



Australian Government
Refugee Review Tribunal

Country Advice

China

China – CHN35867 – Hubei Province –
One-child Policy – Forced abortion –
Forced adoption – Social compensation fee
– Kuomintang
8 January 2010

1 What evidence is there of forced late-term abortions under the One-child Policy in Wuhan (or Hubei generally) in recent years?

Hubei's family planning regulations – the *Hubei Province Population and Family Planning Ordinance* – provide for termination of pregnancies that do not meet statutory birth control criteria:

Article 23: The family planning technical service implements the principle of a combination of state guidance and individual choice:

Governments at all levels should actively create conditions so as to ensure that citizens receive family planning technical services; through the contraception and pregnancy check-ups for childbearing-age women, to help these women select safe and effective contraceptive birth control measures; to provide them with reproductive health services.

Couples of childbearing age should conscientiously take the family planning birth control contraceptive measures; follow guidance from Family Planning Technical Service; to prevent and reduce unplanned pregnancy.

Promote and encourage couples with child/ren adapt the long-term contraceptive measures.

Pregnancies, which do meet the statutory birth control criteria, should be terminated.¹

Comment. Hubei's family planning regulations could only be sourced in Mandarin. A google translation was obtained but some areas remained unclear. A Tribunal staff member provided a written translation of Article 23, which appears above. **End comment.**

The practice of linking the career advancement of family planning officials to population goals also provides impetus for strict enforcement, and in some cases possibly illegal enforcement. For example, according to the 2009 US Department of State report on China:

Officials at all levels remained subject to rewards or penalties based on meeting the population goals set by their administrative region. Promotions for local officials depended in part on meeting population targets. Linking job promotion with an

¹湖北省人口与计划生育条例 (*Hubei Province Population and Family Planning Ordinance* (promulgated 1 December 2002, effective 1 January 2003)), Shanghai Municipal Population and Family Planning Commission website http://www.popinfo.gov.cn/popinfo/pop_doczewd.nsf/v_zcfg/30c108f5f32de4fb48256d2f00100576 – Accessed 5 August 2008 – Attachment 1 Please note: Google translations can often be poor and can contain errors - as such they give only a rough indication of the contents of a document. For any further reliance on this information, a professional translation should be obtained.

official's ability to meet or exceed such targets provided a powerful structural incentive for officials to employ coercive measures to meet population goals.²

Due to this, it is reasonable to expect that at least some women are coerced into having an abortion, although the number cannot be quantified. Some women are probably also forced to give their "consent", thus hiding the true extent of forced late-term abortions in China.

There is also some evidence that local governments specifically target migrant workers for forced abortions, according to media reports cited by the US Congressional-Executive Commission on China:

In April 2009, authorities in Jinyun county, Zhejiang province, drafted an implementation plan for a month-long family planning campaign in which villages would "battle with themselves" by conducting door-to-door inspections to obtain "clues" about out-of-plan pregnancies and determine the "true whereabouts" of migrant workers who have left the villages. The plan urges county-level officials to "assist the township law enforcement group with the implementation of remedial measures such as abortion and the collection of social compensation fees."³

Although there is no evidence that this occurs in Wuhan, based on this information, it is possible that Hubei family planning authorities discover out-of-plan pregnancies of the families of migrant workers – and that they are targeted upon return.

There are many recent reports of forced late-term abortions throughout China. For example, according to the 2009 US Department of State Human Rights Report on China:

In April [2008] population-planning officials in Shandong Province reportedly detained and beat the sister of a woman who had illegally conceived a second child in an attempt to compel the woman to undergo an abortion.

