

Human Rights and Population Policies:

A Case Study of China's One-Child Policy

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**European Master's Degree in Human Rights and Democratisation
July 2003**

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Abstract

For most people deciding on the number and spacing of children is a private affair, this is however not the case in China. There, regulating one's fertility is not a personal affair but rather a state affair. The state has set up various guidelines that have to be followed stipulating on whether and when a couple might conceive and what contraceptives to use. When the guidelines, which are laid down in several laws, are not followed people will be penalised. Officially people may only be penalised through the imposition of fines, but in practice penalties might also include destruction and/or confiscation of property. However, since the focus has been so much on demographic targets, people's needs and interests have not received the attention that it should. The policy has had considerable impact especially on the lives of women and children.

This paper tries to explore where the balance should be placed between individual human rights on the one hand and population policies on the other. As China is usually held up as an example for other countries to follow, this paper will specifically look at how China has coped with its population problem and what lessons can be learned from the policy.

“...there are too many people in the world. We are running out of space. We are running out of energy. We are running out of food. And, although too few people seem to realize it, we are running out of time.”

United States educational materials, 1970s¹

“I was struggling and crying. But still the needle went into the right side of my abdomen. ... Some time later, in agony, I found my child no longer struggling.”

Mahire Omerjan, 2001²

1. Introduction

In our (Western) conception the focus is and has always been on individual human rights. Individuals, couples, and families have the right to choose the number and spacing of their children. This is a basic human right and is laid down in several international declarations and conventions. But where does the problem of overpopulation fit into this (if such a problem even exists)? Should then the general good for society, by not having any or having a very limited number of children prevail over the right of individuals to choose the size of their family? Or should the right to choose be regarded as more important, with a risk of ‘overpopulating’ the world and with that the destruction of the earth? Where should the balance of these two be placed?

Before answering this question, the claim that the world is overpopulated needs to be looked at; is the world really overpopulated and what is actually meant by overpopulation? Is overpopulation a global phenomena or does it only exist locally? As we will see in the following chapter, overpopulation is usually expressed in terms of the earth’s carrying capacity³, but there are also other views. If the carrying capacity is exceeded, then what should be done; should population size be controlled and if so by what means? Should a one-child policy be adopted, such as in China and should it be voluntarily or coercively imposed? Is population the (sole) cause of exceeding the earth’s carrying capacity or are there also other factors at work, such as development and consumption patterns?

¹ This quote comes from a project book for an exhibition for children in the United States, circulated in the late 1970s, which is called ‘Population: The Problem Is Us’. It predicted that if population growth was not controlled soon, mass starvation would set in. It can be found at <http://www.pop.org/main.cfm?is=205&r1=...=3.00&r3=91.00&r4=2.00&level=4&eid=434>.

² This quote is the consequence of the population policy as it is implemented in China. This testimony can be found at <http://www.pop.org/main.cfm?EID=321>.

³ Carrying capacity means the number of people an area can sustain in relation to its resources; these resources range from minerals to air and water.

These are some of the questions and issues that will be dealt with before trying to answer the main question of where to place the balance between individual human rights on the one hand and the general good for society on the other hand, taking into account present and coming generations with regards to population control.

First I will look at the issue of overpopulation and the need for family planning policies. Then I will discuss China's population policy; the evolution of the policy will be discussed as well as the human rights violations that have occurred in the course of the policy and the unintended effects it has brought about. I will also look at the role of the international community concerning population control and family planning and at what China's obligations are. For doing this I will mainly concentrate on the International Conference on Population and Development's Programme of Action, but I will also look at international law and some other international conferences, such as the Beijing Declaration and Platform for Action. Finally, I will give my conclusions on where the balance should be placed and will give some recommendations concerning China's population policy.

2. Overpopulation and Family Planning

2.1 Overpopulation

Not until the 1800s did population reach one billion. Then it took 123 years before another billion was added and in 1960 population reached 3 billion. After the world reached 4 billion in the 70s, it took only 13 to 14 years to add another billion people on earth.⁴ Today there are more than 6 billion people on earth and this number increases every year with about 78 million. This is the equivalent of a Germany every year. Does this mean that the world is overpopulated? Is there a certain number at which point the world is overpopulated? What is overpopulation?

There is no universal definition of overpopulation. Some experts mention a specific number, they say that the earth can only sustain 10 million or maybe even 100 or 200 million people for instance. This would mean that the world was already overpopulated well before the middle ages. Others say the earth can sustain a much higher number. Yet other people argue that it depends on the earth's carrying capacity; in other words the number of people the earth can sustain in relation to its resources. Although many people like to 'blame' population growth for exceeding the earth's carrying capacity as the sole factor, it must also be recognised that the level of development (technology), the distribution of resources and the level of consumption are all factors influencing the carrying capacity.⁵

Whether it is a global problem or local problem is not clear either. If one would adopt the definition of overpopulation as the point at which the earth can no longer support the people that live on earth; in other words when population growth outstrips the available resources, then it can reasonably be argued that locally areas and/or countries are overpopulated but not on a global scale as some countries have more than enough resources to not only support their own population but also others. However, the most adopted definition is that if a state can no longer sustain its population it is overpopulated.

Without defining overpopulation in global or local terms, there are two main viewpoints about the problem; there are pessimists and optimists. There are doomsayers who say that at present the world is overpopulated and if there is not going to be a stop to growth soon, mankind will destroy the earth and finally itself. It is true that man has created pollution and caused environmental degradation, is depleting the earth's resources and is responsible

⁴ B. Carnell, *Projections of Future World Population*, 17 May 2000 at http://www.overpopulation.com/print/fa...ic_Information/future_projections.html.

⁵ Later on in this chapter, this will be further developed.

for the extinction of many species. Every year, about 27,000 plant, animal and insect species become distinct.⁶ On the other hand, there are also optimists who claim that the resources are not diminishing, that there is enough food for centuries to come, that technology will catch up in time, and that there is no need for population control, as fertility rates are dropping already.

The problem of overpopulation goes back to the 18th century. One of the first people who identified the problem was Thomas Malthus. His book 'An Essay on the Principle of Population' rested upon two main principles. First that people cannot survive without food and secondly that people will continue to reproduce themselves in the same rate as before.⁷ He concluded that due to the fact that reproduction was in as much force as it was two thousand or four thousand years before his time, population would grow faster than the earth's ability to produce adequate subsistence for man. Consequently, this would lead to misery and vice. He claimed that population, when unchecked, grows in an geometrical ratio and subsistence in an arithmetical ratio⁸, which means that the first increases by multiplication and the latter by addition. According to this theory, the world has been overpopulated since early history and will continue to do so. For this reason, there must be a check on population. Up to then, nature had held population in check by natural disasters, wars and plagues. Malthus claimed that if nature was unable to bring back population to a sustainable level, great famines would appear.

However, if population would indeed grow in an geometrical ratio, this would mean that every couple should on average have four children and their children again. Up to now, population has never increased exponentially and the fertility rates even have been decreasing. It is not correct either that means of living can only increase in an arithmetical ratio, as up to now subsistence means have always kept up with population growth and even exceeded it.

Malthus has many followers who all assume that population if unchecked will exceed subsistence. Paul Ehrlich, for instance, followed the footsteps of Malthus and predicted mass famines and disasters in his book 'the Population Bomb'. He argued that overpopulation has nothing to do with population density, but rather with "the number of people in an area

⁶ *Population and human development – the key connections*, 13 January 2003 at <http://www.peopleandplanet.net/doc.php?id=199§ion=2>.

⁷ B. Carnell, *An Essay on the Principle of Populations by Thomas Malthus*, 2000, Chapter 1 at http://www.overpopulation.com/print/fa...s_malthus/essay_on_population/001.html.

⁸ *ibidem*.

relative to its resources and the capacity of the environment to sustain human activities”⁹. This would mean that an area is overpopulated when its population cannot be maintained without (rapidly) depleting non-renewable resources and without degrading the environment. Accepting this definition would mean that the world has been overpopulated ever since the environment began to degrade.

In 1972, the Club of Rome published a report called *Limits to Growth*, which predicted that population would reach seven billion in the year 2000 and this would have disastrous results. The world would run out of farm land as a result of trying to feed everyone. The price of natural resources such as copper, tin, silver and oil would increase immensely as the world would run out of these resources.¹⁰ It also predicted that “If the present growth trends in world population, industrialization, pollution, food production, and resource depletion continue unchanged, the limits to growth on this planet will be reached sometime within the next one hundred years.”¹¹ The Club of Rome’s predictions were however far off; world population reached 6 billion in 2000, total farm land increased by 5 percent during that time and natural resources remain abundant.

Confronted with these results, the response by neo-Malthusians is that “human technical progress is but of a temporary trend, whereas the reality of limited resources and the law of diminishing returns possess a universal historical significance”¹².

The Science Summit on World Population of 1992 also recognised the link between environmental degradation on the one hand and population growth and consumption patterns on the other hand. So far we have experienced “growing loss of biodiversity, increasing greenhouse gas emissions, increasing deforestation worldwide, stratospheric ozone depletion, acid rain, loss of topsoil, and shortages of water, food, and fuel-wood in many parts of the world.”¹³ However, it must also be noted that although environmental degradation has increased together with population growth, this does not necessarily have to mean that such a link exists.

On the other side of the spectrum there is also optimism. In July 2000, the Food and Agriculture Organization (FAO) announced that ‘...remarkable progress has been made over

⁹ P. Ehrlich, *The Population Bomb*, 1971, New York, Balantine, pp. 10.

¹⁰ B. Carnell, *Limits to growth*, 17 May 2000 at http://www.overpopulation.com/print/faq/Natural_Resources/limits_to_growth.html.

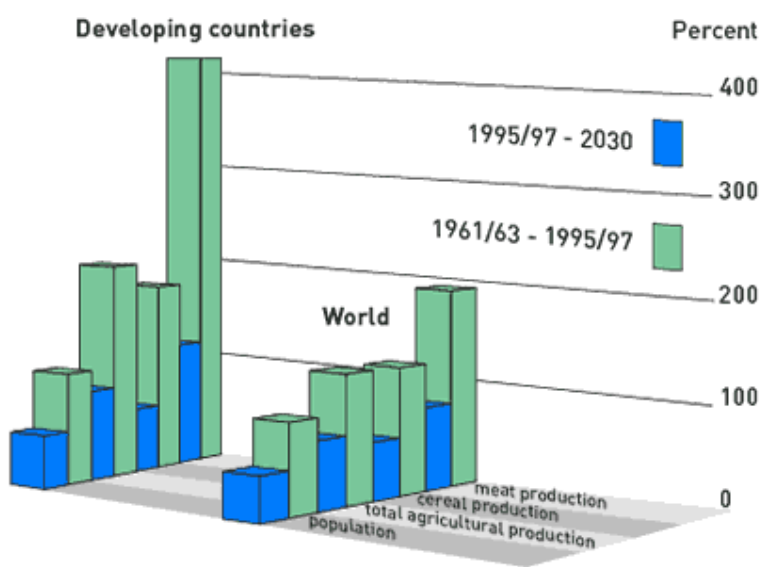
¹¹ E. Pestel, *The Limits to Growth (abstract)*, 1972 at <http://www.clubofrome.org/docs/limits.rtf>.

¹² F. Furedi, *Population & Development : A Critical Introduction*, Cambridge, Polity Press, 1997, pp. 36.

¹³ “Science Summit” on *World Population: A Joint Statement by 58 of the World’s Scientific Academies* at <http://dieoff.org/page75.htm>.

the last three decades towards feeding the world...¹⁴. If we look at the figure below we see that not only did crop yields increase but even outgrew population growth in past decades and according to future predictions this trend will continue. But FAO also said that “in the next few decades world population growth will be the predominant cause of increased global food demand”¹⁵. It reported that “Food production will continue to increase but its rate of increase is expected to fall, from 2.2 percent a year over the last three decades to 1.5 percent a year over the period to 2030.”¹⁶ Although, it will still exceed population growth, it will be at the expense of significant agricultural, economic and environmental costs.¹⁷ The availability of water, for instance, will become a problem. “31 countries with a collective population of half a billion people are experiencing chronic water shortages. The main reasons for this are population growth and rising consumption. In the last half century, for example, annual demand for water has grown twice as fast as population.”¹⁸

Agriculture and population: past and future



A look at these two 34-year periods shows that food production will continue to outstrip population growth. The growth rate of both agricultural production and population will decline overall. In particular, the growth of meat production in developing countries is forecast to slowdown after dramatic increases in the past.¹⁹

¹⁴ FAO, *Food and population: FAO looks ahead*, 2000 at <http://www.fao.org/News/2000/000704-e.htm>.

¹⁵ FAO, *FAO/UNFPA Expert Group Meeting on Food Production and Population Growth*, Rome, 3-5 July 1996 at <http://www.fao.org/sd/wpdirect/wpre0019.htm>.

¹⁶ FAO, *Food and population...*, 2000 op cit.

¹⁷ ibidem.

¹⁸ D. Hinrichsen, J. Rowley, *Planet Earth 2025: A look into the future world of 8 billion humans*, 7 September 2000 at <http://www.peopleandplanet.net/doc.php?id=324>.

¹⁹ FAO, *Food and population:.....*, 2000, op cit.

From what has been stated above, it is clear that the world's resources are finite and irreplaceable, so even if we would accept that overpopulation does not exist at present it will only be a matter of time before it is unless of course technological progress finds a way to prevent or at least postpone this process. It is however also clear that a growing population puts more pressure on the environment in terms of the earth's resources and pollution. This has also been recognised by the international community. Agenda 21 of the 1992 Earth Summit, for instance, mentions that "demographic trends and factors ... have a critical influence on consumption patterns, production, lifestyles and long-term sustainability."²⁰

Moreover, the 1994 Programme of Action of the International Conference on Population and Development states in the preamble that "Around the world many of the basic resources on which future generations will depend for their survival and well-being are being depleted and environmental degradation is intensifying, driven by unsustainable patterns of production and consumption, unprecedented growth in population, widespread and persistent poverty, and social and economic inequality. ... There is emerging global consensus on the need for international cooperation in regard to population in the context of sustainable development..."²¹ But does this mean that population control is needed? Should people have less children or should people use less resources, pollute less or both? Should one problem have priority over the other? I would argue that the problem has to be tackled on all fronts, so not only population growth has to be addressed, but also consumption patterns and environmental degradation, as they are all interlinked.

The interrelationship between the different areas has also been put down in different formulas, which have been developed over time, of which the most well-known, $\text{Impact} = \text{Population} \times \text{Affluence} \times \text{Technology}$, has been developed by Paul Ehrlich in 1971.²² As we have already seen, Ehrlich is a neo-Malthusian; it is therefore not surprising that although the connection between the different factors is acknowledged in this formula, he still maintains that the most important factor that influences outcome is population growth. His conclusion is straightforward, he contends that "the more people there are, the more they consume, and the

²⁰ Agenda 21, Earth Summit 1992, Rio de Janeiro, Brazil, 3 to 14 June 1992 at <http://habitat.igc.org/agenda21/a21-05.htm>, Chapter 5, principle 16.

²¹ United Nations, *Programme of Action of the UN ICPD (ICPD)*, Cairo, Egypt, 5-13 September 1994, Preamble 1.2.

