Questions
1. Please advise about the implementation of the family planning policy (FPP) in Henan and how strictly the FPP is enforced.

RESPONSE

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Executive Summary
Research Response CHN15897, of 8 May 2003, refers to the Henan Family Planning Rules and Regulations (approved by the 15th meeting of the seventh Henan Provincial People’s Congress Standing Committee on 12th April 1990) as the most recent regulations on family planning policy that could be located at the time. A survey of the information presently available indicates that new regulations were instituted in Henan in 2002. Sources indicate that the Henan 2002 family planning regulations were based on a national law, The Population and Family Planning Law of the People’s Republic of China, which came into effect on 1 September 2002 and which is supplied as Attachment 4. Sources indicate that this national law was modified for implementation in Henan but a document detailing the 2002 Henan family planning law, in its entirety, could not be located. Nonetheless, references to some of the articles of Henan’s 2002 family planning regulations were found and, according to the Research Directorate of the Immigration and Refugee Board of Canada, “Article 17 of the Henan Province Population and Family Planning Regulations adopted in 2002 stipulates that a couple may apply to have a second child if, among other things, ‘[b]oth spouses are returned overseas Chinese or former residents of Hong Kong, Macau or Taiwan who have relocated to the mainland, with only one child accompanying them’” (for the most recent previously completed country research on family planning in Henan province, see; RRT Country Research 2003, Research Response CHN15897, 8 May – Attachment 1; for the 1990 Henan family planning regulations, see: ‘Henan Family Planning Rules and Regulations’

No information could be located on the manner in which family planning policy is actually implemented in the specific locale of Henan’s Luoyang city, though some information was located on the implementation of family planning policy across China, and in Henan province, generally. An overview of the available country information follows below. The information appears, for the most part, in reverse chronological order of publication.

**Source Materials**

The US Department of State’s *Country Reports on Human Rights Practices for 2004 – China* provides the following information on the relationship between the national law and its implementation at the local level:

The Population and Family Planning Law, the country’s first formal law on the subject, entered into force in 2002. The National Population and Family Planning Commission (NPFPC) enforces the law and formulates and implements policies with assistance from the China Family Planning Association, which had 1 million branches nationwide. The law is intended to standardize the implementation of the Government’s birth limitation policies; however, enforcement continued to vary from place to place. The law grants married couples the right to have one child and allows eligible couples to apply for permission to have a second child if they meet conditions stipulated in local and provincial regulations. Many provincial regulations require women to wait 4 years or more after their first birth before making such an application. According to the UN Population Fund (UNFPA), the spacing requirement was removed in 5 and relaxed in 10 of the 30 counties across 30 provinces participating in UNFPA’s “Country Program V.” The NPFPC reported that the spacing requirement was removed in the provincial regulations of Hainan, Jilin, and Shanghai, and UNFPA reported that the requirement was relaxed by 15 other provincial-level governments.

The law requires counties to use specific measures to limit the total number of births in each county. Both the Constitution and the family planning law further require couples to employ birth control measures. According to a September 2002 UN survey, the percentage of women who select their own birth control method grew from 53 percent in 1998 to 83 percent in UNFPA-assisted counties in 2000. The law requires couples who have an unapproved child to pay a “social compensation fee,” which sometimes reached 10 times a person’s annual income, and grants preferential treatment to couples who abide by the birth limits. Officials often strongly encouraged women with multiple children to undergo sterilization, such as tubal ligation, according to multiple reports. Although the law states that officials should not violate citizens’ rights, neither those rights nor the penalties for violating them are defined.
The law provides significant and detailed sanctions for officials who help persons evade the birth limitations.

The law delegates to the provinces the responsibility for drafting implementing regulations, including establishing a scale for assessment of social compensation fees. The National Population and Family Planning Law requires family planning officials to obtain court approval for taking “forcible” action, such as confiscation of property, against families that refuse to pay social compensation fees.

The one-child limit was more strictly applied in the cities, where only couples meeting certain conditions (e.g., both parents are only children) were permitted to have a second child. In most rural areas (including towns of under 200,000 persons), where approximately two-thirds of citizens lived, the policy was more relaxed, generally allowing couples to have a second child if the first was a girl or disabled. Local officials, caught between pressures from superiors to show declining birth rates, and from local citizens to allow them to have more than one child, frequently made false reports. Ethnic minorities, such as Muslim Uighurs and Tibetans, were subject to much less stringent population controls (see Tibet Addendum). In remote areas, limits often were not enforced, except on government employees and Party members (US Department of State 2005, *Country Reports on Human Rights Practices for 2004 – China*, ‘Section f. Arbitrary Interference With Privacy, Family, Home, Correspondence’, 28 February http://www.state.gov/g/drl/rls/hrrpt/2004/41640.htm – Accessed February 2004 – Attachment 3).

