

Refugee Review Tribunal

AUSTRALIA

RRT RESEARCH RESPONSE

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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

1. Do you have an English language version of the Family Planning rules applicable in Guangdong Province for the period before the introduction of the new laws of 1998?
2. I am particularly interested in fines and punishments applicable to parents with rural hukou for extra children - in this case, three children in toto.
3. Any idea how long punishments can last? I mean, if you haven't paid the fine off in seven or eight years, will the authorities still pursue you?

List of Sources Consulted

Internet Sources:

Google search engine

UNHCR *REFWORLD* UNHCR Refugee Information Online

National Population and Family Planning Commission of China

<http://www.npfpc.gov.cn/en/index.htm>

United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP)

<http://www.unescap.org/>

Databases:

Public *FACTIVA*

DIMIA *BACIS*

REFINFO

RRT *ISYS*

Reuters Business Briefing

Country Information

IRBDC Research Responses (Canada)

RRT Country Research database, including

Amnesty International, Human Rights Watch,

US Department of State *Country Reports on Human Rights Practices*.

RRT Library *FIRST*

RRT Library Catalogue

Greenhalgh, Susan and Winkler, Edwin A, 2001, *Chinese State Birth Planning in the 1990s and Beyond*, Resource Information Center, Immigration and Naturalization Service (INS), US Department of Justice, Perspective Series, September

RESPONSE

1. Do you have an English language version of the rules applicable in Guangdong Province for the period before the introduction of the new laws of 1998?

According to an English language version of Guangdong's family planning regulations approved in September 1998, previous family planning regulations were revised in May 1986, November 1992 and December 1997 (5th Standing Committee Meeting of the 9th Guangdong Province National People's Congress 1998, *Guangdong Province Revised Family Planning Regulations*, 18 September, (Effective 18 October 1998), NAATI translation arranged by DIMIA – Attachment 1).

Attached are English language versions of family planning regulations for Guangdong province approved in 1992 and 1986:

- 1992:

29th Session of the Standing Committee of the Seventh Guangdong People's Congress 1992, *The Guangdong Family Planning Regulation (An unofficial translation provided to the Refugee Review Tribunal by Ms Penny Kane)*, 28 November – Attachment 2;

- 1986:

20th Session of the Standing Committee of the Sixth People's Congress of Guangdong Province 1986, *Family Planning Regulations of Guangdong Province*, 17 May, (Proclaimed 1 June 1986), DIEA Translation Service Centre Canberra – Attachment 3.

The regulations of December 1997 mentioned above were not found in the sources consulted. However, the attached DFAT advice of September 1997 refers to Guangdong's family planning campaign of that time (DIMIA Country Information Service 1997, *Country Information Report No. 490/97 – China: Guangdong: Family Planning Campaign Continues* (sourced from DFAT advice of 29 September 1997), 9 October – Attachment 4).

2. I am particularly interested in fines and punishments applicable to parents with rural hukou for extra children - in this case, three children in toto.

Chapter VI of the 1992 regulations refers to "Limitation and Punishment" for breaking the regulations; Chapter 4 of the 1986 regulations refers to "Restrictions and Penalties" (29th Session of the Standing Committee of the Seventh Guangdong People's Congress 1992, *The Guangdong Family Planning Regulation (An unofficial translation provided to the Refugee Review Tribunal by Ms Penny Kane)*, 28 November – Attachment 2); (20th Session of the Standing Committee of the Sixth People's Congress of Guangdong Province 1986, *Family Planning Regulations of Guangdong Province*, 17 May, (Proclaimed 1 June 1986), DIEA Translation Service Centre Canberra – Attachment 3).

A record of conversation with the RRT of 15 August 1994, with Penny Kane, “a demographer and consultant on demography, women’s health, population and family planning matters”, states:

I asked Ms Kane whether she would be able to comment on family planning in Guangzhou, particularly in relation to forcible sterilisation and penalties for breaching the one child policy. Ms Kane replied that forcible sterilisation was not policy and should not be being practiced [sic] in Guangdong. She added that Guangdong was one of the pieces in China where the family planning regulations had been least enforced. She said she had been in China a few months ago and average family size in Guangdong is still well above the national average, with many families of three rather than two children being evident.

She added that the new Guangdong Provincial Regulations relating to Family Planning 1993 [issued in November 1992] don't any longer insist on the idea of a single child family, they say it is a matter for local negotiation. She said that the old Guangdong regulations, of which no one took that much notice, said that the 3rd birth and 2nd unplanned child were strictly forbidden for the rural population and that the 4th birth and 3rd unplanned child for minorities were strictly forbidden. These clauses have been deleted from the 1993 regulations. The 1993 regulations state that unplanned births are strictly forbidden. According to Ms Kane, this is a return to the policy prior to the introduction of the one-child policy in the early 1980s. It is a return to the policy whereby people negotiated with their local work unit or township if they wanted to have a 2nd or 3rd child. Ms Kane felt this change in wording was extremely significant. However, Ms Kane added that in the new regulations the penalties for unplanned children (rather than the 2nd unplanned child or 3rd birth) had increased and been extended for those who lived in towns (RRT Country Research 1994, *Record of Conversation at 1.55pm on 15 August 1994 Between Ms Penny Kane and RRT*, 16 August – Attachment 5).

