

**Review and evaluation  
of the  
Department of State Profile of Asylum Claims and Country  
Conditions  
China**

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## Executive summary

The goal of this review is to assess to what extent the Department of State Profile of Asylum Claims and Country Conditions on China, published in May 2007 (hereinafter referred to as the 2007 Report), provides up-to-date, accurate and reliable information on issues raised by Chinese asylum applicants. Evaluation of the 2007 Report was performed on the grounds of the methodology and sources used to compile it. Its assessment entailed the following points:

1. whether suitable research methods were used to gather and analyze information relevant to the family planning policy and other claims raised by asylum applicants;
2. whether the sources used by the 2007 Report provide information which is reliable, balanced and open to independent verification;
3. whether the 2007 Report is based on a reasonable amount of source documents, and information therein contained has been used appropriately;
4. whether the 2007 Report contains errors, and trying to correct them whenever possible.

The 2007 Report was found seriously deficient in respect to each one of the above points. It is not clear what research methodology was used to obtain and evaluate information. Sources from which its assertions originate are seldom referred to. Several sections seem to be based on speculation and hearsay. Others heavily draw from third-hand sources, or have been carried over from previous Department of State country reports. The lack of transparency in the methods used to research the 2007 Report puts to question the reliability of information therein contained. The existence of omissions undermines its credibility and usefulness.

The review is divided in four parts. Part I describes the principles and methodology used to evaluate the 2007 Report. Part II contains a summary of observations on its purpose, structure and methodology. Part III assesses information on claims bases on population policies contained in Section IV of the 2007 Report. Part IV examines the information for adjudicators contained in Section V of the Report. The entire document contains an apparent bias in favour of pro-democracy, Tibetan and Uighur dissidents (2007 Report, at Section II), and downplays the claims of those who resist Chinese Communist Party policies in less visible but more pervasive ways. Aside from this consideration, Section II of the 2007 Report displays the same methodological flaws evident elsewhere, and it outdated. In 2008 and 2009, riots have erupted in the province of Tibet and Xinjiang. in the wake of the Olympic Games and the sixtieth anniversary of the foundation of the

PRC, control over dissident groups and information flows has been tightened. None of these changed circumstances are reflected in the 2007 Report. In spite of these shortcomings, Section II still provides a somewhat accurate and reliable account of the fate a dissident may meet, should he become the subject of a deportation order. Sections IV and V of the 2007 Report on the contrary provide very little usable information.

This review draws on publicly available Chinese, U.S. and other Western sources, all of which are identified in footnotes, and available upon request. It does not purport to provide conclusive answers to specific human rights issues, or to address the claims raised by individual asylum seekers

# Part I

## Assessment methodology

Evaluation of the 2007 Report was performed according to the UNHCR principles of sources assessment,<sup>1</sup> and addresses the following points:

1. The independent and impartial nature of the 2007 Report.

This step involved assessing who produced the information; the nature of the Department of State's mandate; its philosophy with regards asylum requests; the institutional context in which the Department is embedded; the reason why the 2007 Report was authored; the groups to which it is targeted; the scope of reporting; and finally the expertise of its authors.

2. The reliability and accuracy of information contained therein.

Reliability of information depends on the research methodology used to compile the 2007 Report, and on the independent and impartial nature of the sources on which the 2007 Report is based. The range of public sources used to compile the 2007 Report was identified by means of a textual analysis, performed using a plagiarism detection tool.<sup>2</sup> The analysis proved how the 2007 Report relies heavily on two previous versions published in 2004 and 1998 respectively.

Following this analysis, the strategies and methods used to gather information were verified. Each of the 2007 Report's paragraphs was analyzed to understand what sources were used to compile it, how the sources were collected and where, and how broad their range was; whether they were first, secondary or tertiary sources. The sources used to compile the 2007 Report were whenever possible collected and analyzed. Their analysis aimed at assessing

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<sup>1</sup>“Who produced the information and for what purposes (taking into account considerations as the mandate and the philosophy of the information producer);

Whether the information producer is independent and impartial;

Whether the information producer has established knowledge;

Whether the information produced is couched in a suitable tone (objective rather than subjective perspective, no overstatements, etc.)

Whether a scientific methodology has been applied and whether the process has been transparent, or whether the source is overtly judgmental.

Finally, information sources should be regularly re-evaluated as changing circumstances can affect the accuracy and reliability of information.” UN High Commissioner for Refugees, *Country of Origin Information: Towards Enhanced International Cooperation*, February 2004, at par. 26, available at [<http://www.unhcr.org/refworld/docid/403b2522a.html>], last accessed on 1 October 2009.

<sup>2</sup> The majority of plagiarism detection softwares, as Turn-it-in and Urkund, are targeted to the academic market. Their availability is limited, as their use requires an institutional subscription. To allow the reproducibility of the tests and analysis performed in this assessment, the free software Viper 1.2 was used.

their impartiality and credibility; whether the 2007 Report had quoted correctly from them; whether relevant information provided in the sources, was omitted, distorted, mistranslated or misrepresented.

Three different kinds of sources were used: those corroborating the ones used in the Report, those containing claims to the contrary, and those that provided information not contained in the Report. Additionally, in February 2011 this assessment was amended to include records obtained by Mr. Theodore Cox Esq. through a FOIA request. All of the sources used to verify had to satisfy each one of the five following criteria:

- (i) *Classification.* Only primary and secondary sources were used. Tertiary sources were deliberately excluded. As they digest, compile or summarize primary and secondary sources, third-hand sources were considered not suitable to confirm, correct or integrate information contained in the 2007 Report.
- (ii) *Accessibility.* Only sources in English or in Chinese language were used.
- (iii) *Publicity.* Sources had to be public and open to independent verification. To allow for their verification, electronic sources were used as much as possible.
- (iv) *Balanced.* While no truly unbiased sources can be said to exist, the utmost care was placed in choosing sources as balanced and as neutral as possible. Information by the following groups was not used: pro- or anti- abortion lobbies, civil society organizations and interest groups; civil society organizations which in scholarly circles are believed to exaggerate the extent of China's human rights violations, which deny or else understate the extent of such violations.
- (v) *Timeliness.* With the exception of legal sources which were effective as to October 20, 2009, sources produced before 2000 were excluded. This choice was taken as the 2007 Report relies heavily on information contained in its 2004 version, research for which must have taken place between 1998 and 2003.

The sources used include information produced by: U.S. governmental bodies, the United Nations, the European Union, PRC central and local government agencies, mainland Chinese media, international media, NGOs, scholarly literature and expert opinions.

3. The 2007 Report's timeliness. This step of the assessment was performed by collecting recent information which is absent from the 2007 Report. The 2007 Report was also

compared to its previous 2004 and 1998 version, as the textual analysis proved its heavy reliance on these documents, which no longer provide up-do-date information.

It is to be noticed how none of the sources used to verify information on the family planning policy can be considered conclusive. *Some information about abortions and sterilizations is still considered a state secret.*<sup>3</sup> While national and provincial legislation on family planning is easily available, detailed and comprehensive statistical data, and information on the actual measures used to enforce the family planning program are not public.

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<sup>3</sup> The latest provisions about the scope of state secret in family planning came into force in 2009. Their substantive content is described in paragraphs 23 and 24.

## Part II

### General observations

1. The 2007 Report has been produced by the State Department Bureau of Democracy, Human Rights and Labour. The Bureau of Democracy is an agency of the Executive Branch of the United States Government, subordinated to the Office of the Under Secretary for Democracy and Global Affairs within the State Department. Its mandate is promoting freedom and democracy, and protecting human rights. The Bureau of Democracy draws its funding from the State Department budget. The 2007 Report is therefore not an independent source.
2. The 2007 Report is targeted to the U.S. immigration service and immigration courts. It is used by country officers at overseas COI service research<sup>4</sup> and overseas diplomats. The Report is however not binding on the immigration service or the courts,<sup>5</sup> and is just one among the many references consulted by COI researchers and diplomats. **Competent human rights activists, NGOs and academic researchers would not normally use this or other country reports as a source of information or advice because of two reasons.**

**First, activists and researchers are actively involved in work on the field, regardless of whether this information is gathered through survey or interview methods, or by using other primary sources.** Much of the information contained in the 2007 Report would be of very limited usefulness to them, because of its overly generic, out-of-date nature, and the methodological flaws described in the next paragraphs.

**Second, foreign policy agencies are responsive to their governments' policy priorities. Their interest lies in providing information to asylum decision-makers, but also in avoiding to damage relations with world powers<sup>6</sup> as the PRC. Human rights policy is linked to several other policy priorities, as global security, trade, energy policy, migration policy etc.**

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<sup>4</sup> COI stands for country of origin information. This acronym refers to information used in procedures that assess individuals' claims to the status of refugee, or other forms of international protection. Country of origin information should help immigration officers and immigration courts answer questions about the humanitarian situation in refugee and asylum seekers' country of origin.

<sup>5</sup> *Gramatikov v. INS*, 128 F.3d 619, 620 (7<sup>th</sup> Cir. 1997), *Gailius v. INS* 147 F.3d 34, 46 (1<sup>st</sup> Cir. 1998).

<sup>6</sup> David Sloss, "Hard-Nosed Idealism and U.S. Human Rights Policy", *Saint Louis University Law Journal*, n. 46, 2002, at 431.

Clashing policy priorities can result in soft-pedaling human rights concerns.<sup>7</sup> The risks inherent to all country reports are a positive bias towards cooperation partners on global issues,<sup>8</sup> the selective use of source materials and the provision of inaccurate or misleading information.<sup>9</sup> Therefore, parties interested in obtaining first-hand, unbiased information about the humanitarian situation in China would not normally consult this kind of publication.

3. The 2007 Report is a sixty-one pages document, which comprises thirty-nine pages of text and twenty-one pages of appendixes. It addresses the claims raised by Chinese asylum applicants, and provides information on eighteen themes with a varying level of accuracy and detail.
4. The bulk of the 2007 Report is devoted to the four themes most commonly encountered by asylum decision-makers: the family planning policy (49.18 per cent); religious freedom (12.29 per cent); nationality (9.83 per cent); political opinion (8.19 per cent). The treatment of these themes goes into some detail. The 2007 Report covers implementation of the family planning policy in Fujian province, little-known religious movements as the Zhonggong, and the situation of ethnic Koreans. Particular incidents are mentioned. The information provided however does not go beyond the level of detail that would be reasonably expected by a U.S. undergraduate in China Studies.
5. The remaining 20.51 per cent of the report (13 pages) addresses fourteen different claims. These range from discrimination on the grounds of sexual orientation to the military service. Each one of them is treated in a cursory way. They are discussed in less than a page,

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<sup>7</sup> L. Kathleen Roberts, “The United States and the World: Changing Approaches to Human Rights Diplomacy under the Bush Administration”, *Berkeley Journal of International Law*, n. 21, 2003, p. 631. Mark Landler, “Clinton Paints China Policy With a Green Hue”, *The New York Times*, 21 February 2009, [<http://www.nytimes.com/2009/02/22/world/asia/22diplo.html>], last accessed on 10 October 2009.

<sup>8</sup> “the good news is that U.S.-China are increasingly partner, cooperative on bilateral, regional, global issues at a strategic level – economic, finance, security, nonproliferation, climate change, work on terrorists, and on issues North Korea, Iran, Indonesia, and others. So we see increasing the partnership, cooperation between two countries, and we are glad to see that the new administration continue that path that the two countries have had in the past years” Carnegie International Nonproliferation Conference. U.S.-China Strategic Stability. 6 April 2009. Transcript by Federal News Service, Washington, D.C., p. 8, available at [[www.carnegieendowment.org/files/npc\\_us\\_china3.pdf](http://www.carnegieendowment.org/files/npc_us_china3.pdf)], last accessed on 29 September 2009.

<sup>9</sup> Immigration Advisory Service, “Home Office country information dangerously inaccurate and misleading”, 3 September 2003, [<http://www.ein.org.uk/resources/full.shtml?x=162600>], last accessed on 2 October 2009.

sometimes only in a few lines of text.<sup>10</sup> Information provided about each one of these themes consists of very broad and general statements. These limitations of the 2007 Report are however acknowledged in paragraph I, at page 3.

6. The absence of some themes is notable. The Report contains no explicit mention of the death penalty; the transplant of prisoners' organs;<sup>11</sup> enforced disappearance of protesters and criminal suspects and protesters; torture. The failure to mention some of these concerns could be explained with the 2007 Report publication cycle. The 2007 Report is published more or less triennially,<sup>12</sup> so information contained therein does not reflect the rapid pace of change in China. For instance in 2007 information and discussions about enforced disappearances was mostly confined to scholarly circles, activists and NGOs, and not yet available to the policy community.<sup>13</sup> The lack of information about the death penalty, organ transplant and torture cannot be justified by the publication cycle, as these are long-standing concerns about human rights in China. No explanation is given about the reason why this information has been omitted. The 2007 Report places an overwhelming focus on claims based on the grounds of race, religion, political opinion and political activism, and belittles claims based on the fear of subjection to torture or other cruel, inhuman and degrading treatment or punishment on different grounds. No justification for such a selective attention to human rights issues is provided.
7. It is difficult to assess whether those who wrote the 2007 Report have established knowledge about China, or the specific issues raised by Chinese asylum applicants. Users of the 2007 Report have no means to know who its authors are, as the Report never mentions their names.

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<sup>10</sup> This is a significant difference between the Department of State Report and country reports produced by the U.K. Home Office, the Australian Government Department of Immigration and Citizenship, and the Immigration and Refugee Board of Canada. The Home Office COI report on China is open to independent review and assessment. The Country of Origin reports compiled by these bodies are updated more frequently, and contain information which is far more extensive and accurate.

<sup>11</sup> The transplant of organs from executed prisoners has been acknowledged by mainland Chinese media. A search performed on the China Daily, an English newspaper catered to a foreign audience, yields 32 articles on this topic. See [[http://search.chinadaily.com.cn/all\\_en.jsp?searchText=organ+transplant+executed&Submit=Search&searchword=organ+transplant+executions](http://search.chinadaily.com.cn/all_en.jsp?searchText=organ+transplant+executed&Submit=Search&searchword=organ+transplant+executions)]. Last accessed 9 October 2009.

<sup>12</sup> Earlier versions of the Report were released in 2004 and 1998.

<sup>13</sup> The issue was raised to public attention in March 2009, when the New York Times featured a report about black jails in China, see Andrew Jacobs, "Seeking Justice, Chinese Land in Secret Jails", The New York Times, 8 March 2009, available at [[http://www.nytimes.com/2009/03/09/world/asia/09jails.html?\\_r=3&hp](http://www.nytimes.com/2009/03/09/world/asia/09jails.html?_r=3&hp)], last accessed on 10 October 2009.

8. Information contained in the 2007 Report is sometimes presented in a **contradictory** tone. The 2007 Report notices how forced abortion and sterilization continue to occur due to variation in implementation of the family planning policy (at 3), and that the family planning policy retains coercive elements both in law and practice (at 22). Then, it cites a Chinese source claiming that no cases of forced abortion or sterilization took place in Fujian province in the last 10 years (at 26). **Contradictory statements are apparent in the 2007 Report's section on the family planning policy, while they are absent in the five remaining sections.**
  
9. The 2007 Report is a collation of the Department of State *China Country Report on Human Rights Practices*, the *International Religious Freedom Report (China)*, and the *Trafficking in Persons Report*. Information on issues relevant to asylum claims was not obtained first-hand, through qualitative methods as survey research, interviews, field investigation and direct observation, but compiled using these second-hand sources. The entire document is furthermore very similar in content and wording to the *2004 Profile on Country Conditions and Asylum Claims*, and shows similarities to the *1998 Profile* as well. **A textual analysis of the 2007 Report proved that it is an edited and partially updated version of the 1998 and 2004 Profiles. This conclusion is corroborated by correspondence between authors of the 2007 Report.<sup>14</sup> Fifty-five per cent of the 2007 Report is a verbatim replica of information contained in the 2004 Report. The overlap percentage between the 2007 and 1998 Report is lower (36 per cent), but still present.** Some sections have been edited, with no substantial changes to the information they provide. It is reasonable to assume that no prior assessment of the objectivity and reliability of the documents which were collated took place, as entire blocks of text were carried over to the 2007 Report almost unaltered. Performing such an assessment would have been inherently difficult, as none of the Department of State reports contain references to source materials.
  
