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Immigration and
Refugee Board of Canada

Commission de l'immigration
et du statut de réfugié du Canada

China: Family planning laws, enforcement and exceptions, particularly in the provinces of Guangdong and Fujian; reports of forced sterilization of men and women; consequences to officials who force women to have an abortion; whether family planning authorities interact with the Public Security Bureau in enforcing their decisions (October 2012-September 2014) [CHN104963.E]

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1. Overview

According to Human Rights Watch, "[w]omen's reproductive rights and access to reproductive health remain severely curtailed under China's population planning regulations" (Human Rights Watch Jan. 2014, 6). The *Annual Report for 2013* of the US Congressional-Executive Commission on China (CECC) [1] likewise states that "Chinese government officials continu[e] to implement population planning policies that interfere with and control the reproductive lives of Chinese citizens, especially women" (US 10 Oct. 2013, 26).

The US Department of State's *Country Reports on Human Rights Practices for 2013* states that China's birth-limitation policies continue to retain "harshly coercive elements in law and practice," adding that "[t]he financial and administrative penalties for unauthorized births were strict" (US 27 Feb. 2014, 54). The UK's Foreign and Commonwealth Office's *2013 Human Rights and Democracy Report* adds that "illegal coercive implementation of family planning policies" reportedly continues in the country (UK 10 Apr. 2014). Sources indicate that methods of enforcement of family planning policies include:

- forced abortions and sterilizations (UK 10 Apr. 2014; Freedom House 2014; US 10 Oct. 2013, 9);
- fines (*ibid.*; *The New York Times* 26 Sept. 2013; Australia 8 Mar. 2013, 13);
- and
- the "withholding of social benefits and permits" and "arbitrary detention" (US 10 Oct. 2013, 26).

Sources note that family planning policies have caused a gender imbalance in the country due to a greater number of abortions of female fetuses (US 15 Mar. 2013, 17; Xinhua 15 Nov. 2013).

2. Legislation and Regulations

2.1. National Law

Country Reports 2013 states that "[t]he 2002 national population and family-planning law standardized the implementation of the government's birth-limitation policies, although enforcement varied significantly" (US 27 Feb. 2014, 54). An English translation of the 2002 Law is attached to this Response (Attachment 2).

In a background paper on family planning in China, the Australian Migration Review Tribunal and Refugee Review Tribunal (RRT) states that before the implementation of the law,

provincial legislation provided the main legal basis for family planning. The introduction of a national policy obliged, at least in principle, provincial legislatures to revise and amend local regulations to reflect national law. (Australia 8 Mar. 2013, 4)

Country Reports 2013 explains that "[t]he law grants married couples the right to have one birth and allows couples to apply for permission to have a second child if they meet conditions stipulated in local and provincial regulations" (US 27 Feb. 2014, 54).

According to the CECC, in March 2013, the responsibility of developing population planning policy was transferred to the National Development and Reform Commission from the National Population and Family Planning Commission (US 10 Oct. 2013, 9-10), which merged with the Ministry of Health (ibid., *The Telegraph* 15 Mar. 2013).

2.2 Provincial Regulations

A report by the US Congressional Research Service (CRS) indicates that "[e]ach province has its own family planning guidelines" (US 15 Mar. 2013, 17). According to the Australian background paper,

[w]hile the 2002 national family planning legislation establishes national principles and standards for family planning, it continues to devolve power over the implementation of family planning policy to provincial and county level governments. Sub-provincial governments - prefectures, counties and townships - may also have their own local family planning regulations. Regulations at this level are likely to describe how provincial regulations are to be adapted to a particular locality. (Australia 8 Mar. 2013, 5)

