



Australian Government
Refugee Review Tribunal

Country Advice

China

China – CHN36825 – Fujian – Family
planning – Second children – Forced
sterilisation – Domestic violence – State
protection
8 June 2010

1. Please provide an outline of how the family planning laws worked in Fujian province in 1998 (including how fines are calculated, applied, and any special rules applying where the first child is a girl). Is there a family planning policy allowing a couple to have another child within 5 years if the first born child is a girl?

In Fujian in 1998, some rural couples were permitted to have a second child after four years if the first child is a boy, but prior approval for such a birth was required. Second children were only permitted if the parents were both farmers or fishermen living in villages with a good family planning record. Couples who gave birth to a second child were liable to pay a social compensation fee (also called an unplanned parenthood fine) of two to three times their combined annual income.

Second Child Conditions

The Fujian Birth Planning Regulations (1991)¹ governed family planning policy in Fujian province in 1998.² This allows second children under very limited circumstances:

- According to Article 6 (12) of the regulations rural couples (or more precisely “couples who are both farmers or fishermen living in villages where unplanned parenthood is effectively controlled”) can apply for permission to have a second child if the couple only have one daughter.
- Article 10 of the regulations notes that “Persons who conform to the provisions of Articles 6 to 9 of these regulations and who desire to bear a second or third child should apply to the township (town) people’s government or neighbourhood office which will investigate and report to the family planning department of the county (city, district) for approval.” It continues “Those who have received arrangement or approval for bearing children will be issued a family planning certificate.”
- Article 10 of the regulations also states that a time span of four years is required before having an approved second child.

¹ Fujian Province People’s Government 1991, *Fujian Province Family Planning Regulations* (passed 29 April 1988, revised 28 June 1991, effective 1 July 1991) translated by Immigration and Refugee Board of Canada in 1999 as CHN33283.E ‘China: Text of the Fujian Province Family Planning Regulations of 10 July 1991’, 25 November – Attachment 1.

² Greenhalgh and Winkler confirm that these rules were applied in Fujian throughout the 1990s. (Greenhalgh, S. & Winkler, E. 2001, *Chinese State Birth Planning in the 1990s and Beyond*, Resource Information Center, Immigration and Naturalization Service (INS), US Department of Justice, Perspective Series, September, pp.xvii-xviii – Attachment 2)

For further information regarding the circumstances in which a couple can apply to have a second child in Fujian, please refer to Articles 6 to 10 of the family planning regulations.

Unplanned Parenthood Fines

Article 36 (2) of the regulations states that the “unplanned parenthood fine” for having an “unplanned” (i.e. unapproved) second child is two to three times their combined total income for the previous year. (The *Fujian Statistical Yearbook 2008* states that in 1997 the per capita net income for rural residents in Fujian was 2,785 yuan³, and the annual disposable per capita income for urban residents in Fujian was 6144 yuan.)⁴

Article 36 (1) of the regulations also states “Couples ... who fail to observe the provisions governing the interval between bearing the first and second children will pay a fine of 60% to 100 % of their combined total income for the previous year”.

Implementation

There are mixed reports on the implementation of family planning policies in Fujian in the 1990s: some reports indicated a relaxed policy in the province with many multi-child families, while other reports noted incidents of severe or coercive implementation. While reports state that there were local variations in the application of family planning policy, the main trends in Fujian in the late 1990s were increasing compliance with the family planning regulations and a clamp down on excesses by local family planning officials.

In January 2000 the Political Counsellor, Canadian Embassy, Beijing made a fact-finding mission to Fuzhou to investigate the local implementation of Chinese Government policies on religion, birth control, illegal organizations and repatriation of illegal emigrants from Lianjiang, Mawei, Fuqing and Changle. His report⁵ noted:

There is less effective enforcement of the “one child” policy here than in other parts of China. Almost one third of families in the four counties have three children or more. Sanctions against “out of plan” births have not proven effective. There are incentive programs to encourage compliance instead. Family planning workers are now required to pass qualifying examinations to demonstrate understanding of Government birth control policies and practices. Forced abortion and forced sterilization are reportedly not tolerated now, although local official acknowledge there were problems with this in the past.

