

9-1-2003

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### Recommended Citation

Amy Hampton, *Population Control in China: Sacrificing Human Rights for the Greater Good*, 11 Tulsa J. Comp. & Int'l L. 321 (2003).

Available at: <http://digitalcommons.law.utulsa.edu/tjcil/vol11/iss1/9>

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## POPULATION CONTROL IN CHINA: SACRIFICING HUMAN RIGHTS FOR THE GREATER GOOD?

*Amy Hampton*<sup>†</sup>

### I. INTRODUCTION

The People's Republic of China has been struggling for decades to reduce its population through implementation of population control policies.<sup>1</sup> China has a land area slightly smaller than the United States,<sup>2</sup> and recent statistics set its current population at approximately 1.3 billion people.<sup>3</sup> While having only seven percent of the world's arable land, China's population constitutes twenty-two percent of the world's population.<sup>4</sup> In an effort to reduce the Chinese population to a level that more equally matches the country's available resources and to improve the nation's economic standing,<sup>5</sup> the Chinese government has implemented various population control

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1. See Elisabeth Croll, *Introduction: Fertility Norms and Family Size in China*, in CHINA'S ONE-CHILD FAMILY POLICY 1-36 (Elisabeth Croll et al. eds., 1985).

2. CENTRAL INTELLIGENCE AGENCY, THE WORLD FACTBOOK: CHINA (2003), at <http://www.cia.gov/cia/publications/factbook/geos/ch.html> (last modified Aug. 1, 2003).

3. Paul Wiseman, *China Thrown Off Balance as Boys Outnumber Girls*, U.S.A. TODAY, June 19, 2002, at A1.

4. *China: Family Policy Gains Understanding*, CHINA DAILY, Nov. 16, 1999, at 4, available at 1999 WL 17783551.

5. See Croll, *supra* note 1. "The policy has its origins in the government's concern that unless population growth is slowed and ultimately reversed, China will not achieve the economic growth for which she is striving." *Id.* at xii.

policies since the founding of the People's Republic of China in 1949.<sup>6</sup> China's attempt to reduce the population is based upon the idea that as China modernizes and develops economically, fertility will decline.<sup>7</sup> However, modernization and economic development are dependent upon population reduction.<sup>8</sup> In an effort to break the interdependence of development and population, the Chinese government has instituted the one-child policy.<sup>9</sup> By controlling population, the government hopes to help push economic development and modernization along.<sup>10</sup> The goal is to achieve a balance between human procreation and economic production.<sup>11</sup>

The Chinese government has ample resources to achieve its population goals.<sup>12</sup> Reports of coercive and compulsory intrauterine device (IUD) insertions, abortions, and sterilizations have emanated from China over the last few decades, drawing criticism from the United States and other members of the international community.<sup>13</sup> Though the Chinese government relentlessly denies the accusations,<sup>14</sup> reports from both inside and outside China strengthen suspicions of coercive tactics.

6. See *id.* See also JOHNATHAN D. SPENCE, *THE SEARCH FOR MODERN CHINA* 512 (1991).

7. Croll, *supra* note 1, at 1.

8. See *id.*

9. *Id.*

10. See *id.*

11. H. Yuan Tien, *Redirection of the Chinese Family: Ramifications of Minimal Reproduction*, 14 *ASIAN PROFILE* 305, 306 (1986).

12. Chaoze Cheng, *Communication Techniques in China's Planned Birth Campaigns*, 48 *GAZETTE* 31, 36 (1991).

In order to carry out its gigantic population task, the Chinese government has [at] its disposal a machine that controls almost every means of human expression and virtually all the avenues to the Chinese minds. The motor of this immense machine is the Central Family Planning Committee as well as the Department of Health which link the local communities with the national system. It is . . . directly under the direction and supervision of the Central Committee of the Party, the Central Political Bureau, and the Central Secretariat.

*Id.*

13. See *Coercive Population Control in China: Hearings Before the Subcomm. on Int'l Operations and Human Rights of the Comm. on Int'l Relations House of Representatives*, 104th Cong. (1995) [hereinafter *Coercive Population Control in China*].

14. See *id.* at 4 (testimony of John Aird, Demographer).

This comment examines the implementation, enforcement, and consequences of China's population control policies and evaluates ways to reduce coerciveness while maintaining the effectiveness of family planning practices in China. Part II summarizes the historical background that serves as a foundation for the development of population control policies in China. Part III introduces a critical aspect of Chinese culture that permeates every segment of Chinese society and influences every aspect of population policy: the traditional preference for male children. Part IV details the process of population policy implementation from the 1970s to the present. Part V discusses various methods of policy enforcement implemented by the Chinese government such as the incentive/disincentive system, abortion, sterilization, and eugenics. Part VI examines the various human rights issues raised by the Chinese population control policies and the role the United States and the United Nations play in supporting China's policy. Part VII discusses the various future implications of the policy, such as irregular sex ratios and the growing problem of caring for the elderly. Finally, Part VIII examines the various flaws in China's population control system, reviews Chinese efforts to improve the system through new population control legislation, and suggests ways to improve the population policies and still maintain control over population growth.

## II. HISTORICAL BACKGROUND

One reason for China's historically large population is a tradition that emphasizes the importance of producing offspring as an act of "filial piety."<sup>15</sup> In 1949, when Mao Zedong came to power, he reinforced this tradition by declaring the burden of overpopulation was a "capitalist myth" to keep developing countries like China subjugated.<sup>16</sup> Mao Zedong believed a person's amount of consumption could be less than his level of production and actually encouraged population growth by providing incentives for government workers to increase their family size.<sup>17</sup> As a result of this policy, China experienced a population boom between 1963 and 1972.<sup>18</sup> In 1978, Deng Xiaoping, Mao Zedong's successor, implemented incentives in an

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15. *Id.* at 10 (testimony of John Aird, Demographer).

16. Daniel S. Gewirtz, *Toward a Quality Population: China's Eugenic Sterilization of the Mentally Retarded*, 15 N.Y.L. SCH. J. INT'L & COMP. L. 139, 141 (1994).

17. *Id.* at 141-42.

18. *Id.* at 142.

effort to decrease the population.<sup>19</sup> These incentives marked the beginning of decades of governmental control over population growth that is still in force today.

### III. THE PREFERENCE FOR MALE CHILDREN

A preference for male children has endured throughout Chinese history.<sup>20</sup> According to Chinese tradition, women are inferior to men.<sup>21</sup> Male children serve the important function of carrying on the family line and providing support for the older generation.<sup>22</sup> There are also religious reasons for male preference—the practice of ancestor worship allows only males to make the offerings that link generations.<sup>23</sup> Chinese tradition also dictates daughters move in with their husband's family upon marriage, making it impossible to support their own parents.<sup>24</sup> Not surprisingly, the traditional preference for male children has had a great impact on Chinese population distribution.<sup>25</sup> Since female babies are undesirable,<sup>26</sup> infanticide and abandonment of girl babies have occurred in China throughout history.<sup>27</sup> The tradition of male preference has also led some husbands to abuse and batter their wives after the birth of female babies to encourage divorce so they can find new brides that might bear male children.<sup>28</sup>

The preference for males is very much alive in China today<sup>29</sup> mainly because of the disparity in economic value between males and females. Women earn far less than men in the workplace, and if they

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19. *Id.*

20. See Cheng, *supra* note 12, at 45.

21. *Id.*

22. Croll, *supra* note 1, at 11.

23. Deborah Davis-Friedmann, *Old Age Security and the One-child Campaign, in CHINA'S ONE-CHILD FAMILY POLICY* 153 (Elisabeth Croll et al. eds., 1985).

24. *Coercive Population Control in China, supra* note 13, at 10 (testimony of John Aird). The practice of females moving in with the male spouse and his family is termed "major marriage," and is the most common form of marriage in China today. JAMES Z. LEE & WANG FENG, *ONE QUARTER OF HUMANITY: MALTHUSIAN MYTHOLOGY AND CHINESE REALITIES, 1700-2000* 65 (1999).

25. See Delia Davin, *The Single-Child Family Policy in the Countryside, in CHINA'S ONE-CHILD FAMILY POLICY* 62 (Elisabeth Croll et al. eds., 1985).

26. See Cheng, *supra* note 12, at 45.

27. See Croll, *supra* note 1, at 1-36.

28. Tien, *supra* note 11, at 311.

29. See Davis-Friedmann, *supra* note 23, at 153.

bear children, they can spend less time in the work force.<sup>30</sup> Sons are also more likely to offer support to their parents because marriage practices reinforce stronger ties between parents and married sons.<sup>31</sup> An example of the effects of the traditional preference for male children is evident in April 1990 statistics from Huaiyuan county in Anhwei Province.<sup>32</sup> According to statistics from 1989 and 1990, there were forty cases of female infanticide in Huaiyuan county alone.<sup>33</sup> One brigade reported the birth of three boys and five girls from January to March of 1990.<sup>34</sup> Three of the five girls were drowned and two were abandoned.<sup>35</sup> Though the reported number of infanticide and abandonment cases in local areas remains small, it is likely that many such cases go unreported.<sup>36</sup> The 1990 census reported 979,943 missing infant girls.<sup>37</sup>

Though the Chinese government opposes female infanticide,<sup>38</sup> the implementation of strict governmental control through policies that limit families to one child tends to exacerbate the problems of female infanticide and abandonment.<sup>39</sup> In testimony before Congress' Subcommittee on International Operations and Human Rights,<sup>40</sup> John Aird explained how the one-child policy could cause an increase in female infanticide:

The one-child policy imposes serious hardship on parents whose only child is a girl, and this is one of the major reasons why rural couples sometimes resort to infanticide if their first child is a daughter, or use ultrasound to determine the sex of the unborn and abort the pregnancy if it is female, or conceal

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30. *Id.*

31. *Id.*

32. See Ze Hong & G. Edward Ebanks, *Economic Reform and Population Control in Rural Mainland China in the 1980s*, 28 *ISSUES & STUDIES* 22, 40 (1992).

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

37. Susan Greenhalgh, *Fresh Winds in Beijing: Chinese Feminists Speak Out on the One-Child Policy and Women's Lives*, 26 *SIGNS: JOURNAL OF WOMEN IN CULTURE AND SOCIETY* 847, 872 n.26 (2001). The 1990 census is the latest that is publicly available. The Chinese tend to release negative statistics slowly to western academic researchers.

38. *Coercive Population Control in China*, *supra* note 13, at 24 (testimony of John Aird, Demographer).

39. *Id.* at 11.