²² N. Crook, I. Timaeus, *Principles of Population and Development with illustrations from Asia and Africa*, Oxford, Oxford University Press, 1997, pp. 79-80 and Furedi, 1997, pp. 154. More information about different formulas can also be found in both sources.

more technology they use, the greater the damage to the environment.”²³ What also has to be kept in mind when applying this formula is that population growth is not an isolated element, as it is linked to broader social concerns. It is among other things linked to a country’s level of development, poverty, educational levels, status of women, etc.

However, this formula can be a useful indicator of what the environmental impact might be with a reduction or increase in either one of the factors, but it can only be applied to a specified region and not globally, as the world population does not have the same income or technology everywhere. The average cannot be used either, since the world is not equally distributed neither in terms of population nor in terms of development.

The industrialised countries, for instance, constitute only for 24 percent of the world’s population, but they consume more than 85 percent of the world’s natural resources and produce 70 percent of total carbon dioxide emissions.²⁴ For example, an American consumes on average 55 barrels of oil a year, while a Bangladeshi only consumes 3 barrels.²⁵

With rising incomes consumption patterns tend to change as well. People have a tendency to eat more meat with higher incomes; this has an indirect impact on the environment, as several times more grain is needed to feed and breed animals, than if it is directly consumed. Besides this, means of transportation tend to change as well. People who used to walk or used a bicycle make more use of public transportation or use a car instead, which results in higher gas emissions and in turn leads to environmental degradation.²⁶

2.2 Family planning

As we have just seen, population growth is not the sole cause of the problems outlined above. However, the main focus has been on containing population growth through family planning programs.

Family planning programs have been established over time with three distinct rationales: the demographic, health, and human rights rationale.²⁷ The first programs were established at the end of the 1940s, beginning of the 1950s. The main features of family planning programs are its voluntary basis; it usually includes an informational and/or educational campaign; and it mainly focuses on married women although sometimes

²³ Furedi, 1997, pp. 154.

²⁴ A. Rahman, N. Robins, A. Roncerel (Eds.), *Exploding the Population Myth, Consumption versus Population: Which is the Climate Bomb?*, Climate Network Europe, Brussels, 1993, pp. 5.

²⁵ *ibidem*, pp. 66.

²⁶ *ibidem*, pp. 40-41.

²⁷ J. Seltzer, *The Origins and Evolution of Family Planning Programs in Developing Countries*, Rand Publications, 2002, pp. 10.

adolescents are included as well. The first family planning programs focused on policies regulating fertility through providing contraceptives.

By the mid-1960s, family planning programs became an important part of most government policies, as most developing countries were experiencing rapid population growth of more than 3 percent due to rising life expectancy and falling mortality rates. With this speed, a country would double itself in less than 25 years.²⁸

The demographic rationale was the most predominant one until the 1970s due to concern for the consequences of rapid population growth on economic development, natural resources, the environment and the ability of developing countries to feed their population.²⁹ The demographic rationale for population policies was to reduce fertility and population growth in order to improve the economic and social well-being. This rationale is, as the name itself implies, based on numbers and targets. Its goals can be for instance that a certain level of contraceptive prevalence has to be reached and/or work with quotas on the number of births allowed each year.

During the 1980s, the focus shifted towards the health rationale as a reaction to the consequences of high fertility for maternal, infant, and child mortality.³⁰ High maternal mortality was associated with a high number of closely spaced pregnancies, births to older and younger women, and abortions. More attention was given to the quality of care, such as giving clients a wide range of options regarding contraceptive methods, accessibility of contraceptives, means of distribution, etc. During this period, there was also more focus on the interdependence of population growth and development and most population policies were broadened; most family planning programs became part of development programs. The programs have broadened to encompass, for example, maternal and infant mortality, infertility, and sexually transmitted diseases.

In the 1990s, the human rights rationale became predominant, with its focus on women's reproductive health and reproductive and sexual rights.³¹ A client-based approach and the focus on individual reproductive rights, such as the right of women to make their own decisions with regards to reproduction, the right to control their own body and the right to receive information concerning fertility and contraceptives, are at the centre of this approach. Over the years, reproductive health has become linked with gender equity, improving the

²⁸ *ibidem*, pp. 11.

²⁹ *ibidem*, pp. 10.

³⁰ *ibidem*, pp. 11.

³¹ *ibidem*.

status of women and women's empowerment. However, the demographic rationale is still being used by many countries, including China as we will see later.

2.2.1 Effects of Family Planning Programs

Family planning programs have been successful in raising contraceptive prevalence and thereby reducing fertility by meeting the unmet need of family planning. The programs have been "an effective public policy for facilitating widespread use of contraception"³². "Over the last 30 years, the percentage of couples in developing countries using family planning has increased from 10 percent to 50 percent"³³ today. However, programs are not always successful and effective everywhere. Their success depends on multiple factors, such as the social context and the level of development of a country and also on program performance, for example the ways and means of distributing can have an important effect on the overall effectiveness of the program.

However, family planning programs are not the only means to influence fertility. It can also be influenced by other means such as educating women, delaying marriage, and extending the time of breast-feeding³⁴. Some studies have also proved that social and economic development affects the rate of fertility, for instance through a reduced need of many children as an 'economic asset'. Developing countries prefer this broader approach over controlling the population through family planning programs, taken in the strict sense. They interpret high fertility not as the cause, but rather as an effect of poverty and underdevelopment.³⁵ They see development as the best means of contraception. This has led to a contradiction with the developed countries, who view rapid population growth as an obstacle to development rather than a solution.

To conclude, family planning programs can and have helped to decrease fertility rates but this is more the result of preventing unwanted pregnancies rather than changing people's mind about the number of children they want. Also, if effective fertility decline is the ultimate goal more combined efforts are needed. There has to be an integrated approach with economic development and the empowerment of women for instance.

³² *ibidem*, pp.135.

³³ *Population and reproductive health*, 14 January 2003 at <http://www.peopleandplanet.net/doc.php?id=215§ion=4>.

³⁴ A woman cannot conceive when she is breast-feeding.

³⁵ Furedi, 1997, pp. 5.

Now, let us look at China's population policy; how the policy has evolved over time, how it has been implemented, and whether the policy is a good means of controlling China's huge population.

3. China's One-Child Policy

3.1 Evolution of the Policy

In the early days of China's revolution, Mao Zedong propagated reproduction in the believe that more people means a larger army, which in that time meant being a strong power. More people also meant more producers who could enlarge the country's resources instead of draining them.³⁶ In this time slogans such as 'early marriage and early births', 'more children means greater happiness' and 'our population is our strength' could be found anywhere.³⁷ However, due to this believe the population had grown from 500 million in 1949 when the People's Republic of China was established to 900 million in 1974 with a growth rate of approximately 2 percent a year.³⁸

When people started expressing their concerns about this huge population growth in such a short time, Mao simply disputed the Malthusian argument by stating that "Each time the Chinese overthrew a feudal dynasty it was because of the oppression and exploitation of the people by the feudal dynasty, and not because of any overpopulation.... It is a very good thing that China has a big population. Even if China's population multiplies many times, she is fully capable of finding a solution; the solution is production."³⁹ At the end of the 1950s, Mao Zedong and high party leaders still maintained that "the future problem would be lack of manpower rather than overpopulation"⁴⁰. However, due to the propagation to reproduce the huge population was putting more and more pressure on the economy, environment and resources.

3.1.1 Basic Facts

China's population accounts for more than a fifth of the total world population, while the country only has between 7-10 percent of arable land⁴¹; this accounts for a quarter of the world average. The per capita share of freshwater resources is also only one quarter of the world average. Similarly, China has per capita only 60 percent of the world average of the 35

³⁶ T. Scharping, *Birth Control in China 1949-2000: Population policy and demographic development*, London, Routledge, 2003, pp. 29-31.

³⁷ *ibidem*, pp. 47.

³⁸ C. Kadlec, *China: The One-Child Policy*, March 2000 at http://smashtech.net/cckadlec/one_child.htm.

³⁹ Scharping, 2003, pp. 29.

⁴⁰ *ibidem*, pp. 48.

⁴¹ Sources differ on the figure of arable land.

most important minerals. And although China ranks first in the world in terms of grain output, the per capita share accounts for a little more than a quarter of that of the United States.⁴²

Due to the huge population, more than a quarter of the annual addition to the national income is consumed by the new population born during the same year.⁴³ As a consequence, economic development is slowed down and the population is putting more and more pressure not only on the environment and resources, but also on the country's employment, education, housing, medical care, social welfare, etc.

In the next few years, a considerable amount of labour force might have to be laid off, due to the large population and the transition of the economy. There will be 190 million surplus labourers looking for new jobs with an annual increase of around 10 million labourers.⁴⁴ Housing will also become more difficult, as an additional 300 million people in the next 50 years will require an enormous area.

Besides these problems, water shortage is also becoming a problem. Until the 1950s, water supplies in China were still abundant. Surface and underground sources together were more than adequate to satisfy the needs of the country's 500 million people. Since then, however, the water supply-demand balance has deteriorated as water use has increased six-fold, driven by a multitude of factors such as population growth, irrigation expansion, rising affluence, and industrialisation.⁴⁵ What aggravates the situation even more is that wastewater is discharged into waterways for downstream use without being treated first.

In late 1993, Minister of Water Resources Niu Mao Sheng observed that "in rural areas, over 82 million people find it difficult to procure water. In urban areas, the shortages are even worse. More than 300 Chinese cities are short of water and 100 of them are very short."⁴⁶ The most severe shortages are in the north of the country where existing demand is partly met by depleting aquifers. If these aquifers are depleted before they are recharged, water tables will fall and with that land levels often fall as well.⁴⁷ Another problem is that there will be less water available for irrigation which inevitably will lead to lower crop yields,

⁴² *China's One Child Policy, Two Child Reality*, A report from U.S. Embassy, Beijing, October 1997 at <http://www.usembassy-china.org.cn/english/sandt/fertl21.htm>.

⁴³ *Human Rights in China*, White Paper, Information Office of the State Council Of the People's Republic of China, November 1991, Beijing at <http://www.china.org.cn/e-white/7/index.htm>.

⁴⁴ State Family Planning Commission, *A Speech at the Population Council*, by Mr. Zhang Weiqing, Beijing, China, Beijing, China, 2 July 1999 at http://www.unescap.org/pop/database/law_china/ch_record023.htm.

⁴⁵ L. Brown, *Who will feed China? Wake-up call for a small planet*, The Worldwatch Environmental Alert Series, New York, W.W Norton and Company, 1995, pp. 66-67.

⁴⁶ *ibidem*, pp. 66-67.

⁴⁷ *ibidem*, pp. 70.

which in turn could affect China's food security. The water scarcity reflects the extent to which demand is outrunning the sustainability of rivers and aquifers.

Furthermore, arable land is being lost at an increasing rate due to urbanisation, industrialisation, infrastructure, natural disasters, and soil erosion. The area suitable for agriculture decreased from 112 million hectares in 1957 and 104 million in 1965 to about 96 million hectares in 1990.⁴⁸

What aggravates the situation even more is that China's air and water, particularly in urban areas, are among the most polluted in the world. Shen Yimin of the Population and Environment Society said that according to the China 1994 Environmental Conditions Report, acid rain fell on 82 percent of Chinese cities, waste water discharge amounted to 36.53 billion tons, and industrial solid waste to 620 million tons. He then continued by stating that "Not just population growth, but inefficient resource use and inadequate environmental protection are among the causes of these problems."⁴⁹

From the above, it becomes clear that population growth together with rising affluence and inefficient resource use are exerting a lot of pressure on China's carrying capacity. An integrated approach is therefore necessary to prevent further deterioration. The approach should not only encompass more efficient and environmental friendly measures of producing, but population growth and consumption patterns should be addressed as well.

3.1.2 Policy Developments from the 1950s to the Present

Up to the 1950s the import of contraceptives had been forbidden and almost a complete ban on contraceptives, sterilisations and abortions was in existence.⁵⁰ An abortion was only permitted when the life of the mother was in danger and only after the written consent of husbands, superiors and doctors. Moreover, all cadres⁵¹ in central government and Party organs had to obtain the personal endorsement of the Minister of Health himself. In case of illegal abortions, women were penalised, which could even lead to prosecution.⁵²

By the 1960s, high party leaders were gaining more ground with their views on population control, which resulted in the acknowledgement by the government of the adverse effects of rapid population growth. In view of the situation, the Chinese government issued a call for family planning and advocated the use of contraceptives predominantly in urban

⁴⁸ *ibidem*, pp. 66-67.

⁴⁹ *China's One Child Policy, Two Child Reality...*, October 1997, *op cit*.

⁵⁰ Scharping, 2003, pp. 45.

⁵¹ Cadres are official functionaries who work for the communist party or for the state.

⁵² Scharping, 2003, pp. 45.

areas. The program linked the access of contraceptives to health arguments without revealing the actual (economic) reasons behind them. Besides the promotion of contraceptives, the government also introduced measures to increase the legal marriage age to 25 years for women and 27 for men.

In the 1970s, the family planning program mainly focused on facilitating the use of contraceptives in urban as well as rural areas together with the promotion of late marriage, fewer births, and spacing of births. As time progressed, more (media) attention was given to the topic and slogans such as ‘one [child] is good, two are acceptable and three are too many’ and ‘Later [marriage], Longer [spacing], Fewer [births]’ appeared.⁵³ At the same time, the policy became gradually tighter. In the meantime, a shift had occurred in the way of treating birth control. It was no longer treated as an aspect of health work, but it was increasingly dealt with in the context of food and economic policies.⁵⁴

During this decade, fertility levels declined at a rate not seen before in any agricultural country. By the end of the decade, women were having half as many children as before. There had been a decline in total fertility rates from 5.8 in 1970 to 2.8 in 1977.⁵⁵ This drop can partly be attributed to other social factors such as higher educational standards for women, the rise of female labour participation and the extension of a basic medical network in the countryside.

In March 1978, a birth-planning conference was held at which demographic targets were set for the coming years. The projections were to attain a natural increase rate of 1 percent by 1980, a decline of natural increase to 0.5 percent by the year 1985 and finally zero growth by the end of the century.⁵⁶ Demographically, the target was set to 1.2 billion in 2000. In order to obtain this, population targets were set and combined with economic indicators. Yet concrete steps for implementation were not specified. It was therefore unclear how to realise the ambitious population plans.

⁵³ L. Wei-xiong, *Family Planning in China*, National Research Institute for Family Planning, Beijing, China at http://www.medizin-ethik.ch/publik/family_planning.htm.

⁵⁴ Scharping, 2003, pp. 32.

⁵⁵ Crook, 1997, pp. 145.

⁵⁶ Scharping, 2003, pp. 50-51.

In 1979, however, the government realised that more had to be done if population growth was to be controlled and the targets to be obtained. Therefore, the ‘one-child policy’ was introduced at the Fifth National People’s Congress. The government’s report called on all couples to only have one child. The following year, the policy was reaffirmed through an open letter by the Central Committee of the Communist Party and in 1981 it became a state policy.

In the early 1980s, China tried to implement the policy by launching a series of crash campaigns, also referred to as ‘shock campaigns’, in order to ensure compliance. The most ferocious was the mass sterilisation campaign of 1983. In the beginning of 1983, a State Council Bulletin announced a strengthening of the one-child policy. The provisions were as follows⁵⁷:

- Women with one child are required to have an IUD [intrauterine device] inserted.
- Couples with two or more children are required to have one partner sterilised.
- Women pregnant without official permission are required to have an abortion.

