

Refugee Review Tribunal

AUSTRALIA

RRT RESEARCH RESPONSE

Research Response Number: CHN17471
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This response was prepared by the Country Research Section of the Refugee Review Tribunal (RRT) after researching publicly accessible information currently available to the RRT 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.

Questions

I would like to get up-to-date information on the application of family planning regulations in Shandong province, firstly in relation to the impact on parents who have breached the family planning regulations and secondly in relation to the impact on the children.

For example, in relation to the parents:

1. What are the penalties imposed on parents for having out-of-plan children?
2. Are these penalties imposed in practice?
3. Is there any procedure for having them waived / reduced?
4. Would the fact that the children have been born outside of China make any difference to action taken against the parents? (NB. These parents did not come to Australia as students).

In relation to the child:

5. Could she get registration?
6. If so, would she suffer any penalty for having been born out-of-plan?
7. If she was considered a "black child", what would be the impact of being unregistered on her access to education, health care and so forth?
8. Any other information of relevance would be appreciated.

List of Sources Consulted

DFAT

Internet Sources:

Google search engine

UNHCR *REFWORLD* UNHCR Refugee Information Online

Databases:

Public	<i>FACTIVA</i>	Reuters Business Briefing
DIMIA	<i>BACIS</i>	Country Information
	<i>REFINFO</i>	IRBDC Research Responses (Canada)
RRT	<i>ISYS</i>	RRT Country Research database, including

RESPONSE

I would like to get up-to-date information on the application of family planning regulations in Shandong province, firstly in relation to the impact on parents who have breached the regulations and secondly in relation to the impact on the children.

For example, in relation to the parents:

- 1. What are the penalties imposed on parents for having out-of-plan children?**
- 2. Are these penalties imposed in practice?**
- 3. Is there any procedure for having them waived / reduced?**
- 4. Would the fact that the children have been born outside of China make any difference to action taken against the parents? (NB. These parents did not come to Australia as students).**

The questions were sent to DFAT on 9 August 2005 (RRT Country Research 2005, Email to DFAT 'RRT Country Information Request – China: CHN17471 – Shandong Family Planning Regulations – Jinan City', 9 August – Attachment 2). DFAT responded on 6 September 2005 and their response is attached (DFAT 2005, DFAT Report 404 'RRT Information Request: CHN17471', 6 September – Attachment 1). DFAT state:

The following information is in response to an RRT request regarding application of family planning regulations in Shandong province.

A. Chapter 6 of Shandong Province Family Planning Regulations covers penalties ("compensation fees") for out-of-plan births (see http://www.cpirc.org.cn/zcfg/zcfg_detail.asp?id=1699 in Chinese only). For urban residents, the compensation fee is half to ten times the previous years average per capita disposable income for urban residents in the province or half to ten times the person's actual income in the previous year, whichever is higher. For rural residents, the fee is half to ten times the previous years average per capita net income for rural residents of the province or half to ten times the person's actual income in the previous year, whichever is higher. The size of the penalty depends on the nature of the case and severity of violation of the regulations.

B. The Shandong Family Planning Commission informed us that it strictly enforces family planning regulations in Shandong and it had no practice of waiving or reducing the compensation fee. But if the families are under a certain income threshold, the compensation fee can be postponed or paid by instalment. We have not been able to find any evidence of authorities waiving these penalties, but this does not rule out the possibility of waiver or reduction.

C. Articles 21 to 24 of the regulations stipulate 14 circumstances under which a family can have a second child, including if the husband and wife are both the only child in their respective families, if the first child of the family is diagnosed as disabled or if one of the couple has worked in the mining or ocean fishing industry for five years and is still working in the industry and the couple's first child is a girl. However, qualified couples must apply for a pre-birth certificate before the woman

becomes pregnant with the second child. There are no provisions dealing with waiver or reduction of the penalty.

D. The Shandong Family Planning Commission told us that the National Family Planning Commission (NFPC) had separate regulations regarding Chinese nationals resident in other countries. The NFPC told us it had circulated an "internal regulation" (i.e. not for public distribution) to Chinese Embassies saying that students studying overseas were allowed a second child, but would have to pay penalties (at the level set by the province) for a third and any subsequent children. Regulations covering the application of the national Population and Family Planning Law to Chinese citizens who were permanent residents of other countries or were working overseas were yet to be finalised.

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H. This information accords with information we provided in 2004 regarding family planning regulations in Fujian province (BJ550117L).

The *Shandong Province Family Planning Regulations 2002* (in Chinese) are attached for reference (Shandong government 2002, *Shandong Province Family Planning Regulations 2002*, 28 September (in Chinese) from China Popin (Population Information) website http://www.cpirc.org.cn/zcfg/zcfg_detail.asp?id=1699 – Accessed 7 September 2005 – Attachment 3). No English copy of these regulations was found in the sources consulted, but Chinese speakers on staff may be able to assist with these if necessary.

A recent report from a dissident organisation (China Information Center¹ (CIC) 2005, 'Hundreds of women in Shandong Province forced to have abortions', 13 May - <http://www.laogai.org/news/newsdetail.php?id=2319> Accessed 7 September 2005 – Attachment 4) claims:

Township authorities have forced hundreds of women in Chewang Township, Cangshan County, Shandong Province to undergo abortions since March of this year.

It also gives this information on penalties:

For each second birth, couples were required to pay the government 4,500-6,000 yuan as a "birth guarantee fee".