40. See *id.*

unauthorized pregnancies and endure heavy penalties for unauthorized births in their desperation to have a son.<sup>41</sup>

The preference by couples to produce male offspring has thus created the likelihood for more occurrences of female infanticide and abandonment of girl babies.<sup>42</sup> Because the male preference tradition has such an important impact on Chinese culture and reproduction,<sup>43</sup> the entire Chinese population control effort must be viewed against this backdrop.

#### IV. IMPLEMENTATION OF THE POPULATION CONTROL POLICY

The implementation of China's population control policy can be divided into four phases: the Joint Family Model, the Complex Peasant Family Model, the Small Family Model, and the Single-Child Family Model.<sup>44</sup>

##### A. *Joint Family Model (1949)*

The Joint Family Model was dominant in China before the mid-twentieth century.<sup>45</sup> It was based on Confucian principles that encouraged large, complex, and extended families.<sup>46</sup> Under this model, sons continued to live with their parents after marriage in an arrangement that benefited the entire extended family through a sharing of political, economic and social resources.<sup>47</sup> The Joint Family Model phase ended with the establishment of the new Communist government in 1949.<sup>48</sup> However, when Mao Zedong came to power in 1949, he continued to encourage large family size.<sup>49</sup> The first of many efforts by the Chinese government to reduce the size of the population occurred during the second phase of population control,<sup>50</sup> the Complex Peasant Family Model.<sup>51</sup>

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41. *Id.* at 11.

42. *See id.*

43. *See Cheng, supra* note 12, at 45.

44. *See Croll, supra* note 1, at 3-27.

45. *Id.* at 3.

46. *Id.*

47. *Id.*

48. *Id.*

49. *See Gewirtz, supra* note 16, at 141-42.

50. *See Croll, supra* note 1, at 13-20.

51. *See infra* Part IV.B.

*B. Complex Peasant Family Model (1950s-1960s)*

During the 1950s and 1960s, the Complex Peasant Family Model replaced the Joint Family Model.<sup>52</sup> The Complex Peasant Family Model generally encouraged an increase in peasant family size,<sup>53</sup> and the stability of the 1950s contributed to a feeling that children were symbols of wealth and status as well as a source of personal pleasure.<sup>54</sup> Campaigns were initiated during the mid-1950s to advocate family planning, which emphasized fertility planning, not population reduction.<sup>55</sup> The campaigns were a means of delivering family planning services and contraceptives.<sup>56</sup> Methods of contraception and voluntary abortion and sterilization became widely available during these campaigns.<sup>57</sup>

In 1953, the Chinese government released its first population act, *Contraceptive and Induced Abortion Procedures*.<sup>58</sup> The act loosened conditions for abortions, but still restricted the procedure to families with four to six children.<sup>59</sup> However, in 1957, the act was amended to allow abortion regardless of family size.<sup>60</sup>

Though during the Complex Peasant Family Model phase the government began providing services such as abortions and sterilizations for those who desired them,<sup>61</sup> the phase was characterized by freedom of individual couples to choose their own family size without a great deal of governmental intrusion.<sup>62</sup> During this phase, sex ratios between male and female babies evened out somewhat, suggesting a decrease in the occurrence of female infanticide.<sup>63</sup> However, the traditional preference for male children remained intact throughout the Complex Peasant Family Model phase.<sup>64</sup>

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52. See Croll, *supra* note 1, at 2.

53. See *id.* at 13-20.

54. *Id.* at 15.

55. *Id.* at 13-14.

56. *Id.* at 14.

57. *Id.*

58. H. Yuan Tien, *Abortion in China: Incidence and Implications*, 13 MODERN CHINA 441, 442 (1987).

59. *Id.* at 442-43.

60. *Id.* at 443.

61. See *id.* at 14.

62. See *id.*

63. *Id.* at 15.

64. *Id.* at 17.

### C. *Small Family Model (1970s)*

The Small Family Model phase of the 1970s replaced the Complex Peasant Family Model.<sup>65</sup> In the early 1970s, the Chinese government began a sustained attempt to implement family planning and sought to reduce the birth rate to two percent.<sup>66</sup> It was during the 1970s that the government began organizing committees to carry out the family planning efforts.<sup>67</sup> During the 1970s, the Chinese government initiated new campaigns to educate people and encourage them to have only two to three children.<sup>68</sup> The government created birth planning committees at the national, regional, and local levels to be responsible for developing target quotas for their areas.<sup>69</sup> The government also adopted slogans such as "one's not too few, two will do and three are too many for you"<sup>70</sup> in order to redefine family size in China.<sup>71</sup> The "*wan, hsi, shao*" program<sup>72</sup> was launched in the early 1970s to advocate "later marriage and childbearing, longer birth intervals, and fewer children."<sup>73</sup>

During the Small Family Model phase, the government instituted new measures to keep track of family planning.<sup>74</sup> For example, local clinics kept wall charts that recorded women's fertility histories,

65. See Croll, *supra* note 1, at 2.

66. *Id.* at 20.

67. Siu-Iun Wong, *Consequences of China's New Population Policy*, 98 CHINA QUARTERLY [GREAT BRITAIN] 220, 221-22 (1984).

Before the 1970s there was "[inadequate] organization and coordination . . . evidenced by the lack of a single central agency, either as a supra-agency above the Ministry of Public Health, or as a bureau agency under the ministry for birth-planning work." During the third birth control campaign, a Birth-Planning Leading Group was formed within the State Council as a national co-ordinating committee. In 1978 the Group was strengthened with the appointment of Chen Muhua, a vice-premier and member of the Party Central Committee, as its head. But apparently it remained an ad hoc body. Therefore, in 1981 it was transformed into the State Family Planning Commission with a more permanent and regular position in the State Council.

*Id.*

68. Croll, *supra* note 1, at 21.

69. *Id.*

70. *Id.* at 20-21 (quoting H. Yuan Tien, *Wan, Xi, Shao: How China Meets Its Population Problem*, 6 INT'L FAMILY PLANNING PERSPECTIVES, 65, 68 (1980)).

71. *Id.* at 21.

72. Hong & Ebanks, *supra* note 32, at 31.

73. *Id.*

74. See Croll, *supra* note 1, at 20-23.

cycles, and contraception.<sup>75</sup> The government also provided couples with free birth control such as IUDs and free abortion and sterilization surgeries.<sup>76</sup> In 1978, Hua Guofeng, the party chairman and premier, targeted the rate of population increase to be ten percent within three years, and five percent for 1985.<sup>77</sup> In response to this target, mobilization meetings were held, family planning activists were recruited, medical and propaganda teams were sent into the countryside, and articles glorifying the one-child family were published.<sup>78</sup> Unlike the previous population control phase, the Small Family Model phase was characterized by an attempt to implement population control according to a quota system.<sup>79</sup> China's birth rate had begun to decline by the late 1970s, and the program proved especially successful in the cities.<sup>80</sup>

#### *D. Single-Child Family Model (1980s)*

The Chinese government implemented the current phase of population control by introducing the Single-Child Family Model during the 1980s.<sup>81</sup> The government felt it had no alternative but to adopt the one-child rule in order to meet population targets.<sup>82</sup> Some provinces allowed the birth of a second child if a couple's first child was a girl,<sup>83</sup> but the one-child policy was the general rule.<sup>84</sup> Whereas earlier phases of the population control policy allowed couples to maintain control over their family size,<sup>85</sup> the implementation of the Single-Child Family Model gave the government exclusive and

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75. *Id.* at 21.

76. *Id.*

77. Wong, *supra* note 67, at 222.

78. Tyrene White, *Postrevolutionary Mobilization in China: The One-Child Policy Reconsidered*, 43 *WORLD POLITICS* 53, 58 (1990).

79. Croll, *supra* note 1, at 21.

80. *Id.* at 22. "By 1973, the birth rate in the majority of the cities had fallen to below 20 per 1000." *Id.*

81. *See id.* at 2. "The published sets of rules and regulations on family size uniformly advocate the birth of one child and categorically 'prohibit', 'eliminate' or 'ban' the birth of a third child." *Id.* at 27. Policies pertaining to a second child are not as uniform throughout the country. *Id.*

82. Croll, *supra* note 1, at 26-27. China's target was to reduce the population growth rate to 1 percent by 1979, 0.5 percent by 1985, and zero growth by the year 2000. *Id.*

83. Hong & Ebanks, *supra* note 32, at 32.

84. *See id.*

85. *See* Croll, *supra* note 1.

complete control over every couple's family planning.<sup>86</sup> The national system is set up as follows:

There are twenty-two provinces, five autonomous regions, and three centrally administered municipalities in mainland China. At the provincial level, a planned birth committee is made up of members representing various provincial leadership units. Under this committee is a planned birth staff office in charge of supervising and coordinating the planned birth programs at the county or municipal level. Each rural county organizes its own committee on planned birth. Under each county planned birth committee is a county planned birth staff office. The staff office is responsible for the day-to-day operation of the planned birth programs for the entire county.<sup>87</sup>

It is through this vast network of government committees that policies are implemented and enforced.<sup>88</sup>

The one-child policy is enforced through issuance of permits and notices that control "everything from the acts of conception and childbirth to the regulation of a woman's menstrual cycle and her use

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86. See *id.* at 27. For example, the Yonghe Town management chart has the following requirements:

After your first baby, the first month, you have to register your baby in the police station. If more than 1 month passes without a registration, sterilization is required. After you delivered the baby, in the next 2 months you have to insert the IUD. If the second month passes and no IUD has been inserted, sterilization is required.

If you do have IUD in your womb, every quarter the government will inform you, notice you, and you have to go to the office of inspection. If you do not appear, you pay the fine, 50 yuans, every day. If over 1 month, the fine is 2,000 yuans. If 6 months passes, there has been no IUD inspection; then sterilization is required.

If the first baby is male, in the fourth month, the subject must obtain a single-child certificate. If 4 months pass and no such certificate has been obtained, sterilization is required. If the first baby is a female, you have to right away insert IUD and, if you want to have a second baby, you have to wait for another 38 months.

