

Testimony of John Aird
China's New Family Planning Law
September 23, 2002

What is the purpose of China's new family planning law? Why was it adopted at this time? What effect is it likely to have on family planning in China? Misleading claims about the law are being put forward by Chinese family planning officials and by apologists for the Chinese program, but its true purpose has been made clear in Chinese domestic sources from the start. It is intended to increase the government's control over childbearing in order to reduce the numbers of births and hold down the rate of population growth. This is quite clear from the explanations given in Chinese sources during earlier attempts to draft a national law.

Previous attempts

These efforts have been under way in China intermittently for the past 23 years. In July 1979, as China was tightening the then newly announced and highly coercive one-child policy, the leading Chinese family planning official at that time, Vice-Premier Chen Muhua, disclosed that a national family planning law would soon be adopted "to check population growth." She explained:

To quickly and further reduce the population growth rate, the central government is working out a planned parenthood law based on experiences obtained in various localities. A policy of encouragement and punishment for maternity, with encouragement as the main feature, will be implemented. Parents having one child will be encouraged, and strict measures will be enforced to control the birth of two or more babies. Everything should be done to insure that the natural population growth rate in China falls to zero by 2000. (Beijing radio, Domestic Service, July 7, 1979)

However, the law ran into opposition from some Chinese academicians, who argued that popular resistance to the one-child policy was too strong for the law to have a positive outcome. As one put it,

If we adopt under these circumstances administrative measures of a forcible command type, such as not registering more than one child in the census records, not issuing food grain allocations for such children, and not allowing their parents to participate in work, the outcome would be contrary to our wishes, have bad aftereffects, and in fact not be admissible in a socialist state. (Gui Shixun, "Population Control and Economic Policies," *Shanghai Teachers' University Journal*, April 25, 1980)

A Beijing newspaper noted that

Some people believe that family planning should be carried out with encouragement and education, not with coercion. They therefore disapprove the formulation of a family planning law.

The article continued:

Laws have the nature of enforcement, but enforcement is not the same as coercion. It is exactly for eliminating coercion which has arisen in some areas when they carry out concrete work that a family planning law must be promulgated to for all people, young and old alike, to abide by. (*Guangming Daily*, August 29, 1981)

The writer was clearly suggesting that adoption of a family planning law would legitimize coercion by reclassifying it as law enforcement.

In 1983 another writer in a journal for foreign readers argued that

Since different people have different levels of understanding, education alone... cannot fully solve this very urgent problem. Therefore, China plans to draft a family planning law. For the time being, the local governments in various places have introduced economic and administrative measures. (An Zhiguo, "Family Planning," *Beijing Review*, August 29, 1983)

The "administrative measures" referred to included the massive campaign of compulsory birth control surgeries carried out in 1983, which reportedly produced 18 million IUD insertions, 21 million sterilizations, and 14 million abortions. This campaign was directed by the then Minister-in-Charge of China's State Family Planning Commission (SFPC), Qian Xinzong, who later that year was given one of the United Nation's first two family planning awards for his achievement. However the authorization had come from Deng Xiaoping, then the supreme leader of China, who called upon family planning personnel to "rely first on political mobilization, second on law, and third on technical measures" (the last phrase a euphemism for the three birth control surgeries).

After 1983 five years passed without any mention of a national family planning law in the Chinese media. The year 1984 had seen a sudden change in policy away from coercive measures, caused by a strong popular backlash against the 1983 surgery drive, which allegedly had resulted in "the alienation of the masses from the Party." Coercion had to be put on hold. It was no time to pass a law to augment compulsion in family planning. Qian was removed from his post as head of the SFPC in December 1983, and replaced by a new head, Wang Wei, who immediately announced a change in policy. Early in the next year the Party Central Committee issued a "Decision" which called for a "more realistic" family planning policy which is "reasonable, is supported by the masses, and is easy for the cadres to carry out."

This requires that family planning workers do a great deal of difficult, in-depth, and meticulous work, improve their work method and work style, refrain from coercion, strictly forbid any illegal or disorderly action, and carry out their work consistent with actual conditions and reasonably. (*People's Daily*, March 8, 1984)

The call to refrain from coercion was made official in a national "circular" known as Party Central Committee Document No. 7, which was issued on April 12, 1984, widely circulated, often quoted in the Chinese media, but never published. But the effect was immediate. A general relaxation of family planning enforcement spread throughout the country.

