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From Population Control towards Family  
Planning

-The 1994 International Conference on Population and  
Development and its impact on the Chinese Population  
Policy

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# Summary

In China, strict goal-oriented population control has been the reality for Chinese citizens since 1979. According to the Chinese population policy, Chinese citizens are only allowed to give birth to one child, with a few exceptions. The population policy has been strictly monitored by the government and implemented with highly questionable means clearly violating human rights. Ideological education, birth permits and high penalties have been ways to make people comply with policy rules. Individuals have only been able to choose between IUD and sterilization and have not been allowed *not* to use contraceptives. If not complying with policy rules, coercion, forced abortions and sterilization have been used to ensure that number of births hasn't exceeded decided quotas.

China is a state party to ICESCR and CEDAW, which obligate states to ensure the right to family planning. This means that China has the obligation to ensure Chinese citizens to decide the number, timing spacing of births and to have the information and means to do so. But China's human rights record is dark and relations with international community have been tense also after China officially became members of the UN in 1971.

But after the International Conference on Population and Development (ICPD) in Cairo 1994, China has slowly begun to move from goal-oriented population control to client centred family planning in accordance with international human rights law. By endorsing ICPD goals and by initiating different projects of implementation, China has taken an important step towards realisation of the right to family planning. Birth-planning workers have become more client-centred providing better education and informed choice.

But even though this important step has been taken, the right to family planning has not yet been ensured in China, neither in legislation nor in practice. China still has a long way to go, and there are several obstacles to overcome. There is, however, positive development that can enable China to move towards lifting birth-restrictions.

A governmental initiative to abolish current population policy in the near future is unlikely. It is more probable that reforms will come from inside the policy, with better information and individual freedom to choose contraceptives but at the same time adhere to birth restrictions. Over time, and in the light of social and economical development in the country, it is possible that the individual freedom will expand and lifting birth-restrictions will be seen as a natural choice so that individuals finally will be ensured the freedom to decide the number and timing of births.

# Preface

*“You can be a good lawyer by using your brain, but you will never be a great lawyer until you use your heart”<sup>1</sup>*

First, I would like to show my gratitude to SIDA and the Department of Sociology in Lund for giving me the opportunity to go to China and carry out a Minor Field Study.

I am deeply thankful to Jonas Grimheden at the Raoul Wallenberg Institute of Human Rights and Humanitarian Law and Lisa Eklund at the Department of Sociology at Lund University for helping me with many valuable contacts in China.

My deepest gratitude goes to Liu Huawen at the Chinese Academy of Social Sciences (CASS) in Beijing for his patience and support before and during my stay in China.

I would like to thank all the persons I interviewed for taking their time and shared invaluable information. Thank you for your patience when language difficulties occurred.

Finally, I would like to thank my family, my mother Eva, my father Kjellåke and my sister Ellinor, and all my friends for always supporting me in my studies and in my adventures, both in good and in bad times. I could not have done it without you!

Linnéa Lindberg

Skanör 2007-07-30

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<sup>1</sup> Words by Cliff Johnson, visiting Fullbright professor at the Raoul Wallenberg Institute 2005-2006

# Abbreviations

ACWF	All China Women's Federation
CCP	Chinese Communist Party
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
CESCR	Committee on Economic, Social and Cultural Rights
CP4	Fourth Country Programme
CP5	Fifth Country Programme
CP6	Sixth Country Programme
ICCPR	International Convention on Civil and Political Rights
ICESCR	International Convention on Economic, Social and Cultural Rights
ICPD	International Conference on Population and Development
IUD	Intra-uterine devices
MFS	Minor Field Study
NGO	Non-governmental Organisation
NPC	National People's Congress
NPFPC	National Population and Family Planning Committee
PoA	Programme of Action
PRC	People's Republic of China
UDHR	Universal Declaration on Human Rights
UN	United Nations
UNFPA	United Nations Population Fund
UNFPA RH/FP	United Nations Population Fund Reproductive Rights/ Family Planning

# 1 Introduction

## 1.1 Introduction to the Topic

Most people have heard about the Chinese population policy, more known as the “Chinese one-child policy”. The policy has been widely debated around the world because means used by China to limit population growth have been controversial and inhumane, and China’s behaviour has met massive international criticism.

China is the most populous country in the world with its more than 1.3 billion<sup>2</sup> people. Its still growing population is considered to be a major threat to global resources, environment and sustainable development as a whole, both nationally and globally.

China has promoted population control gradually since the 1950ths, but it was not until 1979 China introduced the current population policy, recommending couples to have only one child.

By ratifying international legally binding human rights instruments, China has a duty to respect, protect and fulfil the rights contained in those treaties.<sup>3</sup> However, Chinas compliance with human rights with regard to its population policy has been limited since controlling population growth has been a priority for China as opposed to guaranteeing its citizens human rights.

But since the International Conference on Population and Development (ICPD) in Cairo in 1994, the approach to limit population growth in China has started a slow transition from a goal-oriented population control towards client-centred family planning in accordance with human rights law.

## 1.2 Purpose and Aim

The purpose of this thesis, is to look at how far China has come in implementing ICPD goals on family planning and reform its population policy from goal-oriented population control towards client-centred family planning in accordance with human rights instruments ratified by China.

The aims of the thesis can be divided into four sections:

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<sup>2</sup> Demographic, Social and Economic Indicators, ”A Passage to Hope: Women and International Migration -State of World Population 2006, UNFPA, can be viewed at: <http://www.unfpa.org/swp/swpmain.htm>

<sup>3</sup> Cook, Rebecca J; Fathalla, Mamoud F, *Duties to Implement Reproductive Rights*, Nordic Journal of International Law, 67: 1-16, 1998 p 3



- 1) To describe what a population policy is, its origins and goals. I will describe the difference between population control and family planning. Subsequently, I will clarify the aim and purpose of the International Conference on Population and Development (ICPD) and focus on the objectives and actions concerning family planning services. Since ICPD is a policy document and not a legally binding treaty, I will identify its relation with those international binding human rights instruments containing the right to family planning as defined in the ICPD.
- 2) To describe the background and origin of the Chinese population policy and existing national laws regulating the policy. I will also explain China's relation to human rights and what obligations China has according to its ratified international human rights instruments including the right to family planning.
- 3) To identify what measures China has taken to implement ICPD goals on family planning and reform the Chinese population policy from goal-oriented population control to client-centred family planning and discuss observed changes in current population policy.
- 4) To discuss China's compliance with its international obligations to ensure the right to family planning and present areas of concern but also positive development I believe will have an impact on the process of reforming the Chinese population policy towards the right to family planning and finally discuss if I believe China will be able to ensure the right to family planning and how I believe this reform could occur.

## **1.3 Disposition**

The thesis is divided into eight chapters. Chapter one serves as an introduction to the topic and presents the outline of the thesis. Chapter two describes what a population policy is and international development leading up to the ICPD.

Chapter three explains the ICPD, its definition on family planning and relation to international law. Chapter four elaborates on the right to family planning as outlined in international human rights law. Chapter five presents the Chinese population policy, history and legislation. Chapter six explains China's relation to human rights as regards to the population policy and chapter seven presents what measures China has taken to implement ICPD goals on family planning and observed changes.

Chapter eight is the concluding chapter where I discuss China's compliance with its international obligations to ensure the right to family planning and present areas of concern but also positive development I believe will

influence China in the process of reforming its population policy from goal oriented population control to client-centred family planning, and finally if I believe China will ensure the right to family planning and how this process could occur.

## **1.4 Method and Material**

Thanks to a scholarship from SIDA, the Swedish International Development Agency, I had the possibility to go to China and carry out a Minor Field Study (MFS), from the 19<sup>th</sup> of September to the 9<sup>th</sup> of December 2006. The purpose of my visit to China was to collect information through interviews with researchers and field workers, experts on human rights law and the population policy. This thesis is partly based on the information gathered during the field study.

My fieldwork began in Shanghai, where I conducted interviews with researchers and students at Fudan University. After a period of four weeks in Shanghai, I travelled to Beijing, where most of my field study was carried out. In Beijing, I interviewed researchers at universities and institutions but also representatives at international organisations.

Due to the sensitivity of the subject, the interviews were semi-structured with prepared questions, but leaving a lot of flexibility to the respondent to formulate answers. Different questions were asked, depending on the position and field of study of the respondent.

The answers were written down and the respondent could choose to be anonymous if it so wished. An interpreter was used in those cases where it was necessary. Interviews were also carried out in Sweden and in Denmark, before and after the field study in China.

Information acquired through interviews, is referred to in footnotes as precisely as possible. However, for the anonymous respondents, reference is given in a more general context.

Additionally to the information obtained through interviews, I visited Chinese libraries to collect written information such as statistics and other relevant information. Since some primary sources only have been available in Chinese, secondary sources have been used where deemed necessary.

Beside material collected in China, I have used written documents on international human rights law, mainly from the United Nations. Additionally sources are State Party reports to United Nations treaty bodies and other documents issued by treaty bodies, such as general comments, summary records and concluding observations. I have also used a wide range of different doctrinal texts, articles and information on recognized websites.

## 1.5 Delimitations and Definitions

Several human rights can be violated within population policies, such as the right to life, non-discrimination, freedom of religion and equal rights within marriage.<sup>4</sup> But since it is a wide topic, delimitations are required. I have limited the scope of this thesis to reproductive rights, with a special focus on the right to family planning.

Several important steps have also been taken internationally to integrate human rights in population policies. I have chosen to concentrate on the International Conference on Population and Development (ICPD), since the ICPD is the first international policy document recognizing reproductive rights as human rights.

To focus on ICPD is also highly relevant in the Chinese context since the ICPD Program of Action (PoA) is one of the most important factors influencing China to start reforming its population policy from goal oriented population control towards client-centred family planning.

The PoA is a policy document outlining objectives and actions a state is advocated to undertake to integrate population issues in development policies with the aim to attain sustainable development. It is important to underline that the goal of the ICPD is not only for a state to implement reproductive rights but also other actions as an interrelated process to attain sustainable development and thus limit population growth.<sup>5</sup> Therefore, while this thesis only elaborates on reproductive rights, with special focus on the right to family planning, it is important to have in mind that implementation of reproductive rights shall not be seen as an isolated element but integrated with other actions outlined in the ICPD.

The international community has agreed that all human rights are universal, indivisible, interrelated and interdependent.<sup>6</sup> The full implementation of reproductive rights involves implementation of other human rights as well. However, this will not be elaborated on in this thesis.

It is important to understand that the Chinese population policy differs in different parts of the country due to provincial regulations and local variations. But since I am describing the policy from a general point of view, I will use the concept of “the Chinese population policy”. The Chinese population policy is also regulated in several laws, local regulations

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<sup>4</sup> Tomasevski, Katarina, *Human Rights in Population Policies –A Study for SIDA*. 1994  
Published by SIDA, p 35

<sup>5</sup> Programme of Action of the International Conference on Population and Development, (adopted at the United National Conference on Population and Development, Cairo, 5-13 September 1994, A/CONF.171/13) para 1.12

<sup>6</sup> “All human rights are universal, indivisible and interdependent and interrelated”.  
The Preamble of the Vienna Declaration and Programme of Action, adopted at the World Conference on Human Rights, 14-25 June 1993, A/CONF.157/23.

and governmental directives, creating a complex system sometimes difficult to grasp. Therefore, I will only mention the most important national laws or other relevant government decisions clearly regulating the population policy.

## 1.6 The Right to Family Planning

The right to family planning was recognized internationally as a human right already in 1968 at the International Conference on Human Rights in Tehran. At the 1974 World Population Conference in Bucharest the right to family planning was recognized as a “basic” human right due to the fact that all individuals and not only parents should be entitled to family planning services.<sup>7</sup>

The definition on the right to family planning has changed and evolved over time.<sup>8</sup> However, as the ICPD will be my point of departure, I will use the ICPD definition on the right to family planning:

“The basic rights of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so.”<sup>9</sup>

I believe the right to family planning is the most relevant reproductive right in the context of the Chinese population policy since the core of the policy is that Chinese citizens are only allowed, with a few exceptions, to give birth to one child. Also, offered information and means to Chinese citizens have been limited.

However, to be able to understand the right to family planning in the context of the ICPD, I will give a short description on the ICPD definition on reproductive rights in general.

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<sup>7</sup> Tomasevski, Katarina, *Human Rights in Population Policies –A Study for SIDA*. 1994 Published by SIDA, p 67. *See also*: art 16 of the Proclamation of Tehran on Human Rights, adopted on 13 May 1968 says: “Parents have a basic human right to decide freely and responsibly on the number and spacing of their children and a right to adequate education and information in this respect”. Para 14(1) of the World Population Plan of Action, adopted in Bucharest 19-30 August 1974, states: “ All couples and individuals have the basic right to decide freely and responsibly on the number and spacing of their children and to have information, education and means to do so; the responsibility of couples and individuals in the exercise of this right takes into account the needs of their living and future children, and their responsibilities towards the community”

<sup>8</sup> *See footnote No. 7*

<sup>9</sup> The definition is taken from para 7.3 of the Programme of Action of the International Conference on Population and Development, (adopted at the United National Conference on Population and Development, Cairo, 5-13 September 1994, A/CONF.171/13) outlining reproductive rights. This definition also corresponds with the definition in CEDAW art 16(1)(e) on women’s rights not to be discriminated against and have equal rights as men: “to decide freely and responsibly on the number and spacing of their children and to have the access to the information, education and means to enable them to exercise these rights”.

As for international legally binding instruments comprising the right to family planning, I will limit this thesis to the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economical, Social and Cultural Rights (ICESCR) and the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW). Among those, China has ratified ICESCR and CEDAW but only signed the ICCPR. However, since ICCPR provides protection to individuals from state interference in the private sphere and includes other important human rights highly relevant for China, I believe that including ICCPR will contribute to the overall discussion in this thesis.

## 2 Population Policies

### 2.1 What is a Population Policy?

Population policies have emerged in the last forty years, with the aim of changing the size and composition of the population. Population policies were needed because of the unexpected changes in the population dynamics as a result of development in the first post-war decades.<sup>10</sup>

A population policy tries to influence the size of the population, either to increase or to decrease population rate<sup>11</sup>, and is thus a manipulation of a basic social procedure.<sup>12</sup> A population policy is designed at the macro level but is closely connected with individual human rights, since it is a governmental intervention in human reproduction.<sup>13</sup>

To make people conform to the objectives of a population policy, governments often use incentives or disincentives to change individual reproductive behaviour.<sup>14</sup> Incentives and disincentives can broaden the individual choice, or it can narrow it. When incentives and disincentives narrow individual choice, they may violate human rights.<sup>15</sup> Some population policies even include direct coercion to reach demographic targets, such as compulsory sterilization or forced abortion.<sup>16</sup>

### 2.2 Raised International Awareness to the Problem of a Growing Population

Identifying the core factors of population growth has always been a controversial issue, since the interpretation of the causes has a major effect on the measures adopted to solve the problem. But at the 1974 World Population Conference in Bucharest, a fundamental relationship between socio-economic development and population development was internationally acknowledged.<sup>17</sup> At the conference, it was recognized that

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<sup>10</sup> Tomasevski, Katarina, *Human Rights in Population Policies –A Study for SIDA*. 1994  
Published by SIDA, p 15

<sup>11</sup> This thesis will only deal with population policies trying to decrease population growth

<sup>12</sup> Tomasevski, Katarina, *Human Rights in Population Policies –A Study for SIDA*. 1994  
Published by SIDA, p 15

<sup>13</sup> *ibid*, p 16

<sup>14</sup> Examples of incentives or disincentives with regard to population policies can include free family planning service, financial rewards to single parents, financial rewards for having sterilization or abortion, financial penalization for having more children than permitted etc.

<sup>15</sup> Tomasevski, Katarina, *Human Rights in Population Policies –A Study for SIDA*. 1994  
Published by SIDA, p 29

<sup>16</sup> *ibid*, p 26

<sup>17</sup> <http://www.un.org/esa/devagenda/population.html>, last visited 26th of December 2006.

the problem with population growth was a population *and* a development problem. Population growth should subsequently not be solved as an isolated problem but together with problems of development.<sup>18</sup>

The outcome of the conference, the 1974 World Population Plan of Action<sup>19</sup>, established three requirements for population policies:

- 1) Absolute respect for fundamental human rights;
- 2) Respect for dignity of the family and;
- 3) Prohibition of coercive measures.<sup>20</sup>

The 1974 Plan of Action stated that governments should respect and ensure the right of persons to determine freely and responsibly the number and spacing of their children, despite their demographic goals.<sup>21</sup>

At the International Conference on Population in Mexico ten years later, it was assumed that governments had a right and a duty to adopt population policies, but that the policy should not be implemented with coercion or be discriminatory and should not violate international human rights law. To reduce population, it was instead emphasized to use education and information.<sup>22</sup> The principles established in the 1974 Plan of Action were thereby affirmed at the conference in Mexico.

