

US House of Representatives: Committee on International Relations
“China: Human Rights Violations and Coercion in One Child Policy Enforcement”
December 14, 2004

Submission by Human Rights in China

I. Introduction

Since 1978 when China implemented “open and reform” it has continued to integrate into the international community and become a stronger global economic and political power. This increased international clout has sidelined human rights abuses and violations. While there have been some advancements and improvements in some areas, the human rights situation remains serious, reflecting policy, structural and systemic problems. Human Rights in China (“HRIC”) therefore appreciates this opportunity to comment on abuses that have resulted from the so-called “one-child policy” within the broader context of abuses of the right to health and other international human rights in China.

In this submission, HRIC will lay out the general background of the one-child policy in China and the case of Mao Hengfeng, an activist currently serving 18 months of reeducation through labor (“RTL”) who has recently been subjected to ill-treatment in detention. HRIC will then propose some recommendations.

HRIC is an international, non-governmental organization (NGO) founded by Chinese scientists and scholars in March 1989. Our mission is to promote universally recognized human rights and advance the institutional protection of those rights as a fundamental parameter of China’s social and political transformation. HRIC works to measure, monitor, and promote the implementation of those rights in China, with a special focus on vulnerable groups such as women, workers, ethnic minorities, children, and migrants. HRIC also seeks to facilitate international cooperation on human rights and global governance by working with governments, bilateral and multilateral processes.¹

II. China’s Population Policy

China has one of the world’s most stringent population control policies. When it initially introduced a national family planning policy in the 1970s, the Chinese government instituted a “later-longer-fewer” campaign to promote later marriages, longer intervals between children and fewer children as its principles. In 1979, the policy was tightened over concerns that even an average of two children would lead to destabilizing growth. Despite its propagation at a national level, the policy’s implementation at regional and local levels led to variations from region to region. Flexibility was also advised where a parent or first child is handicapped, for overseas Chinese, national minorities, those in hazardous occupations, and for couples who were both only children or for men whose brothers were all infertile. Generally, however, the policy limited urban couples to one child, with a two or three child policy in some rural areas, and used a variety of incentives and penalties as means of enforcement.

¹ HRIC’s English language website can be accessed at www.hrichina.org.

In the 1980s political pressure to achieve population targets, and lack of coherent legislation, led to numerous instances of forced abortions and forced sterilizations in some areas, impacting women's fundamental right to autonomy over her own body. It was in this context that Mao Hengfeng, a factory worker in Shanghai, became pregnant for a second time in 1988. Mao's case demonstrates some of the most extreme aspects of the one-child policy as it existed in the 1980s: her factory managers wanted her to have an abortion, and when she resisted, she was bound and taken to a psychiatric hospital. Despite this abuse, Mao had her second child and was dismissed from her job. Mao Hengfeng took the case to the Shanghai municipal labor and arbitration committee which ruled that Mao's dismissal was in contravention of the Labor Law and ordered that she be reinstated. The factory appealed the ruling to the Shanghai Yangpu District Court. The judge in that case reportedly offered to rule in her favor if she was willing to have an abortion. Mao subsequently had an abortion, but the court ruled against her anyway, stating that because Mao had contravened China's family planning policy, the factory had a right to dismiss her. Mao Hengfeng subsequently embarked on a fifteen-year struggle for the right to work, frequently petitioning the government on that subject. During that time, she has been detained several times by the police, and her daughters have also reportedly been detained and questioned about who is assisting her with her petitions. In April 2004, the Shanghai Municipal Public Security Bureau sentenced Mao to 18 months of RTL, reportedly for "making trouble." RTL is a sentence which can be imposed by the police without trial. After her monthly welfare assistance payment of 290 *yuan* was terminated for the duration of her sentence, Mao sued the authorities for its reinstatement, but the District Court ruled against her in a hearing on November 18, 2004. According to HRIC's sources, while in detention Mao has been subjected to physical abuse on more than one occasion, including being suspended from the ceiling and beaten, and police are alleged to have assigned two other detainees to monitor her activities in detention.²

III. Recent Developments

The Law on Population and Family Planning was passed in 2001³ in an effort to address abuses by local family planning workers that are still reported to a lesser extent today.⁴ These abuses, such as Mao's job dismissal due to an out of plan birth and other cases of coercive practices led to international criticism, most notably by the US government, and in 1994 the UNFPA also withdrew its funding to China for four years. Even the Chinese government grew increasingly concerned over the consequences of the policy, including a rapidly aging population and a skewed sex-ratio.

The new law bans practices such as abandonment, infanticide, and the use of physical force or the confiscation of property as a means of enforcing the policy. The law also replaces the fines that had once been levied for out-of-plan births and implements instead a "social compensation fee." The fee and payment schedule for couples that have out-of-plan births is based on average county income levels. Reports suggest that local officials exercise discretion and may allow reduced payments or even a complete waiver, dependent on family need. Although the use of coercion

² See HRIC Press Release, *Family Planning Opponent Subjected to Further Abuse*, November 24, 2004, available at <http://www.hrichina.org/public/contents/press?revision%5fid=18765&item%5fid=18764>.

³ The Chinese text and an English translation can be found at <http://www.cecc.gov/pages/newLaws/familyPlanningLaw.php> and <http://www.cecc.gov/pages/roundtables/092302/wincklerLaw.php>, respectively.

