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20 October 2016

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China: Treatment of "illegal" or "black" children born outside the family planning policy; whether unregistered children are denied access to education, health care and other services; information on punitive measures taken against parents who violated family planning policy before and/or after policy changes effective January 2016 (2013-September 2016)

Research Directorate, Immigration and Refugee Board of Canada, Ottawa

1. Overview

Sources report that there are approximately 13 million non-registered people in China (Xinhua 9 June 2016; US 13 Apr. 2016, 58; *Global Times* 27 Jan. 2016). Some sources report that these 13 million people were born "illegally" (Germany 14 Dec. 2015, 5) or "in contravention of the old [one-child] policy" (AI 2016, 120). However, according to the US Department of State's *Country Reports on Human Rights Practices for 2015*, "[n]o data was available on the number of unregistered births," explaining that the 13 million figure was an estimation by the 2010 official census of the number of people without official documentation (US 13 Apr. 2016, 58). An article by Xinhua News Agency states that,

[u]nregistered citizens include those who do not have a birth certificate, those born out of a wedlock, orphans adopted outside the official system, and those who lost their hukou due to marriage traditions, being pronounced missing or dead, or previously held invalid registration papers. (14 Jan. 2016)

Country Reports 2015 added that many of the 13 million people "likely were 'ghost' children whose births were concealed from local officials because they violated the population control policy" (US 13 Apr. 2016, 58). An article by Chinese newspaper *Global Times* states that, among the 13 million people, "60 per cent were born in violation of the one-child policy," without indicating how this

figure was obtained (27 Jan. 2016).

Sources note that those born in violation of the one-child policy are known as "black children" (*The Diplomat* 4 Mar. 2016; Germany 14 Dec. 2015, 5). An article by *The Diplomat*, a "current-affairs magazine for the Asia-Pacific region" (*The Diplomat* n.d.), explains that "these 'black children' remained undocumented – and thus are not reflected in current population statistics" (ibid. 4 Mar. 2016).

2. Consequences of Having Children Born outside the Family Planning Policy

Sources indicate that authorities were continuing to impose controls on births in 2015 (Human Rights Watch Jan. 2016, 179; Freedom House 2016; US 13 Apr. 2016, 53). *Country Reports 2015* states that "[t]he country's birth-limitation policies retained harshly coercive elements in law and practice. The financial and administrative penalties for unauthorized births were strict" (ibid., 54). In the executive summary of an August 2015 report, the Norwegian Country of Origin Information Centre (Landinfo), an "independent body within the Norwegian Immigration Authorities" that collects, analyses and presents country of origin information for use by decision makers in residency and asylum cases (Norway n.d.), likewise states that having "[c]hildren born out of wedlock or without government permit result[s] in harsh, mostly economic, sanctions" (ibid. 3 Aug. 2015, 3).

Sources report that measures which may be imposed include forced abortions (*The Diplomat* 4 Mar. 2016; Reuters 30 Oct. 2015) and sterilisations (US 13 Apr. 2016, 54; Norway 3 Aug. 2015, 3), as well as the confiscation of property (ibid; US 13 Apr. 2016, 54). The Landinfo report adds that in some cases children have been taken away from their parents (Norway 3 Aug. 2015, 3). *Country Reports 2015* further indicates that other disciplinary measures for those who had an "unapproved child," or assisted others to do so, consist of "job loss or demotion, loss of promotion opportunity, expulsion from the CCP [Chinese Communist Party] (membership is an unofficial requirement for certain jobs), and other administrative punishments, including in some cases the destruction of private property" (US 13 Apr. 2016, 54).