Within two years, the central authorities began to be concerned about evidence of rising birth rates. By the end of 1985, Document No. 7 was reinterpreted as a call to take "effective measures," "grasp family planning work firmly," be "resolute in curbing "unplanned" births, and fulfill the population control targets. In May 1986 a new Party circular, Document No. 13, also unpublished but widely distributed, apparently reversed the softer components Document No. 7 and reaffirmed the need to regain control of population growth.

The task proved difficult. Central wavering on the coercion issue seemed to have weakened control at the grassroots level, and it was not easy to regain. In 1988 talk of adopting a national family planning law resumed. An article in a demographic journal noted that local family planning efforts had become confused and inconsistent, birth reports were being falsified, and family planning rules were being violated. The writer proposed that the government

...Formulate and promulgate a family planning law as soon as possible to change the situation of no laws to abide by. Births outside of plans can only be controlled with persuasion and education on the one hand and with the adoption of the necessary administrative and legal measures on the other hand. (Qu Yibin, "An

Enquiry into the Causes of the Marked Rise of China's Population Birth Rate and Measures to Deal with It," *Population Research*, March 29, 1988)

in January 1989, a family planning journal article said that a new law was "imperative" to strengthen the resolve of family planning workers. The provincial family planning regulations were inadequate for this purpose:

...Without having formal laws, the rural cadres at the grass-roots level are always worried. They are fearful that things will change. This greatly [inhibits] their activism... (Wang Shengduo and Wu Yiren, "The Dilemma of the Village Cadres in Rural Family Planning Work and Measures to Deal With It," *China Population*, January 20, 1989)

In August a writer with provincial Party connections, though he objected to some compulsory measures, such as smashing down houses, confiscating farm implements, and refusing household registration to unauthorized newborns, insisted that compulsory abortion was both humane and legal, since it was an expression of the Chinese Constitution's provision that "both husband and wife have a duty to practice family planning." A national family planning law, he said,

...should use the forceful intimidation of punishment to reduce the opposition to compulsory abortion. ... The state has grounds to adopt legal measures for compulsory enforcement against those who are unwilling to carry out their duty of practicing family planning. (Kuang Ke, "Some Suggestions on Passing Laws on Childbirth," *Social Science*, August 15, 1989)

Though few published commentaries echoed this writer's idea of legalizing coercion, most, including prominent demographers and other influential spokespersons, seemed to think the law would strengthen family planning enforcement and urged its adoption "as soon as possible."

Madame Peng Peiyun, who had replaced Wang Wei in January 1988, was quoted by XINHUA in February 1989 as saying that the situation in family planning work had become "crucial" and that a national law was being drafted which would go before the State Council "as soon as possible." (XINHUA-English, February 23, 1989) In April however another XINHUA article questioned the wisdom of this step:

Now, more and more experts are asking the state to accelerate the introduction of [a] family planning law. But many family planning officials are not optimistic about the results of such action. An official of the State Family Planning Commission says, "As long as such a great number of people ignore the law, what can the law do to them? (XINHUA-English, Beijing April 13, 1989)

Nevertheless, in October 1989 Madame Peng told reporters that the draft law on family planning "will be enacted in October next year." (ZHONGGUO TONGXUN SHE, Beijing, October 17, 1989)

It wasn't. In November 1990 the *China Daily* reported that family planners were still calling for a family planning law "as soon as possible" to make family planning policies "more authoritative and forceful." ("Planners Urge Firmer Control of Population," November 14, 1990, p. 4) In May 1992 a demographic journal commented

For one reason or another, our country still has no family planning law. According to public opinion in our society, most people are sympathetic with those having extra children. They are not inclined to support the basic national policy. Under such circumstances, family planning in some localities has become a task that almost no one wants to attend to and take care of. (Li Shaoxian, "Farmers' Desire for More Children and Measures to Solve This Problem," *Population Research*, May 29, 1992)

A number of articles candidly discussing the issue of coercion in family planning appeared in Chinese professional journals during the middle 1990s, some of them opposing coercion and others approving coercive measures. One of the latter appeared in April 1993 in a national law journal. Its authors deplored the

fact that because of the lack of an explicit national law legalizing forcible means, "some forcible measures which could have become legal have become illegal. ...Meanwhile, it is impossible to totally avoid using forcible measures in practice." The article adds:

To get family planning work out of the predicaments, both cadres and ordinary people urgently hope there will be a uniform family planning law so as to use regulations and legal provisions to re-embodiment the party's and the state's policy on birth; and such a law can then be used to regulate and adjust the activity of reproduction of human beings. ... In addition to ordinary economic and administrative sanctions, it is also necessary to have legal rules providing for relevant forcible, restrictive measures to deal with the situation of being pregnant and preparing to give birth after having had two births, such as rules which explicitly provide for forcible termination of pregnancy, forcible induced abortion, or induced abortion. It is necessary to forcibly sterilize those couples who have failed to be sterilized or use contraceptive measures after having each had two births. Forcible and restrictive measures constitute an issue which critically affects whether family planning work can be effectively carried out. If there are no relevant legal rules, then it would be difficult to eliminate the stubborn problems in family planning work. Therefore there should be no hesitancy on this issue. ...

(Yang Quanming and Yuan Jiliang, "Thoughts on Family Planning Legislation," *Politics and Law Tribune*, No. 50, April 1993, pp. 89-93.)

One of the things that concerned these authors was that foreign and domestic criticism that the Chinese government had "violated human rights" in family planning had caused people in China to "worry that restricting citizens' reproductive rights is incompatible with the constitution-stipulated protection for human rights," and these worries "have all along been creating difficulties for conducting thinking on family planning legislation."

When the SFPC's "Outline" of family planning work was published in February 1995, the task still lay in the future. In fact, it sounded more remote than ever:

We must conscientiously do a good job of making preliminary preparations for the drafting of the "PRC Family Planning Law," make proposals on population and family planning legislation, and provide legal guarantees for the implementation of family planning. (*People's Daily*, February 25, 1995, p. 11)

Still, nothing happened. Four years later a Hong Kong newspaper speculated that "a draft law specifying a citizen's rights to have children now looks unlikely to be ever passed by the National People's Congress (NPC)." The writer seemed to think passing such a law would undermine the pretense of the Chinese leadership that their family planning program was voluntary. (Jasper Becker, *South China Morning Post*, April 19, 1999, p. 17)

The law's adoption

That surmise was also mistaken. In September 1999 a vice-minister of the SFPC predicted that the long-awaited law would be enacted within the next three years and that it would "tighten the rule of law in carrying out family planning and strengthen mass supervision over law enforcement in the next decade." By 2015, he predicted, the rule of law in China would be greatly improved and "by then, people of reproductive age would follow the state family planning policy voluntarily," an implicit admission that their compliance now was not entirely voluntary! (*China Daily*, internet version, September 13, 1999) In December 2000 XINHUA quoted Zhang Weiqing, who had replaced Peng Peiyun in March 1998 as head of the SFPC, to the effect that the long-promised national law would be drafted in 2001:

China will draft up a law on population and family planning ... next year to ensure the status of the national policy of family planning and the realization of birth control targets, said an official. At a conference on family planning, Zhang Weiqing... said that lawmaking in the field of population and family planning in

China is still backward and the force of existent laws and regulations is limited. (XINHUA, Beijing, December 24, 2000)

Zhang's prediction did come true. In April 2001 the *People's Daily* revealed that the draft law had been tabled before the Standing Committee of the NPC. In introducing the measure to the Committee, Zhang explained that the law was "indispensable" for "upholding existing birth control policies" because the issue is "very sensitive" and "the traditional concept of having more children remains influential." (*People's Daily* internet version, April 24, 2001)

Throughout the 23 years of its gestation, the essential rationale for the national family planning law was unmistakable and remained unchanged. It was to strengthen enforcement of the existing family planning policies and reinforce government control over childbearing in order to overcome stubborn popular resistance. The law was seen as an additional means of compulsion. Not until 2002 did anyone try to represent it as an effort to curb coercion, and that representation was largely confined to statements for foreign audiences.

However, when the new law was made public at the end of December, the official propaganda line explaining its purpose had already begun to change. On December 30, 2001, the day after its adoption by the NPC Standing Committee, Zhang Weiqing said that "the law neither relaxes nor tightens population policy." (XINHUA-English, Beijing, December 30 2001) In January 2002 another SFPC spokesperson quoted by a Hong Kong newspaper said that the new law "solidly sets forth China's current family planning policy, and there will be no tightening up nor liberalization." (*Ta Kung Pao*, Hong Kong, January 21, 2002) But these statements made no sense. Why would the Chinese government have struggled for 23 years to pass a law that made no difference in how the program was implemented? The only plausible purpose for the law was to tighten controls. In denying that this was intended, the Chinese authorities were being disingenuous.