*Forced Abortion and Sterilization in China: The View from the Inside: Hearing Before the Subcomm. on Int'l Operations and Human Rights of the Comm. on Int'l Relations House of Representatives, 105th Cong. 17 (1998) [hereinafter *Forced Abortion and Sterilization in China: The View from the Inside*] (testimony of Harry Hongda Wu, Executive Director, Laogai Research Foundation).*

87. Hong & Ebanks, *supra* note 32, at 33-34.

88. See *id.*

of contraception.”<sup>89</sup> A couple must obtain a “birth-allowed certificate” before having a child.<sup>90</sup> Local officials issue notices to ensure women comply with scheduled examinations and birth control measures.<sup>91</sup> If a woman has a baby without first obtaining a certificate, she is either forced or coerced into having an abortion.<sup>92</sup> Workers in the planned birth office need not gain permission from any outside agency in apprehending and forcing abortions for policy violators.<sup>93</sup> In some city hospitals, doctors implant IUDs without consent from women after they give birth.<sup>94</sup>

The government has developed an efficient system to keep track of women and their fertility,<sup>95</sup> and the system works even more efficiently for women who work outside the home.<sup>96</sup> Many factories employ a system of tracking each female employee’s menstrual cycle on a blackboard, where women place a check mark on the board when their menstruation begins.<sup>97</sup> If a woman does not stay on schedule, she is required to take a pregnancy test.<sup>98</sup> Since the 1980s, the government has encouraged provinces to set up “qualified birth control villages” where couples eligible to have children under the family planning policies may only do so if there are no unauthorized pregnancies or births in the village.<sup>99</sup>

In 1982, the government’s commitment to population control was reinforced by the inclusion of family planning policy into the state constitution:

In the 1978 Constitution, Article 53 contained the declaration that “the state advocates and encourages family planning.” In the 1982 Constitution, however, Article 25 in the general section on the role of the state reads “The state advocates and promotes fertility planning in order to achieve compatibility between population and various

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89. Tara A. Gellman, *The Blurred Line Between Aiding Progress and Sanctioning Abuse: United States Appropriations, the UNFPA and Family Planning in the P.R.C.*, 17 N.Y.L. SCH. J. HUM. RTS. 1063, 1066 (2001).

90. *Id.*

91. *Id.* at 1066-67.

92. *Id.* at 1068.

93. *Id.*

94. *Id.* at 1070.

95. See Gellman, *supra* note 89, at 1066.

96. See *id.* at 1067.

97. *Id.*

98. *Id.*

99. *Coercive Population Control in China*, *supra* note 13, at 11 (testimony of John Aird, Demographer).

socio-economic development plans"; Article 49 in the section on the basic rights and duties of citizens stipulates that "both husband and wife have the duty to implement fertility planning"; and Article 89 in the section on the State Council includes fertility planning work as one of its responsibilities.<sup>100</sup>

As time has progressed, the coerciveness of China's population policy appears to have intensified.<sup>101</sup> In 1981, Vice Premier Chen Muhua quoted Deng Xiaoping as saying, "[i]n order to reduce the population, use whatever means you must but do it."<sup>102</sup> In 1983, the government carried out a massive campaign of "mandatory sterilization, abortion, and IUD insertion characterized by a degree of heavyhandedness in family planning unprecedented in the world."<sup>103</sup> As the 1983 campaign commenced, the Premier, Zhao Ziyang, stated before a National Party Congress that it was necessary for China "to prevent additional births by all means."<sup>104</sup> The government issued additional family planning policies in Central Document 7 in 1984,<sup>105</sup> which allowed some exceptions to the one-child rule, but the exceptions only applied to about five percent of couples among the Han population.<sup>106</sup> Central Document 7 also called for some moderation of tactics, but it proposed the attainment of the same population targets by the same means implemented in the past.<sup>107</sup>

In a letter dated January 1991, Peng Peiyun, the Minister-in-Charge of the SFPC (State Family Planning Commission), stated family planning workers must "unwaveringly use the basic [family planning] practices that have been effective for so many years."<sup>108</sup> Chinese government statistics show that by the mid-1980s, abortions, sterilizations, and IUD insertions occurred at a rate of over thirty million a year.<sup>109</sup>

100. Wong, *supra* note 67, at 221.

101. See *Coercive Population Control in China*, *supra* note 13.

102. *Id.* at 11 (testimony of John Aird, Demographer).

103. Cheng, *supra* note 12, at 36.

104. *Coercive Population Control in China*, *supra* note 13, at 11 (testimony of John Aird, Demographer).

105. See White, *supra* note 78, at 62.

106. *Id.*

107. JOHN S. AIRD, *SLAUGHTER OF THE INNOCENTS: COERCIVE BIRTH CONTROL IN CHINA* 36 (1990).

108. *Coercive Population Control in China*, *supra* note 13, at 92 (testimony of John Aird, Demographer).

109. *Coercive Population Control in China: Evidence of Forced Abortion and Forced Sterilization: Hearing Before the Subcomm. on Int'l Relations House of*

As for the future, China hopes to keep its population within 1.33 billion by 2005, 1.4 billion by 2010, and 1.6 billion by 2050.<sup>110</sup> However, even with strict guidelines in place, it is estimated that 58,000 babies are born daily in China.<sup>111</sup>

## V. ENFORCEMENT OF THE POPULATION CONTROL POLICY

The Chinese government has relied on several methods to enforce its population policies. Among these are an incentive/disincentive system, compulsory abortion and sterilization, and eugenics programs. Though the government does not officially endorse infanticide and abandonment of female babies, their continued practice serves as another check against population growth.

### A. Incentive/Disincentive System

To encourage couples to abide by the one-child policy, the Chinese government has implemented a system of incentives for those who comply and disincentives to further encourage such compliance.<sup>112</sup> Couples who keep their family size to one child may receive the following benefits: monetary payment, medical and educational benefits, preferential treatment for employment, and even land allocation.<sup>113</sup> Additionally, payment of pensions may be dependent upon family size.<sup>114</sup>

Among the disincentives are extreme fines for unauthorized births (which may exceed a family's yearly income) and harassment of pregnant women until they submit to unwanted abortions.<sup>115</sup> The financial penalties depend upon local family planning regulations<sup>116</sup>

*Representatives*, 107th Cong. 16 (2001) [hereinafter *Coercive Population Control in China: Evidence of Forced Abortion and Forced Sterilization*] (testimony of Stephen Mosher, President, Population Research Institute).

110. *China to Make Population, Family Planning Law*, at <http://www.cpirc.org.cn/e-policy5.htm> (last visited Oct. 9, 2003).

111. Cheryl Daen, *China's Population Control a Sinful Solution*, DAILY AZTEC, June 13, 2000, available at [http://www.tibet.ca/wtnarchive/2000/6/13\\_7.html](http://www.tibet.ca/wtnarchive/2000/6/13_7.html) (last visited Oct. 9, 2003).

112. See Gellman, *supra* note 89, at 1070-73.

113. *Id.* at 1072.

114. Davin, *supra* note 25, at 67.

115. *Coercive Population Control in China*, *supra* note 13, app. at 84-85 (testimony of John Aird, Demographer).

116. The Fujian Province Planned-Birth Regulations set out a fee schedule for individuals who have unauthorized children:

Chapter 7: Legal responsibilities

and the severity of the violation, but can range from ten to fifty percent of the annual household income and can be imposed for a period up to fourteen years.<sup>117</sup>

The government sometimes uses social pressure to penalize entire villages if there are couples in the village not in compliance with the one-child policy.<sup>118</sup> Such social pressure can have an important impact on family planning policies:<sup>119</sup> “[c]ouples who violate their local family planning norms are almost universally reviled. While people who have more children are not formal criminals in the eyes of the state, they are maligned as irresponsible free-riders in the eyes of the public.”<sup>120</sup> Punishment for women not in compliance with the policy may even extend to family members: “[i]f a woman is found to have acted out-of-plan, officials will search for her.

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Article 36: Extra-plan-birth fees are levied on parents who cause extra-plan births:

(1) Couples who give birth to a first child ahead of schedule in violation of planned-birth regulations, or who do not wait the required interval, are levied fees equal to 60% to 100% of the couple's total income for the previous year.

(2) Couples who give birth to an extra child in violation of family planning regulations are levied fees equal to 2-3 times the couple's total income for the previous year.

(3) Couples who give birth to 2 extra children in violation of planned-birth regulations are levied fees equal to 4-6 times the couple's total income for the previous year. Heavy fees shall be levied on those who give birth to 3 extra children.

Cases of illegal adoption of children are handled as extra-plan births.

Extra-plan-birth fees can be collected all at one time.

*Forced Abortion and Sterilization in China: The View from the Inside*, *supra* note 86, at 44-45.

117. Jiali Li, *China's One-Child Policy: How and How Well Has it Worked? A Case Study of Hebei Province 1979-88*, 21 *POPULATION AND DEVELOPMENT REVIEW* 563, 564 (1995).

118. *Coercive Population Control in China*, *supra* note 13, at 11 (testimony of John Aird, Demographer).

119. See LEE & FENG, *supra* note 24, at 134.

120. *Id.*

In the event she cannot be found, it is common practice for officials to detain members of her family until she turns herself in."<sup>121</sup> If the incentive/disincentive method of persuasion proves ineffective, other methods of enforcement may be implemented.

### B. Abortion

Abortion is widely used in China to maintain population levels.<sup>122</sup> According to population policy, if a woman becomes pregnant without a permit, "remedial measures" are taken—the pregnancy is terminated by abortion.<sup>123</sup> In 1978, the number of abortions in Beijing alone totaled 93,879.<sup>124</sup> Between 1971 and 1979, approximately forty-seven million abortions occurred.<sup>125</sup>

Christopher Smith, the House of Representatives Chairman of the Subcommittee on International Operations and Human Rights, explained the abortion process during a 1995 hearing before the Subcommittee:<sup>126</sup>

The Government of China now routinely compels women to abort their "unauthorized" unborn children. The usual method is intense "persuasion" using all of the economic, social and psychological tools a totalitarian State has at its disposal. When these methods fail, the woman is taken physically to the abortion mill. Forced abortions are often performed very late in pregnancy, even in the ninth month. Sometimes the baby's skull is crushed with forceps as the baby emerges from the birth canal. Other times the baby gets an injection of formaldehyde or some other poison into [its] cranium. Either the woman or her husband is then forcibly sterilized.<sup>127</sup>

In a 1998 hearing before the Subcommittee on International Operations and Human Rights,<sup>128</sup> Gao Xiao Duan, a former administrator for a planned birth control office, testified about the forced abortion of a woman who was nine months pregnant: "In the operating room, I saw the child's lips were moving and how its arms and legs were also moving. The doctor injected poison into its skull

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121. Gellman, *supra* note 89, at 1078.

122. See generally Tien, *supra* note 58.

123. Li, *supra* note 117, at 563.

124. Tien, *supra* note 58, at 450.

125. *Id.* at 447.

