

The Human Rights Protection Situation for Population and Family Planning in China

Abstract:

China has a large number of population. Since the implementation of family planning policy China's rapid population increase has been curbed effectively, but the human rights concern in this area was always an international focus. This paper expatiates on the achievements as well as the problems of China's family planning programme.

Key words: family planning, human rights, reproductive health, migrants

China Family Planning Association (CFPA herein after), founded in May 29, 1980, is a nationwide and non-profit NGO. It became a full member of the International Planned Parenthood Federation (IPPF) in 1983 and was granted the UN NGO Consultative Status in Jan.2005.

CFPA is China's largest NGO in the field of reproductive health and family planning. CFPA has an extensive network of over one million branches at all administrative levels in China with 94 million members and volunteers. In the past 20 years, CFPA expanded its scope of work far beyond family planning. It has become an important force in promoting rural economic construction, poverty alleviation through development, villagers' democratic participation in management, etc. At the same time, CFPA brought in international managerial theory, funds and technology and implemented various useful pilot projects such as protection of reproductive health and rights of people at child bearing age, gender equality, poverty elimination, adolescent sexual and reproductive health education, HIV prevention among vulnerable groups and floating population, promotion of reproductive health among Muslim population, etc.

By 2007, the population in China has reached 1,310,000,000. With the background of large population at a rapid growth rate, limited arable land and scant natural resources, in order to promote the sustainable development with a better coordination between population, resources and environment, the Chinese government started the implementation of family planning policy after the deliberation and approval of the National People's Congress. Since then family planning has become a fundamental state policy in China.

Under the basic situation of a large population, limited arable land and poor economic base,

promoting and implementing family planning can slow down the rapid population increase, and therefore is conducive to China's social and economic development and is also in the fundamental interests of the Chinese people. That is why the policy received broad support from the people in both urban and rural areas. Reproductive health right is an important part of human rights. How to better respect and protect human rights in the area of population and family planning has always been one of the aspects we NGOs in China pay special attention to.

1. Major progress

(1) Legislation

According to our observation, the Chinese government has made many laws and regulations to protect people's rights on reproductive health and family planning. Since 1990s, government at provincial and autonomous region level and government of municipalities directly under the central government have, after the approval of local people's congress, published their family planning regulations. These regulations played a positive role in regulating local administrative actions with regard family planning and in protecting people's legitimate rights in practicing family planning. In order to further define the people's rights and duties in practicing family planning, to standardize administrative conduct of government departments and their staff in dealing with family planning issues and to protect people's rights China published its first law in the area of population and family planning—"Law of People's Republic of China on Population and Family Planning" on Dec.29. 2001. To implement this law, the State Council established and perfected three administrative regulations, namely "Administrative Regulation on Family Planning of Migrant Population", "Administrative Regulation on Family Planning Skill and Service" and "Administrative Regulation on Social Compensation Fees". Except Tibet, all the other 30 provinces amended or established their local family planning regulations according to the principles of standardization and unification of law, people centered approach, protection of rights according to the law, reform and innovation. Emphasis was given to the unity of power and responsibility and the unity of rights and duties so that the people's legitimate rights in practicing family planning will be fully protected. These laws and regulations ended the situation in which family planning has no law to follow and government administrative conduct not properly regulated due to different interpretation of the family planning policy in different places and by different people. These laws and regulations played an important role in protecting people's reproductive health and rights and standardizing government administrative conduct and stopping violation of people's reproductive rights by the local government staff.

(2) Put system in effect, standardize the execution and enhance the supervision

Once laws and regulations are established, true implementation becomes the key to human rights protection. In recent years, with the existing laws and regulations, the National Population and Family Planning Commission (NPFPC) has developed a working handbook on family planning administration according to the law, which included 4 working systems on population and family planning legislation, 2 working systems on law popularizing and training, 13 responsibility systems on administrative execution, 10 administrative execution procedures and 5

administrative executive documents including on social compensation fee collection. The local governments also standardized the administrative execution system, procedure and documents to provide law base for local administrative conduct. Meantime, the population and family planning departments at all levels have established responsibility system on administration by the law, further implemented the system of investigating and punishing misconduct in order to ensure that the administration is under the rule of law and the staff fulfill their duties defined by the law. For the staff who caused administrative violation and misjudged case either intentionally or due to serious mistake investigation will be made to find whom to blame. In addition, the administrative compensation system has been established to ensure that people whose lawful rights are invaded and consequently suffered human harms or property losses due to administrative misconduct by the population and family planning department or its staff should be compensated in accordance with the law. A law enforcement fault recovery system has also been established. Staff who causes administrative violation either intentionally or due to serious mistake will be asked to recover the loss in addition to administrative and disciplinary punishment. Local departments also use the “Eight Disciplines” to restrict their staff. Great efforts have been made to intensify investigation and punishment against law violation, to resolutely forbid arbitrary charges and fines and seriously deal with offence behavior and cases violating people’s interests and rights.