10. **The lack of reference to source material is a notable feature of the 2007 Report** too. Its authors write that the 2007 Report is based on “publicly available information deemed credible” (at 3), besides the collation of secondary sources. But its users have no means to know what specific sources of information were consulted, and in which ways was their credibility assessed. **Sources have not been disclosed.** They are not open to third-party scrutiny, review and verification. According to the UNHCR, assessing the reliability of

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<sup>14</sup> Email message from Neil E. Silver to Elizabeth R. Amory and Jeffrey R. Buczacki, 1 May 2007.

collated information is the key to avoid that research be “fundamentally flawed”.<sup>15</sup> What it is sure is that only six primary sources were used.

11. Five pieces of documental evidence seem to have been collected first-hand by Department of State researchers: the PRC Population and Family Planning Law (at 40), the Population and Family Planning Regulations of Fujian Province (at 49), Guangdong, Jiangxi and Sichuan provinces (at 28-29). The sixth one, a letter from the Fujian Population and Family Planning Commission (at 61), was obtained by the Consulate General in Guangzhou. This is the only verifiable information. This documental evidence does not yield an accurate picture of the family planning policy. It is either incomplete, outdated or unreliable.

12. A well-known feature of PRC legislation is the existence of overly broad, vague and generic provisions. This body of legislation can often be difficult to understand and apply, therefore it is continuously integrated and interpreted by a plethora of administrative and departmental regulations and rules. The issue of family planning cuts across several different jurisdictions, therefore relevant legislation has been issued by the Chinese Communist Party,<sup>16</sup> fifteen administrative agencies,<sup>17</sup> and judicial organs.<sup>18</sup> Administrative and departmental rules may conflict with the Population and Family Planning law or even the PRC Constitution, yet the lack of a system of constitutional review means that this legislation continues to be in force, and can be applied discretionally by different government agencies regardless of legislative conflicts. Altogether, central government agencies have issued at least one hundred and three legal documents on family planning.<sup>19</sup> Regulatory production by local governments is higher.<sup>20</sup> The 2007 Report has used just one central document, and four local regulations. Neglect of existing sources could be explained by the existence of time constraints. Yet official interpretations found in regulatory materials shape the ways in which Chinese officials understand the law and apply it to individual cases. They have an actual impact on

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<sup>15</sup> *Supra* at footnote 1.

<sup>16</sup> The Central Committee of the Chinese Communist Party and the Central Organization Department.

<sup>17</sup> The State Council, the National Population and Family Planning Commission, the Ministry of Finance, the Ministry of Health, the Ministry of Public Security, the State Commission for Development and Reform, the Ministry of Education, the Ministry of Civil Affairs, the Ministry of Personnel, the Ministry of Labour and Social Security, the Ministry of Land Resources, the Ministry of Construction, the Ministry of Agriculture, the Ministry of Justice, the China Family Planning Association.

<sup>18</sup> The Supreme People’s Court and the Supreme People’s Procuracy.

<sup>19</sup> This is the number of documents available on the ChinaLawInfo database [www.chinalawinfo.com]. This database contains some limitations in the range and kind of documents it hosts, so the actual number of administrative and departmental rules, regulations and other normative documents issued by central organs is bigger.

<sup>20</sup> It reached the figure of 170 sources as of October 2009. The same considerations outlined in footnote 15 apply to legislative and regulatory production by local level organs.

the treatment of Chinese residents, returnees and deportees. The 2007 Report should have addressed this crucial point. Failure to do so undermines its accuracy.

13. Two of the five legal documents used in the 2007 Report have been repealed and replaced by new provisions in 2009. Guandong and Jiangxi are among the provinces from which migration flows – and asylum claims too – originate, but information the 2007 Report provides about them is no longer valid.

14. Information contained in the letter of the Fujian Population and Family Planning Commission cannot be taken at face value. Even though an increasing degree of openness can be observed in the PRC, matters of abortion and sterilization are still considered as state secrets. If, as the letter claims, abortions and sterilizations are voluntary, why then are figures for abortions and sterilizations not open to public scrutiny? Unless information on abortion and sterilization will be declassified, the provision of objective and truthful to foreign officials can constitute the crime of divulging state secrets, which is punishable with penalties ranging from five years imprisonment to a life sentence.<sup>21</sup> State officials' duty to keep state secrets and the existence of stiff criminal penalties for those who violate it preclude the release of any credible information by central and local family planning organs and their officials.

15. Apart from round-tripping of information, and the analysis of document which have been repealed or are unreliable, it is difficult to know what research methodology was used. The 2007 Report's authors admit to have used "anedoctal and empirical"<sup>22</sup> evidence. Much information is attributed to unnamed sources: "some groups",<sup>23</sup> "observers",<sup>24</sup> "some asylum applicants".<sup>25</sup> Statement by asylum applicants *should not* be used to compile a document which asylum decision-makers will latter use to assess the claims of asylum applicants. Such a choice of sources goes against common sense. Besides, the statements of these

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<sup>21</sup> Article 111 of the PRC Criminal Law states that "Whoever steals, secretly gathers, purchases, or illegally provides state secrets or intelligence for an organization, institution, or personnel outside the country is to be sentenced from not less than five years to not more than 10 years of fixed-term imprisonment; when circumstances are particularly serious, he is to be sentenced to not less than 10 years of fixed- term imprisonment, or life sentence; and when circumstances are relatively minor, he is to be sentenced to not more than five years of fixed-term imprisonment, criminal detention, control, or deprivation of political rights." Criminal Law of the People's Republic of China (*Zhonghua Renmin Gongheguo Xingfa*), issued on 1 March 1997, and effective from 1 October 1997.

<sup>22</sup> Report at 28, referring to the implementation of family planning.

<sup>23</sup> Report at 5 referring to freedom from religious persecution.

<sup>24</sup> Report at 9 referring to mosques in Xinjiang province.

<sup>25</sup> Report at 19, referring to the Tian'anmen movement.

groups, observers and asylum applicants are never quoted. Their identity is unknown. It is not clear whether they have any direct or reliable knowledge of the matters they talk about, and on what their statements are based. Do their statements reflect past circumstances, or current situations? Are they representative of what takes place in the entire country? If so, how could they obtain accurate information about events that affect the lives of each one of the 1.3 billion residents of China? The reliability of information obtained through unnamed sources and unknown methods is suspicious, particularly when information concerns issues as abortions or sterilizations, or topics which are objectively difficult to research. Uncorroborated statements about very private matters as condom use in extramarital relationships, married couples' sexual lives and gynaecological examinations (at 25) are very difficult to take seriously.

16. It can be hypothesized that information was gathered through some form of verbal or written communication with officials, observers stationed in the People's Republic of China and asylum applicants. What is it not known is if this interaction followed an interview format, or rather the 2007 Report relies on casual conversations and hearsay. What is it not known is if in choosing the persons to talk to any sampling method was adopted, and which one. A statement made by ten different persons may be accurate, but it reflects just their experience and knowledge, rather than being representative of what takes place in a Chinese province or even in the entire country. Diplomats and other embassy officials possess extensive knowledge about the cities they are stationed in, but their status and commitments make them unable to work on the ground as scholars, activists and NGOs personnel do.
17. Information obtained through official channels displays a stronger bias than information collected on the ground, through fieldwork or other methods. Aside from the issue of state secrecy, governments with a record of human rights violations may admit to some abuses, to avoid criticism about other and more pervasive problems. Alternatively, they may minimize abuses, attributing them to just a few bad apples, or altogether deny that any abuses occur. Governments and perpetrators' interest in hiding abuses makes it extremely difficult for Western officials to obtain direct and first-hand knowledge about them.
18. If interview or survey methods were not used, then it can be speculated that information originates either from continuous on the ground monitoring, missions, visits, or from open source intelligence methods. These methods rest upon interaction with PRC officials and

government agencies, visits to “model” institutions and facilities built up to be displayed to foreign observers, and the use of public sources. Generally speaking model facilities do not reflect the actual status of prison or medical facilities in the rest of the country. Human rights information provided by PRC officials, government agencies and the media displays a positive bias. State secrets legislation, foreign and domestic policy interests can make local sources unable or unwilling to disclose human rights violations, and other problems. It is to be remembered that the PRC government acknowledged the size of its AIDS epidemics only relatively recently, and that reports about the SARS epidemics were initially suppressed. These cover-ups took place in spite of increasing media openness and the internet diffusion.

19. Another possibility is that the 2007 Report relies on secondary sources as scholarly literature, expert opinions, NGO reports and the media. As detailed in paragraph 120, there is one instance in which one of these sources can be easily identified, as the relevant sentence was lifted from an old reference book and used to write the 2007 Report. What is not possible to know is whether this source was actually consulted by the 2007 Report’s authors, whether it was used by those who wrote the 2004 Report, or by those who wrote the secondary sources used to compile the 2007 Report.
20. The 2007 Report is not only based sources on which are inherently problematic. It is also highly selective in its choice of sources. It systematically omits documentation which qualifies or disproves some of its claims its statements, even though this documentation is public. Moreover, the way in which sources have been used displays errors and biases. Sometimes documental evidence has been cited mistakenly, or crucial information has been omitted. Factual mistakes have been pointed out in Part II, and corrected whenever possible. Some of these mistakes regard population figures in cities, others concern substantive provisions in the PRC criminal law. Others regard information about the re-education through labor system and other forms of arbitrary detention, and the family planning policy. The 2007 Report claims to use unpublished regulations, while in fact all of these so-called confidential documents could be found on Chinese government web pages created well before the 2007 Report’s publication.
21. The 2007 Report is outdated. Some sections were carried over from the 1998 to the 2004 Report, and from there to the 2007 Report. Some information reflects circumstances existing eleven years ago, while other pieces of factual information refer to five years ago.

The translations included in Appendix A and B should have undergone a further round of editing or proofreading, as sometimes two different English words are used to translate the same Chinese term, thus obscuring how certain violations of the family planning policy can be punished by arbitrary detention.

### Part III

## Observations on Section IV of the 2007 Report

22. This section deals with family planning. It is nine pages in length, and divided in four paragraphs. Paragraph A describes national level legislation on family planning. Paragraph B provides an overview of legislation in Fujian province. Paragraph C contains information on three Chinese provinces and Paragraph D refers to the cases of Chinese children born in the United States. Most of the information contained therein has been pasted from the 1998 and 2004 version of the Report, with some minor editing.

23. It is necessary to point out how some information about the family planning policy is covered by state secrecy. Existing provisions on state secrecy severely limit the availability of evidence about abortion and sterilization. These issues are couched in political controversy and extremely difficult to research.

24. There is no univocal consensus on whether forced abortions and sterilizations are still used to implement the family planning policy. Widely different opinions exist. All of them rest on the available evidence, which is neither conclusive nor comprehensive. If forced abortions and sterilizations are practiced, then their existence cannot be publicly acknowledged by the PRC, because both matters fall under the scope of state secret. On the other hand, provisions about state secrets make it nearly impossible to independently confirm that forced abortion and sterilization still take place. In July 2009, local governments transmitted a circular on the Regulations on the Scope of State Secrets in Population and Family Planning Work.<sup>26</sup> The Regulations provides the following broad definition of what information is classified as secret (*jimi*):

1. Information that, if released, could undermine the stability of the basic state policy of population and family planning, social stability and ethnic unity.
2. Information that, if released, could undermine the development of population and family planning.

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<sup>26</sup> (*Renkou he jihua shengyu gongzuo guojia mimi fanweide guiding*), reproduced in Guangyuan Population and Family Planning Commission Circular issuing the Implementation Plan on Inspecting the Protection of State Secrets (*Guangyuanshi Renkou he Jihua Shengyu Weiyuanhui guanyu yinfa "Baomi jiancha gongzuo shishi fang'ande tongzhi"*), issued on 10 July 2009, available at [<http://www.gysrkjhs.gov.cn/yjcx/ShowArticle.asp?ArticleID=1350>], last accessed on 10 October 2009.

Neither the Regulations nor available official commentaries define what pieces of information fall within these categories. As if these blanket provisions were not enough, the Regulations lists eight specific items which are covered by state secret. The following are of particular relevance to assertions made by the 2007 Report:

1. Family planning policies, implementation plans and other strategic decisions which could have a strong influence on population and family planning work at the central level and in provinces.<sup>27</sup>
  2. Statistical figures by family planning organs at the central level, in provinces, “central economic cities” (*jihua danlieshi*),<sup>28</sup> prefecture and cities<sup>29</sup> about deaths caused by “contraceptive operations” (*jiayu shoushu*), of a kind and nature which is not specified.
  3. Statistical figures by family planning organs at the central level, in provinces, “central economic cities” (*jihua danlieshi*),<sup>30</sup> prefecture and cities<sup>31</sup> about complications and sequelae, deaths resulting from problems in population and family planning work.
25. Controversy relates to the U.S. administration’s shifting policies towards forced abortion and sterilization in China, and to the PRC position on this matter. No Western country can compare to the United States of America, as far as criticism of China’s human rights record is concerned. But for a rather long period of time, U.S. courts ruled that forcing women to undergo tubal ligation or to abort their pregnancies did not constitute a form of persecution based on resistance to the party-state intrusion in their reproductive lives.<sup>32</sup> Only in 1996 it

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<sup>27</sup> 1, List of State Secrets in Population and Family Planning Work (*Renkou he jihua shengyu gongzuo guojia mimi mulu*), *supra*, footnote 26.

<sup>28</sup> 3, List of State Secrets in Population and Family Planning Work (*Renkou he jihua shengyu gongzuo guojia mimi mulu*), *supra*, footnote 26.

<sup>29</sup> 6, *supra*, footnote 26.

<sup>30</sup> 4, *supra*, footnote 26.

<sup>31</sup> 7, *supra*, footnote 26.

<sup>32</sup> See Matter of Chang, 20 I&N Dec. 38 (BIA 1989). See also Matter of G-, 20 I&N Dec. 764 (BIA 1993). Craig Trebilcock, an attorney who represented 108 detainees who were held in the New York County Prison for more than two years, in his 1995 testimony before Congress articulated this point very clearly: “The Department of Justice has been deciding these case as a matter of semantics. The Bush administration and the Reagan administration, of course, recognized that infliction of forced abortion and forced sterilization on women is a systematic form of violence against women. They recognized that in China, an act of defiance, such as these ladies have demonstrated by trying to save their children is not only considered a family planning choice, it is considered an act of political defiance against a totalitarian communist (sic!) regime. So the Bush and Reagan administrations recognized that, indeed, this was a political expression, their resistance in China. The Clinton administration has redefined that. They say, oh, this is simply a matter of private family planning; and, therefore, this is not grounds for asylum because it is not political or religious grounds, which are two of the five grounds for asylum. So they have simply changed the definition so that they can deport these people.” “Coercive Population Control in China” *Hearing Before the Subcommittee on International Operations and Human Rights of the Committee on International Relations*, House of Representatives, One Hundred Fourth Congress, First Session, May 17, June 22 and 28, and July 19, 1995 at 64-65, available at

was admitted that opposing the party-state's attempts at eugenics and social engineering was in fact a form of political opposition, and the definition of who is a refugee was amended.<sup>33</sup> The central government of the PRC has officially denied that it supports forced abortion.<sup>34</sup>

26. The sensitivity of this topic also stems from the fact that forced sterilization was considered a crime against humanity at the Nuremberg Medical Trial.<sup>35</sup> Therefore, if forced sterilization and forced abortion take place in China, it is very likely that existence of these practices will be denied. The need to keep China's image unsoiled is among the factors that may contribute to such a denial. Immediately after the Tian'anmen movement, the Family Planning Commission ruled that the problem of excess births:

*"is sensitive. Some individuals even request political asylum on claims that they will be "punished" if they return to China. Some Americans who have got something up their sleeves use this fact to attack us on their media, causing a bad influence."*<sup>36</sup>

Accordingly, in the rare instances when the PRC media have admitted that forced sterilization took place, they have placed the blame on a few bad apples.

27. Besides provisions on state secrecy and the political sensitivity of this topic, restriction on freedom of information limit the availability of data on forced abortion and forced sterilization. Rosie Roberts, a scholar at the University of Queensland, illustrates how some

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[[http://www.archive.org/stream/coercivepopulati00unit/coercivepopulati00unit\\_djvu.txt](http://www.archive.org/stream/coercivepopulati00unit/coercivepopulati00unit_djvu.txt)], last accessed on 10 October 2009.

<sup>33</sup> Section 101(a)(42) of the Act, 8 U.S.C. § 1101(a)(42) (Supp. II 1996) has added the following to the definition of refugee: "person who has been forced to abort a pregnancy or to undergo involuntary sterilization, or who has been persecuted for failure or refusal to undergo such a procedure or for other resistance to a coercive population control program, shall be deemed to have been persecuted on account of political opinion, and a person who has a well founded fear that he or she will be forced to undergo such a procedure or subject to persecution for such failure, refusal, or resistance shall be deemed to have a well founded fear of persecution on account of political opinion."