... Ninety three per cent of Fujian families with women of childbearing age are estimated to use some regular method of birth control. Eighty per cent of local women use the IUD as their method of birth control. After two children, sterilization by tubal ligation is encouraged, but not required. The operation is typically done at a Clinic near the woman’s home. For those couples who prefer use of condoms or birth control pills, these are also available at no cost (with a small supplementary charge for imported condoms).

... Fines for “out of plan” babies typically amount to 60-100% of a family’s annual income. The officials in Fuqing asked that it be noted that use of the word “fine” to describe the monies extracted from families with out of plan babies is not accurate. It is rather a “social subsidy fee” as the rationale is to have families compensate society at large for the cost of maintaining and educating “extra”

³ ‘Fujian Statistical Yearbook 2008: 5:18 Basic Indicators of Rural Household in Selected Years’ 2008, Fujian Provisional Bureau of Statistics website <http://www.stats-fj.gov.cn/tongjijianjian/dz08/index1e.htm> – Accessed 13 October 2009 – Attachment 3.

⁴ Fujian Statistical Yearbook 2008: 5:12 Basic Indicators of Urban Household in Selected Years’ 2008, Fujian Provisional Bureau of Statistics website <http://www.stats-fj.gov.cn/tongjijianjian/dz08/index1e.htm> – Accessed 13 October 2009 – Attachment 4.

⁵ Immigration and Refugee Board of Canada 2000, CHN34099.E – Report of a fact-finding mission to Fuzhou by political counsellor, Canadian Embassy, Beijing, 23 March – Attachment 5

children. In all three counties it was noted that extracting these fines from villagers is difficult.

... It is evident that to date the Fujian local authorities in the four counties visited have lacked the capacity or will to effectively implement the Central Government's national birth control policy. Fujian is far from Beijing and a long tradition of false reporting to central authorities and only feigned compliance with national edicts is very well established in the province's history.

A 1999 Immigration and Refugee Board of Canada report on family planning in Fujian⁶ notes that in 1998 a former Fujian family planning official, Gao Xiao Duan, testified before the United States Congress Committee on International Relations that her office had used threats, coercion and forced sterilization and abortion in its implementation of family planning policy. University of California anthropologist Susan Greenhalgh, stated that Ms. Gao's testimony was plausible, and that "Fujian has been known for being a place where the [family planning] policy has been enforced with special vigor". The report also contains expert advice from Dr Edwin Winkler whose opinion is that:

- The Fujian State Family Planning Commission had put considerable effort in the 1990s into training family planning officials and ensuring that the policies were carried out throughout the province.
- A number of family planning officials in Fujian were sentenced for excesses committed in enforcing the policy and these cases were well known among family planning officials and had a deterrent effect that mitigated against continued abuses.

In 2001 Greenhalgh and Winkler wrote a longer report for the US Government on family planning in China the 1990s.⁷ They state:

Until about 1990, Fujian's birth program implementation was distinctly lax, relying too much on crash campaigns and too little on routine work. During the 1990s, the program received higher priority and more funds, as a result of which implementation became both more strict and more lawful. Within Fujian, program implementation is solid in most of the advanced coastal plain, but not all of it. Enforcement remains weak in poor mountainous rural areas and among urban migrants. Fuzhou City has generally strong implementation, but its coastal counties are notoriously unruly and resistant to the demands of municipal and provincial birth planners. (p.xvii)

The main penalty imposed on ordinary citizens for violating program regulations is a "fee" for out-of-plan births. (p.13)

Physical force directed against both persons and property appears to have greatly declined since 1984. Since about 1993, birth planning leaders have been increasingly insistent that community cadres not use forceful methods. By the mid-1990s, coercion against persons was a clear violation of central policy. It was (and is) least likely in cities and somewhat likely primarily in less developed rural areas. Coercion against property has probably continued longer than force against persons, but by the mid-1990s it too was a clear violation of central policy

⁶ Immigration and Refugee Board of Canada 1999, CHN33035.EX – *China: Update to various aspects of family and family planning law and policy, particularly as it affects Fujian province*, 18 October – Attachment 6.

