

## CHOOSING BETWEEN THE TWO: WHEN HUMAN RIGHTS CONFLICT

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Rapid population growth in 20th century China exerted severe pressure on the country's communist government. The strains of overpopulation were exacerbated by the disastrous social and economic policies of Mao's Great Leap Forward and the Cultural Revolution. In 1979 China instituted the controversial One-Child Policy in order to finally exert some control over its worsening demographic crisis. The One-Child Policy and its draconian enforcement procedures have resulted in the loss of the basic human right to a family for many Chinese citizens. This ensuing loss of liberty has been justified by Chinese officials and international governments alike as unfortunate but necessary for the improvement of China's standard of living. However, these arguments rest on a false dichotomy: it is neither necessary, nor wise to promote economic welfare at the expense of the basic human right to a family.

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In January 2000, Li Aihai was a happily married mother of a two and a half year-old girl, but she had a problem. She was pregnant with her second child. The Sihui county family-planning officials came to her home to tell her that she had become pregnant too soon; the law required her to wait four years before she had her next child. While reassuring her that she would be allowed to have a second child later since she was of a rural family and her first child was a girl, they informed her that she would have to abort this child. She was told to report to the family-planning clinic the next morning.

That night Aihai packed her bags, said good-bye to her family, and left to hide at the home of relatives in a neighboring county until she gave birth — an experience commonly known as childbirth-on-the-run. Once the family-planning officials discovered that she had disappeared, they began arresting her relatives. Her father, mother, brother, sisters, and three extended relatives were held captive until someone

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confessed where Aihai was hiding. As this indefinite imprisonment failed to yield results, the officials tried another tactic three months later. They stormed into Aihai's village with crowbars, jackhammers, and a wrecking crew. At the end of the day, the homes of Aihai, her parents, and her in-laws lay in shambles. Even the family's livestock and poultry were confiscated.

Aihai remained in hiding until she gave birth to a son. She came home to find her family in prison, their homes destroyed and furious family-planning officials. They told her she would have to pay a 17,000 Renminbi fine (about \$2,000) to have her family released. This fine was equivalent to two or three years' income, and Aihai begged other relatives to lend her the money. Upon paying the fine, the officials informed her that she would have to pay another if she wanted to legalize her son's status. He was currently a "black child" since he was conceived outside the family-planning law. As a "nonperson," he would be ineligible for any government education, government employment, or medical care, and would never be allowed to have his own family. After paying another 17,000 Renminbi for her son, she was ordered to report for sterilization. This time Aihai did not resist the officials; a second child had bankrupted her family, so a third child was definitely not a possibility.<sup>1</sup>

This is an unfortunately frequent experience in China and it presents a new human rights dilemma to the international community:<sup>2</sup> What should a state do if it encounters a situation where two human rights seemingly conflict with each other? Furthermore, how should other states respond, if at all? As can be observed in China, this situation usually occurs when individual rights do not seem to be in accordance with the common good of a state. It appears to be a question of whose rights and interests should take priority. In China, the opposed interests are between the individual's right to have a family and the society's right to an adequate standard of living. Aihai's story demonstrates how the Chinese government has given preference to the common good over the individual. However, I argue this policy is based on a false dichotomy and that the international community must take action in order to protect the Human Rights violated by China's "one-child policy." Although China has acknowledged only two courses of action, there are multiple alternatives that could resolve this predicament. First, I will layout the legal foundations for these fundamental human rights.

#### THE RIGHT TO A FAMILY AND AN ADEQUATE STANDARD OF LIVING

The right to a family is well established throughout international human rights laws and conventions. It was first pronounced in Article 16 of the Universal Declaration of Human Rights (UDHR). "Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family... The family is the natural and fundamental group unit of society and is entitled to protection by society and the State." The Declaration clearly defines that all people have the right to begin a family. Furthermore, the family is defined as so essential that it requires security from the state.

The value of a right to a family is additionally proclaimed in Article 10 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR). "The widest possible protection and assistance should

be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment..."<sup>3</sup> The ICESCR emphasizes "establishing" in this right. Men and women should be free to decide for themselves when and how many children they desire to have. It is a personal prerogative.

Lastly, the right to a family is more specifically detailed in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Article 16, section E. "[Women have] the same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education, and means to enable them to exercise these rights." This article gives the most comprehensible definition of what the right to a family entails. By specifying number and spacing, this convention makes it very difficult for states to argue that controversial practices, such as China's one-child policy are still in compliance with this article. Just as important, China is a signatory to CEDAW, as well as the ICESCR, and has ratified both (ICESCR, CEDAW). So, at least China has demonstrated a commitment to securing and protecting the human right to a family.

