

## Refugee Review Tribunal

### AUSTRALIA

#### RRT RESEARCH RESPONSE

**Research Response Number:** CHN30505  
**Country:** China  
**Date:** 23 August 2006

Keywords: CHN30505 – China – One-child Policy – Fujian Province

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.

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#### *Background*

*This is a “black child” case. The child was born in Australia, but his parents lived in Fujian Province.*

#### **Questions**

- 1. Can you please advise how the one child policy is imposed in this town?**
- 2. What penalties are imposed on either the child or the parents for contravening the one child policy in this place?**

#### **RESPONSE**

##### **1. Can you please advise how the one child policy is imposed in this town?**

According to DFAT advice on Guantou town dated October 2004, the Lianjiang County Planning Committee office has stated that all counties applied the provincial regulations on family planning (Guantou is in Lianjiang county of Fujian province). Consequently, all counties and towns levy fees in the same range as prescribed by those regulations (Department of Foreign Affairs and Trade 2004, *DFAT Report No. 327 – RRT Information Request: CHN17017*, 7 October – Attachment 1).

More generally on the Fujian regulations DFAT advised:

The Family Planning Law in Fujian is regulated by a mixture of national, provincial and local laws and rules. Enforcement is by local authorities and evidence suggests that some local governments enforce family planning rules more vigorously than others. This has created a patchwork of different rules and enforcement across the province. Family planning rules are more strictly enforced in the larger cities such as Xiamen and Fuzhou, than in the poorer countryside. The rules are also more strictly enforced in areas where state-owned industry is stronger, such as the steel making city of Sanming, than in the mountainous or coastal fishing areas. In general,

however, Fujian has one of the least coercive family planning regimes in China. In rural areas of Fujian more than half of all families have more than one child. The number of one child families is greater in the larger cities. However, even here, multiple child families are not unknown (Department of Foreign Affairs and Trade 2004, *DFAT Report 287 – RRT Information Request: CHN16609*, 22 April – Attachment 2).

One news article notes, however, that:

In places such as Fujian province, family planning is strictly enforced. Children must be spaced at least four years apart (Johnson, Tim 2004, 'Chinese encourage parents to keep girls: Too many boys in population: Government will build houses, exempt taxes, do anything for females', *National Post*, 10 July – Attachment 3).

Also attached are the family planning regulations for Fujian province (*Population and Family Planning Regulation of Fujian Province*, Adopted by the 33<sup>rd</sup> Meeting of the Standing Committee of the Ninth Provincial People's Congress on 26 July 2002, UNHCR website – Attachment 4).

### **Children born overseas returning to Fujian**

The situation for children born overseas is not clear from the sources consulted.

DFAT advised that:

The Provincial regulations on Family Planning regard children born outside the province (including children born overseas) as not subject to Fujian family planning rules. That is to say they are not counted in assessing penalties for giving birth to more than one child. The problem is getting children born outside Fujian registered with the Fujian authorities. In general terms, such registration is necessary to access state schools in Fujian. Evidence suggests that the problem of registration of children can be overcome by payment of an extra fee of several hundred or thousand RMB. In addition, in Fujian now, there are many private schools and clinics which will enrol or treat unregistered children. Their fees are not excessive by Chinese standards. Registration, while preferable when seeking work, is no longer essential in Fujian as more than 15% of Fujian's population are unregistered workers (Department of Foreign Affairs and Trade 2004, *DFAT Report 287 – RRT Information Request: CHN16609*, 22 April – Attachment 2).

In another DFAT report it was stated:

Lianjiang County also advised that the provincial regulations apply to Chinese nationals who have children overseas and then return to China. The only exception is in cases where one or both of the parents had travelled overseas for study in which case a couple are allowed to have two children, but fees would be charged on return to China for the third and any subsequent children (Department of Foreign Affairs and Trade 2004, *DFAT Report No. 327 – RRT Information Request: CHN17017*, 7 October – Attachment 1).

## **2. What penalties are imposed on either the child or the parents for contravening the one child policy in this place?**

In October 2004 DFAT provided advice on family planning penalties in Guantou town in the following terms:

Guantou town has advised that the birth of a child “out of plan” or “in excess of the plan” cannot be registered without paying a fee. (It is unclear whether this fee also applies to children born overseas.) Fujian Province Population Regulations (available at [www.fujian.gov.cn](http://www.fujian.gov.cn)) stipulate (in article 39) that the fee for the first “out of plan” or “in excess of the plan” birth is between two and three times the county or township per capita annual income; the fee for the second such birth is between four and six times the per capita annual income; and the third and any subsequent births will require payment of an additional (unspecified) fee. Generally speaking in China, a child whose birth has not been registered can not attend a government school. If a non-government school exists in the area an unregistered child would be able to attend but may be charged higher fees than a registered child (Department of Foreign Affairs and Trade 2004, *DFAT Report No. 327 – RRT Information Request: CHN17017*, 7 October – Attachment 1).

