

**REPORT ON IMPLEMENTATION OF CEDAW
IN THE PEOPLE'S REPUBLIC OF CHINA
December 1998**

**A Report with Recommendations and
Questions for the Chinese Government Representatives**

By

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Introduction

This shadow report has been produced by independent organizations in Hong Kong and New York, with input from many academics and activists, some inside China, and contributions from many volunteers. The general sections of the Introduction and the discussion of Article 7 and Article 11 have been produced jointly by the Asia Monitor Resource Centre, China Labour Bulletin, the Hong Kong Christian Industrial Committee and Human Rights in China.¹ The rest of the report is the contribution of Human Rights in China.² This report does not cover all the issues relating to women's rights, but highlights what we consider to be some of the most pressing problems on which sufficient information is available to us.

Considering the serious problems of discrimination faced by many Chinese women across the country today, and the fact that women and girls have suffered disproportionately from the negative effects of government policies on the economy, health and population, the Chinese government's current report to the Committee on the Elimination of All Forms of Discrimination Against Women is severely inadequate.

Throughout the report there is a distinct lack of information about the nature and extent of current discriminatory practices, and on how or whether these laws, policies and programs are implemented in practice, the obstacles met while implementing them, including traditional practices, which agencies are responsible for enforcing them, what punitive measures are available in case of non-compliance and whether such punishments have been used. It fails to mention altogether some of the most severe problems facing women. Furthermore, in the description of plans to implement the Beijing Platform for Action and other commitments the Chinese government has made to women, there are few indications of time-bound targets, benchmarks for monitoring, or details on the allocation of resources.

Thus the report is primarily a description of what the situation should be according to law, not of the reality of women's lives. In most cases, this is not due to a shortage of such information. This shadow report has been prepared by NGOs outside China, but much of the information it contains comes from research and reporting by activists, journalists, academics and scholars published inside China, mostly openly in the Chinese media and in books and journals. Although the government report was drafted by officials from the All-China Women's Federation (ACWF), it ignores news and commentary on problems of discrimination faced by women published daily in the Federation's own newspaper, *China Women's News*, as well as the many reports and studies prepared by Federation researchers, let alone those by women activists and scholars in other institutions.

Since the late 1980s, and particularly in the years just before China hosted the Fourth World Conference on Women, a great deal of research has been done on women's status and a number of women's studies centers have been set up in universities, in the ACWF and in independent institutions. They have produced a myriad of publications, held many conferences and launched all sorts of initiatives to provide new types of social services to women.

¹ AMRC, CLB and HKCIC are Hong Kong-based organizations which focus on labor rights issues. HRIC has its head office in New York and a branch office in Hong Kong.

² As well as the staff of the organization, Human Rights in China would like to thank the following people for their invaluable contributions: Ann Jordan, Mark Girouard, Karen Brenizer, Mehlika Hoodbhoy, Li Xiaorong, Alexandra Moller, Isabella S. C. Scanderbeg, Camilla Wingfield, Miranda Yip, Yu Ping and many others who prefer to remain nameless.

This disjuncture between the government's report and the degree of discussion within the country highlights the regrettable fact that organizations and individuals from within China have not been permitted to participate in the review of the government's report. The government's report has not been circulated or even publicly acknowledged in the media in mainland China. Thus the occasion of the Chinese government's reporting to CEDAW has not been used, as it should be, as an opportunity to focus on the degree of implementation of the treaty in the PRC.

Furthermore, it points to the fact that certain types of information about discrimination against women and girls cannot be published openly in China. This includes information about abuses relating to the population policy, candid examination of the sex industry, detailed reports on the extent of trafficking in women, as well as analysis of the government's responsibility for discriminatory practices and instances of its failure to protect the rights of women and girls.

Disparities ignored

It is very clear that China's economic growth has resulted in higher incomes and rises in living standards. But the last decade has also seen rapid growth in inequality. A picture of which women have benefitted and which have lost out is absent from the government's report.

Unfortunately the Chinese government did not respond to the request from CEDAW in 1992 that the next report be broken down by region. This is particularly regrettable in view of the fact that in 1997 the ACWF published a study which assesses the level of gender equality in different provinces across China.³ This study used comparative data disaggregated by sex on health, infant mortality rate, employment, the proportion of women among professionals and the literacy rate.

Other treaty bodies have also requested that data be provided which gives an idea of conditions in different parts of the country.⁴ Yet the report to CEDAW does not contain any reference to women and girls belonging to ethnic minority groups, nor does it present data disaggregated by region or province. Similarly, while the Committee on the Rights of the Child expressed concern about the rural/urban divide in the fields of education, health and social security, an issue on which we raise concern here,⁵ in its report to CEDAW the Chinese government made very little effort to document such disparities. With a population of 1.2 billion, overall data and averages can conceal a great deal.

Furthermore, there are many questions about the reliability of statistical information in China. This means many of the rosy images presented by the authorities may not reflect the true picture. "Great numbers of grass-roots units and officials throughout the country have been caught deliberately reporting false statistics concerning the industrial output, grain reserves, inflation and even birth rates," said the official *China Daily* in 1998.⁶ While this comment focusses particularly on economic data, social information is also subject to manipulation, particularly if the central government sets targets which local governments are unwilling or unable to achieve. For example, China reports very high primary school enrollment rates, but according to the UNDP, actual rates may be "somewhat lower."⁷

Violence

³ Institute of Women's Studies of the All China Women Federation, *Collection of Women's Studies*, , No. 1, 1997, p.9-14.

⁴ In 1996 CERD expressed regrets at the lack of data provided on "health, education, welfare and other social and economic conditions of life of the different minority groups."

⁵ The section of this report on rural women will be available in January 1999.

⁶ "False reports present a threat to true picture," *South China Morning Post*, June 18, 1998, citing *China Daily*.

⁷ UNDP, *China Human Development Report: Human Development and Poverty Alleviation, 1997*, February 1998.

Despite the Committee's General Comment No.12 on Violence and its request that such information be included in the reports of state parties, China report lacks information about "attitudes, customs and practices" that perpetuate violence against women and therefore stand in the way of China's efforts at implementing the Convention. Even though Addendum 1 mentions inspections and investigations of the enforcement of the Women's Law, the Chinese government does not describe which "problems" were "identified."

The government report is entirely silent on acts of violence committed against women by government agencies, in particular in the context of the implementation of the population control policy. As a result, the report does not allow the formation of any judgment on the level, the causes and the forms of violence against women in China, and therefore on how the government addresses these issues in practice.

Remedies

Although the Chinese government has made repeated commitments to equality for women and has enacted laws and formulated policies aimed at implementing those commitments, all too often in practice women's rights are quietly sacrificed in favor of other goals: "efficiency," attracting foreign investment, restructuring, social harmony and so on.

Women have few avenues for pursuing rights claims when their rights and interests conflict with those of the government or its officials, or when the discriminatory treatment they have suffered is perpetrated by a government agency. As we describe in the sections on Article 1, 2 and 7, the absence of legal remedies and restrictions on freedom of association and expression leave women with little opportunity for challenging lack of government action or violations of their own rights.

In effect the government has blamed women for their own predicament. They are repeatedly exhorted to "improve their quality." Article 6 of the Law on the Protection of Women's Rights and Interests (LPWRI) is a prime example. It provides that "the state shall encourage women to cultivate a sense of self-respect, self-confidence, self-reliance and self-strengthening" and that "women shall abide by the laws of the state, respect social morality and perform their obligations prescribed by law." This implies that discrimination against women is caused by their lack of self respect, self confidence, self reliance and self strengthening. Received wisdom about women employees being less capable than men, costing employers more and having less education is repeated again and again by government officials.

Most of the campaigns the government describes aimed at enforcing equality are aimed at women, such as the legal education drives described in the government report. But little effort goes into reeducating men or tackling discrimination.

The government is frequently shirking its obligation to act against discrimination and to protect women's rights by shifting the responsibility onto organizations such as the ACWF and charitable campaigns. There is virtually no mention of specific commitments of government resources to this issue in the government's report.

Since the government appears unwilling to commit the resources and efforts to combating discrimination, it should at least stop preventing women from articulating their own concerns and from organizing to protect themselves against discrimination.

Below are summaries of some of our main concerns.

Article 2: Laws on discrimination

Article 48 of China's Constitution stipulates that women "enjoy equal rights with men in all spheres of life" and that "the state protects the rights and interests of women." However, it makes no mention of prohibiting discrimination against women, or discrimination against any other category of persons.

Some Chinese legal scholars have claimed that the Law on the Protection of Women's Rights and Interests (LPWRI) is an "anti-discrimination law" and the Chinese government has stated that the law was passed in part to give effect to its responsibilities under CEDAW. But the LPWRI does not address the question of whether a practice that

causes a difference in the treatment of women in comparison to men, even if not intending to discriminate, is discriminatory and therefore prohibited. The law is silent on whether a pattern of behavior that in effect adversely impacts on women in comparison to men may be considered proof of discrimination, or on when an absence of action may constitute discrimination. This points to the fact that the LPWRI is not actually intended to be used as an anti-discrimination law.

There are major problems with the implementation of the LPWRI and other laws protecting women's rights, both in terms of the lack of available legal mechanisms and in terms of the government's lack of action to enforce them. In essence, the LPWRI depends almost entirely for its enforcement on whether or not the government chooses to take administrative measures to fulfill the promises of the law. And unfortunately, as detailed below, it rarely does so.

We recommend that the CEDAW definition of discrimination be incorporated into Chinese law and that individual women and groups of women be given the right to take legal action to protect their rights and gain redress or remedy for their violation.

Article 6: Trafficking

Discussion of trafficking in the government report and addendum is limited to a recitation of related laws and regulations. But the number of reports of women and girls trafficked inside the country and across its border has been rising since the 1980s, giving rise to serious concern.

Chinese commentators attribute the continuance of the trafficking trade to several factors, including economic change, persistence of "feudal" customs, regional disparities in wealth and so on. However, an official report also stated that "insufficient crackdown" on traffickers and "lenient punishment" of purchasers were contributing factors. The collusion of officials with traffickers or with those who profit from trafficking through selling the labor of trafficking victims has been insufficiently examined. Officials who are negligent in their responsibilities to prevent trafficking and protect the rights of trafficking victims have generally escaped punishment or even censure.

Currently the government severely restricts reporting about the issue of trafficking. This means that deficiencies in the laws and policies relating to this problem are not exposed. Furthermore, directing anti-trafficking campaigns only at potential victims as is currently the case means that such efforts do little to mobilize society as a whole to fight this egregious abuse of women's rights, or to change the attitudes and practices which allow women and girls to be bought and sold like cattle.