They may have been reacting to widespread reports of spectacular instances of coercion in the program since the late 1990s, some of them involving the death of family planning violators under torture and, in two cases, attempts by local family planning officials to kill live-born infants who had been conceived without birth permits. One of these involved the deliberate drowning of a newborn baby boy in a paddy field. In the other case, several attempts by a hospital director to kill a newborn baby girl failed, and the child survived. More recently the efforts to "sanitize" the law retroactively may have been stimulated by the disclosure in October 2001 that a private investigative team sent to China by a Washington organization with anti-abortion connections had found coercive measures still in force in one of the UNFPA's project counties, where such measures were supposed to have been abolished. This report embarrassed both the Chinese government and the UNFPA, and the UNFPA hastily put together an "independent" team with close UN connections to go to the same county obviously with the intent of finding no coercion, which, hosted and escorted by both the government and the UNFPA, it naturally did not find. After the report of the U. S. State Department investigative team's visit to China in May 2002, released in July, confirmed the persistence of coercive measures in China, it was obvious that China's new law needed to be given a softer image. Hence the subsequent official statements from Chinese sources disavowing the only reasonable *raison d'etre* for such a law!

Giving the law a "kinder, gentler" image was not easy to accomplish, mainly because the text of the law, which conveys a rather hard-fisted impression, as will be pointed out in detail below, had already been published. Some foreign observers who examined the law immediately rejected the official assurances that it would not affect the intensity of family planning implementation. In January 2002 a Hong Kong newspaper said flatly that:

The legislation basically incorporates current policy and practice. ... Analysts say China is unlikely to see a major departure [from] or relaxation of the coercive one-child policy. ... The legislation has failed to

prescribe detailed prohibitions against the well-documented abuses that have been perpetrated in the name of the policy, analysts said. (Clara Li, *South China Morning Post*, January 5, 2002)

Two months later, perhaps partly in response to such skepticism, the Chinese authorities seem to have decided to try to represent the law as a human rights document. In an English language dispatch, clearly targeted at a foreign audience, XINHUA asserted that NPC delegates were saying that

The law emphasizes the principle of human care and prohibits coercion, abuse of powers, and infringement on people's legitimate rights and interests. ... "The law requires that officials in charge of family planning change their work style," said [a Sichuan family planning commission director]. (XINHUA-English, Beijing, March 13, 2002)

Expressions of concern about "work style" usually refer to the use of "coercion and commandism" to force citizen compliance with unpopular central policies, including family planning, though in at least one instance "work style" reform was demanded because the local cadres were NOT enforcing family planning policies. The law itself gives little encouragement for the idea that eliminating coercion was one of its primary objectives. Moreover, only five days after the Sichuan official was cited, former Premier Li Peng, always a hard-liner on birth control, presented the annual work report of the NPC Standing Committee in which he said nothing about avoiding coercion. Referring to the new law, he said:

...The NPC Standing Committee enacted the Law on Population and Family Planning, thereby upgrading this basic national policy into a law. This is set to have a profound and far-reaching impact on effectively controlling the size of the population and improving the quality of births. (XINHUA, Domestic Service, Beijing, March 18, 2002)

The propaganda effort continued, however. In April, Wang Zhongyu, secretary general of the State Council, warned that family planning personnel must

...improve their working style and method, and ensure that laws are understood, observed, and followed in regulating administrative actions in family planning. (XINHUA, Nanchang, April 8, 2002)

Wang also called for the amendment of local family planning regulations to bring them into conformity with the national law and to "ensure the continuity and stability of family planning policy." This news item was NOT directed at a foreign audience. The Chinese authorities now seemed to be speaking with two voices even to domestic audiences, a sign of confusion in official circles.

