



Australian Government
Refugee Review Tribunal

Country Advice

China

China – CHN38652 – Hebei Province –
Family Planning – Selective Enforcement –
Unduly Harsh Punishment for Violation –
Provincial Regulations, Updates and
English Translations

29 April 2011

The questions concern the implementation in Hebei Province of the Population and Family Planning Law of the People’s Republic of China (“the PFP Law”) In Hebei Province:

1. Are there any reported instances of selective enforcement of the PFP Law?

The current implementation of family planning policies in Hebei province is not discussed widely in English language sources. Nationally, wealthy and well-connected families may be able to circumnavigate the one child policy through payment of „social maintenance fees”¹ to local family planning officials. In practice, local officials reportedly have control in setting the amounts of such fees. As such, the amount of yuan required to have additional children should a social maintenance fee be accepted may generally be quite arbitrary.² The US Department of State (USDOS) reports that national authorities have continued to be ineffective in protecting citizens from some local officials who commit abuses, such as destroying property of those who refuse to pay, when attempting to extract such fees.³ A 2010 *China Daily* article cites the case of a Hebei farmer who paid approximately the equivalent of his annual salary in „social maintenance fees” to have a third child and ensure a male heir.⁴ The calculation of social maintenance fees in Hebei Province appears to be formally addressed in Article 46 of the Hebei Population and Family Planning Ordinance 2003. An informal translation of this Article is included in the response to Question 4.

A 2009 article by a non-profit, pro-life group called Population Research Institute questions the enforcement of family planning in Hebei with regard to Chinese minority groups. Ethnic minority groups are purportedly exempt from one child policy restrictions. The author cites interviews with Manchu residents of Fengning county, northern Hebei, and states that the Manchu minority

¹ Some sources also refer to these fees as „social compensation fees”.

² Chinese Human Rights Defenders 2010, “*I Don’t Have a Choice over My Own Body*”, 21 December, <http://chrinet.org/wp-content/uploads/2010/12/%E2%80%99CI-Don%E2%80%99t-Have-a-Choice-over-My-Own-Body%E2%80%9D.pdf> – Accessed 13 January 2011, p. 2-3 – Attachment 1

³ US Department of State 2011, *Country Report on Human Rights Practices – China (Includes Tibet, Macau, Hong Kong)*, 8 April, Sec.5 – Attachment 2

⁴ „Brides and prejudice in China” 2010, *China Daily*, 23 August – Attachment 3

in this area appear to be subject to the same family planning restrictions as the rest of the population.⁵

The Population Research Institute article also explicitly raises the possibility that persons affected by disability may be selectively sterilised, citing a case in Luan county, eastern Hebei.⁶

More generally, enforcement of family planning policies and regulations can vary markedly between provinces, and even areas within a province under different local officials.^{7 8} Chinese Human Rights Defenders reports that “[n]ot only do provincial governments adopt different regulations, but the work of implementation is subject to various local policy directives, as well as being open to interpretation by local officials.” Penalties for unauthorised pregnancies may range from abortion or sterilisation to payment of „social maintenance fees’ to local family planning officials. The severity of penalties within a given area may also vary from time to time, depending on whether population pressures have ceased or whether officials are running crack down campaigns to discourage unauthorised births.⁹ The Immigration and Refugee Board of Canada reports that some local officials resort to coercion when under pressure to meet birth targets regulated by the government.¹⁰

2. Are there any reported instances of unduly harsh punishment for breaches of the PFP Law?

Aside from the payment of „social maintenance fees’ as referred to in the response to Question 1, reports were located of forced abortions occurring in Hebei Province:

- A 2010 Associated Press article reported that a woman in southern China was detained, beaten and forced to have an abortion as her pregnancy, eight months advanced, violated family planning laws. The article states that similar cases have been reported in Hebei Province, but does not provide any further details.¹¹

⁵ Population Research Institute 2009, „U.N. Population Fund Targets Minorities in China: New PRI Investigation Reveals the Manchus Are Under Fire, One-Child Policy Rigorously Enforced’ *PRI Review*, v.19(4), July/August, Population Research Institute website

<http://www.pop.org/content/u-n-population-fund-targets-minorities-in-china-1218> – Accessed 27 April 2011 – Attachment 4

