



Australian Government
Refugee Review Tribunal

Country Advice

China

China – CHN38303 – Hebei – Family Planning – Fines – Instalments – Abortion – Sterilization

2 March 2011

1. What would the approximate fine be for each child born in breach of the Hebei Family Planning laws?

Family planning regulations were issued in Hebei in March 1989 and then revised in 1994, 3 September 1997 and 1 October 2003.¹

Fine for Second Child (born March 2001)

The second child, who was born in March 2001, would have been considered under the 1997 *Regulations on Family Planning of Hebei Province*. An English translation of Chapter 3 of the 1997 Regulations is available, which stipulates the 13 conditions under which couples may have had a second child without incurring penalties.

Article 14 Couples who meet any one of the following conditions, subject to application and approval, can have a second birth:

1. The only child has non-genetic defects;
2. The wife becomes pregnant after having adopted a child legally;
3. Both parties are only child in their family and have only one child;
4. Couples who have only one child, with either party being a veteran soldier with second-class, second-degree disability and above or equivalent of other non-genetic defects;
5. Couples who have only one child, with both parties being members of ethnic groups with a total population of less than 10 million;
6. Couples who have only one child, with both parties being returned overseas Chinese or residents of Hong Kong, Macao and Taiwan permanently living in this province;
7. Remarried couples with one party having one child from previous marriage and the other having none, or one party having no child but the other being widowed with less than two children;

¹ 'Hebei' n.d., *United Nations Economic and Social Commission for Asia and the Pacific (ESCAP)* website <http://www.unescap.org/esid/psis/population/database/chinadata/hebei.htm#family> – Accessed 6 October 2010 – Attachment 1; Hongqing, D., 2007, 'Full-Term Abortion Lawsuit a First for China', *Caijing English Newsletter*, 23 July – Attachment 2; *Regulations on Family Planning of Hebei Province* (3 September, 1997), United Nations Economic and Social Commission for Asia and the Pacific (ESCAP) website http://www.unescap.org/esid/psis/population/database/poplaws/law_china/ch_record069.htm – Accessed 6 October 2010 – Attachment 3, *Hebei Population and Family Planning Ordinance* (promulgated 18 July 2003, effective 1 October 2003), Hebei province government website <http://www.hebei.gov.cn/article/20071017/451993.htm> – Accessed 11 August 2008 – Attachment 4.

8. Miners who have worked in the well for over five years and still do the same job, and have only one female child;
9. Rural residents living in plain or hilly areas, with only one female child;
10. People engaged in ocean fishing, with only one child;
11. Rural residents living in mountainous or reservoir areas, with only one child;
12. Rural couples with the husband married to a woman whose family has no son and with only one child;
13. Other circumstances as specified by the provincial government.²

If the couple did not meet any of the above criteria, then they should have been required to pay a social compensation fee for their second child. As no reliable English translation of the complete 1997 Regulations could be located, no information was found on the amount of social compensation that applied to couples from Sunshi Town, Langfang City, Hebei Province in 2001.

Notwithstanding the absence of a reliable English translation of the 1997 Regulations, a study conducted in 2001 on family planning in two counties in Hebei province, Huasheng and Pangxie, gives approximate values of social compensation fees for these two areas in the late 1990s, at the time the 1997 Regulations were in effect. The study notes that in the late 1990s, fines for the first out-of-plan child were approximately five times the per capita village income. Per capita incomes in the two counties in 1999 were 3,200 and 3,560 yuan, indicating that fines were approximately between 16,000 and 17,800 yuan in those areas of Hebei.³ The calculation of out-of-plan fines and per capita incomes can vary considerably across areas within a Chinese province, depending on factors such as location of industry and vicinity to urban centres. The values given here for Huasheng and Pangxie in 1999 can therefore only suggest approximate values for the fine in the applicant's home town in 2001.

Fines for Third and Fourth Children (born in November 2004 and July 2007 respectively)

The third child (born in November 2004) and the fourth child (born in July 2007) would have been considered under the 2003 *Hebei Population and Family Planning Ordinance*.⁴ No formal English translation of the 2003 Ordinance could be located. Based on a Google translation (an imprecise translation tool), Article 46 of the 2003 Ordinance addresses social compensation fees for out-of-plan children, and it appears to refer to fees of 2.5 times the person's last annual income. Article 46 also appears to deal with the fees associated with third and fourth children.

