

**Refugee Review Tribunal  
AUSTRALIA**

**RRT RESEARCH RESPONSE**

**Research Response Number:** CHN35360  
**Country:** China  
**Date:** 24 August 2009

Keywords: China – Fujian – Sterilisation – One-child policy – Administrative penalties – Bail conditions – Labor farms – Strikes – Detention centres

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**Questions**

- 1. Is there any information on the success or failure of sterilisation techniques in China?**
- 2. Are serious violators of China's one child policy subject to forced labour in farms or other institutions? What are the current penalties for violations in Fujian?**
- 3. Is there reference to a "state owned farm" near Dongying village in Longtian Town?**
- 4. Please provide any information on procedures surrounding bail and/or bail on medical grounds. What are the penalties for violating bail conditions?**
- 5. Please provide any information on the treatment of those who organise "anti-government strikes" or similar with regard to conditions in labour farms.**
- 6. Is it possible that a person held in detention for protests/strikes would be held in a cell together with criminals?**

**RESPONSE**

- 1. Is there any information on the success or failure of sterilization techniques in China?**

Extensive or detailed information was not found on the success or failure of female sterilisation procedures in China. Contraceptive failure rates – defined as unintended pregnancy while contraceptive is in use – for modern methods, including sterilisation, are reported to be high in China. Failure rates for female sterilisation are reported to be lower compared with other methods: 0.7-1.2%.

The medical operation of sterilisation, male and female, is described as being "effective and permanent" by S. Greenhalgh and E. Winkler in their major 2001 study for the Immigration and Naturalization Service (INS) of the US Department of Justice:

(c) Second child and sterilization

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. & 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, p.7 – Attachment 1).

The authors do go on to state that in the context of family planning campaigns (temporary efforts often one to three months in duration to mobilise the populace for a particular policy purpose) “in rural areas...medical operations are performed by a mobile medical team, often in a rushed manner, using poor facilities”:

The campaign context of birth control surgery undoubtedly inflicts both emotional and physical trauma on many of the women targeted. In addition to the intense social pressures to comply, **in rural areas the resulting medical operations are performed by a mobile medical team, often in a rushed manner, using poor facilities. Poor quality medical procedures are most likely in this context; in fact, provincial regulations specifically and consistently warn against this, indicating the seriousness of the problem.** Especially in earlier years, when campaigns worked through terror and fear, the emotional trauma to women was incalculable. Physical harm due to medical complications was also more likely than when medical procedures were conducted under more routine circumstances. The top priority was achieving numerical targets; the reproductive health of women was a very secondary concern. Health and safety were considered, but not if concern for them jeopardized attainment of the larger goal. Such abuses were worse in the past than in the present, and were worse in rural areas than in urban areas. They may well continue in some rural areas, but they are loudly deplored by program leaders (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, p.12 – Attachment 1).

Statistical figures on the failure rates of female sterilisation in China are provided in an academic paper ‘Abortion as a backup method for contraceptive failure in China’, published in the *Journal of Biosocial Science* in 2003 but based on a survey conducted in 1988. More generally, the authors of the paper state that “failure rates [defined as unintended pregnancy while a contraceptive is in use] for modern methods including sterilization are reported to be high in China”, and go on to describe some of the factors which may give rise to contraceptive failure in the context of resort to abortion:

**Contraceptive failure rates [defined as unintended pregnancy while contraceptive is in use] for modern methods including sterilization are reported to be high in China...**For example, the first year failure rates were 4.2% for male sterilization, **0.7% for female sterilization**, 10.3% for the intrauterine device, 14.5% for the pill, and 19.0% for the condom. There were also some differentials in contraceptive failure rates by users' socio-demographic and fertility characteristics. Contraceptive failure rate declined with women's age for all reversible methods. Rural women had higher sterilization, IUD and condom contraceptive failure rates than urban women did.

...differences in abortion rate given contraceptive failure by women's social and demographic background shown in this study suggest three main possible mechanisms through which women's characteristics included in the analysis may influence the resolution of contraceptive failure in abortion:...the second group of factors may reflect the low effectiveness of modern contraceptive methods among certain women and in poor family planning services in some communities... Table 4 displays the distribution of the number of contraceptive failures contributed to the sample by each women. **About 20% of women contributed more than one contraceptive failure to the sample, and in particular one women had nine contraceptive failures...**It may also be possible that some women generally would continue to be served by the same family planning personnel that provided poor service (such as inexperienced community doctors, limited supplies of different types and sizes of contraceptives to meet individual need, especially in rural areas) (Wang, D., Yan, H., & Feng, Z. 2003, 'Abortion as a backup method for contraceptive failure in China', *Journal of Biosocial Science*, vol 36, pp.279, 285-286 – Attachment 2).

A 2003 paper in the *International Journal of Gynecology and Obstetrics* concluded from a study of 289 women who had undertaken quinacrine sterilisation (QS) that: "there were three pregnancy failures for a cumulative life table failure rate of 1.2 per 100 women at 24 months. The TL [Tubal Ligation] patients...had a similar rate of 0.7" (Lu, W., Zhu, J., Zhong, C., & Zhoa, Y., 2003, 'A comparison of quinacrine sterilization (QS) and surgical sterilization (TL) in 600 women in Guizhou Province, China', *International Journal of Gynecology and Obstetrics*, vol. 83, suppl. 2, pp.51-58 – Attachment 3).

