

China Profile of Asylum Claims and Country Conditions
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I. Introduction

[1] This profile addresses the issues most frequently raised by Chinese asylum applicants.^a Given the diversity of political, ethnic, religions, social, and economic conditions in China, a vast country of 1.3 billion people, and the uneven local enforcement of national polices, it cannot cover every conceivable circumstance asylum applicants may raise.^b However, where possible, it contains detailed information regarding the regions and issues most frequently at the root of asylum requests, notably information regarding Fujian Province, birth planning, and religious practices.^c It includes information from the most recent Department of State annual Country Reports on Human Rights Practices, International Religious Freedom Report, and Trafficking in Persons Report, and other publicly available information deemed credible.^d

[2] Country profiles are produced by the Office of Multinational and Global Affairs in the Department of State's Bureau of Democracy, Human Rights and Labor.^a They are produced for use by the Department of Homeland Security, the Executive Office of Immigration Review, and asylum officers and immigration judges.^b By regulation, the Department of State may provide asylum officers and immigration judges information on country conditions that may be relevant to the adjudication of asylum claims.^c Profiles are written by Department of State officers with country-specific expertise and experience, and are reviewed by overseas posts and within the Department.^d

II. Overview

[3] The People's Republic of China (*PRC*) is an authoritarian state in which the Chinese Communist Party (*CCP*) is the paramount source of power.^a Party members hold almost all top government, police, and military positions throughout China.^b The party's authority rests on its ability through the government to maintain social stability;^c appeal to nationalism and patriotism; control key personnel, media, and security institutions;^d and continue to improve the living standards of most of China's citizens.^e Chinese citizens are not free to publicly advocate changing national leaders, key policies, or the form of government.^f Party-controlled propaganda and security organs work with a high degree of success to isolate and control any opposition to party rule and its key policies in print, broadcast, and other media, including electronic postings.^g Public protests by those seeking to

redress grievances – most of a local economic nature – remain common, but many are suppressed violently by security forces.^h The party exercises strict political control of courts and judges, and often resorts to closed trials and administrative detention.ⁱ Individuals and groups, especially those considered politically sensitive by the party and government, continue to face tight restrictions on their freedom to assemble and their freedom to practice religion and spiritual practices.^j Though the government claims to have stopped using forced abortion and sterilizations, which are now contrary to birth planning regulations, forced abortions and sterilizations continue to occur due to uneven implementation at the local level and ongoing pressure to keep birthrates low.^k The government fails to adequately protect North Korean asylum-seekers, and the forced repatriation of North Koreans continues to be a grave problem.^l

III. Claims Based on Protected Grounds

A. Race

[4] Few asylum applicants claim persecution based on race.^a Most such claims are filed by ethnic Tibetans and ethnic Koreans, whose situations are addressed in Section III. C. Nationality.^b

B. Religion

[5] A large number of Chinese asylum applicants claim past or fear of future persecution for their religious beliefs or spiritual practices, usually Christian or Falun Gong, but sometimes Tibetan Buddhist or Muslim.^a With all sources – official and unofficial – agreeing that the number of religious and spiritual practitioners continues to grow, at least 100 million, and perhaps more than 300 million Chinese practice some religious or spiritual activity.^b

[6] Unregistered or unsanctioned religions and spiritual groups – including Protestant groups, the ‘underground’ Catholic Church, and Falun Gong – experience differing degrees [of] official interference and harassment with the degree of restrictions varying significantly from region to region.^a In many localities, unregistered groups and their leaders report pressure to register with the State Administration for Religious Activities (*SARA*) or its provincial and local offices, known as Religious Affairs Bureaus (*RAB*), and pressure to affiliate with and accept the supervision of

the legally registered nationwide church organizations.^b Police have closed many unregistered churches, house churches, some with large memberships, as well as some mosques, temples, and seminaries.^c Some religious leaders are targeted for official harassment, interrogation, detention, and severe physical abuse.^d Some asylum applicants have admitted that smugglers instructed them to claim belief in Christianity.^e For more information on repression of unsanctioned Christian religious groups, see Section III.B.4. – Unsanctioned Christian Churches (*protestant and Catholic*).^f

[7] The constitution provides for freedom of belief. CCP doctrine and practice, however, prohibit religious believers from party membership, which is often a prerequisite for holding public office.^a In practice, the government seeks to restrict religious practices to government-sanctioned organizations and registered places of worship and to control the growth and scope of religious and spiritual group activity.^b Government control mechanisms aim to prevent the rise of competing, autonomous, non-governmental, and non-CCP source authority.^c

[8] The government implemented new religious affairs regulations in March 2005 giving legal protection to the property, publications, and some activities of registered religious groups, but offering no protection to unregistered religious groups.^a Some argue that the new regulations foster a more tolerant atmosphere by establishing legally protected rights for religious groups, but others point out that the new regulations merely codify past practice and question whether they enhance religious freedom.^b

B.1. Sanctioned vs. Unsanctioned Christian Churches

[9] With a few exceptions, the government officially permits only those Christian churches affiliated with one of the national umbrella organizations (*i.e., the Three-Self Patriotic Movement for Protestant and the Catholic Patriotic Association*) to operate openly.^a Those sanctioned churches offer religious services, distribute Bibles, hold Bible study meetings, and often provide social services.^b Owing to reasons of conscience and fear of state control, however, many religious groups are unwilling or unable to register with the government.^c Unregistered Protestant evangelical groups commonly disagree with many of the Three-Self Patriotic Movement's `non-

denominational' teachings, such as that communism is comparable with Christianity and that all Protestant beliefs are compatible, fearing these 'ecumenical' tenets would restrict their doctrinal freedom and invite strict control over their teachings.^d Some religious groups fear adverse consequences if they reveal to the authorities, as required, the names and addresses of church leaders and members.^e Catholics who practice their beliefs in 'underground' churches do so owing to the officially sanctioned Catholic Patriotic Association's non-recognition of the Pope's spiritual authority.^f

[10] Some groups claim that authorities refuse to register them without explanation.^a The government contends that refusals result mainly from these groups' lack of adequate facilities.^b Bibles are available for purchase in some bookstores and in most officially sanctioned churches.^c Many members of unregistered house churches buy their Bibles from registered churches without incident.^d

B.2. The Sanctioned Protestant Churches

[11] The government generally does not interfere with worship at sanctioned Protestant churches as long as religious activities are confined to registered buildings.^a About 16 million Chinese worship at officially sanctioned Protestant churches, almost all under the supervision of a nationwide 'patriotic' Protestant movement, the Three-Self Patriotic Movement (*TSPM*).^b In 1954, the government and the CCP created this movement to cut foreign religious ties, control domestic church activities, and promote patriotism under the rubric of the three principles of 'self-determination, self-support, and self-propagation.'^c In 1980, the government established the China Christian Council (*CCC*) under the TSPM to 'serve' China's Protestant churches, in line with the post-1979 policies of opening to the outside world and allowing more freedom of religious activity.^d The CCC administers seminaries, publishes Bibles, facilitates international exchanges, and oversees ordination of ministers.^e It was admitted into the World Council of Churches in 1991.^f Despite the TSPM's non-

denominational orientation, some individual affiliated churches, in practice, align themselves with a particular denomination. ^g

[12] In a few regions, Christian groups have registered with the government without affiliating with the TSPM or CCC. These groups include the local Assemblies Protestant churches in Zhejiang Province, where no significant TSPM/CCC community exists, and the (*Korean*) Chaoyang Church in Jilin Province.^a Under Chinese law, joining the TSPM is not a requirement for Protestant religious communities to register, but the central government has so far refused to publicly state that Protestants can register outside of the TSPM.^b Thus, in the vast majority of cases, Protestant groups are required to submit to the TSPM in order to register. ^c

B.3. The Sanctioned Catholic Church

[13] The government generally does not interfere with worship at sanctioned Catholic churches as long as religious activities are confined to registered buildings.^a About 5million Chinese attend services at sanctioned Catholic churches that operate under the authority of the Catholic Patriotic Association (*CPA*).^b This `Association,' which the Vatican regards as a schismatic, but not a heretical movement, was created in 1957 under government and CCP pressure for the same purposes as was the TSPM for Protestants as described above.^c The National Bishop's Conference, established in 1980 after China began its reforms, is analogous to the Protestant China Christian Council. ^d

[14] The CPA does not recognize the authority of the Pope and, officially, the government bars the Vatican from appointing bishops in China.^a Instead, the government approves bishops appointed by the CPA. The ordination issue is at the heart of long-standing, off-and-on negotiations between the PRC and the Vatican over establishing diplomatic relations.^b In 2006, the CPA ignored the Vatican's request to delay the ordination of three bishops, disrupting a period of two years during which several bishops and auxiliary bishops were appointed with both Chinese government and Vatican approval.^c Other bishops, however, were ordained with both government and Vatican approval before and after the dispute began.^d An increasing number of priests and bishops have acknowledged publicly that the Vatican had approved their appointment, without repercussions, though the Chinese government denied that the Vatican played a role in approving these clergy.^e

In fact, most bishops recognized by the CPA have been recognized by the Pope either before or after their appointment by the government.^f

[15] Despite the general trend toward dual PRC and Vatican recognition of a number of high Catholic Church officials in China, other bishops appointed by the Vatican were forced to keep their identities and activities secret, at the risk of arrest and detention.^a There has also been an increase in reported harassment and abuse of some registered Catholic clerics in recent years. As described in the greater detail in the Congressional Executive Commission on China (CECC) 2006 report, in November and December 2005, three incidents were reported in which officials or unidentified assailants beat officially sanctioned Catholic nuns or priests in Shaanxi Province and Tianjin Municipality after they had demanded that local governments return church property confiscated in the 1950s and 1960s.^b These reported incidents contrast sharply with the situation between 2000 and 2004, when there were not such reports, and there was a relative relaxation of control over registered bishops.^c

B.4. Unsanctioned Christian Churches (Protestant and Catholic)

[16] There is a wide variety of Christian religious activity in China that is not officially sanctioned by the government which is often repressed and sometimes quietly tolerated.^a A lot depends on local conditions, with the government coming down harder on small evangelical groups it has labeled 'cults.'^b Unregistered, 'unofficial' Chinese Christians include millions of Protestants who worship in unregistered house churches and millions of Catholics who are faithful to the Pope and worship in 'underground' Catholic churches.^c No reliable statistics are available regarding the number of unregistered church members, but the number probably far exceeds membership in sanctioned churches and is growing.^d Chinese academics estimate there are between 30 and 100 million unregistered Protestants, and Catholic sources put the number of unregistered Catholics at more than 5 million.^e As described more fully above, religious groups that are unwilling to register officially fear government restrictions on their practices and tenets.^f

[17] In some places, government supervision of unsanctioned religious activity is minimal.^a However, in other places, where mistreatment by some

Henan Province officials of unregistered Protestants and by some Hebei Province officials of 'underground' Catholic clergy stands out, local security officials use threats, demolition of unregistered property, interrogation, arrest, imprisonment, and sometimes severe physical abuse to target unregistered religious leaders and their followers.^b The degree of repression also seems to vary with the size of the religious groups and with the type of activities conducted.^c

[18] Police and other security officials have disrupted Protestant religious retreats and large meetings on many occasions.^a In July 2005, the government reportedly detained one hundred Sunday school students in Hebei Province.^b In August 2005, police reportedly raided a training class in Jiangxi Province for Sunday school teachers.^c On Christmas Day 2005, police reportedly raided an unregistered church in Manasu County, Xinjiang.^d

[19] The U.S. Commission on International Religious Freedom (*USCIRF*) has reported large-scale raids in recent years on some meetings of Protestant house church pastors in Henan, Heilongjiang, and Hebei Provinces, with these pastors apparently being briefly detained and then released.^a A number of 'underground' Catholic bishops or priests remain under arrest, imprisoned, or detained in China for leading services outside the authority of the sanctioned Catholic Patriotic Association.^b

[20] While local officials often move aggressively against unregistered groups they regard as growing too large or espousing beliefs they consider threatening to social stability, many house churches, which conduct Bible studies, prayer meetings, or worship services, are quietly tolerated by local authorities as long as they remain small and unobtrusive.^a The government has stated that home Bible study with family and friends is permitted, but that formal church services or meetings that exceed the scope of family and friends must take place in registered venues rather than in the home.^b House churches reportedly encounter difficulties when their membership becomes too large, when they arrange for the use of facilities for the specific purpose of conducting religious activities, or when they attempt to forge links with other unregistered groups or foreign religious groups or individuals.^c

[21] Going far beyond the repression of the unsanctioned 'mainline' Protestant evangelical and 'underground' Catholic churches, the government, citing the 1997 Criminal Law and a 1999 National People's

Congress decision, has come down hard on groups it deems to be `cults.’^a These include Eastern Lightning, the Three Grade of Servants Church, the Shouters, the South China Church, the Association of Disciples, the Full Scope Church, the Spirit Sect, the New Testament Church, the Lord God Sect, the Established King Church, the Unification Church and the Family of Love.^b Authorities accused some in these groups of lacking proper theological training, preaching the imminent coming of the apocalypse or holy war, or exploiting the reemergence of religion for personal gain.^c

[22] The government has accused the South China Church, the Three Grades of Servants Church, and the Eastern Lightning group of involvement in violence.^a Several leaders of the South China Church who were imprisoned and lengthy sentences for alleged rape, arson, and assault continued in 2005 to suffer abuse in prison.^b Following a 2004 crackdown, in late 2004 and early 2005, more than seventeen members of the Three Grades of Servants Church were put on trial for murder and other offenses.^c The alleged murders resulted from a conflict between the Three Grades of Servants Church and the Eastern Lightning group.^d The Three Grades of Servants Church leader and two other members were sentenced to death, three others received suspended death sentences and eleven others were sentenced to three- to fifteen-year prison terms.^e Eastern Lightning has been accused by other Chinese religious groups of resorting to kidnapping, acts of violence, and other coercive methods to expand its influence.^f

[23] In adjudicating claims of religious persecution, asylum officers and immigration judges may wish to consider recent, and often detailed, information on repressing practices in specific provinces and localities and with respect to specific religious groups as reported in the annual Department of State International Religious Freedom Report and the annual Congressional Executive Commission on China and U.S. Commission on International Religious Freedom reports, all available on line.^a

B.5. Buddhism and Taoism

[24] Buddhism has been practiced in China for two millennia, and is strongly connected with traditional Chinese culture. Buddhists constitute the largest body of religious believers in China.^a The government estimates that there are more than 100 million Buddhists, most from the majority Han Chinese ethnic group.^b Few Buddhists, except for those who practice

Tibetan Buddhism, report difficulties practicing their faith.^c However, one Buddhist group, the Way of the Goddess of Mercy, is considered a 'cult' by Chinese authorities.^d In July 2005, in what was the first criminal conviction of members of this group, six members of the Way of the Goddess of Mercy (*Guangyin Famen*) group were sentenced in Zinjiang to two to four years in prison for using a cult organization and apparent intent to distribute religious material.^e

[25] Taoism is a fold religion that originated in China.^a It is widely practices in southern China and it remains an important part of traditional Chinese culture.^b In Shanghai, for example, Taoists operate academic and research institutes and publish a journal devoted to Taoist studies.^c There have been no reports of persecution of Taoists in recent years.^d

B.6. Tibetan Buddhism

[26] Besides Tibetans living in the Tibetan Autonomous Region and Tibetan ethnic areas in Gansu, Qinghai, Sichuan, and Yunnan provinces, many Mongolian Buddhists living in the Inner Mongolia Autonomous Region practice Tibetan Buddhism. See: Section III.C.1 – Tibetans.^a

B.7. Islam

[27] There are about 20 million Muslims from 10 ethnic groups in China.^a The largest ethnic group is the Hui, with a population of 10 million.^b Hui Muslims, who live predominantly in Northwest China, in Nigxin, Gansu, Qinghai, and Shaanxi Provinces, but who are scattered throughout China, have lived in close proximity with the majority Han Chinese for centuries, and are indistinguishable from Hao Chinese in most respects, except for religious and dietary practices.^c The Hui reportedly have few problems with the government, as long as they confine their religious activities to their mosques or their homes.^d The availability of religious education for school age children is very limited, though there are a number of schools that teach Arabic.^e The government permits, and in some cases subsidizes, Muslim citizens who make the Hajj (*pilgrimage*) to Mecca.^f Official reports note that more than 9,700 Chinese Muslims traveled to Mecca for the 2006-2007 Hajj pilgrimage.^g This figure likely did not include Chinese participants not organized by the Chinese government, for whom there are no official estimates but who have numbered in the thousands in previous years.^h

