

## POSITIVE RECENT DEVELOPMENTS IN CHINESE REPRODUCTIVE POLICY

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### OUTLINE

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### INTRODUCTION

As part of China's gradual transition from communism, Chinese social policy is gradually shifting, from limiting population through planning of births by the state, toward delivering a broader range of reproductive health services needed by citizens. A December 2001 Law has legalized both the birth limitation program and many reforms in it; associated regulations have helped curb abuses and expand citizens' rights. Due to the complexity of this subject and the shortness of time, I will package my remarks in the kind of numerical slogan in which Chinese public administration often packages complex policy matters -- here "one theme, two purposes and three threes". (For a longer briefing with references, please see my September 2002 paper in *Population and Development Review*, appended to this testimony and posted on the Commission website. My translation of the 2001 Law also appears in both places. As regards numerical slogans, in the late 1990s the birth planning program's summary of its key policies was "33321", referring to the "three unchangeables", the "three basics", the "three links", the "two transitions" and the "one purpose", explained below.)

By way of introduction, the **one theme** over-arching my remarks is that this subject involves **tradeoffs** between competing rights and objectives, both for Chinese social policy and for American foreign policy. On both sides, public policy makers are making difficult practical and ethical choices. Each side has legitimate criticisms of the other, but these criticisms are most persuasive when they recognize that both sides have reasons for doing what they are doing that many on both sides consider legitimate. Each side should

understand the values that are being privileged by the other and the values that are being sacrificed by its own choices. The PRC is deliberately limiting the reproductive freedom of current generations in order to preserve the sustainability of development and the quality of life of future generations. In the name of reproductive freedom, the US is protesting this restriction, but at the cost of the UNFPA's capacity to deliver reproductive health services desperately needed by millions of women in countries less developed than China. "Limiting reproductive freedom" may sound horrendous to some, but no freedom is absolute, including "reproductive freedom", even in the United States, and even according to international conventions. Besides, any society may limit some freedoms during emergencies. For several decades the PRC leadership has regarded China's burgeoning population as a national crisis. Evidently by now much of China's populace largely agrees. Ongoing program reforms are deliberately intended to restore as much reproductive freedom as possible, consistent with continuing to limit population growth.

Overall, my remarks have **two purposes**. One is to provide **reliable information** about recent policy developments in China, which I believe are mostly good news. My statement is called "positive recent developments" not only because some positive developments have occurred, but also because, in order to promote positive developments, it is essential to be able to recognize them when they occur. Such recognition becomes unnecessarily difficult when today's PRC is viewed through yesterday's ideology: as a timelessly totalitarian monstrosity mindlessly inflicting pointless suffering on its population. My other purpose is to identify forms of **effective intervention** from outside, which I believe should include not only criticizing the bad but also supporting the good. At the very least, as recommended by the State Department's May 2002 Independent Assessment Team, the Congress should give the State Department and other executive agencies the resources necessary to monitor developments in Chinese reproductive policy. Moreover, the executive branch should give some priority to doing so.

In the body of my remarks, the first set of points emphasizes the **extent of change** in China over the past decade. These include *demographic* change to low fertility, *political* change toward a smaller state and weaker national leadership and, consequently, *program* change from state-centric birth limits toward client-centered health services. The second set concerns **principles of law**. The 2001 Law institutionalized the *duty* of citizens to comply with birth limits. However, it also institutionalized *restraints* on how those limits can be administered and it authorized a transition toward provision of more *benefits*. The third set of points notes the **difficulties of practice** that China will face in attempting to implement these principles over the next decade. Both politics and prudence dictate the need for some *stability* of policy. The central government's leverage over local practice is limited by *decentralization* of authority and resources. What any particular locality can achieve is relative to its level of economic *development*.

## EXTENT OF CHANGE

The main point of this section is that China is changing rapidly and greatly and that PRC reproductive policy is changing along with everything else. Birth policy change has been mostly for the better, particularly since around 1993. A 2000 Decision and 2001 Law codified reforms over the past decade and prescribed additional reforms over the next decade. These reforms in the Chinese birth program have not been superficial or cosmetic, but rather have been grounded in fundamental changes in population and politics.

