

**Refugee Review Tribunal
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RRT RESEARCH RESPONSE

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Questions

- 1. Is the treatment lenient for Chinese who were not students returning from overseas and would there be forced sterilisation if two children were born quickly overseas?**
- 2. Please send some information on forced sterilisation in Guangdong Province.**

RESPONSE

- 1. Is the treatment lenient for Chinese who were not students returning from overseas and would there be forced sterilisation if two children were born quickly overseas?**

A notice from the National Family Planning Commission of China [was sent] to the Dalian Family Planning Committee in response to a request from the latter for a definition of “overseas student” and “overseas Chinese” and other related questions. .

The family planning notice was found on the Guangdong Archives Information Network website and also on the Fujian Family Planning and Population Committee website.

The notice by the National Family Planning Commission of China to the Dalian Family Planning Committee provides brief information on the application of family planning policy for returned ‘Overseas Students’, ‘Overseas Chinese’, and ‘those who went abroad for other reasons’. The following is an outline of the relevant information:

‘Overseas Chinese’

The notice defines ‘Overseas Chinese’ as “Chinese citizens who have gained permanent residence or the right of long term stay” in another country. The document does not provide detailed information on the family planning regulations for Overseas Chinese but instead

refers the reader to previous family planning recommendations for Returning Overseas Chinese by the National Population and Family Planning Commission. The notice also contains brief references to a privileged family planning policy which applies to Returning Overseas Chinese (PRC National Population and Family Planning Commission 2003, 'Reply to request for definition of 'overseas student' and 'overseas Chinese' and relevant questions from the Dalian Family Planning Commission', 25 April – Attachment 1).

'Those who went abroad for other reasons'

The document states that Chinese citizens who, while abroad "for other reasons", have not adhered to family planning regulations will be treated upon return to China according to the family planning regulations of the area in which the female previously lived. The privileged family planning policy would thus not apply to this group. The family planning notice states that:

Those who went abroad for other reasons and returning back to China did not follow the birth control policy of the place where they belong before they left, should be treated according to the female domicile local policy where she used to belong (PRC National Population and Family Planning Commission 2003, 'Reply to request for definition of 'overseas student' and 'overseas Chinese' and relevant questions from the Dalian Family Planning Commission', 25 April – Attachment 1).

In August 2007 the Department of Foreign Affairs and Trade (DFAT) similarly advised that second children born overseas, who do not have foreign citizenship, are subject to family planning regulations on return to China. DFAT states that according to family planning regulations in Shanghai returning Chinese professionals and asylum seekers must pay a social maintenance to gain household registration for an out-of-plan child. Students however, may apply for exemptions from the fine. The report provides the following advice:

Second children born overseas who have returned to China are Chinese nationals if they have not acquired foreign citizenship, and are therefore still subject to the family-planning policy. According to Shanghai Population and Family Planning Commission, returning students who have had a second child overseas can apply to local family-planning authorities for exemption from the fine, if they have lived and studied in a foreign country continuously for over one year. Unlike returning students, returning professionals who have retained their Chinese citizenship and repatriated asylum seekers would not be exempted from paying the fine if they had a second child overseas and sought to register the child in Shanghai (Department of Foreign Affairs and Trade 2007, *DFAT Report 691 – RRT Information Request: CHN32173*, 31 August – Attachment 4).

DFAT also reported in October 2004 on the penalties for Chinese nationals returning to Guangdong who have breached the one child policy. The report states that parents returning with an out of plan child, who is recognised as a Chinese national, will be required to pay a social maintenance fine. DFAT reports that:

Guangdong provincial Family Planning Commission has told us that provincial regulations are strictly enforced.

If the applicant's child was recognised as a Chinese national and returned with the mother to Guangzhou the applicant would be required to pay a fee. According to article 55 of the Guangdong Family Planning regulations (available at www.gdpc.gov.cn), the fee imposed on a single mother giving birth to a child is two

times the local annual disposable income. Article 50 states that people with “excess births” shall not be employed by government, state-owned enterprises, state-dominated share holding companies and collectively owned enterprises within five years of the birth and shall not enjoy medical welfare nor shall they receive bonuses or other welfare related to collectively-owned enterprises within seven years of the birth. The reference to “excess births” includes children born outside of marriage.

