



Australian Government
Refugee Review Tribunal

Country Advice

China

China – CHN37998 – Henan Province –
Family planning regulations – Maternity
checks – Female children – Forced
abortions – Centralised records

21 January 2011

- 1. Please provide an outline of how the family planning laws are applied in Henan Province in 2010, including forced abortions, any special rules applying where the first child is a girl, and whether fines are applied.**

In Henan, the Henan family planning regulations apply. The provincial governor has also stated that the province will continue with its family planning policy. In China, however, the requirements, interpretation and application of regulations vary greatly between regions and even between local officials.¹ Although forced abortions and sterilisations are illegal under Chinese law, they still occur in China; some local officials resort to coercion when under pressure to meet birth targets regulated by the government.² Consequently, forced abortions could occur in Henan. In March 2008, according to the US State Department, Henan family planning officials reportedly forcibly detained a 23-year-old unmarried woman, induced labour and killed the baby upon delivery.³ Special rules can apply in Henan when the first child is a girl. In this situation a couple may apply for another child when one spouse is a miner⁴ or the spouses are rural residents and face economic difficulties.⁵ A range of fines for breaches of the family planning regulations are applied in Henan, including fines for violations other than having an out-of-plan child, e.g. failing to have a gynaecological test.

¹ Department of Foreign Affairs and Trade 2007, *DFAT Report 604 – RRT Information Request: CHN31325*, 19 February – Attachment 1.

² Immigration and Refugee Board of Canada 2010, *CHN103502.E – China: Family planning laws, enforcement and exceptions; reports of forced abortions or sterilization of men and women particularly in the provinces of Guangdong and Fujian (2007 – May 2010)*, 9 July http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=453047&l=e – Accessed 16 August 2010 – Attachment 4.

³ US Department of State 2009, 'f. Arbitrary Interference with Privacy, Family, Home, or Correspondence' in *Country Reports on Human Rights Practices for 2008 – China*, 25 February – Attachment 5.

⁴ *Henan Province Population and Family Planning Regulations* (Adopted 30 November 2002, Effective 1 January 2003), (English translation by the US Department of State, Office of Language Services, Translating Division), Article 17 (5) – Attachment 3.

⁵ *Henan Province Population and Family Planning Regulations* (Adopted 30 November 2002, Effective 1 January 2003), (English translation by the US Department of State, Office of Language Services, Translating Division), Article 18 (1) – Attachment 3.

In Henan, China's most populous province with over 100 million residents,⁶ the *Henan Province Population and Family Planning Regulations* apply.⁷ The provincial governor has stated that the province will continue with its family planning policy.⁸

Henan's family planning regulations allow for pregnancy terminations (abortions) and "remedial measures" (possibly including sterilisations) in three instances:

Article 25 Under any of the following conditions, necessary remedial measures shall be taken and the pregnancy terminated under the guidance of family planning technical service workers:

- (1) Pregnancy out of wedlock;
- (2) Pregnancy without a certificate for the birth of a child, where the party already has one child;
- (3) Pregnancy after improperly obtaining a certificate for the birth of a child.⁹

In a *Straits Times* news article, dated March 2010, a doctor from Henan, at the launching of a study at a Guangdong university on the lack of infertility data in China, reportedly stated that "induced abortions were still widely used where contraception has failed".¹⁰ In the news article the Henan doctor did not indicate whether induced abortions occurred in Henan.

Fines are applied in Henan for the following breaches of the family planning regulations:

- Failure to attend scheduled reproductive health checks (a fine between RMB 50 and RMB 500.¹¹
- Failure to take "remedial action or terminate a pregnancy" (a fine between RMB 200 and RMB 500.¹²
- Giving birth to a first child or a second child in breach of the management certificate for the birth of a child regulations (a fine between RMB 200 and RMB 500 for the first child and RMB 500 and RMB 2,000 for the second child.¹³ In

⁶ 'Population set to hit 100 million in Henan' 2010, *China Daily*, 13 July http://www.chinadaily.com.cn/china/2010-07/13/content_10097160.htm – Accessed 6 January 2011 – Attachment 2.

⁷ *Henan Province Population and Family Planning Regulations* (Adopted 30 November 2002, Effective 1 January 2003), (English translation by the US Department of State, Office of Language Services, Translating Division) – Attachment 3.