These have been the national guideline since; only in certain areas, mostly rural and minority areas, were couples sometimes allowed more than one child.⁵⁸

Despite the harsh methods used, the campaign had the intended results; 2.68 million sterilisations were performed and 210,000 other contraceptive measures were taken in January 1983 alone. At the same time, “statements against coercive measures and commandeering ceased, while record numbers sterilizations and abortions continued for the rest of the year”⁵⁹.

In 1984, a modified policy was set forth by the Party Central Committee in a statement called Document No. 7, which relaxed the aforementioned policy somewhat.⁶⁰ The same targets were still to be attained, but coercive measures were to be renounced. This relaxation was because the one-child campaign encountered serious problems in gaining acceptance, especially among the peasants. Therefore, the government extended to rural peasants the permission of second children to include families with a lack of manpower and families where the first child is a girl.⁶¹ The slogan that accompanied the moderation was ‘open a small hole to close a big gap’.⁶²

⁵⁷ *Profile Series China: Family planning policy and practice in the People’s Republic of China*, INS Resource Information Center, Washington, D.C., 1995, pp.3.

⁵⁸ For more information on the exceptions, see ‘Exemptions’ in this chapter on page 22.

⁵⁹ Scharping, 2003, pp. 57.

⁶⁰ *Profile Series China: Family planning policy...*, 1995, op cit., pp.3.

⁶¹ J. Becker, *A failure to control the population*, in <<South China Morning Post>>, 19 April 1999.

⁶² *Profile Series China: Family planning policy...*, 1995, op cit., pp. 59.

This relaxation lasted until 1986 when the policy was again to be followed with renewed vigour. It was not so much a tightening of the policy itself, but rather a stabilisation of the current more lenient policy with a strengthening of enforcement. This re-enforcement was laid down in China's Communist Party Central Committee Document No. 13 of 1986.⁶³ It was drafted in response to the fact that the target of 1.2 billion could not be attained by the year 2000. The main reasons why the targets were not met were the result of several factors among which underreporting of births, corruption of officials, the avoidance of regulations by the 'floating' (migrating) population, and so on.

In 1991, this re-enforcement was reiterated by the issuing of the 'Decision on Strengthening the Family Planning Program to Strictly Control Population Growth'.⁶⁴ It contains provisions suggesting the use of IUDs, sterilisation, and pregnancy termination in specified circumstances. In response to this Decision, most provinces launched major crash campaigns to abort all unauthorised pregnancies and to sterilise one member of all couples that were over their one or two child limit.

In 2000 again, President Jiang Zemin called on cadres to strengthen population and family planning work and urged them to treat population control and family planning as 'a protracted war'.⁶⁵ Yet, the government has always maintained its position of being opposed to coercion.

Throughout the decades, the policy has consistently focused on encouraging one child, strictly limiting second births and resolutely prohibiting third births. The main characteristics of the policy are the promotion of late marriage and late childbearing; fewer and healthier births; the practice of one child per couple; and spacing between births for couples that are allowed a second child. The policy has been accompanied by slogans such as 'one couple, one child' and 'Later, Longer, Fewer'. Late marriage generally meant that a woman's first marriage had to be postponed until she reached the age of 23 or higher. Late childbearing referred to having your first child at the age of 24 or later. The longer refers to spacing between births. In most places, couples have been required to wait for four years before having a second child.

⁶³ *Women of the World: Formal Laws and Policies Affecting Their Reproductive Lives*, The Center for Reproductive Law & Policy, International Program, New York, 1995, pp. 10.

⁶⁴ *ibidem*.

⁶⁵ E. Rosenthal, *Rural Flouting of One-Child Policy Undercuts China's Census*, in <<The New York Times>>, 14 April 2000.

The policy has been formulated and implemented with the objectives of slowing down population growth, promoting economic and social development, and improving the quality of life of the population. The government described the reason for family planning as follows: “It is for bringing about a sustained economic growth and sustainable development, satisfying the daily increasing material and cultural demands of the whole people, and guaranteeing the fundamental and long-term interests of the current generation and their posterity, that the Chinese government has chosen the strategic policy of family planning.”⁶⁶

According to the government, the effect of abstaining from population control would be the following: “If China fails to effectively check the over-rapid growth of the population and alleviate the great pressure wrought by the population growth on cultivated land, forests and water resources, an ecological and environmental deterioration will become inevitable in the coming decades, profoundly endangering the minimum living conditions of the overwhelming majority of the Chinese people as well as the sustainable development of their society and economy.”⁶⁷

When the policy was first implemented in 1979, it was seen as a temporary measure to last for one generation only. In the 1980s, the party promised that by 2000 at the latest it would be over.⁶⁸ Yet, since the implementation of the policy in 1979, the principles have been embedded in various laws and regulations. Family planning is even part of the Constitution, which shows the importance of the policy. For instance, article 25 of the Constitution states that “the state promotes family planning so that population growth may fit the plans for economic and social development.” This article seems to imply that family planning is subject to economic and social development. Article 49 of the Constitution also mentions that families have a duty to practice family planning. Other references to family planning can be found in the 1980 Marriage Law, the 1994 Law on Maternal and Infant Health Care and even some of the regulations of the 1998 Adoption Law are subjected to regulations of the policy. Further principles and general laws are laid down in various White Papers. In September 2002, the ‘Population and Family Planning Law’ even came into force after more than 20

⁶⁶ Chinese Embassy, *Fact Sheet 3 - Family Planning in China*, Chinese embassy in the UK at http://www.oneworld.org/news/partner_news/china_factsheet3.htm.

⁶⁷ *Family Planning in China*, White Paper, Information Office of the State Council Of the People's Republic of China, August 1995, Beijing at <http://www.chnlaw.com/DataBase/WhitePaper/FamilyPlanning/FamilyPlanningE-5.html>.

⁶⁸ J. Becker, *A failure to...*, 19 April 1999, op cit.

years of practising the one-child policy.⁶⁹ China is the first country in the world to have such a law.

The law is, however, by no means to be interpreted as a relaxation of the family planning policy. Zhang Weiqing, the Minister in charge of China's State Family Planning Commission confirmed this when he said "any mood of relaxation and blind optimism could lead to a rebound in our fertility rate and the deterioration of our population environment."⁷⁰ Xu Yulin, deputy director of the Legislative Affairs Office of the State Council, also confirmed this by saying that "it is a misconception to think that China will relax its family planning policy, a change that would permit its citizens to have as many children as they would like as long as they are able to pay the fine imposed for an extra-policy birth."⁷¹

3.1.3 Future Goals

The goals set by the government for the coming decades are to keep the population under 1.33 billion people by the year 2005 with an annual growth rate of maximum 9 per thousand. By 2010, the population has to be maintained within 1.4 billion persons with zero population growth.⁷²

With regards to the improvement in the quality of life and development, the number of years of education will be higher, 9 year compulsory education, combined with a much higher enrolment level; all people will have access to basic medical care and reproductive health services; informed choice of contraceptives measures is to be practised widely and the sex ratio at birth is expected to gradually become normal.⁷³

By the year 2050, the population would peak at 1.6 billion after which it is expected to decrease slowly. By this time, middle and higher education is to be popularised nationwide, a comprehensive social security system is to be in place, urbanisation will be greatly enhanced and the employment is expected to be more rational. The Chinese people would have a much better life with their per capita income equalling that of moderately developed nations. China

⁶⁹ This law will be discussed in further detail in chapter 5 – Legal Framework.

⁷⁰ J. Albright, M. Kunstel, *China renews vow to end growth; Country pledges to stabilize*, in <<Austin American-Statesman>>, 13 October 1999.

⁷¹ *No Relaxation of Chinese 'One Couple, One Child' Policy: Official*, in <<People's Daily>>, 2 September 2002.

⁷² *China's Population and Development in the 21st Century*, White Paper, Information Office of the State Council Of the People's Republic of China December 2000, Beijing at <http://www.china.org.cn/e-white/21st/index.htm>.

⁷³ The skewed birth ratio between boys and girls will be discussed in chapter 4.2 Unintended Effects.

would also have achieved a coordinated development of the population, economy, resources and environment.⁷⁴

3.2 Procedure for Birth Permit

In order to attain these demographic goals in the future the government has, just as in the past, set an annual nationwide goal for the number of authorised births. Each province, municipality, and so on is allocated a specific number of births. To keep with these targets, couples have to apply for a birth permit before conceiving. To receive the permit, couples have to go through a whole set of stages. Only women who have reached the late-birth age are able to obtain a birth permit.⁷⁵ In order to obtain this document, women first have to get permission from their work unit. Then, they can apply for the permit at the family planning office of their residence committee.

The following documents have to be attached to the written application: a stamped form certifying attendance of a marriage guidance course, a statement from the work units of both spouses, and a statement of the responsible neighbourhood committee.⁷⁶ Besides this, couples, especially married women, are closely monitored. Local family planning officials usually have a chart of every woman in their area, which includes among others their marital status, contraceptive use, pregnancies and even their menstrual cycle. Also, they are regularly called in for check-ups and they may be penalised for not showing up or for having unauthorised births.⁷⁷ This seriously questions the voluntariness of the policy.

3.3 Contraceptive Use

The focus of the Chinese government regarding population control has always been and still is on targets and numbers. It thus applies the demographic rationale for its policy. The focus of the policy, in obtaining the targets, has by and large been through the compulsory use of contraceptives. Although according to governmental white papers, China relies on informed choice regarding the provision of contraceptives the main focus is still on the insertion of IUDs, sterilisation of one spouse and induced abortions. This also becomes clear by looking at the table below.

⁷⁴ *China's Population and Development...*, White Paper, 2000, op cit.

⁷⁵ The late-birth age is 24 years and above.

⁷⁶ Scharping, 2003, pp. 94-95.

⁷⁷ *Profile Series China: Family planning policy...*, 1995, op cit., pp. 10.

The table shows that women have to bear a disproportionate burden of practising family planning compared to that of men. Men account for less than 13 percent of the total use of contraceptives. Besides this, it is females who have to endure contraceptive failure and ‘remedial procedures’ (abortions). As a result they have a higher risk of suffering from any side-effects and medical complications. IUD insertion, for instance, can have serious health effects. It might lead to inflammatory infections, more serious bleeding and so on, but it still accounts for more than 45 percent. Repeated abortions and IUD insertions worsen the risk of infection and perforation.⁷⁸ Finally, the figures on sterilisation also show extensive gender bias. This, despite the fact that a vasectomy is less complicated and risky than tubal ligation; and while female sterilisation is permanent, there is a new technology for performing no-scalpel vasectomies, which are less ‘drastic’ and reversible.⁷⁹ The Committee on the Elimination of Discrimination Against Women has also expressed concern with the figures for female sterilisation and observed that the fact that women bear the overall responsibility for contraceptive use might amount to discrimination.⁸⁰

Table 1: Contraceptive mix in China in 2001

Contraceptive Methods	Percent
Female sterilisation	38.1
Male sterilisation	7.51
IUD	45.6
Implant	0.4
Oral pills & Injection	2.1
Condoms	5.1
Others	0.8

Source: National Report of the People’s Republic of China to the Fifth Asian and Pacific Population Conference, August 2002

⁷⁸ S. Greenhalgh, E. Winckler, *Perspective Series: Chinese State Birth Planning in the 1990s and Beyond*, U.S. Department of Justice, INS, Washington, D.C., September 2001, pp. 32.

⁷⁹ *ibidem*.

⁸⁰ Committee on the Elimination of Discrimination Against Women, *Concluding Observations: China*, 3 February 1999 at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/1483ffb5a2a626a980256732003e82c8?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/1483ffb5a2a626a980256732003e82c8?Opendocument).

Although the Chinese government does not promote abortion as a means of contraception, it has always accounted for a significant percentage of the birth control surgeries conducted in China. Between 1971 and 1998, abortions accounted between 17 and 43 percent of all operations, averaging 31.6 percent.⁸¹

3.4 Exemptions

The one-child policy is however not as the name seems to imply, strictly a ‘one child per couple’ policy; some exceptions are allowed. Rural families who are in real difficulties (those who have a shortage of labour power, when the first child has mental or physical disabilities or when the first born is a girl) are allowed to have a second child after an interval of several years. Although family planning is encouraged among minorities, they are usually exempted from the one child rule. Exemptions are also allowed in cases when a pregnancy occurs after the decision to adopt, when couples are facing difficulties in continuing the family line, and in the case of returning overseas Chinese. Except for four provinces (Henan, Hubei and Gansu Provinces and Inner Mongolia Autonomous Region), couples who are only children themselves, are since 2000 allowed to have two children themselves provided that an appropriate interval is between them.⁸²

3.5 Incentives – Disincentives

The government has imposed a system of incentives and disincentives to promote adherence to the family planning program. Examples of incentives are extended maternity leave and other bonuses such as periodic allowances, and retirement pensions which are all attached to the one-child certificate.⁸³ The child itself will get preference for day-care, and will also receive priority for future jobs. Other incentives involve preferential treatment in areas such as employment, housing, and land allocation for farmers. To further encourage small families in rural regions, incentives like low-interest business loans and discounted fertiliser have been provided for households with two children or less.

⁸¹ S. Greenhalgh, E. Winckler, *Perspective Series:...*, September 2001, op cit., pp. 99. For a closer look at the number of abortions per year, see table 6.1 of the same report.

⁸² D. Yimin, , *China's one-child policy enters new phase*, 15 February 2001 at <http://www.peopleandplanet.net/doc.php?id=771>.

⁸³ This certificate can be obtained when couples are committed not to have more than one child.

In the 1980s, less than one-fifth of the married couples had signed the certificate and some people handed back the certificate later on. During the 1990s, the nationwide certificate rate rose slightly from 18 percent in 1989 to 22 percent in 1996.⁸⁴ If we look at the urban-rural breakdown of figures in 1989, it shows that 48.9 percent of urban couples signed the one-child pledge, while only 18.1 percent in towns and 10.5 percent in villages signed the certificate.⁸⁵ In recent years, to encourage urban couples to sign the one-child pledge, the government has offered them an extra month's salary per year until the child is 14.⁸⁶

Due to the fact that the one-child bonus has not kept up with the increase in wages, prices and inflation rates, this incentive has largely lost its value as a material incentive. Other incentives have encountered difficulties as well. In urban areas for instance, the preferential treatment for single children has lost most of its value, because due to the high adherence in cities most children are entitled to the benefits. Extended maternity leave is hardly ever enforced as an incentive, as work units have to bear the burden of providing the incentives and sometimes a woman simply cannot take time off.

When the one-child pledge is broken, the certificate has to be returned, all funds will be withdrawn and they even have to be reimbursed. This is also required when a couple receives a second-child permit. When Families violate the policy by having their second child too soon or refusing to terminate an unauthorised pregnancy, they will be imposed a fine of 10 percent of their combined annual incomes to be paid for 7 up to 10 consecutive years. However, if a woman aborts the second child, she is entitled to a paid holiday. In urban areas higher fines are usually imposed, ranging from 20 to 50 percent of the family's income.

