.6 However, following changes to the law, couples who choose to have only one child after 1 January 2016 (the implementation of the family planning policy amendment), no longer receive the SCP certificate. Couples who gave birth to only one child voluntarily during the one-child policy period are still qualified to receive the certificate (see [Impact of the family planning policy](#)).

### c. Multiple-child families

- 2.3.7 In [AX](#), the Upper Tribunal also held that where a second child is born who is unauthorised, the family will encounter additional penalties. Workplace discipline for parents in employment is likely to include demotion or even loss of employment. In addition, a 'social upbringing charge' (SUC) is payable,

which is based on income, with a down payment of 50% and three years to pay the balance' (para 191(7)).

2.3.8 Decision makers should note that although the Upper Tribunal in AX used the term 'social upbringing charge', various sources cited in the country information section refer to it as a 'fine' or 'fee'.

2.3.9 However, there have been changes in the law since the promulgation of [AX](#). Childbirth is still expected to occur within marriage. However, the birth registration system has been relaxed – in particular the 'one-child policy' – to now allow married couples to have two children and married couples are no longer required to go through the approval process for their first two children. Couples can also apply for approval have a third child without incurring penalties providing they meet conditions stipulated in local and provincial regulations (see [Family planning policy](#), [Introduction of the two-child policy](#), and [Documentation](#)).

2.3.10 Otherwise, financial or workplace penalties continue to apply to for births that exceed the two-child policy (see [Introduction of the two-child policy](#) and [Enforcement of the family planning policy](#))

2.3.11 In addition in [AX](#), the Upper Tribunal held:

'There are hundreds of thousands of unauthorised children born every year. Family planning officials are not entitled to refuse to register unauthorised children and there is no real risk of a refusal to register a child. Payment for birth permits, for the registration of children, and the imposition of SUC charges for unauthorised births are a significant source of revenue for local family planning authorities. There is a tension between that profitability and enforcement of the nationally imposed quota of births for the town, county and province, exceeding which can harm the careers of officials (para 191(8)).

'The financial consequences for a family of losing its SCP (for having more than one child) and/or of having SUC imposed (for having unauthorised children) and/or suffering disadvantages in terms of access to education, medical treatment, loss of employment, detriment to future employment etc will not, in general, reach the severity threshold for persecution or serious harm or treatment in breach of Article 3 (para 191(8)).

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

d. Returnees who have had their permitted quotas of children

2.3.12 In [AX](#), the Upper Tribunal that:

In general, for female returnees, there is no real risk of forcible sterilisation or forcible termination in China. However, if a female returnee who has already had her permitted quota of children is being returned at a time when there is a crackdown in her 'hukou' area, accompanied by unlawful practices such as forced abortion or sterilisation, such a returnee would be at real risk of forcible sterilisation, or, if she is pregnant at the time, of forcible termination of an unauthorised pregnancy. Outside these times, such a female returnee may also be able to show an individual risk, notwithstanding the absence of a general risk, where there is credible evidence that she, or members of her family remaining in China, have been threatened with, or have suffered, serious adverse ill-treatment by reason of her breach of the family planning scheme (para 191(11)).

'Where a female returnee is at real risk of forcible sterilisation or termination of pregnancy in her 'hukou' area, such risk is of persecution (para 191(12)).

2.3.13 Male returnees do not, in general, face a real risk of forcible sterilisation, whether in their 'hukou' area or elsewhere, given the very low rate of sterilisation of males overall and the even lower rate of forcible sterilisation. (para 191(13)) (see also [Enforced abortion, sterilisation and birth control](#)).

2.3.14 The country information available following the promulgation of [AX](#) and the implementation of changes to the family planning laws indicates that officials continue to enforce compliance with family planning targets. Whilst reportedly occurring less frequently since [AX](#), forced and coerced abortions, sterilisations and other birth control methods continue to be applied to those who have already reached the birth quota, or have unauthorised pregnancies (see [Enforced abortion, sterilisation and birth control](#)).

2.3.15 While [AX](#) still applies, evidence indicates that there is now less risk of punishments and in general parents are not likely to be at risk of treatment amounting to persecution or serious harm.

2.3.16 For further guidance on assessing the availability or not of state protection, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#).

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## 2.4 Protection

2.4.1 Where the person's fear is of persecution or serious harm at the hands of the state, they will not be able to obtain protection.

2.4.2 For further guidance on assessing the availability of state protection, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#).

2.4.3 See also the country policy and information note on [China: Background information including actors of protection and internal relocation](#).

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## 2.5 Internal relocation

2.5.1 Where a person is at risk of the state enforcing sterilisation or termination in their 'hukou' area, in general it would be reasonable to expect the person to internally relocate.



- 2.5.2 In [AX](#), the Upper Tribunal held that where a real risk from State officials exists in the 'hukou' area, it may be possible to avoid the risk by moving to a city. Millions of Chinese internal migrants, male and female, live and work in cities where they do not hold an 'urban hukou.' Internal migrant women are required to stay in touch with their 'hukou' area and either return for tri-monthly pregnancy tests or else send back test results. The country evidence does not indicate a real risk of effective pursuit of internal migrant women leading to forcible family planning actions, sterilisation or termination taking place in their city of migration. Therefore, internal relocation will, in almost all cases, avert the risk in the 'hukou' area. However, internal relocation may not be safe where there is credible evidence of individual pursuit of the returnee or her family outside the 'hukou' area. Whether it is unduly harsh to expect an individual returnee and her family to relocate in this way will be a question of fact in each case (para 191(14)).
- 2.5.3 For further guidance on internal relocation and the factors to be considered, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#).
- 2.5.4 See also the country policy and information note on [China: Background information including actors of protection and internal relocation](#).

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## 2.6 Certification

- 2.6.1 Where a claim is refused, it is likely to be certifiable as 'clearly unfounded' under section 94 of the Nationality, Immigration and Asylum Act 2002 unless if a female returnee is found to be at real risk of forced sterilisation or termination because she has already had her permitted quota of children and is being returned at a time when there is a crackdown in her 'hukou' area, such risk amounts to persecution.
- 2.6.2 For further guidance on certification, see [Certification of Protection and Human Rights claims under section 94 of the Nationality, Immigration and Asylum Act 2002 \(clearly unfounded claims\)](#).

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### 3. Policy summary

- 3.1.1 Under the amended national population and family-planning law, since January 2016 married couples have the right to have two children and can also apply for approval have a third child without incurring penalties providing they meet conditions stipulated in local and provincial regulations.
- 3.1.2 Financial and administrative penalties for births that exceed birth limits continue to be applied but will not, in general, reach the threshold of persecution, serious harm or treatment in breach of Article 3 ECHR.
- 3.1.3 Whilst officials continue to enforce compliance with family planning targets, in general for women with two or more children there is no real risk of forcible sterilisation or forcible termination. However, if a female returnee who has already had her permitted quota of children is being returned at a time when there is a crackdown in her 'hukou' area, accompanied by unlawful practices such as forced abortion or sterilisation, they would be at real risk of forcible sterilisation, or, if pregnant at the time, forcible termination of an unauthorised pregnancy. This would amount to persecution.
- 3.1.4 In general, male returnees do not face a real risk of forcible sterilisation and are not at risk of persecution.
- 3.1.5 Where there is a real risk of forced sterilisation or termination in a person's 'hukou' area, in general it would be reasonable to expect the person to internally relocate.
- 3.1.6 A person fearing persecution or serious harm by the state will not be able to seek effective state protection.
- 3.1.7 Except in cases that meet para 3.1.3 above, where a claim is refused it is likely to be certifiable as 'clearly unfounded'.