**Demographic change.** Around 1970 when the PRC began seriously trying to limit its population growth, the average woman bore a lifetime total of just under six children. Around 1980 when the PRC declared a "one child" goal, China faced a new generation-long baby boom. To China's leaders these facts constituted a crisis that required party-state intervention and justified some temporary sacrifice of citizens' rights. It took several years for national political and program leaders to arrive at a policy that seemed reasonable enough to the populace that implementation was feasible. In particular, the "one child" goal had to be modified to allow much of the rural population to have two children. Nevertheless, by around 2000, through some combination of program effort and socioeconomic change, total fertility had fallen to around two. Most couples no longer

want many more children than that, though many still want at least one son. To China's leaders the crisis was not entirely over, because substantial population growth continues and the pressure on environmental resources continues to intensify. Therefore, they concluded, it is necessary to retain the program for limiting fertility, particularly in less developed areas where natural fertility remains high. Nevertheless, the fact that average national fertility is now below replacement has broadened policy options, to maintaining low fertility while expanding services. Therefore, China's national political and program leaders concluded, it is necessary to actively reform the program in many respects, particularly in more developed areas where citizens' childbearing aspirations barely exceed what the government recommends.

**Political change.** Changes in reproductive policy reflect broader political changes. The most basic changes have been *systemic*. Since around 1980 PRC leaders have been deliberately shrinking the state and substituting indirect state regulation for direct state operation of economy, society and culture. PRC leaders have been systematically "legalizing" the state by passing laws that both authorize and constrain administration of each area of public policy. PRC leaders have been further decentralizing the state by transferring many economic and social matters to provincial and local governments for funding and administration. There have also been significant changes in the *leadership* itself. The first and second generation of revolutionary founders such as Mao and Deng were confident of their control over Chinese society and imagined that they could plan reproduction in society just as they planned production in the economy. The third and fourth generations of revolutionary successors such as Jiang and Hu have become increasingly preoccupied with avoiding political collapse. They prefer policies that do not antagonize the public by making undue demands on citizens or by permitting maladministration by cadres. China's national political leaders are attempting to make policies more truly "public" in the sense that policies are adopted through representative bodies that then help monitor implementation, to prevent incompetence and corruption and to ensure transparency and fairness. Where bureaucratic "red tape" creates unnecessary costs of administration or opportunities for corruption, the PRC has begun to "deregulate" — including in the birth limitation program.

**Program change.** Around 1970 China's national political leaders launched an ambitious attempt to control the quantity and improve the quality of China's population. Three decades of experience have provided China's birth program with many local examples of "best practice" in attempting to reach these twin goals, examples that the program has propagated nationwide. For example, a major early lesson was to stress propaganda-and-education over administrative or economic incentives, to stress pre-pregnancy contraception over post-pregnancy birth control, and to stress routine work over crash programs (the "three basics"). Accordingly, by the 1990s a major program objective was to replace crash campaigns by amateur cadres with continuous work by trained professionals. At the beginning of the 1990s, conservative national political and program leaders announced that some things about the birth program would not change: the basic policy of limiting births, overall national targets for controlling population, and the personal responsibility of local party and government leaders for meeting these objectives (the "three unchangeables"). On this basis, since around 1993 the program has unleashed a series of progressively more fundamental reforms.

Reforms in the early 1990s addressed flaws in China's state-centric approach itself (the "two transitions"). First, birth limitation was linked to other government programs such as alleviating poverty and advancing women. Second, the program began adapting to China's new "socialist market economy" by supplementing administrative and social "constraints" with financial "guidance" through incentives and disincentives. Throughout the 1990s a major preoccupation was correcting abuses within the administration of the program itself. Clumsy coercion was attacked by the 1995 "seven don'ts"; local financial corruption was addressed first through anti-corruption campaigns and later through local financial reform. Reforms in the later 1990s initiated movement toward a more client-centered approach. With international assistance, China's more advanced localities began improving "quality of care": some choice between methods of contraception in particular and better maternal-and-child health care in general. By around 2000, the emphasis was shifting from limiting the quantity of the population toward improving its quality -- "quality" both in the narrow sense of better maternal-and-child health care and in the broad sense of better lifelong health and education.