High levels of contraceptive failure are also referred to in a 1998 study published in the *Asia-Pacific Population Journal*. The authors also concluded that "For sterilization, number of living children is identified as a very strong predictor of contraceptive failure as well as of its outcome for rural women. Rural women with three or more children have a significantly higher rate of contraceptive failure, and also a significantly higher chance of a subsequent live birth rather than an abortion, compared with women having fewer than three children":

The need to understand the predictors of contraceptive failure and its outcome is particularly acute in China where there are high levels of contraceptive use (around 70 percent throughout the 1980s) coupled with high levels of failure (Delfs, 1990; Poston, 1986; Weinberger, 1991).

...Contraceptive failure is here defined as a pregnancy occurring while contraception is being practised. This definition of failure includes both method failure and failures attributed to inconsistent or incorrect use, which is also called "use failure" (Jejeebhoy, 1990) [B].

...[Table 2](#) presents the results from the final parsimonious proportional hazards models for the six methods by urban-rural residence. The parameter estimates are omitted here. Instead, the effects of the various covariates are expressed as relative risks, which are calculated as the exponentiated coefficients. These relative risks represent the relative change in the hazard rate of contraceptive failure for the specific category compared to the reference group of this variable, controlling for other variables. For example, in the hazard model for rural male

sterilization users, the relative risk of about 6.8 during the first year of male sterilization means that the risks of experiencing a male sterilization failure are 6.8 times higher than risks for the reference category “after three years of use”. The chi-squared statistic compares the final model with the null model, which includes only the parameter for the intercept. All variables in these final models are significant at the 5 percent or higher level.

**...For female sterilization, duration of use together with number of living children and previous contraceptive failure are found to be important predictors of contraceptive failure for rural women but not for urban women. The effects of duration of use and number of living children are similar to that for male sterilization but with a smaller effect of duration. In addition, for rural sterilized women, prior experience of contraceptive failure strongly increases the chance of experiencing another accidental pregnancy.**

...[Table 3](#) presents the distribution of the outcomes of the 3,658 contraceptive failures by method and residence. It shows the striking differences in the way urban and rural couples resolve a contraceptive failure. Only 9.1 percent of failures result in a live birth for urban couples compared with 42.0 percent for rural couples. The marked differentials in the outcomes of contraceptive failure also exist among different methods for rural less. As shown in [table 3](#), **for rural couples 61.7 percent and 62.4 percent of contraceptive failures for male and female sterilization, respectively, lead to live births, whereas 45.0 percent of IUD failures and less than 25.0 percent of other reversible method failures lead to live births.**

...Comparing urban and rural dwellers, rural couples are more likely to become pregnant because of **sterilization failure**, and they would also be more likely to have a live birth as a result of contraceptive failure. On the other hand, urban couples are more likely to have an induced abortion as opposed to a live birth if contraceptive failure occurs.

**...For sterilization, number of living children is identified as a very strong predictor of contraceptive failure as well as of its outcome for rural women. Rural women with three or more children have a significantly higher rate of contraceptive failure, and also a significantly higher chance of a subsequent live birth rather than an abortion, compared with women having fewer than three children.** This suggests that some of the “failures” may be deliberate pregnancies. [Table 3](#) also shows that, for rural sterilization users, over 60 per cent of failures lead to a live birth compared with 45.0 percent for IUD failures, and less than 25 percent for other reversible methods. If those are not deliberate pregnancies, then a low motivation to prevent pregnancy may be another cause (Wang, D., Diamong, I., & Curtis, S. L., 1998, ‘Contraceptive failure and its subsequent effects in China: a two-stage event history analysis’ *Asia-Pacific Population Journal*, vol. 13, no.1 <http://gendwaar.gen.in/RepTE/RT28.htm> – Accessed 21 August 2009 – Attachment 4).

For information on the use of forced sterilisation in Fujian and China, see June 2009 *Research Response CHN34917* (RRT Research & Information 2009, *Research Response CHN34917*, 16 June – Attachment 5).

## **2. Are serious violators of China’s one child policy subject to forced labour in farms or other institutions? What are the current penalties for violations in Fujian?**

No reports were found to indicate that serious violators of China’s one child policy are subject to forced labour in farms or other institutions. Susan Greenhalgh and Erwin Winkler, in their major 2001 study for the Immigration and Naturalization Service (INS) of the US Department of Justice, discuss the application of “administrative punishments and criminal sanctions” as the third and last of three avenues open to local authorities in their

implementation of China's one child policy. They stated that "some evidence suggests that people are sometimes temporarily "detained" at birth planning clinics for "education"...more severe punishments are most likely to apply not to ordinary citizens, but to government or party personnel":

The program is mandatory state birth planning, not voluntary family planning. The main program rules have been mandatory contraception after a first child and mandatory sterilization after a second, but there have been both deliberate and inadvertent exceptions and the rules are beginning to be softened. In principle, the main means of enforcement have been, first, propaganda-and-education (a technique that can involve considerable coercion), second, economic incentives and penalties, and only as a last resort, more drastic "administrative means."

...(c) Administrative means: Administrative punishments and criminal sanctions

More severe forms of enforcement include "administrative means" employed by bureaucratic organizations with which citizens are involved, and criminal sanctions applied by the justice system. Some of these administrative means, and most of these criminal sanctions, approach what some Westerners would regard as coercion. Program leaders prefer not to punish ordinary citizens severely, but consider such punishment legitimate when applied according to regulations to recalcitrant cases. One of the few circumstances under which an ordinary citizen would be subject to criminal penalties in connection with a birth planning violation is if he or she attacked a birth planning worker in a violent manner that would be criminal under any circumstances. Lawmakers have made it a crime to harm or kill women and baby girls - practices that, of course, are officially deplored by the birth program but that sometimes occur as people react to the stiff policies the program enforces. Under the 1991 Law Protecting Women's Rights and Interests and the 1994 Law on Maternal and Infant Health Care, it is a crime to drown, forsake, cruelly injure or kill baby girls and to discriminate against women who give birth to baby girls or bear no children. Provincial regulations often have similar provisions, yet the means of enforcing those criminal provisions are rarely specified, and actual enforcement is generally lax. Some evidence suggests that people are sometimes temporarily "detained" at birth planning clinics for "education." In June 1998, a video of such a "birth planning jail" was shown on American television and to the House Subcommittee on International Operations and Human Rights, within the House Committee on International Relations. According to interviews, such detention should not last for more than a day, but evidently can last a week or two. Localities have a revenue incentive for collecting fines, and for that reason try to make them enforceable. Under the 1989 Administrative Procedures Law, citizens have access to legal redress for mistreatment. Such redress, however, is often difficult to obtain.