Although the government stated in a 1995 white paper on family planning that "...the amounts thus collected must in no way affect the family's basic livelihood..."⁸⁷, the fines imposed seriously endanger the family's chance of survival on a regular basis. The government can also impose a collective fine upon the village, town or work unit of the violator. Penalties such as a demotion at work or even job loss may also be imposed.

⁸⁴ S. Greenhalgh, E. Winckler, *Perspective Series:...*, September 2001, op cit., pp. 69.

⁸⁵ *ibidem*.

⁸⁶ Crook, 1997, pp. 142.

⁸⁷ *Family Planning in China*, White Paper, August 1995... op cit.

Besides government action, enterprises are also allowed to take measures against employees who have become pregnant without obtaining permission first. These measures can include, no pay-raise for several years, no promotion, and even dismissal. Besides the fact that the implementation of a government policy and its penalties should not be left to enterprises but strictly to government control, dismissal of a woman with an unauthorised pregnancy is even against some provincial laws. Shanghai's Municipality's labour and employment law, for instance, prohibits the dismissal of a female employee who is "pregnant, on maternity leave, or undergoing a nursing period after the delivery"⁸⁸.

3.6 Results

China has achieved remarkable results since the implementation of the one-child policy; it managed to avert more than 300 million births since 1980. The total fertility rate fell from 5.8 children per woman in 1970 to 1.8 in 2000.⁸⁹ The average marriage age for women increased from 20.8 in 1970 to 22.6 years in 2000. However, this cannot be completely attributed to a changing attitude, as the minimum legal marriage age was raised to 20 years for women and 22 years for men. China has also managed to save more than 360 billion yuan (US\$ 43.4 billion) that would otherwise have been used to raise these children.⁹⁰

Due to a lower fertility rate, China has contributed to the stability of the world's population and improved the quality of life of its people. Family planning has helped to save resources and funds, and lessened the pressure on the demand for daily necessities such as education, employment, medical care, etc. This in turn has raised the standard of living of the Chinese people.

More than 200 million people less are living under the poverty line since the late 1970s, which means a drop from 33 percent to around 3 percent of the total population; people are on average higher educated; the average life expectancy has risen from 35 years before 1949 to 70.8 in 1996; the infant and maternal mortality rates have dropped immensely; per capita incomes rose; and the status of women has improved.⁹¹ China has also accomplished the transition in its reproduction pattern from one featuring high birth rate, low death rate and high growth rate to one featuring low birth rate, low death rate and low growth rate in a relatively short period of time.

⁸⁸ *Women of the World...*, 1995, op cit., pp. 13.

⁸⁹ C. Friedman, *Executive Summary: Demographic Profile of China*, Population Resource Center, August 2002 at <http://www.prcdc.org/summaries/china/china.html>.

⁹⁰ *Family Planning Policy Helps Reduce Poverty in China*, in <<People's Daily>>, 12 July 2002.

The lowered birth rate also means that there are relatively fewer children and elderly people that need support from the working-age people (15 to 64 years old); this situation leads to an investment opportunity. Since the number of young persons and elderly, supported by each productive citizen, is comparatively low at this moment, China can now “boast an abundant labor pool and a light burden of unproductive population, which is conducive to the development of productivity.”⁹² This trend is likely to continue for another twenty years or so, after which China will gradually experience the heavy burden of an aged society.

Despite the fact that fertility rates in China have dropped a great deal, the population still grows with 1.07 percent a year, which is an annual net increase of about 13 million, even though the total fertility rate is below the replacement level.⁹³ This is due to population momentum; as a result of the huge population base the number of women entering their child-bearing years each year will continue to increase for several years. This means that the population will still exert a great pressure on the environment and the economy.

Although China has managed to prevent more than 300 million babies from being brought in this world, a question that arises is at what cost this has happened; how many of these babies were actually wanted? Many also question why the policy was ever put in practice in the first place, since the birth rate already dropped steadily in the 1970s when the policy was more experimental and based upon the voluntary use of contraceptives. The birth rate was at a steady 2 percent between 1949 and 1974 and then declined to about 1.5 percent in the mid 1970s.⁹⁴ Nigel Crook, a demographer, even stated that the policy was unnecessary. He stated that demographers have calculated that the target of 1.2 billion set by the government could also have been reached with two children per couple “if they started on their childbearing much later and spaced the births with a four-year interval between them”⁹⁵. However, this policy would have been difficult to enforce “as it implies that women starting their family are in their thirties”⁹⁶.

⁹¹ State Family Planning Commission, *Achievements and Developments in Population and Family Planning*, Beijing, China, 2001 at <http://www.sfpc.gov.cn/en/effort.htm>.

⁹² G. Kun, *Population: Key to the Economic Takeoff*, December 2000 at <http://www.china.org.cn/english/2000/Dec/5057.htm>.

⁹³ Z. Zhang, *Fertility Trends and the Prospect of Family Planning Program in China: Its Future Changes and Related Policy Selection*, Institute of Population and Development, Nankai University at <http://www.iussp.org/Bangkok2002/S04Zhang.pdf>.

⁹⁴ *ibidem*.

⁹⁵ Crook, 1997., pp. 145-146.

⁹⁶ *ibidem*.

3.7 Acceptance

In rural areas the birth rate has never fallen below 2.5 children per family. In the cities the policy has worked better; the birth rate there has fallen to an average of 1.2 children per family.⁹⁷ A reason for this is that it is easier to enforce the policy in the cities, due to the fact that there is stricter control and acceptance is higher due to higher economic development. Secondly, in the city children are not 'useful' until they reach the age of 16 and can get a job.

Although many urban couples prefer to have two children, the strict enforcement of the policy and the high costs of raising children prevent them from having more. Nowadays, urban people have to pay for education, health care and pensions themselves. Housing is also very difficult to find in the cities, so the preferential housing allocation linked to the one-child certificate is extremely helpful. Lastly, in urban areas children are not needed for their parents' retirement since most of them that work, especially those who are involved in state companies, will receive retirement pensions and do not need their children to support them.

In the countryside the policy has been less successful. In these regions it is far more difficult to enforce the policy, not only due to peasants' resistance but also because most of these areas are so remote. Resistance in rural areas was and still is largely widespread due to cultural, social and economic factors. Traditional marriage and family patterns with stereotypical gender roles are still prevalent in rural areas. For example, marriage is primarily seen as an instrument for reproduction. There is a strong preference for (at least) two children in the countryside, as children are needed to work the fields and parents need children to support them when they are older, since no social security system is in place.

Paradoxically, given the remaining gap between state demands and popular desires, the evidence indicates that most of the public largely accepts the birth planning program as legitimate and even necessary. In a 1992 urban survey, 85 percent of women said that the individual must submit voluntarily to national policy and 83 percent agreed that national leaders had no option but to control population growth. 46 percent disagreed that the number of children should be left to the choice of the individual (42 percent agreed and 12 percent did not answer). Nearly all women said that in practice the number of children they had, had been dictated by national policy rather than personal preference. Some indicated that that was appropriate, others merely that it was unavoidable.⁹⁸

⁹⁷ C. Friedman, *Executive Summary...*, August 2002, op cit.

⁹⁸ C. Nathansen Milwertz, *Accepting Population Control: Urban Chinese Women and the One-Child Family Policy*, Nordic Institute of Asian Studies, Surrey, Curzon Press, 1997, pp. 86-95.

In this chapter we have seen that the Chinese government imposes strict rules on when and how to regulate the fertility of Chinese people. Government intervention has been thought necessary to influence or control individual action in the interest of the common good. As the Tibetan government-in-exile put it, people have a 'state owned womb'. As one can imagine, the policy has not always been voluntarily followed; sometimes coercion was/is needed to reach the targets set by the government. The effects and consequences the policy has had will therefore be discussed in the following chapter.

4. Effects of China's Population Policy

China's population policy has had a considerable impact on people's lives and not always in a positive way. The policy has been accompanied by substantial human rights violations⁹⁹, of which forced sterilisation and abortions are the most common ones. Besides these violations, the policy has also brought about effects the government did not expect or was not prepared to handle from the outset of the program. These include among others, an ageing society and discrimination of girls. These and other consequences will be discussed in the second part of this chapter.

4.1 Human Rights Violations

The most common violations include among others, forced sterilisations and abortions, destruction of homes, and the detention of so-called 'violators' of the policy or otherwise their relatives.

Most family planning offices have an operating room where pregnant women can be examined, inserted with IUDs and where sterilisations and abortions can be performed.¹⁰⁰ Abortions may be performed even well into the third semester. These nearly full-grown babies are given a saline injection in the skull, so that they will be stillborn. In China, even when a baby is descending through the birth canal, while given a lethal injection is still being considered a legal abortion.¹⁰¹ Elsewhere, this would be seen as infanticide.

According to Chen Shengli, "10 million people are sterilized each year – not all of them volunteers".¹⁰² Sterilisation, may be imposed when parents suffer from alleged 'genetic disorders' a practice justified by the eugenic objective of 'improving the quality of the population'.

Most family planning clinics also have a cell where they can detain people who violate the policy. Cadres sometimes also detain people who did not or cannot pay their fine. The detention facilities are often very poor. Usually there is only one room for between 20-25 people and men and women are put together. The detentions are not lawful; family planning clinics do not need consent by the courts, the judicial departments or the public security

⁹⁹ In the following chapter the violations will be linked to specific human rights that have been violated.

¹⁰⁰ *ibidem*.

¹⁰¹ T. Walker, *China ruthless enforcing one-child law*, in <<Calgary Herald>>, 27 August 2000.

¹⁰² J. Pomfret, *Battle of the births: Policies initiated almost 20 years ago to try to limit population growth in China have largely failed. Applied erratically, with enforcement varying from town to town, province to province and year to year, the one-child rule has created enormous demographic stresses*, in <<The Gazette>>, 7 May 2000.

departments. There are no paperwork formalities and there are no limits associated with the detention.¹⁰³

The following case is a good account involving many of the violations mentioned above. Aihai Li, was a married woman living in Sihui county and mother of a 2.5 year old girl. As she lived in the countryside and her first child was a girl, she was allowed to have a second child, but only after an interval of 4 years. However, by then she was already 4 months pregnant with her second child. For this reason family planning officials came to her house and told her that she would have to undergo an abortion, because she was expecting too soon. As she did not want to abort her child, she fled and went into hiding with relatives in a neighbouring county until she had given birth to her child. When the family planning officials found out that she had disappeared, they began arresting her relatives. Her parents, brother, sister, mother-in-law, brother-in-law, and three other relatives were all arrested and imprisoned over the next few weeks. As none of her relatives would reveal the whereabouts of Aihai, the officials went to their house and demolished it. When they were finished, “you could stand on the first floor of Aihai’s home and look up through two stories and the roof to the blue sky”¹⁰⁴. But this was not enough for the officials, so they went on to her parents’ house and then her in-laws’.

When Aihai came back after having given birth to a son, she found her family in prison and her house in pieces. If she wanted her relatives to be released she had to pay a fine of 17,000 RMB, the equivalent of about US\$ 2,000 and equalling two or three years income. As her son was unauthorised, he could only be registered after paying another 17,000 RMB. If he stayed unregistered, he would be considered by the state as a non-person with no rights whatsoever. He would not have had access to health care, education, government employment, etc. However, if she was able to pay the fine her son would be issued with an identity card, but she would still have to pay double fees for his school supplies and of course she had to undergo sterilisation.

¹⁰³ *Forced Abortion and Sterilization in China: The View From the Inside*, Hearing before the Subcommittee on International Operations and Human Rights of the Committee on International Relations, House of Representatives, Washington, DC., 10 June 1998 at http://commdocs.house.gov/committees/intlrel/hfa49740.000/hfa49740_0.HTM.

¹⁰⁴ Population Research Institute, *The Population Controllers and Their War on People*, vol. September-October 2002 at <http://www.pop.org/main.cfm?id=94&r1=1.00&r2=1.00&r3=0&r4=0&level=2&eid=421>.

Another appalling story concerns Zhou Jianxiong, a 30-year-old agricultural worker from Hunan province who died from torture in 1998. In January 1998, Zhou went to Changsga to find work and his wife, Jiang Lianhui, moved to Guangdong for the same purpose. However, officials thought Jiang was pregnant ‘out-of-plan’ and had subsequently gone into hiding, although she had had a tubal ligation in November 1997. Zhou was then made to reveal the whereabouts of his wife, but he was not able to do so as he had no way of contacting her. In response, officials detained and tortured him at the township birth control office for 10 days. “Zhou was denied food, hung upside down, whipped and beaten with wooden clubs and burned with cigarette butts. ... The officials reportedly then branded his lower body with soldering irons, tied wire around his genitals and ripped off his penis.”¹⁰⁵

Due to the fact that his family demanded answers from officials, they were proposed 20,000 Yuan in compensation and 15 days detention for the perpetrators. This is in any case not in proportion to the acts committed by the perpetrators. Apparently this is what the government means with a dedicated commitment to punish offenders.

The cases mentioned above are not exceptional; stories of raids, destruction of houses, beatings and detentions are very familiar from newspaper articles, testimonies from former family planning officials and testimonies from victims of such abuses. Many of these cases do not even happen secretly, but publicly to set an example to others of what will happen if they disobey orders.

These stories are not just limited to the majority of Han Chinese. Minorities are more and more subject to stricter policy regulations and abuses have also occurred. Minorities with a population under 10 million people, are officially excluded from the one-child policy; the policy is encouraged among them but they do not strictly have to adhere to it. Usually, they are allowed two children and sometimes three. However, specific rules and regulations are detailed by provincial and local governments.

Since 1995 rules for minorities have become much stricter. President Jiang Zemin said in a speech that “although some measures are being taken in the minority areas, implementation of the Communist Party’s family planning policies are not satisfactory there. From now on it is necessary to enforce implementation of the birth control policies in the

¹⁰⁵ Amnesty International, *People’s Republic of China: Torture – A Growing Scourge in China – Time for Action*, 12 February, 2001 at <http://web.amnesty.org/ai.nsf/Index/ASA170042001?OpenDocument&of=COUNTRIES\CHINA>.

minority areas”¹⁰⁶. In response, most provincial and local governments have laid down regulations specifying that minorities can have one to two children after which they have to be sterilised.

For instance, in 1995 legislation changed for minorities living in Guangxi province. Compulsory sterilisation after the second child was introduced.¹⁰⁷ Before 1989, a family with one parent belonging to a minority could have two children. After 1989, this was restricted to families who were both from a minority. Anyone who does not comply with these new regulations are facing a fine of 50,000 Yuan (about \$6,000), even though peasants’ annual incomes average only 300 to 500 Yuan (\$60). Of course, hardly anyone can pay these exorbitantly high fines, “but if you resist the officials will pull down your house and take away all your possessions, including pigs and oxen””, said a doctor¹⁰⁸.

In February 2003, a team of independent journalists from radio Free Asia interviewed residents of Korla City in Xinjiang Province, where the Uyghur minority resides. In the interview the journalists asked a local birth control officer what would happen to women who have an unauthorised pregnancy. This is what the officer replied: “We forcibly make her abort her child.”¹⁰⁹

Regulations have also been tightened in Tibet, although official policy is that Tibetans are allowed as many children as they want. Married women of childbearing age are only allowed a maximum of two children. The London-based Tibet Information Network Sources reported that in the Tibetan prefecture of Shigatse local women who have had two children faced forcible sterilisation and those who resisted were charged with ‘opposing socialism’.¹¹⁰ The Tibetan government-in-exile has also documented some abuses. In one report in 1996, they stated that 308 Tibetan women had had forced sterilisations in the space of 22 days in Takar, a town near the capital.¹¹¹

¹⁰⁶ Y. Sharma, *Population_China: Birth Control Policy Stepped Up for Minorities*, in <<Inter Press Service>>, 18 November 1997.