<sup>34</sup> "All forms of forced abortion are resolutely opposed", Information Office of the State Council, Family Planning in China, Beijing: 1995, at Section VIII. Family Planning and Protection of Human Rights, available at [<http://www.china.org.cn/e-white/7/7-VIII.htm>], last accessed on 29 September 2009.

<sup>35</sup> The Trial took place from December 1946 to August 1947. Index to Document Book (6). Sterilization Experiments. NMT 01. Medical Case – USA v. Karl Brandt et al., English Transcript at 507, (16 December 1946). See the *Green Series: Trials of war criminals before the Nuernberg Military Tribunals*. Washington: U.S. Government Printing Office, 1949-1953, 15 vols. For a reproduction of some of the letters and memoranda documenting sterilization see volume I, pp. 717 and following. Documents used in Case 1, Case 2 and Case 4 of the Nuremberg Medical Trial are available also on the website of the Harvard Law School Library [[http://nuremberg.law.harvard.edu/php/docs\\_swi.php?DI=1&text=nur\\_13tr](http://nuremberg.law.harvard.edu/php/docs_swi.php?DI=1&text=nur_13tr)]. For an historical overview of the Nuremberg Medical Trial see Paul Julian Weindling, *Nazi Medicine and the Nuremberg Trials: From Medical War Crimes to Informed Consent*. New York: Palgrave, 2004.

<sup>36</sup> Preamble, State Family Planning Commission circular on the problem of excess births by overseas students (*Guojia Jishua Shengyu Weiyuanhui guanyu chuguo liuue renyuan jihuawai shengyu wentide tongzhi*), issued on 18 November 1989 and effective from the same date.

researchers had to disguise their own research in the attempt to document resistance to the family planning policy. She describes the further difficulties of this sub-field of research as follows:

*“The political sensitivity of abortion makes sociological investigation of these issues difficult unless it is done under Chinese government control. Such studies, however, are susceptible to the problem of producing highly controlled and not necessarily accurate results and conclusions. Even when surveys are not directly government controlled, there still remains a problem that interviewees, particularly medical professionals are well aware of what they are officially supposed to say, and this could influence their responses.”*<sup>37</sup> Carmel Shalev, a public interest lawyer, has observed that restrictions on freedom of association and of the press are such that most information on violations of human rights is anecdotal at best.<sup>38</sup>

28. The 2007 Report does not provide this background information. Seemingly ignoring the existence of these policies and controversies, it argues that neither abortion nor sterilization are practiced coercively, i.e. that physical constraint, violence, punishment or the threat thereof by state agents seldom play a role in decisions to terminate pregnancies, to undergo tubal ligation or vasectomy.
29. The 2007 Report’s first point of contention is that most Chinese citizens decide to terminate their pregnancy or to undergo sterilization either because they are fearful of economic sanctions, or because they give in to social pressure. According to the 2007 Report, this combination of factors “...often leave(s) expectant mothers feeling that they have little choice but to undergo abortion” (at 22).
30. Its second point of contention is that local officials may adopt physical coercion to meet birth-planning quotas, but coercion takes place occasionally.
31. Finally, the Report holds that physical coercion takes place in rural areas of Shandong province more often than elsewhere (at 22).
32. The 2007 Report acknowledges that the birth planning policy retains “harshly coercive elements” both in the laws on which it is based, and in practice. But immediately after this

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<sup>37</sup> Rosie Roberts, “Abortion as Personal Experience in Chinese Women’s Fiction: the ‘Alienated Maternal Body’ in Lu Xing’er’s “The Sun is Not Out Today””, *New Zealand Journal of Asian Studies*, vol. 7, n. 1, June 2005, at 64.

<sup>38</sup> Carmel Shalev, “China to CEDAW: An Update on Population Policy”, *The Human Rights Quarterly*, vol. 23, n. 1, February 2001, at 119.

claim has been made, it states that local enforcement varies “significantly” (Report at 22), therefore forced abortions and sterilizations are an exceptional occurrence rather than the norm. However, on page three of the Report one can read that: *“forced abortions and sterilizations continue to occur due to uneven implementation at the local level and ongoing pressure to keep birthrates low.”*

33. Such contradictory statements result from the use of three different kinds of empirical evidence:

1. national and provincial legislation on family planning.
2. Statements by unnamed U.S. diplomats in China.
3. Press reports originating from mainland China

34. By the 2007 Report’s admission, legislation itself doesn’t prove much about implementation. Local governments may comply with the prohibition of forced abortion and sterilization, or they may not. By just looking at legislation, we will never know what happens on the ground. The use of different sources is necessary.

35. Statements by U.S. diplomats are a tertiary source. The Report states that U.S. diplomats have heard reports that illegal means are occasionally used. Reports heard by U.S. diplomats may be reliable, or they may downplay the extent to which illegal means are used. It is not known which source or province these reports originate from, and how many reports U.S. diplomats heard. If U.S. officials heard a large sample of report from sources which provided accurate information about each province, then this piece of information can be accepted as good. If they heard one or a few reports, then these are insufficient to prove the occasional nature of abuses. If reports originated from U.S. or other Western officials then they are no more than hearsay. If U.S. officials used Department of State publications to determine that forced abortions and sterilization take place occasionally, then information was just round-tripped. This source is not suitable to prove the 2007 Report’s claims.

36. Mainland Chinese press reports document single episodes. A large sample of reports published by a wide range of PRC press, television and electronic media over a number of years can indeed yield some information about implementation. No such methodology was

adopted to select the press sources used in the 2007 Report. The bulk of information provided on pages 22 to 24 has been cut and pasted from the 2004 Report. Updates on implementation were drawn from four press reports. A fifth press report mentioned on page 26 cannot be considered an update, because this part of the text was carried over from the 2004 to the 2007 Report. The press reports refer to incidents occurred in the provinces of Sichuan, Anhui and Gansu. They provide no clue as to what happened in other provinces. They never mention Shandong province, but on page 22 the 2007 Report states that physical coercion takes place mostly in rural Shandong province. How is it possible to know what happened in Shandong, if the four sources used to update the 2007 Report refer to different provinces? To make methodological flaws even worse, the 2007 Report immediately contradicts its own claims. On page 22, in the section on minority and transient population, the 2007 Report quotes a tertiary source as stating that family planning legislation is enforced more strictly in Anhui province. This piece of information is in contradiction with both the four reports summarized on page 24, and the statement about Shandong province on page 22.

37. The 2007 Report also tries to pass mere conjectures as statements of fact. On page 22, it is written that expectant mothers feel they have little choice but to undergo abortion. It would be interesting to know how the 2007 Report authors can be so sure of what Chinese women feel, given that the source of this information is not mentioned. Apparently neither them or the Department of State carried out a large-scale survey of Chinese women feelings toward abortion and sterilization. Besides, this hypothesis is contradicted on the following page (at 23), where it is stated that termination of pregnancies, sometimes euphemistically referred to as a “remedial measure” is an obligation grounded in provincial legislation, rather than a voluntary choice.
38. Finally, the 2007 Report ignores a range of sources which prove or either state that abortions and sterilization result from state coercion. They are listed below together with relevant quotations. Their listing does not purport to be conclusive as to how the family planning policy is implemented. It aim is illustrating some of the materials that could have been included in the 2007 Report or in a brief update, thereby yielding a more neutral overview of the range of available information.

### 39. U.S. Government sources

In May 2002, Secretary of State Colin Powell decided to send an investigation team to China, to survey implementation of family planning programs, which were indirectly funded by the United States through its contribution to United Nations Population Fund (UNFPA). The investigation was necessary as the Kemp-Kasten amendment precluded funding of organizations or programs involving coercive abortion or involuntary sterilization.<sup>39</sup> After the team's visit to China, the Secretary of State concluded that funds made available by the Foreign Operations, Export Financing and Related Appropriation Act could not be provided to the UNFPA. As stated by Ambassador Sichan Siv, the United States Representative to the U.N. Economic and Social Council: "Based on the Team's findings, a review of Chinese laws, U.S. human rights reports, and other information, the Secretary concluded that the UNFPA China program supported and participated in the management of a program of coercive abortion in violation of Kemp-Kasten."<sup>40</sup> This important fact is never mentioned in the 2007 Report.

The Congressional-Executive Commission on China, in its 2006 annual report **stated** that the practice of forced abortion and sterilization still takes place:

*"The Chinese government strictly controls the reproductive lives of Chinese women. Since the early 1980s, the government's population planning policy has limited most women in urban areas to bearing one child, while permitting many women in rural China to bear a second child if their first child is female. Officials have coerced compliance with the policy through a system marked by pervasive propaganda, mandatory monitoring of women's reproductive cycles, mandatory contraception, mandatory birth permits, coercive fines for failure to comply, and, in some cases, forced sterilization and abortion."*<sup>41</sup>

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<sup>39</sup> Letter of Paul W. Kelly to Senator Barbara Boxer, August 5, 2002. See also Cable of the Secretary of State to the United States Mission at the United Nations, December 2, 2002.

<sup>40</sup> Cable of the United States Mission at the United Nations, October 2, 2002, par. 8.

<sup>41</sup> Congressional-Executive Commission on China. *2006 Annual Report*, V. Monitoring Compliance with Human Rights V(h). Population Planning, available at [<http://www.cecc.gov/pages/annualRpt/annualRpt06/PopulationPlanning.php#popplanb>], last accessed on 10 October 2009.

#### 40. United Nations bodies

In its 1999 Concluding Observations, the Committee on the implementation of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), illustrated the status of China's compliance with its international obligations as follows:

*“299. The Committee recognizes that population growth is a genuine and severe problem and that considerable progress has been made in providing family planning services, but expresses concern about various aspects of the implementation of China's population policy, including the following:*

*(a) The Committee notes with concern that only 14 per cent of men use contraceptives, thus making contraception and family planning overwhelmingly a woman's responsibility. In the light of the fact that vasectomy is far less intrusive and costly than tubal ligation, targeting mainly women for sterilization may amount to discrimination;*

*(b) Notwithstanding the Government's clear rejection of coercive measures, there are consistent reports of abuse and violence by local family planning officials. These include forced sterilizations and abortions, arbitrary detention and house demolitions, particularly in rural areas and among ethnic minorities. (...).”<sup>42</sup>*

The same concerns were expressed seven years later, in 2006:

*“31. While noting that legal measures prohibiting sex-selective abortions and female infanticide and other measures are in place, such as the nationwide campaign, “Operation Caring for Girls”, launched in 2006 and a system of incentives, the Committee remains concerned at the persistence of illegal practices of sex-selective abortion, female infanticide and the non-registration and abandonment of female children, and about forced abortions. The Committee is concerned about the impact of the adverse sex ratio, which may contribute to the increase in trafficking in women and girls.”<sup>43</sup>*

Similar findings were made by the Committee on the implementation of the International Covenant on Economic, Social and Cultural Rights. In its 2005 Concluding Observations on China, it is possible to read that:

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<sup>42</sup> China, CEDAW, A/54/38/Rev.1 (1999) at par. 299.

<sup>43</sup> China, CEDAW, C/CHN/CO/6 (2006) at par. 31.

*“The Committee is deeply concerned about reports of forced abortions and forced sterilizations imposed on women, including those belonging to ethnic minority groups, by local officials in the context of the one-child policy, and about the high maternal mortality rate as a result of unsafe abortions.”*<sup>44</sup>

(...)

*The Committee urges the State party to undertake effective measures to ensure that abortions are carried out voluntarily and under adequate medical and sanitary conditions and to ensure that the existing legislation governing the one-child policy does not violate the rights enshrined in article 10 of the Covenant.”*<sup>45</sup>

#### 41. European Union bodies

A very similar position has been adopted by the Council of Europe,<sup>46</sup> and the Parliament of the United Kingdom.<sup>47</sup>

#### 42. PRC government bodies

The China Population and Family Planning Commission tried to stop forced abortions and sterilizations in the mid-1990s and early 2000s.<sup>48</sup> It is not known how successful these attempts have been. However, available documents issued by some of its local chapters illustrate that attempts to grasp the actual extent of forced abortion and sterilization were still going on in 2008. The following is an excerpt from a questionnaire distributed in 2008 by the Shaanxi Province Population and Family Planning Commission:

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<sup>44</sup> China, ICESCR, E/2006/22 (2005) 25 at par. 165.

<sup>45</sup> China, ICESCR, E/2006/22 (2005) 25 at par. 194.

<sup>46</sup> 2003 Ordinary Session (Fourth part), Report, Twenty-eighth sitting, Tuesday, 30 September 2003 (provisional version), available at [<http://assembly.coe.int/Main.asp?link=/Documents/Records/2003/E/0309301000E.htm>], last accessed on 10 October 2009.

<sup>47</sup> Early Day Motion 161, 8 November 2007, available at [<http://edmi.parliament.uk/EDMi/EDMDetails.aspx?EDMID=34257&SESSION=891>], last accessed on 10 October 2009.

<sup>48</sup> Immigration and Refugee Board of Canada, “China: Information on the Population and Family Planning Law, its administration and implementation (2002-2003)”, CHN41713.E, 17 September 2003, available at [<http://www2.irb-cisr.gc.ca/en/research/rir/?action=record.viewrec&gotorec=416367>], last accessed on 10 October 2009.

*“1. To the [best of] your knowledge, did the government perform any of the following actions in its implementation of the birth planning policy during the last three years?”*

*(multiple choice)*

*(If the answer is yes, write “1” in the relevant field, otherwise write “0”)*

- 1. Use threats and other strong, violent methods*
- 2. Collect arbitrary fees, levy arbitrary fines, apportion arbitrary costs*
- 3. Damage or seize the masses’ property, limit the masses’ personal freedom*
- 4. Perform forced IUD insertion after the first birth and forced sterilization after the second birth*
- 5. Make ugly episodes and mass incidents happen*
- 6. Approve second births in a non-public and non-transparent way*
- 7. Force [temporary] residents to return to their permanent place of residence for family planning/to undergo reproductive health examination*
- 8. Other (Specify \_\_\_\_\_)”<sup>49</sup>*

In the same year, a very similar questionnaire was distributed by Chongqing Municipality Population and Family Planning Commission:

*“CO1. According to your knowledge, did the local government perform any of the following actions in its implementation of the birth planning policy during the last three years?”*

*(multiple choice, if the answer is yes, write “1” in the relevant field, otherwise write “0”)*

- 1. Issue forcible orders, use threats and other strong, violent methods*
- 2. Collect arbitrary fees and levy arbitrary fines*
- 3. Damage or seize the masses’ property, limit the masses’ personal freedom*
- 4. Perform forced IUD insertion after the first birth and forced sterilization after the second birth*
- 5. Make ugly episodes and mass incidents happen*
- 6. Approve second births in a non-public and non-transparent way*
- 7. Force [temporary] residents to return to their permanent place of residence for family planning/to undergo reproductive health examination*
- 8. Refuse to register above quotas children*
- 9. Other (Please specify \_\_\_\_\_)”<sup>50</sup>*

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<sup>49</sup> Questionnaire Form for Women of Childbearing Age (*Yuling funü diaocha wenjuan*), in Shaanxi province mid-term evaluation forms of the “Eleventh Five-Years Plan”’s population development plan and development plan (city and county level) (*Shaanxisheng “shiyiwu” renkou fazhan he shiye fazhan guihua zhongqi pinggubiao (shi, xian)*) at 22-23.

An inspection to assess the actual extent of the problem was ordered also by the Hebei province Population and Family Planning Commission.<sup>51</sup>

It is not known how many people received these questionnaire forms, if these people were local officials or ordinary citizens, how high the response rate was, and if questionnaires were valid. However in 2009 local authorities were issuing documents calling for forced sterilization. Earlier this year, a campaign to implement the family planning policy took place in Jiangxi province. The following is an excerpt from a document jointly issued by the Longhua village party committee and people's government:

*“3. Concentrate forces and increase strength*

*During the Spring Family Planning High-Tide, the two levels of township and villages must fulfill the “three concentrations” – of personnel, forces and time, and adopt energetic measures and effective methods to strengthen work. They must perform a one-time concentrated assault action (tuji xingdong) at appropriate times, and organize night-time actions according to the work needs, to adopt coercive measures (qiangzhi cuoshi) towards some objects [of the family planning policies].”<sup>52</sup>*

Local organs also set out quotas for IUD insertion and sterilization. From 27 March until 30 April 2009, family planning officials were assigned the tasks to insert a total of 143 IUDs and perform 255 sterilizations. Failure to meet these quotas would result in various consequences:

*“Sterilizations, IUD insertions and abortions are the key, sterilization of “two-daughters households” is the difficult point, it is necessary to overcome difficulties, grasp the most important point so that sterilization of “two daughters households” is concluded by April 10. Sterilizations must end by April 20. If these tasks are not fulfilled during this time, village*

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<sup>50</sup> Chongqing Municipality Population and Family Planning Commission, Department for Development and Planning, *Technical Handbook for the Midterm Evaluation of the “Eleventh Five-Years Plan”’s development and population plan (Chongqingshi “shiwu” renkou fazhan he jihua shengyu shiye fazhan guihua zhongqi pinggu jishu souce)*, Chongqing, 25 July 2008 at 113.

