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Recent Developments

The Bush Administration's Decision to Defund the United Nations Population Fund and Its Implications for Women in Developing Nations

Rachel Farkas†

I. INTRODUCTION

In May 2002, due to continuing pressure to investigate the United Nations Population Fund's (UNFPA) alleged support of Chinese forced abortion and involuntary sterilization practices, the Bush administration sent an independent assessment team to evaluate the UNFPA's family planning programs in China.1 Although the team concluded that the UNFPA has not "knowingly supported or participated in the management of a program of coercive abortion or involuntary sterilization in the PRC [People's Republic of China],"2 the Bush administration nevertheless relied on a little-known statutory provision under The Foreign Operations, Export Financing and Related Programs Appropriations Act to cut $34

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This recent development piece evaluates the policies behind the Bush administration's decision to cut the UNFPA's funding and illustrates that these policies fail to justify the cutting of funds intended for organizations such as the UNFPA, which are dedicated to helping developing countries address reproductive health and population issues that are crucially important today. Section II provides an overview of China's "One-Child-Policy" and questions whether coercive reproductive practices exist in China today. Section III covers the United Nations Population Fund's goals and its programs in reproductive health and family planning, safe motherhood, and women's empowerment, as well as its involvement in China. Section IV chronicles the U.S. policy that has governed the allocation of funding to the UNFPA from the 1970s, when the United States started appropriating family planning resources during the Carter administration, to the present Bush administration. This section also discusses the implementation and use of the Kemp-Kasten Amendment to deny funding to the UNFPA. Section V analyzes the potential effects of the funding cut and the reasons behind the Bush administration's decision.

II. CHINA'S ONE-CHILD FAMILY POLICY

In 1979, China announced its "one child per family" policy, a temporary measure to control population growth by encouraging families to have only one child, with exceptions allowed in a limited number of cases. A year later, the 1980 Marriage Law stipulated the duty of married couples to adopt family planning practices. The Marriage Law made marriage illegal for men less than twenty-two years of age and for women less than twenty years of age. In 1982, Article 49 of China's constitution also established the duty of husband and wife to practice family planning. Throughout the 1980s, China modified the policy and expanded the categories of couples allowed to have more than one child. In

7. Zhang, supra note 4, at 561.
1988, in order to address the alarming increase in infanticide of female first-born children in rural areas, China established an exemption for rural provinces. This exemption allowed each couple with a single daughter to have a second child.

China's policy relies primarily on economic incentives and sanctions to control population growth. Although China's national government determines target population growth rates for different regions of the country, there is no national law regarding incentives or penalties. Provinces and cities in China are awarded a yearly quota of new births, and neighborhood committees apportion the number among their members. Enforcement of the quotas is largely left to local officials. Economic sanctions and incentives for individual couples vary by region and locality. Incentives, for example, may include monthly stipends and preferential medical and educational benefits for compliance with the policy. Penalties include fines, demotions, and withholding of social services. Village family planning committees, and sometimes entire villages, are rewarded for staying within birth quotas. Furthermore, party leaders reward a government official based on his ability to achieve the allocated birth quota for his area.

Although the Chinese national government does not authorize coercive methods of maintaining the one-child policy, the incentive system practiced by local officials has lead to widespread abuses, including allegations of coerced abortion and involuntary sterilization. In many provinces, late-term abortions are allowed, and forced late-term abortions have been reported. A former administrator of a planned birth control office testified that as many as one-third of the abortions performed there occurred after the first trimester of pregnancy. Chinese women are often sterilized immediately following a forced abortion, and many women who have unplanned second children also are forcibly sterilized. Other coercive methods include public monitoring of female factory workers' contraceptive methods, local informant systems including monetary awards for reports of unauthorized births, and demotion or loss of employment for viola-
tions of the policy.\textsuperscript{23}

Recently, the Chinese government passed legislation attempting to curb coercive abortion and involuntary sterilization practices.\textsuperscript{24} In 1989, it passed the Administrative Litigation Law, which granted citizens the right to institute proceedings against administrative authorities for acts involving abuse of official powers or acts in excess of authority.\textsuperscript{25} A report by the Population Crisis Committee\textsuperscript{26} found that instances of abuses such as forced abortion and involuntary sterilization are “far less common today” than in the 1980s.\textsuperscript{27}

