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Extended Response to Information Request

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China: Update to various aspects of family and family planning law and policy, particularly as it affects Fujian province

Research Directorate, Immigration and Refugee Board, Ottawa

This Extended Response provides current information regarding various aspects of family law and family planning law and practice in China. Information on current (1999) family planning policy and practice in Fujian province is presented in the first section. This is followed by sections examining the laws of adoption and marriage in relation to their effect on the ability of families to legally bear and adopt children. The final section describes documentation related to the implementation of family planning policy. For general information concerning family planning policy in China, current to June 1999, please consult the Research Directorate publication *China: One-Child Policy Update* available in the IRB's Regional Documentation Centres, the REFINO database and on the IRB Website at <<http://www.irb.gc.ca>>.

Family Planning Policy and Practice in Fujian Province

Information concerning family planning policy and practice in Fujian province in the late 1990s is conflicting among the sources consulted by the Research Directorate. In 1997 an article appeared in the state-owned *Beijing Review*, praising the implementation of family planning policies in Fujian province (22-28 Dec. 1997). In the article, the deputy director of the Fujian State Family Planning Commission credits the work of the Family Planning Association, a "mass organization" which disseminates information regarding birth control and birth control policy, population and healthy child-bearing (*ibid.*). The article also lists some of the benefits offered in rural Fujian to households practising family planning: job arrangements, funds, loans and allocation of land, business licences, tax exemption or reduction, pension insurance and other services (*ibid.*).

In June 1998, a former Fujian family planning official, Gao Xiao Duan, testified before the United States Congress Committee on International Relations that her office had used threats, coercion and forced sterilization and abortion in its implementation of family planning policy (10 June 1998). The Research Directorate was unable to contact Ms. Gao Xiao Duan within the time constraints of this Extended Response.

Chinese government sources denied Ms. Gao's allegations and stated that a system of checks and balances existed against abuse of power by family planning officials that included protection under the *Administrative Procedures Law, the Compensation Law and the Criminal Law* (Xinhua 18 June 1998). A State Family Planning Commission spokesperson stated that there had in fact been family planning officials convicted of infringing people's rights in 1996, and that those persons had been punished with a two-year jail sentence (*ibid.*). According to the article:

The [State Family Planning Commission] spokesman said that in pursuing the family planning policy, the Chinese Government resolutely opposes any form of coerced abortion and the adoption of induced abortion as a means of family planning. The Chinese Government emphasizes that abortions are merely a means of dealing with contraception failures and must be done under safe and reliable conditions with the consent of the people concerned (*ibid.*).

In October 1998, the State Family Planning Commission repeated its insistence that coercion, including forced abortion and forced sterilization, was "resolutely opposed" by the Chinese government (Xinhua 29 Oct. 1999a; see also SCMP 31 Oct. 1998).

Ms. Gao's testimony generated considerable media interest, and the ABC television network program *Nightline* considered the issue of China's family planning policies (9 June 1998; see also *The Interim* July 1998). One of the network program guests, University of California anthropologist Susan Greenhalgh, stated that Ms. Gao's testimony was plausible, and that "Fujian has been known for being a place where the [family planning] policy has been enforced with special vigor" (ibid.). However, at the same time, she spoke of the need to be aware of the broader circumstances surrounding China's family planning policies and to understand the complexity of that context (ibid.). Dr. Greenhalgh subsequently commenced a fellowship with the Open Society Institute, with the topic "American Readings of Chinese Reproductive Realities," seeking to contextualize the American debate regarding China's family planning policies (Open Society Institute n.d.).

In a telephone interview with the Research Directorate, Dr. Greenhalgh stated, with respect to the general situation in Fujian, that she was unaware of any indications that a "crackdown" had been undertaken in recent years and that the overall trend was one of democratization in the family planning sphere, referring to complaints processes that had been established (18 Oct. 1999).