On 24 October 2005, Calcutta’s *The Telegraph* reported on the arrest of “Chen Guangcheng, 34, a blind social activist from Linyi town in eastern Shandong”, who had been campaigning against what he claimed was a “spate of government-sanctioned but illegal abortions of women carrying their second child”. Gao is reported to have said: “‘One of my clients is an unmarried woman from (central Henan province) who was aborted at seven months because it seems the authorities took it upon themselves to decide a single woman had no right to have a baby’”. *The Washington Post* has recently been reported that the Chinese government will formally prosecute Chen Guangcheng; according to this report, “Chen’s trial …represents a major setback for reformers in the government who have been trying to soften the one-child policy and eliminate the abuses long associated with it” (Pocha, J.S. 2005, ‘Forced abortions in China’, *Telegraph*, 24 October http://www.telegraphindia.com/1051024/asp/foreign/story_5392215.asp# – Accessed 17 July 2006 – Attachment 6; Pan, P.P. 2006, ‘Chinese to Prosecute Peasant Who Resisted One-Child Policy’, *Washington Post*, 8 July http://www.washingtonpost.com/wp-dyn/content/article/2006/07/07/AR2006070701510_pf.html – Accessed 17 July 2006 – Attachment 7).

On 6 September 2005, the Research Directorate of the Immigration and Refugee Board of Canada provided the following advice on Henan:

> The Henan Province Population and Family Planning Regulations state that if a woman gets pregnant outside of wedlock, “necessary remedial measures shall be taken and the pregnancy terminated under the guidance of family planning technical service workers” (PRC 30 Nov. 2002, Art. 25) (Immigration and Refugee Board of Canada 2005, *China: treatment of pregnant, unmarried women by state authorities, particularly in Guangdong and Fujian; whether unmarried women are obliged to undergo pregnancy tests by family planning officials* (2002-2005), 6 September – Attachment 8).

On 25 August 2005, the Research Directorate of the Immigration and Refugee Board of Canada provided the following advice on Henan:
Likewise, Article 17 of the Henan Province Population and Family Planning Regulations adopted in 2002 stipulates that a couple may apply to have a second child if, among other things, “[b]oth spouses are returned overseas Chinese or former residents of Hong Kong, Macau or Taiwan who have relocated to the mainland, with only one child accompanying them” (PRC 30 Nov. 2002). Article 15, however, notes that “[t]he birth of a third child is prohibited” in Henan Province (ibid.). The penalty for violating the provisions in Article 17 would be: “a social maintenance fee … imposed and collected from each spouse as follows: For urban residents, the fee shall be triple the per-capita disposable income of urban residents in that locality for the previous year; for rural residents, the fine shall be triple the per-capita net income of rural residents in that locality for the previous year” (ibid., Art. 38).

A 2005 US Congressional-Executive Commission report on China makes reference to two reported incidents in Henan province as evidence of the report’s claim that “[p]hysical coercion against women by local officials seeking to meet population planning goals has continued”. The details of the cited reports follow below but their contents could not be located in the sources consulted:

‘Henan Family Planning Official Brutalizes Local Residents,’ China Information Center (Online), 15 July 05; … ‘Henan Woman Seized on the Street and Coerced to Have an Abortion,’ China Information Center (Online), 18 July 05 (US Congressional-Executive Commission on China 2005, US Congressional-Executive Commission report on China for 2005, 11 October

On 3 June 2005, China’s Xinhua News Agency reported that high rates of participation had been recorded in Henan province’s family planning incentive schemes. The report also refers to a “new family planning policy” which rewards “rural couples with only one child or two daughters”. Some extracts follow:

According to the new family planning policy, rural couples with only one child or two daughters become eligible for a cash reward of no less than 600 yuan each year when they turn 60 years old.

…Li Ping, director of the educational, scientific and cultural department of the Ministry of Finance (MOF), said the central government has decided to double the fiscal budget this year to raise the total cash rewards to 400 million yuan (48 million dollars).

…According to Liu Jiuxiang, vice head of Bo’ai County in Henan Province, the number of people applying for the “one-child certificates” has doubled to more than 11,000 since the project was launched last year (‘China rewards rural couples practicing family planning with special allowances’ 2005, Xinhua News Agency, 3 June – Attachment 11).

On 6 January 2005, China’s Xinhua News Agency reported the claim of the “provincial statistics bureau” that “central China’s Henan Province – the most populous province of the country” – had “seen a decrease of more than six million births in the past decade” “[b]ecause of successful implementation of family planning policy” (“Population growth slows down in central China province’ 2005, Xinhua News Agency, 6 January – Attachment 12).

families it was permissible to have multiple children and then later imposed stiff fines and forced abortions, according to farmers and local journalists”. The incident is referred to in order to illustrate the manner in which the “[e]nforcement [of current family-planning policies] is prone to abuse by local officials, who often use birth-related fines to raise money”. According to this report, such problems have contributed to China’s “weighing an overhaul of its controversial family-planning policies” (the principal reason for this overhaul being that the government is “worried that the rule limiting many couples to one child has become socially and economically counterproductive”). According to this report, “[l]arge segments of the population are already allowed to have two children” and “[m]any rural couples may have a second, especially if their first is a girl; a husband and wife who each are the products of single-children families also may have two” (Hutzler, C. & Chang, L.T. 2004, ‘China Weighs Easing Its Harsh “One Child” Rule – Family-Planning Policies Have Long Drawn Flak; Demographic Issues Loom’, Wall Street Journal, 4 October – Attachment 13).