⁷ Greenhalgh, S. & Winkler, E. 2001, *Chinese State Birth Planning in the 1990s and Beyond*, Resource Information Center, Immigration and Naturalization Service (INS), US Department of Justice, Perspective Series, September – Attachment 2.

and should have been on the decline. Especially since the mid-1990s, program leaders have devoted increasing attention to enforcing “lawful administration” on cadres themselves and to protecting the “legitimate rights and interests” of citizens. It is difficult to assess the extent to which these rhetorical goals have been achieved in practice. While some ‘perhaps even major’ gains certainly have been made, the use of forceful tactics might well persist in some areas. (p.16)

According to a 1998 US Department of State profile on China “Fujian province’s lax enforcement of family planning rules has been criticized in the official press”.⁸ The report notes that, in rural areas of Fujian:

The standard is a one-and-a-half child policy (e.g., a second child permitted if the first is a female). In visits prior to 1996, officers from the U.S. Consulate General in Guangzhou found that two children were permitted without the necessity of paying a fine for the second child. In 1996 U.S. Consulate General officers were told by local officials that the policy for rural areas is that a second child is permitted if the first is a daughter and the parents wait 4 years for a second child. While this may be the formal policy, other reports indicate that it is applied loosely.

2. Please provide any information about women in Fujian in 1998 being forcibly sterilised on the basis of having two female children born two years apart.

In the 1980s forcible sterilisation of one member of the couple after their second or even first child was common, but this policy was softened in the 1990s. While women who had had two children were still “encouraged” to undergo sterilisation in 1998, by this time forcible sterilisation was no longer government policy. Though incidents of forcible sterilisation were still reported in Fujian, these appear to have been isolated and due to “over-zealous” officials.

The Fujian Birth Planning Regulations (1991)⁹ do not mention mandatory sterilisation after two children. The regulations only call for the couple to be urged to carry out effective birth control measures:

Article 13 All couples who are capable of bearing children should carry out **effective measures of birth control** according to the requirements of family planning.

Article 40 While the “unplanned parenthood fine” is being levied and restrictions and penalties are being applied, the township (town) people’s governments or neighbourhood offices should, at the same time, adopt appropriate measures to **urge the persons involved to carry out effective birth control measures** or remedial measures for unplanned pregnancies.

Article 43 Persons who fail to carry out effective birth control measures as stipulated or who do not adopt remedial measures after an unplanned pregnancy **should undergo education**. Those who do not carry out such measures even after education will have economic penalties imposed on them by the township (town) people’s government or neighbourhood office in accordance with the relevant provisions.

⁸ US Department of State, Office of Asylum Affairs, Bureau of Democracy, Human Rights and Labor, 1998, *China: Profile of Asylum Claims and Country Conditions*, 14 April, Section IV 1.b.2 ‘Claims based on coercive family planning’ – Attachment 7.

⁹ Fujian Province People’s Government 1991, *Fujian Province Family Planning Regulations* (passed 29 April 1988, revised 28 June 1991, effective 1 July 1991) translated by Immigration and Refugee Board of Canada in 1999 as CHN33283.E ‘China: Text of the Fujian Province Family Planning Regulations of 10 July 1991’, 25 November – Attachment 1.

The policy relating to sterilisation in China is discussed in detail in a US Department of Justice report titled *Chinese State Birth Planning in the 1990s And Beyond* by Greenhalgh and Winkler which states that:

Until recently, once a couple had a second child (for whatever reason), in principle, sterilization became mandatory for one member of the couple. In many parts of the country, that policy was widely enforced. Birth planning officials follow the same process of persuading or mobilizing couples for sterilization as they do for abortion, but people are much more averse to sterilization than to abortion. In the past, particularly in rural areas, birth planning workers have preferred sterilization as a means of contraception because the operation is effective, permanent, and not reliant on the vigilance and cooperation of the woman herself. However, especially in the countryside, sterilization is highly unpopular, because people fear practical harm to their health and symbolic diminution of their bodily powers. Accordingly, in practice, if a couple clearly seemed likely to adhere to the birth planning regulations, the couple might be able to avoid sterilization. However, repeated deliberate attempts to have a third child, or success at having a third child, almost certainly demanded sterilization. In the late 1990s, many provinces revised their birth planning regulations, and reportedly **all of those provinces dropped mandatory sterilization of couples with two children, requiring only that they practice “safe and effective” contraception.**¹⁰