⁴ For a recent article discussing the wider impact of the policy on women and women's rights in China, see Si-Si Liu, *Where Have All the Young Girls Gone?*, China Rights Forum No. 4, 2004, available at www.hrichina.org.

under the family planning law has been decreasing, whether the new law has the potential to reduce abuse depends on its actual implementation.⁵

The new family planning law should also be viewed within the context of wider legal reforms in China, including amendments to the Constitution that state that the government “respects and protects human rights” in Article 33. The de jure reform of these laws and in the Constitution do not, however, ensure that human rights are being adequately protected in practice to avoid the indirect effects of the policy, including sex-selective abortion that adds to an increasingly skewed sex ratio, abandonment of female infants and the concealment of female children. De facto change will depend on actual implementation, change in cultural attitudes and health and education policies that empower women.

IV. Recommendations

1. *Human Rights and Family Planning*: HRIC recognizes the importance for all states to implement responsible social planning for sustainable growth, but these policies must be designed and implemented in compliance with their international legal obligations. Coercive practices that have been documented in China violate fundamental human rights of health, choice, physical autonomy, and the right to be free from physical abuse, and also perpetuate gender discrimination.
2. *International law and international standards*: HRIC urges the international community to hold China to the international commitments that it has itself signed onto:
 - *The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*: As a state party to CEDAW,⁶ China is obligated not to implement any policy that contradicts the principles of the convention and take necessary steps within its jurisdiction to make the principles a reality. The principles include the elimination of discrimination against women in the field of health care and other areas.
 - *International Covenant on Economic, Social and Cultural Rights (ICESCR)*: As a state party to the ICESCR,⁷ China is obligated to ensure that all rights enshrined in the convention, including the rights to health and equal status at work, are available to men and women equally, and that people are not discriminated against due to their gender or birth status. States are required to address the protection of these rights through all appropriate means, which are not limited to formal legal enactments.
 - *The Beijing Platform For Action (BPFA)*: As a government committed to implementing the BPFA, China is obligated to achieve the objectives outlined, including taking integrated measures to prevent and eliminate violence against women.
 - *The International Conference on Population and Development (ICPD)*: As a participant in the ICPD and having endorsed the Cairo Program of Action, China must implement policies which affirm that women have rights to reproductive health and health care, and

⁵ For another discussion of the potential impact of the new law, see, e.g., Edwin A. Winckler, *Positive Recent Developments in Chinese Reproductive Policy*, Revision of statement prepared for a Roundtable on Women’s Rights and China’s New Family Planning Law, Congressional-Executive Commission on China, Monday 23 September, 2002, available at <http://www.cecc.gov/pages/roundtables/092302/wincklerIndex.php>.

⁶ China signed the convention on July 17, 1980, and ratified on November 8, 1980.

⁷ China signed the convention on October 27, 1997 and ratified on March 27, 2001.

the right to make free and responsible decisions on an equal basis with their spouses whether or not to have children. The ICPD affirms that individuals have the right to “attain the highest standard of sexual and reproductive health . . . [and the] right to make decisions concerning reproduction free of discrimination, coercion and violence, as expressed in human rights documents.”

3. *Supporting Civil Society Spaces:* There is a growing civil society in China that has been especially active in the areas of labor, the environment and health advocacy and organizing. HRIC urges the US government to fully use its leverage with the Chinese government to promote greater room for those civil society actors in China. This leverage should include more effective use of the bilateral dialogues, technical cooperation, and capacity building programs, which should be tied to transparent human rights benchmarks.⁸
4. *Support for international programs:* The US government has been an outspoken critic of Chinese population-control policies. The concern over such abusive practices has resulted in the halting of US funding for the United Nations Population Fund (UNFPA) for fear that its programs in China included involvement with coercive Chinese government policies.⁹ In 1994, the UNFPA itself withdrew its funding of China programs due to similar concern, but resumed in 1998 through pilot projects throughout the country that seek to move China away from coercion. Despite the May 2002 independent US State Department team’s recommendation that UNFPA funding be reinstated after finding no evidence of UNFPA involvement in coercive abortion or involuntary sterilization in China, fears have remained and funding was again withheld this year.

HRIC urges the US government to reassess its position on the UNFPA within a broader policy framework which includes the following factors:

- Whether the UNFPA program in China helps to reduce coercive practices;¹⁰
- Continued rigorous monitoring of UNFPA’s work in China to ensure that no funds are used in any aspect of China’s policy that results in rights abuse;
- An expansion of the program to regions in China that currently have no access to the UNFPA’s programs that seek to eliminate quotas; and
- Conditionality of funds to address US concerns.

⁸ See also HRIC’s submission to the US Commission on International Religious Freedom: China Forum 2004, *Talking With China about Human Rights: Assessing the Future of Bilateral Human Rights Dialogues*, November 9, 2004, at <http://www.hrichina.org/public/contents/article?revision%5fid=18643&item%5fid=18642>; and *Preliminary Assessment of the EU/China Human Rights Dialogue*, developed by HRIC and the International Federation for Human Rights (FIDH), at <http://www.hrichina.org/fs/view/downloadables/pdf/downloadable-resources/rf9-Incorporating6.2004.pdf>.

⁹ Halting the funding for the UNFPA was based on the 1985 Kemp-Kasten Amendment that bars funding for any group that “supports or participates in the management of a program of coercive abortion or involuntary sterilization.”

¹⁰ It is suggested that China’s \$3 million project in China that focuses on volunteerism has helped to reduce the abortion rate from 24 percent to 10 percent in areas it serves by educating women about contraceptives. Reuters, October 2, 2004. Available at <http://www.philly.com/mld/inquirer/news/nation/9814891.htm?1c>