Country Advice

China

13 December 2010

1. Please comment on the application of the one-child policy in Fuqing, and in Shanghai prior to 2001 and currently.

One-Child Policy in Shanghai prior to 2001

An RRT research response dated 20 October 2003 refers to sources that indicate that family planning regulations were adopted in Shanghai in March 1990, and revised in 1997 and 2003.¹ The Municipal People’s Congress of Shanghai was reported to have adopted family planning regulations on 14 March 1990. The regulations provided for the imposition of a fine on a couple equal to three to six times their average annual income (calculated on income two years before the birth) if they had an unplanned birth. Couples who had unplanned births could also be subjected to disciplinary action by their work units or if they were self-employed, by the administrative department of industry and commerce. The regulations allowed second births if both the husband and wife were single children, if a first child “cannot become normal because of nonhereditary diseases,” or if a couple who had remarried had only one child before the remarriage. The identification of the sex of a foetus without medical reasons by units and individuals was strictly prohibited.²

In December 1997, the family planning regulations in Shanghai were revised. Under Article 10 of the regulations, a couple was encouraged to have only one child and there was a prohibition on out-of-plan births. Article 12 lists conditions under which couples were allowed to have a second child. These were where the husband and wife were both single, the first child was diagnosed as having non-genetic defects and could not grow up to be a normal labourer, a remarried couple had only one child from their previous marriages, both parties were returned overseas Chinese who had lived in China for less than six years, and where ethnic immigrants had obtained a second birth permit from local family planning authorities above county level before moving to Shanghai, and the wife was already pregnant. Article 13 lists additional conditions by which rural residents were permitted to have a second child.³

¹ RRT Country Research 2003, Research Response CHN16217, 20 October – Attachment 1
Current One-Child Policy in Shanghai

China’s 2002 national population and family planning law standardises implementation of the government’s birth limitation policies, although enforcement reportedly varied significantly.\(^4\) A copy of China’s population and family planning law is attached.\(^5\) All provinces have regulations that implement the national family planning law.\(^6\)

The Shanghai Municipal People’s Congress adopted regulations on population and family planning on 31 December 2003 and the regulations came into force on 15 April 2004. Under Article 23 of the regulations, “[o]ne child per couple is advocated” and “[t]hose who meet the conditions specified by law and these Regulations may apply for another childbearing.” Articles 25 and 26 of the regulations set out the conditions to be met for couples to have a second child. Articles 42 and 43 of the regulations set out penalties for breaching the regulations.\(^7\)

An August 2007 DFAT report, responding to a request for information from the RRT,\(^8\) includes information on the implementation of the one-child policy in Shanghai. The DFAT report indicates that there had been a dramatic increase in the number of couples applying to have a second child in Shanghai with the new regulations in 2004. In relation to enforcement of the policy, it is stated in the report that:

B.  Enforcement of the family-planning policy is, for the most part, more strict in urban than rural areas. The family-planning authorities have sub-offices in each neighbourhood committee, which carry out its daily operations. Family-planning officials in neighbourhood committees will visit women whose pregnancy with a second child is not covered by one of the exceptions, trying to persuade them to have an abortion. However, with the rapid expansion of neighbourhoods and the weakening functions of neighbourhood committees, family-planning officials don’t always know everyone living in their neighbourhood, and some people simply choose to move away from their place of registration to avoid visits by the neighbourhood committee.

The report also indicates that the minimum fine in Shanghai for violating the one-child policy was three times the average per capita disposable income of the previous year, but if the annual income of either spouse was over the average income, then the fine was three times his/her actual income.\(^9\)

Shanghai is reported to currently have strict regulations on the eligibility of couples to have a second child. Instances where a second child is permitted include when a couple’s