<sup>51</sup> Art. 2 par. 3, Circular of the Hebei Population and Family Planning Commission General Office about conducting an inspection on the administrative law enforcement of population and family planning, (*Hebeisheng Renkou he Jishengwei Bangongshi guanyu kaizhan renkou he jihua shengyu xingzheng zhifa duchade tongzhi*), issued on 17 November 2008.

<sup>52</sup> Article 3, Implementation Plan of the 2009 Spring Population and Family Planning Services High Tide (*guanyu kaizhan 2009nian chunjie renkou he jihua shengyu fuwu gaochaode shishi fang’an*), issued on 26 March 2009.

*secretaries and cadres shall be suspended from service, and not receive their salary during the entire period, also they will have to still perform the family planning work, until all tasks have been fulfilled”.*<sup>53</sup>

A circular issued by Yichun city (Jiangxi province) adopts a very similar wording:

*“2. Targets who until today have not undergone tubal ligation, and been the object of several rounds of unsuccessful ideological work shall undergo forced tubal ligation.”*<sup>54</sup>

Forced sterilization was also ordered in Tianbao village (Shandong province) three years ago:

*“2. Targets who until today have not had an IUD inserted in spite of repeated ideological work will be fined 200 yuan, and undergo forced IUD insertion.*

*3. Targets who until today have not undergone tubal ligation after repeated and unsuccessful ideological work will be fined 600 yuan, and undergo forced sterilization.”*<sup>55</sup>

#### 43. NGOs

Western NGOs have been very vocal in trying to document forced abortion and sterilization, and condemning these practices, but are never referred to in the 2007 Report.

According to Amnesty International 2009 Country Report on China, attempts to oppose the practice of forced abortion resulted in harsh prison sentences:

*“Chen Guangcheng, blind activist and legal adviser, continued to suffer ill-treatment in prison. He is serving a prison sentence of four years and three months after he tried to hold local officials in Shandong accountable for conducting forced abortions and sterilizations in order to enforce birth quotas.”*<sup>56</sup>

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<sup>53</sup> Article 4, *supra*.

<sup>54</sup> Art. 2, par. 2 Circular about conducting the Autumn Population and Family Planning Service concentrated movement (*Guanyu zai quanzhen kaizhan qiujie renkou he jihua shengyu jizhong fuwu huodongde tongzhi*).

<sup>55</sup> Circular about carrying out the Movement “2006 Spring Population and Family Planning Service Month” in Tianbao village (*Guanyu Tianbaoxiang 2006nian kaizhan chunji jihua shengyu fuwuyue huodong tongzhi*), issued on 1 March 2006.

<sup>56</sup> Amnesty International, *Amnesty International Report 2009. State of the World’s Human Rights, China*, available online at [<http://thereport.amnesty.org/en/regions/asia-pacific/china>]. Last accessed 22 September 2009.

Cheng Guangcheng's activities became known to the Western public in 2006, one year before the 2007 Report was published. This case, which is well-known among NGO personnel and China specialist, is no mentioned in the 2007 Report.

In a recent briefing to the Committee Against Torture, Amnesty also pointed out how forced abortions and sterilizations are intentional, cause an intense suffering, and are based on discrimination.<sup>57</sup>

A study conducted by the NGO Human Rights in China concluded that:

*“Those who proceed with unauthorized pregnancies, especially after they have already had one or the permissible number of births, must have their pregnancies terminated. After having an out-of-plan birth, one spouse must be sterilized. (...) Reports show that when excessive force has been used in enforcing population control policies, government officials, persons acting in an official capacity (such as local militias or police), or people hired by officials have been the ones who took away and detained women for abortion, sterilization or IUD insertion; beat up those who resisted; confiscated property and demolished houses. In some areas, terrorizing women and their families into submission has become a routine job for population control officials”*.<sup>58</sup>

The practice of forced abortion has been criticized also by other NGOs as ChinaAid,<sup>59</sup> and by anti-abortion lobbies.<sup>60</sup> Mainland China human rights government-organized nongovernmental organizations (GONGOs) – as the China Society for Human Rights Studies<sup>61</sup> – have not produced material on this matter.

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<sup>57</sup> Amnesty International, “People’s Republic of China: Briefing for the Committee Against Torture in Advance of Their Consideration of China’s Fourth Periodic Report, 3-21 November 2008”, available online at [<http://thereport.amnesty.org/en/regions/asia-pacific/china>]. Last accessed on 29 September 2009.

<sup>58</sup> Human Rights in China, “Unfair Burdens: Impact of the Population Control Policies on the Human rights of Women and Girls”, available online at [<http://www.hrichina.org/public/contents/article?revision%5fid=4162&item%5fid=4161>]. Last accessed on 22 September 2009. See also Sisi Liu, “Where have all the young girls gone?”, *China Rights Forum*, n. 4, 2004, available at [<http://hrichina.org/public/PDFs/YoungGirls4-2004.pdf>]. at 4], last accessed on 10 October 2009.

<sup>59</sup> Reggie Garcia Littlejohn, “One-Child Policy and Forced Abortion in China”, available at [[http://www.chinaaid.org/qry/page.taf?id=135&\\_function=detail&sbtblct\\_uid1=135](http://www.chinaaid.org/qry/page.taf?id=135&_function=detail&sbtblct_uid1=135)], last accessed on 10 October 2009.

<sup>60</sup> Society for the Protection of Unborn Children, “Memorandum”, available at [<http://www.publications.parliament.uk/pa/cm200304/cmselect/cmfaaff/389/389we14.htm>], last accessed on 10 October 2009.

<sup>61</sup> This NGO’s website can be visited at [<http://www.humanrights.cn/cn/index.htm>]

#### 44. Chinese citizens' petition letters

Chinese citizens who have not emigrated, either legally or illegally, to the U.S. believe that forced sterilization and forced abortions take place indeed. In October 2008, a resident of Anhui wrote to the provincial Population and Family Planning Commission, asking why his wife had to undergo forced sterilization. This letter and the Commission's reply were posted on the Commission's website. They are translated below:

*"I am a resident of Lucheng in Chengguan township, who married in 1992 and had a first son in 1995. I divorced in 2006, and my wife obtained my son's custody. I remarried in 2007. My wife's residence is in Wanshan county, and has obtained permission to have a second child there. In May this year she gave birth to a boy. Wanshan township and the village committee requested her to undergo sterilization, and told that sterilization was forced. Since I work in Guangzhou, my spouse and the child are alone at home. Township and village [cadres] came several times, asking that I come back to cooperate in the sterilization, but I cannot go back due to work, it has been a headache. I don't understand, I have already paid a caution, guaranteeing that I won't have another child, and agreed to adopt other contraceptive measures – why do they want to perform forced sterilization? According to my understanding, Chengguan township does not need to perform forced sterilization in circumstances such as mine, why are there two different policies in the same place? Does forced sterilization have a legal basis or not? Thank you!*

*Dear Mr. Yan,*

*According to our understanding, your wife has already undergone sterilization. We thank you for supporting the birth planning work."<sup>62</sup>*

Even though the 2007 Report includes information from provincial population and family planning organs, this material, which is easily available on the internet, has been ignored.

#### 45. Western and Chinese news media

A recent report by the news agency Reuters sheds light on how forced abortion has been practiced in Canton as late as February 2009. With reference to the case of women who

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<sup>62</sup> "Why one must perform forced sterilization" (*Weihe yiding yao qiangzhi zuo jueyu shoushu*), *Zhongguo Lujiang*, 22 October 2008, available at [<http://www.ahlj.gov.cn/mutual/showmail.asp?id=1008370>], last accessed on 1 October 2009. See Appendix 6.

rented their wombs to other women who could not have children, reporter James Pomfret found out that:

*“In the southern Chinese city of Guangzhou, three young surrogate first-time mothers were discovered by authorities hiding in a communal flat. Soon afterwards, district family planning and security officers broke into the flat, bundled them into a van and drove them to a district hospital where they were manhandled into a maternity ward, the mothers recounted to Reuters. “I was crying ‘I don’t want to do this’,” said a young woman called Xiao Hong, who was pregnant with four-month-old twins. “But they still dragged me in and injected my belly with a needle.”*<sup>63</sup>

Very similar press reports were available also in 2007 and before. The Los Angeles Times recounted how the rounding up of rural women to perform forced sterilization sparked a riot.<sup>64</sup> Reports about forced abortions and sterilizations could be found also on the Washington Post.<sup>65</sup> In 2005, German media catering to a Chinese audience carried similar reports.<sup>66</sup> The same is true of British, French,<sup>67</sup> and Hong Kong media as and also of mainland Chinese media. Among others, they reported how forced abortion was performed on a female offender so she could be put to death, and published a picture of her abortion certificate proving how abortion took place forcibly.<sup>68</sup>

#### 46. Scholarly literature

The consensus among some scholars of population and family planning in China holds that forced abortions and sterilizations largely belong to China’s past, and are no longer used as a mean to implement the family planning policy. These findings are shared by studies by

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<sup>63</sup> James Pomfret, “Forced abortions shake up China’s wombs-for-rent industry”, Reuters, available online at [<http://uk.reuters.com/article/idUKTRE53T04D20090430?pageNumber=1&virtualBrandChannel=0>]. Last accessed on 22 September 2009.

<sup>64</sup> Jonathan Watts, “Chinese villagers riot over ‘one-child’ policy”, *The Guardian*, 21 May 2007, available at [<http://www.guardian.co.uk/world/2007/may/21/china.jonathanwatts>], last accessed on 10 October 2009.

<sup>65</sup> Philip P. Pan, “Detained Chinese Activist Put Under House Arrest”, *The Washington Post*, 10 September 2005, available at [<http://www.washingtonpost.com/wp-dyn/content/article/2005/09/09/AR2005090901998.html>], last accessed on 17 October 2009.

<sup>66</sup> “China: the most sophisticated internet filters and forced sterilization” (*Zhongguo: zuigaoji hulianwang guolu he qiangzhi jueyu*) available at [<http://www.dw-world.com/dw/article/0,,1719823,00.html>], last accessed on 10 October 2009.

<sup>67</sup> “China to stick with one-child policy”, *Agence France Presse*, 9 March 2008, available at [[http://afp.google.com/article/ALeqM5jM-xJphn\\_Izf43LQMb7ZPxe1J5vg](http://afp.google.com/article/ALeqM5jM-xJphn_Izf43LQMb7ZPxe1J5vg)], last accessed on 10 October 2009.

<sup>68</sup> “Forced abortion puts criminal code on trial”, *The China Daily*, 27 September 2009, available at [[http://www.chinadaily.com.cn/english/doc/2004-09/27/content\\_378051.htm](http://www.chinadaily.com.cn/english/doc/2004-09/27/content_378051.htm)], last accessed on 10 October 2009.

Susan Greenhalgh and Edwin Winkler,<sup>69</sup> and a 2004 article by Dali Yang and Huang Yanzhong,<sup>70</sup> This consensus has been challenged by an equally recent body of research.

Zhang Weiguo believes that monetary incentives and the threat of fines are insufficient to induce compliance with the family planning policy: “The system of incentives and disincentives was ineffective in the pre-reform period, and remains ineffective today; rural couples simply have never accepted state-imposed limits on their childbearing in return for economic incentives.”<sup>71</sup> Demographer Thomas Scharping has found out how administrative pressure is still pivotal in ensuring compliance with the family planning policy.<sup>72</sup>

A 2003 book by Yang Zhong found out that physical coercion is used to perform abortions and sterilizations: “To make sure the local birth rate remains below targeted levels – and their careers remain out of jeopardy – Chinese county and township/town officials often take extreme measures such as heavy fines, forced sterilization, forced abortion and even confiscation of furniture and destruction of houses to deter from unpermitted pregnancies and punish couples who have “illegal” babies”.<sup>73</sup>

According to Stephen W. Mosher, forced abortions continue: “Officials conduct nighttime raids on couples suspected of having unauthorized children, and they keep detailed records on the sexual activity of every woman in their jurisdiction – so much for privacy. And to make the coercive regime complete, the “family planning centers” have prison cells – complete with bars – to detain those who resist forced abortion or sterilization.”<sup>74</sup>

In 2008, Nie Jingbao published a book based on interviews with doctors who perform forced sterilizations.<sup>75</sup>

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<sup>69</sup> Susan Greenhalgh and Edwin A. Winkler, *Perspective Series: Chinese State Birth Planning in the 1990s and Beyond*, Immigration and Naturalization Service (Washington, DC), Sept. 2001, available online at [<http://www.ins.usdoj.gov/graphics/services/asylum/ric/documentation/pschn01001.pdf>], last accessed on 10 October 2009. Of the same authors see also *Governing China's Population: from Leninist to neoliberal biopolitics*, Stanford: Stanford University Press, 2005.

<sup>70</sup> Dali Yang and Huang Yanzhong, “Population Control and State Coercion in China”, *Holding China Together. Diversity and National Integration in the post-Deng Era*. Barry J. Naughton and Dali L. Yang (eds.) Cambridge: Cambridge University Press, 2004, pp. 193-225.

<sup>71</sup> Zhang Weiguo, *Chinese Economic Reforms and Fertility Behaviour. A Study of a North China Village*, China Library, 2002, at 194.

<sup>72</sup> Thomas Scharping, *Birth Control in China 1949-2000: Population Policy and Demographic Development*, London, New York: RoutledgeCurzon, 2003.

<sup>73</sup> Yang Zhong, *Local Government and Politics in China. Challenges from Below*. Armonk: M.E. Sharpe, 2003, at 135.

<sup>74</sup> Steven W. Mosher, *Population Control. Real Costs, Illusory Benefits*, New Brunswick, NJ: Transaction Publishers, 2008, at 75-76.

<sup>75</sup> Nie Jingbao, *Behind the Silence: Chinese Voices on Abortion*. Oxford: Rowman and Littlefield 2005.

### Paragraph A.1

47. This paragraph describes national legislation on family planning. It is immediately apparent how information contained therein is outdated. Apart from a brief reference to the situation of the Uighur minority, it repeats information found in the 2004 and 1998 Reports.
48. The existence of the Measures on the Administration of Family Planning for the Floating Population,<sup>76</sup> and important legal document, is not mentioned. This administrative regulation was repealed on 1 October 2009 by the State Council Rules on Family Planning for the Floating Population,<sup>77</sup> which has made the birth planning policy stricter. Article 12 of the Rules poses increased obligations to non-permanent residents: “*women of reproductive age must willingly use family planning contraceptive and birth control measures and accept the family planning administration of the place of permanent residence as well as of the place of temporary residence.*”
49. In light of these changed circumstances, the content of this paragraph cannot provide guidance as to how the family planning law will be implemented on the transient population.

### Paragraph A.2

50. This paragraph contains information on marriage age and single parenting. It states that “there are no provisions in the National Law on Population and Birth Planning to detain or jail cohabiting couples for having an unauthorized child.” (at 25) On page 22, the 2007 Report also quotes the U.S. Embassy in Beijing, according to which “violations of the birth planning policy are civil offenses and result in civil penalties. They are not considered criminal offences”. However on the same page, the Report states that *actions as detaining family members* require “court approval”.

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<sup>76</sup> (*Liudong renkou jihua shengyu guanli banfa*), issued on 29 September 1998 and effective from 1 January 1999, repealed on 1 October 2009.

<sup>77</sup> (*Liudong renkou jihua shengyu guanli banfa*), issued on 29 April 2009 and effective from 1 October 2009, available at [[http://www.gov.cn/zwgk/2009-05/20/content\\_1320203.htm](http://www.gov.cn/zwgk/2009-05/20/content_1320203.htm)], last accessed on 10 October 2009.