⁶ Population Research Institute 2009, „U.N. Population Fund Targets Minorities in China: New PRI Investigation Reveals the Manchus Are Under Fire, One-Child Policy Rigorously Enforced’ *PRI Review*, v.19(4), July/August, Population Research Institute website

<http://www.pop.org/content/u-n-population-fund-targets-minorities-in-china-1218> – Accessed 27 April 2011 – Attachment 4

⁷ Chinese Human Rights Defenders 2010, “*I Don’t Have a Choice over My Own Body*”, 21 December, <http://chrnet.org/wp-content/uploads/2010/12/%E2%80%99CI-Don%E2%80%99t-Have-a-Choice-over-My-Own-Body%E2%80%9D.pdf> – Accessed 13 January 2011, p. 2 – Attachment 1

⁸ Department of Foreign Affairs and Trade 2007, *DFAT Report 604 – RRT Information Request: CHN31325*, 19 February – Attachment 5

⁹ Chinese Human Rights Defenders 2010, “*I Don’t Have a Choice over My Own Body*”, 21 December, <http://chrnet.org/wp-content/uploads/2010/12/%E2%80%99CI-Don%E2%80%99t-Have-a-Choice-over-My-Own-Body%E2%80%9D.pdf> – Accessed 13 January 2011, p. 2-3 – Attachment 1

¹⁰ Immigration and Refugee Board of Canada 2010, *CHN103502.E – China: Family planning laws, enforcement and exceptions; reports of forced abortions or sterilization of men and women particularly in the provinces of Guangdong and Fujian (2007 – May 2010)*, 9 July http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=453047&l=e – Accessed 16 August 2010 – Attachment 6

¹¹ „Chinese woman forced to abort eight-month foetus’ 2010, *Associated Press*, 25 October – Attachment 7

- Similarly, a March 2007 report from the Immigration and Refugee Board of Canada noted that “[i]n 2005 and 2006, there were reports of forced abortions in Hebei and Anhui”. However, no further information was provided in relation to these cases.¹²
- An alleged forced late term abortion occurred in Hebei in 2000. In this case, the nine-month pregnant mother was allegedly forced to undergo an abortion in Luojiaying village, Anshan County, in September 2000 after violating planning regulations for conceiving the child five months before marrying the child’s father. The case has been widely reported in the media as the couple filed a lawsuit against family planning officials seeking compensation for subsequent medical expenses and psychological distress. The couple claim that local officials had initially agreed to accept a fine for the out-of-plan birth but later forced the woman to undergo an abortion which caused her severe medical problems.^{13 14} A court ruled that the family planning officials had not violated any family planning laws by forcing the woman to have an abortion.¹⁵
- Additionally, a 2004 Amnesty International report to the US House of Representatives stated that there were a ‚series’ of reports dating from 1992 whereby family members of Hebei residents seeking to avoid abortion were detained and ill-treated.¹⁶

According to a 2010 report by Chinese Human Rights Defenders, the 2002 *Population and Family Planning Law of the People’s Republic of China* does not explicitly prohibit forced sterilisation or abortion (including late-term abortions).¹⁷ It is noteworthy, however, that where the US Department of State (USDOS) formerly reported that ‚termination of pregnancy’ was explicitly required for unauthorised pregnancies in Hebei Province,¹⁸ the latest USDOS Human Rights Practices Report for China does not include such a reference.¹⁹ This issue is further discussed in the response to Question 3.

No reports were located of compulsory sterilisations occurring in Hebei Province. Forced sterilisations allegedly continue to occur across China, but the prevalence of this is uneven. In April 2009, the Department of Foreign Affairs and Trade stated that “[t]here is little, if any, media reporting [in China] on this issue”, and that “[a]lthough Post cannot discount the possibility of forced sterilization, Post has the impression that it is not a widespread practice”.²⁰

¹² Immigration and Refugee Board of Canada 2010, *CHN103502.E – China: Family planning laws, enforcement and exceptions; reports of forced abortions or sterilization of men and women particularly in the provinces of Guangdong and Fujian (2007 – May 2010)*, 9 July http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=453047&l=e – Accessed 16 August 2010 – Attachment 6

¹³ Cheng, A. 2007, ‚Chinese couple sue over forced abortion; One-Child Policy; Citizens Push Their Rights In First Case Of Its Kind’, *National Post*, 29 August – Attachment 8