\(^4\) US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – China (includes Tibet, Hong Kong, and Macau)*, March, Section 6 – Attachment 4
\(^6\) US Department of State 2009, *Country Reports on Human Rights Practices for 2008 – China (includes Tibet, Hong Kong, and Macau)*, February, Section 1(f) – Attachment 6
\(^8\) RRT Research & Information 2007, Email to DFAT ‘RRT Country Information Request – CHN32173’, 8 August – Attachment 8
first child has a non-hereditary disability or both spouses are from a one-child family.\textsuperscript{10} It is reported that under the local regulation, couples who have a second child but do not meet the necessary criteria “will be imposed a social fostering fee that triples the family’s per capita disposable income of the past year.”\textsuperscript{11} Also, some local governments in China are reported to have specifically targeted migrant workers for forced abortions, and one of the primary objectives of a “special rectification operation” for the “floating population” launched by the government in the city of Kunshan on the outskirts of Shanghai in December 2009, was to increase the implementation of “remedial measures for out-of-plan pregnancies”.\textsuperscript{12}

Shanghai’s political adviser is reported to have recently suggested that the government should improve social welfare “and encourage more eligible couples to have a second child” as Shanghai’s development was being hindered by a low birth rate and an increasing elderly population. There had been earlier Chinese media reports that China would loosen its family planning policy in 2011 by allowing couples with one spouse from a single-child family in five provinces with low birth rates, being Heilongjiang, Jiangsu, Jilin, Liaoning and Zhejiang, to have two children. A spokesman from Shanghai’s Population and Family Planning Commission said that Shanghai had as yet no specific plans to adjust the policy. The city, however, has already begun encouraging more eligible couples to have a second child, including couples whose first child had a non-hereditary disability, couples where both spouses were single children, or disabled couples with impaired ability to work. Shanghai had previously cancelled the interval of four years between first and second births, and this had led to a rise in births of second children between 2005 and 2007.\textsuperscript{13} A spokesman of the Shanghai Population and Family Planning Commission is reported to have indicated that Shanghai would follow orders from the central government in relation to population policy.\textsuperscript{14}

Another report from November 2010 refers to a couple demanding that the Jiading District Population and Family Planning Commission withdraw a decision that they must pay a 300,000 yuan penalty for having a second child in violation of China’s family planning law. The couple had previously been informed by the district’s population and family planning commission that they didn’t meet the criteria to have a second child and would have to pay a social fostering fee if the baby was born.\textsuperscript{15}

An RRT research response dated 6 August 2007 includes information on the implementation of the one-child policy in Shanghai.\textsuperscript{16}

**One-Child Policy in Fujian**

The Fujian Provincial People’s Congress adopted a regulation on population and family planning on 26 July 2002 and the regulation came into force on 1 September 2002. Articles 9 to 12 of the regulation set out the circumstances under which a couple may have

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\textsuperscript{10} ‘Shanghai: Family planning policy stays’ 2010, *Shanghai Daily*, 5 November – Attachment 10
\textsuperscript{11} ‘Shanghai: Couple fights for 2nd child’ 2010, *Shanghai Daily*, 11 November – Attachment 11
\textsuperscript{12} Congressional Executive Commission on China 2010, *Annual Report 2010*, 10 October, pp. 118-119 – Attachment 12
\textsuperscript{13} Hongyi, W. 2010, ‘Aging population could bring vital changes to family planning policy’, *China Daily*, 10 November – Attachment 13
\textsuperscript{14} ‘Shanghai: Family planning policy stays’ 2010, *Shanghai Daily*, 5 November – Attachment 10
\textsuperscript{15} ‘Shanghai: Couple fights for 2nd child’ 2010, *Shanghai Daily*, 11 November – Attachment 11
\textsuperscript{16} RRT Research & Information 2007, *Research Response CHN32065*, 6 August, (Questions 2 & 3 – Attachment 14
a second child. Under Article 18 of the regulation, those who become pregnant in breach of the regulation “should take remedial measure in time”, and villagers’ or resident’s committees or their units “should urge them to take remedial measures in time.” Chapter 6 of the regulation covers legal liability for violations of the regulation, and includes Article 39 which sets out the social compensation fee to be paid for the birth of additional children.17

In April 2004, DFAT advised that family planning rules in Fujian were enforced more strictly in the larger cities than in the poorer countryside, but in general, Fujian had “one of the least coercive family planning regimes in China.” It is stated in the DFAT report that:

- A. 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 then 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.18