In March [2008] family planning officials in Henan Province reportedly forcibly detained a 23-year-old unmarried woman who was seven months pregnant. Officials reportedly tied her to a bed, induced labour, and killed the newborn upon delivery.⁴

Similar cases of forced late-term abortions have also been sited in media reporting:

In February 2009, a woman in Guangdong's Shenzhen Special Economic Zone told local media that officials subjected her to a forced abortion six days prior to her due date because she was pregnant with her second child (her first was a daughter) before the officially mandated period between births had passed.⁵

In June 2009, family planning officials in Guan county, Shandong province, forced 35-year-old Feng Junhua to have an abortion in her ninth month of pregnancy. The injection to induce abortion reportedly caused massive haemorrhaging and killed the mother.⁶

There is also some evidence to suggest forced late-term abortions occur in Wuhan. For example, according to the Times Online a case occurred in September 2008:

²US Department of State 2009, *Country Reports on Human Rights Practices 2008 – China*, 25 February, Section 1. f <http://www.state.gov/g/drl/rls/hrrpt/2008/eap/119037.htm> – Accessed 7 January 2010 – Attachment 2

³ 'Shuhong Township Implementation Plan for Family Planning Activities Month of "Seizing the Three Inspections, Promoting Long-Term Effectiveness, Strengthening the Foundation"' 2009, Jinyun County People's Government website, 13 April cited in US Congressional-Executive Commission on China 2009, *2009 Annual Report*, 10 October, p.155 <http://www.cecc.gov/pages/annualRpt/annualRpt09/CECCannRpt2009.pdf> – Accessed 7 January 2010 – Attachment 3

⁴ US Department of State 2009, *Country Reports on Human Rights Practices 2008 – China*, 25 February, Section 1. f – Attachment 2

⁵ Sheridan, M. 2009, 'Women Rebel Over Forced Abortions', *Times Online*, 15 February <http://www.timesonline.co.uk/tol/news/world/asia/article5733835.ece> – Accessed 7 January 2010 – Attachment 4

⁶ 'Shandong's Barbarous Family Planning, Mother and Child Both Die' 2009, Radio Free Asia website, 18 June cited in US Congressional-Executive Commission on China 2009, *2009 Annual Report*, 10 October, p 153 – Attachment 3

An even more horrifying story, reported on hundreds of websites, concerned a case of infanticide in Wuhan, central China, last September. A farmer named Huang Qiusheng said his wife, who was nine months pregnant, gave birth to a live child despite being forced to submit to an injection to induce an abortion. The infant was thrown into a urinal.

The next day an elderly woman named Liu Zhuyu heard the child's cries, rescued it, washed it and delivered it to a neonatal clinic. But the reports claim that five family planning officials confronted Liu, seized the child and killed it by throwing it to the ground.⁷

In August 2000, a similar case of attempted forced late-term abortion and infanticide occurred near Wuhan, according to the Associated Press:

Family planning officials in central China induced abortion upon a woman who violated birth control policies by getting pregnant with her fourth child, a local government spokeswoman said ... The woman ... was taken to a birth-control clinic in the village of Caidian near the central city of Wuhan where the fetus was aborted, said an official for the village government, who spoke on condition of anonymity ... But the official denied a story in *The Times* of London that claimed the woman's baby had survived an earlier attempt to induce an abortion and had been born healthy. *The Times* report claimed family planning officials seized the newborn, kicking it and then drowning it in a flooded rice paddy in front of the parents.⁸

Despite the gap in reporting, it is reasonable to expect that many cases go unreported⁹ and the possibility that some returnees will be forced to abort cannot be discounted.

2 What is the level of fine payable in respect of an overseas-born second child in Wuhan?

Wuhan city is the capital of Hubei province, and residents would almost certainly be classified as "urban residents" for the purposes of Hubei's family planning regulations – the *Hubei Province Population and Family Planning Ordinance*. Under these regulations, the fee levied for a second-born child – also known as a "social compensation fee" – is three times the average annual income of urban residents at the county-, city- or district-level – whichever applies. In this instance, the fee would remain the same if the child was born overseas – the only known exceptions for overseas-born children apply to students and returned overseas Chinese; see Department of Foreign Affairs and Trade 2007, DFAT Report No. 746 for further information on exceptions for overseas-born children.¹⁰ Hubei's legislation outlining the payment of fines for out-of-plan pregnancies is below:

Article 33 both parties who breach this regulation governing family planning shall be dealt with as follows:

⁷ Sheridan, M. 2009, 'Women Rebel Over Forced Abortions', *Times Online*, 15 February <http://www.timesonline.co.uk/tol/news/world/asia/article5733835.ece> – Accessed 7 January 2010 – Attachment 4