¹⁴ Hongqing, D. 2007, ‚Full-Term Abortion Lawsuit a First for China’, *Caijing English Newsletter*, 23 July – Attachment 9

¹⁵ Chinese Human Rights Defenders 2010, *“I Don’t Have a Choice over My Own Body”*, 21 December, <http://chrdnet.org/wp-content/uploads/2010/12/%E2%80%99CI-Don%E2%80%99t-Have-a-Choice-over-My-Own-Body%E2%80%9D.pdf> – Accessed 13 January 2011, p. 29 – Attachment 1

¹⁶ Kumar, T. 2004 ‚Human Rights Violations and Coercion in One-Child Policy Enforcement’ Amnesty International Testimony Before the Committee on International Relations United States Congress, 14 December – Attachment 10

¹⁷ Chinese Human Rights Defenders 2010, *“I Don’t Have a Choice over My Own Body”*, 21 December, <http://chrdnet.org/wp-content/uploads/2010/12/%E2%80%99CI-Don%E2%80%99t-Have-a-Choice-over-My-Own-Body%E2%80%9D.pdf> – Accessed 13 January 2011 p. 11 – Attachment 1

¹⁸ US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – China (includes Tibet, Hong Kong, and Macau)*, 11 March, Sec.1f – Attachment 11

¹⁹ US Department of State 2011, *Country Report on Human Rights Practices for 2010 – China (includes Tibet, Hong Kong and Macau)*, 8 April, Sec.1f – Attachment 2

²⁰ 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 12

In contrast, the 2010 *Freedom in the World Report – China* reports that whilst the practice is less common than in the past, compulsory sterilisations do occur “fairly frequently”.²¹ The 2010 Chinese Human Rights Defenders report states that forced sterilisations continue to occur but that this occurs unevenly across China:

Women and (less often) men are urged by family planning officials to be sterilized once they have reached their birth quota. Again, the application of forced sterilization is uneven across the country and is dependent upon the discretion of the particular family planning officials. In some cases, officials threaten to withhold a *hukou* for the couple’s child if the mother or father fails to submit to the sterilization procedure. Other times, couples are physically threatened if they refuse. Elsewhere, however, parents can get away with paying fines and bribing officials to avoid being sterilized. Others never have the request made of them at all. If a couple is considered particularly uncooperative, for example refusing to pay a fine or a bribe, or when they find themselves caught up in the local government’s campaign to crack down on violators of the policy, then sometimes they are forcibly taken away for the surgery.²²

No references to other forms of punishment, such as household demolition or loss of employment, for breaching family planning rules in Hebei Province were located.

3. Are Hebei Population and Family Planning implementation details (Promulgated 14 September 2004, Effective 1 November 2004) and Hebei Population and Family Planning Ordinance (Promulgated 18 July 2003, Effective 1 October 2003) still current?

No conclusive information was located as to whether these regulations have already sunset or been superseded.

With the introduction of national family legislation in 2002, provinces were required “in principle” to revise and amend their family planning regulations to reflect the new laws.²³ The question refers to a Population and Family Planning Ordinance and implementation details which are dated 2003 and 2004 respectively. Conclusive information as to whether or not Hebei Province has again revised its family planning regulations was not located.

However, a comparison of recent US Department of State (USDOS) reports suggests that an explicit requirement that unregistered pregnancies be terminated may possibly have been removed from Hebei provincial regulations. The USDOS *Report on Human Rights Practices for 2009 – China* stated that Hebei was one of eight provinces in China which explicitly required “termination of pregnancy” if the pregnancy failed to conform with provincial family planning regulations.²⁴ The equivalent USDOS report for 2010 does not mention Hebei Province, and states that only three provinces still maintain the requirement to terminate unplanned pregnancies. However, no sources were located which explicitly stated that Hebei had removed this requirement to terminate from its family planning regulations.