51. Provisions allowing the administrative detention of those who violate certain aspects of the family planning law are found in administrative regulations. Those who protest against the consequences of sterilization can be subjected to arbitrary detention under re-education through labor, or detained on public security charges. As proved by the case of a Jiangxi resident,<sup>78</sup> in practice vague statutory provision on re-education through labour are invoked to detain any of the following subjects:

*“Those who refuse to work for a long time even though they have a job, who disturb labour discipline, who cause disturbances without reason, disrupt the order of production, the order of work, of study or scientific research, the order of normal live, obstruct public service and do not listen to persuasion and [orders to] cease.”<sup>79</sup>*

52. Moreover, opposition to the family planning policy which amounts to obstruction of public service can be punished with no more than ten days detention and a fine up to 500 yuan:

*“Article 50. Any of the following acts is punished with a police warning or a fine below 200 yuan. If the circumstances are serious, it is punished with no more than five and no less than ten days detention, and a concurrent fine of no more than 500 yuan:  
(2) obstructing state personnel from carrying out their lawful duties;”<sup>80</sup>*

53. Those who oppose the family planning policy using violence or threats commit the crime of obstructing public service. Under art. 277 of the Criminal Law of the People’s Republic of China, they can be punished with a maximum penalty of three years imprisonment:

*“Article 277. Whoever uses violence or threat to obstruct state personnel from discharging their duties is to be sentenced to not more than three years of fixed-term imprisonment, criminal detention, or control; or a sentence of a fine.”<sup>81</sup>*

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<sup>78</sup> Administrative review decision of the Pingxiang City People’s Government (*Pingxiangshi Renmin Zhengfu xingzheng fuyi juedingshu*), 20 January 2007. See Appendix 7.

<sup>79</sup> Art. 10, par. 5 State Council Experimental Measure on Re-education through Labour (*Guowuyuan laodong jiaoyang shixing banfa*), issued on 21 January 2082 and effective from the same date.

<sup>80</sup> Art. 50, Law of the People’s Republic of China on Administrative Penalties (*Zhonghua Renmin Gongheguo xingzheng chufafa*), issued on 17 March 1996 and effective from 1 October 1996.

<sup>81</sup> Circular of the Supreme People’s Court and Supreme People’s Procuracy on severely punishing according to the law crimes of disrupting family planning, (*Zuigao Renmin Fayuan, Zuigao Renmin Jianchayuan guanyu yifa yancheng pohuai jihua shengyu fanzui huodong*), issued on 12 November 1993 and effective from the same date.

54. A 1997 judicial interpretation which is still into force mentions that deprivation of personal freedom can be used on those who oppose the family planning policy.<sup>82</sup>

### Paragraph A.3

55. Paragraph A.3 contains an overview of birth planning methods. Information about abortion statistics is outdated. It is stated that four years ago seven million abortions were performed, and that the peak year for abortion was 1983, when fourteen million abortions took place. In 2009 a pro-government newspaper disclosed that thirteen million abortions are performed in China every year.<sup>83</sup>

56. Those born out of quota can face job discrimination even in economically developed areas, which is something the Report denies. Anita Chan, a specialist on labor rights, writes:

*“(...) the young migrant was informed by a friend that if he went to Shenzhen he would find a job. But he was advised that before he left he had to apply for a number of documents. These included a “border region pass” (at 120 yuan, taking six months), a personal identity card (another 80 yuan, taking one month), an unmarried status certificate (60 yuan, valid one year), and a certificate to prove that he was not born out of quota (45 yuan, valid for one year)”*.<sup>84</sup>

### Paragraph A.4

57. This paragraph provides an overview of documents related to abortion and birth planning. The 2007 Report cites unnamed US Embassy officials, who stated that they are “unaware of any so-called “abortion certificates” (p. 22).

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<sup>82</sup> Reply of the Supreme People’s Court about whether people’s courts can accept appeals filed by those who do not accept garnishments, limitation of personal freedom or other coercive measures adopted by family planning departments (*Zuigao Renmin Fayuan guanyu bufu jihua shengyu guanli bumen caiqude kouya caiwu, xianzhi rensheng ziyou deng qiangzhi cuoshi er tiqide susong renmin fayuan yingfou li weitide pifu*), issued on 4 April 1997 and effective from the same date.

<sup>83</sup> Shan Juan and Qian Yanfeng, “Abortion statistics cause for concern”, *China Daily*, 30 July 2008, available at [[http://www.chinadaily.com.cn/china/2009-07/30/content\\_8489656.htm](http://www.chinadaily.com.cn/china/2009-07/30/content_8489656.htm)], last accessed on 11 October 2009.

<sup>84</sup> Anita Chan, “A “race to the Bottom.” Globalisation and China’s labour standards”, *China Perspectives*, n. 46, March-April 2003, at 46.

58. This statement is contradicted on lines 4 and 5, where it is said that after an abortion has taken place, hospitals issue a document which certifies that abortion was performed.

59. The Profile neglects to mention the existence of sterilization certificates (*jiezhazheng*). Sterilization certificates are routinely mentioned by local level legislation. Citing a joint decision by the Party Committee and the government of Guangdong Province, the Dongguan City Measures on the Administration of Rewards for Family Planning requires couples who have one child to include a sterilization certificate to their application for a reward:

*“Those eligible to apply for family planning rewards must file their application to the village (community) where they are registered. The application must include their identity card, household registration booklet, marriage certificate, sterilization certificate, birth certificate of their child, “one child certificate”[...].”*<sup>85</sup>

60. Local legislation sometimes mention a “certificate of contraceptive measures” (*jiayu cuoshi zhengming*). But, this is an euphemism for a sterilization certificate, as local organs in Guangdong explain:

*“each married couple must provide their marriage certificate, and the documents relevant to their different circumstances: (2) with the exception of couples who have given birth to twins, those who have given birth to two children must provide the relevant policy documents related to births issued by the family planning commission at above the municipal level at the time of giving birth, and also provide a “form to request the birth of a second child”, “birth certificate of a second child” and the “certificate of contraceptive measures adopted by one of the spouses (see footnote two)””*

(...)

*Footnote two: this is a sterilization certificate issued by our bureau”*<sup>86</sup>

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<sup>85</sup> Article 4, Dongguan City Measures on the Administration of Rewards for Family Planning (*Dongguanshi jihua shengyu jiejuyuan guanli banfa*), issued on 14 February 2009 and effective from 1 April 2009.

<sup>86</sup> Article 3, footnote two, Shenzhen Office of Personnel, Shenzhen City Government Office for Family Planning Circular on Conscientiously Implementing the Family Planning Policy in the Hiring of Talents (*Shenzhen City Jihua Shengyu bangongshi guanyu zai rencai yinjin guozhengzhong renzhen zhising jihua shengyu zhengcede tongzhi*), issued on 1 April 1999 and effective from the same date, as amended on 24 March 2008.

61. The sterilization certificate is listed among the documents requested from workers wishing to be transferred to foreign invested enterprises.<sup>87</sup> This certificate is needed also to enjoy other basic rights, as primary education. In May 2009, a resident of Fujian province wrote in an information request to the local people's government:

*“My wife was sterilized in Shenzhen, and the sterilization certificate has been taken away by family planning cadres in our village, saying that it needs to be given to the county (level government). I don't know if such a policy really exists. Now I have to enrol my child at primary school, and they absolutely want our sterilization certificate, otherwise they will not accept my child in school. I would like to ask if we can get our sterilization certificate back.”*<sup>88</sup>

62. Chinese sources mention how PRC citizens, in the attempt to avoid abortions, try to obtain sterilization certificates illegally.<sup>89</sup> The sale of fake sterilization certificates shifts the burden of abortion quotas to those who are unable or unwilling to buy counterfeit abortion certificates.

63. The 2007 Report assumes that the mere issuing of an abortion certificate proves that abortion took place voluntary. This assumption is not based on any publicly available evidence. On the contrary, a pro-government newspaper catering to a foreign audience

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<sup>87</sup> Article 3, paragraph 2, subparagraph 5, section 9, Reply Letter of Shenzhen Labour Office on the jurisdiction of service centres established by our office at foreign invested enterprises and other matters (*Shenzhen shi laodongju bangongshi guanyu baosong woju zai waishang touzi qiye fuwu zhongxin yewu shouli fangwei deng wentide han*) issued on 31 October 1995 and effective from the same date. Violations of the family planning policy also preclude urban permanent registration Art. 5 par. 5 Shanghai Municipality Experimental Measures on Holders of Temporary Resident Certificates Requesting Permanent Household Registration in Shanghai (*Shanghaishi chiyou “Shanghaishi juzhuzheng” renyuan shenban shi changzhu hukou shixing banfa*), issued on 12 February 2009 and effective from the same date. Full text in Chinese available at [<http://www.shanghai.gov.cn/shanghai/node2314/node2319/node12344/userobject26ai17537.html>], last accessed on 28 September 2009, last accessed on 11 October 2009.

<sup>88</sup> “Is it possible to get back a sterilization certificate?” (*Nengbuneng nahui jiezha zheng?*), Information Request no. 09051300014, dated 13 May 2009, General Office of Fujian Province People's Government (Fujiansheng Renmin Zhengfu Bangongting), available at [<http://12345.fuzhou.gov.cn/detail.jsp?callid=09051300014>]. Last accessed on 22 September 2009.

<sup>89</sup> “Sterilization certificates sold by some village cadres in Ling county” (*Lingxian gebie cun ganbu jingmai jiezha zheng*), *Dagongbao*, 9 September 2009, available at [[http://sx.takungpao.com/2009/9\\_85988.htm](http://sx.takungpao.com/2009/9_85988.htm)], last accessed on 11 October 2009; “Accepted trousers, cigarettes and other goods to issue fake sterilization certificates to seven people – deputy head of the family planning station gets five years sentence” (*Shoushou kuzi, xiangyan dengwu wei 7 ren zuo jia jiezha shoushu – jisheng fuzhangzhang lingxing 5 nian*), *Guizhou Population Network*, 27 December 2004, available at [[http://www.gzrenkou.gov.cn/readinfo.asp?info\\_id=524](http://www.gzrenkou.gov.cn/readinfo.asp?info_id=524)], last accessed on 11 October 2009.

recently released the picture of a certificate carrying the annotation that abortion was performed coercively, at the request of a public security official.<sup>90</sup>

### Paragraph B

64. This paragraph holds that no forced abortions and no forced sterilizations take place in Fujian. This claim rests upon information provided by the Fujian Province Birth Planning Committee (FPBPC) and findings from a consular mission. Information originating from Zhang Weiqing, chair of the national Population and Family Planning Commission was omitted, even though it was available to the Department of State at the time the 2007 Report was compiled. According to Zhang Weiqing, “commando tactics, illegal “study sessions”, detentions (...) illegal monetary deposits (...) unlawful custody, or assaults on the people” took place as late as September 28, 2005.<sup>91</sup> Besides, there are four different reasons why information originating from these sources cannot be taken at face value.
65. First, at the time when the 2007 Report was written, of information regarding the birth planning policy was classified as a state secret. In 2007 the scope of state secrets in family planning work included statistics on family planning, figures for abortions and sterilizations, regardless of whether they are forced or not, figures for deaths resulting from abortions.<sup>92</sup> This information was classified as secret also in 1989.<sup>93</sup>
66. Second, birth planning officials have the obligation to sign a pledge of abstention from divulging information classified as a state secret. To reinforce pre-existing duties, this obligation was reiterated in the summer of 2009. It concerns officials who are active, as well as those who have retired.<sup>94</sup>

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<sup>90</sup> Supra, at footnote 67.

<sup>91</sup> Telegram from the Embassy of the United States in Beijing to the United States Department of State, October 11, 2005.

<sup>92</sup> Regulations on the scope of state secret in population and family planning work (*Renmou he jihua shengyu gongzuo guojia mimi fanweide guiding*), summary available at [[http://www.sqjsw.gov.cn/flfg\\_news.asp?newsid=388](http://www.sqjsw.gov.cn/flfg_news.asp?newsid=388)], last accessed on 11 October 2009.

<sup>93</sup> Rules on the concrete scope of state secret and the grades of state secrecy in family planning work (*Jihua shengyu gongzuo zhong guoji mimi jiqi miji juti fanweide guiding*), issued on 28 July 1989 and effective from the same date.

<sup>94</sup> Circular of the Chinese Communist Party Central Organization Department, the State Secrets Bureau, the Ministry of Human Resources and Social Security, the State Personnel Bureau on organizing and carrying out the work of signing the pledge of secrecy (*Zhonggong Zhongyang Zuzhibu, Guojia Baomiju, Renli Ziyuan he Shehui Baozianbu, Guojia Gongwuyuanju guanyu zuxhi kaizhan baomi chengnuoshu qian ding gongzuode tongzhi*), issued on 14 March 2009 and effective from the same date.

67. Third, the Fujian Party Committee and the Fujian People's Government instructed lower-level organs to publicize abuses only at the end of May 2007, when the 2007 Report had already been published.<sup>95</sup> In light of these instructions, it is hardly surprising that no cases of forced abortions or sterilization could be documented or verified, other than those mentioned by Gao Xiaoduan's 1998 testimony: rising these points was prohibited. Lack of compliance with these and similar instructions could result in demotions, or even in criminal charges.
68. Fourth, in 2005 the FPBPC issued a regulation that restricts citizens' right to protest.<sup>96</sup> If such a right is limited, then very little information on the violation of the birth planning policies reaches the FPBPC or other provincial organs. According to the above quoted 1989 and 1995 regulations, protests caused by implementation of the birth planning policy were furthermore classified as a state secret.
69. These constraints affect the credibility of the findings by any consular visit to Fujian, regardless of U.S. consular officials' good faith. If local officials, who are those responsible for fulfilling abortion quotas, are bound by secrecy they will not disclose information that has been classified as secret. It is also likely that visits to Fujian are scheduled to take place when activities covered by state secret do not take place. The 2007 Report states how abortions are performed at night. Existence of this practice has been corroborated by independent scholarly findings, and by statements released by birth planning officers.

*“Although one member of each villagers’ committee (usually a woman) is responsible for implementing the state’s population control policies, it is often township officials who enforce the policy. They will do such things as arrive unannounced in the village in the middle of the night and give a woman a (forced) abortion themselves or drag her to the local clinic or hospital to have it done”.*<sup>97</sup>

<sup>95</sup> Fujian Chinese Communist Party Committee, Fujian People's government opinion on implementing the Decision of the Central Committee of the Chinese Communist Party and the State Council on the overall strengthening of population and family planning work and solving the population problem (*Zhonggong Fujian shengwei, Fujiansheng Renmin Zhengfu guanyu chuanche luoshi Zhonggong Zhongyang, Guowuyuan guanyu quanmin jiaqian renkou he jihua shengyu gongzuo tongchou jieju renkou wentide jue ding*), issued on 22 May 2007 and effective from the same date.

<sup>96</sup> Fujian Province Population and Family Planning Commission circular about the scope of petition letters accepted by the Fujian Province Population and Family Planning Commission (*Fujiansheng Renkou he Jihua Shengyu Weiyuanhui guanyi yinfa Fujiansheng Renkou he Jihua Shengyu Weiyuanhui xingfang shixiang shouli fanwei*), issued on 15 August 2005 and effective from 1 September 2005.

<sup>97</sup> Suzanne Ogden, *Inklings of Democracy in China*, Harvard: Harvard University Asia Center, 2002, at 211 – 212.

During a speech addressed to party officials in Shishi, Fujian province, an official named Gong Xian Qin recounted how his fellow villagers attempted to stab him after:

*“One night, 23 women who had already two daughters were caught one after another, and forced sterilizations were performed on them.”<sup>98</sup>*

Normally visits by foreign authorities do not take place at night, so U.S. officials couldn't have witnessed abortions or sterilizations, because they were not there when abortions and sterilizations were being performed.

70. FPCPC's claims that no forced abortions and sterilizations take place in Fujian are contradicted by two documents issued by the Changle population and family planning leading group in 2008 and 2009. On Christmas Eve of 2008, the leading group ruled that work groups and village cadres had to take advantage of migrants return for the Chinese New Year festivities, so that sterilizations and abortions could be performed on those who had until then been able to avoid them.<sup>99</sup> Also, the leading group mandated that:

*“the number of sterilizations of those who have two daughters must be over 80 per cent of the target set for the first half of the year. The implementation rate of abortions must be over 80 per cent of the target set for the first half of the year, and the implementation rate of abortions through induced labor must be over 75 per cent of the target set for the first half of the year.”<sup>100</sup>*

Five months later, in May 2009, Changle launched a so-called “hundred days drive” to reduce the number of excess pregnancies and births.<sup>101</sup> Directives issued to family planning cadres mentions explicitly that:

*“induced abortions must be resolutely performed on all those who had excess pregnancies, in order to reduce illegal births to a minimum.”<sup>102</sup>*

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<sup>98</sup> Gong Xianqin, “Dedicating oneself and adding luster to the Party flag” (*Fengxian ziji, wei dangqi zenghui*), text of the speech available online on the website of Shishi party committee [[http://dangjian.shishi.gov.cn/\\_asp/ewebeditor/UploadFile/20054418400747.DOC](http://dangjian.shishi.gov.cn/_asp/ewebeditor/UploadFile/20054418400747.DOC)], last accessed on 11 October 2009.