The government should allow extensive reporting about this subject. Rather than just focussing on professional traffickers, the government should prosecute officials who collude with traffickers, fail to act to rescue victims and halt trafficking, as well as buyers and sellers of women and girls.

Article 7: Political representation

While there are no legislative or constitutional barriers to women's participation in political and public life as the government's report states, a combination of lack of representation of women in the highest organs of power in the state, political controls over association and the low priority given to women's needs and concerns means that in reality women's representation does not comply with the standards set out in the Convention.

Most crucially, national laws and policies give the All-China Women's Federation (ACWF) a monopoly on representing women's interests, and require that all initiatives and groups focussing on women's concerns should be controlled by it. Yet according to the ACWF, its "guiding policy" is to "unite and educate the broad mass of women and implement the basic line of the party..." Official documents state that the primary task of the organization is "to implement government policies at all levels of society, from working women upwards."

This means that when women's interests come into conflict with those of the ruling party and the government, the ACWF cannot represent them. Thus, concerns about the many negative effects of government policies on women and girls often cannot find proper channels for expression, and women are unable to advocate forcefully for changes in such policies.

Women in all spheres of life, but particularly the poorest and most vulnerable, urgently need the services, agency and voice which independent women's organizations could provide. We therefore recommend that the government repeal restrictive laws on freedom of association to create space for the formation of such organizations.

Article 11: Employment

Article 13 of China's Labor Law states, "Women and men enjoy equal rights to employment." However, the reality is that women do not enjoy the same rights as men in the existing structure. Despite the existence of such laws and regulations which protect a variety of rights relating to employment, women have suffered disproportionately from unemployment resulting from economic restructuring: although they constitute less than 40 percent of the formal urban workforce, women have suffered 60 percent of the layoffs in this sector. Women also encounter widespread discrimination in hiring and promotion, with even some government departments openly refusing to hire them.

Women workers are frequently deprived of benefits employers are required to provide for them under the law and often have to face working conditions which violate national laws on health and safety and work practices, endangering their lives and health. Women working in the informal sector, including as domestic helpers and sex workers, remain entirely unprotected by labor laws.

In the face of serious problems regarding employment, women find few avenues available to challenge discrimination and abusive working environments, since most relevant laws contain only administrative mechanisms for enforcement, and the reality of a lack of official action demonstrates that addressing such problems is not a high priority for central or local governments. Furthermore, the lack of independent unions and women's organizations means that women have few advocates in their struggle for equality in the workplace.

The government claims that it has done a great deal to enforce laws protecting women's employment rights, but in reality it has failed to do so. The government must make it a priority to enforce existing laws. It must also make the necessary legislative changes to allow for action to be taken against the discrimination women currently face in employment, and to ensure that the rights of all workers, including sex workers and domestic workers, are properly protected.

Article 12: Health

In so far as China's national health policies consider the specific needs of women, they focus almost entirely on their role as mothers and link health interventions directed at women to family planning and the survival and health of children. The government's report contains hardly any data on the health status of women in China today, and fails to address some of the major emergencies in women's health.

As China shifts to a system of fee-for-service medicine, with 79 percent of Chinese people now not covered by any kind of health insurance or benefits, women are particularly disadvantaged. The lower status of girls and women means that they are less likely to receive care which is increasingly expensive. This is particularly so for rural women, whose access to health care is severely inadequate. Currently about 60 percent of public health spending is disbursed for 15 percent of the population who live in cities or are employed by government, and in 1993, only 4 percent of spending covered the needs of the poorest quarter of the rural population.

While mental health services in China have long suffered from general neglect, this fact is particularly worrying in the light of one of the major emergencies for women's health in China: the epidemic of suicide. China has the fourth highest rate of suicide of all the countries which provide data on the matter to the WHO, and in the Burden of Disease study

suicide ranked fifth among China's health "burdens." Rural suicide rates are three times urban rates. China is the only country in the world where higher rates of suicide are reported for women than for men: with only 21 percent of the world's women, it has 56 percent of the world's female suicides.

STDs have been spreading rapidly in recent years, and HIV infection is spreading. The government has taken insufficient action to combat these diseases, and has not particularly targeted women, although they are at special risk because they are often unable to exercise control in their sexual lives. Sex workers and trafficked women present the most extreme examples.

The government must do more to identify the specific health needs of women of all ages and take effective steps to meet them. We recommend that the government take immediate action to provide basic health care for the rural poor and following consultation with women and experts on women's mental health, institute a nationwide gender-specific suicide prevention program, concentrating on reaching rural women.

Article 14: Rural Women

The Chinese government's report provides little information about the specific situation of rural women, although it does discuss various programs directed at them. The report entirely fails to mention the many ways in which rural women continue to experience particular disadvantages as compared to their urban sisters. The report completely fails to address the effects on women of the growing inequality between urban and rural areas. It also neglects the fact that most of the innovative programs which address women's rights are concentrated in the cities, while the role of rural Women's Federation officials in enforcing the population policy means that they may not be trusted by women or available to assist with other types of problems.

Rural women suffer disproportionately from poverty, poor living conditions and sanitation, lack of adequate health care, abuses relating to the population policy, effects of traditional prejudices against women and girls, domestic violence and lack of access to quality education, among other problems. They are affected by problems such as growing urban-rural inequality, under- and unemployment in the countryside, the lack of social security benefits for rural residents and the feminization of agriculture. Even when they leave the countryside, the residence registration (*hukou*) system perpetuates their second class status when they migrate to the cities, and makes them particularly vulnerable to exploitation and abuse.

Many of the principal types of discrimination and violence faced by rural women are covered in other parts of this report, including trafficking (Article 6), lack of health care and the epidemic of suicide (Article 12), the many violations associated with the population control policy (Article 16) and domestic violence (Article 16).

Article 16: Population policy

Despite the concern expressed by the Committee during its review of China's previous report about aspects of the PRC's population policies and their effects, the Chinese government devotes hardly any space in the present report to this subject. The government report does not even mention any of the negative effects population policies have had.

Of course the population policy has provided many women with access to the family planning services which are their right, and in this respect, should be affirmed. But too often the pursuit of demographic goals have overridden the needs and interests of women and girls, and have led to the use of physical violence and other coercive measures. The state's insistence on meeting demographic targets has combined with traditional attitudes and practices to threaten the survival, health, wellbeing and status of many women and girls. Increasingly, the burden of such misguided policies is falling disproportionately on the poor and politically powerless.

The population policy remains a "priority national policy" and the structural causes of the violations which its implementation can cause have not been changed. The authorities generally attribute the policy's negative effects to "feudal thinking," implying that they have

no responsibility for them. However, over the years independent accounts from reliable sources across the country point to a consistent pattern of official actions which constitute gross violations of human rights. The government has not only failed to take action to halt such abuses, but has also ignored the serious discriminatory effects of the policy, such as the imbalances in sex ratios at birth and the negative impacts on women's health and safety. This inaction means that the government has not adhered to the standards articulated in the Convention, nor those in the ICPD Plan of Action or the Beijing Platform for Action.

There are some positive developments worthy of mention. We are pleased to note that in 1997 the Chinese government gave the go-ahead for a long-discussed UNFPA pilot program to be carried out in a number of rural counties which aims to show the effects of a purely voluntary family planning program concentrating on providing quality services without using coercive methods or demographic targets. Another development is the recent change in the Adoption Law, which should mean that the many abandoned children and infants in welfare institutions can quickly find homes.

We urge the Chinese government to abandon the practice of assessing officials and awarding them bonuses, promotions and other benefits according to whether they meet rigid, centrally allocated demographic quotas. This practice, combined with the fact that officials are never, to our knowledge, prosecuted for abuses relating to implementation of the population policy, means that coercive measures will continue to be used, causing discriminatory violence to women and girls.

List of abbreviations used in the report

ACFTU	All China Federation of Trade Unions
ACWF	All China Women's Federation
CCP	Chinese Communist Party
LPWRI	Law on the Protection of Women's Rights and Interests
MIHCL	Mother and Infant Health Care Law
NPC	National People's Congress
SOE	State Owned Enterprise
WCWC	Working Committee on Women and Children of the State Council
WWC	Women Workers' Committee of ACFTU

Articles 1 and 2: Definition of Discrimination and Measures to Combat it

Overview

The Chinese government's report lists many laws and policies aimed at implementing provisions of the Convention. It identifies the causes of discrimination against women and the obstacles to the full realization of equality as caused by economic and social conditions and "old ideas in real life." The report states that women's equal rights have yet to be fully realized, and that "belittlement of and discrimination against women, even violation of their rights and interests, are not uncommon." The major methods to deal with these problems are identified as government action to develop the economy, improve the legal system and "eliminat[e] all backward ideas that discriminate against women," as well as implementing the Beijing Platform for Action.⁸

The report fails to mention Article 1 at all. Under Article 2, the report lists a series of laws, policies and programs aimed at fulfilling these objectives. Further details of these measures are also provided in the specific areas covered by other Articles. However, throughout the report there is a distinct lack of information about the nature and extent of current discriminatory practices, and on how or whether these laws, policies and programs are implemented in practice, the obstacles met while implementing them, including traditional practices, which agencies are responsible for enforcing them, what punitive measures are available in case of non-compliance, and whether such punishments have been used.

Thus the report is primarily a description of what the situation should be according to law, not of the reality of women's lives. The difference between *de jure* and *de facto* situations, and the need to supply information on both, was raised forcefully by the Committee on the Rights of the Child during its review of China's report: "Greater focus was placed within the report on the content of domestic legal and administrative provisions rather than on their practical application."⁹ Furthermore, during their review of China's second report to CEDAW, Committee members requested that in its next report the government should provide more specific information about the actual situation of women. In our view, it has generally failed to do so.

In most cases, this is not due to a shortage of such information, as the Introduction and the various sections of this shadow report demonstrate. Since the late 1980s, and particularly in the years just before China hosted the Fourth World Conference on Women, a great deal of research has been done on women's status and a number of women's studies centers have been set up in universities, in the ACWF and in independent institutions. The many publications produced include a book-length compilation of statistics on women's status; an assessment by the ACWF of the degree of gender equality by a variety of measures in China's different provinces; reviews of women's status in the blue book produced annually by the Chinese Academy of Social Sciences; research on the situation of female migrants in south China; and a host of papers and articles on an extensive range of topics. There have been many conferences and all sorts of initiatives to provide new types of social services to women.