The Guangdong Province family planning regulations do not mention conditions under which the penalty for an out of plan can be waived. The Family Planning Commission has told us it does not waive penalties (Department of Foreign Affairs and Trade 2004, *DFAT Report No. 330 – RRT Information Request: CHN16967*, 15 October – Attachment 5).

Please note that since the initial retrieval of the notice by the National Family Planning Commission of China from the Guangdong Archives Information Network website, the document has not been able to accessed or located. An IT Officer has advised that the document may have been removed from the website. The Fujian Population and Family Planning website however, contains a full version of the original notice from the National Family Planning Commission of China to the Dalian Family Planning Commission.

2. Please send some information on forced sterilisation in Guangdong Province.

Forced Sterilisation in Guangdong

No recent information was found in the sources consulted regarding forced or compulsory sterilisation in Guangdong. The last report of forced sterilisation in Guangdong found in the sources consulted is from 2003. The Immigration and Refugee Board of Canada (IRB) has reported on the difficulty in gaining independent information on forced sterilisation in China (*Better Ten Graves Than One Extra Birth* 2004, The Laogai Research Foundation, Washington, D.C., pp. 55-56 – Attachment 6; 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://www.cisr-irb.gc.ca/en/research/publications/index_e.htm?action=view&doc=chn43165e – Accessed 4 April 2005 – Attachment 7).

The 2007 US Department of State (USDOS) report indicates that Guangdong is one of 10 provinces that require ‘remedial’ action for out of plan pregnancies. The report does not contain further information as to what remedial measures are implemented. The USDOS report:

Several provinces--Anhui, Hebei, Heilongjiang, Hubei, Hunan, Jilin, Liaoning, and Ningxia--require “termination of pregnancy” if the pregnancy violates provincial family planning regulations. An additional 10 provinces--Fujian, Guizhou, **Guangdong**, Gansu, Jiangxi, Qinghai, Sichuan, Shanxi, Shaanxi, and Yunnan--require unspecified “remedial measures” to deal with out-of-plan pregnancies (US Department of State 2008, *Country Reports on Human Rights Practices 2007 – China*, 11 March, Section 1.f – Attachment 8).

A 2005 report by the IRB reports that no specific incidents were found of forced abortions or forced sterilisations in Guangzhou (located in Guangdong province). However, the IRB report on the difficulties in obtaining independent information on these “sensitive” issues.

According to the report, Amnesty International have not been able to conduct independent research into forced abortion or sterilisation in China due to “strict control of information by the authorities” (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://www.cisr-irb.gc.ca/en/research/publications/index_e.htm?action=view&doc=chn43165E – Accessed 4 April 2005 – Attachment 7).

The Laogai Research Foundation (LRF) have reported on a 2003 document from the local government of Jieshi town located in Guangdong, which instructs local officials to perform a mass sterilisation drive, including the sterilisation of all women in rural areas with two girls. The LRF report that the document calls on authorities to “overcome difficulties with creativity” to ensure that family planning targets are met. The Laogai Research Foundation provides the following report of the document:

The Laogai Research Foundation recently obtained a document of Jieshi Town, Guangdong Province from 2003. This Document No. 43 shows how the local government has harshly implemented China’s family planning law. Jieshi, located in the northern part of Lufeng City, Guangdong Province, has an area of 124 km and a population of 200,000. Document No. 43 of Jieshi Township, issued on August 26, 2003, gave orders that the fall 2003 family planning assignment should begin on August 26, and within 35 days (ending of September 30), certain goals must be achieved: to sterilize 1,369, fit 818 with an IUD, induce labor for 108, and carry out 163 abortions. During this period, each five days there should be a count and each ten days there should be an evaluation, and there must be a 100% success rate. Party secretaries and village heads who failed to fulfill this task would have their salaries cut by half, and other responsible cadres would suffer the withholding of their entire salary.

One regulation of Document No. 43 stipulates: “sterilized women will be compensated with 50 yuan, and women who undergo late-term abortions will be compensated with 300 yuan”. The document also demands “in the countryside, sterilization for all women with two girls, and induced labor for late-term pregnancy. Overcome difficulties with creativity, so that all fall actions can be implemented successfully, and the ground can be set for yearly population control planning” (*Better Ten Graves Than One Extra Birth* 2004, The Laogai Research Foundation, Washington, D.C., pp. 55-56 – Attachment 6).