Further DFAT advice in October 2004 refers to comments by the Lianjiang County Family Planning Committee office that while local regulations for family planning had been applied by counties in the past, all counties now applied the provincial regulations. This meant that the fee levied by all counties and towns was in the same range as that prescribed by the provincial regulations.19 A US Department of State report in May 2007 refers to there being a wide variation in the amount of social compensation fees and the hardship they imposed for out-of-plan births. According to the Fujian Province Birth Planning Committee, the social compensation fees were based on net per capita income levels for rural households and urban households’ disposable per capita income. The exact figure was based on county-level statistics and varied throughout the province. The report also provides differing accounts on whether there were forced abortions or sterilisations in Fujian.20

In China, “the law prohibits the use of physical coercion to compel persons to submit to abortion or sterilization. However, intense pressure to meet birth limitation targets set by government regulations resulted in instances of local birth-planning officials using physical coercion to meet government goals.”21 DFAT has advised that “Fujian’s

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18 Department of Foreign Affairs and Trade 2004, DFAT Report No. 287 – China: RRT Information Request: CHN16609, 22 April – Attachment 16
19 Department of Foreign Affairs and Trade 2004, DFAT Report No. 327 – China: RRT Information Request: CHN17017, 7 October – Attachment 17
21 US Department of State 2010, Country Reports on Human Rights Practices for 2009 – China (includes Tibet, Hong Kong, and Macau), March, Section 1(f) – Attachment 4
provincial regulations on population and family planning do not impose compulsory abortion or sterilisation for people with a history of out-of-quota births, but rather observe that guidance on birth control methods and family planning should be available to all to prevent out-of-quota births.”

As previously mentioned, under Article 18 of the population and family planning regulation in Fujian, those who become pregnant in breach of the regulation “should take remedial measure in time”, and villagers’ or resident’s committees or their units “should urge them to take remedial measures in time.”

According to the Congressional Executive Commission on China annual report for 2009, Fujian is one of ten provinces where population planning officials are authorised to deal with out of plan pregnancies through “remedial measures”. DFAT advice from April 2004 indicates that the post had “found no record of enforced sterilisation of women in Fujian since the early 1990s”, while a further DFAT report from September 2004 indicates that the Post understood “that compulsory abortions and sterilisations occur in Fujian, but that such measures are much rarer than in the 1980s.” Also, in provinces such as Fujian, “sanctions relating to family planning can be avoided through payment of a fee to local authorities, parts of which may be both above and below the table.”

More recently, DFAT advices from 2009 refer to reports of instances of persons being ordered to undergo forced sterilisation in Fujian. The veracity of the reports, which were taken from local bulletin board service posts, could not be confirmed.

It has also been reported that the authorities in some areas of Fujian “employed abortion as an official policy instrument” in 2009. In February 2009, officials in Anxi County, Fujian designated “implementation of abortion remedial measures” among the five primary tasks of a five week campaign of “concentrated service activities”. Village family planning regulations published by the Wuyishan County government in Fujian in June 2009 stipulated that remedial measures (abortion) should be promptly carried out in emergency situations when pregnancies violated family planning policies. Officials in Xianyou County, Fujian were reported during 2009 to have forced a pregnant unmarried woman to have an abortion, and to have detained a woman to pressure her daughter, who was pregnant with her second child, to undergo an abortion.

22 Department of Foreign Affairs and Trade 2004, DFAT Report No. 317 – China: RRT Information Request: CHN16905, 2 September – Attachment 19
23 ‘Population and Family Planning Regulation of Fujian Province’ 2002, UNHCR Refworld website, 1 September http://www.unhcr.org/refworld/country.LEGAL,NATLEGBOD,CHN,4242b7394,0.html – Accessed 9 December 2010 – Attachment 15
26 Department of Foreign Affairs and Trade 2004, DFAT Report No. 317 – China: RRT Information Request: CHN16905, 2 September – Attachment 19
27 DIAC Country Information Service 2009, Country Information Report No. 09/38 – CIS Request No. 9656; Economic sanctions applied to breaches of the One Child Policy, Fujian Province, (sourced from DFAT advice of 28 April 2009), 28 April – Attachment 21
An RRT country advice dated 18 November 2010 provides information on the record of the authorities in Fujian regarding enforcement of financial penalties for unregistered and illegitimate births, and the occurrence of forced abortions in Fujian.\(^{30}\) Another RRT research response dated 11 March 2008 includes reports from 1999 to 2007 on family planning in Fujian.\(^{31}\)

2. Please advise of any known groups or individuals operating in Fuqing or Shanghai in relation to protesting the one child policy or assisting women who were victim to it.

