

## LOOKING OUTWARDS - DESCRIPTION OF NON-WESTERN SYSTEMS: CHINA

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The word 'China' has multiple meanings. In our century, it refers to a) the People's Republic of China (PRC), including the special administrative zones of Hong Kong and Macao, and b) the Republic of China in Taiwan. Because of time limitations, I will limit myself to talking about only the People's Republic of China, which is the largest part of modern China, without taking into consideration Hong Kong - as it has a British legal system - or Macao - whose legal system is Portuguese. The time limit unfortunately does not allow me to go into all the different aspects of the topic.

All website references date from 7 March 2009.

### A. Terminology

#### 1. The term 'civil status' in France

"In France<sup>1</sup>, 'civil status' means:

- 1) A person's situation within society and the family; 2) the organisation set up in order to note officially people's situations within society and the family, more precisely:
  - a. All qualities inherent in a person that civil law takes into consideration in order to attach to them effects (status of spouse, adopted child, widow...). The main elements taken into consideration as differentiating each person from others from the point of view of benefitting from and exercising civil rights are: nationality, marriage, affiliation, parenthood, affinity, name, home, capacity, and even sex [...] see civil identity.
  - b. in a narrower sense, capacity, made up of all the qualities mentioned above, except those which allow or do not allow a person to exercise his rights himself [...]
- 2) An organisation created in order to note officially the qualities mentioned above. More precisely:
  - a. the means of finding out or recording, by updating public registers, the principal facts or acts affecting a person's status (birth, marriage, divorce, death, disowning, acknowledgment of a child born out of wedlock, legitimation, adoption, guardianship, etc.)
  - b. the legal public service for which a civil registrar (usually the mayor of each town) is responsible, and whose aim is to create within the public registers instrumental records noting the facts and the acts noted above, and to provide copies or extracts of them to any persons legally-authorized to request them
  - c. (colloquial meaning) the building housing this service. See civil-status registers, civil index, civil record, family record booklet.

(Records) Written records aiming to note the most important events in a physical person's life (birth, marriage, death, etc.), which, on the basis of personal declarations made to a public authority, are established within registers by that public authority (in each town, the civil registrar in charge of receiving them, writing them, signing them and storing them); these are drawn up either as original, principal records (birth, marriage or death certificate), or else as marginal annotations added to previous records (acknowledgment of a child born out of wedlock, divorce); the annotations are legally determined, vary from one record to another, have variable probative value (authenticity of declarations checked by a civil registrar; possibility of contrary proof for the others) and are to a certain extent public (deliverance of a copy or extract to interested parties on demand by register depositaries). "

#### 2. The term 'civil status' in the People's Republic of China

If you look up in a French-Chinese dictionary which word corresponds to the term 'civil status' you will find 'hukou 户口'<sup>2</sup> or 'huzheng 户政'<sup>3</sup>. Hence, I will start by talking about what the term 'hukou' or 'huzheng', with the central element of the Chinese character 'hu', concretely means in China. 'Hu' does not literally mean 'civil status', but rather 'household' ('Haushalt' in German, 'ménage' in French).

<sup>1</sup> *Vocabulaire juridique*, edited under the direction of Gérard Cornu, Presse Universitaires de France, Paris 2007, p. 376-377

<sup>2</sup> *Han-Fa Zhengzhi Jingji Waijiao Cidian 汉法政治经济外交词典* (Dictionnaire politique, économique et diplomatique chinois-français, Zhongguo Duiwai Fanyi Chubanshe 中国对外翻译出版公司, Beijing 1990, p. 348.

<sup>3</sup> *Han-Fa Zonghe Cidian 汉法综合辞典* (Dictionnaire français de la langue chinoise), Institut Ricci/Kuangchi Press, Paris 1970, p. 409.

In French legal terms, 'household' means<sup>4</sup> :

- 1 A group formed by the spouses themselves (couple, matrimonial or conjugal core) and, if applicable, by the children living with them; for instance, a group formed by two people living maritally (as a household) [...].
- 2 The domestic life and all of the activities and affairs linked to the community of the life of a household (in the sense of 1), and to its daily life [...].

## **B. Eight aspects of civil status in the People's Republic of China**

### **1. The legal bases**

Civil status is regulated by in the 'Prescriptions of the People's Republic of China on registering households'<sup>5</sup> of 9 September 1958 (24 articles). Since 1991, the elaboration of a 'law on household registers'<sup>6</sup> has been under way, in order to adapt the entire system to recent developments.<sup>7</sup> But until March 2009, this new law has not yet seen the light of day.