Another fundamental human right that is also found in the UDHR and ICESCR is the right to an adequate standard of living. Article 25 of the UDHR states:

Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control (UDHR).

The ICESCR contains a similar article that calls for all states to promote and protect a person's right to an adequate standard of living. Article 11 states:

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent (ICESCR).

This definition adds a new component to the right: "continuous improvement". The state must not only maintain the current living standard, but it must also take appropriate action to improve the standard. Although "appropriate steps" is not plainly defined, it is evident that the ICESCR obliges, by the government to fulfill this right. Significantly, the right to a family and the right to an adequate standard of living are both equally presented in several international human rights treaties. Neither is given more precedence or priority over the other.

#### CHINA'S PREDICAMENT AND DECISION

In the 1970s, before the one-child policy was established, China's

society was suffering two very extreme problems. The first problem was that China was “on the verge of economic collapse”.<sup>4</sup> The earlier policies of Mao Zedong’s Great Leap Forward and Cultural Revolution had devastating results for Chinese society. Mao believed that more people would make the state strong. “The Chinese government urged more births in order to increase the rate of socioeconomic development and to strength the country”.<sup>5</sup> China’s first census in 1953 reported a population that was one hundred times larger than the official figure used before; the population had grown to about 1 billion at this time. However, there was no economic growth. “Without coordinated development between the population and the economy, society, resources and environment, it is very difficult to realize sustained, fast and healthy national economic development and overall progress of society,”. China’s social resources and economic policies could not adapt quickly enough with the rapid surge in population, and thus the economy entered a deep recession.

The second problem was also a result of the overpopulation from Mao’s Great Leap Forward and Cultural Revolution. “With only 10 percent of its land suitable for farming, China [was] hard-pressed to increase agricultural production enough to match the population growth.”<sup>6</sup> Due to Mao’s economic policies, a large number of people did not have access to food, and some began dying of starvation. The state could not produce food quickly enough to sustain a significantly larger population.

The following years were filled with poverty, hunger, and low economic standards for the Chinese people. When Deng Xiaoping came to power in 1978, he knew that major reforms were needed immediately. “Determined to overcome decades of sluggish economic growth and low living standards, the Deng regime rewrote the script for China’s future, placing the development of ‘market socialism’ and the transformation of China into a modern nation within decades.”<sup>7</sup> This was the crucial juncture where China made its drastic choice. The government defined the increasing number and size of Chinese families as the source of the state’s current problems—instead of focusing on its failing economic and political policies that were responsible for the large population. While overpopulation was a problem for China, it was not the only or most important one. However, this did not stop the government from blaming its economic woes on the mushrooming population. The policy agenda was limited to choosing between population growth (right to a family) and socioeconomic progress (right to an adequate standard of living). Since the standard of living is a public good and family is a personal good, the government decided to pursue a policy that suppressed population growth and fostered the economy. The state issued a statement declaring that “population growth retarded economic development and depressed the standard of living.”<sup>8</sup> Socioeconomic stabilization and advancement became the government’s main priority above everything else – after all, the ICESCR does declare that the standard of living must be adequate (which it was not at that time) and that the state work toward the continuous improvement of that standard. “Because economic goals were expressed as per capita targets, population control — drastic population control — was to be a key item on the new agenda.”<sup>9</sup> Hence, the one-child policy was created.

## RULES OF THE ONE-CHILD POLICY

In 1979 births became a matter of public policy. "She [1984 Chinese representative to CEDAW Committee] explained that 'child-bearing was not only a family issue, but also of interest to the State and the people as a whole.'"<sup>10</sup> The policy was not codified into law, but instead ordered by general directives for the government's State Family Planning Commission. First, urban couples were limited to only one-child. Second, those couples living in rural areas could apply to have two children, especially if the first was a girl, but they would have to wait until their first child was at least four years old before having the second. Third, the policy was more flexible for national minorities. Fourth, single women were not allowed to become pregnant. At first, the policy was declared as voluntary, but it soon became clear that this was no longer the case.<sup>11</sup>

