



Chinese Human Rights Defenders (CHRD)

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Promoting human rights and empowering grassroots activism in China

“I Don’t Have a Choice over My Own Body”

The Chinese Government Must End its Abusive Family Planning Policy

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“I don’t have a choice over my own body. If I don’t insert it [the intrauterine device], I’d be detained,” wrote a woman on an internet forum for mothers.¹

“I discover that in China, in this society, women in villages have no human rights. They [local family planning officials] even said that I am under their management, that I do not have a choice, that whatever they say I have to do,”² wrote another woman on the same forum.

This year marked the thirtieth anniversary of China’s family planning policy, often referred to as the “one-child policy.” In recent years, the government has carved out many exceptions to “one-child” aspect of the policy, leading to widespread speculation about its current status and future: Are people still bound by the policy, or can they pay their way out of it and have as many children as they want? Is the government going to loosen the policy, allowing couples to have more than one child?

CHRD argues that this focus is misplaced. Though the National Population and Family Planning Law, enacted in 2002, was ostensibly designed to rein in abusive practices associated with the family planning policy, the Chinese government continues to use coercion and violence to implement the policy.³ The family planning policy remains abusive of Chinese citizens’ reproductive rights regardless of the number of children each couple is allowed to have, and will remain so unless the policy in its current form is abolished.

In this report, CHRD documents human rights abuses associated with the implementation of the family planning policy from across the country in the past five years, demonstrating that

¹ “Response from respondent 25: urgent!!! Can I refused to be inserted with [contraceptive] rings? How do you handle the family planning officials and not be inserted with rings? 24 楼 回复:急!!! 不上环可以吗? 怎么可以应付计生办不用上环?,” March 26, 2008, <http://bbs.ci123.com/post/2819169.html/15>

² “Response from respondent 42: urgent!!! Can I refused to be inserted with [contraceptive] rings? How do you handle the family planning officials and not be inserted with rings? 24 楼 回复:急!!! 不上环可以吗? 怎么可以应付计生办不用上环?,” March 26, 2008, <http://bbs.ci123.com/post/2819169.html/15>

³ In China, the policy is officially referred to as the “family planning policy” (计划生育政策), also known as the “one-child policy.” In this report, we will refer to the policy as “family planning policy.” This is because the term one-child policy, although poignant, does not fully describe the situation as some couples are allowed more than one child and that it is the coercion and violation of reproductive rights, not the number of children allowed, that is the focus of the report.

serious violations continue to occur despite talk of change:

- Married people are pressured to sign “contracts” with the government in which they promise to comply with various aspects of the policy;
- Married people are required to obtain permission from the government before they give birth;
- Married women are pressured to undergo regular gynecological tests in order for the government to monitor their reproductive status;
- Married women are urged to insert intrauterine devices (IUDs) or be sterilized when they have reached their birth quotas,⁴ thus depriving them of their choice over birth control methods;
- Women who are pregnant out-of-quota—which includes premarital pregnancies—are often forced to abort the fetuses even in advanced pregnancies;
- Men and women who have violated the policy, as well as their families and relatives, have been punished with arbitrary detention, beatings, fines, and property seizures; others have been fired from their jobs and their out-of-quota children have been denied household registration permits (*hukou*);
- Both parents and children face discrimination as a result of the policy, as education and employment opportunities and even social services are linked to compliance with the policy. The highly arbitrary and uneven way the policy is being carried out across the country also results in unequal treatment between couples who share similar circumstances.

These abuses frequently occur in local campaigns launched by authorities to crack down on what they perceive as widespread non-compliance with the policy, and occasionally outside of these campaigns at the whim of the officials involved in implementing the policy. Family planning officials at the grassroots level are given incentives as well as pressure by their superiors to fulfill certain targets in carrying out the policy. Individual officers and their teams are pitted against each other in their ability to meet these quotas, and those who excel in enforcing a certain number of the “four surgeries” (insertion of IUDs, sterilizations, abortions and late-term abortions) or the “three examinations” (examinations for pregnancies, the status of IUDs, and for gynecological diseases or illnesses) are given better pay, bonuses and promotions. Those who do not are criticized and their careers are jeopardized. The women and men whose bodies are concerned are seen as numbers, rather than people whose choices should be respected.

The implementation of the policy is extremely uneven across the country. Not only do provincial governments adopt different regulations, but the work of implementing the policy is subject to various local policy directives, as well as the interpretations of local officials. A woman bearing her second son might be forced to abort the fetus in some areas, while a similarly situated woman might be asked to pay a fine in another area. Furthermore, the

⁴ Birth quota refers to how many children a couple is allowed to have. For most couples, they are only allowed one child, but for some, they can have more than one child if they meet the criteria the government has set for exemption. Please see section A for a lengthier discussion on this topic.

motivations of local officials play a large role in how the family planning policy is enforced. For example, in developed areas, where population pressures have eased as the result of a variety of factors, some officials may refrain from pursuing aggressive measures, while official in other areas may order strict and brutal campaigns to further their own careers.

While it has become easy for the rich and well-connected to skirt the regulations, and for China’s small yet growing middle-class to buy their way out of the policy, many cannot afford the fines, called “social maintenance fees.”⁵ These fines have become an important source of income for local governments and family planning offices, especially in rural areas. The fines are also highly arbitrary, as local officials have wide latitude in setting the levels of the fines, thus providing an opportunity for corruption.

A combination of factors—fear, paucity of legal knowledge, lack of confidence in the judiciary and in the government in general on the part of the victims, as well as the silencing of journalists and lawyers by government officials—make it particularly difficult for CHRD to obtain a detailed picture of the policy’s implementation across the country. For example, we do not know to any degree of certainty or precision the total number of these forms of abuses, how they vary across the country, and how they have changed in the last few years. However, despite these limitations, what is clear based on recent cases documented in this report is that the problems described are ongoing, egregious and directed mostly against women.

CHRD concludes its report by calling on the Chinese government to abolish its family planning policy, and for officials who have violated the rights of Chinese citizens while enforcing the policy to be held accountable. We also call on the Committee on the Elimination of All Forms of Discrimination against Women as well as the Committee on Economic, Social and Cultural Rights to focus on the family planning policy in their next reviews of the Chinese government’s compliance with its obligations under the Convention on the Elimination of All Forms of Discrimination against Women and the International Covenant on Economic, Social and Cultural Rights, respectively. The two committees should also call on the government to abolish the current policy in order to conform with international human rights standards. Moreover, CHRD urges the Chinese government to extend an invitation to the UN Special Rapporteur on violence against women to visit China.

⁵ Shehui fuyang fei (社会抚养费)

Table of Contents

A. Evolution of the family planning policy in China 5

B. International standards and Chinese law 7

 International Law 7

 Chinese law 8

C. Abuses related to the implementation of the family planning policy 12

 Lack of reproductive health information and services before marriage 12

 Marriage and first child: surveillance, permission and incentives 14

 Forced sterilization 18

 Forced abortions..... 19

 Fines..... 19

 Loss of jobs and social services..... 21

 Crackdown campaigns: arbitrary detention, seizure of properties and violence 22

D. Deprivation of choice..... 24

E. Discrimination against one-child policy violators and their children 26

F. Enforcers of China’s family planning policy 27

G. Lack of Remedies and Accountability 28

H. Conclusion and Recommendations 30

A. Evolution of the family planning policy in China

In response to a rapidly increasing population, the Chinese government started to advocate for family planning around 1956, when the CCP Central Committee included family planning as a national policy in “An Outline of Agricultural Development.”⁶ However, family planning was all but abandoned during the intervening tumultuous years. At the beginning of the 1970s, the government again focused its attention on the need of a policy to control the size of the population. Before 1979, the stress was on encouraging a limit of two children per couple. In 1980, however, the Chinese Communist Party (CCP) Central Committee issued an open letter “recommending” that “a couple should only have one child.”⁷ It is this central idea in this landmark document that each couple can only have one child, and the strong resistance it met when it was first implemented, that China’s family planning policy has been termed “the one child policy.” In 1981, the National People’s Congress Standing Committee established the National Population and Family Planning Commission of China under the State Council as the state agency for family planning. At each lower level of government -- the provincial, prefecture, county and township levels -- there are family planning bureaus. A year later, the 12th CCP Congress made family planning a “basic national policy.”⁸ Family planning was then included in the 1982 Constitution, which states in article 49 that Chinese citizens have the responsibility to implement family planning.⁹ The Chinese government has since enforced the “one child policy” across the country.

In the 1980s, those who worked in government work units were often stripped of their jobs and subjected to disciplinary actions if they violated the policy. For those who lived in rural areas and thus earned no pension, the resistance against the policy was stronger and punishments were heavier. Individuals who refused to submit to insertions of IUDs, sterilizations or abortions as part of the policy were dragged into vehicles and taken to the hospitals where they were forced to abort their out-of-quota fetuses or sterilized; resistant family members were handcuffed, tied up and/or detained; and teams of cadres carried out raids in towns and townships in search of violators. Family planning officials would lose their jobs or not be promoted if they fail to reach their family planning targets.

Because many people especially those living in rural areas strongly resisted the one child policy from the outset, government officials, both in Beijing and across the country, soon began tinkering with the policy’s language. In 1984, the Central Committee issued a document outlining its “current family planning policy,” which stated that rural residents with one daughter could have a second child, while ethnic minorities could have between two

⁶ CCP Central Committee, “An Outline of Agricultural Development, 农业发展纲要,” 1956

⁷ CCP Central Committee, “an Open Letter to all members of the CCP Youth League on the control of the question of population growth in China 《关于控制中国人口增长问题致全体共产党员共青团员的公开信》,” September 25, 1980.

⁸ People’s Net, Gansu Daily: a Review of the work of family planning in Gansu Province on the anniversary of the 30th anniversary of the publication of the CCP Central Committee’s open letter 甘肃日报：中共中央《公开信》发表 30 周年甘肃省人口计生工作回眸,” September 21, 2010, http://www.chinapop.gov.cn/gkx30n/mtjj/201009/t20100921_337416.html

⁹ The English version of the 1982 constitution is available here: <http://english.peopledaily.com.cn/constitution/constitution.html>

and four children.¹⁰

Since then, local governments have added even more exceptions to the original one-child rule. These exceptions are numerous, detailed and are different across the country. For example, the Shandong Provincial Population and Family Planning Regulations lists 14 circumstances in which couples are permitted to have more than one child.¹¹ These exceptions have generated debates in recent years regarding the percentage of Chinese citizens who are currently bound by, or who are currently abiding by, the one child policy.