A US Department of State (USDOS) 2007 *China Profile of Asylum Claims and Country Conditions* states that 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.” The USDOS report further states that ‘it is [im]possible to confirm this claim, and, in 2006, reportedly there were forced sterilisations in Fujian’.¹¹

In January 2000 the Political Counsellor, Canadian Embassy, Beijing made a fact-finding mission to Fuzhou to investigate the local implementation of Chinese Government policies on religion, birth control, illegal organizations and repatriation of illegal emigrants from Lianjiang, Mawei, Fuqing and Changle. The report of the 2000 fact-finding mission to Fuzhou by Canadian political counsellor from the Canadian Embassy in Beijing¹² noted:

Family planning workers are now required to pass qualifying examinations to demonstrate understanding of Government birth control policies and practices. Forced abortion and forced sterilization are reportedly not tolerated now, although local official acknowledge there were problems with this in the past.

... Ninety three per cent of Fujian families with women of childbearing age are estimated to use some regular method of birth control. Eighty per cent of local women use the IUD as their method of birth control. After two children, **sterilization by tubal ligation is encouraged, but not required.** The operation is typically done at a Clinic near the woman’s home. For those couples who prefer use of condoms or birth control pills, these are also available at no cost (with a small supplementary charge for imported condoms).

With respect to the Fuzhou region of Fujian province a report by the Immigration and Refugee Board of Canada (IRB) published in February 2005 did not find reports of specific

¹⁰ Greenhalgh, S. & Winkler, E. 2001, *Chinese State Birth Planning in the 1990s and Beyond*, Resource Information Center, Immigration and Naturalization Service (INS), US Department of Justice, Perspective Series, September – Attachment 2.

¹¹ US Department of State 2007, *China: Profile of Asylum Claims and Country Conditions*, Political Asylum Research and Documentation Service website, May http://www.pards.org/paccc/china_may_2007.doc – Accessed 4 March 2008 – Attachment 8.

¹² Immigration and Refugee Board of Canada 2000, *CHN34099.E – Report of a fact-finding mission to Fuzhou by political counsellor, Canadian Embassy, Beijing*, 23 March – Attachment 4

incidents of forced abortions and sterilisation. The IRB provide the following information on the difficulties in obtaining independent information on forced sterilisation and abortion in China:

Amnesty International (AI), in an 8 October 2004 article, commented that human rights organizations have not been able to conduct independent research on allegations of forced sterilization and abortion in China due to strict control of information by the authorities. Likewise, a lecturer in international relations at the University of Kent who recently co-authored a book on China's "surplus" male population noted in correspondence to the Research Directorate that information about forced sterilization and abortions "is very difficult to collect," and Chinese experts are sometimes reluctant to speak about such a "sensitive" issue (13 Jan. 2005).¹³

A March 2006 article by the *Voice of America* reports that in October 2005 a woman in Fujian province who had a second child in contravention of family planning regulations was forcibly sterilised four days after giving birth.¹⁴

3. Please provide any information available about the authorities' response to/treatment of victims of domestic violence in Fujian province.

Limited information was found in the sources consulted regarding how authorities respond to domestic violence within Fujian province. The following reports indicate that there are special courts or panels established within Fujian to deal with women's issues such as domestic violence:

- A report dated 25 February 2009 published on the Chinese National Working Committee on Children and Women website states that on 20 February 2009 the Fujian Peoples Court created a "collegial bench panel" to protect women's and children's rights. The report states that the panel deals with domestic abuse among other women's issues. The report states that "People's courts at different levels in the province began establishing collegial bench panels at the end of last year" and that "they have dealt with more than 600 cases involving women and children's rights since last December".¹⁵
- A 2007 report by the All-China Women's Federation states that Fuzhou, the capital city of Fujian, has created a special 'circuit' court in order to deal with women's rights issues, including domestic violence. The report states that "the special court will serve the needs of women suffering from domestic violence and solve the difficulties these women have come across in the legal procedure in a shorter time".¹⁶