⁸ 'Population set to hit 100 million in Henan' 2010, *China Daily*, 13 July http://www.chinadaily.com.cn/china/2010-07/13/content_10097160.htm – Accessed 6 January 2011 – Attachment 2.

⁹ *Henan Province Population and Family Planning Regulations* (Adopted 30 November 2002, Effective 1 January 2003), (English translation by the US Department of State, Office of Language Services, Translating Division), Article 25 – Attachment 3.

¹⁰ '9.3% infertility rate in Shanghai' 2010, *Straits Times*, 8 March – Attachment 6.

¹¹ *Henan Province Population and Family Planning Regulations* (Adopted 30 November 2002, Effective 1 January 2003), (English translation by the US Department of State, Office of Language Services, Translating Division), Article 37 (1) – Attachment 3.

¹² *Henan Province Population and Family Planning Regulations* (Adopted 30 November 2002, Effective 1 January 2003), (English translation by the US Department of State, Office of Language Services, Translating Division), Article 37 (2) – Attachment 3.

¹³ *Henan Province Population and Family Planning Regulations* (Adopted 30 November 2002, Effective 1 January 2003), (English translation by the US Department of State, Office of Language Services, Translating Division), Article 37 (3) – Attachment 3.

Henan, a system of certificates that allow a couple to have a child has been implemented under the regulations.¹⁴

- Social maintenance fees are collected for the birth of out-of-plan children. These fees are based upon whether the spouses are married, urban or rural residents and, as well, their income and the per capita income of their locality and the number of children involved.¹⁵ These fees can amount to a substantial sum. In Henan, the birth of second child fees could amount to triple the locality's per capita income or triple an individual's income when that income is more than double the locality's per capita income.¹⁶ A December 2010 report by the Chinese Human Rights Defenders (CHRD), a network of Chinese and international human rights activists,¹⁷ notes that it is easy for the rich, well-connected and the middle classes to avoid payment; however, many Chinese cannot afford to pay the fee.¹⁸

2. How often are maternity checks undertaken in Henan province?

No information was found on a specific timing for maternity checks undertaken in Henan. The Henan family planning regulations only state that women are to “undergo regular reproductive health checkups”.¹⁹

The CHRD report notes that in China the frequency of gynaecological tests, including pregnancy checks, varies locally. The frequency of the tests depends on the reproductive potential of the women, i.e. whether they have been sterilised or are approaching the end of their childbearing years. In Jiangxi province, for example, women are required to be tested between one and three times per year. Women who fail to appear for tests within the specified time period could be punished by the local government. Also, women living away from home may be required to return to do these tests.²⁰

¹⁴Henan Province Population and Family Planning Regulations (Adopted 30 November 2002, Effective 1 January 2003), (English translation by the US Department of State, Office of Language Services, Translating Division), Article 20 – Attachment 3.

¹⁵Henan Province Population and Family Planning Regulations (Adopted 30 November 2002, Effective 1 January 2003), (English translation by the US Department of State, Office of Language Services, Translating Division), Article 38 – Attachment 3.

¹⁶Henan Province Population and Family Planning Regulations (Adopted 30 November 2002, Effective 1 January 2003), (English translation by the US Department of State, Office of Language Services, Translating Division), Article 38 – Attachment 3.

¹⁷ ‘About Us’ (undated), Chinese Human Rights Defenders website, <http://chrdnet.org/about-us/> – Accessed 14 January 2011 – Attachment 7.

¹⁸ Chinese Human Rights Defenders 2010, “*I Don’t Have a Choice over My Own Body*”, 21 December, p.3 <http://chrdnet.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 8.

¹⁹Henan Province Population and Family Planning Regulations (Adopted 30 November 2002, Effective 1 January 2003), (English translation by the US Department of State, Office of Language Services, Translating Division), Article 24 – Attachment 3.

²⁰ Chinese Human Rights Defenders 2010, “*I Don’t Have a Choice over My Own Body*”, 21 December, pp.14-15 <http://chrdnet.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 8.

3. Please provide any information available about women who have already had a female child being subjected to forcible abortions during maternity check-ups or otherwise.

No information was found on women who already have a female child being subjected to forcible abortions during maternity checks or otherwise. Forced abortions for women with female children could occur. During a campaign by local government to crackdown on perceived widespread non-compliance with the family planning policy a township in Henan reportedly issued a document which raised the possibility of forced abortions being given in households with two female children. According to the CHRD report much of the worst human rights violations associated with the implementation of the family planning policy occur during such campaigns.