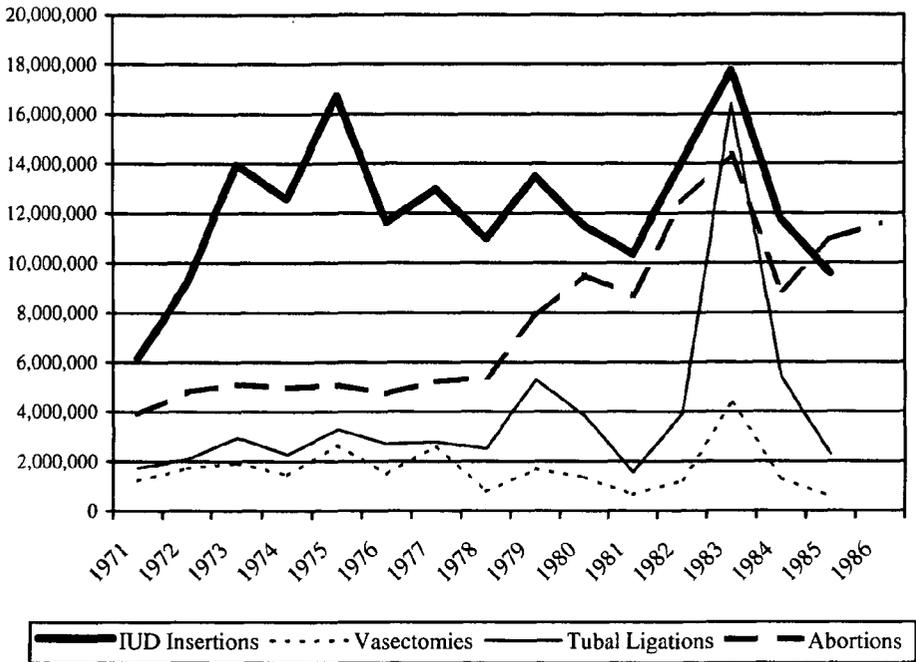
126. See *Coercive Population Control in China*, *supra* note 13.

127. *Id.* at 1.

128. See *Forced Abortion and Sterilization in China: The View from the Inside*, *supra* note 86.

and the child died and it was thrown into the trash can."<sup>129</sup> Despite the measures taken to compel compliance, the Chinese government maintains the abortions are voluntary so long as the women "walk to the clinics on their own legs."<sup>130</sup>

### BIRTH CONTROL SURGERIES: 1971-1986<sup>131</sup>



129. *Id.* at 12 (testimony of Gao Xiao Duan, Former Administrator, Planned Birth Control Office, People's Republic of China).

130. *Coercive Population Control in China*, *supra* note 13, at 11-12 (testimony of John Aird, Demographer).

131. AIRD, *supra* note 107, at 40. This table represents birth control activities leading up to the surgical campaign of 1983. Statistics released through the Chinese media may not be entirely accurate due to the government's control over such information. It is likewise difficult to gather very recent statistics due to the absence of free press in China.

### C. Sterilization

Sterilization is also a common method used by the Chinese government to enforce population control policies.<sup>132</sup> As many as thirty million female and male sterilizations were performed from 1971 to 1977.<sup>133</sup> Women make up the larger portion of the statistics, and are "five times more likely to be sterilized than men."<sup>134</sup> Sterilizations are commonly given when a woman has an out-of-plan pregnancy, and immediately after a forced abortion.<sup>135</sup>

Like the regulations that impose forced abortions, the regulations that impose sterilization are inflexible, and special circumstances are not considered.<sup>136</sup> In a hearing before the House of Representatives Subcommittee on International Operations and Human Rights in 1998,<sup>137</sup> Nicole Hess, from the Laogai Research Foundation, told the story of a young unmarried woman's forced sterilization:

She was pregnant and engaged to her boyfriend. However, out of fear of the government's planned birth policy, as she did not have a permit for such a birth, she went to the hospital and aborted her baby on her own. Later, she tells of how she was accused of hiding the baby by informers and the government captured her for sterilization. Before her sterilization surgery, however, her cousin tried to go back to the hospital where she received the abortion to get proof from the doctor who performed the surgery that she did not in fact have a child. But when he returned to the planned birth office, it was too late. The girl had already been sterilized.<sup>138</sup>

In another instance, a woman was forced to undergo sterilization even when her pregnancy was the result of faulty IUD insertion.<sup>139</sup>

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132. See Tien, *supra* note 58, at 447.

133. *Id.*

134. Greenhalgh, *supra* note 37, at 870.

135. Gellman, *supra* note 89, at 1069.

136. See *Forced Abortion and Sterilization in China: The View from the Inside*, *supra* note 86.

137. See *id.*

138. *Id.* at 8 (testimony of Nicole Hess, The Laogai Research Foundation).

139. *Id.* at 11 (testimony of Gao Xiao Duan, Former Administrator, Planned Birth Control Office, People's Republic of China).

[The couple was] married in 1988. Their son was born in 1989. According to regulations she had an IUD inserted, but the IUD was not in the correct place and she subsequently became pregnant again. In order to avoid having an abortion, she hid out until her son was born. However, in October 1995, the work team sent a bulldozer to

Another woman was fined and forced to undergo sterilization when after giving birth to a baby boy, she found a baby girl on her doorstep and decided to keep it.<sup>140</sup>

In her statement before the House of Representatives Subcommittee on International Operations and Human Rights in 1995,<sup>141</sup> Chen Yun Fie, an asylum seeker, related her story of forced sterilization.<sup>142</sup> She had just given birth to a second child when officials came to her house to persuade her to be sterilized.<sup>143</sup> At first she agreed but continued to put the officials off when they came to discuss it with her.<sup>144</sup> In 1986, she became pregnant again and opted to go to a medical student to have an abortion in order to avoid a subsequent sterilization.<sup>145</sup> Since the medical student was not fully trained on how to conduct the operation, Chen Yun Fie developed a serious infection and her health became poor.<sup>146</sup> On her way home from the abortion, she came upon a newborn infant girl lying in the street, only seven or eight days old.<sup>147</sup> Since no one else would take the child, she decided to.<sup>148</sup> Of course, this would be counted as a third child, so she had to leave her home in order to avoid

tear down their house, as well as their brother's house. And, in May 1996, Mrs. Lin was sterilized.

*Id.*

140. *Id.* at 18 (testimony of Harry Hongda Wu, Executive Director, Laogai Research Foundation).

In Bantou Village in Yonghe Town, Mr. and Mrs. Chai, they [had their] first boy. So they also have a contract with the government, not going to have any second baby. Mrs. Chai in this town is wealthy and [has a] very good reputation. But one early morning, they find a baby girl on their doorstep. But she doesn't know how to handle it. She cannot pick up the girl. So finally they pick up the girl. And the government fined 20,000 and forced the woman to have sterilization.

*Forced Abortion and Sterilization in China: The View from the Inside*, *supra* note 86, at 18.

141. *See Coercive Population Control in China*, *supra* note 13.

142. *See id.* at 56-59 (testimony of Chen Yun Fei, Asylum Seeker).

143. *Id.* at 56.

144. *Id.* at 56-57.

145. *Id.* at 57.

146. *Id.*

147. *Coercive Population Control in China*, *supra* note 13, at 57 (testimony of Chen Yun Fei, Asylum Seeker).

148. *Id.*

sterilization.<sup>149</sup> When she returned seven years later, government officials were waiting and forced her to undergo sterilization.<sup>150</sup>

The permanency of sterilization made the jobs of local family planning officials easier: "[t]here was no further need to monitor unauthorized pregnancies among sterilized women or to spend long hours 'persuading' them to have abortions. Women coerced into being sterilized were coerced forever."<sup>151</sup>

#### D. Eugenics

The Chinese government supplements its attempts to reduce population quantity through a program of eugenics to improve population quality.<sup>152</sup> The rationale supporting the eugenics program is to prevent the birth of individuals who cannot contribute to society and who will be a burden to others.<sup>153</sup> High rates of mental retardation are common in rural areas where inbreeding occurs.<sup>154</sup> With the implementation of a marriage law in 1981, the government prohibited marriage of "lineal relatives and collateral relatives within the third degree of relationship (i.e., persons with common paternal or maternal grandparents)."<sup>155</sup>

Marriages are also banned for individuals with diseases that prevent the victim from living independently and are likely to pass to

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149. *Id.* at 58.

150. *Id.* at 59.

151. AIRD, *supra* note 107, at 33.

152. See Gewirtz, *supra* note 16, at 148. "Increasing the population quality appeals to the Chinese government, because it supplements the government's current controls on population quantity." *Id.* at 139.

153. Wong, *supra* note 67, at 223.

The official rationale for advocating eugenics has both a positive and a negative aspect. The positive aspect, as stated by Chen Muhua, is to "enable our future offspring to develop their moral, intellectual and physical capacities to the full. They will then become useful citizens for the Four Modernizations Programme, and they will make the Chinese nation strong and prosperous." The negative aspect is to prevent the birth of defective children who will hinder the Four Modernizations because they are economically unproductive. Some Chinese writers have estimated that there are over 10 million children in China with congenital defects, including schizophrenics, "idiots," and the physically deformed, who are said to constitute a big burden on the country.

*Id.*

154. Gewirtz, *supra* note 16, at 146.

155. Wong, *supra* note 67, at 224.

subsequent generations.<sup>156</sup> In 1989, Gansu province implemented the first mandatory sterilization law for mentally retarded individuals.<sup>157</sup> By 1995, the government codified eugenics regulations into law.<sup>158</sup>

### *E. Infanticide and Abandonment of Female Babies*

The practice of infanticide in China saw its beginnings as early as the first millennium.<sup>159</sup> Chinese people of all classes practiced infanticide, and though the majority of victims were females, males were not excluded.<sup>160</sup> However, due to the traditional preference for male children to continue the bloodline<sup>161</sup> and for ancestor worship,<sup>162</sup> the practice of infanticide focused mainly on females.<sup>163</sup> In some areas, up to half the newborns could be killed.<sup>164</sup> Changes in economic conditions sometimes led to an increase in female infanticide, as the availability and price of food fluctuated.<sup>165</sup> Historically, Chinese peasants may have exhibited a less serious attitude toward life, which likely contributed to the number of children killed through the practice of infanticide.<sup>166</sup> Though infanticide may not have been considered immoral historically,<sup>167</sup> it is both illegal and "widely considered immoral" today.<sup>168</sup>

With advances in ultrasound technology and the encouragement of abortions, controlling the sex and number of children through abortion is more common than infanticide.<sup>169</sup> Though the number of infanticide occurrences had reduced over the years, it increased again

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156. Gewirtz, *supra* note 16, at 147-48.

157. *Id.* at 149.

158. *Coercive Population Control in China*, *supra* note 13, at 100 (testimony of Nicholas Eberstadt, American Enterprise Institute, Harvard Center for Population and Development Studies).

159. LEE & FENG, *supra* note 24, at 47.

160. *Id.*

161. See Croll, *supra* note 1, at 11.

162. See Davis-Friedman, *supra* note 23, at 153.

163. See LEE & FENG, *supra* note 24, at 47.

164. *Id.*

165. *Id.* at 51.