² *Regulations on Family Planning of Hebei Province* (3 September, 1997), United Nations Economic and Social Commission for Asia and the Pacific (ESCAP) website http://www.unescap.org/esid/psis/population/database/poplaws/law_china/ch_record069.htm – Accessed 6 October 2010 – Attachment 3.

³ Merli, G., Qian, Z. & Smith, H. 2004 'Adaptation of a Political Bureaucracy to Economic and Institutional Change under Socialism: The Chinese State Family Planning System', University of Chicago website, 13 July, p.25 <http://www.spc.uchicago.edu/prc/pdfs/merli02.pdf> – Accessed 15 April 2008 – Attachment 5.

⁴ *Hebei Population and Family Planning Ordinance* (promulgated 18 July 2003, effective 1 October 2003), Hebei province government website <http://www.hebei.gov.cn/article/20071017/451993.htm> – Accessed 11 August 2008 – Attachment 4.

Noting that the national 2002 *Measures for Administration of Collection of Social Maintenance Fees* refer to social compensation fees for urban residents being based on annual per capita disposable income, the following estimation of the fees is based on the annual per capita disposable income of urban residents in Hebei.⁵ If total income was used for the calculations, the fines would be in the order of 1.5 times larger.⁶

In 2004, the average disposable annual income of urban residents in Hebei was approximately 7,951 yuan, while in 2007 it was approximately 10,305 yuan.⁷ As the applicant has stated that no fine was imposed for the birth of the second child, it is possible that the child has been viewed as ‘in plan’ by the authorities. If this is the case, while the Ordinance is not explicit on this matter, it is possible that the third child could have been considered as the first out-of-plan child of the couple, incurring a fee of 19,878 yuan (7,951 x 2.5). Taking this reasoning further, it is then possible that the fourth child could be considered to be the second out-of-plan child and the fine would be calculated based on the fine issued for third children, incurring a fee of 51,525 ([10,305 x 2.5] x2).

In the event that the authorities were to view the third child as the second out-of-plan birth and the fee for a third child is double the fee for a second child, then the fee in 2004 for a third child would have been approximately 39,755 yuan. If the fee for a fourth child is double that for a third child, the fee in 2007 for a fourth child would have been 103,050 yuan. As noted above, there is some ambiguity in the translation whereby the fee for a fourth child could be calculated the same way as for a third. If this was the case, then the fine for the fourth child would have been 51,525 yuan.

Taken together, the social compensations fees for the third child would be in the range of 19,878 yuan to 39,755 yuan and the social compensation fees for the fourth child would be in the range of 51,525 yuan to 103,050 yuan.

2. Is there any country information regarding the imposition of any other form of penalty in Hebei in addition to the fines or in the event that the fines could not be paid (such as forced sterilization)?

No reports were found of the imposition of other forms of penalty in Hebei in addition to the payment of fines *following* the birth of out-of-plan children. Reports were however found of forced abortions occurring in the province in the period 2000-2006.

The current implementation of family planning policies in Hebei province is not discussed widely in English language sources. It is useful to note in this discussion that, at the national level, according to a 2010 report by Chinese Human Rights Defenders, the 2002 *Population and Family Planning Law of the People’s Republic of China* does not

⁵ *Measures for Administration of Collection of Social Maintenance Fees* (promulgated 2 August 2002, effective 1 September 2002), National People’s Congress of the People’s Republic of China website http://www.npc.cn/englishnpc/Law/2007-12/14/content_1384253.htm – Accessed 31 January – Attachment 20.

⁶ This statement is based on average wages in 2007 of 16,590 yuan sourced from: National Bureau of Statistics China 2007, ‘5-26 Average Wage of Staff and Workers by Sector and Region’, *China Statistical Yearbook 2007*, <http://www.stats.gov.cn/tjsj/ndsj/2007/indexeh.htm> - Accessed 2 March 2011 – Attachment 7.