¹⁰⁷ A. Bezlova, *China: Curbing Population Growth Still an Uphill Battle*, in <<Inter Press Service>>, 13 October 1999.

¹⁰⁸ *ibidem*.

¹⁰⁹ J. Thornton, *UNFPA and forced abortion in China*, 8 May 2003 at http://www.iconservatives.org.uk/unfpa_and_forced_abortion_in_chi.htm.

¹¹⁰ D. Rennie, *International: ‘Sterilisation threat’ to Tibetans*, in <<The Daily Telegraph>>, 12 February 2000.

¹¹¹ Tibetan government-in-exile, *Population Transfer and Control*, 2 February 1996 at <http://www.tibet.com/WhitePaper/white8.html>.

The government has never responded to specific abuses; it has always maintained and still is maintaining that its population policy is based on ‘the voluntarism of the masses’. This ‘voluntarism’ means “trying to persuade people to do what they will be required to do in any case”¹¹². The government tries to achieve this through propaganda and education in the long run, while in the short run it focuses on persuasion and mobilisation. Persuasion can already entail a great deal of social, political, and emotional pressure, not to mention the amount of pressure one has to endure when being mobilised by government officials. These mobilisations usually happen when a new crash campaign is embarked on. Most of the campaigns first raise people’s awareness, then demand that selected targets comply with program requirements, such as needed abortions and/or overdue sterilizations. The main reason for the campaigns is to compensate for the inadequate implementation and enforcement of government policy.

In order to meet quotas, family planning officials will try to persuade the non-complier through several means. First, the cadre will try to persuade the woman to have an abortion by stating her duties; if this does not have the intended result, the official will visit the ‘client’s’ house and tries not only to influence her, but also her husband and her in-laws. The client is reminded of the benefits and penalties for compliance and non-compliance respectively, and of the harmful effects of having another child has on the community. As one could imagine, these social and political pressures can become tremendous, leaving the client little choice but to give in and comply. However, if this still does not work, officials might use coercion as a last result.¹¹³

The government has admitted that sometimes abuses have occurred, but states that it is opposed to coercion and maintains that abuses are the exception and not the rule. The government portrays abuses as isolated incidents, performed by overzealous officials who were untrained and did not understand the principles. This is for instance what Chen Shengli said as a reaction to the murder of an ‘out-of-plan’ baby in Hubei province “clearly, the educational level of these officials was quite poor. They didn’t understand the law.”¹¹⁴

¹¹² S. Greenhalgh, E. Winckler, *Perspective Series*:..., September 2001, op cit., pp. 9.

¹¹³ ibidem.

¹¹⁴ M. Sheridan, ‘Official’ baby killing scandalizes Chinese: Resistance growing to the brutal enforcement of birth-control rules, in <<The Gazette (Montreal)>>, 18 February 2001.

However, officials do not, by and large, force sterilisations and abortions on women because they are zealous, rather it is the policy that in practice leaves them no other choice if they are to meet the government's targets. This is the result of the government's imposed responsibility system; officials are personally made responsible for implementing and obtaining the targets set by the government.¹¹⁵ Cadres who comply with the implementation of the policy and obtain good results receive immediate bonuses, but officials who on the other hand perform a poor job are denied bonuses and promotions. In severe cases they can face demotion, fines or loss of work. Faced with this immense pressure to perform and uphold the plan and its quotas, family planning workers resorted, and still are resorting to violence.

The Guangdong provincial government, for instance, issued an order of 20,000 abortions and sterilisations to be carried out in six months in 2001 in Huaiji county after reports revealed that the county would not meet its targets.¹¹⁶ This can hardly be discarded as a local deviation.

Women of childbearing age were sterilised or fitted with contraceptive devices, without being informed about alternative contraceptive methods. Women found to be pregnant with a second child without permission had to undergo an abortion and all women who had given 'authorised' births were sterilised. Mrs. Ru Xiaomei, division director of the International Cooperation Department of the State Family Planning Commission, stressed that what happened in Huaiji is not condoned by the authorities. She said that "those responsible will be re-educated about the country's principles for implementing family planning"¹¹⁷. But what the people really need, besides trained personnel, is that the people responsible will actually be punished as well.

Yet, perpetrators of such abuses are hardly ever prosecuted. "In recently publicized cases, some officials who have engaged in extreme violence have received only suspended sentences."¹¹⁸ Violators are only reprimanded when residents speak out against a specific action and this hardly ever happens. They fear retribution from local Communist Party officials if they speak out. Usually, it is the other way around; officials are reprimanded when they did not obtain their targets. For example, according to a report in Fujian Daily on 30 May 1996, Longhai county had announced penalties for 56 family planning workers who had failed in their duties, including 16 who lost their jobs because they were deemed responsible

¹¹⁵ *ibidem*, pp. 17-18.

¹¹⁶ M. Donohoe, *Chinese women forced to have abortion*, in <<The Irish Times>>, 5 September 2001.

¹¹⁷ *ibidem*.

¹¹⁸ Amnesty International, *People's Republic of China: Torture...*, 12 February, 2001, *op cit*. For examples of such punishments read the report.

for “relaxations and cover-ups, resulting in 14 births outside the policy in the period January to April 1996”.¹¹⁹ And in 2000, for instance, 71,000 local party members and government employees were fined or dealt with according to administrative regulations for not complying with the policy in Anhui Province.¹²⁰

4.2 Unintended effects

As said in the beginning of this chapter, the policy has also brought about some unintended effects; besides an ageing society, due to the decline in fertility, China has also faced problems as a result of the skewed ratio at birth. This, in turn, is the result of strong son preference, which has been exacerbated by the one child policy.

4.2.1 Ageing Society

States with less than 10 percent of citizens aged 65 and over is regarded as infantile, those with between 10 to 15 percent of elderly as an adolescent society, and those between 15 and 20 percent as mature, balanced or stabilised. A society with 20 percent and more of elderly is considered an aged society.¹²¹ However, states with more than 10 percent of senior people is already considered an ageing society.

Due to the fact that China’s total fertility rate has dropped in such a short time means that it is becoming an ageing society. Because the size of young children being born has declined, and the size of elderly has increased (not only due to larger cohorts becoming older, but also due to the fact that life expectancy has increased), the age of the total population has been increasing, resulting in gradual population ageing.

In 2000, China already had 130 million elderly residents, who made up just over 10 percent of the population compared with an elderly population of 66 million in 1990.¹²² This number is only expected to increase; statistics show that the number of Chinese people older than 60, is increasing at a rate of 3.2 percent per year.¹²³ It is estimated that by the year 2020, the number of people aged 60 and over in the whole of China will reach about 400 million.¹²⁴ The World Bank has predicted that those 60 years old or older will account for 22 percent of

¹¹⁹ Amnesty International, *Women in China: Detained, Victimized but Mobilized*, July 1996 at <http://web.amnesty.org/library/Index/ENGASA170801996?openof=ENG-CHN#UOT>.

¹²⁰ BBC, *China: Anhui reports good results in birth control*, 16 February 2000 at <http://news.bbc.co.uk/1/hi/asia-pacific/>.

¹²¹ M. Sagrera, *Population Crisis*, Fundamentos, Madrid, 1994, pp. 21-22.

¹²² BBC, *China’s ageing population*, 1 September 2000 at <http://news.bbc.co.uk/1/hi/world/asia-pacific/906114.stm>.

¹²³ *Report: China’s Aging Population Expanding Fast*, in <<People’s Daily>>, 15 August 2002.

¹²⁴ *ibidem*.

the nation's population in 2030.¹²⁵ This has significant implications for elderly people in terms of health care and other social services, such as pensions.

A huge problem is that a complete social welfare system is not yet in place throughout China; in rural regions it is virtually non-existent. As a result people rely on their children (read sons) for support. At present more than 70 percent of seniors are financially supported and looked after by their families and only less than 17 percent of them enjoy pensions.¹²⁶ Especially in the countryside, the family is still the most reliable support for the elderly, and there 80 percent of the aged live with their children or other family members.¹²⁷

However, at present the old age support function of the family is weakening due to changes in family structure and residential modes. Just as families are becoming smaller and more nuclear, the aged are losing the position of respect and care they had within the family in petty production society. Urbanisation and industrialisation have weakened family members' dependence on the family as well. Also, as a result of the one child policy focus has shifted towards the young, which in turn also leads to weaker respect for the elderly.

In the future, it will be difficult for single children to support their parents, as they people do not have any siblings they need to support their parents alone. But these people do not only face the daunting prospect of caring for their parents alone but also for four grandparents. This phenomenon is known as a 4-2-1 family. This places enormous reliance on the child, especially on those who have been brought up as a 'little emperor', and who in any case may be less willing to shoulder the traditional burden of responsibility for his or her parents' welfare. Therefore, those that can afford it have begun to transfer their traditional responsibilities of looking after their relatives at home to private nursing homes; a move that has itself sparked some resentment. Some people have even sued their families for neglect.¹²⁸

4.2.2 Unbalanced Sex Ratio

Besides this, the policy has also led to a skewed sex ratio at birth; this is a consequence of female underreporting, infanticide, sex-selective abortions, abandonment and neglect due to China's strong son preference. According to Chinese tradition there must be a boy among the children in order to continue the family line, to inherit and work the land, and to provide for old-age support. In China, you will be considered a bad descendant to your ancestors if you

¹²⁵ *Pension problem shadows nation*, in <<China Daily>>, 4 August 2000.

¹²⁶ *Report: China's Aging Population...*, 15 August 2002, op cit.

¹²⁷ S. Changmin, *Population Ageing and the Old-Age Security System in China*, 1996 at <http://www.iias.nl/iiasn/iiasn9/eastasia/sun.html>.

¹²⁸ BBC, *China's ageing population*, 1 September 2000, op cit.

do not have a boy to carry the family name.¹²⁹ Chinese also prefer boys to girls because in most parts of the country, a woman marries into her husband's family. As a result the attitude is not to spend money on girls, in the form of health care and education, since they are going to leave their parents anyway. This is due to the strong Confucian influence that exists among Chinese families despite attempts to reduce it.

Even before family planning programs were introduced in China, son preference was evident in the better health care and higher education received by sons as compared to daughters. The introduction of the one child policy has only reinforced this.

The son preference has expressed itself in a very skewed birth ratio. The normal sex ratio at birth is between 105 and 107 boys for 100 girls born. The reason why the birth ratio for boys is slightly higher is due to the fact that under equitable conditions of nutrition and health care, infant and child mortality is lower for females.

During the 1960s and 1970s China's sex ratio at birth was normal. However, in 1982, the ratio of boys born was 111.7 for every 100 girls.¹³⁰ The sex ratio has worsened since; the sex ratio at birth was estimated at 113 boys per 100 girls in 1987, 118 or 119 male births for 100 females ones in 1994, and again 118 boys per 100 girls in 1997.¹³¹ The 2000 census revealed that there were 117 boys born for every 100 girls in 2000.¹³² Others, such as the Chinese Academy of Social Sciences contend that 120 boys are born for every 100 girls.¹³³ In addition to this, the infant mortality rate for girls was increasing while that of boys was decreasing.¹³⁴ In 1981 the male infant mortality rate declined from 39 to 35.5 per 1000 while the female rate increased from 36 per 1000 to more than 40 per 1000 in 1989.¹³⁵

¹²⁹ *Infanticide in china*, 29 April 2002 at <http://small-world.netfirms.com/articles/infanticide.htm>.

¹³⁰ *Geo Factsheet: Population Policy in China*, September 1998, Number 55 at <http://www.curriculumpress.co.uk/pdf/newgeo/055%20Population%20policy%20in%20China.pdf>.

¹³¹ China Rights Forum Spring 1999, *The Population Policy and Discrimination Against Women and Girls*, Human Rights in China, Spring 1999 at http://www.hrichina.org/crf/english/99spring/e18_population.htm.

¹³² A. Bezlova, *China to formalize one-child policy*, in <<Inter Press Service>>, 24 May 2001.

¹³³ D. Rennie, *International: China to relax disastrous one-child policy*, in <<The Daily Telegraph>>, 14 March 2000.

¹³⁴ G. Baochang, R. Krishna, *Sex Ratio at Birth in China, with Reference to Other Areas in East Asia: What We Know*, in <<Asia-Pacific Population Journal>>, United Nations, vol. 10, No. 3, September 1995, pp. 30.

¹³⁵ E. Croll, *Amartya Sen's 100 Million Missing Women*, in <<Oxford Development Studies>>, vol. 29, no. 3, 2001, pp. 229.

Especially those conceived at second and higher parity births are particularly at risk. In 1990 in China, the sex ratios at birth were near normal at first birth but there was a substantial increase to 122 boys to 100 girls at second birth and thereafter birth ratios hovered around 130 to 100 for subsequent births.¹³⁶ The imbalance between male and female births has been particularly occurring among women having daughter(s) but no son, which shows intentional interference with fertility behaviour owing to strong son preference. In Anhui, for instance, figures for mothers giving birth to a second child showed that three boys were being born for every girl. This discrepancy is attributed to the ‘deliberate termination of the child’ by parents who discover through ultrasound examination that the foetus is female.¹³⁷

The imbalance also differs regionally; “the 1990 census showed that the city provinces had the lowest sex ratio at birth, i.e. 108.9... However, it is interesting to note that in town populations, the sex ratio at birth was highest at 111.9, whereas for the county or rural population it was 111.7. 21 of the 30 provinces had a sex ratio at birth higher than 108.0...”¹³⁸ Officials are concerned that there are 4 boys to every girl in countryside.¹³⁹ Besides this, official statistics also showed that in rural areas infant mortality rates are 27 percent higher for girls than boys.¹⁴⁰

This has led to between 5 to 10 million ‘missing’ girls each year.¹⁴¹ A population survey in 1995 showed that there were 36.8 million more men than women and single men aged 25 to 49 outnumbered single women by 15 times. Today, experts estimate that there are 66 million more men than women.¹⁴² That is already far more than the current female populations of Taiwan and South Korea combined. This means that universal marriage is no longer possible for every man. Already in 2000, there was a shortage of 30 million brides in China.¹⁴³ This shortage has resulted in increased women trafficking; tens of thousands of young women are kidnapped and sold each year. 110,000 women were freed during a crackdown¹⁴⁴ and more than 19,000 perpetrators of woman and child trafficking were arrested

¹³⁶ *ibidem*.

¹³⁷ J. Gittings, *Ultrasound ban to tackle boy baby bias: Beijing takes action as desire for sons pushes sexes out of balance*, in <<The Guardian>>, 12 December 2000.

¹³⁸ G. Baochang, R. Krishna, *Sex Ratio at Birth...*, September 1995, *op cit.*, pp. 21.

¹³⁹ M. Kwang, *67% of one-child families in China have sons*, in <<The Straits Times>>, 1 February 2000.