[28] In contrast to the conditions enjoyed by most other Chinese Muslims, especially the Hui, Uighur Muslims, who live in China's far west Xinjiang Autonomous Region, face strict government scrutiny and repression.^a The Uighurs – along with some other local Turkish-speaking ethnic groups – predominated in Xinjiang until recent decades when the government encouraged the massive migration of Han Chinese to Xinjiang.^b Observers have noted signs on Xinjiang indicating that children and university students may not enter;^c however, in practice, children over the age of twelve are sometimes seen in mosques. Government officials have confirmed that religious education of school-aged children outside the home is prohibited in Xinjiang, despite public statements by the central government that Chinese law does not restrict the provision of religious education to minors.^d This prohibition may be unevenly enforced.^e See Section III.C.2 – Uighurs.^f

B.8. Falun Gong and Zhong Gong

[29] Claimed adherents of the Falun Gong movement constitute a very large percentage of Chinese asylum applicants.^a Some applicants who originally said they were Falun Gong adherents subsequently admitted that their stories had been concocted by smugglers who brought them to this country.^b There is also some question about documents used to 'prove' Falun Gong membership in China (*see below*).^c

[30] The government has banned groups it has determined to be 'cults,' including Falun Gong, the Zhong Gong movement, and a few other small qigong movements that, like Falun Gong, combine traditional exercise discipline with some mystical tenets.^a Citing the 1997 Criminal Law and a 1999 National People's Congress decision, the government uses the term 'cult' to stigmatize and repress Falun Gong, Zhong Gong, and a few other qigong groups, with the level of repression applied varying significantly from region to region.^b Prisoners who are members of groups that the government has labeled cults are subject to much harsher treatment than other inmates.^c

[31] The government has continued to wage a severe campaign against Falun Gong, and thousands of individuals may still be undergoing criminal, administrative, and extrajudicial punishments for engaging in Falun Gong practices, admitting belief in Falun Gong, or simply refusing to recant their beliefs or condemn the movement.^a By some reports, hundreds have been confined in reeducation through labor camps and high-security psychiatric

hospitals for the criminally insane.^b While it is difficult to confirm reports of abuse within China, in 2005, NGOs not affiliated with Falun Gong documented nearly 500 cases of Falun Gong members detained, prosecuted, or sentenced to reeducation based on their alleged practice of Falun Gong spiritual activities;^c credible reports suggested the actual number was much higher. UN Special Rapporteur Nowak reported in March 2006 that Falun Gong practitioners comprised 60 percent of victims of alleged torture while in government custody.^d The mere belief in Falun Gong, without any public practice of its tenets, have been sufficient grounds for practitioners to receive punishments ranging from loss of employment to imprisonment.^d

[32] In the face of this massive repression, Falun Gong has engaged in almost no public activities in China in recent years.^a Membership documents that have been presented to U.S. officials appear to have been issued abroad.^b To the best knowledge of U.S. officials in China Falun Gong does not issue membership documents to practitioners in China.^c Some asylum applicants have asserted that they face persecution because the authorities mistakenly believe them to be Falun Gong adherents, often because close family members were involved in the movement.^d While mistaken detentions might have occurred, many asylum applicants, including practitioners, have reported that they were released after signing statements renouncing involvement in Falun Gong.^e

[33] Falun Gong blends aspects of Taoism, Buddhism, and the meditation techniques and physical exercises of qigong (*a traditional Chinese exercise discipline*) with the teachings of Falun Gong founder Li Hongzhi.^a Many practitioners became interested in Falun Gong because of its purported health benefits.^b Despite the mystical nature of Li's teachings, Falun Gong has no clergy or places of worship, and does not represent itself as a religion.^c

[34] After its founding in 1992, Falun Gong grew rapidly in China.^a No one knows how many Chinese adherents the movement had at its peak, but the Chinese government's estimate of 2.1 million is probably at the low end.^b By 1996, the government, concerned about the movement's burgeoning popularity, refused to grant it legal status, labeling it a 'cult.'^c Despite the destination, many CCP and People's Liberation Army (*PLA*) members adhered to the movement, further raising government and CCP concerns.^d

[35] In April 1999, thousands of Falun Gong adherents gathered peacefully outside the CCP leadership compound in central Beijing to protest the government's attitude toward the movement.^a Surprised by the size of the demonstration, and believing that Falun Gong constituted a potential threat to its authority, the government banned the movement on July 22, 1999, under a 1997 criminal law aimed at repressing socially disruptive activities by 'cults.'^b This was followed by a nationwide crackdown on Falun Gong practitioners.^c

[36] In 2001, the government launched a massive anti-Falun Gong propaganda campaign, initiated a comprehensive effort to round up practitioners not already in custody, and sanctioned high pressure indoctrination tactics in order to force practitioners to renounce Falun Gong.^a Neighborhood committees, state institutions (*including universities*), and companies reportedly were ordered to send all known practitioners to intensive anti-Falun Gong study sessions.^b Even practitioners who had not protested or engaged in other public demonstrations of belief reportedly were forced to attend these classes.^c Those refusing to recant their beliefs after weeks of intensive instruction reportedly were sent to reeducation through labor camps, where in some cases beatings and torture were used to force them to recant.^d Some of the most active Falun Gong adherents were sent directly to reeducation-through-labor. Faced with these harsh tactics, large numbers of Falun Gong adherents reportedly signed pledges to renounce the movement.^e

C. Nationality

[37] China's fifty-five officially designated ethnic minorities constitute 8.4 percent of its population, or about 110 million persons, a percentage that has grown in recent decades in response to Chinese policies that give preferential treatment to minorities in marriage regulations, birth planning, university admission, and employment.^a Though the stated official policy is nondiscriminatory, some minorities face serious discrimination, including job discrimination in favor of Han migrants.^b This and other forms of discrimination are deeply resented by minorities in some areas, especially, by the Uighurs in Xinjiang and the Tibetans.^c While the government in some circumstances is quite sensitive to minority attitudes on some religiously or culturally significant issues, especially with regard to China's Hui Muslims, who often live in sensitive border areas, the government does not openly

recognize Han discrimination against minorities or tension among different ethnic groups as problems.^d There are a number of minorities which have assimilated to majority Han culture while also retaining some unique cultural markers.^e In many areas, however, ethnic minority leaders are shut out of leadership markers.^f In many cases, however, ethnic minority leaders are shut out of leadership positions of real political and decision making power in the government and the CCP.^g

C.1. Tibetans

[38] The United States recognizes the Tibet Autonomous Region (*TAR*) and the Tibetan autonomous prefectures and counties in Qinghai, Gansu, Sichuan, and Yunnan Provinces as part of the People's Republic of China.^a The Tibetan population of the *TAR* is about 2.4 million, while the Tibetan population in autonomous prefectures and counties outside the *TAR* is about 2.9 million.^b The government keeps tight controls on religious practices and places of worship in Tibetan areas, although conditions are generally more relaxed in Tibetan areas outside the *TAR*.^c In all Tibetan areas, Chinese authorities permit many traditional religious practices, including public manifestations of belief, but promptly and forcibly suppress they view as vehicles for political dissent or advocacy of Tibetan independence, such as religious practices venerating the Dali Lama.^d Outside of the *TAR*, abbots and monks have stated that, compared with their *TAR* co-religionists, they have greater freedom to worship, conduct religious training, and manage the affairs of their monasteries.^e

[39] Authorities, especially in the *TAR*, continue to commit serious human rights abuses, including torture, arbitrary arrest and detention, house arrest, surveillance of dissidents, and arbitrary restrictions on freedom of movement.^a A person's likelihood of suffering abuse appears to depend more on his or her political activities, especially if they support Tibetan independence, than on ethnicity or religious practice as such.^b Often, however, people are arrested for their loyalty to the Dalai Lama or the Panchen Lama, which the government characterizing as political, but which the individual may perceive as religious.^c According to the U.S. Congressional Executive Commission political prisoner database, by the end of 2006, there were 105 known Tibetan political prisoners cases, although the exact figure may be higher.^d Some of these 'political prisoners' were

held for their religious beliefs.^e Based on information available for 70 political prisoners, the average sentence was 10 years and 11 months, and 69 persons were monks or nuns.^f According to this data, 57 Tibetan political prisoners were held in the TAR, 20 in Sichuan Province, 12 in Qinghai Province, four in Gansu Province, and there in Beijing.^g

[40] Monks and nuns accused of political activism have reportedly suffered abuse and torture in prison, including beatings for resisting political reeducation imposed by prison authorities.^a According to the Tibet Information Network (*TIN*), at least 29 monks and nuns have died while in Tibetan areas since 1987.^b In August 2001, a young monk died after a brief period of detention in Lhasa for attempting to travel to India.^c In October 2003, another monk dies, reportedly as a result of repeated torture while serving a nine-year sentence for advocating Tibetan independence.^d

[41] As in earlier years, in 2005 and 2006 there were new, credible reports of detention and imprisonment of Tibetans for political activities, inside and outside the TAR.^a In the TAR authorities reportedly arrested five monks who refused to denounce the Dalai Lama and to recognize Tibet as part of China during a 'patriotic education campaign' that began in October 2005 in Lhasa's Drepung Monastery.^b TAR Officials later said that the Drepung monks were not detained but rather expelled from the monastery;^c they admitted that hundreds of monks had gathered to petition for their return.^d In January 2006, a court in Gannan Prefecture, Gansu, reportedly sentenced five Tibetan monks and nuns to up to three years in prison for distributing posters critical of the government.^e In June 2006, Radi Free Asia reported that the authorities in Kardze Prefecture, Tibet, had detained five Tibetans, including two Buddhist nuns, for allegedly handing out leaflets promoting Tibetan independence.^f *TIN* reported in April 2006 that a Tibetan monk and teacher of traditional monastic dance from a Qinghai Province monastery was sentenced in January 2006 to four years in prison after he gave talks about Tibetan culture and history;^g the charges against him are unknown.^h

[42] Most Tibetans practice Tibetan Buddhism to some degree, as do some other ethnic groups inside and outside of Tibetan areas, most notably Mongolians living in Inner Mongolia.^a The overall level of religious repression, while less oppressive for lay followers than in the past, remains high.^b Authorities limit the number of monks and nuns in many major monasteries, oversee daily operations of many major monasteries through

Democratic Management Committees (*DMS*) and local religious affairs bureaus, and reserve the right to disapprove any individual's application to take religious orders.^c Regulations restrict leadership of many DMCs to 'patriotic and devoted' monks and nuns, and specify that the government must approve all DMC members.^d At some monasteries, government officials sit on the DMC.^e In October 2005, Radio Free Asia reported that 40 of the approximately 50 nuns residing in the Gyarak Monastery near Lhasa were expelled for refusing to participate in political education.^f

[43] Tibet's foremost religious figure, the Dalai Lama, fled Tibet in 1959 in the wake of a failed popular uprising against Chinese authority.^a He and a significant Tibetan exile community live in India.^b While government officials maintain that possessing or displaying pictures of the Dalai Lama is not illegal, such pictures cannot be purchased openly in the TAR and possession has triggered arrests in the past. Diplomatic observers have seen pictures of a number of Tibetan religious figures, including the Dalai Lama, openly displayed in Tibetan areas outside the TAR. While denunciation of the Dalai Lama continue during 'patriotic education' campaigns in monasteries, in February 2006, envoys of the Dalai Lama came to China for the fifth round of talks since 2002.^c In his public remarks, the Dalai Lama has called for a 'middle way' approach which included 'meaningful autonomy' for Tibet, but not independence.^d

[44] The government continues to insist that a boy it selected in 1995 is the reincarnation of the Panchen lama, Tibetan Buddhism's most prominent religious figure after the Dalai Lama.^a The Dalai Lama's choice, another boy, disappeared into government custody in 1995.^b After the Karmana Lama, another influential Tibetan Buddhist figure, secretly left the TAR for India in December 1999, the government increased its efforts to control the process for finding and educating reincarnate lamas.^c A young reincarnate lama who was recognized by the Karmapa Lama in 1994 lives under strict government supervision.^d

[45] While many government officials and CCP members practice Buddhism, the government continues to insist that party members and senior government employees adhere to the party's code of atheism.^a

[46] Chinese birth planning policies permit Tibetans and members of other minority groups to have more children than Han.^a Urban Tibetans, including party members, and some ethnic Han Chinese living in Tibetan

areas, were usually permitted to have two children.^b Rural Tibetans are encouraged, but not required, to limit births to three children.^c

[47] Many Tibetan asylum seekers come to the United States via Nepal.^a Between 1959 and 1989, Nepal accepted as residents approximately 20,000 Tibetan refugees, most still live in Nepal.^b Later arrivals have no right or access to citizenship, property ownership, travel documents, education, or public services.^c Instead, Nepal facilitates their passage to India, where the Dalai Lama has his headquarters.^d Among the later arrivals who stayed in Nepal, some enjoy thriving commercial and cultural activities, even though they face discrimination and have no legal right to work.^e

[48] In May 2003, the Chinese government successfully pressured the Nepalese government to repatriate to China 18 individuals who had entered Nepal from China without travel documents.^a Contrary to established practice, the Nepalese government denied the office of the UN High Commissioner for Refugees (*UNHCR*) in Kathmandu access to the group.^b Chinese authorities detained the 18 Tibetans at a Chinese border post and later at a prison in Shigate.^c Chinese authorities reportedly pressured detainees for bribes, tortured some detainees, and subjected monks in the group to extra beatings.^d Following international pressure on Nepal over the incident, Nepali authorities have turned over the majority of Tibetans apprehended in similar circumstances to UNHCR.^e In 2006, 2,405 new Tibetan arrivals approached UNHCR in Nepal, and 2,946 Tibetans left for India, the difference reflected a backlog in UNHCR Tibetan transit cases at the end of 2005.^f

[49] Tibetans who arrived in India before 1979 were given asylum.^a Those who arrived after the cut-off date are not entitled to any official status.^b In India, the Central Tibetan Administration (*CTA*) of the Tibetan exile community takes responsibility for trying to meet the needs of resettled Tibetans.^c The Indian government provides CTA with land for settlements and some small assistance.^d Tibetans in India can obtain travel documents and serve in the Indian army.^e When Tibetans travel abroad from India, they need to get an Indian Identity Certificate.^f When they return to India they need to get an Indian visa.^g

[50] Tibetans living in the TAR and other parts of China continue to encounter substantial difficulties in obtaining Chinese passports and Indian visas for travel to India for religious and other purposes.^a Chinese authorities

restrict the movement of Tibetans during sensitive anniversaries and events, and increase controls over border areas at these times.^b In September 2006 and October 2006, in two serious incidents, Chinese troops fired on dozens of Tibetans, including monks, nuns and children, attempting to cross a high pass into Nepal.^c In the 2006 incident, eyewitnesses reported soldiers fired at the group from a distance, contradicting claims made shortly after the incident by Chinese media which alleged that the group had attacked Chinese border troops.^d One woman, a 17-year old nun died. Forty-three members of the group arrived in Kathmandu;^e a member of the group who later reached India claimed that three dozen of the Tibetans captured by the soldiers were tortured with cattle prods and forced to do hard labor.^f There were also reports of arbitrary detentions of persons, particularly monks, returning from Nepal.^g Detentions generally lasted for several months, although in most cases no formal charges were brought.^h

C.2. Uighurs

[51] The Xinjiang Autonomous Region, in China's remote northwest, has a long history of ethnic tension between the ruling Han Chinese and the majority Muslims Uighurs.^a Some Uighurs advocate self-determination, which the Chinese authorities strongly oppose.^b Violent incidents have been attributed to Uighu activities, including bombings in 1997.^c Even though authorities have stated that there have not been any violent terrorist acts in Xinjiang since 2001, counterterrorism has been used as justification for a broad crackdown on Muslim religious activity.^d Scores, perhaps hundreds, of Uighurs accused of involvement in political or religious activities have been executed since the mid-1990s;^e thousands of others have been detained and imprisoned after unfair trials.^f There are credible reports of torture. Severe restrictions have been placed on the Islamic clergy and the practice of Islam in the region.^g Authorities restrict the building of mosques in Xinjiang and prohibit the teaching of Islam to school aged children outside the home.^h In addition, perhaps under the age of 18 are not permitted to attend Friday prayers in mosques, though this prohibition may be unevenly enforced.ⁱ Teachers, professors, university students, and employees of state-owned enterprises, face similar restrictions on attending mosques, wearing headscarves, and practicing their faith openly.^j