⁸ Bodeen. C. 2000, 'Chinese woman has forced abortion', *The Associated Press*, 25 August – Attachment 5

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 – Attachment 6; DIAC Country Information Service 2009, *CIS Request CHN9645: Overseas born children of Chinese nationals*, (sourced from DFAT advice of 28 April 2009), 28 April. – Attachment 7)

¹⁰ Department of Foreign Affairs and Trade 2007, *DFAT Report No. 746 – China: RRT Information Request: CHN32483*, 6 December – Attachment 8

Urban residents who breach this Regulation and give a second birth will have to pay a levy as the maintenance fees equivalent to three times of the average income of the previous year for the urban residents at county-level (or city-level or district-level).

The fee would probably be levied at the city-level for residents of Wuhan. In 2008, the average annual income in Wuhan was CNY 27 213 (approx. AUD\$4321– 7 January currency rates), according to Wuhan’s bureau of statistics.¹¹ Based on this figure, the fee levied against Wuhan residents would be around AUD\$12 963.

3 If the relevant fine was paid, would there be any continuing disadvantage to either the second child or the parents?

Under Hubei’s family planning regulations, couples who comply with the one-child policy receive preferential treatment over the course of their lifetime, including cash bonuses and higher retirement pensions. Couples who breach one-child regulations forgo their access to preferential treatment.

In addition to the social compensation fee, Hubei’s regulations provide for other penalties, depending on the individual’s employment circumstances. Public servants are more heavily penalised – they must pay all birth-related expenses, cannot apply for childcare allowances or low income grants, forfeit their right to promotion for three years following the birth, and “should be given executive penalty in accordance to legislation.” In contrast, non-public servants “should be disciplined by their work unit or organisation”. However, due to the non-prescriptive nature of the legislation, it is difficult to determine exactly what type of discipline is intended, or if the employer can use their discretion.

Hubei’s regulations do not provide for penalties against the child itself and there is no information to indicate the child would suffer any continuing disadvantage if the relevant fine was paid.

4 If a person were to return to China with their second child born overseas, would they be forced to send their child to the “Local Chinese Welfare Institute” where the child might be “sold” for adoption?

There is limited evidence – in a legal sense – that returnees would be forced to give their child to a third party for adoption and that it might be sold. Forced adoption is outlawed in China and carries criminal implications. However, there is some evidence that corrupt Chinese officials forcibly remove new-borns from their parents for the purposes of adoption.

There are a number of articles under the *Adoption Law of the People’s Republic of China* that deal with illegal adoption practises:

Article 11 Adoption of a child and the placing out of the child for the adoption shall both take place on a voluntary basis. Where the adoption involves a minor aged 10 or more, the consent of the adoptee shall be obtained.

Article 20 It is strictly forbidden to buy or sell a child or to do so under the cloak of adoption.

Article 31 Whoever abducts and traffics in a child under the cloak of adoption shall be investigated for criminal responsibility in accordance with law.

¹¹武汉市统计局 关于2008年全市有关统计数据的公告 (*With Regard to 2008 the City’s Notice of Relevant Statistical Data*) 2009, Wuhan Bureau of Statistics website <http://www.whstj.gov.cn/Announce.aspx?id=542> – Accessed 6 January 2010 – Attachment 9 Please note: Google translations can often be poor and can contain errors - as such they give only a rough indication of the contents of a document. For any further reliance on this information, a professional translation should be obtained.

Whoever abandons an infant shall be fined by a public security organ; if the act constitutes a crime, the offender shall be investigated for criminal responsibility in accordance with law.