¹⁴⁰ G. Yan, *Sex-selection abortions banned to end population imbalance*, 30 April 2003 at <http://www.laogai.org/en/news-news-population-sex-selection.html>.

¹⁴¹ S. Moore, *Maloney & co. Should fund condoms themselves*, in <<The Washington Times>>, 6 June 1999.

¹⁴² J. Pomfret, *Battle of the births...*, 7 May 2000, *op cit.*

However, sources differ about the exact number of missing women. Most predictions are somewhere between 40 and 70 million missing women.

¹⁴³ S. Weinberg, *An End to the One-Child Quota?*, Catholic World Report, February 2000 at <http://www.catholic.net/rcc/Periodicals/cwr/Feb2000/Dossier3.html>.

¹⁴⁴ J. Pomfret, *In China's Countryside, 'It's a Boy!' Too Often*, in <<The Washington Times>>, 29 May 2001.

in 2000 alone.¹⁴⁵ Chinese gangs also traffic in Vietnamese and North Korean women to meet the demand of (desperate) Chinese men looking for wives.

There is an argument that this is a self-correcting problem; that when you have a severe shortage of marriageable women, all of a sudden females become more valuable because they are rarer, and that raises the status of females.¹⁴⁶ However, the increased kidnapping and selling of women seems to conflict with this argument. Rather the opposite seems true; women's lives become even less valuable.

Sex-selective abortion, infanticide, neglect, abandonment and non-registration are responsible for the 'missing' girls. Since the beginning of the 1980s the use of ultrasound machines has become widespread throughout China. These machines have been and still are being used to identify the sex of the foetus after which in most cases selective abortion followed in cases where the scans indicate a female foetus. According to a report, 97.5 percent of all aborted foetuses in the country were female.¹⁴⁷ Most female foetuses are aborted, so that parents can have another try for having a 'legal' son.

In an attempt to deal with the crisis, China has issued a ban on sex-selective abortions in 1993, and in 1995 the government passed a law criminalising them. Ultrasound tests for the purpose of sex-selection were outlawed and the government is conducting a nationwide campaign to convince farmers that girls are as desirable as boys are. But the practice still continues. The regulation prohibits medical institutions, family planning agencies and private clinics to provide medical means for identifying a foetus' sex, unless there is a need for identifying whether the foetus would carry hereditary diseases.¹⁴⁸

Again there is a division between rural and urban areas. Sex-selective abortions are less common in cities as urban families do not have to rely on 'sons' for their old age support as most people there will receive pension funds.

¹⁴⁵ C. Junhong, *Prenatal Sex Determination and Sex-Selective Abortion in Rural Central China*, in <<Population and Development Review>>, vol. 27, no. 2, 1 June 2001, pp. 169.

¹⁴⁶ M. Fathalla, *The missing million*, 5 December 2000 at <http://www.peopleandplanet.net/doc.php?id=576>.

¹⁴⁷ Gendercide Watch, *Case Study: Female Infanticide* at http://www.gendercide.org/case_infanticide.html.

¹⁴⁸ *Regulation On Prohibiting Fetal Sex Identification and Selective Termination of Pregnancy for Non-Medical Reasons*, adopted at the Fifth Session of the Ninth Standing Committee of Shandong Provincial People's Congress on 21 November 1998 at http://www.unescap.org/pop/database/law_china/ch_record021.htm.

Besides sex-selective abortions, parents have also concealed baby girls from official registration or even abandoned them in order to be able to have a chance for a boy. Some are even made crippled by their parents because, according to the regulations, if the first baby is disabled, the parents are allowed to have another child.¹⁴⁹

The abandonment of female infants has increased since the early 1980s.¹⁵⁰ A very high proportion, in some areas up to 90 percent, of young children in orphanages is female. In a sample of 237 children who were abandoned, almost 90 percent (212) were girls. There were only 25 abandoned boys in the sample of which 60 percent of the abandoned boys were disabled or severely ill.¹⁵¹

Abandoned children, mostly girls and handicapped children, may die of exposure, end up in welfare institutions where many also die due to poor conditions and poor health, or be adopted. They are best off when they are adopted informally. Mei-ming, for instance, is a female infant in an orphanage. She was “tied up in urine-soaked blankets, scabs of mucus growing across her eyes, her face shrinking to a skull, malnutrition slowly shrivelling her two-year old body.” She had been left like that for 10 days. “The orphanage staff call her room the ‘dying room’, and they have abandoned her for the very same reasons her parents abandoned her shortly after she was born. She is a girl. When Mei-ming dies four days later, it will be of sheer neglect. She will be just another invisible victim of the collision between China’s one-child policy and its traditional preference for male heirs.”¹⁵²

About a million handicapped babies are abandoned each year by parents determined that their one allowed child should be healthy.¹⁵³ A doctor shrugged and talked for many when he said, “they should be left where they are”¹⁵⁴. The reason why parents abandon their children instead of officially giving them up for adoption is that couples are only allowed to do that in exceptional circumstances, such as if they cannot take care of the child either financially or physically. Besides, after having given up their child for adoption, under state regulations the couple is not allowed to have a second child, as they already have/had one.

¹⁴⁹ *Infanticide in china*, 29 April 2002, op cit.

¹⁵⁰ *Beijing admits major imbalance in male-female birth statistics*, in <<The Irish Times>>, 29 March 2001.

¹⁵¹ K. Johnson, *Infant Abandonment and Adoption in China*, in <<Population and development Review>>, vol. 24, no. 3, September 1998 at http://www.popcouncil.org/mediacenter/newsreleases/pdr24_3_china.html.

¹⁵² T. Hilditch, , *Chinese Cultural Studies: A Holocaust of Little Girls* at <http://acc6.its.brooklyn.cuny.edu/~phalsall/texts/c-wnhol.html>.

¹⁵³ J. Manthorpe, *Chinese officials drown baby in front of parents: China’s one-child policy leads to the kidnapping of thousands of women*, in <<The Vancouver Sun>>, 24 August 2000.

¹⁵⁴ A. Antonowicz, *Inside China; They Were the Pictures Which Shocked the World Now We Walk the Streets Where Unwanted Babies Are Left to Die*, in <<The Mirror>>, 24 February 2001.

A fourth reason for the missing girls is the neglect of baby girls resulting in lower female survival rates. Girls receive, by and large, less resources and medical attention. They are usually breast-fed for shorter periods than boys, which may reduce their natural immunity to diseases. In some cases the neglect of baby girls may extend to infanticide.

Although infanticide, abandonment and abuse of female babies and their mothers are crimes both under the Women's Law and the Criminal Code, those who commit these crimes seem to run very little risk of being caught and punished under these regulations and laws, as cases of prosecution are extremely rare.

Finally, many demographers are worried about the fact that today's children are more spoiled than ever, since their parents and grandparents have fewer people on whom to spread their resources. As a result, many of the children are self-centred and lack the ability to cooperate with others even though they perform well individually. "Studies have also shown that these children are less interested in tradition than their elders and feel compelled to quickly carve out a niche for themselves in society."¹⁵⁵

In the previous chapter we have seen the evolution of China's population policy with its basic guidelines. The claimed results have however not always been achieved without coercion, as the government wants people to believe. In this chapter we have seen that the policy has led to serious violations. Therefore, the legal framework will be discussed in the following chapter. China's obligations under international law, according to international conferences and its obligations under its own national law will be discussed.

¹⁵⁵ J. Zink, *China's One Child Policy*, Acadia University, 16 December 2002 at <http://axe.acadiau.ca/~043638z/one-child/thoughts.html>.

5. Legal Framework

5.1 International Human Rights

Reproductive and sexual health rights are part of the internationally accepted framework of human rights. The 1994 United Nations International Conference on Population and Development (ICPD), for instance, affirmed that universally recognised human rights standards apply to all aspects of population programs. It stated “Reproductive rights embrace certain human rights that are already recognized in national laws, international human rights documents and other relevant United Nations consensus documents.”¹⁵⁶

The human rights that have a close bearing on population issues are, among others, the right to health; to information and education; the right to liberty and personal security; the right to be free from torture; to equal treatment and to be free from discrimination; the right to marry and found a family; and in the case of China also the right to be free from arbitrary detention and the right to property.

5.1.1 Right to Health

Article 12 of the International Covenant of Economic Social and Cultural Rights (ICESCR) recognises “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” The Committee on Economic, Social and Cultural Rights stated in General Comment no. 14 that “the right to health is closely related to and dependent upon the realization of other human rights... including the rights to ... education, human dignity, life, non-discrimination, equality, the prohibition against torture, privacy, access to information... These and other rights and freedoms address integral components of the right to health.”¹⁵⁷

The right to health includes all care related to sexual and reproductive health. It also implies the choice to decide whether, when, how, and which method to use regarding family planning services.¹⁵⁸ In order to be able to make a well-informed choice about regulating one’s own fertility, people, including adolescents and the unmarried, are entitled to be informed about such services together with the benefits and risks they entail. The ICPD

¹⁵⁶ ICPD, 1994, op cit., principle 7.3.

¹⁵⁷ Committee on Economic, Social and Cultural Rights, *General Comment 14, The right to the highest attainable standard of health*, UN Doc. E/C.12/2000/4, 2000 at <http://www1.edu.humanrts/gencomm/escgencom14.htm>.

¹⁵⁸ This right is also recognised in the ICPD Programme of Action, principle 7.3 and the Fourth World Conference on Women, Platform for Action, principle 223.

Programme of Action stated that both men and women have the right to “be informed and to have access to safe, effective, affordable, and acceptable methods of family planning of their choice, as well as other methods of their choice for regulation of fertility which are not against the law, and the right of access to appropriate health-care services that will enable women to go safely through pregnancy and childbirth and provide couples with the best chance of having a healthy infant.”¹⁵⁹ Moreover, the ICPD Programme of Action acknowledged that “the principle of informed free choice is essential to the long-term success of family-planning programmes”¹⁶⁰. It also stated that informed individuals will act responsibly in the light of their own needs and those of their families and communities.¹⁶¹ Therefore, “the aim should be to assist couples and individuals to achieve their reproductive goals and give them the full opportunity to exercise the right to have children by choice.”¹⁶²

5.1.2 Right to Information and Education

The right to information is not only covered by the right to health, as has been recognised by the ICPD Programme of Action, but also by the right to education. In general, all persons have the right to education, and in particular to specific educational information on sexual and reproductive health rights to ensure the health and well being of persons and families. Article 19 of the Chinese Population and Family Planning Law states that “the State shall create conditions conducive to individuals being assured of an informed choice of safe, effective, and appropriate contraceptive methods.” However, as we have seen in the previous chapters, this right is not yet (effectively) in place. China still dictates its people on when, how and what method to use to regulate their fertility. It prefers people to use long-term contraceptive methods to prevent ‘out-of-plan’ children from being born.

As has been discussed before, China still promotes the insertion of IUDs after the first child and sterilisation of one spouse after the second child, which can have serious health consequences for the women that undergo these birth control operations. The IUDs used in China, for instance, do not have a tail, which means that they cannot be safely removed by the user or an unskilled worker.¹⁶³ The woman has to seek permission for removal, which is hardly ever granted. This in turn can severely damage a person’s health. This is also in contradiction with the ICPD Programme of Action which requires from states “to ensure that

¹⁵⁹ ICPD, 1994, op cit., principle 7.2.

¹⁶⁰ *ibidem*, principle 7.12.

¹⁶¹ *ibidem*.

¹⁶² *ibidem*, principle 7.16.

¹⁶³ C. Nathansen Milwertz, *Accepting Population Control:...*, 1997, op cit., pp. 106.

comprehensive and factual information and a full range of reproductive health care services, including family planning, are accessible, affordable, acceptable and convenient to all users” and “to enable and support responsible voluntary decisions about child-bearing and methods of family planning of their choice, as well as other methods of their choice for regulation of fertility which are not against the law and to have the information, education and means to do so” (principle 7.5).

5.1.3 Right to Liberty and Security of the Person

The right to life, liberty and security is one of the most fundamental human rights and as such it could be regarded as being/becoming international customary law.¹⁶⁴ The principle of bodily integrity, or the right to control one’s own body, is included in this basic right and it also lies at the heart of reproductive and sexual freedom. “Bodily integrity includes both ‘a woman’s right not to be alienated from her sexual and reproductive capacity and....her right to the integrity of her physical person’”¹⁶⁵. This includes that all persons have the right to be free from any medical intervention related to their sexual and reproductive health and life, save with their full, free, and informed consent.¹⁶⁶ Under this definition forced sterilisations and abortions are in violation of this right. Not only has the Committee on the Elimination of Discrimination Against Women recognised that forced abortions and sterilisations are in violation of article 5 and 16¹⁶⁷, but several constitutional courts have also held that compulsory sterilisation and abortion violate this right as well.¹⁶⁸

¹⁶⁴ This right is laid down in the Universal Declaration of Human Rights, adopted 10 December 1948, General Assembly Resolution 217A (III), article 3; International Covenant on Civil and Political Rights, General Assembly Resolution 2200A (XXI), article 6.1 and 9.1; Convention on the Rights of the Child, adopted 20 November 1989, General Assembly Resolution 44/25, article 6.1 and 6.2. It must be noted that although the Universal Declaration (UDHR) is not legally binding and China has not ratified the ICCPR, many of the rights contained in both documents are gradually becoming customary law.

¹⁶⁵ G. Sen, et al., *Population policies Reconsidered: Health, Empowerment, and Rights*, Harvard University Press, 1994, pp. 113.

¹⁶⁶ United Nations Population Fund, *The State of World Population 1997*, 1997, Chapter 1 at <http://www.unfpa.org/swp/1997/chapter1.htm>.

¹⁶⁷ Committee on the Elimination of Discrimination Against Women, *General Recommendation no. 19*, 1992 at <http://lawhk.hku.hk/demo/unhrdocs/wgr19.htm>, 22 and Committee on the Elimination of Discrimination Against Women, *General Recommendation no. 21*, 1994 at <http://lawhk.hku.hk/demo/unhrdocs/wgr21.htm>, 22.

¹⁶⁸ The countries are Austria, France, Italy, the Netherlands and Canada. United Nations Population Fund, *The State of World...*, 1997, op cit., Chapter 1.

The Platform for Action, adopted at the Fourth World Conference on Women (FWCW) in September 1995¹⁶⁹, included “physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs”¹⁷⁰ in the definition of violence against women. It explicitly included “forced sterilization and forced abortion/forced use of contraceptives, female infanticide and pre-natal sex selection”¹⁷¹. China’s Maternal Health Care Law, which is concerned with “improving the quality of births”, however, specifies the conditions under which an abortion may be necessary (read compulsory). If one of the persons of a couple is “diagnosed as having a serious hereditary disease,” and is therefore “medically deemed unsuitable for reproduction”, he or she should have the situation explained by a doctor and may only marry “if they agree to take long lasting contraceptive measures or give up childbearing by undergoing ligation” (Article 10). If the prenatal examination indicates that the foetus is suffering from a serious hereditary disease or defect, or when it endangers a woman’s life, the examining doctor should explain this to the couple and “should give a medical opinion on terminating pregnancy” (Article 18). Although officially the consent of the woman in question is needed for birth control operations (abortions and sterilisations), in practice this is often not the case. This is actually in contradiction with China’s Law on the Protection of Rights and Interests of Women. Article 34 of that law states that “women’s freedom of the person shall be inviolable” and article 35 continues by stating that “women’s right of life and health shall be inviolable.” However, the law does not provide any specific legal responsibilities, penalties or remedies against abortion or sterilisation without such consent.