## 2.2.1 Population Control vs Family Planning

At the 1974 Bucharest conference, the difference between *population control* and *family planning* as two different ways to approach the problem of increasing population was established:

*Population control* is a philosophy identifying fast population growth as the fundamental cause of poverty and underdevelopment. Population control means that a government sets demographic goals and strategies on how to attain them, often implemented with coercion.<sup>23</sup>

*Family planning* is a recognized basic human right<sup>24</sup> and means that every individual has the right to be able to plan the size and composition of the

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<sup>18</sup> Nathansen, Cecilia M, *Accepting Population Control –Urban Chinese Women and the One-Child Family Policy*. Richmond : Curzon, 1997, p 2

<sup>19</sup> United Nations – Population policies, res. 16, Report of the World Population Conference, Bucharest, 19-30 August 1974

<sup>20</sup> *ibid*, p 43, para. (a)

<sup>21</sup> Nathansen, Cecilia M, *Accepting Population Control –Urban Chinese Women and the One-Child Family Policy*. Richmond : Curzon, 1997, p 3

<sup>22</sup> *ibid*

<sup>23</sup> Tomasevski, Katarina, *Human Rights in Population Policies –A Study for SIDA*. 1994 Published by SIDA, p 19-20

<sup>24</sup> See above 1.4.1

family and have the means and information available to do so, as an integral part of sustainable development.<sup>25</sup>

The goal of family planning programs is not to reduce population *per se*. Family planning is an integral part of sustainable development, providing informed choice and better contraceptives often leading to fertility reduction.<sup>26</sup>

## 2.2.2 Women and Population Policies

Population policies have been, and still are, a human rights exception. To prevent further population growth has for many states been more important than respect for human rights. One reason is that the victims are mostly women and human rights of women are far below men's.<sup>27</sup>

Since fertility and reproduction is connected with women, population policies are a much bigger burden on women than on men. Because strategies to attain demographic goals are often created by men in power, population policies often neglect the needs of women and thus making the burden on women even bigger.<sup>28</sup>

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<sup>25</sup> Nathansen, Cecilia M: *Accepting Population Control –Urban Chinese Women and the One-Child Family Policy*. Richmond : Curzon, 1997, p 3

<sup>26</sup> Anrudh, Jain; Bruce, Judith, Mensch, Barbara: *Setting Standards of Quality in Family Planning Programs*, Studies in Family Planning, Vol. 23, No. 6, 1992 p 392-395 p 392

<sup>27</sup> Tomasevski, Katarina: *Human Rights in Population Policies –A Study for SIDA*. 1994 Published by SIDA, p 7-8

<sup>28</sup> de Barbieri, Teresia: *Gender and population policies: some reflections*, Reproductive Health Matters 1993, Vol.1, No.1, p 85-92, p 87



# 3 The International Conference on Population and Development (ICPD)

## 3.1 Introduction

During the 1980s, better reproductive health was demanded by women all over the world, through non-governmental organisations (NGOs), and other political networks. Demographers and other experts also got more convinced that keeping demographic targets were not efficient to reduce population.<sup>29</sup> In the light of this development, the International Conference on Population and Development (ICPD), held in Cairo in 1994, has been described as a paradigm shift regarding population and development.<sup>30</sup>

The conference was organized by the United Nations Population Fund (UNFPA) and the Population Division of the United Nations (UN) Department for Economic and Social Information and Policy Analysis.<sup>31</sup>

Unlike the conferences on population in Bucharest 1974 and in Mexico 1984, the ICPD conference in 1994 was given a wider mandate on development and reflected growing knowledge that population, poverty, patterns of production, consumption and the environment were interconnected and had to be considered jointly.<sup>32</sup> Before the ICPD, population issues had rarely been considered in development strategies but were issues to be treated separately.

The conference argued that widespread poverty, as well as serious social and gender inequities, influenced extensively, and were extensively influenced by, population growth, its structure and distribution.<sup>33</sup> It recognized an interrelationship between population, sustained economic growth and sustainable development.

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<sup>29</sup> Bergman, Ylva (Ed): *Breaking through – A Guide to Sexual and Reproductive Health and Rights*, RFSU, Stockholm 2004, p 6.

<sup>30</sup> McIntosh, C. Alison; Finkle, Jason L: *The Cairo Conference on Population and Development: A New Paradigm?* Population and Development Review, Vol. 21, No. 2, 223-260, 1995 p 235

<sup>31</sup> [www.unfpa.org/icpd/summary.htm](http://www.unfpa.org/icpd/summary.htm) last visited 9th January 2007.

<sup>32</sup> Programme of Action of the International Conference on Population and Development, adopted at the United National Conference on Population and Development, Cairo, 5-13 September 1994, A/CONF.171/13, 1.5

<sup>33</sup> *ibid*, para 3.1

Population issues should therefore be integrated in development strategies to achieve a balance between population and available resources.<sup>34</sup>

The outcome of the conference, the ICPD Plan of Action (PoA)<sup>35</sup>, adopted by 179 United Nations (UN) member states, is a 20-year plan outlining population and development objectives and actions to be implemented by the international community and addresses challenges and links between population and sustained economic growth within the framework of sustainable development. One of these objectives includes that the international community shall ensure reproductive rights, including the right to family planning.<sup>36</sup>

## 3.2 ICPD and Reproductive Rights

ICPD is the first and most wide-ranging international policy document endorsing reproductive rights.<sup>37</sup> ICPD is also the first international document explicitly recognizing reproductive rights as human rights.<sup>38</sup>

The definition of reproductive rights is elaborated in ICPD para 7.3:

“Reproductive rights embrace certain human rights that are already recognized in national laws, international laws and international human rights documents and other consensus documents. These rights rest on the recognition of the *basic rights of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health*. It also includes *the right to make decisions concerning reproduction free of discrimination, coercion and violence*, as expressed in human rights documents.”<sup>39</sup> (emphasis added)

The rights outlined in the above paragraph have also been elaborated by UNFPA and includes *inter alia*:

- The right to reproductive health shall be a part of overall health for both men and women during their whole life;

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<sup>34</sup> McIntosh, C. Alison; Finkle, Jason L, *The Cairo Conference on Population and Development: A New Paradigm?* Population and Development Review, Vol. 21, No. 2, 223-260, 1995 p 235 and Programme of Action of the International Conference on Population and Development, adopted at the United National Conference on Population and Development, Cairo, 5-13 September 1994, A/CONF.171/13, 3.2

<sup>35</sup> The "ICPD PoA" will hereinafter only be referred to as "ICPD"

<sup>36</sup> *ibid* chapter 7

<sup>37</sup> Nair, Sumati; Sexton, Sarah; Kirbat, Preeti: *A decade after Cairo: Women's health in a Free Market Economy*, Indian Journal of Gender Studies Vol. 13 No. 2 (2006) p 171

<sup>38</sup> Programme of Action of the International Conference on Population and Development, adopted at the United National Conference on Population and Development, Cairo, 5-13 September 1994, A/CONF.171/13, para 7.3.

<sup>39</sup> *ibid*

- The right to family planning, *i.e.* to decide the number, time and spacing of their children, and have access to the information and methods to be able to apply this voluntary choice;
- The right to equality and equity between men and women to be able to make free and informed choices in all spheres of life, and be free from gender based discrimination;
- The right to privacy and security in everyone's reproductive and sexual lives and freedom from sexual violence and coercion.<sup>40</sup>

### 3.2.1 Family Planning According to ICPD

Family planning services must according to ICPD:

(...) enable couples and individuals to decide freely and responsibly the number and spacing of their children and to have the information and means to do so and to ensure informed choices and make available a full range of safe and effective methods. (...) The principle of free choice is essential to the long-term success of family-planning programmes. Any form of coercion has no part to play. (...) Governmental goals for family planning should be defined in terms of unmet needs for information and services.<sup>41</sup>

According to this paragraph, the aim of family planning services must be to let individuals:

- decide freely and responsibly on the number and spacing of their children without governmental interference;
- have the information and means to do so;
- be ensured informed choice;
- have available full range of safe and effective methods;
- not be subjected to coercion of any kind

According to ICPD, successful family planning programmes have showed that individuals receiving family planning counselling can and will act responsibly in relation to their own needs. The ICPD further states that governments who have set up policies, guided by demographic goals implemented by incentives and disincentives, have showed to have only a minor impact on fertility and have in some cases even been counterproductive. Targets and quotas shall therefore not be used as means to limit population growth.<sup>42</sup>

ICPD also states that governments shall do everything with all available means to improve the principle of voluntary choice in family planning

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<sup>40</sup> [www.unfpa.org/icpd/summary.htm](http://www.unfpa.org/icpd/summary.htm), last visited 2007-01-09

<sup>41</sup> *ibid* para 7.12

<sup>42</sup> *ibid* and Nair, Sumati; Sexton, Sarah; Kirbat, Preeti, *A decade after Cairo: Women's health in a Free Market Economy*, Indian Journal of Gender Studies Vol 13 No. 2 (2006) p 171

programs.<sup>43</sup> Governments are urged to monitor implementation of family planning services so they are client-centred with the aim to prevent and control abuses and but also ensure improvements. The aims should be to assist individuals to attain their reproductive goals and give them the possibility to exercise the right to have children by choice.<sup>44</sup> The actions of governments should always be in conformity with human rights.<sup>45</sup>

### 3.2.2 Quality of Care

ICPD goals on family planning do not only require that states ensure the availability of family planning services to everyone; they shall also be of adequate quality. According to the ICPD, population policies should focus on reproductive health, deal with social and gender inequalities and also securing programmes with appropriate level of quality.<sup>46</sup> This is called “Quality of Care”.

Quality of Care, as a dimension of family planning consists of six elements:

- Method choice;
- Provision of information to clients;
- The providers technical competence;
- Relation between client and provider;
- Follow-up and continuity and;
- Appropriate selection of services<sup>47</sup>

A family planning programme with appropriate quality means that it is client oriented, *i.e.*, helping individuals to achieve their personal reproductive preferences.<sup>48</sup>

### 3.3 ICPD Follow-up

In 1999, the UN held its first follow-up meeting to the ICPD, ICPD+5, in the General Assembly, to evaluate what results the first five years of implementing the 20-year plan had given. The session identified key areas

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<sup>43</sup> Programme of Action of the International Conference on Population and Development, adopted at the United National Conference on Population and Development, Cairo, 5-13 September 1994, A/CONF.171/13 para 7.15

<sup>44</sup> *ibid* para 7.16

<sup>45</sup> *ibid*, para 7.17

<sup>46</sup> Simmons, Ruth; Brown, Joseph; Diaz, Margarita: *Facilitating Large-Scale Transitions to Quality of Care: An Idea Whose Time Has Come*, Studies in Family Planning, Vol. 33, No. 1, March 2002, p 61-75, p 61.

<sup>47</sup> Bruce, Judith: *Fundamental Elements of the Quality of Care: A simple framework*; Studies in Family Planning, Vol. 21, No. 2 March/April 1990, p 61-91

<sup>48</sup> Anrudh, Jain; Bruce, Judith, Mennsch, Barbara: *Setting Standards of Quality in Family Planning Programs*, Studies in Family Planning, Vol. 23, No. 6, 1992, p 392-395 p 392

for further implementation.<sup>49</sup> In one of the key areas: “Reproductive health and unmet need of contraceptives”, countries should try to deliver contraceptives to all individuals wishing to control the size and composition of their families. But it should still be on voluntary basis, and should be implemented without target or quotas. The review also led to a number of meetings and roundtable discussions with the aim of further elaborating the strategies and quality of the implementation of the ICPD goals.

Five years later, it was time to reflect the progress of the implementation when it was half way, the ICPD +10. The UNFPA conducted an extensive Global Survey, studying the strategies, lessons learned and how to continue its work, country by country. The Global Survey showed that ICPD had had a major impact and that many of the countries had implemented ICPD into national programmes.<sup>50</sup> The survey showed that a solid ground had been built during the first ten years, but much more had to be done.<sup>51</sup>

### 3.4 ICPD and International Law

Since the ICPD is a policy document and not a treaty, it is not a legally binding instrument. This means that the ICPD doesn't hold governments legally accountable for breaching principles established in the document. But in the preamble of ICPD it is written that:

“The International Conference on Population and Development does not create any new international human rights, it affirms the application of universally recognized human rights standards to all aspects of population programmes” (...).<sup>52</sup>

Mechanisms to hold governments legally accountable for breaching the principles established by the ICPD, generally exists in national constitutions and regional and international human rights treaties. Already established legal obligations in national laws and international treaties can help realizing the aims and purposes of the ICPD.<sup>53</sup>

Even if the principles in ICPD are non-binding, they represent an important development. If they are reaffirmed repeatedly by countries or international

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<sup>49</sup> <http://www.unfpa.org/icpd/icpd5.htm>, last visited 4th February 2007

<sup>50</sup> UNFPA -A summary report, *Investing in People –National Progress in Implementing the ICPD Programme of Action 1994-2004*, p 1, be viewed at:

<http://www.unfpa.org/icpd/10/index.htm>, last visited 2007-02-04

<sup>51</sup> *ibid* p 20

<sup>52</sup> Programme of Action of the International Conference on Population and Development, adopted at the United National Conference on Population and Development, Cairo, 5-13 September 1994, A/CONF.171/13, preamble 1.5.

<sup>53</sup> Cook, Rebecca J; Fathalla, Mahmoud F, *Duties to Implement Reproductive Rights*, Nordic Journal of International Law, 67, 1-16, 1998, p 3

bodies, the principles can evolve to take on the qualities of customary law. However, principles evolving into customary law is often a slow process.<sup>54</sup>

### 3.5 Conclusion

As outlined above, ICPD is a paradigm shift in the development of population policies. ICPD is important because it acknowledges that population issues shall be introduced into development strategies as an interrelate process. ICPD recognizes that guaranteeing reproductive rights, including the right to family planning, *inter alia*, can limit population growth, using targets or quotas, do not. It rejects all forms of coercion in population policies. But according to the ICPD, ensuring family planning services are not enough, they should also be of adequate quality.

In the next chapter, I will present relevant provisions in international legally binding instruments containing the right to family planning as outlined in ICPD.

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<sup>54</sup> McIntosh, C. Alison; Finkle, Jason L, *The Cairo Conference on Population and Development: A New Paradigm?* Population and Development Review, Vol. 21, No. 2, 223-260, 1995 p 226

# 4 The Right to Family Planning in International Human Rights Law

## 4.1 Introduction

As mentioned above, the ICPD is the first international policy document explicitly recognizing reproductive rights, including the right to family planning, as human rights.<sup>55</sup> It establishes that to attain the goal of sustainable development, individuals have to be able to have control over their reproductive lives.<sup>56</sup>

Since the ICPD is not a legally binding instrument, it is important to outline where in the legally binding treaties the right to family planning can be found.<sup>57</sup>

I will elaborate on three international binding instrument I believe are the most important with regard to this thesis: the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW).

ICCPR and ICESCR, together with the Universal Declaration on Human Rights (UDHR) form the “International Bill of Human Rights”.<sup>58</sup>

ICCPR, adopted 16 December 1966, protects individual autonomy and self-determination and is an instrument containing obligations the State Party undertakes to respect and ensure without distinction of any kind.<sup>59</sup> It contains *inter alia* fundamental human rights such as: the right to life (Art 6), the prohibition of torture (Art 7), freedom of expression (Art 19), freedom of association (Art 22) and freedom from interference with privacy (Art 17). ICCPR has two Optional Protocols. The second protocol enables

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<sup>55</sup> The right to family planning was recognized as a basic human right already at the Bucharest conference in 1974, *see* 1.4.1

<sup>56</sup> [www.unfpa.org/rights/rights.htm](http://www.unfpa.org/rights/rights.htm), last visited 10th of January 2007

<sup>47</sup> *ibid*

<sup>57</sup> Until now, there has been no direct reference to reproductive rights in international human rights law, but the new Convention on the Rights of Persons with Disabilities, adopted the 6th of December 2006, is the first international legally binding instrument that specifically mentions the right to sexual and reproductive health. Art 25 says that State Parties should: “*Provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in the area of sexual and reproductive health and population-based public health programmes.*” The Convention has at the time of writing not yet entered into force.

<sup>58</sup> <http://www.ohchr.org/english/law/index.htm> last visited 23 August 2007

<sup>59</sup> Art 2.1, International Covenant on Civil and Political Rights, adopted 16 December 1966

individuals, who believe their rights under the Covenant have been violated by a State Party, can submit written communications to the ICCPRs monitoring body, the Human Rights Committee (HRC), for consideration.<sup>60</sup>

ICESCR, adopted 16 December 1966, includes obligations to be achieved progressively by the State Party with maximum available resources.<sup>61</sup> It includes *inter alia* the right to work (Art 7), the right to an adequate standard of living (Art 11) and the right to health (Art 12). ICESCR has a monitoring body, the Committee on Economic, Social and Cultural Rights (CESCR). ICESCR has no optional protocol nor is it possible for individuals to submit communications on alleged violations for consideration before the CESCR.

CEDAW, adopted the 18<sup>th</sup> December 1979, has been described as the “International Bill of Rights for Women”.<sup>62</sup> States parties to the Convention shall take all appropriate measures to eliminate discrimination against women in *inter alia* the political and public life (Art 7), in the field of education (Art 10) and in matters relating to the family and marriage (Art 16). The Convention reaffirms the inalienable rights of women already established in ICCPR and ICSECR, but goes further and recognizes the importance of culture and tradition in shaping the behaviour of men and women, and how this behaviour restricts women in exercising their basic rights.<sup>63</sup> In 1999, an Optional Protocol to CEDAW was adopted to give women individually, or groups of women, the right to complain before the Committee on the Elimination of all Discrimination Against Women (CEDAW Committee) for presumed violations of the Convention. This is called the “communication procedure”. The procedure is subsidiary, which means that individuals must exhaust domestic remedies before complaining before the Committee. Also, the decisions taken by the Committee are non-binding.<sup>64</sup> Below, I will present one decision taken by the CEDAW Committee relevant for this thesis.

