



Australian Government
Refugee Review Tribunal

Country Advice China

China – CHN36060 – Fujian – Illegitimate children – De facto relationships – Societal attitudes – Social compensation fee – Household registration – State protection

18 February 2010

Questions

Please locate expert advice on these questions.

- 1. Are children who are born out of wedlock and have gained household registration subject to discrimination or harm in China? If so, what is the nature of the discrimination and harm and is state protection available (both legally and in practice) in such circumstances?**
2. Can you provide any advice on societal attitudes in China towards children born out of wedlock?
3. Can you provide any advice on the treatment of children born out of wedlock in Fujian province?
4. Would a child born out of wedlock face societal discrimination if the parents were to stay together in a de facto relationship or were to marry at a future date?
5. Would a woman face any risk of harm in China for having a child out of wedlock (beyond payment of the social compensation fee)?
6. Is this situation different for a woman who has a child out of wedlock but remains in a relationship with the father of the child?
7. Could any harm be mitigated by marriage subsequent to the birth of the child?

RESPONSE

Dr Alice de Jonge is a Senior Lecturer of Business Law and Taxation at Monash University. According to information provided on the Monash University website Dr de Jonge has “lived and studied in China and was a Visiting Scholar at Nanjing University, China”.¹ In October 2004, Dr De Jonge provided advice to the Department of Immigration and Citizenship (DIAC) on the situation for children

¹ ‘Dr Alice de Jonge’ 2009, Monash University website, 14 October
<http://www.buseco.monash.edu.au/blt/staff/a-de-jonge.html> - Accessed 18 February 2010 - Attachment 1.

born out of wedlock in China.² The Tribunal contacted Dr Alice de Jonge on 15 January 2010 in relation to this matter.³ On 15 January 2010 Dr De Jonge responded and provided the following advice:

1. Are children who are born out of wedlock and have gained household registration subject to discrimination or harm in China? If so, what is the nature of the discrimination and harm and is state protection available (both legally and in practice) in such circumstances?

The main risk for a child born out of wedlock is discrimination in the form of being denied access to state-provided benefits and services. This includes education and health services. I would be surprised if such a child had the same 'registration' documents as a state-sanctioned child born to a married couple. If such documents were held by a child returning to China after two or more years in Australia, it is unlikely that any such documents would continue to be recognised. Without current documents, the child would not be able to enrol in a state pre-school or school. In addition, being unable to provide such documents when seeking medical care in a public facility would mean a risk that services would be denied or a hefty charge levied (bit like not being entitled to a medicare card in Australia).

2. Can you provide any advice on societal attitudes in China towards children born out of wedlock?

Such children are still regarded with pity and disdain. They are teased at school. Single mothers are subject to discrimination when it comes to accessing housing, education and medical services.

3. Can you provide any advice on the treatment of children born out of wedlock in Fujian province?

Fujian is a relatively prosperous province in SE China.

It is not the worst place to be a child born out of wedlock. Nor the best. The private sector is active in Fujian so that access to employment is at a reasonable level, even for single mothers, depending upon qualifications.⁴

On 15 January 2010 the Tribunal sent a further email to Dr Alice de Jonge seeking clarification on earlier advice provided.⁵ On 15 January 2010 Dr De Jonge responded and provided the following advice:

1. I understand from your advice that in order for an out of wedlock child to gain household registration the parents would have to pay a social compensation fee. Without household registration the child would face difficulties in accessing public education and health care. However, if a couple pay the social compensation fee and gain household registration for their child would the child still face any discrimination or harm on the basis of being born out of wedlock? If so, what is the nature of the discrimination and harm?

2. Would a child born out of wedlock face societal discrimination if the parents were to stay together in a de facto relationship or were to marry at a future date?

²Jonge, A. 2004, 'Advice of China's Family Planning Law(s) and Regulations with special reference to the position of unmarried mothers', October - Attachment 2.

³RRT Country Advice Service 2010, Email to Dr A. De Jonge 'Request for assistance from Refugee Review Tribunal, Sydney (RRT ref: CHN36060)', 15 January - Attachment 3.

⁴De Jonge, Alice 2010, Email to RRT Country Advice 'RE: Request for assistance from Refugee Review Tribunal, Sydney (RRT ref: CHN36060)', 15 January - Attachment 4.

⁵RRT Country Advice Service 2010, Email to Dr A. De Jonge 'Re: Request for assistance from Refugee Review Tribunal, Sydney (RRT ref: CHN36060)', 15 January - Attachment 5.

A child with full and up-to-date household registration papers, and living with both a ‘mum’ and a ‘dad’ would face little discrimination. It is the lack of papers that is the main risk. If the family were poor and parent(s) unemployed the discrimination would be greater. Also much greater if single parent household. If the parents lived together and/or got married, chances are the child would try (probably successfully) to hide the fact of being born out of wedlock anyway. If found out, similar social discrimination to that experienced by Australian children born out of wedlock (‘bastards’) before the 1960s.⁶

On 20 January 2010 the Tribunal sent an email to Dr Alice De Jonge seeking advice on the situation for mothers who have children out of wedlock in China.⁷ On 20 January 2010 Dr De Jonge responded and provided the following advice:

1. Would a woman face any risk of harm in China for having a child out of wedlock (beyond payment of the social compensation fee)?