More mixed signals emerged as the new law was about to go into effect on September 1, 2002. The day before, a XINHUA-English dispatch quoted a Beijing professor saying the law would represent a milestone in China's transformation from "the administrative-guided period into a new era that puts public satisfaction as top priority." (XINHUA-English, Beijing, August 31, 2002) But the XINHUA domestic dispatch on the same subject said nothing of the sort! Instead, it quoted Zhang Weiqing in a statement that the new law must be publicized so that everyone would

...understand the importance of stabilizing the childbearing policy currently in force, gain a better understanding of citizens' rights and obligations to practice family planning, understand the legal provisions concerned, and enhance their consciousness in practicing family planning. (XINHUA, Domestic Service, Beijing, August 31, 2002)

The next day, another XINHUA-English dispatch quoted Zhang as saying that the new law "focusses on the all-around development of human beings." The article went on to say that "it also strictly prohibits the abuse of authority, illegal administration, coercive imperatives, and other practices infringing on the interests of citizens during family planning." (XINHUA-English, Beijing, September 1, 2002) The Hong Kong English language newspaper *South China Morning Post* also quoted Zhang Weiqing as having said that the new law would "help end abuses such as late abortions and arbitrary fines," but statements attributed to Zhang in

domestic sources said nothing about curbing abuses. ("New family planning law might end abuses," *South China Morning Post*, September 2, 2002) In fact, late-term abortions have long been not only approved but required for unauthorized pregnancies that had not been detected earlier in the pregnancy. In domestic regulations such abortions are not called "abuses"--instead, they are called "remedial measures."

A September 1 XINHUA domestic dispatch quoted the Deputy Director of Legislative Affairs Office of the State Council as saying:

...It is a misconception to think that China will relax its family planning policy, a change that would permit its citizens to have as many children as they would like as long as they are able to pay the fine imposed for an extra-policy birth.

The article continued:

Zhao Bingli, Vice-Minister in Charge of the SFPC, said the law was made to ensure the control of the country's population and thus to guarantee the harmonious co-development of population, economy, society, and environment.

"The mentality of 'money for children' goes against the core principle of the family planning legislation," Zhao said. "From the date that the law took effect, those who have an extra-policy birth must face the music." (XINHUA, General News Service, Beijing, September 1, 2002)

From these strange contradictions, one might have supposed the references were to two different laws!

Actually discrepancies between Chinese pronouncements in domestic channels and those addressed to foreigners are often highly revealing. China scholars have long been aware that English language publications can present a very different picture of a controversial issue from that found in the Chinese version. Usually, the Chinese language version is the more reliable and the more informative. What that version omits is misleading propaganda devised for foreign consumption that could not possibly deceive a domestic audience.

All that aside, why did the Chinese authorities decide to adopt a national family planning law at this time despite all their former misgivings? One possibility is that they felt that their grip on family planning enforcement was slipping and they needed all the legal force they could muster. In fact, there are signs that at least since the late 1990s, the Chinese political system has been gradually losing its effectiveness in all spheres of domestic administration, not just in family planning. This is apparent in the leaders' increasingly paranoid reaction to any spontaneous citizen action, especially any collective action that takes place without official prompting or control. That reaction may explain the Chinese government's violent persecution of the Falun Gong cult and other religious groups not under state supervision and control. The leaders seem to fear dissidence or civil disobedience, as if they are unsure of their control over their people, and they ruthlessly crush all such manifestations.

They have also expressed concern recently that losing control of population growth could lead to social "instability." Exactly how is not spelled out, but Chinese demographers, SFPC leaders, Peng Peiyun, Zhang Zemin, and Jiang Zemin himself have been saying since at least 1994 that the birth control policy was in conflict with the childbearing desires of the Chinese people, especially those in rural areas, hence the current low birth rates in China are "unstable." On March 11, 2001, Jiang Zemin himself affirmed that population control was a "major affair for strengthening the country, enriching the people, and maintaining tranquility." Jiang called for "really effective measures" and demanded that the country "grasp ever more tightly and do still better this major item of economic and social work, without the slightest slackness or relaxation." (XINHUA, Domestic Service, Beijing, March 11, 2001) Presumably the new population law was seen as helping the government tighten its "grasp." The language of the law in many places, even where it sounds intentionally vague, seems to point in that direction.

Specific provisions

When the text of the law was published, it immediately received close scrutiny both in China and abroad. Some of its provisions apparently caused problems for the UNFPA. In February 2002 the UNFPA Executive-Director, Thoraya Obaid, sent a letter to Zhang Weiqing expressing "reservations" about provisions in three articles that she alleged were inconsistent with "ICPD principles and recommendations." She said the UNFPA would seek "further clarifications," surely a very mild remonstrance! The three articles are: Article 18, which proposes to "stabilize the current childbirth policies," speaks of "upholding a single-child policy for married couples," and reaffirms that couples must have government permission before they can have a second child; Article 41, which provides for the imposition of a "premium" on unauthorized childbirths; and Article 42, which says that in addition to the "premium" a state functionary "may also be punished administratively."