This incident was also reported in a statement to the US House of Representatives by John Aird, a former senior research specialist on China for the U.S Bureau of the Census (Aird, J 2004, ‘Human Rights Violations under China’s One-Child Policy’, U.S. House of Representatives Committee on Foreign Affairs website, 14 December http://www.internationalrelations.house.gov/archives/108/air121404.htm#_ftn1 – Accessed 18 March 2008 – Attachment 9).

A 2002 article in the *Washington Post* reports that the Population Research Institute interviewed women in Guangdong who described the continued implementation of forced sterilisation. However, an independent team sent by the Secretary of State to China did not find evidence of compulsory sterilisation. The report follows:

A team of investigators from the Population Research Institute, a Virginia-based organization that opposes population control, said it interviewed women in a UNFPA county in

Guangdong province last year [2001] who stated that forced abortions and sterilizations continued. The government and UNFPA denied the allegations.

An independent team sent by Secretary of State Colin L. Powell in May visited five UNFPA counties and found no evidence of coercive abortions or involuntary sterilizations. It concluded China's family planning program remains coercive, but noted "some relaxation" in the UNFPA counties and urged Bush to continue funding UNFPA (Pan, Philip P. 2002, 'China's one-child policy now a double standard limits and penalties applied unevenly', Washington Post Foreign Service, 20 August – Attachment 10).

According to the Canadian Immigration and Refugee Board (IRB), authorities in the Huaiji region of Guangdong were reportedly ordered to perform abortions and sterilisations in 2001. The IRB report that:

Authorities were reported to have ordered that 20,000 abortions and sterilizations be performed by the end of 2001 in the Huaiji region of Guangdong (*The Irish Times* 5 Sept. 2001; NRO 16 Aug. 2001; *The Telegraph* 15 Aug. 2001). Although the one-child policy was reported to no longer be "strictly applied in many rural areas," the edict was issued "after census officials revealed that the average family in Huaiji has five or more children" (ibid.) According to a 5 August 2000 article, not only would abortions be performed on women with "unauthorised" pregnancies, but doctors had also been ordered to sterilize women immediately following officially approved pregnancies (ibid.). Ann Noonan, the policy director of the Laogai Research Foundation, a US-based non-profit organization that conducts research on human rights issues in China, stated in a 16 August 2001 article that, in order to meet the imposed quota, nearly 100 per cent of all pregnancies would need to be aborted (NRO). A 5 September 2001 article in the *Irish Times* stated that, as a result of this imposed quota, in recent months, women of childbearing-age in Huaiji had either been sterilized or fitted with contraceptive devices and women who had been discovered to be pregnant with a second child without permission had been required to undergo an abortion and then sterilization (Immigration and Refugee Board of Canada 2002, CHN38921.E – China: The "out-of-plan" birth penalties meted out to residents of Guangdong province generally, or Guangzhou City in particular, arising as a result of the national census of 1-15 November 2000, 22 April – Attachment 11).

Forced Sterilisation in China

Sources indicate that while the use of coercive family planning techniques in China is generally declining instances of forced sterilisation are still reported. Forced sterilisations appear to be reported mainly in connection with women who have had two children and particularly during crackdowns by local authorities in order to meet population targets (US Department of State 2008, *Country Reports on Human Rights Practices 2007 – China*, 11 March, Section 1.f & 5 – Attachment 8; Elegant, S. 2007 'Why Forced Abortions Persist in China', *Time*, 30 April <http://www.time.com/time/world/article/0,8599,1615936,00.html> – Accessed 25 February 2008 – Attachment 12).

The US Department of State (USDOS) *Country Reports on Human Rights Practices 2007 – China* reports on continued cases of forced sterilisation in China. It reports that couples who have two children are often pressured to undergo sterilisation. The report also states that local authorities under pressure to meet family planning targets have resorted to coercive measures, including forced sterilisation. The relevant sections of the report are reproduced below:

The government continued its coercive birth limitation policy, in some cases resulting in forced abortion and sterilization (intro)

...In the case of families that already had two children, one parent was often pressured to undergo sterilization. The penalties sometimes left women with little practical choice but to undergo abortion or sterilization (Section 1.f).