Freedom House states that "China's population controls mandate that couples must obtain government permission before giving birth" (Freedom House 2014). However, according to *Country Reports 2013*, "[t]he National Population and Family Planning Commission reported [in 2013] that all provinces eliminated the birth-approval requirement before a first child is conceived" (US 27 Feb. 2014, 55). Nonetheless, the report adds that

provinces may still continue to require parents to "register" pregnancies prior to giving birth to their first child. This registration requirement could be used as a de facto permit system in some provinces, since some local governments continued to mandate abortion for single women who became pregnant. (US 27 Feb. 2014, 55)

Country Reports 2013 also adds that

regulations requiring women who violate family-planning policy to terminate their pregnancies still exist in Liaoning and Heilongjiang provinces. Other provinces -Fujian, Guizhou, Guangdong, Gansu, Jiangxi, Qinghai, Shanxi, and Shaanxi -require unspecified "remedial measures" to deal with unauthorized pregnancies. (ibid.)

2.3 Change to National Family Planning Policy

Sources report that a change in the national family planning policy was announced in late 2013, stipulating that couples can have two children if either of the parents is an only child (US 27 Feb. 2014, 54, 55; Freedom House 2014; Xinhua 15 Nov. 2013). The state news agency Xinhua reports that the December 2013 resolution of the Standing Committee of the National People's Congress modifying the family planning regulations entrusts provincial congresses and their standing committees to make their own calls on implementation of the new policy (Xinhua 28 Dec. 2013).

According to Freedom House, "[Communist] party leaders said local authorities would gradually implement the reforms over the coming months" (2014). An article by the US Law Library of Congress indicates that as of August 2014, all Chinese provinces except Tibet and Xinjiang had amended their family planning regulations to reflect the change in policy (US 6 Aug. 2014). The article provides a list of the provincial regulations that have been changed and are available online in their original Chinese versions, with their date of implementation (ibid.). The Law Library of Congress's article is attached to this Response (Attachment 5).

2.4 Guangdong and Fujian Family Planning Regulations

The translated texts of the 2009 Population and Family Planning Regulations of the Province of Guangdong and the 2002 Population and Family Planning Regulations of Fujian Province are attached to this Response (Attachments 4 and 3, respectively).

Sources indicate that an amendment to the Regulations of Guangdong Province on Population and Family Planning came into force in March 2014 to bring the regulations in line with the changes at the national level, allowing a second child to a couple in which at least one of the parents is an only child (US 6 Aug. 2014; The Nanfang 4 Apr. 2014).

The Law Library of Congress also indicates that a similar amendment to the province of Fujian's Population and Family Planning Regulations came into force on 31 March 2014 (US 6 Aug. 2014).

3. Exceptions and Enforcement

3.1 Exceptions

According to the Law Library of Congress article, "[t]he exceptions to the 'one child' policy vary from province to province" (US 6 Aug. 2014). The article states that

[a]lthough "one couple, one child" has been established as the general rule under China's family planning policy, the Population and Family Planning Law ... provides that under certain conditions a married couple may be allowed to have a second child or more, and authorizes the legislatures at the provincial level to formulate the exceptions. (ibid.)

The US CRS report adds that "[m]any jurisdictions allow for more than one child for ethnic minorities, rural couples in which the first child is a girl, couples in which both parents are only children, and in various other circumstances" (US 15 Mar. 2013, 17). The British newspaper *The Guardian* likewise states that "[w]hile most people in China are still only allowed to have one child, some groups, including ethnic minorities, disabled people, and couples in which both members are only children, are allowed to have two" (*The Guardian* 15 Nov. 2013).

Freedom House states that "[m]ost urban couples are limited to one child and rural residents to two" (Freedom House 2014). *Country Reports 2013* explains that "[t]he one-child limit [is] more strictly applied in urban areas," adding that, in 2013,

[n]ationwide 35 percent of families fell under the one-child restrictions, and more than 60 percent of families were eligible to have a second child, either outright or if they met certain criteria. The remaining 5 percent were eligible to have more than two children. (US 27 Feb. 2014, 54-55)

Xinhua also reports that one-child families account for 37.5 percent of China's population (Xinhua 15 Nov. 2013).

