

Controlling overpopulation: is there a solution? a human rights analysis

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ABSTRACT

This paper is concerned with the serious problem of overpopulation, a challenging phenomenon that is causing increased stress to the earth and its resources with each passing day. The implications of overpopulation are far-reaching and include, but are not limited to, environmental degradation and widespread poverty. Correspondingly, this paper identifies that there is a pressing need to address this problem with a human rights compatible population control policy. To arrive at this point, this paper will identify the difference between regulationist and voluntarist approaches to policymaking. Accordingly, the Chinese one-child policy introduced in the 1980s will be analysed as a famous and fitting example of a regulationist policy which quantitatively restricted the number of children that a couple could have. The analysis of this policy will indicate to what extent regulationist policies introduced to control population can withstand human rights based analysis.

The research will then go further, seeking to offer human rights friendly solutions to the need implement some form of population control. This paper will first draw upon the Indonesian population control response seen throughout the 1970s and 80s as an example of a successful voluntarist approach which provides logical solutions. These solutions are identified as being largely voluntarist, and promoting free and informed decision making in the area of family planning. More precisely, this paper will coin the idea of 'generating contentment' as a policy which will delay the desire for children. The idea of generating contentment will focus on improving living standards in developing countries via the adoption of the United Nations' Sustainable Development Goals, as well as the propagation of widespread family planning services and the implementation of these into educational curriculums. The implementation of these goals will be a primary driver into reducing population by achieving outcomes such as broadened and emphasised career opportunities for women, and challenging customs that suppress sexual education and contraception access.

Introduction

Overpopulation is an increasingly concerning and contemporary issue in the modern world. Science has clearly identified that our current way of life cannot be sustained for much longer due to the incompatible duality between finite resources and an infinitely expanding population. Whilst maybe a change to the mode of resource consumption could be a solution; this paper will not concern itself with

this. Instead, it will focus on policies to control the population, by reviewing methods that have already been used, namely the Chinese one-child policy, and analyse their implications on human rights amongst other things. Current literature in this area identifies the importance of the relationship between population control policies and human rights, and more broadly that regulationist policies, such as the one-child policy, are more likely to erode

liberties and human rights. The literature, however, falls short on supplying an analysis of these policies using real life examples, predominantly due to its age, and thus gives latitude for an expansion on its arguments that are primarily speculative in the absence of case studies such as the Chinese policy. Fittingly, this paper will attempt to pick up where the literature has left off, and apply a fresh analysis to population control policies and the extent of their legality within the context of international norms. This paper will then present some possible solutions which rest mainly within 'voluntarist' policies including, but not limited to, incentivisation policies and educational and accessible approaches to family planning, with a discussion of any implications they may also present. Many of these possible solutions have been influenced by the Indonesian population policy within the 1970s and 80s which will be discussed in further depth. In addition, the United Nations' seventeen Sustainable Development Goals, adopted in 2015, should be deemed instrumental in the enactment of successful policy in this area, as they address many of what this paper considers the root causes of population growth; poverty, overconsumption, inequalities, economic factors and lack of innovation.

Current literature

A review of the existing literature on the legality of possible population control policies has identified a few key works in this area. The 1978 article: 'Legal Implications of Population Control: A Practical Reevaluation of Some Human Rights Considerations' by Susan Eisenhauer in the *Fordham International Law Journal* is an authoritative paper in this field.¹ The paper identifies the problem of overpopulation and the possibilities available with respect of population control policies. Like this paper, it identifies the international human rights framework of the time

and applies its applicability to possible population control policies. However, there are a few issues with Eisenhauer's research, leading to gaps in the literature which are remedied here. Firstly, and most importantly, the study is not a recent piece of research. As such, it does not benefit from discourse around the highly significant Chinese one-child policy, which came into place a year after the article's publication. The current study takes advantage of this, and provides a nuanced discussion of this policy to illustrate the inherent injustices of government mandated quantitative population control policies. The age of the paper also renders it blind to solutions such as the United Nations' Sustainable Development Goals (SDGs). In fact, Eisenhauer even argues that at the time, "The UN position... is not satisfactory for dealing with the population problem" and calls for "stronger action".² Therefore, this paper updates this discourse by focusing on the utility of the new SDGs as a nuanced but effective approach to population control, which Eisenhauer's paper did not have the chance to analyse.

A further issue with Eisenhauer's paper is the Western centric view it takes of the discussion, specifically with respect of the United States. For example, focusing on solutions which are much more accessible in the west, such as the imposition of education fees.³ Therefore, it does not satisfactorily address the problem where it is most prevalent, in developing countries, and this is a missed opportunity which will be appropriately covered here.

Another piece of literature that this author deems important is a 1971 article appearing in the *Harvard Law Review* which is silent as to the author's details. The article, 'Legal Analysis and Population Control: The Problem of Coercion',⁴ is again very US centric and suffers from age, but offers a very interesting discussion of the types of policies

¹ S C Eisenhauer, 'Legal Implications of Population Control: A Practical Reevaluation of Some Human Rights Considerations' (1978) 2(1) *Fordham Int Law Journal* 1.

² *Ibid*, 42.

³ *Ibid*, 31.

⁴ Unnamed Author, 'Legal Analysis and Population Control: The Problem of Coercion' (1971) 84(8) *Harvard Law Review* 1856.

available to deal with overpopulation. The paper analyses the two possible approaches to population control, terming them as ‘voluntarist’ and ‘regulationist’. Using this language allows the current study to analyse possible policies which may lead to successful population control. For example, we see that the Chinese one-child policy is a regulationist policy, whereas increasing education and addressing social needs would fall under a voluntarist policy, which encourages free decision making yet may be coercive in guiding an individual (perhaps unconsciously) to make decisions which will reduce their family size.⁵ This paper will expand on this language and by utilising a ‘voluntarist’ and ‘regulationist’ analysis to differentiate possible policies, identify that regulationist approaches are much more likely to have a pernicious effect on human rights.

Finally, the 2019 paper, ‘Population Law and Policy: From Control and Contraception to Equity and Equality’ by Victoria Mather is a much more recent analysis on population control and human rights.⁶ The paper summarises the positions of previous population control policies, from the ‘regulationist’ Chinese one-child policy to the sterilisation campaigns in India, to more voluntarist policies such as in Indonesia. Mather then introduces potentially relevant human rights considerations, such as the applicability of first, second, third and fourth generation rights to population control. In general, the article feels more descriptive than analytical, and fails to analyse the policies that it lists under the lens of human rights. Furthermore, Mather does not put forward any

possible solutions to overpopulation. This provides a platform for elaboration on the applicability of the listed human rights principles to population control policymaking in the future.