Despite official pronouncements that China will adhere to its current policy for at least the next decade, the Chinese official media have published articles that give an opposite impression: that the rich and famous are defying the rules, that less than half of Chinese people of reproductive age are actually allowed one child, and that pilot schemes will be allowing two children in some provinces.¹² In a July 2007 interview with *China Daily*, a spokesman with the National Population and Family Planning Commission said that less than half (at only 35.9 percent) of the Chinese population is limited to one child because of these exceptions. Couples in many rural areas (or 52.9% of the population) are permitted to have a second child if their first born is a girl, and more than 11% of the population is permitted to have two or more children due to their status as an ethnic minority.¹³ However, since only half of those 52.9% of people will have a girl, in practice, a total of about 60% of Chinese people are allowed only one child.¹⁴ In a 2007 paper, a group of Chinese researchers found that the level of “achieved fertility” is very close to one that would be predicted if one estimates that 60% of Chinese couples are allowed only one child, suggesting that the Chinese citizenry is complying fairly strictly with the government’s family planning policy, according to statistical analysis performed by these researchers.¹⁵

If we take the estimate of 60%, that means, based on data from the 2000 census, that approximately 420 million men and women of reproductive age are permitted to have only one child.¹⁶ China’s implementation of the one child policy thus remains a very serious

¹⁰ China Net (china.com.cn), “The original of current family planning policy in China 中國現行生育政策由來,” April 18, 2008, http://big5.china.com.cn/aboutchina/zhuanti/zgrk/2008-04/18/content_14975523.htm

¹¹ Shandong National People’s Congress, Shandong Provincial Population and Family Planning Regulations (山东省人口与计划生育条例), effective since September 28, 2002, <http://www.china.com.cn/chinese/zhuanti/jhsy/457801.htm>

¹² *The New York Times*, “China Sticking With One-Child Policy,” March 11, 2008; *China Daily*, ‘Guangdong to relax family policy by 2030,’ September 25, 2010, http://www.chinadaily.com.cn/china/2010-09/25/content_11342254.htm; AFP, “Critics urge pressure as China one-child policy hits 30,” September 25, 2010

¹³ *China Daily*, “Most people free to have more child [sic],” July 11, 2007, http://www.chinadaily.com.cn/china/2007-07/11/content_5432238.htm

¹⁴ Assuming that half of those 52.9% will give birth to a girl, then 26.45% of them would only be allowed one child. If we add 26.45% to the 35.9% of Chinese who are limited to one child regardless of the gender of their first child, the total of Chinese people allowed only one child is 62.35%.

¹⁵ Gu Baochang, Wang Feng, Guo Zhigang, Zhang Erli, “China’s Local and National Fertility Policies at the End of the Twentieth Century,” *Population and Development Review* 33(1): 129-147, March 2007

¹⁶ The number of men and women of reproductive age is taken from the 5th national census in China conducted in 2000. The total number, 718,432,187, was calculated by adding the numbers of men and women between the age of 15 and 49. (For the population data, see Table 1.7 in 第五次人口普查数据(2000年), <http://www.peacehall.com/news/gb/misc/2010/09/201009062152.shtml>). Since the census data was compiled in

concern due to the sheer number of people affected by it. Furthermore, regardless of the number of Chinese couples who have more than one child, the fact remains that the Chinese government continues to use coercion and violence to control the number of children its citizens have, depriving its citizens of their reproductive rights and intruding into the most private sphere of life. Minorities, who are allowed to have between two and four children, are nonetheless subjected to similar inhuman and degrading treatment as authorities limit their number of children to that stipulated under relevant law and regulations, demonstrating that relaxing the number of children allowed under the law would not solve the fundamental human rights problem that plagues China’s family planning policy.¹⁷

B. International standards and Chinese law

International Law

The right of parents to freely plan their families was first recognized by delegates to the 1968 United Nations International Conference on Human Rights in Tehran, who wrote that “the protection of the family and of the child remains the concern of the international community,” and that “parents have a basic human right to determine freely and responsibly the number and the spacing of their children.” This concept was expanded to include the right to reproductive health during the 1994 International Conference on Population and Development (ICPD), held in Cairo, and the 1995 Fourth World Conference on Women, held in Beijing. The ICPD Program of Action defines reproductive health as:

a state of complete physical, mental and social well-being and ... not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes. Reproductive health therefore implies that people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when and how often to do so. Implicit in this last condition are the right of men and women to be informed and to have access to safe, effective, affordable and acceptable methods of family planning of their choice, as well as other methods of their choice for regulation of fertility which are not against the law, and the right of access to appropriate health-care services that will enable women to go safely through pregnancy and childbirth and provide couples with the best chance of having a healthy infant (Article 7.2 from the ICPD Program of Action).

It also elaborated on reproductive rights and stress that couples have the right to make decisions on reproductive matters free from coercion:

...the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. It also includes their right to make decisions concerning reproduction free of discrimination,

2000, it only serves as a rough estimate here to demonstrate the impact of the population control policy on the lives of Chinese men and women.

¹⁷ Human Rights Watch, Interviews with three Tibetan women from Sichuan and Qinghai Provinces, conducted between March and May 2007

coercion and violence, as expressed in human rights documents (Article 7.3 from the ICPD Program of Action).

The two treaties to explicitly affirm these rights are the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). According to General Comment No. 14, issued by the Committee on Economic, Social and Cultural Rights, Article 12 of the ICESCR, which states that individuals have the right to “the highest attainable standard of health,” includes “the right to control one’s health and body, including sexual and reproductive freedom.”¹⁸ Reproductive freedom “means that women and men have the freedom to decide if and when to reproduce and the right to be informed and to have access to safe, effective, affordable and acceptable methods of family planning of their choice as well as the right of access to appropriate health-care services that will, for example, enable women to go safely through pregnancy and childbirth.”¹⁹

The role of the state with regard to family planning is envisioned by both ICESCR and CEDAW as constructive, rather than restrictive. CEDAW calls on states to provide “access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning” (Article 10.h) and develop regulations which guarantee women’s rights to “decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights” (Article 16.e).

Although China has ratified both the ICESCR and the CEDAW,²⁰ by limiting the number of children which women are allowed to bear and the spacing and timing between them, as well as coercing men and women to adopt certain methods of family planning, the family planning policy directly contravenes these treaties. In addition, the discrimination against out-of-quota children violates the non-discrimination principle outlined in article 2 of the ICESCR, which state that individuals enjoy these human rights, including the right to education and employment, “without discrimination of any kind as to...birth or other status.” In addition, the acts of violence that are carried out by family planning officials violate provisions of another treaty that China has ratified, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Indeed, in December 2008, after the Committee Against Torture’s review of China’s compliance with the CAT, the Committee noted with concern “the lack of investigation into the alleged use of coercive and violent measures to implement the population policy.”²¹

Chinese law

¹⁸ The right to the highest attainable standard of health (i.e. article 12 of the International Covenant on Economic, Social and Cultural Rights) General Comment No.14, E/C.12/2000/4, paragraph 8.

¹⁹ The right to the highest attainable standard of health (i.e. article 12 of the International Covenant on Economic, Social and Cultural Rights) General Comment No.14, E/C.12/2000/4, note 8.

²⁰ China signed the ICESCR on October 27, 1997 and ratified it on March 27, 2001; it signed CEDAW on July 17, 1980 and ratified it on November 4 of the same year.

²¹ Committee against Torture, Concluding observations of the Committee against Torture: China, CAT/C/CHN/CO/4 December 12, 2008, paragraph 29.

The Chinese Constitution contains four articles on family planning.²² Article 25 states that “the state promotes family planning so that population growth may fit the plans for economic and social development.” Article 49 states that “husband and wife have the duty to practice family planning.” Articles 89 and 107 stipulate that the State Council and local people’s governments at and above the county level exercise the power to administer the work of family planning at the national level and the local level, respectively. Although these articles do not define “family planning,” implicit in the wording of these provisions is that family planning is seen as a matter within the domain of the state, its goal is to control the size of the population for the benefit of development and that it is the *duty* of citizens to do their part to implement this policy. Conspicuously missing is the *right* of citizens to reproductive freedom.

The family planning policy is regulated and implemented according to the national Population and Family Planning Law²³ (hereafter referred to as the PFPL), effective since 2002. Before then, the implementation of family planning was governed only by policy documents and regulations at the local level. According to the government, the intended purpose of the PFPL is to standardize the implementation of the policy across the nation. The PFPL gave rise to two national regulations, the Regulation on the Technical Service in Family Planning²⁴ and Measures for Administration of Collection of Social Maintenance Fees,²⁵ both promulgated by the State Council. At the provincial level, there are the regulations passed by the provincial people’s congresses or their standing committees, which have been revised to bring them in line with the PFPL. At the sub-provincial level, there are many more local government regulations and policy documents related to family planning.

The PFPL mentions the term “rights” six times. Article 1 states that the policy is implemented, among other reasons, to “protecting the legitimate rights and interests of citizens,” while Articles 4, 39 and 44 state that one can seek an administrative review or initiate administrative proceedings should one feel that one’s rights and interests, which include “personal and property rights,” are infringed upon. Article 17 asserts that citizens have “the right to reproduction.” However, in the same article it says citizens have “the obligation to practice family planning according to law.” The reproductive right promised is, unfortunately, not defined in the PFPL, nor in the two national regulations, the provincial regulations, the local regulations or policy documents. On the other hand, the further one goes down the hierarchy of these government documents, the more clearly is the coerciveness of the policy spelled out.

Article 18 of the PFPL provides that the state “advocates” for one child per couple, but at the

²² Family planning made its first appearance in Chinese constitution in the 1978 constitution, which preceded the current 1982 constitution. Article 53 of the 1978 constitution stated that “the state encourages and promotes family planning.”

²³ NPCSC, Population and Family Planning Law (中华人民共和国人口与计划生育法), effective since September 1, 2002, the English version is available here: http://www.gov.cn/english/laws/2005-10/11/content_75954.htm

²⁴ State Council, Regulation on the Technical Service in Family Planning (计划生育技术服务管理条例), effective since October 1, 2001.

²⁵ State Council, Measures for Administration of Collection of Social Maintenance Fees (社会抚养费征收管理办法), effective since September 1, 2002.

same time, it says a couple is only permitted to have a second child upon request, and such requests maybe granted if “the requirements specified by laws and regulations are met.” Article 41 states that those “who give birth to babies not in compliance with the provisions of Article 18 of this Law shall pay a social maintenance fee prescribed by law.” “Advocates” is therefore more of a euphemism, as one cannot violate something that is just being advocated. Similarly, most provincial regulations “advocate” one child per couple, but at the same time list categories of people who are exempt as well as detailed schedules of fines and punishments for those who violate the rule.