"Administrative means" probably include some of the stronger economic "restrictions and punishments" listed above. However, "administrative means" includes "other administrative punishments" that the regulations do not specify but leave up to the violator's unit or the department in charge to decide. The punishment is to be reported for review to the department in charge of birth planning at the same level. **These more severe punishments are most likely to apply not to ordinary citizens, but to government or party personnel who violate birth regulations governing their own personal lives by having more children than allowed.** In principle, such officials are punished more severely than ordinary citizens because employment by the state is regarded as a privilege and requires exemplary behavior. These punishments range from entering demerits in the offender's government or party career file to loss of government job or party membership. In practice, local officials often ignore the regulations and then protect each other from such punishments by neglecting to report the violations to their superiors. Trying to stamp out these local deviations, during the 1990s,

program administrators made increasing efforts to punish officials who set a bad example for the public by having unpermitted children.

Many articles specifying appropriate punishment add that if what the program violator has done legally constitutes a crime, the case should be referred to the relevant legal authorities for possible prosecution. Penalties could then include prison and even execution. These most severe punishments are most likely to apply to birth planning and medical personnel who violate birth planning regulations governing their conduct in their official relations with the public, usually by accepting bribes in exchange for favorable treatment, but sometimes for using coercion against a resistant client. Such severe punishment of deviant program personnel is intended to prevent abuse of the public.

**...Faced with recalcitrant cases, grass-roots administrators sometimes feel that they have no alternative to using intense pressure, if not actual physical force. Violation against personal property also occurred because cadres understood it as substituting for a fine from couples who were unwilling to pay the fine or who fled the community.**

Objectionable though the practice is, community cadres felt that, in order to demonstrate that they had “done something” to punish violators, they had to take property such as a television set or other consumer durables, or perhaps even damage the offender’s house. Many such cases have been reported in the Chinese press, especially during the major campaigns of the past.

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 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 (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.16-17 – Attachment 1).

In January 2008, *The Washington Post* reported on the loss of jobs and expulsion for members of the Communist Party for having more children than allowed during the previous year. The report also stated that approximately 93,000 people had out-of-plan children:

Officials in Hubei province have expelled 500 people from the Communist Party for violating China’s “one-child” family planning policy, state media reports said Monday.

Of the 93,084 people who had more children than allowed last year, 1,678 were officials or party members, the New China News Agency reported. Among the violators were seven national or local legislators and political advisers, all of whom were stripped of their political status. Another 395 offenders lost their jobs.

China’s family planning officials, worried about a baby boom that could further strain the country’s resources, have been trying to crack down on parents who have more children than they are permitted under the law.

Under the current rules, city residents are limited to one child, while rural residents may have two children. In addition, parents who themselves are only children and members of ethnic minorities are granted exceptions.

...In recent years, a growing number of wealthy Chinese have defied the rules and simply paid the resultant fines. Now, government agencies are attempting to improve the enforcement of their policies without necessarily resorting to coercive means such as forced abortions -- a tactic used in the past.

Hubei province, which levied a record-breaking \$105,000 fine against a local lawmaker last year, now bars violators from holding elective office or government jobs for three years.

“More party members, celebrities and well-off people are violating the policies in recent years, which has undermined social equality,” said Yang Youwang, head of Hubei’s family planning commission, according to the New China News Agency. A number of cases involving celebrities or officials were still under investigation, but they would be later identified, Yang said (Fan, M. 2008, ‘Officials Violating ‘One-Child’ Policy Forced Out in China’, *The Washington Post*, 8 January <http://www.washingtonpost.com/wp-dyn/content/article/2008/01/07/AR2008010701062.html> – Accessed 21 August 2009 – Attachment 6).

*Research Response CHN34475* of February 2009 examined the regulation *Temporary Measures on Implementation of Reeducation through Labour* (1982), one of three documents that form the main basis for Re-education through Labour (RETL). Articles from the regulations which specify the acts which warrant RETL are quoted. They make no reference to family planning but do make reference to those “who do not reform after repeated education” in the case of “unlawful or criminal acts of hooliganism, prostitution, theft, fraud, etc.,”:

Under the 1982 *Temporary Measures*, targets include:

1. counter-revolutionary and anti-Party, anti-socialist elements whose crimes are not sufficiently serious to warrant criminal sanction;
2. those who form groups to commit murder, armed robbery, rape, arson and other gang crimes, whose crimes are not sufficiently serious to warrant criminal sanction;
3. **those who commit unlawful or criminal acts of hooliganism, prostitution, theft, fraud, etc., who do not reform after repeated education**, whose crimes are not sufficiently serious to warrant criminal sanction;
4. those who disrupt social order by inciting the masses to create disturbances and fights, pick quarrels and cause a disturbance, stir up trouble, whose crimes are not sufficiently serious to warrant criminal sanction;
5. those who have a work unit, but who, for a long time, refuse to labour or who disrupt labour discipline, ceaselessly cause trouble without cause, disrupt order of production, work, study and teaching or living or obstruct official business, whose crimes are not sufficiently serious to warrant criminal sanction; and
6. those who instigate others to commit unlawful criminal acts, but whose offences are not sufficiently serious to warrant a criminal sanction (Biddulph, Sarah 2007, *Legal Reform and Administrative Detention Powers in China*, Cambridge University Press, Cambridge, p.197 – Attachment 7).