In the context of such a campaign, the CHRD report quoted a document from Daquandian township in Henan, referring to households with female children, which raised the possibility of forced abortions. The document quoted reads as follows:

“Complete in full the mission of ‘four surgeries’²¹...[we should] sterilize those households with two girls, implement the policy of inserting IUDs [intrauterine devices] in those with one girl in a timely manner, work to prevent the phenomenon of the IUDs coming off, and strengthen the monitoring of their pregnancy status... whenever households with two girls are found to be pregnant again, we must resolutely take the corresponding measures... we must ruthlessly pay close attention to out-of-quota abortions... those who should have IUDs inserted should have them inserted, those who should be sterilized should be sterilized, while those who should be given abortions and induced labor abortions should be given.” (Daquandian Township, Henan Province, 2009)²²

4. Would the forced abortion be the only “consequence” of the second pregnancy or would there be an additional consequence of “forced sterilisation”? If so, to which party is the forced sterilisation normally applied?

According to the Henan family planning regulations both an abortion and sterilisation could be the consequence of a second pregnancy in Henan. Under the regulations a second pregnancy could cause “remedial measures” to be taken and “the pregnancy terminated”.²³ “Remedial measures” could include sterilisations. The Henan regulations do not state which party would be sterilised. In China, however, although the implementation of the family planning policy is directed at both sexes it disproportionately affects women, who tend to bear most of the responsibility for birth control.²⁴

²¹ The four surgeries are “insertion of IUDs, sterilizations, abortions and late-term abortions”. Chinese Human Rights Defenders 2010, *“I Don’t Have a Choice over My Own Body”*, 21 December, p.2 <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 8.

²² Chinese Human Rights Defenders 2010, *“I Don’t Have a Choice over My Own Body”*, 21 December, p.23 <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 8.

²³ *Henan Province Population and Family Planning Regulations* (Adopted 30 November 2002, Effective 1 January 2003), (English translation by the US Department of State, Office of Language Services, Translating Division), Article 25 (2) – Attachment 3.

²⁴ Chinese Human Rights Defenders 2010, *“I Don’t Have a Choice over My Own Body”*, 21 December, p.12 <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 8.

Article 25 of the Henan regulations does not state to which party the remedial measures normally applied. It states:

Article 25 Under any of the following conditions, necessary remedial measures shall be taken and the pregnancy terminated under the guidance of family planning technical service workers:...

(2) Pregnancy without a certificate for the birth of a child, where the party already has one child;...²⁵

The US State Department also reported that one parent was often pressured to undergo sterilisation; 80% of birth control methods involve IUDs or female sterilisation.²⁶ Estimates on the number of women and men sterilised in China, sourced by the Canadian Immigration and Refugee Board, also reflect the higher incidence of women being sterilised:

...a 2 June 2010 article by Xinhuanet, translated by the Women of China website, which is operated by the All-China's Women Federation (ACWF) states that 37.5 million Chinese men (7.39 percent) have had vasectomies in comparison to the 221.5 million women who have had tubal ligation.²⁷

5. What would be the likelihood of the authorities pursuing a wife for forced sterilisation once her husband had left the country?

As women bear most of the responsibility for birth control in China (see question 4 above), it is possible that the authorities would pursue the wife for forced sterilisation once the husband has left China.

The CHRDC has also reported that women are urged to be sterilised on reaching their birth quota more often than men. It provided an example of a woman reportedly forcibly sterilised in the possible absence of her husband. In the example the woman, who lived in Sichuan with her husband, was visiting her family in Yunnan when she was said to have been forcibly sterilised. The example did not indicate whether her husband was with her in Yunnan or he had stayed in Sichuan.²⁸

²⁵ *Henan Province Population and Family Planning Regulations* (Adopted 30 November 2002, Effective 1 January 2003), (English translation by the US Department of State, Office of Language Services, Translating Division), Article 25 (2) – Attachment 3.

²⁶ US Department of State 2010, 'f. Arbitrary Interference with Privacy, Family, Home, or Correspondence' in *Country Reports on Human Rights Practices for 2009 – China*, 11 March – Attachment 9.

²⁷ Immigration and Refugee Board of Canada 2010, *CHN103502.E – China: Family planning laws, enforcement and exceptions; reports of forced abortions or sterilization of men and women particularly in the provinces of Guangdong and Fujian (2007 – May 2010)*, 9 July http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=453047&l=e – Accessed 16 August 2010 – Attachment 4.