Publicly voicing opposition to China’s one-child policy was reported at a seminar in 2005 to be problematic. It was still taboo to discuss it in public or argue it should not work. China’s leadership was reported to be thinking about the taboo because of demographic problems.\(^{32}\)

Information was found on the treatment of an opponent of the one-child policy from Shanghai. Mao Hengfeng refused to abort her second child in 1988 and was dismissed from her employment. She petitioned for her right to work and other basic rights, and during the course of numerous petitions, she was often detained and on several occasions forcibly committed to psychiatric institutions. She refused to give up her petitioning and in April 2004, the Shanghai Municipal Public Security Bureau sentenced her to 18 months of Re-education Through Labour (RTL).\(^{33}\) In January 2009, Amnesty International reported that since 2004, Mao Hengfeng had “repeatedly been detained for her work defending women’s reproductive rights and housing rights.” In January 2007, she was sentenced to imprisonment for two and half years for “intentionally damaging property”, and was reported to have been tortured while in prison. She was released in November 2008.\(^{34}\) In March 2010, she was assigned to 18 months in RTL for ‘disturbing social order’.\(^{35}\) She had protested outside Beijing Municipal Intermediate Court in support of human rights activist Liu Xiaobo in December 2009.\(^{36}\) In April 2010, just days before the international exposition Expo 2010 opened in Shanghai, she was transferred to the Anhui Provincial Women’s RTL facility, where she reported that she had been beaten by other inmates on the instructions of the RTL facility’s officers.\(^{37}\)

\(^{30}\) RRT Country Advice 2010, *Country Advice CHN37751*, 18 November, (Questions 4 & 6) – Attachment 23


\(^{34}\) Amnesty International 2009, *Women’s rights activist detained in China*, 14 January http://www.unhcr.org/refworld/country,,,CHN,,,497051501e,0.html – Accessed 8 December 2010 – Attachment 27


Although not in relation to Fujian or Shanghai, it has also been reported that blind human rights activist Chen Guangcheng, who was released from prison in September 2010 after serving “a four-year prison sentence for charges relating to his involvement in a legal action against forced sterilizations and abortions carried out by the authorities on thousands of women in the Shandong province”, continued to be under unofficial house arrest following his release.  

An RRT research response dated 10 March 2008 provides information on activists or advocates against the one-child policy in China.

3. Please comment on the probability that a person being able to legally depart China from Fujian province, who had been subject to family planning penalties and had actively protested against the one-child policy and assisted its victims.

The law in China is reported to provide for freedom of movement within the country, emigration, foreign travel and repatriation, but these rights were generally not respected in practice by the government. The government permitted foreign travel and legal emigration for most citizens. Some academics and activists were reported to continue to face travel restrictions around sensitive anniversaries. Although most citizens could obtain passports, “those whom the government deemed threats, including religious leaders, political dissidents, and ethnic minorities, were refused passports or otherwise prevented from traveling overseas.”

Chinese authorities reportedly “arbitrarily barred rights defenders, advocates, and critics from entering and leaving China.” Under Article 13 of China’s Passport Law, officials have “the discretion to refuse the issuance of a passport where ‘the competent organs of the State Council believe that [the applicant’s] leaving China will do harm to the state security or result in serious losses to the benefits of the state.’” A copy of the Passport Law of the People’s Republic of China, which came into effect on 1 January 2007, is attached.

DFAT advice from December 2008 indicates that the Post was “aware of reports of Chinese citizens with legally-obtained passports being prevented from leaving China because the local security bureau believes them to be involved in a sensitive case or believes they will undermine national security.” Earlier DFAT advice from November 2007 refers to “cases where dissidents who have been subject to criminal punishment (including imprisonment) have subsequently been able to obtain passports and leave the

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39 RRT Research & Information 2008, Research Response CHN33075, 10 March – Attachment 31
40 US Department of State 2010, Country Reports on Human Rights Practices for 2009 – China (includes Tibet, Hong Kong, and Macau), March, Section 2(d) – Attachment 4
42 Passport Law of the People’s Republic of China (Adopted 29 April 2006 & Promulgated 1 January 2007), Provided to the Refugee Review Tribunal by the Department of Foreign Affairs and Trade on 16 December 2008 – Attachment 32
43 Department of Foreign Affairs and Trade 2008, DFAT Report No. 943 – China: RRT Information Request: CHN34077, 16 December – Attachment 33
country.”  