166. *Id.* at 60-61. "Chinese peasants may not have thought of killing their children as murder. Traditionally, the Chinese did not consider children during the first year of life as fully 'human.' Indeed, a well-known and oft-cited prescript claimed that infants were just young animals." *Id.* at 61 (citation omitted).

167. See *id.*

168. LEE & FENG, *supra* note 24, at 61.

169. See *id.*

in 1979 with the implementation of the one-child policy.<sup>170</sup> Female infanticide may occur in several different ways: by infants being killed at birth as unauthorized babies in government hospitals, by parents who want to maintain the option of having a son in the future, or by abandonment.<sup>171</sup>

The Chinese media has never indicated the occurrence of infanticide in hospitals by obstetricians, but several outside sources report the practice.<sup>172</sup> In 1981, Michael Vink reported the infanticide practice in the *Wall Street Journal*, alleging hospital doctors were administering injections to women giving birth to unauthorized babies to cause stillbirths or delivery of nonviable infants.<sup>173</sup> Vink also reported doctors were killing infants upon birth who were third children of their parents.<sup>174</sup> In 1983, another report uncovered doctors in Guangzhou were required to "make sure that no infant born without a permission slip from the mother's work unit be allowed to leave the hospital alive."<sup>175</sup> In January 1989, another report told of newborns killed by having gauze stuffed into their mouths and being given alcohol or ether injections.<sup>176</sup> The evidence available on hospital infanticide does not indicate whether the government supports the practice<sup>177</sup> or if it is the product of what the government has repeatedly termed overzealous local officials.<sup>178</sup> In any case, the frequency and similarity of the details of the reports indicate the practice is occurring.<sup>179</sup>

#### *F. The Chinese Market for Fetal Body Parts*

Perhaps even more shocking than the enforcement of China's population control policies is the profit of abortion doctors in selling

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170. *Coercive Population Control in China*, *supra* note 13, at 24 (testimony of John Aird, Demographer).

171. *Coercive Population Control in China: Evidence of Forced Abortion and Forced Sterilization*, *supra* note 109, at 36 (testimony of Stephen Mosher, President, Population Research Institute).

172. AIRD, *supra* note 107, app at 91.

173. *Id.*

174. *Id.*

175. *Id.* "The babies could be destroyed by 'any kind of method,' including strangulation." *Id.*

176. *Id.* at 92.

177. AIRD, *supra* note 107, app at 92.

178. *See Coercive Population Control in China*, *supra* note 13, at 12 (testimony of John Aird, Demographer).

179. *See id.*

aborted fetuses.<sup>180</sup> At a hearing before the House of Representatives Subcommittee on International Operations and Human Rights,<sup>181</sup> Nicolas Eberstadt, a demographer for the American Enterprise Institute, stated that reports from Hong Kong reveal the practice of selling fetal parts.<sup>182</sup> The reports claim the harvested fetuses are used for "medicine, delicacies, [and] other consumer uses."<sup>183</sup> The coercive measures used to enforce the population control policies are less likely to diminish as long as local officials monitoring pregnancies and performing abortions can earn extra money by harvesting and selling the fetuses.<sup>184</sup>

## VI. HUMAN RIGHTS ISSUES AND THE POPULATION CONTROL POLICY

The Chinese population control policies implicate a variety of human rights issues.<sup>185</sup> The right to reproductive freedom, almost universally declared as a basic human right,<sup>186</sup> is seriously hindered by the Chinese population control policies.<sup>187</sup> Article 55 of the United Nations Charter states "the United Nations shall promote . . . universal respect for, and observance of, human rights and fundamental freedoms for all without distinctions as to race, sex, language, or religion."<sup>188</sup> In the words of Harry Wu, Director of Laogai

180. *Id.* at 17 (testimony of Nicholas Eberstadt, Demographer, American Enterprise Institute).

181. *See generally id.*

182. *Id.* at 17.

183. *Id.*

184. *See Coercive Population Control in China, supra* note 13, at 17 (testimony of Nicholas Eberstadt, Demographer, American Enterprise Institute).

185. *See id.* at 4-6 (testimony of John Aird, Demographer).

186. *Id.* at 4-5.

The right to reproductive freedom is included in the United Nations Declaration of Human Rights, has been endorsed by leading nongovernment organizations promoting family planning, including the United Nations Population Fund, or UNFPA, and the International Planned Parenthood Federation. The World Population Conferences of 1974, 1984, and 1994 all espoused reproductive freedom in declarations adopted by most of the attending delegations. The 1994 conference affirmed it in these words: "all couples and individuals have the basic right to decide freely and responsibly the number and spacing of their children and to have the information, education and means to do so."

*Id.*

187. *See id.*

188. U.N. CHARTER art. 55, para. c.

Research Foundation, before the House of Representatives Committee on International Relations,<sup>189</sup>

To give birth is a basic human right. No government, organization, or individual should, based on political, economic, cultural, religious and racial reasons, deprive a human being's right to give birth. To give birth is also an act of nature, and try as we might, we cannot always control a human being's reproductive system. To violently punish a woman and her unborn child for natural consequences often beyond their control is the epitome of cruelty.<sup>190</sup>

Even as the Chinese government continuously maintains that its human rights record is "very good," it seeks to discourage human rights organizations from "meddling in China's internal affairs with 'ulterior motives.'"<sup>191</sup>

In response to the human rights violations in China, the United States has withheld allocation of funds to the United Nations Fund for Population Activities (UNFPA) because China is one of its recipients.<sup>192</sup> The UNFPA supports population and family planning programs in various countries,<sup>193</sup> and disperses over 280 million dollars in donations every year to provide reproductive health care to women, children, and families.<sup>194</sup> As part of the UNFPA population control program, the organization disperses more "Pregnancy Termination Kits" than food or medical supplies.<sup>195</sup>

In 1991, the United States gave the UNFPA twenty million dollars based on the condition that none of the funds be used for China; subsequently, the United States ceased funding completely.<sup>196</sup> The UNFPA continues to support China's population programs in the absence of support from the United States,<sup>197</sup> and China has been the recipient of UNFPA awards for its progress in population control.<sup>198</sup>

189. See *Coercive Population Control in China: Evidence of Forced Abortion and Forced Sterilization*, *supra* note 109, at 19-28 (testimony of Harry Hongda Wu, Executive Director, Laogai Research Foundation).

190. *Id.* at 23.

191. *Coercive Population Control in China*, *supra* note 13, app. at 74 (testimony of John Aird, Demographer).

192. Gewirtz, *supra* note 16, at 160.

193. Gellman, *supra* note 89, at 1063-64.

194. *Coercive Population Control in China: Evidence of Forced Abortion and Forced Sterilization*, *supra* note 109, at 4.

195. *Id.* at 9.

196. Gewirtz, *supra* note 16, at 160.

197. See *Coercive Population Control in China*, *supra* note 13, at 2.

198. See *id.* at 8 (testimony of John Aird, Demographer).

When China received a UNFPA award in September of 1983, the UN Secretary-General Javier Perez de Cuellar commended China on its ability to achieve wide-scale implementation of population policies through a marshalling of resources.<sup>199</sup>

In January 1998, the UNFPA signed a four-year agreement with China in which the UNFPA would operate in thirty-two counties.<sup>200</sup> The central and local authorities in these counties agreed "there would be no coercion and no birth quotas, and that abortion would not be promoted as a method of family planning."<sup>201</sup> In a statement released by the UNFPA, the organization pointed out that "China is keen to move away from its administrative approach to family planning to an integrated, client-centered reproductive health network based on the principles of free and voluntary choice."<sup>202</sup> However, at a hearing before the House of Representatives Committee on International Relations,<sup>203</sup> Josephine Guy, who had just returned from one of those thirty-two counties, testified that she had "videotaped evidence of forced abortion, of the destruction of houses belonging to families who have had unauthorized children, and of similar abuses that have been associated with the People's Republic of

In September 1983, the year the Chinese program reached its all-time peak in coerciveness and family planning work teams fanned out across the country carrying out 21 million sterilizations, 18 million IUD insertions and 14 million abortions, many of them involuntary, the United Nations gave one of its first two annual population awards to Qian Xinzong, the minister in charge of the State Family Planning Commission who directed the mass surgery drive.

*Id.*

199. AIRD, *supra* note 107, at 5.

200. *Coercive Population Control in China: Evidence of Forced Abortion and Forced Sterilization*, *supra* note 109, at 1.

201. *Id.*

The UNFPA claims that in counties where it is active (1) that reproductive health programs are "fully voluntary," that (2) "women are free to voluntarily select the timing and spacing of their pregnancies," (3) that targets and quotas have been lifted, and that, (4) in keeping with the principles of the 1994 Cairo Program of Action, abortion is not promoted as a method of family planning, and finally, that coercion does not exist.

*Id.* at 17 (testimony of Stephen Mosher, President, Population Research Institute).

202. *Forced Abortion and Sterilization in China: The View from the Inside*, *supra* note 86, at 3.

203. See *Coercive Population Control in China: Evidence of Forced Abortion and Forced Sterilization*, *supra* note 109.

China population control program.<sup>204</sup> Though President Bush decided to withhold U.S. contributions to the UNFPA in 2002,<sup>205</sup> China will continue to find support from other nations because the world community generally accepts population targets.<sup>206</sup>

Though China officially states there is no coercion in its family planning program,<sup>207</sup> the Chinese media has openly condoned the use of coercion.<sup>208</sup> When coercion reaches a point to where popular resistance and alienation from the Communist Party becomes a problem, the Chinese government “disavow[s] the coercive measures and claim[s] that the local cadres misunderstood their instructions and became ‘excessively zealous.’”<sup>209</sup> To date, the Chinese government has not publicly disavowed the use of some of the most popular coercive tactics.<sup>210</sup>

## VII. FUTURE IMPLICATIONS OF THE POPULATION CONTROL POLICY

However coercive the Chinese population control policies may seem, they are nevertheless effective.<sup>211</sup> In 1984, the world’s population as a whole saw a decrease for the first time due to the decrease in China’s population.<sup>212</sup> Some family planning advocates even started citing the Chinese population control policies as a model

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204. *Id.* at 2.

205. Stephen Moore, *Debasing Human Dignity*, WASHINGTON POST, Aug. 3, 2002, at A17.

206. See *Coercive Population Control in China*, *supra* note 13, at 106-07 (testimony of Nicholas Eberstadt, American Enterprise Institute, Harvard Center for Population and Development Studies). Among the international organizations who support population control is the World Bank. *Id.* at 106-107.

207. See *id.* at 11-12 (testimony of John Aird, Demographer).

208. *Id.* at 12.