Curiously, the UNFPA raised no objections to a number of other articles which also seem to contain hints of coercion or appear contrary to the principles of reproductive freedom. For example:

- Article 2 says "The state shall employ a series of varied measures to place the population growth under control," but it does not set any limits on the kinds of measures alluded to, an ominously vague and wide-open provision.
- Article 10 authorizes the formulation of population plans at various levels and calls for supervision over the "implementation" of these plans, but population plans in China have always been the foundation of population quotas and targets and an essential part of the coercion mechanism.
- Article 17 couples a citizen's right to give birth to a child with the idea that citizens are also "duty-bound to undergo family planning, as provided for in the law," thus implying that citizens have a right to have only as many children as the government family planning policy permits them to have.
- Article 20 says that "husbands and wives of childbearing age shall consciously employ family planning, contraceptive, or birth control measures, accepting family planning technical services and teachings, in order to prevent an unintentional pregnancy or reduce its chances," which precludes the option of NOT practicing family planning hence constitutes a direct infringement on reproductive freedom ("unintentional" by whose standards?).
- Article 12 says that village and neighborhood committees "shall press ahead with family planning, with unreserved efforts, and in accordance with the law," which has a somewhat relentless sound that is undoubtedly intentional.
- Article 34 talks about "urging husbands and wives who already have a child or children to adopt permanent birth control measures, a reference to IUDs and sterilization. Moreover, in the past "urging," "advocating," "promoting," and "persuading" have often culminated in brute force when noncompliance persisted.
- Article 11 says "Specific population and family planning measures shall provide for detailed population control quotas..." Here the language is undisguised and quite unambiguous. One might have supposed this provision would have caught the UNFPA's attention, inasmuch as the agency has been saying that it is encouraging an abandonment of targets and quotas not only in the 32 counties where it has current projects but all across the country.

One wonders why the UNFPA expressed no concern about these articles? Why don't they also need "clarification"?

The lack of specificity of many of the law's provisions is in itself a reason for suspicion, the more so because some articles, in contrast, are highly explicit, notably those which condemn actions that disrupt or weaken program implementation. For example:

- Article 36 is quite specific about penalties for those who gain "illegal" income by helping people evade family planning rules, including performing "illegal" birth control surgical operations, using ultrasound to detect and abort female fetuses, and performing phony birth control operations, conducting false pregnancy checks, or issuing false birth control certificates.
- Article 37 specifies penalties for those who falsify birth control certificates or issue them "illegally," presumably to people who do not qualify for them--not much ambiguity there.
- Article 39 provides for the punishment of state functionaries who engage in several kinds of activities, including "doing wrong to serve friends or relatives," "seeking or accepting a bribe," diverting family planning funds for other purposes, and falsifying population and family planning statistical reports--nothing very vague there either.
- Article 40 provides for administrative punishment of the leadership of local units which "refuse... to assist in a family planning process as required..." apparently a reference to the long-term policy of holding local leaders responsible for the success of family planning in their units. This is not fully explicit but it does not need to be. Local leaders in China would have no trouble knowing what it means.
- Article 43 provides for the punishment of those who oppose or obstruct an administrative department. This is not specific, but given its purpose it needs to be broadly construed, since popular opposition to birth control takes so many different forms, including setting fire to the houses and fields of family planning officials and physical attacks on family planning cadres when they drag pregnant women from their homes for forced abortions.
- Article 22 should also be cited as one of the more specific. It prohibits "discrimination against and maltreatment of women" who give birth to girls, which the government has long recognized as a form of opposition to the family planning rules.

The seven articles of Chapter Four of the law (Articles 23 through 29) which provide for rewards and incentives for those who comply with family planning requirements are also in most cases relatively specific, and they resound with serious intent. On the other hand, the articles which purport to offer some sort of protection for the rights of citizens are particularly vague. For example:

- Article 4 says that family planning is to be conducted "in strict accordance with the law, in a civilized manner, and without infringing upon citizens' legitimate rights and interests," but does not indicate what constitutes an "uncivilized" manner or what rights of citizens are "legitimate." Since total reproductive freedom is contrary to the Chinese constitution, it is presumably NOT legitimate.
- Article 21 says that couples of childbearing age "shall enjoy free of charge basic family planning technical services," which of course include the three basic birth control surgeries that have not always been so enjoyable for recipients in the past because they were involuntary. To represent the surgeries as a service to be enjoyed is more than a little bit cynical.
- There is also one provision under Article 39 that condemns "infringing upon a citizen's personal rights, property rights, or other legitimate rights and interests." This may be an attempt to discourage certain kinds of coercion, such as knocking down houses and confiscating farm implements, which have in the past been recognized by the central authorities as counter-productive because they arouse

the collective anger of citizens and lead to setbacks in family planning work. But this provision could have been made more explicit, unless perhaps its vagueness was meant to allow wiggle room in case the government later decided that it did not wish to come down too hard on cadres who used such tactics.

- Finally, Article 44 provides that citizens and organizations may "apply for reconsideration of an administrative decision or file a lawsuit against an administrative decision, after considering that an administrative organ [has] infringed upon their legitimate rights and interests during a family planning process." Again, the meaning of this provision depends upon a precise definition of the "rights and interests" of citizens, which the law does not spell out. Even with such a definition, a plaintiff appealing an adverse administrative decision may get nowhere if the local courts, on prompting of higher level administrators, simply refuse to hear him, as has often happened in the past. A more explicit law might have made it harder for them to dismiss such appeals, but the vagueness here allows them considerable latitude in ruling specific citizen complaints out of order.

If the new law was meant to curb coercion in family planning, it could have done so almost instantly without the necessity of any judicial process, simply by explicitly demanding coercive tactics widely used in the past that must cease at once and imposing penalties on those who continue to use them. The law does not do that.

- It does not prohibit forced IUD insertions, forced subcutaneous implants, forced abortions, or forced sterilizations.
- It does not prescribe penalties for cadres or officials who authorize, condone, or carry out such measures.
- It does not prohibit exorbitant fines for family planning violators.
- It does not condemn the use of administrative harassment of violators which is often applied to them in addition to other penalties.
- It does not prohibit the widespread practice of detaining pregnant women, their spouses, or their other relatives to force them to submit to abortion, sterilization, or other unwanted procedures.
- It does not prohibit the killing of unauthorized infants by medical personnel at the time of delivery or within the next few days, a practice that has been reported in the international media several times in the past three years.
- It does not prohibit the use of torture to extract confessions or information from family planning violators, which has sometimes resulted in their death while in detention, as has also been documented in foreign press reports.
- It does not repeat or even allude to the particularly offensive coercive tactics discouraged by the so-called "Seven Prohibitions" circular issued by the SFPC in July 1995, which ruled out punitive measures that provoked popular unrest and damaged family planning work.
- It does not even mention the word "coercion" or advise cadres to "improve their work style," expressions which in appeared in the brief anti-coercion campaigns of 1978, 1980, and 1984, and which, as noted above, again reappeared briefly in several domestic news items in March and April of this year.

Nor does the law affirm any of the basic principles of reproductive freedom supposedly endorsed by China along with other nations at the 1994 Cairo World Population Conference, although this would be the place

for such an affirmation if the Chinese government were serious about implementing them. It does not acknowledge "the rights of citizens to determine the number and spacing of their children" or their right to choose their own form of contraception, presumably because these rights go beyond what the Chinese authorities wish to recognize as "legitimate." To have included such language in the law would have roused the enthusiasm of the people throughout the country and led to a virtual rebellion against the family planning program as presently implemented. Reproductive freedom might have suddenly become a reality for most Chinese couples of childbearing age. The Chinese government clearly has no intention of taking that risk, and the UNFPA and other apologists for the program seem disinclined to make more than a token issue of the matter.

How the new law will play out in the next few years remains to be seen. It is possible that a show of suppressing the more flagrant forms of coercion will take place in the near term, at least until world attention becomes preoccupied elsewhere. But then the emphasis will probably shift back to requiring citizen compliance with family size limits, targets, quotas, and plans, and the argument will be advanced that family planning is now not just a policy but a law which citizens must obey. Whether the law's domestic advocates, who expect this will make for more compliance, or its domestic critics who think it will inspire more defiance, will be proven correct may not be clear for some time. For the moment, however, the advocates have prevailed.

Taking all the evidence so far into account, one conclusion is inescapable. The basic purpose of the new law is to reinforce population control in China. Ultimately that control will probably be lost despite government efforts to hold onto it, but the new law is clearly meant to delay the attainment of true reproductive freedom in China as long as possible.

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