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# Country information

Updated: 21 September 2017

## 4. Demography

4.1.1 The 2016 estimate of the population of China stood at approximately just over 1.3 billion people<sup>1</sup>. The age structure below shows the ratio of male to female population:

'0-14 years: 17.1% (male 126,732,020/female 108,172,771)

'15-24 years: 13.27% (male 97,126,460/female 85,135,228)

'25-54 years: 48.42% (male 339,183,101/female 325,836,319)

'55-64 years: 10.87% (male 75,376,730/female 73,859,424)

'65 years and over: 10.35% (male 67,914,015/female 74,205,210).'<sup>2</sup>

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## 5. Legal context

### 5.1 Protections

5.1.1 Article 25 of the [Constitution](#) states that: 'The State promotes family planning so that population growth may fit the plans for economic and social development.'<sup>3</sup> While Article 49 states: 'Marriage, the family and mother and child are protected by the State. Both husband and wife have the duty to practise family planning. Parents have the duty to rear and educate their children who are minors, and children who have come of age have the duty to support and assist their parents.'<sup>4</sup>

5.1.2 The UN Committee on the Convention of the Rights of the Child in its Concluding observations on the combined third and fourth periodic reports of China, dated 29 October 2013 welcomed the adoption of laws and policy measures aimed at eliminating discrimination against children, including:

- The revisions of the Law of the People's Republic of China on the Protection of Minors, in December 2006 and October 2012;
- The adoption of the Law on Social Insurance, in October 2010.
- The Plan of Action against Human Trafficking 2013-2020, in March 2013;
- The National Programme for Child Development 2011-2020, in July 2011;

<sup>1</sup> The Central Intelligence World Factbook, 'China', (People and Society: Age structure), updated 2 August 2017, <https://www.cia.gov/library/publications/the-world-factbook/geos/ch.html>. Accessed 18 August 2017

<sup>2</sup> The Central Intelligence World Factbook, 'China', (People and Society: Age structure), updated 2 August 2017, <https://www.cia.gov/library/publications/the-world-factbook/geos/ch.html>. Accessed 18 August 2017

<sup>3</sup> Constitution of the People's Republic of China, Chapter I General Principles, [http://www.npc.gov.cn/englishnpc/Constitution/node\\_2825.htm](http://www.npc.gov.cn/englishnpc/Constitution/node_2825.htm). Accessed: 18 August 2017

<sup>4</sup> Constitution of the People's Republic of China, Chapter II The Fundamental Rights and Duties of Citizens, [http://www.npc.gov.cn/englishnpc/Constitution/node\\_2825.htm](http://www.npc.gov.cn/englishnpc/Constitution/node_2825.htm). Accessed: 18 August 2017

- The twelfth Five-Year Plan for National Economic and Social Development 2011-2015, with a child focus.<sup>5</sup>

5.1.3 The UN Committee on the Elimination of Discrimination against Women (CEDAW) in its ‘Concluding observations on the combined seventh and eighth periodic reports of China’, dated 14 November 2014 welcomed the adoption of laws aimed at eliminating discrimination against women, including:

- National Human Rights Action Plan (2012-2015);
- Programme for the Development of Chinese Women (2011-2020).<sup>6</sup>

5.1.4 The Committee also welcomed the fact that, in the period since the consideration of the previous report, the State party has ratified or acceded to international instruments, including:

- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children;
- Convention on the Rights of Persons with Disabilities, in 2008;
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111) of the International Labour Organization, in 2006.<sup>7</sup>

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## 5.2 Legislation

5.2.1 The US Library of Congress reported in January 2016:

‘On December 27, 2015, the Standing Committee of China’s National People’s Congress (NPC) adopted a decision amending the Population and Family Planning Law. Effective January 1, 2016, the “two child policy” became law applicable nationwide... Previously, on September 29, 2015, the Fifth Plenary Session of the Communist Party of China (CPC) 18th Central Committee announced that China would end its decades-long “one child policy,” allowing all married couples to have two children... This is the first time the Population and Family Planning Law was revised since its promulgation in 2001. Under article 18 of the old Law, the state advocated that every married couple have only one child; a second child might be

<sup>5</sup> The UN Committee on the Convention of the Rights of the Child in its Concluding observations on the combined third and fourth periodic reports of China, adopted by the Committee at its sixty-fourth session (16 September–4 October 2013), (II. Follow-up measures taken and progress achieved by the State party, p1-2), 29 October 2013, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/CHN/CO/3-4&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/CHN/CO/3-4&Lang=En). Accessed: 5 September 2017

<sup>6</sup> The UN Committee on the Elimination of Discrimination against Women (CEDAW) in its ‘Concluding observations on the combined seventh and eighth periodic reports of China’, (B. Positive aspects, p1-2), dated 14 November 2014, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/CHN/CO/7-8&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/CHN/CO/7-8&Lang=En). Accessed: 5 September 2017

<sup>7</sup> The UN Committee on the Elimination of Discrimination against Women (CEDAW) in its ‘Concluding observations on the combined seventh and eighth periodic reports of China’, (B. Positive aspects, p1-2), dated 14 November 2014, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/CHN/CO/7-8&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/CHN/CO/7-8&Lang=En). Accessed: 5 September 2017

allowed only when the requirements specified by laws and regulations were met.<sup>8</sup> (See also: [Family planning policy](#)).

- 5.2.2 The US State Department's 2016 Country Report on Human Rights Practices ('the USSD Report for 2016') published on 3 March 2017, observed that: 'The revised [one child policy] law did not, however, eliminate state-imposed birth limitations or the penalties that citizens face for violating the law.'<sup>9</sup> (See also: [Enforced abortion, sterilisation and birth control](#)).
- 5.2.3 It is estimated that about 90 million families may qualify for the new two-child policy but it will be the responsibility of the provinces to implement the law<sup>10</sup> (see also: [Enforcement of the family planning policy](#)).
- 5.2.4 Family Planning policies can vary in each Province. In a [response](#) to an information request, dated 23 October 2017, the Immigration and Refugee Board of Canada Research Directorate (CIRB) provided unofficial translations for 1980 (amended 2016) Population and Family Planning regulations in Guangdong, Fujian and Hebei Provinces. (The translations, including for Fujian and Hebei Provinces are available on request in hard copy).
- 5.2.5 An example of the amended regulations translated by the CIRB can be noted in the Guangdong Province on Population and Family Planning as adopted by the 28th Meeting of the Standing Committee of the 12th Guangdong Provincial People's Congress on September 29, 2016, which states:
- '1. Article 19 is amended as: "In one of the following situations, with a co-application submitted by both the husband and wife and the approval from the township people's government, neighbourhood office or directly managed agricultural and forest farms at or above the county level, the couple may bear another child or two children:
    - '(1) A couple who has given birth to two children but one or both of their children is or are disabled and cannot grow into a member or members of the normal labour force, with appraisal by medical appraisal institutions of ill and disabled children in a city at or above the prefecture level, and who are deemed medically fit for reproduction may bear one child;
    - '(2) A remarried couple, of which one party has not given birth to any child but the other party has one child before their remarriage, wanting to bear a child after their remarriage, may bear one child;
    - '(3) A remarried couple, of which one party has not given birth to any child but the other party has two or more children before their remarriage, may bear one child;
    - '(4) A remarried couple, of which one party has given birth to one child and the other party has one child or two children before their remarriage, may bear one child; ...