In relation to the child:

5. Could she get registration?

6. If so, would she suffer any penalty for having been born out-of-plan?

7. If she was considered a "black child", what would be the impact of being unregistered on her access to education, health care and so forth?

¹ According to their website at <http://www.cicus.org/aboutus.html> "The China Information Center (CIC) is a nonprofit organization that engages in research projects on China's politics, economy, social and cultural development. CIC's goal is to bring balanced and credible information about China, Tibet Initiated by Harry Wu (Wu Hongda), Executive Director of The Laogai Research Foundation, in February 2002, CIC is located in Northern Virginia and guided by an editorial board consisting of prominent individuals from Chinese, European, and American academia and journalism."

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.....

E. The child would be able to register for a residence permit ("hukou"), provided her parents paid the compensation fee outlined in paragraph A. The Shandong Family Planning Commission told us that all births must be registered with local public security authorities.

F. The regulations do not prescribe any penalty against children born out-of-plan.

G. China does not have a national medical health insurance system, thus registration is not relevant to accessing health care. We understand unregistered children can attend school in most cases, but may face restrictions on which schools they can attend and must pay higher tuition fees.

H. This information accords with information we provided in 2004 regarding family planning regulations in Fujian province (BJ550117L).

In relation to the question of registration, although in the context of a different province, Professor Jonathan Unger, Professor and Head of the Contemporary China Centre gave advice in 2004 which may be of some use (Unger, Jonathan 2004, E-mail to RRT Country Research: 'Re: Question on treatment of single mothers in Guangzhou', 21 September – Attachment 5). Note that the advice is the consensus of four China specialists (an anthropologist, two sociologists and a political scientist). He has also included an opinion of an urban anthropologist in the US. This advice states:

First, let me provide the consensus opinion of the four of us here at the ANU. I should note that this is our general feeling about urban society and official policy in south China, but none of us specifically knows what has occurred in particular cases in an exact situation like this. Here are your questions and our responses.

1 How strictly is the family planning policy currently enforced in Guangdong province?

In a large city like Guangzhou the family planning policy is quite strictly enforced for residents who hold a Guangzhou registration (hukou). However, what is strictly examined by authorities is how many children a woman and her partner have given birth to. In this case, the child is presumably her first and only child, and thus its birth does not violate the urban one-child policy. The woman therefore would not encounter any trouble in this respect.

In the countryside of Guangdong, unlike Guangzhou city, women who want an extra child in violation of the family planning policy simply go home to their natal village when they become obviously pregnant, and then return with the new born baby. They and their husbands know in advance how much the fine is, and they have saved up for it. They simply pay the fine and the extra child is then registered locally: this has become almost like a "birth tax". I know about this personally: families in the

countryside near Guangzhou have told me they themselves and many of their neighbours have done this.

It is possible, of course, though not necessarily likely, that an official in the city of Guangzhou might find some minor regulation or other to object to properly registering the child with a Guangzhou hukou once the woman returns. In such circumstances, the purpose in China today is normally to extract some revenue from the woman. If so, she would need to pay a fine (fee) amounting to as much as several hundred Australian dollars to get her child properly registered.

8. Any other information of relevance would be appreciated.

The following documents give information on Chinese family planning policies in recent years:

US Department of State 2005, 'Arbitrary Interference With Privacy, Family, Home, Correspondence' in *Country Reports on Human Rights Practices for 2004 – China (includes Tibet, Hong Kong, and Macau)*, 28 February – Attachment 6).

Immigration and Refugee Board of Canada 2005, CHN43165.E 'China: Any reports of forced abortions and forced sterilization within the regions of Guangzhou (Guangdong Province) and Fuzhou (Fujian Province) covered by the urban hukou; any reports of an easing or a tightening of family planning regulations since 2002 (2002-2005)', 21 February – Attachment 7)

Immigration and Refugee Board of Canada 2003, CHN41712.E 'China: Information on the Population and Family Planning Law, its administration and implementation (2002-2003)', 17 September – Attachment 8)

Immigration and Refugee Board of Canada 2003, CHN40685.E 'China: Update on the one-child policy and family planning regulations (2002-2003)', 4 March – Attachment 9)

List of Attachments

1. DFAT 2005, DFAT Report 404 'RRT Information Request: CHN17471', 6 September
2. RRT Country Research 2005, Email to DFAT 'RRT Country Information Request – China: CHN17471 – Shandong Family Planning Regulations – Jinan City', 9 August
3. Shandong government 2002, *Shandong Province Family Planning Regulations 2002*, 28 September (in Chinese) from http://www.cpirc.org.cn/zcfg/zcfg_detail.asp?id=1699 – Accessed 7 September 2005
4. China Information Center (CIC) 2005, 'Hundreds of women in Shandong Province forced to have abortions', 13 May - <http://www.laogai.org/news/newsdetail.php?id=2319> Accessed 7 September 2005
5. Unger, Jonathan 2004, E-mail to RRT Country Research: 'Re: Question on treatment of single mothers in Guangzhou', 21 September

6. US Department of State 2005, 'Arbitrary Interference With Privacy, Family, Home, Correspondence' in *Country Reports on Human Rights Practices for 2004 – China (includes Tibet, Hong Kong, and Macau)*, 28 February
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8. Immigration and Refugee Board of Canada 2003, CHN41712.E 'China: Information on the Population and Family Planning Law, its administration and implementation (2002-2003)', 17 September (REFINFO)
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