²⁸ Chinese Human Rights Defenders 2010, "*I Don't Have a Choice over My Own Body*", 21 December, pp.18-19 <http://chrndnet.org/wp-content/uploads/2010/12/%E2%80%9CI-Don%20%99t-Have-a-Choice-over-My-Own-Body%E2%80%9D.pdf> – Accessed 13 January 2011 – Attachment 8.

6. Are there any “centralised” records kept on people who are wanted by the local authorities for outstanding sterilisation procedures? If so, would a husband find it difficult to leave the country?

No information was found on a centralised record on people who are wanted by the local authorities for outstanding sterilisation procedures. Information was found concerning a national database, “Women of childbearing age Information System” (WIS), which records the results of periodic gynaecological tests.²⁹ Information on the WIS is scant and most is in Chinese language sources. Given what little is known about the nature of the WIS database, it would be unlikely that a male would be listed. No information was found on the ability of people wanted by the local authorities for outstanding sterilisation procedures to leave China.

In respect of the WIS database, the CHRD wrote that it is a national database recording the results of periodic gynaecological tests which aim to check for pregnancies, abortions, uncover the removal of IUDs and gynaecological illnesses.³⁰ From the available sources and using Google translate,³¹ it appears that the database comes under the ambit of China’s National Population and Family Planning Commission (NPFPC) and incorporates provincial WIS databases. Although WIS was first mentioned in a 2005 source, the database’s current stage of development and implementation could not be determined.³²

²⁹ Chinese Human Rights Defenders 2010, “*I Don’t Have a Choice over My Own Body*”, 21 December, p.14 <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 8.

³⁰ Chinese Human Rights Defenders 2010, “*I Don’t Have a Choice over My Own Body*”, 21 December, p.14 <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 8.

³¹ Google translations can often be poor and can contain errors – as such they give only a rough indication of the contents of a document. For any further reliance on this information, a professional translation should be obtained.

³² 隋映 2009, *基于WEB的山东育龄妇女信息系统的设计与实现*, 10 October, Shandong University 硕士学位论文 [Sui Ying 2009, *A design and implementation of web-based information system for Shandong women of childbearing age*, 10 October, Shandong University Master’s Thesis]

http://202.194.11.26:8001/xlw/document?RecordNo=20222&ColumnName=FREETEXT_URL&MultiNo=0&issource=yes&type=bin&channelid=65004 – Accessed 13 January 2011 – Attachment 10; ‘National Population and Family Planning Commission of the issuance of speeding up the construction of population and family planning guidance information notification@Hebei Total Health Network’ 2009, WomanBlog website, 4 May

<http://webcache.googleusercontent.com/search?q=cache:Vmvt5zyHtP0J:woman.yantailing.us/%3Fp%3D1266+%22women+of+childbearing+age+information+system%22+china&cd=2&hl=en&ct=clnk&gl=au> – Accessed 13 January 2011 – Attachment 11; ‘关于流动人口计划生育服务与管理:

国家人口计生委政策法规司赵延配’[On family planning services and management of floating population:National Population and Family Planning Commission policy and regulations with the Secretary ZHAO Yan] 2008, National Population and Family Planning Commission of China website, February

<http://www.npfpc.gov.cn/cn/file/undp/qdh-3.pdf> – Accessed 13 January 2011 – Attachment 12; Google translation of p.42 of: ‘关于流动人口计划生育服务与管理: 国家人口计生委政策法规司赵延配’[On family planning services and management of floating population:National Population and Family Planning Commission policy and regulations with the Secretary ZHAO Yan] 2008, National Population and Family Planning Commission of China website, February

<http://www.npfpc.gov.cn/cn/file/undp/qdh-3.pdf> – Accessed 13 January 2011- Attachment 12 – Attachment 13; ‘人口计生系统在抗震救灾第一线: 摧不垮的队伍’ [‘Population and family planning system in the first line of relief: not destroy the team’] 2008, National Population and Family Planning Commission of China website, 10 June

<http://www.npfpc.gov.cn/cn/document/detail.aspx?articleid=090525145617965107> – Accessed 13 January 2011 – Attachment 14;

‘您现在的位置: 项目资料库>>中国/联合国人口基金生殖健康/计划生育第五周期项目总结会’[‘Strengthen the assessment of information technology to promote quality services to the development of good management – Population and Family Planning Commission of Heping District, Tianjin’] 2005, National Population and