\section*{III. THE UNITED NATIONS POPULATION FUND}

\textbf{A. Goals and Programs}

The United Nations Population Fund (UNFPA) was founded in 1967 as a special trust fund to finance population control programs not covered by regular budget appropriations.\textsuperscript{28} Since it began operation in 1969, the UNFPA has provided approximately five billion dollars in assistance to developing countries. Today, it remains the world’s largest internationally-funded source of population control assistance.\textsuperscript{29} The UNFPA’s major program areas include reproductive health and family planning, safe motherhood, reproductive health supplies, and women’s empowerment.\textsuperscript{30} At the 1994 International Conference on Population and Development, the UNFPA established its goal of ensuring universal access to a range of reproductive health services, including voluntary family planning, for all couples and individuals by 2015.\textsuperscript{31}

In the area of safe motherhood, the UNFPA aims to reduce preventable maternal deaths in developing countries.\textsuperscript{32} Every year, approximately half a mil-

\begin{itemize}
\item \textsuperscript{23} Id. at 1067-70; Zhang, \textit{supra} note 4, at 569.
\item \textsuperscript{24} Zhang, \textit{supra} note 4, at 573.
\item \textsuperscript{25} Id. at 570.
\item \textsuperscript{26} The Population Crisis Committee, now called Population Action International, is a private, nonprofit organization that has been involved in population policy research and action to slow world population growth since 1965. \textit{Population Action Int’l}, \textit{About PA}, \texttt{at http://www.populationaction.org/about/index.htm} (last visited Apr. 11, 2003).
\item \textsuperscript{27} Zhang, \textit{supra} note 4, at 573.
\item \textsuperscript{29} \textit{United Nations Population Fund}, \textit{About UNFPA: Overview}, \texttt{at http://www.unfpa.org/about/index.htm} (last visited Apr. 13, 2003).
\item \textsuperscript{31} Id.
\item \textsuperscript{32} Id.
\end{itemize}
lion women die during pregnancy. Many such deaths are the result of poor maternal health and inadequate care during pregnancy, delivery, and the critical immediate postpartum period. According to the UNFPA, many of these deaths could be prevented if access to adequate healthcare were available. The UNFPA estimates that, by meeting the existing demand for family planning services, maternal deaths and injuries could be reduced by twenty percent or more.

To achieve its goal of reducing preventable maternal deaths, the UNFPA focuses on providing timely emergency obstetric care for women who develop complications, as well as having skilled attendance and functioning referral systems for all women in labor. In addition, the UNFPA works to increase general access to contraceptive services.

To date, the UNFPA has been instrumental in supporting safe motherhood programs in eighty-nine developing countries. In India, for example, the UNFPA is implementing emergency obstetric care projects in seven districts of Rajasthan. Thus far, assessments of basic needs, information management services, facilities, and training needs have been undertaken. In addition, medical officers and staff nurses received skill-based training, procurement of equipment and supplies was initiated, construction and repair of operating theaters, labor rooms, and toilets began, and water, electricity, and sewage systems began to be improved. This is one example of the numerous programs that the UNFPA has implemented in developing nations to help reduce preventable maternal deaths in developing countries.

The UNFPA is committed to providing logistic support and commodities to help countries improve access to high-quality and affordable means of contraception and sexually-transmitted disease (STD) prevention. Priorities in this area include helping young people protect their rights to reproductive and sexual

34. Id.
35. Id.
37. Id.
38. Id.
40. Id.
41. Id.
42. Other examples of successful programs include programs in Senegal, Mali, East Timor, Turkey, Morocco, Mozambique, and Nicaragua. UNITED NATIONS POPULATION FUND, UNFPA SUPPORTS SAFE MOTHERHOOD: CARING FOR MOTHERS IN THEIR TIME OF NEED, supra note 36.
43. UNITED NATIONS POPULATION FUND, ABOUT UNFPA: MISSION STATEMENT, supra note 30.
Eight hundred and ninety million people between the ages of fifteen and twenty-four live in developing nations. Among sexually active people in this age group worldwide, only seventeen percent use contraceptives. In the least-developed countries, one in six births is to a woman between the ages of fifteen and nineteen. The UNFPA has supported several programs to address issues related to adolescent sexual and reproductive health. For example, in the Dominican Republic, where pregnancy and delivery complications are leading causes of death among teenage girls, the UNFPA has supported a program that provides training for a network of 360 peer educators who, in addition to providing information and distributing condoms, provide referrals to health services.