In 1997, before the 1998 Guangdong regulations, DFAT advised:

Violations of family planning policy are regarded as civil violations not criminal violations. Those caught in breach of the regulations are fined and may lose subsidised housing and employment, if they are engaged by state-run enterprises. Fines are levied on a sliding scale of between RMB100 - RMB7000 and more depending on the financial circumstances of the family. We believe that people violating family planning regulations are not routinely denied passports or travel documents. Post's PMO recalls a number of instances where families with up to four children have presented applications to go to Australia (DIMIA Country Information Service 1997, *Country Information Report No. 490/97 – China: Guangdong: Family Planning Campaign Continues* (sourced from DFAT advice of 29 September 1997), 9 October – Attachment 4);

and

In rural areas of Guangdong families are allowed two children. The family must apply for permission for a second child and must observe a period of four years from the birth of the first child, before applying to give birth to a second. In its 1997 family planning campaign the provincial government has stressed that this interval be strictly observed. Guangdong's total fertility rate is pushed above the national average because a high proportion of rural residents have two children or more. The rural population in Guangdong is 61 per cent of the provincial total (DIMIA Country Information Service 1997, *Country Information Report No. 566/97 – China:*

Guangdong: Family Planning Policy and Implementation (sourced from DFAT advice of 11 November 1997), 5 December - Attachment 6).

According to sources cited in a UK Home Office report referring to Guangdong:

Guangdong Province

2.46. The province is one of the four target provinces identified in the early 1990s campaigns, and distinguished by being the one furthest away from the Chinese heartland.[2m] It is one of the main subjects of "success" propaganda in the Chinese press, as the province represents a major north-south China integration challenge for the central authorities. It is an area of great concern to the PRC authorities as the province has boomed economically but lagged behind in terms of policy adherence, i.e. representing an uncontrolled growth, as opposed to the model of Shanghai, which combines economic growth with impeccable policy adherence. [4wi]

2.47. It was a target province in the 1993 campaigns, but the campaigns had relatively effect (sic). [2m] In January 2000, the official Chinese press announced that Guangdong had achieved a growth rate of less than 10 per thousand for the first time, with the total provincial population of 72.7 million at the end of 1999. [2m] It has a relatively low uptake on contraception (of 86.79 percent of couples), according to the 1996 official figures. [2m] (UK Home Office 2002, *Grasp Tightly, Grasp Well: Family Planning Policies – “One Child Policy” (including childcare provisions in China)*, China Extended Bulletin 5/2002, October, paras. 2.46-2.47 – Attachment 7).

Albeit an April 2000 article, Elisabeth Rosenthal writes in *The New York Times*:

In a country best known for its excruciatingly tough one-child policy, large young families today are scattered throughout the countryside. Although, technically, rural families can have only up to two children - and then only if the first child is a girl - families with three, four, five or more children are now the norm in many areas, including this southern coastal region of Guangdong (Rosenthal, Elisabeth 2000, 'Rural Flouting of One-Child Policy Undercuts China's Census', *The New York Times*, 14 April – Attachment 8).

3. Any idea how long punishments can last? I mean, if you haven't paid the fine off in seven or eight years, will the authorities still pursue you?

No information was found on this question in the sources consulted.

Of interest is the attached September 2004 advice from Professor Jonathan Unger, Professor and Head of the Contemporary China Centre, ANU, which cites a senior American anthropologist specialising in contemporary urban Guangzhou society. The advice states:

“Re strictness of enforcement - I suspect that this is an idiosyncratic matter, e.g., what are your local connections, how fierce is the pressure on lower level cadres at this moment, how much do the cadres need the money at this moment?...”(Unger, Jonathan 2004, E-mail to RRT Country Research: 'Re: Question on treatment of single mothers in Guangzhou', 21 September – Attachment 9).

List of Attachments

1 5th Standing Committee Meeting of the 9th Guangdong Province National People's Congress 1998, *Guangdong Province Revised Family Planning Regulations*, 18 September,

(Effective 18 October 1998), NAATI translation arranged by DIMIA (CISNET China CX41799)

2 29th Session of the Standing Committee of the Seventh Guangdong People's Congress 1992, *The Guangdong Family Planning Regulation (An unofficial translation provided to the Refugee Review Tribunal by Ms Penny Kane)*, 28 November (CISNET China CX4354)

3 20th Session of the Standing Committee of the Sixth People's Congress of Guangdong Province 1986, *Family Planning Regulations of Guangdong Province*, 17 May, (Proclaimed 1 June 1986), DIEA Translation Service Centre Canberra (CISNET China CX329)

4 DIMIA Country Information Service 1997, *Country Information Report No. 490/97 – China: Guangdong: Family Planning Campaign Continues* (sourced from DFAT advice of 29 September 1997), 9 October (CISNET China CX26263)

5 RRT Country Research 1994, *Record of Conversation at 1.55pm on 15 August 1994 Between Ms Penny Kane and RRT*, 16 August (CISNET China CX4402)

6 DIMIA Country Information Service 1997, *Country Information Report No. 566/97 – China: Guangdong: Family Planning Policy and Implementation* (sourced from DFAT advice of 11 November 1997), 5 December (CISNET China CX26787)

7 UK Home Office 2002, *Grasp Tightly, Grasp Well: Family Planning Policies – “One Child Policy” (including childcare provisions in China)*, China Extended Bulletin 5/2002, October, paras. 2.46-2.47

8 Rosenthal, Elisabeth 2000, 'Rural Flouting of One-Child Policy Undercuts China's Census', *The New York Times*, 14 April (FACTIVA)

9 Unger, Jonathan 2004, E-mail to RRT Country Research: 'Re: Question on treatment of single mothers in Guangzhou', 21 September