<sup>99</sup> Par. 1, 3 Changle Population and Family Planning Leading Group circular on conducting a major clean-up family planning clean-up work city-wide (*Changleshi renkou he jihua shengyu lingdao xiaozu guanyu zai quanshi kaizhan jisheng da qingli gongzuode tongzhi*), issued on 24 December 2008.

<sup>100</sup> Par. 2, *supra*.

<sup>101</sup> See Changle Population and Family Planning Leading Group circular on diligently implementing population and family planning work in the months of May, June and July (*Changleshi renkou he jihua shengyu lingdao xiaozu guanyu*

renzhen kaizhan 5, 6, 7 yuefen renkou jisheng gongzuode tongzhi), issued on 7 May 2009.

Searches for those who tried to hide above-quota pregnancies were mandated,<sup>103</sup> and family planning cadres were to be escorted by the police.<sup>104</sup>

71. Chinese citizens who reside in the PRC – hence they have no interest in misrepresenting the issue in order to obtain protected status or political asylum – have sent petition letters to birth planning organs, claiming that abortions and sterilizations are performed forcibly. While the FPBPC wrote to the U.S. Consulate that no forced abortion take place, it posted on its website two letters which prove the contrary:

*“Giving birth to a second child. Wu Wenbo. 13489802818.<sup>105</sup> 309833219@qq.com*

*Both me and my wife are rural residents. We already have a son. I am a only son, and according to the family planning regulations I can have a second child. I was born in another province, but my wife is from Fujian. So I moved my residence to Fujian. I asked the village family planning cadres, and they told me they don’t know whether I can have a second child or not, ask the township government.*

*My questions: 1. If they behave this way, couldn’t they violate my right to a second child? 2. How do I apply for permission to have a second child? What documents are needed? 3. If a woman gives birth to a second child, is she forcibly sterilized or does she only have the IUD inserted? (forced sterilization is inhumane, and in Quanzhou<sup>106</sup> sterilization is forced). I definitely will not have a third child, it is only that I have decided that one child is not enough, and two is the right number. The feeling of growing up alone is pitiful, I have already experienced it, and I do not want to harm the next generation.”<sup>107</sup>*

72. These publicly available documents also mention some of the possible ways in which coercion takes place:

*“(…) On 13 May this year, I had my second baby. This was lawful. Our local Family Planning Office continuously urged me to undergo a gynecological examination. On 12*

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<sup>102</sup> Par. 3, 3, *supra*.

<sup>103</sup> Par. 5, *supra*.

<sup>104</sup> Par. 7, *supra*

<sup>105</sup> This is Mr. Wu’s mobile phone number.

<sup>106</sup> A city in Fujian province.

<sup>107</sup> “Reply to Wu Wenbo query about having a second child” (*Wu Wenbo zixun “sheng ertai” de daifu*), reply of the Fujian Population and Family Planning Commission, dated 24 July 2008, available at [[http://www.fjjs.gov.cn:8080/html/7/383/11180\\_2008731311.html](http://www.fjjs.gov.cn:8080/html/7/383/11180_2008731311.html)], last accessed on 2 October 2009. See Appendix 8.

*June, when my baby was just one month old, together with it and my husband I went to the Family Planning Office to undergo the examination. As soon as we got there, a family planning official wanted me to be sterilized. My baby was one month, I had just given birth, so my body was still weak, and I had mastitis. We asked that surgery be performed some time later, but he disagreed and said: you must undergo surgery today, and you must do it even if you don't want to, if you disagree go file a petition. Then we agreed, but we wanted to receive surgery at the Xiamen Hospital of Traditional Chinese Medicine. The family planning official agreed. He drove us to the traditional Chinese medicine, but halfway along the road he made a U-turn and brought us another hospital called Minhai Hospital. Now I disagreed. They once more said you have to agree even if you disagree, and if you don't, go file a petition. In the end they forced me to undergo sterilization surgery. We did not violate regulations on family planning, why? (...).”<sup>108</sup>*

73. According to an U.S.-based dissident:

*“In early 2001, my elder sister became once more pregnant. On 2 December 2001, she gave birth to a baby girl in Changle hospital. On that very same day, medical doctors forcibly sterilized my elder sister, while she was unconscious.”<sup>109</sup>*

### Paragraph C

74. Paragraph C describes birth planning legislation in Guangdong, Jiangxi and Sichuan provinces.

75. Guangdong province

Information about legislation in Guangdong province is longer valid, as new and stricter provincial regulations went into force on January 1, 2009. The new regulations qualify incompliance with the family planning policy as a minor offence (*weifa xingwei*).<sup>110</sup>

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<sup>108</sup> “Why did the family planning office force me to be sterilized 29 days after I gave birth?” (*Chanhou cai 29 tian weihe jishengban ao qiangpo wo zuo jiezha shoushu ne?*), Information Request no. C2008002504, dated 11 August 2008, Xiamen Municipal Government (*Xiamenshi Renmin Zhengfu*), available at [<http://www.mail.xm.gov.cn:8080/govXf/answerDetail.jsp?oid=2504>]. Last accessed on 11 October 2009.

<sup>109</sup> “Lin Chongyan: The bitter fruits of family planning” (*Lin Chongyan: jihua shengyude eguo*), available online at [<http://www.hqcdp.org/pinglun/pinglun13/linzhongyan01.HTM>], last accessed on 22 September 2009.

<sup>110</sup> Art. 4, Guangdong Province Rules on population and family planning work (*Guangdongsheng renkou yu jihua shengyu tiaoli*), issued on 28 November 2008 and effective from 1 January 2009.

The 2009 Regulations, which are modeled after the Family Planning Law, apply also to the following subjects: returned overseas Chinese (*guiqiao*), relatives of Chinese nationals living abroad (*qiaojuan*), residents of Guangdong who have children abroad, residents of Guangdong who are married to a resident of Hong Kong, Macao, Taiwan or to a foreign citizen.<sup>111</sup> Migrant workers who do not comply with the family planning policy are to be dismissed by their private employer. In case they are self employed according to the contract system (*chengbao*), the contractor must rescind their agreement. Their contract of location is to be rescinded too.<sup>112</sup> The 2007 Report fails to mention that earlier legislation punished the forgery, counterfeiting or theft of family planning documents with arbitrary detention under re-education through labor.<sup>113</sup>

## 76. Jiangxi Province

Information on legislation in Jiangxi province is no longer valid, as provincial regulations were amended in 2009. According to the amended regulations, couples must apply for permission before they can have a first child.<sup>114</sup> The following subject can have a maximum of two children:

- returned overseas Chinese
- relatives of Chinese nationals living abroad
- Hong Kong, Macao or Taiwan citizens who have moved their residence to Jiangxi province
- Those who have a child who is a legal permanent resident of a foreign state, Hong Kong, Macao or Taiwan.
- Couples of legal permanent residents of a foreign state who already have one child, if one of the spouses has resides in China for less than six years<sup>115</sup>

## 77. Sichuan province

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<sup>111</sup> Art. 23, *supra*.

<sup>112</sup> Art. 43, *supra*.

<sup>113</sup> Art. 17, Guangdong Province measures on the administration of population and family planning (*Guangdongsheng renkou he jihua shengyu guanli banfa*), issued on 1 August 1993 and effective from the same date.

<sup>114</sup> Art. 8, Jiangxi province rules on population and family planning (*Jiangshixheng renkou yu jihua shengyu tiaoli*), issued on 27 March 2009 and effective from 1 May 2009.

<sup>115</sup> Art. 9, pars. 7 and 8, *supra*.

In its description of Sichuan legislation, this paragraph omits to mention the following provision:

*“The national family planning policy applies to the births of legal permanent residents of Sichuan province who are citizens of Hong Kong, Macao, Taiwan, returned overseas Chinese, couples in which one spouse is a citizen of Hong Kong, Macao, Taiwan or a foreign state, or a returned overseas Chinese.”*<sup>116</sup>

78. More importantly, a report about the occurrence of forced abortions in Sichuan, sent to the Department of State by the U.S. Consulate in Chengdu was ignored.<sup>117</sup>

#### **Paragraph D**

79. This paragraph addresses the question of whether Chinese parents who have children outside of China can undergo abortion or sterilization once they return to China.

80. The key to answering this question is whether a children born outside of China is counted against the number of children allowed under the family planning law. **The 2007 Report relies on the answer contained in a letter by the FPBPC.** The letter states that if a child is registered as a permanent resident of China, then it is counted. If the child is not registered, it is not counted:

*“A U.S.-born child by a resident of Mainland China shall not be considered a permanent resident of Mainland china if permanent residency is not established when the child returns to the Mainland.”* (at 61)

81. **However, in 2003 the FBPC ruled that the children a woman from Changle had in the U.S. were Chinese citizens, and counted them in disregard of Chinese legislation:**

***“According to relevant provisions in the PRC Nationality Law, any person born abroad whose parents are both Chinese nationals or one of whose parents is a Chinese national and have not settled abroad, shall have foreign nationality.”***

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<sup>116</sup> Art 17, Sichuan province rules on population and family planning work, (*Sichuansheng renkou he jihua shengyu tiaoli*), issued on 1 October 2002 and effective from the same date, as amended on 24 September 2004.

<sup>117</sup> Telegram from the Consulate of the United States in Chengdu to the United States Department of State, March 30, 2005.

*In principle it is not allowed to recognize this, and the child will be considered a Chinese citizen.*

*The children that the Zheng \*\* couple had when they were in the United States are Chinese citizens.*”<sup>118</sup>

82. Information the FPBPC gave to the to U.S. consular authorities does not reflect practices enacted by the FPBPC. It does not reflect the content of relevant legislation. Practices as the ones described above violate the content of an exchange of notes that followed the signing of the U.S. – China bilateral consular Convention of September 17, 1980. According to the exchange of notes, Chinese children born in the United States had to be regarded as U.S. citizens if they entered China on a U.S. passport.<sup>119</sup> Registration of a child born outside of mainland China is mandatory. All Chinese nationals must be registered,<sup>120</sup> and children must be entered into the household registration booklet of their parents, legal guardians or neighbors no longer than thirty days after their birth.<sup>121</sup>

83. The National Population and Family Planning Commission has issued two replies on this matter in 2007<sup>122</sup> and in 2003.<sup>123</sup> According to the 2003 Reply, Chinese citizens who travel abroad and have children in violation of the family planning policy will be dealt with according to rules and regulation of the mother’s latest place of residence. If the mother’s

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<sup>118</sup> Reply of the Fujian Province Population and Family Planning Policy to Fuzhou family planning commission’s request of instruction about Changle Construction Office’s question on the child born from Ms. \*\* in the United States (*Fujiansheng Jihua Shengyu Weiyuanhui guanyu dui Fuzhoushi Jishengwei qingshi Changleshi Jiansheju guan \*\* funü zai Meiguo shengyu yihai wentide pifu*), issued on 8 May 2003 and effective from the same date, available at [[http://www.fjjsw.gov.cn:8080/html/7/436/10716\\_20087171058.html](http://www.fjjsw.gov.cn:8080/html/7/436/10716_20087171058.html)], last accessed on 11 October 2009.

<sup>119</sup> Email message from Edward A. Betancourt to Neil E. Silver and Katherine E. Farrel, 30 March 2007.

<sup>120</sup> Art. 1, PRC Rules on household registration (*Zhonghua Renmin Gongheguo hukou dengji tiaoli*), issued on 9 January 1958 and effective from the same date.

<sup>121</sup> Art. 7, *supra*.

<sup>122</sup> This is a binding document entitled Reply of the National Population and Family Planning Commission to the Fujian Province Family Planning Commission’s request to clarify some policies about the births of Chinese overseas (*Renkou Jishengwei dui Zhejiangsheng renkou jishengwei guanyu yaoqiu mingque ruogan sheqiao shengyu zhengce qingshide fuhan*), issued on 21 November 2007 and effective from the same date. Hereinafter referred to as the 2007 Reply.

<sup>123</sup> Reply of the National Population and Family Planning Commission General Office to Dalian city population and family planning commission about the problem of demarcating Chinese students abroad and “overseas Chinese” and related questions (*Guojia Renkou he Jihua Shengyu Weiyuanhui Bangongting guanyu dui Dalianshi jishengwei guanyu chuguo liuxue renyuan, huaqiao shenfeng jieding ji xianguan wentide qingshi de pifu*), issued on 31 March 2003 and effective from the same date.

household registration was cancelled when she left China, then children are counted in the birth-planning quotas of the mother's former place of residence in China.<sup>124</sup>

84. Children born outside of China must be registered as permanent resident of China before their parents return to China. A children born above-quota must be registered too, and its parents must pay the social compensation fee.

85. The only exception is for foreign citizens.<sup>125</sup> If it is found out that the child is a foreign national, the child is not registered in its parent's household, and not counted against the number of children allowed under the family planning policy.

86. When does a child count as non-Chinese national to Chinese authorities?

According to the Nationality Law of the PRC: *“Any person born abroad whose parents are both Chinese nationals or one of whose parents is a Chinese national shall have Chinese nationality. But a person whose parents are both Chinese nationals and have both settled abroad, or one of whose parents is a Chinese national and has settled abroad, and who has acquired foreign nationality at birth shall not have Chinese nationality.”*

87. It follows that a child born abroad is considered a Chinese citizens if at least one of its parents has not “settled abroad”. “Settled abroad” is used to translate the Chinese word “*dingju*”. The State Council has issued an interpretation on how “settled abroad” (*dingju*) should be interpreted. A Chinese citizen is considered to have “settled abroad” only if:

- He/she is a legal permanent resident of a foreign country.<sup>126</sup>
- has legally lived in a foreign country for more than five consecutive years, and still lives abroad.<sup>127</sup>

LPRs enjoy a preferential policy which is denied to the rest of PRC citizens:

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<sup>124</sup> Art. 3, *supra*.

<sup>125</sup> Art. 4, *supra*.

<sup>126</sup> Art. 1, Trial explanation of the term “settle abroad” used in assessing the status of overseas Chinese (*Guanyu dui huaqiao dingyizhong “dingju” de jieshi shixing*), issued on 8 November 2005 and effective from the same date.

<sup>127</sup> Art. 2, *supra*.

- LPRs who have two children are not allowed to have any more children once they return to China. Legal permanent residents who are pregnant when they cross the Chinese border are *allowed to complete their pregnancy*.
- LPRs who have one child abroad can apply for permission to have a second child six years after they have returned to China.
- LPRs who have two or more children are allowed one more child only if they do not bring their children back with them.<sup>128</sup>

88. Legal permanent residents are not considered to have “settled abroad” (*dingju*) if after obtaining the status of LPR they do not live abroad. In this case they are considered residents of China, and more favorable conditions do not apply to them.<sup>129</sup>

Apart from illegal migrants, the following are not considered to have “settled abroad” (*dingju*), and do not enjoy any preferential policy:

- Those who have obtained a residence permit for a period of more than three years, but are not legal permanent residents of a foreign country.<sup>130</sup>
- “Chinese overseas students” (*liuxue renyuan*), either self-funded or state-sponsored, during their period of studies.<sup>131</sup>
- Those who travel abroad on official business, included those who perform menial jobs, during their entire period of employment.<sup>132</sup>

89. The children of a Chinese resident who is married to a Chinese citizen who has settled abroad are counted against the number of children allowed under family planning.<sup>133</sup> In

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<sup>128</sup> Art. 3, par. 1 Reply of the State Population and Family Planning Commission’s Legal Department about a petition letter regarding the policies towards Chinese abroad (*Guojia jishengwei zhengce faguisi guanyu chuguo renyuan shengyu zhengce wentide xingfang dafu*), issued on 27 January 2003 and effective from the same date. A possibility would be giving up one’s children for adoption to friends or relatives. But adopted children are counted as the adopter’s own children

<sup>129</sup> Art. 1, Reply of the State Population and Family Planning Commission to Fujian Province Population and Family Planning Commission request for instructions about clarifying some policies which apply to births by overseas Chinese (*Renkou jishengwei dui Zhejiangsheng Renkou Jishengwei guanyu yaoqiu mingque ruogan sheqiao shengyu zhengce qingshide fuhan*) issued on 21 November 2007 and effective from the same date.

<sup>130</sup> Art. 3, par. 2, Reply of the State Population and Family Planning Commission’s Legal Department about a petition letter regarding the policies towards Chinese abroad (*Guojia jishengwei zhengce faguisi guanyu chuguo renyuan shengyu zhengce wentide xingfang dafu*), issued on 27 January 2003 and effective from the same date.