This disjuncture between the government's report and the degree of discussion within the country highlights the regrettable fact that organizations and individuals from within China have not been permitted to participate in the review of the government's report. The government's report has not been circulated or even publicly acknowledged in the media. Thus the occasion of the Chinese government's reporting to CEDAW has not been used, as it should be, as an opportunity to focus on the degree of implementation of the treaty in the PRC. Reporting obligations remain a futile exercise if they are not used as a means to raise

⁸ CEDAW/C/CHN/3-4, p.3-4.

⁹ Committee on the rights of the Child, 12th Session, June 1996, CRC/C/15/Add.56.

public awareness, to highlight areas which need improvement, or if treaty bodies' recommendations are not reflected in subsequent reports and transformed into concrete measures.

The quality of China's report also points to the fact that certain types of information about discrimination against women and girls may not be published openly in China. This includes information about abuses relating to the population policy, candid examination of the sex industry, detailed reports on the extent of trafficking in women, as well as analysis of the government's responsibility for discriminatory practices and instances of its failure to protect the rights of women and girls.

This section focuses on the Law on the Protection of Women's Rights and Interests (LPWRI) as this is the principal mechanism the government has established for the enforcement of the provisions of CEDAW. Furthermore, its nature illuminates broader problems with the system in China which stand in the way of action against discrimination against women.

Article 1: Definition of discrimination

Article 48 of China's Constitution stipulates that women "enjoy equal rights with men in all spheres of life" and that "the state protects the rights and interests of women." However, it makes no mention of prohibiting discrimination against women, or discrimination against any other category of persons.

Although some Chinese legal scholars have claimed that the Law on the Protection of Women's Rights and Interests (LPWRI) is an "anti-discrimination law" and the Chinese government has stated that the law was passed in part to give effect to its responsibilities under CEDAW, according to the government's report the general premise of the LPWRI is "protecting the lawful rights and interests of women."¹⁰ This indicates a somewhat different approach, which, while providing a significant scope for dealing with problems of inequality, is not equivalent to an anti-discrimination perspective.¹¹ Although the words "discrimination" and "discriminate" are used in the LPWRI and the province-level implementation regulations which have been enacted to give it local application, neither contain a definition of discrimination.¹²

To be more specific, the LPWRI and the provincial regulations do not address the question of whether a practice that causes a difference in the treatment of women in comparison to men, even if not intending to discriminate, is discriminatory and therefore prohibited. For example, LPWRI Article 22 prohibits any unit from refusing to employ women "by reason of sex," while Article 26 provides that no unit may dismiss woman staff and workers "by reason of marriage, pregnancy, maternity leave or lactation." Yet in practice, when an employer rejects a potential female employee or dismisses a woman from her post, he or she will rarely cite sex or pregnancy for doing so, but may use an excuse or other method to achieve the same result (see Article 11 for more on this issue). The law is silent on whether a pattern of behavior that in effect adversely impacts on women in comparison to men may be considered proof of discrimination, or on when an absence of action may constitute discrimination. Thus the LPWRI and its implementing regulations do not give any guidance on what facts are sufficient to prove discrimination.

In sum, in our view neither the LPWRI nor its provincial implementing regulations have incorporated the definition of discrimination contained in the Convention, and since

¹⁰ CEDAW/C/CHN/3-4, p.6.

¹¹ For a discussion of how the idea of protecting the "rights and interests" of certain sectors of the population, including minors, people with disabilities, the elderly, workers and so on, has been changing China's approach to rights issues, see Ronald C. Keith, "Legislating women's and children's 'rights and interests' in the PRC," *The China Quarterly*, No.149, March 1997.

¹² Since 1992, all 31 province-level administrations, including municipalities directly under the central government and autonomous regions, have issued rules and regulations regarding the implementation within their respective jurisdictions of the Law on the Protection of Women's Rights and Interests.

other Chinese laws do not even use this term and it is absent from China's Constitution, there is no guidance on how it should be applied. This points to the fact that the LPWRI is not actually intended to be used as an anti-discrimination law.

Article 2: Anti-discrimination laws and policies

The LPWRI and its provincial implementing regulations, as well as some other laws mentioned in the Chinese government's report, contain comprehensive provisions for protecting most of the rights articulated in the CEDAW. We welcome the enactment of such laws.

However, there are major problems with the implementation of these laws, both in terms of the lack of available legal mechanisms and in terms of the government's lack of action to enforce them. In essence, the LPWRI depends almost entirely for its enforcement on whether or not the government chooses to take administrative measures to fulfill the promises of the law. As one scholar puts it:

Despite frequent assertions that the [LPWRI] is a powerful tool for women to protect their lawful rights, the reality is that the law is not designed to be used by the victims of discrimination themselves... [T]he law is essentially a set of normative principles to be inculcated through education and propaganda. The process of activating the legal system to enforce the norms—that is, to apply sanctions against those who violate women's rights—operates almost entirely at the discretion of the state.¹³

Article 48 of the LPWRI provides that "[w]hen a woman's lawful rights and interests are infringed upon, she has the right to request the competent department concerned for a disposition or bring a lawsuit in a people's court according to law." In addition, Article 52 provides that "[w]here an infringement upon a woman's lawful rights and interests causes loss of property or other damage, the infringer shall make due compensation or bear other civil liabilities according to law."

But the central problem is that the LPWRI did not actually establish any new criminal offenses, any new private causes of action, or any new penalties or remedies for violations of the law. Any lawsuit to protect the rights the law enumerates or punish those who infringe them, whether a public prosecution or a civil suit, has to be based on another law, such as the Criminal Code or the Civil Law.

While Article 48 allows for women to bring suits under the Civil Law for damages resulting from a violation of the LPWRI, and Chinese legal scholars support such an interpretation,¹⁴ civil liability under Chinese law relates only to property rights and personal rights.¹⁵ Thus, no suit on employment, for example, is possible under the Civil Law.

Chinese courts generally will not accept cases unless the plaintiff can show that a specific violation of a written law or regulation has occurred, and that a specific remedy is provided for. This principle is made clear by the example of the Administrative Litigation Law, which provides for Chinese citizens to bring suit against government agencies which have violated their rights. However, the scope of the law is strictly limited, and courts have wide discretion to deny review. Cases may only be brought if a law or regulation on a particular matter explicitly states that such review is available, or if the matter in question is included in the general remit of the Administrative Litigation Law.¹⁶

¹³ Jonathan Hecht, "The legal protection of women's rights in China: discretionary enforcement of human rights norms," *China Rights Forum*, Fall 1995.

¹⁴ See for example Wang Deyi, "The basic contents and characteristics of the Law on the Protection of Women's Rights and Interests," *China and Foreign Law Science Journal*, Vol.4, 1992.

¹⁵ Although the concept of personal rights in Chinese law is potentially fairly broad, in practice most cases relate to marriage, defamation and intellectual property.

¹⁶ Examples of the latter type include cases in which individuals have been sentenced administratively to Reeducation Through Labor and cases relating to the population policy. But in the latter field, courts

Administrative enforcement

In the absence of direct channels for legal action, women whose rights under the LPWRI have been violated must approach an administrative agency responsible for the matter in question and lodge a complaint. As with other methods of dealing with complaints in China, the agency responsible for dealing with the complaint is generally the one which has been responsible for the violation, so a satisfactory resolution of the issue is often very difficult to achieve.

In certain types of cases, however, the question of which agency to approach may be unclear, in part because the law is very vague on this. In a private matter, say for example an infringement of a woman's right to freedom of marriage, no government agency may actually be involved. In such circumstances the woman's only recourse is to approach the ACWF, and request assistance. But the ACWF does not have any power to enforce decisions it makes about particular cases.

Even if an administrative agency does agree to take up the case, penalties available are generally ineffective. In the absence of specific penalties under the law, government can only have recourse to administrative sanctions, which would include warnings to the individual involved in violating the law, demotions and other such measures. Such sanctions do not include fines or ways of reversing the wrong in question. Administrative sanctions really only have effect within the government and the state sector, which can impose such discipline on those employed within them. In the private sector and in matters involving women's rights within the family, such measures are useless.

Furthermore, in many cases the person who has committed the violation may actually be a leader in the administrative agency which should be responsible for dealing with it. As a Chinese legal scholar has put it:

Many violations of rights—such as firing women workers because of marriage, pregnancy, maternity leave or nursing; violating the principle of equal rights between men and women in allocating land—are perpetrated by the leader or person in charge of the work unit to which the victim belongs. Under such circumstances, it is very difficult to expect the heads of the unit to rectify the situation or take administrative disciplinary action against the person directly responsible for violating a woman's rights and interests.¹⁷

She concludes that despite the enactment of the LPWRI, "there are still no reliable guarantees for the protection of women's legal rights and interests."¹⁸

Questions to ask the Chinese government representatives:

1. Please provide details of complaints dealt with and law suits filed under the LPWRI, broken down by type of case, part of the country and result. How does the government assist women who want to bring suit under the law?
2. Can the government give details of what problems the inspection teams which have looked at the implementation of the Women's Law found during their investigations?¹⁹ Can the government provide the Committee with the text of their reports?
3. According to the government's report, the Working Committee on Women and Children under the State Council called a meeting on the implementation of the Beijing Platform for Action with central and provincial government level officials, asking them to

in some areas have been given instructions not to hear such cases. (See Article 16 for more information.)

¹⁷ Ma Yanan, "Chinese law and the protection of women's human rights," in *Human Rights: Chinese and Canadian Perspectives*, The Human Rights Research and Education Center, Ottawa, 1997.

¹⁸ Ibid.

¹⁹ CEDAW/C/CHN/3-4/Add.1, p.4.

“formulate plans for women’s development.” Can the government provide details on these plans and on specific resources allocated to carry them out?

Recommendations

1. A definition of discrimination consistent with the CEDAW should be incorporated into Chinese law.
2. The LPWRI should be amended to allow for women whose rights under the law have been violated to seek redress or remedy in the courts. Available penalties should be increased, incorporating fines and other sanctions.
3. In the interim, the WCWC and its provincial level counterparts should be made responsible for investigating complaints of violations of the LPWRI, and should be given powers to enforce the law.

Article 6: Suppression of Trafficking in Women

Overview

Discussion of trafficking in the government report and addendum is limited to a recitation of related laws and regulations. Without providing details on the enforcement of such rules or the actual situation of trafficking both within China and across its international borders, the government states: “The number of cases involving the abduction and sale of people has declined nationwide. Cases of women abuse have been on the decrease and some worst cases of abuse have been dealt with in a timely fashion.” This is despite the fact that the Committee on the Rights of the Child expressed serious concern about this issue in its 1996 review of China’s report.²⁰

But the number of reports of women and girls trafficked into the sex industry, domestic servitude, sham marriages, sweatshops and begging in the cities has been growing since the late 1980s and the incidence of kidnapping and selling of women in China’s rural regions has been on the rise since the beginning of that decade.²¹ Furthermore, the government fails to mention altogether the fact that a growing number of Chinese women are being trafficked to other countries or that women from neighboring countries have been trafficked into China.