## **What are the current penalties for violations in Fujian?**

Information on the overall administration and implementation of family planning regulations in Fujian, including coastal areas such as Longtian, is provided in question one of April 2008 *Research Response CHN33191* and question one of March 2008 *Research Response CHN33025* (RRT Research & Information 2009, *Research Response CHN33191*, 21 April – Attachment 8; RRT Research & Information 2009, *Research Response CHN33025*, 11 March – Attachment 9).

*Research Response CHN33191* includes articles from the 2002 population and family planning regulations for Fujian and reports from the Department of Foreign Affairs and Trade. The 2002 population and family planning regulations for Fujian indicate that the penalty is payment of a “social compensation [fee] of four to six times [of the average annual disposable income] shall be imposed on those who give birth to the second additional child. A much more heavy social compensation fee shall be imposed on those who give birth to the third or more additional child”. The Fujian population and family planning regulations provide the following information on the social compensation fee:

Article 39 Anyone who violates this Regulation by one of the acts listed below shall be ordered to pay the corresponding number of times of the average annual disposable income of the urban residents or the net average annual income of the rural peasants of the county in the previous year when the child is born in violation of this regulation as social compensation fee by family planning administrative department of the county or by township people’s government or urban neighborhood office appointed by such administrative department:

- (1) A social compensation of zero point six to one time shall be imposed on those who give birth to a child ahead of the schedule;
- (2) A social compensation of two to three times shall be imposed on those who give birth to the first additional child. A social compensation of four to six times shall be imposed on those who give birth to the second additional child. A much more heavy social compensation fee shall be imposed on those who give birth to the third or more additional child.
- (3) A social compensation of four to six times shall be imposed on those who give birth to a child born out of an extramarital affair. A much more heavy social compensation fee shall be imposed on those who give birth to the second child born out of an extramarital affair. If the actual annual income of the parties concerned exceeds the average annual disposable income of the urban residents or the net average annual income of the rural peasants of the county in the previous year, the actual income shall be used as the base to calculate the number of the social compensation fees. The decision in writing to impose social compensation fee shall be made by the family planning administrative department of the county. Such department may appoint the people’s government of township or town or the urban neighborhood office to make such decisions (*Population and Family Planning Regulation of Fujian Province*, (Promulgated 26 July 2002 & Effective 1 September 2002), UNHCR website- p.11 Attachment 10).

In April 2004 the Department of Foreign Affairs and Trade (DFAT) reported on regional differences in the enforcement of family planning regulations within Fujian. The DFAT report concluded that in “rural areas of Fujian more than half of all families have more than one child. The number of one child families is greater in the larger cities. However, even here, multiple child families are not unknown”:



The Family Planning Law in Fujian is regulated by a mixture of national, provincial and local laws and rules. Enforcement is by local authorities and evidence suggests that some local governments enforce family planning rules more vigorously than others. This has created a patchwork of different rules and enforcement across the province. Family planning rules are more strictly enforced in the larger cities such as Xiamen and Fuzhou, than in the poorer countryside. The rules are also more strictly enforced in areas where state-owned industry is stronger, such as the steel making city of Sanming, than in the mountainous or coastal fishing areas. In general, however, Fujian has one of the least coercive family planning regimes in China. In rural areas of Fujian more than half of all families have more than one child. The number of one child families is greater in the larger cities. However, even here, multiple child families are not unknown (Department of Foreign Affairs and Trade 2004, *DFAT Report 287 – RRT Information Request: CHN16609*, 22 April – Attachment 11).

*Research Response CHN33191* also quotes a January 2000 report based on officials from the Canadian Embassy in Beijing who made a fact finding mission in Fuzhou, a prefecture level city in Fujian. The report of the mission states that “almost one third of families in the four counties have three children or more”:

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 officials acknowledge there were problems with this in the past.

... Briefing by the officials of the Fujian Family Planning Committee described new procedures to ensure professional standards in family planning work at the local level which involve qualifying examinations and refresher courses. Forced abortion and forced sterilization are no longer accepted methods for resolving noncompliance with the Government’s birth control policy. At present, the average number of children per family in Fujian is 1.56

33.7% of families have one child

33.1% of families have two children

27.8% of families have three or more children.

... After two children, sterilization by tubal ligation is encouraged, but not required.

c. Meetings with local officials in Lianjiang, Fuqing and Changle counties confirmed local implementation of these policies

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

d. 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. The Chinese saying for this phenomenon translates as "Heaven is high and the Emperor is far away" (Immigration and Refugee Board of Canada 2000, *CHN34099.E – China: Report of a fact-finding mission to Fuzhou by Political Counsellor, Canadian Embassy, Beijing, 23 March – Attachment 12*).

### **3. Is there reference to a "state owned farm" near Dongying village in Longtian Town?**

No reference or information was found on a "state owned farm", including one used for forced labour, near Dongying village in Longtian Town. The *Laogai Handbook 2007-2008* provides a list of approximately 669 prisons and 319 re-education through labor (RTL) camps in China. The Laogai Research Foundation (LRF) believes the book is "the most authoritative record that exists on China's Laogai system, second only, of course, to the records of China's central government." In its survey of Fujian Province, the handbook refers to 16 prisons which include farms as part of their labour enterprises; and lists twelve Reeducation through Labor (RTL) camps in the province, one of which is referred to as a farm enterprise but is located in the west of the province: "Longyan Farm; Longyan RTL; Longmenkou, Longyan City" (The Laogai Research Foundation 2008, *Laogai Handbook: 2007-2008*, October, pp.65-79 <http://www.laogai.org/news2/book/handbook2008-all.pdf> – Accessed 5 March 2009 – Attachment 13).