The program also began reducing unnecessary regulation, for example allowing newlyweds to have their first child whenever they choose instead of waiting for local government permission.

At the turn of the millennium, two major policy documents both further institutionalized and further reformed Chinese reproductive policy: a once-in-a-decade joint party-and-government Decision in March 2000 and a long delayed national Law, finally passed in December 2001. As regards institutionalization, the Decision and Law reaffirmed the PRC's intention to continue trying to control national population growth and to limit individual couples' fertility. As regard reform, the Decision and Law formalized 1990s reforms and authorized further progressive reforms. As I say in my current article in *Population and development review*: "Clearly the program is no longer just administratively-enforced birth limitation, but equally clearly it is not yet entirely client-centered reproductive health care. Language is now in place authorizing much of both. How much of which prevails will depend on the power of rival policymakers and the vagaries of local implementation." Fortunately, since I wrote that, an important program conference has given further concrete indication that the program will continue moving in a progressive direction.

Thus in early September 2002 -- just as the 2001 Law came into effect -- the program convened a national work conference to summarize two years of experiments in how to proceed with the additional reforms that the new Law now permits. The conference site, the city of Mudanjiang in the province of Heilongjiang, will serve as a national model for many features of the next round of reforms. One of the most important of these involves the PRC's rigorous system for evaluating the performance of local political leaders and administrative personnel (a form of western "management by objectives" that the Chinese call a "responsibility system"). This system is one of the national leadership's most important tools for controlling local politics and steering local policy. In the early 1990s the national leadership used this system to ensure draconian enforcement of birth limits. Now, in the early 2000s, the national political leadership is using this same system to ensure reform of the program toward less state regulation and more service delivery. In evaluating personnel performance, Mudanjiang is dropping indicators for population growth and birth quotas and replacing them with indicators for quality care and citizen satisfaction. This is the most direct evidence one can have of the likely future direction of the program: further reform in a progressive direction is now institutionalized not only as national law but also as the criteria by which local performance will be evaluated.

## PRINCIPLES OF LAW

The main point of this section is that current PRC reproductive policy is principled not unprincipled. The 2001 Law embodies definite constitutional principles concerning citizen rights and duties, definite public policy principles of optimality and justice, and definite implementational principles of reasonableness and fairness. What so long delayed the adoption of a national law governing reproductive policy were difficulties in squaring the ideal requirements for what a law should contain under the PRC state constitution and the actual practice of birth limitation in China. It was only after the program was already substantially reformed that the 2001 Law could be passed authorizing further reforms. Westerners may justifiably disagree with some of the principles involved or with how some of them are applied. Nevertheless, the underlying principles are analogous to principles upheld by the West -- in fact many of them derive from the West or from current international conventions. Preoccupations common to the PRC and the West include defining an appropriate relationship between the rights and duties of citizens, establishing restraints on what the state can do to citizens, and achieving a feasible relationship between citizen entitlements and local resources.

**Duties of citizens.** The 2001 Law reaffirms the duty of Chinese couples to practice contraception and to limit their childbearing. The PRC regards this duty as comparable to military service or tax payment. Ideally citizens should comply with such duties voluntarily. Noncompliance is not criminal and should not be punished by criminal penalties. Nevertheless, such duties are mandatory and therefore should be enforced by some sanctions. Accordingly, noncompliers must pay a steep "social compensation fee" (several times annual income), so called because the PRC regards it as a way to reimburse society for the extra costs

imposed by extra children. This fee also provides local revenues from which to reward couples who do restrict themselves to only one child. Of course, such a fee also serves as a coercive deterrent, but in the form of a financial disincentive that the PRC considers appropriate to a “socialist market economy”. Sanctions become more severe only for citizens who do not pay this fee (either immediately or by yearly installments). Citizens who actively refuse to pay, or who otherwise actively obstruct birth planning, can be referred to the courts for trial and punishment.