Not only do Chinese citizens not enjoy the right to determine the number of their children, they are also deprived of the right to decide on the spacing between their children, even if they are allowed to have more than one child. The provincial regulations in Guangxi Province, for example, stipulate that a couple must wait at least four years for their second child and that the mother must be over 28 years old.²⁶

The PFPL does not state a preference for specific methods of birth control, it states that “family planning shall be practiced chiefly by means of contraception” (Article 19) and that couples shall be “conscientious” in adopting it (Article 20). The government’s role is to create “conditions to ensure that individual citizens make informed choices²⁷ about safe, effective, and appropriate contraceptive methods” (Article 19). However, in some local regulations, the word “conscientious” is dropped. For example, the Ningxia provincial regulations says couples “shall adopt contraceptive methods” while those in Fujian Province says they “shall adopt one effective birth control measure according to the demand of the policy.”²⁸ Some provincial regulations are more explicit, “advocating” women have an IUD inserted once they have had their first child.²⁹ Some provincial regulations require couples with children to adopt “long-term” birth control measures while some spell out more plainly that sterilization is “encouraged” once a couple reaches their birth quota.³⁰ For those who are pregnant with

²⁶ Guangxi Zhuang Autonomous Region People's Congress Standing Committee, Guangxi Provincial Population and Family Planning Regulations (广西壮族自治区人口与计划生育条例), effective since September 1, 2002, article 46

²⁷ Although the official translation has translated the term “zhiqing xuanze” (知情选择) as “knowingly choose” we have used the term “informed choice” instead it is a more accurate translation.

²⁸ Guangxi Hui Autonomous Region People's Congress Standing Committee, Ningxia Provincial Population and Family Planning Regulations (宁夏回族自治区人口与计划生育条例), effective since January 1, 2003, article 26; Fujian Province People's Congress Standing Committee, Fujian Provincial Population and Family Planning Regulations 福建省人口与计划生育条例, effective since September 1, 2002, article 18

²⁹ Hainan Province People's Congress Standing Committee, Hainan Provincial Population and Family Planning Regulations (海南省人口与计划生育条例), effective since December 1, 2003, article 36; Hunan Province People's Congress Standing Committee, Hunan Provincial Population and Family Planning Regulations 湖南省人口与计划生育条例, effective since January 1, 2003, article 22.

³⁰ See for example Article 39 of Jiangsu Provincial Population and Family Planning Regulations (江苏省人口与计划生育条例) promulgated by Jiangsu Province People's Congress Standing Committee and effective since December 1, 2002 and Article 36 of Shandong Provincial Population and Family Planning Regulations (山东省人口与计划生育条例) promulgated by Shandong Province People's Congress Standing Committee and effective since September 28, 2002; Article 45 of Guizhou Provincial Population and Family Planning Regulations (贵州省人口与计划生育条例), promulgated by Guizhou Province People's Congress Standing Committee and effective since September 29, 2002 and Article 23 of Shanxi Provincial Population and Family Planning Regulations (山西省人口和计划生育条例), promulgated by Shanxi Province People's Congress Standing Committee and effective since June 1, 2009.

a child out-of-quota, some local regulations state that “remedial measures,” that is, abortions, should be carried out.³¹ In practice, it is common for local governments to require that women with one child to have IUDs inserted while those with two be sterilized. Such practice is spelled out most clearly in the policy documents and work reports issued by the local governments.³²

Article 39 of the PFPL does outline a number of acts by family planning officials punishable by law or administrative penalties:

- 1) infringing on a citizen's personal rights, property rights or other legitimate rights and interests;
- 2) abusing his power, neglecting his duty or engaging in malpractices for personal gain;
- 3) demanding or accepting bribes;
- 4) withholding, reducing, misappropriating or embezzling funds for family planning or social maintenance fees; or
- 5) making false or deceptive statistic data on population or family planning, or fabricating, tampering with, or refusing to provide such data.

However, the PFPL does not explicitly prohibit forced gynecological testing, insertion of IUDs, sterilization or abortion (including late-term abortions). Most provincial regulations contain provisions which replicate Article 39 without any elaboration, while a few shorten it or fail to mention it at all. In 1995, the National Family Planning Commission issued a notice prohibiting the following conduct in the implementation of the policy: illegal detention, beatings, destruction or seizure of property, levying excessive fines, punishing the couple’s family and friends, preventing legal births, or conducting gynecological tests on unmarried women.³³ However, the notice does not spell out any punishments against officials who breach these prohibitions nor does it prohibit forced “four surgeries” or “three examinations.”³⁴

To conclude, the specifics regarding implementation of the family planning policy are spelled out in greater detail in lower level documents, such as provincial regulations, local policy documents and reports. These documents outline the mandated methods of birth control, categories of exceptions to the one-child rule and the schedule of fines levied against the offenders. These detailed provisions can vary from one province to the next. However, the rights related provisions of the PFPL and the very limited protections against abuses during

³¹ See for example, Article 27 of Anhui Provincial Population and Family Planning Regulations (安徽省人口与计划生育条例) promulgated by the Province People’s Congress Standing Committee and effective since September 1, 2002 and Article 24 of Hainan Provincial Population and Family Planning Regulations

³² The policy, “[women] with one child [should be] inserted with rings; [women] with two children [should be] sterilized (一孩放环, 二孩结扎),” is mentioned in these local government reports: “Linkou Township family planning work achieve results earlier (林口乡计生工作关口前移出成效)” published by Linkou Township government, January 20, 2008, <http://www.zxdj.gov.cn/article/show.asp?id=1952> and “Main points in the work of population and family planning in 2008 in Yanjin County (盐津县 2008 年人口与计划生育工作要点),” March 5, 2008, http://xxgk.yn.gov.cn/canton_model65/newsview.aspx?id=292893

³³ National Family Planning Commission, “National Family Planning Commission on the Issuance of Notice to Adhere to the “Seven Not Allowed” [Policy] in the Administrative Enforcement of Family Planning [Policy] (国家计划生育委员会关于印发在计划生育行政执法中坚持 “七个不准” 的通知), effective since May 19, 1995.

³⁴ The “three examinations” are examinations for pregnancies, the status of the IUDs, and for gynecological diseases or illnesses while the “four surgeries” are insertion of IUDs, sterilizations, abortions and late-term abortions.

implementation of the policy remain vaguely-worded, watered down or omitted altogether. In theory, the PFPL -- a national law--should take precedence over provincial regulations or local policy documents, but in practice, the lower level documents operationalize China’s family planning policy, spelling out more detailed restrictions on Chinese people’s reproductive freedom.

C. Abuses related to the implementation of the family planning policy

Although the implementation of the policy is directed at both sexes, it disproportionately affects women, as women tend to shoulder most of the responsibilities of birth control. The policy is therefore an affront to women’s rights as well as the source of serious form of violence against women. Below we describe the various aspects of China’s family planning policy in a woman’s lifetime. We have restricted our case studies to those which occurred in the past five years, to show that the coercive aspects of the family planning policy continue to be carried out. The Chinese government and its officials continue to view Chinese citizens as numbers—the number of married women who are under reproductive surveillance, fined, forcibly sterilized and the number of fetuses forcibly aborted is often used an important aspect of evaluation of official performance. The drive towards reaching certain quotas often results in an inflexible and insensitive attitude on the part of officials tasked with carrying out the policy towards those individuals affected.

Lack of reproductive health information and services before marriage

While the PFPL states that schools shall carry out sex education and the Bureau of Education’s Guidelines for Primary and Secondary School Health Education outline the content of this education, in reality there is little to no sex education in schools. Students are taught about the biology of puberty, to protect oneself against sexual abuse and that premarital sex is dangerous and should be avoided because it “seriously affects one’s physical and mental health.” Students are not taught about birth control methods at all. In a July 2010 survey of more than 3,000 people conducted by the Social Research Center of the *China Youth Daily*, 91.2% said there is a lack of sex education for adolescents, out of which more than half said such education is “seriously lacking.”³⁵ In a country where 60% of its young people think that premarital sex is acceptable according to the same survey, this abstinence-only education policy is clearly inadequate.³⁶ Respondents also said they were frustrated at the lack of reproductive health information provided by the government, as its family planning services focus exclusively on married couples.

In some cases, especially during strike-hard campaigns to stamp out illegal births, those responsible for family planning will go so far as to force unmarried women to have their

³⁵ Xinhua, “Worry for Sex Education of Chinese Youths: Both Schools and Parents Are Shy (中國青少年性教育之隱憂：學校父母皆羞澀)” August 3, 2010, http://big5.xinhuanet.com/gate/big5/news.xinhuanet.com/edu/2010-08/03/c_12401929.htm

³⁶ China.com.cn, “*The Straits Times*: Chinese people lack sex education; are conservative about sex (海峽時報：中國人缺乏性教育 對性很保守)” August 18, 2010, http://news.ifeng.com/opinion/society/detail_2010_08/19/1985061_0.shtml

fetuses aborted.

- Liu Dan (刘丹), from Liuyang City in Hunan Province, became pregnant before she reached the age at which she could legally get married, which is 22 for men and 20 for women. Liu and her boyfriend then decided to get engaged. Liu’s child was due to be born on March 5, 2009 and just a little over a week before the due date, on February 26, Liu was seized at her home by officials from the town family planning bureau, who forced her to undergo an abortion. Liu and her child died on the operation table.³⁷
- Ms. Xie, from Zhutai Town in Shandong Province, was forced to abort her fetus on September 4, 2010 when she was six months pregnant. The reason, according to the officials from the Zhutai Town Family Planning Office, was that Mr. Zhao, Xie’s husband, was three months short of 22 years old, the legal marriage age for men in China, when Ms. Xie got pregnant.³⁸

The lack of sex education as well as the paucity of accurate reproductive health information available before marriage are two main factors contributing to a high rate of abortions among young women. According to a July 2009 *China Daily* article, government statistics show that most of the women seeking abortions at registered medical institutions are single women between the age of 20 and 29.³⁹ The same article reports that many of these women had little knowledge about pregnancy prevention, or knowledge about sexually-transmitted diseases.⁴⁰

While a lack of information, poor planning, or any number of other causes may lead to unplanned pregnancies for young women, the abortions which often result are frequently due to pressures related to the family planning policy. If a woman gets pregnant before she is married, then the birth is considered out-of-quota, and she will be required to pay a fine, or pressured by family planning officers to undergo an abortion. If the woman decides to give birth to the child, then it will be extremely difficult for the child to be registered with a *hukou*. A “*hukou*” is a residency permit, or a household registration record, that identifies a person as a resident of a certain area and determines the kind of social services one is eligible for and the kinds of local regulations and rules one is subjected to (see p.26-7). This will have a ripple effect on the child’s (and the mother’s) life, and often lead to increased discrimination and hardship for both mother and child.⁴¹

³⁷The original post “Liuyang City Family Planning Commission forcible late-term abortion led to the death of girl and baby (浏阳市计生委强制引产致死少女和胎儿)” has since been deleted and reposted repeatedly so it is impossible to trace its origins. Mr. Democracy Center has verified this information by calling the victims on the phone.