By looking at the above definition of violence against women, adopted at the FWCW, we see that psychological violence is included. It can therefore be argued that intense persuasion to undergo an abortion could be a form of psychological violence. In severe cases, this might even be seen as an act of torture, cruel, inhuman or degrading treatment or punishment, especially when such ‘forced’ abortions are performed in the third trimester of the pregnancy.

¹⁶⁹ Although international conferences are not legally binding, they do represent international consensus on the topic and participant states have expressed their commitment to realising the principles laid down in the documents.

¹⁷⁰ United Nations, *Fourth World Conference on Women Platform of Action* (FWCW), Beijing, China, 4-15 September 1995, paragraph 113 at <http://www.un.org/womenwatch/daw/beijing/platform/violence.htm>.

¹⁷¹ *ibidem*, paragraph 115.

Since China does not have any regulations on the limit regarding the termination of abortions, they are even performed well into the 8th or even 9th month of the pregnancy when the baby in most cases is nearly full-grown. As was discussed in the previous chapter, when a baby is descending through the birth canal while being given a lethal injection is still being considered an abortion. Besides the fact that this might be seen as an act of torture, cruel, inhuman or degrading treatment or punishment towards its parents, and especially towards the mother, it could also be argued that this is against the right to life of the child (article 6 of the Convention of the Rights of the Child).¹⁷² Besides, the right to found a family¹⁷³ also recognises that special protection should be accorded to women during a reasonable period before and after childbirth (ICESR, article 10.2). This means that states have an obligation to protect women from undergoing an abortion that is forced upon them.

5.1.4 Right to Freedom from Torture

The right to be free from torture, cruel, inhuman or degrading treatment or punishment is one of the most basic rights. It is regarded as customary law and derogation of this right is not allowed. Article 1.1 of the United Nations Convention Against Torture (CAT) describes torture as follows “...any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as ... punishing him for an act he or a third person has committed... when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.” Under this article and article 16, which describes acts of cruel, inhuman or degrading treatment or punishment, China is obligated to prevent such acts from, happening. By looking at this definition of torture, cruel, inhuman or degrading treatment and punishment, it can be argued that forced abortions might fall under this definition, since in particular late abortions are cruel and they can be physically as well as psychologically damaging to the health of the mother. The most common complications include severe bleeding, haemorrhage, laceration of the cervix, menstrual disturbances, inflammation of the reproductive organs, bladder or bowel perforation, and serious infection.¹⁷⁴ In most cases,

¹⁷² However, it must be noted that in most cases the right to life is only granted after birth. Yet, in cases where the child is descending through the birth canal, one could question whether the right to life of the baby should not receive protection. China has made a reservation to this article stating “the People’s Republic of China shall fulfill its obligations provided by article 6 of the Convention under the prerequisite that the Convention accords with the provisions of article 25 concerning family planning of the Constitution of the People’s Republic of China and in conformity with the provisions of article 2 of the Law of Minor Children of the People’s Republic of China.

¹⁷³ This right is discussed on page 48.

¹⁷⁴ *Is Abortion Safe: Physical Complications* at <http://nrlc.org/abortion/ASMF/asmf13.html>.

abortions also lead to psychological effects. About 95 percent of women undergoing an abortion suffer from psychological effects.¹⁷⁵ Most women experience feelings of guilt, anxiety, depression, loss, and anger.¹⁷⁶ These risks increase with the use of chemical solutions, such as saline injections because women often see the complete tiny bodies of their unborn children. The saline injection is often used in China when women are in their third trimester of their pregnancies. What happens with the saline injection is that the baby is poisoned. The solution causes painful burning and deterioration of the baby's skin. Then it takes about an hour before the baby dies. After about 33 to 35 hours, the mother has to go into labour and gives birth to a dead, burned and shrivelled baby.¹⁷⁷

Article 4 of the Convention states that "Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity to participation in torture." The article then continues by stating "Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature." Although China has stated on several occasions that it is opposed to coercion regarding the enforcement of the one-child policy and reiterated that it would punish officials, it has never done so. Only in severe cases has China reprimanded family planning workers. Besides, China's criminal law stipulates that when a person commits torture, "the minimum sanction, if applied, is a 'demerit point'. Even when the 'circumstances are serious or cause serious consequences' the disciplinary sanction may simply be demotion."¹⁷⁸ According to this article, China fails to uphold its obligations under the said Convention, as this sanction does not take the grave nature of the crime into account.

5.1.5 Right to Equality and to be Free from Discrimination

Women have the right "not to be discriminated against by way of legislation, regulation, customs, practices, social and cultural patterns of conduct or other customs or practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women."¹⁷⁹ This includes that no person should be discriminated against in their sexual and reproductive lives, in their access to health care and/or services on the grounds of marital status, age, mental, or physical ability. However,

¹⁷⁵ *Abortion* at http://killer-essays.com/Legal_Issues/1fm17.shtml.

¹⁷⁶ B. LeBow, *Abortion: Psychological complications of abortion* at <http://www.all.org/issues/ab28.htm>.

¹⁷⁷ *Is Abortion Safe: Salt Poisoning* at <http://nrlc.org/abortion/ASMF/asmf9.html>.

¹⁷⁸ Amnesty International, *People's Republic of China: Torture...*, 12 February, 2001, op cit.

China's family planning laws, rules and regulations only make references to couples. Nowhere are the rights of adolescents, single or unmarried persons described, although the ICPD recognised the rights of individuals as well. This is in violation of the non-discrimination principle of the ICPD (principle 1 and 4), the Beijing Declaration and Platform for Action (paragraph 214), article 1 and 3 of Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and article 2.2 of the ICESCR.

Besides this, article 11.2 of CEDAW also states that "in order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States parties shall take appropriate measures: (a) to prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave... and (b) to introduce maternity leave with pay to with comparable social benefits without loss of former employment, seniority or social allowances." Article 26 of China's Population and Family Planning Law also states that "in accordance with applicable State regulations, women shall have special job-safety protections and be entitled to assistance and subsidies during pregnancy, delivery, and while breast-feeding." Yet, the sanctions imposed on women who bear unauthorised children, such as no paid maternity leave and dismissal, are in direct violation of this article.

There are between two and four million unregistered children in China.¹⁸⁰ As has been described earlier, these children have no right to health care, education, etc. This is in direct violation of a number of articles of the Convention of the Rights of the Child, of which the most basic one is the right to life, survival and development (article 6). As a State party to this Convention, China has the obligation to ensure that children "shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents" (article 7). The article then goes on to state that "States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless". However, in Chinese law no reference can be found to the rights of 'out-of-plan' children.

¹⁷⁹ International Planned Parenthood Federation, *IPPF Charter on Sexual and Reproductive Rights*, 2000, at <http://mirror.ippf.org/pdf/charter1.pfd>, pp. 14-15.

¹⁸⁰ *Profile Series China: Family planning policy...*, 1995, op cit., pp. 31.

5.1.6 Right to Choose to Found and Plan a Family

Article 16 of the Universal Declaration of Human Rights (UDHR) states that “men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family”. Implicit in this right is the right to decide whether and when to have children.¹⁸¹ Besides this, States should also enable and support responsible voluntary decisions about childbearing and methods of family planning of their choice. The Fourth World Conference on Women Beijing Declaration explicitly recognises and reaffirms that “the right of all women to control all aspects of their health, in particular their own fertility, is basic to their empowerment”¹⁸². Paragraph 96 of the FWCW Platform for Action also states that “the human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence.” Furthermore, article 16.1(e) CEDAW states that both men and women have “the same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them exercise these rights”. Finally, principle 8 of the ICPD states that “...Reproductive health-care programmes should provide the widest range of services without any form of coercion. All couples and individuals have the basic right to decide freely and responsibly the number and spacing of their children and to have the information, education and means to do so.”

As has been stated above both the ICPD, as well as the FWCW have affirmed that any form of coercion is prohibited in population policies. Therefore, “governments are encouraged to focus most of their efforts towards meeting their population and development objectives through education and voluntary measures rather than schemes involving incentives and disincentives” (principle 7.22). Furthermore, “Governments at all levels are urged to institute systems of monitoring and evaluation of user-centred services with a view to detecting, preventing and controlling abuses by family-planning managers and providers and to ensure a continuing improvement in the quality of services. To this end, Governments should secure conformity to human rights, and to ethical and professional standards in the delivery of family planning and related reproductive health services aimed at ensuring responsible, voluntary and informed consent and also regarding service provision. In-vitro fertilization techniques should be provided in accordance with appropriate ethical guidelines and medical standards”

¹⁸¹ ICPD, principle 7.3 and FWCW, paragraph 223.

¹⁸² FWCW, principle 17.

(Principle 7.17). The Committee on the Elimination of Discrimination Against Women has also strongly recommended states to “ensure that measures are taken to prevent coercion in regard to fertility and reproduction...”¹⁸³

However, China has not established any regulations prohibiting any specific enforcement measures as cruel and illegitimate. Thus local authorities are implicitly given the green light to use whatever means necessary to meet government’s targets. Besides, the Chinese government does condone coercive means such as group pressure, incentives and disincentives, and heavy propaganda.

5.1.7 Right to be Free from Arbitrary Detention and Right to Property

In the previous chapter it has been described that in order to comply with birth quota, family planning officials carry out raids to find/apprehend women who are suspected of being pregnant ‘out-of-plan’ in order to ‘persuade’ them to undergo an abortion. Because this is a known phenomenon in China, most women go into hiding when they find out they are pregnant with an unauthorised child. In response, officials usually detain family members for an indefinite period of time, usually until the woman turns herself in for abortion, and/or they might destroy the house of the couple and/or other family members’ property.

Under international law, anyone who has been arrested or detained has the right to appear promptly before a judge.¹⁸⁴ However under Chinese law there are no such safeguards and the law only has provisions referring to prisoners in detention. This means that the detention of people in family planning clinics falls outside the scope of Chinese law, since they are not prisoners in the official meaning of the word.¹⁸⁵

Article 17 of the UDHR recognises the right to own property and not to be arbitrarily deprived of his or her property.¹⁸⁶ This includes that somebody’s property cannot be arbitrarily confiscated or destroyed. So, family planning workers are not allowed to confiscate property to substitute for the non-payment of fines without a warrant or official order and they are not allowed, under any circumstances, to demolish the homes of people.

¹⁸³ Committee on the Elimination of..., *General Recommendation no. 19*, op cit., 24(m).

¹⁸⁴ UDHR, article 9 and 10; ICCPR, article 9.3

¹⁸⁵ Also see page 28-29

¹⁸⁶ Although the UDHR is not legally binding and China has not ratified the ICCPR, this right is generally recognised.

5.2 Shift in Policy

To fulfil the objectives of the ICPD Programme of Action and the Beijing Declaration and Platform for Action, China contends that it has made some fundamental changes to its former approach of family planning. The government will apply a more holistic approach, combining socio-economic development with gender equity.¹⁸⁷ It will move away from a strictly administrative approach, towards a more client-centred approach, although it will strengthen the incentive system. In its country report to review the implementation of the ICPD Programme of Action, China stated that the changes made to its approach are that its population policy will pay more attention to the people's needs and interests, improve its family planning services with regards to expanding reproductive services and informed choice, and enhancing people's participation through information, education and communication.¹⁸⁸ The government has also devoted more attention to women's rights and interests. It has, for instance, enacted the Maternal and Infant health law in 1994. China has also begun with experimental projects to raise women's status, promote their education, and increase their economic participation, particularly for women in poor areas.¹⁸⁹

In 1995, Beijing started a pilot project on quality service in 6 counties. It mainly focused on providing information with regards to several areas, ranging from contraceptive use to childbearing and rearing.¹⁹⁰ In 1998, the United Nations Population Fund (UNFPA) started experimental projects in 32 counties. The main purposes of the pilot projects are¹⁹¹:

- To make people understand the importance of family planning to the whole society, by means of publicity and education; to raise people's level of consciousness so that they will practice family planning on their own initiative, make them understand their own legal rights and the importance of protecting these rights;
- To expand the scope of services through information, education and follow-up visits and;

¹⁸⁷ *A Speech at the Population Council...*, 2 July 1999, op cit.

¹⁸⁸ State Family Planning Commission, *Country Report to Review its Implementation of the ICPD Program of Action*, Beijing, China, 24 March 1998 at http://www.unescap.org/pop/database/law_china/ch_record013.htm.

¹⁸⁹ E. Winckler, *Chinese Reproductive Policy at the Turn of the Millennium: Dynamic Stability*, in <<Population and development Review>>, vol. 28, no. 3, September 2002, pp. 383.

¹⁹⁰ P. Pan, *China's One-Child Policy Now a Double Standard: Limits and Penalties Applied Unevenly*, in <<The Washington Post>>, 20 August 2002.

¹⁹¹ State Family Planning Commission, *New Progress Made in Promoting Quality of Care in China's Reproductive Health and Family Planning Services since ICPD*, Beijing, China, 8 November 1998 at http://www.unescap.org/pop/database/law_china_ch_record024.htm.

- To enhance the training of personnel in charge of family planning at the grass roots level, and organise a work force willing and able to provide service on family planning.

According to UNFPA, the target and quota systems have been abolished in these areas, but heavy fines are still in place. The fines in the UNFPA counties vary from one to eight times the average local income.¹⁹² At first the government was reluctant to allow experiments, as it was afraid that if people would have a choice regarding their own reproduction, population growth would be out of proportion again. However, in the counties where the projects were run, population growth has remained steady.¹⁹³ Yet, reports have also been published that even in these pilot counties coercion still occurs.¹⁹⁴ Nonetheless, the fact that these projects apply a reproductive health approach marks an important shift, although they are still very limited in focus. At least they can serve as an example to the government that other approaches, which are less harsh/coercive, might also work.

5.3 National Law

After numerous drafts, China's Family Planning and Population Law was finally adopted in 2001. With the promulgation of this law, the one-child policy is finally codified and this is a significant change to 'rule by law'. The exact reason why the law was promulgated is unknown, as there does not appear to be a very big difference between the policy as it was and the new legislation. Nevertheless, the law marks the ongoing shift from strict birth control towards delivering reproductive health services, applied since the ICPD. The document has, for instance, incorporated many recent international ideals of quality care, informed choice, and women's empowerment. A reason why China has codified its policy might be in response to international criticism in order to gain more credibility for its policy.

As with each policy and law, this law also has proponents as well as opponents, both within and outside China. Proponents of the law say that by codifying the policy into a law, clear rights are established and thus coercion is no longer condoned. People can actually request redress if their rights have been violated. However, opponents of the new law claim that the law incorporates coercion, as it does not prohibit specific enforcement measures.

¹⁹² State Family Planning Commission, *Country Report...*, 24 March 1998, op cit.

¹⁹³ P. Pan, *China's One-Child Policy...*, 20 August 2002, op cit.