Thus, as a policy, PRC birth limitation is “coercive” in the sense that it is a mandatory restriction on absolute reproductive freedom. Nevertheless, by now -- as a result of thirty years of propaganda and enforcement on the one hand and of economic and social change on the other -- compliance is largely voluntary. Evidently by now, in principle, most Chinese citizens agree with their government that population should be limited and that citizens have a duty to limit their childbearing. Most citizens are willing to do so, provided that policy is reasonable and consistent and that enforcement is firm and fair -- just as most Americans are willing to pay their taxes voluntarily, but only so long as everyone does so. In practice, of course, some couples attempt to break the rules, particularly couples who have a daughter or two but still do not have the son they desire. But then enforcement is definitely not supposed to be “coercive” in the sense of community-level implementors taking physical action against the noncompliers.

**Restraints on the state.** Thus the 2001 Law also reaffirms the right of Chinese citizens not to suffer from abuses of maladministration or from over-harsh implementation measures. This is part of an ongoing effort by national political leaders to rein in sometimes predatory local governments, in order to protect the regime’s legitimacy in the eyes of the public. As noted above, during the 1990s the national political and program leadership made strenuous efforts to combat *abuses* in the birth program such as clumsy enforcement (physical coercion of persons, physical damage to property) and financial corruption (local governments levying undue fines to increase their revenues). These efforts included removing egregiously coercive or extractive provisions from local regulations. The 2001 Law institutionalizes these efforts by stipulating severe penalties for such abuses. Thus most of the punishments specified in the 2001 Law are not on citizens for non-compliance but on local officials for maladministration. Associated regulations will turn all money from fees over to county finance bureaus, reducing opportunities for financial corruption.

The 2001 law also omits many harsh *measures* that still remain in existing provincial regulations, which will require removing them from provincial regulations as well. These include such unpopular requirements as that, after a couple has had its permitted number of children, one partner in the couple should accept sterilization. The 2001 Law also continues efforts to combat demographic distortions that birth policy has aggravated, such as skewed sex ratios at birth. Thus the 2001 Law confirms that it is illegal to use ultrasound machines to determine the sex of a foetus as a prelude to sex-selective abortion. (This is intended as a restraint on both state and private medical providers, and on private citizens. Unfortunately the popular demand for sex-selection is so great that this attempt at restraint has little effect.)

**Provision of benefits.** At the same time that the PRC is limiting some rights (mostly civil-political) it is extending others (in the case of reproductive health, rights to social services that go beyond those guaranteed by the Chinese state constitution). The 2001 Law affirms the right of citizens to a variety of benefits related to reproduction. Couples who forego extra children deserve direct rewards to compensate for the economic benefits the children would have provided. Poor households who practice birth planning deserve extra help in developing their livelihoods through priority access to poverty-relief resources and programs. Women deserve access to basic reproductive health services and to more opportunities for education and employment. An adequate social security system would lessen the need of parents for children who can care for them in old age. Of these benefits, the main specific one currently being actively expanded is reproductive health care. A main goal here is to raise the “quality” of the children actually born, through premarital and prenatal screening, checkups and nutrition during pregnancy, and better care during childbirth and early infancy. In 2001, concurrent with the process of passing the Law, the State Birth Planning Commission issued Technical

Services Regulations to govern the provision of these benefits. Among other things, these regulations instructed the SBPC and Ministry of health to cooperate in establishing a “local service provision network”.

## DIFFICULTIES OF PRACTICE

The main point of this section is that the principles endorsed by the 2001 Law face difficulties of implementation in practice. In the long run progressive reformists at the center probably will largely prevail. However the process will be gradual, piecemeal, and incomplete.