... 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. There continued to be sporadic reports of violations of citizens' rights by local officials attempting to reduce the number of births in their region. The most egregious reports of mass violations occurred in April and May in Guangxi Province, where authorities forced dozens of pregnant women to undergo abortions at a hospital in Baise City, some as late as nine months. In a separate incident in Guangxi, thousands of residents of nine towns in Bobai and Rong counties protested illegal family planning measures, which included forced abortions and sterilizations, by attacking government workers and looting family planning offices (Section 1.f).

...The law prohibits the use of physical coercion to compel persons to submit to abortion or sterilization. However, intense pressure to meet birth limitation targets set by government regulations resulted in instances of local birth-planning officials using physical coercion to meet government goals. Such laws and practices required the use of birth control methods (particularly IUDs and female sterilization, which according to government statistics, accounted for more than 80 percent of birth control methods employed) and the abortion of certain pregnancies (Section 5) (US Department of State 2008, *Country Reports on Human Rights Practices 2007 – China*, 11 March, Section 1.f & 5 – Attachment 8).

A May 2007 report by the IRB provides information of continued reports of forced sterilisation in China (Immigration and Refugee Board of Canada 2007, *CHN102495.E – China: Whether forced abortions or sterilizations are still occurring; prevalence and location of forced abortions or sterilizations; reports of forced sterilization of men (2005 – 2007)* , 10 May http://www.irb-cisr.gc.ca/en/research/rir/index_e.htm?action=record.viewrec&gotorec=451207 – Accessed 14 August 2007 – Attachment 13).

An article on the *Time* website reports on a coercive family planning crackdown in April 2007 in the Guangxi province which involved forced abortions. The article also provides the following advice from Nicolas Becquelin, Research Director of Human Rights in China, regarding the continued enforcement of sterilisations in rural China:

Despite the growing consensus calling for change, however, Beijing continues to make enforcement of the policy one of the two main yardsticks by which the performance of local bureaucrats — and hence their prospects for advancement — are judged. (The other is tax collection.) It is this pressure from above to comply with population quotas that prompts local officials to adopt measures such as forced abortion (sometimes heart-rendingly late in term), forced sterilization and the like, says Nicolas Becquelin of New York-based Human Rights in China.

“The occurrence of these cases is largely confined to poor or ethnic areas of China” says Becquelin, noting that in such areas the central government often seems to fear that if restrictions on population growth are lifted there will be an immediate population explosion. That would be highly unwelcome economically — with [Communist Party] cadres fearing that the new mouths would either be trapped in poverty at home or join the flood tide of rural migrants swamping the cities (Elegant, S. 2007 ‘Why Forced Abortions Persist in China’, *Time*, 30 April <http://www.time.com/time/world/article/0,8599,1615936,00.html> – Accessed 25 February 2008 – Attachment 12).

A September 2005 article in *The Independent* reports on the enforcement of compulsory sterilisation by local authorities in Linyi city in Shandong province. The report states that local officials are not authorised to enforce sterilisations and that the officials were arrested for their actions. The following is an extract from the report:

Several health workers have been arrested in Shandong Province in the east of China after the authorities admitted that local officials had been forcing women to have abortions or undergo sterilisations.

Sources in Linyi City and its surrounding counties claimed that up to 120,000 women had been coerced into submitting to the procedures and that some of them were in the ninth month of their pregnancies.

... Yu Xuejun, China's National Population and Family Planning Commission (NPFPC) spokesman, admitted it had received "successive complaints" about the activities of its officials in Linyi. "Some persons in a few counties and townships of Linyi did commit practices that violated laws and infringed upon the legitimate rights and interests of citizens while conducting family planning work," said Mr Yu on the NPFPC website. "The responsible persons have been removed from their posts and some have been detained."

... Forced abortions and compulsory sterilisations were commonplace in the early 1980s in China, which with 1.3 billion people is the world's most populous nation. But since the mid-1990s, the government has supposedly switched to a system of fines for couples who have more than one child, while offering annual pensions of about £85 to couples over 60 who have adhered to the one-child policy.

Beijing insists local officials are not authorised to compel people to undergo abortions or sterilisations. Mr Yu said NPFPC officials have travelled to the region to "correct any infringements of citizens rights" (Eimer, D. 2005 'China admits women were forced to have abortions', *The Independent*, 21 September

<http://www.independent.co.uk/news/world/asia/china-admits-women-were-forced-to-have-abortions-507688.html> – Accessed 20 March 2008 – Attachment 14).