The NPFPC has been persistently implementing a supervision system to check law enforcement situation all over the country through selective check on its local departments besides the self-check by each province. At the same time, the population and family planning system is subject to the external supervision. The Committee on Education, Science, Culture and Health under the National People’s Congress, the provincial People’s Congress, Political Consultative Conference and other departments have made researches and taken several supervisions on the implementation of the National Population and Family Planning Law and the provincial population and family planning laws and regulations. Such supervision and check further promoted the implementation of the population and family planning laws and regulations. It can not be denied that some rights invasion behaviors and cases do happen in some areas, especially in the rural areas. But it is also a fact that in recent years this kind of behaviors has been effectively curbed and cases violating people’s rights and interests have decreased greatly.

(3) Quality service, rights to access information and rights of health

In order to protect the reproductive health of people at childbearing age, the Chinese government launched the “Population and Family Planning Quality Service Advanced County Competition”. Rights to family planning information and choice are the key elements of human rights in family planning and the core content of quality service. Previously in rural areas, people lacked access to information and did not know how to make a choice for family planning. As a matter of fact, not many options were available and informed choice was impossible at that time. During the competition, informed choice has been promoted throughout the rural areas. Contraception knowledge has been popularized, various contraceptive drugs and devices as well the relevant services are available and supplied, thus people’s free choice for family planning methods has become a reality. By now, more than 800 counties have been officially accepted as state level quality service counties and many more become provincial level quality service counties. In

comparison with total 2,800 counties in the whole country, the number of quality service counties is proportionally quite high which is a clear indication of high popularization of informed choice in China.

To take Jiangsu, Gansu and some other provinces for example, informed choice of contraceptive methods has replaced the previous compelling methods of only IUD and sterilization. Jiangsu PFPC established the “Jiangsu Informed Choice Rules and Procedures” and “Informed Choice Guidelines”. An “Informed Choice Agreement” will be signed by the clients with full information of available methods and on a basis of complete free decision thus they are ensured to make free informed choice for safe, effective and appropriate contraceptive methods. Efforts have been made to expand informed choice coverage from child bearing aged women to general population and from the population under the local household registration system to migrants.

2. Improvement is needed

Generally speaking, the human rights situation in family planning area in China keeps improving. The reproductive health rights of the people at child bearing age are getting more respect and protection. As China’s largest NGO in the area of family planning, CFPA has made some useful experiments and attempts to promote and improve people’s reproductive health. It advocates the government to pay more attention to adolescent reproductive health education and rights protection. It advocates democratic participation and supervision as well as management of family planning by villagers themselves. CFPA also pays more attention to rights protect for the migrants and their better access to reproductive health services. We hope that through NGOs efforts more and more information and reference on human rights protection can be provided to the government for its consideration.

Comparing with 10 and 20 years ago, the progress made thus far is really great. However, many things remain to be done in order to further improve human rights situation, mainly in the following three aspects:

(1) A few grassroots family planning workers are still possessed by the old views and concepts which prevailed before the adoption of the National Population and Family Planning Law, namely that as long as it is for the implementation of the family planning policy which is a fundamental state policy occasional violation of people’s rights should not be considered as a serious mistake. With such ideas still in the minds of the few family planning workers, incidents in violation of peoples’ reproductive rights do occur from time to time in some remote, bordering and economically underdeveloped areas.

(2) Reproductive health and rights of the adolescents have not yet received fully protection. In China, married women at chilled bearing age have been the major target of family planning services while the needs of large number of unmarried adolescents are still not met. With the development of economy and urbanization, the needs of adolescents for sexual and contraception knowledge, contraceptive methods supply and reproductive health service are growing rapidly. But the existing service system can hardly cover this part of the population and consequently their

reproductive health and rights could not get effective protection. How to fully and effectively protect the reproductive health and rights of adolescents is an important aspect which needs further improvement by the Chinese government through its continuous efforts in the future.

(3) The situation of migrants is worrisome. China has now over 150,000,000 migrants. Since they are quite mobile and floating between rural and urban service systems, they became the vulnerable group in getting reproductive health and family planning services. Most of the migrants are still out of the existing reproductive health and family planning service system and therefore their reproductive health and rights can not be fulfilled entirely. Because both the scope of floating population and the number of migrants will probably become even bigger the protection of their reproductive health and rights will be one of the most serious challenges for the Chinese government in the future.