[52] Chinese authorities in Xinjiang often make little or no distinction between violent opposition and the peaceful exercise of the right to freedom of expression, association, and religion, and have used the war on terrorism

as an excuse to repress the Uighurs.^a China often deems advocacy for greater regional autonomy or independence to be 'ethnic separatism,' a crime against state security.^b In December 2003, the Chinese Ministry of Public Security published a list of four Uighur groups it characterized as 'terrorist' organizations: the East Turkestan Islamic Movement (*ETIM*), the East Turkestan Liberation Organization, the World Uighur Youth Congress, and the East Turkestan Information Center.^c After information received from the Chinese government was corroborated by other evidence, the United Nations classified *ETIM* as a terrorist organization.^d According to available information, the World Uighur Youth Congress and the East Turkestan Information Center, both based in Germany, are political groups that publicize reports of abuses against Uighurs in China and advocate self-determination or independence for the region.^e

[53] In August 1999, Uighur businesswoman Rebiya Kadeer, her son, and her secretary were detained in Urumqi, Xinjiang while on their way to meet a visiting foreign delegation.^a Kadeer was convicted of passing state secrets and sentenced to eight years in prison, even though she maintained that the items were publicly available newspaper articles.^b She reportedly was singled out because of her activism on behalf of Uighurs and because of her husband's links to Uighur causes and Radio Free Asia.^c Since she left China on a medical parole and resettled in the United States in 2005, Xinjiang authorities have continued to harass her family members remaining in Xinjiang, and her children have also been imprisoned.^d

[54] The authorities have confiscated what they termed 'illegal' religious publications in Xinjiang, and continue in some areas to discourage overt religious attire and religious marriage ceremonies.^a Visitors to Xinjiang report that some mosques have been destroyed, though some attribute the demolition to conflict between Hui and Uighur Muslims.^b

[55] Uighurs and other ethnic minorities in Xinjiang are nominally subject to less stringent population controls than Han Chinese.^a However, authorities are increasingly pressuring minorities – especially Uighurs – to limit births to the same number as Han Chinese.^b There have also been reports that authorities have engaged in coerced abortion and forced sterilization of Uighurs.^c In remote areas, there are no effective limits, but government employees and party members are encouraged to have one child.^d

C.3. Koreans

[56] The situation faced by Chinese citizens of Korean ethnicity, both in Northeast China, where about half of China's two million ethnic Koreans live, and elsewhere in China, in stark contrast with that faced by North Koreans asylum-seekers.^a Established communities of ethnic Koreans in Northeast China and individual ethnic Koreans elsewhere do not experience active, officially sanctioned persecution.^b However, there have been numerous credible reports of harassment, detention, and abuse of North Korean asylum-seekers, and of arrest and detention of some Chinese citizens who provided food, shelter, transportation, and other assistance to North Korean asylum-seekers.^c

[57] In established ethnic Korean communities in China's northeastern provinces of Jilin, Liaoning, and Heilongjiang, especially Jilin's Yanbian Korean Autonomous Prefecture, Korean language and culture co-exist with Chinese language and culture: protections for them are written into local law, signs are bilingual, ethnic Koreans operate their own Korean-language newspapers and radio stations, and ethnic Koreans work at various levels of local, city, and provincial government.^a In these areas, parents are free to send their children to mainstream Chinese schools or to schools that feature primary and secondary instruction in Korean.^b While students who attend Korean schools may suffer some disadvantages and discrimination later in life, national policy offers minorities some measure of preference in university admission and higher university stipends than for majority Han Chinese students.^c Korean couples, as minorities, generally are allowed two or more children, though historically, the ethnic Korean birth rate in China has been lower than the Han Chinese birthrate.^d In the Yanbian Autonomous Korean Prefecture, Catholic and Protestant churches, including Korean language Protestant churches with close ties to South Korean churches, have numerous adherents.^e Korean Protestant churches also operate openly in Liaoning Province and maintain a seminary in Liaoning Province that trains ethnic Korean Protestant ministers.^f

[58] Reports from numerous sources suggest that thousands of North Koreans every year are detained and forcibly returned to North Korea, where they likely face harsh punishment, and in some cases, possibly the death penalty.^a The Chinese government continues to deny UNHCR access to operate along its northeastern border with North Korea, taking the position that North Koreans who cross the border without official travel permits are

illegal economic migrants, not refugees.^b China has a long-standing agreement with North Korea to repatriate border crossers who do not hold official travel permits.^c While China is a party to the 1951 UN Convention Relating to the Status of Refugees and its 1967 Protocol and Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or punishment, it does not have a process to determine if an individual North Korean meets the criteria for protection under those treaties.^d

[59] Press reports claim widespread trafficking of North Korean women and girls in China, especially in the Northeast, to work in the sex industry or to be forced to live with Chinese men, including in forced marriages to rural men of Korean and Han ethnicity. Local observers report they are unaware of large-scale trafficking of North Korean women and girls on either side of the border, while acknowledging that some small-scale trafficking takes place.^a

D. Political Opinion

[60] Although the government denies holding political or religious prisoners, the number of persons detained or serving sentences for peacefully expressing their political, religious, or social views is estimated to number in the thousands.^a Legal safeguards for those detained or imprisoned are inconsistently implemented or ignored.^b For example, police and prosecutors often subject prisoners to serve psychological pressure to confess, and coerced confessions frequently are introduced as evidence.^c Government pressure makes it difficult for Chinese lawyers to represent criminal defendants, especially in high-profile political case, and a number of attorneys have been detained and sentenced to multi-year prison terms in connection with their defense of clients in politically sensitive cases.^d In highly charged cases, especially those implicating local government and party officials, the authorities generally attach higher priority to suppressing political opposition and maintaining public order than to enforcing legal norms or protecting individual rights.^e

[61] Dozens of political activists have been arrested over the past decade for trying to register a political party and other political activities, such as advocating political reform or a reappraisal of the 1989 Tiananmen

Massacre.^a In 1999, dozens of members of the then-newly formed China Democracy party (*CDP*), were arrested, and almost all of its leaders were sentenced to long prison terms or held without charges.^b The crackdown against the *CDP* continues. More than 30 current or former *CDP* members reportedly remained in prison at the end of 2006 as a result of their political activities.^c The China Development Union, a group devoted to political and environmental reform, has also been virtually shut down by the arrest of its members.^d

[62] In recent years, the government has prosecuted some individual advocates of political reform for ‘subversion’ and ‘leaking state secrets,’ especially those who actually or allegedly have had contact with foreign human rights organizations.^a For example, in October 2003, former attorney Zheng Enchong was sentenced to three years in prison for ‘disclosing state secrets’ as an alleged result of his providing information to foreign organizations.^b The same month, house church member Liu Fenggang was detained on state secrets charges, allegedly for providing information to overseas nongovernmental organizations about his investigation into the destruction of house churches in Xhejiang Province.^c Others detained, prosecuted, or sentenced on state secrets or subversive charges included political dissident and U.S. legal permanent resident Yang Jianli, and more than 40 internet essayists who advocated political reforms.^d

D.1. Past Political Events in China

[63] New or ongoing organized activities or publication of ideas that the party, at whatever level, regards as challenging its authority are forbidden, and are harshly repressed, particularly if warnings to desist are unheeded.^a However, China’s political and social situation has changed over the past decade and more. Generally, the further back in time an applicant’s political involvement, the less likely he or she is to face reprisal from the government.^b The following section is intended to provide adjudicators with a brief overview of events in China’s human rights history to which applicants may refer.^c

[64] **The 1950s and early 1960s.** Some applicants may assert that they would suffer if they returned to China, citing past persecution of family

members during the anti-rightist (*i.e.*, `anti-counterrevolutionary') campaigns following the CCP's 1949 victory, or because of alleged association with the pre-1949 Chinese Kuomintang (*KMT*) party, or membership in a `black five element' family (*i.e.*, *whose members before 1949 had been landlords, rich farmers, CCP opponents, criminals, or rightists*).^a The political environment of China today is significantly different from that of the 1950s and 1960s.^b During the past decade, there have been no reports of official discrimination because of `bad class' background.^c

[65] The Cultural Revolution. The Cultural Revolution era (1966-1976) was sparked by fierce struggle at the top of the CCP between Mao and his `leftist' party followers and the alleged `rightist' party officials and bureaucrats whom he believed were working to push him (*Mao*) to the margin of the political stage.^a During this long period of sustained political and economic upheaval, millions of Chinese across the country were humiliated, arbitrarily detained, and tortured, and many were killed.^b Mao encouraged teenage and young adult radicals, the Red Guards, to terrorize officials, bureaucrats, and intelligentsia whom he regarded as opposing his ideas.^c Following Mao's death and Deng Xiaoping's political resurrection, the December 1978 Third Plenary Session of the Eleventh CCP Congress repudiated the Cultural Revolution, and politically rehabilitated millions of its victims along with many victims of the mid-1950s `anti-rightist' purge of intellectuals.^d We are not aware of any impact on Chinese who now return to China, whether they were victims or perpetrators of repression and violence during the Cultural Revolution era.^e

[66] 1976 Beijing Demonstrations. Near the end of the Cultural Revolution era, Premier Zhou Enlai, widely seen as somewhere more `liberal' than Mao, died in January 1976, just months before Mao died and his closets political acolytes (*the `Gang of Four'*) were purged.^a When Beijing residents placed wreaths in Xhou's memory in Tiananmen Square in April 1976, on the occasion of China's annual day of remembrance for the deceased, the wreaths were removed and the demonstrations were violently expelled from the Square.^b Those arrested during this demonstration were later released and absolved by the CCP, though many of the leading 1976 activists were involved in later movements highlighted below;^c ironically, many of these activists were former Red Guards.^d

[67] 1978-1979 Democracy Wall. During the December 1978 Eleventh Plenum of the CCP, encouraged by obvious ongoing internal CCP struggle over how fast and how far to go in repudiating the political consequences of the Cultural Revolution, representatives of the generation that had come of age during the Cultural Revolution sponsored a brief but widely noticed period of public discussion by posting their ideas on a wall in central Beijing.^a In 1979, these postings were briefly moved to another site before one of the leading activists (*Wei Jingshen*) was arrested and the movement repressed.^b The Democracy Wall movement was the genesis of later waves of political activism.^c

[68] 1986 Student Movement. Student demonstrations in 1986 over dissatisfaction with conditions on Chinese university campuses also had heavy political overtones, leading ultimately to the CCP's removal of Party General Secretary Hu Yaobang, whom party elders regarded as too tolerant of dissent.^a After the government cracked down, with strong controls on rallies and protest marches, some student protest leaders reportedly were expelled from school kept from classes required to graduate, assigned undesirable jobs, or not assigned jobs after graduation.^b The authorities have maintained that no students were arrested as a result of these demonstrations.^c However, student activists Yang Wei, who was involved in these demonstrations, was arrested in January 1987, released in January 1989, arrested again in July 1989, and released again in February 1991.^d (*See also Section III.D.2. – Political Activities in the United States: Case of Yang Wei*).^e

[69] 1989 Tiananmen Democracy Movement. Some asylum applicants have claimed that, when they left China, authorities had not realized the degree to which they had supported Beijing pro-democracy activists in 1989.^a Chinese authorities have claimed that all Tiananmen cases have been resolved, but they have not provided a credible accounting of those missing, dead, or still imprisoned.^b Individuals suspected of ongoing involvement in activities commemorating those killed in the Tiananmen Square massacre are subject to harassment and sometimes detention.^c

[70] 1989 Demonstration in Fujian and Guangdong. During the 1989 Tiananmen demonstrations in Beijing, there were demonstrations in Fujian and Guangdong, both provinces with historically high volumes of asylum claims.^a However, these local demonstrations were smaller and less dramatic than those in Beijing, and appear to have been closed down by local

authorities – as generally was the case elsewhere in China outside of Beijing – less forcefully, i.e., and without violence or widespread retribution. ^b

[71] Some asylum applicants from Fujian Province assert that the security authorities were seeking them because they disseminated information in Fujian about the Tiananmen Democracy Movement.^a While we have no specific information regarding such claims, Chinese media enjoyed unprecedented freedom over several key days during the June 1989 Tiananmen period, openly reporting on many cases, such as riots in Xi'an and Chengdu, foreign reports were also broadcast without interference during this period. ^b

[72] **1999 Crackdown on the China Democracy Party.** A 1999 crackdown against the China Democracy Party (*CDP*) resulted in scores of arrests of CDP members and, by the end of that year, almost all of the CDP's leaders were serving long prison terms or were in custody without formal charges.^a In November 2002, authorities in 17 provinces rounded up a number of the 192 activists, many of whom were CDP members, who had signed an open letter calling for political reform and a reappraisal of the official verdict on the 1989 Tiananmen massacre. ^b

D.2. Political Activities in the United States

[73] The Chinese government monitors some political activities of students and exchange scholars living abroad.^a Those who have joined organizations deemed hostile to China have been advised in the official media that they should quit them before returning and refrain abroad from activities that violate Chinese law.^b Some persons with a history of pro-democracy activism within China, who also have been politically active in the United States, have been barred from returning, but a few activists have returned in recent years, some with no apparent problem and some encountering difficulties.^c Although some have returned with no apparent problems, persons who participate in high-profile democracy activities in the United States still run the risk of arrest and imprisonment should they return to China. ^d

[74] Many students and scholars claim that their political activities in the United States, such as demonstrating at the United Nations or at Chinese Consulates, criticizing the Chinese government on U.S. television, writing articles for Chinese-language newspapers, and joining dissident U.S. based

political groups would prompt security authorities to target them for punishment on their return to China.^a Some claim that their families in China have been harassed as a result of their political activities in the United States.^b

[75] Case of Yang Jianli. In May 2003, China sentenced U.S. permanent resident Yang Jianli to five years in prison for spying for Taiwan and entering China on a false passport after he was repeatedly denied permission to travel to China.^a Yang, who had fled to the United States after taking part in the 1989 Tiananmen demonstrations, ran a foundation in the Boston area that advocated democratic reform in China.^b In 2002, he reportedly used a friend's passport to return to China.^c He was arrested and charged with entering China illegally, a crime that carries a maximum one-year prison sentence.^d Prosecutors added the espionage charge and convicted him in a closed trial.^e According to court documents, Yang's high-profile political activities in the United States played a role in his conviction and sentencing.^f

[76] Case of Wang Bingzhang. In February 2003, China sentenced U.S. permanent resident and pro-democracy activist Wang Bingzhang to life imprisonment for 'organizing and leading a terrorist group' and spying for Taiwan.^a In June 2002, Wang and two associates reportedly were kidnapped in Vietnam by Chinese authorities and taken to Nanning, Guanxi, where they were arrested.^b Wang had lived in the United States since 1982 and as a founder of the Chinese Alliance for Democracy and the pro-democracy periodical, China Spring.^c

[77] In 1989 Wang reportedly slipped into China on a false passport to help establish the China Democracy and Justice Party (*not to be confused with the China Democracy party*).^a Apprehended by the authorities, he was detained for a month and expelled from China.^b Some of Wang's post-1982 political activities took place in China, distinguishing his case from those that involve activity in the United States.^c

Claims Based on Membership in the U.S. Based Chinese Democratic Party or Chinese Alliance for Democracy.