³⁸ *Morning Post*, “Husband reaches 22-year-old in two months, wife subjected to forced late-term abortion 丈夫差2个月满22岁，妻子被强制引产,” September 6, 2010, <http://www.peacehall.com/news/gb/misc/2010/09/201009062152.shtml>

³⁹ *China Daily*, “Abortion statistics cause for concern,” July 30, 2009, http://www.chinadaily.com.cn/china/2009-07/30/content_8489656.htm

⁴⁰ *Ibid*

⁴¹ Howard W. French, “Single Mothers in China Forge a Difficult Path,” April 6, 2008, <http://www.nytimes.com/2008/04/06/world/asia/06china.html>

Marriage and first child: surveillance, permission and incentives



*"Letters of responsibility"
and forced testing*

Picture 1: Men and women signing "Letters of Responsibilities" in Linhai City, Zhejiang Province (Photo found in article dated September 3, 2007, which is available here <http://www.duqiao.gov.cn/show.aspx?cid=88&id=4133>)

One of the main focus of China's family planning policy is ensuring that only legally married men and women are allowed to have a child. To prevent pregnancies which may violate the family planning policy, government offices ask those one level down to sign agreements with them, stipulating certain birth quotas for the jurisdictions of the offices lower down. At the

grassroots or at the lowest administrative level, staff at the family planning offices ask married people in their jurisdiction or in some cases, large companies ask their employees, to sign "Letters of Responsibility for Family Planning Goals."⁴² These "letters" are in fact contracts that stipulate that the undersigned agree to comply with various aspects of the family planning policy, such as applying for birth permits, being tested for pregnancy status regularly, having IUDs inserted and being sterilized. The documents also list fines and punishments for breaking the agreement. Local governments often boast of high rates of people in their jurisdiction signing the contracts.⁴³ Although letters of responsibility are not mentioned in the PFPL, some provincial regulations mandate such contracts.⁴⁴

One of the requirements in these contracts is that women submit to periodic gynecological tests. The aim of the tests is to uncover any removal of previously-inserted IUDs, pregnancies or abortions, as well as to check for gynecological illnesses. The test results are recorded using the national database, "Women of childbearing age Information System" (WIS). The frequency of these tests varies locally and depends on the reproductive potential of the

⁴² For an example of such contract, see <http://www.nnjn.gov.cn/jishengju/upload/2009/6/2009650442787.doc>, available on the website of Jiangnan District government in Nanning City, Guangxi Province.

⁴³ See for example, Xinhua, "Shandong Cangshan economic development zone: Promote family planning contracts (山東蒼山經濟開發區：推行計劃生育合同)," May 31, 2010, http://big5.xinhuanet.com/gate/big5/sd.xinhuanet.com/wq/2010-05/31/content_19935821.htm; Duqiao government website, "Signing of family planning contracts in Xikou Office (溪口办事处计划生育合同签订)," September 3, 2010, <http://www.duqiao.gov.cn/show.aspx?cid=88&id=4133>

⁴⁴ For example, Article 11 of Shandong Provincial Population and Family Planning Regulations (山东省人口与计划生育条例) promulgated by the Shandong Province People's Congress Standing Committee and effective since September 28, 2002.

women—whether they have been sterilized, or if they are near the end of their childbearing years. In Jiangxi Province, for example, local regulations require that women be tested between one and three times a year.⁴⁵ Women who fail to turn up at these tests within a mandated timeframe might be punished by the local government. For women who have migrated elsewhere, this can be very burdensome. Although family planning offices in a woman’s hometown might accept test results certified by their counterparts at the county level or above, sometimes they require the women to return home for such tests. These tests are therefore psychologically, physically and sometimes financially, onerous to migrant women.

- Mr. Li, a migrant worker from a villager in Suixi County in Anhui Province, returned to his home village in October 2009 with his wife and child only to find that the land he had contracted from the village commune for farming and for building his home has been confiscated by the local government. Li was punished for failing to return when summoned by the local government to have his wife tested for pregnancy in 2001. According to the vice mayor of the town, other farmers in the province were subjected to similar punishment for failing to comply with the family planning policy. The town government, he said, had no choice but to confiscate Mr. Li’s land because the town cadres were pressed hard by higher level officials to tighten compliance with the policy at the time.⁴⁶
- On April 19, 2009, Chen Wei (陈魏), from Qingyang Town in Jiangsu Province, was picked up at her home by a car sent by the neighborhood committee after officials grew concerned she would not get tested before April 20, the deadline for periodic gynecological tests for women in the neighborhood. Chen was restrained and verbally assaulted en route before being attacked and violently beaten at the family planning offices by two staff members. A number of male staff members then remained in the room while Chen was roughly examined by female staffers. Chen’s husband Gong Hengyuan (龚恒源) reported the incident to the police on April 19.

After Chen’s case was reported online, the town’s vice Party secretary and the director of the family planning office were given a warning by the Party, and the director was removed from his position and given another job. As to the two people involved in beating Chen, one was given several days of administrative detention but the other was not punished. The local government negotiated with Chen, demanded that she not sue the government and in return, she would received RMB 5,000 for medical expenses. Although Chen remained bitter about the experience, she decided against suing the government because she did not believe she could win. None of the people involved had criminal charges brought against them; the punishments were very light and, according to the activist following the case, certainly would not

⁴⁵ Jiangxi Provincial government, “Jiangxi Province Methods of Implementation of IUD and Pregnancy Tests for Married Women of Childbearing Age (江西省已婚育龄妇女环检、孕检实施办法), effective since October 1, 2005, <http://www.ruichang.gov.cn/zfbm/display.asp?id=ZF200821163227&dept=%BC%C6%C9%FA%CE%AF>

⁴⁶ Information verified by staff at Mr. Democracy Center

affect the careers of the officials.⁴⁷

In addition to requiring women to be tested regularly to ensure their compliance with the policy, local officials frequently provide monetary incentives to neighbors, relatives, friends, and coworkers to spy on women and inform the authorities of possible violations to the family planning policy. For example, in one county in Gansu Province, a 2010 local rule provides that individuals may be given up to RMB 5,000 for reporting violations.⁴⁸

Women not allowed to give birth unless they have birth permits

Many, if not all provincial regulations explicitly stipulate that once a couple has decided to have their first child, they must obtain a birth permit (生育证) from the family planning offices at the township level and/or members of the neighborhood committee or the village committee.⁴⁹ For couples that fulfill the criteria for a second child, they must make another application for a birth permit from the same offices. The birth permit system is an important instrument in controlling citizens’ reproductive behavior as it denies permission to give birth to those out-of-quota. Furthermore, the birth permit system is especially confusing and inconvenient for migrant couples, who often have to travel multiple times and covering great distances, even when the woman is far along in her pregnancy, between their hometowns and their adopted cities in order to secure the permits as family planning officials in each location deny responsibility to issue them.⁵⁰

Preferential treatment of single children

Couples are given incentives for having one or no children. The PFPL honors those who voluntarily pledge to have only one child with a Certificate of Honor for Single-Child Parents. These couples and those who pledge not to have any children at all are awarded money and are entitled to various benefits depending on the details stipulated in provincial regulations and relevant local documents. For example, they may be given an additional portion when the village allocates land and benefits and when they get old, they will receive a monthly pension from the state. Furthermore, the government treats these single children preferentially in education, employment, health care and other social services. For example, the government subsidizes these children’s school fees and other education-related expenses and gives them bonus points on school entrance exams.

Forced insertion of intrauterine devices (IUDs)

The extent to which women are subjected to forced insertion of IUDs vary from one locality

⁴⁷ CHRD, “Sihong County, Jiangsu Province Family Planning Bureau Carries out Violent Pregnancy Tests (江苏泗洪县计生部门暴力孕检)”, April 25, 2009, http://crd-net.org/Article/Class53/200904/20090425150109_15135.html

⁴⁸ The Population and Family Planning Office of Ningxian, “Implementing Measures for Rewarding the Reporting of Family Planning Policy Violations in Ning County (宁县计划生育有奖举报制实施办法),” effective since March 31, 2010, <http://www.nxrk.gov.cn/ArticleShow.asp?NewsID=796>

⁴⁹ The Chinese government has, in some areas, replaced the birth permit with the “Manual of Family Planning Services” (计划生育服务手册) for the first born. Regardless of the name of the document, Chinese citizens are still required to apply and seek permission from the family planning authorities in order to give birth.

⁵⁰ China Midwives Network, “Hukou was moved three times, difficult to register for a birth permit(户口辗转三地生育证难办), April 4, 2008, <http://www.cnzcs.com/zhuchanxuexiao/ShowArticle.asp?ArticleID=13088>

to the next. In some areas, family planning officials visit married women who have reached the birth quotas and “persuade” them to adopt the procedure. Failure to be “persuaded” typically includes fines and denial of *hukou* to the child.

Although the Chinese government claims that women adopt these measures “voluntarily,” for many women the reality is otherwise.⁵¹ Women are increasingly using the internet to obtain information previously unavailable to them and denounce the coercive aspects of the policy as an affront to their dignity. Below are excerpts from messages women posted on Parenting Forum (<http://bbs.ci123.com/>) between February 2008 and June 2010, an internet forum for young mothers. Although the PLFP states that individuals can “make informed choices about safe, effective, and appropriate contraceptive methods,” users on the forum complain bitterly of being forced to submit to IUD insertion. Some others reply that they have faced no such demands, reflecting the uneven application of China’s family planning policy, as well as the arbitrary power of local officials to direct its implementation.