The program also sensitizes doctors, nurses, and others to the needs of the young people. Similarly, in Malawi, the UNFPA supported a community-based program to train young people selected by the community to distribute contraceptives and make referrals to reproductive health clinics.

The UNFPA is at the forefront of a movement to bring gender issues to international attention and to ensure that nations consider and address these issues in their national programming and policy. Violence causes more death and disability among women ages fifteen to forty-four than do cancer, malaria, traffic accidents and even war. Women lack equal access to education and to services that meet their sexual and reproductive health needs. They are deprived of the right to own land, to inherit property, to earn income, and to be free from job discrimination. In countries such as Brazil, the UNFPA has helped to develop a long-distance training course on family, reproductive health, and gender; establish a sustainable post-graduate course on sex education; and train leaders of cooperatives on reproductive health, gender, and family issues. Through public education about gender-based and domestic violence, the UNFPA is also helping to break the silence regarding violence against women in countries such as India.

46. Id.
47. Id.
49. Id.
50. Id.
51. Id.
54. Id.
55. Id.
Kenya, Morocco, and Nepal. 57

B. Involvement in China

The UNFPA’s current policy toward China is to “help China move away from the use of coercive methods to the voluntary and user-oriented family planning approach that is based on informed choice by individuals and couples.”58 Its most recent joint program with China provides assistance to thirty-two counties and is designed to strengthen “client-centered reproductive services based on the principle of free and responsible choice.”59 The Bush administration’s Independent Assessment Team found no evidence that UNFPA has knowingly supported or participated in coercive practices in the thirty-two counties with which the UNFPA is associated.60 The Assessment Team also noted that the UNFPA monitors its joint program for incidents of coercive abortion and has found no coercive abortion or involuntary sterilization since the program was established in 1998.61

The Project Document Between the People’s Republic of China and the United Nations Population Fund, signed in 1998, sets forth the joint reproductive health and family planning projects in the thirty-two counties in which the UNFPA is involved.62 It establishes the program’s commitment to family planning and states, “[T]he UNFPA will work with the Government to ensure that the widest range of reproductive health and family planning services are provided in the project counties without any form of coercion.”63 During negotiation of the terms of the project, the UNFPA required that the Chinese government formally agree to suspend or remove birth quotas and targets, as well as permit monitoring access and oversight by the UNFPA’s Executive Board, U.S. diplomatic staff in China, and independent observers in order to assess the voluntary nature of family planning activities.64

In the past, however, it has been less clear whether the UNFPA supported China’s one-child-policy. In 1991, then-director of the UNFPA Nafis Sadik praised China’s approach to population control, stating that “China has every reason to feel proud of and pleased with its remarkable achievements made in its

58. E-mail from Abubakar Dungus, United Nations Population Fund, to Rachel Farkas, J.D. Candidate, Boalt Hall School of Law, University of California, Berkeley (Nov. 18, 2002, 16:37 PST) (on file with author).
59. Gellman, supra note 5, at 1083-84 (quoting the United Nations Population Fund) (internal quotation omitted).
60. Assessment Team Report, supra note 2.
61. Id.
62. Id.
63. Id.
64. Letter from Colin L. Powell, Secretary of State, to Sen. Patrick J. Leahy, Chairman, Subcommittee on Foreign Operations, enclosure, Overview of History of Kemp-Kasten and UNFPA (July 21, 2002) [hereinafter Kemp-Kasten Analysis].
family planning policy and control of its population growth over the past ten years. In 1999, the UNFPA also asserted, “according to the law you should only have one child. If the law says you should have one child and you have more than one—you are breaking the law.” At the same conference, it contradicted itself by stating that “people in the world should have a choice in when to have a baby and how many children to have.” Following its 2002 visit, however, the Assessment Team concluded that the UNFPA had not knowingly supported coercive practices. Further, the Team reported that it had reviewed several documents indicating that China’s coercive practices had decreased in the counties in which the UNFPA had been involved since 1998, when the UNFPA started their involvement in joint family planning projects. This suggests that the UNFPA’s involvement may have helped to decrease the instances of coercive practices, rather than to support them.