⁷ China Internet Information Center n.d., ‘Hebei 2004 – The Year in Review’, *An Introduction to China’s Provinces, Municipalities and Autonomous Regions*, <http://www.china.org.cn/english/features/ProvinceView/155692.htm> - Accessed 1 March 2011 – Attachment 8; United Nations Development Program China 2008, *China Human Development Report 2007/08: Access for all: Basic public services for 1.3 billion people*, China Translation & Publishing Corporation, November, http://www.undp.org.cn/downloads/nhdr2008/NHDR2008_en.pdf - Accessed 1 March 2011 – Attachment 9.

explicitly prohibit, among other things, forced sterilization or abortion (including late-term abortions).⁸

Sterilization

No reports were found on the use of compulsory sterilization in Hebei Province. As noted above, no reliable English translation of the current 2003 *Hebei Population and Family Planning Ordinance* could be located. The abovementioned Google translation suggests however that the Ordinance promotes ‘long-term contraceptive measures’, although these do not appear to be defined.⁹

Forced sterilizations allegedly continue to occur across China, but the prevalence of this is uneven. In April 2009, the Department of Foreign Affairs and Trade stated that “[t]here is little, if any, media reporting [in China] on this issue [of forced sterilization]”, and went on to state that “[a]lthough Post cannot discount the possibility of forced sterilization, Post has the impression that it is not a widespread practice”.¹⁰ Similarly, the 2010 *Freedom in the World Report – China* reports that the practice is less common than in the past, however the report goes on to state that “compulsory...sterilization...still occur[s] fairly frequently”.¹¹ A more critical view is presented in the 2010 Chinese Human Rights Defenders report which states that forced/coerced sterilizations continue to occur but that this occurs unevenly:

Women and (less often) men are urged by family planning officials to be sterilized once they have reached their birth quota. Again, the application of forced sterilization is uneven across the country and is dependent upon the discretion of the particular family planning officials. In some cases, officials threaten to withhold a *hukou* for the couple’s child if the mother or father fails to submit to the sterilization procedure. Other times, couples are physically threatened if they refuse. Elsewhere, however, parents can get away with paying fines and bribing officials to avoid being sterilized. Others never have the request made of them at all. If a couple is considered particularly uncooperative, for example refusing to pay a fine or a bribe, or when they find themselves caught up in the local government’s campaign to crack down on violators of the policy, then sometimes they are forcibly taken away for the surgery.¹²

Other Forms of Punishment/Coercive Practices

No reference to other forms of punishment, such as household demolition, for breaching family planning rules in Hebei Province could be located.

⁸ Chinese Human Rights Defenders 2010, “*I Don’t Have a Choice over My Own Body*”, 21 December, <http://chrnet.org/wp-content/uploads/2010/12/%E2%80%9CI-Don%E2%80%99t-Have-a-Choice-over-My-Own-Body%E2%80%9D.pdf> – Accessed 13 January 2011 – [Attachment 10](#).

⁹ *Hebei Population and Family Planning Ordinance* (promulgated 18 July 2003, effective 1 October 2003), Hebei province government website <http://www.hebei.gov.cn/article/20071017/451993.htm> – Accessed 11 August 2008 – [Attachment 4](#).

¹⁰ DIAC Country Information Service 2009, *CIS Request CHN9645: Overseas born children of Chinese nationals*, (sourced from DFAT advice of 28 April 2009), 28 April – [Attachment 17](#).

¹¹ Freedom House 2010, *Freedom in the World – China (2010)*, June, p.10, <http://www.freedomhouse.org/template.cfm?page=22&year=2010&country=7801> – Accessed 31 January 2010 – [Attachment 18](#).

¹² Chinese Human Rights Defenders 2010, “*I Don’t Have a Choice over My Own Body*”, 21 December, p. 18, <http://chrnet.org/wp-content/uploads/2010/12/%E2%80%9CI-Don%E2%80%99t-Have-a-Choice-over-My-Own-Body%E2%80%9D.pdf> – Accessed 13 January 2011 – [Attachment 10](#).

Several sources commenting on the situation nationally have reported on the imposition of punishments and coercive practices such as the destruction of homes, incarceration and confiscation of property, examples appear below.

- A 2005 article published in the *Stanford Journal of East Asian Affairs* stated that “Governmental denials notwithstanding, couples who violate the policy are often subject to the destruction of their homes, incarceration, and forced sterilization”. The article noted that such punishments are implemented at the local level and the authorities at the central level “turn a blind eye to these actions”. The article provides a list of commonly used penalties that includes (in addition to forced sterilization and abortion), the destruction of homes, ineligibility of the child for school or any form of government assistance, the imprisonment of the individuals concerned or their family members, and job loss.¹³
- The US Congressional-Executive Commission on China *Annual Report 2009* provides an example from Fujian of the May 2009 detention of a woman aged 55 years to pressure her nine-month pregnant daughter to have an abortion.¹⁴
- The 2010 Chinese Human Rights Defenders report provides several examples of punishments for non-compliance with family planning policies in other provinces in China, examples include the confiscation of the land of a migrant worker from Anhui Province upon his return to his home village in 2009 for “failing to return when summoned by the local government to have his wife tested for pregnancy in 2001”; the deprivation of liberty, physical assault and the forcible performance of gynaecological tests on a woman from Jiangsu Province in 2009; and the barring of a woman in Jiangsu Province from civil service employment for having had a child prior to marriage.¹⁵