[78] Some asylum applicants claim alleged membership in one of two U.S. based political organizations, the 'Chinese Democratic Party' (*not to be confused with the indigenous China Democratic Party described in Section III.D.1 – Past Political Events in China*) or the 'Chinese Alliance for

Democracy’ Some applicants have alleged fear of persecution should they return to China, citing articles they have written for these parties’ journals on political subjects, including articles deriding Communist theory and Chinese leaders.^a

[79] These applications often are accompanied by copies of one or more petitions or open letters (*e.g.*, a letter to President Jiang Zemin or a copy of the ‘Seattle Declaration’ of November 21, 1993) bearing the applicant’s and perhaps other signatures.^a These are presented to demonstrate the applicant’s pro-democracy bona fides, and support their assertions that they would be in trouble with the Chinese government should they return to China;^b we have no independent information about how people involved in these groups are treated if they return to China.^c

[80] Case of Yang Wei. Asylum applications sometimes include material about the case of Yang Wei, a Chinese student who was arrested in China in January 1987 after his return from Arizona.^a However, Yang Wei also was charged with engaging in anti-regime activities in China, his case is not analogous to claims based on United States only political activity.^b See Section III.D.1. – Past Political Events in China: 1986 Student Movement.^c

E. Social Group

[81] Asylum claims in this category usually relate to homosexuality.^a Chinese law no longer criminalizes homosexual acts, and, as of 2001, the China Psychiatric Association no longer lists homosexuality as a mental illness, a move that many Chinese homosexuals saw as a sign of increased tolerance.^b While there have been a few open, large-scale meetings in larger Chinese cities on social issues affecting homosexuals, homophobia remains widespread in China.^c

[82] There have been no recent reported cases in China of detention or imprisonment because of a person’s homosexuality.^a Sporadic instances of police harassment of homosexual citizens seem to reflect traditional social taboos and homophobia rather than systematic official harassment, and reportedly, Chinese police generally adopt a ‘don’t ask, don’t tell’ attitude towards homosexuals.^b

IV. Claims Based on Population Policies

[83] China's birth planning policies retain harshly coercive elements in law and practice.^a A high percentage of all Chinese asylum applicants cite China's coercive birth planning policy as a reason for their request.^b Published law and regulations restrict the rights of families to choose the number of children they may have and the period of time between births.^c The penalties for violating the law are strict, leaving some women believing they have no choice but to abort pregnancies.^d In cases of families that already have two children, one parent is often pressured to undergo sterilization.^e Beyond this pressure, while central government policy prohibits the use of physical coercion to compel persons to submit to abortion or sterilization, there have been continuing reports of physical coercion to meet birth targets in some areas, notably and recently, in rural Shangdong Province.^f

[84] National law purportedly standardizes the implementation of the birth limitation policy, but local enforcement and important aspects of local regulations vary significantly from place to place.^a The law grants married couples the right to have one birth and allows eligible couples to apply for permission to have a second child if they meet conditions stipulated in local and provincial regulations.^b The law requires couples who have an unapproved child to pay a 'social compensation fee,' which sometimes reaches 10 times a person's annual disposable income;^c there are also some benefits for couples who adhere to the birth limitation policy.^d Social compensation fees are set and assessed at the local level.^e The law requires birth planning officials to obtain court approval before taking 'forcible' action, such as detaining family members or confiscating and destroying property of families who refuse to pay social compensation fees, but this requirements is not always followed in practice.^f

[85] Because penalties can be theoretically levied against a spouse's work unit or against local officials for allowing out-of-plan births, many individuals and organizations are affected providing multiple sources of pressure on couples.^a The scope and intensity of the pressure often leave expectant mothers feeling that they have little choice but to undergo abortion.^b According to the U.S. Embassy in Beijing, violations of the birth planning policy are civil offenses and result in civil penalties.^c They are not considered criminal offenses. Nevertheless, unpaid 'social compensation fees' have sometimes resulted in confiscation or destruction of private property.^d There are reports that village officials have expelled women and

their families from their homes and then destroyed the houses.^e The 'social compensation fees' and other penalties often left women with little practical choice but to undergo abortion or sterilization.^f

[86] The one-child policy is more strictly applied in the cities, where only couples meeting certain conditions (*such as both parents being only children*) are permitted to have a second child.^a In most rural areas (*including towns of under 200,000 persons*), which included approximately 60 percent of China's population, the policy is more relaxed generally allowing couples to have a second child if the first was a girl or had a disability.^b China's 55 ethnic minorities often are allowed to have more children, though they are encouraged to have fewer.^c

[87] The implementation of birth planning policy in villages, the situation relevant to most asylum applicants, is the responsibility of local officials, but not normally public security officers.^a The personalities, interests, and personal connections of these local officials often influence their enforcement of national, provincial, and local laws, regulations, and policies, including birth planning policies, resulting in uneven enforcement, sometimes more strict and sometimes more permissive.^b

A. National Law of Population and Birth Planning

[88] In September 2002, the first National Population and Birth Planning Law came into effect.^a Intended to standardize national birth planning limitations policies, the law grants married couples permission under most circumstances to have a single child and allows eligible couples to have a second child if they meet conditions pursuant to local and provincial regulations.^b The law requires couples to employ birth control measures and stipulates that couples that have an unapproved child must pay a 'premium to a fund set up for bringing up children in society.'^c This premium is often referred to as a social maintenance or compensation fee.^d

[89] The law delegates to the provinces and autonomous regions the responsibility for drafting implementing regulations, including establishing a scale for assessment of social compensation fees.^a All provincial level governments have done so.^b State Council Degree 357 provides general

guidance to local authorities, and also permits birth planning officials to ask a court to take forcible action against families that refuse to pay social compensation fees.^c

[90] Rewards for couples that adhere to the policy include monthly stipends and preferential medical, food, and educational benefits.^a Both social and economic pressures are common.^b During unauthorized pregnancies, women are visited by birth planning workers who remind them of their potential liability to pay the social compensation fees.^c Seven provinces – Anhui, Hebei, Heilongjiang, Hubei, Hunan, Jilin, and Ningxia – require ‘termination’ of pregnancies that violate provincial birth planning regulations.^d Another 10 provinces – Fujian, Guizhou, Guangdong, Gansu, Jiangxi, Qinghai, Sichuan, Shanxi, Shaanxi, and Yunnan – require unspecified ‘remedial measures’ to deal with out-of-plan pregnancies.^e In at least two provinces (*Fujian and Hunan*), couples who have conditions that would cause serious genetic illnesses in their offspring may not have children.^f Additional disciplinary measures against those who violate the limited-child policy by having an unapproved child or helping another to do so may include loss of government-subsidized health benefits, job loss or demotion, loss of promotion opportunity for one or more years, expulsion from Communist Party (*membership in which is an unofficial requirement for certain jobs*), and other administrative punishments.^g Under these circumstances, government employees are particularly vulnerable to loss of employment when they have a child outside of locally established regulations.^h In some areas, violators of birth planning regulations were held and abused in ‘population schools,’ which were nothing more than unofficial prisons.ⁱ Chinese officials have said that government-subsidized education benefits are no longer denied to out-of-plan children, but it is unclear if that is the case.^j

[91] Central government policy prohibits the use of physical coercion to compel persons to submit to sterilization or abortion.^a However, U.S. diplomats in China have hard reports that local officials occasionally employ illegal means, such as forcibly performing abortions or sterilizations, in order to demonstrate their resolve to meet birth planning targets and keep their jobs.^b Reports of physical coercion continue to be heard. For example, the Chinese press reported the March 21, 2005 death of an unmarried 19-year-old woman during a forced late-term abortion in Pi County, Sichuan Province.^c So far, no officials are known to have been held accountable for this death. In June 2004, officials in Jieshou City, Anhui Province, forced a

woman to be sterilized, and state media reported that the woman was injured when she jumped out of a window in the operating room in an attempt to avoid the procedure.^d In the same city, another woman committed suicide when her relatives were detained in 'population schools.'^e According to state-media reports, the local officials responsible for the detentions were fired or sanctioned administratively.^f Earlier in 2004, media reports noted that a drug offender in Gansu Province was forced to have an abortion before her trial on charges punishable by the death sentence.^g

[92] China's birth planning law is most strictly enforced on Han Chinese in urban areas, where the one-child policy is the norm.^a The constant scrutiny of neighbors makes it difficult to conceal a pregnancy, and small apartments encourage small families.^b Couples seldom receive permission to have more than one child, although the government maintains that members of urban couples who themselves were only children may now receive permission to have two children.^c Residents of rural areas enjoy more flexibility de jure and de facto in having a second child.^d

A.1. Minority and Transient Populations

[93] Government policy is more relaxed and/or sporadically applied in China's substantial ethnic minority and transient migrant (*estimated at 150 million persons*) populations.^a China's economic migrants (*the 'floating population'*) work for long periods without permanent household registration documents allowing them to live legally in their current, usually urban, locations.^b U.S. officials in China have heard several recent reports of attempts to enforce birth planning laws more strictly in Anhui Province, a major source of migrant labor.^c Minority ethnic groups are subject to less stringent population controls and are generally allowed at least two children.^d In remote rural areas, there are no effective limits.^e However, there are reports of enforcement of the one-child rule on the Uighur minority in Xinjiang Province.^f There have also been reports that the government has engaged in coerced abortion and forced sterilization of the Uighur minority.^g (*See Section C.2. – Uighur above*).^h Ethnic minority persons who are government workers or CCP members are coming under increasing pressure to adhere to the birth limits imposed on Han Chinese.ⁱ

A.2. Marriage Age/Single Parenting

[94] In order to delay childbearing, the law sets the minimum marriage age for women at 20 years and for men at 22 years, and couples are encouraged by birth planning authorities to delay childbearing.^a The National Marriage Law, amended in October 2003, no longer mandates premarital medical examinations.^b Persons who marry before the legal age generally are not allowed to register their marriage or to obtain a notarized certificate of marriage.^c This may result in loss of social benefits, such as access to a larger apartment, subsidized healthcare, or better educational opportunities for their child.^d

[95] There are no provisions in the National Law on Population and Birth Planning to detain or jail cohabiting couples for having an unauthorized child.^a However, couples that are not underage but cohabit and have an unauthorized child are liable for 'social compensation fees.'^b It is illegal in almost all provinces for a single woman to have a child, and social compensation fees have been levied on unwed mothers.^c

A.3. Birth Planning Methods

[96] Chinese law requires couples to practice birth control, and an increasing number of birth planning clinics give patients a range of options and promote 'informed choice' of birth control methods.^a Married women may be required to be examined from one to four times a year to show they are not pregnant.^b This practice is not universal and some women are never tested.^c Typically, pregnancy checks are required only after the birth of the first child.^d Checking is most common for migrant workers and others that the authorities suspect might try to violate family planning regulations.^e Unmarried women are generally not checked, but there was a press report of a complaint by a Putian County, Fujian resident that unmarried women over the age of 18 were required to be tested.^f Pregnancy checks are not mentioned in the national birth planning law, but are required by some provinces.^g For example, Anhui's regulations state that 'organizations engaged in birth planning technical services must implement pregnancy checks and follow-up visits for married women.'^h Fujian has no such provision.ⁱ

[96] Whether in the cities or in rural areas, abortion and sterilization are important methods along with IUDs, used in pursuit of China's one-child-

policy, with abortions performed more frequently in urban areas than in rural ones.^a The Ministry of Health reported that in 2005 there were 7.1 million abortions, 6.8 million IUD insertions, 1.4 million tubal ligations, and just under 200,000 vasectomies.^b Comparable figures for 1983, the peak year for many of these procedures, were 14.3 million abortions, 17.7 million IUD insertions, 16.4 million tubal ligations, and 4.4 million vasectomies.^c Birth control pills and condoms are used as well, but more often in urban areas than in rural areas.^d Condom use, especially outside of marriage, is growing because of their promotion for HIV/AIDS prevention.^e

[97] The government (*whether or not it has actual or sampling data*) does not publicize data on forced abortions or forced sterilizations, although the press occasionally reports abuses.^a Individuals can sue officials who have exceeded their authority in implementing family planning law, but there are no known successful suits on these grounds.^b In 2003, officials in one province who tried to force a woman to be sterilized were reprimanded after she complained to national family planning officials and insisted on her right under the law to choose her method of birth control.^c She subsequently chose an IUD.^d

A.4. Abortion and Birth Control Documents

[98] The U.S. Embassy and Consulate General are unaware of any so-called 'abortion certificates,' which sometimes are presented as evidence of forced abortion as part of asylum applications.^a According to Embassy officials, the only document that might resemble and be confused with such a certificate is a document issued by hospital upon a patient's request after a voluntary abortion.^b Patients use this certificate to request two weeks of sick leave after an abortion has been performed, a right provided by the law.^c It is possible that the holder of a document indicating a requested voluntary abortion may, in fact, have only submitted to an abortion as a result of pressure.^d Local authorities, usually at the township or neighborhood committee levels, issue birth permits, birth planning certificates (*obtained at marriage and entitling couples to use birth planning services, including birth control*);^e and 'one-child-certificates' to couples promising to have only one child.^f

B. Fujian Province

[99] According to the Fujian Province Birth Planning Committee (FPBPC), there have been no cases of forced abortion or sterilization in Fujian in the last 10 years.^a It is possible to confirm this claim, and, in 2006, reportedly, there were forced sterilizations in Fujian.^b Hundreds of asylum applicants from Fujian claim that forced abortions and sterilizations continue to the present day.^c The FPBPC acknowledged that during the 1980s and early 1990s there were isolated cases of forced abortion and sterilization.^d Since that time, the FPBPC asserts that it has insisted that all men and women who undergo surgical procedures provide informed, written consent before surgery.^e Local physicians in contact with the U.S. Consulate General in Guangzhou report that they have not seen signs of forced abortions or sterilization among their patients from Fujian and Guangzhou Provinces since the 1980s.^f However, Gao Xiaoduan, a former birth control planning officer in Yonghe Town, Jianjing Municipality, Fujian Province, told a subcommittee of the U.S. House of Representative in June 1998 that the birth planning office where she worked was performing involuntary abortions and sterilizations as late as 1998.^g Gao stated that 'planned birth supervision teams' often carried out nighttime raids on the homes of suspected violators of birth planning policy and dismantled their homes.^h Female violators apprehended during these nighttime raids would have sterilization or abortion procedures performed on them against their will.ⁱ More recently, a hospital director in Changle, Fujian, stated that the hospital would take 'measures' (*unspecified*) to induce some patients to undergo abortions in the name of compliance with the birth planning law.^j Consulate General officials visiting Fujian have found that coercion through public and other pressure has been used, but they did not find any cases of physical force employed in connection with abortion or sterilization.^k In interviews with visa applicants from Fujian, representing a wide cross-section of society, Consulate General Officers have found that many violators of the one-child policy paid fines but found no evidence of forced abortion or property confiscation.^l

[100] According to the FPBPC, each married couple is allowed to have one child without a birth permit.^a Article 15 of the Fujian provincial regulations states that a first birth permit is required, but the U.S. Consulate General in Guangzhou reports that, since September 2002, first birth permits have in practice been replaced by family planning service cards, which are issued to couples upon marriage and given them access to contraception and reproductive health services, including prenatal services for the first child.^b

While service cards are technically required before a couple is allowed to get pregnant, the Consulate General has heard of cases where rural governments are willing to issue these cards retroactively after a first birth with marriage.^c Also according to the FPBPC, the provincial government only imposes penalties on families that do not comply with the birth planning law;^d it does not impose criminal penalties or physically coercive methods to ensure compliance.^e However, birth planning law violators sometimes lose their jobs or positions, especially if they are Communist Party members.^f Couples with unauthorized children are not allowed to work for the provincial government.^g

[101] There is wide variation in the amount of social compensation fees, and the severity of hardship they impose, for out-of-plan births.^a According to the FPBPC, social compensation fees are based on net per capita income levels for rural households and disposable per capita income for urban households (*the 'baseline'*).^b The exact figure is based on county-level statistics, so the baseline varies throughout the province.^c For households with incomes significantly greater than the relevant income baselines, the local birth planning commission can increase the social compensation fees.^d Social compensation fees range from the baseline or less for unmarried couple that has a child to greater than six times the baseline for couples with four children or more and are determined by the local birth planning committee in the city or county where the couple resides.^e In 2003, urban disposable income in Changle City and Lianjiang County was approximately 10,500 renminbi (*about \$1210*) and rural net income per capita was approximately 4,401 renminbi (*about \$530*).^f In 2004, Changle City and Lianjiang county urban disposable per capita income was 11,437 renminbi (*about \$1380*) and rural net income per capita was 4,815 renminbi (*about \$580*).^g

[102] According to the FPBPC, couples unable to pay the fee immediately may be allowed to pay in installments.^a Local birth planning committees have the power to sue families that refuse to pay the requisite fees, but they cannot garnish wages.^b The FPBPC asserts that parents cannot be sterilized if they are unable or refuse to pay the fee.^c Some asylum applicants from Fujian have stated that, starting in mid-2004, couples who had had an unauthorized pregnancy, even one that ended in abortion, were

required to post security deposits as high as 20,000 renminbi (*about \$2,500*) to guarantee that they would abide by birth planning limitations.^d These applicants claim that they were threatened with arrest if they did not post the deposits.^e While U.S. officials in China cannot confirm that the practice of posting deposits is currently taking place, a notice on the Quanzhou, Fujian website banning the practice suggests deposits may have been collected in past years.^f The Guangzhou site states: ‘All family planning security deposits that were collected over historical years must be returned. New types of security deposits are strictly forbidden.’^g

[103] The media have reported some cases in which a person was punished because his or her relatives either violated birth planning restrictions or had not paid fees for violating birth planning regulations, although these cases have not been independently verified.^a Chinese birth planning officials admit the possibility of ‘overzealous’ officials exceeding their authority, but they assert that such behavior is neither the norm nor sanctioned by the government.^b

C. Other Provinces

Guangdong Province

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

[105] U.S. Consulate General officers are aware of one case in which a woman pregnant with an unauthorized second child lost her job at a local market due to pressure from a local birth planning committee.^a After the child was born, officials would not register her child in the family’s residency booklet (*see Section V.C. – Household Registration and Identity Card*) until she paid a fee, even though there are no provisions in the provincial birth planning regulations that permit local authorities to withhold registration until social compensation fees are paid in full.^b

[106] Anecdotal and empirical evidence suggests that self-employed individuals and rural residents can evade birth limitation regulations and authorities with relative ease.^a Job loss threats mean less to self-employed

persons than they do to state enterprise employees.^b Many self-employed individuals use economic means to skirt restrictions, using methods including bribing authorities before birth and paying fees after the birth.^c Urban residents can sometimes evade constraints simply by moving to the countryside or staying with relatives in other areas until the child is born, then returning home and paying a fee.^d

Jiangxi Province

[107] According to a Xinhua News Agency report in February 2004, new provincial regulations state that couples without an official marriage certificate who produce offspring will be fined 1.05 times the baseline income for their locality.^a If one or both of the members of the couple is younger than the lawful marriage age, the fine rises to 1.75 times the baseline. Couples who give birth in violation of the 'one child policy' will face fines of up to 3.5 times the average annual local per capita income.^b The average annual income of Jiangxi's urban residents in 2003 was roughly 6,900 renminbi (*about \$830*);^c for rural households, the figure was around 2,000 renminbi (*about \$240*).^d

Sichuan Province

[108] Sichuan birth planning regulations promulgated in implementation of the 2002 National Law on Population and Birth Planning abolished the requirement that couples obtain permission to have their first child.^a The regulations provide exemptions for residents from Taiwan, Hong Kong, and Macao, as well as returned overseas Chinese.^b Ethnic autonomous prefectures are empowered to promulgate their own regulations, subject to approval by the provincial People's Congress.^c Couples are permitted to have a second child if:

Their first child is handicapped and unable to work.