In 1980, the Guangdong provincial government ordered a one percent cap on population growth for the year. Since no coherent legislation was available, family planning officials (named cadres) were not given any guidelines on how to comply with the orders; all they knew was that they *had* to meet that goal. They launched a "high tide" to terminate as many pregnancies as possible. The "high tide" included forced sterilizations for any women with three or more children and abortions of any second pregnancies if the first child was not four years old. In 1981, a "technical policy on family planning" was developed. It required that fertile women with one-child already must have an intrauterine device<sup>12</sup> (IUD) inserted; that one partner in any couple with two children be sterilized (usually the woman); any unauthorized pregnancies must be terminated.<sup>12</sup>

Despite the ethical dilemmas created by such an invasive policy, the Chinese government proclaimed that it was the grand solution they needed to get their state back on the economic-developmental track.<sup>13</sup> The government even went so far as to release a report — just a month before the 1995 U.N. World Conference on Women — that declared women were greater advantaged under this new policy:

Family planning has "greatly promoted the improvement of the Chinese women's status in economic and social affairs as well as in their families...Women who have fewer children have less work at home, a better chance for outside employment and more opportunities to learn skills that will help them earn a living..."<sup>14</sup>

China believes the one-child policy has been very effective and beneficial for their society and has gone to great lengths to convince others of this too. In 2000, the government released its *White Paper on Population*, avowing that it will continue this policy for another 50 years.<sup>15</sup>

In 2002, China took a further step to cement its policy. The Population and Family Planning Law took effect in September and codified the one-child policy. When asked why China had waited so long to pass this legislation, Zhao Bingli, vice minister of the State Family Planning Commission, said that times were not "ripe" before and that, "such a broad action needs a law to standardize its implementation."<sup>16</sup> Zhao described the family planning legislation as follows:

The government advocates each couple to have one-child in accordance with the family planning policy. However, any couple facing genuine difficulties, mainly those in rural areas whose first child is a girl, can apply for the birth of a second child by going through the necessary formalities...since specific birth policies are set by each province according to local circumstances, the conditions vary from province to province and from city to city. Different ethnic minority groups may also be subject to different policies.<sup>17</sup>

The new law is intended to standardize the policy throughout China. However, this new policy still does not specify its enforcement procedures. However, to allay any public concerns, Zhao proclaimed that, "to fully protect people's rights is the basic concern of the legislation."<sup>18</sup> In sum, the public seems to have the right to begin family, but it is subjected to heavy state regulation.

#### IMPLEMENTATION OF THE POLICY: DO THE ENDS JUSTIFY THE MEANS?

The one-child policy has remained open-ended in terms of implementation, and, arguably, this is done on purpose.

The Chinese program remains highly coercive not because of local deviations from central policies but as a direct, inevitable, and intentional consequence of those policies. And this is not secret. Articles in the Chinese media openly speak of the need for coercion in family planning, and senior officials continue to endorse the policy as currently practiced.<sup>19</sup>

By leaving the policy open, the government allows officials to take whatever measures they deem necessary to reach their stringent quotas. Xiaoping himself promoted a "no-holds-barred" approach to the program; "use whatever means you must to reduce China's population," he ordered Party officials.<sup>20</sup> The State Family Planning Commission obeyed. As long as the strict goals of population control were met, it clearly did not matter to the state how they were met. Any means that advanced the state's socioeconomic goals and standard of living was condoned for the sake of the common good.

In the 1980s, the one-child policy began in part with large-scale city campaigns as part of the "high tide."<sup>21</sup> Cadres were assigned to a city or town and given quotas for sterilizations and birth preventions that they had to meet with a certain time period. Such campaigns have also continued until recently so that less-compliant towns can be placed back on track with its population control. One such campaign occurred in Jieshi.

Jieshi is a town located in the northern part of Lufeng City, Guangdong Province. The area is 125 kilometers, and the population is 200,000. And in this town, from August 26, 2003 through September 30th, the lo-

cal government had a goal that must be achieved: To sterilize 1,369 women, fit 815 IUDs to the women, induce labor in 108, and carry out 163 abortions during the 35-day period in this small county.<sup>22</sup>

Other examples include 25,000 abortions in Huaiji County in 2001 and numerous forced abortions and sterilizations in various rural towns during the "high tide" of the early 1980s. The government demanded rapid results and the cadres responded with severe methods like these.<sup>23</sup>

A series of incentives and disincentives, mostly the latter, are applied to cadres to drive them to strictly enforce the one-child policy. The state places an extreme amount of pressure on officials to maintain their low quotas by the "job responsibility system." Under this system, the cadres are personally responsible for ensuring that population targets are met in their district and that women follow the family planning regulations. If the cadres fail in any single way concerning these two aspects, no matter if they have excelled in any other aspect of their job, the cadre is reputed as a failure and subject to penalties. The cadre may lose his monetary bonuses, receive a loss of promotion, be demoted, or may be dismissed from his employment.<sup>24</sup> These harsh disincentives compel cadres to use drastic and forceful means to ensure that the citizens in their district are compliant because their own reputations and livelihoods depend on it.<sup>25</sup>