**Need for stability.** Program change will be gradual because national political and program leaders regard some stability as a precondition for much reform. As in any country, policy change is easier to achieve if it can be represented as a continuation of existing policies. In the March 2000 Decision “stability” is a mantra: the goal is to “stabilize” a low fertility rate that the leadership regards as potentially “unstable”, because in some areas economic and cultural development is not yet sufficiently advanced to reduce fertility on its own. According to the Decision, the key to maintaining low fertility is to “stabilize” and “strengthen” existing policies. This does mean maintaining strict limits on the number of children that couples are permitted, particularly in less developed areas where fertility remains high. However it does not mean “strengthening” enforcement against citizens -- instead, what is to be “strengthened” is program capacity to deliver services -- competently, honestly and efficiently.

In practice, the process of reforming China’s birth program will involve a great deal of stability. First, to placate conservative elites, large parts of central policy itself will not change. Perhaps as a concession to conservatives, the 2001 Law contains much language authorizing features of the old “state planning” approach. Second, to avoid erratic mass behavior, policy change must proceed in an orderly fashion. At each stage it must remain clear what rules cadres must enforce and citizens must obey. Program leaders believe that experience has taught them that for the program to remain stable -- neither grass-roots implementors nor the mass public either rebelling or defecting -- the program must steer a centrist course between too great severity and too great leniency. That is why, when the 2001 Law was passed, national program leaders immediately underlined that it represented “neither a tightening nor a loosening” of policy. Third, existing policies have been arrived at through a long process of trial-and-error. The reform strategy is to “fade in” new methods and to make sure they work before a “fade out” of old methods. Obviously change in China’s birth program is a politically sensitive and technically complex process that requires careful attention to understand correctly.

**Limits from decentralization.** Program change will be not only gradual but also piecemeal because the central government’s leverage over provincial and local governments has some limits, for both constitutional and practical reasons. According to the Chinese state Constitution, provinces have some latitude for adapting national policies to provincial circumstances. In social policy, central ministries do not exert direct authority over their provincial branches, which report instead to the provincial government and its party leadership. The same is true of the relationship between provincial and local governments (county and city), and between local governments and community governments (township and village). As a practical matter, lower levels provide much of the funding and staffing for social programs and therefore inevitably have some latitude for influencing what occurs within their jurisdictions. For very high priority objectives, higher levels can use personnel policy and party discipline to overcome these obstacles. This has worked well for combating maladministration of birth limitation but is less likely to work well for delivering reproductive health services.

**Level of development.** Program change will be not only gradual and piecemeal but also incomplete, because it will be relative to development. As Marxists, national leaders view many matters as relative to the overall level of national economic development, including what constitutional rights it is feasible to implement at each stage. In practice it will be harder to rein in abuses in less developed localities, where fertility is still

high, compliance is less voluntary, and the quality of personnel is lower. In these poorer localities, positive benefits will be harder to fund and many benefits may never be feasible at all.

## CONCLUSION: POLICY IMPLICATIONS

By way of conclusion I return first to my two purposes (providing reliable information about recent policy developments and identifying effective forms of outside intervention) and then finally return to my one main theme (the inevitability of tradeoffs between different rights). All of these are complicated by the multiplicity of discourses in both China and the West. China includes both many modern discourses (e.g. variants of both communist and non-communist modernity) and many traditional discourses (e.g. variants of Confucianism and other philosophies). Each of these discourses has its own interpretation of, or adds its own nuance to, Chinese understanding of Western rights concepts. These Western concepts are themselves contested within the United States, within the international community, and between the two. In particular, the dominant discourse through which Americans have perceived PRC birth limitation is what Professor Susan Greenhalgh calls “the coercion narrative”, whose relevance to the program has been steadily decreasing (please see her testimony). Accordingly, dialogue between China and the West over the PRC’s implementation of specific rights might best proceed by looking for common ground, particularly between the Chinese and Western discourses that are closest to each other. These are Western social democracy and its Eastern offshoot, post-Mao Chinese market socialism. However, philosophical agreement is no longer the main problem: China has already adopted most of the aspirations compiled in international agreements.