One parent is a disabled veteran.

Both parents are only children themselves.

The mother is an only child and the father is a rural resident.

The mother or the father is a single child of a military casualty.

The mother is a single child from an under-populated rural area.

They are a rural one-child family in a remote or mountainous region.

A family has several brothers, but only one has reproductive capacity.

[109] Couples who have a second child in contravention of the regulations are required to pay 6-8 times their disposable income in social compensation fees.^a The regulations stipulate different methods for calculating the income of rural and urban residents.^b Unwed couples who have a child are required to pay a social compensation fee of 3-4 times their annual disposable income.^c Couples who meet the criteria for a second birth, but who fail to obtain permission before having the child, must pay a social compensation fee equivalent to their disposable annual income.^d Couples who have a second child in contravention of the birth-spacing regulations would be required to pay a social compensation fee of two times their annual disposable income.^e Persons who did not meet the requirements for a second or third birth, but who nevertheless had a second or third child, would have to pay double the social compensation fee for each additional birth.^f

D. Births in the United States

[110] Couples sometimes seek asylum based on a claimed fear that an 'unauthorized' child born in the United States would – if the child returned to China – prompt their city university, or other work unit to fire one or both spouses from jobs or impose heavy economic penalties for violating the one-child policy.^a Some asylum seekers also claim the existence of an official Chinese government policy mandating sterilization of one partner if a couple has given birth to two children, at least one of whom was born abroad, if the child or children return to China.^b U.S. officials in China are not aware of the alleged official policy, at the national or provincial levels, mandating the sterilization of one partner of couples that have given birth to two children, at least one of whom was born abroad.^c

[111] National Population and Family Planning Commission officials told U.S. Embassy officials in July 2005 that, in accordance with an unpublished 2002 national level 'Regulation on Issues Concerning Births by Students when Overseas,' no action will be taken against students (*who give birth while overseas*) where both parents have resided overseas for at least one year and have two children when they return to China.^a Also under this regulation, reportedly, 'where Chinese returning to China have other offspring living permanently overseas, those offspring will not be counted for birth planning regulation purposes.'^b Unfortunately, when regulations are

unpublished, it is hard for members of the public to know and protect their rights, especially if officials claim laws or regulations are otherwise.^c Shanghai Municipality has published its own parallel regulation, which refers specifically to the unpublished national regulations, and states that the Shanghai regulation conforms to the national regulation's provisions.^d

[112] As to Fujian Province, in response to an inquiry by the U.S. Consulate General in Guangzhou, the Population Family Planning Commission of Fujian Province stated in an October 2006 letter that children born abroad, if not registered as permanent residents of China (*i.e., not entered into the parents' household registration*), are not considered as permanent residents of China, and therefore are not counted against the number of children allowed under China's family planning law.^a The October 6 letter has been translated and is attached as Appendix C.^b

[113] Complications could arise if a Chinese national returns with a U.S. born child who is traveling on a Chinese passport, as many be the case when parents hope to obtain free public education, medical care, and social services for the child in China. China does not recognize dual citizenship, and children without a Chinese household registration (*i.e., who enter and live in China as American citizens rather than as Chinese permanent residents*) are not eligible for free public education and other social benefits available to Chinese permanent residents.^a These benefits are available, but at a higher cost than the parents of permanent resident children pay.^b However, out understanding is that the parents of U.S. born children who choose to register their children as Chinese permanent residents in order to gain free or 'Chinese-cost' educational and other social benefits would not be able to exclude these children from the number of children allowed under Chinese family planning policy, and this could trigger sanctions and economic penalties under the relevant laws and regulations.^c In any case, the parents would be expected to conform to the restrictions in Chinese law and regulations on future offspring.^d American citizen children traveling on American passports are not eligible for free Chinese public education, many attend private schools where parents pay tuition.^e

[114] In an exchange of notes which accompanies the U.S.-China Bilateral Consular Convention signed in 1980, both governments agree that nationals of the sending state who enter the receiving station travel documents issued by the sending state 'will ... be considered nationals of the

sending state' for purposes of consular access and protection while in the receiving state.^a Thus, a person born in the United States to Chinese parents who enters China on a U.S. passport (*with a Chinese visa*) will be regarded as a U.S. citizen for purposes of consular protection.^b

Other Information for Adjudicators

[115] Many factors can come into play in asylum requests, including the treatment of illegal immigrants who are returned by the United States to China, complex issues regarding documentation, possible reasons for the large number of asylum requests from Fujian, and a host of other economic and social factors in today's China.^a There are also issues related to Taiwan, and conditions in Hong Kong and Macau, from which few asylum applications, in fact come.^b The following omnibus section addresses a number of these questions.^c

A. Treatment of Returning Illegal Emigrants from the United States

[116] The Chinese government accepts the repatriation of citizens who have entered other countries or territories illegally.^a 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.^b In most cases, returnees are detained long enough once reaching China for relatives to arrange their travel home.^c 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.^d Persons identified as organizers or enforcers of illegal migrant trafficking are liable to face criminal prosecution in China.^e

B. Documentation

[117] Documentation from China, particularly from Fujian Province, is subject to widespread fabrication and fraud.^a This includes documents that purportedly verify identities, personal histories, births and birth control measures, and notices from public security authorities.^b The existence of this fraud has been established by direct investigation by U.S. consular officers in China. Certificates also may be issued to relatives or friends if they have written authorization from the interested party.^c According to me Chinese official with responsibilities relating to notarial offices in Fujian Province, no reliable documents exist to prove relationships and notaries must do field

investigation to confirm information in notarial documents.^d If no contradictory information is discovered, notarial certificates are then issued.^e From early 1999 to 2000, of 61 document[s] examined for verification by the U.S. Consulate General in Guangzhou, 38 were found to be fraudulent and 6 were found to be dubious, only 17 were judged without a doubt as genuine.^f

C. Household Registration and Identity Cards

[118] The household registration document (*hukou*) is key to an individual and his family's well-being, education, employment, housing, and social benefits.^a It officially documents not only the legitimate residence of a person – differentiating rural and urban residents – but also the allocation of various services, such as food assistance and schooling.^b With marketization of the economy, increased privatization, and the ability of individuals to decide how they want to earn a living, however, the importance of the household registration book has diminished, particularly in the more developed areas of southern and eastern China.^c In the 1990s, citizens became more mobile even as they retained their original 'rural' or 'urban' designation.^d The U.S. Consulate General in Guangzhou reports that although the household registry is an important source of otherwise undocumented information (*e.g., ethnic status and rural/urban designation*), fraud precludes consular officers from relying on the household registration booklets as a prime source of documentation in adjudicating visa cases.^e

[119] An individual who is unmarried but living with a parent might not have a registration booklet, but might be carried on the head of household's registration (*e.g., a parent*), and would obtain his/her own booklet upon marriage or upon leaving the parents' household.^a Some individuals, such as a person living in factory allocated housing, might have no household registration booklet, but might be listed on a roster of factory workers.^b The Public Security Bureau also requires in some instance that an individual intending to reside temporarily in a location file a temporary household registration (*linshi hukou*).^c

[120] In addition to the household registration document, individual identity cards (*jumin shengengzheng*) and work identification cards

(*gonggzuozheng*), issued by an individual's workplace, are important documents.^a The authorities try to use the identification card system to control migration within the country.^b This system's effectiveness has eroded during China's shift in the direction of a more market-oriented economy.^c 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 (*see Section V.G. Internal Flight Alternatives, below*).^d The U.S. Embassy comments that the identity card remains important to residents of major cities. Of particular importance is the 'legal residence' or 'address' of the bearer shown on the card.^e This address, if not fraudulent, confirms the 'jurisdiction' of officials empowered to approve basic applications, such as for marriages and passports.^f However, there is a burgeoning market in counterfeit documents.^g

D. Passports and Exit Permits

[121] For the average citizen, i.e., those without legal or political problems, obtaining a passport for private travel abroad is now relatively easy, and millions of Chinese travel abroad annually, a big change from even a decade ago.^a The Chinese government routinely permits most legal emigration and most private foreign travel, though in the past it placed obstacles in the way of such travel on political, security, or other grounds.^b However, the government still denies passports to some individuals for political reasons, and, in particular, many dissidents encounter difficulties in obtaining passports.^c In one recent case, Chinese authorities in Henan Province attempted to block, before relenting under domestic and international pressure, the overseas travel of a pioneering Chinese doctor who has championed the cause of HIV patients and HIV prevention.^d Leaders and clergy of underground religious groups frequently find it difficult to obtain passports and other necessary travel documents.^e

[122] Individuals traveling on ordinary (*nonofficial*) passports for personal travel must apply for a passport, which requires the approval of public security officials.^a Exit permits issued by the Public Security Bureau are no longer required, but public security officials may still prevent persons from exiting at border checkpoints.^b Persons traveling on public affairs (*waiban*) passports and official passports have explicitly received government permission to travel abroad.^c As a result, a person entering the United States on a public affairs or official passport is unlikely to face

persecution or prosecution, unless a serious political or other issue, such as malfeasance, surfaces after the person exits China.^d

[123] According to the U.S. Embassy, there is no law, regulation, or policy that bars persons who have been sanctioned for violating birth planning laws from obtaining a passport or leaving the country.^a The U.S. Consulate General in Guangzhou has processed visas for persons who had been sanctioned for violating birth planning laws or were required to undergo sterilization.^b These applicants had valid passports authorizing them to leave China. Multiple abortions, likewise, would have no bearing on travel authorization.^c

E. Fujian and Guangdong Provinces

[124] A large number of asylum seekers, in fact, a disproportionate number compared with asylum seekers from other provinces, come from Fujian Province.^a Emigration from China's coastal, heavily populated Fujian Province to the United States, which dates back to the 19th century, prepared the way for many of today's immigrants.^b Legal and illegal (*Fujian has also been a major source of emigration over three centuries in Taiwan and Southeast Asia*).^c Though standards of living have improved in China in recent decades, especially in coastal areas, including many parts of Fujian, some persons seeking to further improve their economic status arrange to be smuggled into the United States – often with no realistic understanding of the social and economic environment here.^d

[125] While emigration from Guangdong Province has also been substantial since the 19th century, in recent decades Guangdong, unlike Fujian, has not been the source of massive illegal emigrations, nor, apparently, has it been the source of a disproportional number of asylum applicants.^a

[126] Following is some information on the places of origin of many Fujian asylum applicants:

Fuzhou City

[127] Fuzhou, capital of Fujian Province, has 1.5 million registered inhabitants and an estimated 'floating' population of 250,000.^a Substantial urbanization has followed in the wake of conversion of farmland around Fuzhou into industrial or special economic zones.^b Displaced workers from inland areas of China also go to Fuzhou hoping for economic opportunity.^c The city's residents average higher levels of education and income than do the people from the surrounding area, in places such as Changle and Lianjiang.^d

[128] Changle City is located just southeast of Fuzhou.^a The registered population in Changle is 600,000 people, but in some towns Changle's jurisdiction, 50 to 85 percent of residents are reported to be in the United States.^b During the 1990s the Changle area was described as having a 'culture of migration,' since many of its residents aspire to emigrate.^c Asylum applicants from Changle mostly appear to be young;^d once in the United States, they usually help to support their families in China with remittances.^e

Lianjiang County

[129] Located north of Fuzhou, Lianjiang County has a registered population of around 600,000 people. Of the 19 towns in Lianjiang County, Guantou and neighboring Tingjiang are the largest immigrant sources.^a An estimated 1.6 million Chinese people in Hong Kong, Macao, and Taiwan were originally from Tingjiang.^b

F. Place Names and Dialects (and Fujian)

[130] 'Pinyin' has been the official PRC Romanization system for transliterating Mandarin Chinese into English since 1978, and most, but not all, asylum applications transcribe proper and place names into 'pinyin' Roman letters.^a This transliteration system is very different from an earlier commonly used transliteration system that is still widely used in Taiwan.^b However, 'non-pinyin' transliterations of some place names in south China, notably from Fujian and Guangdong Province, where local 'dialects,' actually different (*Chinese*) languages, are commonly used and Mandarin Chinese may only be used in school, are sometimes seen in asylum applications filed by or on behalf of immigrants from these areas.^c

[131] The three locations around Fuzhou, Fujian Province, from which many applicants come, are rendered in pinyin in Romanization as: Changle City, Lianjiang County, and Tingjiang Town.^a Because of the local dialect, however, these counties might appear on the I-589 and in affidavits and statements as Zanlok/Chunler (*Changle*), Lyanggiang/Linking (*Lianjiang*) and Dinggiang/Tinzhan (*Tingjiang*) or in other ways that make them, accidentally or not, appear to be different places.^b Applicants from Fuzhou often list only their local district, e.g., Mawei, without naming Fuzhou; applicants from the countryside might just list a hometown, for example, Guantou (*home of many applicants*), rather than the county, Lianjiang.^c Or, even if from a county some miles away, they might list Fuzhou as home.^d

G. Internal Flight Alternatives

[132] Most asylum applicants take the position, implicitly or explicitly, that they would be unable to avoid mistreatment by moving elsewhere within China.^a Circumstances prevailing through the mid-1970s, notably widespread rationing of basic foodstuffs, limited transportation options, a general requirements to have travel permission from local authorities or one's workplace, limited temporary residency options, and a strict internal migration and household registration regime, made it likely that authorities could easily identify those who might try to migrate internally.^b However, by the 1980s the shift from a state-regulated to a pluralistic market economy rendered these previously formidable obstacles essentially obsolete.^c

[133] Today, China's booming economy and the demand for transient labor have drastically spurred internal migration.^a As a result, internal relocation is more of a possibility than previously, especially for those with access to money, those traveling on seemingly widely available fraudulent documents (*see Sections V.B. – Documentation and V.C. – Household Registration and Identity Cards*), and the 100-150 million persons 'floating population' of economic migrants who leave their home areas to seek work elsewhere in China.^b However, it would still be difficult for a person who is seriously 'wanted' by national authorities to hide indefinitely with any degree of security in China.^c

[134] For these better off workers as well as poorer rural itinerants, the earlier difficulty of moving in China has been reduced by eased residency restrictions and inconsistent enforcement by various levels of law enforcement.^a Many asylum applicants tell of hiding and working in large cities – often Fuzhou – for periods ranging from a few months to several years.^b In many areas, local authorities have lost track of registered residents and do not know the identities of new arrivals.^c Transient quarters in cities are swamped, and new arrivals stay with friends or relatives or sleep on the street or in inexperienced hostels in many places.^d While some industries can legally hire itinerant laborers, others that are not legally permitted to do so continue to hire such persons in violation of regulations.^e

[135] The lack of legal resident status for this itinerant population means restricted access to housing, social services, schooling, and many employment opportunities.^a Unless such persons obtain resident status, most jurisdictions require them to pay a premium for such services or deny them altogether, although the government has made a priority of improving the conditions of the ‘floating population.’^b Some cities, such as Beijing, are beginning to provide free social services for such persons, and 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 being eliminated, though public knowledge of the changes remains limited and migrants may be reluctant to press their claims.^c Migrants are reportedly often cheated of their wages by unscrupulous employers.^d

