

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	506
Land:	Kina
Kilde:	Immigration and Refugee Board of Canada
Titel:	China: Effects of the implementation of the Two-Child Family Planning Policy on children born outside the country and their parents, including access to social services and benefits, particularly in Guangdong, Fujian, Hebei, and Liaoning; punitive measures taken against parents who return from abroad after having children in violation of family planning policies, including whether the Two-Child Family Planning Policy is being applied retroactively (2017-October 2018).
Udgivet:	18. oktober 2018
Optaget på baggrundsmaterialet:	15. januar 2019

18 October 2018

CHN106165.E

China: Effects of the implementation of the Two-Child Family Planning Policy on children born outside the country and their parents, including access to social services and benefits, particularly in Guangdong, Fujian, Hebei, and Liaoning; punitive measures taken against parents who return from abroad after having children in violation of family planning policies, including whether the Two-Child Family Planning Policy is being applied retroactively (2017-October 2018)

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Information on the implementation of the Two-Child Family Planning Policy regarding children born outside China was scarce among the sources consulted by the Research Directorate within the time constraints of this Response.

For information on changes to the Family Planning Policy in effect since January 2016, see Response to Information Request CHN105499 of May 2016. For information on the implementation of the Two-Child Family Planning Policy until October 2017, including access to social services and benefits in Guangdong, Fujian and Hebei provinces, see Response to Information Request CHN105981 of October 2017.

1. Geographic Variations in Regulations Implementing the Two-Child Policy

English-language Chinese media site Sixth Tone states that "[w]hen the two-child policy went into effect, the central government left it up to regional governments to iron out its implementation" (Sixth Tone 25 Oct. 2017). A country information report on China by Australia's Department of Foreign Affairs and Trade (DFAT) specifies that "[l]ower level governments down to neighbourhood and village committees are responsible for implementation of the two-child policy. Interpretation and implementation of the policy varies enormously across China" (Australia 21 Dec. 2017, para. 3.106).

The US Law Library of Congress's Global Legal Monitor service likewise states that, following the implementation of the law regarding the Two-Child Policy at the national level in January 2016,

[p]rovincial-level people's congresses were expected to revise their own regulations to implement the "two-child law," which would contain important detailed rules, such as which couples are eligible to have more than two children and the specific amount of the fine (social maintenance fee) for having more than two children if not eligible. The regulations would also specify the length of maternity and paternity leave in addition to the existing maternity leave enacted at the national level. (US 6 Feb. 2017)

As of February 2017, according to the same source, "29 out of the 31 [provinces], autonomous regions, and municipalities directly under the central government have revised their regulations in implementing the 'two-child law'," including Guangdong, Fujian, Hebei, and Liaoning provinces (US 6 Feb. 2017). In August 2017, the English edition of *Global Times*, a Chinese government-run

newspaper (*The Economist* 20 Sept. 2018), provided the following details on the implementation of penalties for contravening the two-child policy, based on a report from the Chinese-language newspaper *The Beijing Daily*:

30 provinces and regions in China have modified their regulation on family planning in 2016, 25 of which clearly stated the payment for social maintenance fees.

Northeast China's Liaoning Province imposes up to 10 times per capita disposable income for families who violate the family planning regulations, the highest among all provinces.

Heilongjiang Province ranks the lowest.

Some provinces, such as Hunan, Shanxi and Guizhou impose social maintenance fees in accordance with their salaries....

Government officials in at least 14 provinces in China would face dismissal or punishment if they violate the family planning policy.

Officials from Guizhou, Yunnan, Hubei, Ningxia and Guangxi would be removed from their positions when found to have children in violation of the policy. (*Global Times* 3 Aug. 2017)

For the text of the Family Planning Regulations for Guangdong, Fujian, and Hebei, see Response to Information Request CHN105983 of October 2017.

2. Punitive Measures for Children Born Outside of China in Violation of Family-Planning Policies

In correspondence with the Research Directorate, an associate professor of sociology at the University of North Carolina, whose research focus includes Chinese society and social demography and who has written and provided commentary on family planning policies in China, stated the following:

For children born outside of China, some places allow them to be registered without penalty, [whereas] other places would allow [registration] only after paying some kind of special assessment (fines or fees), and still others refuse to take up those cases. Those differences can be seen at the provincial level, but also exist at the county or even township level. (Associate Professor 28 Sept. 2018)

The Australian DFAT report explains that

[b]oth the previous [one-child] and amended [two-child] Population Law require those who give birth to a child in contravention of family planning policies (including second children born before 1 January 2016) to pay a social compensation fee, irrespective of household registration status. (Australia 21 Dec. 2017, para. 3.107)

The same source adds the following:

Local authorities can decide whether to impose a more lenient fine if parents report an out-of-policy birth soon after it occurs. Authorities are likely to apply heavier penalties for uncooperative behaviour such as hiding children, and can apply additional surcharges to those who fail to pay the required fee. The local family planning bureau and employers may pressure the parents of out-of-policy children. Awareness of the fees is widespread and, in many cases, couples wishing to have

an additional child will save the required social compensation fee in order to do so. In these cases, social compensation fees operate as an additional tax, rather than as a punitive arbitrary measure. (Australia 21 Dec. 2017, para. 3.108)

2.1 Dismissal from Employment for Contravening the Family-Planning Policy, Including Retroactively

The information in the following paragraph comes from the October 2017 Sixth Tone article:

According to a report from Chinese-language newspaper *Beijing Youth Daily*, following recommendations made the previous May by [translation] "four experts on labour law," the national Legislative Affairs Commission has advised five provinces (Guangdong, Hainan, Yunnan, Fujian, and Jiangxi) to amend outdated regulations that allow employers to fire workers found to be in violation of the country's two-child policy. "A department head at the Legislative Affairs Commission told *Beijing Youth Daily* that such provincial family planning regulations should be reviewed and abolished as soon as possible." "Other provinces, municipalities, and autonomous regions in China have already scrapped such rules in favor of less harsh disciplinary measures." Following the implementation of the two-child policy, the five provinces had

kept the same or similar strict family planning regulations in place, merely changing the maximum number [of children] from one to two. In addition to a violator's employment being terminated, many local governments continued to impose stiff, even extortionate fines. Those who refused or were unable to pay were barred from obtaining *hukou* for their children - a household registration document needed to receive education, public health, and other government services. (Sixth Tone 25 Oct. 2017, italics in original)

The information in the following paragraphs comes from a December 2017 interview by Chinese-language news source "Red Star News" (republished by news site China.com) with a law professor who had been part of the group calling for a review by the Legislative Affairs Commission:

When the group of scholars made their recommendations in May 2017, seven provinces (Liaoning and Guizhou in addition to Guangdong, Hainan, Yunnan, Fujian, and Jiangxi), had regulations that still called for the firing of workers who had contravened the two-child policy. The recommendation by the legal scholars held that these policies of dismissal of employees for [translation] "over-quota birth[s]" violated legal provisions. After the two-child policy was incorporated into the new family planning law, some [translation] "local legislatures" did not modify "the means of punishment for over-quota birth[s]." The national Law on Population and Family Planning does not contain any provisions relating to dismissal of employees and provisions relating to such disciplinary actions by [translation] "local legislatures" are in violation of the national Labour Contract Law (Red Star News 26 Dec. 2017).

However, if the birth of a second child happened [translation] "before the official launch of the new [two-child] policy, but ... in conformity with the new population policy," and "before the amendments to the local legislation, it has indeed violated regulations at that time and the illegality does exist" (Red Star News 26 Dec. 2017).

As of December 2017, out of the seven provinces, Fujian has modified its family planning regulations to remove the penalty of dismissal of employees for contravening the family planning policy (Red Star News 26 Dec. 2017).

Further information on changes to other provinces' regulations could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

3. Access to Services

The Australian DFAT report explains the following:

The *hukou* (or household registration) system ties access to services including health and education to an individual's place of birth or, in some circumstances, their parent's place of birth According to national law, children born before 1 January 2016 have a right to household registration and access to health and education services. Some provinces, including Fujian, Shandong and Zhejiang, prohibit local authorities from requiring payment of social compensation fees as a prerequisite for accepting an application for a *hukou*. Children whose unauthorised birth might previously have gone unregistered are now by law able to apply for a *hukou* irrespective of whether their parents have paid the relevant fees. (Australia 21 Dec. 2017, para. 3.109, italics in original)

Further and corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

4. Implementation of the Two-Child Policy in Guangdong Province Regarding Children Born Outside China

The information in the following paragraph comes from a Chinese-language article in *Guangzhou Daily*, republished by news site People's Daily Online, which discusses two court cases of villagers in Guangzhou continuing to be penalized for the birth of additional children born before the implementation of the two-child policy:

In both cases, the Sub-District Office argued that the over-quota births had happened before the implementation of the two-child policy and therefore penalties still applied due to the [translation] "non-retroactive principle in law." In one case, where the second child was born outside of Mainland China, in Hong Kong, is registered as a Hong Kong resident, and has a Hong Kong Permanent Identity Card, the Court of First Instance

[translation]

affirmed after hearing the case that, according to relevant provisions, if both the husband and wife are residents of Mainland China, their children born outside China should be included [in] the total number of their children when the population and family planning policies and regulations are applied in various regions, if such children have returned to Mainland China and completed their household registration procedures or have an accumulated length of residence for 18 full months within two years. (*Guangzhou Daily* 20 Sept. 2017)

Further information on appeals made or on the implementation of the Two-Child Family Planning Policy in Guangdong regarding children born outside China could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

5. Implementation of Two-Child Policy in Fujian Province Regarding Children Born Outside China

According to Red Star News,

[translation]

on November 24 [2017], the Standing Committee of Fujian Province People's Congress issued "Decision on Amendments to 'Regulations of Fujian Province on Population and Family Planning'," in which the clauses with specified punishments for over-quota birth[s] were modified. According to the modified clause, "people who give birth in violation of the Regulations or having other actions against the family planning policy, if he/she is [a] civil servant, his/her government department[t] (employer) or their superior department will take disciplinary sanctions against such employees based on relevant regulations; if he/she is not [a] civil servant, their employers should take disciplinary actions." (Red Star News 26 Dec. 2017)

Information on additional changes to family planning regulations in Fujian or on the implementation of the Two-Child Family Planning Policy in the province regarding children born outside China could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

6. Implementation of the Two-Child Policy in Hebei and Liaoning Provinces Regarding Children Born Outside China

Information on the implementation in Hebei and Liaoning provinces of the Two-Child Family Planning Policy regarding children born outside China could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

References

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Additional Sources Consulted

Oral sources: All Girls Allowed; All-China Women's Federation; China – National Health Commission; Deputy Director of the Women's Studies Institute of China; director of a law firm in Guangdong; Human Rights in China; lawyer based in the US who has worked on family-planning related cases; librarian at the US Law Library of Congress; professor of sociology who has studied the two-child policy; scientist who has studied family planning policies in China.

Internet sites, including: Amnesty International; Asian Children's Environment Education Association; Bertelsmann Stiftung; Caixin; China – State Council; *China Daily*; Chinese Human Rights Defenders; ecoi.net; Freedom House; GBTimes; Human Rights Watch; *The New York Times*; Norway – Landinfo; Quartz; SupChina; UK – Home Office; UN – Refworld; US – Congressional-Executive Commission on China, Department of State; Xinhua News Agency.