DFAT also advised in November 2006 that the Post was aware of several instances where the Chinese authorities had denied citizens passports to stop them leaving the country, including dissidents, human rights activists and their relatives. In the cases the Post was aware of, “refusal to issue the passport came after the dissident or activist had served a period of imprisonment (but this is not necessarily an essential factor in denying a passport to this group of people).”

It was reported in February 2010 that the Chinese Exit and Entry authorities maintained “a range of systems to facilitate their processing of PRC citizens seeking to depart China and that these systems include alert lists of persons of interest.” China is reported to have developed a national computer network for policing named the Golden Shield Project. A counsellor at the Chinese Embassy in Ottawa informed the Immigration and Refugee Board of Canada in June 2009 that the Golden Shield Project has eight databases, and includes information on passports and entry and exit. Information that is not stored in the project includes "non-policing information and information from other departments, such as family planning information". DFAT, in advice from August 2010, indicates that although the Post was aware of foreign reports of the Golden Shield database, it was unable to confirm its existence or implementation.

It was reported in August 2010 that the authorities in Fujian had “prevented Beijing-based writer Mo Zhixu from leaving the country, on grounds that he posed a ‘danger to state security.’” Chinese rights activists, lawyers, and academics had said the authorities were increasingly targeting them through immigration controls, and in recent months, a growing number of people had been prevented from leaving China to attend overseas events.

In May 2008, an administrative decision barring Yuan Weijing, the wife of Chen Guangcheng, from leaving China in August 2007 to receive an award on her imprisoned husband’s behalf, was upheld by the Chaoyang People’s Court in Beijing.

An RRT country advice dated 17 September 2010 includes information on departure checks in China.

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46 DIAC Country Information Service 2010, Country Information Report No. 10/6 – CRS Request No. CHN10037; Uighur Political Profile, (sourced from DFAT advice of 2 February 2010), 2 February – Attachment 36
47 Immigration and Refugee Board of Canada 2009, CHN103133.E – China: Whether the Public Security Bureau (PSB) has set up a national computer network for information sharing; nature and extent of communication between PSB offices across the country; whether a link to a police computer network is available at international airports in China (2006 - May 2009), 2 July http://www.irc-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=452429&l=e – Accessed 14 September 2010 – Attachment 37
48 Department of Foreign Affairs and Trade 2010, DFAT Report No. 1183 – China: RRT Information Request: CHN36990, 10 August – Attachment 38
49 ‘China: Travel bans for activists’ 2010, Radio Free Asia, 5 August http://www.unhcr.org/refworld/country,...CHN,,4c7622dbc0.html – Accessed 8 December 2010 – Attachment 39
50 US Department of State 2009, Country Reports on Human Rights Practices for 2008 – China (includes Tibet, Hong Kong, and Macau), February, Section 2(d) – Attachment 6
51 RRT Country Advice 2010, Country Advice CHN37292, 17 September, (Question 2) – Attachment 40
4. Please direct me to any other resources that you think might also be relevant.

   No further information is attached.

Attachments


2. ‘Shanghai adopts family planning regulations’ 1990, National Centre for Biotechnology Research website, April. 

3. ‘Regulations on Family Planning of Shanghai’ 1997, United Nations Economic and Social Commission for Asia and the Pacific website, 10 December 


7. ‘Regulations of Shanghai Municipality on Population and Family Planning’ (Promulgated 31 December 2003 & Effective 15 April 2004), Shanghai Municipal Population and Family Planning Commission website 

8. RRT Research & Information 2007, Email to DFAT ‘RRT Country Information Request – CHN32173’, 8 August.


15. ‘Population and Family Planning Regulation of Fujian Province’ 2002, UNHCR Refworld website, 1 September


