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China: Family planning laws, enforcement and exceptions in the provinces of Guangdong and Fujian; reports of forced abortions or sterilization of men and women; consequences to officials who force women to have an abortion; whether family planning authorities interact with the Public Security Bureau in enforcing their decisions (2010-September 2012)

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1. Overview

According to various sources from between 2010 and 2012, family planning laws in China continue to be enforced by state authorities through the use of violence (CHRD 21 Dec. 2010, 1; *The Guardian* 25 Oct. 2011), "coercion" (AI 22 Apr. 2010; Legal consultant 7 Sept. 2012), and general "abuses" (*The New York Times* 22 July 2012; US 2011, 110). Freedom House reports that forced abortion and sterilization "still occur fairly frequently" (2012), while Human Rights Watch indicates that forced abortions "continue to be imposed, if somewhat erratically, on rural women" (2012). Numerous sources emphasize that there is no authoritative data on the frequency of coerced or forced abortions or sterilizations (Senior research scholar 6 Sept. 2012; *The New York Times* 22 July 2012; Legal consultant 7 Sept. 2012; All Girls Allowed 13 Sept. 2012). In a telephone interview with the Research Directorate, a US-based legal consultant for Amnesty International USA's China Coordination Group who has 18 years of experience working on Chinese asylum cases, particularly those relating to the enforcement of family planning policy in Fujian, explained that the lack of firm statistics is due in part to the treatment of the issue as a "state secret" by the authorities, as well as the lack of free press to consistently report on such occurrences and the imprisonment of activists such as Chen Guangcheng who speak out about the issue (Legal consultant 7 Sept. 2012).

China Human Rights Defenders (CHRD), an international NGO providing logistical support and capacity building to human rights advocates and monitoring human rights developments (n.d.), writes in a 2010 report on China's family planning policy that at the state level, the policy is regulated by the 2002 *Population and Family Planning Law of the People's Republic of China* and managed by the National Population and Family Planning Commission of China, which reports to the State Council (CHRD 21 Dec. 2010, 9, 27). However, lower level governments are responsible for implementing and enforcing the policy (ibid. 11; *Global Times* 8 May 2012). This is accomplished through the enactment of provincial and sub-provincial regulations and policy documents with more detailed provisions, and through family planning bureaus at the provincial, prefecture, county, and township levels of government, and grassroots workers who belong to village and neighbourhood committees (CHRD 21 Dec. 2010, 9, 11, 12, 27). Sources indicate that regulations vary between provinces (ibid., 11; US 2011, 261) and enforcement can differ in every locality (AI 22 Apr. 2010; CHRD 21 Dec. 2010, 2; US 24 May 2012, 51).

However, according to the state-run English language newspaper *China Daily*, the head of the Guangdong provincial population and family planning commission stated in September 2012 that changes to family planning policy must be approved by the central government and that local governments do not have the authority to change it themselves (5 Sept. 2012). The same article reported that, according to Chinese authorities, China had cancelled a pilot program to relax birth restrictions and was not considering applications from local governments to allow couples to have a second child if either parent were a single child (*China Daily* 5 Sept. 2012).

2. Legislation and Regulations

2.1 State Law

According to the *Population and Family Planning Law*, each married couple is permitted one child, and their eligibility to have a second child is determined by their provincial-level government (China 2002a, Art. 18). The law stipulates that citizens who have unauthorized children are required to pay a

fine known as the "social maintenance fee" (ibid., Art. 41), which is also set by each individual provincial-level government (ibid. 2002b, Art. 3).

The legislation prohibits state officials from "infringing on a citizen's personal rights, property rights or other legitimate rights and interests" while carrying out family planning work (ibid. 2002a, Art. 39). However, it does not define the "personal rights" that are to be protected (ibid.; US 24 May 2012, 53). Additionally, as CHRD notes, the law does not specifically forbid forced gynaecological testing, insertion of intrauterine devices (IUDs) for contraception, sterilization, or abortion, including late-term abortion (CHRD 21 Dec. 2010, 11; China 2002a). It also does not discuss recourse for citizens whose rights have been violated (*The Wall Street Journal* 4 July 2012; China 2002a).