## 4.2 International Covenant on Civil and Political Rights

ICCPR contains no specific provision on the right to family planning, but includes however applicable articles. Art 17(1) ICCPR states that:

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<sup>60</sup> Art 2, The Optional Protocol to the International Convention of Civil and Political Rights, adopted 16 December 1966

<sup>61</sup> Art 2.1 The International Covenant on Economic, Social and Cultural Rights, adopted 16 December 1966

<sup>62</sup> <http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>, last visited 23 August 2007

<sup>63</sup> General Recommendation No. 21, “Equality in marriage and family relations” art 16, Thirteenth session, 1994.

<sup>64</sup> <http://www.whrnet.org/docs/issue-cedaw1.html>, last visited 4 June 2007



“No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.”

A state has according to this article a duty not to arbitrarily interfere in the private life of individuals. In general comment No 16, HRC says that the state shall only be able to interfere in individuals’ private life if it is essential in the interest of society as understood by the Covenant.<sup>65</sup> It is argued that the right to privacy in ICCPR also includes the right to decide over ones own body and sexual autonomy.<sup>66</sup>

Relevant is also art 23(2), which states that:

“The right of men and women of marriageable age to marry and to found a family shall be recognized.”

The right to found a family in art 23(2) means more than the right to conceive, gestate and deliver a child. To “found a family” includes individual’s right to plan, time and space their children.<sup>67</sup> This article also includes that if a state adopts a population policy, it should not be discriminatory or compulsory.<sup>68</sup>

## 4.3 International Covenant on Economic, Social and Cultural Rights

According to ICESCR, State Parties have an obligation to protect the family.

Art 10(1) states:

“The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society (...)”

State Parties have also a duty a to recognize the right of everyone to the enjoyment of the highest attainable standard of health.

Art 12(1) states:

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<sup>65</sup> General Comment No. 16, “The right to respect of privacy, family, home and correspondence, and protection of honour and reputation”, art 17, Thirty-second session, 1993, para 8.

<sup>66</sup> Nowak, Manfred: *U.N. Covenant on Civil and Political Rights – CCPR Commentary*, 2nd revised edition, 2005, N.P. Engel Publisher, Arlington, p. 389-391.

<sup>67</sup> Cook, Rebecca J, *International Human Rights and Women’s Reproductive Health*, Studies in Family Planning, Vol. 24, No. 2, 1993, p 80

<sup>68</sup> General Comment No. 19, “Protection of the family, the right to marriage and equality of the spouses” art 23, Thirty-ninth session, 1990, para 5.

“The State Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”

According to CESCR, the right to health includes both freedoms and entitlements. The freedoms include that every individual should be free to control its own health and body, including sexual and reproductive health. The entitlements include the right to health protection that can ensure the highest attainable standard of health.<sup>69</sup> The Committee interprets the right to health not only as the right to an appropriate health care, but also the underlying determinants of health, such as health related education including on sexual and reproductive health.<sup>70</sup> According to Art 12(2) steps taken by states should include:

“The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for (a) the provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child.”

This provision has been interpreted by the CESCR as requiring measures to improve sexual and reproductive health, including access to family planning.<sup>71</sup>

States have an obligation to respect the right to health and are not allowed to limit access to sexual and reproductive health, or to censor information concerning sexual and reproductive health.<sup>72</sup> States are not allowed, for the sake of reducing population, to limit the choice of contraceptives or impose compulsory sterilization, which will limit people to their right of highest attainable standard of health and bodily integrity.<sup>73</sup>

## **4.4 Convention on the Elimination of All Forms of Discrimination against Women**

CEDAW is an important international instrument with regard to women’s right to family planning.

Art 16(1)(e) states that:

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<sup>69</sup> General Comment No. 14, “The right to the highest attainable standard of health”, art 12, Twenty-second session, 11 August 2000, para 8

<sup>70</sup> *ibid* para 11.

<sup>71</sup> *ibid* para 14.

<sup>72</sup> *ibid* para 34.

<sup>73</sup> Isaacs, Stephen L, *Incentives, Population Policy and Reproductive Rights: Ethical Issues*, Studies in Family Planning, Vol. 26, No. 6, 1995, p 363.

“State Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women (...) 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 to exercise these rights.”

According general recommendation No. 21 by the CEDAW Committee, women have the right to decide on the number and spacing of their children, because the responsibilities women have to bear and raise children, affect women’s physical and mental health.<sup>74</sup> Therefore, the decision to have children or not should not be limited by anyone, including the government.<sup>75</sup>

In the recommendation, the CEDAW Committee refers to Art 10(h) on education. This article contains a reference to the right to education and information on family planning:

“States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women (...) access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.”

The Committee also recognizes that where there is voluntary regulation of fertility, the well being of all members of the family improves. The Committee further states that voluntary fertility regulation improves the general quality of life and health of the population, and the regulation of population growth on a voluntary basis, helps to preserve the environment and attain sustainable economical and social development.<sup>76</sup> In general recommendation No. 19, on violence against women, the Committee obligates State Parties to ensure measures and prevent coercion concerning fertility and reproduction.<sup>77</sup>

Important is also Art 12(1) on the right to health care:

“State Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.”

The CEDAW Committee concludes in its general recommendation No 24, that women’s special health care needs are often neglected and that special measures are needed to eliminate discrimination against women in the field of reproductive health.<sup>78</sup>

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<sup>74</sup> *ibid* para 21

<sup>75</sup> *ibid* para 22

<sup>76</sup> *ibid* para 23

<sup>77</sup> General Recommendation No. 19, “Violence against women” para 24, 1992 A/47/38.

<sup>78</sup> General Recommendation No. 24, “Women and health”, twentieth session, 1999, art 12, para 12

## 4.5 A Decision under the Optional Protocol to CEDAW

At the time of writing, the CEDAW Committee has only adopted six decisions under its Optional Protocol. However, one is highly relevant for this thesis, *Ms A.S vs Hungary*.<sup>79</sup>

The complainant, a Hungarian Roma, *Ms A.S*, claimed she had been subjected to forced sterilization while having a caesarean section due to a miscarriage. Before the caesarean section was performed, she signed a form with only a very limited time for consideration, allowing sterilization, without understanding the meaning of the word “sterilization” and during a poor medical state due to severe bleedings and pain. Not until after the operation, *Ms A.S* found out what had happened to her and that she was never again able to have children. Since *Ms A.S* was a Catholic, and not accepting any contraceptive, she claimed she would never have agreed to undergo sterilization.<sup>80</sup>

*Ms A.S* complained before the CEDAW Committee after exhausting domestic remedies. Before the Committee, *Ms A.S* claimed that Hungary had violated Art 10(h), Art 12 and Art 16(1)(e) of the Convention. She stated that forced sterilization had been recognized as serious violations of human rights by international organisations.<sup>81</sup>

Regarding violation under Art 10(h), she argued that she didn’t get the necessary information on family planning required under Art 10 or was told the risks and consequences of the operation.<sup>82</sup> The Committee stated that *Ms A.S* had the right to get informed about sterilization or other contraceptives, to be able to reject that the sterilization was performed. Since the information on the operation was given insufficiently, due to language difficulties and her bad medical condition, the Committee considered she was not given adequate information on family planning and found it to be a violation under Art 10(h).<sup>83</sup>

Concerning violation of Art 12, *Ms A.S* stated that she had not been able to make an informed choice before she had signed the operation form. Because she was unable to understand what she agreed to, due to her language difficulties and her medical state at the time, she argued that she didn’t have the possibility to give informed consent on her health situation and that this constituted a breach of Art 12.<sup>84</sup> The Committee stated that since *Ms A.S*

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<sup>79</sup> Views of the Committee on the Elimination of Discrimination against Women under article 7, paragraph 3, of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (thirty-sixth session) Communication No: 4/2004

<sup>80</sup> *ibid* para 2.2 – 2.4

<sup>81</sup> *ibid* para 3.2

<sup>82</sup> *ibid* para 3.3

<sup>83</sup> *ibid* para 11.2

<sup>84</sup> *ibid* para 3.4

was in bad medical condition when she signed the form and this was done under a very short period of time, this could not be considered to be enough to get the appropriate information on the risks and benefits of sterilization. In its consideration, the Committee referred to general recommendation No 24, on women and health, where the Committee explains that the requirement of proper health care service is when a woman is able to give consent based on full information and receives service that respects her dignity.<sup>85</sup> In this case, the Committee regarded the measures taken by Hungary as insufficient to ensure *Ms A.S* adequate health care and constituted thus a violation of Art 12.<sup>86</sup>

On the alleged violation of Art 16(1)(e), *Ms A.S* argued that Hungary had limited her ability to decide freely and responsibly on the number and spacing of her children and was denied information and means to do so.<sup>87</sup> The Committee referred to general recommendation No 19, on violence against women, where the Committee states that compulsory sterilization hinders women to decide on the number and spacing of their children and affects their health, both physically and mentally.<sup>88</sup> Based on this information, the Committee concluded that since *Ms A.S* did not give her full consent to undergo sterilization, which consequently removed her reproductive ability, it constituted a violation of Art 16(1)(e).<sup>89</sup>

## 4.6 Conclusion

According to ICCPR Art 17, a state shall respect individuals right to non-interfere in individual reproductive decisions and enable them to decide the number, time and spacing of births. A state has, according to HRC, the right to interfere in individual's private lives if it is in the interest to society. State interference in individual's reproductive choices is however prohibited in Art 23(2) where everyone shall be ensured the right to "found a family" which includes the right to plan the family.

According to ICESCR Art 12, a state party shall ensure means and information for individuals to be able to make an informed choice concerning their reproductive lives. Family planning services shall be included into the state's national health care system to ensure the highest attainable health.

CEDAW is more clear concerning the right to family planning, directly stating women's right to decide the time and number of children and have access to the means and information to enable this right.

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<sup>85</sup> General Recommendation No. 24 "Women and health", twentieth session, 1999, Art 12

<sup>86</sup> Communication No: 4/2004 para 11.3

<sup>87</sup> *ibid* para 3.5

<sup>88</sup> General Recommendation No. 19, "Violence against women" 1992 A/47/38

<sup>89</sup> Communication No: 4/2004 para 11.4

The decision taken by the CEDAW Committee in *A.S vs Hungary* is interesting because it shows that information and education in family planning has to be given so that the individual understands the options and the individual is given time to reflect to be able to make an informed choice. Also, proper health care is not only when the individual gets fully informed about the options, means and consequences, but also that the respect and dignity for the patient is taken into account. Finally, the case says that coerced sterilization clearly affects both the mental and physical health why everyone should be guaranteed to decide freely and responsibly on the number and spacing of births.

Based on above presentation, it is possible to conclude that individuals have a right to family planning as defined in ICPD according to international human rights law. States parties to the conventions elaborated above, have a negative obligation not to interfere in individual's reproductive decisions, they also have a positive obligation to provide means and information to be able to enable individuals' reproductive decisions.

Also, there is no doubt that population policies, interfering in individual's reproductive choices and lives, setting demographic targets and goals to control population growth, violate individuals' right to family planning. States using population control to limit population growth do not enable individuals the freedom to choose the number, time and spacing of births, neither provide means nor information so that individuals can make an informed choice.

In the next chapter, I will outline the Chinese population policy, its history and means of implementation.

# 5 The Chinese Population Policy

I will in this chapter present the Chinese population policy up to the promulgation of the Chinese Law on Population and Birth Planning<sup>90</sup> in 2001. I will outline the policy's background, implementation measures and existing legal norms and regulations.

## 5.1 Building a Population Policy

The Chinese population policy originates from 1978-79, but population growth has been an item on the Chinese political agenda since the Peoples' Republic of China (PRC) was founded in 1949. But at that time, a large population was not seen as something negative, on the contrary, it meant that more people could take part in production. Mao Zedong stated in 1949 that:

“Of all things in the world, people are the most precious”

After 1950, mortality rates began to decline and due to the end of wars, redistribution of grains to areas that didn't have enough supplies, and improvement in the health care system. This trend lasted until the Great Leap Forward<sup>91</sup> in 1957 that was followed by a major famine that increased mortality levels. But within a couple of years, living conditions improved and mortality levels decreased again. Fertility levels remained high due to the cultural tradition of many children as an advantage to the family.<sup>92</sup> From 1950 to 1970, the population increased from 300 million to 820 million.<sup>93</sup>

Over time, the Chinese leadership began to realize that existing resources were not enough to feed the growing population. But since the large population before had been seen as a major asset, the Chinese leaders found it hard to admit that it in reality was the contrary. However, in a speech from 1963 Mao Zedong phrased:

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<sup>90</sup> I will use the term "birth planning" even if the term in Chinese often is translated as "family planning". This is to avoid confusion with the international definition of family planning as a human right. *See: Nathansen, Cecilia M, Accepting Population Control – Urban Chinese Women and the One-Child Family Policy*, Richmond: Curzon, 1997, p 5

<sup>91</sup> The Great Leap Forward was an attempt to double the industrial production, but failed and with widespread famine as a result.

<sup>92</sup> Nathansen, Cecilia M, *Accepting Population Control – Urban Chinese Women and the One-Child Family Policy*, Richmond: Curzon, 1997, p 44

<sup>93</sup> *ibid* p 38

“A large population is a good thing, but as we are the most populous country in the world, we have already had plenty of this good thing, and if we still let the population grow rapidly in an unplanned manner, it won't be a good thing anymore”<sup>94</sup>

In 1973, China launched the “*wan, xi, shao*” campaign. Chinese couples were encouraged to late marriage and childbearing (*wan*), birth spacing (*xi*) and fertility limitation (*shao*).<sup>95</sup> But population growth was still a sensitive issue for Mao Zedong and it was not until his death in 1976 that the Communist party (CCP) included population growth as one of the causes of economic problems. Since then, the neglect of population control has been considered as a historical mistake and some leaders have also compared the neglect of population control to disasters like the Great Leap Forward and the Cultural Revolution<sup>96, 97</sup>.

When finally recognizing population growth as a serious problem for the Chinese development, the Chinese leadership decided on a goal not to exceed 1,2 billion people by the year 2000, and this by all necessary means.<sup>98</sup> To reduce population rate was of high importance for the development of the Four Modernizations.<sup>99</sup>

But it was still unclear how to realise these plans and as a first step, Chinese government decided to establish birth-planning bureaux in residential areas and at factories all over the nation. The birth planning bureaux should propagate families with one child and accept families with two children but try to prevent additional births. These guidelines were to be implemented by incentives for those families with one child and disincentives if they had three.

The drafting of birth planning regulations was at a high speed on the regional level and since there still did not exist any regulations on national level, implementation differed in different parts of the country.<sup>100</sup> The Chinese government soon realised that the *wan, xi, shao* campaign failed to limit population growth to reach the target of 1,2 billion by the year 2000

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<sup>94</sup> *ibid* p 32

<sup>95</sup> Attané, Isabelle, *Chinas Family Planning Policy: An Overview of its Past and Future; Studies in Family Planning* 2002; Vol. 33, No. 1, Family Planning Programs in the Twenty-First Century, 2002, p, 103-113, p 103

<sup>96</sup> The Cultural Revolution (1966-1976) was a mass movement initiated by Mao Zedong that aimed to destroy all bourgeois elements and re-educate all those being a threat to communism. The Cultural Revolution was followed by chaos and stagnation

<sup>97</sup> Scharping, Thomas, *Birth Control in China, 1949-2000: population policy and demographic development*. London: Routledge:Curzon, 2003, p 33

<sup>98</sup> *ibid* p 51

<sup>99</sup> A programme announced by the Communist Party in 1978 with the aim to modernize industry, agriculture, science and technology and national defence.

<sup>100</sup> Scharping, Thomas, *Birth Control in China, 1949-2000: population policy and demographic development*. London: Routledge:Curzon, 2003, p 51-52



and the government decided to adopt more stringent rules in 1979.<sup>101</sup> The “one-child policy” was now taking shape.

## 5.2 Implementation

Since the implementation of the Chinese population policy differed in different parts of the country due to lack of coherent laws and regulations nationwide<sup>102</sup>, it is difficult to outline a general description of the implementation. Additionally, the population policy has also changed over time. From 1979 to 1983 the population policy was to be implemented “whatever the cost”, but due to changes in Chinese domestic policy in 1984, the implementation became more relaxed.<sup>103</sup> However, I have in this section tried to outline the structure of birth planning institutions and their main implementation measures from 1979 up to the 2001 Law on Population and Birth Planning.

