



1. Has the one child policy been relaxed in the Guangdong Province?

The one child policy has not been officially relaxed in Guangdong. The *Population and Family Planning Regulations of the Province of Guangdong*, 2002 (the Regulations) still call for all couples to have only one child, though exceptions are allowed for rural couples whose first child is a girl [Article 19 (g)].¹ Couples who have extra children are likely to be fined [Article 55(a) and (b)].

In 2004, Professor Jonathon Unger at the Australian National University has advised the Tribunal that the one child policy in Guangdong Province has been less rigorously enforced than some other parts of China. As a result, the province has also experienced a higher birth rate over the last ten years as many residents have chosen to have extra children and then to pay the associated fines.² In spite of this traditional leniency, officials have periodically cracked down and publicly advocated heavy fines for out of plan births.

Particular attention is periodically paid to the children of wealthy residents and celebrities who are able to bribe local officials. Zhang Ming'ai, writing for the Chinese information portal, China.org based in Beijing, reported in 2007 that,

[a]ccording to one Guangzhou family planning worker, in some expensive blocks and villas one can now and then see young mothers taking a walk with two or three kids. Most of these families are business owners. They do not fear fines and they neglect birth control, freely giving birth to more than one child. "A poor family hides away when giving birth to more than one child, while the rich man simply pays a fine to have more than one child."³

In 2008, *The China Daily* reported local experts and officials within Guangdong province were increasingly concerned about the burgeoning population.⁴ While enforcement of the policy has experienced periods of tightening, the Chinese Human Rights Defenders reported changes to the Guangdong Family Planning Regulations in November 2008 which came into force in January 2009. The revised regulations:

abolish the requirement that qualified couples wait for more than 4 years after their first child before they are permitted to have the second child.

¹ Standing Committee of the Ninth People's Congress of the Province of Guangdong, 2002, *Population and Family Planning Regulations of the Province of Guangdong: 6th revision (translation by Public Works and Government Services, Canada)*, 25 July 2002 – Attachment 1

² Unger, J., 2004, E-mail to RRT Country Research: 'Re: Question on treatment of single mothers in Guangzhou', 21 September, Attachment 2

³ Zhang Ming'ai, 18 September, <http://www.china.org.cn/english/government/224913.htm> China.org, 2007, Attachment 3

⁴ Qiwen, Liang 2008, 'Population boom poses problems for Guangdong', *China Daily*, 16 April http://www.chinadaily.com.cn/cndy/2008-04/16/content_6619764.htm – Accessed 13 January 2009 – Attachment 4 ; Qiwen, Liang 2008, 'Baby overload in Guangdong', *China Daily*, 16 October http://www.chinadaily.com.cn/cndy/2008-10/16/content_7110365.htm – Accessed 13 January 2009 – Attachment 5

The revised regulations also relax the requirements for couples who are re-married and those whose children are disabled.⁵

The most current translated copy of the Guangdong Family Planning Regulations available to the Tribunal is the 2002 edition, translated by the Canadian Immigration and Refugee Board and provided to the Tribunal in 2005.⁶

2. If the child's parents return to their village what is the likely fee (fine) they will have to pay to obtain a hukou for the child?

The level of the fine (if any) will vary depending on whether the couple have an urban or rural hukou, the couple's income and whether they are able to obtain an exemption. It is sometimes possible to avoid family planning sanctions by bribing local authorities. The amount required also varies from locality to locality.⁷ In 2007, the US Department of State advised that,

[a]necdotal and empirical evidence suggests that self-employed individuals and rural residents can evade birth limitation regulations and authorities with relative ease. Job loss threats mean less to self-employed persons than they do to state enterprise employees. Many self-employed individuals use economic means to skirt restrictions, using methods including bribing authorities before birth and paying fees after the birth. Urban residents can sometimes evade constraints simply by moving to the countryside or staying with relatives in other areas until the child is born, then returning home and paying a fee.⁸

The Population and Family Planning Regulations of the Province of Guangdong, Chapter VII, Article 55 (the Regulations)⁹ set out the legal responsibilities of parents who do not conform to the Regulations. The English version of the regulations available to the Refugee Review Tribunal contains some ambiguities which made estimation of the payable fee range problematic (highlighted in italics).

Urban residents – who have one more child than permitted, a one-time social support fee equal to three to six times *the average per capita disposable income* of urban residents in the local county (city, district) for the preceding year shall be imposed on both husband and wife. Where the actual income of the parties in question exceeds the average per capita disposable income of urban residents in the local county (city, region) (sic) for the preceding year, a further social support fee shall be levied on the excess portion that is at least equal but no more than twice the excess amount.