3.2 Enforcement

Sources report that family planning policies are unevenly enforced throughout the country (Australia 8 Mar. 2013, 11; Professor 7 Oct. 2014). According to *Country Reports 2013*, authorities employ "education, propaganda, and economic incentives, as well as ... more coercive measures," to enforce family planning policies (US 27 Feb. 2014, 56). The US CRS report states that the national law authorizes penalties for those who breach the family planning policy, including "heavy fines and job-related sanctions, as well as the denial of public health and education benefits to offspring beyond the first child" (US 15 Mar. 2013, 17). According to the Australian background paper,

Chinese family planning officials use a variety of methods to enforce the regulations, including issuing fines and coercive methods like terminating the employment of parents, forced abortion, sterilisation, detention, beatings and land confiscation. (Australia 8 Mar. 2013, 11)

Country Reports 2013 likewise states that

[t]hose who had an unapproved child or helped another do so faced disciplinary measures such as social compensation fees, job loss or demotion, loss of promotion opportunity, expulsion from the CCP (membership is an unofficial requirement for certain jobs), and other administrative punishments, including in some cases the destruction of private property. (US 27 Feb. 2014, 56)

The US CECC report adds that, according to media reports,

despite provisions in the PRC Population and Family Planning Law that prohibit infringements on citizens' personal, property, and other rights, officials in some cases threatened or imposed job

termination [for public servants], expulsion from the Communist Party, and violence for family planning violations. (US 10 Oct. 2013, 102)

Freedom House likewise reports that "[r]elatives of unsterilized women or couples with unapproved births are subject to high fines, job dismissal, reduced government benefits, and occasionally detention" (Freedom House 2014). The US CECC report states that

[o]fficials in localities across China also continue to employ other forms of coercion and violence against women - including forced abortions, forced sterilizations, and forced contraceptive use - in their enforcement of national and local population planning policies ... (US 10 Oct. 2013, 112)

The report adds that

Chinese law leaves women unprotected against such abuses; for even though it prohibits officials from infringing upon citizens' rights and interests during population planning implementation, the law does not define what constitutes a citizen's right or interest, nor does it stipulate punishments for violations. (ibid.)

Freedom House also states that compliance with family planning policies is enforced by "the inability of unregistered children to obtain *hukou* [household registration permits (US 10 Oct. 2013, 103)] status, except upon payment of substantial fines" (Freedom House 2014).

The US CECC report similarly states that, as reported by media and human rights organizations,

[a]uthorities in some cases deny hukous ... to children based on their parents' lack of compliance with local population planning policies. Children who are born "out of-plan" may go without hukous until their parents pay the necessary "social maintenance fees" associated with their birth. These children are commonly referred to as "illegal residents" (*heihu*) and face considerable difficulty accessing social benefits typically afforded to registered citizens, including health insurance, public education, and pensions. (US 10 Oct. 2013, 103)

For further information on the treatment of children born outside the family planning policy, please refer to Response to Information Request CHN104186 .

According to an article by the Honk-Kong newspaper *South China Morning Post* (SCMP), a first-born child in Shandong province was denied hukou because his mother had not yet had an intra-uterine device (IUD) fitted after his birth (SCMP 19 Dec. 2012). The article further reports that according to a local news source, attempts by the parents to appeal the case before the local Public Security Bureau were "in vain, as bureau staff blocked the door and hung up during a phone conversation" (ibid.). According to the SCMP article, while the National Population and Family Planning Commission stipulated that according to national laws and regulations, the fitting of IUDs is not a requirement for obtaining a hukou for the child, the "forced bundling of IUD operations with the hukou system" is "virtually an unspoken rule" in several places of China (ibid.). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

3.2.1 Abortions

According to the US CECC report,

Chinese law reportedly does not stipulate punishment for officials who demand or implement forced abortion. Furthermore, provincial-level population planning regulations in at least 22 of China's 31 provincial-level jurisdictions explicitly endorse the practice, often referred to as a "remedial measure" (*bujiu cuoshi*), as an official policy instrument. (US 10 Oct. 2013, 100)