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<sup>8</sup> US Library of Congress (LoC), 'China: Two Child Policy Becomes Law', 8 January 2016, <http://www.loc.gov/law/foreign-news/article/china-two-child-policy-becomes-law/>. Accessed: 31 July 2017

<sup>9</sup> US State Department, '2016 Country Report on Human Rights Practices', (Section 6. Discrimination, Societal Abuses, and Trafficking in Persons: Reproductive Rights), 3 March 2017, <https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2016&dliid=265328#wrapper>. Accessed: 31 July 2017

<sup>10</sup> Reuters, 'China to leave implementation of two-child policy to provinces', 30 October 2015 <http://www.reuters.com/article/us-china-population-idUSKCN0SO0RP20151030>. Accessed: 31 July 2017

- '5. Article 47 is changed into Article 46 and Item 2 is amended as "Rural couples who have one overquota child shall each be levied a one-time social maintenance fee of not less than three times but not more than six times the per-capita disposable income of the previous year for rural residents (permanent residents) in their local county (city, district) or prefecture-level city without districts. For those whose actual annual income is higher than the per-capita disposable income of the previous year for local rural residents (permanent residents), an extra social maintenance fee of not less than the same but not more than twice the extra part shall be levied. For two or more over-quota children, social maintenance fees to be levied will be based on the amount of social maintenance fees for one over-quota child, multiplied by the number of over-quota children."
- '6. Article 56 is changed into Article 55 and Item 2 is amended as "If couples with conditions of additional childbearing prescribed in laws and regulations are pregnant before obtaining approval, they should make up for the review procedure. If such procedure has not been completed at the time of child birth, a social maintenance fee will be levied at 2% of the base amount for calculation prescribed in Article 46 herein by the health and family planning administration department of the people's government at or above the county level."<sup>11</sup>

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### 5.3 Contraventions of international law

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

'...any birth limits imposed on Chinese women and their families, as well as coercive measures used to implement these limits, violate standards set forth in the 1995 Beijing Declaration and Platform for Action and the 1994 Programme of Action of the Cairo International Conference on Population and Development. Acts of official violence committed in the implementation of population planning policies contravene Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Discriminatory actions such as refusing to register children born in violation of the population planning policy contravene the Convention on the Rights of the Child and the International Covenant on Economic, Social and Cultural Rights.'<sup>12</sup>

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<sup>11</sup> The Immigration and Refugee Board of Canada Research Directorate Response to Information Request, dated 23 October 2017, Standing Committee of 12th Guangdong Provincial People's Congress Public Notice (No. 66), "Decision of the Standing Committee of Guangdong Provincial People's Congress on Amending 'Regulations of Guangdong Province on Population and Family Planning'" has been adopted by the 28th Meeting of the Standing Committee of the 12th Guangdong Provincial People's Congress on September 29, 2016. (Hard copy only)

<sup>12</sup> Congressional-Executive Commission on China: 'One Year Later, Initial Impact of China's Population Planning Policy Adjustment Smaller Than Expected', (Population Planning Policy Violates International Law), 09 December 2014 <http://www.cecc.gov/publications/commission-analysis/one-year-later-initial-impact-of-china%E2%80%99s-population-planning-policy>. Accessed 23 August 2017

## 6. Family planning policy

### 6.1 Brief history of the 'one-child policy'

#### 6.1.1 TIME magazine (online) described the history of the One-child policy:

'In the 1970s, many countries around the world were worried about population growth, but China, with its combination of a particularly large population and a powerful government, took an extreme approach to the problem. The country initially ran a successful birth control campaign under the slogan "Late, Long and Few," which cut population growth by half between 1970 and 1976. But, as the decade came to an end, that drop leveled off and the nation was still facing food shortages and fear of a repeat of the devastating famine that killed some 30 million people by 1962.

'In 1979, the Chinese government introduced a policy requiring couples from China's ethnic Han majority to limit themselves to one child. The official start of implementation came in 1980, with an open letter issued by the Central Committee of the Communist Party of China. The letter outlined the population pressure on the country and set out a goal of curbing population growth, bringing the nation's total below 1.2 billion at the end of the 20th century. As reports from the time noted, the nation's 38 million Communist Party members were told to use "patient and painstaking persuasion" to teach the rest of the population how important it was to practice family planning.'<sup>13</sup>

#### 6.1.2 The Congressional-Executive Commission on China report: 'One Year Later, Initial Impact of China's Population Planning Policy Adjustment Smaller Than Expected', 9 December 2014, stated:

'In November 2013, the Chinese Communist Party announced a new exception to its population planning policy – couples in which one parent was an only child were now allowed a second child. One year later, reports indicate that the impact of this policy adjustment has been modest thus far. While every Chinese province except Xinjiang has implemented the policy adjustment, applications for birth permits for second children were generally lower than most Chinese government predictions. Moreover, Chinese officials reportedly have not relaxed their enforcement of the population planning policy, and have continued to use coercive measures such as forced abortion and sterilization, among others, that violate international law.'<sup>14</sup>

#### 6.1.3 See also the Guardian newspaper's 2015 [China's child policy – timeline](#).<sup>15</sup>

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<sup>13</sup> TIME, 'Here's How China's One-Child Policy Started in the First Place', 29 October 2015, <http://time.com/4092689/china-one-child-policy-history/>. Accessed: 10 August 2017

<sup>14</sup> CECC - Congressional-Executive Commission on China, 'One Year Later, Initial Impact of China's Population Planning Policy Adjustment Smaller Than Expected', 9 December 2014. <http://www.cecc.gov/publications/commission-analysis/one-year-later-initial-impact-of-china%E2%80%99s-population-planning-policy>. Accessed: 10 August 2017

<sup>15</sup> The Guardian, China's one-child policy – timeline, 29 October 2015, <https://www.theguardian.com/world/2013/nov/15/china-one-child-family-policy-timeline>. Accessed: 10 August 2017



## 6.2 Implementation of the one-child policy

6.2.1 Deutsche Welle, Germany's international broadcaster, published an article in January 2016 which explained the one-child policy:

'Beijing introduced its one-child policy the late 1970s to control population growth and bolster food security. Rural families could have two children if the first was a girl – a response to the Chinese tendency to prefer male children to females. Ethnic minorities could also have an extra child. Officials ensured people conformed to the rules by detailing a system of fines for violators, and raising the possibility of forced abortions. The government argued that the rule was a key factor in contributing to China's economic growth. However, the law caused severe emotional distress to parents and led to sex-selective abortions in the male-dominated society.'<sup>16</sup>

6.2.2 TIME magazine reported in an online article in October 2015:

'To enforce the law, the Chinese government could fine couples for having another child without a permit. The law also incentivized single-child homes by offering longer maternity leave and other benefits to such families. Compliance with the law was seen as a revolutionary good for society; couples who abided by the mandate were awarded a "Certificate of Honor for Single-Child Parents."