Rural residents – who have one more child than permitted, a one-time social support fee equal to three to six times the *average per capita net income in the local township*, ethnic township or town in the preceding year shall be imposed on both husband and wife. Where the actual net income of the parties in question in the preceding year exceeds the average per capita net income of the local township... for the preceding year, an

⁵ Chinese Human Rights Defenders, 16- 30 November 2008, http://crd-net.org/Article/Class9/Class10/200812/20081208102144_12246.html - Accessed 15 March 2010, Attachment 6

⁶ Standing Committee of the Ninth People's Congress of the Province of Guangdong, 2002, *Population and Family Planning Regulations of the Province of Guangdong: 6th revision (translation by Public Works and Government Services, Canada)*, 25 July 2002 –Attachment 1

⁷ Department of Foreign Affairs and Trade 2004, *DFAT Report 317 – RRT Information Request: CHN16905*, 2 September. Attachment 7

⁸ US Department of State, 2007, *China Profile of Asylum Claims and Country Conditions*, May, paras. 104-106. Attachment 8

⁹ Standing Committee of the Ninth People's Congress of the Province of Guangdong, 2002, *Population and Family Planning Regulations of the Province of Guangdong: 6th revision (translation by Public Works and Government Services, Canada)*, 25 July 2002 –Attachment 1.

additional social support fee shall be levied on the excess portion that is at least equal to but no more than twice the excess amount.

In February 2009 NewsGD.com, a Guangdong based online news agency, reported the disposable income for urban residents was 19722 RMB and the disposable income for rural residents was 6400.¹⁰

Assuming the actual income of the parents does not exceed the average disposable income:

- The fine for **urban residents** for having their first out of plan child would be between approximately RMB59166 - RMB118332 (AUD\$9466 and AUD\$18932) for each parent.
- The fine for **rural residents** would be between RMB19200 - RMB38400 (AUD\$3072 AUD\$6144) for each parent.

If the couple has difficulty paying the fine, information from the 2009 Country of Origin Information report issued by the UK Home Office states that in Guangdong,

an application to pay in instalments may be submitted in conformity with the law to the body that decided on the levying fee, but the period during which instalments may be paid shall not exceed three years.¹¹

China.org has also reported the implementation of a differentiated penalty regime for 'wealthy couples' in response to the perception that wealthy couples continue to have children without regard for the one child policy or the fine structure.¹²

Exemptions and mitigating circumstances

There are particular circumstances where a second child is permitted under Chapter 3, Article 19 of the Regulations, including:

- where the household registration of both husband and wife is as village committee residents (rural residents), and the couple has one child who is a girl [Article 19(e)]; and where
- both husband and wife are from single parent families.

¹⁰ 'Guangdong to maintain sustainable development in 2009 amid financial crisis', 13 February 2009, NewsGD.com, http://www.newsgd.com/news/guangdong1/content/2009-02/13/content_4913587.htm, Attachment 8

¹¹ USCIS Resource Information Centre, 21 January 2004, *China: Information on Return to China After Having Children Abroad United States*, United States Citizenship and Immigration Services - Accessed 15 March 2010

¹² A demonstration of the formula applicable to "rich violators of the one child policy" was found at www.China.org.cn:

For example, the per capita disposal income of the Tianhe District in Guangzhou last year was about 200,000 yuan. If one private enterprise boss in this district earned 200,000 yuan last year, he would pay a maximum social child-raising fee of: $20,000 \times 6 + (200,000 - 20,000) \times 2 = 480,000$ yuan (about US\$63,763) and a minimum $20,000 \times 3 + (200,000 - 20,000) \times 1 = 240,000$ yuan (US\$31,884).

This is only the fine for one of the couple. The fines for both members of the couple would be much more. And for those who have more than two children the fines will be doubled.

Zhang Ming'ai, 18 September, <http://www.china.org.cn/english/government/224913.htm> China.org, 2007, Attachment 3.

In this example, the fine is charge to each member of the couple based on their income. It is possible that the fee applied to husband and wife separately is only applied where the couple is considered wealthy. No discussion can be found on the threshold income for a couple to be considered wealthy. The Guangdong Regulations state that the "one-time social support fee...shall be imposed on both husband and wife." [Chapter VII, Article 55(a), (b)].

If the couple are registered as rural residents, the fine may be waived or reduced. If a couple's first child is a girl and they waited longer than the prescribed minimum period (four years) may also contribute to a less harsh application of the fine.