In April 2002, a team of British Parliament members assessed the UNFPA’s work in China and confirmed that there was no evidence of coercive practices in the UNFPA-supported counties. The team found that the UNFPA’s work in China has had a positive effect and has played an important and catalytic role in reforming China’s family planning practices. In particular, the team noted that the UNFPA’s work has shifted China’s reproductive policies from an administrative family-planning approach to a client-oriented, quality-of-care model that empowers women by providing information and enables them to make reproductive choices. The Team observed that the success of the UNFPA’s programs in China has led the Chinese Government to propose using the same program in over 800 additional counties at its own expense.

IV. U.S. POLICIES ON FUNDING THE UNFPA

Since the UNFPA’s inception, the United States has been one of the UNFPA’s largest donors and greatest supporters. In 1974, at the UN Conference on Population, the United States played a critical role in initiating a declaration that recognized family planning as a basic human right. In 1977, the

67. Id.
68. Id.
69. Id.
70. ALL-PARTY PARLIAMENTARY GROUP ON POPULATION, DEVELOPMENT, AND REPRODUCTIVE HEALTH, CHINA MISSION REPORT BY UNITED KINGDOM MP’S, Apr. 1-9, 2002, at 2 [hereinafter UK CHINA MISSION REPORT].
71. Id.
72. Id.
73. Rohrbaugh, supra note 28, at 241.
74. Id.
Carter administration passed section 104(d) of the Foreign Assistance Act of 1961, which, for the first time, integrated family planning programs into more traditional development assistance programs.\textsuperscript{75} Due to political reactions to \textit{Roe v. Wade}, however, Congress banned the use of foreign aid for abortion and involuntary sterilization.\textsuperscript{76} Still, throughout the rest of the Carter administration, steady family planning funding was given to the UNFPA.\textsuperscript{77}

In 1984, at the second International Population Conference in Mexico City, the Reagan administration announced a new policy identifying population growth as a “neutral phenomenon,” as opposed to a fundamental challenge to economic development.\textsuperscript{78} This policy, known as the “Mexico City Policy,” expanded the ban on funding for abortion to include organizations that undertook voluntary abortion activities using non-U.S. funds.\textsuperscript{79} Motivated in part by opposition to China’s one-child family policy, the Reagan administration required the UNFPA to provide “concrete assurances that [it] is not engaged in, or does not provide funding for, abortion or coercive family planning programs.”\textsuperscript{80}

In 1985, Congress passed the Kemp-Kasten Amendment, which amended the Foreign Assistance and Related Programs Appropriations Act of 1985. The Amendment stated that no funds were to be made available to “any organization or program which, as determined by the President of the United States, supports or participates in the management of a program of coercive abortion or involuntary sterilization.”\textsuperscript{81} Due to opposition to China’s one-child policy, the Reagan administration used the Kemp-Kasten Amendment to deny all U.S. funding to the UNFPA.\textsuperscript{82} In 1986, this application of the amendment was challenged in, and then upheld by, the District of Columbia Circuit Court in \textit{Population Institute v. McPherson}.\textsuperscript{83} Until this point, the United States had provided almost one-third of the UNFPA’s yearly funding.\textsuperscript{84} The policy remained in place through the first Bush administration.\textsuperscript{85}

On January 22, 1993, as one of his first presidential acts, Clinton reversed the Mexico City Policy.\textsuperscript{86} In the Foreign Operations Appropriations Act of 1994, Congress provided $50 million for the UNFPA.\textsuperscript{87} United States Agency for International Development (USAID) administrator Brian Atwood determined that

\begin{itemize}
  \item[76.] Id.
  \item[77.] Id.
  \item[78.] Id.
  \item[79.] Id.
  \item[80.] Id.
  \item[82.] Ehrlich & Salzman, supra note 75.
  \item[83.] 797 F.2d 1062 (D.C. Cir. 1986).
  \item[84.] Ehrlich & Salzman, supra note 75.
  \item[85.] Id.
  \item[86.] Ehrlich & Salzman, supra note 75; Rohrbaugh, supra note 28, at 242.
  \item[87.] Id.
\end{itemize}
granting funding to the UNFPA would not violate the Kemp-Kasten Amendment because there was no direct link between the UNFPA’s program and China’s coercive practices.\footnote{88} The USAID general counsel’s office interpreted the Amendment to require “evidence that the organization knowingly and intentionally provides direct support for, or helps manage, people or agencies who are clearly engaged in coercive abortion or involuntary sterilization.”\footnote{89}