'The policy was relaxed slightly in the mid-1980s, with the government allowing second children for some families in rural areas or offering exceptions for households in which both parents were themselves only children.'<sup>17</sup>

(See also: [Impact of the family planning policy](#), [Enforcement of the family planning policy](#) and [Enforced abortion, sterilisation and birth control](#))

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## 6.3 Introduction of the two-child policy

6.3.1 The CECC Annual report on human rights in China, 6 October 2016, stated:

'As the November 2013 policy revision of allowing couples to bear a second child if one parent is an only child (dandu erhai policy) failed to meet the intended birth target, and amid demographic and economic concerns voiced by population experts and research institutions, central Party authorities issued a decision in October 2015 to adopt a "universal two-child policy" (quanmian erhai) at the Fifth Plenum of the 18th Communist Party Central Committee, allowing all married couples to have two children (see [Legislation](#)).'<sup>18</sup>

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<sup>16</sup> Deutsche Welle, 'China's two-child policy comes into effect', 1 January 2016, <http://www.dw.com/en/chinas-two-child-policy-comes-into-effect/a-18953903>. Accessed 1 August 2017

<sup>17</sup> TIME, 'Here's How China's One-Child Policy Started in the First Place', 29 October 2015, <http://time.com/4092689/china-one-child-policy-history/>. Accessed: 10 August 2017

<sup>18</sup> Congressional-Executive Commission on China, 'Annual report on human rights in China', (Population Control: Findings, p27), 6 October 2016, <http://www.cecc.gov/sites/chinacommission.house.gov/files/2016%20Annual%20Report.pdf>. Accessed: 1 August 2017



- 6.3.2 As reported by the East Asian Forum in April 2017: ‘At the beginning of 2016 the Chinese government relaxed its family planning laws to allow all married couples to have a second child. The new policy came into effect in March [2016] after formal ratification by the National People’s Congress.’<sup>19</sup>
- 6.3.3 The CECC report added: ‘An approval process, however, is still in place for eligible couples who intend to have a third child, though local family planning authorities are to promote “optimization” and “simplification” of that process.’<sup>20</sup>
- 6.3.4 Further noting:
- ‘Central government authorities stated that the universal two-child policy is the Party’s “major initiative” to “promote balanced population development” and to address demographic concerns China currently faces. Central government officials emphasized repeatedly that family planning will remain the long-term “basic national policy.” On December 27, 2015, the Standing Committee of the National People’s Congress amended the PRC Population and Family Planning Law, which became effective nationwide on January 1, 2016. As of August 2016, at least 29 provincial-level jurisdictions reportedly had revised their population and family planning regulations in accordance with the amended national law. Human rights advocates, demographic experts, and others, however, expressed concerns that coercive implementation of family planning measures and human rights abuses will persist despite the adoption of the universal two-child policy.’<sup>21</sup>
- 6.3.5 The USSD Report 2016 observed that:

‘The revised law permits married couples to have two children and allows couples to apply for permission to have a third child if they meet conditions stipulated in local and provincial regulations. The revised law did not, however, eliminate state-imposed birth limitations or the penalties that citizens face for violating the law. The government considers intrauterine devices (IUDs) and sterilization to be the most reliable form of birth control and compelled women to accept the insertion of IUDs by officials. The National Health and Family Planning Commission reported that all provinces eliminated an earlier requirement to seek approval for a birth before a first child was conceived, but provinces could still require parents to “register pregnancies” prior to giving birth, which could be used as a de facto permit system in some provinces.’<sup>22</sup>

<sup>19</sup> East Asia Forum, ‘China’s two-child policy one year on’, 19 April 2017,

<http://www.eastasiaforum.org/2017/04/19/chinas-two-child-policy-one-year-on/>. Accessed: 4 July 2017

<sup>20</sup> Congressional-Executive Commission on China, ‘Annual report on human rights in China’, (Population Control: page 149), 6 October 2016,

<http://www.cecc.gov/sites/chinacommission.house.gov/files/2016%20Annual%20Report.pdf>.

Accessed: 1 August 2017

<sup>21</sup> Congressional-Executive Commission on China, ‘Annual report on human rights in China’, (Population Control: Findings, p27), 6 October 2016,

<http://www.cecc.gov/sites/chinacommission.house.gov/files/2016%20Annual%20Report.pdf>.

Accessed: 1 August 2017

<sup>22</sup> US State Department, ‘2016 Country Report on Human Rights Practices’, 3 March 2017, (Section 6. Discrimination, Societal Abuses, and Trafficking in Persons – Women: Reproductive Rights), <https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2016&dliid=265328>. Accessed 16 August 2017

(See: [Enforcement of the family planning policy](#) and [Enforced abortion, sterilisation and birth control](#))

#### 6.3.6 The CECC report added:

‘Some experts noted that the impact of the universal two-child policy would be limited to urban areas, as the rural population was already allowed to have two children under previous policy revisions. Many married couples, however, especially those in urban areas, were reportedly reluctant to have a second child due to a number of factors, including the high cost of rearing an additional child, lack of adequate child care and education options, lack of energy to look after children, disruption to career development, and the perception that having one child is enough due to decades-long government propaganda.’<sup>23</sup>

#### 6.3.7 Reflecting on the policy 2 years on, the East Asian Forum noted:

‘... [T]he new two-child policy has not been an easy fix for China’s population problems. According to data released by the National Bureau of Statistics, China’s total population reached 1.383 billion in 2016. The annual population increase for the year was 17.86 million, 1.31 million more than in 2015. But in some provinces the fertility rate is still lower than the previous year. If the total population is to reach 1.42 billion by 2020, China must achieve an average annual population increase of at least 19 million. The population growth rate is still far from satisfactory (see: [Demography](#)).’<sup>24</sup>

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### 6.4 Impact of the family planning policy

6.4.1 The National Health and Family Planning Commission (NHFPC) of the People’s Republic of China recorded 17.86 million births in 2016, a 7.9% increase on 2015, the highest annual number since 2000.<sup>25</sup>

6.4.2 The BBC reported that: ‘What the [One-child] policy did was push fertility over a cliff edge and now China is losing around five million people from its labour force every year, and will continue to do so for years to come.’<sup>26</sup>

6.4.3 The law firm King & Wood Mallesons noted on their website ‘Since the announcement of the two-child policy by the CPC [Communist Party of China] in the 5th Plenary Session of the 18th CPC Central Committee in October 2015, on 27 December 2015, the Standing Committee of the People’s Congress voted to pass the Amendment for the Law of the People’s Republic

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<sup>23</sup> Congressional-Executive Commission on China, ‘Annual report on human rights in China’, (Population Control: Policy Revisions and Implementation, p149), 6 October 2016, <http://www.cecc.gov/sites/chinacommission.house.gov/files/2016%20Annual%20Report.pdf>.

Accessed: 1 August 2017

<sup>24</sup> East Asia Forum, ‘China’s two-child policy one year on’, 19 April 2017, <http://www.eastasiaforum.org/2017/04/19/chinas-two-child-policy-one-year-on/>. Accessed: 4 July 2017

<sup>25</sup> National Health and Family Planning Commission (NHFPC), ‘Second-child policy increases births by 7.9 percent’, 23 January 2017, [http://en.nhfpc.gov.cn/2017-01/23/c\\_71085.htm](http://en.nhfpc.gov.cn/2017-01/23/c_71085.htm). Accessed: 16 August 2017

<sup>26</sup> BBC, ‘China birth rate up after one-child rule change’, 23 January 2017, <http://www.bbc.co.uk/news/world-asia-china-38714949>. Accessed: 22 August 2017

of China on Population and Family Planning and the two-child policy was officially implemented on 1 January, 2016.<sup>27</sup>

#### 6.4.4 Further noting:

‘According to the Amendment, for couples having only one child after the implementation of the Amendment on January 1st, 2016, they will no longer receive the Certificate of Honourable Parents of Only-Child. However, for couples who gave birth to only one child voluntarily during the period when the national law encouraged a couple having only one child, they are still qualified to receive the Certificate of Honourable Parents of Only-Child and are still entitled to relevant rewards and assistance (including rewards for the parents of only-child, assistance to parents who lost their only-child and rewards to the elderly in birth control families).<sup>28</sup> (See: [Implementation of the one-child policy](#)).