A woman wrote: “When you apply for a birth permit, you have to pay 500 [RMB] as a deposit for the IUD, and if you do not pay you cannot get the permit. Once the child is born, if you don’t have an IUD inserted, then the deposit is gone and the child is refused a *hukou*. And if your child is not given a *hukou* within the specified time, then you are fined, about 5000 [RMB]. I really don’t understand, the national family planning policy says one has can make “an informed choice,” but where we are this is not possible...what a bad idea. Inserting the IUD isn’t 100% effective, and there is great side effect, so painful!”⁵²

“I feel so helpless, I heard that inserting the IUD isn’t good for your body...but if you don’t insert it, then those people from the family planning office wouldn’t let you [get away with it], they would grab my family. Although it is now said that they cannot detain people, they cannot beat people up, but they would tell you to take a rest in a guest room, to go to the guestroom (the so-called guestroom is the same as a cell, where the windows are fitted with iron bars) where you can only come out after you’ve thought through the matter, then you’d go and get [the ring] inserted (they say no beating but they would come to interrogate you in the middle of the night when you’re so sleepy...[and they ask you] ‘have you thought through it?’ Comrades, tell me, what should I do? How should I deal with them? Shouldn’t Chinese people have human rights?”⁵³

“In our work unit, if we do not insert the IUDs, then the office cannot be rated as an

⁵¹ *Quanzhou Evening Post*, “Family planning commission: China’s family planning policy is not coercive and does not violate human rights (计生委:中国计划生育政策无强迫性 不违犯人权),” February 5, 2010, <http://news.163.com/10/0205/12/5UOQUTJH0001124J.html>

⁵² “Response from respondent 24: urgent!!! Can I refuse to be inserted with [contraceptive] rings? How do you handle the family planning officials and not be inserted with rings? (24 楼 回复:急!!!不上环可以吗? 怎么可以应付计生办不用上环?),” March 26, 2008, <http://bbs.ci123.com/post/2819169.html/15>

⁵³ “Response from respondent 26: urgent!!! Can I refuse be inserted with [contraceptive] rings? How do you handle the family planning officials and not be inserted with rings? (26 楼 回复:急!!!不上环可以吗? 怎么可以应付计生办不用上环?),” March 26, 2008, <http://bbs.ci123.com/post/2819169.html/15>

‘excellent office’ by the end of the year,” said another woman.⁵⁴

“[I] just gave birth to my daughter three months [ago], early this morning three thugs made a lot of noise, telling me to go get an IUD inserted ...I said I don't want to, firstly I'm afraid of the pain and secondly I'm afraid that it has side effects...it'd feel weird...those three triad members became excited, yelling at me telling me to go get an IUD inserted...do women not have the right to choose even the methods of birth control? There are many methods, I just don't want to be cut open and butcher by them like some cat or dog.”⁵⁵

Forced sterilization

Women and (less often) men are urged by family planning officials to be sterilized once they have reached their birth quota. Again, the application of forced sterilization is uneven across the country and is dependent upon the discretion of the particular family planning officials. In some cases, officials threaten to withhold a *hukou* for the couple's child if the mother or father fails to submit to the sterilization procedure. Other times, couples are physically threatened if they refuse. Elsewhere, however, parents can get away with paying fines and bribing the officials. Others never have the request made of them at all. If a couple is considered particularly uncooperative, such as refusing to pay a fine or a bribe, or when they find themselves caught up in the local government's campaign to crackdown on violators of the policy, then sometimes they are forcibly taken away for the surgery.

- On July 15, 2010, 23 year-old Li Hongmei (李红梅), a new mother who gave birth less than a month earlier, was kidnapped along with her baby by officials in Changfeng County, Anhui Province. When her family contacted local officials regarding her disappearance, a quarrel broke out and Li's mother was seized by local police. She was later administratively detained 10 days for "obstructing the carrying out of official duties." The family later learned that Li had been taken to Shuangfeng Hospital, where family planning officials had held Li's baby to coerce Li into signing an agreement consenting to a sterilization procedure. Li fell ill after the procedure, suffering from dizziness and chest pains. In August 2010, Li found a legal representative to help her file a lawsuit, after having been refused many times by lawyers who said they that they could not take on her case because it "involved government policies."⁵⁶
- Zhang Kecui (张克翠), a mother of two from Zhaotong City, Yunnan Province who lives with her husband in Ziyang City, Sichuan Province, was visiting her family back in Zhaotong City when she was seized from her family's home by members of the local subdistrict office on February 5, 2009. Zhang was forcibly sterilized. Members of the subdistrict office did not ask Zhang for her consent, nor did they seek her

⁵⁴ "Response from respondent 35: urgent!!! Can I refuse be inserted with [contraceptive] rings? How do you handle the family planning officials and not be inserted with rings? (35 楼 回复:急!!!不上环可以吗? 怎么可以应付计生办不用上环?)," March 26, 2008, <http://bbs.ci123.com/post/2819169.html/15>

⁵⁵ "Title: the fire is coming! Family planning [officials] told me to have the ring inserted (1 楼 主题:火大大啊~~ 计生叫我上环)", October 31, 2008, <http://bbs.ci123.com/post/5421305.html>

⁵⁶ CHRD, "Anhui Family Planning Cadres Kidnap Mother and Daughter, Force Sterilization, and Detain Relative" (安徽计划生育干部绑架妇婴做绝育手术并拘留家属(图)), August 25, 2010, <http://news.boxun.com/news/gb/china/2010/08/201008251347.shtml>

signature on any authorization document. Zhang, who has two sons, had an IUD inserted three years ago. When interviewed by a journalist from Cailong Zhongguo Net regarding Zhang’s experience, the vice bureau chief of the Family Planning Bureau in Zhaoyang District said that “sterilization of women is the only effective means to prevent births out-of-quota.”⁵⁷

Forced abortions

Similarly, married women continue to be subjected to forced abortions for out-of-quota births, especially if they refuse to pay a hefty fine or are discovered pregnant during local campaigns to crackdown on such births.

- Xiao Aiying (肖爱英), a 36-year-old woman from Xiamen City in Fujian Province, was dragged out of her home on October 10, 2010, then detained for three days before she was forced to undergo an abortion while eight months pregnant. Xiao, who is 36-year-old, already has a daughter together with her migrant worker husband. When contacted by the journalists at the British newspaper *The Guardian*, local officials claimed that Xiao underwent the surgery voluntarily.⁵⁸
- Between March 20 and April 4, 2008, a woman surnamed Cha (查), sister of a village woman eight months pregnant with her second child, was accused of violating the family planning policy and detained by the local Family Planning Committee in Jiaolikeng Village, Linyi City, Shandong Province. Cha was held hostage by the Committee in order to force her sister to undergo an abortion. Cha’s is one of a dozen families who have reportedly been subjected to detention and beating by the Family Planning Committee in the village. Linyi City is home to Chen Guangcheng, jailed activist known for exposing extensive violence in the implementation of the population policy in the area.

Fines

The PFPL stipulates that those who violate the family planning policy have to pay a “social maintenance fee”⁵⁹ and the national Measures for Administration of Collection of Social Maintenance Fees⁶⁰ outline some basic principles regarding the administration of the fee. It is at the provincial level where the schedule of fees is outlined in great details. In Jiangsu Province, for example, for the first child born out-of-quota, a couple is fined four times the average annual per capita net income or the disposable income in the area where they reside, and between five and eight times if it is the second child out-of-quota or if the child was born out of wedlock.⁶¹

⁵⁷ Jinying News, “Sichuan woman visits relatives during spring festival, forcibly taken away for sterilization (四川女子春节到外地探亲 被强行拉走结扎), February 6, 2009, http://news.hunantv.com/x/n/20090206/135282_2.html

⁵⁸ *The Guardian*, “Chinese woman forced to have abortion at eight months, claims husband,” October 21, 2010, <http://www.guardian.co.uk/world/2010/oct/21/chinese-woman-abortion-forced>

⁵⁹ Shehui fuyang fei 社会抚养费

⁶⁰ State Council, Measures for Administration of Collection of Social Maintenance Fees (社会抚养费征收管理办法), effective since September 1, 2002.

⁶¹ Article 44, Jiangsu Provincial Population and Family Planning Regulations

For most Chinese, the fee is difficult to bear. Although the fees are proportional to one’s disposable income, its impact is different depending on one’s source of income. For people living in urban areas, their disposable income as well as their savings are usually higher, and their income more stable. In other words, these people could afford to pay the fee while the impact of the fee on rural farming families is a burden, even predatory. Those who cannot afford to pay risk being forced to undergo an abortion. Couples are also assessed fines for violations other than having more children than allowed in the policy. They are fined for not taking regular gynecological tests, for not inserting an IUD, for not getting sterilized and for failing to apply for a residency permit for their children on time, even though none of these fines are stipulated in the PFPL or in provincial regulations. Officials often pocket this money and do not issue receipts for such “fines.”

Although there are standards for levying the social maintenance fee, the standards allow much room for interpretation, thus resulting in unevenness and unfairness of the application of the fines, as well as leaving the door open for abuse and corruption by officials in charge of handling the fee. Furthermore, local governments often dedicate a particular percentage of the collected fines and fees to pay for the operation costs of the same family planning offices that enforce the policy. Staff members are motivated to levy fines especially since these offices are often required to provide services and bonuses with insufficient resources.⁶² In one city alone, a campaign to crackdown on non-payment of social maintenance fees between July and September this year yielded 12 million RMB in fines.⁶³ According to one estimate in a county in Anhui Province, about 80% of the fines are used to finance the local family planning office and pay its staff for overtime, for extra expenses during travels to rural areas, and others.⁶⁴ The fines have also been channeled by local governments to pay for other expenditures, such as officials’ bonuses and pensions. Some local governments give out bonuses for family planning officials depending on the amount of fines they collect.⁶⁵ On the one hand, the family planning office is supposed to ensure the implementation of the policy and limit births by women in its jurisdiction, but on the other hand, when it is not pressed by higher authorities to meet the quotas, it secretly welcomes births outside of the quota as these births generate income. Family planning related fines have become an important source of income for township level government, especially since 2005, when the agricultural tax, much of which went to the township government’s coffers, was abolished.⁶⁶ In strike-hard campaigns, officials and the offices also arbitrarily impose new fines or use the opportunity to collect old fines that are overdue.