Similarly doctors are also penalized if they do not perform abortions and sterilizations as ordered by the State Family Planning Commission and officials. Doctors who fail to complete their "duties" face stiff fines and risk discharge from their employment. A doctor may also be punished if he removes a woman's IUD without proper authorization, even if it is done because of serious health problems.<sup>26</sup> They must follow order without hesitation or questions or they will also face severe consequences from the government.

Incentives and disincentives were also used to coerce individuals to adhere to the policy. First, those couples who limit themselves to one child receive many extra benefits from the state. The couples qualify for more and receive more cash bonuses at work and are also more quickly promoted. They also receive preferential treatment for many basic government services including housing, medical care, and daycare. The government rewards those couples who willingly subject themselves to the one-child policy.<sup>27</sup>

The worst disincentives are applied towards the couple, especially the woman, who do not readily comply. All the women of most districts must attend weekly family planning meetings. The purpose of these meetings is to allow cadres to monitor each woman's menstrual cycle and uncover any unauthorized pregnancies. After the first legal birth (by a married woman at or above the age of 23 years), the woman must have an IUD inserted. If a woman is found to be illegally pregnant, the cadres would relentlessly threaten her with job loss or other sanctions to pressure her into aborting the pregnancy. If this did not work, "there are reports of instances where authorities have physically forced a woman to terminate a pregnancy."<sup>28</sup> Immediately thereafter, if the doctor determined that the woman was physically strong enough, she would be sterilized in the same visit. Many reports also verify that these forced abor-

tions are performed as late as 8 months or more into the pregnancy.

“Ms. Gao, a former family planning office testified that she had witnessed a woman who was nine months pregnant undergo an induced abortion because she did not possess a birth permit. Ms. Gao described what she witnessed in the operating room and stated that ‘the child’s lips were moving and its arms and its arms and legs were also moving, [and the] doctor injected poison into its skull, and the child died, and it was thrown into the trash can.’”<sup>29</sup>

Any means necessary were used to terminate unauthorized births and ensure that they did not happen again.<sup>30</sup>

If a pregnant woman fled into hiding to give birth to her unauthorized child there were punishments for her family members. The example of Aihai is not a rare instance. Generally the husband is imprisoned, and in some cases even tortured, until he tells the cadres the location of his illegally pregnant wife. If the husband does not divulge the required information; the cadres will begin taking other family members hostage. They will interrogate any relatives they believe might have knowledge of where the wife is hiding. Just as with Aihai’s family, if no one cooperates with the cadres, they may destroy the families’ homes and confiscate the livestock. With such extreme penalties, the cadres aim at deterring the family from disobeying them again and also warn other families in the village of the consequences for violating the policy.<sup>30</sup> Under the new law passed in 2002, if a woman is successful in giving birth to her illegal child, her family must pay a “social compensation fee” to the State. These fees are meant to reflect the collective cost imposed on society by the family having additional children.<sup>31</sup> Authorities felt that it was also necessary to set these fees high so as to discourage people, particularly wealthy people, from presuming that they could just pay extra money to have a child. The actual amount of the fine is subject to the decision of the cadres. In nearly all cases the fines range from one half of the couple’s annual income to ten times that amount. If the fines are not paid, then the couple’s bank accounts could be frozen or their home destroyed.<sup>33</sup> The state instituted these fees as another deterrent to illicit pregnancies. “It’s clear these fines are not intended to reflect the cost of raising children as they are to bankrupt families into doing what the state wants them to do: not have children.”<sup>34</sup> A family’s livelihood and standard of living — the very thing that the government claims it is seeking to improve — are destroyed if a family has more children than the state allows them or when the state does not approve.<sup>35</sup>

If the parents fail to pay the registry fines, there are even sanctions for “black children.” Additional children are not entitled to state subsidies, admission to public day care and schools, or access to public health care. They are also not allowed to start their own families. The unregistered children have no official identity. They are denied all rights and government services as punishment for the circumstances of their birth.<sup>36</sup>

The city campaigns and systems of incentives and disincentives testify to the extent that the Chinese government will intrude into any aspect of a person’s life to force them to adhere to the policy. No means

— even human rights violations — are spared to ensure its enforcement. Unfortunately, it is unlikely that the policy will be altered in the near future; in 2002 a senior representative of the State Family Planning Commission was quoted saying, “[the] one-child policy should not be relaxed as such a move could cause social instability.”<sup>37</sup> The government still believes that improving society’s standard of living is a more worthwhile goal than protecting the individual’s right to a family.