According to Landinfo, "[f]ines are the most common sanction" (Norway 3 Aug. 2015, 3). Sources indicate that these fines are known as "social maintenance fees" (*Global Times* 27 Jan. 2016) or "social compensation fees" (US 13 Apr. 2016, 54). *Country Reports 2015* adds that these fees "are set and assessed at the local level" (ibid.). The Landinfo report states that the fines "can be hefty, depending on income, marital status and the child's number in the line" (Norway 3 Aug. 2015, 3). *Country Reports 2015* states that the fee "could reach 10 times a person's annual disposable income" (US 13 Apr. 2016, 54). However, according to *Global Times*,

[t]he regulation was changed in 2014, now those who have more children than they are permitted need to pay a fee that is at most three times the local average annual disposable income, which is still very expensive. This makes it particularly pricey in big cities - a Beijing family must pay a fine of around 400,000 yuan [approximately C\$77,920]. (27 Jan. 2016)

Country Reports 2015 states that "[u]nregistered children [cannot] access public services, including education. ... Some local officials denied such children household registration and identification documents, particularly if their families could not pay the social compensation fees" (US 13 Apr. 2016, 58). According to sources, unregistered citizens are unable to obtain a *hukou* [household registration] (*The New York Times* 8 Feb. 2016; *Global Times* 27 Jan. 2016; Germany 14 Dec. 2015, 5). Xinhua News Agency explains that, in China, "various social benefits such as medical insurance and access to basic education are based [on having a hukou]" (9 June 2016). *Global Times* likewise notes that those who

are unregistered and lack a hukou "are living with no access to any social welfare or legal identity," adding that "[f]or decades, many local governments limited access to hukou to punish violators of the one-child policy and to press parents to pay fines" (27 Jan. 2016). The website of China's State Council indicates that China plans to reduce the population of unregistered people by improving the registration system (China 14 Jan. 2016). The website also indicates that "[d]ue to certain policy barriers, the civil rights of citizens without 'hukou', such as those born outside the former family planning policy or without medical birth certificates, have not been well protected" (ibid.).

3. Efforts at Regularisation of Status

According to sources, the government announced plans in October 2015 to change the one-child policy in order to allow most couples to have two children (Human Rights Watch Jan. 2016, 179; AI 2016, 120; Germany 14 Dec. 2015, 5). Reuters reports that the policy had already "been relaxed" in "recent years," with some parents permitted to have a second child (Reuters 30 Oct. 2015). Amnesty International (AI) likewise stated that the change in policy followed "many years of incremental changes" and that "[p]olicies allowing rural households and ethnic minorities under certain circumstances to have additional children would continue" (AI 2016, 120). Sources report that Chinese lawmakers adopted an amended family planning law in December 2015 (China.org.cn 5 Jan. 2016; Freedom House 2016). According to sources, the national law was officially put into force in January 2016 (US 13 Apr. 2016, 53; *Global Times* 27 Jan. 2016; China.org.cn 5 Jan. 2016).

Sources indicate that government authorities also announced in 2015 that they would take steps to regularize the status of unregistered citizens (Xinhua News Agency 9 June 2016; AI 2016, 120; Germany 14 Dec. 2015). In a briefing note, the Federal Office for Migration and Refugees of Germany stated that with this change in policy, unregistered people would "[f]or the first time, [...] receive 'Hukou' documents allowing them school attendance and unrestricted access to social services including medical care" (Germany 14 Dec. 2015, 5).

According to sources, the Chinese State Council directed in January 2016 that citizens without status be allowed to register and obtain hukous (China 14 Jan. 2016; *Global Times* 27 Jan. 2016; *The New York Times* 8 Feb. 2016). Sources note that the State Council declared that having a hukou was a "basic right" (ibid.; Xinhua News Agency 14 Jan. 2016). The State Council directive "forbids related government departments from setting any preconditions for 'hukou' registration" (China 14 Jan. 2016). Xinhua News Agency indicates that the State Council also instructed that "illegal restrictions to citizens' rights to a 'hukou' be removed" (14 Jan. 2016).