Chinese commentators attribute the continuance of the trafficking trade to several factors, including economic change, persistence of “feudal” customs, regional disparities in wealth and so on. However, an official report also stated that “insufficient crackdown” on traffickers and “lenient punishment” of purchasers were contributing factors.²² But the collusion of officials, the lack of effort to combat the trade and the failure to arouse public awareness and indignation about it are also significant. As one academic put it, “More publicity should be made [and] more people from more agencies [should] be involved... to get more support from the whole society.”²³

Generally, there is little exposure of this problem in China as the authorities consider exposure of such negative issues tarnishes the nation’s image. Some media, however, such as *China Women’s News* and *Rural Women Knowing All*, have carried reports on trafficking in recent years. But the general shortage of public discussion and scholarly study means that

²⁰ See the Committee’s concluding observations in CRC/C/15/Add.56, one paragraph of which reads: “The Committee shares the State party’s concern that there has been an upsurge in recent years of kidnapping and abductions of children. In this connection, the Committee wishes to express its serious concern about the apparent insufficiency of measures to prevent and combat the problems of the sale, trafficking and sexual exploitation of children.”

²¹ Report of the U.N. Special Rapporteur on Violence Against Women, 1997, p.22, paragraph 88. E/CN.4/1997/47

²² Ibid.

²³ He, “Protection of the rights of girls in Yunnan: problems and prospects.”

deficiencies in the laws and policies relating to this problem are not subject to criticism and review. Furthermore, directing anti-trafficking campaigns only at potential victims, whether in the media or in the form of legal knowledge drives launched by Women's Federations, means that such efforts do little to mobilize society as a whole to fight this egregious abuse of women's rights, or to change the attitudes and practices which allow women and girls to be bought and sold like cattle.

The collusion of officials with traffickers or with those who profit from trafficking through selling the labor of trafficking victims has been insufficiently examined. Officials who are negligent in their responsibilities to prevent trafficking and protect the rights of trafficking victims have generally escaped punishment or even censure.

Background

No matter [whether] domestic or intra-country trafficking, those being trafficked suffer a lot, and all live a miserable life: some women are forced to marry with those they never would if they had a choice, apart from bearing children, they have to toil day and night; the children are used as slaves, who have to 'share' all the hard labor. Instead of working in factories to 'make big money,' as promised by the agents, the young girls trafficked into the foreign countries are worse [off]: they have to work very hard in the brothels in order to pay off their debts and get enough money to come back. As a result some of them are [infected] with HIV/AIDS, and they have to spend the rest of their life in great sorrow.²⁴

As this description demonstrates, trafficking in China has many similarities to the situation in other countries in the region. In the PRC, it involves the transfer of women and girls to other parts of the country or across national borders, often by means of abduction, deception or half-truths, for the purpose of selling them as "wives," forcing them into prostitution or profiting from their prostitution, or from other kinds of exploitative work in which they are engaged.

From the late 1970s onwards, the trafficking and sale of Chinese women and girls both inside and outside China's national borders has reemerged as a major form of human rights abuse, with perhaps as many as hundreds of thousands of women being affected in the reform era.

But the figures made available by the Chinese authorities are scanty and generally only include cases which have been resolved. In some years, the numbers of traffickers prosecuted and victims rescued have been made available. However, these few official figures point to tens of thousands of women and girls falling prey to traffickers every year. Almost all official figures report higher numbers of traffickers prosecuted than victims rescued, and sometimes a higher number of cases than of victims rescued.²⁵

According to the most recent figures, contained in an official report in 1997, in the previous year, police arrested 14,709 people in 8,290 trafficking cases involving 1,928 trafficking groups. As a result, 10,503 victims, including 1,563 children, were rescued.²⁶ But some observers put the figures much higher. In an unpublished report, an international agency put the number of trafficking victims in Yunnan Province alone at between 5,000 and 10,000, with a third of them children. According to a Chinese scholar in Yunnan, 1,800 women and

²⁴ He Zhixiong, "Protection of the rights of girls in Yunnan: problems and prospects," paper delivered at Regional Conference on Illegal Labor Movements: The Case of Trafficking in Women and Children, November 1997, Bangkok. Sponsors of the conference included UNICEF.

²⁵ One case may involve a number of suspects.

²⁶ Zhang Weihang, Zhu Yantao and Fang Yuzhu, "Abduction and trafficking of women in China: status quo of the crime and countermeasures," paper delivered at Regional Conference on Illegal Labor Movements: The Case of Trafficking in Women and Children, November 1997, Bangkok. The first two authors of this paper are officials in the Ministry of Public Security with direct responsibility for combating trafficking.

700 girls were trafficked in the province in 1995.²⁷ In the first half of the 1990s, in some years published reports put the number of trafficking cases each year at 50,000.²⁸

The available evidence indicates that domestic trafficking claims the majority of victims, but that the problem of trafficking across China's international borders continues to grow. Victims are frequently subjected to extreme violence and abuse which damage their physical and mental health. Some of them have been held in conditions of slavery and repeatedly raped for years on end.

Understanding trafficking and the social mobilization to fight the phenomenon that might be generated by such awareness within the country is severely limited. This is in part because the Chinese authorities restrict reporting of "negative" news and have chosen to address the trafficking issue almost exclusively through a law-and-order approach aimed primarily at arresting and punishing professional traffickers. Although there was some academic study of the issue in the late 1980s and early 1990s, few publications on the topic have appeared in recent years.

This official approach, combined with the lack of independent NGOs in China, means that there have been insufficient efforts to provide services of various types to trafficking victims. Even in areas like Yunnan where international trafficking has been a serious problem for some time, organized reintegration programs for returnees have begun only recently. Traditional attitudes mean that women and girls who have been trafficked and raped or forced to engage in prostitution may not be able to return to their families, either because of their own feelings of shame or because the families believe the victim's suffering has caused them to "lose face."

Domestic trafficking

Until a few years ago, domestic trafficking appears to have been primarily for the purpose of selling women into virtual slavery to men who cannot find wives, a situation in which the women are often subjected to repeated rapes and abuse and forced to bear children. But recent reports have shown an increase in the volume of trafficking for the purpose of forcing women into the sex industry.²⁹

Although domestic trafficking restarted in the mid-1970s and has been steadily increasing since the mid-1980s, the authorities' response has been extremely laggard and ineffective. It was not until 1991 that a comprehensive law on trafficking was passed, and even then, the law was not comprehensively enforced. Despite the claims in its report, in reality the government has failed to initiate a comprehensive campaign of arrests and prosecutions of all those involved, including officials who collude with or turn a blind eye to trafficking, parents who sell their children and purchasers of women and children.

According to a number of academic surveys and press reports, the vast majority of trafficking victims are rural women from impoverished parts of the country, with most being young.³⁰ According to a recent paper by various officials involved with combating this crime, most are from Guizhou, Yunnan and Guangxi, and are sold to central and northern China.³¹ They tend to be abducted or deceived into going with traffickers when traveling away from home, often in search of work, with the main areas in which traffickers operate being informal labor markets, railway stations and dockside areas.³² However, an unknown number are also

²⁷ He, "Protection of the rights of girls in Yunnan: problems and prospects."

²⁸ See Human Rights in China, *Caught Between Tradition and the State: Violations of the Human Rights of Chinese Women*, August 1995. This report contains much more detail on the statistics and nature of trafficking in China.

²⁹ For a more detailed examination of this issue, see Human Rights in China, *Caught Between Tradition and the State*.

³⁰ See, for example, He, "Protection of the rights of girls in Yunnan: problems and prospects."

³¹ Zhang et al, "Abduction and trafficking of women in China: status quo of the crime and countermeasures."

³² Ibid.

sold to traffickers by parents or relatives. Typically, the women and girls are transported across the country to an area with which they are unfamiliar and where they do not know the local dialect, and then sold. Stories of horrific abuse at the hands of traffickers during transport, including rape and even murder, have appeared.

Men who purchase trafficking victims as "wives" are generally farmers living in poor areas of more well-off provinces. According to officials, they use the women as "tools of child production."³³ Some reports have described women having the tendons in their feet cut by their buyers so they could not escape or being held prisoner in locked rooms for long periods. Nationwide, China has a shortage of women, a problem which will be exacerbated in years to come by the seriously unbalanced sex ratios at birth resulting from son preference.

Since the late 1980s, the number of reports of trafficking of women and girls into prostitution has been growing. In at least one case, an entire village was living off the earnings made from prostituting trafficked women the villagers had purchased. "In recent years, certain human traffickers operated in collusion with offenders who [ran] beauty parlors and 'roadside hostels' and force[d] the trafficked victims into prostitution," an official report states.³⁴

From the sketchy reports available about perpetrators of this crime, it may be seen that traffickers include individual operators, family businesses and organized networks. According to officials, 70-80 percent are members of criminal organizations.³⁵ In a case reported in August 1996, 80 percent of the residents in one Anhui village were involved in the trafficking and sale of women.³⁶

International trafficking

In the early 1990s, reports of Chinese women being trafficked to other countries in the region, primarily for purposes of prostitution, began to appear. In more recent years, the trafficking of Chinese women and girls has spread to Europe and the Americas through the activities of Chinese triads and international mob syndicates.³⁷ However, such news remains generally absent from the Chinese media.³⁸

There are no accurate figures on the number of Chinese women and girls trafficked across China's international borders, and the Chinese authorities do not make available any national estimates they may compile. But some data indicate that over 10,000 women and girls may be trafficked annually—for example, in the mid-1990s, the Yunnan Provincial Public Security Bureau estimated that around 7,000 women and girls from their province alone are being trafficked across the southwestern borders every year. An unpublished report by an international agency estimated that 15,000 women and girls from China had been trafficked into neighboring countries in recent years. A large proportion of the women and girls are from the various ethnic minority groups in southwest China, particularly the Dai people, although sources say the number of Han women has been increasing.

In the early 1990s a majority of the trafficking victims from China encountered by sources in Thailand working in brothels, detained in the Immigration Detention Centers and elsewhere were women and girls who had either been coerced or duped into leaving their villages. Typically they had no papers or had given any identification papers they had to the traffickers. They had been transported across the border into Burma and then into Thailand by agents who promised them lucrative work or a pleasure "trip." They were then confined in closed brothels where they were forced to submit to being raped by paying clients until they

³³ Ibid.

³⁴ Ibid.