Dr. Edwin Winckler is a political scientist and research associate of the East Asia Institute at Columbia University and the editor of *Transition from Communism in China: Institutional and Comparative Analyses* (1999). Dr. Winckler has interviewed numerous Chinese family planning officials including some from Fujian and has extensively studied official records from Fujian in the course of his research. Dr. Winckler provided the following information regarding implementation of family planning policy in Fujian in the late 1990s in a telephone interview with the Research Directorate (19 Oct. 1999).

Dr. Winckler stated that the dominant trends within the work of the Fujian State Family Planning Commission in the late 1990s have been professionalization and democratization. By the former term, Dr. Winckler explained that there had been a significant increase in spending on family planning implementation in Fujian, including spending on training in order to raise the qualifications of family planning workers, with the overall goal of building a competent family planning administration in Fujian. The most concrete expression of this professionalization was the consistency of compliance with birth planning goals at the sub-regional level across Fujian, according to Dr. Winckler; he also referred to a very minor difference in the multiple-child rate (families of three or more children) between major regions in the province.

Dr. Winckler explained that by democratization, he was referring to the proliferation of means of "mass supervision" (supervision by the masses) of family planning work. Dr. Winckler elaborated on the complaints processes referred to by Dr. Greenhalgh, stating that at least four channels of appeal existed for persons seeking redress from excesses committed by family planning officials: local community pressure, a formal local complaints mechanism, the ability to sue local officials according to the *Administrative Procedures Law*, and the possibility of criminal liability for officials. With respect to the fourth mode of redress, Dr. Winckler stated that in the mid to late 1990s, criminal charges related to family planning issues had been more frequently directed towards officials than the masses. He provided several anecdotal examples of family planning officials being sentenced for excesses committed in enforcing the policy and added that these cases were well known among family planning officials and had a deterrent effect that mitigated against continued abuses. In summary, Dr. Winckler stated that some abuses and bureaucratic accidents had occurred, however, it was his belief, based upon his research, that scenarios such as those described in Ms. Gao's testimony were increasingly improbable in the late 1990s.

Dr. Winckler was unable to address questions of a very specific nature regarding the implementation of family planning policy in Fujian. Similarly, in correspondence with the Research Directorate, Dr. Greenhalgh stated that information regarding Fujian family planning policy and its implementation of a highly issue-specific or geographically-specific nature could only be obtained through research on site (12 Oct. 1999). Several other specialists on national population policy contacted by the Research Directorate were unable to provide Fujian-specific information.

Adoption Law

Article 6 of the *Adoption Law of the People's Republic of China* (1992) states that persons wishing to adopt must be childless, capable of rearing and educating the adoptee, and have reached the age of 35. Article 8 states that a family may adopt only one child, either male or female. However, Article 8 also states that these restrictions, other than the requirement that the persons must be capable of rearing and educating the adoptee, do not apply to the adoption of orphans or disabled children. According to Xinhua, new rules regarding the

registration of adoption introduced in 1999 mean that

Chinese people are now allowed, regardless of whether they have children or not, to adopt more than one orphan. ... [A]ccording to the new regulation, Chinese citizens who want to adopt children in every case should register at civil affairs departments (27 May 1999).

Birth planning regulations also make reference to adoption. The Fujian Birth Planning Regulations, attached to this Extended Response, state in Article 5 that "It is forbidden to adopt-in or adopt-out [place for adoption] a child illegally." Furthermore, in Article 6 it is specifically stated that adopted children "count" towards the total number of children in a family and Article 36 specifies that illegal adoptions are to be treated the same as "out of plan" births in terms of administrative sanction.

According to a study released in November 1998, adoption of abandoned infants, particularly girls, is a common phenomenon in China; according to a Population Council news release announcing the publication of the study's findings:

To a significant extent, adoptive parents have emerged spontaneously to handle the crisis of abandonment created by population control policies.... This is true in part because these same policies create an unfulfilled demand for girls among families who have filled or exceeded their quota of births with sons. Couples who are infertile also want to adopt abandoned girls.