Overpopulation – the extent and implications

Overpopulation presents a pressing crisis which will target our way of life. The global population is nearing 8 billion, having almost doubled in just 46 years from 1974.⁷ Scientists around the world have tried to highlight the severity of this situation. In 1992, over 1700 scientists, of which 104 were Nobel laureates, drafted a warning to humanity.⁸ They urged that “we must accept limits” to the “unrestrained population growth” due to the finite amount of resources on our planet, highlighting that even in 1992, when the population was just 5.4 billion, one in five people lived in poverty, without enough to eat, and one in ten suffered serious malnutrition.⁹

The implications stretch far beyond just poverty, and put together can set off a perpetual chain-reaction of negative consequences. In their warning, the scientists recognised the damage that overpopulation could have on six significant mechanisms of our planet:

- 1) The atmosphere – With CO₂ emissions growing 12 fold during the 20th century, a growing population is a root cause of the global warming crisis.¹⁰ With an increasingly mechanised lifestyle, the demand for fossil fuels can only grow.¹¹ The

⁵ Ibid, 1882.

⁶ V Mather, ‘Population Law and Policy: From Control and Contraception to Equity and Equality’ (2019) 50(3) St Mary’s Law Journal 917.

⁷ The global population hit 4 billion in 1974, expected to hit 10 billion by 2060 – available at:

<https://www.worldometers.info/world-population/> accessed 3 July 2020.

⁸ Union of Concerned Scientists, ‘World Scientists’ Warning to Humanity’ (1992) available at:

<https://www.ucsusa.org/sites/default/files/attach/2017/11/World%20Scientists%27%20Warning%20to%20Humanity%201992.pdf> accessed 4 July 2020.

⁹ Ibid, P1, col 2.

¹⁰ United Nations Population Fund, ‘Population and Environmental Change’ (2001) P5, available at:

https://www.unfpa.org/sites/default/files/pub-pdf/swp2001_eng.pdf accessed 3 Feb 2021.

¹¹ Larry LeDoux, ‘Does Population Growth Impact Climate Change?’ *Scientific American* (29 Jul 2009) available at:

- extra air pollution and greenhouse emissions created by trying to supply more resources depletes the ozone, enhancing ultraviolet radiation. This leads to air pollution, global warming and acid rain. Damaging crops, ecosystems and animals.¹²
- 2) Water resources – the pollution of rivers and lakes damages depletable water resources and ecosystems essential for food production and other human systems. There are many water shortages in places that rely on freshwater, such as landlocked countries. Freshwater sources will further deplete with a growing population, a phenomenon known as water scarcity.¹³ Which will in turn affect crop and livestock production, and may lead to food shortages.¹⁴
 - 3) Oceans – Global warming has led to rising sea levels, which threatens ecosystems such as in the Arctic as well as coastal cities such as Venice. Furthermore, overfishing is very prevalent, especially in coastal regions relying on seafood as the main element of their economy. This will lead to the collapse of ecosystems, food shortages and economic downturn.¹⁵
 - 4) Soil - soil productivity is decreasing due to the demand for more crops to feed the

increasing population. As a result, per capita food production is decreasing in many parts of the world.¹⁶

- 5) Forests – rainforests are being rapidly destroyed due to deforestation to fulfil an increasing need for space for livestock farming, as well as the growth of urban settlements.¹⁷ This leads to a loss of habitats for flora and fauna alike, as well as greater pollution.¹⁸
- 6) Living species – there would be an irreversible loss of species as a result of many of the effects above.¹⁹ This will reduce genetic diversity and have huge knock effects on food chains, known as a ‘trophic cascade’.²⁰

Whilst this is not a scientific article, it is clear that overpopulation is an urgent crisis, and its implications are grave and interrelated. The intersectional nature of these implications would lead to crippling and irreversible damage to our planet,²¹ thus action must be taken swiftly before we cross this rubicon.

There is evidence to support the idea that overpopulation is largely a social issue, given that 90% of population growth occurs in poorer countries.²² This may suggest that there is an important link between overpopulation and

<https://www.scientificamerican.com/article/population-growth-climate-change/> accessed 3 Feb 2021.

¹² I Manisalidis et al, ‘Environmental and Health Impacts of Air Pollution: A Review’ (2020) 8(14) *Front Public Health*: doi: 10.3389/fpubh.2020.00014

¹³ Gioietta Kuo, ‘Overpopulation and water scarcity leading to world future food crisis’ *Stanford MAHB* (12 Jul 2020) available at: <https://mahb.stanford.edu/library-item/overpopulation-and-water-scarcity-leading-to-world-future-food-crisis/> accessed 3 Feb 2021.

¹⁴ Ibid.

¹⁵ Katie Luoma, ‘How does Population Growth Impact Ocean Health?’ *Population Education Blog* (16 Nov 2016) available at: <https://populationeducation.org/how-does-population-growth-impact-ocean-health/> accessed 3 Feb 2021.

¹⁶ Union of Concerned Scientists (n8).

¹⁷ AA Rivera, ‘Deforestation and Overpopulation’ (1995) *Carta Inf* (Spanish) PMID:12179422.

¹⁸ Union of Concerned Scientists (n8).

¹⁹ Ibid.

²⁰ Renee Cho, ‘Why Endangered Species Matter’ *Columbia University Earth Institute* (26 Mar 2019) available at: <https://blogs.ei.columbia.edu/2019/03/26/endangered-species-matter/> accessed 4 Feb 2021.

²¹ Robert Sanders, ‘Scientists uncover evidence of impending tipping point for earth’ *Berkeley News* (6 Jun 2012) available at: <https://news.berkeley.edu/2012/06/06/scientists-uncover-evidence-of-impending-tipping-point-for-earth/> accessed 3 Feb 2021.

²² R Smith, ‘Overpopulation and overconsumption’ (1993) 306 *BMJ* 1285.

socioeconomic factors such as poverty and reduced access to education. Correspondingly, there is logic in addressing the socioeconomic factors in these countries to indirectly influence population growth rather than focusing on purely regulationist policy. This will be discussed in further depth throughout the paper.

Nevertheless, the repercussions of overpopulation could be fatal to humankind and thus it is imperative that governments act swiftly to curb it. It is generally accepted that there are only two natural approaches that can be adopted in population control policies; to directly regulate the ability to procreate or to achieve the same result through more indirect, gentle and coercive means. These are the 'regulationist' or 'voluntarist' approaches to policy making,²³ in keeping with the language of the Harvard Article. The Chinese one-child policy is the most famous example of population control and was a strict regulationist policy. This paper will analyse the Chinese policy to highlight the implications of regulationist policy in regard to population control.