Attachments

1. Department of Foreign Affairs and Trade 2007, *DFAT Report 604 – RRT Information Request: CHN31325*, 19 February.
2. ‘Population set to hit 100 million in Henan’ 2010, *China Daily*, 13 July http://www.chinadaily.com.cn/china/2010-07/13/content_10097160.htm – Accessed 6 January 2011.
3. *Henan Province Population and Family Planning Regulations* (Adopted 30 November 2002, Effective 1 January 2003), (English translation by the US Department of State, Office of Language Services, Translating Division).
4. Immigration and Refugee Board of Canada 2010, *CHN103502.E – China: Family planning laws, enforcement and exceptions; reports of forced abortions or sterilization of men and women particularly in the provinces of Guangdong and Fujian (2007 – May 2010)*, 9 July http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=453047&l=e – Accessed 16 August 2010.
5. US Department of State 2009, *Country Reports on Human Rights Practices for 2008 – China*, 25 February.
6. ‘9.3% infertility rate in Shanghai’ 2010, *Straits Times*, 8 March. (FACTIVA)
7. ‘About Us’ (undated), Chinese Human Rights Defenders website, <http://chrnet.org/about-us/> – Accessed 14 January 2011.
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%99CI-Don%E2%80%99t-Have-a-Choice-over-My-Own-Body%E2%80%9D.pdf> – Accessed 13 January 2011.
9. US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – China*, 11 March.
10. 隋映 2009, *基于WEB的山东育龄妇女信息系统的设计与实现*, 10 October, Shandong University 硕士学位论文 [Sui Ying 2009, *A design and implementation of web-based information system for Shandong women of childbearing age*, 10 October, Shandong University Master’s Thesis] http://202.194.11.26:8001/xwfw/document?RecordNo=20222&ColumnName=FREETEXT_URL&MultiNo=0&issource=yes&type=bin&channelid=65004 – Accessed 13 January 2011.
11. ‘National Population and Family Planning Commission of the issuance of speeding up the construction of population and family planning guidance information notification@Hebei Total Health Network’ 2009, WomanBlog website, 4 May <http://webcache.googleusercontent.com/search?q=cache:Vmvt5zyHtPOJ:woman.yantailin>

Family Planning Commission of China website, 25 May
<http://www.npfpc.gov.cn/cn/document/detail.aspx?articleid=090525111245856326> – Accessed 13 January 2011
– Attachment 15.

[g.us/%3Fp%3D1266+%22women+of+childbearing+age+information+system%22+china&cd=2&hl=en&ct=clnk&gl=au](http://www.npfpc.gov.cn/cn/file/undp/qdh-3.pdf) – Accessed 13 January 2011.

12. ‘关于流动人口计划生育服务与管理: 国家人口计生委政策法规司赵延配’[On family planning services and management of floating population:National Population and Family Planning Commission policy and regulations with the Secretary ZHAO Yan] 2008, National Population and Family Planning Commission of China website, February <http://www.npfpc.gov.cn/cn/file/undp/qdh-3.pdf> – Accessed 13 January 2011.
13. Google translation of p.42 of: ‘关于流动人口计划生育服务与管理: 国家人口计生委政策法规司赵延配’[On family planning services and management of floating population:National Population and Family Planning Commission policy and regulations with the Secretary ZHAO Yan] 2008, National Population and Family Planning Commission of China website, February <http://www.npfpc.gov.cn/cn/file/undp/qdh-3.pdf> – Accessed 13 January 2011 - Attachment 12.
14. ‘人口计生系统在抗震救灾第一线：摧不垮的队伍’ [‘Population and family planning system in the first line of relief: not destroy the team’] 2008, National Population and Family Planning Commission of China website, 10 June <http://www.npfpc.gov.cn/cn/document/detail.aspx?articleid=090525145617965107> – Accessed 13 January 2011.
15. ‘您现在的位置：项目资料库>>中国/联合国人口基金生殖健康/计划生育第五周期项目总结会’[‘Strengthen the assessment of information technology to promote quality services to the development of good management – Population and Family Planning Commission of Heping District, Tianjin’] 2005, National Population and Family Planning Commission of China website, 25 May <http://www.npfpc.gov.cn/cn/document/detail.aspx?articleid=090525111245856326> – Accessed 13 January 2011.