#### 6.4.5 An article published by Al Jazeera reflecting on the impact of the policy on the discrimination of women, noted:

‘Although there is no data available on the rates of employment discrimination against women due to the implementation of the two-child policy as yet, discussion on social networking sites, such as Sina Weibo, overwhelmingly point to already rampant discriminatory employment practices worsening as employers balk at the prospect of having to pay maternity benefits twice when they hire young women, according to Keegan Elmer, a labour researcher at the Hong Kong-based China Labour Bulletin (CLB).’<sup>29</sup>

#### 6.4.6 Researchers from the Academy of Macroeconomic Research say that ‘more than half of China’s unregistered citizens are above 18 years old. Many of these adults not only lost out on schooling, but also struggled to find a job as they couldn’t provide hukou and other legal documents often needed for hiring.’<sup>30</sup>

#### 6.4.7 When the two-child policy came into force in January 2016 however, China ordered its local governments to give children born illegally under its former one-child policy access to state healthcare and education.<sup>31</sup>

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<sup>27</sup> King & Wood Mallesons, “Two-Child Policy” is implemented—HR policies might need to be adjusted’, 28 November 2015, <http://www.kwm.com/en/cn/knowledge/insights/what-adjustments-hr-should-make-when-the-new-second-child-policy-takes-effect-in-2016-20151228>. Accessed: 31 July 2017

<sup>28</sup> King & Wood Mallesons, “Two-Child Policy” is implemented—HR policies might need to be adjusted’, 28 November 2015, <http://www.kwm.com/en/cn/knowledge/insights/what-adjustments-hr-should-make-when-the-new-second-child-policy-takes-effect-in-2016-20151228>. Accessed: 31 July 2017

<sup>29</sup> Al Jazeera, ‘How has the end of its one-child policy affected China?’, (One child is enough), 2 February 2017, <http://www.aljazeera.com/indepth/features/2017/01/child-policy-affected-china-170129130503972.html>. Accessed: 23 August 2017

<sup>30</sup> South China Morning Post (SCMP), ‘The battle of China’s invisible children, victims of the one-child policy, to recover lost years’, 26 December 2016, <http://www.scmp.com/lifestyle/families/article/2056885/battle-chinas-invisible-children-victims-one-child-policy-recover>. Accessed 23 August 2017

<sup>31</sup> The Telegraph, ‘China to give illegally born children access to social welfare’, 15 January 2016, <http://www.telegraph.co.uk/news/worldnews/asia/china/12101342/China-to-give-illegally-born-children-access-to-social-welfare.html>. Accessed: 23 August 2017

## 6.5 Enforcement of the family planning policy

6.5.1 The Guardian reported in December 2015 that ‘Enforcement of the family planning policy has always varied across China, and a few local authorities have already said they will start granting hukou to people whose parents have not paid the fines. But the new policy will still have to be implemented area by area, and some families have previously complained that no changes have been made “on the ground” no matter what reforms were promised by higher officials.’<sup>32</sup>

(See: [Unregistered children / \(Heihaizi / ‘black children’\)](#))

6.5.2 Lifenews reported in December 2015 that:

‘[T]he CCP has gone out of its way to emphasize that family planning restrictions will remain in force. Shortly after the announcement of the two-child policy, Vice Minister of the National Health and Family Planning Commission Wang Peian said that “China would not abandon its family planning restrictions.” He said, “A large population is China’s basic national condition so we must adhere to the basic state policy of family planning”. He also said that “China needs to . . . promote birth monitoring” before the two-child policy comes into effect.’<sup>33</sup>

6.5.3 Further adding: ‘The problem with the one-child policy is not the number of children “allowed.” Rather, it is the fact that the CCP is telling women how many children they can have and then enforcing that limit through forced abortion and forced sterilization.’<sup>34</sup> (See: [Enforced abortion, sterilisation and birth control](#))

6.5.4 The CECC Annual report on human rights in China, 6 October 2016, stated:

‘Officials continue to enforce compliance with population planning targets using methods including heavy fines, job termination, arbitrary detention, and coerced abortion...

‘Language used in official speeches and government reports from jurisdictions across China continued to reflect an emphasis on the harsh enforcement of family planning measures. During this reporting year, as in previous years, official reports from several provinces across China –including Anhui, Fujian, the Guangxi Zhuang Autonomous Region, Henan, Hubei, Hunan, Shandong, and Shanxi – continued to promote “family planning work” that entailed harsh and invasive family planning measures. Phrases such as “fight the family planning work battle” (dahao jihua shengyu gongzuo de gongjian zhan), “resolutely implement” (hen zhua), and “use all means necessary” (qian fang

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<sup>32</sup> The Guardian, ‘China promises rights to citizens born in violation of one-child policy’, 10 December 2015, <https://www.theguardian.com/world/2015/dec/10/china-promises-rights-citizens-born-violation-one-child-policy>. Accessed: 16 August 2017

<sup>33</sup> Lifenews, ‘On International Human Rights Day, China Should End Forced Abortions and Sterilizations’, 10 December 2015, <http://www.lifenews.com/2015/12/10/on-international-human-rights-day-china-should-end-its-forced-abortion-and-sterilization/>. Accessed: 8 July 2017

<sup>34</sup> Lifenews, ‘On International Human Rights Day, China Should End Forced Abortions and Sterilizations’, 10 December 2015, <http://www.lifenews.com/2015/12/10/on-international-human-rights-day-china-should-end-its-forced-abortion-and-sterilization/>. Accessed: 8 July 2017

bai ji) appeared in official speeches and government reports, indicating the aggressive nature of these family planning campaigns.’<sup>35</sup>

#### 6.5.5 The USSD 2016 report, noted:

‘Under the law and in practice, there continued to be financial and administrative penalties for births that exceed birth limits or otherwise violate regulations. The National Health and Family Planning Commission announced it would continue to impose fines, called “social compensation fees,” for policy violations. The law as implemented requires each woman with an unauthorized pregnancy to abort or pay the social compensation fee, which can reach 10 times a person’s annual disposable income. The exact level of the fee varied widely from province to province. Those with financial means often paid the fee so that their children born in violation of the birth restrictions would have access to services. Some parents avoided the fee by hiding a child born in violation of the law with friends or relatives.’<sup>36</sup>

#### 6.5.6 The USSD report for 2016 further noted: ‘Children born to single mothers or unmarried couples are considered “outside of the policy” and subject to the social compensation fee and the denial of legal documents, such as birth documents and the “hukou” residence permit. Single women can avoid those penalties by marrying within 60 days of the baby’s birth.’<sup>37</sup> (See: [Hukou \(registration\) system](#) and [Single mothers](#)).