Whoever sells his or her own child, his or her illegal gains shall be confiscated by a public security organ and he or she shall also be fined; if the act constitutes a crime, the offender shall be investigated for criminal responsibility in accordance with law.¹²

China's criminal law – *Criminal Law of the People's Republic of China* – also provides that “abducting, kidnapping, trafficking, fetching, sending or transferring a woman or child for the purpose of selling the victim” is a crime and will be punished by 5–10 years plus a fine. If the crime is especially serious the sentence can be raised to the death penalty:

Article 240 Whoever abducts and traffics in a woman or child shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years and shall also be fined; if he falls under any of the following categories, he shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment and shall also be fined or sentenced to confiscation of property; if the circumstances are especially serious, he shall be sentenced to death and also to confiscation of property:

- (1) being a ringleader of a gang engaged in abducting and trafficking in women and children;
- (2) abducting and trafficking in three or more women and/or children;
- (3) raping the woman who is abducted and trafficked in;
- (4) enticing or forcing the woman who is abducted and trafficked in to engage in prostitution, or selling such woman to any other person who would force her to engage in prostitution;
- (5) kidnapping a woman or child by means of violence, coercion or anaesthesia for the purpose of selling the victim;
- (6) stealing a baby or an infant for the purpose of selling the victim;
- (7) causing serious injury or death to the woman or child who is abducted and trafficked in or to her or his relatives or any other serious consequences; or
- (8) selling a woman or a child out of the territory of China.

By abducting and trafficking in a woman or child is meant any of the following acts: abducting, kidnapping, buying, trafficking in, fetching, sending, or transferring a woman or child, for the purpose of selling the victim.¹³

Despite being illegal, Chinese officials have forcibly removed children of parents who could not afford to pay fines for unauthorized births. For example, according to The Guardian:

Local officials have been accused of seizing baby girls from parents who broke birth control limits and helping hand them on to adoptive parents overseas for the equivalent of about £1,800 each, Chinese media have reported. Six officials have been punished after children were wrongly sent to an orphanage, local authorities in Guizhou province, south-west China, confirmed. The authorities were still looking into the role of the institution in the affair. “According to our investigation it is true that babies who have parents were forced into the orphanage and then abroad,” an official from the Zhenyuan county family planning bureau told a newspaper which uncovered the story. The Southern Metropolis News said family planning officers removed the children when their parents could not afford to pay the fine for excess births. The Chinese

¹² *Adoption Law of the People's Republic of China* (Promulgated & Adopted 29 December 1991, Amended 4 November 1998), The National People's Congress of the People's Republic of China website http://www.npc.gov.cn/englishnpc/Law/2007-12/12/content_1383868.htm – Accessed 6 January 2010 – Attachment 10

¹³ *Criminal Law of the People's Republic of China* (Promulgated 14 March 1997, Effective 1 October 1997), The Supreme People's Court of the People's Republic of China website <http://en.chinacourt.org/public/detail.php?id=5> – Accessed 6 January 2010 – Attachment 11

newspaper Time Weekly reported claims that officials forged documents stating that the babies were orphans, and that they split adoption fees with the orphanage. The newspaper also said that almost 80 infants from Zhenyuan had been adopted by American and European families since 2001, although many were genuine orphans or given up voluntarily.¹⁴

The 2006 UK Home Office report on China also contained some information on forced adoptions:

... In March 2006, however, news sources reported that over the past four years, family planning officials in Gaoping County [Hunan Province] had ‘violently removed’ twelve unregistered children, some ‘illegally’ adopted, from their homes...¹⁵

Corruption almost certainly drives this practice, with officials selling children to adoption agencies for around US\$3000, according to media reporting.¹⁶

The “Local Chinese Welfare Institute” is probably a reference to a local adoption agency. There is no evidence of an existing forced-adoption network in Wuhan; however, such information would not always be available in the public domain and the possibility cannot be discounted.

5 Is there any evidence that would suggest the parents of a second child might be sent to jail?

There is limited evidence to suggest that the parents of an unauthorised second child would be sent to jail for breaching the one child policy, and arrest is not prescribed in either the provincial or national regulations. Additionally, no reference to family planning was found in the *Criminal Law of the People’s Republic of China*.¹⁷

However, because out-of-plan births require payment of a fine, non payment could lead to arbitrary detention. For example, the 2009 US Department of State report on China indicates that non payment of family planning fees can lead to forcible action by family planning officials, which is not always officially sanctioned by the courts:

Although the law states that officials should not violate citizens’ rights, these rights, as well as penalties for violating them, are not clearly defined. The law provides significant and detailed sanctions for officials who help persons evade the birth limitations.