### 5.2.1 Structure of Birthplanning Institutions

In 1981, the State Council<sup>104</sup> created the State Birth Planning Commission (the commission later changed name to the National Population and Family Planning Commission, NPFPC<sup>105</sup>). The NPFPC established a vertical organization of provincial birth planning commissions all over the country. The main responsibility of the NPFPC was to manage birth planning measures, implementation of rules, propaganda and education, train birth-planning personnel and distribute contraceptives.<sup>106</sup>

Below the NPFPC, provincial birth planning commissions managed the municipal birth planning work. The county or urban birth planning commissions managed birth planning bureaux in villages or street committees in urban areas. Birth planning offices also existed in every workplace with birth-planning workers carrying out propaganda work and supervision of the female employees.<sup>107</sup>

Birth planning at the lowest level required a lot of time and resources as it included control of contraceptives, home visits to women with unauthorized pregnancies to persuade them to have an abortion and the regularly check-

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<sup>101</sup> Attané, Isabelle, *Chinas Family Planning Policy: An Overview of its Past and Future*; Studies in Family Planning 2002; Vol. 33, No. 1. Family Planning Programs in the Twenty-First Century, 2002, p 103-113, p 103

<sup>102</sup> See 5.1.3

<sup>103</sup> Scharping, Thomas, *Birth Control in China, 1949-2000: population policy and demographic development*. London: Routledge:Curzon, 2003, p 51

<sup>104</sup> The State Council is the most powerful executive body in the Chinese government.

<sup>105</sup> To avoid confusion, I will hereinafter only use the term NPFPC

<sup>106</sup> Scharping, Thomas, *Birth Control in China, 1949-2000: population policy and demographic development*. London: Routledge:Curzon, 2003, p 162-163

<sup>107</sup> *ibid* 168-172

ups of women of reproductive age to prevent them from getting pregnant. Such visits should in some villages be conducted monthly. To handle all these the time- and resource demanding activities, special associations were set up where women usually were forced to join to carry out birth-planning work.<sup>108</sup>

## 5.2.2 Ideological Education

Since the introduction of the current population policy in 1979, different methods have been used to ensure policy compliance.

Ideally, people would receive ideological education and thus comply with the birth restrictions voluntarily.<sup>109</sup> The ideological education should teach people that the policy was based on the interest of the state and the people. The education could consist of posters or distributing leaflets and home visits promoting birth planning. Ideological education measures were increased during the Chinese New Year and the Chinese national holiday when it is popular to get married.<sup>110</sup>

If individuals, even after ideological education, did not feel obliged to follow the policy, they were subjected to persuasion in direct individual meetings with the birth-planning worker.<sup>111</sup>

## 5.2.3 Birth Permits and Quotas

Another very common way to control births was the use of birth permits. In the early years of the population policy, there was no need to apply for birth permits for the first child, but when the control tightened in the late 1980s, birth permits were introduced for the first child as well. Obtaining a birth permit was a complicated procedure and required several different documents proving that the couple fulfilled all the requirements to have a child. The couple had to prove that they had undergone a marriage guidance course, hand in statements from the work unit of both spouse and provide statements of the village or street committee.<sup>112</sup>

When a woman got pregnant, the pregnancy had to be registered at the hospital within two months after conception. The woman then had to obtain a statement where she guaranteed that she would take contraceptive measures after delivery. The couple would also have to pay a deposit for the risk of contraceptive failure if the woman chose oral contraceptives instead

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<sup>108</sup> *ibid* 168-172

<sup>109</sup> Nathansen, Cecilia M, *Accepting Population Control –Urban Chinese Women and the One-Child Family Policy*. Richmond : Curzon, 1997, p 94

<sup>110</sup> *ibid*

<sup>111</sup> *ibid* p 98

<sup>112</sup> *ibid*

of IUD. In some cases it required more than twelve different documents before giving birth to the first child.<sup>113</sup>

But in many areas of the country, the complicated procedure of issuing documents and monitoring the procedure was difficult to carry out, due to lack of personnel and financial means. This created gaps in control and in some areas the birth permit for the first child was handled as a mere formality as long as the couple did not have more than one child.<sup>114</sup>

A birth permit was not issued to the couple unless there was a part of the quota left. The quota was distributed from the highest level down to birth-planning workers. If the annual quota almost was filled, the younger women who applied for a birth permit was persuaded to wait, so the older women got a chance to give birth. If the younger women didn't agree, birth-planning workers continued with persuasion and explained the reasons why she had to comply with the policy.<sup>115</sup>

Certain families got permission to have a second child, for example if the first child was disabled or the first child was a girl and the family had real difficulties to survive with only one girl.<sup>116</sup>

## 5.2.4 Contraception and Abortion

Compulsory contraception was introduced in China in 1979. The most common contraceptive used was the intra-uterine devices (IUD) because it was economical and simple to use. IUDs were checked through compulsory gynaecological examinations and X-ray check-ups, mostly organised by the work unit. Oral contraceptives were more expensive and difficult to control and many women did not take them regularly. Even if most provinces "advocated" IUDs, this contraceptive was more or less compulsory. IUDs were often of low quality and many women suffered from severe bleedings sometimes leading to expulsion.<sup>117</sup>

In many provinces sterilization was compulsory after the second child. In the mid 1980s, China carried out shock campaigns, including mass-sterilizations, to promote birth planning. Even though male vasectomy was much less complicated, female tubal ligation was much more common. 1997, the year with the highest number of sterilizations, 39 per cent of

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<sup>113</sup> *ibid*

<sup>114</sup> Scharping, Thomas, *Birth Control in China, 1949-2000: population policy and demographic development*. London: Routledge:Curzon, 2003, p 95

<sup>115</sup> Nathansen, Cecilia M, *Accepting Population Control –Urban Chinese Women and the One-Child Family Policy*, Richmond : Curzon, 1997, p 99-100

<sup>116</sup> Scharping, Thomas, *Birth Control in China, 1949-2000: population policy and demographic development*. London: Routledge:Curzon, 2003, p 97

<sup>117</sup> *ibid* p 106

married women in reproductive age were sterilized, compared to 10 per cent men.<sup>118</sup>

A woman who got pregnant without a birth permit was persuaded to “take measures”. This often meant abortion. Abortion was considered to be a remedial measure for making up for contraception failure. If the woman did not have an abortion, the birth-planning workers would try to persuade her until she did. According to some surveys, the abortion rate per 100 live births was in the beginning of the 1990s as high as 62.4.<sup>119</sup>

## 5.2.5 Incentives and Financial Disincentives

Couples who decided to have only one child received material incentives as preferential treatment. The incentives often included favoured treatment in education, health and housing or annual bonuses. To be able to benefit from the incentives, the family had to have a one-child certificate. A one-child certificate meant that the family promised they would not have additional children and if the woman got pregnant again, she was expected to have an abortion.<sup>120</sup> Preferably one of the spouses would get sterilized after the first birth. This was however less common since many couples hoped that the policy would change in the future. Instead the certificate had to be renewed each year.

If the couple had a second child, the one-child certificate had to be handed back and the bonuses received had to be repaid. Incentives varied in different parts of the country due to local conditions and it was the work units of both the husband and wife who had to bear the burden of repaying bonuses. Therefore, the size of the bonus depended on the budget of each unit and also how many certificates that had been issued to those employed in the work unit.<sup>121</sup>

If people, after ideological education, persuasion and incentives, still didn't adhere to the population policy, they became subjected to financial disincentives. The state believed that couples who had more children they were permitted to should carry the burden themselves since the extra child put an extra burden on the state. But it was not only the violating couple who was punished, sometimes the whole work unit and the birth-planning workers were penalised since they had failed in their work to prevent further births. Work units could be penalized for not reaching an agreed target, but

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<sup>118</sup> *ibid* p 110

<sup>119</sup> *ibid* p 121

<sup>120</sup> Nathansen, Cecilia M, *Accepting Population Control –Urban Chinese Women and the One-Child Family Policy*, Richmond : Curzon, 1997, p 90

<sup>121</sup> Scharping, Thomas, *Birth Control in China, 1949-2000: population policy and demographic development*. London: Routledge:Curzon, 2003, p 126

were on the other hand rewarded if they did. This system created a strong group pressure among people to adhere to the policy.<sup>122</sup>

Penalties could consist of wage deduction or a “social compensation fee”, a larger sum paid only once. The amount could differ due to social status and personal connections why the decided amount in many cases was a result of bargaining. Other disincentives used were withdrawal of bonus payments, no job promotions, and reduced welfare and health benefits.<sup>123</sup>

## 5.3 Effects of Chinese Population Control

### 5.3.1 Son Preference

The traditional Chinese society has a strong son-preference due to the Confucian<sup>124</sup> patriarchal family tradition. With the “risk” of getting a girl and no second chance to have another child, girl children have suffered considerably due to Chinese population control.

Female infanticide in China is however nothing new. For more than a thousand years, girl children were seen as a minor sin in comparison with boys who were the guarantee for carrying on the family line.<sup>125</sup>

When the Communists took power in 1949, they almost managed to eliminate female infanticide, but it reappeared again in the 1980s. The strong desire to have a son, but a one-child restriction, made couples take measures so to avoid “ending up” with a daughter.<sup>126</sup>

Women’s main role in the family was to give birth to a boy. Women who gave birth to girls were often maltreated by the in-laws. To prevent giving birth to a daughter, couples used ultrasound to find out whether the foetus was a boy or a girl. If expecting a girl, the woman often had an abortion. Couples without the possibility to use ultrasound, drowned the newborn baby in a bucket of water they had put beside the bed if it turned out to be a girl. If the couple couldn’t bear to kill the baby girl at birth, she was abandoned in hope that she was found and taken to an orphanage.<sup>127</sup>

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<sup>122</sup> Nathansen, Cecilia M, *Accepting Population Control –Urban Chinese Women and the One-Child Family Policy*, Richmond : Curzon, 1997, p 89

<sup>123</sup> Scharping, Thomas, *Birth Control in China, 1949-2000: population policy and demographic development*. London: Routledge:Curzon, 2003, p 142-145

<sup>124</sup> Confucianism is traditional Chinese ideology and social system with the aim of having a society based on harmony and hierarchy where everyone knows his or her place. The family is the base of the society with elder dominating younger and men dominating women. The eldest man has the responsibility to maintain the family line.

<sup>125</sup> Hall, Christine: *Daughters of the Dragon –Women’s life in contemporary China*, Scarlet Press, London, 1997, p 111-113

<sup>126</sup> *ibid*

<sup>127</sup> *ibid*

Son-preference and the harmful effects towards girl children have created imbalance in the sex ratio at birth.<sup>128</sup> In some provinces in China the sex ratio at birth is still very high compared to what is normal. The lack of girls has also been linked with increased trafficking of women and bride selling in China.<sup>129</sup>

### 5.3.2 Coercion

As described above, the population policy should be implemented on a voluntary basis by information and education. The government's official position was that no coercion was accepted. But since birth-planning workers often were under the pressure not to exceed birth quotas in their district, Amnesty International among others, reported that birth-planning workers used coercion and physical violence, including forced abortions and sterilizations on women who didn't want to comply with the policy. If not, the birth-planning workers would get punished for exceeding the allowed number of births. Meetings where people were supposed to be educated in birth-planning, could turn out to be compulsory mass meetings where women were kept until they "voluntarily" agreed to sign a one-child contract and to get sterilized preventing them from breaking the contract.<sup>130</sup>

Women pregnant with an unauthorized child could be kept in custody until the abortions were performed.<sup>131</sup> Reports also indicated that those who helped women to escape forced abortions and sterilizations were detained and prosecuted.<sup>132</sup>

Women suffered the most, both mentally, because of the stringent implementation of the population policy as a result of intervention in women's choice over their own bodies, and physically, as unskilled workers under non-hygienic conditions carried out sterilizations and abortions.<sup>133</sup> As mentioned above, sterilizations were more common among women than men. Men often believed that sterilization would result in reduced potency and women believed it was their responsibility to protect themselves from getting pregnant.<sup>134</sup>

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<sup>128</sup> "Sex ratio at birth" is the number showing how many boys are born on 100 girls. Statistics in some provinces in China has shown a sex ratio at birth of more than 130 boys to 100 girls. (See: <http://www.unfpa.org/news/news.cfm?ID=734&Language=1>)

<sup>129</sup> Shavel, Carmen: *China to CEDAW: An Update on Population Policy*, Human Rights Quarterly, 2001, Vol. 23, p 119-147, p 120

<sup>130</sup> *Chi An- Bara en dotter*, berättat för Steven Mosher, Ritzers förlag, Malmö 1996, p 208-212

<sup>131</sup> Shavel, Carmen, *China to CEDAW: An Update on Population Policy*, Human Rights Quarterly, Vol. 23, 2001, p 119-147, p 140

<sup>132</sup> Amnesty International: *Women In China –Detained, Victimized but Mobilized*. AI Index: ASA 17/80/96, <http://www.amnesty.org/ailib/intcam/china/china96/wom5.htm>, last visited 7 April 2007.

<sup>133</sup> Shavel, Carmen: *China to CEDAW: An Update on Population Policy*, Human Rights Quarterly, Vol. 23, 2001, p 119-147, p 120

<sup>134</sup> Interview with Gender Researcher at Fudan University, Shanghai 12 October 2006.

The value of an unborn child is not high in China<sup>135</sup> and abortions were carried out without any possibility for women to get any counselling or support before or after they had an abortion.<sup>136</sup>

Although the government admitted problems in the implementation and it never declared forced abortions as a government policy for implementing the population policy, it declared that implementing the population policy came first, the problems deriving from it came second.<sup>137</sup>

## 5.4 Domestic Legislation Regulating the Population Policy

The Chinese legislation on the population policy is far from clear. After 1979, the CCP issued several instructions and regulations that built on informal rules promulgated in preceding decades. In 1980, the Party addressed the “Open Letter” to all party members confirming the population policy. This letter has been seen as the first public declaration of the new line on stricter population control. The letter stated the limit of 1,2 billion people for the year of 2000. One child was the main rule, but if persons had severe difficulties to survive with only one child they could as an exemption get a special permission to have an additional child.<sup>138</sup>

The Party suggested free choice of contraceptive methods and accentuated the use of incentives instead of disincentives.<sup>139</sup> Unfortunately, free choice of contraceptives was only on paper and special permissions for a second child were seldom given.<sup>140</sup>

The Chinese leadership almost never involved legislative organs when they issued rules on the population policy.<sup>141</sup> Because of limited financial power, lack of control and lack of knowledge of extremely shifting local conditions, central organs gave subordinate bodies a wide area of interpretations. The central directives tended to be diffuse and imprecise. Many provincial norms were only available as views or circulars of leading bodies with the result that many of them were contradictory and ambiguous and they were transmitted to lower levels to take final decisions or enact additional rules or guidelines.<sup>142</sup>

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<sup>135</sup> Hall, Christine: *Daughters of the Dragon – Women’s life in contemporary China*. Scarlet Press, London, 1997, p 109

<sup>136</sup> Interview with Gender Researcher at Fudan University, Shanghai 12 October 2006.

<sup>137</sup> Scharping, Thomas: *Birth Control in China, 1949-2000: population policy and demographic development*. London: Routledge:Curzon, 2003, p 58

<sup>138</sup> Nathansen, Cecilia M: *Accepting Population Control –Urban Chinese Women and the One-Child Family Policy*, Richmond : Curzon, 1997, p 54

<sup>139</sup> *ibid*

<sup>140</sup> *ibid*

<sup>141</sup> *ibid* p 83

<sup>142</sup> *ibid*

After several unsuccessful attempts to enact a law on birth planning, articles on the population policy were included in the “Marriage Law”<sup>143</sup> in 1980.<sup>144</sup>

Art 2 says:

“(…) birth planning shall be practiced”<sup>145</sup>

Art 12 says:

“Both husband and wife shall have the duty to practice birth planning.”<sup>146</sup>

Birth planning became a constitutional duty when it was included in the “1982 Constitution of the Peoples’ Republic of China”<sup>147</sup> (hereinafter: Constitution) art 25:

“The State promotes birth planning so that population growth may fit the plans for economic and social development”<sup>148</sup>

Art 49 says:

“Both husband and wife have duty to practise birth planning”<sup>149</sup>

And art 89 says:

“The State Council exercise the following functions and powers (...):

7. to direct and administer the affairs of (...) public health (...) and birth planning.”<sup>150</sup>

In 1992, China enacted the “Law of the People’s Republic of China on the Protection of Rights and Interests of Women”<sup>151</sup>.

Art 47 says:

“Women have the right to child-bearing in accordance with relevant regulations of the State as well as the freedom not to bear any child.”

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<sup>143</sup> Marriage Law, adopted at the Third Session of the Fifth National People's Congress and promulgated by Order No. 9 of the Chairman of the Standing Committee of the National People's Congress on September 10, 1980, and effective as of January 1, 1981.

<sup>144</sup> Nathansen, Cecilia M, *Accepting Population Control –Urban Chinese Women and the One-Child Family Policy*, Richmond : Curzon, 1997, p 5

<sup>145</sup> art 2 Marriage Law

<sup>146</sup> art 12 Marriage Law

<sup>147</sup> Constitution of the Peoples’ Republic of China 1983, adopted on the 4 December 1982 by the Fifth National People’s Congress at its Fifth Session.