### CONSEQUENCES OF THE ONE-CHILD POLICY

The results of this cruel policy are equally shocking. Zhao Bingli was proud to report that by 2002 the family planning policy had “effectively controlled” over 300 million births.<sup>38</sup> Meanwhile, Henry Wu offered an alternative reaction to this statistic: “What is the percentage of the 300 million that is due to the forced abortions or late-term abortions, which means murder? If we say 10 percent of them, that means 30 million murder cases there.”<sup>39</sup> Even 1 percent would mean 3 million “murders” were part of a government policy meant to improve the general well-being.

Another result of the one-child policy was sex-selective abortions and infanticide of female babies. Families, particularly rural couples, desire a son over a daughter because boys are perceived as more suited and capable for rural farm work. In a growing number of cases, couples abandon their newborn girl so they can try again for a son. Couples that are able to learn the sex of the baby before birth are tempted to abort the child if it is a girl. In reaction to this the cadres began allowing rural couples in the 1980s to apply for a second child if the first was a girl. However, urban couples also had motivation to abandon their newborn girls. In Chinese culture, it is customary for the son to care for his parents once they become infirm; the daughter becomes a part of her husband’s family, making her less likely to care for her own aged parents. Because urban couples are allowed only one-child, parents would rather have a son so they can be guaranteed support and care in the future. A son will carry on the family name and care for his parents in their old age — two things a daughter cannot do. Admittedly the government has made some minor efforts to address this, such as prohibiting infanticide and ultrasounds to determine the baby’s sex. However, the practice does still continue in some areas.<sup>40</sup>

The limited effect of these measures is confirmed by the China’s current gender ration, that continues skew heavily towards males. “According to the 2000 census, [the gender ratio] was about 117 males to 1 female. For second births, however, the ratio was about 152 to 100.”<sup>42</sup> The population of women has diminished to a dangerously low level because of the policy. This stark difference has led to further ghastly results.

The wide difference in gender population has made it increasingly problematic for men to find wives. In some areas, there is literally not enough women. “This [sex ratio] has led to another phenomenon, the kidnapping of women for sale to farmers in remote rural areas as wives.”<sup>42</sup> Bride-selling, sex slavery, and women trafficking have now become endemic societal problems. In 1995, China reported to the CE-

DAW Committee that 10,531 cases of abducting and selling of women were uncovered, and that 13,934 women victims were rescued.<sup>43</sup> China's police have reported rescuing more 42,000 kidnapped women and children from 2001 to 2003.<sup>44</sup> Although some argue that bride-selling is an old Chinese practice in rural areas, this does not go far enough to explain the problem. Surely, the occurrence of kidnapping and trafficking, the increased number of reports, and the geographic spread of these crimes throughout China are direct results of the distorted gender ratio caused by the one-child policy.

Another shocking and unexpected result of the one-child policy is the vast increase in the number of female suicides. "According to the U.S. State Department's report [Human Rights Report], the country's birth limitation policies have caused an upwards of 500 suicides by women each and every day."<sup>45</sup> China alone accounts for more than 56 percent of all female suicides worldwide.<sup>46</sup> 500 women take their lives each day because they cannot cope with the crippling agony and trauma inflicted by the one-child policy. The impacts of this policy reach beyond the physical and monetary status of individuals to also affect their individual psychologies.

The one-child policy was supposed to enhance China's standard of living, but instead it has threatened societal stability and public order and caused many unnecessary deaths. Population growth rate may be somewhat under control, but can the government honestly claim that China's society and citizens are the better off? Has depriving them of their right to a family truly fulfilled their right to an adequate standard of living? It is true that China no longer faces famine and its economy is not on the verge of collapsing, but this could have also resulted from sounder economic and political policies after Mao's death.<sup>47</sup> People no longer fear hunger or poor conditions, they fear the government planning officials knocking on their door and destroying their family. The economy is stabilized, but Chinese society and the lives of many citizens lay in ruins.

#### HOW HAVE OTHER STATES REACTED?

The Preamble to the UDHR reads that all member states "have pledged themselves to achieve...the promotion of universal respect for and observance of human rights and fundamental freedoms." Still, the states have not strongly reacted against the one-child policy.