[136] In June 2003, the State Council abolished the ‘custody and repatriation’ system of administrative detention for illegal migrants following the beating death of a university graduate from Hubei Province in Guangzhou custody and repatriation camp.^a The State Council called for the conviction of administrative detention centers into humanitarian relief centers to support migrants, vagrants, and the homeless.^b The impact of these reforms remains uncertain.^c

H. Work Units and Decision – making

[137] The Chinese government continues to exert administrative control over its citizens primarily through the workplace, but such control is less pervasive today because of China’s movement away from the state-owned enterprise system toward a market economy.^a Still, the state’s work units often provide housing and health insurance and grant permission to travel

abroad.^b The unit retains its members' birth and marriage certificates, school transcripts and diplomas, professional certificates and licenses, and other documents that would be considered personal in the United States.^c It is also the conduit through which retirement benefits usually are paid, although reforms are planned to make this a local government function.^d In 2003, new regulations eliminated the requirement that individuals obtain work unit approval before getting married.^e

[138] Private firms and foreign joint ventures, which employ millions of workers, are not considered classic work units, and there are no provisions for these enterprises to control the personnel dossiers of individuals working in these enterprises.^a In such cases, personal documents are usually retained by an employer's former work unit (*especially for older workers*) or, to an increasing extent, by skilled labor placement centers, which manage a small but growing employment market aimed primarily at younger, more mobile Chinese workers.^b

[139] While rural decollectivization and the follow-on household contract responsibility system have made the family the primary unit of rural production, work units also operate at the village level.^a Work units in the countryside may seek to exercise many of the same controls as those in urban areas, but when it comes to providing benefits, rural work units generally have a little to offer.^b Health and retirement benefits available in theory to urban state enterprise workers are not available to most rural residents.^c A growing number of township enterprises, however, have begun to offer such benefits.^d

I. Work Choices

[140] Labor markets have changed significantly in China in recent years.^a As noted above, booming coastal cities have attracted a 'floating population' of excess unskilled rural manpower numbering 100-150 million persons. Private firms and foreign joint ventures have drawn millions of skilled and unskilled workers away from state-run enterprises.^b Labor mobility for skilled workers, however, is sometimes impeded by work units that prevent employees from leaving their jobs by refusing to relinquish control of their dossiers, which contain vital records, credentials, permits, licenses, and other essential documents. Some employers hold documents or use several months of wage arrears as leverage to prevent workers from leaving their employ

without `permission.’^c Nevertheless, many state enterprises, in fact, have been eager to shed workers.^d

[141] There is no longer a job assignment system for middle school, high school, and college leavers and graduates.^a Once students are legally eligible of reemployment at age 16, and have completed as much school as they wish beyond the nine years of compulsory education, schools issue an employment eligibility certificate, and young people are then free to seek out work in any manner they wish.^b College graduates are responsible for networking, attending job fairs, and preparing and sending out resumes in support of their own employment applications.^c

J. Former Prisoners

[142] Persons released from prison, including dissidents, often face restricted employment opportunities for a variety of reasons.^a Social prejudice against former prisoners plays a part.^b Loss of party membership (*as a mandated result of a prison sentence*) can preclude employment in government jobs.^c Categories such as `on parole,’ `on probation,’ activities restricted,’ and `no political rights for (*a specified number of years*)’ provide another barrier to some employment.^d When former prisoners try to start private enterprises, they may not be allowed to register their companies or authorities might try to intimidate potential customers.^e Educational opportunities are often denied to former prisoners and dissidents.^f Freedom to travel and access to social services such as housing also can be severely restricted.^g Other former prisoners have returned home but have been denied freedom of movement.^h

[143] College graduates who have been labeled `bad elements’ for political, religious, or other activism would have a hard time getting state jobs, because such labels may be in their personnel files.^a Jobs with foreign companies are numerous and lucrative, however, if a graduate has language or technical skills.^b As for employment of `bad elements’ in Chinese private sector firms, the situation is less clear and it may fluctuate with the state of the economy.^c (*China’s economy has been growing at about 8 percent per year for the past several years*).^d Given the government’s dominant role in economic decision making, private companies are susceptible to government pressure in matters of hiring and firing.^e

K. Family Housing

[144] Chinese urban apartments are small by U.S. standards, and families with several children are likely to experience difficulty obtaining suitable space in an urban setting.^a Living space is less likely to be a problem in rural areas.^b Many Chinese live in housing provided by their work units or purchased from their worker units at a very low price.^c Since private land ownership remains forbidden, housing can be expropriated by at any time.^d Given the rapid pace of Chinese urban redevelopment, older neighborhoods are frequently torn down and residents relocated, often to more distant or expensive apartments.^e In rural areas, land is often reclaimed for development or other use.^f Those who hold 'land use' rights – in either urban or rural settings – have no legal recourse to a government removal order, although they can contest the amount of compensation provided for relocation.^g Government removal orders from local governments have sparked tens of thousands of protests annually in recent years.^h

L. Forced Marriage

[145] Some female asylum applicants claim that they were forced into marriage.^a Chinese law has forbidden coerced marriage since 1950.^b While a person may come under intense family pressure to enter into a marriage for financial or other reasons, the 2001 Marriage Law, and the Regulations on Matrimonial Registration, adopted by the State Council in 2003, reaffirmed that only marriages willingly entered into by both parties are valid.^c There have been reports of women who are abducted and forced into marriage, but both the abduction and the marriage violate Chinese law.^d

M. Military Service

[146] The PRC has a law on military conscription, and localities must meet conscription quotas.^a Conscription law specified that males who are 18 to 22 years of age and who have completed middle school must register for service in the People's Liberation Army (*FLA*).^b Service in the FLA has traditionally been prestigious, and military authorities carefully screen applicants for political reliability.^c

N. The Taiwan Factor

[147] While asylum applicants from China may legitimately claim that they suffered in the past, especially in the 1950s and 1960s, because of

alleged support for, or family ties to Taiwan or Chiang Kai-shek's Kuomintang (*KMT*) party, such historic connections would not normally be a problem today.^a For almost two decades, both Beijing and provincial authorities have encouraged propel on Taiwan to return legally to the People's Republic of China, to trade, invest, and visit relatives.^b More than one million Taiwan residents now visit China annually for business or pleasure;^c Taiwan is one of the largest sources of outside investment in China;^d and some 500,000 people from Taiwan live in China, primarily for business purposes.^e Travel from the PRC to Taiwan is rarer, but thousands of individuals, as well as PRC regional officials involved in trade and investment, have visited Taiwan since 1988.^f

O. Hong Kong

[148] Applicants for asylum from Hong Kong residents are rare, and usually are base on alleged religious persecution or fear for what might happen in Hong Kong in the future Hong Kong, an enclave on the South China coast with a population of almost 7 million, has been a Special Administrative Region (*SAR*) of the PRC since July 1, 1997.^a Prior to its reversion in China, Hong Kong was a British Crown Colony for over 150 years.^b As a result of British era precedent and long negotiations between China and Britain before its reversion, Hong Kong maintains a high degree of autonomy, except in matters of defense and foreign affairs.^c It has well-established government, religious, political, and other non-governmental institutions that support the rate of law and a vigorous civil society.^d The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, Hong Kong's mini-constitution, provides for the protection of fundamental rights.^e

[149] The Basic Law for freedom of religion, the Bill of Rights Ordinance prohibits religious discrimination, and the SAR government generally respects these provisions in practice.^a Under the Basic Law, China does not have jurisdiction over religious practices in Hong Kong, and as a result, the Vatican appoints the head of the Jong Kong's Catholic Diocese.^b Despite the ban on Falun Gong in China, which considers itself a spiritual movement and not a religion, is legally registered in Hong Kong under the Societies Ordinance, and is generally free to practice, organize, attract public attention to its movement, and conduct public demonstrations.^c

[150] China's birth planning policies do not apply in Hong Kong.^a

[151] The SAR government generally respects the human rights of residents, and the law and judiciary generally provide effective means of dealing with individual cases of abuse.^a Human rights problems that existed both before and after Hong Kong's reversion to China included limitations on residents' ability to change their government and limitations on the power of the legislature to affect government policies, violence and discrimination against women, discrimination against ethnic minorities, restrictions on workers' rights to organize and bargain collectively, and trafficking in person for the purpose of forced labor and prostitution.^b

[152] British-derived Common Law, legal precedent, and the Basic Law provide substantial and effective protection against arbitrary arrest or detention, and the SAR government generally observes these provisions.^a The Basic Law provides for freedom of assembly and of association, and the SAR government generally respects these rights in practice.^b

P. Macau

[153] Applications for asylum from Macau residents are rare.^a Macau, a small enclave on the South China coast with a population of about 450,000, reverted from Portuguese to Chinese administration on December 20, 1999.^b As a Special Administrative Region (SAR) of the PRC, Macau maintains a high degree of autonomy except in defense and foreign affairs, and its citizens enjoy basic freedoms and legally protected rights.^c The Sino-Portuguese Joint Declaration (1997) and the Basic Law – the SAR's mini-constitution promulgated by China's National People's Congress in March 1993 – specify that, for the first 50 years under Chinese sovereignty, Macau shall continue to enjoy substantial autonomy, including its economic system and an unchanged way of life.^d

[154] The Basic Law provides for freedom of conscience and religious belief as well as freedom to preach and conduct and participate in religious activities.^a The Freedom of Religion Ordinance provides for freedom of religion, privacy of religious belief, freedom of religious assembly, freedom to hold religious processions, and freedom of religious education.^b The SAR

government generally respects these rights in practice.^c Falun Gong practitioners have been allowed to continue their spiritual exercises and demonstrations in Macau's public parks without government interference.^d

[155] China's birth planning policies do not apply in Macau.^a

[156] The SAR government generally respects the human rights of its citizens, however, there are problems in some areas.^a These problems include occasional reports of police abuse, the limited ability of citizens to change their government, limits on the legislature's ability to initiate legislation, inadequate provision for persons with disabilities, and a lack of legal protection for strikes and collective bargaining rights.^b

[157] The law prohibits arrest and detention, and the SAR government generally respects these provisions in practice.^a There were no reports of political prisoners in recent years.^b The law provides for freedom of speech, of the press, of association, and of assembly, and the SAR government generally respects these rights in practice.^c

Appendix A

People's Republic of China Population and Family Planning Law

(adopted at the 25th Session of the Standing Committee of the Ninth National People's Congress on December 29, 2001)

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Chapter 1: General Provisions

Article 1

This Law of the People's Republic of China on Population and Family Planning has been drawn up on the basis of the Constitution and with a view to coordinating the development of population with the development of the economy, society, resources and environment, promoting family planning, uploading the lawful rights and interests of citizens, and bringing happiness into the family, and prosperity and social progress to the nation.

Article 2

China is a country with a large population and the practice of family planning is the state's basic national policy.

The state shall adopt comprehensive measures to control the size of the population and improve its quality.

The state shall rely on publicity and education, scientific and technological progress, comprehensive services, and the establishment or improvement of award and social security systems to implement population and family planning work.

Article 3

Population and family planning work should be implemented in conjunction with an increase in education and employment opportunities for women, improvement of women's health, and raising the status of women.

Article 4

In promoting the work of family planning, People's Governments and their employees at all levels shall administer the work in strict compliance with the law and carry out enforcement with civility. The lawful rights and interests of citizens may not be violated.

Workers and administrative departments responsible for family planning shall enjoy the protection of law while in official duties under the law.

Article 5

The State Council shall lead population and family planning work for the entire nation.

Local People's Governments at all levels shall lead population and family planning work for their respective administrative regions.

Article 6

The administrative department responsible for family planning under the State Council shall be in charge of the family planning and related population work for the entire nation.

Administrative departments responsible for family planning in People's Governments at or above the county level shall be in charge of family planning and related population work for their respective administrative regions.

Other related departments of People's Governments at or above the county level shall be in charge of relevant population and family planning work within the purview of each.

Article 7

Trade Unions, the Communist Youth League, Women's Federations, Family Planning Associations and other social organizations, enterprises, institutions and citizens shall assist the People's Government in promoting population and family planning work.

Article 8

The State shall award organizations and individuals who have made significant accomplishments in population and family planning work.

Chapter II: Generation and Implementation of the Population Development Plan

Article 9

The State Council shall draw up the Population Development Plan incorporate it in the Plan for National Economic and Social Development.

Local People's Governments at or above the county level shall draw up the Population Development Plan for their respective administrative regions on the basis of the National Population Development Plan and the Population Development Plan of the next higher level of the People's Government, in light of actual local conditions, and incorporate said plan of the Plan for National Economic and Social Development.

Article 10

On the basis of the Population Development Plan, People's Governments at the county level or above shall draw up a Population and Family Planning Implementation Plan and organize its implementation.

Administrative departments in charge of family planning in People's Governments at the county level or above shall be responsible for carrying out the daily work of the Population and Family Planning Implementation Plan.

People's Governments at the township, nationalities township and town levels, and urban neighborhood committees, shall be in charge of population and family planning work in the area under their respective jurisdiction, and shall carry out the Population and Family Planning Implementation Plan.

Article 11

The Population and Family Planning Implementation Plan shall set the size of the population, reinforce maternal and infant care and improve the quality of the population.

Article 12

Village committees and resident committees shall do effectively implement family planning in accordance with law.

Government agencies, military units, social organizations, enterprises and institutions shall effectively implement family planning work in their own units.

Article 13

Departments of family planning, education, science and technology, culture, health, civil affairs, news and publishing, broadcast and television shall organize publicity and education on the tonic of population and family planning.

The mass media shall have the obligation of publicizing population and family planning for the public good.

Using methods appropriate to the characteristics of those to be educated, and in a planned way, school shall educate students on physical health, puberty and sexual health.

Article 14

Family planning work among the floating population shall be carried out jointly by the People's Governments in the areas where these populations have their household registrations and the areas where they currently reside, with the latter taking primary responsibility.

Article 15

In step with national economic and social development, the State shall gradually increase the overall level of funding for population and family planning. People's Governments at all levels shall ensure necessary funding for population and family planning work.

People's Governments at all levels shall provide priority support to poor and national minority areas in population and family planning work.

The State encourages social organizations, enterprises, institutions and individuals to make donations to the cause of population and family planning work.

No unit or individual may intercept, cut or misappropriate funds earmarked for population and family planning work.

Article 16

The State encourages scientific research and exchange and cooperation with other countries in the field of population and family planning.

Chapter III: Birth Regulations

Article 17

Citizens have the right to bear children as well as the obligation to practice family planning according to law. Husband and wife bear common responsibility in implementing family planning.

Article 18

The State shall stabilize the current birth policy. It encourages citizens to defer marriages and defer births and advocates one child for each couple. When eligible under laws and regulations, a couple may request arrangements to have a second child. Detailed regulations shall be drawn up by the People's Congresses or their standing committees of the province, autonomous prefecture, and centrally-administered city concerned.

National minorities shall also be subject to family planning. Detailed regulations shall be drawn up by the People's Congresses or their standing committees of the province, autonomous prefectures and centrally-administered cities.

Article 19

The primary means of family planning shall be contraception.

The State shall create the conditions for and provide information to citizens so that they can select safe, effective and appropriate contraceptive measures. When contraceptives and birth control procedures are performed, the safety of the recipient shall be ensured.

Article 20

Couples of childbearing age who practice family planning shall enjoy free family planning technical services funded as a basic state project.

Article 21

Couples of childbearing age who practice family planning shall enjoy free family planning technical services funded as a basic state project.

Funding necessary for the above provision of family planning technical services shall be included in the budget in accordance with relevant state regulations or insured by social insurance.

Article 22

Discrimination against or abuse of women who give birth to female infants or are sterile are prohibited. Discrimination, abuse and abandonment of female infants are prohibited.

Chapter IV: Awards and Social Security

Article 23

The state shall give couples who practice family planning awards according to regulations.

Article 24

The state shall establish or improve such social security systems as basic insurance for old age, basic medical insurance, birth insurance and social welfare benefits and promote family planning.

The state encourages insurance companies to set up insurance plans beneficial to family planning.

Where conditions permit, different forms of providing for old age can be implemented in the rural areas based on state guidance and the voluntary participation of peasants.

Article 25

Citizens who practice late marriage and late childbirth shall be awarded with extended leaves for marriage and childbirth or other benefits.

Article 26

During pregnancy, birth and lactation, women shall enjoy special labor protection and receive aid and compensation according to state regulations.

