



United States Department of State

Washington, D.C. 20520

APR 3 2017

The Honorable
Bob Corker, Chairman
Committee on Foreign Relations
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This letter is to inform you that a determination has been made that funding for the United Nations Population Fund (UNFPA) is precluded pursuant to the third proviso under the heading "Global Health Programs" ("the Kemp-Kasten Amendment") of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2016 (Div. K, P.L. 114--113) (SFOAA), as carried forward by the Continuing Appropriations Act, 2017 (Div. C, P.L. 114-223), as amended, referred to as the Fiscal Year 2017 Continuing Resolution. Enclosed are copies of the determination and an accompanying Memorandum of Justification, which explains the basis for the determination.

As required by section 7082(b) of the SFOAA, as carried forward by the FY 2017 CR, the Department of State will transfer to the "Global Health Programs" account any funds that are "not made available for UNFPA because of the operation of any provision of law," to make them available for other family planning, maternal and reproductive health activities.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Macmanus", with a long horizontal line extending to the right.

Joseph E. Macmanus
Bureau of Legislative Affairs

Enclosure:
As stated.

Determination Regarding the “Kemp-Kasten Amendment”

Pursuant to the authority vested in me by the third proviso under the “Global Health Programs” heading (“the Kemp-Kasten Amendment”) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2016, (Div. K, P.L. 114-113) (SFOAA), as carried forward by the Continuing Appropriations Act, 2017 (Div. C, P.L. 114-223), as amended, and by Executive Order 12163, as amended, and State Department Delegation of Authority 413, I hereby determine that the United Nations Population Fund supports, or participates in the management of, a program of coercive abortion or involuntary sterilization. This determination shall be deemed to apply to any provision of law that is the same, or substantially the same, as the referenced proviso, to the extent applicable to the use of funds appropriated in FY 2017.

This determination shall be reported to Congress, and published in the *Federal Register*.

30 March 2017

Date



Thomas A. Shannon, Jr.
Under Secretary for Political
Affairs

Memorandum of Justification for the Determination Regarding the “Kemp-Kasten Amendment”

The “Kemp-Kasten Amendment,” set out in the third proviso under the heading “Global Health Programs” of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2016, (Div. K, P.L. 114-113) (SFOAA), as carried forward by the Continuing Appropriations Act, 2017 (Div. C, P.L. 114-223), as amended, referred to as the Fiscal Year (FY) 2017 Continuing Resolution (CR), provides that “none of the funds made available in this Act nor any unobligated balances from prior appropriations acts may 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.” The law also requires that any such determination “be made no later than 6 months after the date of the enactment of this Act, and...be accompanied by the evidence and criteria utilized to make the determination.” This Memorandum of Justification provides the explanation of the evidence and criteria supporting a determination under the Kemp-Kasten Amendment with respect to the United Nations Population Fund (UNFPA).

The Chinese Government employs measures such as coercive abortion and involuntary sterilization to carry out its population-control policies. The Population and Family Planning Law of the People’s Republic of China, first enacted in 1979 and revised in 2002, directs the central Government to adopt comprehensive measures to “control the size of the population and improve its quality.” These measures, collectively known as the “one-child policy,” include the implementation of regulations that limit the number of children a woman may have, the provision of obligatory contraception services or termination of pregnancy, and the imposition of incentives and penalties on individuals and couples to induce compliance. On December 27, 2015, the Standing Committee of the Chinese National People’s Congress (NPC) amended the Population and Family Planning Law to introduce a “two-child policy” countrywide, effective January 1, 2016. The revised statute raises the birth limit imposed on its citizens from one child to two children per married couple, and further allows couples to apply for permission to have a third child if they meet conditions stipulated in local and Provincial regulations. The National Health and Family Planning Commission (NHFPC) oversees the implementation of the law.¹

Despite this partial liberalization of the previously restrictive “one-child policy,” the Chinese Government, at both central and provincial levels, continues to place financial and administrative penalties on individuals who exceed the birth limits, or otherwise violate regulations promulgated under the amended law, as discussed in Section 6 (“Discrimination, Societal Abuses, and Trafficking in Persons”) of the State Department’s 2016 *Report on Human Rights Practices for the People’s Republic of China* (the *Report*). Furthermore, according to the *Report*, the NHFPC has announced it will continue to impose fines (“social-compensation fees”) for violations, and require each woman with an unauthorized pregnancy to abort her unborn child or pay a social-compensation fee that can reach 10 times an average Chinese citizen’s annual disposable income. The *Report* notes that China’s population-control policy relies on measures such as mandatory pregnancy examinations and coercive abortions and sterilizations. Regulations enforced in a number of Provinces, including Hubei, Hunan, Guizhou, Jiangxi, Qinghai, Yunnan and Liaoning,

¹ The NHFPC was created from a merger of the Ministry of Health and the National Population and Family Planning Commission (NFPC) in November 2013.

require women who violate the policy to terminate their pregnancies. For example, Hunan Provincial regulations revised in March 2016 stipulate that “pregnancies that do not conform to the conditions established by the law should promptly be terminated.” Children born to single mothers or unmarried couples are considered “outside the policy,” and subject to the social-compensation fee and the denial of legal documents, such as birth certificates and “*hukou*” residence permits, which allow access to state-provided health care and public education.

Similarly, the 2016 *Annual Report* of the bipartisan Congressional-Executive Commission on China, published after the introduction of the “two-child policy,” found the Chinese Government approach to family planning abuses human rights. The analysis asserts, “Chinese authorities continue to actively promote and implement coercive population-planning policies that violate international standards,” and details numerous examples. Echoing the State Department’s *Report*, the Commission concluded that Chinese officials “enforce compliance with population-planning targets using methods including heavy fines, job termination, arbitrary detention and coerced abortion.”

Human-rights advocacy organizations, such as Amnesty International and Human Rights Watch, have also confirmed that the Chinese “two-child policy” continues to rely on forced sterilizations and abortions, and Government control over birth permits. These groups judge that restrictions on reproductive rights remain common throughout China.

UNFPA first began its program in China in 1978. All of the organization’s programs in China are subject to national laws and local regulations, including the Population and Family Planning Law and the corresponding provincial implementing regulations that provide the framework for the country’s coercive birth policies. In June 2015, the UNFPA Executive Board approved the 8th Country Program (CP8) for China, which covers the period 2016-2020, in “close consultation with the [Chinese] Government.” As outlined in the Third Plenum of the 18th Central Committee of the Communist Party of China in November 2013, the program aligns with Chinese national priorities. Furthermore, like past UNFPA Country Programs for China, CP8 calls for national execution models (i.e., implementation through government agencies). The NHFPC, which is responsible for implementing and enforcing China’s program of forced abortion and involuntary sterilization, appears in CP8 as a UNFPA partner in anticipated family planning-related outcomes. By implementing a portion of its family planning program in partnership with that government entity, UNFPA provides support for the NHFPC’s implementation of China’s family planning policies, which includes coercive elements.

The Chinese Government’s Population and Family Planning Law, even as amended in 2015, and related regulations and practices at the central and Provincial levels, clearly constitute a “program of coercive abortion or involuntary sterilization,” and are an integral part of the comprehensive population-control program the Chinese Government advances. While there is no evidence that UNFPA directly engages in coercive abortions or involuntary sterilizations in China, the agency continues to partner with the NHFPC on family planning, and thus can be found to support, or participate in the management of China’s coercive policies for purposes of the Kemp-Kasten Amendment.