According to Reuters, authorities announced that "the central government [would] leave provinces to hash out the details of implementing [the new two-child policy]" (30 Oct. 2015). Likewise, *The New York Times* reported that the State Council had "ordered local governments to come up with measures to register all citizens" (8 Feb. 2016). In its August 2015 report, Landinfo explains that

[a]s all province level units have their own family planning regulations, there is regional variation. Implementation also varies geographically. Chinese who give birth to or return from abroad with an unauthorized child, answer to the local regulations in the place of their household registration. (Norway 3 Aug. 2015, 3)

According to *Global Times*, "[m]ost local governments, who are in charge of granting hukou, are waiting for the central government to lay out more precise regulations before making a move" (27 Jan. 2016). *The Diplomat* states that

[m]uch of the ambiguity surrounding the two-child-policy has to do with the way it is being implemented. While the policy itself was passed by a national body – the

National People's Congress' Standing Committee, delegated with administering to the nation's laws – the creation and implementation of actionable guidelines has been left to the provinces. ... As a result, the provinces have tiptoed around how to implement the two-child policy. (4 Mar. 2016)

4. Punitive Measures against Parents Who Violated the Family Planning Policy

According to a report published on the official government news portal China.org.cn,

[i]f a family's second child was born before midnight on Dec. 31, in a family that already has a child and doesn't meet the requirements which allow them to have two children, the baby would be deemed illegal as the one-child policy was still in effect, and its parents would have to pay a heavy fine. However, if the baby was born after midnight on Jan. 1, there would be no problem at all, as the new law allows all Chinese couples to have two children. (5 Jan. 2016)

Freedom House states that, with the change in policies, "fewer families [will] be likely to encounter the punitive aspects of the system in practice" (Freedom House 2016). However, sources note that government authorities would continue to be involved in authorizing births (ibid.; Reuters 30 Oct. 2015). Reuters reports that, according to a National Health and Family Planning Commission official, "[f]amilies wishing to have a second child would still need approval, although eventually the commission will seek to shift to a system of registration rather than approval" (ibid.).

According to Xinhua News Agency, the Ministry of Public Security reported that approximately 746,000 previously unregistered citizens received hukous during the first five months of 2016 (Xinhua 9 June 2016). Sources report that there has been confusion among Chinese citizens regarding the implementation of the new policies and whether the payment of fines will be required (*The New York Times* 8 Feb. 2016; *Global Times* 27 Jan. 2016). *The New York Times* reports that, "[s]ome provinces have announced that while paying a fine will no longer be a precondition for obtaining a hukou, families who violated the old rules will still be required to pay fines for children they had when the rules were in effect" (8 Feb. 2016). According to *Global Times*,

nearly no local government, including the ones that have already begun allowing [black children] ... to have a hukou without paying fines first, have implemented clear regulations about "social maintenance fees." Some just follow the old standards while some have stopped collecting fines.

...

After the State Council's notice [in January 2016], Guangdong and Liaoning provinces responded by officially delinking fines and hukou registration. Several provinces including East China's Shandong and Fujian implemented such policies as early as 2014 to tackle the [black children] problem. In these places those that are born outside the rules can register for a hukou without having to first pay fines - although the fines must be paid eventually. (27 Jan. 2016)

The New York Times reports that, according to the *Southern Metropolis Daily*, a Guangzhou-based newspaper, "[i]n the southern province of Guangdong, public security and family planning officials said a fine would no longer be a precondition for a hukou for children born in violation of the national policy" (*The New York Times* 8 Feb. 2016). The same source adds, "[h]owever, their families would still have to pay fines for those children or risk being taken to court" (ibid.). The same source further reports that

[i]n Jiangxi Province in 2014, the provincial government had similarly declared that it would not make paying the fine a prerequisite for getting a hukou. But some families who registered children born in violation of the policy were forced to

pay afterward.

Government officials in Beijing and many other parts of China have yet to disclose how they plan to carry out the new hukou directive and whether fines will be imposed retroactively. (ibid.)

Further information on the implementation of the new policies could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

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Internet sites, including: All Girls Allowed; BBC; Bertelsmann Stiftung; CBC; China – National Health and Family Planning Commission; *China Daily*; Chinese Human Rights Defenders; CKGSB Knowledge; ecoi.net; *The Economist*; *The Epoch Times*; Factiva; Laogai Research Foundation; LifeNews.com; *People's Daily*; Radio Free Asia; *South China Morning Post*; UK – Home Office; US – Congressional-Executive Commission on China Report; Women's Rights Without Frontiers; womenofchina.cn.

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