The United Nations Population Fund (UNFPA) has been a stronger supporter of China's population control policy since the beginning. "The largest grant came from the UNFPA, which would quickly become the major player in China; it ponied up a hefty \$50 million over the first five years."<sup>48</sup> In 1983, a year when coercion was particularly severe, U.N. officials presented China with the first United Nations Population Award and praised the state "for the most outstanding contribution to the awareness of population questions."<sup>49</sup> Even though reports of forced abortions and other human rights violations continue to flow in from human rights advocacy groups, including Amnesty International, the UNFPA is still the chief defender China's policy and persistently claims that the policy is voluntary.<sup>50</sup> The UNFPA reveres China's policy so much that it believes it should be exported to other states. Nafis Sadik, the for-

mer Executive Director of UNFPA has declared, "China has every reason to feel proud and pleased with its remarkable achievements made in its family planning policy. The country could offer its experiences and special expert help to help other countries."<sup>51</sup> As women were taken from their homes and forced to abort their children and submit to sterilization, the UNFPA and the U.N. stood by and applauded.

One of the first states to take a stand in the face of the suffering and oppression of the Chinese people was the United States. In the early 1990s, the Reagan and George Bush Sr. administrations allowed Chinese couples looking to conceive more than one-child to apply for political asylum in the U.S.<sup>52</sup> Although this action did not do much in terms of deterring the Chinese government, relief and assistance was given to those who most desperately needed it. This also sent a clear message to the international community that people in China were so oppressed that leaving their homes and seeking refuge in another state was their best option. However, the message fell largely on deaf ears.

In 2002, President George W. Bush and his administration took the strongest action against the Chinese policy to date. Secretary of State Colin Powell and a State Department fact-finding team spent two weeks in China gathering details on the implementation and effects of the one-child policy. Upon discovering the use of coercive measures such as forced abortions, stifling social compensation fees, and that the failure of the UNFPA's programs, the administration withdrew U.S. funding for the UNFPA. "The Bush administration withheld the funds [\$34 million] from the UNFPA because, it said the agency's activities in China help maintain a 'program of coercive abortion'."<sup>53</sup> By denying the funds, the government was targeting one of the important resources that enable the Chinese State Family Planning Commission to carry out its policy. Some of the wishful goals of the U.S. were that withholding funds would curb the state's actions to some degree and to encourage other states to take stronger action against China.<sup>54</sup>

But once again, other states did not follow suit with the U.S. actions. The response, actually, was quite the opposite. To counteract the negative impact of withheld U.S. funds, the European Union increased its funding to the UNFPA. Their rationalization was that it was "pushing China toward more humane family planning programs."<sup>55</sup>

It is unlikely, however, that China will change its programs. Support and funding from the UNFPA remains as strong as ever. Other states have been reluctant to take forceful action against China, and when one state does take such actions it is offset by another. The U.N. has not threatened or placed any sanctions on China to compel them to cease coercive population control. Without these, there are no compelling reasons for China to change its program. In fact, inaction could be interpreted as a sign that states are supporting the policy by virtue of omission.

The main opposition to China's policy stems from non-governmental organizations and human rights advocacy groups. Organizations such as Human Rights in China and Amnesty International are effective at gathering information and testimonies from Chinese citizens about the wide range of coercion tactics and abuse. This is the reason why most of the evidence on human rights violations appears to be anecdotal. The Chinese media is not free to report on abuses by the government, so there is no other outlet for people to express their suffering.

These collected anecdotes of large social compensation fees, forced sterilizations, involuntary IUD assertions, forced abortions and poison injections to live babies presents clear, indisputable patterns of abuse.<sup>56</sup>

Despite the large body of personal testimonies verifying the people's oppression public opinion in other states seems to accept China's rationalization for implementing the one-child policy. While travelling across the U.S. to give lectures on the actual conditions of policy enforcement in China, Steven Mosher discovered that many people "were all too ready to excuse these acts in the name of fighting overpopulation."<sup>57</sup> One leader of the National Organization of Women remarked during one of his lectures, "I am personally opposed to forced abortion and sterilization but, after all, China does have a population problem." In a lecture at California State University at San Luis Obispo an angry professor declared, "Don't you see that the Chinese government *must* control childbearing under a state plan in order for China to develop!"<sup>59</sup> A doctor of the Harvard School of Public Health lauded China for its "very good work" in family planning.<sup>60</sup> It is difficult for outside governments to take stern actions against China when its own public has bought into China's family planning propaganda. When the U.S. pulled funds from the UNFPA, for example, there was strong backlash from various social and political organizations.<sup>61</sup>