²¹ Freedom House 2010, *Freedom in the World – China (2010)*, June, p. 10, <http://www.freedomhouse.org/template.cfm?page=22&year=2010&country=7801> – Accessed 31 January 2010 – Attachment 13

²² Chinese Human Rights Defenders 2010, “*I Don’t Have a Choice over My Own Body*”, 21 December, p. 18, <http://chrinet.org/wp-content/uploads/2010/12/%E2%80%9CI-Don%E2%80%99t-Have-a-Choice-over-My-Own-Body%E2%80%9D.pdf> – Accessed 13 January 2011, p. 18 – Attachment 1

²³ Greenhalgh, S. & Winkler, E. 2005, *Governing China’s Population: From Leninist to Neoliberal Biopolitics*, Stanford University Press, Stanford, p. 160 – Attachment 14

²⁴ US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – China (includes Tibet, Hong Kong, and Macau)*, 11 March, Sec.1f – Attachment 11

Links to English translations of the overarching national *Law of the People's Republic of China on the Population and Family Planning* were located.^{25 26}

4. Deleted.

Attachments

1. Chinese Human Rights Defenders 2010, “*I Don't Have a Choice over My Own Body*”, 21 December, <http://chrnet.org/wp-content/uploads/2010/12/%E2%80%9CI-Don%E2%80%99t-Have-a-Choice-over-My-Own-Body%E2%80%9D.pdf> – Accessed 13 January 2011.
2. US Department of State 2011, *Country Report on Human Rights Practices – China (Includes Tibet, Macau, Hong Kong)*, 8 April.
3. „Brides and prejudice in China’ 2010, *China Daily*, 23 August. (CISNET China CX247788)
4. Population Research Institute 2009, „U.N. Population Fund Targets Minorities in China: New PRI Investigation Reveals the Manchus Are Under Fire, One-Child Policy Rigorously Enforced’ *PRI Review*, v.19(4), July/August, Population Research Institute website <http://www.pop.org/content/u-n-population-fund-targets-minorities-in-china-1218> – Accessed 27 April 2011.
5. Department of Foreign Affairs and Trade 2007, *DFAT Report 604 – RRT Information Request: CHN31325*, 19 February.
6. Immigration and Refugee Board of Canada 2010, *CHN103502.E – China: Family planning laws, enforcement and exceptions; reports of forced abortions or sterilization of men and women particularly in the provinces of Guangdong and Fujian (2007 – May 2010)*, 9 July http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=453047&l=e – Accessed 16 August 2010.
7. „Chinese woman forced to abort eight-month foetus’ 2010, *Associated Press*, 25 October. (CISNET China – CX251991)
8. Cheng, A. 2007, „Chinese couple sue over forced abortion; One-Child Policy; Citizens Push Their Rights In First Case Of Its Kind’, *National Post*, 29 August. (FACTIVA)
9. Hongqing, D. 2007, „Full-Term Abortion Lawsuit a First for China’, *Caijing English Newsletter*, 23 July. (FACTIVA)
10. Kumar, T. 2004 „Human Rights Violations and Coercion in One-Child Policy Enforcement’ Amnesty International Testimony Before the Committee on International Relations United States Congress, 14 December. (CISNET China – CX146253)
11. US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – China (includes Tibet, Hong Kong, and Macau)*, 11 March.

²⁵ *Population and Family Planning Law of the People's Republic of China* (Promulgated 29 December 2001, Effective 1 September 2002), Chinese Government's official web portal http://english.gov.cn/laws/2005-10/11/content_75954.htm – Accessed 2 April 2007 – Attachment 19

²⁶ Winckler, E. 2002, „People's Republic of China Law on Population and Birth Planning (Documents)’ *Population and Development Review*, Vol. 28, No. 3 – Attachment 20

12. 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)
13. Freedom House 2010, *Freedom in the World – China (2010)*, June <http://www.freedomhouse.org/template.cfm?page=22&year=2010&country=7801> – Accessed 31 January 2010.
14. Greenhalgh, S. & Winkler, E. 2005, *Governing China's Population: From Leninist to Neoliberal Biopolitics*, Stanford University Press, Stanford.
15. Deleted.
16. Deleted.
17. Deleted.
18. Deleted..
19. *Population and Family Planning Law of the People's Republic of China* (Promulgated 29 December 2001, Effective 1 September 2002), Chinese Government's official web portal http://english.gov.cn/laws/2005-10/11/content_75954.htm – Accessed 2 April 2007.
20. Winckler, E. 2002, „People's Republic of China Law on Population and Birth Planning (Documents)' *Population and Development Review*, Vol. 28, No. 3.