The Chinese one-child policy

Background

The Chinese Communist Party (CCP) and its then leader, Deng Xiaoping, introduced the regulationist one-child policy in 1979, and formally implemented the policy in 1980 in an open letter from the CCP.²⁴

This policy was introduced to curb the spiking population in China, to alleviate many issues such as scarcity of resources, high unemployment rates and to encourage economic growth rather than the strain it was facing.²⁵ Such a strict policy was not without opposition, especially in rural areas. Consequently, the CCP published a document known as 'Document 7', which would allow local governments some flexibilities to make exceptions,²⁶ but the policy remained largely compulsory. In fact, in many cases, the latitude given to local governments to enforce this policy led to many more human rights issues, such as involuntary abortions, sterilisations, etc. This will be explored further in the discussion of the policy's implications. Since 2013, the CCP began to relax the policy, culminating in its termination in 2016.²⁷

Enforcement and punishment

The enforcement of the policy did not come from the central government, but instead occurred at a provincial level with the enforcement procedures constructed by the local governments. This allowed the policies to complement the local conditions.²⁸ Due to the flexibilities that local governments were permitted to make under Document 7, some provinces would allow a second child in limited circumstances, such as the first being disabled, or even female.²⁹ However, because the power of enforcement was allocated on a provincial level, the different mechanisms varied throughout China. The most common method was a mix of incentives and

²³ Unnamed Author (n4) 1865.

²⁴ CCP, 'Open Letter of the Central Committee of the Communist Party of China to the General Membership of the Communist Party and the Membership of the Chinese Communist Youth League on the Problem of Controlling Population Growth in Our Country' (Sept 25, 1980).

²⁵ W Huang, 'How does the one child policy impact social and economic outcomes?' (2017) 387(Sept) IZA World of Labour 1, 2.

²⁶ CCP Central Committee, 'CCP Central Committee's Comments on the Report Regarding Family Control by CCP Committee in National Family Planning Commission' CCPCC Document [1984] No 7.

²⁷ F Wang, B Gu & Y Cai, 'The end of China's one-child policy' *Brookings* (2016) available at: <https://www.brookings.edu/articles/the-end-of-chinas-one-child-policy/#:~:text=Starting%20on%20January%201%2C%202016,for%20the%20last%2035%20years>. accessed 8 Feb 2021.

²⁸ B Li & H Zhang, 'Does population control lead to better child quality? Evidence from China's one child policy enforcement' (2017) 45(2) *J Comparative Economics* 246.

²⁹ Matt Soniak, 'How does China Enforce its One-Baby Policy?' *Mental Floss* (5 Jan 2012) available at: <https://www.mentalfloss.com/article/29647/how-does-china-enforce-its-one-baby-policy> accessed 6 July 2020.

rewards for compliant parents, and punishments for those who were not, regardless of the intention of the couple.

Policies such as this appear draconian, as one would naturally expect the implementation of such a policy to be rooted in nationwide education and the provision of contraception. However, whilst this was something the central Chinese government took seriously,³⁰ it did not resonate with the public opinion. There did not seem to be a positive encouragement for its use on a nationwide level, which was reflected in the general attitude of Chinese people regarding contraception. By 2004, as focus group thought that men should not take on the greater burden of contraception, and would prefer that women were sterilised.³¹ In fact, China only lifted its ban on the advertisement of condoms in 2014.³² This indicates that the provincial governments had been content with policies of incentives and punishments, rather than a drive for more accessible contraception and improved education.

Many incentives were offered in most provinces for compliance with the one-child policy. Common types of incentives included free water, tax breaks, special pension benefits and monthly stipends from the government.³³ Soniak goes on to note that in some instances, the child of a compliant couple was even awarded bonus points in school entrance exams.³⁴ Compliant couples would frequently

experience preferential treatment when applying for government jobs or even receive a 'certificate of honour'.³⁵

On the other end of the spectrum, the treatment of 'non-compliant' couples was not nearly as amicable, as many were subjected to punishments. These punishments were largely monetary, yet there were more extreme punishments depending on the province. Fines were regularly levied against couples that had more than one child. It is estimated that by 2012, China had levied, since the adoption of the one-child policy, around two trillion yuan (£206 billion).³⁶ The fines were usually around 10-50% of the annual income of the couple, and even more if it was a third child.³⁷ Furthermore, there was a household registration system in China, with households being listed as a worker or a peasant registration, due to the Communist state. Peasants lived off the land whilst workers would draw money from the state, being eligible for things such as a pension, access to recreational facilities and much more.³⁸ Worker households thus had a lot more to lose through non-compliance with the one-child policy. They could lose certain benefits attached with the registration, or even have it repudiated entirely,³⁹ as well as losing their job.

However, many provinces found themselves under immense pressure to conform with a birth quota set

³⁰ Information Office of the State Council of the People's Republic of China, 'Family Planning in China' [1995] White Paper, Chapter V, available at <https://www.fmprc.gov.cn/ce/celt/eng/zt/zfbps/t125241.htm> accessed 7 July 2020.

³¹ K Hardee, Z Xie & B Gu, 'Family Planning and Women's Lives in Rural China' (2004) 30(2) *Int Family Planning Perspectives* 68, 71.

³² Katrin Buchenbacher, 'What type of contraception does China's younger generation prefer?' *The Global Times* (15 Oct 2017) available at <http://www.globaltimes.cn/content/1070279.shtml> accessed 12 July 2020.

³³ Soniak (n29).

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ *The Economist*, 'The one-child policy - The brutal truth' *The Economist* (23 Jun 2012) available at: <https://www.economist.com/china/2012/06/23/the-brutal-truth> accessed 14 July 2020.

³⁷ J Li, 'China's One-Child Policy: How and How Well Has it Worked? A Case Study of Hubei Province, 1979-88' (1995) 21(3) *Population and Development Review* 563, 564.

³⁸ *Ibid.*, 565.

³⁹ Susan Greenhalgh, 'The Peasantization of the One-Child Policy in Shaanxi' in Deborah Davis & Stevan Harrell (eds), *Chinese Families in the Post-Mao Era* (University California Press, 1993).

by the government,⁴⁰ which, in turn, would lead to the execution of many more illegal and extreme punishments. These included mass abortion campaigns as well as forced sterilisation, predominantly carried out on women.⁴¹ In fact, many academics argue that the use of abortion was given more emphasis by China in its family planning policies than actual pre-birth contraception.⁴² There is considerable evidence that this has led to a small ratio of women compared to men in China, after many parents would abort their child after discovering the foetus was female. The illegal practices of these local governments came to light when a woman named Mao Hengfeng, now a human rights activist, exposed her story. Upon falling pregnant with a fourth child, she received an involuntary abortion from the provincial government, who allegedly drowned the foetus in a bucket. Furthermore, she had suffered severe haemorrhaging and instead of being treated, the officials attempted to give her a hysterectomy. Mao and her husband then lost their jobs and business licences and she was then detained in a mental asylum.⁴³

These unnerving stories instilled fear around China. Young couples expecting a second child were so fearful that many fled to different provinces to register a child under a separate name in order to try and evade the authorities.⁴⁴

Implications of this policy

International human rights

Clearly, the limitations placed on couples in China by the one-child policy and the resulting enforcement practices raise many questions from a human rights perspective.⁴⁵ With the pressing need to introduce population control policies in an era where overpopulation is headed towards breaking point, it is paramount to identify where previously used policies such as China's one-child policy infringe upon international human rights laws.