⁶² Liaowang Magazine, “以超生养计生”现象屡现 警惕社会抚养费“变味,” December 11, 2007, http://news.xinhuanet.com/politics/2007-12/11/content_7229190.htm

⁶³ Zhuzhou Media Network Xiangdong Work Station, “Liling City made significant achievements in family planning work, collected over 10 million social maintenance fees (醴陵市计生工作成绩显著 征收社会抚养费逾千万),” September 20, 2010, <http://www.zzbvtv.com/news/2010-09/20/cms14144article.shtml>

⁶⁴ Liaowang Magazine, “The phenomenon of using out-of-quota births to support family planning appears repeatedly, [we must be] vigilant over the corruption of social maintenance fees (以超生养计生”现象屡现 警惕社会抚养费“变味,” December 11, 2007, http://news.xinhuanet.com/politics/2007-12/11/content_7229190.htm

⁶⁵ Ibid

⁶⁶ Ibid

Loss of jobs and social services

In order to enforce the family planning policy, local governments tie compliance with the policy into the provision of social services and employment. Especially for those working for the government, in work units closely related to the government, or in some big private companies whose family planning matters are managed by the government, violators of the policy may be stripped of their jobs and/or their Party membership and their entire work unit and those responsible for the unit might not be given awards or bonuses at the end of the year. They might be barred from being promoted or obtaining government positions in the future, barred from the military, denied access to education, or discriminated against in receiving health care.⁶⁷

- Wang Ying (王莹), a 30 year-old lawyer from Tongshan County in Jiangsu Province, was barred from obtaining a civil service position by the Tongshan County government in July 2009 on the grounds that she had violated family planning regulations by having a child before marriage.⁶⁸
- Lei Yuanzhou (雷元周), a teacher from Gonggan County in Hubei Province, paid a social maintenance fee of RMB 12,000 in 2006 before the birth of his second child. However, two years later, the local family planning bureau reported the birth to their superiors, claiming that Lei's newborn was his third child, without mentioning that Lei had already paid the required fine. Lei was fired, stripped of his Party membership, and barred for life from working for the government or government-owned enterprises.⁶⁹
- Associate professor and legal scholar Yang Zhizhu (杨支柱), at the China Youth University for Political Sciences Faculty of Law, was dismissed by the university for violating family planning regulations. On December 21, 2009, Yang's wife had given birth to the couple's second child; that same date, officials at China Youth University issued a set of guidelines stipulating punishments for school employees who violated Beijing municipal family planning regulations. Yang wrote articles and began a blog to challenge the current family planning regulations as well as the school's punishments, which included a three-year ban on promotions for individuals in violation of the regulations as well as one year of suspension. In a humorous and vocal act of defiance against the policy, Yang Zhizhu is offering himself “for sale” as a “slave” in order to pay for RMB 24,000 fines levied against him and his wife for giving birth to their second child.⁷⁰

⁶⁷ For example, see Article 45 of the Guangxi Zhuang Autonomous Region Population and Family Planning Regulations and Article 48 of Jiangsu Provincial Population and Family Planning Regulations; Linyi City Population and Family Planning Bureau, “(临沂市: 通报违反计生国策案件 165 名干部被处分),” August 11, 2009, <http://www.xtpop.com/onews.asp?id=786>

⁶⁸ CHRD, “Female Lawyer Wang Ying's 'Babygate' Lawsuit Heard in Xuzhou” (女律师王莹“婚育门”诉讼在徐州开庭), February 4, 2010, http://www.crd-net.org/Article/Class53/201002/20100204180508_19776.html

⁶⁹ Lei Yuanzhou's blog, “Hubei village teacher tells the inside story of out-of-quota births (湖北农村教师自曝“被超生”内幕),” November 6, 2009, <http://blog.cntv.cn/html/11/1039311-1014885.html>, the experience described in this blog post has been verified by researchers at Mr. Democracy Center.

⁷⁰ CHRD, “Famous Scholar Yang Zhizhu Fired for Challenging Family Planning Regulations” (著名学者杨支柱因挑战计划生育政策被解聘), April 6, 2010, <http://peacehall.com/news/gb/china/2010/04/201004060931.shtml>

Crackdown campaigns: arbitrary detention, seizure of properties and violence

Much of the worst violence and human rights violations associated with the implementation of the family planning policy occur during campaigns by local governments to crack down on what officials consider to be widespread noncompliance. Two of the most well-known large scale campaigns in recent years happened in Bobai County in Guangxi Province in 2007 and in Linyi City in Shandong Province in 2005. In these campaigns, local officials set arbitrary targets of compliance and officials at the grassroots level are supposed to meet them. Those family planning officials who meet the targets are rewarded with the opportunity to move up the career ladder. The limited safeguards or prohibitions in the PFPL or provincial regulations are thrown out of the window as officials at the grassroots use “local methods” (土办法) to ensure that targets are met. Although government officials higher up are fully aware of what is going on, they acquiesce and some even promote these “local methods.” Despite having sparked riots in Bobai County and ignited a failed legal campaign to hold officials accountable in Linyi County, the same type of violence and repertoire of coercive actions continue to be perpetrated against people across the country in the name of family planning. Below we have excerpted a number of government documents and press reports detailing such campaigns in Jiangxi Province, Shandong Province, Shaanxi Province and Guangdong Province since 2008.

A look at some of the local government’s documents reporting on the implementation of these campaigns gives a sense of how they are carried out. Official documents often adopt combative terminology in describing those quotas, showing a glimpse of the official psychology towards those subjected to family planning violence: that it is the reaching of targets, rather than the reproductive health and rights of the people involved, that is most important.



Picture 2: relatives of couples who have violated the family planning policy held behind bars in government offices

“Campaign targets: implements 90% of long-term birth control measures, 95% of women are tested for pregnancy and IUD...100% of the social maintenance fees are collected...In each natural village, write at least one propaganda slogan...to create a good environment where everyone in the township hates those who have violated the family planning policy...For each sterilization, the village is awarded RMB 100; for each omission, a fine of RMB 100; for each insertion of IUD, a reward of RMB 50, for each

omission, a fine of 50.”⁷¹ (Ping Township, Jiangxi Province, 2008)

“Complete in full the mission of ‘four surgeries’ [insertion of IUDs, sterilization, abortion and late-term abortion]...[we should] sterilize those households with two girls, implement the policy of inserting IUDs in those with one girl in a timely manner, work to prevent the phenomenon of the IUDs coming off, and strengthen the monitoring of their pregnancy situation...whenever households with two girls are found to be pregnant again, we must resolutely take the corresponding measures...we must ruthlessly pay close attention to out-of-quota abortions...those who should be inserted with IUDs should have them inserted, those who should be sterilized should be sterilized, while those who should be given abortions and induced labor abortions should be given. .”⁷² (Daquandian Township, Henan Province, 2009)

“...the crackdown on family planning [violations] has achieved clear results. Since July, a total of 57 various surgeries have been carried out, 20 of which are sterilization, 32 insertions of IUDs, five abortions. All objects of operations who stay in [their] home [village] have been implemented before the deadline, whereas those who have migrated [we] will work hard to find out their full address and seek assistance from the family planning departments in the local areas. At the same time, [we will] implement “man to man,” “person surrounding person” management methods to implement monitoring, to learn about their whereabouts at any time; once they are home, organize the relevant staff to implement the relevant surgeries in a timely manner.”⁷³ (Pingliang Town, Shaanxi Province, 2009)

In these campaigns, officials leverage every power they have over the villagers in order to force them to comply. Officials detain and threaten couples as well as their families, and those who resist are beaten. The couple’s and their families’ homes are destroyed, their properties confiscated, the land rented out to them are taken away, their applications for renting the land is rejected or only a small part of it is given. During these campaigns, women often try to evade family planning officials by hiding.⁷⁴

On April 7, 2010, Puning City in Guangdong Province initiated the “Second Child Sterilization Special Action.”⁷⁵ In order to fulfill their quotas, officials in the city forced couples working outside of the county who have had a second child to come back to their hometowns for

⁷¹Pingxian City Government Information Openness Website, “(关于开展计划生育专项整治活动的实施方案),” June 24, 2008, <http://www.pingxiang.gov.cn/ecms/www/pxs/z/lhx/2008-11-19/79001.html> (the notice has been removed, but it can still be found at <http://www.5xwmw.com/gwxz/Print.asp?ArticleID=2042&Page=1>)

⁷²Daquandian Township Government Public Net, “Township party secretary Yu Guofang’s speech at the county-wide autumn mobilization meeting of bringing reproductive health to the homes and concentrating services (乡党委书记余国芳在全乡秋季生殖健康进家庭集中服务活动动员会上的讲话), August 8, 2009, <http://www.scdqd.com/kjww/html/?547.html>

⁷³The CCP Propaganda Department Hanyin County Branch, “The remedial activities in Pingliang Town have shown effectiveness (平梁镇计生整治活动显实效),” August 5, 2009, http://www.hyxcb.com/Article_Show.asp?ArticleID=2187

⁷⁴ For example, a family in Shandong Province has been in hiding for years, working as migrant workers in cities, moving from one city to the next every year in order to evade punishment, see Zhonggu Legal Net, ‘Cangshan out-of-quota illegal child (苍山超生 “黑孩”);’ April 7, 2010, <http://news.9ask.cn/hyjt/hydt/201004/470269.html>.

⁷⁵ Puning City Government website, “Our city sets off a special action to sterilize those with two children (我市掀起二孩结扎专项行动),” October 4, 2010, <http://www.puning.gov.cn/xwzx/pnxw/2010-4-12/412101013G.html>

sterilization surgeries by detaining their relatives, the vast majority of whom are elderly.⁷⁶ By April 12, a total of 1,377 people were detained in offices of townships, towns and neighborhood committees under the jurisdiction of Puning City. In one of the offices, a journalist reported that "nearly a hundred people, children, elderly, men and women, are held together in a room about 200 square meters, most of them elderly; the room was damp...the floor has a few bamboo mats but they are not enough for people to lie down and sleep. Those who are younger are forced to stand or squat; there wasn't enough bedding either, many had to curl up to keep warm."⁷⁷



Picture 3: A meet of cadres at the village, town, county and city level gathered at the "Puning City Second Child Sterilization Special Action Mobilization Meeting" in Puning City, Guangdong Province. <http://www.puning.gov.cn/xwzx/pnxw/2010-4-12/412101013G.html>

In addition, those who have violated the policy, as well as their relatives, had applications for land for the construction of homes cancelled, their annual bonuses cancelled, and their children denied resident permits. The city government was criticized at a provincial family planning meeting and ordered to get themselves removed from a blacklist of counties that have performed badly in the implementation of the policy by 2010. Officials in the city were warned that if they were unable to reach the targets, they would be relieved of their official duties or fired. By April 12, the city has carried out half of the targeted 9559 cases of sterilizations. Puning City carried out yet another sterilization campaign in autumn, with about 3,000 sterilizations reported by September 16.⁷⁸

D. Deprivation of choice

⁷⁶ China News Net, "To urge women with two children to get sterilized, town government detains the elderly people who have stayed home (镇政府为促二孩妇女结扎 关押留守老人)," April 15, 2010, <http://news.cn.yahoo.com/10-04-/346/2k4oo.html>;