209. *Id.*

210. AIRD, *supra* note 107, at 16-17. Among these coercive tactics are the mass “mobilizations” for sterilization and abortion, from which women often flee from their homes and go into hiding because once caught up in a “mobilization” they have little chance of refusing what the cadres demand. Another is requiring women pregnant without permission to attend “study classes” where they are pressured and threatened by the presiding cadres and not allowed to return to their families until they consent to an abortion. Still another is the so-called “heart-to-heart talks” with cadres who repeatedly visit the homes of women who refuse IUD insertion, sterilization, or abortion until they and their families break under the strain and comply. *Id.* at 17.

211. See Gewirtz, *supra* note 16, at 141.

212. *Id.*

for other countries.<sup>213</sup> However, because the size of any population is the result of long evolution, an attempt to reduce it in a short period of time causes irregular age distributions, leading to negative effects on socio-economic development.<sup>214</sup> Though the current population control policies are keeping the Chinese population growth rates to a minimum,<sup>215</sup> there are some very serious implications for the future, such as a severely imbalanced sex ratio<sup>216</sup> and the problem of caring for the growing number of elderly individuals.<sup>217</sup>

### A. Irregular Sex Ratios

Though China's population policies have effectively reduced population,<sup>218</sup> there is a significant imbalance in the sex ratio between males and females in China.<sup>219</sup> The sex ratio imbalance is already evident in many areas of China, and officials are becoming concerned.<sup>220</sup> Though some official reports deny an imbalance in national statistics, local areas report "highly distorted" ratios between males and females.<sup>221</sup> Current national statistics report 100 million more men than women in China,<sup>222</sup> and according to China's most recent census, there were 116.9 boys born for every 100 girls in 2000.<sup>223</sup> The normal ratio worldwide is around 105-107 boys for every 100 girls.<sup>224</sup> On a local level, a small village in Guanxi province reported that nineteen out of twenty-four births during 2001 were boys.<sup>225</sup>

The increase in availability of methods to determine the sex of babies has exacerbated the sex ratio problem.<sup>226</sup> Though pre-natal

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213. AIRD, *supra* note 107, at 4.

214. Shaomin Li, *China's Population Control and Socio-Economic Reforms: The Chinese Dilemma*, 25 CHINA REPORT 219, 223 (1989).

215. See CENTRAL INTELLIGENCE AGENCY, *supra* note 2.

216. See *infra* Part VII.A.

217. See *infra* Part VII.B.

218. See generally Li, *supra* note 214.

219. See Wiseman, *supra* note 3.

220. See *id.*

221. Davin, *supra* note 25, at 62.

222. *China Aims to Limit Its Population to 1.6 BLN*, BLOOMBERG NEWS, Dec. 19, 2000, LEXIS, Nexis Library, UPI File.

223. Wiseman, *supra* note 3.

224. *Id.*

225. *Coercive Population Control in China: Evidence of Forced Abortion and Forced Sterilization*, *supra* note 109, at 24 (testimony of Harry Hongda Wu, Executive Director, Laogai Research Foundation).

226. See Wiseman, *supra* note 3.

screening to determine the sex of babies is illegal, it is still common practice.<sup>227</sup> As portable ultrasound machines made technology more accessible to people living in the countryside, the sex ratio imbalance was thrown off even more.<sup>228</sup> In central Hubei Province, the ratio reached an incredible 130.3 boys for every 100 girls, the highest ratio in China during 1995.<sup>229</sup> While technicians giving ultrasounds may refrain from actually telling the parents the sex of the baby, they may indicate the sex by either smiling or frowning.<sup>230</sup>

With the steady increase of the male population and the decline of the female population, men will find it increasingly difficult to marry.<sup>231</sup> One report estimates the number of unmarried males in China could grow to as many as thirty-three million by the year 2020.<sup>232</sup> Another source estimates over the next twenty years, as many as forty million men will not be able to find wives.<sup>233</sup> Though it is impossible to give exact predictions on the number of males that will be looking for wives in the years to come, the consensus among scholars and demographers is clear: the shortage of women of marriageable age is inevitable, and it will bring with it many other social and cultural consequences.<sup>234</sup> The shortage of women of marriageable age in rural areas is already causing a rise in the occurrence of incestuous marriages between first cousins, which will increase the likelihood of birth defects.<sup>235</sup>

The sex ratio imbalance will almost certainly lead to an increase in crime.<sup>236</sup> An article in a Chinese magazine, *Beijing Luntan*, predicted that "sexual crimes [such] as forced marriages, girls stolen for wives, bigamy, visiting prostitutes, rape, adultery... homosexuality... and weird sexual habits appear to be unavoidable."<sup>237</sup> Prostitution has already become a problem in larger Chinese cities, and bride trafficking has already appeared in the

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227. *Id.*

228. *Id.*

229. *Id.*

230. *Id.*

231. *See id.*

232. Wiseman, *supra* note 3.

233. *Id.*

234. *See generally id.*

235. *See* Hannah Beech/Nanliang, *With Women So Scarce, What Can Men Do? Years of Female Infanticide Help Shatter the Taboo on Incestuous Marriages*, TIME MAGAZINE, July 1, 2002, at 8.

236. *See* Wiseman, *supra* note 3.

237. *Id.*

countryside.<sup>238</sup> Such an increase in crime could cause the Chinese government to “tighten its grip on society” by increasing governmental control over citizens.<sup>239</sup>

The imbalanced sex ratio will also change Chinese marriage culture significantly.<sup>240</sup> Women have already begun to be more selective when choosing their future husbands.<sup>241</sup> With the shortage of women and the overabundance of men, women can raise their standards when shopping for a husband.<sup>242</sup> In the words of Liu Xicheng, a twenty-one-year-old migrant worker in Beijing, “[b]efore, it was men choosing women . . . . Now it is women choosing men. Some have high quality standards. It is hard to marry them.”<sup>243</sup> It is possible that women will choose to find husbands in the cities, since levels of income and education are more likely to increase among men in the cities.<sup>244</sup> Up to ninety-seven percent of unmarried rural men have not completed high school, and as many as forty percent are illiterate.<sup>245</sup>

Chinese history shows all too well what kind of problems can emerge from an imbalanced sex ratio. During the Nien Rebellion of the mid-1800s, the ratio of men to women was 129 to 100.<sup>246</sup> The rebellion broke out in Shandong Province, and many unmarried men rebelled against the Qing Dynasty.<sup>247</sup> At one point, there were 100,000 rebels exerting control over territory that contained six million people.<sup>248</sup> The Qing government fought for seventeen years before it was able to crush the rebellion.<sup>249</sup>

As China faces another sex ratio imbalance, the government might even begin seeking out military conflicts just to keep bachelors occupied and out of trouble.<sup>250</sup> Historically, governments have dealt with an overabundance of unmarried men through strict

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238. *Id.* Chinese media have reported that brides have sold for \$600 dollars in Hebei province. *Id.*

239. *Id.*

240. *See generally id.*

241. *See Wiseman, supra note 3.*

242. *See id.*

243. *Id.*

244. *See id.*

245. *Id.*

246. *Id.*

247. *Wiseman, supra note 3.*

248. *Id.*

249. *Id.*

250. *Id.*

authoritarian rule, public works projects, or jobs with security forces.<sup>251</sup> If the sex ratio imbalance continues to increase, the government will be forced to take measures to counter it.

### *B. Care for the Elderly*

Another major problem caused by the population policies is the aging of the Chinese population.<sup>252</sup> While the number of younger individuals in China is shrinking due to the one-child population policy, the number of elderly individuals is on the rise.<sup>253</sup> China is currently experiencing an increase in the percentage of the population made up by middle aged and elderly individuals.<sup>254</sup> Since the birth rates began to fall in the 1970s, nutrition, sanitation, and health care improvements began to raise life expectancies in China,<sup>255</sup> and issues such as who will take care of the aging population are coming to the forefront.<sup>256</sup> Some studies indicate the elderly population of China will be on a steady increase for several more decades, with as many as 439 million senior citizens predicted by the year 2050, making up a quarter of the Chinese population.<sup>257</sup>

Since China does not have a social security system, elderly people depend on their children to take care of them in their old age.<sup>258</sup> As of 1982, only approximately one percent of the retirement-aged population (men sixty-five and older, women sixty and older) received pensions.<sup>259</sup> With many of these individuals having had only one child, the strain of taking care of both parents falls on that child.<sup>260</sup> If the child does not have the resources to provide for his/her parents, there are not any measures to fall back on—with no social security plan or pension benefits, some senior citizens may have to fend for themselves.<sup>261</sup>

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251. *Id.*

252. See generally Chaoze Cheng & Qianjin Wu, *Population Aging in China: The Demographic Implications*, 30 CHINA REPORT 29 (1994).

253. See *id.*

254. *Id.* at 29.

255. *Id.*

256. See *id.*

257. *China Sticks to Population Control Policy In New Century*, XINHUA GENERAL NEWS SERVICE, Nov. 2, 2000, LEXIS, Nexis Library, UPI File.

258. Li, *supra* note 214, at 235.

259. Tien, *supra* note 11, at 310.

260. See *id.*

261. See generally *id.*

Continued enforcement of the one-child policy will only exacerbate the problem.<sup>262</sup> However, the Chinese citizens might respond to the growing problem by intentionally violating the one-child policy in an effort to plan for old age.<sup>263</sup> If this occurs, the serious implications of providing for China's elderly in the future will be somewhat diminished,<sup>264</sup> but the government would likely resort to more coercion to encourage compliance with the population policies.

### VIII. IMPROVING THE POPULATION CONTROL POLICY

Concerns about the future effects of the population control policy in China have drawn many suggestions on how to improve the current situation and to avoid potential disaster in the future. There are indications that the Chinese government has recognized the need to implement changes to the current population control policy, and recent reports have been encouraging. Though China still needs a way to control its population, reforms to the current system may encourage individuals to comply in the absence of coercion. Some possible methods for improving the policy are: to reform the incentive/disincentive system to eliminate the need for forced abortion and sterilization,<sup>265</sup> to establish a social security system,<sup>266</sup> to offer more alternatives for contraception,<sup>267</sup> to provide better health care for family planning,<sup>268</sup> and to encourage women to break away from their traditional roles.<sup>269</sup>

#### *A. Reforming the Incentive/Disincentive System*

As mentioned earlier, China has already implemented an incentive/disincentive system in an effort to control the population.<sup>270</sup> One suggestion for improving the population control policies in China is to focus on economic incentives and disincentives rather than to rely on coercion.<sup>271</sup> Current economic incentives such as monetary payment, medical and education benefits, and preferential treatment

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262. *See generally id.*

263. *Id.* at 312.