2.2 Provincial Regulations

According to CHRD, provincial regulations and other local policy documents contain detailed provisions on mandated methods of birth control, exceptions to the one-child rule, and fines imposed on citizens who violate the rules (21 Dec. 2010, 11). The US Congressional-Executive Commission on China (CECC) notes that as of 2007, 19 Chinese provinces allow rural residents to have a second child if the first is a girl (2011, 261). The same source reports that the regulations of at least 18 provinces, including Guangdong and Fujian, demand mandatory abortion, referred to as a "remedial measure," for unapproved pregnancies (US 2011, 110, 261). The US Department of State's *Country Reports on Human Rights Practices for 2011* states that almost all provinces prohibit single women from having a child and prescribe fines or forced abortions for violating the prohibition (24 May 2012, 52, 53).

2.2.1 Guangdong

The Population and Family Planning Regulations of the Province of Guangdong, which entered into effect in January 2009, outlines eight situations in which a couple can apply to have a second child. For example, a second child may be permitted if:

- both spouses are single children and have only one child;
- the parents are rural residents and their first child is female, and neither parent is a state employee at the county level or above;
- if they belong to an ethnic minority and are rural residents of an autonomous ethnic minority county (Guangdong 2009, Art. 19, 20, 22).

For a full list of the conditions, please consult the text of the Guangdong regulations in the attachments to this Response.

The regulations also apply to births in Guangdong "that involve Chinese returning from overseas and their family members, or□citizens whose household registration is held within Guangdong but who reside outside the province, or□spouses who are residents of [Hong Kong, Macao, or Taiwan] or foreigners" (ibid., Art. 23).

Social support fees range from three to six times the local average annual per capita disposable income (for urban residents) or net income (for rural residents), multiplied by the number of unauthorized ("out-of-quota") children (ibid., Art. 53). Fines for out-of-wedlock births are doubled for the first child, and between three and six times the standard fine for subsequent children, while a birth that is the result of an extramarital affair is between six and nine times the standard fine (ibid.). The regulations also apply to unauthorized adoptions (ibid.).

The regulations stipulate that migrant workers of reproductive age who do not have proof of their reproductive status (a family planning certificate), or who do not use birth control or submit to pregnancy tests, are not permitted to work or rent accommodations and are liable to lose their job and housing (ibid., Art. 43, 46).

2.2.2 Fujian

According to the 2002 Population and Family Planning Regulations of Fujian Province, there are seven circumstances in which a couple can apply to have a second child, and an additional five circumstances for rural couples (Fujian 2002, Art. 9, 10). For example, a husband and wife who are both single children qualify for a second child, while a rural couple qualifies if either spouse is a single child (ibid.). Rural couples may also have a second child if their first child is a girl, or if the husband's brothers are childless and unable to have children (ibid.). For a full list of conditions, please consult the full text of the Fujian regulations in the attachments to this Response. With some exceptions, couples are required to wait four years before having a second child, and the wife must be at least 25 years old (ibid., Art. 13).

Couples who exceed the birth quota are subject to a social compensation fee, which is two to three times the average local annual income for a first additional child, four to six times for a second additional child, and a "much more heavy" fee for subsequent children (ibid., Art. 39). A fine of four to six times the average local annual income is applied to births that are the result of an extramarital affair (ibid.). The regulations advise citizens with unauthorized pregnancies to take "remedial measure [s]" and instructs villagers' committees and residents' committees to "urge" them to take this course of action (ibid., Art. 18). Couples who have already had one child are "instructed to take long-term contraceptive measures" (ibid., Art. 17).