Citizens who undergo family planning procedures shall enjoy leave according to state regulations. Local People's Governments shall give awards to such citizens.

Article 27

Couples who voluntarily commit to having only one child in their lifetimes shall be issued a 'Certificate of Honor as Parents of an Only Child' by the state.

Couples who receive such a 'Certificate of Honor as Parents of an Only Child' shall enjoy single-child parent awards in conformity with regulations of the relevant state, provincial, autonomous prefecture or centrally-administered municipality.

Where laws, regulations and rules provided that award measures for couples who commit to having one child only in their lifetimes shall be implemented by their work units, the work units shall do so.

Where a single child is accidentally injured or dies, and the parents commit not to have more children or adopt a child, the local People's Government shall render necessary assistance.

Article 28

Local People's Governments at all levels shall give support and favorable treatment to rural families practicing family planning by providing funds, technology and training to aid their financial development. Priority assistance given to poor families which practice family planning shall take the form of loans, allowing families to pay debts through work, and inclusion in various projects for the poor, as well as public assistance.

Article 29

People's congresses and the standing committees thereof, or People's Governments in provinces, autonomous prefectures, centrally-administered municipalities and larger cities may, based on this Law and relevant laws and administrative regulations and in light of actual local conditions, draw up plans for concrete implementation of the award measures provided in this Chapter.

Chapter V: Technical Services for Family Planning

Article 30

The State shall establish systems for pre-marital, pregnancy and post-natal health care in order to prevent or reduce birth deformities and improve the health of new-born infants.

Article 31

People's governments at all levels shall adopt measures to insure family planning technical services for citizens and improve citizens' reproductive health.

Article 32

Local People's Governments at all levels shall rationally allocate and comprehensively utilize health resources. They shall establish or improve a family planning technical services network comprising family planning technical service agencies and medical and health care organizations providing family planning technical services, improve technical service facilities and conditions, and raise the technical level of such services.

Article 33

Family planning technical service agencies and medical and health care organizations providing family planning technical services shall, within their respective purview, carry out propaganda and educational work among people of childbearing age to impact basic knowledge regarding population and family planning, examine married women of childbearing age for

pregnancy and provide follow-up services, and provide counseling, guidance and technical services in regard to family planning and reproductive health.

Article 34

Family planning technical service workers shall guide citizens practicing family planning in selecting safe, effective and proper contraceptive measures.

Couples who have already had a child are recommended to adopt long-term contraceptive measures.

The state encourages research, application and dissemination of new technologies, pharmaceuticals and devices for family planning.

Article 35

Identifying the gender of a fetus using ultrasound or other technology when not medically indicated is strictly prohibited. Selective gender-based artificial termination of pregnancy when not medically indicated is strictly prohibited.

Chapter VI: Legal Liability

Article 36

Where one of the following circumstances exist in violation of this Law, administrative departments responsible for family planning and health care shall, within their purview, order the situation to be rectified, issue a warning, or confiscate illegal gains. Where the illegal gain amounts to RMB 10,000 and more, the fine shall be no less than double nor more than six times the amount of the illegal gain. Where there is no illegal gain or the illegal gain is under RMB 10,000, the fine shall be of not less than RMB 10,000 nor more than RMB 30,000. Where the circumstances are grave, practicing licenses shall be revoked by the original issuing agencies. Where the circumstances constitute a crime, criminal liability shall be determined in accordance with law:

- (1) Unlawful provisions of family planning procedures to third parties;

- (2) The use of ultrasonic or other technology to identify fetal sex or selective sex-based termination of pregnancy for third parties if not medically indicated;
- (3) Falsification of birth control procedures, fraudulent medical evaluations or issue of fraudulent family planning certificates.

Article 37

The illegal gains of those who forge, alter or buy and sell family planning certificates shall be confiscated by administrative departments responsible for family planning. For illegal gains of over RMB 5,000, a fine of not less than double nor more than 10 times the amount of the illegal gain shall be imposed. For cases with no illegal gains or in which illegal gains amount to less than RMB 5,000, a fine of not less than RMB 5,000 nor less than RMB 20,000 shall be imposed. Where the circumstances constitute a crime, criminal liability shall be determined according to law.

Family planning certificates acquired by improper means shall be cancelled by family planning administrative departments. Where the issuing agency is in error, the executive directly in charge and other people with direct responsibility shall be assigned administrative sanctions according to law.

Article 38

Family planning service workers who violate regulations or cause delays in taking emergency action and providing medical attention resulting in serious consequences shall assume corresponding liability in accordance with relevant laws and administrative regulations.

Article 39

If government workers doing family planning work commit one of the following actions, if the circumstances constitute a crime, criminal liability shall be determined according to law; if the circumstances do not constitute a crime, administrative punishment shall be meted out; if there is illegal gain, the illegal gain shall be confiscated:

- (1) Violation of the citizen's right of person, property and other lawful rights and interests;

- (2) Abuse of power, dereliction of duty, and malfeasance;
- (3) Solicitation or acceptance of bribes;
- (4) Interception, cutting, misappropriation or graft of family planning funds or social family planning data.
- (5) False reports, cover-ups, fabrication, alteration or refusal to report population and family planning data.

Article 40

Those who violate this law and fail to discharge their obligation of assisting family planning management shall be ordered by the local People's Government concerned to rectify their conduct and a criticism of their mistake circulated. Administrative sanctions shall be given to the executive directly in charge of the work and to other directly responsible personnel.

Article 41

Citizens who fail to comply with Article 18 of this law and give birth to a child shall pay a social compensation fee according to law.

Those who fail to pay the full amount of the social compensation fee within the specified period shall pay an additional late penalty beginning on the date payment is overdue in accordance with relevant state regulations. The administrative department responsible for family planning which made the decision shall apply to the People's Court for mandatory enforcement in accordance with law in cases where violators fail to make payment after the late penalty is imposed.

Article 42

If government workers are required to pay social support in accordance with Article 41 of this law, such workers shall additionally be assigned administrative sanctions; other people shall be disciplined by the work units or organizations to which they belong.

Article 43

Those who refuse or obstruct the administrative departments responsible for family planning and their workers in performing their public duties according to law shall be given criticism and education by the family planning administrative departments concerned and their actions stopped. Where these actions constitute violation of security management, they shall be given punishment in security management in accordance with law. Where their actions constitute a crime, criminal liability shall be determined.

Article 44

Citizens, legal persons or other organizations who feel that the administrative departments responsible for family planning have infringed upon their lawful rights and interests in the course of implementing family planning management may request administrative review or submit an administrative complaint in accordance with law.

Chapter VII: Supplementary Provisions

Article 45

The State Council shall draw up regulations for the concrete management of family planning work among transient populations as well as concrete management regulations for family planning technical services and measures for the imposition and management of social support.

Article 46

The detailed implementation plan for this law among the Chinese People's Liberation Army shall be drawn up by the Central Military Commission on the People's Liberation Army shall be drawn up by the Central Military Commission on the basis of this law.

Article 47

This law goes into effect on September 1, 2002.

Appendix B

Population and Family Planning Regulations of Fujian Province

Passed on April 29, 1988 by the 2nd session of the Standing Committee of the 7th People's Congress of Fujian Province

First amended in accordance with the Decision on Revising the Family Planning Regulations of Fujian Province passed June 28, 1991 by the 22nd session of the Standing Committee of the 7th People's Congress of Fujian Province.

Amended for the second time in accordance with the Decision on Revisions of Local Codes passed on October 25, 1997 by the 35th session of the Standing Committee of the 8th People's Congress of Fujian.

As further amended in accordance with the Decision on Revising the Family Planning Regulations of Fujian Province [passed] on November 18, 2000 by the 22nd session of the Standing Committee of the 9th People's Congress of Fujian Province.

Revised on July 26, 2002 by the 33rd session of the Standing Committee of the 9th People's Congress of Fujian Province.

Proclamation of 'Population and Family Planning Regulations of Fujian Province'

The 'Population and Family Planning Regulations of Fujian Province' were amended on July 26, 2002 by the 33rd meeting of the Standing Committee of the 9th People's Congress of Fujian Province. The amended 'Population and Family Planning Regulations of Fujian Province' are hereby proclaimed, and shall be in effect as of September 1, 2002.

Standing Committee of People's Congress of Fujian Province, July 30, 2002.

Chapter 1: General Provisions

Article 1

In order to control population size, raise the quality of the population, and allow a balanced population growth in line with the economic and social development, based on the 'Population and Family Planning Law of the People's Republic of China' and other related laws and regulations, and in correspondence with the actual situation in this province, the following regulations have been established.

Article 2

Husbands and wives are jointly responsible for family planning. Citizens' legal rights and interests shall be protected by law during the implementation of family planning procedures.

Article 3

Family planning advocacies must focus on promotion and education, contraception and regular practice. It must be linked to helping the masses in achieving economic development, wealth through hard work, and establishing a civilized, prosperous household. Establishing a comprehensive and well-conceived system of incentives and social security will boost family planning work.

Article 4

The various local levels of the People's Government shall guide population and family planning work within their administrative areas.

Family planning units of the People's Government at the county and higher levels shall be responsible for family planning work and other population-related work within their administrative areas.

Other related administrative units within the People's Government at the county and higher levels shall, within the scope of their particular duties, be responsible for the implementation of population and family planning work respectively.

Article 5

Township (*town*) People's Governments and offices of neighborhood affairs shall be responsible for population and family planning work for their

area of jurisdiction, and shall thoroughly implement population and family planning projects.

Villagers and resident committees must implement family planning work well in accordance with law.

Article 6

Local People's Governments at all levels must incorporate population and family planning into their programs for citizens' economic and social development, allocate funding for population and family planning work in their annual budgets, and based on the actual situation of their economic and social development, gradually raise the overall amount of funding provided for population and family planning work, to ensure adequate funding for population and family planning work.

Article 7

Unions, Communist Youth Leagues, Women's federations, Family Planning Associations and other civic groups, enterprise organizations and citizens in general must assist the People's Government in furthering population and family planning work.

Chapter 2: Regulations of Birth Control

Article 8

A 'late marriage' means when the marriage license is applied for the male is 25 years old or older and the female is 23 years old or older.

A couple is considered to have 'late childbearing' if they meet one of the following criteria:

- (1) The couple conceives after a late marriage;

- (2) The wife gives birth for the first time at age 24 or older;
- (3) The husband is 30 years of age or older when the child is born;

Article 9

The couple who already has one child but conforms to one of the following criteria may have an additional child after approval:

- (1) Both husband and wife are the only child of their parents;
- (2) Either the husband or the wife is the only child of a martyr;
- (3) The couple has legally adopted a child due to infertility but then conceives;
- (4) The couple's first child is handicapped and will not be able to work normally, but the couple is deemed medically fit to have another child;
- (5) Either the husband or the wife has been disabled on the job, and has been certified with having Type Two, Second Class disability or abuse;
- (6) Both husband and wife have returned from the Hong King Special Administrative Region, the Macau Special Administrative Region or the Taiwan area to reside in the PRC, and have resided in the PRC for less than six years.

For married couples, if one partner has no children, and one partner has a child before the second marriage; or one partner has remarried after the death of his or her first spouse, and before the second marriage, the two spouses have a total of two children between them, the couple may have an additional child after approval.

Article 10

If both husband and wife live in a rural area and already have one child, but conform to one of the following criteria, the couple may have an additional child between them, the couple may have an additional child after approval:

- (1) Either husband or wife is an only child;
- (2) None of the husband's brothers has a child, nor can they have more children;
- (3) The wife has no brothers and has only one sister, and her husband had moved in to live with the wife's family and is supporting his parents-in-law;
- (4) Both husband and wife reside in an area with a population density of less than 50 persons per square kilometer, the per capita acreage tilled is 2 mu or greater, or the per capita area of mountain forest land is 30 mu or more;
- (5) The couple has only one daughter.

If both husband and wife are fisherman, or if the husband and wife have engaged in underground mining work for a continuous period of five years or more and are still working underground in the mining industry, and the couple has only one daughter, the case will be handled as per clause (5) of the pervious article.

Article 11

If both husband and wife have returned from permanent residency overseas to reside in the PRC, but conform to one of the following criteria, the couple may have an additional child after approval:

- (1) The wife had already conceived upon entering the PRC for residency;
- (2) Both husband and wife have been residing in the PRC for less than six years, and the couple has only one child;
- (3) The couple's children all live overseas and no children live in the PRC with the couple.

Overseas Chinese spouses residing in Fujian Province shall be subject to clause 3 of the foregoing.

If the husband or wife is a resident or a villager in Fujian Province, and the other spouse is a resident of the Hong Kong Special Administrative Region, the regulations in this article shall also apply. However, if the husband and wife have a child together after the marriage, and the spouse who is a resident of the Hong Kong Special Administrative Region or the Macau Special Administrative Region had children before that marriage, but those children are not living in the PRC, then those children do not count towards the total number of children the couple has under these regulations.

If the husband or wife is a resident of Taiwan, the case will be handled according to the previous regulation.

Article 12

If both husband and wife are members of an ethnic minority (*except the Zhuang Minority*) and conform to one of the following criteria, they may have two children:

- (1) Both husband and wife live in an agricultural village;
- (2) Both husband and wife have lived or worked in a minority village for five years or longer;

If a couple conforms to one of the following criteria, they may have an additional child after approval:

- (1) Both husband and wife are the only child;
- (2) The couple has two children, but one is handicapped, and will not be able to work normally, and the couple is deemed medically fit to have another child;
- (3) For remarried couples, before the marriage, both spouses had a total of two children between them;

If either husband or wife is of the Han nationality, and the other spouse is an ethnic minority (*except Zhuang*), and the Han spouse has moved to live permanently in a minority area and resides in a minority village, the children born to the couple are viewed as minorities for the purposes of related regulations and the two foregoing clauses apply.

Article 13

After approval is granted for a couple to have an additional child, the birth must occur at least four years after the previous child birth, and the wife must be at least 25 years of age. However, under any of the following situations, the restriction on the four year gap shall not apply:

- (1) The couple fulfills the requirements in Article 9, clause 1, item 3, or clause 2;
- (2) The couple fulfills the requirements in Article 11, clause 1, items 1 or 3;
- (3) The couple fulfills the requirements in Article 12, clause 2, items 3 and 4, the wife is age 30 or above;

For the purpose of these regulations, recognition of a child's handicapped status must be done through a municipal or higher level medical testing organization; recognition of infertility or inability to have children must be done through a medical certificate from a county or higher level medical organization or medical care organization.

Article 14

Early childbirth and childbirth outside of wedlock are forbidden. Any one of the following conditions constitutes early childbirth:

- (1) Giving birth before marriage (including pregnancies before the legal age for marriage);
- (2) Giving birth before the end of the stipulated interval between births;
- (3) Giving birth by a couple who is eligible to have an additional child but have not received approval for childbearing.

Illegal adoptions and foster caring of children or abandonment of children shall be viewed as actions in violating of these regulations. Individuals, who have abandoned a child shall not be approved to have an additional child.

Article 15

A certificate to give birth must be duly obtained for childbirth as required by regulation. Specific procedures for obtaining a certificate to give birth shall be set by the provincial family planning administrative departments.

Chapter 3: Technical Services of Family Planning

Article 16

Local People's Governments at all levels must consider local conditions in establishing a system for family planning technical services, universalization of birth control eugenics and population improvement and knowledge about reproductive health science, to encourage good prenatal management to ensure the safety of the patient and to prevent and reduce birth defects among the population.

Article 17

Family planning technical service organizations and medical and health maintenance organizations and technicians providing family planning technical services must guide the citizens in understanding various types of contraceptive techniques. This will help people select life, effective and appropriate means of contraception, and prevent and reduce the number of unwanted pregnancies. Parents who already have children should be counseled in selecting a method of birth control effective for the long term.

Couples who have conditions which would cause serious genetic illnesses in their offspring may not have children. Either the husband or the wife must submit to birth control surgery or adopt a method of birth control with long-term effectiveness. In cases where the wife is already pregnant, the couple must terminate the pregnancy in a timely manner.

Article 18

Couples with the ability to have children must utilize an effective means of birth control in order to comply with family planning requirements and must submit to checks on their contraception. Specific procedures shall be set by the provincial family planning administrative departments, and implemented after being submitted to the Provincial People's Government for approval.

Persons who become pregnant in violation of these regulations must take appropriate corrective measures in a timely fashion. Villagers' (residents') committees and local work units are responsible for ensuring that such measures are taken in a timely fashion.