264. *See id.*

265. *See infra* Part VIII.A.

266. *See infra* Part VIII.B.

267. *See infra* Part VIII.C.

268. *See infra* Part VIII.D.

269. *See infra* Part VIII.E.

270. *See* Gellman, *supra* note 89, at 1070-73.

271. *See* Li, *supra* note 214, at 234.

for employment certainly encourage couples to abide by the one-child policy.<sup>272</sup> Likewise, current economic disincentives such as fines are likely to encourage individuals to abide by the policy.<sup>273</sup> A recent modification in the system of fines has called for couples having unauthorized births to pay a "social compensation fee" instead of a fine, which is intended to "reflect the collective cost rather than individual fault for bearing additional children."<sup>274</sup> Even if the amount of the fee differs little from the amount of past fines, one positive aspect of the new modification is that local officials will now have to give the proceeds of the social compensation fees directly to the central government.<sup>275</sup> With local officials not keeping proceeds, "overzealous" officials will have less incentive to abuse their power in order to retain more money.<sup>276</sup>

When disincentives become excessive such as the harassment of pregnant women and extension of punishment to family members, the system becomes too harsh.<sup>277</sup> If the government finds the incentive/disincentive system is not working effectively, an increase on the incentive side of the equation would likely prove more effective than an increase on the disincentive side. The appealing nature of additional incentives may be enough to convince individuals to abide by the population policy. On the other hand, increases in disincentives may only make citizens angry and encourage them to oppose the government's efforts to control population.<sup>278</sup> When innocent family members are detained or punished for a female family member's violations,<sup>279</sup> the government is properly seen as the enemy of the people. When levels of coercion to enforce the population control policy rise, the degree of alienation of the people from the government rises accordingly.

Focusing on increased incentives to enforce the population control policy would be costly for the government, but if the incentives are effective, the government will save money in the future because the

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272. Gellman, *supra* note 89, at 1072.

273. See *Coercive Population Control in China*, *supra* note 13.

274. Ching-Ching Ni, *China Eases Interpretation of Infamous 1-Child Policy: For a Fee, Families May Skirt Population-Control Law*, SEATTLE TIMES, Aug. 23, 2002, at A13.

275. *Id.*

276. *Id.*

277. See *Coercive Population Control in China*, *supra* note 13, at 12 (testimony of John Aird, Demographer).

278. See *id.* at 12.

279. Gellman, *supra* note 89, at 1077-78.

population will be reduced. If the number of people in China can be reduced effectively, there will be more resources available to offer a higher quality of life to Chinese citizens.

### *B. Establishing a Social Security System*

One of the main reasons for having children in China is to ensure a provider for old age.<sup>280</sup> In the absence of any effective program by the government to care for the elderly, the citizens will continue to plan for the future by having children.<sup>281</sup> Some scholars and demographers suggest a welfare system would help curb the need to have children.<sup>282</sup> The Chinese government could effectively reduce the population by guaranteeing citizens social security funds to provide for them in their old age. China currently has a form of social security for certain members of the population based on the national registration system,<sup>283</sup> but it is not available for everyone.<sup>284</sup> According to the system, individuals with worker registration are guaranteed the following benefits: employment, pensions, insurance, food rations, housing, medical benefits, day care, educational benefits, transportation subsidies, and even access to recreational facilities.<sup>285</sup> Unfortunately, individuals with peasant registration are guaranteed none of the above benefits and cannot count on a government pension to provide for them in their old age.<sup>286</sup> If individuals could count on the government to take care of them, the need for having children to fulfill that purpose would be eliminated, and the population would likely see a marked decrease.<sup>287</sup>

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280. Li, *supra* note 214, at 235.

281. *See id.*

282. Cheng & Wu, *supra* note 252, at 50. "In those economically developed rural townships where systems of pension for the old have been set up, such systems should be consolidated and improved." *Id.*

283. The household registration system (*hukou zhidu*) was implemented in the 1950s, and it requires that each person in China have an official record of personal characteristics and background information. The registration system effectively divides the Chinese population into two segments: those in the "peasant registration" (*nongcun hukou*) typically depend upon agriculture for their subsistence, while those in the "worker registration" (*chengshi hukou*) earn money from the state and are provided many benefits at the cost of the state. Li, *supra* note 117, at 564.

284. *Id.*

285. *Id.* at 565. Although individuals under worker registration enjoy many benefits, those benefits may be revoked as disciplinary sanctions for violating the one-child policy. *Id.*

286. *Id.* at 564.

287. *See* Li, *supra* note 214, at 235.

The elderly segment of the Chinese population is growing quickly,<sup>288</sup> and the government inevitably will be forced to address the problem of the aging population.<sup>289</sup> If care for elderly parents proves too much for one child to tackle, the government will need to provide a back-up plan for caring for the elderly.<sup>290</sup> Again, the creation of a social security system would cost the Chinese government a great deal of money to implement; however, it would remove the inclination of individuals to have children to secure financial support in old age, and would thus help keep the population growth rate down.<sup>291</sup>

### C. *Improving Methods of Contraception*

Another improvement the Chinese government could make to current population policies is to offer women more methods of contraception.<sup>292</sup> Though the current health care system provides IUDs for women at no charge,<sup>293</sup> the devices have proved to be unreliable in many cases<sup>294</sup> and injurious in others.<sup>295</sup> Improper insertion of IUDs is common, and failure rates for the IUDs are as high as twenty percent.<sup>296</sup> Contraceptive shortages often occur in the rural areas, posing another difficulty for the population control program.<sup>297</sup> To counter the problem, the Chinese government will have to invest more resources in making contraceptives more widely available and at the same time improve the quality of health care providers rendering services in connection with the population control policies.<sup>298</sup>

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288. See *China Sticks to Population Control Policy in New Century*, *supra* note 257.

289. See Cheng & Wu, *supra* note 252, at 47. "[T]he aging process of the Chinese population will have a series of effects on the country's social life, including its economic, political, and cultural dimensions. The impact will be particularly profound on economic development, including production, consumption, technological process and economic structure." *Id.*

290. See generally *id.*

291. See generally *id.*

292. See Hong & Ebanks, *supra* note 32, at 37-39.

293. See Croll, *supra* note 1, at 21.

294. Hong & Ebanks, *supra* note 32, at 38.

295. *Id.*

296. *Id.*

297. *Id.*

298. See generally *id.*

One aspect of the current policy that should be reconsidered is the almost exclusive use of IUDs to prevent pregnancy.<sup>299</sup> Though IUDs are touted as both a safe and effective means of birth control, they may not be appropriate for every woman.<sup>300</sup> Use of the IUD has almost disappeared in the United States due to safety concerns.<sup>301</sup> However, new versions of the IUD are declared safe and effective by many organizations.<sup>302</sup> Despite its continued unpopularity in the United States, there are approximately 128 million women worldwide who use IUDs, and Chinese women make up nearly sixty-two percent of the world's IUD users.<sup>303</sup> Only six out of every 1,000 IUD users will become pregnant if the device is functioning properly.<sup>304</sup>

Despite the overall reliability and low cost of IUDs,<sup>305</sup> the Planned Parenthood organization warns that women in the following categories should not use IUDs because of the possibility of serious infections that could lead to infertility: women who have not had any children, women who want more children, and women who have had trouble becoming pregnant in the past.<sup>306</sup> To heed this warning would effectively rule out IUD use for most women of childbearing age.

Regardless of the advantages or disadvantages of IUD use, there are several benefits for the Chinese government in providing IUDs at no cost to the public: it is a very effective means of birth control when used properly,<sup>307</sup> it is the most inexpensive method of long-term

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299. See generally *Coercive Population Control in China*, *supra* note 13; *Forced Abortion and Sterilization in China: The View from the Inside*, *supra* note 86; *Coercive Population Control in China: Evidence of Forced Abortion and Forced Sterilization*, *supra* note 109.

300. See *IUDs vs. Sterilization*, at [http://www.rhtp.org/iuds/iud\\_vs\\_steriliz.htm](http://www.rhtp.org/iuds/iud_vs_steriliz.htm) (last visited Oct. 9, 2003).

301. According to a 1995 National Survey of Family Growth, less than one percent of women in the United States were using the IUD to prevent pregnancy. David A. Grimes, MD, *Letter From the Editor*, at <http://www.contraceptiononline.org/contrareport/article01.cfm?art=53> (last visited Oct. 9, 2003).

302. *IUDs vs. Sterilization*, *supra* note 300. "[N]ew IUDs are recognized by the Food and Drug Administration, the World Health Organization, the American Medical Association, and the American College of Obstetricians and Gynecologists as some of the safest and most effective reversible methods of birth control for women . . . ." *Id.*

303. *Id.*

304. *Understanding IUDs*, at <http://www.plannedparenthood.org/BC/IUD.htm> (last visited Oct. 9, 2003).

305. See *IUDs vs. Sterilization*, *supra* note 300.

306. *Understanding IUDs*, *supra* note 304.

307. See *IUDs vs. Sterilization*, *supra* note 300.

reversible birth control available,<sup>308</sup> and it is easier for the government to regulate.<sup>309</sup> Since safe removal of the IUD can only be done by a trained individual,<sup>310</sup> women have essentially no control over their reproductive systems once the IUD is inserted. For all practical governmental purposes, the IUD suits a coercive program better than any alternative means of birth control.<sup>311</sup>

If the Chinese government were to reform the ideology behind current population control policies by providing greater incentives for compliance rather than forcing such compliance, other methods of birth control might be more feasible.<sup>312</sup> Among the various methods widely available in the United States are: female and male condoms, diaphragms, cervical caps, and hormone injections, patches, and pills.<sup>313</sup> Allowing women to have more control over their method of birth control might increase their willingness to maintain an effective birth control regimen.<sup>314</sup> This control, combined with incentives for sticking to the one-child policy, could possibly eliminate the need for coercion on the part of the government.

It appears the Chinese government is already making some improvements in its system of providing contraceptives.<sup>315</sup> Over the past two decades, the Chinese government has noted an increase in the availability of reproductive information and choice of contraceptives.<sup>316</sup> Additionally, self-service condom vending machines have been installed in nearly twenty Chinese cities for convenient access to birth control.<sup>317</sup> Moreover, family planning officials are providing rural women with information on different types of contraceptives, helping them to make "informed choices about which contraceptive they want to use."<sup>318</sup> Continued improvements in the availability of various birth control methods could only help maintain China's population growth rate.

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308. *Understanding IUDs, supra* note 304.

309. *See generally Coercive Population Control in China, supra* note 13.

310. *Understanding IUDs, supra* note 304.