According to *Country Reports 2013*, "[g]overnment statistics on the percentage of all abortions that were nonelective was not available" (US 27 Feb. 2014, 54). However, according to sources, the Ministry of Health reported that about 336 million abortions had been performed since 1971 (ibid.; *The Telegraph* 15 Mar. 2013). According to an article by the *Telegraph*, these abortions were conducted under family planning policies (ibid.). *Country Reports 2013* also note that the National Population and Family Planning Commission had "reported that 13 million women annually underwent abortions caused by unplanned pregnancies" (US 27 Feb. 2014, 54).

3.2.2 Incentives for Officials

According to the *New York Times*, "local officials are often evaluated by their superiors based on how well they keep down the populations of their areas" (26 Sept. 2013). Freedom House likewise states that "[b]irth and sterilization quotas remain crucial to the career advancement of local officials," and that as a consequence, "compulsory abortion and sterilization still occur, though less frequently than in the past" (Freedom House 2014). Similarly, other sources indicate that family planning policies have led to abuses by officials in enforcing

these policies (Australia 8 Mar. 2013, 11; *The New York Times* 26 Sept. 2013; US 15 Mar. 2013, 17), including forced contraception, sterilization, and abortion (ibid.).

3.2.3 Fines

The CECC report states that

[i]n accordance with national measures, local governments direct officials to punish noncompliance with heavy fines, termed 'social maintenance fees' (*shehui fuyang fei*), which force many couples to choose between undergoing an unwanted abortion and incurring a fine much greater than the average annual income of their locality. (US 10 Oct. 2013, 102-103)

Country Reports 2013 state that these fines "can reach 10 times a person's annual disposable income" (US 27 Feb. 2014, 56). The Australian background paper states that "these fees apply for violations such as having a child out of wedlock and for having more than the approved number of children. Fees vary according to a range of factors such as province, type of violation, personal income, and average income in the area" (Australia 8 Mar. 2013, 5). Furthermore, according to information obtained in 2010 by the Australian Department of Foreign Affairs and Trade (DFAT), which is summarized in a Country Advice on China's family planning regulations by the Australian Refugee Review Tribunal, "[w]here a range of penalties is applicable, there is anecdotal evidence that local officials have discretion to decide, on a case-by-case basis, the applicable fees" (ibid. 12 Nov. 2010, 2, 5).

The *New York Times* reported that according to a Chinese lawyer, who obtained the information from provincial governments, "[n]ineteen province-level governments in China collected a total of \$2.7 billion in fines last year from parents who had violated family planning laws" (26 Sept. 2013). In June 2012, the *Economist* reported that an independent scholar and critic of the one-child policy had conservatively estimated that over \$314 billion had been collected in social maintenance fees since 1980 (*The Economist* 16 June 2012).

3.2.4 Fujian

Information on family planning policies and enforcement in Fujian province is available in Section 6 of the Australian background paper which is attached to this Response (Attachment 1).

3.2.5 Guangdong

Country Reports 2013 states that "[a] number of online media reports indicated that migrant women applying for household registration in Guangzhou [in Guangdong province] were required to have an intrauterine contraceptive device (IUD) implanted" (US 27 Feb. 2014, 55). The same report specifies that

[a]ccording to online reports, women who registered newborns in Nanhai District, Foshan, Guangdong Province, were requested to insert an IUD. Many posted online complaints that officials threatened not to register the baby if the mother did not comply, even when the newborn was the mother's only child. Other reports indicated that a mother could not enroll her child in school if she was unwilling to insert an IUD. (ibid., 57)

Country Reports 2013 further indicates that in the first half of 2013, the city of Guangzhou collected more than \$49 million in social maintenance fees (ibid., 55). The report notes that authorities in Guangdong province "refused to disclose the amount of fees it had collected from one-child policy violators" (ibid.). Further information on family planning policies and enforcement in Guangdong province is available in Section 7 of the Australian background paper which is attached to this Response (Attachment 1).