As far as rights of the unborn child go, the right to be born is not one that is conventionally recognised under international human rights law. The UN *Convention on the Rights of the Child* (CRC) recognises a right to life under Article 6. However, it is typically understood that this convention does not apply to pre-natal children unless the ratifying state chooses to interpret it this way. This was, of course, a contentious issue in the drafting of the *CRC*, and the working group left the wording of whether the rights in the *CRC* apply to unborn children very ambiguous, with the purpose of getting more states to ratify it,⁴⁶ and apply the convention in line with their domestic laws. This is of no further relevance, as any state which would want to protect the rights of the unborn child is very unlikely to implement a population limiting policy.

In this light, it is better to analyse the effect of the one-child policy in regard to the human rights of the

⁴⁰ Li (n37).

⁴¹ W Feng, B Gu & Y Cai, 'The End of China's One-Child Policy' (2016) 47(1) *Studies in Family Planning* 83, 85.

⁴² J Liu, Y Englert & W Zhang, 'Is Induced Abortion a Part of Family Planning in China?' in Igor Lakhno (ed), *Induced Abortion and Spontaneous Early Pregnancy Loss – Focus on Management* (IntechOpen, 2019) available at: <https://www.intechopen.com/books/induced-abortion-and-spontaneous-early-pregnancy-loss-focus-on-management/is-induced-abortion-a-part-of-family-planning-in-china-> accessed 16 July 2020.

⁴³ Verna Yu, 'I could hear the baby cry. They killed my baby... yet I couldn't do a thing': The countless tragedies of China's one-child policy' *South China Morning Post* (15 Nov 2015) available at: <https://www.scmp.com/news/china/policies-politics/article/1879116/i-could-hear-baby-cry-they-killed-my-baby-yet-i-couldnt> accessed 17 July 2020.

⁴⁴ Soniak (n29).

⁴⁵ Bing Jia & Hanibal Goitom, 'Formulation of the One-Child Policy in China' *Lib of Congress* (Nov 19 2013) available at: <https://blogs.loc.gov/law/2013/11/formulation-of-the-one-child-policy-in-china/> accessed 4 July 2020.

⁴⁶ F Broughton, 'Are unborn children rights-holders under the United Nations Convention on the Rights of the Child?' (2010) *The Boolean* 25.

parents. The main source of international human rights law is the UN *International Covenant on Civil and Political Rights* (ICCPR), which China has signed but not ratified.⁴⁷ The preamble for the treaty states that all rights are derived from the “inherent dignity of the human person”. Article 23(1) states that “family is a fundamental group unit of society and is entitled to protection by society and the state”. This is very similar to the protection afforded to private and family life under Article 8 of the *European Convention on Human Rights*. These rights can be interpreted in both ways; that there is a right to have any type of family as desired (including as many children as an individual may want) that can be protected/cared for by the family unit, or that there is only protection of the family that already exists and which any prospective family unit is not yet afforded. In practical application, most states favour the first interpretation, considering that China, a country that has not ratified the *ICCPR*, is the only state that has quantitatively limited family numbers in such a widespread way. Therefore, any future policy to limit population should do so in such a way which affords the family a choice, based largely on education and providing incentives, rather than punishment.

As Mather has contended, the *ICCPR* is, in many ways, an instrument guaranteeing ‘first generation’ rights.⁴⁸ She characterises these rights as “freedom from, rather than freedom to”.⁴⁹ Accordingly, they may not be the most appropriate means to provide a freedom to procreate. Mather, in her discourse, does not explicitly link the compatibility of generational rights to population control policies, but her discourse implies that second generation rights are the most applicable as ‘freedom to’ rights. She identifies that second generation rights which assure freedoms require positive obligation, or protection, from the state.⁵⁰ The UN’s *International*

Covenant on Economic, Social and Cultural Rights (ICESCR) is an exemplification of this, as suggested by Karel Vašák, the jurist behind the generational categorisation of rights.⁵¹ Article 10 provides that:

“...the widest possible protection and assistance should be accorded the family which is the natural and fundamental group unit of society, particularly for its establishment.”

The *ICESCR*’s protection of the family, “particularly for its establishment”, expressly provides second generation protection of the freedom to procreate. This acts as a further indication that international human rights law cannot accept strict regulationist approaches which interfere with the right to procreate freely. This gives more weight to the suggestion that voluntarist approaches are the most appropriate means of dealing with population control as they do not impose interferences on the actual right itself, but attempt to guide and gently coerce individuals to engage in effective family planning.

International soft law

Soft law is invaluable in aiding the interpretation of Article 23 of the *ICCPR* and Article 10 of the *ICESCR* by expanding on the intended protections of the family. The UN, the body behind the aforementioned covenants, has expanded upon the rights to have a family, and expressly the freedom to procreate, under various soft law instruments on multiple occasions. Firstly, in the *Human Rights Day Declaration 1966*, “the opportunities to decide the number and spacing of children is a basic human right”.⁵² This was expanded upon into a resolution adopted in the International Conference on Human Rights, Tehran in 1968. Resolution XVIII said that “couples have a basic human right to decide freely

⁴⁷ UN Treaty Collection, ‘Status of Treaties: 4. ICCPR’ available at:

https://treaties.un.org/Pages/ViewDetails.aspx?chapter=4&clang=_en&mtdsg_no=IV-4&src=IND accessed 8 Feb 2021.

⁴⁸ Mather (n6), 940.

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

⁵¹ C Wellman, ‘Solidarity, the Individual and Human Rights’ (2000) 22(3) *Human Rights Quarterly* 639.

⁵² United Nations, *Human Rights Day Declaration on Population* (10 Dec 1966).

and responsibly on the number and spacing of their children”.⁵³ Furthermore, in 1984, the UN gave further recommendations for the implementation of the world population plan of action. Recommendation 25 said that “Governments should... make universally available... the means to assist couples and individuals to achieve their desired number of children”.⁵⁴ Taken together, there is an indication of a strong mentality within the United Nations that there should be no restriction on the couple’s right to choose when and how to have any children.

International soft law is not only important in aiding the interpretations of legally binding instruments such as the *ICCPR*, but can evolve into customary international law.⁵⁵ Article 38(1)(b) of the *Statute of the International Court of Justice* describes customary law as “a general practice accepted as law”. The mentality of the UN and its members leading to the constitutions of the various soft law must be sufficiently cogent to evince *opinio juris*, to accept the right to self-family planning as customary law. The International Court of Justice in *Nicaragua v United States*⁵⁶ asserted that *opinio juris* will be present if:

“States taking such action or other States in a position to react to it, must have behaved so that their conduct is evidence of a belief that this practice is rendered obligatory

by the existence of a rule of law requiring it.”⁵⁷

Correspondingly, *opinio juris* may be identified in the various reactions to the Chinese one-child policy. However, from the research it can be observed that significant condemnation of the policy did not occur,⁵⁸ which would have been an indication of *opinio juris*. Nevertheless, China, as an emerging superpower and an integral component of world trade was a country that would be foolish to condemn. President Biden, as a Senator in 1985, reportedly blocked a motion to condemn China due to the worries that it would “interfere with the normalization of trade relations”.⁵⁹ In essence, the lack of condemnation does not necessarily reject the constitution of *opinio juris*.