Concerning civil status, there are also local orders, for instance the 'prescriptions of Guangdong Province concerning the control of immigrant persons'<sup>8</sup> of 25 July 2003 (25 articles).<sup>9</sup>

### **2. The most important organisation responsible for civil status**

In the People's Republic of China, it is more appropriate to speak of 'police status', rather than 'civil status', as the registration of households is in the hands of the police, more precisely the 'public security departments in charge of household registers' (Gong'an huji guanli bumen 公安户籍管理部门). It is local police stations that are responsible, in their respective districts, for the registration of the inhabitants' civil status. The 'People's police for household registers' (huji minjing 户籍民警), a specific branch of the police, takes care of this task. In regions devoid of police stations, people's committees, or other organisations, are responsible for civil status administration. The departments responsible for household registers must register all important data (see infra d.), and must cancel a registration whenever a Chinese person moves abroad, or re-establish the registration when this person returns to China.<sup>10</sup>

### **3. The structure of a household**

All people living together under the responsibility of a certain person - the head of the household - belong to the household. In most cases, these are families. But there can also be collective households, for instance universities.

Each household owns a household book, which corresponds to a civil status book. Each member of the household is registered in this book and is also registered in the household register at the police station. Each member of a household belongs to a household. In principle, children born outside of family planning are not registered, and hence do not belong to a household.

### **4. Household registers (huji)**

Household registers are established according to a person's permanent address (street name, house number) (jingchang juzhu de difang 经常居住的地方)<sup>11</sup>. Since the 1980s, there have also been, in certain parts of China, for instance in Shanghai, temporary household registrations (linshi hukou 临时户口). The common name for this register is 'huji 户籍', which means 'household register', and the formal name is 'hukou dengji bu 户口簿 登记簿', which means 'booklet for registering the household'. In the household register, are noted the following:

- The head of the household (huzhu 户主)<sup>12</sup>
- The members of the household, their family names, first names, changes of names, pseudonyms if there are any, their sex, their birth date, place of birth, place of origin (jiguan 籍贯, which can be the father's, or even grandfather's place of birth), ethnic group, marital status (single / married /

<sup>4</sup> Vocabulaire juridique, publié sous la direction de Gérard Cornu, Presses Universitaires de France, Paris 1987, p. 498.

<sup>5</sup> « Zhonghua Renmin Gongheguo hukou dengji tiaoli » 中华人民共和国户口登记条例。

<sup>6</sup> Huji fa 户籍法。

<sup>7</sup> <http://news.sina.com.cn/o/2005-02-24/07485186552s.shtml>.

<sup>8</sup> « Guangdong Sheng liudong renyuan guanli tiaoli » 广东省流动人口管理条例。

<sup>9</sup> <http://www.gd.lss.gov.cn/zcfg/showcontent.asp?id=755>.

<sup>10</sup> « Standards concerning the implementation [of work in relation to household registers] and with inhabitants' certificates (Banli hukou, jumin shenfenzheng gongzuo guifan 办理户口, 居民身份证工作规范), enacted by the Ministry of Public Security on 24 July 1998 [http://www.gov.cn/banshi/2005-08/02/content\\_19461.htm](http://www.gov.cn/banshi/2005-08/02/content_19461.htm).

<sup>11</sup> Art. 6 of « Prescriptions of the People's Republic of China on the registration of households », 9 September 1958 .

<sup>12</sup> Mentioned in Art. 5 of « Prescriptions of the People's Republic of China on the registration of households », 9 September 1958 .

divorced), profession, place of work. Moreover, it is necessary to register the death of a household member (and to remove that person's record), as well as the birth of a new household member, marriages, divorces, adoptions, acknowledgments of children, the splitting of a household or the fusion of households, disappearance, or the return of a person who had disappeared, and so on. The registered data may be changed. In this case the head of the household, the person concerned, the parents, or sometimes the neighbours, must notify the accountable office of these modifications, such as, for instance, a birth or a death.

Since 6 April 1984, it has been possible for any Chinese person over 16, registered as a household member, to request an inhabitant's certificate (*jumin shenfengzheng* 居民身份证) from a police station in charge of the household register.<sup>13</sup>

## 5. Change of household

- If a household member wishes to move to a place beyond the jurisdiction of the police station where his household is registered, in principle, he must transfer his household (*qianhu* 迁户). He must request that this police station register his relocation, and obtain a relocation certificate, and request that his entry in the household register be cancelled. If he wishes to move from the country to a town, he must produce a certificate established by a work supervision department in the town he is moving to, confirming that he has secured a job in the town has been accepted into a school in the town, or an attestation from the department responsible for the registration of households that confirms he has permission to move to a town. He must ask the authority responsible for his household registration to carry out the moving procedure<sup>14</sup>. At the destination police station, he must produce the certificate cancelling his old household registration.
- If this person is not starting a new household, but entering into a collective household, he becomes a member of the collective household (for instance universities or schools). A household transfer is not necessary for seasonal workers, who are changing places only for a period of time. For instance: it may occur that a Chinese person from Sichuan Province is working during the summer months selling tourist goods in Lhasa in the Autonomous Region of Tibet. His household registration will remain in Sichuan Province. That is to say, he is not registered as an inhabitant of Lhasa. Such a person will have no official certificate in his place of temporary work, or else he will have registered as temporarily resident there.