311. *See generally id.*

312. *See generally Greenhalgh, supra* note 37.

313. *Birth Control, at* <http://www.plannedparenthood.org/BC> (last visited Oct. 9, 2003).

314. *See generally Greenhalgh, supra* note 37.

315. *See China: Family Policy Gains Understanding, supra* note 4.

316. *Id.*

317. *Id.*

318. *Id.*

#### *D. Improving the Quality of Health Care*

China could also improve the effectiveness of the population control policy by implementing a better health care system.<sup>319</sup> Low quality health care has been a constant source of patient injury, and individuals suffering these injuries are often denied further medical attention.<sup>320</sup> Raising the level of training for health care providers would reduce the number of patient injuries and would likely increase the effectiveness of birth control measures.<sup>321</sup> Improving the health care system would incur significant costs for the government, but the benefits would outweigh the costs. More effective birth control measures would reduce the number of babies born due to failure of contraceptives, and the overall improved health of patients would reduce costs of continued treatment for injuries.

In an effort to improve the quality of health care provided to its citizens, the Chinese government has announced plans for changes in the health care system with the goal of improving reproductive health.<sup>322</sup> The State Family Planning Commission has proposed three programs to be carried out during the Tenth Five-Year Plan from 2001 to 2005.<sup>323</sup> The three programs include a reproductive infection control program, which would reduce the occurrence of infectious reproductive diseases; a birth defect control program, which would reduce the occurrence of birth defects by "[making] use of the [world's] most advanced techniques and research on the prevention and treatment of birth defects;" and a contraceptive improvement program, which would provide better contraception services and promote contraception.<sup>324</sup>

#### *E. Changing Women's Roles in Society*

Perhaps one of the most effective ways to maintain population control in China would be to move further away from the traditional models of women in society.<sup>325</sup> Since the traditional role of the Chinese woman is to bear many children, work in the home, and take care of the family, to implement a one-child policy without providing

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319. See generally Hong & Ebanks, *supra* note 32.

320. *Id.* at 38.

321. See *id.*

322. Qin Chuan, *Programmes Focus on Reproductive Health*, CHINA DAILY, June 7, 2001, available at 2001 WL 7482614.

323. *Id.*

324. *Id.*

325. See generally Greenhalgh, *supra* note 37.

women opportunities to work outside the home leaves the woman's role in question.<sup>326</sup>

According to Yang Fukui, Executive Vice-Director of the China Family Planning Association, "[w]omen's positions have greatly improved in society, and old sexist ideas have been largely conquered."<sup>327</sup> Since the implementation of family planning policies, the Chinese government has repeatedly touted the benefits of the policies to women: "[i]n this cheerful story, birth planning has reduced the burden of reproduction on women, in the process enhancing their health and allowing them to participate more fully in education and social production."<sup>328</sup> Through implementation of the one-child policy, women can "stop being a baby machine," allowing them to focus on personal development through education and employment.<sup>329</sup>

As optimistic as the situation depicted by the government may seem, there is no quick fix for erasing centuries of traditional ideology about women's roles in society.<sup>330</sup> To say that women are benefiting from population control policies is one thing, but to credit the change as a direct effort by the government to improve the lives of Chinese women is another thing altogether.<sup>331</sup> Critics suggest although women's lives are improving, the problem remains that birth control programs stem from the needs of the state, not the needs of the women affected.<sup>332</sup> In this light, women are "treated not as subjects but as objects, tools to be managed and used in the achievement of state plans and goals."<sup>333</sup> Regardless of its underlying motivations, as the Chinese government continues modifying the population control policies, women stand to reap benefits.<sup>334</sup> If the government modifies population policies in such a way that will allow women new roles in society, perhaps traditional ideas about women in China will slowly change.<sup>335</sup>

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326. *See generally id.*

327. Guo Aibing, *China Talks About Sex, Health, Life*, CHINA DAILY, July 12, 2002, available at 2002 WL 7169427.

328. Greenhalgh, *supra* note 37, at 867.

329. *Id.* at 869.

330. *See id.*

331. *See id.* at 870.

332. *Id.*

333. *Id.*

334. *See generally* Greenhalgh, *supra* note 37.

335. *See generally id.*

*F. Solidifying Population Control Efforts Through Law*

China has shown no intention to halt population control in the near future, and the government is moving toward codification of its policies to help achieve its goals.<sup>336</sup> On October 17, 2002, Li Peng, Chairman of the Standing Committee of the National People's Congress, summed up China's goals for the future: "China will continue to control population growth, improve population quality, protect and rationally utilize resources, strengthen ecological building, protect and improve the environment, and vigorously promote the coordinated development of the economy, population, resources, and the environment with development as the theme."<sup>337</sup>

After more than twenty years of drafting, the first Population and Family Planning Law in China came into force during 2002.<sup>338</sup> The law provides "a legal basis for prioritizing population control in the national sustainable development strategy."<sup>339</sup> According to Zhang Wieqing, the Director of the Chinese State Family Planning Commission, the law "focuses on decision-making which takes both population and development into account, and which will greatly stabilize the harmony between population and social and economic progress as well as promote sustainable development."<sup>340</sup> The law also emphasizes "human care" and "prohibits coercion, abuse of powers, and infringement on people's legitimate rights and interests."<sup>341</sup> Zhang also acknowledged national strength and living standards hinge on both economic production and individual consumption, with population control necessary to control the number of individuals consuming resources.<sup>342</sup> Though family planning regulations have been implemented for decades throughout China,<sup>343</sup> until 2002 there

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336. See *Priority on Population Control Legitimized*, XINHUA NEWS AGENCY, Sept. 1, 2002, available at 2002 WL 26134537.

337. *China's Li Peng Speaks at Population Forum*, BBC MONITORING, Oct. 20, 2002, available at 2002 WL 101934641.

338. *Priority on Population Control Legitimized*, *supra* note 336.

339. *Id.*

340. *Id.*

341. *New Law Guides Family Planning in China*, at <http://www.epirc.org.cn/enews20020314.htm> (last visited Oct. 9, 2003).

342. *Priority on Population Control Legitimized*, *supra* note 336.

343. For example, the Yonghe Town propaganda document "Decision on Intensifying Realization of Planned-Birth Work Goals" is based on a government document, and lists several family planning regulations:

1. To control all young women who attain the full age of 16 and all young men who attain the full age of 18;

was no official law on family planning.<sup>344</sup> Perhaps more concrete guidelines and goals for population control will lead to fewer excesses in the future.

### IX. CONCLUSION

While Chinese citizens experience constraints on their reproductive freedom through family planning programs, most recognize the need for policies that keep the population in check.<sup>345</sup> Public acceptance of the need to reduce the population tend to legitimize the government's use of coercion to attain population targets,<sup>346</sup> and resistance would probably only raise the level of coercion. While some level of coercion seems to be evident from various reports, the extent of such is difficult to ascertain.

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2. All those who marry early and give birth early, are pregnant or have children, shall unexceptionally undergo abortion and sterilization surgeries, and shall be imposed heavy monetary penalties;

3. All women with 1 child shall undergo device-insertion surgeries 2 months after giving birth, and must undergo 4 examinations a year. Shall they fail to present themselves twice for check-up or fail to undergo device-insertion surgeries within 4 months, they shall without exception be sterilized;

4. All women with 1 boy shall without exception be sterilized after giving birth;

5. All women with 2 children shall without exception be sterilized within 1 month after their second child is born;

6. Tests to identify the sex of fetuses are prohibited.

*Forced Abortion and Sterilization in China: The View from the Inside, supra* note 86, at 66-67 (testimony of Harry Hongda Wu, Executive Director, Laogai Research Foundation).

344. *See Priority on Population Control Legitimized, supra* note 336.

345. LEE & FENG, *supra* note 24, at 133.

The need for some kind of family planning policy is so widely accepted that during the spring of 1989, when millions of Chinese took to the streets of Beijing and elsewhere to voice their dissatisfaction with the government over a wide variety of political and social issues, virtually none of the criticism was aimed at the family planning policy.

*Id.*

346. *See id.* at 134. Many Chinese are sympathetic to victims of coercive tactics, but have accepted that excesses are unavoidable and necessary for the policies to be effective. *Id.*

Whatever one's conclusions are about the coerciveness of China's population control policies, the effectiveness of the policies in reducing the population in China are evident. The reduction in the population has brought about several positive changes in China,<sup>347</sup> but the biggest flaw in China's current population control policies is the exercise of coercion by local family planning officials. If the reports of coerciveness are accurate, the same amount of government effort rewarding citizens who abide by family planning policies would keep population growth within reasonable bounds. The Chinese government could effectively eliminate the need for coercion by providing citizens with more positive incentives for limiting family size. If individuals knew they would get substantial economic benefits for limiting their family size, they would likely make their best effort to stay within the guidelines. The government could eliminate the need for individuals to have children as a means of support for their old age by setting up a social security system to care for seniors.

China has already achieved a noteworthy accomplishment by providing contraception to women of childbearing age at no cost. By increasing government spending and education efforts to provide a wider variety of contraceptive methods to women, women might be more willing to abide voluntarily by the one-child policy. If the roles of women in society continue to change and more opportunities become available for women to obtain education and find gainful employment, many women may voluntarily decide not to have children. In this scenario, women would need no coercion from the government to use birth control.

If the government is to curb the growing sex ratio disparity between males and females and to prevent any further shortage of marriageable women, it must put a stop to female infanticide. The government has assumed through its promotion of the one-child policy that equality exists between male and female children. However, this is not the reality.<sup>348</sup> If the national policy continues to limit couples to having one child, the government must denounce traditional male preference ideals to prevent the killing of female babies. Though the government has discouraged the practice of female infanticide through slogans and press releases,<sup>349</sup> it may need to reinforce words

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347. See Greenhalgh, *supra* note 37.

348. Li, *supra* note 117, at 583.

349. Slogans such as "Boy or girl, it's a child" have been introduced by the government in an effort to alleviate the sex ratio imbalance and to reduce the

with action. If citizens still prefer male children as a means of provision for old age, the creation of a social security system might help eliminate the practice of female infanticide. If the preference for males is purely cultural, the government will need to employ means to emphasize the desirability of having a female child.

The Chinese population control policies have proven successful in many ways, but there is still room for improvement. The Chinese government has already recognized the need to reform its current policies concerning population, and it should continue making improvements to its population policies as we move forward into the twenty first century. Perhaps with enough effort, China may even be able to alleviate some of the disastrous effects of previous coerciveness.

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occurrence of practices such as sex-selective abortion. *Forced Abortion and Sterilization in China: The View from the Inside*, supra note 86, at 74 (testimony of Harry Honga Wu, Executive Director, Laogai Research Foundation).