Moreover, if one reviews the behaviour of other countries which have experienced population issues, it becomes clear that they did not behave in the manner that China did. For instance, a ‘two-child norm’ has been utilised by many countries, including Vietnam⁶⁰ and Indonesia.⁶¹ The difference here is that these policies were not enforced, and were more suitably equivalent to governmental objectives that were met via contraception campaigns etc.⁶² Accordingly, it can be seen that apart from China, countries struggling with overpopulation have not acted as restrictively and this may be enough to constitute *opinio juris*. Whether this soft law can successfully constitute an

⁵³ United Nations, Final Act of the International Conference on Human Rights, Tehran 1968, Resolution XVIII (3).

⁵⁴ United Nations, Recommendations for the Further Implementation of the World Population Plan of Action 1984, Recommendation 25.

⁵⁵ M Olivier, ‘The relevance of ‘soft law’ as a source of international human rights’ (2002) 35(3) *The Comparative and International Law Journal of Southern Africa* 289.

⁵⁶ (1986) ICJ Rep 14.

⁵⁷ *Ibid*, [207] 109.

⁵⁸ There is a seeming lack of news articles and responses from governments etc. which indicate that the Chinese one-child policy was condemned. It seems that the approach that was mainly taken was surveillance of the situation.

⁵⁹ US Congress House Hearing, 112 Congress, ‘China’s one-child policy: The Government’s massive crime against women and unborn babies’ Serial no 112-105 (22 Sept 2011) available at: <https://www.govinfo.gov/content/pkg/CHRG-112hhrg68446/html/CHRG-112hhrg68446.htm> accessed 10 Feb 2021.

⁶⁰ D Goodkind, ‘Vietnam’s One-or-Two Child Policy in Action’ (1995) 21(1) *Population and Development Review* 85.

⁶¹ D Warwick, ‘The Indonesian Family Planning Program: Government Influence and Client Choice’ (1986) 12(3) *Population and Development Review* 453.

⁶² Mather (n6), 934.

opinio juris or not, it still reflects the mentality and general consensus of the State Parties to the UN. Olivier has described soft law as having an important role in “facilitating and mobilising the consent of states”.⁶³ Furthermore, according to Druzin, it generates a sense of collective responsibility, which makes it “uniquely calibrated” for adoption and compliance.⁶⁴ Thus, soft law is of weighty value in international matters, an illustration being that resolutions alone must receive a majority vote.

It is also worth noting that soft law is frequently a conscious decision. As Guzman and Meyer identify, soft law is elected for many reasons, especially when states are “uncertain about whether the rules they adopt today will be desirable tomorrow”.⁶⁵ This is known as the delegation theory and gives rise to the quasi-legal personality of soft law. For example, the aforementioned resolutions and declarations regarding family numbers may, in an era of severe overpopulation, be problematic were they binding law. Whilst this may weaken the future effectivity of soft law on population control, it does not undermine the fact that the current consensus, and perhaps even *opinio juris* is reflected by the soft law, and they certainly complement the interpretation of the binding legal instruments.

In summation, the various soft law instruments indicate at least a general consensus, and at most, an *opinio juris* that population control policies should focus on voluntarist approaches which attempt to reconcile a diminished ‘desire’ to have multiple children without directly infringing the reproductive choices of couples, which strict regulationist policies clearly do.

Natural rights

Under a philosophical approach, the most fundamental human rights are natural rights. John Locke has asserted in his idea of perfect freedom that “all men are naturally in ... a state of perfect freedom to order their actions... as they see fit... without asking leave, or depending on the will of any other man”⁶⁶ and no government “ought to harm another in his life, health, liberty, or possessions”.⁶⁷ Locke’s ideology is an established part of modern politics – governments have a duty to protect and not interfere with the natural rights of the person, which Locke argues is a criterion for a legitimate Government.⁶⁸ According to Locke, ‘liberty’ is a natural right, or a right given by God that a human possesses naturally before entering into the rules of a political society. Liberty is widely interpreted. The Supreme Court of the United States has interpreted the word ‘liberty’ to include a right to procreate.⁶⁹ This liberty also includes the fundamental right to an abortion. Justice Anthony Kennedy famously stated in *Planned Parenthood v Casey*: “At the heart of liberty is the right to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life”.⁷⁰

Consequently, an analysis of natural rights further reinforces the notion that any population control policy should be aimed at minimising one’s desire to have a child, rather than directly interfering with a natural right whose protection forms the institution of legitimate government.

Practical implications

The practical implications of the Chinese one-child policy must also be considered before implementing

⁶³ Olivier (n55).

⁶⁴ B Druzin, ‘Why does Soft Law Have any Power Anyway?’ (2017) 7(2) *Asian Journal Int Law* 361.

⁶⁵ A T Guzman & T L Meyer, ‘International Soft Law’ (2010) 2(1) *Journal of Legal Analysis* 171.

⁶⁶ Locke J & Shapiro I (ed), *Two Treatises of Government and A Letter Concerning Toleration* (First published 1689, Yale University Press 2003) 101, §4.

⁶⁷ *Ibid*, 102, §6

⁶⁸ Ruth W Grant, ‘John Locke on Women and the Family’ in *supra* n66, 297.

⁶⁹ *Skinner v Oklahoma ex rel Williamson*, 316 US 535 (1942).

⁷⁰ *Planned Parenthood of Southeastern Pennsylvania v Casey*, 505 US 833 (1992) [851] (Kennedy J).

similar policies around the world. Mainly, the problems that materialise when a country goes from a large population to a relatively small one.

a) Aging population –

The Chinese policy has, foreseeably, led to an aging population in China. This is a huge threat to its economy. The country will have fewer young people to look after the elderly, less people to work in the economy, all whilst there are more pensions to pay and retirees to support. China will now be ill-prepared to protect the elderly.⁷¹

b) Labour shortages –

This implication is intertwined with the difficulties of having to care for an aging population. The fact that there will not be enough young people to keep up with China's economic activity is worrying, and is further exacerbated by the need to support the country's elderly. The decline in the labour force is already prevalent in the coastal regions of China, rising wages are concomitant with the shortages, to attract migrant workers and increase productivity.⁷²

c) Sex-ratio –

The policy has given rise to a disproportionately male dominant ratio in China. Studies have found that this is related to the enforcement practices. The provinces where the policy was policed strictly appeared to have a bigger disparity in sex-ratio and, as Ebenstein has identified, this generally indicates a preference for male children in China.⁷³ This was

achieved via pre-natal sex selection (which was later outlawed) with couples aborting fetuses who were not of their preferred sex.⁷⁴ This issue is compounded by the fact that, fertility rates will drop because there are fewer women to carry children than ever before, making it difficult to rebalance the population.