Social compensation fees are set and assessed at the local level. The law requires family 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. However, in practice this requirement was not always followed and the national authorities remained ineffective at reducing abuses by local officials.

The one-child limit was more strictly applied in the cities, where only couples meeting certain conditions (e.g., both parents are only children) were permitted to have a second

¹⁴ Branigan, T. 2009, ‘Babies in China seized and then sold for adoption’ *The Guardian*, 3 July, <http://www.guardian.co.uk/world/2009/jul/03/china-babies-adopt-family-planning> – Accessed 21 December 2009 – Attachment 12

¹⁵ UK Home Office 2009, *Country of Origin Information Report China*, 1 October, paragraph 27.30 <http://www.homeoffice.gov.uk/rds/pdfs09/china-011009.doc> – Accessed 7 January 2010 – Attachment 13

¹⁶ ‘China babies “sold” for adoption’ 2009, *BBC News*, 2 July <http://news.bbc.co.uk/2/low/asia-pacific/8130900.stm> - Accessed 6 January 2010 – Attachment 14; Branigan, T. 2009, ‘Babies in China seized and then sold for adoption’ *The Guardian*, 3 July, <http://www.guardian.co.uk/world/2009/jul/03/china-babies-adopt-family-planning> – Accessed 21 December 2009 – Attachment 12

¹⁷ *Criminal Law of the People’s Republic of China* (Promulgated 14 March 1997, Effective 1 October 1997), The Supreme People’s Court of the People’s Republic of China website <http://en.chinacourt.org/public/detail.php?id=5> – Accessed 6 January 2010 – Attachment 11

child. In most rural areas the policy was more relaxed, with slightly more than half of women permitted to have a second child if the first was a girl or had a disability.¹⁸

The requirement to obtain court approval for enforcement of social compensation fees is prescribed in China's national family planning regulations – the *Population and Family Planning Law of the People's Republic of China*:

Article 41 Citizens who give birth to a child in violation of Article 18 of this Law should pay a social compensation fee (shehui fuyang fei, literally “social bringing-up fee”).

Those who do not pay the full amount of the social compensation fee within the stipulated time period shall, from the date of default, be levied a late-payment penalty according to relevant State stipulations. [In the case of] those who still do not pay, the birth planning administrative department that decided to levy [the social compensation fee] shall petition the people's court for enforcement (qiangzhi zhixing, literally “forceful implementation”), according to the law.¹⁹

It is unclear whether a returnee would be sent to jail. They would not be imprisoned under criminal law; however, they could be arbitrarily detained. It does not appear commonplace for parents of second children to be sent to jail; however, the Tribunal has limited visibility of enforcement at the local level – particularly in Wuhan – and the possibility cannot be discounted.

6 Would the provisions of the “One-child Policy” be more harshly enforced on the basis of a sentence handed out to a person's great grandfather, in relation to “offences” apparently committed long before the Communist revolution?

There is no information to indicate that a family history would result in harsher enforcement of the one child policy. China's one child policy is a product of China's Population and Family Planning Law, which is a law of general application. Moreover, association with the Kuomintang, for example, no longer appears to attract any form of official discrimination. According to a 2004 US Department of State report:

Before the Cultural Revolution: Some applicants may claim past persecution because of anti-rightist campaigns, alleged association with the nationalist Chinese Kuomintang (KMT), or membership in a ‘black five element’ family (a family whose members before the revolution had been landlords, rich farmers, counter-revolutionaries, criminals, or rightists), and assert that they would suffer because of this if they were to return to China. The political environment of China today is significantly different from that of the 1950s and 1960s, and we are not aware of any citizen in the last 10 years who has suffered official discrimination because of ‘bad class’ background.²⁰

Reports between 1989–2004 from the Immigration and Refugee Board of Canada, the US Department of State and the Department of Foreign Affairs and Trade indicate that until the late 1970s, treatment of former KMT members was harsh (i.e. imprisonment); that discrimination in matters such as employment may have occurred until the late 1980s, depending on locale and the rank of those involved with the KMT; and that from the mid-1990s KMT party connections were less relevant but that ill-treatment of family members remained possible, depending on the particular officials in a particular location. See