Although the Guangdong Province Family Planning Regulations stipulate that the regulations apply to returned overseas Chinese¹³, exemptions to this provision have also been known to exist. DFAT advice provided in December 2009 refers to exemptions where couples may not be required to pay the fine for out-of-plan children, including when the parents were studying overseas for a period of more than a year where the mother became pregnant after she left China.¹⁴

Inconsistencies exist in reports dealing with the implementation of penalties for Chinese who have had children whilst overseas. For example, the United States Citizenship and Immigration Service Resource and Information Centre found,

actual implementation of China's population control policy varies considerably throughout the country, and that some people in southern Fujian and Guangdong provinces had reported no problems in returning after having children abroad. However, a retired Chinese analyst at the U.S Census Bureau said in a telephone interview that 'there is no reason to expect' that women who have had children abroad will be treated differently than those women who give birth in China.¹⁵

In 2008, DFAT also advised that Chinese returnees are required to pay a family planning fee. Exemptions only applied to Chinese nationals who have had their second child overseas and have been studying abroad for more than one year, or hold permanent residency in another country and are classified as 'overseas Chinese'.¹⁶

3. Is the child able to obtain Chinese citizenship?

Yes. The child is able to obtain Chinese citizenship under the *Nationality Law of the People's Republic of China* (1980) which states:

Article 5 - Any person born abroad whose parents are both Chinese nationals and one of whose parents is a Chinese national shall have Chinese nationality. But a person whose parents are both Chinese nationals and have both settled abroad, or one of whose parents is a Chinese national and has settled abroad, and who has acquired foreign nationality at birth shall not have Chinese nationality.

Article 15 - Nationality applications at home shall be handled by the Public Security Bureaus of the municipalities or counties where the applicants reside; nationality applications abroad shall be handled by Chinese diplomatic representative agencies and consular offices.¹⁷

¹³ Standing Committee of the Ninth People's Congress of the Province of Guangdong, 2002, *Population and Family Planning Regulations of the Province of Guangdong: 6th revision (translation by Public Works and Government Services, Canada)*, 25 July 2002 – Attachment 1

¹⁴ Department of Foreign Affairs and Trade, *DFAT Report No. 746 – China: RRT Information Request: CHN32483*, 6 December, Attachment 9

¹⁵ UK Home Office, Country of Origin Information Report, China October 2009, pg 139, <http://www.homeoffice.gov.uk/rds/pdfs09/china-011009.doc> - Accessed 14 March 2010, Attachment 14

¹⁶ Department of Foreign Affairs and Trade 2007, *DFAT Report No. 746 – China: RRT Information Request: CHN32483*, 6 December, Attachment 9

¹⁷ Chinese Government 1980, *Nationality Law of the People's Republic of China*, (Adopted at the Third Session of the Fifth National People's Congress, promulgated by Order No. 8 of the Chairman of the Standing Committee of the National People's Congress on and effective as of September 10, 1980), 10 September <http://www.novexcn.com/nationality.html> - Accessed 15 March 2010 – Attachment 11

Advice obtained from the Chinese embassy by DFAT in October 2004 states that if a child's mother does not hold permanent residency in Australia and can prove that she is a Chinese citizen, the child can apply for a passport.

Chinese embassies and consulates may issue travel permits to Chinese citizens who may not meet the requirements for issue of a passport (similar to our documents of identity), who need them quickly, or who are being repatriated to China. Travel permits may have up to 12 months validity, and may be issued subject to conditions (e.g one way only or one month validity only). Travel permits are quick to obtain, and are cheaper than normal passports. Children under 16 may have their own passports, or travel on their parents' passport, but travel permits can be obtained within China as a cheaper alternative.¹⁸