This very much depends on the circumstances of the woman. In more remote villages, social ostracism can have very real human rights impacts on its victims, including discrimination in access to basic amenities. In urban contexts, again the individual circumstances of the woman and her child must be considered. Social connections and networks are essential. With them, almost anything is possible. Without access to social supports, life can be very hard indeed to the extent that access to basic amenities such as housing and access to job opportunities can be denied. Women pregnant out of wedlock typically face discrimination in obtaining appropriate medical care. Single mothers are often discriminated against when seeking housing, education for their child, job opportunities and more generally in the context of social interactions. Does the child have a full set of registration papers? Typically the child would not have a full set of entitlements – eg. access to free education – a fee for entry may be charged or the child may be denied entry to a state school and be forced to seek entry to a private school. Healthcare may require a fee not normally charged.

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2. Is this situation different for a woman who has a child out of wedlock but remains in a relationship with the father of the child?

Having the father around certainly helps. Two people are more likely to earn a decent income than one. Two people are better at looking after a child than one. Two people are more likely to have access to the social supports and networks that are so vital in China.

3. Could any harm be mitigated by marriage subsequent to the birth of the child?

Yes. Having the marriage certificate makes many things much easier.

Obtaining a passport for the child becomes easier. Traveling becomes easier and staying at hotels becomes easier. Without a marriage certificate, extra room payment is often required. When the child grows up, it becomes easier for him/her to go through the formalities for getting married and having a child. Marriage certificates help also when things go wrong. If a partner is ill, visiting is easier,

⁶ De Jonge, Alice 2010, Email to RRT Country Advice ‘RE: Request for assistance from Refugee Review Tribunal, Sydney (RRT ref: CHN36060)’, 15 January – Attachment 6.

⁷RRT Country Advice Service 2010, Email to Dr A. De Jonge ‘Request for assistance from Refugee Review Tribunal, Sydney (RRT ref: CHN36060)’, 20 January - Attachment 7.

donating blood etc. is easier. If a partner dies, a wedding certificate is needed to inherit property – otherwise the deceased partner’s relatives may inherit.⁸

On 3 February 2010 Dr John Powers was contacted in relation to this matter.⁹ Dr Powers is a Professor at the Faculty of Asian Studies at the Australian National University.¹⁰ On 3 February Dr Powers responded and provided the following information:

I’m really not the person to ask about this. I’m not aware of any discrimination relating to out of wedlock children in China. Marriages there are a more casual affair than in the West, and there’s no concept I’m aware of that sees them as inferior to other children.

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List of Attachments

1. ‘Dr Alice de Jonge’ 2009, Monash University website, 14 October <http://www.buseco.monash.edu.au/blt/staff/a-de-jonge.html> – Accessed 18 February 2010.
2. Jonge, A. 2004, ‘Advice of China’s Family Planning Law(s) and Regulations with special reference to the position of unmarried mothers’, October. (CISNET China CX213527)
3. RRT Country Advice Service 2010, Email to Dr A. De Jonge ‘Request for assistance from Refugee Review Tribunal, Sydney (RRT ref: CHN36060)’, 15 January.
4. De Jonge, A. 2010, Email to RRT Country Advice ‘RE: Request for assistance from Refugee Review Tribunal, Sydney (RRT ref: CHN36060)’, 15 January.
5. RRT Country Advice Service 2010, Email to Dr A. De Jonge ‘Re: Request for assistance from Refugee Review Tribunal, Sydney (RRT ref: CHN36060)’, 15 January.
6. De Jonge, A. 2010, Email to RRT Country Advice ‘RE: Request for assistance from Refugee Review Tribunal, Sydney (RRT ref: CHN36060)’, 15 January.
7. RRT Country Advice Service 2010, Email to Dr A. De Jonge ‘Request for assistance from Refugee Review Tribunal, Sydney (RRT ref: CHN36060)’, 20 January.
8. De Jonge, A. 2010, Email to RRT Country Advice ‘RE: Request for assistance from Refugee Review Tribunal, Sydney (RRT ref: CHN36060)’, 20 January.
9. Deleted.
10. Deleted.
11. Deleted.

⁸ De Jonge, Alice 2010, Email to RRT Country Advice ‘RE: Request for assistance from Refugee Review Tribunal, Sydney (RRT ref: CHN36060)’, 20 January - Attachment 8.

⁹RRT Country Advice Service 2010, Email to Dr J Powers ‘Request for assistance from Refugee Review Tribunal, Sydney (RRT ref: CHN36060)’, 3 February – Attachment 12.

¹⁰ ‘Professor John Powers’ 2009, Australian National University, 1 July

http://asianstudies.anu.edu.au/Professor_John_Powers - Accessed 18 February 2010 - Attachment 13.

¹¹ Powers, J. 2010, Email to RRT Country Advice ‘RE: Request for assistance from Refugee Review Tribunal, Sydney (RRT ref: CHN36060)’, 3 February - Attachment 14.

12. RRT Country Advice Service 2010, Email to Dr J Powers 'Request for assistance from Refugee Review Tribunal, Sydney (RRT ref: CHN36060)', 3 February.
13. 'Professor John Powers' 2009, Australian National University, 1 July
[http://asianstudies.anu.edu.au/Professor John Powers](http://asianstudies.anu.edu.au/Professor_John_Powers) – Accessed 18 February 2010.
14. Powers, J. 2010, Email to RRT Country Advice 'RE: Request for assistance from Refugee Review Tribunal, Sydney (RRT ref: CHN36060)', 3 February.