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### 6.6 Enforced abortion, sterilisation and birth control

#### 6.6.1 The Globe and Mail published an article in March 2015, which reported: ‘Since 1971, China has seen a total of 336 million abortions, completed 196 million sterilizations, and inserted 403 million intrauterine devices. More difficult to count are the ghosts: the ones who were born, but have no official status. China’s 2010 census estimated that there were 13 million people without official documentation...’<sup>38</sup>

#### 6.6.2 As reported by the Washington Post in October 2015:

‘Although they were not endorsed by the government, forced abortions and compulsory sterilization had been a part of China’s one-child policy since the 1980s. Growing anger about the practices led Beijing to push for less coercive

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<sup>35</sup> Congressional-Executive Commission on China, ‘Annual report on human rights in China’, (Population Control: Official Campaigns, pages 147, 149-150), 6 October 2016, <http://www.cecc.gov/sites/chinacommission.house.gov/files/2016%20Annual%20Report.pdf>. Accessed: 1 August 2017

<sup>36</sup> US State Department, ‘2016 Country Report on Human Rights Practices’, 3 March 2017, (Section 6. Discrimination, Societal Abuses, and Trafficking in Persons – Women: Reproductive Rights), <https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2016&dliid=265328>. Accessed 16 August 2017

<sup>37</sup> US State Department, ‘2016 Country Report on Human Rights Practices’, 3 March 2017, (Section 6. Discrimination, Societal Abuses, and Trafficking in Persons – Women: Reproductive Rights), <https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2016&dliid=265328>. Accessed 16 August 2017

<sup>38</sup> The Globe and Mail, ‘The ghost children: In the wake of China’s one-child policy, a generation is lost’, 13 March 2015, <https://www.theglobeandmail.com/news/world/the-ghost-children-in-the-wake-of-chinas-one-child-policy-a-generation-is-lost/article23454402/>. Accessed: 16 August 2017



measures in the 1990s, including family planning methods. However, though the national government may have prohibited these practices, local and provincial officials implementing the policy frequently did not pay heed, because helping to keep the birthrate low was often a path to a promotion.<sup>39</sup>

6.6.3 An article published by Lifenews in December 2015, noted:

‘According to our network, if a woman is caught illegally pregnant and cannot pay the fine, she will still be forcibly aborted, as was the case under the One Child Policy. According to the president of a local hospital and a family planning official contacted by our network, if a woman runs away in an attempt to escape the fine, and is caught, she will be forcibly aborted. The woman will have no recourse to a court of law, as courts will not accept such cases.’<sup>40</sup>

6.6.4 An article published by the New York Post in January 2016 reported that: ‘[a]s recently as 2010, a mass sterilization campaign for close to 10,000 people was held in Puning City, Guangdong. According to Amnesty International, almost 1,400 relatives of couples targeted for sterilization were detained, to pressure these couples to consent.’<sup>41</sup>

6.6.5 Freedom House, in their 2016<sup>42</sup> and 2017<sup>43</sup> reports noted however that forced abortions and sterilizations were less common than in the past.

6.6.6 A BBC News report dated October 2016 indicated that whilst it found no evidence or admission of a forced abortion being carried out since the introduction of the two-child policy, the threat of such was ‘clearly still there’. Family planning officials spoken to by the BBC stated they would ‘persuade’ pregnant women who had exceeded the child quota to have a termination.<sup>44</sup>

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## 6.7 Single mothers

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

‘[Children born out of wedlock] are still regarded with pity and disdain. They are teased at school. Single mothers are subject to discrimination when it

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<sup>39</sup> Washington Post, ‘The human suffering caused by China’s one-child policy’, 29 October 2015, [https://www.washingtonpost.com/news/worldviews/wp/2015/10/29/the-human-suffering-caused-by-chinas-one-child-policy/?utm\\_term=.3c807ed40b94](https://www.washingtonpost.com/news/worldviews/wp/2015/10/29/the-human-suffering-caused-by-chinas-one-child-policy/?utm_term=.3c807ed40b94). Accessed: 18 August 2017

<sup>40</sup> Lifenews, ‘On International Human Rights Day, China Should End Forced Abortions and Sterilizations’, 10 December 2015, <http://www.lifenews.com/2015/12/10/on-international-human-rights-day-china-should-end-its-forced-abortion-and-sterilization/>. Accessed: 8 July 2017

<sup>41</sup> New York Post, ‘Sterilization, abortion, fines: How China brutally enforced its 1-child policy’, 3 January 2016, <http://nypost.com/2016/01/03/how-chinas-pregnancy-police-brutally-enforced-the-one-child-policy/>. Accessed: 18 August 2017

<sup>42</sup> Freedom House: ‘Freedom in the World 2016 – China’, (Civil Liberties: G. Personal Autonomy and Individual Rights), 27 January 2016, <https://freedomhouse.org/report/freedom-world/2016/china>. Accessed: 8 July 2017

<sup>43</sup> Freedom House: ‘Freedom in the World 2017 – China’, (Civil Liberties: G. Personal Autonomy and Individual Rights), January 2017, <https://freedomhouse.org/report/freedom-world/2017/china>. Accessed: 8 July 2017

<sup>44</sup> BBC News, ‘China’s forbidden babies still an issue’, 28 October 2017, <http://www.bbc.co.uk/news/world-asia-china-37788712>. Accessed: 1 September 2017

comes to accessing housing, education and medical services... Women pregnant out of wedlock typically face discrimination in obtaining appropriate medical care. Single mothers are often discriminated against when seeking housing, education for their child, job opportunities and more generally in the context of social interactions.<sup>45</sup>

- 6.7.2 An article about unwed mothers in China published by the Economist in February 2016, reported that:

‘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).’<sup>46</sup>

- 6.7.3 A May 2016 article published by the International Women's Initiative noted:

‘An unwed woman with a child needs to pay a “social maintenance” fee to the family planning authorities, which varies in different regions and can be between one to six times the local average annual salary. In addition, although a single mother can still give birth in a hospital, she will have to pay everything out of her own pocket as the state does not provide the so-called “reproductive insurance” for unmarried women.

‘Even without the government-imposed hurdles and all the administrative difficulties, pregnancy out of wedlock carries an unshakable stigma that is arguably equally, if not even more, overwhelming. While sex outside marriage was made legal in 1997, having a child without being married is still frowned upon and perceived as socially disgraceful.’<sup>47</sup>

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## 6.8 Children born overseas

- 6.8.1 As reported in an Australian Refugee Review Tribunal response, dated 29 April 2011:

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<sup>45</sup> Australia: Refugee Review Tribunal, China: Family Planning, 8 March 2013, 5. Unregistered children (‘Black children’) p.18 <http://www.refworld.org/pdfid/51f61ea04.pdf>. Accessed 24 August 2017

<sup>46</sup> The Economist, Single parents: Pariahs, 27 February 2016, <https://www.economist.com/news/china/21693590-single-mothers-have-tough-time-china-so-do-their-children-pariahs>. Accessed: 5 September 2017

<sup>47</sup> International Women's Initiative (IWI), ‘The Unsettling Reality for Unwed Mothers in China’, 6 May 2016, <https://www.internationalwomensinitiative.org/news/2016/5/6/the-unsettling-reality-for-unwed-mothers-in-china>. Accessed: 5 September 2017



'The Department of Foreign Affairs and Trade (DFAT) was contacted on 14 January 2010 requesting information relating to the official procedures that need to be undertaken for children born overseas when their parents return to China. DFAT responded with the following advice.

"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.