<sup>148</sup> Constitution art 25

<sup>149</sup> Constitution part of art 49

<sup>150</sup> Constitution part of 89

<sup>151</sup> Law on the Protection of Rights and Interests of Women, adopted at the Fifth Session of the Seventh National People's Congress on April 3, 1992



“Relevant regulations of the State” in Art 47 meant local laws and regulations enacted in provinces and at lower levels.<sup>152</sup>

Due to discrimination against women giving birth to girls and the wide practice of infanticide and maltreatment of baby girls, the following article was included in the law:

Art 35 says:

“Women's right to life and health shall be inviolable. Drowning, abandoning or cruel infanticide in any manner of female babies shall be prohibited; discrimination against or maltreatment of women who give birth to female babies or women who are sterile shall be prohibited (...).”<sup>153</sup>

Brutality and violence was not accepted at upper-level organs, but directives condoning violent implementation were often only circulated internally within institutions without any public report, it was important to the institutions not to lose face in front of the government.<sup>154</sup>

## 5.5 Law on Population and Birth Planning

China's political leaders wanted a law to legitimate the population policy already in 1978 but up until 2001, it had been an impossible task due to difficulties to agree on specific details.<sup>155</sup> The discussion concerned *inter alia* if the law should specify which contraceptives that should be used. This showed to be impossible to agree on, since China lacked the necessary medical facilities and resources to put this into practise.

Another issue was if the law should specify the number of children permitted in different circumstances but this was seen among certain to be a violation of citizens' rights why the one-child norm therefore only should be a recommendation.<sup>156</sup>

Over time, China reformed to be a state built on legal foundation and in the end, the population policy was the only national policy domain not codified in legislation. After several drafting attempts, China finally enacted the Law on Population and Birth planning in 2001.<sup>157</sup>

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<sup>152</sup> Nathansen, Cecilia M, *Accepting Population Control –Urban Chinese Women and the One-Child Family Policy*, Richmond : Curzon, 1997, p 5

<sup>153</sup> Law on the Protection of Rights and Interests of Women, art 35

<sup>154</sup> Scharping, Thomas, *Birth Control in China, 1949-2000: population policy and demographic development*. London: Routledge:Curzon, 2003, p 147

<sup>155</sup> Winckler, Edwin A: *Chinese Reproductive Policy at the Turn of the Millennium: Dynamic Stability: Population and Development Review*, 2002, Vol. 28 No. 3, 379-418, p 391

<sup>156</sup> *ibid* p 392

<sup>157</sup> Greenhalgh, Susan, Winckler, Edwin A: *Governing China's Population –From Leninist to Neoliberal Biopolitics*, Stanford University Press, Stanford, California, 2005, p 159

The law is written fairly general, authorizing legislators at lower levels to determine specific details. It emphasizes that people have a constitutional obligation to birth plan and establishes a legal ground for implementation but the law neither tightens nor loosens the policy.<sup>158</sup>

The law is divided into seven chapters and contains general principles from macro to micro management of birth planning. It is balanced between state power and citizens protection. The incentives given according to the law, are mainly for citizens' compliance with the law and the disincentives or penalties are mainly directed against officials not carrying out their job according to law and regulations.<sup>159</sup>

The law advocates couples to have only one child and leaves it up to legislatures at lower levels to decide cases of exceptions (Art 18).<sup>160</sup> The State Council shall formulate a national population development plan and incorporate it into the national economic and social development plan (Art 9), which is in conformity with the goals and objectives in the ICPD.

According to the law, family planning should be practised primarily by means of contraception (Art 19) and those couples who already have children, are encouraged to adopt long term contraceptive measures (Art 34). The law doesn't specifically mention abortion or sterilization as means of limiting births, but sterilization is included as a voluntary option for long-term contraceptives and abortion is included implicitly as a last way out when contraception has failed (Art 20).<sup>161</sup>

The law stipulates that birth-planning workers shall educate, publicise and offer guidance and advice on birth planning and reproductive health (Art 33). Providers shall also give guidance to clients in choosing safe, effective and appropriate contraceptives (Art 34).

The law requires citizen's who have a child outside the plan shall pay a "social compensation fee" (Art 41 in conjunction with Art 18). The fee is, according to the law, meant as compensation to the state for that extra child, not as a way to subject citizens to criminal penalties only for having a child

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<sup>158</sup> *ibid*

<sup>159</sup> Winckler, Edwin A: *Chinese Reproductive Policy at the Turn of the Millennium: Dynamic Stability: Population and Development Review*, 2002, Vol. 28, No. 3, 379-418, p 394

<sup>160</sup> Greenhalgh, Susan, Winckler, Edwin A: *Governing China's Population –From Leninist to Neoliberal Biopolitics*, Stanford University Press, Stanford, California, 2005, p 159; and art 18, Population and Birth Planning Law of the Peoples Republic of China, adopted at the 25th meeting of the Standing Committee of the Ninth National People's Congress 29 December 2001.

<sup>161</sup> Winckler, Edwin A: *Chinese Reproductive Policy at the Turn of the Millennium: Dynamic Stability: Population and Development Review*, 2002, Vol. 28, No. 3, 379-418, p 395; and art 20 Population and Birth Planning Law of the Peoples Republic of China, adopted at the 25th meeting of the Standing Committee of the Ninth National People's Congress 29 December 2001.

out of plan. But if not paying, citizens will be subjected to supplementary financial penalties and can in the end be taken to court (Art 41).<sup>162</sup> Citizens who hinder birth-planning officials to perform their work shall be given criticism and education and can also be penalised (Art 43). A state functionary shall be given additional administrative sanction (Art 42).

Those who comply with the regulations set out in the law shall be rewarded, but details on how to arrange and fund the rewards are left to lower legislatures or even to employers. Rewards can also be given to couples that postpone marriage and childbearing (Art 25), who undergo surgical procedures (Art 26) and can be given a “Certificate of Honour for Single-Child Parents” (Art 27). Additional financial support can also be given to those couples with only one girl to combat son-preference.<sup>163</sup>

The law also gives certain focus on the status of women. Both husband and wife bear equal responsibility for birth planning (Art 17). The implementation of the population policy shall also be combined with efforts to improve women’s situation, including education and employment and to raise their status (Art 3), maternal and health care should be improved (Art 11), discrimination against female children and their mothers is forbidden (Art 22) and do sex selection through ultrasound and abortion is also illegal (Art 35).

The law enumerates certain illegal actions related to birth planning. These actions include: illegal operations related to birth planning: using ultrasound to identify gender or to terminate a pregnancy because of the foetus is of a certain gender or performing a fake birth-control operation (Art 36).

A functionary of a state organ can also be punished or given administrative sanctions if the functionary for example: infringe on a citizen’s personal rights, property rights or other rights and abuses his power, neglecting duty or engaging in practices for personal gains (Art 39). Citizens who believe that an administrative department has infringed their rights and interests while administering birth planning, can appeal to administrative review or initiate administrative proceedings (Art 40).<sup>164</sup>

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<sup>162</sup> Winckler, Edwin A: *Chinese Reproductive Policy at the Turn of the Millennium: Dynamic Stability*: Population and Development Review, 2002, Vol. 28, No. 3, 379-418, p 395

<sup>163</sup> Interview with Ms. Lisa Eklund, Ph D Candidate, Lund University, Department of Sociology, Lund, 10 June 2006

<sup>164</sup> Winckler, Edwin A: *Chinese Reproductive Policy at the Turn of the Millennium: Dynamic Stability*: Population and Development Review 28(3): 379-418, Sep 2002 p 396, and art 44, Population and Birth Planning Law of the Peoples Republic of China, adopted at the 25th meeting of the Standing Committee of the Ninth National People’s Congress 29 December 2001.

## 5.6 Conclusion

It is not an easy task to outline the Chinese population policy up to the enacting of the 2001 Law, neither implementation nor legislation. The policy was built on local rules and regulations and even if it was mentioned in the 1980 Marriage Law, the existing national laws as well as the Constitution, was mostly stating a legal obligation for the Chinese people to plan births and not how the policy was to be implemented.

However, based on existing information, there is no doubt that the Chinese population policy clearly violated the right to family planning as well as other human rights as established in international human rights instruments. Not only the harmful effects, due to lack of clearly stated norms, lack of resources or birth-planning workers using coercion to make people adhere to the policy, but also the policy in itself.

Individuals could not choose the number, time and spacing of their children since the policy limited everyone to only one child, with some local exceptions, and couples had to apply for birth permits before giving birth, not to exceed quotas. If giving birth to an unauthorized child, they had to pay a social compensation fee, often so high that couples did not have any other choice than to abort.

Individuals did not have the information to be able to make an informed choice since information consisted of ideological education and persuasion to limit births. Individuals were also offered only two kinds of contraceptives, IUD or sterilization, and did not get information on or possibility to choose preferred contraceptive. Also, individuals did not have the possibility *not* to use contraceptives.

Individuals did not have access to the highest attainable reproductive health care since resources were limited and abortions and other related operations often were carried out under simple conditions without the possibility to get support or counselling neither before nor after surgery.

Due to lack of clear and detailed laws and regulations, the policy was often arbitrarily implemented with no supervising body to prevent brutality and harmful effects even though the government did not encourage violence and coercion. And with no clear laws and regulations, birth-planning workers who used violence and coercion often escaped punishment.

The large amount of people to monitor and the time consuming work led to frustration among birth-planning workers. They often had to carry out their work with limited resources and with pressure from upper levels not to exceed quotas.

Noteworthy is that the most important component to make the policy successful was that individuals voluntarily should practice birth planning.

Education and propaganda should make people realize that if they put their own preferences aside for the sake of the needs of the country, it should in the end be for their own good.

But cultural norms were a threat for the policy's success. There was a desire to have a son to be able to continue the family line and people living in the countryside often needed more than one child to be able to survive. And of course, there was the natural wish among couples to have more than one child.

The new law is an improvement since birth-planning workers are obliged to educate and inform clients about family planning. Clients have also according to the law the right to be given advice to be able to choose the best suitable means of contraception. A state functionary shall be punished if infringing on individual's personal or property rights. But the law doesn't give couples freedom to choose the number of births, and they have an obligation to use contraceptives. And couples are still obliged to pay a social compensation fee if giving birth to a non-authorized child.

It is however difficult to say how much protection the law actually gives since the definitions are vague and leaves certain details to legislators on lower levels to decide.

I will in the next chapter outline China's relation to human rights law and implementation of human rights instruments including the right to family planning.

# 6 Chinese Population Policy and Human Rights Law

## 6.1 China and Human Rights

China has sometimes been referred to as the “human rights exception”, because the international community for a long time avoided China in the international human rights debate.<sup>165</sup>

In China, the concept of human rights was seen as a bourgeois slogan irrelevant in a socialist society. When the People’s Republic of China (PRC)<sup>166</sup> was founded in 1949, the government held that human rights of the Chinese people finally had been secured and did not impose any legitimate demand on the government anymore. After the PRC was founded, the subject became more or less taboo.<sup>167</sup>

But when China officially became a member of the UN 1971<sup>168</sup>, it had to get more involved in the international debate on human rights. By becoming a UN member it also became a state party to the UN charter and had *inter alia* an obligation to respect human rights.<sup>169</sup> The involvement in the international debate made the international community direct criticism towards China and the Chinese government felt it had to try and clarify China’s official position on human rights.<sup>170</sup> Also, during the 1980s, China realized the importance in taking part in the international work on human rights and signed several international conventions.<sup>171</sup>

After the horrible events on Tiananmen Square in 1989, China had to respond to the massive international criticism it rejected as interference in China’s internal affairs. The criticism against China forced it to adopt a more advanced approach to human rights to be able to defend its views. China published the “White Paper on Human Rights” and several academic

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<sup>165</sup> Cohen, R: *People’s Republic of China: The Human Rights Exception*, Human Rights Quarterly, Vol. 9, 1987

<sup>166</sup> No distinction will be made between “China” and “PRC”.

<sup>167</sup> Svensson, Marina: *The Chinese Conception of Human Rights – the debate on Human Rights in China, 1898-1949*. Studentlitteratur, Lund 1996, p 294

<sup>168</sup> Until 1971, Taiwan represented China in the UN

<sup>169</sup> Charter of the United Nations, entered into force 25 Oct, 1945, art 1(3) *The Purposes of the United Nations are (...) To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion;(...)*

<sup>170</sup> Svensson, Marina: *The Chinese Conception of Human Rights – the debate on Human Rights in China, 1898-1949*, Studentlitteratur, Lund 1996, p 296

<sup>171</sup> *ibid*

institutions and universities began human rights research.<sup>172</sup> In 2004, China amended its Constitution recognizing respect for human rights.<sup>173</sup>

Over time, China wanted to show the outside world that human rights were respected by creating “human rights with Chinese characteristics”. Chinese authorities accepted the principle of human rights as universal, but pointed out at the same time that human rights were closely connected with the social, economic and political conditions in a country. All countries had different approaches to human rights and according to the Chinese view it depended on which stage of development the countries were in. The Chinese leadership believed that the most important right was the right to subsistence. To uphold this, priority was placed on economic and social rights over civil and political rights.<sup>174</sup>

The main ideology was that only a communist society could realize the most idealist human rights. China also argued that the goal of Communism was to realize human rights, which should be accomplished through the elimination of private ownership. However, over time, Chinese scholars have more and more questioned this theory.<sup>175</sup>

## 6.2 Status of International Human Rights Law in China

Of those treaties containing the right to family planning elaborated above, China has ratified ICESCR and CEDAW, but only signed ICCPR.<sup>176</sup>

Chinese law doesn't include any coherent regulations on the relationship between international treaties and national law.<sup>177</sup> It is only possible for an international treaty to be applied in Chinese courts through specific laws and regulations.<sup>178</sup>

Responsible for ratification of international treaties is the Standing Committee of the National People's Congress (NPC), represented by the

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<sup>172</sup> *ibid* p 298

<sup>173</sup> Constitution art 33, Amendment fourth, approved on March 14, 2004, by the 10th NPC at its 2nd Session

<sup>174</sup> Svensson, Marina: *The Chinese Conception of Human Rights – the debate on Human Rights in China, 1898-1949*, Studentlitteratur, Lund 1996, p 300

<sup>175</sup> Buyun, Li: *Constitutionalism and China, article: Basic Theory and Practice of Socialist Human Rights*, p 333-353, publ. Legal Research (Issue 4, 1992), Law Press China. p 352

<sup>176</sup> China signed ICCPR in 1998, and is preparing for its ratification. But since there are several discrepancies between Chinese law and the ICCPR, the government has a careful position towards the process for ratification is at the moment slow. (*see*: Bai, Guimei, Gong Renren: *Summary of the Report on the Status of the Selected UN Conventions in China*, UN Theme Group on the Rule of Law, July 2005, p 7)

<sup>177</sup> Bai, Guimei, Gong Renren: *Summary of the Report on the Status of the Selected UN Conventions in China*, UN Theme Group on the Rule of Law, July 2005, p 4

<sup>178</sup> *ibid*

president.<sup>179</sup> After the legislatures approval, China has to comply with the obligations set out in the treaty. Most of the approved treaties have to be implemented in domestic law to correspond with its purpose. If there are discrepancies between international human rights law and domestic law, international human rights law has precedence, unless China has made a reservation to it.<sup>180</sup>

Human rights in China are foremost protected by the Constitution. As stated above, Art 33 in the Constitution was amended in 2004 with the sentence: “The State respects and preserves human rights”. Specific rights set out in the Constitution are *inter alia* in Art 33: “all citizens are equal before the law”, Art 35: “all citizens have freedom of speech, of the press, of assembly, of association, of procession and of demonstration” and Art 36: “all citizens have the right to religious beliefs”.<sup>181</sup>

## 6.3 Implementation and Reporting of Human Rights Instruments

Below, I will discuss China’s relation to the legally binding international instruments presented above. I will also present the reports submitted by China to the monitoring committees and the committees’ concluding observations.

### 6.3.1 International Covenant on Economic, Social and Cultural Rights

China ratified ICESCR 27<sup>th</sup> March 2001 and has made a reservation against Art 8(1)(a) concerning the right to form trade unions. China has not signed the Optional Protocol to CEDAW.