A 2005 article by the *China Daily* reports on an instance in which a victim of domestic abuse in a village in Fujian was not provided assistance by local authorities. According to the report, the woman told the Beijing-based Maple Women's Psychological Counselling Centre that she has complained to local government organisations many times. The report

¹³ Immigration and Refugee Board of Canada 2005, CHN43165.E – China: Any reports of forced abortions and forced sterilization within the regions of Guangzhou (Guangdong Province) and Fuzhou (Fujian Province) covered by the urban hukou; any reports of an easing or a tightening of family planning regulations since 2002 (2002-2005), 21 February <http://www2.irb-cisr.gc.ca/en/research/rir/?action=record.viewrec&gotorec=416251> – Accessed 29 May 2009 – Attachment 9.

¹⁴ Bayron, H. 2006, 'Experts: China's One-Child Population Policy Producing Socio-Economic Problems', *Voice of America*, 7 March <http://www.voanews.com/english/archive/2006-03/2006-03-07-voa38.cfm?cfid=278034385&cftoken=83505359> – Accessed 5 March 2008 – Attachment 10.

¹⁵ 'Fujian Bolsters Legal Protection for Women and Children' 2009, National Working Committee on Children and Women under the State Council website, 25 February <http://www.nwccw.gov.cn/html/08/n-144008.html> – Accessed 27 January 2010 – Attachment 11.

¹⁶ 'Circuit Court for Women Opens in Fuzhou' 2007, *All-China Women's Federation*, 25 July <http://www.women.org.cn/english/english/whatisnws/07-25-01.htm> – Accessed 11 September 2009 – Attachment 12.

states that domestic violence is common in the women's village and that "no one wants to intervene in other people's family affairs".¹⁷

A 2005 journal article titled *Prevalence of and Risk Factors for Intimate Partner Violence in China* is based on information gained from interviews with women in an outpatient gynaecological clinic at a major teaching hospital in Fuzhou in 2000. The study found that "2 out of 5 Chinese women between ages 18 and 60 years had experienced physical violence from a partner in their lives, and 1 out of 5 had experienced physical violence in the past year". The article states that these figures are "comparable to or even higher than data gathered in US health care settings". The article provides the following analysis of the domestic violence within the Chinese cultural context:

This study found that domestic violence is prevalent among Chinese women who come to this clinic and that women are willing to disclose intimate partner violence. However, the prevalence rates still could be underestimated because some women believed that family problems should be discussed only within the family. Those abused women we interviewed were not previously identified as being abused by others, and for them, the abuse was recurring.

The risk factors that predict intimate partner violence must be viewed within the Chinese cultural context. With current reform initiatives and the development of a "socialist market economy" in China, women are supposed to "hold up half of the sky," which is economic and political independence. However, the women treated in the clinic were not as supportive of gender equality, at least in terms of marital relationships, as the new Chinese constitution prescribes. Women still adhere to the norms of a male-dominant culture to some degree. Their belief in that traditional culture and the likelihood of abuse were strongly associated. Either the partner may be influencing the woman to accept more traditional beliefs, or the woman may tell herself that his dominance must be appropriate. Also, the reform has resulted in 30% of these women being unemployed, which has increased their financial dependency on the partner and thus put them at further risk for being abused. Thus, one of the main problems for contemporary Chinese society is providing for women what was promised: "half of the sky." Without both kinds of independence, freedom and equality for Chinese women are unlikely.¹⁸

No other more recent reports were found in the sources consulted regarding instances of domestic violence in Fujian province or services available to victims. *Research Response CHN35378*, dated 15 September 2009 provides information on domestic violence within China. Information contained in the response indicates that legislation in China fails to adequately address domestic violence. Reports also indicate that victim's access to justice is restricted due to the evidentiary burden of courts and police reluctance to become involved in family disputes.¹⁹

List of Attachments

1. Fujian Province People's Government 1991, *Fujian Province Family Planning Regulations* (Passed 29 April 1988, revised 28 June 1991, effective 1 July 1991) translated by Immigration and Refugee Board of Canada in 1999 as *CHN33283.E*

¹⁷ 'Anti-domestic violence drive needs legal support' 2005, Human Rights without Frontiers, source: *China Daily*, 23 August http://www.hrwf.net/china/ext/cn_pr_aug23_05.pdf – Accessed 9 September 2009 – Attachment 13.