3. Enforcement and Exceptions

Sources indicate that the enforcement of family planning regulations varies across the country (AI 22 Apr. 2010; CHR D 21 Dec. 2010, 2). CHR D explains that "not only do provincial governments adopt different regulations, but the work of implementing the policy is subject to various local policy directives, as well as the interpretations of local officials," resulting in a "highly arbitrary" and "extremely uneven" policy implementation between localities (ibid.). Amnesty International (AI) suggests that policies in rural regions are less strictly enforced (22 Apr. 2010). However, in correspondence with the Research Directorate, a senior research scholar at the Weatherhead East Asian Institute of Columbia University, who has authored several publications on Chinese reproductive policy, stated that enforcement is "more thorough but less brutal in cities, and vice versa in the countryside" (6 Sept. 2012). In corroboration, sources indicate that abuses in the enforcement of population policies mostly take place in rural areas (*China Daily* 29 June 2012; CHR D 21 Dec. 2010, 28; Legal consultant 7 Sept. 2012). The American Legal consultant explained that city residents rarely violate family planning policies because of the economic and social pressures to abide by the policy (ibid. 7 Sept. 2012; ibid. 26 Sept. 2012). He indicated, for example, that urban residents often cannot afford to raise more than one child in the city and that they cannot easily avoid the scrutiny of public officials, which reduces the need for "forced enforcement" of birth limits in cities (ibid.; ibid. 7 Sept. 2012).

Sources indicate that enforcement strategies typically involve two "inspections" -- pregnancy checks and verification of IUD insertion -- and four "procedures" -- insertion of IUDs, early-term abortion, late-term abortion, and sterilization (US 2011, 111; CHR D 21 Dec. 2010, 2). A third inspection, for gynaecological diseases or illnesses, may also be part of the strategy (ibid.; US 2011, 262 note 24). In some provinces, family planning staff in village and neighbourhood committees require married

couples to sign contracts to comply with certain practices, including regular pregnancy checks, the insertion of IUDs, sterilization, and applying for birth permits (CHRD 21 Dec. 2010, 14). Article 42 of the Guangdong family planning regulations and Article 27 of the Fujian family planning regulations both mention the signing of family planning contracts between village committees and local residents (Guangdong 2009, Art. 42; Fujian 2002, Art. 27). Such contracts also reportedly outline the fines for failing to submit to these procedures, which are not stipulated in the national legislation or provincial regulations (CHRD 21 Dec. 2010, 14, 20).

3.1 Fines

Sources indicate that the social maintenance fee levied for unauthorized births is often several times greater than the parents' annual income (*Global Times* 8 May 2012; Winckler 17 July 2012) and is difficult to afford for most people (ibid.; CHRD 21 Dec. 2010, 20). Although, as CHRD notes, it has become possible for the "small yet growing middle-class to buy their way out of the policy" (ibid., 3), the standards "allow much room for interpretation, thus resulting in unevenness and unfairness in the application of the fines" (ibid., 20). Radio Free Asia (RFA) indicates that fines can vary by region, reporting that they can range from 200,000 to 800,000 Chinese yuan [C\$ 30,801-123,216 (XE 10 Sept. 2012a; ibid. 10 Sept. 2012b)] in the south around Guangzhou and Shenzhen in Guangdong province, but are comparatively cheaper in the northern provinces (RFA 21 June 2012). *China Daily*, citing the dean of Renmin University's school of sociology and population, also reports that the fine varies by region but ranges from two to ten times the local per capita annual income (9 Sept. 2011).

Sources indicate the fines represent a significant unofficial source of income for local officials (CHRD 21 Dec. 2010, 3; *USA TODAY* 24 July 2012), although the distribution of the funds collected reportedly varies by province (*Global Times* 8 May 2012). RFA reports that, according to official data, almost 28 billion yuan [C\$ 4.3 billion (XE 10 Sept. 2012c)] in fines are collected each year through the enforcement of the family planning policy (3 Aug. 2012).

3.2 Official Incentives

According to various sources, the enforcement of birth limits at local levels is largely motivated by top-down pressure from higher authorities, often in the form of incentives or punishments (CHRD 21 Dec. 2010, 2; *The New York Times* 22 July 2012; *Los Angeles Times* 15 June 2012). CHRD reports that in some provinces, family planning offices at each administrative level sign agreements with the offices one level beneath them that establish birth quotas for each office's jurisdiction (21 Dec. 2010, 14). Local officials can reportedly receive better pay and promotions for meeting their targeted numbers (CHRD 21 Dec. 2010, 2) or be denied the same privileges for poor performance (Winckler 17 July 2012; *Los Angeles Times* 15 June 2012). Additionally, the *New York Times* reports that, according to an academic researching the Chinese administrative evaluation system at the London School of Economics and Political Science, lower level government officials may receive a warning or a fine, or be removed from their positions, for failing to meet population targets (22 July 2012). CHRD indicates that officials' job performance is often evaluated based on the number of married women in their jurisdiction who are under "reproductive surveillance" or who are subject to fines, forced sterilizations, and forced abortions (21 Dec. 2010, 12).