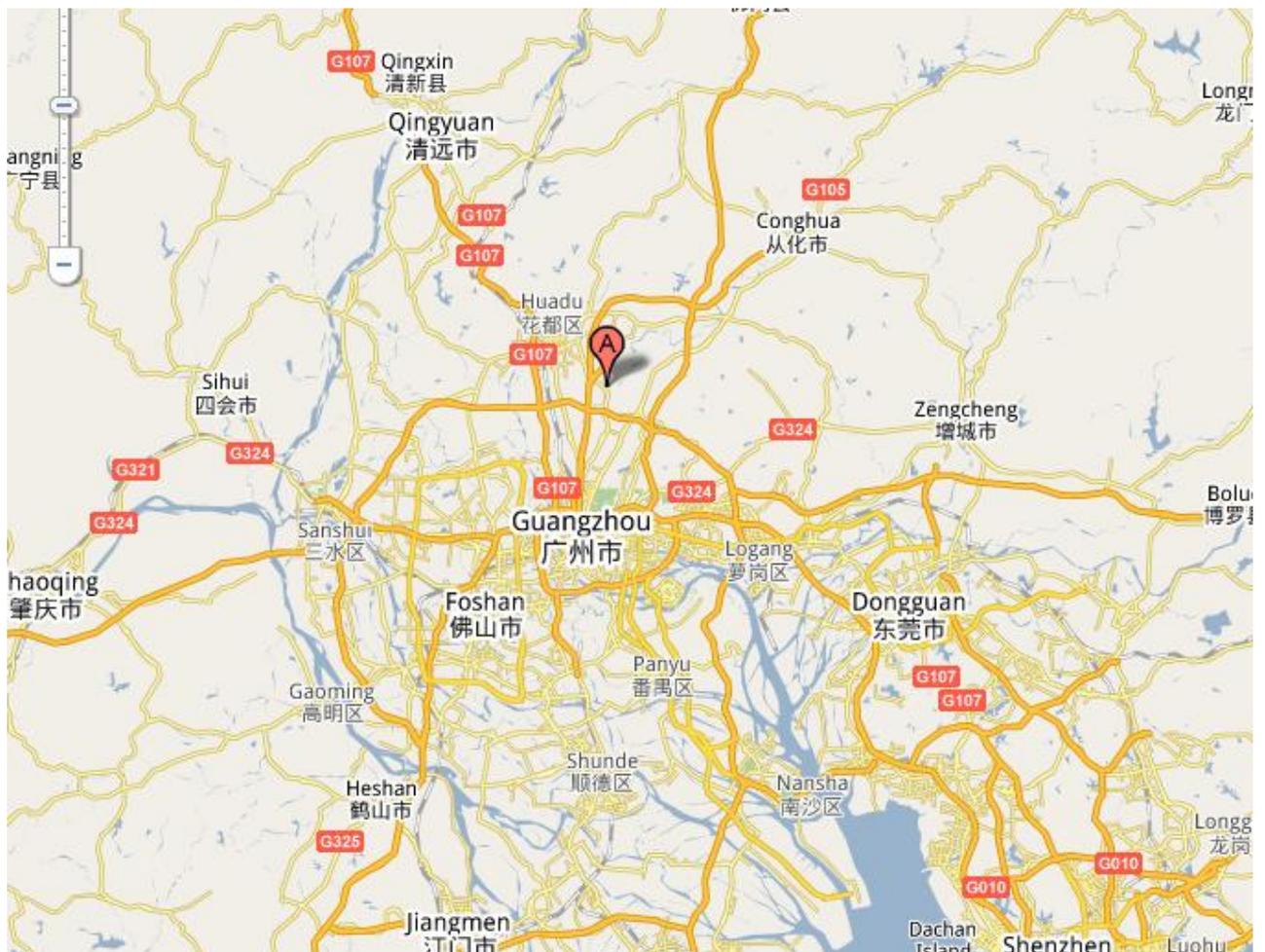
Attachments

1. Standing Committee of the Ninth People's Congress of the Province of Guangdong, 2002, *Population and Family Planning Regulations of the Province of Guangdong: 6th revision (translation by Public Works and Government Services, Canada)*, 25 July 2002
2. Unger, J., 2004, E-mail to RRT Country Research: 'Re: Question on treatment of single mothers in Guangzhou', 21 September,
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8. US Department of State, *China Profile of Asylum Claims and Country Conditions*, May, paras. 104-106
9. Department of Foreign Affairs and Trade, *DFAT Report No. 746 – China: RRT Information Request: CHN32483*, 6 December
10. UK Home Office, Country of Origin Information Report, China October 2009, pg 139, <http://www.homeoffice.gov.uk/rds/pdfs09/china-011009.doc>

¹⁸ Department of Foreign Affairs and trade, *DFAT 2003, Report 00221 – 'RRT Information Request: CHN14995'*, 13 January - Attachment 12

11. Chinese Government 1980, *Nationality Law of the People's Republic of China*, (Adopted at the Third Session of the Fifth National People's Congress, promulgated by Order No. 8 of the Chairman of the Standing Committee of the National People's Congress on and effective as of September 10, 1980), 10 September
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15. City eases one child policy *China Daily*, http://www.chinadaily.com.cn/china/2007-07/05/content_910262.htm

Google map:



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