In September 2003, the Oxford University based Oxford Analytica group made the following observations of family planning policy implementation in China:

Policy relaxation. Universal provision has long existed for couples with a disabled child to have a second child. In a majority of provinces rural couples were also permitted to have a second child if their first-born was female. The Population and Family Planning Law enacted in September 2002 endorsed and extended such practices, and sought to eliminate ad hoc local regulations governing birth control and family planning in favour of the establishment of a formal legal framework for the implementation of national population-control policies.

In particular, it signalled a more lenient official attitude towards family planning by allowing couples that meet a wider range of specified conditions to have a second child. However, this did not imply the wholesale abandonment of the one-child principle and officials have continued to warn against expectations of legitimising extra births through monetary payments (in the form of fines) (‘Population a problem despite slower growth’ 2003, Asia Pacific Alliance website, source: Oxford Analytica (22 September 2003), September http://www.asiapacificalliance.org/SITE_Default/SITE_Population_and_Reproductive_Health/news/September_2003.asp – Accessed 17 July 2006 – Attachment 14).

In September 2002 China Daily reported on the new national Population and Family Planning Law, and reported on amendments made to the law in Henan province:

China’s first Population and Family Planning Law, which formally came into effect Sunday, has been applauded as humanitarian as it gives prominence to the rights and interests of citizens.

...The law particularly underlines preferential favor for households abiding by the state family planning policies. It also strictly prohibits the abuse of authority, illegal administration, coercive imperatives and other practices infringing on the interests of citizens during family planning.

Since the state law only makes stipulations regarding China’s overall situation, the drafting of specific administrative and service systems and measures at grass-roots level is delegated to local legislative departments.

With a population of 90 million, central China’s Henan province, the country’s most populous, has made a second amendment to the local population and family planning regulations according to the state law.
“While fixing the current population policies, the new legislation emphasizes protecting the legal rights and interests of citizens as well as strengthening related services,” said one of the officials amending the regulations.

He added that the new regulations were more endowed with humanitarian connotations.

…but in rural areas, contracted farmlands allocated to parents with only one child will be doubled. Rural households complying with the family planning policies can also get preferential treatment in the distribution of collective income and welfare.

…Areas all over the country are stepping up the formulation or amendment of local population and family planning regulations, in which strict, compelling words like “forbidden” and “must” almost disappear or appear much less.

Many provinces are simplifying the complex application procedures for having a child and legally allowing parents in certain special circumstances to have more than one child (‘Family planning law takes effect’ 2002, China Daily website, 2 September http://chinadaily.com.cn/en/doc/2002-09/02/content_134431.htm – Accessed 17 July 2006 – Attachment 5).
List of Sources Consulted

Internet Sources:

Government Information & Reports
US Department of State website http://www.state.gov
US Embassy, Beijing, China website http://beijing.usembassy-china.org.cn/

United Nations (UN)
UN Economic and Social Commission for Asia and the Pacific (UNESCAP) website http://www.unescap.org
UN Population Fund (UNPF) website http://www.unfpa.org/

Non-Government Organisations
Asia Pacific Alliance (APA) website http://www.asiapacificalliance.org

International News & Politics
BBC News website http://news.bbc.co.uk
China Daily website http://chinadaily.com.cn
Oxford Analytica website http://www.oxan.com/
The Telegraph (Calcutta) website http://www.telegraphindia.com
The Washington Post website http://www.washingtonpost.com

Search Engines
StaggerNation website’s Google API Proximity search engine http://www.staggernation.com/cgi-bin/gaps.cgi

Databases:
FACTIVA (news database)
BACIS (DIMA Country Information database)
REFINFO (IRBDC (Canada) Country Information database)
ISYS (RRT Country Research database, including Amnesty International, Human Rights Watch, US Department of State Reports)
RRT Library Catalogue
List of Attachments


8. Immigration and Refugee Board of Canada 2005, *China: treatment of pregnant, unmarried women by state authorities, particularly in Guangdong and Fujian; whether unmarried women are obliged to undergo pregnancy tests by family planning officials* (2002-2005), 6 September. (REFINFO)


11. ‘China rewards rural couples practicing family planning with special allowances’ 2005, *Xinhua News Agency*, 3 June. (FACTIVA)