#### IMPLICATIONS FOR HUMAN RIGHTS

The combined effects of continued coercive implementation of China's one-child policy, fervent support and financial assistance from the UNFPA, and weak responses from the international community serve to undermine the international foundation for human rights protection and promotion. "In human rights discourse, the notion of human dignity implies a right to autonomy and to privacy, in the sense of a right of the individual to make decisions on intimate matters, such as reproduction and sexuality, free of state interference...this human rights notion is foreign to Chinese culture."<sup>62</sup> China's blatant and public rejection of this basic human right influences the manner in which other states perceive the right to a family. As has been shown from the above examples of the U.N. and UNFPA, it has not been a positive influence. By accepting rationalizations and excuses for violating one human right in order to supposedly prevent another, China and the international community are essentially devaluing and delegitimizing the right to a family. Human rights, as a principle ideal, are those fundamental aspects of human life that are needed by and entitled to all persons for their well-being and self fulfillment. The role of states is to protect their citizens and their rights. "Human rights standards define the process of [the government's] decision making...and are key to the respect of human dignity."<sup>63</sup> States' acceptance of extreme derogations and violations steal this critical value away from the right to a family. If violations are so widely allowed, even defended and encouraged, how can people perceive the right to a family as fundamental to human life?

Another disturbing implication of the China case is that individuals have been convinced to believe these violations are justifiable. These rights are inherently and intimately their own, yet people can be persuaded to believe that they are not supreme or unconditional. As Mosher

er's experiences mentioned above demonstrate, many types of people from educators to civil rights advocates can be convinced to believe that sometimes government suppression of a human right is necessary. I find this implication most frightening of all because human rights stem from and innately belong to all humans. If individuals do not believe in the utmost value of human rights and protest their violation, then there is little reason for states to ardently uphold them. This scenario poses a troubling future for human rights standards.

If the right to a family, although guaranteed by the UDHR and ICESCR, can be easily and largely derogated from, why not others? Governments can use the right to a standard of living, or any other, to justify the violation of many other human rights. A state can create a multitude of "human rights" excuses to explain why they need to suppress some other right. Once this is allowed with one right, it is difficult to draw the line where these derogations end and with what rights it is and is not allowed.

Many have argued that China's reasons and intentions were legitimate and honorable. I do not deny that China faced stark socioeconomic problems. I also agree that strong government action needed to be taken to pull the state out of the hole, so to speak, that previous leaders had dug. However, forsaking a basic human right has not benefited the state, the international community, or especially the Chinese people who should have been the first and major concern. State intrusion on the right to a family was not the proper solution, nor was it the only available one.

#### THE ALTERNATIVES

China framed their problems to appear as though drastic population control and family planning was their only option. This was not difficult for them to do or others to believe since their rapidly enlarged population was clearly a source from where many of their problems stemmed. The government claimed that for the common good of the state, citizens would have to relinquish a few of their individual rights. I argue, however, that this was not necessarily true; alternatives did and do exist. China did not have to deny the right to a family in order to enhance the standard of living. As testified by Representative Tom Lantos of the House Committee on International Relations during a hearing on China's one-child policy,

When women in the developing world have access to education and the full range of reproductive health care services, they choose to have smaller families. Developing countries that invest in health and education and enable women to make their own fertility choices have also registered faster economic growth than those that do not.<sup>64</sup>

Studies and reports have found that on the aggregate, women in these countries will pursue educational and employment opportunities.<sup>65</sup> Generally in developing countries access to these opportunities is not always readily available to all, especially to women, so when these valuable opportunities do arise many women will seize them. High lev-

els of education and successful employment take time to achieve, therefore women are likely to delay the time when they begin a family so they may pursue these opportunities and have fewer children later on so ample time can be dedicated to both family and work.