3.3 Forced Abortions and Sterilizations

Various sources indicate that, in enforcing family planning policies, local officials continue to "coerce" (US 2011, 110; AI 22 Apr. 2010) or "force" women (RFA 3 Aug. 2012; Freedom House 2011; CHRD 21 Dec. 2010, 19) to have abortions. The CECC's 2011 annual report found that coerced

abortions took place in both urban and rural areas across the country (US 2011, 110). He Yafu, a demographer and specialist on family planning, stated in an interview with the *Los Angeles Times* that "the law [on forced abortions] isn't clear and different jurisdictions interpret it [in] different ways" (15 June 2012). In September 2012, All Girls Allowed, an American faith-based organization dedicated to "exposing the injustice of China's one-child policy [and] rescuing girls and mothers from gendercide" (n.d.), reported that, according to an official of the Chongqing family planning office, the National Population and Family Planning Commission issued in the summer of 2012 a directive to all family planning committees prohibiting forced abortion and sterilization (12 Sept. 2012). All Girls Allowed also reports that in July 2012, the Minister of the National Population and Family Planning Commission called on family planning officials to stop performing forced late term abortions (12 Sept. 2012). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

Describing some of the "coercive" tactics involved in "mandated abortion," Yang Zhizhu, a law professor at China Youth University of Political Science who has written extensively on birth quotas, explains that

[t]here are 'population schools' that illegally detain the parents, grandparents and husband of the pregnant woman, or even the woman herself, in order to force them into 'willingness' [to have an abortion]. Neighbors, too, will scare the pregnant woman and there are even damages incurred to residences in order to scare [the woman] into 'willingness.' (Yang 19 June 2012)

Similarly, in correspondence with the Research Directorate, the Executive Director of All Girls Allowed explained that while it is very difficult to determine how often abortions are performed under the threat of violence, it is "very common" for women to be threatened with a "very strong punishment" to incentivize a 'voluntary' abortion" (13 Sept. 2012). Additionally, CHRD indicates that women who do not pay the mandated social maintenance fee for unauthorized pregnancies may be forced by the authorities to have an abortion (CHRD 21 Dec. 2010, 19). It also reports that couples in violation of birth limitation policies sometimes see their belongings, or those of their family, confiscated, or are beaten and detained (ibid., 27).

An article published by RFA states that, according to activists and social commentators, late-term forced abortions are "common across China" (27 June 2012).

In an article in the *Guardian* reporting the death of a woman in her seventh month of pregnancy during a forced abortion in October 2011, Li Heping, a lawyer who has represented victims of forced abortions, asserts that such deaths do occur because violence is used "everywhere in China" to enforce birth limits (25 Oct. 2011). Similarly, citing Professor Yang Zhizhu, an RFA article states that "many pregnant women, especially those in the remote villages, who violate the one-child policy end up dying on the operation table" (3 Aug. 2012).

Sources report that local authorities occasionally launch campaigns to crack down on or prevent non-compliance with family planning policy (CHRD 21 Dec. 2010, 22; US 2011, 111). Such campaigns are reported to involve "coercive measures" (ibid.), "abuses" (*Los Angeles Times* 15 June 2012), and "much of the worst violence and human rights violations associated with the implementation of the family planning policy" (CHRD 21 Dec. 2010, 22). The campaigns are sometimes known as "'spring family planning service activities,'" (US 2011, 111) which, as the CECC suggests, are designed to take advantage of the spring festival season when many migrant workers return home to visit family (ibid., 114).

Various sources also report on forced sterilizations, usually after a woman has reached the number of allowed births (US 2010, 119; CHRD 21 Dec. 2010, 18). Women are reported to be more frequently

sterilized than men (ibid.; Senior research scholar 6 Sept. 2012; Legal consultant 7 Sept. 2012). The senior research scholar stated that the prevalence of forced sterilization has "probably" declined in recent years (6 Sept. 2012). The Executive Director of All Girls Allowed wrote that "we may be seeing some progress when it comes to ending forced sterilizations" (13 Sept. 2012).