"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."<sup>48</sup>

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## 6.9 Child gender selection

6.9.1 The USSD report for 2016 noted: 'According to the National Bureau of Statistics of China, the sex ratio at birth was 113 males to 100 females in 2016, a decline from 2013, when the ratio was 116 males for every 100 females. Sex identification and sex-selective abortion are prohibited, but the practices continued because of traditional preference for male children and the birth-limitation policy.'<sup>49</sup>

6.9.2 The Organisation for Economic Co-operation and Development (OECD), Social Institutions and Gender Index (SIGI): China 2014, described child gender selection as, '[T]he result of a combination of the one-child policy and skewed economic growth, which has been linked to a social preference for sons that in turn has resulted in female sex-selective abortions, female infanticide or general neglect of girls in early childhood.' Adding: 'While these practices are more prevalent in rural areas, they are also increasing in urban centres.'<sup>50</sup>

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<sup>48</sup> Australia: Refugee Review Tribunal, China: 1. Are there any reported instances of selective enforcement of the PFP Law? 2. Are there any reported instances of unduly harsh punishment for breaches of the PFP Law? 3. Are Hebei Population and Family Planning implementation details (Promulgated 14 September 2004, Effective 1 November 2004) and Hebei Population and Family Planning Ordinance (Promulgated 18 July 2003, Effective 1 October 2003) still current? 4. Deleted., 29 April 2011, (p7), [http://www.refworld.org/publisher,AUS\\_RRT,,CHN,4f10351f2,0.html](http://www.refworld.org/publisher,AUS_RRT,,CHN,4f10351f2,0.html). Accessed 17 August 2017

<sup>49</sup> US State Department, '2016 Country Report on Human Rights Practices', (Section 6. Discrimination, Societal Abuses, and Trafficking in Persons: Reproductive Rights: Gender-biased Sex Selection), 3 March 2017, <https://www.state.gov/j/dri/rls/hrrpt/humanrightsreport/index.htm?year=2016&dliid=265328#wrapper>. Accessed: 31 July 2017

<sup>50</sup> The Organisation for Economic Co-operation and Development (OECD), Social Institutions and Gender Index: China 2014, (Son Bias), <http://www.genderindex.org/country/china/>. Accessed: 23 August 2017

6.9.3 The SIGI notes that: ‘A United Nations multi-agency publication reports that, in one survey in rural China, 36% of married women acknowledged undergoing sex-selective abortions. While there is some evidence of a gradual shift in attitudes, women in China continue to face enormous pressure to give birth to sons, particularly in rural areas.’<sup>51</sup>

6.9.4 Further adding:

‘The Chinese government has taken measures to try and address this imbalance and reduce son bias. These include provisions in the 2002 National Population and Family-planning Law banning the use of ultrasounds to determine the sex of a foetus, and sex-selective abortions, as well as mistreatment and abandonment of female infants, and discrimination against women who give birth to girls. The Government also reports that it has instituted national and local-level campaigns to encourage people to change their attitudes regarding the benefits of male over female offspring, and providing financial assistance to couples who only have girl children.’<sup>52</sup>

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## 7. Documentation

### 7.1 Birth permit

7.1.1 Sources consulted by the Immigration and Refugee Board of Canada (IRB), Research Directorate as noted in a response to an information request in June 2016 that in China, a ‘birth permit’, also referred to as a ‘birth service certificate,’ ‘family planning certificate’ or ‘family planning service permit’ is required before the birth of a child.<sup>53</sup>

7.1.2 A PhD candidate in the Department of Politics and International Relations at the University of Leicester whose research focuses on identity documentation in China, explained to the IRB that: “unlike a birth certificate in other countries, which indicates [that] birth registration has taken place, in China this certificate means that the state authorises a birth,”...the document is obtained through the Population and Family Planning Commission “usually when the mother is pregnant but this can take place afterwards”.<sup>54</sup>

<sup>51</sup> The Organisation for Economic Co-operation and Development (OECD), Social Institutions and Gender Index: China 2014, (Son Bias), <http://www.genderindex.org/country/china/>. Accessed: 23 August 2017

<sup>52</sup> The Organisation for Economic Co-operation and Development (OECD), Social Institutions and Gender Index: China 2014, (Son Bias), <http://www.genderindex.org/country/china/>. Accessed: 23 August 2017

<sup>53</sup> Immigration and Refugee Board of Canada (IRB), Research Directorate, China:

Information on birth registration for children born out of wedlock; whether the name of the father appears on the birth certificate if the child is born out of wedlock; what information may appear on the birth certificate if the father is unknown; whether the father's name may be added to the child's birth certificate by referring to the father's Resident Identity Card, particularly relating to Henan Province birth certificates (2010-June 2016), 29 June 2016, CHN105545.E, <http://www.refworld.org/docid/5821defa4.html> (via Refworld). Accessed: 6 September 2017

<sup>54</sup> Immigration and Refugee Board of Canada (IRB), Research Directorate, China:

Information on birth registration for children born out of wedlock; whether the name of the father appears on the birth certificate if the child is born out of wedlock; what information may appear on the birth certificate if the father is unknown; whether the father's name may be added to the child's birth certificate by referring to the father's Resident Identity Card, particularly relating to Henan Province birth certificates (2010-June 2016), 29 June 2016, CHN105545.E, <http://www.refworld.org/docid/5821defa4.html> (via Refworld). Accessed: 6 September 2017

## 7.2 Hukou (registration) system

7.2.1 A January 2017 online article by the Independent explained that the:

'Hukou is a kind of passport system, which limits access to public services, based on the birthplace of the holder. It was first established in 1954 to immobilise China's large rural population, as China's leader Mao Zedong sought to contain any possible challenges to the Chinese Communist Party's (CCP) new autocratic regime. The result was a highly segregated society.

'Having an urban hukou allowed citizens to enjoy privileged access to public services such as education, health, housing and pensions. Meanwhile, citizens with a rural hukou were more or less deprived of access to the country's limited welfare system, and unable to move freely to China's more affluent urban centres along the east coast.'<sup>55</sup>

7.2.2 The Independent article also explained that the death of Mao in 1976 and the economic upturn in the 1980s and 1990s led to rural migration from the countryside to the city in search of job opportunities, but the migrants mainly ended up in the industrial sector as low paid labourers in 'dirty, dangerous and demeaning jobs' and routinely experienced discrimination at the hands of Chinese city-dwellers.<sup>56</sup> But '[T]he strict hukou system made it almost impossible for rural migrants to bring their families with them to the city. As a result, China's countryside is now populated primarily by elderly people, women and children. In fact, it's estimated that more than 61 million children have been left behind in China's villages, to be looked after by older siblings or grandparents. Many suffer from psychological problems caused by the long-term separation from their parents.'<sup>57</sup>

7.2.3 Described by the Globe and Mail, the 'maroon-and-gold household-registration document', the hukou, '... is a form of identity used to control people's movements inside the country...'<sup>58</sup>

7.2.4 Adding that: 'With it, a person can secure a national-identification card, attend school, access basic medical services, find a place to live, board a bus or train, open a bank account, get a job, and secure a passport. Without it, each of those things becomes difficult and, for those with too little money or too few connections, often impossible.'<sup>59</sup>

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<sup>55</sup> Independent, 'Outdated 'urban passports' still rule the lives of China's rural citizens', 13 January 2017, <http://www.independent.co.uk/news/world/politics/outdated-urban-passports-still-rule-the-lives-of-china-s-rural-citizens-a7517181.html>. Accessed: 1 August 2017

<sup>56</sup> Independent, 'Outdated 'urban passports' still rule the lives of China's rural citizens', 13 January 2017, <http://www.independent.co.uk/news/world/politics/outdated-urban-passports-still-rule-the-lives-of-china-s-rural-citizens-a7517181.html>. Accessed: 1 August 2017

<sup>57</sup> Independent, 'Outdated 'urban passports' still rule the lives of China's rural citizens', 13 January 2017, <http://www.independent.co.uk/news/world/politics/outdated-urban-passports-still-rule-the-lives-of-china-s-rural-citizens-a7517181.html>. Accessed: 1 August 2017

<sup>58</sup> The Globe and Mail, 'The ghost children: In the wake of China's one-child policy, a generation is lost', 13 March 2015, <https://www.theglobeandmail.com/news/world/the-ghost-children-in-the-wake-of-chinas-one-child-policy-a-generation-is-lost/article23454402/>. Accessed: 16 August 2017

<sup>59</sup> The Globe and Mail, 'The ghost children: In the wake of China's one-child policy, a generation is lost', 13 March 2015, <https://www.theglobeandmail.com/news/world/the-ghost-children-in-the-wake-of-chinas-one-child-policy-a-generation-is-lost/article23454402/>.