... [C]hildren who are abandoned and subsequently adopted informally may be better off than those who spend months in an orphanage where mortality rates may be high and where severe restrictions are placed on who may adopt them. Many children abandoned in rural areas are adopted within days, sometimes hours, and thus are simply reabsorbed within the local population, where they live normal lives as daughters in families that want them.... 'In most cases the adoptive parents do not know the birth parents, and the adoptions are not arranged to hide the girls from the authorities'.

The biggest obstacle to finding homes for abandoned children in China has been government policy.... [The authors of the study] recommend that the government ease restrictions on the adoption of foundlings and publicize the availability of healthy children (6 Nov. 1998).

Marriage Law

Article 12 of *The Marriage Law of the People's Republic of China* (1981) states that "Husband and wife are in duty bound to practise family planning." Family planning and family law and policy in China are also linked through the promotion of later marriage as part of a comprehensive policy with the main goals of later marriage, later childbirth and fewer children (Beijing Review 22-28 Dec. 1997; Xinhua 29 Oct. 1998b). Article 5 of the Marriage Law states that "No marriage shall be contracted before the man has reached 22 years of age and the woman 20 years of age. Late marriage and late childbirth should be encouraged." Within the Fujian Birth Planning Regulations (June 1991), Article 5 states that "late marriage means that the male is at least 25 and the female at least 23".

Additional detail is found in the Regulations on Marriage Registration of the People's Republic of China (1986, amended 1994). According to Article 24:

The marriage relations of citizens who have not reached legal marriage age but live together as husband and wife and those parties who meet the requirements for marriage and live as husband and wife but have not applied for marriage registration are invalid and not protected by law.

The Marriage Law states that "Children born out of wedlock enjoy the same rights as children born in lawful wedlock. No person shall harm them or discriminate against them" (Article 19).

No further information concerning the effect of family planning policies and practices on underage marriage and out of wedlock childbirth could be found among the sources consulted by the Research Directorate.

Documentation Related to Family Planning Policy

Information regarding the documentation associated with family planning work in China is scarce among the sources consulted by the Research Directorate. According to Dr. Greenhalgh a "Certificate of Sterilization" and a "Certificate of IUD Insertion" are commonly used as proof to obtain the benefits related to the incentive-based aspects of compliance with family planning policy (18 Oct. 1999). According to Dr. Greenhalgh, these certificates are also used for other administrative purposes, for example, registering children for school. Dr. Greenhalgh had not heard of a document called the "Certificate of Forced Abortion" and expressed doubt as to its existence (ibid.).

Dr. Winckler similarly stated that to his knowledge there was no certificate of forced abortion (19 Oct. 1999). However, he stated that there would be records kept of abortions as part of the bureaucratic process, although it was unlikely such records would take the form of a certificate. As a general comment, Dr. Winckler stated that there was relatively little documentation associated with the family planning program and that the most common document is the "One Child Certificate" which certifies that the bearer has only had one child and has committed to not have any more; this certificate is used to obtain benefits (ibid.).

Articles 19 and 20 of the attached Fujian Birth Planning Regulations make reference to a "Contraception Certificate" and a "Birth Planning Certificate" respectively. Articles 30, 31 and 32 contain references to a one child certificate used to obtain benefits. The Research Directorate was unable to obtain samples of these certificates within the time constraints of this Extended Response.

The 1991 Fujian Birth Planning Regulations are electronically attached to this Extended Response. For additional Fujian regulations and directives, please consult the attachments to CHN30778.E of 5 January 1999, available at Regional Documentation Centres.

This Extended Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Extended Response is not, and does not purport to be, conclusive as to the merit of any particular claim to refugee status or asylum.

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Attachment

Fujian Birth Planning Regulations. 28 June 1991. Translated by Dr. Edwin Winckler.

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