A prime example of the above pattern is set by the Indian state of Kerala. In 1999, India's population reached one billion, making it the second largest country after China. Kerala was the first socialist state in India and in 1987 had about seventeen percent of its population living below the poverty line. To combat their poverty, Kerala provided its population with universal access to education and a strong health care program. The results of this program were a rise in the status of women, an enabling environment for social development, and success in family planning and lowering the birth rate. Kerala's similar circumstances to China and accomplishments in non-coercive family planning demonstrates that China's repressive one-child policy is not the only means to achieve population control.<sup>66</sup>

Another example of non-coercive success to curb population growth is found in the Shaanxi province of China. In the early 1980s, Zhu Chuzhu, a professor at Xian Jiaotong University began a project to discover if economic development actually does affect family size and improve women's status. With a grant from the government, Chuzhu assisted a small rural town in growing apples to sell in markets around China instead of wheat that many were harvesting. The Ping family became a model of the success experienced throughout the town. Wang Ping and her husband were long-standing Communist Party members with two children. The apples they sold brought in a monthly income of \$600 (in USD), whereas wheat only brought in \$125. Wang proclaimed, "In the beginning, I thought the more children the better. Then I had my second. [Then] I was so busy with the orchard business I really didn't have any time to have any more."<sup>67</sup> True to Representative Lantos's assertion, women were likely to have fewer children when given the opportunity for successful employment.<sup>68</sup>

Coercive population control was not China's only option. Economic alternatives in locations similar to China and within China itself had proven to be successful in lowering the birth rate. Additionally, these alternatives also raised people's economic status and thus their standard of living—which is China's ultimate goal and justification for its policy. One possible disadvantage to these alternatives, however, is that they may not produce noticeable results as quickly as government-forced population control. Nevertheless, this disadvantage does not outweigh all the negatives of the coercive one-child policy. Even granting that the famine and near economic collapse in 1979 necessitated immediate action and results does not justify implementation of the policy today when China has an expanding economy and has enough food that it has become a net exporter of wheat.<sup>69</sup> Simply put, China did not and currently does not need its one-child policy to improve economic conditions and raise the standard of living. The right to a family did not have to be forcibly and violently taken away from the Chinese people to fulfill their right to an adequate standard of living.

## CONCLUSION: WHAT CAN THE INTERNATIONAL COMMUNITY LEARN?

We have seen that the international community's response to China's one-child policy was at best a passive permission and at worst a fervent praise. The only stern response given was in 2002 when the U.S. withdrew its funding from the UNFPA. Unfortunately this long awaited condemnation was offset when the E.U. subsequently increased its funding. After almost 30 years of uninhibited implementation of the one-child policy, what has, or should have, the international community learned from rebuffing one human right for the sake of another?

What should be learned is that the notion of the ends justifying the means has no place in the realm of human rights. The China case has proven that placing one human right in conflict with another, even for the best of intentions, does not result in a favorable or constructive environment for the people—with whom the rights, and supposedly the state, are fundamentally concerned. Repudiating one right for the sake of another results in a situation that is equally dire, if not worse, than what the people were already experiencing. The people will always lose in this situation.

I further argued that the international community also loses. The collective allowance of sacrificing one right for another undermines human rights as a whole. The Preamble to the UDHR declares that human rights are "inalienable". There are no qualifiers to that statement. The Preamble does not claim that these rights are inalienable unless a state has a good reason to derogate from it. By allowing violations to occur, the international community sets the stage for other developing states to follow China's example. Thus, the hard-fought status of prominence and legitimacy that human rights standards have earned will be in jeopardy.

What makes this case so intriguing is that China not only outwardly violated the human rights of a family, but it did so in a manner that seemed justifiable and earned approval from the international community. The consequences of this are appalling. These abuses and false dichotomies of rights must be stopped before human rights can continue as a prevailing force in the international community. Human rights are meant to protect individuals and secure the dignity of human life. China should serve as an international reminder that this purpose and meaning depreciates most when one right is sacrificed for another.

## ENDNOTES

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- 10 Greenhalgh, 202.
- 11 Mosher, 79-80.
- 12 Ibid.
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- 16 Hu Huiting. "Family Planning law and China's Birth Control Situation." *China.org.cn*, October 18, 2002, <http://www.china.org.cn/english/2002/Oct/46138.htm> (accessed November 25, 2007).
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- 19 Mosher, 80.
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- 22 Official city document, qtd. in Hearing, 35.
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- 27 *Ibid.*, 131.
- 28 Hearing, 23.
- 29 Quoted in Love, 144.
- 30 Hearing, 2004.
- 31 Hearing, 42.
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- 37 UNHCR 2003.
- 38 Huiting, 302.
- 39 Hearing, 35.
- 40 Shalev, 136-143.
- 41 Hearing, 21.
- 42 Shalev, 142.
- 43 *Ibid.*, 144.
- 44 Hearing, 8.
- 45 *Ibid.*, 3.
- 46 Shalev, 143.
- 47 Hearing, 8.
- 48 Mosher, 82.
- 49 *Ibid.*, 83.
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- 60 Ibid., 85.
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