This broader interpretation allowed continuous funding to be provided to the UNFPA during the Clinton administration. However, in exchange for congressional support for payment of $1 billion of U.S. debts to the United Nations, Clinton agreed in the Consolidated Appropriations Act of 2000 to require that private organizations certify that they did not perform abortions.\footnote{90} In 2000, the U.S. budget for the 2001 fiscal year provided that U.S. funds for the UNFPA be held in a separate account and that the funds not be used for family planning in China.\footnote{91} Furthermore, if any of the funds were used in a program in China, the provision stipulated that funds would be withheld from the UNFPA for the following year.\footnote{92}

On March 28, 2001, President Bush issued a memorandum directing the USAID to “reinstate in full all of the requirements of the Mexico City Policy in effect on January 19, 1993.”\footnote{93} Due to continuing controversy over China’s one-child family policy, the Bush administration sent an independent assessment team to China to investigate the UNFPA’s program.\footnote{94} On May 29, 2002, the Bureau of Population, Refugees, and Migration released their report.\footnote{95}

The team found “no evidence that the UNFPA has knowingly supported or participated in the management of a program of coercive abortion or involuntary sterilization in the PRC” and recommended that the $34 million appropriated to the UNFPA be released.\footnote{96} During a meeting with the team, the UNFPA’s Executive Director, Thoraya Ahmed Obaid, stated that the UNFPA’s policy included strict opposition to coercive methods and that, should such a case be alleged in any of the thirty-two counties in which the UNFPA has a family planning program, it would be immediately investigated.\footnote{97} The team found that “the UNFPA does its best to monitor its joint program in the thirty-two counties and thus far has found no coercive abortion or involuntary sterilization since the program was established in 1998.”\footnote{98} The team’s own investigation, which included interviews

\begin{itemize}
  \item \footnote{88}{\textit{Kemp-Kasten Analysis}, \textit{supra} note 64.}
  \item \footnote{89}{\textit{Id.}}
  \item \footnote{90}{Ehrlich & Salzman, \textit{supra} note 75.}
  \item \footnote{91}{Gellman, \textit{supra} note 5, at 1090-91.}
  \item \footnote{92}{\textit{Id.} at 1091.}
  \item \footnote{93}{President’s Memorandum on Restoration of the Mexico City Policy, 66 Fed. Reg. 298, 550 (Mar. 28, 2001).}
  \item \footnote{94}{S. REP. NO. 107-219, at 54 (2002).}
  \item \footnote{95}{\textit{Kemp-Kasten Analysis}, \textit{supra} note 64.}
  \item \footnote{96}{\textit{Id.}}
  \item \footnote{97}{\textit{Id.}}
  \item \footnote{98}{\textit{Id.}}
\end{itemize}
with State Family Planning Commission (SFPC) officials, doctors of local hospitals, county administrative officials, and Chinese citizens in spontaneous, no-notice encounters on the streets, turned up no evidence of coercive methods used in the thirty-two counties where the UNFPA runs its programs.99

While the team found no evidence that the UNFPA was involved in coercive methods of family planning, it did conclude that "the population programs of the PRC retain coercive elements in law and in practice." The team recommended that no U.S. funds be allocated for population programs in the PRC.100

Among the documents examined by the team was a 1997 "Notice of Non-Permission to Bear [More] Children" issued to a couple with two children and warning that failure to comply would be handled "severely."101 The team also examined a 1999 document reporting demotion and dismissal from the Communist Party of officials who violated birth planning laws and regulations, as well as the March 2000 State Council Decision on Family Planning, which directed that "fees for society to bring up children" be collected from families who violated family planning policies.102 The team found that fees for the first "out of plan" child are often set at two to three times the amount of a couple’s annual salary.103