### **4. Please provide any information on procedures surrounding bail and/or bail on medical grounds. What are the penalties for violating bail conditions?**

Several recent research responses have examined procedures surrounding bail and bail on medical grounds (see question 2 of RRT Research & Information 2007, *Research Response CHN32671*, 4 December – Attachment 14; for bail on medical grounds see question 1- 4 of RRT Research & Information 2009, *Research Response CHN34880*, 22 May – Attachment 15).

*Research Response CHN32671* quotes from the following two Amnesty International reports on the main form of bail in China, known as 'Taking a Guarantee and Awaiting Trial' (*qubao houshen*):

In addition to detention (*juliu*), the CPL [Criminal Procedure Law] sets out two forms of pre-trial restriction which the police may impose on their own authority, without charge or judicial review. These are: Supervised Residence (*jianshi juzhu*), comparable to detention, and Taking a Guarantee and Awaiting Trial (*qubao houshen*). These may be imposed on any "criminal suspect" (article 51) including those against whom there is insufficient evidence to justify arrest (article 65). They may also be imposed when pre-trial investigation by the police, procuratorate or the courts cannot be concluded within the legal time limits (article 74). **Whereas the CPL stipulates time limits for Supervised Residence and Taking a Guarantee and Awaiting Trial of 6 and 12 months respectively, subsequent interpretations have extended the limits to 18 months and 3 years respectively.** On paper, Supervised Residence may appear preferable to detention, but in practice it is being widely used as a means of detaining "suspects" incommunicado outside regular detention centres away from the oversight of existing supervisory mechanisms. Torture is frequently the result.

**Taking a Guarantee and Awaiting Trial, a form of bail, is the least restrictive of all pre-trial control measures.** However, certain categories of suspect are excluded, including those suspected of crimes "endangering national security". This includes the majority of prisoners

of conscience and political prisoners known to Amnesty International. Detainees, their near relatives or legal representatives now have the right to apply for it. There is no appeal process if their request is rejected (Amnesty International 2001, *People's Republic of China: Torture – A Growing Scourge in China -Time for Action*, 12 February, ASA 17/004/2001, Sect. 6.1 – Attachment 16).

An earlier 1997 Amnesty International study titled *Law Reform and Human Rights* stated that measures involving “Taking a guarantee and awaiting trial” applies to people “suspected of or charged with crimes which are considered minor or to those who ‘do not pose a danger to society’”:

Similar provisions [to supervised residence/surveillance] exist in the law for another form of restriction, known as “taking a guarantee and awaiting trial [out of custody]” (qubao houshen), which involves less stringent restrictions than “supervised residence”. **“Taking a guarantee and awaiting trial” means restriction to the city or county where the suspect resides.** It is limited to one year under the revised CPL. **Like “supervised residence”, it applies to people suspected of or charged with crimes which are considered minor or to those who “do not pose a danger to society”.** The “guarantee” is either a personal or a financial guarantee. The revised law includes a new provision making it possible for detainees, their legal representatives or close relatives to apply for “taking a guarantee and awaiting trial” (Article 52) which, if granted, is equivalent to release on bail. This is an improvement over the 1979 CPL. **However, like “supervised residence”, this form of restriction can also be imposed by the police against people who are not charged with an offence, for up to one year and without any recourse against it, in cases where there is insufficient evidence to justify arrest.**

Suspects subjected to “supervised residence” or to the other “coercive measures” permitted by the law – including “taking a guarantee and awaiting trial”, “detention” and “arrest” – have no recourse to a court or other authority to challenge the legality of their restriction or detention so long as these remain within the specified time limits. Under the revised CPL, the police, the procuracy or the courts must rescind or alter “coercive measures” if they discover that these measures have been inappropriately taken (Article 73). However, the only circumstance in which detainees and restricted persons, or their legal representative, can demand release or the lifting of their restriction order is when the maximum permitted length for their detention or restriction has been exceeded (Article 75, revised CPL). Prior to this point, there is no other procedure giving detainees the right to contest the legality of their detention. As will be seen below, for those who are formally “arrested”, the length of detention without recourse can be particularly long (Amnesty International 1997, *People's Republic of China: Law Reform and Human Rights*, March, ASA 177/14/97, p.6 – Attachment 17).

The United Nations High Commission for Refugees website provides the following version and translation of the *Criminal Procedure Law of the People's Republic of China* and the relevant Articles 51-55 concerning bail. For those granted bail, it states that they are required to provide a guarantor or deposit as security:

#### Chapter VI Compulsory Measures

##### Article 50

The people's court, the people's procuratorate and the public security organ may, in light of the circumstances of a case, issue a warrant to compel the appearance of the crime suspect or defendant, release him upon **bail pending trial** or subject him to residential surveillance.

##### Article 51

Under any of the **following circumstances, the people's court, the people's procuratorate and the public security organ may subject the crime suspect or defendant to release upon bail pending trial** or to residential surveillance:

1. if he could be sentenced to punishment of control, criminal detention or could be subjected to accessory punishment separately; or
2. if a sentence at or above termed imprisonment could be meted out thereto and the adoption of the release upon bail pending trial or residential surveillance would not likely cause the occurrence of a social danger. The release upon bail pending trial and residential surveillance shall be executed by the public security organ.

