



Refugee Documentation Centre (Ireland)
LEGAL AID BOARD

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What is the minimum age for getting married in China? Do women in China undergo periodic pregnancy tests? Are there fines for married women who are pregnant below the minimum marriage age? What are the consequences of not being able to pay any fines?

A report by the *United States Department of State* under the heading 'Women' states:

"In order to delay childbearing, the law sets the minimum marriage age for women at 20 years and for men at 22 years. It continued to be illegal in almost all provinces for a single woman to have a child, with fines levied for violations. The law states that family-planning bureaus will conduct pregnancy tests on married women and provide them with unspecified "follow-up" services. Some provinces fined women who did not undergo periodic pregnancy tests." (United States Department of State (8 April 2011) *2010 Human Rights Report: China (includes Tibet, Hong Kong, and Macau)*)

This report also states:

"The 2002 National Population and Family-planning Law standardized the implementation of the government's birth limitation policies; however, enforcement varied significantly. The law grants married couples the right to have one birth and allows eligible couples to apply for permission to have a second child if they meet conditions stipulated in local and provincial regulations. The one-child limit was more strictly applied in urban areas, where only couples meeting certain conditions are permitted to have a second child (e.g., if each of the would-be parents are themselves an only child). In most rural areas, the policy was more relaxed, with couples permitted to have a second child in cases where the first child was a girl. Ethnic minorities are subject to less stringent rules. Countrywide, 35 percent of families fell under the one-child restrictions, and more than 60 percent of families were eligible to have a second child, either outright or if they met certain criteria. The remaining 5 percent were eligible to have more than two children. According to government statistics, the average fertility rate for women nationwide was 1.8 (representing the number of children each woman of child-bearing age has); in the country's most populous and prosperous city, Shanghai, the fertility rate was 0.8.

While all provinces eliminated the birth-approval process for a first child, thus allowing parents to choose when to start having children, some provinces continued to regulate the period of time required between births. This adjustment signaled an end to the former family-planning quota system, in which some couples previously had to delay pregnancies if the allotted birth quota for that locality had already been exceeded.

The law requires each person in a couple that has an unapproved child to pay a "social compensation fee," which can reach 10 times a person's annual disposable income. The law grants preferential treatment to couples who abide by the birth limits." (ibid)

The Marriage Law of the *People's Republic of China* under the heading 'Article 5' states:

"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 shall be encouraged."
(People's Republic of China (1 January 1981) *Marriage Law of the People's Republic of China*)

A response by the *Australian Refugee Review Tribunal* states:

"Article 6 of the Marriage Law of the People's Republic of China states:

Article 6 No marriage may be contracted before the man has reached 22 years of age and the woman 20 years of age. Late marriage and late childbirth shall be encouraged.

If the father was under 22 years old at the birth of the first child, the birth is considered to be unapproved under Chinese law and the couple subject to penalty as per Article 39 of the Fujian regulations which reads:

Anyone who violates this Regulation by one of the acts listed below shall be ordered to pay the corresponding number of times of the average annual disposable income of the urban residents or the net average annual income of the rural peasants of the county in the previous year when the child is born in violation of this regulation as social compensation fee by family planning administrative department of the county or by township people's government or urban neighbourhood office appointed by such administrative department:

(1)A social compensation of zero point six to one time shall be imposed on those who give birth to a child ahead of the schedule." (Australian Refugee Review Tribunal (25 February 2011) *China – CHN38129 – Fujian Province – Family planning – Social compensation fees – Unmarried couples – Underage fathers – Children born overseas – Passports*)

A report by *Freedom House* under the heading 'Political Rights and Civil Liberties' states:

"China's policy of restricting population growth remains in place. In urban areas, only one child per couple is permitted, while many rural families are limited to two children. Although compulsory abortion and sterilization by local officials are less common than in the past, they still occur fairly frequently. According to the Congressional-Executive Commission on China, regulations in 18 of 31 provincial-level administrative units explicitly endorse mandatory abortions as an instrument for enforcing population-control policies. Officials who fail to meet birth and sterilization quotas risk disciplinary action, and relatives of unsterilized women or couples with unapproved pregnancies were subjected to high fines, job dismissal, and detention in special "study sessions" in 2010. These controls and a cultural preference for sons have led to sex-selective abortion and

a general shortage of females, exacerbating the problem of human trafficking.”
(Freedom House (17 June 2011) *Freedom in the World 2011 – China*)

A report by the *United Kingdom Border Agency* under the heading ‘Forced abortion/sterilisation under ‘one child policy’ states:

“Penalties for violating family planning laws are strict, leaving many women little choice but to abort pregnancies. In the case of families that already had two children, one parent was often pressured to undergo sterilisation. (28.27 and 28.28). Reports of physical coercion by officials trying to meet birth targets continued through 2010. Freedom House reports that compulsory sterilisation and forced abortion by local officials have become less common, but still occur „fairly frequently“.

Although the law standardises implementation of the policy, enforcement varies significantly. The „social compensation fee“ may be financially overwhelming for some couples, i.e. up to 10 times a person’s annual disposable income. The law grants preferential treatment to couples who abide by the birth limits. Although the law states that officials should not violate citizens’ rights, these rights, as well as penalties for violating them, are not clearly defined. The law requires family planning officials to obtain court approvals before taking „forcible“, action, such as detaining family members or confiscating and destroying property of families who refuse to pay social compensation fees but this is not always followed in practice. It is not unknown for a second infant to be „detained“ for weeks, until the mother has signed a consent form for sterilisation; this is not general practice, but is more common in some provinces than others. Mandatory abortion (sometimes referred to as „remedial measures“ in government reports) is explicitly endorsed as an official policy within the regulations of 18 of China’s 31 provincial-led jurisdictions. In 2010, it was found that local officials continue to coerce women with unauthorised pregnancies to undergo abortions in both urban and rural areas across China.” (Home Office UK Border Agency (11 October 2011) *Operational Guidance Note China – pg.17*)

The report also states:

“The law states that family planning bureaus will conduct pregnancy tests on married women and provide them with unspecified „follow-up“ services. Some provinces fined women who did not undergo periodic pregnancy tests.” (ibid) (pg.18)

References:

Australian Refugee Review Tribunal (25 February 2011) *China – CHN38129 – Fujian Province – Family planning – Social compensation fees – Unmarried couples – Underage fathers – Children born overseas – Passports*
http://www.ecoi.net/file_upload/2107_1314257881_chn38129.pdf
(Accessed 13 October 2011)

Freedom House (17 June 2011) *Freedom in the World 2011 – China*

<http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=printdoc&docid=4dfb658533>
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People's Republic of China (1 January 1981) *Marriage Law of the People's Republic of China*
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<http://www.state.gov/g/drl/rls/hrrpt/2010/eap/154382.htm>
(Accessed 13 October 2011)

This response was prepared after researching publicly accessible information currently available to the Refugee Documentation Centre within time constraints. This response is not and does not purport to be conclusive as to the merit of any particular claim to refugee status or asylum. Please read in full all documents referred to.

Sources Consulted:

Amnesty International
Australian Refugee Review Tribunal
Electronic Immigration Network
European Country of Origin Information Network
Human Rights Watch
Immigration and Refugee Board of Canada
Lexis Nexis
UNHCR Refworld
United Kingdom Border Agency
UN Committee on the Elimination of Discrimination Against Women (CEDAW)
United States Department of State