On December 29, 2001, the PRC State Law on Population and Birth Planning was passed. The legislation included economic sanctions for citizens giving birth to unauthorized children.104

Despite its own assessment team’s recommendation that the UNFPA funding be released, the Bush administration concluded that the UNFPA’s program in China violated the Kemp-Kasten Amendment and chose to withhold the $34 million allocated by Congress.105 In a September 24, 2002 statement, Ambassador Sichan Siv, United States Representative to the Economic and Social Council, urged the UNFPA to reform their China program by taking measures such as building a "firewall" between the UNFPA and the government of China and expanding use of independent international non-governmental organizations.106

99. Id.
100. Id.
101. Id.
102. Id.
103. Id.
104. Id.
106. Ambassador Siv Statement, supra note 3.
V. Effects of the Funding Cut

Each year, 500,000 women die in pregnancy or childbirth.107 One hundred million women and girls die because they are denied adequate food or medical care or because they are aborted or killed at birth because they are female.108 Sixty percent of the children kept out of elementary school are girls, and 130 million women and girls have undergone genital mutilation.109 Between one and two million women and girls are trafficked into prostitution each year.110 The $34 million that Congress allocated to the UNFPA would have helped women and families in the poorest countries who rely on the UNFPA for health services during pregnancy and birth, voluntary family planning, and protection from AIDS and other sexually transmitted diseases.111

The decision to cut that funding may force the elimination of vital programs in many of the world’s poorest nations.112 In Kenya, the cut could harm a UNFPA program that provides resources for the safe delivery of children, family planning, and women’s empowerment.113 The program trains birth attendants to help women who give birth at home because they cannot travel to clinics.114 Plans to provide services for safe delivery in inaccessible villages in India will be scaled down or postponed.115 An emergency obstetric care program, which was to begin this year in Burundi, where one in eight women will die in childbirth, has been canceled.116 Support for primary health-care clinics for poor people living in remote areas will also be reduced, which could lead to increased infant mortality.117

Efforts to create an emergency obstetric care system and a program that provides subsidized contraceptives to men and women in rural areas could also be suspended.118 In Nepal, where contraceptive use increased from twenty-eight percent to thirty-nine percent due to UNFPA support, supplies will be reduced by twenty percent as a result of the funding cut.119

In Burkina Faso, plans to rehabilitate health care facilities and purchase medical equipment will be halted and supplies of contraceptives will be disrupted.120 In Thailand, where teenage pregnancies account for fifteen percent of

108. Id.
109. Id.
110. Id.
111. Obaid Statement, supra note 105.
112. Dungus, supra note 58.
113. Id.
114. Id.
115. Id.
117. Id.
118. Id.
119. Id.
120. Id.
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births and an estimated 200,000 to 300,000 illegal abortions occur every year, plans to make reproductive health services available to unmarried men, women, and youth may be jeopardized.21

Plans for midwife training in Algeria and an AIDS center in Haiti have also been canceled.22 Despite rising rates of HIV and AIDS infection in Vietnam, the UNFPA’s plans for provision of HIV/AIDS test kits and safety equipment for safe blood transfusion could be delayed.23 On a worldwide level, the funding cut is predicted to result in two million unwanted pregnancies, 4700 maternal deaths, 60,000 cases of serious maternal illness, and over 77,000 infant and child deaths.24

The Bush administration’s decision to deny funding to the UNFPA will have a negative effect on more people than just the women in underdeveloped nations.25 Cuts to programs that provide much-needed contraceptives and methods of family planning have an impact on all of us because of the detrimental effect on the world’s population control.26 Today, the world population is 6.2 billion.27 It is growing at a rate of 78 million people a year and ninety-seven of that growth occurs in the world’s poorest countries.28 This population explosion can have an extremely negative effect on the world’s resources and on our environment. Overpopulation represents the most fundamental threat to the world’s plants, for which the threat of extinction is much larger than commonly believed.29 Overpopulation and the consequent over-fishing will result in approximately one billion people in developing nations facing shortages of fish, their most important source of protein.30

Using a narrow interpretation of the Kemp-Kasten Amendment, the Bush administration concluded that decisions to cut funding need not rest on legal intent to fund coercive programming; rather, funding can be denied if the recipient “supports or participates in the management of a program of coercive abortion.”31 In determining that the UNFPA does support or participate in coercive abortion programs in China, the Bush administration relied on briefings supplied by the UNFPA, Chinese law, the U.S. State Department’s annual human rights reports, and the report of the independent assessment team.32