⁷⁷ ibid

⁷⁸ Puning City government website, "Our city's autumn family planning services has been effective (我市秋季计生服务效果好)," September 16, 2010, <http://www.puning.gov.cn/xwzx/pnxw/2010-9-16/91615A0422.html>; See here for the anguish of families in Puning City as a result of the sterilization campaign, Marie Claire, "Breaking China's One-Child Law," November 16, 2010, <http://www.marieclaire.com/world-reports/news/latest/chinas-one-child-law>

Although the PFPL assures citizens “of an informed choice of safe, effective, and appropriate contraceptive methods,” individuals’ choices are often not considered important by those implementing the family planning policy. With the combination of surveillance, fines, threat of job loss, detention and other forms of coercion, couples have very little choice but to go along with what family planning officials “advocate.” In a study published in 2004, of 6027 women and men in three provinces, it was found that “the IUD and sterilization continue to be the two most prescribed and used methods. The vast majority of women in Yunnan (87%), Anhui (91%) and Jiangsu (97%) reported that they (or their partners) were currently using a contraceptive method...In each province, the contraceptive use pattern corresponded to the fertility level. In Jiangsu, most couples had one child and thus used the IUD. In Anhui and Yunnan, a greater proportion of couples had two children, and contraceptive use was split between the IUD and sterilization.”⁷⁹ The pattern of contraceptive use, therefore, is found to closely correspond with the methods “advocated” by the local governments. Similarly, national figures compiled by the government find that 83% of women of child-bearing age adopt a birth control method, the vast majority of which use either IUDs (48%) or sterilization (36%), again corresponding to local governments’ preferences for these two methods.⁸⁰

Some women are uncomfortable with the birth control methods forced on them. In the same study, “many women recounted IUD failures” and complained of the ineffectiveness of IUDs. Women interviewed were even more uneasy about sterilization. There are also safety concerns. Individuals who develop complications after being forced to adopt one of these methods are often shunned by the government when they request compensation, treatment or accountability.

In May 2005, Li Banghua (黎邦华), a migrant worker from Chongqing Municipality employed in Shenzhen, was visited at his home by staff members from the local neighborhood committee. The committee members told him that his wife needed to be sterilized pursuant to the national family planning policy. However, Li’s wife was unwilling and said she could not be sterilized because she has Hepatitis B. That same evening, the committee members took Li from the factory where he worked, and after Li’s futile protests, made him sign an agreement authorizing sterilization surgery for himself, and carried out the sterilization. Since then, Li has experienced pain where the incision was made, and was diagnosed with complications from the operation. Although the relevant family planning departments have been paying for subsequent procedures and medicines to treat the complications, Li feels that he deserves more as he lost the ability to work and to have sex. When the relevant officials were confronted about Li’s situation, they said there was no evidence to show that Li’s medical problems were linked to the sterilization procedure, that since Li “voluntarily participated” in the surgery, they have been paying for his treatment “because they care about vulnerable groups.”⁸¹

⁷⁹ Karen Hardee, Zhenming Xie and Baochang Gu, Family Planning and Women's Lives in Rural China, *International Family Planning Perspectives*, Volume 30, Number 2, June 2004

⁸⁰ *Quanzhou Evening Post*, “Family planning commission: China’s family planning policy is not coercive and does not violate human rights (计生委:中国计划生育政策无强迫性 不违犯人权),” February 5, 2010, <http://news.163.com/10/0205/12/5UOQUTJH0001124J.html>

⁸¹ Southern Net, “Following ‘forced’ sterilization, man became ill, lost his job and sex pleasure (男子被“强迫”结扎

E. Discrimination against one-child policy violators and their children

As previously discussed, the application of the family planning policy is very uneven, and largely dependent on local regulations and the actions of local officials. Each set of provincial regulations provides for exceptions to the one-child rule according to a variety of different factors, including membership in an ethnic minority group, *hukou* status (urban or rural), reproductive history (already has a healthy son or not), family background (whether her or himself is a single child, or child of soldiers or military policemen), and many other aspects of one’s social origin and personal history. The matter is further complicated by increased mobility in Chinese society, with couples who have *hukous* in different local areas and/or have migrated elsewhere, and it is often confusing to find out which rules are applicable to them. Furthermore, even if a couple has sorted out all the relevant rules, as we have seen above, they do little to restrain family planning officials from breaking them. It is therefore difficult to tell exactly why a woman who has exceeded the birth quota is forced to undergo abortion while another is simply fined. The situation is not only confusing to couples, and unsettling to those who are forced to undergo tests and surgeries against their will, but it also amounts to discrimination and unfair treatment.

Children whose parents have violated the policy are often denied *hukous* unless the parents pay the required fines or comply with other demands of family planning officials. The management of the *hukou* system is the domain of the Ministry of Public Security and it refuses to issue *hukous* to children without birth permits, children of unmarried parents, and children whose parents for some reasons have not completed the required procedures. Without a *hukou*, a child cannot apply for an ID card and thus does not have a legal identity, is not a citizen and consequently is deprived of the rights accorded to other Chinese citizens. Children who are denied *hukous* face great difficulties in accessing education, social services, and gaining employment throughout their lives.

Those who are denied *hukous* in childhood are sometimes “pardoned” and given a *hukou* by the government during the national census (though the family might be asked to pay a fine), which takes place once every ten years. It is unclear, however, how many children are denied *hukou* during this ten-year window, and how many of their parents allow their children to remain “black residents” even after they are supposed to be pardoned because they are unaware of the regulations. Since these children are not registered as residents, there is no telling how many “black residents” there are across the country. In 2008, the Fujian provincial government estimated that in its province alone, there are at least 183,000 children without *hukous*.⁸²

- In a December 2008 article, *China Youth Daily* reported the case of Li Xue (李雪), a 15-year-old girl from Beijing who had not been allowed to attend school because she did not have a *hukou*. Li is the second child of two laid-off workers, who survive on

留病根 丢饭碗失“性福”), December 24, 2007, <http://blog.law-star.com/blog/cgi/shownews.jsp?id=1450004194>

⁸² *Nanfang Metropolis Daily*, “Strengthen efforts to solve illegal *hukous* as a result of family planning (加紧解决“计生黑户),” March 11, 2009, <http://www.hzga.gov.cn/show.php?contentid=7852>

minimal living allowances and could not afford the RMB 5,000 fine for giving birth to a child out-of- quota.⁸³

F. Enforcers of China’s family planning policy

As mentioned above, the National Population and Family Planning Commission of China under the State Council is the state agency for family planning. At each lower level of government -- the provincial, prefecture, county and township levels -- there are family planning bureaus. But the grassroots staff, that is, those people who interact with ordinary people about family planning matters, are the members of the neighborhood committee and the village committee at the village level. These individuals are given the task of monitoring couples in their neighborhood and “pressuring” them to adopt “advocated” birth control methods when the time comes. They might, on the surface, maintain a friendly relationship with the couples, visiting them regularly, while monitoring romantic relationships, reproductive status and reporting the status to higher authorities.⁸⁴ Although these grassroots staff are not an official part of the government and many are not salaried, they personally benefit from funding from the township level as well as the collected “social maintenance fees.” Victims of family planning violence often complain of involvement of “thugs,” unidentified men that act like triad members, in the implementation of the policy. Some commentators have speculated that government officials employ these men to carry out the harshest measures such as confiscating the couple and their families’ property belonging to the couple and/or their families, beating and detaining the them.⁸⁵ Local policemen rarely intervene or respond to allegations of violence perpetrated by grassroots staff or unidentified thugs in the implementation of the policy.

For those government officials involved in the implementation of the policy, their performance evaluations are tightly linked to how well they meet the targets set by their superiors. Officials are subjected to “one-strike rejection” (yipiao foujue)—meaning that all their achievements in the past year are annulled if they fail to meet their quotas. This “one-strike rejection” system is reserved by the Chinese government for policy areas that it prioritizes most highly, and family planning has been one area that have had this evaluation system applied nationwide.⁸⁶ If the grassroots officials fail in meeting these targets, the leading officials would be denied honors, bonuses promotions and even leading to

⁸³ *China Youth Daily*, “Freezing Point: Those Unnecessary Fifteen Years,” December 3, 2008, http://zqb.cyol.com/content/2008-12/03/content_2455706.htm

⁸⁴ See, for example, the following government documents issued by a subdistrict office in Ma’anshan City in Anhui Province, “Tongxi Subdistrict Office uses four measures simultaneously to ensure the quality of pregnancy and IUD tests (塘西街道四项并举严把孕环检质量关),” May 17, 2010, <http://www.maspfc.gov.cn/html/c38/2010-05/846.html> and by a village committee in Yuexi County in Anhui Province, “Measures to implement the work of village-based population and family planning in Huangwei Town in 2009 (黄尾镇 2009 年度人口与计划生育“村为主”工作实施办法), August 25, 2009, <http://hwz.ahyx.gov.cn/gzdt/200908/14091.html>

⁸⁵ Regarding the collusion between village cadres and triad members, see Yu Jianrong, “Dark forces in villages and the regression of grassroots political power—a study of Xiangnan area (农村黑恶势力和基层政权退化——湘南调查),” October 25, 2004, <http://www.xschina.org/show.php?id=2172>

⁸⁶ Weiguo Zhang, *Chinese economic reforms and fertility behaviour: a study of a North China village*, Routledge, 2002, p.51; Kjeld Erik Brødsgaard, Yongnian Zheng, *The Chinese Communist Party in reform*, Taylor & Francis, 2006, p.129

demotions and loss of official positions.⁸⁷ In 2009, for example, cities and districts in Jiangxi Province were given a list of “family planning missions” which included “[ensuring that] the birth rate is consistent with the policy” and “[ensuring that] social maintenance fees are collected and managed properly.”⁸⁸ These cities and districts were graded on a 100-point scale and pitted in a competition against each other. Those at the bottom of their rankings were criticized, and their leaders punished.

In another example, in an Anhui town, in 2009, 40% of a village cadre’s performance-related pay was determined by his or her implementation of the family planning policy, which included tasks such as “finding out about the romantic relationships and marriages between unmarried young men and women” and “getting in touch at least once a month with those pregnant women who lived away from the village.”⁸⁹ The performance of the village cadres were rated according to a point system: for example, for each birth outside of the quota, 5 points are deducted from a cadre’s score, or for each “person who should be sterilized” but was not, another 5 points are deducted.⁹⁰ Again, the performance of the cadres are aggregated, and teams of cadres are competing against each other—cadres from the village rated first were given a RMB 1,000 award, while that rated last was named and shamed.