4. Sanctions Against Officials Who Breach the Family Planning Policy

Information on sanctions against officials who breach the family planning policy was scarce among the sources consulted by the Research Directorate.

Country Reports 2013 states that "[t]he law provides significant and detailed sanctions for officials who help persons evade the birth limitations" (US 27 Feb. 2014, 57). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

Country Reports 2013 also notes that while officials are required by law to obtain court approval before taking "'forcible' action" to enforce family planning policies, this requirement is "not always followed, and national authorities remained ineffective at reducing abuses by local officials" (ibid., 56). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

Sources report that in June 2012, in the Shaanxi province, officials were punished for forcing a seven-month pregnant woman to have an abortion (US 19 Apr. 2013, 58; *The Economist* 16 June 2012). *Country*

Reports 2012 states that "[t]wo local officials were fired and five otherwise sanctioned" following an investigation that determined that the local family planning bureau had violated the woman's rights (US 19 Apr. 2013, 58).

In correspondence with the Research Directorate, a professor of political science at The City University of New York, whose research interests include human rights and political governance in China, stated that there are specific laws and Communist Party regulations to discipline officials who breach the family planning policies (Professor 7 Oct. 2014). As examples, the Professor mentioned that the Civil Service Law provides penalties for civil servants, while the Party Disciplinary Code deems the violation of the family planning policy as misconduct by a party member (ibid.). He explained that civil servants who breach the family planning policies would probably be "criticized, reduced in salary, downgraded in administrative rank," removed from a position of responsibility, and "possibly" expelled from the civil service (ibid.). The Professor added that a member of the Party would "certainly" receive a disciplinary penalty and may face expulsion from the Party (ibid.). However, the Professor also explained that penalties may vary depending on the relationship between the offender and higher level-officials, as well as with colleagues (ibid.). The Professor also added that authorities in the country "increasingly" use violations to procedures "as an excuse to punish ...officials who have shown dissenting voices or expressed critical opinions" about the workplace or management (ibid.).

The Professor added that "there are tremendous regional variations" in applying sanctions to officials, explaining that,

[f]or example, if the local government is weak and law enforcement is lax, it is easier to get away with [violations of] family planning policy. However, a corrupt ... [and] bullying local government can enforce the family planning law with coercion and brutality. (ibid.)

Corroboration for the information provided by the Professor could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

5. Public Security Bureau (PSB)

According to the Professor, "family-planning enforcement forces include local police and Party disciplinary committee; they can arrest people, remove family belongings, and destroy the property, apartment and house of the violators" (7 Oct. 2014).

Further information on the relationship between family planning authorities and the PSB 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.

Note

[1] The CECC was created by the United States Congress in 2000, with the "legislative mandate to monitor human rights and the development of the rule of law in China," and to produce annual reports for the President and the Congress (US n.d.).

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Additional Sources Consulted

Oral sources: Attempts to contact the following individuals and organizations were unsuccessful within the time constraints of this Response: All Girls Allowed; a professor of political science, The City University of New York; and a US-based legal consultant.

Internet sites, including: Amnesty International; Austrian Centre for Country of Origin & Asylum Research and Documentation; BBC; China Daily; Chinese Human Rights Defenders; The Dui Hua Foundation; *ecoi.net*; Factiva; *Global Times*; China – National Health and Family Planning Commission of the PRC; People's Daily; Germany – Federal Office for Migration and Asylum; Radio Free Asia; UN – Office of the High Commissioner for Human Rights, Refworld; UK – Home Office; Women's News Network; Women's Rights Without Borders.

Attachments

1. Australia. 8 March 2013. Migration Review Tribunal and Refugee Review Tribunal. *China: Family Planning*. <<http://www.refworld.org/pdfid/51f61ea04.pdf>> [Accessed 18 Sept. 2014]
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