³⁵ Ibid.

³⁶ "Eighty Percent of Villagers Traffic in Women," *Ming Pao*, August 26, 1996.

³⁷ See David Wallen, "Triads taking women to UK for prostitution," *South China Morning Post*, August 14, 1997 and John Hopper, "Italian police uncover Asian paedophile ring," *Guardian Weekly*, November 16, 1997.

³⁸ Much information for this sections comes from interviews with NGO activists in Thailand.

escaped, were rescued, were arrested by the police, or paid off their "debt" and returned home.

In recent years, however, sources report that a larger number of women are travelling into Thailand voluntarily to work as entertainers, sex workers, waitresses, barmaids or karaoke hostesses. However, a significant number of them arrive only to discover that they have been deceived and are forced to work in exploitative or abusive conditions of virtual slavery or are forced to work in the sex industry. Many of them are not paid, so they have no money, they also may not have legal documents or speak Thai. This renders them vulnerable to prolonged exploitation and abuse and it is impossible for them to leave without assistance.

Growing numbers of Chinese women and girls are also being deceived or forced to travel to other countries and territories in the region, including Cambodia, Singapore, Malaysia, Hong Kong, Japan and Taiwan. Many transit through Thailand to third countries. There have also been reports of women from Vietnam and North Korea being trafficked into China and sold as "wives."

In the case of Hong Kong, women and girls enter either by bribing a Public Security Bureau officer to get a travel permit, with which they can enter Hong Kong legally, or through agents who arrange this, sometimes tricking them with offers of employment. Some are confined within residential apartments, karaoke bars or massage parlors. Even for those who know they will be working in prostitution, their illegal status leaves them very open to abuse; according to certain reports some women are forced to have sex with tens of men per day to "pay off their debt." This increases their risk of contracting STDs or HIV, particularly if, as is common, the men refuse to use condoms. Almost all must give a substantial portion of their earnings to brothel owners. Sources say some very young girls are brought into the territory by boat for the night and sold for high prices.³⁹

Most sources report that organized crime groups in China, Hong Kong and Taiwan play a major role in trafficking. Hong Kong police identify many of the persons arrested for involvement in trafficking women into the territory as triad members, while sources in Thailand said when traffickers could be identified, they were often found to be part of organized crime groups. As mentioned above, Chinese police believe that 70-80 percent of traffickers are involved in organized crime.

As with all undocumented persons, there are major difficulties in repatriating trafficking victims from the countries in the region. In general, no distinction is made between trafficking victims, including minors, and other illegal immigrants/emigrants, either by the receiving country or the country of origin. From what is known, this is also the case in relation to Chinese women and girls. Sources in Thailand say that if women and girls there seek to return through the same illegal channels that brought them there, they usually have to pay a large sum of money to be transported back into China.

Those rescued by NGOs or arrested by the police have to rely on the efforts of NGOs and/or kind-hearted individuals, as well as the cooperation of their families in China, to gather the necessary documentation to allow them to be repatriated. This is a long and complicated process, which is made longer by the fact that the Chinese authorities require all identifications and approvals of travel documents to be authorized by the central bureaucracy, as well as the locality from which the individual comes.⁴⁰ While the Chinese authorities are usually cooperative, if slow, in providing documentation, there is clearly no effort to be proactive in assisting women and girls who end up in detention in foreign countries as a result of trafficking.

Those repatriated from Hong Kong who have been arrested for engaging in prostitution are not known to face the same problems of documentation, since they generally hold travel permits obtained through bribery. However, they do face double jeopardy. Generally, they are detained in Hong Kong for up to a year as punishment for entering the

³⁹ There are regular reports in the Hong Kong press about police raiding sex industry establishments where women and girls from mainland China are working.

⁴⁰ However, we understand that Yunnan Province has now worked out a way of dealing directly with authorities in Thailand to arrange repatriations.

territory illegally or working.⁴¹ Then upon their return to the mainland, they are usually required to pay a fine of several thousand *yuan* or confined in "Women's Custody and Education Centers"—a form of detention camp specifically for women and girls caught engaging in prostitution—for a period of time, often several months.⁴²

Rehabilitation and reintegration services are generally lacking or inadequate. In Yunnan Province, some rehabilitation programs for repatriated child trafficking victims have recently been established, but these may not include psychiatric or psychological help. Such programs are not known to exist in other areas of China, and clearly are available only to a small proportion of those returning. Sources report that most returnees, including minors, are given a blood test, questioned while the test is being processed and then returned to their villages. Sometimes the returnees are not informed of the results of the blood tests. Offers from NGOs overseas and intergovernmental agencies to conduct systematic reintegration programs for trafficking victims have generally been refused. However, concerns about the spread of HIV/AIDS may be prompting the emergence of a more systematic program, particularly in Yunnan.

Some progress on laws, continuing questions about implementation

The 1997 revisions to China's Criminal Code resulted in some positive, if long overdue, changes in laws relating to trafficking. The new provisions of the Criminal Code incorporate and expand upon many of the measures of the 1991 Decision to Punish Criminals Guilty of Abducting, Selling and Kidnapping Women and Children. But the law failed to incorporate any provisions on the rights of victims of this crime, whether Chinese nationals or other nationals, or to provide for the services which should be available to them. And no other laws have been enacted which provide those who have been trafficked grounds to bring private prosecutions and recover damages from their abusers (see also Article 1-3).

The revised Criminal Code defines abducting and trafficking women or children as "any act of abduction, kidnapping, buying, selling, transporting, or transshipping of women or children with purpose of selling them" punishable by 5 to 10 years in prison plus a fine. Cases which also involve the trafficking of more than three women and/or children; the rape of abducted women; forced prostitution; kidnapping through coercive means for the purpose of selling victims; the stealing of infants or babies for the purpose of selling; serious injury or death; or the selling of women or children across China's borders are punishable by 10 years to life, in addition to fines or confiscation of property, and ringleaders of trafficking groups are also subject to these higher penalties. Traffickers who commit "especially serious crimes" are to be sentenced to death in addition to confiscation of property. (Article 240) The failure to define "especially serious crimes" allows for considerable arbitrariness in the implementation of anti-trafficking measures.

The definitional clause ensuring that any offense relating to trafficking can be considered a crime is a significant improvement over the previous legal regime, but questions remain as to how these will be interpreted in practice. For instance, in the past, parents who have sold their children are not known to have been prosecuted for doing so. Would such a sale be considered as constituting an offense under the new law? We have yet to see reports of any such cases.

Another improvement is that buying women and children is clearly a criminal offense. In the past, buyers were hardly ever punished. However, penalties for purchase of women or children are much lighter than those for trafficking. Article 241 states that buying trafficked women carries a punishment of no more than three years in prison, criminal detention (1 to 6 months), or control.⁴³ Furthermore, purchasers can avoid criminal liability altogether if they "do not obstruct purchased women from returning to their original

⁴¹ Women are convicted of working illegally even though Hong Kong law does not recognize sex work as a form of work.

⁴² See Article 11.1.f. for more information on this.

⁴³ The latter penalty is like probation.

residence...or do not abuse purchased children or obstruct efforts to rescue them.” This clause provides an unacceptable loophole, which can be used to continue to excuse buyers from punishment.

Article 242 makes it an offense to obstruct state personnel in the rescue of trafficked women and children, and allows for heavier punishment for those who use violence in or organize to carry out such obstruction. It is unfortunate, however, that the offense only occurs if state personnel are involved in the rescue.

In another welcome addition, Article 416 provides for penalties for officials who fail to rescue trafficked women and children. It states: “State personnel with professional responsibility for the rescue of women or children who have been trafficked, who, after receiving requests for rescue from trafficked women or children or their relatives or a report from the public, do not attempt to rescue the trafficked women or children, causing serious consequences, may be sentenced to less than 5 years’ imprisonment or criminal detention. State personnel with professional responsibility for the rescue who use their position to obstruct such rescue may be sentenced to between two years and seven years in prison; if the circumstances are light, they may be sentenced to two years imprisonment or criminal detention.”

However, we are concerned that confining such provisions to those who are “responsible for the rescue” may exempt the local officials who are most likely to collude with, or turn a blind eye to, trafficking offenses. If such officials do not receive a “report” about a trafficking case which is generally known to have occurred, they may be able to ignore it.

In practice, enforcement of anti-trafficking laws is highly erratic and heavily dependent on the political climate and region. In recent years, the Chinese government has launched a series of nationwide campaigns to arrest and prosecute traffickers, meting out heavy punishments. In April 1998 it was reported that 52 people were convicted of abducting and selling 112 women and children in what was believed to be the largest case of its kind.⁴⁴ Seven were executed, two are serving life sentences and the remaining received prison terms that ranged from 18 months to 15 years. Areas in the borderlands and interior of China where trafficking is considered most entrenched are the focus of these campaigns. However, cases of trafficking that occur outside of these campaigns and regions may continue undisturbed.

Ultimately, enforcement of anti-trafficking measures depends on the will of the local authorities. Traffickers and purchasers of women frequently rely on the collusion or active involvement of officials. Such acts range from turning a blind eye to the practice and accepting bribes, to registering “marriages” between purchasers and trafficking victims, and even to active involvement in the trade. Police mounting rescue operations to free trafficking victims usually come from the woman’s home area, and often cannot depend on local police for assistance. According to an official report:

“Certain grassroots administrators are feeble and incoherent and are indifferent to the trafficking in women and children. Some of them [are] even partial to the purchaser of a wife under the belief [that trafficking is] beneficial matchmaking.”⁴⁵

In some rural communities, sympathies are with the buyers of women, and the authorities very rarely prosecute men or their families for purchasing “wives.” According to an official study which questioned 100 purchasers of women about their actions, 80 percent replied that “it isn’t illegal,” 15 percent said that buying a person was “incorrect” and only 5 percent thought that it was a crime to do so.⁴⁶

Yet this same official study, when listing services provided to victims of trafficking, included the following: “For those women who voluntarily decide to remain and settle after trafficking, [the Women’s Federation] help[s] them to process marriage registration.”⁴⁷ Such

⁴⁴ “Human trade ringleaders put to death,” *Agence France Presse*, April 7, 1998.

⁴⁵ Zhang et al, “Abduction and trafficking of women in China: status quo of the crime and countermeasures.”

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

an approach is very worrying, since it implies official endorsement of “marriages” created by trafficking. In such situations, women may feel they have few options, or may not wish to leave any children they have borne behind if they leave.

Furthermore, the government has failed to create avenues of redress for trafficking victims, or to enact concrete measures to give effect to their legal rights. Such measures are crucial in supporting the recovery of trafficked persons, and should be urgently studied and implemented.