<sup>131</sup> Art. 3, par. 1, *supra*.

<sup>132</sup> Art. 3, par. 2, *supra*.

<sup>133</sup> Art. 3, *supra*.

2001, the Ministry of Public Security introduced a simplified procedure to register children born abroad, once the parents return to China.

90. Besides the letter from the FPBPC, another piece of evidence used to disprove that forced abortions take place consists of a tertiary source. This source are unnamed U.S. Embassy officials who in 2005 heard from Chinese officials of an unpublished 2002 national-level Regulation on Issues Concerning Births by Students when Overseas.

91. This Regulation was been posted on the website of the FPBPC in April 2002.<sup>134</sup> The 2007 Report states that FPBPC officials told U.S. Embassy officials what this regulation was about, but then quotes directly the Regulation omitting some important words: “*Where Chinese returning to China have other offspring living permanently overseas*”, should have been “*Where Chinese overseas students returning to China*”.<sup>135</sup>

92. The scope of application of this regulation is limited to overseas students narrowly defined, and it does not include other Chinese citizens that emigrate. By omitting the words “overseas students” the 2007 Report misrepresents the substantive content of the 2002 Regulation.

93. The 2002 Regulation is very similar to a Regulation on Issues Concerning Births by Students when Overseas issued in 1989 by the State Family Planning Commission and by the State Education Commission.<sup>136</sup> The Regulation was published in 2000 on the website of the Fujian province Population and Family Planning Commission. The 1989 Regulation makes it clear that adoption of a more favorable policy towards students is a move needed to protect the government’s international reputation.<sup>137</sup> It is to be noticed how the Regulation does not exempt self-funded students from sterilization.

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<sup>134</sup> It is available at [[http://www.fjjsw.gov.cn:8080/html/7/420/10632\\_200878727.html](http://www.fjjsw.gov.cn:8080/html/7/420/10632_200878727.html)], link last accessed on 11 October 2009.

<sup>135</sup> Art. 3, State Family Planning Commission Circular issuing the Regulations about the problem of births by overseas students (*Guojia Jishengwei guanyu yinfa chuguo liuxue renyuán shengyu wentide guidingde tongzhi*), issued on 24 April 2002 and effective from the same date.

<sup>136</sup> *Supra*, footnote 36.

<sup>137</sup> *Supra*.

## Part IV Observations on Section V of the 2007 Report

### Paragraph A

94. This paragraph contains information on the treatment of Chinese returnees, yet it fails to state the important points outlined below. According to the PRC Criminal Law, illegal emigration constitutes an offence punishable with a maximum penalty of one year imprisonment:

*“Whoever violates the laws and regulations controlling secret crossing of the national boundary (border), and when the circumstances are serious, shall be sentenced to not more than one year of fixed-term imprisonment and criminal detention or control.”*<sup>138</sup>

Deprivation of freedom can take place either as a result of violating the Criminal Law, or article 14 of the Law of the People's Republic of China on the Exit and Entry of Citizens.<sup>139</sup>

A wide range of sources consulted by the Immigration and Refugee Board of Canada all agree that deportees and returnees are placed in administrative detention.<sup>140</sup> The UK Home Office has proved how a detention centre for deportees and returnees exists in Fuzhou.<sup>141</sup>

95. This paragraph states that “U.S. officials in China have not confirmed any cases of abuse of persons returned to China from the United States for illegal entry” (at 31), but it does not specify how many returnees and deportees U.S. Embassy officials have been in touch with, to which province they were deported, and when. If U.S. Embassy officials talked to twenty returnees, it is possible that none of them suffered abuses. At the same time, it is possible that each one of the hundreds of returnees U.S. Embassy officials never talked to was subjected to arbitrary detention, or other abuses.

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<sup>138</sup> Art. 322, Criminal Law of the People's Republic of China (*Zhonghua Renmin Gongheguo Xingfa*), issued on 1 March 1997, and effective from 1 October 1997.

<sup>139</sup> (*Zhonghua Renmin Gongheguo churujing guanlifa*), issued on 22 November 1985 and effective from 1 February 1986.

<sup>140</sup> Immigration and Refugee Board of Canada, “Extended Response to Information Request China: Treatment of illegal emigrants repatriated to Fujian province; legal provisions for sanctions; actual practice”, 22 September 1999, CHN32869.EX, available at [[http://www2.irb-cisr.gc.ca/en/research/ndp/ref/index\\_e.htm?docid=2&cid=0](http://www2.irb-cisr.gc.ca/en/research/ndp/ref/index_e.htm?docid=2&cid=0)], last accessed on 24 September 2009.

<sup>141</sup> UK Border Agency, Country of Origin Information Service, *Country of Origin Information Report. China*, 6 April 2009, at 152-153.

96. This paragraph is moreover a verbatim copy of paragraph 165 of the 2004 Report: *“The Chinese Government accepts the repatriation of citizens who have entered other countries or territories illegally. In the past several years, hundreds of Chinese illegal immigrants have been returned from the United States, and U.S. Embassy officials have been in contact with scores of them. In most cases, returnees are detained long enough for relatives to arrange their travel home. Fines are rare. U.S. Officials in China have not confirmed any cases of abuse of persons returned to China from the United States for illegal entry. Persons identified as organizers or enforcers or illegal migrant trafficking are liable to face criminal prosecution in China.”* (at 48)
97. Admittedly, information provided by returnees dates to the “past several years”. (at 31) It is very likely that these “past several” years in fact comprise the years between 1999 and 2004. The 1998 Profile contained no mention of talks between U.S. Embassy Officials and returnees: *“The Chinese Government accepts the repatriation of citizens who have entered other countries or territories illegally. For decades the Government has accepted the return of Chinese illegal immigrants found in Hong Kong, and in recent years it has accepted returnees from the United States and Central America. Returnees are generally fined anywhere between \$600 to \$6,000. Many are also subjected to lengthy administrative detention or reeducation through labor camps. Those who are identified as organizers or enforcers of illegal migrant trafficking are liable to face criminal prosecution.”*
98. The sample of returnees to which U.S. officials talked is hence limited in number and not representative of their treatment. Information contained in the 2007 Profile has been copied from the 2004 one. So, it dates back to at least 2003-2004, and it does not take into account changed circumstances, as for instance a generalized tightening of security prior to the 2008 Olympic Games.
99. This paragraph ignores the launch of periodic crack-downs on illegal migrants, as this one: *“In 2000, as part of the ‘Strike hard’ campaign against illegal emigration, the Fujian provincial government decreed that illegal emigrants who are caught in or outside China and sent back would receive jail terms of two to five years and be fined RMB 5,000.”*<sup>142</sup>

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<sup>142</sup> James K. Chin, “Gold from the Lands Afar: New Fujianese Emigration Revisited” *Globalizing Chinese Migration: Trends in Europe and Asia*, Pal Nyiri and Igor Saveliev (eds.), Adershot: Ashgate, at 243.

100. Finally, while the 2007 Report admits that the enforcement of laws and policies is subjected to tremendous regional variations, it offers no clue about if these variations regard also the arbitrary detention of returnees, and how.

### Paragraph B

101. This paragraph provides information on fabricated and fraudulent documentation. It contains the arguments that Chinese documents are subject to “widespread fabrication and fraud” (p. 31), and that these practices affect particularly documentation from Fujian province.

102. There is no question that every kind of fake document can be easily obtained in China, that documents can be obtained illegally or altered. Reports about forgery in China in general<sup>143</sup> and in Fujian and Guangdong provinces in particular are plentiful.<sup>144</sup> Forgery regards most identity cards, passports and household registration certificates. Information on how to assess the genuineness of documents as identity cards and passports is easy to find too.<sup>145</sup> Forging documents produced by administrative organs, as directives, letters and so

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<sup>143</sup> Immigration and Refugee Board of Canada, “China: Reports of corrupt officials issuing fraudulent Resident Identity Cards to unsuspecting rural residents and selling the authentic ones to “snakeheads” on the black market (2004 - 2007)”, 14 June 2007, CHN102486.E available at [[http://www2.irb-cisr.gc.ca/en/research/rir/index\\_e.htm?action=record.viewrec&gotorec=451315](http://www2.irb-cisr.gc.ca/en/research/rir/index_e.htm?action=record.viewrec&gotorec=451315)], last accessed on 23 September 2009. “China: The manufacture, procurement, distribution and use of fraudulent documents, including passports, hukou, resident identity cards and summonses; the situation in Guangdong and Fujian particularly (2001-2005)”, 8 September 2005, CHN100510.E available at [[http://www2.irb-cisr.gc.ca/en/research/rir/index\\_e.htm?action=record.viewrec&gotorec=449523](http://www2.irb-cisr.gc.ca/en/research/rir/index_e.htm?action=record.viewrec&gotorec=449523)], last accessed on 23 September 2009.

<sup>144</sup> Tania Branigan, “Babies in China seized then sold for overseas adoption”, *The Guardian*, 3 July 2009, available at [<http://www.guardian.co.uk/world/2009/jul/03/china-babies-adopt-family-planning>], last accessed on 23 September 2009, detailing how babies whose parents could not pay the fine for excess births were seized by family planning officers, who forged documents stating that the babies were orphans. On the same topic see also Austrian Centre for Country of Origin and Asylum Research and Documentation “China: 10<sup>th</sup> European Country of Origin Information Seminar, Budapest, 1 – 2 December 2005: Final Report on China ”, 17 March 2006, p. 25, available at [[http://www.ecoi.net/file\\_upload/bp269\\_COI-SE-Budapest200512-China-Report-Final.pdf](http://www.ecoi.net/file_upload/bp269_COI-SE-Budapest200512-China-Report-Final.pdf)], last accessed on 23 September 2009.

<sup>145</sup> See indications contained in Immigration and Refugee Board of Canada, “China: The format, appearance and manufacture of Chinese resident identity cards; procedure for replacing a lost or stolen identity card; the new law on citizen's identification cards (this Response replaces CHN28290.E of 8 January 1998), 20 April 2004, CHN42321.E, available at [[http://www2.irb-cisr.gc.ca/en/research/rir/index\\_e.htm?action=record.viewrec&gotorec=416323](http://www2.irb-cisr.gc.ca/en/research/rir/index_e.htm?action=record.viewrec&gotorec=416323)], last accessed on 23 September 2009. Other information which may be useful in examining Chinese identity card is provided by the following Responses to Information Requests, “China: National Resident Identity Cards; background information; description; issuance procedures”, 24 February 2005, CHN43360.E, available at [[http://www2.irb-cisr.gc.ca/en/research/rir/index\\_e.htm?action=record.viewrec&gotorec=416246](http://www2.irb-cisr.gc.ca/en/research/rir/index_e.htm?action=record.viewrec&gotorec=416246)], last accessed on 23 September 2009; “China: Update to CHN33958.E of 24 February 2000 on the number of digits or letters in the number on a Chinese identity card; the significance of these digits; whether an identification number remains consistent throughout the cardholder's lifetime”, 12 July 2004, CHN42691.E, available at [[http://www2.irb-cisr.gc.ca/en/research/rir/index\\_e.htm?action=record.viewrec&gotorec=416308](http://www2.irb-cisr.gc.ca/en/research/rir/index_e.htm?action=record.viewrec&gotorec=416308)], last accessed on 23 September 2009. Information on passports issued in Fujian province is provided by China: Whether passports are issued in Fujian with the photograph of the passport holder printed directly onto the identification page of the passport; if so, when these

on would on the other hand be more difficult. Redaction of these documents follows rigid style and format guidelines. Watermark or letter head paper is used. There are no known instances of the forgery of such documents.<sup>146</sup>

103. The 2007 Report suggests that forgery is more common in Fujian than elsewhere. The message between the lines is that while documents originating from any Chinese province may be fake, documents produced by Fujian applicants are surely forged. This conclusion is based on a statement by one unnamed PRC official, and on the verification of 68 documents by the U.S. Consulate General in Guangzhou over a period of roughly twelve months.

104. The statement by the PRC official about the unreliability of documents is based on his direct experience. It reflects practices followed by the official, and presumably other notaries he knows, in an unnamed part of the Province. It actually refers to a very low percentage of all notarizations that take place in Fujian Province. It does not prove that all refugees from Changle hold forged documents. The validity of this statement cannot be generalized to all of the 1,107 townships of Fujian, and it does not extend to the nearly half million documents notarized in Fujian every year.<sup>147</sup>

105. Compared to such a massive figure, the fact that the Guangzhou consulate found 38 fraudulent documents proves that forgery and fraud might occur. But:

106. It does not prove that forgery takes place in Fujian, because the Profile does not mention from where the 38 fraudulent documents originated.

107. It does not prove that all Fujian residents forge their documents. Even assuming that all of the 38 documents were produced by applicants from Fujian, a “sample” of 38 documents would not allow to draw any statistical inference as to the extent to which forgery takes place in Fujian. No sampling methodology was employed in obtaining the

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passports were first issued”, 12 July 2004, CHN42638.E, available at [[http://www2.irb-cjsr.gc.ca/en/research/rir/index\\_e.htm?action=record.viewrec&gotorec=416307](http://www2.irb-cjsr.gc.ca/en/research/rir/index_e.htm?action=record.viewrec&gotorec=416307)], last accessed on 23 September 2009.

<sup>146</sup> See below, at par. 109.

<sup>147</sup> The exact figure is of 460,609, and refers to 2007. Fujian Office of Justice (Fujiansheng Sifating), “Statistical table of notarizations from 1 – 12 2007” (*2007nian 1-12 yuan quansheng gongzheng yewu qingkuang tongjibiao*), available at [[http://www.fjsf.gov.cn/gip/interfacepublic/archive\\_content\\_look.jsf?id=13184&menuId=145](http://www.fjsf.gov.cn/gip/interfacepublic/archive_content_look.jsf?id=13184&menuId=145)], last accessed on 23 September 2009.

documents. The documents are therefore not representative of the entire population of documents issued in Fujian – which reaches the figure of 460.000.

108. It does not prove that forgery takes place in Fujian more or more often than in other provinces, because no comparison was performed with the situation of forgery in other provinces.

109. Credible information about forgery in Fujian and Guangdong province is still unavailable: after consulting a total of 36 sources, in 2009 the Immigration and Refugee Board of Canada concluded that, while fraud does indeed take place in China, “*Information on the manufacture, procurement, distribution and use of fraudulent passports, hukou, resident identity cards and summonses in Guangdong and Fujian, in particular, could not be found*”,<sup>148</sup> even though information about forged degree certificates was available.

### Paragraph C

110. Paragraph C contains information about household registration documents.

111. “The household registration document is key to an individual and his family’s well-being (...) such as food assistance”. (p. 32) This piece of information is outdated. Food rationing ended in 1993.<sup>149</sup>

112. “The U.S. Consulate general in Guangzhou reports that although the household registry is an important source of otherwise undocumented information (*i.e., ethnic status and rural/urban designation*), fraud precludes consular officers from relying on the registration as a primary source of documentation in adjudicating visa cases” (p. 32). This information is mistaken. Information as ethnic status and rural or urban designation is in fact provided by the identity card too. According to article 3 of the Law of the People’s Republic of China on Resident Identity Card:

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<sup>148</sup> Immigration and Refugee Board of Canada, “China: The manufacture, procurement, distribution and use of fraudulent documents, including passports, *hukou*, resident identity cards and summonses in Guangdong and Fujian in particular (2005 - May 2009), 24 June 2009, CHN103134.E, available online at [[http://www2.irb-cisr.gc.ca/en/research/rir/index\\_e.htm?action=record.viewrec&gotorec=452430](http://www2.irb-cisr.gc.ca/en/research/rir/index_e.htm?action=record.viewrec&gotorec=452430)]. Last accessed on 23 September 2009.

<sup>149</sup> Fred Gale and Kuo Huang, “Demand for Food Quantità and Qualità in China”, United States Department of Agriculture, Economic Research Report number 32, 2007. Available online at [<http://www.ers.usda.gov/Publications/ERR32/>]. Last accessed on 23 September 2009.