Article 19

Couples practicing family planning shall enjoy the following free basic family planning technical services:

- (1) Pregnancy and contraceptive examinations;
- (2) Insertion and removal of intrauterine devices and usual and customary medical tests related to same;
- (3) Procedures for abortion and the related routine medical tests;
- (4) Procedures for tubal ligation or vasectomy and usual related and customary medical tests;
- (5) Treatment for conditions secondary to family planning techniques;
- (6) With the approval of the family planning administration organ, surgery to reverse vasectomies.

In the case of villages, the required costs for the above-listed family planning technical services will be guaranteed through a special fund set up from local public finances: in cities, for those who participate in basic medical insurance or other rebated social insurance plans, costs will be paid from insurance funds based on related regulations. For individuals without the above types of insurance coverage, or without any insurance, the work unit will pay costs for those individuals who have a work unit. For persons without a work unit, local public finances will pay the costs. Specific procedures will be set by the Provincial People's Government.

Article 20

Those who have had contraceptive surgery will be granted vacation time as per national and provincial regulations. If the spouse who has undergone

birth control surgery requires care from the other spouse, the caretaker spouse's work unit may grant from five to seven days vacation time.

During leave periods associated with birth control surgery, or during periods of medical treatment for condition secondary to family planning techniques, or during periods associated with vasectomy reversal surgery, organizations and companies shall pay salary to workers as usual, and promotions shall not be affected.

Article 21

If a person is still unable to work after treatment for complications from family planning surgery, that person's work unit or the local People's Government shall furnish care and subsidy as required by regulation.

Persons eligible under these regulations who undergo birth control surgery after giving birth may be granted assistance from their work unit based on actual conditions; for villagers (residents), the township (town) People's Government or office of neighborhood affairs, or the villagers' (*residents'*) committee may afford assistance based on the actual conditions.

Article 22

All levels of local People's Governments must give priority to managing family planning technical service organizations and medical and health maintenance organizations and technicians providing family planning technical services, use existing health resources, improve service conditions, set standards for service and enhance the ability to provide services.

Family planning technical service organizations and medical and health maintenance organizations and technicians providing family planning technical services must, based on their particular duties, provide basic information, promotion and education about population and family planning, perform pregnancy tests and follow up visits as required by law, and be responsible for family planning and reproductive health information, guidance and technical services.

Article 23

Personnel providing family planning technical services must be duly tested and may take up their posts only with the appropriate certification.

Without the permission of the family planning administration or health administration authorities, no unit or individual may provide family planning technical services.

Article 24

Family planning administrative and related authorities must do a good job of planning, management and distribution of contraceptives.

They must enhance scientific research into family planning and promote safe, effective, convenient new contraceptive methods.

Chapter 4: Management of Population and Family Planning

Article 25

The various levels of the People's Government shall implement a term responsibility system for population and family planning goals. The status of family planning work should be included as an important item in reviewing the performance of local People's Governments at all levels.

Related administrative units of the People's Government at the county level and higher shall set regulations which must be used for family planning work. Family planning administrative authorities at all levels are responsible for oversight and supervision.

Article 26

Information, education, cultural, health, judicial and family planning authorities as well as Trade Union, Communist Youth Leagues, Women's Federations, family planning associations and other civic groups shall further regulatory efforts and education and information services on eugenics and scientific knowledge related to population and family planning work.

Article 27

Village implementation of family planning shall be autonomous, democratically managed and democratically supervised. Villagers' committees may set village regulations for family planning or enter into contracts with villagers, and may sign family planning agreements with individuals of reproductive age, setting forth the rights and responsibilities of both parties in regard to childbearing, implementation of contraception, pregnancy checks, rewards and incentives, mechanisms for contracts and other items.

Municipalities shall establish a management mechanism, and resident's autonomy with regard to family planning. Property management organizations shall work to facilitate the work of family planning.

Organizations, business units, and various civic groups, shall implement a family planning responsibility system with legally designated responsible individuals. Each unit must be responsible for family planning work within that unit, implementing measures covering family planning workers, costs and incentives and rewards.

Article 28

Organizations or individuals who demonstrate outstanding achievements in the area of population and family planning shall be presented with an award by the local level People's Government. Workers who are evaluated three times as leading family planning workers at the county level or higher shall enjoy preferential treatment equivalent to that of a model worker.

For work subsidies by townships (*town*) for family planning professionals and for long-term planning to increase retirement benefits for family planning workers at the county (*city or district*), township (*town*) or neighborhood levels, and specific procedures will be set by the Provincial People's Government.

Article 29

Population and family planning statistics must be timely and accurate. Related units and personnel may not hide, falsify, inflate or delay reporting of such figures, and may not fabricate or change such data.

Public security, financial, statistical, health, labor and social guarantee administrative units must regularly exchange data concerning population and family planning with the family planning administrative authorities.

Article 30

For the enhancement of family planning for the floating population, specific action will be implemented in accordance with the 'Family Planning Management Guidelines for the Floating Population' issue[d] by the State, and 'Family Planning Management Guidelines for the Floating Population of Fujian Province.'

The use of ultrasound technology or other technical means to perform a non-medically-required fetal sex determination or to determine the sex of the fetus prior to a possible abortion is forbidden; Specific actions shall be implemented in accordance with the related national and provincial regulations.

Chapter 5: Incentives and Rewards

Article 31

Local People's Governments at the county and higher levels must raise money in a variety of ways to establish a dedicated fund for population and family planning incentives. This fund is to be used for rewards for citizens implementing family planning. Specific procedures will be set by the Provincial People's Government.

Article 32

Couples who voluntarily have only one child throughout their lifetimes may apply, before the wide reaches the age of 40, to the township (*town*) People's Government or street committee office for a Certificate of Honor as the parents of an only child. Certificate holders will enjoy incentives and rewards.

Article 33

Couples who obtain the Certificate of Honor as Parents of Only Children will be given a one-time reward of not less than RMB 500.

Reward costs for workers in organizations and companies shall be borne equally by the work unit of the husband and the wife. In cases where one spouse does not work for an organization or enterprise work unit, the cost shall be contributed in whole by the work unit of the other parent. In cases where neither spouse works for an organization or enterprise work unit, reward monies shall be paid out of the dedicated fund for population and family planning incentives.

Article 34

Couples eligible to give birth to an additional child who choose not to do so, and who obtain the Certificate of Honor as Parents of an Only Child, shall be paid a reward of not less than RMB 1000 by the county (*municipal, area*) People's Government. Reward monies shall be paid out of the dedicated fund for population and family planning incentives.

Article 35

Couples in agricultural villages who obtain the Certificate of Honor as Parents of an Only Child, or who use birth control after having two daughters, shall enjoy the following incentives and rewards:

- (1) At the time of distribution for collective economic income, collective benefits, or division of land, the couple shall receive an extra person's portion;
- (2) During the nine-year period of compulsory education, no miscellaneous school fees shall be charged to the couple;
- (3) The couple will enjoy preference in training, employment, medical care and housing, as well as child care and school admissions for their children;
- (4) The couple will be cared for under programs offering support, funds or technical assistance to the poor;

- (5) In areas with pensions or living subsidies, the couple will enjoy additional monies for pensions or living subsidies;
- (6) Other preferential policies as stipulated by the local People's Government.

Article 36

Couples in agricultural villages who have two daughters and use birth control subsequently may enjoy all the rewards and incentives in Article 35 in addition to the following incentives and rewards:

- (1) A reward of not less than RMB 500, with reward monies to be paid out of the dedicated fund for population and family planning incentives.
- (2) For couples eligible for local minimum living guarantees, preferential enjoyment of local agricultural village minimum living guarantees.

Article 37

For couples who have obtained the Certificate of Honor as parents of only children qualifying to apply for an additional child under these regulations, the Certificate of Honor and any reward monies shall be taken back as of the date of the approval of the application to have an additional child.

Couples that enjoy the incentives and rewards listed in these regulations but give birth to an additional child in violation of these regulations shall forfeit the certificate of Honor as parents of an only child; all related incentives will also be retracted.

Article 38

In cases of late marriages for workers in organizations and companies, workers shall be granted honeymoon leave of 15 days; for couples who delay childbearing and obtain the Certificates of Honor as Parents of Only Children the wife shall be entitled to maternity leave of between 135 and 180 days, while the husband will be entitled to paternal leave of 7 to 10

days. During honeymoon, maternity or parental leave periods salaries will be paid as usual and promotions shall not be affected.

Chapter 6: Legal Liability

Article 39

For giving births in violation of these regulations, a social maintenance fee shall be paid by the violator in the amount of one year's disposable income for a county (city, district) town-dweller or the average net income of a farmer, based on the figures for the year prior to the discovery of the violation:

- (1) For early births, a fine from 60 to 100 percent of this figure;
- (2) For the birth of one additional child, a fine from four to six times this figure. For the birth of the third or subsequent child(children), a higher fine will be levied;
- (3) For the birth of a child outside wedlock, a fine from four to six times this figure. For the birth of a second or subsequent child outside of wedlock, a higher fine will be levied. For a person with an annual income higher than the average disposable income for a town-dweller or the average net income of a farmer, the violator's actual annual income may be used as a basis for calculating fines when levying the social maintenance fees in the foregoing Article.

Social maintenance fees shall be levied by the county or higher level family planning administrative departments, or the township (town) People's Government or office of neighborhood affairs may be tasked with such levies.

Article 40

As a result of any of the following actions, based on duties, the family planning administrative or health administrative authorities may issue an order for correction, give a warning, or confiscate illegally obtained gains. For illegal gains of RMB 10,000 or more, a fine of not less than double or more than six times the illegal gains will be imposed. For those with no illegal gains, or in cases where illegal gains amount to less than RMB

10,000, a fine of not less than RMB 10,000 nor more than RMB 30,000 shall be imposed. In severe cases, the organization issuing the entity's certificate may revoke it. Such behavior shall constitute a criminal act, and criminal responsibility shall be determined:

- (1) Engaging in false contraceptive surgery, illegally inserting or removing a contraceptive device for a third party, illegally performing surgery to reverse a vasectomy or tubal ligation or illegally terminating a pregnancy, or providing false medical tests or diagnostic certificates;
- (2) Issuing false certificates to give birth, marriage certificates or certificates to give birth for the floating population. Certificates of Honor as Parents of an Only Child, certificates of contraceptive status or other certificates related to family planning;
- (3) Performing family planning operations, if provider is an organization or individual that has not obtained administrative permission for same as required by law.

Article 41

Any of the following actions constitutes obtaining family planning certificates by illicit means, and such family planning related certificates will be cancelled by the family planning administrative organ; if the unit issuing the certification is at fault, the supervisor directly responsible, as well as any other workers directly responsible, issued an administrative sanction as provided under law:

- (1) Hiding or concocting false marriage, birth or contraceptive status;
- (2) Obtaining certificates through fraudulent means, bribery or other abnormal procedures;
- (3) Any other false or fraudulent action in relation to family planning certificates.

Article 42

Persons discovered to be hiding or covering up violations of family planning shall be criticized and educated by the family planning administration, which shall issue an order for correction; if the violator refuses to make correction, causing serious consequences, the county or higher level family planning administrative organ shall levy a fine of not less than RMB 3,000 nor more than RMB 10,000.

Article 43

Any of the following actions will result in criticism and education by the county or higher level family planning administrative organ, or the township (town) People's Government or street committee, and if the violator refuses to correct the situation after the criticism and education, the county or higher level family planning administrative organ shall levy a fine of not more than RMB 500.

- (1) Failure to implement effective contraceptive measures, terminate a pregnancy, or submit to contraceptive examination as per the family planning requirements;
- (2) Violation of the management regulations of the certificate of permission to have an additional child.
- (3) Fraudulently obtaining or submitting false or invalid family planning certificates, or hiding or making false reports of one's status in relation to childbearing.

Article 44

Those violating these regulations by having a child or in any other manner who are State employees will be issued an administrative sanction as

per the regulations of the work unit or the next higher level organ, and make a report to the equivalent level People's Government family planning administrative department. If the violator works for an enterprise or a civic organization, an appropriate penalty shall be imposed by the work unit or organization.

Article 45

For additional births in violation of these regulations, or for births outside wedlock, violators shall not be recruited or employed as State workers and shall not be chosen as villagers' committee members. With the approval of the relevant authority or township (*town*) People's Government, the villagers' committee shall remove said member as provided by law.

Article 46

An individual who impedes family planning authorities of the People's Government and the employees thereof in the performance of their official duties, or who insults, slanders or injures family planning workers, medical personnel, or others, or who intentionally destroys property, is in violation of the 'People's Republic of China Public Safety Management and Penalty Guidelines' and the case shall be handled by the public safety organization as set forth in law; such behavior shall constitute a criminal act, criminal responsibility shall be determined.

Article 47

Municipal, county, area, or village (*township*) People's Government and street committees who fail to implement a population and family planning goals responsibility system for their area of jurisdiction, or any villagers (*residents'*) committee, organization, enterprise or unit, or any kind of civic organization which fails to administer the requirements of these regulations, may not be designated an Annual Spiritual Civilization Advanced Unit or receive any other honorary designation; in severe cases, leadership responsibility must be determined and an administrative sanction assigned.

In any one of the following situations, the People's Government will order a correction of the situation and issue a report and criticize the violator. The supervisor directly responsible, as well as any other workers

directly responsible shall be issued an administrative sanction as provided under law:

- (1) Failure to provide incentives or rewards to citizens practicing family planning according to law;
- (2) Failure to implement a responsibility system for family planning with a designated representative;
- (3) Failure to implement public service volunteer propaganda efforts in support of population and family planning;
- (4) Other failure to exercise duty of assisting in management of family planning.

Article 48

For State workers engaged in family planning work, any of the following will result in the issuance of an administrative sanction against the person in charge and any other persons directly responsible by the related authority. Illegally obtained gains will be confiscated. Such behavior shall constitute a criminal act, and appropriate criminal procedures shall be decided.

- (1) Encroaching upon the body, property, or other legal rights of a citizen;
- (2) Abuse of position, dereliction of duty, practice of favoritism or fraud;
- (3) Retention, embezzlement, misappropriation or graft involving family planning funds or social maintenance or funds;
- (4) False or misleading reporting, manufacturing, tampering or inflation of population or family planning statistics.
- (5) Extortion or acceptance of bribes;
- (6) Refusal to issue family planning certificates for a non-standard cause;
- (7) Other illegal activity;

Article 49

Those persons who object to a decision requiring a social maintenance fee or with administrative sanctions may apply for review or bring an administrative suite as provided by law. If the party fails to apply for review or file suit within legally established timeframes, if the violator still refuses to comply, the unit levying the social maintenance fee or issuing the administrative sanction shall apply to the People's Court for enforcement.

Chapter 7: Additional Principles

Article 50

The number of children referenced in these regulations includes adopted fostered and abandoned children, except as otherwise stipulated by law.

The scope of application of family planning practice for agricultural villagers, as referred to within these regulations, shall be determined by the provincial family planning administrative authority in cooperation with related organizations and submitted to the Provincial People's Government for approval.

Article 51

These regulations are in effect as of September 1, 2002.

Appendix C

Fujian Province Population and Family Planning Commission

Correspondence from the Fujian Province Population and Family Planning Commission in Reply to Family Planning Questions

DHS- CIS in the U.S. Consulate General Guangzhou

The following is a reply to your letter regarding family planning questions:

1. The question regarding whether a child born in the U.S. of a resident from Mainland China should be counted or not: In accordance with the regulation set forth by the appropriate department of the nation, 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. Therefore, when enforcing birth control policy rules in the Mainland, the child is not counted. Pursuant to Article 17 of the 'Fujian Province Population and Family Planning Regulations,' family planning technical service agencies and health care agencies and their technical staff that provide family planning technology services should instruct citizens to choose safe, efficient and proper birth control measures to prevent and decrease unwanted pregnancies, with the understanding and knowledge of various birth control measures. Therefore, there is no forcible insertion of an IUD or sterilization.

2. The question regarding which department has the authority to levy the Social Compensation Fee: The 'Method of Levying the Social Compensation Fee; of the State Council stipulates that the Social Support Fees Levying is to be decided upon in writing by the Family Planning Administrative Office of the Country People's Government. The Family Planning Administrative Office County People's Government can authorize the People's Government at town level or a sub-district office to decide in writing the fee to be levied. The uniform fee receipt entitled 'Social Administration and Service Fee Receipt' is produced by the Department of Finance with the levy unit's official seal on it.

The Villagers' Committee is an autonomous society composed of villagers. It does not have the right to make decisions on family planning disposition. A certificate/proof by said Committee should be deemed ineffective.

The above is our letter in reply.

(Round seal reads: Fujian Province Population and Family Planning Commission)

October 13, 2006