121. Id.
122. Id.
123. Id.
124. Obaid Statement, supra note 105.
126. Id.
128. ASHEVILLE CITIZEN TIMES, supra note 125.
129. Id.
130. Id.
131. Kemp-Kasten Analysis, supra note 64.
132. Id.
The Bush administration interpreted the assessment team’s finding that population programs in the PRC “retain coercive elements in law and practice” to show that the UNFPA in some way supports or participates in such programs despite the assessment team’s recommendation that funding be released.\textsuperscript{133} Translated more broadly, this rationale seems to indicate that an organization that has programs in a country with coercive practices supports and participates in those practices regardless of whether there is any direct evidence of such support or participation.

In drawing its conclusions, the Bush administration also relied on the Chinese government’s adoption of the Population and Family Planning Law of the People’s Republic of China.\textsuperscript{134} While this law admittedly imposes “social compensation fees” and disciplinary measures on those who violate family planning laws,\textsuperscript{135} the Bush administration failed to provide concrete evidence that the UNFPA’s programs support such coercive practices. In addition, the Bush administration relied on documents posted in PRC State Family Planning Commission Offices in the thirty-two counties where the UNFPA operates forbidding the prevention of “legal births on the grounds of fulfilling the population plan.”\textsuperscript{136} According to the Bush administration, this “convey[s] the clear message that it is not forbidden for government workers to seek to prevent out-of-plan [or illegal] births.”\textsuperscript{137} One wonders, even if it is accurate to assume that the UNFPA is implicated by the fact that such documents are posted in China’s government offices. The Bush administration fails to provide support for this inference.

The only evidence the Bush administration supplies that directly connects the UNFPA to China’s coercive practices is the fact that the organization provides financial support to the PRC for equipment such as computers and data-processing equipment, surgical and other medical equipment, and project vehicles, as well as funds for other family-planning activities.\textsuperscript{138} Based solely on this bit of evidence, the administration concluded that any benefits the UNFPA’s programs provide in China are not sufficient to justify furnishing funding under the Kemp-Kasten Amendment, because the UNFPA’s involvement in China’s population planning program “allows the Chinese government to implement more effectively its program of coercive abortion.”\textsuperscript{139} However, this conclusion is strongly contradicted by a United Kingdom study’s finding that the UNFPA has not only had a positive impact in the counties in which it operates, but it might also lead the Chinese government to lessen its coercive practices in the rest of the nation.\textsuperscript{140}

\begin{thebibliography}{99}
\bibitem{133} Id.
\bibitem{134} Kemp-Kasten Analysis, supra note 64.
\bibitem{135} Id.
\bibitem{136} Id.
\bibitem{137} Id.
\bibitem{138} Id.
\bibitem{139} Id.
\bibitem{140} UK CHINA MISSION REPORT, supra note 70.
\end{thebibliography}
The Bush administration’s paltry reasoning raises questions about the real motive behind its decision. Even if one believed the administration’s conclusion that the UNFPA supports coercive practices, it could do what the Clinton administration did by funding the UNFPA with the qualification that none of the money be spent in China. This viable alternative suggests that the Bush administration’s real motives have less to do with protecting Chinese women from human rights abuses and more to do with appeasing U.S. moral conservatives who supported President Bush politically and financially when he was running for office. This amounts to an imposition of Bush’s personal religious beliefs, which should not be tolerated in a democratic nation.

Denying funding to the UNFPA, however, is only one of many steps that the Bush administration has taken to prevent women in developing countries from having the same rights as do American women. For example, President Bush has reinstated a policy, commonly called the “global gag rule,” which prohibits international organizations that receive U.S. funds from providing women with any information about abortion, even if abortion is legal in the country in which the organization operates. The policy also prevents such organizations from lobbying governments for changes in abortion law, and from using non-U.S. funds to provide information on abortion. If instituted in the United States, the global gag rule could be held unconstitutional, but that has not prevented President Bush from enforcing it against the world’s poorest and most powerless women.