If a presumed criminal is arrested, the authority responsible for his arrest must inform the police station of the place where the person's household is registered so that his registration may be cancelled.<sup>15</sup>

## 6. The aims of household registration

One aim of household registration is to create a database on the status of each inhabitant of the People's Republic of China, and create the conditions under which each inhabitant of China may enjoy his rights (for instance, concerning school education, participation in local elections, and so on), and fulfil his obligations (for instance, concerning family planning, which is, in principle, linked to the place of household registration)<sup>16</sup>.

A second aim of this institution is to make it possible for the Chinese State to obtain information on population development, population changes, statistics, all of this as a basis for economic plans, government purchases, social services, and so on.

This institution has a third aim. It has exerted an enormous influence, from the 1950s to the present, on the life of the Chinese people. This is due to the administrative control exerted by the police on the fluctuation of the Chinese population. A dual system creates a distinction between country households and town households. The difference between those two types of households was, until the 1990s, of fundamental importance. For decades, the mobility of people from country households was very restricted. In principle, they could not move to a town. A person registered in a country household could not even respond to a personal marriage advertisement placed by someone in a town, as he had no chance of changing his place of residence in order to come and live with his partner in town. In towns, being registered in a household was linked to certain rights, privileges, and economic interests. In the past, someone who was not registered in a town household could not secure work or a flat, and could not obtain stamps for certain basic rationed foods and cloths (cotton, etc.).

<sup>13</sup> « Detailed rules for the implementation of People's Republic of China prescriptions concerning the inhabitant's certificate » (*Zhonghua Renmin Gongheguo jumin shenfengzheng tiaoli shishi xize* 中华人民共和国居民身份证条例实施细则), in force since 1 October 1<sup>st</sup> 1999. <http://www.luxian.gov.cn/Article/ShowArticle.asp?ArticleID=1944>

<sup>14</sup> Art. 10 of « Prescriptions of the People's Republic of China on the registration of households », 9 September 1958

<sup>15</sup> Art. 12 of « Prescriptions of the People's Republic of China on the registration of households », 9 September 1958

<sup>16</sup> Art. 6 of « Measures for controlling the planning of births among migrant persons » (*Liudong renkou jihua shengyu guanli banfa* 流动人口计划生育管理办法), in force since July 3<sup>rd</sup> 2003, [http://www.cpirc.org.cn/zcfg/zcfg\\_detail.asp?id=1651](http://www.cpirc.org.cn/zcfg/zcfg_detail.asp?id=1651); Art. 2, 7, 12 of « Measures for controlling the planning of births among migrant persons » (*Liudong renkou jihua shengyu gongzuo guanli banfa* 流动人口计划生育工作管理办法), in force since January 1<sup>st</sup> 1999, <http://www.china.com.cn/chinese/renkou/75063.htm>.

The validity of these stamps was limited to the part of town under the jurisdiction of the police station where one's household was registered. The child of a town-dweller who was not registered in a household in that town could neither go to kindergarten nor to school, and could not benefit from State health services, and so on.

Because of the big difference in living standards between towns and the country, the distinction between country household and town household cannot yet be cancelled, since such a measure would stifle Chinese towns. There are authors who say that the abolition of the current household registration institution, which serves to separate the rural population from the city population, will not be reached until the mid-21<sup>st</sup> Century, once the economic aims of the Chinese Communist Party mentioned in the Party Statute have been reached.<sup>17</sup>

## 7. The probative value of recorded data

What is recorded in the household register and the household book is considered to be a valid proof of the registered person's civil status. (Art. 4 par. 4 of the People's Republic of China Prescriptions on the registration of households, 9 September 1958).