*“The name, sex, nationality (minzu), date of birth, permanent domicile (changzhu hukou), number the identity card, photograph of the citizen himself (herself), the card’s valid term and the issuing organ shall be registered on the identity card of that citizen.”*<sup>150</sup>

113. “The authorities try to use the identification card system to control migration in the direction of a more market-oriented economy. The need for a supplemental work force in the areas of fastest economic growth has led to tolerance of a large itinerant population that does not comply with formal requirements to obtain permission to change residences” (p. 32. These sentences in fact refer to the household registration booklet (*hukou*), not to the identity card. Identity cards exist not to control population movements, but in order to: *“certify the identity of the citizens who reside within the People’s Republic of China, to guarantee their legal rights and interests, facilitate their carrying-out of social activities and to safeguard the social order”*.<sup>151</sup>

#### **Paragraph D**

114. Paragraph D is problematic in two different ways. Firstly, it is outdated, and fails to mention such crucial changes as the entry into force of the Passport Law, and the ensuing simplification of procedures to obtain a passport. Secondly, it fails to mention how in some cases the PRC government refuses to issue travel documents to Chinese citizens detained on immigration violation, or else invalidates or refuses to renew their passports while they are abroad. Both of these are well-known facts among scholars and practitioners of Chinese law.<sup>152</sup>

#### **Paragraph E**

115. Paragraph E claims that a disproportionate number of asylum seekers come from Fujian province.

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<sup>150</sup> Law of the People’s Republic of China on Resident Identity Card (*Zhonghua Renmin Gongheguo Jumin Shenfenzhengfa*), issued on 28 June 2003 and effective from 1 October 2004.

<sup>151</sup> Article 1, *supra*.

<sup>152</sup> Donald Clarke, “Yang Jianli and China’s Passport Law”, *Chinese Law Prof Blog*, entry dated 28 August 2007, available at [[http://lawprofessors.typepad.com/china\\_law\\_prof\\_blog/2007/08/yang-jianli-and.htm](http://lawprofessors.typepad.com/china_law_prof_blog/2007/08/yang-jianli-and.htm)], last accessed on 11 October 2009.

116. There is no question that Fujian province is one of the provinces from which migration flows originate.<sup>153</sup> However, publicly available evidence does not support the claim that the number of asylum application originating from Fujian is “disproportionate”.
117. In 2008, the United States received 5.459 asylum applications from China. While this figure<sup>154</sup> and other information about migration flows<sup>155</sup> are publicly available, detailed statistics about the internal origin of Chinese asylum applicants are not. In the absence of this piece of information, how is it possible to state that the number of asylum application from Fujian is “disproportionate”?
118. Also, in the absence of any survey about how asylum applicants perceive life in the United States, how is it possible to state that their expectation about the social and economic environment in America are not realistic?
119. Unverifiable claims apart, this section contains one significant omission about the geographical origins of migration flows, and factual mistakes about the population, unregistered residents and administrative divisions of Fuzhou city, Changle city and Lianjiang county.
120. Besides Fujian, migration flows originate also from the following provinces: Zhejiang, Liaoning, Jilin and Heilongjiang. In Fujian, substantial migration flows originate not just from Fuzhou, Changle, and Lianjiang, but also from Fuqing city and Minhou county.

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<sup>153</sup> Frank N. Pieke, Pal, Nyiri, Mette Thunoe, Antonella Ceccagno, *Transnational Chinese: Fujianese migrants in Europe*. Stanford: Stanford University Press, 2004. Flemming Christiansen, *Chinatown, Europe. An exploration of overseas Chinese identity in the 1990s*. London: Routledge, 2003. Frank N. Pieke and Hein Mallee eds. *Internal and International Migration. Chinese Perspectives*. London: Curzon, 1999. Zai Liang, “Rules of the Game and Game of the Rules: The Politics of Recent Chinese Immigration to New York City,” in Migration, transnationalization, and race in a changing New York, Héctor R. Cordero-Guzman, Robert C. Smith, Ramon Grosfoguel eds. Philadelphia: Temple University Press, 2001, at 131 – 145.

<sup>154</sup> Daniel C. Martin and Michale Hoefler, *Annual Flow Report 2009. Refugees and Asylees: 2008*. Homeland Security, Office of Immigration Statistics, Policy Directorate, 2009. Available at [[http://www.dhs.gov/xlibrary/assets/statistics/publications/ois\\_rfa\\_fr\\_2008.pdf](http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_rfa_fr_2008.pdf)]. Last accessed on 25 September 2009.

<sup>155</sup> As statistics on arrivals by region and country of nationality, by relationship to principal applicant, gender, age, marital status etc. See *Yearbook of Immigration Statistics: 2008*, available online at [<http://www.dhs.gov/files/statistics/publications/YrBk08RA.shtm>], last accessed on 30 September 2009.

<sup>156</sup> James K. Chin, “Patterns, Trends and Government Policies: Understanding Irregular Migration from China” in *Understanding irregular migrations from China*, Ernest Aryeetey and Natalia Dinello eds. Cheltenham, Edward Elgar Publishing, 2007, at 186-209.

121. The Report states that Fuzhou, the capital of Fujian province, had “1.5 million registered inhabitants and an estimated “floating” population of 250,000” (p. 33). This information, which source the Profile does not reference to, can be found on page 33 of The Encyclopedia of the Chinese overseas:

*“Like other cities in southern and coastal China today, Fuzhou, with 1.5 million registered inhabitants and a ‘floating population’ of about 250,000.”*<sup>157</sup>

The Encyclopedia was published eleven years ago, in 1998, and some of the information it contains is outdated. According to the Fuzhou government, in 2007 Fuzhou had 6.170.000 permanent residents.<sup>158</sup> According to the 2000 Fifth National Census, unregistered residents – better known as the ‘floating population’ were 1,432,944 people.<sup>159</sup>

122. According to the Fifth National Census the official figure for permanent residents of Changle reached 689,815.<sup>160</sup> Besides, the administrative divisions of Changle city are not, as the Report mentions, “towns”, but “townships”. The two are different administrative divisions, yet the Report’s authors ignore this basic distinction. Townships (*xiang*) are the basic political divisions of China, and they are normally smaller than a town (*zhen*)

“Of the 19 towns in Lianjiang County...”

The administrative jurisdiction of Lianjiang County comprises 22 townships,<sup>161</sup> not 19.

### Paragraph F

123. No comments

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<sup>157</sup> Pan Lynn (ed.), *The Encyclopedia of the Chinese Overseas*. Singapore: The Chinese Heritage Centre, 1998.

<sup>158</sup> Fuzhou People’s Government, “Administrative division and population” (*Xingzheng quhua yu renkou*) available at [<http://www.fuzhou.gov.cn/html/20070614/639830.html>], last accessed on 11 October 2009.

<sup>159</sup> Wei Xiaoli and Zhu Yu, “The special distribution of the floating population in Fuzhou, and its formation” (*Fuzhoushi liudong renkou kongjian fenbu ji xingcheng jizhi*), *Fujian Shifan Daxue Xuebao* (Journal of Fujian Normal University), no. 6, 2007, at 155.

<sup>160</sup> Fujian Provincial Bureau of Statistics “Household and population figures, gender ration in Fujian province” (*Fujiansheng fendiqu hushu, renkoushu he xingbiebi*), available at [<http://www.stats-fj.gov.cn/pczl/rkpc/rkpcsj/0200312170018.htm>], last accessed on 11 October 2009.

<sup>161</sup> People’s Government of Lianjiang County, Fujian Province, “An overview of Lianjiang County” (*Lianjiang xianqing jianjie*), available online at [[http://www.fjlj.gov.cn/lianjiang/zjlj\\_gk\\_zt.asp](http://www.fjlj.gov.cn/lianjiang/zjlj_gk_zt.asp)], last accessed on 23 September 2009.

## Paragraph G

124. This paragraph on internal flight alternatives tries to prove that rural residents and the itinerant population suffer no discrimination based on their geographical origins, holding that:

*“in Shanghai and elsewhere in East China, distinctions with regard to access to social services between local legal residents and economic migrants from other areas are eliminated”* (at 35)

125. As it is explained here, this picture is contradicted by the PRC media, United States government agencies, United Nations bodies, recent scholarship and NGOs.

126. In February 2009 the China Daily, a state-controlled newspaper catering to a foreign audience, instead reported that in even in major urban centres as Shanghai discrimination is still widespread. Reform of the household registration system has been designed to keep out unskilled workers from urban centres:

127. *“The Shanghai rules are designed mostly to attract talented professionals. Applicants must meet a minimum of five requirements - holding a local residency permit for seven years, participating in the city's social security program for seven years, paying taxes, having a mid-level professional title, and violating neither the family planning nor other laws.*

*Since the residency permit system in Shanghai started only in June 2002, few people meet the above five requirements. Many have questioned such stringent rules as a mission impossible for those who now work and live in the city”*.<sup>162</sup>

The issuing of new rules<sup>163</sup> on household registration has not had any substantial impact on reducing discrimination. As the China Daily goes on to comment:

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<sup>162</sup> “Hukou reform significant”, *The China Daily*, 25 February 2009, available online at

[[http://www.chinadaily.com.cn/china/2009npc/2009-02/25/content\\_7516170.htm](http://www.chinadaily.com.cn/china/2009npc/2009-02/25/content_7516170.htm)], last accessed on 28 September 2009.

<sup>163</sup> Shanghai Municipality Experimental Measures on Holders of Temporary Resident Certificates Requesting Permanent Household Registration in Shanghai (*Shanghaishi chiyou “Shanghaishi juzhuzheng” renyuan shenban shi changzhu hukou shixing banfa*), issued on 12 February 2009 and effective from the same date. Available at

*“But the new rules are not without flaws. It has excluded many people who have lived in the city for many years, working low-level jobs, such as nannies, waitresses and construction workers. They also pay taxes, abide by laws and want to make Shanghai their permanent home. But their chance of getting a local hukou seems to be slim (...). The existing hukou system, which impedes free human movement and discriminates people as rural and urban, is not based on a fair and just model.”*

128. These considerations are echoed from the Congressional Executive Commission on China’s **2008** annual report:

*“recent reforms only allow migrants to change hukou if they meet criteria that generally favor senior Communist Party officials, as well as the wealthy and educated. Those without a stable job, a stable place of residence, or family connections to urban hukou holders still face obstacles to obtaining city hukou.”*<sup>164</sup>

and also by recent scholarship on the household registration system,<sup>165</sup> according to which immigration quotas, particularly in cities as Beijing, are fulfilled by party officials and their cohorts.<sup>166</sup>

129. The 2007 Reports’s claim that “some cities, such as Beijing, are beginning to provide free social services for such persons” (p. 35) is contradicted by the following case:

*“In January 2008, a high school girl in Beijing attempted suicide after learning that she was unable to register for the college entrance examination without a Beijing hukou, prompting public outcry over the slow pace of hukou reform.”*<sup>167</sup>

130. These allegedly “eased residency restrictions” witnessed some reversals in occasion of the 2008 Olympics.<sup>168</sup> In August 2009, the Committee on the Elimination of Racial

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[<http://www.shanghai.gov.cn/shanghai/node2314/node2319/node12344/userobject26ai17537.html>], last accessed on 28 September 2009.

<sup>164</sup> Congressional-Executive Commission on China. *2008 Annual Report*, available at [[http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110\\_cong\\_house\\_committee\\_prints&docid=f:44748.wais](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_house_committee_prints&docid=f:44748.wais)], last accessed on 10 October 2009, at 103.

<sup>165</sup> Wang Feiling, *Organizing Through Division and Exclusion. China’s Hukou System*. Stanford: Stanford University Press, 2005. see in particular the discussion in Chapter 4.

<sup>166</sup> *Supra*, at 92.

<sup>167</sup> *Supra*, footnote 38, at par. 104.

Discrimination observed that in spite of reforms, *de facto* discrimination against internal migrants persists.<sup>169</sup> According to a report submitted in June 2009 by the NGO Human Rights in China to the Committee on the Elimination of Racial Discrimination, recent reforms of the household registration system have not ended discrimination in the areas of education, employment, healthcare, housing and political participation.<sup>170</sup>

Internal flight alternatives may be made more difficult because the Ministry of Public Security, the administration in charge of managing household registration system, established an electronic database to manage citizens' files:

*“To manage the massive files of the hukou system, the MPS started to establish an electronic hukou database in 1996 and got special funding for national computerization of the hukou system in 1992. By 2002, almost all police stations had computerized their hukou management. Some 1,180 cities and counties joined regional computer networks for file-sharing of the hukou records of a total of 1.07 billion people (about 83 percent of the total population)”*<sup>171</sup>

#### Paragraph H

131. No comments

#### Paragraph I

132. No comments

#### Paragraph J

133. Noticeable mistakes and **inaccuracies** involve the following points.

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<sup>168</sup> *Supra*, footnote 38.

<sup>169</sup> CERD/C/CHN/CO/10-13, 28 August 2009, parts. 14, 15 at pp. 4-5, available online at [[http://www.bayefsky.com/pdf/china\\_t4\\_cerd\\_75\\_adv.pdf](http://www.bayefsky.com/pdf/china_t4_cerd_75_adv.pdf)], last accessed on 29 September 2009.

<sup>170</sup> Human Rights in China, “Implementation of the Convention on the Elimination of all Forms of Racial Discrimination in the People’s Republic of China. A Parallel NGO Report by Human Rights in China”, June 2009, par. 38, at 18, available at [[http://www.hrichina.org/public/PDFs/Reports/2009-CERD\\_Report.pdf](http://www.hrichina.org/public/PDFs/Reports/2009-CERD_Report.pdf)], last accessed on 29 September 2009.

<sup>171</sup> Wang Feeling, “Brewing Tensions while Maintaining Stabilities: The Dual Role of the Hukou System in Contemporary China”, in *Discontented miracle: growth, conflict, and institutional adaptations in China*, Dali Yang ed., London and Hackensack: World Scientific, 2007, at 55-56.

134. Loss of party membership. Loss of party membership is a party discipline punishment which applies only to party members. It is not a mandated result of a prison sentence, but it takes places before a party member can be prosecuted.

135. Supplementary punishments as deprivation of political rights<sup>172</sup> are mistakenly defined as “categories” (at 36). So is probation. The PRC criminal law does not contain any punishment named “activities restricted” (at 36), even though the activities of those who are placed on probation undergo a definite restriction.

136. The rest of claims referring to former prisoners are, as it is usual in the 2007 Report, unsubstantiated.

137. Class labels, as the label of bad element, where removed in 1982.

#### **Paragraph K**

138. No comments

#### **Paragraph L**

139. No comments.

#### **Paragraph M**

140. Four lines of information about the military are provided in this paragraph. Information about the following points has been omitted:

1. Basic facts about the size and structure of the People’s Liberation Army
2. The treatment of deserters

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<sup>172</sup> Art 34, Section VII, Criminal Law of the People’s Republic of China (*Zhonghua Renmin Gongheguo Xingfa*), issued on 1 March 1997, and effective from 1 October 1997.

3. Information about if and how it is possible to postpone military service or to obtain an exemption therefrom
4. Information about conscientious objection

### **Paragraph N**

141. This paragraph purports that connections to Taiwan would not normally be a problem today. However, dissident Yang Jianli has been tried on allegations of providing intelligence for Taiwan. Yang, who earned his PhD at Harvard, had connections to a Taiwan academic foundation. Scholarly exchanges with Taiwan were however used as a pretext to imprison him.<sup>173</sup>

### **Paragraph O**

142. Information on the political situation in Hong Kong omits the notorious issue of article 23 of the Hong Kong Basic Law:  
*“The Hong Kong Special Administrative Region shall prohibit by law any act designed to undermine national unity or subvert the Central People’s Government”*. This article provided the Constitutional basis to propose an anti-subversion law.<sup>174</sup> After repeated protests and pressure from the international community, the proposed bill was withdrawn.

### **Paragraph P**

143. The Basic Law of Macao contains provisions modelled after those of article 23 of the Hong Kong Basic Law.<sup>175</sup> In March 2009, a National Security Law modelled after the strict provisions of mainland Chinese legislation came into effect,<sup>176</sup> thereby reducing the extent to political freedoms enjoyed by Macao residents. These important facts have been omitted.

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<sup>173</sup> “Taiwan Spy Sentenced to 5-year Imprisonment”, *Xinhua*, 13 May 2004, available at [<http://www.china.org.cn/english/2004/May/95434.htm>], last accessed on 11 October 2009.

<sup>174</sup> National Security (Legislative Provisions) Ordinance, available at [<http://www.basiclaw23.gov.hk/english/download/CSA-markup-e3.pdf>], last accessed on 11 October 2009.

<sup>175</sup> Art. 23, Basic Law of the Macao Special Administrative Region of the People’s Republic of China, adopted on 31 March 1993, effective from 20 December 1999, available at [[http://bo.io.gov.mo/bo/i/1999/leibasica/index\\_uk.asp#c1](http://bo.io.gov.mo/bo/i/1999/leibasica/index_uk.asp#c1)], last accessed on 11 October 2009.

<sup>176</sup> “National Security Law promulgated in Macao”, 2 March 2009, available at [[http://en.ce.cn/National/Politics/200903/02/t20090302\\_18366998.shtml](http://en.ce.cn/National/Politics/200903/02/t20090302_18366998.shtml)], last accessed on 11 October 2009.