#### Article 52

Crime suspects and defendants already taken into custody, their legal representatives and near relatives shall have the right to apply for their release upon bail pending trial.

#### Article 53

When a people's court, people's procuratorate and public security organ decide to grant the release upon **bail pending trial to a crime suspect or defendant, they shall order him to provide a guarantor or deposit a security.**

Article 54 A guarantor must satisfy the following requirements:

1. being not related to the present case;
2. being capable of executing the obligation and responsibility under the guarantee;
3. enjoying political rights, and freedom of the person not being restricted; and
4. having a permanent domicile and regular income.

Article 55 A guarantor must be under the following duties:

1. supervising the guaranteed in observing the provisions of Article 56 of this Law;
2. reporting without delay to the executing organ when he finds that the guaranteed is likely to commit or has already committed an act in violation of a provision of Article 56 of this Law. Where the guaranteed has an act in violation of a provision of Article 56 of this Law, but the guarantor fails to make a prompt report, a fine shall be imposed on the guarantor, if a crime is constituted, criminal responsibility shall be investigated according to law (*Criminal Procedure Law of the People's Republic of China* (Adopted 17 March 1996), United Nations High Commission for Refugees website <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=search&docid=3ddbcd4e7&skip=&query=criminal%20procedure%20china> – Accessed 29 November 2007 – Attachment 18).

Article 56 of the *Criminal Procedure Law of the People's Republic of China* defines the penalties for those who violate the bail pending trial conditions:

Article 56 A crime suspect or defendant being released upon bail pending trial must observe the following provisions:

1. may not leave the city or county in which he resides without approval of the executing organ;
2. shall appear before the court whenever being summoned;
3. may not interrupt in any manner the witness to testify; and

4. may not destroy or falsify any evidence or collude to make confession tally.

**If a crime suspect or defendant being released upon bail pending trial violates a provision of the preceding paragraph and has already deposited a security, the security shall be confiscated, and in light of different circumstances, he shall be instructed to write a statement of repentance, deposit a security or provide a guarantor again, or be subject to residential surveillance or be arrested.** If the crime suspect or defendant did not violate the provisions of the preceding paragraph during the period of release upon bail pending trial, the security shall be returned when the period ends (*Criminal Procedure Law of the People's Republic of China* (Adopted 17 March 1996), United Nations High Commission for Refugees website <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=search&docid=3ddbcd4e7&skip=&query=criminal%20procedure%20china> – Accessed 29 November 2007 – Attachment 18).

Article 60 of the *Criminal Procedure Law* allows for release upon bail pending trial for crime suspects or defendants being arrested who are suffering from serious illness:

#### Article 60

When facts prove that a crime suspect or defendant has committed a crime and he could be sentenced to a criminal punishment of not less imprisonment, and if such measures as releasing upon bail pending trial or placing under residential surveillance would not be sufficient to prevent the occurrence of danger to society and an arrest is necessary, the crime suspect or defendant shall be arrested without delay according to law.

A crime suspect or defendant being arrested who is suffering from serious illness or is a pregnant woman or a woman breast-feeding her own baby may be allowed to be subjected to such measures as release upon bail pending trial or residential surveillance (*Criminal Procedure Law of the People's Republic of China* (Adopted 17 March 1996), United Nations High Commission for Refugees website <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=search&docid=3ddbcd4e7&skip=&query=criminal%20procedure%20china> – Accessed 29 November 2007 – Attachment 18).

### **5. Please provide any information on the treatment of those who organise “anti-government strikes” or similar with regard to conditions in labour farms.**

In April 2007, the Department of Foreign Affairs and Trade provided the following brief description of the role of Reeducation through Labour (RTL):

As background, we note that the Public Order Administration Punishment Law is not the only legal means under which Chinese authorities can impose administrative detention. Chinese authorities use a variety of forms of punitive administrative detention for acts deemed to be “between an error and a crime”. **The most well-known of these is the system of Re-education Through Labour (RTL). RTL is commonly used against drug-users and prostitutes but is also used to punish political and religious dissidents. Under the RTL Regulations, a person may be detained between one and three years, with the possibility of a one-year extension.** A new RTL law has been anticipated for many years but China has not specified any time frame for its release. Other forms of administrative detention include ‘Custody and Education’, used to punish prostitutes and their clients with between six months and two years’ administrative detention, and ‘Enforced Drug Rehabilitation’, which enables police to impose between three and six months’ detention on drug addicts. All forms of administrative detention are imposed without charge, trial or judicial review (DIMIA Country Information Service 2007, *Country Information Report No. 07/38 – CHINA: Fuqing*

*Documentation*, (sourced from DFAT advice of 27 February 2007), 20 April – Attachment 19).

Very little information was found on the treatment of those who organise “anti-government strikes” or similar with regard to conditions in labour farms or other administrative detention facilities. In 2004, the Falun Gong website did report on the strike of people at the Jiamusi Labor Camp. The report states that the response from the police was to “intensify the persecution of these practitioners”:

About six months ago, authorities at the Jiamusi Labor Camp entered into a contract with a private firm to produce cellular phone cases. The raw materials used for the cell phone cases are substandard and contain toxic substances far exceeding the permissible limits, and are carcinogenic. The police and guards who supervise the work are even afraid to stay in the workshop. However, Falun Gong practitioners are forced to remain in the workshop to make the cell phone cases. After a period of time, practitioners’ health is severely damaged by the toxic substances.