A 2001 article titled *Chinese State Birth Planning in the 1990's and Beyond* by Susan Greenhalgh and Edwin Winckler, reports that while the mandatory sterilisation of women who have had two children was widely enforced in China, many provinces revised their regulations in the late 1990's and removed the practice of compulsory sterilisation. Greenhalgh and Winckler provide the following overview of the enforcement of sterilisation in China:

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. (Greenhalgh, S. & Winckler, E. 2001 ‘*Chinese State Birth Planning in the 1990’s and Beyond*’, US Department of Justice, Immigration and Naturalisation Service, September, p.7, Citizenship and Immigration Services website, <http://www.uscis.gov/files/nativedocuments/pschn01001.pdf> – Accessed 3 April 2007 – Attachment 15).

List of Sources Consulted

Internet Sources:

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Immigration & Refugee Board of Canada <http://www.irb.gc.ca/>
UK Home Office <http://www.homeoffice.gov.uk>
US Department of State <http://www.state.gov/>
US Department of State website <http://www.state.gov>
US House of Representatives Committee on Foreign Affairs website <http://www.internationalrelations.house.gov/>
US Citizenship and Immigration Services website <http://www.uscis.gov/files/nativedocuments/pschn01001.pdf>

United Nations (UN)

UNHCR <http://www.unhcr.ch/>

Non-Government Organisations

Amnesty International website <http://www.amnesty.org/>
Freedom House <http://www.freedomhouse.org/template.cfm?page=1>
Human Rights Watch <http://www.hrw.org/>
International Helsinki Federation for Human Rights <http://www.ihf-hr.org/welcome.php>
Human Rights Internet (HRI) website <http://www.hri.ca>

International News & Politics

BBC News website <http://news.bbc.co.uk/>
The Independent <http://www.independent.co.uk/>
Time <http://www.time.com/time/>

Region Specific Links

Fujian Family Planning and Population Committee website <http://jsw.fjgov.cn:8080/templates/index.jsp>
Guangdong province government website <http://www.da.gd.gov.cn/>

Search Engines

Google search engine <http://www.google.com.au/>

Databases:

FACTIVA (news database)
BACIS (DIMA Country Information database)
REFINFO (IRBDC (Canada) Country Information database)
ISYS (RRT Country Research database, including Amnesty International, Human Rights Watch, US Department of State Reports)
RRT Library Catalogue

List of Attachments

1. PRC National Population and Family Planning Commission 2003, 'Reply to request for definition of 'overseas student' and 'overseas Chinese' and relevant questions from the Dalian Family Planning Commission', 25 April.
2. PRC National Population and Family Planning Commission 2003. 'Reply to request for definition of 'overseas student' and 'overseas Chinese' and relevant questions from the Dalian Family Planning Commission', Guangdong Archives Information Network website, 25 April
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7. 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://www.cisr-irb.gc.ca/en/research/publications/index_e.htm?action=view&doc=chn43165E – Accessed 4 April 2005.
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9. Aird, J 2004 'Human Rights Violations under China's One-Child Policy', U.S. House of Representatives Committee on Foreign Affairs website, 14 December
http://www.internationalrelations.house.gov/archives/108/air121404.htm#_ftn1 – Accessed 18 March 2008.
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11. Immigration and Refugee Board of Canada 2002, *CHN38921.E – China: The "out-of-plan" birth penalties meted out to residents of Guangdong province generally, or Guangzhou City in particular, arising as a result of the national census of 1-15 November 2000*, 22 April. (REFINFO)

12. Elegant, S. 2007 'Why Forced Abortions Persist in China', *Time*, 30 April
<http://www.time.com/time/world/article/0,8599,1615936,00.html> – Accessed 25 February 2008.
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14. Eimer, D. 2005 'China admits women were forced to have abortions', *The Independent*, 21 September
<http://www.independent.co.uk/news/world/asia/china-admits-women-were-forced-to-have-abortions-507688.html> – Accessed 20 March 2008.
15. Greenhalgh, S. & Winckler, E. 2001 '*Chinese State Birth Planning in the 1990's and Beyond*', US Department of Justice, Immigration and Naturalisation Service, September, p.158, Citizenship and Immigration Services website,
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