China submitted its initial report to the CESCR the 27<sup>th</sup> of June 2003.<sup>182</sup> In the report, China admitted that the degree of enjoyment of certain rights did not reach the requirements of the Covenant. China explained that this was due to that China still was a developing country and had to reduce the gap between rich and poor, while it also faced the pressure of population growth and lack of resources. Concerning the status of women, China held that realization of gender equality was a basic policy of national development and admitted that due to women’s restricted level of economic and social development and traditional attitudes, to realize women’s rights was a long

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<sup>179</sup> *Women of the World: Laws and Policies Affecting Their Reproductive Lives*, publ. by Centre for Reproductive Rights 2006, can be viewed at: [http://www.reproductiverights.org/ww\\_asia\\_china.html](http://www.reproductiverights.org/ww_asia_china.html), p 34

<sup>180</sup> United Nations, International Human Rights Instruments: *Core document forming part of the reports of state parties* HRI/CORE/1/Add.21/Rev.2, 11 June 2001, p 14

<sup>181</sup> *ibid* p 13

<sup>182</sup> Initial reports submitted by States parties under art 16 and 17 of the Covenant, The People’s Republic of China, E/1990/5/Add.59, 4 March 2004



term project. The social environment for women's development required further improvement and China had to overcome obstacles to prevent discrimination against women.<sup>183</sup>

In the report, China didn't mention the implementation of the population policy *per se*, it only made reference to deficits and certain improvements in maternity and infant health care and what kind of protection the 2001 Law gave to women and female children.<sup>184</sup>

In CESCR concluding observations, it recognized China's large population, but expressed that there were no considerable factors hindering the State from effectively implementing the Covenant.<sup>185</sup> The Committee also noted the persistence of gender inequality and regretted the State's negligence to provide information on effective measures to improve women's situation.<sup>186</sup>

Concerning the population policy and its effects, the Committee expressed concern over the high rate of abortion of the girl foetus and the problem of sale of women and girl children.<sup>187</sup> It also expressed its deep concern about reports on forced abortions and forced sterilizations conducted by local officials within the implementation of the population policy and also the high maternal mortality among women as a consequence of unsafe abortions.<sup>188</sup>

The Committee finally urged China to carry out effective measures to ensure that abortions would be voluntary and they were carried out under adequate medical and sanitary conditions. The Committee also urged that China should ensure that legislation on the population policy did not violate rights in Art 10 *i.e.* did not infringe on the obligations to protect the family.<sup>189</sup>

### **6.3.2 Convention on the Elimination of Discrimination Against Women**

China ratified CEDAW the 4th of November 1980 as one of the first ratifying States. China has made a reservation to Art 29(1) concerning dispute settlement. By its reservation, China does not accept that a dispute between two or more states concerning the application or interpretation of

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<sup>183</sup> *ibid* p 8-11

<sup>184</sup> *ibid* p 57-61

<sup>185</sup> *ibid* p 2 para 11

<sup>186</sup> Concluding Observations of the Committee on Economic, Social and Cultural Rights, People's Republic of China (including Hong Kong and Macao) 3 para 17, Thirty-fourth session, E/C.12/1/Add.107, 25 April-13 May 2005

<sup>187</sup> *ibid* p 3 para 18-19

<sup>188</sup> *ibid* p 5 para 36

<sup>189</sup> *ibid* p 9 para 65

the Convention, if not resolved by negotiation or arbitration, may be referred by one of the parties to the International Court of Justice (ICJ).<sup>190</sup>

China has submitted six reports to the CEDAW Committee. The initial report was submitted 1985 and its second report in 1989. The third and fourth, as well as its fifth and sixth reports were combined submitted in 1999 and 2004.<sup>191</sup>

In the combined third and fourth report from 1999, China admitted that because China was developing, women's situation still needed improvement. In the concluding observations, the Committee commended China for its cooperation with UNFPA to improve family planning services and welcomed the government's strong objection to the use of coercive measures in implementing the population policy.<sup>192</sup> China was however criticized for not having a definition of discrimination against women established by law.<sup>193</sup> The Committee recognized the problem with increasing population but expressed concern over the implementation of the population policy, including the following concerns: the low contraceptive use by men and the targeting of women for sterilization; reports of abuse and violence by local family planning officials, including forced abortions and sterilizations; the high sex-ratio at birth; sex-selective abortion and female infanticide. The Committee urged the government to improve the reproductive health services, introduce gender sensitivity training among birth-planning workers. The government should also clarify that coercion and violence were prohibited and enforce the prohibition with legal procedures and give sanctions to those officials exceeding their authority.<sup>194</sup> The Committee criticized the report for not including enough information on the result of the implementation of legal reforms.<sup>195</sup>

China's combined fifth and sixth report was more comprehensive than previous and included more information on actual measures taken. The report described *inter alia* the content and the protection of women under the 2001 Law.<sup>196</sup> However, China avoided giving an explanation why not adopting a definition of discrimination in Chinese law.<sup>197</sup>

The Committee considered the report on its 36<sup>th</sup> session 7-25 August 2006. This was the first time that other Chinese NGOs than the "All-China

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<sup>190</sup> <http://www.un.org/womenwatch/daw/cedaw/>, last visited 29th of April 2007

<sup>191</sup> *ibid*

<sup>192</sup> Concluding Observations of the Committee on the Elimination of Discrimination Against Women: China, 1999-02-03, A/54/38, paras. 251-336, para 274

<sup>193</sup> *ibid* para 283

<sup>194</sup> *ibid* para 299-300

<sup>195</sup> *ibid* para 305

<sup>196</sup> Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All forms of Discrimination Against Women. Combined fifth and sixth periodic report of States Parties. CEDAW/C/CHN/5-6, p 46-48

<sup>197</sup> *ibid* p 8

Women's Federation" (ACWF)<sup>198</sup> could participate. However, these NGOs were not permitted to write shadow reports.<sup>199</sup>

In the Committee's concluding observations, China was commended for making legal reforms to improve women's situation, *inter alia* the 2001 Law, aimed to achieve compliance with the obligations in the Convention. China was however criticized by the Committee for not providing enough statistical data or information on *de facto* situation of women in China.<sup>200</sup> The Committee expressed concern over the still existing profound stereotypes concerning the role of men of women in society, leading to son-preference and sex-selective abortions.<sup>201</sup> The Committee also urged China to strengthen the monitoring of laws against sex selective abortion and female infanticide and to investigate reports on violence committed by birth planning workers and sanction those, through fair legal procedures, who exceeded their authority.<sup>202</sup>

In a shadow report presented by the Centre for Reproductive Rights, to complement the information provided by China in its combined fifth and sixth report, China was criticized for the major shortcomings in the government's efforts to fulfil the obligations in the Convention. The centre argued that the 2001 Law, although giving force of law to the population policy, actually could worsen reproductive health and the autonomy of women. The report also mentioned that even if there was better access to contraceptives for all, many women were still sterilized instead of being offered an informed choice.<sup>203</sup>

## 6.4 Conclusion

By ratifying ICESCR, China has an obligation to guarantee the highest attainable health care services, including family planning services and not interfere in the rights of every person to control their own body. The highest attainable health care includes the obligation to provide information and education to ensure an informed choice. China has also an obligation according to the ICESCR to give the widest possible protection to the family.

The report submitted to CESCR, was Chinas initial periodic report under the Convention. It is therefore not possible to evaluate any improvements in

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<sup>198</sup> All-China Women's Federation (ACWF) is a quasi governmental NGO, funded by the Chinese government

<sup>199</sup> Interview with Ms. Bai Guimei, Deputy Head Officer for Human Rights Research Centre, Peking University, 5 December 2006.

<sup>200</sup> Concluding Comments of the Committee on the Elimination of Discrimination against Women, China, Thirty-Sixth session, 7-25 August 2006, CEDAW/C/CHN/CO/6, p 2 and 5

<sup>201</sup> *ibid* para 17

<sup>202</sup> *ibid* para 31-32

<sup>203</sup> Centre for Reproductive Rights: *Re: Supplementary Information on China Scheduled for review during the CEDAW's 36th Session*. August 3, 2006, p 1

Chinas compliance with the obligations under the ICESCR relevant for the population policy.

According to CEDAW, China has the obligation to recognize the right of every woman to decide the number, time and spacing of births. China shall also fight discrimination against women in the field of health care and provide information and education on family planning.

In the latest report by China submitted to the CEDAW Committee, China has clearly listened to the recommendations made by the Committee concerning the previous report. The report is more comprehensive and shows that the government has made improvements since the previous. But it remains clear that China has avoided to mention the *de facto* situation and the effectiveness of the changes made, why it is difficult to evaluate the real improvements.

By only signing ICCPR, China has no formal obligation to implement the rights outlined in the Covenant. However, as elaborated above, it is possible to argue that relevant rights in ICCPR, such as the right to bodily integrity and the right to found a family, are already protected by ICESCR and CEDAW in the context of reproductive rights including the right to family planning.

Whether China ratifies ICCPR in the near future remains to be seen.

# 7 ICPD and China

## 7.1 Introduction

China considers itself as an important country and sees its efforts to limit births as an important contribution to help the rest of the international community to control population growth. As mentioned above, China was during its first two decades as members of the UN reluctant to listen to international advice on how to handle fast population growth, but gradually, in the beginning of the 1990s, China became more and more interested in international reproductive rights standards, especially concerning implementation methods and ethics, particularly with the help of UNFPA.<sup>204</sup>

UNFPA has given assistance to China since 1979.<sup>205</sup> The assistance has changed from efforts to slow population growth towards assisting in implementing reproductive health.<sup>206</sup>

As participants at the ICPD conference, China held that controlling population from a top-down strategy with firm government control was crucial for sustainable development, contrary to ICPD's objectives, which supports a bottom-up strategy with better reproductive health care and voluntary choice. But contrary to the official position held at the conference, policy leaders soon showed great interest in learning from ICPD ideals.<sup>207</sup>

During the 1990s, the once high fertility in China had decreased, mainly because of a combination of two factors: socioeconomic change and party-state effort.<sup>208</sup> Some policy leaders were also of the opinion that past policy enforcement might have been too strict, although with major impact on fertility levels but also with the effect of damaging women's reproductive health.<sup>209</sup>

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<sup>204</sup> Greenhalgh, Susan, Winckler, Edwin A: *Governing China's Population –From Leninist to Neoliberal Biopolitics*, Stanford University Press, Stanford, California, 2005, p 145-146

<sup>205</sup> Interview with Peng Jiong, Programme officer for Gender and reproductive health programme, UNFPA office, Beijing 1/11 2006

<sup>206</sup> Greenhalgh, Susan, Winckler, Edwin A: *Governing China's Population –From Leninist to Neoliberal Biopolitics*, Stanford University Press, Stanford, California, 2005, p 148

<sup>207</sup> *ibid* p 134

<sup>208</sup> Winckler, Edwin A: *Chinese Reproductive Policy at the Turn of the Millennium: Dynamic Stability: Population and Development Review*, 2002, Vol. 28, No. 3, 379-418, p 379

<sup>209</sup> Greenhalgh, Susan, Winckler, Edwin A: *Governing China's Population –From Leninist to Neoliberal Biopolitics*, Stanford University Press, Stanford, California, 2005, p 134

## 7.2 Implementing ICPD Goals

Following the ICPD, the outcome of the conference was translated into Chinese and other documents from the conference were published. Material from the conference and ideas concerning Quality of Care were distributed to population policy makers.<sup>210</sup> A new concept was adopted by Chinese leaders, called the “two re-orientations”. The two re-orientations were *inter alia* 1) to integrate the population policy in social and economical development and 2) change policy implementation from constraints to implementation driven by individual interests and choice.<sup>211</sup>

Several measures have been taken to implement ICPD goals in China. Below, I will elaborate on two initiated projects: the *Quality of Care project* and the *UNFPA RH/FP*.

### 7.2.1 Quality of Care Project

Chinese participants at the ICPD conference were influenced by the humane approach in reproductive health services. Based on ICPD goals, a small group of Chinese researchers and officials, working within NPFPC or well familiar with the policy, initiated in 1995 a pilot project in six counties where the new ideas of Quality of Care should be introduced.<sup>212</sup> The project’s goal was to show that by introducing family planning services guided by people’s preferences and needs, would not lead to further population growth.<sup>213</sup>

The project’s purpose was to implement the elements of Quality of Care mentioned above. Six highly developed countries were chosen so that changes in implementation measures less likely would result in raised population growth.<sup>214</sup>

During first period of the project, the imperatives of Chinese population policy were maintained but implemented with a more client-centred approach. The clients received counselling and were able to choose between different contraceptives and thus not limited only to IUD or sterilization. However, the rules on allowed births remained unchanged.<sup>215</sup>

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<sup>210</sup> Kaufman, Judith; Erli, Zhang; Zhenming, Xie: *Quality of Care in China: From Pilot Project to National Program*, Final version 2004, can be viewed at:

[www.blackwell-synergy.com/doi/pdf/](http://www.blackwell-synergy.com/doi/pdf/)

<sup>211</sup> *ibid* p 5

<sup>212</sup> *ibid* p 4

<sup>213</sup> *ibid*

<sup>214</sup> Greenhalgh, Susan, Winckler, Edwin A: *Governing China’s Population –From Leninist to Neoliberal Biopolitics*, Stanford University Press, Stanford, California, 2005, p 150

<sup>215</sup> Kaufman, Judith; Erli, Zhang; Zhenming, Xie: *Quality of Care in China: From Pilot Project to National Program*, Final version 2004, can be viewed at:

[www.blackwell-synergy.com/doi/pdf/](http://www.blackwell-synergy.com/doi/pdf/)

An evaluation conducted after the first year showed no increase in birth rates, why it was decided that the project should continue and also expand. With the expansion, the project had a “spill-over effect”. Other counties, not part of the project, were inspired by the methods used in project counties and started, with own resources, similar activities.<sup>216</sup> At the same time, the Chinese leadership began to show interest in the project and endorsed the reform.<sup>217</sup>

Further evaluations conducted after four years, showed that not only was the fertility still stable, individuals had also more freedom in choosing contraceptives, established a better relationship between birth-planning workers and clients. Additionally, birth-planning workers felt less pressure of strict implementation. The survey also showed that even if not all criterias of Quality of Care had been implemented, since there still was no possibility *not* to use contraceptives, the project was a success. The pressure to abort an out of plan child still existed, but due to better contraceptives use and less contraception failure, abortion decreased.<sup>218</sup>

In 2000, China issued a “White Paper on Population”, recognizing the need for better quality and citizen’s legal protection, but still emphasized that current population policy, with birth limitations, would continue.<sup>219</sup> Subsequently, as mentioned above, in 2001, China enacted the Law on Population and Birth planning.

The project, now covering more than 800 counties out of approximately 3000<sup>220</sup>, became institutionalised in 2004 and was referred to as the “Quality of Care project” and was adopted as a national reform. The project brought together several other projects, including the UNFPA project (see below), developed in isolation from the Quality of Care project.<sup>221</sup>

## 7.2.2 UNFPA RH/FP Project

As mentioned above, UNFPA has been active in China since 1979, but in the beginning, the assistance given by UNFPA was mainly to help slow

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<sup>216</sup> Interview with Dr. Gu Baochang, Ph. D, Professor of Demography, Renmin University, Center for Population and Development Studies, Beijing, 3 November 2006

<sup>217</sup> Kaufman, Judith; Erli, Zhang; Zhenming, Xie: *Quality of Care in China: From Pilot Project to National Program*, Final version 2004, can be viewed at: [www.blackwell-synergy.com/doi/pdf/](http://www.blackwell-synergy.com/doi/pdf/) and Speech by Mme. Zhang Yuqin, Vice Minister of State Family Planning Commission of China at Cairo, Egypt, November 8, 1998, can be viewed at: <http://www.unescap.org/esid/psis/population/database/poplaws>

<sup>218</sup> *ibid* p 8

<sup>219</sup> Information Office of the State Council of the People’s Republic of China (2000). *China’s Population and Development in the 21st Century (white paper)*, issued in December, Beijing, para 13-14

<sup>220</sup> Interview with Gu Baochang, Ph. D, Professor of Demography, Renmin University, Center for Population and Development Studies, Beijing, 3 November 2006

<sup>221</sup> Kaufman, Judith; Erli, Zhang; Zhenming, Xie: *Quality of Care in China: From Pilot Project to National Program*, Final version 2004, p 10, can be viewed at: [www.blackwell-synergy.com/doi/pdf/](http://www.blackwell-synergy.com/doi/pdf/)

population growth. Based on increased international cooperation, the assistance gradually shifted towards promoting reproductive health and family planning services.<sup>222</sup>

In 1998, UNFPA introduced its Fourth Country Programme (CP4) in China. The CP4 lasted from 1998 until 2002. The main object of CP4 was to implement family planning and reproductive health services in line with ICPD for both men and women in 32 chosen counties. The government should also be assisted in shifting from strict population control to client oriented family planning and women's empowerment.<sup>223</sup> The long-term goal was to make quality oriented reproductive health services, including family planning services, widely accessible based on the principle of free and responsible choice.<sup>224</sup> The project would work directly on local level but also give assistance at central level to the NPFPC.<sup>225</sup>

In the project's initial period, the main strategy was to introduce new implementation methods without abolishing the old. Couples were offered different choice of contraceptives and better face-to-face counselling but within the framework of the strict rules on allowed births.<sup>226</sup>

One major achievements obtained in the 32 counties during the CP4 was abolition of the system of birth permits in order to reduce coercion. Birth-planning workers were trained in Quality of Care and better contraceptives were offered to the clients. The project also showed a trend of decreasing abortions due to better contraceptive use.<sup>227</sup>

In 2003, UNFPA introduced The Fifth County Programme (CP5) as a continuation of the previous but was expanded with 30 counties. The CP5 increased focus on gender awareness among policy makers and providers and male involvement in reproductive matters.<sup>228</sup> CP5 ended in 2005 and showed that contraceptives were more extensively available and temporary reversible contraceptives increased and the use of permanent methods

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<sup>222</sup> Greenhalgh, Susan, Winckler, Edwin A: *Governing China's Population – From Leninist to Neoliberal Biopolitics*, Stanford University Press, Stanford, California, 2005 p, 147

<sup>223</sup> China/UNFPA- Reproductive Health/Family Planning CPR/98/P01, End of project – Women survey report, Key Findings. China Population and Development Research Centre (CPDRC) and Southampton Statistical Sciences Research Institute, University of Southampton, UK; Aug 2004, ix

<sup>224</sup> United Nations Population Fund proposed projects and programmes: Recommendation by the Executive Director Assistance to the Government of China. DP/FPA/CP/196 8 July 1997, p 3, para 22

<sup>225</sup> *ibid* para 23

<sup>226</sup> China/UNFPA- Reproductive Health/Family Planning CPR/98/P01, End of project – Women survey report, Key Findings. China Population and Development Research Centre (CPDRC) and Southampton Statistical Sciences Research Institute, University of Southampton, UK; Aug 2004, ix

<sup>227</sup> Executive Board of the United Nations Development Programme and of the United Nations Population Fund: UNFPA Fifth Country programme for China Distr.: General DP/FPA/CHN/5 31 October 2002, para 8 and 20

<sup>228</sup> *ibid* para 11



reduced.<sup>229</sup> During CP5, the NPFPC incorporated UNFPA programme principles and developed national Quality of Care standards based on the Quality of Care project.<sup>230</sup>

In 2006, UNFPA initiated Sixth Country Programme (CP6), still ongoing at the time of writing and will continue until 2010. The programme includes *inter alia* assisting the government to continue increasing high-quality client centred reproductive health and family planning services in line with the principles in ICPD and CEDAW.<sup>231</sup>

## 7.3 Observed Changes and Current Situation

ICPD has had an important impact on changing the Chinese population policy from goal-oriented population control towards client-centred family planning. The success of the Quality of Care project has been explained due to the fact that ICPD principles have been adapted to local conditions by people working with or well familiar with the policy. The shift could commence slowly in a political environment resistant to changes in current population policy.<sup>232</sup> But ICPD goals are still not totally implemented and below, I will present some of the changes observed during my field study after the introduction of ICPD principles and Quality of Care.