Abortion

In their current reports on human rights in China, the US Department of State and the US Congressional-Executive Commission on China state that Hebei is one of eight provinces in China that explicitly require “termination of pregnancy” if the pregnancy fails to conform with provincial family-planning regulations.¹⁶ This view is consistent with that of a China expert from Germany who was cited in a 17 March 2006 report on China at the 10th European Country of Origin Information Seminar, who is quoted as stating:

[t]he provinces [of] Anhui, **Hebei**, Heilongjiang, Hubei, Hunan, Jilin, and Ningxia **require the termination of pregnancy** if the pregnancy violates the family-planning law. The regulations of Fujian, Guizhou, Guangdong, Gansu, Jiangxi, Qinghai, Sichuan, Shanxi, Shaanxi, and Yunnan have other [unspecified]

¹³ Kostrzewa, B. 2005, ‘Using Many Knives: Regionalism and the Codification of China’s Family Planning Policy’, *Stanford Journal of East Asian Affairs*, vol.5, no.2, <http://www.stanford.edu/group/sjeaa/journal52/china1.pdf> – Accessed 31 January 2010 – Attachment 19.

¹⁴ US Congressional-Executive Commission on China 2009, *Annual Report 2009*, 10 October, p. 154 – Attachment 12.

¹⁵ Chinese Human Rights Defenders 2010, “*I Don’t Have a Choice over My Own Body*”, 21 December, p. 13 & 21, <http://chrnet.org/wp-content/uploads/2010/12/%E2%80%9CI-Don%E2%80%99t-Have-a-Choice-over-My-Own-Body%E2%80%9D.pdf> – Accessed 13 January 2011 – Attachment 10.

¹⁶ US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – China (includes Tibet, Hong Kong, and Macau)*, 11 March, Sec.1f ‘Arbitrary Interference With Privacy, Family, Home, Correspondence’ – Attachment 11; US Congressional-Executive Commission on China 2009, *Annual Report 2009*, 10 October, p. 153 – Attachment 12.

punishments for contraventions. It is very common not only to terminate out-of-plan pregnancies, but also to sterilize one of the parents.¹⁷

The view that the Hebei regulations require “termination of pregnancy” could not, however, be confirmed conclusively in the current Hebei provincial family planning regulations (2003 *Hebei Population and Family Planning Ordinance*¹⁸), as no reliable English translation could be found. Article 29 of the Google translation of the Ordinance appears to refer to measures needing to be taken to ‘terminate the pregnancy’ if it is in violation of Articles 19 and 20, however due to the poor quality of the translation this could not be confirmed. If termination of pregnancy is required, this would suggest that forced abortions are employed in the province notwithstanding the provisions for payment of social compensation fees.

No reports of recent forced abortions in Hebei could be located; however there are reports of forced abortions occurring in Hebei between 2000 and 2006.

- A March 2007 report from the Immigration and Refugee Board of Canada notes that “[i]n 2005 and 2006, there were reports of forced abortions in Hebei and Anhui”, no further information about these cases is provided.
- As noted in Country Advice CHN37419 (11 October 2010), an alleged forced late term abortion occurred in Hebei in 2000. In this case, the nine-month pregnant mother was allegedly forced to undergo an abortion in Luojiaying village, Anshan County, in September 2000 after violating planning regulations for conceiving the child five months before marrying the child’s father. The case has been widely reported in the media as the couple filed a lawsuit against family planning officials seeking compensation for subsequent medical expenses and psychological distress. The couple claim that local officials had initially agreed to accept a fine for the out-of-plan birth but later forced the woman to undergo an abortion which caused her severe medical problems.¹⁹

Noting the above examples, a contrasting example is also identified in Country Advice CHN37419 (11 October 2010), which indicates that violation of family planning regulations in Hebei does *not* require the termination of a pregnancy and that the payment of a social compensation fee is available to families in Hebei. The government’s *China Daily* newspaper reported in August 2010 that a villager in Hebei Province was able to have three children after paying 20,000 yuan in social compensation fees:

The preference for boys is especially strong in impoverished areas, where families tend to have two or three children.