DFAT continued that it had been advised by the Lianjiang County Family Planning Committee office that:

...the annual per capita income for 2003 was 7000 RMB (AUD 1170) for urban areas and between 3000 and 5000 RMB (AUD 500 and 835) for rural areas. The office would decide which multiple to apply in any given case based on the attitude of the individual (Department of Foreign Affairs and Trade 2004, *DFAT Report No. 327 – RRT Information Request: CHN17017*, 7 October – Attachment 1).

DFAT also states that:

We understand that compulsory abortions and sterilisations occur in Fujian, but that such measures are much rarer than in the 1980s. Fujian’s provincial regulations on population and family planning do not impose compulsory abortion or sterilisation for people with a history of out-of-quota births, but rather observe that guidance on birth control methods and family planning should be available to all to prevent out-of-quota births. Furthermore, in present day China, particularly in provinces such as Fujian and Guangdong, sanctions relating to family planning can be avoided through payment of a fee to local authorities, parts of which may be both above and below the table. Such fees are generally not excessive by middle-class Chinese standards, though fees vary from locality to locality (Department of Foreign Affairs and Trade 2004, *DFAT Report 317 – RRT Information Request: CHN16905*, 2 September – Attachment 5).

### **Children born overseas returning to Fujian**

The situation for children born overseas is not clear from the sources consulted.

In October 2004 DFAT advised that it was unclear whether the fee for registering the birth of child “out of plan” or “in excess of the plan” applied to children born overseas (Department of Foreign Affairs and Trade 2004, *DFAT Report No. 327 – RRT Information Request: CHN17017*, 7 October – Attachment 1).

According to an earlier DFAT advice dated April 2004:

If the children were born overseas, the mother would not be expected to pay large fines for exceeding the birth quota. The registration of the children born overseas may entail an extra fee but this applies to all children born outside Fujian and the fee would not be excessive by current day Chinese standards (Department of Foreign Affairs and Trade 2004, *DFAT Report 287 – RRT Information Request: CHN16609*,

22 April – Attachment 2).

Article 11 of the *Population and Family Planning Regulation of Fujian Province* allows Chinese citizens “Returned overseas Chinese” to have a second child in certain circumstances (*Population and Family Planning Regulation of Fujian Province*, Adopted by the 33<sup>rd</sup> Meeting of the Standing Committee of the Ninth Provincial People’s Congress on 26 July 2002, UNHCR website, Article 11 – Attachment 4).

“Returned overseas Chinese” are a special category of Chinese who have lived in another country before coming to live in China. Greenhalgh and Winckler have more on this category (*Law of the People’s Republic of China on the Protection of the Rights and Interests of Returned Overseas Chinese and the Family Members of Overseas Chinese*, (Unofficial translation) The Law was adopted at the 15th Meeting of the Standing Committee of the Seventh National People’s Congress on 7 September 1990, promulgated by Order No.33 of the President of the People’s Republic of China on 7 September 1990 and effective as of 1 January 1991, Article 2 <http://www.unhcr.org/cgi-bin/texis/vtx/rpd/print.html?CATEGORY=RSDLEGAL&id=3ae6b4dc0> – Accessed 23 August – Attachment 6; 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, p.90 – Attachment 7).

## **List of Sources Consulted**

### Internet Sources:

#### **Search Engines**

Google search engine <http://www.google.com.au/>

#### 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

1. Department of Foreign Affairs and Trade 2004, *DFAT Report No. 327 – RRT Information Request: CHN17017*, 7 October
2. Department of Foreign Affairs and Trade 2004, *DFAT Report 287 – RRT Information Request: CHN16609*, 22 April
3. Johnson, Tim 2004, 'Chinese encourage parents to keep girls: Too many boys in population: Government will build houses, exempt taxes, do anything for females', *National Post*, 10 July (FACTIVA)
4. *Population and Family Planning Regulation of Fujian Province*, Adopted by the 33<sup>rd</sup> Meeting of the Standing Committee of the Ninth Provincial People's Congress on 26 July 2002, UNHCR website
5. Department of Foreign Affairs and Trade 2004, *DFAT Report 317 – RRT Information Request: CHN16905*, 2 September
6. *Law of the People's Republic of China on the Protection of the Rights and Interests of Returned Overseas Chinese and the Family Members of Overseas Chinese*, (Unofficial translation) The Law was adopted at the 15th Meeting of the Standing Committee of the Seventh National People's Congress on 7 September 1990, promulgated by Order No.33 of the President of the People's Republic of China on 7 September 1990 and effective as of 1 January 1991, Article 2  
<http://www.unhcr.org/cgi-bin/txis/vtx/rsd/print.html?CATEGORY=RSDLEGAL&id=3ae6b4dc0> – Accessed 23 August
7. 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, p.90