Currently, the Bush administration is in the process of deciding whether to use the Kemp-Kasten Amendment again to withhold funds from the World Health Organization’s (WHO) Human Reproduction Project on the grounds that the WHO is doing research on abortion pill RU-486. Nine members of Congress wrote to Secretary of State Colin Powell to criticize the State Department for failing to contribute to the WHO research programs in fiscal year 2002. The nine members maintained that such a broad interpretation could lead the United States to withhold all funds from the WHO, the UN Children’s Fund, the UN Development Program, and the World Bank. Although the Bush administration claims that all of the money denied to the UNFPA and other organizations will go to international family planning, few organizations will be left that

143. Id.
144. Id.
145. Id.
147. Id.
148. Id.
are eligible to receive the funds.\textsuperscript{149}

There have been other efforts to deny support to the United Nations' programs that the Bush administration claims promote abortion. Although the State Department initially backed the UN, the Bush administration is now trying to block an international treaty known as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).\textsuperscript{150} This treaty, along with a family planning agreement that the United States helped write at the 1994 United Nations population conference in Cairo, has been endorsed by 179 other nations.\textsuperscript{151} The agreement represents a population policy focused on improving the economic status and legal rights of women and embraces the idea that giving women more control over their lives is the best way to control population growth.\textsuperscript{152} The United States is threatening to withdraw its support because of two terms included in the agreement: "reproductive health services and reproductive rights," which the Administration argues can be construed to promote abortion.\textsuperscript{153}

In 1994, the United States and 179 other nations recognized the importance of improving access to health care, education, and employment opportunities for women in developing nations and agreed to donate a total of $17 billion to meet this goal.\textsuperscript{154} In 1996, the United States needed to triple its contribution to international family planning in order to reach its promised portion of the $17 billion; along with Japan, it represented the largest share of the donor deficit.\textsuperscript{155} The U.S. government should not be withholding funds to organizations that are dedicated to such important goals, and it should reaffirm the commitment it made in 1994.

The unfortunate irony of these recent policy decisions is that they likely perpetuate that which they are trying to prevent. UNFPA Executive Director Thoraya Obaid predicts that the cuts to the UNFPA funding alone will result in 800,000 more induced abortions.\textsuperscript{156} Evidence from Russia and several Eastern European countries shows that the more family planning and contraceptive use becomes available, the more abortion rates plummet.\textsuperscript{157} Perhaps the real question is, if the Bush administration is so concerned with protecting the human rights of women in China, why not spread that concern to other countries and stop creat-

\begin{thebibliography}{99}
\bibitem{151} Id.
\bibitem{152} Id.
\bibitem{153} Id.
\bibitem{155} Id.
\bibitem{156} Obaid Statement, \textit{supra} note 105.
\bibitem{157} Threats to Women's Rights, \textit{supra} note 142.
\end{thebibliography}
VI. CONCLUSION

The People’s Republic of China’s use of birth quotas as a means to assess the performance of party leaders and government officials, and the consequent incentive systems, practiced by local officials led to coercive practices, including forced abortion and involuntary sterilization, throughout the 1980s. Although the PRC has attempted to remedy the situation, allegations of such abuse continue to exist today. As a result of such allegations, the Bush administration sent an independent assessment team to China to determine whether the UNFPA “supports or participates in the management of a program of coercive abortion or involuntary sterilization” as forbidden by the Kemp-Kasten Amendment.

Against the independent assessment team’s recommendation that the $34 million appropriated by Congress be released to the UNFPA, the Bush administration used the Kemp-Kasten Amendment to withhold the funding. The administration claimed that the decision was made based on the independent assessment team’s finding that China’s population practices retain coercive elements. A close examination of this reasoning, however, shows that the administration failed to prove a clear connection between any continued coercive practices in China and the UNFPA’s programs. This leads to the conclusion that the real motive behind the decision revolves around the President’s personal beliefs about abortion. This is a conclusion buttressed by other recent decisions made by the Bush administration, such as reinstatement of the Mexico City Policy and the global gag rule.

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158. Gellman, supra note 5, at 1071; Zhang, supra note 4, at 569.
159. Zhang, supra note 4, at 573.
161. Ambassador Siv Statement, supra note 3.
162. Kemp-Kasten Analysis, supra note 64.