### 7.3.1 Contraception and Abortion

After the introduction of ICPD principles, women and men have the possibility to choose among different types of contraceptives but are not able to choose *not* to use contraceptives. Couples are urged to abort if the pregnancy is out of plan and they still can't choose the number and timing of births.<sup>233</sup> If the abortion is not performed, the couple may be fined large sums, which can be impossible for poor families to pay.<sup>234</sup> Sterilization has diminished, but still, it is mostly women who are sterilized due to male perception of reduced potency.<sup>235</sup>

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<sup>229</sup> Executive Board of the United Nations Development Programme and of the United Nations Population Fund UNFPA Sixth Country programme document for China Distr.: General 10 October 2005, para 4

<sup>230</sup> *ibid* para 10

<sup>231</sup> *ibid* para 18-21

<sup>232</sup> Kaufman, Judith; Erli, Zhang; Zhenming, Xie: Quality of Care in China: *From Pilot Project to National Program*, Final version 2004, can be viewed at:

[www.blackwell-synergy.com/doi/pdf/](http://www.blackwell-synergy.com/doi/pdf/)

<sup>233</sup> *ibid*

<sup>234</sup> *Women of the World: Laws and Policies Affecting Their Reproductive Lives*. Publ. by Centre for Reproductive Rights 2006, can be viewed at:

[http://www.reproductiverights.org/ww\\_asia\\_china.html](http://www.reproductiverights.org/ww_asia_china.html) p 41

<sup>235</sup> Interview with Ms. Jufen Wang, Researcher on Women and Gender, Fudan University, Department of Sociology, Shanghai, 26 September and 10 October 2006 and Statistics show that in 2004, 81.098.006 women were sterilized compared to 17.762.270 men. (*Statistics on Chinese Population and Birth Planning 2004*, p 274)

Because more contraceptives are required to offer sufficient family planning services, the contraceptives can sometimes be of bad quality. There have been problems in some counties with IUDs only offered in one size that can result in contraceptive failure and heavy bleedings if the wrong size is used.<sup>236</sup> Oral contraceptives are becoming more common, but only in the bigger cities.<sup>237</sup>

Since people now more easily can move around the country and the bigger cities have many un-registered internal migrants, it is difficult for birth planning workers at the residential offices to control pregnancies and use of contraceptives.<sup>238</sup> Work places run by the government still have birth-planning workers, but private companies mostly don't. Many citizens are outside the system and as long as they are, they can in most cases escape control.<sup>239</sup>

### 7.3.2 Education and Information

According to the new law, birth-planning workers shall offer an informed choice and educate clients in family planning, but since resources are limited, and there are more than a half million birth-planning workers to educate, birth-planning workers are often not given sufficient education to be able to do so.<sup>240</sup> Since most birth-planning workers before only had to make sure that the client either used IUD or was sterilized, to teach them about Quality of Care and put the client in the centre and is therefore a difficult task.<sup>241</sup> Many birth-planning workers are nonetheless very positive to become more client-centred. They have now been given an option on how to do their work and treat the client, an option they believed they did not have before.<sup>242</sup> Additionally, the Chinese people's knowledge of different contraceptive methods has also increased dramatically since the introduction of ICPD principles.<sup>243</sup>

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<sup>236</sup> Interview with Dr. Gu Baochang, Professor of Demography, Renmin University, Center for Population and Development Studies, Beijing, 3 November 2006

<sup>237</sup> Interview with Jufen Wang, Researcher on Women and Gender, Fudan University, Department of Sociology, Shanghai, 26 September and 10 October 2006

<sup>238</sup> Interview with Ms. Eve Wen-Jing Lee, Programme Officer, Sexuality, Reproductive Health & Rights, The Ford Foundation, Beijing, 15 November 2006

<sup>239</sup> *ibid*

<sup>240</sup> *ibid.*

<sup>241</sup> Interview with Dr. Gu Baochang, Professor of Demography, Renmin University, Center for Population and Development Studies, Beijing, 3 November 2006

<sup>242</sup> *ibid*

<sup>243</sup> *Women of the World: Laws and Policies Affecting Their Reproductive Lives*. Publ. by Centre for Reproductive Rights 2006, *can be viewed at:* [http://www.reproductiverights.org/ww\\_asia\\_china.html](http://www.reproductiverights.org/ww_asia_china.html) p 42 and during the CP4, the knowledge of modern methods of contraceptives increased from 41% in 1998 to 86% in 2002 (See: China/UNFPA- Reproductive Health/Family Planning CPR/98/P01, End of project –Women survey report, Key Findings. China Population and Development Research Centre (CPDRC) and Southampton Statistical Sciences Research Institute, University of Southampton, UK; Aug 2004, ix)

Even if China has adopted international norms and principles, these have been reinterpreted by local authorities limiting clients' informed choice.<sup>244</sup> Another problem is that birth-planning workers do not get enough gender training why women still carry most of the burden for birth planning and contraceptive use.<sup>245</sup> Men are reluctant to use condoms, since they often are artificial, based of oil instead of water, which can cause skin irritation.<sup>246</sup> Women who have had an abortion are not given any sufficient counselling, and non-married women have to pay for the abortion themselves.<sup>247</sup>

Birth planning is still a big issue in rural parts of the country. In minor townships, birth-planning workers still do home visits were women are controlled so they are not pregnant. In some cities, birth-planning workers gather people in mass meetings and give information about birth planning and control that women are not pregnant with an unauthorized child.<sup>248</sup>

### 7.3.3 Birth Permits and Quotas

Although some counties have removed the requirement of birth permits to give birth to a child, many counties have not.<sup>249</sup> But counties removing birth permits and quotas have showed no increased fertility, fewer abortions and less coercion.<sup>250</sup>

In some bigger cities where the policy often is more relaxed, parents only have to go with their newborn baby to the local police office for birth registration without any additional procedure before giving birth. This can unfortunately lead to that children are unregistered and have not the right to health care or insurance.<sup>251</sup>

### 7.3.4 Incentives and Financial Disincentives

Families with only a girl can be given financial support or even be given a new house and other benefits form the government as a compensation for only having a girl. The social compensation fee is now regulated by the 2001 law. The fee can however for most people be as high as twice the annual income, leaving no other option than abortion.<sup>252</sup> Additionally to the

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<sup>244</sup> Greenhalgh, Susan, Winckler, Edwin A: *Governing China's Population –From Leninist to Neoliberal Biopolitics*, Stanford University Press, Stanford, California, 2005, p 151

<sup>245</sup> Interview with Mr. Peng Jiong Programme officer for Gender and RH programme. UNFPA office 1 November 2006

<sup>246</sup> Interview with Ms. Eve Wen-Jing Lee, Programme Officer, Sexuality, Reproductive Health & Rights, The Ford Foundation, Beijing, 15 November 2006

<sup>247</sup> Interview with Mr. Peng Jiong Programme Officer for Gender and RH programme. UNFPA office, 1 November 2006

<sup>248</sup> Interview with Ms. Eve Wen-Jing Lee, Programme Officer, Sexuality, Reproductive Health & Rights, The Ford Foundation, Beijing, 15 November 2006

<sup>249</sup> *ibid*

<sup>250</sup> See <http://www.unfpa.org/news/news.cfm?ID=734&Language=1>

<sup>251</sup> Interview with student in anthropology at Fudan University, Shanghai, 10 October 2006

<sup>252</sup> See: <http://www.unfpa.org/news/news.cfm?ID=734&Language=1>

social compensation fee, families giving birth to an unauthorized child, have to pay all maternal health-care costs and are denied certain insurances.<sup>253</sup>

### 7.3.5 Son-Preference and Coercion

To change the sex ratio at birth and make it more popular to give birth to girls, massive campaigns have been launched to promote gender equality and raise the social value of girls.<sup>254</sup> The project, “Care for girls”, is a good initiative, but is at the same time only a short-term project since the girls are taught to adapt to a male dominated society.<sup>255</sup> However, some argue that the population policy also has raised girls’ value, especially in urban areas, since the families with only one girl have had “to do the best of the situation”, and invest in the only child they get, even if it is a girl.<sup>256</sup> The son-preference is still a problem in the rural areas since lack of social security makes it unfavourable to have a girl.<sup>257</sup>

Coercion still occurs, but among birth-planning workers coercion is more or less considered as a prohibited implementation measure.<sup>258</sup> Coercion has also diminished because many rural couples have accepted smaller families.<sup>259</sup> On the other hand, while physical coercion is considered to be prohibited, screaming and threats are used instead to make people adhere to the policy.<sup>260</sup>

### 7.3.6 The 2001 Law

Since the 2001 Law has vague definitions and is fairly general, leaving a lot of decision-making to lower levels, it does not give sufficient protection.<sup>261</sup> Like many other Chinese laws, it has been badly implemented and is more

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<sup>253</sup> *Women of the World: Laws and Policies Affecting Their Reproductive Lives*. Publ. by Centre for Reproductive Rights 2006, can be viewed at: [http://www.reproductiverights.org/ww\\_asia\\_china.html](http://www.reproductiverights.org/ww_asia_china.html) p 41

<sup>254</sup> Greenhalgh, Susan, Winckler, Edwin A: *Governing China’s Population –From Leninist to Neoliberal Biopolitics*, Stanford University Press, Stanford, California 2005, p 176

<sup>255</sup> Interview with Ms. Lisa Eklund, Ph D Candidate, Lund University, Department of Sociology, Lund, 10 June 2006

<sup>256</sup> Interview with Jufen Wang, Researcher on Women and Gender, Fudan University, Department of Sociology, Shanghai, 26 September and 10 October 2006

<sup>257</sup> Interview with Ms. Lisa Eklund, Ph D Candidate, Lund University, Department of Sociology, Lund, 10 June 2006

<sup>258</sup> Interview with Dr. Gu Baochang, Professor of Demography, Renmin University, Centre for Population and Development Studies, Beijing, 3 November 2006

<sup>259</sup> Merli, M. Giovanna; Qian, Zhenchao; Smith, Herbert L.: *Recent dimensions and future prospects of the Chinese family planning program: Implications for policy implementation and fertility*, Paper prepared for presentation at the Session on “Population change and political transitions,”XXIV IUSSP General Conference, Salvador, Brazil, 18-24 August 2001.

<sup>260</sup> Discussion with a man about what his close friend’s experiences, Beijing 15 November 2006

<sup>261</sup> Interview with Peng Jiong Programme Officer for Gender and RH programme. UNFPA office 1/11 2006

or less unknown to the people.<sup>262</sup> New strict birth planning regulations are still enacted on local levels showing the local authorities' power to decide on implementation measures.<sup>263</sup>

In 2006, a blind lawyer named Chen Guangcheng was imprisoned after revealing the authorities illegal behaviour when implementing the population policy. He was sentenced to four years in prison for “disturbing the public order”. Guangcheng had been trying to organize a lawsuit against the government for performing forced abortion and mass sterilizations, even though the 2001 Law guarantees citizens' right to informed choice<sup>264</sup> and prohibition of birth planning officials to infringe on citizen's personal rights<sup>265</sup>.<sup>266</sup> Although clearly violating the law, very few birth-planning officials were sentenced. Local authorities lobbied national officials and persuaded them to ban discussion on the *Guangcheng case* in media and on Internet.<sup>267</sup>

## 7.4 Future Development

According to Chinese media, China plans to keep its current population policy for the foreseeable future. The strategy is to control population but at the same time improve the quality in implementation. China acknowledges that the policy has resulted in negative consequences but believes that every policy has negative sides. China considers itself to be a responsible country and that includes keeping current population policy to avoid further population growth.<sup>268</sup>

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<sup>262</sup> Interview with Ms. Eve Wen-Jing Lee, Programme Officer, Sexuality, Reproductive Health & Rights, The Ford Foundation, Beijing, 15 November 2006

<sup>263</sup> A province in Eastern China has recently enacted a regulation making it possible for birth-planning workers to be demoted or fired if they fail to enforce the population policy by allowing more children to be born by their subordinates than recommended. Article from <http://www.npfpc.gov.cn/en/index.htm> last visited 2007-07-01

<sup>264</sup> Law on Population and Birth Planning art 19, para 2

<sup>265</sup> *ibid* art 39 (1)

<sup>266</sup> “Who Controls the Family? Blind Activist Leads Peasants in Legal Challenge To Abuses of China's Population-Growth Policy” Philip P. Pan Washington Post Foreign Service; Saturday, August 27, 2005; <http://www.washingtonpost.com/wp-dyn/content/article/2005/08/26>, last visited 2007-07-01

<sup>267</sup> *Chinese to Prosecute Peasant Who Resisted One-Child Policy Decision Reveals Growing Clout of Beijing Hard-Liners*, By Philip P. Pan, Washington Post Foreign Service Saturday, July 8, 2006

<sup>268</sup> *Official: Family Planning Policy to Stay*: Guan Xiaofeng, China Daily, 2007-07-04; [http://www.chinadaily.com.cn/china/2007-07/04/content\\_909229.htm](http://www.chinadaily.com.cn/china/2007-07/04/content_909229.htm), last visited 2007-07-08

# 8 Towards The Right to Family Planning?

## 8.1 Introduction

It has not an easy task to outline the right to family planning, the ICPD and its relation to international human rights law and then put it in the context of the Chinese population policy and describe how China has been influenced by and implemented ICPD goals to start reform from goal-oriented population control towards client-centred family planning. The legal basis is unclear, both with regard to reproductive rights in general, the right family planning, as well as the Chinese population policy. The efforts needed to promote client-oriented family planning are countless and require massive resources and changes in current system. It is also difficult to draw precise conclusions on current situation and changes made nationally since conditions are changing throughout the country due to local variations. This would have required further studies in the field with further interviews, and additional information. Nonetheless, I have tried to outline the general picture and grasp the main concerns in a complicated process.

In this final chapter, I will discuss the right to family planning in international human rights law and in China. I will also as personal remarks, present areas of concern and positive development I believe will have an impact on China in the process of reforming its population policy from goal-oriented population control to client-centred family planning built on the purpose and goals outlined in the ICPD and international human rights law.

## 8.2 The Right to Family Planning in China?

The two international human rights instruments ratified by China, ICESCR and CEDAW, provide a protection for the right to family planning as defined in the ICPD. ICESCR obligates China to include family planning services in the national health care system but China has also an obligation to ensure that individuals have the right to control their own body without state interference.

CEDAW gives additional protection to women, and provides protection for women's right to decide freely and responsibly the time and spacing of births and have access to means and information to exercise this right. Additionally, according to CEDAW, China shall take measures to eliminate discrimination in the field of education, including education on family

planning as well as in the field of health, and provide access to family planning services.

Based on the information presented in this thesis, there is no doubt that China, also after endorsing ICPD goals, is in breach of its international obligations established in ICESCR and CEDAW to guarantee its citizens the right to family planning. The government is still interfering in individuals' reproductive decisions and as long as Chinese citizens are not allowed to decide the number, timing and spacing of their children and not have the choice not to use contraceptives, the right to family planning can never be ensured. This violation is present both in legislation and in practice.

Indeed, development is positive since ICPD and the projects initiated to implement ICPD goals have had a significant influence on the means of implementation. Quality of Care has been adopted as a national strategy within the national health care system. Birth-planning workers no longer see coercion as an acceptable implementation method even though it still occurs. There is a wider selection of contraceptives to choose from and birth-planning workers have become more client-centred and are being instructed to give information and advice on what means are the most suitable for the clients needs. Birth permits and quotas have in some counties been removed with the result of less coercion, fewer abortions with no raised fertility. But to be able to fully comply with international obligations, more important changes in current population policy are necessary.