3.4 Other Penalties

Sources report that citizens who violate population planning policies have been subject to penalties such as arbitrary detention and the loss of their jobs (Freedom House 2012; CHRDR 21 Dec. 2010, 2; US 2011, 113). Other penalties reportedly include violence and property seizure or destruction (ibid.; CHRDR 21 Dec. 2010, 2), as well as expulsion from the Communist Party (US 2011, 113). Sources indicate that the families and relatives of citizens who violate the policy have also been punished (CHRDR 21 Dec. 2010, 2; Freedom House 2012). Children are reported to have been denied household registration (*hukou*) if their births were not authorized (CHRDR 21 Dec. 2010, 2; US 2011, 113), or if their parents refuse to have an IUD inserted or to be sterilized (CHRDR 21 Dec. 2010, 18). Similarly, *Country Reports 2011* indicates that in Foshan, Guangdong Province, mothers were threatened with the denial of *hukou* for their newborn child if they did not have an IUD inserted (US 24 May 2012). For additional information on the treatment of children born in violation of the family planning policy, please see Response to Information Request CHN104186.E of 1 October 2012.

3.5 Guangdong

Citing reports from local family planning bureaus, the CECC reports on spring family planning campaigns in 2011 in Maonan district and Yangchun city (US 2011, 111, 261 note 11). The Maonan district campaign is described as involving "coercive measures to prevent or terminate 'out-of-plan' pregnancies" (ibid.). The Yangchun campaign reportedly focused on sterilizing women with two daughters and implementing "remedial measures" for unauthorized pregnancies, with officials directed to "adopt 'man-on-man military tactics' 'storm the fortifications' [of non-compliant households] in a 'targeted manner,' [and] 'spare no efforts'" in their enforcement activities (ibid., 111). The CECC also reported in 2010 that the Lechang city government launched a spring family planning campaign to keep birth rates low (ibid. 2010, 118) "by all means necessary" (ibid. 2010, 271 note 24).

In April 2010, the government of Puning City launched a campaign to sterilize 9,559 people (AI 22 Apr. 2010; CHRDR 21 Dec. 2010, 23), reportedly in response to criticism from the provincial government about its poor implementation of population control policy (US 2010, 119-120; CHRDR 21 Dec. 2010, 24). The authorities detained 1,377 people, primarily elderly relatives of the targeted couples (*The Independent* 17 Apr. 2010; CHRDR 21 Dec. 2010, 24), to pressure couples into consenting to the procedure (ibid., 23-24; AI 22 Apr. 2010). Sources also report that people who had exceeded birth quotas, as well as their families, were denied state benefits (US 2010, 120), permits (ibid.; CHRDR 21 Dec. 2010, 24), and household registration for their children (US 2010, 120). The city reportedly reached at least half of its target in April 2010 (AI 22 Apr. 2010; CHRDR 21 Dec. 2010, 24) and completed another 3,000 sterilizations in the autumn of 2010 (ibid.).

According to the CECC, Zhanjiang city regulations mandate city officials to "force those who exceed birth limits to have an abortion" (US 2010, 117). Unauthorized children are to be excluded from collective social benefits, while their parents lose their social benefits, cannot be employed by village agencies, and are denied "documents" (ibid., 117-118).

3.6 Fujian

According to the Legal consultant, both internal government documents and significant anecdotal evidence indicate that the enforcement of family planning law is "generally coercive" in the rural areas of Fujian, due in part to the pressure on officials to meet population targets or birth quotas (7 Sept. 2012). Examples of coercive tactics include women being abducted and transported to a hospital by groups of local enforcers, as well as women being forced to sign their consent to an operation (Legal consultant 7 Sept. 2012). The Legal consultant noted that citizens may be able to protect themselves from unwanted operations if they have the right personal connections and the ability to pay significant bribes; he emphasized, however, that paying the social maintenance fee alone is not sufficient to protect a person from forced abortion or sterilization (*ibid.*). Corroborating information for these statements could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