¹⁸ US Department of State 2009, *Country Reports on Human Rights Practices 2008 – China*, 25 February, Section 1. f <http://www.state.gov/g/drl/rls/hrrpt/2008/eap/119037.htm> – Accessed 7 January 2010 – Attachment 2

¹⁹ Winckler, E. 2002, ‘People's Republic of China Law on Population and Birth Planning (Documents)’ *Population and Development Review*, vol.28, no.3 – Attachment 15

²⁰ US Department of State 2004, *China: Profile of Asylum Claims and Country Conditions*, June, Section D.1, Paragraph 75 – Attachment 16

Research Response CHN32428, Q5, November 2007,²¹ for further information on the history of China's treatment of KMT members and their families since 1949. A person's separation from Kuomintang (KMT) involvement by three generations probably reduces the likelihood that they would suffer from persecution today.

List of attachments

1. ¹湖北省人口与计划生育条例 (*Hubei Province Population and Family Planning Ordinance* (promulgated 1 December 2002, effective 1 January 2003)), Shanghai Municipal Population and Family Planning Commission website http://www.popinfo.gov.cn/popinfo/pop_doczcwd.nsf/v_zcfg/30c108f5f32de4fb48256d2f00100576 – Accessed 5 August 2008.
2. US Department of State 2009, *Country Reports on Human Rights Practices 2008 – China*, 25 February.
3. US Congressional-Executive Commission on China 2009, *Annual Report 2009*, 10 October.
4. Sheridan, M. 2009, 'Women Rebel Over Forced Abortions', *Times Online*, 15 February <http://www.timesonline.co.uk/tol/news/world/asia/article5733835.ece> – Accessed 7 January 2010.
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7. DIAC Country Information Service 2009, *CIS Request CHN9645: Overseas born children of Chinese nationals*, (sourced from DFAT advice of 28 April 2009), 28 April. (CISNET China CX225344)
8. Department of Foreign Affairs and Trade 2007, *DFAT Report No. 746 –China: RRT Information Request: CHN32483*, 6 December.
9. 武汉市统计局 关于2008年全市有关统计数据的公告 (*With Regard to 2008 the City's Notice of Relevant Statistical Data*) 2009, Wuhan Bureau of Statistics website <http://www.whstj.gov.cn/Announce.aspx?id=542> – Accessed 6 January 2010.
10. *Adoption Law of the People's Republic of China* (Promulgated & Adopted 29 December 1991, Amended 4 November 1998), The National People's Congress of the People's Republic of China website http://www.npc.gov.cn/englishnpc/Law/2007-12/12/content_1383868.htm – Accessed 6 January 2010.
11. *Criminal Law of the People's Republic of China* (Promulgated 14 March 1997, Effective 1 October 1997), The Supreme People's Court of the People's Republic of China website <http://en.chinacourt.org/public/detail.php?id=5> – Accessed 6 January 2010.

²¹ RRT Research & Information 2007, *Research Response CHN32428*, 22 November – Attachment 17

12. Branigan, T.2009, 'Babies in China seized and then sold for adoption' *The Guardian*, 3 July, <http://www.guardian.co.uk/world/2009/jul/03/china-babies-adopt-family-planning> – Accessed 21 December 2009.
13. UK Home Office 2009, *Country of Origin Information Report China*, 1 October <http://www.homeoffice.gov.uk/rds/pdfs09/china-011009.doc> – Accessed 7 January 2010.
14. 'China babies "sold" for adoption' 2009, *BBC News*, 2 July <http://news.bbc.co.uk/2/low/asia-pacific/8130900.stm> – Accessed 6 January 2010.
15. Winckler, E. 2002, 'People's Republic of China Law on Population and Birth Planning (Documents)' *Population and Development Review*, vol.28, no.3.
16. US Department of State 2004, *China: Profile of Asylum Claims and Country Conditions*, June.
17. RRT Research & Information 2007, *Research Response CHN32428*, 22 November.