Questions to ask the Chinese government representatives:

1. Please provide figures, broken down by province, for the years since its last report relating to the trafficking of women and girls within China and across its national borders, including estimates of the scale of the problem, as well as numbers of victims rescued and numbers of people prosecuted for different types of offenses relating to trafficking.
2. Are all those involved in trafficking persons subject to prosecution? Please provide details of cases in which government officials have been prosecuted for obstructing the rescue of trafficking victims, or failing to rescue them. Please clarify which officials are considered legally “responsible” for rescuing victims under Article 416 of the Criminal Code. Please provide details of cases in which individuals have been prosecuted for purchasing women or children, or in which parents or other family members have been prosecuted for selling their female family members.
3. What legal rights of trafficked persons does the government protect? Does the government have any strategy for the rehabilitation and reintegration of trafficking victims? If so, please provide details of such services including agencies responsible, how needs are assessed, services provided, number of victims helped, amount of funding by central and local governments and any evaluation of the program so far.
4. Does the government assist trafficked persons in suing their traffickers, purchasers, or others who have harmed them, for damages, or in gaining custody of any children born to them while they have been forced to act as child bearers for men who have purchased them? Please provide details of any cases.
5. Please provide details on cross-border cooperation, if any, with police forces in neighboring countries or territories to fight trafficking in women and girls, including in Hong Kong and Taiwan.

Recommendations

1. The Supreme People’s Court should, in an explanation on the implementation of the laws relating to trafficking, clarify that all officials with jurisdiction over an area into which a woman or child is trafficked should be “responsible” under the law for combatting trafficking there, and that if it becomes known that such an event has occurred in a locality, officials must act regardless of whether they have received a complaint from the public or a request for rescue.
2. Restrictions on media reporting of all aspects of the trafficking issue should be lifted to raise awareness in society of this trade as a serious human rights violation, while a campaign should be launched to reach all those involved. The campaign should make clear that the following types of people will be held criminally liable for their actions: parents who sell their children; people who pay to rape trafficking victims, where it is obvious that the victim is a child or is not a consenting adult; people who purchase women and girls; people who collude in the abuse or prevent the rescue of trafficking victims; and officials who fail to act against trafficking offenses.

3. Efforts should be made to enforce anti-trafficking measures consistently, comprehensively and justly, rather than engaging in sporadic, high-profile “Strike Hard” campaigns. All those involved in trafficking (see Recommendation 2) should be subject to prosecution and large fines should be levied on those carrying out such activities, with the monies raised to be used for victim services.
4. The Chinese government should convene a series of meetings of experts, both from government and service providers, from China and outside, to discuss best practice developed in other countries, develop an understanding of the real needs of victims and then come up with strategies for the protection of the rights of trafficking victims and the provision of appropriate services to them, including counseling, legal assistance, temporary housing, health care and elimination of any police record.
5. The Chinese government should push for a high-level meeting on the issue of trafficking with other governments in the region in order to work out joint approaches to combating cross-national trafficking operations, including cooperation on prosecutions. Such a meeting must include service providers and should be aimed at preventing trafficking and protecting the rights of trafficking victims regardless of their nationality.
6. In consultation and cooperation with concerned governments and service providers, the Chinese government should institute proactive measures for assisting victims outside their own country who are without documentation and wish to return, in order to facilitate their safe and speedy repatriation, and ensure that they may benefit from appropriate services on their return.

Article 7: political and public life

Overview

While there are no legislative or constitutional barriers to women’s participation in political and public life as the government’s report states, a combination of lack of representation of women in the highest organs of power in the state, political controls over association and the low priority given to women’s needs and concerns means that in reality women’s representation does not comply with the standards set out in the Convention. As a China scholar who has studied this subject puts it, “[T]he official release of partial data.... tends to highlight the positive aspects of women’s political participation, while avoiding more uncomfortable data or interpretations.”⁴⁸

During review of China’s two previous reports, CEDAW experts asked many questions about the representation of women. In oral replies, the Chinese delegate gave figures on this. Asked why there was such a low percentage of women in decision-making levels of leadership in the economic, legal and political fields, the Chinese representative acknowledged that this percentage “was still far from satisfying.” The current report notes that there has been an increase in the proportion of women cadres (33 percent of the total, as compared with 28.8 percent in 1989) but fails to acknowledge that the number of women ministers has remained the same: three.

The current report presents several measures aimed at increasing equal representation in the political arena, two of which are a response to questions by experts: special training for women (“A better professional quality is the prerequisite for women’s entry into higher decision-making echelons”), and minimum ratios for women to be elected to local people’s

⁴⁸ Stanley Rosen, “Women and political participation in China,” *Pacific Affairs*, No. 68, Fall 1995.

congresses. In failing to address issues of discrimination, the paragraphs about training thus also do not respond to the “further clarifications” sought at the end of the 1992 session when experts “wondered whether that was not an old-fashioned, macho approach of the ‘undertraining’ of women, since men did not have to go through such special training.”

Political participation has not substantially increased

The vague statistics in the current report (page 17) on election of women deputies to the National People’s Congress (NPC) and other bodies do not present a full picture of women’s participation at the highest levels of decision-making. In fact, women’s participation has grown very slowly in the history of the PRC, as a table in the UNDP’s China Human Development Report makes clear.⁴⁹ The highest levels of participation were recorded during the Cultural Revolution, and there has been little progress since then.⁵⁰ For example, in 1978 women constituted 21 percent of the Fourth NPC’s Standing Committee⁵¹ but this had dropped to 9 percent by the Sixth NPC in 1983 and stood at 12.69 percent in 1993. For the Standing Committee of the Chinese People’s Political Consultative Conference (CPPCC), the proportion of female members was 9.7 percent in 1993.⁵²

Although the government report indicates that 33 percent of cadres are female, a survey by the official *China Daily* found that very few hold high-level posts, with the vast majority being local level officials. At county level and above, only 14 per cent of officials are women and just three members of the 39-member State Council are women.⁵³ As an ACWF study put it, the situation of women in politics is “one low, three small,” meaning that the overall number is low, while women at higher levels in top positions and key sectors is small. Furthermore, women cadres usually hold deputy positions (deputy major, deputy governor etc.), and the vast majority are in charge of aspects of work traditionally seen as women’s sphere.⁵⁴

Representation is even lower in the top levels of the Chinese Communist Party (CCP) which leads the Chinese state in all its endeavors and is effectively the supreme decision-making institution.⁵⁵ In the 1992 CCP Central Committee, women made up only 6.35 percent of full members, and 9.3 percent of alternate members. In the Central Committee elected by the 1997 CCP Congress, the proportion of female full members actually declined, making up 4.14 percent of the total, while female alternates rose slightly at 11.25 percent. The proportion of women has changed little since China acceded to the Convention, with full female members and alternate members respectively making up 5.24 percent and 9.42 percent in 1982, and 5.71 percent and 10.91 percent in 1987.⁵⁶ The 24-member 1997 CCP Politburo, the most important decision-making body in the PRC, contains only one woman, Wu Yi, who is one of two alternates, while its seven-member Standing Committee has no women at all, and never has done since the founding of the PRC. Fewer women were elected full members of the Chinese Communist Youth League Central Committee in 1993 (15.15 percent) than in 1957 (16.78 percent), although overall female membership was about the same in 1993 and

⁴⁹ UNDP, *China Human Development Report: Human Development and Poverty Alleviation 1997*, February 1998, Figure 3.6.

⁵⁰ Rosen, “Women and political participation in China.”

⁵¹ The full Congress only meets once a year for several weeks.

⁵² UNDP, *China Human Development Report*, Figure 3.6.

⁵³ “Way to greater liberation for women ‘through party,’” *South China Morning Post*, September 12, 1998.

⁵⁴ Rosen, “Women and political participation in China,” citing various studies by the ACWF and academics in China.

⁵⁵ The Preamble to China’s 1982 Constitution enshrines four “basic principles” to which the people and the nation are to adhere: the leadership of the CCP, Marxism-Leninism and Mao Zedong Thought, the people’s democratic dictatorship and the socialist road.

⁵⁶ UNDP, *China Human Development Report*, p.47, Figure 3.6.

1957 when the alternate members were added, with 32.72 percent and 30.65 percent respectively.

Official studies have shown that most women cadres in leadership positions are involved with “women’s work” through the All-China Women’s Federation and its local branches. For example, more than 80 percent of women delegates to township-level people’s congresses are directors or committee members of village women’s congresses. This means that women are essentially confined to a particular sphere of work, and have few opportunities to gain experience in broader political issues, and thus to get promoted into higher-level posts.⁵⁷

Women’s Federation bows to CCP priorities

The All-China Women’s Federation (ACWF) is one of China’s eight “mass organizations” set up soon after the CCP came to power in 1949. According to the government’s report, the ACWF is “widely regarded as by the government and the people as the bridge bringing China’s women population together.” This somewhat ambiguous statement increasingly serves to confuse the formal role of the ACWF. “[The ACWF’s] guiding policy is to unite and educate the broad mass of women *and implement the basic line of the party...*”⁵⁸ Official documents state that the primary task of the organization is “to implement government policies at all levels of society, from working women upwards.”⁵⁹ With the leadership role of the Chinese Communist Party enshrined in China’s 1982 Constitution, government policy is always an expression of the “basic party line.” As the General Principles of the Charter of the All-China Women’s Federation puts it:

The All-China Women’s Federation is a mass organization of society which links together women across the country of all minority nationalities and from all walks of life under the leadership of the Chinese Communist Party to achieve further liberation, and a bridge and a transmission belt linking the masses of women with the CCP and the government.

*The ACWF is an important force in building socialism with Chinese characteristics. The ACWF takes Marxism-Leninism, Mao Zedong Thought and Deng Xiaoping Theory as guides for its action. During the primary stage of socialism, the ACWF plays an active role in uniting and educating women on a broad scale to implement the Party’s basic line and build socialist material and spiritual civilization. The ACWF’s basic function is to represent and protect the rights and interests of women, and to promote equality between men and women.*⁶⁰

The report states that the ACWF is “China’s largest NGO” which can “articulate in a timely fashion the views and aspirations of women.” Yet both official and scholarly publications repeatedly stress that China’s social organizations are *not* pressure groups, as their interests are “identical” to those of the authorities. A prime example of this is the fact that the ACWF was responsible for drafting the government’s report to CEDAW currently under review. Furthermore, ACWF officials are considered “state cadres.” In a recent speech to the new leadership of the ACWF President Jiang Zemin emphasised that “without the advancement of the cause of the Communist Party and the people, Chinese women will not witness their own progress.”⁶¹

Problems arising from the dual and contradictory roles of representation and implementation of state policy is manifested in the ACWF’s actual work. For example there is no doubt that the organization has “many dedicated local women’s cadres [who] have worked

⁵⁷ Rosen, “Women and political participation in China.”