In September 2002, the law came into force. The first article states the purpose of the law: “This law is enacted... so as to bring population into balance with social economic development, resources, and the environment: to promote family planning; to protect citizens’ legitimate rights and interests; to enhance family happiness, and to contribute to the nation’s prosperity and social progress”. Article 2 then goes on by stating that “China is a populous country. Family planning is a fundamental state policy. The State shall adopt a comprehensive approach to controlling population size and improving socio-economical and public health characteristics of population. The State shall rely on publicity and education... and the establishment and improvement of the incentive and social security systems to carry out the family planning program.” Chapter 4, 5 and 6 describe the incentives, health services, and the legal responsibilities. The state still encourages late marriage and childbearing and advocates one child per couple. Exceptions for people to have a second child are still maintained, but subjected to local level rules and regulations. The same applies to ethnic minorities (article 18).

In order for couples to limit their childbearing, the main focus is on long-term contraceptive measures, such as the insertion of IUDs and sterilisation on which family planning technical service providers shall give “guidance” (article 19 and 34). Articles 25 to 28 describe the incentives for postponing marriage and childbearing, for undergoing birth control operations, and for having only one child. The fines, imposed for having an ‘out-of-plan’ birth, are described as social compensation fees. In the past, a one-time fine was imposed, however with the new law the penalties escalate as citizens go from merely having an extra child to actively resisting the program (article 41-43). Citizens who do not pay the fee will be levied an additional “late payment penalty” and those that persist in non-payment can be taken to court (article 41). Citizens who resist or hinder family planning workers in performing their work should be criticised and ordered to change their behaviour. Those who violate public security regulations or criminal law may be prosecuted (article 43). State employees are subject to additional administrative measures and others are subject to additional disciplinary penalties by their employers (article 42).

Some positive features of the law are the fact that birth planning should be linked to women’s education and employment, to improving their health and raising their status (article 3). Article 22 prohibits discrimination against, maltreatment of women who give birth to female children and women who are infertile and bans discrimination against, and

¹⁹⁴ Population Research Institute, *The Population Controllers...*, vol. September-October 2002, op cit. and J. Thornton, *UNFPA...*, 8 May 2003, op cit.

maltreatment and abandonment of female infants. The law also requests not only wives but also husbands to bear the responsibility of family planning (article 17). This is important as women bear an unfair burden regarding family planning in comparison with men. However, the law mentions that all citizens, regardless of gender, have a right to have children of their own. Nevertheless, the law does not prohibit local legislation requiring people who suffer from hereditary diseases to refrain from childbearing, for example.

Due to the wording of article 17, men and women are not only equally responsible for birth control, but also have an equal right to have children, men will get legal support if their partners have abortions without their consent.¹⁹⁵ As one can imagine, this law has led to many controversies. One man has actually already started a court case against his wife for having an abortion without his consent.¹⁹⁶

Finally, what is also important is the fact that the law stipulates that officials may not infringe upon citizens' personal rights and interests (article 4). In case an official infringes on a citizen's personal rights, property rights or other legitimate rights and interests, he/she might be held criminally responsible, in case of a crime, or otherwise be subject to administrative penalties (article 39(1)). Besides this, persons are allowed to sue for redress or may appeal for review (article 44). Yet, it remains to be seen whether and how this will work out in practice. As Mr. Guo, a lawyer who has represented cases concerning family planning, said "courts in reality remain weak and generally unwilling to rule against official institutions". He then continued by saying, "some judges are afraid of making mistakes because they think family planning is national policy, and they don't want to be on the wrong side of what they think is government policy."¹⁹⁷ Mr. Lubman, an American expert on Chinese law, also stated that "...the downtrodden rarely win in court...and when they do win, stronger parties rarely respect the verdict".¹⁹⁸ Beside this, "informants from different areas have reported that courts have sometimes been ordered to refuse all suits relating to enforcement of the population policy; and not a single case in which an official has been prosecuted for malfeasance in relation to implementation of the policy."¹⁹⁹

¹⁹⁵ *No Relaxation of Chinese...*, 2 September 2002, op cit.

¹⁹⁶ BBC, *Chinese man sues wife over abortion*, 20 March 2002 at <http://news.bbc.co.uk/2/hi/asia-pacific/1883709.stm>.

¹⁹⁷ D. Olojede, *Pregnancy case testing strength of China's birth-control rules; Couples wind through courts after wife is fired over decision to have child*, in <<The Dallas Morning News>>, 27 November 1998.

¹⁹⁸ J. Pomfret, *Seeking Justice in China After a Forced and Botched Abortion; Damages Award Tests Evolving Legal System*, in <<International Herald Tribune>>, 28 March 2001.

¹⁹⁹ China Rights Forum..., Spring 1999, op cit.

A weak point of the law is that it does not state which enforcement measures are not allowed and should be avoided by officials. This is especially important since officials are still personally held responsible for achieving their targets. Moreover, article 39(5) states that officials will be held responsible for “distorting, under-reporting, fabricating, modifying or refusing to report statistical data on population or family planning”.

5.4 China’s Point of View

According to the government, China respects human rights in the field of population and development. The government believes that development should be the basis before human rights can be fully implemented. China also upholds the principle of sovereignty, which basically means no interference with the internal affairs of a nation.²⁰⁰ The government stated that “international co-operation in regard to population and development should be undertaken with full respect for the principle of sovereignty”²⁰¹. In a white paper of 1995, the government went even further when it stated that “not only has China never imposed its ways and ideas of solving its own population problem on anyone else, but it has, instead, always understood and welcomed all good-intentioned criticism and useful suggestions from outside. However, some people, distorting or disregarding the basic facts, have made improper comments on China’s family planning programme, criticizing it as a ‘violation of human rights,’ and denouncing it as ‘inhumane’. They have even tried to impose their values and ideas on China, using the excuse of ‘protecting human rights’ to put pressure on China and to interfere in China’s internal affairs. This is totally unacceptable.”²⁰² The paper then continues by stating that “China has always held that concepts of human rights are a product of historical development, closely related to social, political and economic conditions, as well as the individual nation’s particular history, culture and concepts. The realization and optimization of human rights is a historical process. A citizen’s right of choice in reproduction is also part of this process.”²⁰³

²⁰⁰ *Family Planning in China*, White Paper, August 1995, op cit.

²⁰¹ State Family Planning Commission, *Statement by Mr. Wang Zhongyu, State Councillor and Secretary-General of the State Council*, Beijing, China, 30 June 1999 at http://www.unescap.org/pop/database/law_china/ch_record022.htm.

²⁰² *Family Planning in China*, White Paper, August 1995, op cit.

²⁰³ *ibidem*.

Although the government stated that the realisation of reproductive health is a gradual process, it still maintained that family planning is pursued in complete accordance with the relevant principles and human rights requirements. According to the government, China's family planning policies and programs combine citizens' rights and duties, joining the interests of the individual with those of society. It states that "these conform to the basic principles outlined at the various international population conferences and have been established on the basis of the relationship of interpersonal interests under socialism"²⁰⁴.

The Chinese approach to rights is based on modern socialist ideas. It does not regard rights as absolute rather they are relative. According to Chinese culture no rights exist without duties and vice versa. The Chinese approach to rights emphasises individuals' responsibility to others, including later generations. As such, the government states that family planning is a responsibility and duty "incumbent on each citizen as it serves the purpose of making the whole society and whole nation prosperous, and it is not proceeding from the private interest of some individuals. This is wholly justifiable and entirely consistent with the moral concepts of Chinese society."²⁰⁵ China further believes that if there are no restrictions imposed on childbearing, in other words if complete reproductive freedom exists, the Chinese people will reproduce themselves unlimited. As a result "The interests of the majority of the people, including those of new-born infants, will be seriously harmed"²⁰⁶. Therefore, China defends its policy as justifiable on the basis that collective rights, such as the right of an adequate standard of living for all, prevails over an individual right, such as the right to found a family. Besides, the government has argued that the rights contained in the relevant international documents also entail duties, thereby criticising the Western approaches that in its view overemphasise rights at the expense of duties.²⁰⁷

As has been discussed in this chapter, many basic human rights of people in connection with China's one-child policy have been violated. The government still has a lot to do if the policy is actually to be voluntarily followed and if the country is sincere in upholding and respecting the human rights of its people. However, it must be noted that since the ICPD some important changes have been announced.

²⁰⁴ *ibidem*.

²⁰⁵ *ibidem*.

²⁰⁶ *ibidem*.

²⁰⁷ Article 29 of the UDHR also recognises duties, as well as regional instruments, such as the African Charter on Human and People's Rights and the American Declaration on the Rights and Duties of Man. This shows that regionally there are other visions on the relationship between rights and duties other than the dominant 'Western' one.

6. Conclusions and Recommendations

In the 1970s many writers/scholars were concerned with the adverse effects population growth had on the environment. They attracted much attention, and as a result, population size and growth have often been blamed inappropriately as the exclusive or primary causes of problems such as global environmental degradation and poverty.

As China was gradually experiencing environmental problems of its own, such as increasing water shortages due to its huge population, it began developing and implementing population policies of its own, as population control came to be seen as a prerequisite to economic development. Therefore in 1979, China announced the one-child policy. As we have seen this is not a strict one-child per couple, some exceptions are allowed for rural couples and minorities. The most common exemption is when a couple has ‘real difficulties’, which basically means that when the first child is a girl (or handicapped), the parents can try again for a son. This does not only put girls and handicapped children at the same level, but it also implicitly gives the message that female and handicapped children are less valuable than boys. Besides, by allowing such an exemption the government indirectly condones sex-discrimination.

According to article 24 of the Convention of the Rights of the Child, States “shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children. However, the current policy tacitly condones society’s preference for boys, which in turn exacerbates problems of female infanticide, neglect, abandonment, and the unequal sex ratio. Therefore, the government should be urged to either change the existing policy to allow all rural couples to have children, regardless of the sex of their firstborn or there should also be a strict one-child rule. In any case, a gender-neutral approach should be adopted. The government should also strengthen the laws that prohibit sex-selective abortions. Also more efforts have to be undertaken to raise the status of women and reduce the need of children (sons) to provide for old-age support. In order to realise this last requirement, a comprehensive pension system has to be put in place, especially in rural areas. Besides this, the government could also give additional incentives to people who only have one daughter.

In addition to these unintended effects, the policy has led to extensive human rights violations. The following violations have been documented: abuses and violence in the form of forced abortions and sterilisations, destruction of housing as a penalty, discrimination, arbitrary detention, severe economic penalties, etc. These are direct violations of several international legal instruments, as has been described in chapter 4. It is also in direct contravention of the principle of non-coercion, which is laid down in the different international conferences. The most basic human right that lies at the heart of controlling one's own fertility is the right to decide freely on the number and spacing of births in an informed and responsible manner.

The current population policy in China is however opposed to these principles. The direct intervention of the Chinese government into the fertility decisions of the individual and the family amounts to a violation of basic human rights, as has been described earlier. On the other hand, it must also be acknowledged that the policy has provided many women with access to family planning services, although these services have been used to limit women's choices instead of expanding them. Besides, the focus on demographic goals has too often overridden the needs and interests of women and girls, and has led to the use of physical and other coercive measures. China's population policy has, due to the combination of meeting rigid demographic targets and quotas together with traditional attitudes and practices, threatened the survival, health, well being, and status of many women and girls.

Although the government has recognised that some violations have occurred, it has simply discarded them as local deviations committed by untrained officials. However, violations have occurred throughout the country on a regular basis. Besides, it has been discussed that these violations do not occur because of overzealous or untrained officials but due to the individual responsibility system the government has imposed in order to reach the rigid demographic goals it has set. For this reason, the government should make sure officials are well trained and it should abolish the system of linking demographic targets to the assessment of officials. It should also take responsibility for committed violations, set up regulations which enforcement measures are prohibited and make sure perpetrators are punished accordingly and appropriately.

It is a pity that the government has focused so much on demographic targets instead of quality of care, since the experimental projects have proved so far that a reproductive health approach has not led to a surge in fertility levels. Therefore, it is highly recommended that the government continues to shift its emphasis from achieving fixed birth quotas to providing quality care by expanding the pilot projects. The projects should expand reproductive health services to include not only women of childbearing age but also young adults and older men and women. The mix of contraceptive methods should be expanded beyond just IUDs and female sterilisation, so that women can truly make an informed choice. In addition, male participation should be stimulated as women still bear an unfair burden with regards to contraceptive use. It should be made clear to them that childrearing and contraceptive use are not the sole responsibility of women.

Many have questioned why the harsh policy was implemented in the first place, since by the late 1970s China had reached near replacement level fertility with truly voluntary methods. It is very likely that the same results could have been achieved, though perhaps at a slower pace, by continuing the program of the early 1970s. Arguably, without a birth control policy, below replacement fertility could have been obtained in the 1980s in urban areas.²⁰⁸ Besides, there was also an alternative to the one-child policy, which would have been much more acceptable to the Chinese people. A policy of two children with delayed childbearing and appropriate spacing could be as, or even more effective than the one-child policy, not only demographically but also socially and economically.

Although it is easy for the international community to criticise China for its population policy, it must also be recognised that developed countries also have a responsibility in achieving sustainable development, especially with regards to establishing sustainable consumption patterns.²⁰⁹ Besides, the international community does not only require China to implement a population policy, but most industrialised countries even have pro-natalist policies themselves. For example the European Union promotes population policies abroad. Yet at the same time it expresses concern about the fact that most European states are experiencing below replacement level fertility.²¹⁰

²⁰⁸ A. Hussain, *Demographic Transition in China and its Implications*, in <<World Development>>, vol. 30, no. 10, pp. 1826-1827.

²⁰⁹ Rio Declaration, principle 8; ICPD, principle 6; FWCW, 1995, op cit., paragraph 113.

²¹⁰ Furedi, 1997, pp. 13.

Most industrialised countries that are experiencing below replacement level fertility are promoting pro-natalist policies with incentives for families who have more children, such as tax reductions, special subsidies, etc. This is actually extremely unfair at a time when tremendous pressure is placed on women and men in developing countries to reduce the size of their families. This is especially true when one recognises that most of these countries are more densely populated than are those countries that have been targeted for population reduction programs. The developed countries justify their policies on the basis that they have declining populations, while on the other hand populations in the South have too many young people. They contend that the rising number of young people in the South provides a potential source of instability and stress.²¹¹ But what they actually mean with is that they are afraid of massive waves of refugees ‘flooding’ the developed countries, to seek a better future. This is the main reason why most industrialised do not only promote population control abroad but also promote pro-natalist policies in their own countries.

Now to come back to the main question posed in the beginning of this thesis: Where should the balance be placed between individual human rights on the one hand and population policies on the other hand?

It must be acknowledged that sometimes collective rights, such as ‘the general good for society’ might prevail over individual rights. However, states have committed themselves to protecting international human rights by ratifying conventions. In any case, “the right to decide freely and responsibly the number and spacing of their children and to have access to the information, education and means to enable them exercising these rights” should be recognised. The right also mentions ‘responsible’, so in this sense people have a duty/responsibility regarding fertility choices. However, in any case no population policy should be coercive, in other words violations should be prevented and prohibited.

This is also one of the reasons why it is important to be aware of the consequences of China’s population policy, since it is sometimes held up as an example for other countries to follow. The policy might be a demographic success but, according to international definitions of human rights, it is obviously based on control and coercion. This is the main reason why other countries should not model their population policies on the Chinese example. Besides, the success of China’s policy also relies for a big part on a culturally based acceptance of the policy of the policy, which might not be found elsewhere.

²¹¹ *ibidem*.

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