The inhabitant's certificate also has probative value in the following cases:

- Registration in a household
- Registration for elections
- Registration for military service
- Marriage registration
- Starting at a new school or job
- Notarial matters
- Travelling formalities in China and in order to leave China to go abroad
- Participation in judicial activities
- Acquiring a driving licence
- Securing a permit to set up a business
- Obtaining social benefits
- As legitimation for obtaining a refund, an item of mail, and so on.<sup>18</sup>

For certain judicial processes, it is necessary to produce simultaneously two documents: the household book and the inhabitant's certificate (for instance, for registering your marriage, see *infra* 4)

## 8. Other organisations in the People's Republic of China which handle civil status

Under the heading 'Civil status in China', the Consular Division of the French embassy in Beijing says on its website that:

"The authorities under the control of the Ministry of Civil Affairs, at provincial, regional, municipal and district levels, are entitled to establish civil-status records"<sup>19</sup>

This information is only partly true. As explained above, all civil-status registration is carried out by the police, which is under the jurisdiction of the Ministry for Public Security. But, if in the People's Republic of China a couple wishes to get married, divorced by consent, or if they wish to annul a marriage, they must register these documents with a civil administrative body (*minzheng* 民政) which is within the jurisdiction of the Ministry for Civil Administration (*minzheng bu* 民政部) in the place where the household of one of the two concerned parties is recorded<sup>20</sup>. These organisations are called 'Bureau for the registration of marriages for the Civil Administration Division of the People's Government of [...] [name of the actual administrative unit] (*Minzheng Ting (Ju) / Renmin Zhengfu Hunyin Dengji Chu* 民政厅(局) / 人民政府婚姻登记处)<sup>21</sup>. The man and woman wishing to get married must produce their household book as well as their inhabitant's certificate.<sup>22</sup> The same is true for consensual divorces and for adoptions. Once made out, these records must be added to both people's household registers. Overseas, diplomatic bodies can register the marriage. Adoptions are

<sup>17</sup> 50 years of the institution of household registration (*Huji zhidu 50 nian* 户籍制度50年), in: *Population Research (Renkou Yanjiu* 人口研究), Beijing, Vol. 32, January 2008, p. 47.

<sup>18</sup> Art. 20 of « Detailed rules for executing the People's Republic of China's prescriptions concerning the inhabitant's certificate » (*Zhonghua Renmin Gongheguo jumin shenfenzheng tiaoli shishi xize* 中华人民共和国居民身份证条例实施细则), in force since October 1<sup>st</sup> 1999

<sup>19</sup> <http://www.ambafrance-cn.org/Etat-civil.301.html>.

<sup>20</sup> Art. 4, paragraph 1, of « Prescriptions regarding the registration of marriages » (*Hunyin dengji tiaoli* 婚姻登记条例), in force since October 1<sup>st</sup> 2003, <http://sfsk.net/SF/cyfgk/msfg/34.htm>.

<sup>21</sup> Art. 7, paragraph 1, of « Temporary standards concerning the registration of marriages » (*Hunyin dengji gongzuo zanxing guifan* 婚姻登记工作暂行规范), issued by the Ministry of Civil Administration, in force since 1 October 2003, <http://news.sohu.com/41/20/news213622041.shtml>

<sup>22</sup> Art. 5, paragraph 1, of « Prescriptions on the registration of marriages » (*Hunyin dengji tiaoli* 婚姻登记条例), in force since 1 October 2003.

carried out and recorded with an office for the registration of adoptions (Shouyang Dengji Jiguan 收养登记机关) under the supervision of the Civil Administration Department (Minzheng bumen 民政)<sup>23</sup>.

### C. Interesting discovery

In 2002, in Liye (North East of Hunan 里耶秦简), 37 000 bamboo manuscripts were discovered, dating back to the Qin dynasty (221 - 207 BC), 24 of which have been deciphered, and have turned out to be household registers, which confirms the hypothesis, which was up to that point unproven, that a form of 'civil status', ancestor of Hukou 户口, already existed under the Qin dynasty.<sup>24</sup>

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<sup>23</sup> « Measures regarding the registration of child adoptions by Chinese citizens » (Zhongguo gongmin shouyang zinu dengji banfa 中国公民收养子女登记办法), in force since 25 May 1999, <http://jijingzhou.mca.gov.cn/article/zcwi/200812/20081200023703.shtml>; « Standards concerning the registration of adoptions » (Shouyang dengji gongzuo guifan 收养登记工作规范), issued by the Ministry for Civil Administration, promulgated on 1 September 2008, <http://news.163.com/08/0901/15/4KP2N5G10001124J.html>.

<sup>24</sup> [http://www.chine-informations.com/actualite/chine-un-systeme-de-registres-familiaux-existait-sous-la-dynastie-qin\\_8000.html](http://www.chine-informations.com/actualite/chine-un-systeme-de-registres-familiaux-existait-sous-la-dynastie-qin_8000.html)