### **8.3 Areas of Concern**

As I have concluded above, China has an obligation, by ratifying CEDAW and ICESCR, to ensure the right to family planning. But it is also of utmost importance that China ratifies ICCPR to have an obligation to ensure its citizens essential human rights protection. The protection provided by ICCPR, as the freedom of expression and the freedom of association, will enable the Chinese people additional possibilities to oppose the population policy and reveal illegal behaviour. Unfortunately, China's human rights policy prioritises the right to subsistence, aiming at economic development before ensuring civil and political rights. But to change current population policy and remove birth-limitations requires political will. The wellbeing of citizens must have higher priority than the "limit population growth at whatever the cost" ideology.

In the State Reports submitted by China to the CESCR and CEDAW Committee, China has avoided describing *de facto* situation as regards to the implementation of the population policy. Since Chinese NGOs has had a restricted possibility to submit shadow reports and attend the Committees' examinations of the reports submitted by China, it is difficult to draw any conclusion on the *de facto* situation based on the reports. Therefore, the

monitoring of China's implementation of international obligations according to CEDAW and ICESCR needs to improve to put pressure on China to give better information on actual situation.

The population policy's legal framework is far from sufficient. Even if there is a law regulating the population policy, prohibiting coercion and guaranteeing informed choice, it is vague and leaves a lot of freedom to the local authorities to decide regulations on implementation. Additionally, the law and the protection it gives is unknown to ordinary citizens. This makes it difficult for them to oppose the policy and implementation measures.

The government's lack of control over local behaviour makes it difficult to prevent abuses. The power of local authorities is reflected in the *Guangcheng case* where national authorities could not resist local pressure and challenge local behaviour. Of course, the difficulties to control local authorities from abusing power are also due to the immense population. The problem with insufficient resources makes it difficult to guarantee an informed choice and sufficient education and supplies.

Another issue is the status of women. Human rights of women have always had a lower priority compared to other human rights. The population policy has always been a bigger burden on women and will continue to be so if the status of women in China doesn't change. Women still take most of the responsibility and are subjected to forced abortion and sterilization. A "good" woman is still equal to giving birth to take care of the family, as compared to men who are "good" husbands if they earn a lot of money. As long as women's status is lower than men's, human rights can never fully be guaranteed. It is unlikely that the right to family planning will be fully ensured as long as human rights of women have a lower priority.

China is a country developing in a very high speed and Chinese citizens have a bigger purchasing power than ever before, why international interest in the Chinese market is overwhelming. China believes that the right to subsistence is essential and argues that other human rights will be ensured when economical development has been guaranteed. But at the same time the rift between classes is getting bigger and bigger and those who were poor before are now getting even poorer, often being women who gets most affected. The determination to earn money quickly is so strong that human rights are left behind.

## **8.4 Positive Development**

But apart from the areas of concern, there is also positive development. After the ICPD, China has become more open to change, even among policy leaders and the high political leadership. ICPD has been presented as an effective alternative to handle the problem of growing population instead of controlling population with targets and quotas. Endorsing Quality of Care as



a national strategy is probably the best proof of the Chinese leadership's recognition of ICPD goals.

China has come a long way since the introduction of the population policy in 1979. China has ratified almost all relevant human rights instruments and has now a more open human rights debate making it possible to challenge the system in a way considered impossible before. The country is also more open towards cooperation with the international community, which makes it easier for international actors to direct criticism towards human rights violations in the country. A more open human rights debate might also accelerate the ratification of ICCPR.

The reports submitted by China to the international treaty bodies, CESCR and CEDAW Committee, are improving and a very positive development is that there now is a possibility for Chinese NGOs to participate in the procedure.

The economy is improving, at least in urban areas, and the need for a big family is no longer a prerequisite for survival. Less pressure on women to give birth to many children has given them better work opportunities and better opportunities get educated to be able to influence their own future. This will in itself limit population growth.

Although several points of weakness, there now is a law regulating the policy outlining rights and responsibilities and gives individuals the possibility to complain if they believe that provisions in the law have been violated. As seen in the *Guangcheng case*, great media attention is now given to some of those trying to oppose the policy.

## 8.5 Concluding Remarks

I believe that the latest message given by the Chinese leadership, that current population policy will stay, controlling the population but improving quality, embrace the central message of future development. China is trying to keep population control dressed in the clothes of family planning.

As long as the current policy is adhered to, full realisation of the right to family planning is not possible. The current policy, improved by implementation of ICPD goals and Quality of Care, can progress reproductive health care; give better education and information being more client-centred. It can give room for more personal influence and more knowledge about matters related to the reproductive system. Individuals can be ensured an informed choice but in the end, individuals will never have total freedom to choose the number, time and spacing of their children and they will not be able to choose *not* to use contraceptives, as long as the current policy is adhered to.

Women will be discriminated against since women have the right to make decisions regarding their own body without interference by anyone. And adhering to current policy will make it possible to abuse it, with possible coercion and forced sterilizations and abortions as a result.

With this being said, and without defending any human rights violations, the current policy, with improvements, is definitely better than it was before. One cannot neglect the fact that China's huge population is a threat to all individuals, existing resources, environment and sustainable development as a whole. It is of utmost importance to limit population growth to secure the wellbeing of future generations. One should also remember that China sometimes is expected to transform in decades what other countries in the West have not been able to accomplish for centuries. And in this reform process, the ICPD as an important programme of action and the international instruments ratified by China, CEDAW and ICESCR, are important tools to be used when setting normative standards.

I believe that an official decision from the government to abolish the population policy as it is today with birth-restrictions is unlikely, especially after the latest official decision to keep the policy for the foreseeable future. However, there is a possibility that parts of the country that have experienced rapid socioeconomic development, where fertility has declined naturally and citizens have a wide and free choice of contraceptives, policy relaxation might be introduced, enabling citizen's the right to decide over their reproductive lives. And by relaxing the policy in one area of the country this can have a "spill-over" effect on other areas.

I consider the most important factor to be that a process of reform has begun and new ideas of policy implementation have been introduced. This shows that China is on the right track, adapting to new ideas. What probably can be expected is a slow transition, with reforms and more freedom within the policy, a freedom that can work its way out so that finally, hopefully, the advantages of individual freedom can convince the Chinese government and policy leaders to take a decision to lift the control and ensure individual freedom to choose the number and spacing of births.

# Supplement

## Law on Population and Birth Planning<sup>269</sup> –Selected articles

(Passed by the 25th Meeting of the Standing Committee of the Ninth National People's Congress on 29 December, 2001)

### *Chapter One: General Principles*

**Art 1)** This Law is enacted on the basis of the Constitution, in order to achieve coordinated development of population on the one hand, and the economy, society, resources, and environment on the other; to promote birth planning and safeguard citizens' legitimate rights and interests; and to advance family happiness, national prosperity, and social progress.

**Art 2)** China is a populous country, [so] practicing birth planning is a basic national policy of the State.

The State shall employ comprehensive measures to control population quantity and improve population quality.

In developing (kaizhan) population and birth planning work, the State shall rely on propaganda and education, scientific and technological progress, comprehensive services, and the establishment and improvement (jianli jianquan) of rewards and of a social security system.

**Art 3)** The development of population and birth planning work should be mutually linked with increasing the opportunity of women for education and employment, improving women's health, and raising women's status.

**Art 4)** While carrying out the work of promoting birth planning, people's governments and their functionaries at all levels should conduct administration strictly in accordance with the law (yange yifa xingzheng), should enforce the law in a civilized manner (wenming zhifa), and must Not infringe upon citizens' legitimate rights and interests.

In lawfully discharging official duties, birth planning administrative departments and their functionaries shall receive the protection of the law.

**Art 5)** The State Council shall lead (lingdao) the work of population and birth planning in the whole country.

Local people's governments at all levels shall lead the work of population and birth planning within their administrative jurisdictions.

**Art 6)** The birth planning administrative departments of the State Council shall be responsible for (fuze) national birth planning work and [national] population work that is related to birth planning.

The birth planning administrative departments of local people's governments at and above the county level shall be responsible for the work of birth planning, and for population work related to birth planning, within their administrative area.

### *Chapter Two: Formulation and Implementation of Population Development Plans*

**Art 9)** The State Council shall formulate (bianzi) a national population development plan and incorporate it in the national economic and social development plan.

Local people's governments at and above the county level -- based on the national population development plan and the population development plan of the people's government at the next higher level, and according to their actual local conditions -- shall work out a population development plan

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<sup>269</sup> Translated by Edwin A. Winckler, East Asian Institute, Columbia University: *Population and Development Review*, Vol 28 No. 3, 2002

for their administrative jurisdictions, and incorporate it in the [local] economic and social development plan.

**Art 10)** Local people's governments at and above the county level, based on the [local] population development plan (guihua), shall formulate an implementation plan (fangan) for population and birth planning and shall organize its implementation.

The birth planning administrative departments within local people's governments at and above the county level shall be responsible for implementing the day-to-day work of the [local] implementation plan for population and birth planning.

People's governments of townships, nationality townships, or towns, and urban neighbourhood administrative offices, shall be responsible for the work of population and birth planning in their administrative jurisdictions and shall thoroughly carry out the [local] implementation plan for population and birth planning.

**Art 11)** The implementation plan for population and birth planning should stipulate measures (guiding... cuoshi) for controlling population quantity, for strengthening maternal and child health, and for improving population quality.

**Art 12)** Villagers' committees and residents' committees should do a good job of (zuohao) birth planning work, in accordance with the law.

**Art 13)** [Government] departments -- such as birth planning, education, science and technology, culture, public health, civil affairs, news and publication, and radio and television -- should organize propaganda-and-education for developing population and birth planning.

Mass media have a duty to [carry] social public-service propaganda (shehui gongyixing xuanquan) for developing population and birth planning.

### *Chapter Three: Regulating Reproduction*

**Art17)** Citizens have the right to have a child (shengyu, "give birth") and also have a duty to practice birth planning according to the law. Husbands and wives bear joint responsibility in practicing birth planning.

**Art 18)** The State shall stabilize currently implemented birth policies, encouraging (guli) citizens to postpone marriage and childbearing (wanhun wanyu, literally "late marriage and late birth") and advocating (tichang) that each couple have one child. Those who meet the conditions stipulated in laws and regulations can request the arrangement of the birth of a second child. Specific [administrative] measures shall be stipulated by the people's congresses of provinces, autonomous regions, or directly subordinate municipalities, or by their standing committees.

**Art 19)** The practice of birth planning should take contraception (biyun) as the main [method].

The State shall create conditions guaranteeing citizens informed choice of safe, effective and appropriate measures for preventing pregnancy and controlling birth (biyun jieyu cuoshi). [Personnel] performing operations for preventing pregnancy and controlling birth should protect the safety of the person undergoing the operation.

**Art 20)** Couples of childbearing age should conscientiously practice birth planning measures for preventing pregnancy and controlling birth and should accept guidance on birth planning technical services.

[Couples] should prevent and reduce unwanted pregnancies.

**Art 21)** Couples of childbearing age who practice birth planning shall enjoy, free of charge, (mianfei xiangshou) the technical services that the State stipulates as basic items (guojia guiding de jiben xiangmu).

**Art 22)** [It is] forbidden to discriminate against or mistreat women who give birth to female infants and women who do Not give birth [i.e. are infertile].

It is forbidden to discriminate against, mistreat or abandon female infants.

*Chapter Four: Incentives and Social Insurance*

**Art 23)** The State shall reward couples who practice birth planning, according to the [relevant] stipulations.

**Art 25)** Citizens who postpone marriage and childbearing may obtain (*keyi huode*) longer wedding leave, longer maternity leave, and other beneficial treatment (*fuli daiyu*).

**Art 26)** During the period of pregnancy, birth-giving, and breast-feeding, women shall enjoy special labour protection (*teshu laodong baohu*) and can obtain assistance and compensation (*buchang*), in accordance with the relevant State stipulations.

Citizens undergoing a birth planning surgical operation shall enjoy State-stipulated leave. Local people's governments may give [them] rewards.

**Art 27)** [To] couples who Voluntarily decide to have only one child during their lifetime, the State shall issue a "Certificate of Honour for One-Child Parents".

Couples who obtain a "Certificate of Honour for One-Child Parents" shall enjoy a reward for one-child parents, in accordance with the relevant national, provincial, autonomous region, or municipal stipulations.

[A couple's unit] should provide [the couple] with [any rewards] that are provided by their unit, among the [many possible] measures that are stipulated by laws, regulations or rules for rewarding couples who voluntarily decide to have only one child only during their lifetime.

[If] an only child suffers accidental disability or death, and [if] its parents do not have another [child] or adopt [another] child, the local people's government should give [any] necessary aid.

**Art 29)** Specific implementation methods for the reward measures stipulated in this chapter may (*keyi*) be formulated by the people's congresses or their standing committees of the provinces, autonomous regions, directly administered cities or relatively large cities, in accordance with this Law and the stipulations of [other] relevant laws and administrative regulations, and according to actual local conditions.

*Chapter Five: Birth Planning Technical Services*

**Art 30)** The State shall establish systems for premarital health care and for health care during pregnancy and childbirth, [in order to] prevent or reduce birth defects and improve the standard of health of newborn infants.

**Art 31)** People's governments at all levels should take measures to guarantee that citizens enjoy birth planning technical services, in order to raise the standard of citizens' reproductive health.

**Art 32)** Local people's governments at all levels should rationally allocate and comprehensively utilize health resources, establishing and improving a birth planning technical service network (formed from birth planning technical service organs (*jigou*) and from medical and public health organs that provide birth planning technical services), improving technical service facilities and conditions, and raising the standard of technical services.

**Art 33)** Birth planning technical service organs and medical and public health organs that provide birth planning technical services, should -- within their respective area of responsibility and targeting people of childbearing age -- conduct propaganda and education on basic knowledge about population and birth planning. [They should also] develop pregnancy checkups and follow-up (*suifang*) service work for married women of childbearing age. [They should also assume the burden of providing (*chengdan*)] information, guidance and technical services for birth planning and reproductive health.

**Art 34)** Birth planning technical service personnel should guide citizens practicing birth planning to select safe, effective, and appropriate contraceptive measures (*biyun cuoshi*).

[It is] recommended (*tichang*) that couples who have already had a child choose long-term (*changxiao*, literally "long effective") contraceptive measures.

**Art 35)** [It is] strictly forbidden to use ultrasound technology or other technological means to conduct examinations of the sex of fetuses, other than as medically necessary. [It is] strictly forbidden to terminate a pregnancy [for the purpose of sex selection], other than as medically necessary.

*Chapter six: Legal Responsibility*

**Art 36)** [Anyone who] violates this Law by one of the acts listed below shall -- by the birth planning or public health agency, based on their authority (yijiu zhiquan) -- be ordered to rectify the situation (zeling gaizheng), given a warning, and have illegal income confiscated.

If the illegal income is 10,000 yuan or more, a fine shall be imposed of no less than two times and no more than six times the illegal income. If there is no illegal income or the illegal income is less than 10,000 yuan, a fine shall be imposed of No less than 10,000 yuan and no more than 30,000 yuan. If the case is serious, the license to practice shall be revoked by the issuing agency. Acts constituting a crime shall be referred for criminal prosecution according to the law.

(2) Using ultrasound technology or other technology for [the benefit of] another [person] to detect the sex of a foetus other than as medically necessary, and artificially terminating a pregnancy [for the purpose of] sex selection

**Art 39)** A State functionary who commits one of the acts below in the course of birth planning work, if the act constitutes a crime shall be prosecuted according to the law. Or, if the act does not constitute a crime, [the functionary] shall be given administrative punishment according to the law. Any illegal income shall be confiscated.

(1) Infringing upon a citizen's rights of person, property rights, or other legitimate rights and interests

(2) Abuse of power, dereliction of duty, or graft

(3) Demanding or accepting a bribe

(4) Withholding, deducting, misappropriating or embezzling birth planning funds or social compensation fees

(5) Distorting, under-reporting, fabricating, altering, or refusing to report population and birth planning statistics.

**Art 41)** Citizens who give birth to a child in violation of Article 18 of this Law should pay a social compensation fee (shehui fuyang fei, literally "social bringing-up fee").

Those who do not pay the full amount of the social compensation fee within the stipulated time period shall, from the date of default, be levied a late payment penalty according to relevant State stipulations. [In the case of] those who still do not pay, the birth planning administrative department that decided to levy [the social compensation fee] shall petition the people's court for enforcement (qiangzhi zhixing, literally "forceful implementation"), according to the law.

**Art 42)** Among personnel (renyuan) who pay a social compensation fee in accordance with Article 41 of this Law, those who are State staff (guojia gongzuo renyuan) should also be given administrative punishment (xingcheng chufen) according to the law. Other personnel [who are not State staff] should also [in addition to the social compensation fee] be given disciplinary punishment (jilu chufen) by their own unit or organization.

**Art 43)** Anyone who refuses or obstructs (jujue zu-ai) a birth planning administrative department or its personnel while they are lawfully performing their official duties shall be given criticism-and-education and stopped by the birth planning administrative department. Anyone whose conduct constitutes a violation of public security management (weifan zhian guanli) shall be given public-security-management punishment. Anyone [whose acts] constitute a crime shall be referred for criminal prosecution.

**Art 44)** Citizens, legal persons, and other organizations which deem that an administrative agency has infringed on their legal rights and interests in the process of implementing birth planning management may appeal for administrative reconsideration or may initiate administrative litigation.



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