This reflects the misogynistic attitudes that were prevalent in China at the time and presents further human rights concerns to the one-child policy. Once the prenatal sex screening was prohibited due to the disparity in sex ratio,⁷⁵ an increase in the prevalence of female infanticide occurred.⁷⁶ This dangerous consequence of a quantitative policy in a place where such misogynistic views exist threatened the lives of many newborn children. The right to life is enshrined in Article 6 of the *ICCPR* and the State Parties have a duty to “respect and ensure to all individuals” this right.⁷⁷ This includes the “duty to take positive measures to protect the right to life”.⁷⁸ In short, a policy which could foreseeably lead to the loss of life is a plain infringement of the state's obligations under this provision. It is paramount that a state considers foreseeable implications such as this when creating policy.

Further evidence that a policy like China's is not a suitable way of managing the population is evidenced by the fact that China is now encouraging couples to have a second child, as a baby boom has not been forthcoming since lifting the policy. This is a desperate attempt to restore balance to the Chinese population and economy in light of the implications above.⁷⁹

⁷¹ Charlie Campbell, 'China's Aging Population is a Major Threat to its Future' *Time* (7 Feb 2019) available at: <https://time.com/5523805/china-aging-population-working-age/> accessed 21 July 2020.

⁷² H Li, L Li, B Wu & Y Xiong, 'The End of Cheap Chinese Labor' (2012) 26(4) *Journal of Economic Perspectives* 57.

⁷³ A Ebenstein, 'The "Missing Girls" of China and the Unintended Consequences of the One Child Policy' (2010) 45(1) *J Human Resources* 87.

⁷⁴ Y Chen et al, 'Prenatal Sex Selection and Missing Girls in China: Evidence from the Diffusion of Diagnostic Ultrasound' (2013) 48(1) *J Human Resources* 36.

⁷⁵ J Clarke, 'The Chinese Population Policy: A Necessary Evil?' (1987) 20 *NYU J Int'l L & Pol* 321, 350.

⁷⁶ Mather (n6), 931.

⁷⁷ Article 2, *International Covenant on Civil and Political Rights* 1966.

⁷⁸ United Nations Human Rights Committee, *General Comment No 36: Article 6: Right to Life* (2019) [21].

⁷⁹ T Hesketh, Y Wang & X Zhou, 'The End of the One-Child Policy: Lasting Implications for China' (2015) 314(24) *JAMA* 2619, 2620.

Utilitarianism

The article appearing in the Harvard Law Review suggested “the necessity for a utilitarian justification” of regulationist proposals.⁸⁰ The article claimed this to be necessary to ensure that a regulationist policy is not ‘imposing a moral standard’ and is actually enacted for the good of the people.⁸¹ In the context of a regulationist population control policy such as China’s, a utilitarian approach would permit such action only if the behaviour it was regulating, i.e. “reproducing excessively”, affects more than “the acting parties”.⁸² The limit to this approach is that it does not effectively consider the morality of one’s actions. Of course, excessive reproduction affects the wider world by contributing to overpopulation. Yet, an approach as oppressive as the one-child policy is surely one of the most immoral ways to achieve control over this. Utilitarianism is a primary form of consequentialist ethics, based on the result and not intention of an action – at its heart, it seeks to achieve the greatest happiness principle.⁸³ John Stuart Mill’s works attempted to reconcile utilitarianism and morality, with considerations around the notion that morality was founded upon the consequence of happiness. He says that “actions are right in proportion as they tend to promote happiness, wrong as they tend to produce the reverse of happiness”.⁸⁴

To perform a utilitarian justification of the Chinese government policy, the consequences of the policy must be analysed under the greatest happiness principle. The greatest happiness will be achieved in finding a balance between the benefits that flow from preventing overpopulation and the pleasure of

having less interference in private activities, such as procreation. In this author’s opinion, the balance would be best met by finding the least restrictive approach.⁸⁵ The least restrictive means test is a legal doctrine perhaps best illustrated by the ‘strict scrutiny’ level of judicial review in the United States, where a law restricting liberty must be narrowly tailored into the least restrictive iteration possible to achieve a compelling governmental objective.⁸⁶ This begs the question, which is perhaps easily answered as ‘no’, as to whether the one-child policy was the least restrictive means of reducing population growth. Naturally, lesser restrictive approaches exist in voluntarist approaches, which coerce and change behavioural norms through education, contraception, etc. This occurred in Indonesia throughout the 1970/80s and worked very well, having reduced the fertility rates of women from 5.6 births per woman from 1967-70, to 2.8 from 1995-97.⁸⁷

Nevertheless, it is worth noting the socio-political differences between the West (or global north) and China. The least restrictive means doctrine is evidence of the libertarian tendencies of the Western world, evidenced by the fact that the best example of its utility is found within US Supreme Court jurisprudence. As previously mentioned, overpopulation is not occurring in developed economies at the same rate, therefore, it is easy to sit aside and cast aspersions on China and their dealing with the crisis. In this way, there is certainly an existence of what Edward Said has famously termed ‘orientalism’, or a “Western style for dominating, restructuring, and having authority over the Orient”,⁸⁸ in which a presumption of

⁸⁰ Unnamed Author (n4) 1885.

⁸¹ Ibid.

⁸² Ibid, 1886.

⁸³ Bentham J, *A Fragment on Government* (London, 1776), Preface.

⁸⁴ Mill J S, *Utilitarianism* (Longman, Green, Reader and Dyer, 1871) Part II.

⁸⁵ There has been mention that Utilitarianism and the least restrictive alternative approach are compatible – C Lin, ‘Ethical exploration of the least restrictive alternative’ (2003) 54(6) *Psychiatric Services* 866.

⁸⁶ *Gooding v Wilson*, 405 US 518 (1972).

⁸⁷ Permana IB & Westoff C, *The Two-Child Norm in Indonesia* (Jakarta, Macro Int 1999) P1, available at: <https://dhsprogram.com/pubs/pdf/FA28/FA28.pdf> accessed 11 Feb 2021.

⁸⁸ Said E, *Orientalism* (Penguin 1977) 3.

Western superiority is founded.⁸⁹ This can be observed in the west with the notion of ‘defeating communism’ and the general incorporation of constitutional liberties, which is not the case within China, whose culture is based generally upon authoritarianism, not liberty. Chinese legal culture is centred on the ‘rule-of-men’, which is different to the rule of law in that those in power derive their power to govern “from their superior virtue”,⁹⁰ and not through the consent of the people. The Western approach of politics, Ruskola notes, encompasses democracy, the rule of law and liberty, and “has ruinous analytic consequences for the study of Chinese law”,⁹¹ via criticism of the incompatibility of the laws with Western values. Whilst this paper ostensibly denounces the Chinese policy, it must be mentioned parenthetically that the reader should be aware of the many alternative interpretations of the Chinese government stance, which may conclude that their one-child policy was the most fitting approach available under the system of politics familiar to the Chinese people.