Every day, practitioners have breakfast at 7:00 a.m. Then they work from 7:30 a.m. to 12:00 p.m. After lunch, they work from 12:30 p.m. to 4:00 p.m. Sometimes they have to work until 5:30 p.m. They are only allowed to use the restroom twice during the day. For the rest of the time, they are forced to work nonstop. Whenever they slow down, they would be cursed at or beaten, or else have their terms extended. The meals are very poor every day. Among the practitioners forced to do slave labor, 68-year-old Zhu Xiuzhi is the oldest.

Due to the long-term persecution, especially the brutal torture “large handcuffs behind the back,” many practitioners have been severely injured or even disabled. Many have heart problems. Some people even have difficulty walking. Yet under this circumstance, the labor camp still forces practitioners to work for long periods of time. Many people can hardly continue.

Since February 14, about 15 practitioners have gone on labor strike. By February 20, the number of practitioners going on strike has increased to about 30. The police are intensifying the persecution of these practitioners. The situation is now critical. We appeal to people of conscience to pay close attention to this situation (“Thirty Falun Gong Practitioners on Labor Strike at the Jiamusi Labor Camp to Protest their Enslavement” 2004, Clearwisdom website <http://www.clearwisdom.net/emh/articles/2004/3/7/45829.html> – Accessed 21 August 2009 – Attachment 20).

The US State Department’s current human rights report on China, published in February 2009, indicates that “the right to strike is also not protected in law”, and goes on to describe the situation of striking workers more generally and penalties that may be imposed:

Some workers acted outside the ACFTU [the government’s All-China Federation of Trade Unions] structure to demand back wages, pension or health insurance contributions, or other benefits owed by employers. During the year strikes and labor protests throughout the country were increasingly widespread and well-organized. Reports of protests in which workers blocked traffic or damaged employers’ facilities appeared to increase during the year. Most of these protests occurred at export-oriented Hong Kong and Taiwan-invested factories, which shut down suddenly due to deteriorating business conditions without paying back wages or severance pay.

During the year the government acted against some activist workers, especially when they engaged in organized campaigns. **Some workers who complained to local labor and social security bureau offices about working conditions reported that they faced harassment**

**from their employers and police and sometimes from labor bureau officials.** Labor rights activists complained throughout the year of police surveillance, including interviews with police. In March authorities in Guangzhou arrested and subsequently detained 13 workers from three factories in Guangzhou's Panyu District who were involved in public protests over unpaid wages. **Authorities used force to suppress the demonstrations, bringing criminal charges against the protestors, and continued to use administrative detention, which is not subject to judicial review, as a penalty for involvement in such protests.**

...The trade union law acknowledges that strikes may occur, in which case the union is to reflect the views and demands of workers in seeking a resolution of the strike. **Local government interpretations of laws and regulations with respect to the right to strike vary, with some jurisdictions showing limited tolerance for strikes. Other jurisdictions continued to treat worker protests as illegal demonstrations.** Without a clearly defined right to strike, workers had only a limited capacity to influence the negotiation process.

In some cases workers did strike to demand better conditions and benefits. During the year labor strikes and protests throughout the country became increasingly widespread and well organized. In January in Guangzhou and Dongguan in Guangdong Province, thousands of workers from Hong Kong and Taiwan-invested factories protested wage arrears and other grievances. Some of these strikers reportedly clashed with police (US Department of State 2009, *2008 Human Rights Report: China*, 25 february, Section 6 Worker Rights,– Attachment 21).

A September 2008 study by the International Centre for Human Rights and Democratic Development on worker activism in the reform of China's State-Owned Enterprises provides some further details on the situation of those who engage in strikes/public protest:

#### Criminalizing Collective Protests by Workers

The actual number of worker activists currently imprisoned in China remains unknown, since only a minority of such cases is publicized in the official news media. **In general, however, whereas up until the late 1990s the authorities were highly diligent in arresting and prosecuting workers who staged strikes or public protests, in recent years there has been a gradually increasing level of official tolerance (albeit grudging and uncertain) for such activities.** The simple fact is that, in an era of market reform marked by widespread violations of basic labour rights, worker protests have become so frequent and numerous across the country that local governments nowadays are under increasing pressure to concede that the protesting workers have a wellfounded point. They are therefore generally more willing than before to adopt conciliatory tactics in such situations, as a means of defusing local labour unrest and other such factors of "political instability" in society. **However, misuse of the law to scapegoat and punish labour activists remains a serious problem in China, and one that may be considerably more widespread than presently known.**

#### ...Trumped-up Criminal Charges

In the case of the Liaoyang protest movement, the workers' leaders Yao Fuxin and Xiao Yunliang were found by the court to have committed the crime of "subversion of state power" – an essentially political offence and one of the gravest in the PRC Criminal Law. The Liaoyang Intermediate People's Court deemed that both defendants "were aware that their actions would necessarily result in a threat to society, and moreover they desired this outcome." On that basis, the court pronounced that they had "organized, planned and carried out actions aimed at subverting state power and overthrowing the socialist system."



...Similarly, in more recent cases, Zhu Guo, one of the leaders of the Tieshu Textile Factory protests, and also Luo Mingzhong, Zhan Xianfu, Luo Huiquan and Zhou Shaofen, four workers involved in the Tianyuan Chemicals Factory dispute, were all detained by police and charged with the offence of “assembling a crowd to disturb social order.” At their respective trials, the defendants were deemed by the courts to have gathered a mob with “disruptive intent” and (in the Tianyuan case) to have “inflicted grave impact on work, production, management, and training and research activities, leading to significant [economic] losses.” The defence lawyers argued in court that the evidence presented by prosecutors was grossly insufficient, and moreover that there had been no intent at all on the part of the accused to “assemble a crowd to disturb social order.” Nonetheless, court convictions predictably followed in both sets of trials.