G. Lack of Remedies and Accountability

Few have turned to the law to fight for their rights after suffering abuses related to the policy, or after developing complications following forced sterilizations or other coercive birth control measures. This is because most of these abuses occur in rural villages, and villagers with little knowledge of the law and their rights are cowed by the local authorities, believing that they are in the wrong for violating the policy in the first place. They often opt to negotiate with local officials and party cadres rather than bring them to court, believing that even if they did sue the government, they would be unlikely to win and would likely be retaliated against.⁹¹ For those who take the bold step to sue the government, their cases are often not accepted by the courts because the courts, controlled by the local governments, are afraid of challenging the local government in general and on family planning policy in particular since it is seen as an important national policy.⁹² Often, the courts will not issue a formal rejection letter when deciding not to handle a lawsuit, so the victims cannot appeal this rejection and draw further attention to their plight.⁹³ Even if a court accepts one of

⁸⁷ M. Giovanna Merli, Zhengchao Qian and Herbert L. Smith, Adaptation of a Political Bureaucracy to Economic and Institutional Change Under Socialism: The Chinese State Family Planning System, *Politics and Society* Vol. 32 No.2, June 2004, p.235.

⁸⁸ Guangfeng County government website, “Program to evaluate and manage population and family planning work targets in Jiangxi Province in 2009 (江西省 2009 年人口和计划生育工作目标管理考核方案),” May 13, 2009, <http://www.gfx.gov.cn/zfgz/2009/05/13/4344.htm>

⁸⁹ Huangwei Town People’s Government, “Measures to implement the work of village-based population and family planning in Huangwei Town in 2009 (黄尾镇 2009 年度人口与计划生育“村为主”工作实施办法),” July 1, 2009, <http://hwz.ahyx.gov.cn/gzdt/200908/14091.html>

⁹⁰ *ibid*

⁹¹ Interview with a Beijing lawyer (lawyer A), December 8, 2010.

⁹² Interviews with two Beijing lawyers (lawyer B and D) and a Chongqing lawyer (lawyer C), December 8, 2010.

⁹³ See for example, Yang Zhizhu, “Yang Zhizhu: Did the judges really not know that the family planning bureau was lying? (杨支柱: 法官真的不知道计生局在说谎吗?)” October 23, 2010, <http://yi.fuxian.blog.163.com/blog/static/109005802201092311945786/>

these cases, it is rare to pass a fair judgment due to the court’s lack of independence from political influence by the local government.⁹⁴ At the same time, local government officials frequently warn or threaten lawyers against taking cases involving family planning, and warn local media against reporting them.⁹⁵

- In 2001, village cadres and family planning officials forced Jin Yani (金亚妮), a villager from Hebei Province, to have an abortion when she was nine months pregnant because she and her husband Yang Zhongchen (杨忠臣) had not applied for a birth permit. Since this abortion, Jin has not been able to get pregnant. In 2007, the couple sued the Changli County Family Planning Bureau for compensation, and the lawsuit was accepted by the county court. However, the county court ruled against the couple, stating that “family planning is a national policy [with which] all citizens must comply. The plaintiff, Jin Yani, got pregnant before she was married, so according to the Hebei Provincial Family Planning Regulations at the time...it was not illegal for the family planning cadres from Anshan Town and Luojiaying Village to “mobilize” the plaintiff and to drag her into a vehicle to the county family planning technical service stations to take remedial measures, and that the technical service stations staff have not violated the law for carrying out the abortion after conducting a check-up on Jin.”⁹⁶
- After learning in July 2009 that she had been denied a new job as a procurator because she violated the family planning policy, Wang Ying (王莹), a lawyer from Tongshan County in Jiangsu Province whose case we discussed on p.21, began a campaign to overturn the decision. After making no headway by appealing to the Party and by petitioning at the State Council Letters and Visits Office, she started to seek legal remedies. First, she sued the Party Organization Department, but the court rejected the case because “one cannot sue a Party organ.” Then Wang filed another lawsuit, this time against the Ministry of Human Resources, but the court rejected it again because “it was the doing of the Organization Department, which is unrelated to the Ministry of Human Resources.” So finally, Wang sued the Family Planning Bureau, demanding that it reverse its decision that she had given birth in violation of the family planning policy. However, Wang lost her case and her appeal.⁹⁷

Those who are denied their day in court, those who fail to obtain justice in court, or those who simply do not know how to file a lawsuit against the government, often petition the government for redress. However, the result is no more effective:

⁹⁴ In an interview with Radio Free Asia, Beijing lawyer Teng Biao, who was closely involved in helping villagers in fighting family planning policy abuses in Shandong Province together with Chen Guangcheng, said those victims of the violence have all been pressured to retract their lawsuits against the government and some have been retaliated against. Teng was also quoted as saying that even if the officials are prosecuted, the court are unlikely to support the victims. RFA, “Jiangsu village family planning cadres violate rights, the laws meaningless and no channels for defending one’s rights (江苏农村计生干部侵权 法同虚设维权无门),” December 16, 2007, <http://www.rfa.org/mandarin/yataibaodao/jiang-20070216.html>

⁹⁵ Interview with a Beijing lawyer (lawyer A), December 8, 2010.

⁹⁶ *Caijing Magazine*, “China’s first lawsuit on family planning (中国计划生育第一案),” July 23, 2007, <http://www.douban.com/group/topic/2906713/>

⁹⁷ CHRD, “Xuzhou female lawyer Wang Ying tells the world mournfully: your warmth is better than that of the sun (徐州女律师王莹向世界悲切呼告: 你们的温暖胜过太阳),” May 18, 2010, http://groups.google.com/group/weiqianwang_CHRD/browse_thread/thread/0e00bb9e8c656086?pli=1

- On October 29, 2010, CHRD interviewed Guo Shuifeng (郭水凤), 43, a petitioner from a village near Nanping City in Fujian Province. Guo has been petitioning to seek official accountability for a serious infection and kidney failure she suffered following a forced sterilization procedure by town health officials in April, 2000, which was performed with improperly sterilized equipment. Guo recounted how she was kidnapped and forced to undergo the procedure after she had her second child, and how local government officials refused to accept responsibility when their actions resulted in serious medical consequences for Guo and financial difficulties for her family. Since April 2004, Guo has been petitioning in Beijing, and local officials have intercepted and detained her on a number of occasions. Most recently, in April 2009, Guo was forcibly returned to her hometown and detained a total of 13 days for "improper petitioning."⁹⁸

It is striking just how little officials and cadres are held accountable for the abuses committed in the name of the family planning policy. And when victims of the policy seek compensation or accountability through petitioning or the courts, they are often ignored and retaliated against. In the aftermath of the violent campaign to enforce family planning quotas in Linyi City, Shandong Province in 2005, the divide between officials who abused their powers and citizens who stood up for their rights could not be more stark. Chen Guangcheng (陈光诚), an activist and legal advisor living in the city, drew widespread domestic and international attention for documenting, exposing, and campaigning against the violence he saw being carried out around him. For his work, he was jailed for three years and four months. The Chinese government vowed to handle the abuses uncovered by Chen, telling the UN Committee Against Torture in 2008 that “local officials in Lingyi [*sic*] City have been held accountable for using such coercive and violent measures.”⁹⁹ However, CHRD is unaware of any official in Linyi being punished to date. Furthermore, the Party Secretary of Linyi at the time Chen was jailed, Li Qun (李群), has since been promoted to be the head of the Propaganda Department in Shandong Province. Chen was released from prison on September 9, 2010, but he and his wife have been subjected to illegal house arrest in their home in Linyi City ever since.

H. Conclusion and Recommendations

Changes to the policy are long overdue. The family planning policy has distorted China’s demographics so much that there is now a serious imbalance between the two sexes as well as a rapidly aging population.¹⁰⁰ The pressure which prompted the government to make the

⁹⁸ CHRD, “Fujian petitioner Guo Shuifeng’s life is seriously threatened by the government (福建访民郭水凤生命受到政府严重威胁),” August 12, 2010,

<http://www.peacehall.com/news/gb/china/2010/08/201008122228.shtml>

⁹⁹ Committee against Torture, “Concluding Observations of the Committee against Torture: China, CAT/C/CHN/CO/4,” December 12, 2008, paragraph 29.

¹⁰⁰ Yang Xiaoping and Zuo Xuejin, “China must adjust its family planning policy (中国必须调整生育政策),” September 15, 2010, <http://www.chinadialogue.net/article/show/single/ch/3817-Time-to-drop-the-one-child-policy>

drastic decision 30 years ago—namely, an explosive population growth—is no longer present. We argue that piecemeal measures, such as increasing the number of exceptional situations in which couples can have a second child, is inadequate, unfair and will do nothing to curb abuses associated with the implementation of the policy. We believe that more fundamental changes are needed immediately—the family planning policy, as it exists now, should be abolished.

Specifically, we call on the Chinese government to:

- Abolish the current family planning policy and end immediately all forced abortions, sterilizations, insertions of IUDs, compulsory tests of reproductive status, and all forms of violence and detention in the implementation of its family planning policy.
- Abolish the Population and Family Planning Law and replace it with a new law that focuses on the protection of citizens’ reproductive health and freedom. This new law should:
 1. Clearly define the concepts of reproductive health and reproductive rights according to international human rights standards.
 2. Define clearly the role of the government in the provision of reproductive health care services and the promotion of reproductive freedom, which includes educating citizens, regardless of their marital status, informing individuals of their reproductive rights as well as various birth control methods, guaranteeing an individual’s right to choose the timing and number of their children and their birth control methods.
 3. Explicitly prohibit the use of any form of coercion or violence in the provision of reproductive health services and outline clear punishments for violations.
- Abolish all provincial regulations, local rules, and policy documents which violate an individual’s reproductive freedom, and replace them with new documents in compliance with the new law on the protection of reproductive health.
- Hold legally accountable government officials involved in using coercion and violence in the provision of reproductive care services.
- Halt the practice of refusing lawsuits filed by victims of coercion and violence in the provision of reproductive care services.
- Cease all discriminatory practices against couples and their children for the reproductive status of the couples.

CHRD also asks the Committee on the Elimination of All Forms of Discrimination against Women and the Committee on Economic, Social and Cultural Rights, in their next reviews of the Chinese government’s record in the implementation of the CEDAW and ICESCR, to focus on the government’s family planning policy. The two committees should ask the Chinese government to provide detailed information (including statistics) regarding the implementation of the policy in the past five years. The two committees should also call on the government to abolish the current policy in order to conform with international human rights standards. Moreover, CHRD urges the Chinese government to extend an invitation to

the UN Special Rapporteur on violence against women to visit China.