¹⁸ Xu, X., Zhu, F., O'Campo, P., Koenig, M.A. 2005, 'Prevalence of and Risk Factors for Intimate Partner Violence in China', *American Journal of Public Health*, vol. 95, no. 1, pp. 78, 82 & 84 – Attachment 14.

¹⁹ RRT Research & Information 2998, *Research Response CHN35378*, 15 September – Attachment 15.

'China: Text of the Fujian Province Family Planning Regulations of 10 July 1991', 25 November. (CISNET REFINFO)

2. Greenhalgh, S. & Winkler, E. 2001, *Chinese State Birth Planning in the 1990s and Beyond*, Resource Information Center, Immigration and Naturalization Service (INS), US Department of Justice, Perspective Series, September.
3. Fujian Statistical Yearbook 2008: 5:18 Basic Indicators of Rural Household in Selected Years' 2008, Fujian Provisional Bureau of Statistics website <http://www.stats-fj.gov.cn/tongjinnian/dz08/index1e.htm> – Accessed 13 October 2009.
4. Fujian Statistical Yearbook 2008: 5:12 Basic Indicators of Urban Household in Selected Years' 2008, Fujian Provisional Bureau of Statistics website <http://www.stats-fj.gov.cn/tongjinnian/dz08/index1e.htm> – Accessed 13 October 2009.
5. Immigration and Refugee Board of Canada 2000, *CHN34099.E – Report of a fact-finding mission to Fuzhou by political counsellor, Canadian Embassy, Beijing*, 23 March. (REFINFO)
6. Immigration and Refugee Board of Canada 1999, *CHN33035.EX – China: Update to various aspects of family and family planning law and policy, particularly as it affects Fujian province*, 18 October.
7. US Department of State, Office of Asylum Affairs, Bureau of Democracy, Human Rights and Labor, 1998, *China: Profile of Asylum Claims and Country Conditions* Section IV 1. Claims based on coercive family planning, 14 April.
8. US Department of State 2007, *China: Profile of Asylum Claims and Country Conditions*, Political Asylum Research and Documentation Service website, May http://www.pards.org/paccc/china_may_2007.doc – Accessed 4 March 2008.
9. Immigration and Refugee Board of Canada 2005, *CHN43165.E – China: Any reports of forced abortions and forced sterilization within the regions of Guangzhou (Guangdong Province) and Fuzhou (Fujian Province) covered by the urban hukou; any reports of an easing or a tightening of family planning regulations since 2002 (2002-2005)*, 21 February <http://www2.irb-cisr.gc.ca/en/research/rir/?action=record.viewrec&gotorec=416251> – Accessed 29 May 2009.
10. Bayron, H. 2006, 'Experts: China's One-Child Population Policy Producing Socio-Economic Problems', *Voice of America*, 7 March <http://www.voanews.com/english/archive/2006-03/2006-03-07-voa38.cfm?cfid=278034385&cfToken=83505359> – Accessed 5 March 2008.
11. 'Fujian Bolsters Legal Protection for Women and Children' 2009, National Working Committee on Children and Women under the State Council website, 25 February <http://www.nwccw.gov.cn/html/08/n-144008.html> – Accessed 27 January 2010.
12. 'Circuit Court for Women Opens in Fuzhou' 2007, *All-China Women's Federation*, 25 July <http://www.women.org.cn/english/english/whatisnws/07-25-01.htm> – Accessed 11 September 2009.
13. 'Anti-domestic violence drive needs legal support' 2005, Human Rights Without Frontiers, source: *China Daily*, 23 August http://www.hrwf.net/china/ext/cn_pr_aug23_05.pdf – Accessed 9 September 2009.
14. Xu, X., Zhu, F., O'Campo, P., Koenig, M.A. 2005, 'Prevalence of and Risk Factors for Intimate Partner Violence in China', *American Journal of Public Health*, vol. 95, no. 1.

15. RRT Research & Information 2998, *Research Response CHN35378*, 15 September.