...Detention without Trial

When security officials are unable to concoct a criminal case against worker activists, they nonetheless have at their disposal an extensive system of “administrative punishment” under which those seen as troublemakers can be detained and “re-educated,” solely on police authority, for up to three years without trial. The RTL system as a whole violates U.N. standards that prohibit detention without trial, including the International Covenant on Civil and Political Rights (ICCPR.). The Re-education through Labour (RTL) system was first developed by the Communist Party in the 1950s to deal with “counter-revolutionary and other undesirable elements” and was formally implemented in January 1956. According to the government, RTL is an extra-judicial measure aimed at punishing citizens deemed to have committed “minor offences not meriting criminal sanction.” In any given year nowadays, upwards of 250,000 Chinese citizens are subjected to this arbitrary form of punishment. An unknown number of them are labour rights activists. Indeed, two of the workers from the few cases discussed here were (International Centre for Human Rights and Democratic Development 2008, *No Way out: Worker Activism in China’s State Owned Enterprise Reforms*, September, pp.14-18 [http://www.clb.org.hk/en/files/File/research\\_reports/no\\_way\\_out.pdf](http://www.clb.org.hk/en/files/File/research_reports/no_way_out.pdf) – Accessed 21 August 2009 – Attachment 22).

For further information on the extent of protests, demonstration, ‘mass incidents’, ‘public order disturbances’, etc in China, please see the following research responses:

- RRT Research & Information 2009, *Research Response CHN34939*, 2 June – Attachment 23.
- Question two of RRT Research & Information 2008, *Research Response CHN34225*, 23 December – Attachment 24;
- RRT Research & Information 2006, *Research Response CHN30440*, 15 August – Attachment 25.

## **6. Is it possible that a person held in detention for protests/strikes would be held in a cell together with criminals?**

The primary purpose of detention centres in China is as the place for police to detain persons/suspects who are awaiting trial and prior to formal charges being laid. Following criminal conviction persons are transferred to a prison (Wines, M. 2009, ‘China Daily Assails Prisoner Abuses’, *The New York Times*, 25 March [http://www.nytimes.com/2009/03/25/world/asia/25china.html?\\_r=2](http://www.nytimes.com/2009/03/25/world/asia/25china.html?_r=2) – Accessed 24 August 2009 – Attachment 26; Huizi, L. 2009, ‘Investigative Report: How a Chinese detention center



ticks', *Xinhua*, 25 May [http://news.xinhuanet.com/english/2009-05/25/content\\_11432759.htm](http://news.xinhuanet.com/english/2009-05/25/content_11432759.htm) – Accessed 24 August 2009 – Attachment 27).

Very little information is available on procedures in detention centres in China. According to the *Laogai Handbook: 2007-2008*, detention centres do hold criminals: those awaiting sentence or sentenced to under two years; or prisoners awaiting execution:

#### Detention Centers

The purpose of detention centers is to hold criminals who are waiting to be sentenced or who have been sentenced to two years or less. Detention centers are also used to house prisoners who are awaiting execution. All criminals in detention, whether sentenced or not, are required by law to engage in forced labor.

The number of criminals in detention centers fluctuates greatly in response to various government policies. Most un-sentenced prisoners either have already been convicted or are waiting to be transferred to a prison, labor camp or Laojiao camp. Because detention centers are governed by local cadres and are rarely subject to any central authority, conditions at the centers vary greatly. Some centers treat detainees humanely and working conditions are manageable, while at others inmates are tortured and labor conditions remain harsh.

After its 2004 visit to China, the UN Working Group on Arbitrary Detention concluded that the government had made “no significant progress in reforming the administrative detention system to ensure judicial review and to conform to international law” (The Laogai Research Foundation 2008, *Laogai Handbook: 2007-2008*, October, p.19 <http://www.laogai.org/news2/book/handbook2008-all.pdf> – Accessed 5 March 2009 – Attachment 13).

A United Nations report published in 2006 on torture and other cruel, inhuman or degrading treatment or punishments in China, describes Beijing No. 2 Municipal Detention Centre. It indicated on this centre that “among the death row prisoners in each cell [holding between 7-12 prisoners], there were pretrial detainees” (United Nations Commission on Human Rights 2006, *Civil and Political Rights, including the Question of Torture and Detention – Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Mission to China*, E/CN.4/2006/6/Add.6, 10 March, p. 44 – Attachment 28).

An August 2000 report by the Immigration and Refugee Board of Canada indicated that each cell in the detention centre in the Fujian provincial capital of Fuzhou can accommodate up to 10-12 people:

The detention centre [in Fuzhou] is a rectangular, four storey building with a large enclosed courtyard. It can accommodate a maximum of 100 detainees. The cells are all around the building with recreation facilities such as a ping pong table in the courtyard. On the first floor, there are several rooms for questioning deportees. Those rooms are fairly small with a plexiglass divider separating the detainee and the interviewer. We recognized one of the deportees of the previous day being questioned as we walked by. Each cell can accommodate up to 10-12 people (UK Home Office 2009, *Country of Origin Information Report – China*, 16 April, para.34.11, p.153 – Attachment 29).

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#### **International News & Politics**

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*The New York Times* <http://www.nytimes.com/>

*Xinhua* <http://news.xinhuanet.com/>

#### **Topic Specific Links**

International Centre for Human Rights and Democratic Development website

<http://www.clb.org.hk/>

#### **Search Engines**

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

#### Databases:

FACTIVA (news database)

BACIS (DIAC Country Information database)

REFINFO (IRBDC (Canada) Country Information database)

ISYS (RRT Research & Information database, including Amnesty International, Human Rights Watch, US Department of State Reports)

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