Alternative solutions to population control

From the discourse of this article, it can be observed that there are generally two approaches to population control, regulationist and voluntarist. Regulationist policies (such as the one-child policy) impose direct state interference and enforcement to achieve the objective whereas voluntarist policies share the same objectives but are naturally met via the voluntary will of the people after persuasion and even gentle coercion.

After reviewing the Chinese one-child policy, it is clear that the consequences (both intended and otherwise) were quite extreme and softer

alternatives are a much more sensible option to control population. Of course, contraception access will always remain an integral part of both voluntarist and regulationist policies. However, an important aim of voluntarist policies will also be to create a desire to have fewer children, which lies predominantly in generating contentment in having a smaller family.

Indonesia: a case of effective voluntarist policy

Indonesia is a great example of a voluntarist policy which was successful by the metrics the state set itself. Indonesia experienced extreme population growth and high fertility rates before the 1970s, especially in Java and Bali.⁹² The Indonesian policy focused on family planning and contraception. Many family planning clinics were opened in the early 1970s, and then women’s ‘Acceptor Clubs’ sprouted up within the local communities, often headed by a locally prominent woman. The acceptor clubs liaised between local women and the family planning clinics “to ensure a steady supply of contraceptives at the local level”.⁹³ Indonesia recognised “the need for and desirability of family planning to make the small and happy family the norm”.⁹⁴

The policy focussed on family planning, including visits to communities by mobile family planning teams, accessible contraception and contraceptive information and integrating family planning activities with other health-related activities.⁹⁵ In plain, the main aim of the Indonesian policy was to introduce the norm of “a small, happy and prosperous family”,⁹⁶ in which Indonesia was very successful, largely achieving a maximum of two children families by the mid-1990s.⁹⁷

⁸⁹ Ibid, 42.

⁹⁰ Ruskola T, *Legal Orientalism* (Harvard University Press 2013) 14.

⁹¹ Ibid.

⁹² Mather (n6), 934.

⁹³ Hartmann B, *Reproductive Rights and Wrongs: The Global Politics of Population Control* (Haymarket Books 2016) 75.

⁹⁴ H Suyono, ‘The strategies, experiences and future challenges of the information component in the Indonesian Family Planning Programme’ (1988) 3(4) *Asia Pacific Population Journal* 33.

⁹⁵ Ibid.

⁹⁶ Ibid.

⁹⁷ Permana & Westoff (n87).

To contrast the effectivity of this with a regulationist approach, such as the quota-enforced Indian mass sterilisations between 1975-77,⁹⁸ it can be seen that the voluntarist strategy in Indonesia was more effective in reducing the fertility rate. India's fertility rate in 1970 stood at 5.72 compared to Indonesia's 5.6,⁹⁹ and by 1995, India's had dropped to 3.83 compared to Indonesia's 2.8.¹⁰⁰ Of course, China's regulationist policy was more effective than both India and Indonesia's, reducing the rate from 5.725 in 1970 to 1.66 in 1995,¹⁰¹ but this was achieved after an extended period of strict enforcement of a policy which arguably infringes human rights. The effectiveness of Indonesia's policy and the potential it has still shines through due to the results it has achieved using a purely voluntarist approach.

Incentives

Desirable incentives are always an option if offered to those having fewer children and could still constitute a voluntarist, albeit more coercive approach. Much like the Chinese system, these could include tax relief, pension benefits and other stipends. The one thing that, in the view of this author, should not be included however, is the offering of better opportunities to an only-child, rather than children with siblings. China did this by granting extra school entrance exam marks etc. In this author's view, it is clearly neither ethical nor morally acceptable to punish children who are blameless for their parents' actions.

India also provided cash incentives in return for sterilisation.¹⁰² Eisenhower argues that in countries where population growth is pernicious to living

conditions, such as India, incentives are generally morally permissible. She takes the view that incentives should be seen as compensation for "lost work and other effects" due to the sterilisation or another practice, not a bribe to undergo the procedure.¹⁰³ This viewpoint implies the existence of a social contract between the state and the individual, suggesting that the actions of incentivisation are moral and legitimate so long as it is viewed as 'compensation'. Yet, on the other hand, Chacko argues that incentives for accepting birth control measures "are a crude device for obtaining consent" which exploits "the acceptor's impoverished condition".¹⁰⁴ In simple terms, they are more likely to appeal to and be taken up by minorities and those in poverty. In developing countries, this could become an extremely dangerous practice which, when mixed with birth control, could indirectly lead to an unintended form of ethnic cleansing. Therefore, cash incentives for population control are certainly balancing on the thin line between moral permissibility and intolerability, and should be measured with caution should a state decide to attempt to adopt this approach.

Another practical pitfall to an incentivised approach is that by offering financial aid to people with fewer children, a huge wealth imbalance will be generated between families with more children and more expenses, yet no aid. This will result in many larger families becoming dependent on state welfare. This would render the incentives useless, as larger families will still be able to receive aid from the state through welfare. Therefore, the optimum way to increase contentment is to improve the quality of life for all, where people believe in the benefits of a smaller family.

⁹⁸ Mather (n6), 932.

⁹⁹ Permana & Westoff (n87) & 'Total fertility rate in India, from 1880 to 2020' *Statista* (2020) available at: <https://www.statista.com/statistics/1033844/fertility-rate-india-1880-2020/> accessed 11 Feb 2021.

¹⁰⁰ Ibid.

¹⁰¹ 'Fertility rate, total (births per woman) – China' *The World Bank*, available at:

<https://data.worldbank.org/indicator/SP.DYN.TFRT.IN?locations=CN> accessed 11 Feb 2021.

¹⁰² Eisenhower (n1), 34.

¹⁰³ Ibid.

¹⁰⁴ V I Chacko, 'Some Considerations of Incentives and Disincentives in the Promotion of Family Planning: India's Experience' (1975) 7 *Columbia Human Rights Law Review* 45, 48.

Achieving a reduced desire to have a large family

This paper has identified that ‘generating contentment’ in a smaller family should be a key factor of any successful policy aimed at counteracting overpopulation. This was central to Indonesian policy in the promotion of a small, happy and prosperous family.

This could be achieved through a more intense focus on community activities, which are much more accessible to smaller families and approaches, such as a standardised portrayal of smaller families on the television and in the media. Furthermore, through offering more accessible pre-elementary childcare, in which children can be entertained in groups without needing multiple siblings.

Beyond these points, Indonesia highlights the importance of accessible family planning. Statistics cannot lie, and family planning was the cornerstone of the Indonesian policy, the heart from which all other measures flowed. Education is a very important counterpart of family planning, so it may be integrated into the next generations in developing countries where people are, as Eisenhower right identifies, more “unwilling to accept family planning services” due to “religious and cultural barriers”.¹⁰⁵ The need for education and family planning to challenge outdated customs will be developed in more depth below.