Media sources report that in Daji township [Xianyou county], in June 2012, a woman who was almost eight months pregnant with her third child was kidnapped from her store by local officials, detained, and forced to consent to an abortion (*The New York Times* 22 July 2012; RFA 27 June 2012). RFA reports that the family had already paid a fine of 20,000 yuan and had been asked for an additional 55,000 yuan [C\$ 8,485 (XE 10 Sept. 2012d)] by family planning officials (27 June 2012). In an interview with *USA TODAY*, the family planning enforcement supervisor for Daji township explained that separating a pregnant woman from her family members is the most effective method of enforcing birth limits (24 July 2012). The same article explains that because additional fine was collected but not distributed in time, the family will be eligible for a refund provided that the husband is sterilized (*USA TODAY* 24 July 2012). According to the Daji woman who had the forced abortion, couples who are willing to pay the fine for an out-of-quota child may still be coerced or forced into having an abortion in order to meet birth targets (*The New York Times* 22 July 2012).

Media sources also report that in October 2010, in Xiamen city [also called Amoy], an eight-month-pregnant woman was detained, beaten, and forced to have an abortion (Al Jazeera 20 Oct. 2010; RFA 3 Feb. 2011). RFA reports that, according to the woman's husband, she was detained incommunicado for 40 hours and had not signed her consent to the abortion (*ibid.*).

A 2010 document produced by the Lian Jiang County Population and Family Planning Leadership Group announces a "massive cleanup campaign" during the 2011 New Year and Spring Festival season to "stop the extra births beyond the quota" (Lian Jiang 24 Dec. 2010, 580). The document instructs officials to visit individual homes to "motivate" citizens to undergo the "'double check-ups'" and "'four surgeries,'" and to "[t]ake every measure possible to raise the [compliance] rate" (*ibid.*, 581). The document also calls on officials to focus on migrant workers in particular (*ibid.*, 580).

A 2010 document produced by the Chang Le City Population and Family Planning Bureau announces a "family planning administration and propaganda services" campaign targeting migrant workers during the 2011 New Year and Spring Festival season (Chang Le 20 Dec. 2010, 292). Officials are instructed to execute the "'double check-ups'" and "'four surgeries'" among the migrant population (*ibid.*, 293). The document also instructs officials to have local employers, landlords, and property owners to sign "family planning responsibility agreements" with the village authorities, agreeing to take responsibility for their workers' family planning obligations (*ibid.*, 294). Additional information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

4. Consequences for Authorities

According to Amnesty International, "few officials are believed to have been brought to justice or punished for abuses" such as coerced abortions and sterilizations (22 Apr. 2010). CHRD writes that "[i]t is striking just how little officials and cadres are held accountable for the abuses committed in the name of the family planning policy" (21 Dec. 2010, 30). Both the senior research scholar (6 Sept. 2012) and the Legal consultant (7 Sept. 2012) suggested that political authorities primarily wish to avoid situations that lead to social "instability," and that cases of birth planning enforcement that attract a negative public reaction can lead to punishment for the officials involved. The legal consultant indicated, further, that such occurrences are rare and that there are no reports of family planning officials being punished for wrongdoing in any other situation (7 Sept. 2012).

5. Public Security Bureau (Police)

Information on the relationship between family planning authorities and the Public Security Bureau (PSB) was scarce among the sources consulted by the Research Directorate. CHRD notes that the Ministry of Public Security is responsible for issuing hukou documents and does not issue hukou to children who are born in violation of family planning policy (21 Dec. 2010, 26). The Executive Director of All Girls Allowed stated that family planning officials and local police work together to enforce family planning policy (13 Sept. 2012). According to the senior research scholar, local branches of both the family planning authorities and the PSB are supposed to participate in municipal interdepartmental cooperation to enforce birth limits, but it is likely that individual localities can decide on the extent and mode of cooperation (6 Sept. 2012). The legal consultant also suggested that the level of cooperation may depend on the local relationship between the two authorities (7 Sept. 2012). He noted, however, that in a recent enforcement campaign in Guantou [Fujian province], some "search and arresting groups" included party members, family planning authorities, as well as police officers (The legal consultant 7 Sept. 2012).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

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