¹⁷ Immigration and Refugee Board of Canada 2007, *CHN102495.E – China: Whether forced abortions or sterilizations are still occurring; prevalence and location of forced abortions or sterilizations; reports of forced sterilization of men (2005-2007)*, 10 May - Attachment 13.

¹⁸ *Hebei Population and Family Planning Ordinance* (promulgated 18 July 2003, effective 1 October 2003), Hebei province government website <http://www.hebei.gov.cn/article/20071017/451993.htm> – Accessed 11 August 2008 – Attachment 4.

¹⁹ Cheng, A., 2007, ‘Chinese couple sue over forced abortion; One-Child Policy; Citizens Push Their Rights In First Case Of Its Kind’, *National Post*, 29 August – Attachment 15; Hongqing, D., 2007, ‘Full-Term Abortion Lawsuit a First for China’, *Caijing English Newsletter*, 23 July – Attachment 2; See footnote three of: *Women’s Rights Without Frontiers 2009, The Consequences of Coercion: China’s One Child Policy and Violence Against Women and Girls*, 10 November <http://www.pearlsofchina-thefilm.com/littlejohn2.pdf> – Accessed 6 October 2010 – Attachment 16.

Wang Shuzheng, who lives in Wangzhuangtou village in Hebei province, has two daughters aged 19 and 7, and a 2-year-old son. He said he paid more than 20,000 yuan in fines to family planning officials in order to ensure he had a male heir.

“I don’t have any social insurance to take care of me in later life,” said the 39-year-old father. “My daughters will get married and join other people’s families one day, so my wife and I can only rely on my son when we are old. Although the money (paid in fines) is almost the same as our family’s income for an entire year, it was worth it.”²⁰

In light of the method for calculating social compensation fees detailed in response to Question 1, the reported amount of 20,000 yuan appears low and this could be the result of a calculation based on the average net incomes of rural residents.

3. Could any applicable fines be paid in instalments?

No definitive reference could be located to the payment of social compensation fees in Hebei Province by instalments, although it appears to be available under the current family planning policy of Hebei.

The provision to pay social compensation fees via instalments is provided for under the national 2002 *Measures for Administration of Collection of Social Maintenance Fees*:

Article 6A decision on collecting a social maintenance fee shall be effective from the date of serving it on the person. The person shall pay the social maintenance fee on a lump-sum basis within 30 days from the date of receiving the decision on the collection.

When having actual difficulties in paying the social maintenance fee on a lump-sum basis, the person shall, within 30 days from the date of receiving the decision on the collection, submit a written application of payment in instalments along with the relevant evidence to the family planning administrative department of the people’s government at the county level that made the aforesaid decision. The family planning administrative department of the people’s government at the county level shall, within 30 days from the date of receiving the application, make a decision on whether to approve or not to approve the payment in instalments and notify the person in writing.²¹

The 2004 *Hebei Population and Family Planning Implementation Details* appear to address the issue of the payment of social compensation fees via instalments; however no formal English translation of the Implementation Details was located. Based on a Google translation (an imprecise translation tool), Article 38 of the Implementation Details appears to deal with the payment of social compensation fees via instalments. The translation suggests that people can pay social compensation fees via instalments over three years, with 50 percent of the total to be paid in the first year.²²

²⁰ ‘Brides and prejudice in China’, 2010, *China Daily*, 23 August – Attachment 14.

²¹ *Measures for Administration of Collection of Social Maintenance Fees* (promulgated 2 August 2002, effective 1 September 2002), National People’s Congress of the People’s Republic of China website http://www.npc.cn/englishnpc/Law/2007-12/14/content_1384253.htm – Accessed 31 January – Attachment 20.

²² *Hebei Population and Family Planning Implementation Details* (promulgated 14 September 2004, effective 1 November 2004), *Hebei Daily* <http://hbrb.hebnews.cn/20041020/ca422840.htm> – Accessed 12 August 2008 – Attachment 21.

Attachments

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<http://www.unescap.org/esid/psis/population/database/chinadata/hebei.htm#family> – Accessed 6 October 2010.
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