The importance of the United Nations’ Sustainable Development Goals

Increasing the standard of living for citizens is crucial for generating contentment. Contemporary

society provides many influences to achieve this which older policies such as China’s and India’s could not benefit from. Currently, the most effective ways to facilitate this are arguably embodied under the United Nation’s Sustainable Development Goals (SDGs). The 17 SDGs urge contracting parties to adopt ways to end poverty and hunger, ensure good health, well-being and education, access to water, sanitation and gender equality. It also urges states to focus on clean energy, work opportunities and economic growth, industry, innovation and infrastructure and sustainable cities.¹⁰⁶ Taken together, these SDGs drive up the standard of living in even the poorest areas in the world. This paper believes that the root causes of overpopulation lie within poverty, overconsumption, inequalities, economic factors and a lack of innovation, and this is why the SDGs are a suitable response to the overpopulation crisis. Poverty is linked to overpopulation in that 90% of all population growth occurs in impoverished countries.¹⁰⁷ This is due to a general lack of access to education,¹⁰⁸ and the general inclination to have more children in the face of realistic uncertainty of the child’s probability of survival,¹⁰⁹ and this reasoning is often employed within countries experiencing overconsumption also. Furthermore, while often overlooked as a cause of overpopulation, gender inequality in countries where gender role attitudes disqualify women from pursuing a career and educational opportunities seem to lead to increased fertility rates.¹¹⁰

Achieving overall levels of increased contentment with fewer children also begins in a mother’s early life. Dr Newman asserts that a mother who has a child later in their life is much more likely to have

¹⁰⁵ Eisenhower (n1), 5.

¹⁰⁶ United Nations, ‘Sustainable Development Goals’ available at: <https://www.un.org/sustainabledevelopment/sustainable-development-goals/> accessed 1 Oct 2020.

¹⁰⁷ Smith (n22).

¹⁰⁸ S Sinding, ‘Population, poverty and economic development’ (2009) 364(1532) *Philos Trans R Soc Lond B Biol Sci* 3023.

¹⁰⁹ Bill Gates, Remarks at US Global Leadership Coalition (2 Feb 2011) available at: <http://www.usglc.org/wp-content/uploads/2008/09/TRANSCRIPT-Bill-Gates-remarks.pdf> accessed 12 Feb 2021.

¹¹⁰ N Golmakani et al, ‘Relationship between gender role attitude and fertility in women referring to health centres in Mashhad in 2013’ (2015) 20(2) *Iran Journal of Nursing and Midwifery Research* 269.

just the one child.¹¹¹ This could be capitalised upon by a policy targeting population control, through honouring the SDGs (especially SDG 5, 8 and 9 regarding the creation of equal working opportunities for women) and adopting a policy which focuses on emphasising and boosting opportunities for a woman's career development from a young age. Allowing them to focus on this until well into their 30s, at which point they may decide to have a child.

Social education and access to contraception

It is well known that over 90% of population growth occurs in developing countries,¹¹² whereas developed countries such as Japan and most of Western Europe have the "lowest birth rates in the world".¹¹³ This statistic indicates that the reality of overpopulation is not a scientific issue, but a social one. Lower-income countries are less likely to have widely available access to contraception, and sex education. Furthermore, these countries may also be more likely to have barriers and stigma for contraceptive use and procedures such as abortion.¹¹⁴ Therefore, wider access to contraception and education,¹¹⁵ and a focus on removing the stigma for these practices in lower-income countries, may produce an effective response to overpopulation. This will also benefit families in these countries in escaping poverty, by having sound family planning to match their financial output. These solutions are in line with the UN's Sustainable Development Goals, and will ensure that the social issues behind overpopulation are minimised.¹¹⁶

Cultural perceptions and customs provide substantial barriers to an effective population control policy. As Eisenhower stated, some cultures may be "unwilling to accept family planning services".¹¹⁷ Sub-Saharan Africa is a great example of this, and may well "offer greater resistance to fertility decline than any other world region".¹¹⁸ African religion views high fertility as a "divine reward" and "evidence of the right behaviour",¹¹⁹ whereas low fertility is often viewed as "evidence of sin and disapproval".¹²⁰ This is clearly deeply entrenched and will cause complications to family planning and population control. In response, this author believes that the most effective approach is to target the younger generations with a widely propagated educational curriculum that gives focus to family planning, sex education, and the implications of overpopulation. Generational change is extremely effective, and hopefully rigorous educational policies in areas which hold strong cultural barriers will influence a normative shift in procreative behaviour.

Conclusion

Overpopulation is a colossal and contemporary problem which currently dictates that almost a quarter of humanity lives in hunger and poverty. Therefore, the need to control the population is paramount; if no intervention is made, scientists believe that every ecosystem will be irreparably damaged, creating an environment in which the human species cannot survive.

¹¹¹ Dr Susan Newman, *The Case for Only Child: Your Essential Guide* (Health Comms Inc, 2011).

¹¹² Smith (n22).

¹¹³ Mather (n6), 937.

¹¹⁴ M Makenzius et al, 'Stigma related to contraceptive use and abortion in Kenya: scale development and validation' (2019) 16 *Reprod Health* 136.

¹¹⁵ W J Ripple et al, 'World Scientists' Warning to Humanity: A Second Notice' (2017) 67(12) *Bioscience* 1026.

¹¹⁶ United Nations, 'World Population Prospects 2019' *New York* (2019)

<https://population.un.org/wpp/Publications/Files/WPP2019_Highlights.pdf> accessed 29 July 2020.

¹¹⁷ *Supra*, n105.

¹¹⁸ J Caldwell & P Caldwell, 'The Cultural Context of High Fertility in sub-Saharan Africa' (1987) 13(3) *Population and Development Review* 409.

¹¹⁹ *Ibid*, 415.

¹²⁰ *Ibid*, 416.

It is apparent that governments should realise some form of policy in order to combat overpopulation. However, regulationist policies tend to be extreme, such as China's one-child policy. Policies such as this give rise to numerous human rights and moral infringements, as well as practical implications such as an ageing population, labour shortage and a gender imbalance. In essence, regulationist policies are not favourable under the lens of human rights, international soft law and various philosophical approaches such as utilitarianism and natural rights. Focus should therefore be given to softer, more indirect voluntarist policies.

Voluntarist policies should aim to strike a natural balance by focusing not on punishment, but on empowerment. Empowerment will follow the key tenets of education, access to contraception and family planning; much like the successful policy that was employed in Indonesia in the 1970s and 80s. Voluntarist approaches that focus on the aforementioned tenets allow a more gentle and sustainable approach to population control in regions with more nuanced problems, such as poverty, inequality and cultural barriers. The human rights instruments from the UN also suggest that policies to limit population should be based on a voluntarist approach. Their Sustainable Development Goals offer policies which focus on reducing poverty, inequality and over-consumption, and which emphasise the need for innovation, work opportunities and economic improvement. It has been identified that these goals will encompass a general improvement to the standard of living, which should generate contentment and diminish the desire for more children, encouraging the norm of a small but happy family.

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