The first of my two purposes has been to provide **reliable information** about recent policy developments in China, in particular to underline that there is much that is positive in recent developments, the 2001 Law in particular. Evidently that positiveness is difficult to detect through the lens of the coercion narrative, as Dr. John Aird’s statement to this Roundtable illustrates, making that statement distinctly unreliable as a source of information. Dr. Aird’s main conclusion is correct: Chinese couples still do not have complete reproductive freedom and the 2001 Law is intended to further institutionalize public policies limiting the number of children that PRC citizens are permitted to have. Nevertheless, his conclusion presents a number of problems. A first is that, contrary to the impression he conveys, few informed persons maintain otherwise, least of all the PRC government or the 2001 Law, which he correctly cites as plainly requiring that Chinese citizens limit their fertility. A second problem is that much of the rest of his strategy for substantiating his conclusion is irrelevant or misleading. It is irrelevant to report that enforcement of the policy has been clumsily coercive in the distant past. It is misleading not to report that, precisely for that reason, the PRC is doing its best to prevent enforcement from being clumsily coercive in the present and future.

A third problem is that some of the rest of Dr. Aird’s strategy for proving his conclusion is misinformed or misguided. As for misinformation, it is simply not the case that, for example, the 2001 Law calls for population targets or birth quotas (that was a FBIS mistranslation). It is not true that the Law does not proscribe abusive coercion as a method of implementation (that is the meaning of the Law’s demand for “lawful implementation” and for respecting citizens’ “legal rights and interests”). It is not correct that the government makes no domestic mention of its opposition to abusively coercive implementation (in the late 1990s it advertized the “seven don’ts” and in the early 2000s it is trying to inform citizens of the 2001 Law’s ameliorative provisions). As for misguidedness, Dr. Aird asks why the PRC would pass such a law at this time if it were not for the sinister purpose of increasing “coercion”, when the answer plainly is that the PRC is belatedly bringing birth planning into a longstanding process of reconstructing the foundations of the regime on the basis of “socialist legality”. In doing so the PRC has reaffirmed that birth limitation is mandatory, but it has also chosen the least coercive method for enforcing such limits that it could devise. Equally misguided as a form of argument, Dr. Aird finds “contradictions” between various Chinese policy statements, which again to him proves a sinister intent to “coverup” increased coercion, but which really just demonstrates that he simply does not understand the complex process of reform that is occurring.

As regards **effective intervention**, over the past decade Chinese reproductive policy has been remarkably responsive to outside influences. Negative criticism of questionable practices has contributed. However, constructive assistance and persuasive ideals have contributed more. For example, the United Nations Population Fund (UNFPA) made the largest single contribution to reducing abortions in China, by improving contraceptive technology to avoid unauthorized pregnancies. International standards for reproductive health and women's rights (Cairo 1994 and Beijing 1995) quickly and strongly influenced Chinese reproductive policy. The Ford Foundation, Population Council and other international organizations helped launch the 1990s reforms in China's birth limitation program. The problem now is not so much persuading the PRC to adopt Western ideals as it is the PRC's ability to implement jointly held ideals. According to the "developmental" approach to rights taken by China's leaders, the main question is one of feasibility. Demographic feasibility dictates that implementation measures not allow a rebounding of fertility. Economic feasibility requires that local resources be available to fund better administration and more benefits. Political feasibility demands that particular measures win credit for individual leaders within the elite and win legitimacy for the regime within society. Effective intervention would analyze and help alleviate these feasibility constraints, through both bilateral and multilateral assistance to the Chinese birth program in such matters as employing voluntary methods, raising technical standards, and combating HIV/AIDS.

Finally, I return to my one main theme of **tradeoffs**. Most contemporary ethical theories concede that rights are never absolute. In particular some tradeoff is likely between libertarian rights of freedom from state interference and social-democratic rights to social services that require some state intervention. In China's reproductive policy the main tradeoff has been between the right of the current generation to bear more children and the right of future generations to resources and environment. In relevant American policy there has been some tradeoff between security and economic relations with China and the ethical values of some Americans related to reproduction. There has also been some tradeoff between the right of Americans to promote such values and the right of Third World women to receive international assistance for reproductive health. No doubt such tradeoffs will continue, but positive recent developments in Chinese reproductive policy should make them less acute.