7.2.5 It is estimated that approximately 13 million Chinese (1% of the population) do not have a hukou.<sup>60</sup>

7.2.6 A Guardian article from May 2015 noted ‘Some of them [those without a hukou] are orphans, but many more are people born in violation of the highly controversial “one-child policy”, which restricted most couples to only one offspring, and barred any extra from being registered unless their parents paid a hefty fine, which many could not afford. Known as “black children”, they are unable to go to school or obtain formal employment, and often have problems travelling, among other difficulties (see also: [Unregistered children \(Heihaizi / ‘black children’\)](#)’.<sup>61</sup>

7.2.7 In February 2017, Asia-Pacific current affairs magazine ‘The Diplomat’ reported ‘[Chinese] migrant workers living and working away from their hometown face discrimination in labor markets, are cut off from home loans, and face challenges in getting a good education for their children. With the migrant worker population numbering an estimated 277 million, according to China Labor Bulletin, China is facing a huge task to both quell potential unrest and to provide social services to this huge demographic group’<sup>62</sup>

7.2.8 The Diplomat further reported:

‘Recent data indicates that the government is making progress. On February 11, China’s Ministry of Public Security announced that it had issued 28.9 million new urban residency permits in 2016, with 1.69 million issued in Beijing, 406,000 in Shanghai, 810,000 in Guangzhou, and 1.71 million in Shenzhen. But migrant workers’ chances of acquiring an urban hukou differ considerably across China.’

‘New hukou rules introduced by local governments in China’s largest cities, such as Beijing, Shanghai, Guangzhou, and Shenzhen, as well as Chengdu, Wuhan, and Xi’an, make it tough for migrant workers by grading an application according to a points system based on an applicant’s education level, tax payments, and work experience.

‘Lower-tier cities, which are less developed and have smaller populations, have introduced comparatively easier regulations, in line with the central government’s goal of channeling migrants to these areas and providing extra labor to boost economic growth. That’s why China’s Ministry of Public Security stated recently that the points-based system doesn’t apply in cities with less than 3 million permanent residents in downtown areas.’<sup>63</sup>

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[chinas-one-child-policy-a-generation-is-lost/article23454402/](#). Accessed: 16 August 2017

<sup>60</sup> The Guardian, ‘China promises rights to citizens born in violation of one-child policy’, 15 May 2017, <https://www.theguardian.com/world/2015/dec/10/china-promises-rights-citizens-born-violation-one-child-policy>. Accessed: 4 July 2017

<sup>61</sup> The Guardian, ‘China promises rights to citizens born in violation of one-child policy’, 15 May 2017, <https://www.theguardian.com/world/2015/dec/10/china-promises-rights-citizens-born-violation-one-child-policy>. Accessed: 4 July 2017

<sup>62</sup> The Diplomat, ‘China’s Hukou Reforms and the Urbanization Challenge’, 22 February 2017, <http://thediplomat.com/2017/02/chinas-hukou-reforms-and-the-urbanization-challenge/>. Accessed: 4 July 2017

<sup>63</sup> The Diplomat, ‘China’s Hukou Reforms and the Urbanization Challenge’, 22 February 2017, <http://thediplomat.com/2017/02/chinas-hukou-reforms-and-the-urbanization-challenge/>. Accessed: 4

### 7.3 Unregistered children / (Heihaizi / 'black children')

7.3.1 In 2015 China's state media reported that it would allow millions of unregistered citizens, many of them children known as "black children" born in violation of the one-child policy, 'to obtain documents vital to secure education and health services long denied to them'.<sup>64</sup>

7.3.2 Blasting news, an independent global magazine, described a 'Black Child' as being 'deprived of a Hukou - a legal document that serves as identification quite similar to a social security number through which one can avail government benefits.' Adding: 'If you want to legalize your child, you have to pay a hefty fine which the government calls a "social maintenance fee." Unable to do so will see your child be termed as a "black child".'<sup>65</sup>

(See [Legislation](#))

7.3.3 Blasting news further noted in the article that:

'Lives of these children are often miserable. They do not have a right to pursue education, are deprived of health care, a formal job or a legal marriage, living for all intents and purposes, as second-class citizens in their own country. As a result of these dire and unforgiving circumstances, the Heihaizi often resort to transgression, working with organized crime syndicates in prostitution, drugs trafficking, extortion, etc. It is no secret as well that some parents sell these children on the black market for money.'<sup>66</sup>

7.3.4 Further adding:

'According to 2010's census, there were approximately 13 million "black children" in China, although several demographers believe the actual number may well be twice that. What the Chinese government did not realize was that the one-child policy would one day bring about a severe gender imbalance and age growth. Today, Chinese men outnumber women by a whopping 33 million meaning that millions of Chinese Men will never experience the joys of marriage.'<sup>67</sup>

7.3.5 The USSD report 2016 noted 'Parents must register their children in compliance with the national household registration system within one month of birth. Unregistered children could not access public services, including education. No data was available on the number of unregistered births... Some local officials denied such children household registration and

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<sup>64</sup> The Guardian, 'China promises rights to citizens born in violation of one-child policy', 10 December 2015, <https://www.theguardian.com/world/2015/dec/10/china-promises-rights-citizens-born-violation-one-child-policy>. Accessed: 16 August 2017

<sup>65</sup> Blasting News, 'Heihaizi - China's miserable black children', 16 November 2016, <http://uk.blastingnews.com/world/2016/11/heihaizi-china-s-miserable-black-children-001261241.html>. Accessed: 16 August 2017

<sup>66</sup> Blasting News, 'Heihaizi - China's miserable black children', 16 November 2016, <http://uk.blastingnews.com/world/2016/11/heihaizi-china-s-miserable-black-children-001261241.html>. Accessed: 16 August 2017

<sup>67</sup> Blasting News, Heihaizi - 'China's miserable black children', 16 November 2016, <http://uk.blastingnews.com/world/2016/11/heihaizi-china-s-miserable-black-children-001261241.html>. Accessed: 16 August 2017

identification documents, particularly if their families could not pay the social compensation fees.’<sup>68</sup>

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<sup>68</sup> US State Department, ‘2016 Country Report on Human Rights Practices’, (Section 6. Discrimination, Societal Abuses, and Trafficking in Persons: Children), 3 March 2017, <https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2016&dliid=265328#wrapper>. Accessed: 31 July 2017

# Version control and contacts

## Contacts

If you have any questions about this note and your line manager, senior caseworker or technical specialist cannot help you, or you think that this note has factual errors then [email the Country Policy and Information Team](#).

If you notice any formatting errors in this note (broken links, spelling mistakes and so on) or have any comments about the layout or navigability, you can [email the Guidance, Rules and Forms Team](#).

## Clearance

Below is information on when this note was cleared:

- version **2.0**
- valid from **7 November 2017**

## Changes from last version of this note

Updated COI and guidance to reflect the amendments of the family planning policy, which came into effect in January 2016.

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