⁵⁸ Emphasis added. Wang Sibin et al, *Social Welfare* (China Books, 1998), p.136.

⁵⁹ Ibid, p.138.

⁶⁰ Constitution of the All-China Women’s Federation, August 31, 1998.

⁶¹ “Way to greater liberation for women ‘through party,’” *South China Morning Post*, September 12, 1998.

hard to investigate and redress complaints of sex discrimination and abuse in the workplace, as well as reports of women being forced into prostitution”⁶² But at the same time “the arbitrary power that these local ACWF cadres hold can lead to abuse. Incidents of forced sterilizations have often been attributed to overzealous local ACWF cadres...”⁶³ Their primary role in enforcing the state’s population policy means that ACWF cadres are often unpopular figures in their communities.⁶⁴

Structure of the ACWF

Since the Fourth ACWF Congress,⁶⁵ the organization has held such meetings every five years and in the intervening years all decisions are taken by an executive committee. The ACWF has branches in all of China’s 30 provinces as well as in 376 prefectures, 2,825 counties, 47,635 townships and 6,012 neighborhoods. The ACWF’s 80,000-90,000 cadres work mostly work as full time staff paid by the state. However, in federations or committees below city-level, there are few full-time staff.

Below city level, if no local federation or committee exists, the ACWF is represented through Women’s Congresses (*funu daibiaohui*) in rural areas and Women’s Working Committees (*fulianyuan hui*) in the towns. Most of these committees and congresses are manned by poorly paid staff and volunteers.

In 1993, there were 835,904 Women’s Congresses at village and neighborhood level and 71,602 Women’s Working Committees at the township level.⁶⁶ There are also women’s committees in branches of the All-China Federation of Trade Unions (ACFTU) where the enterprise or company has 50 or more women workers. These committees are also group members of the ACWF.

The majority of ACWF officials are party members. For example a survey found that 78 percent of 196 leading women’s federation officials at county level in Suzhou were party members.⁶⁷ As one moves up the hierarchy of the ACWF this percentage increases.

The last twenty years of economic reform have clarified the often conflicting interests of women from different classes and sectors in Chinese society. However, the ACWF still tends to ignore these divisions and regards all women as having basically the same interests. All women are automatically members of the organization thus negating the need for it to recruit actively. A practical example of the confusion of interests is demonstrated by the case of Wu Ziyang, praised as the first migrant worker to serve on the Xiamen Women’s Federation Executive Committee. However, Wu actually worked as a manager at a local joint venture company.⁶⁸

Furthermore, unfortunately the ACWF has not challenged the misconception that it is somehow the “quality” of Chinese women that lies behind continuing discrimination and low levels of participation. In the aforementioned speech, President Jiang urged women “to study hard to improve their capabilities and skills. They must master Deng Xiaoping theory and the Party’s policies in addition to general knowledge.” The government report appears to go along with this stereotype stating that “Belittlement of and discrimination against women, even

⁶² Kris Torgeson, “Speaking for Chinese Women,” *China Rights Forum*, Winter 1994.

⁶³ Ibid.

⁶⁴ Rosen, “Women and political participation in China.”

⁶⁵ During the Cultural Revolution all the ACWF was judged a counter-revolutionary organization and forced into non-activity. It was officially revived in September 1978 when it held its Fourth National Congress.

⁶⁶ Xu Weihua, “The Women’s Federation and its Role in Protecting Women’s Rights and Interests,” in *Human Rights, Chinese and Canadian Perspectives*, edited by E.P. Mendes and A.M. Traeholt (Human Rights Resource and Education Centre, University of Ottawa 1997), p.476.

⁶⁷ “Reflections on the participation of basic-level women’s federations in the political organs of Suzhou City,” *China Women’s News*, January 1991, p.20-21.

⁶⁸ “Female migrant worker elected to city women’s federation committee,” *Special Economic Zone Workers Daily*, January 22, 1995.

violation of their rights and interests, are not uncommon, *and their quality as a whole needs further improvement.*"⁶⁹

Laws on non-profits restrict representation of women

The strength of the CCP's hold over women's representation has been further enhanced and formalised by laws and regulations passed since the brief flowering of autonomous organizations during the 1989 Democracy Movement.

There are no rules or laws which specifically outlaw the establishment of organizations, indeed China's 1982 Constitution states that Chinese citizens enjoy freedom of association. However, by requiring all groups to register with the Ministry of Civil Affairs prior to operation, the Regulations on the Management and Registration of Social Groups (1998) aim to incorporate and therefore control all social groups wishing to organize.⁷⁰ Failure to register renders the organization illegal and its initiators subject to prosecution. Before an application can even be filed, the group has to find a sponsor which is a government body and obtain approval from the relevant "professional leading organs." The presumption of these regulations is, in fact, against freedom of association, since there may be no activities of a group without registration.

The ACWF's monopoly is rounded off by a further provision of the 1998 Regulations, also contained in the 1989 version, which states "identical or similar social groups cannot be set up within the same administrative area" (Article 16) which effectively gives the department in charge of a particular issue—the ACWF for example—a monopoly over any activities in its field carried out by social groups, even those connected to other mass organizations or government departments.

Detailed regulations from the Ministry of Civil Affairs also strictly forbid all new organizations—referred to as "social organizations"—from being organized around gender.⁷¹ Although women's organizations already in existence before 1989 have been allowed to continue to operate, new women's groups must be registered as "second-level" organizations within larger associations as well as being group members of the ACWF.⁷²

Despite the size and the influence the government's report attributes to it, the ACWF has, to date, not been able to increase women's participation and representation in national politics (see above). Of course this is not to say that the ACWF and even the government have not made efforts in this regard.

Independent women's groups

Following the suppression of the 1989 Democracy Movement and ensuing 1989 Regulations there was considerable confusion regarding the process of registration with the Ministry of Civil Affairs. Local implementation regulations have, if anything, further tightened the knot restricting the operation of independent groups. For example, the Shanghai authorities passed regulations in 1994 which required that even groups which had successfully found a sponsor

⁶⁹ CEDAW/C/CHN/3-4, p.3. Emphasis added.

⁷⁰ These regulations superseded ones of the same name enacted in October 1989. While both have similar registration procedures, the 1998 version is considerably more restrictive, since, for example, it bars individuals who have ever been "deprived of their political rights" as part of a criminal sentence from setting up or acting as officers of associations or non-profit entities; and it removes any right of appeal against decisions of the registration authorities. See Human Rights in China, "Bound and gagged: freedom of association in China further curtailed under new regulations," November 13, 1998.

⁷¹ Gordon White, Jude Howell and Shang Xiaoyuan, *In Search of Civil Society: Market Reform and Social Change in Contemporary China* (Clarendon Press, 1996).

⁷² For example, the Chinese Women and Technical Workers' Association is a group member of the ACWF as well as being a "linked unit" of the Science and Technology Association.

had to notify their sponsors and the civil affairs department at least 15 days in advance of any major meeting.⁷³

Although there has undoubtedly been an increase in the number of women's groups legally registered as "secondary organizations" this has only served to further reduce the space for women's groups who have not been able to register or who would rather operate outside these parameters.

It is also important to recognise the apprehension with which the government views "social groups" when it suspects them of refusing to accept the leadership of the Party and the consequent repression which it employs to deal with them. The official view is that freedom of association must operate within strict regulatory limits as only in this manner can the "minority of lawless illegal elements be prevented from using 'political pluralism' and the 'freedom of association' from plotting to oppose the socialist system"⁷⁴

Yet there have been numerous examples of women's organizations trying to operate in a non-registered or partially-registered limbo, many have ended up being closed down. The following are a few examples:

- In the early 1990s an informal women's salon of 20 people met regularly at the Beijing Institute of Geology until the police closed it down. A similar women's salon at the Beijing Languages Institute had to stop inviting outside guests after warnings from the police.
- In 1996 a privately-financed shelter for battered women in Shanghai was closed down soon after it opened. An investigation team which included ACWF representatives justified the shutdown on account of unspecified "financial irregularities," the international media attention the shelter had attracted and that it was "inappropriate" for such a center to be run by private individuals.
- In 1993 an application from a social group seeking to lobby the Japanese government for compensation for Chinese "comfort women" in World War II was rejected with no reason given.
- In 1995 the Zhengzhou International Women's College—the first women's studies centre in China—was shut down for undisclosed reasons. The Chinese Women's Museum associated with the college had been closed the previous year on the grounds that the museum's presentation of women's history was not in keeping with the CCP interpretation of women's history.

The continuing efforts of women to organize independently and escape the control of official organizations such as the ACWF indicate that there is significant dissatisfaction with the work and policies of the ACWF. Where there have been independent surveys on this question the results back up such a conclusion. For example, a survey carried out in 1992 in the cities of Shenyang and Nantong found that 46 percent of interviewees expressed the need for a new women's organization and 56.4 percent said they would join a such an organization if one was established. Although they have been subject to constant propaganda on how the ACWF works for women, only 54 percent of the interviewees felt that the ACWF played a very important role in representing women's interests.⁷⁵

A compliant union

⁷³ Human Rights in China, *China: Social Groups Seek Independence in Regulatory Cage*, September 1997.

⁷⁴ *Research on China's Social Groups* (China Society Publishing House, 1992), p.128.

⁷⁵ White, *In Search of Civil Society*.

Although the All-China Federation of Trade Unions (ACFTU) is not directly mentioned in the government's report, it is considered by the Chinese government as a major organization for representing the interests of women in the work place.⁷⁶

The ACFTU is a profoundly hierarchical and undemocratic organization which operates under the direct leadership of the CCP. Key officials, especially at the provincial and national levels, are appointed by the party and their work must always: "Resolutely uphold the unitary leadership of the CCP. Unions at all levels should maintain a high degree of unanimity with the Party: politically, in ideas and in action."⁷⁷

The Trade Union Law (1992) ensures that the ACFTU enjoys a strict legal monopoly on organizing in the workplace. Articles 12 and 13 stipulate that the formation of any new union branch or organization requires the prior approval of the higher-level trade union organization. This, as the imprisonment of many who have tried to testify, effectively rules out any union organization—representing female or male workers—that attempts to operate outside the parameters of the ACFTU and independent of the CCP leadership.

Throughout the 1990s there has been a huge ground swell of general dissatisfaction with the ACFTU and its ability to defend its members. Spearheaded by the Beijing Workers' Autonomous Federation (BWF), the 1989 Democracy Movement saw nationwide attempts to set up an alternative union. The BWF and its sister organizations met with fierce opposition from the official union. After the clampdown, many of its members and leaders received heavy prison sentences. Despite the continuous harassment and repression of all labor activists since, the disenchantment with the ACFTU has grown rather than diminished.

Thus there are serious questions about the ability of the organization to provide adequate representation for any workers, including women. As women are disproportionately affected by employment-related problems—from layoffs, unemployment and non-payment of wages to discrimination and abusive working conditions—the lack of an independent union which can reflect their concerns and defend their interests has a particular impact on them, exacerbating the discrimination they face.

In 1994 the chair of the ACFTU's Women Workers' Committee Xue Zhaojun pointed out: "*The specific needs of trade union work concerning women workers should be carried out in the context of the overall need of the party and the state.*"⁷⁸

Where there are more than 50 female union members in an enterprise or work unit, the ACFTU is obliged to set up a Women Workers' Committee (WWC). The work of the committee is to ensure that the "special characteristics" of women workers are taken into account. The union claims that, through these committees, the organization and representation of women workers is "relatively independent" and that:

*"Because there are a number of specific biological and psychological problems facing women at work, a women's organization is required which can independently find solutions to these problems."*⁷⁹

Each WWC is responsible to the leadership of the local trade union branch which in turn is responsible to the next level up. All levels operate under the Party's leadership and

⁷⁶ However, like the ACWF this task is complicated by the fact that the Chinese government refuses to recognise the existence of class differences in China. According to the ACFTU, China has "no exploiting class" but "differences still exist among the working classes and peasant classes." See "Trade Union Theory and Practice," in *An Encyclopedia of Trade Union Work* (Haiyang Publishing House, 1992).

⁷⁷ ACFTU, Opinion on the ACFTU's Implementation of the Circular on the Strengthening and Improvement of the Leadership of the CCP in the Work of Trade Unions, the Communist Youth League and the ACWF, October 15, 1990, quoted in *Workers Waiting for Work—And a Representative Union* (China Labour Education and Information Centre, 1995), p.3.

⁷⁸ China Labour Education and Information Centre, *Women Workers in China*, 1995. p23

⁷⁹ Ibid.

when there is a conflict of interests, either specific or general, the interests of the Party comes first.

Most workers are fully aware of this conflict in roles, and many believe that the union fails to represent their interests. A spontaneous street survey organized by students in a city in south China, conducted after they had listened to a labor rights programme broadcast from Hong Kong, revealed the extent of the dissatisfaction:

- *Ms. You, 30, pharmaceutical worker:*

Interviewer: What do you think about our trade unions?

Ms. You: I have worked at the factory for more than 10 years. When the factory is doing well, the union issues some safety equipment or some souvenir presents on festivals and public holidays. When times are hard, the union is hard put even to look after itself. Basically the union can't look after our interests. In my experience, the union has never helped us or spoken out for workers.

- *Ms. Xiao, 28, accountant, eight years work experience:*

Interviewer: If your rights have been violated, would you think of going to the union for help?

Ms. Xiao: No way.

Interviewer: Can you tell us why?

Ms. Xiao: If we have a problem, it's best to go direct to the boss, and if he's no good then ask the government department responsible for the enterprise. If I am still not getting anywhere, then I'll rely on my own connections to get the problem sorted out. It would really be pointless asking the union to help. All they do is issue a few souvenirs on holidays and organize leisure events. They don't really have much to do with us and certainly are not the people to ask if you've got problems at work.

Interviewer: Have you joined the union?

Ms. Xiao: Yes, but it's more or less mandatory and I only found out from the union dues deducted from my wages. Otherwise I wouldn't even know it existed and certainly have never thought of asking them to help with a problem.

- *Ms Li, 35*

Interviewer: If your rights were ignored by the enterprise, would you go to the union?

Ms. Li: I've never heard of the union solving workers' problems. I've been working for a long time and I've never heard of anything like that. In fact I've heard that the All-China Women's Federation is better at looking after the interests of women workers and their children. It seems like the union just takes our dues but doesn't do anything else. The thing is that looking after workers' rights is a sensitive issue at the moment and the union can't do anything to protect us.⁸⁰

Independent organizing

Although the harsh legal environment and subservient nature of the ACFTU make it very difficult for working women to organize in defence of their rights, many have by no means given up. As is made clear in other sections of this report, women workers have suffered the brunt of the recent wave of job losses sweeping China and the ACFTU has proved singularly incapable of defending a woman's right to work in dignity.

- On International Women's Day in 1995, women workers at the Xiehe Department Store in Beijing went on strike to persuade management to issue wages on time. The dispute came at a profoundly sensitive time for the ACFTU and the ACWF as they were in the middle of preparations for the UN's Fourth Women's Conference in Beijing. Worried that the strike and the issues it raised would find their way on to the conference agenda, the women's

⁸⁰ "Workers speak out," *China Labour Bulletin*, Issue 39, December 1997.

demands were quickly met. The ACFTU, which has a branch at the store, took no part in the action.⁸¹

- Also in Beijing, labor activist and single mother Zhu Rui organized brave attempts to defend job security at her workplace, the PLA-owned Beijing Military Uniforms Factory 3501. In December 1997, Zhu and fellow activists at the factory tried to use legal channels to organize a demonstration against the management's arbitrary introduction of short-term contracts. The new contracts were accompanied with threats of dismissal for those who refused to sign. After weeks of trying to obtain legal permission for the march and twice being taken away by the local police, Zhu and the organizing committee were forced to abandon their efforts. Some however refused to sign the new contracts and were sacked. In September 1998, Zhu Rui was again detained for three days. She was questioned exhaustively about the planned release of a "Declaration on Freedom and Civil Rights" by a group of dissidents inside China.⁸²

Weak and ineffectual state machinery

According to the government report, the main central government body responsible for policy on women is the Working Committee on Women and Children (WCWC) under the State Council, which plays a coordinating role between different departments. However, there is little evidence the institution has much impact on government policy. The WCWC is reportedly not considered very important in the hierarchy of departments, and its regular meetings are rarely attended by any official above vice-ministerial rank.

The involvement of the ACWF in the WCWC does provide some limited channels for input into government decision-making, but the WCWC has not been entrusted with tasks such as law drafting, and its (and the ACWF's, by extension) influence on such processes has thus only been indirect.

Furthermore, the scope of the "undertakings" and "services" the government's report claims this body provides is doubtful considering its annual budget of 4 million *yuan* (US\$500,000)⁸³ and the number of women and children in China. Most of this budget is reportedly spent on maintaining the WCWC office.

Counterparts of the WCWC, variously named Commission for the Protection of the Rights and Interests of Women and Women and Children Work Commission, have been set up in all province-level government departments.⁸⁴ Most such departments are located in the provincial women's federation, although in a few cases, they are situated in the main office of the local government. Only three such provincial commissions have any full-time government staff,⁸⁵ while the rest have to rely on staff seconded from the women's federation or other departments.

As well as personnel, these mechanisms are generally short of funds, with some receiving no government allocation at all. In 1996, seven province-level administrations—Hebei, Qinghai, Xinjiang, Henan, Anhui, Hunan and Sichuan—reportedly did not allocate any government funds for the operation of such commissions. In the latter four, most of the expenses for the commissions' offices were covered by provincial women's federations. For those areas where governments did provide finances, the level of funding varied enormously.

⁸¹ China Labour Education and Information Centre, *Women Workers in China*, p.20.

⁸² See "News from Beijing Municipal Factory No.3501," issued by staff forced into unemployment from Factory No.3501, translated in *China Labour Bulletin*, January-February 1998; and "Activists appeal to French premier," *South China Morning Post*, September 24, 1998.

⁸³ Figure provided by ACWF to Women's Environment and Development Organization (WEDO) in 1997 for publication, *Mapping Progress: Assessing Implementation of the Beijing Platform 1998* (WEDO, 1998).

⁸⁴ Four cities (Beijing, Tianjin, Shanghai and Chongqing) are counted as province-level administrations, as well as the three autonomous regions of Tibet, Inner Mongolia and Xinjiang.

⁸⁵ According to a November 1996 report in *China Women's News*, there are 15 staff in Yunnan Province and four each in Guangxi and Heilongjiang.

At the lower end of the scale, Tianjin allocated 30,000 *yuan*, while on the higher end, Tibet apportioned 500,000 *yuan*, and Shanghai 1.2 million *yuan*. Most province-level administrations contributed between 100,000 and 200,000 *yuan*.⁸⁶

Questions to ask the Chinese government representatives:

1. Please provide the most recent statistics on the number of women who hold posts in the government and the Chinese Communist Party, broken down into the following categories: in each province-level administration, by large city, city below 200,000 population and rural areas; which government departments they work for, including the Women's Federation; and how many women are in leadership positions, such as governors, vice-governors, mayors, vice-mayors, first Party secretaries, deputy Party secretaries, heads of village committees etc.
2. Can the government provide the Committee with the results of the survey of women cadres conducted by the ACWF in 1997 mentioned in the government's report?⁸⁷ What were the main findings? What action did the government take in response?
3. Please provide information about specific actions taken by the ACFTU to protect the rights of women workers, to redress discrimination against women and to prevent further discrimination.
4. Why has the Chinese government closed down women's organizations such as those mentioned above? Why does the government not permit women's organizations which are not sponsored by the ACWF to exist?

Recommendations

The Chinese government should:

1. Ratify ILO Conventions 87 and 98 and reintroduce the right to strike into the Chinese Constitution.
2. Ratify the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, as well as its two optional protocols, at the earliest possible date, without reservations, and proceed to implement the two treaties.
3. Repeal all sections of the *Regulations on the Management and Registration of Social Groups (1998)* which prevent women from organizing independently, including articles requiring registration and government sponsorship of all associations; in particular, eliminate the monopoly rule which allows only one organization in one area of work, and thus allows the ACWF to block the formation of new groups representing women.
4. Release all women held in custody for exercising their right to form associations, to free expression and to peaceful assembly, whether to represent the interests of women in society or for other objectives.
5. Repeal Articles 12 and 13 of the Trade Union Law.
6. Repeal or amend all current laws which allow for abridgement of rights guaranteed in Article 35 of the Chinese Constitution, namely the "freedom of speech, of the press, of assembly, of association, of procession and of demonstration." Any relevant new laws should be drafted to embody full respect for these rights and freedoms.

Article 11: employment

⁸⁶Ibid.

⁸⁷ CEDAW/C/CHN/3-4, Add.1, p.12.

Overview

Article 13 of China's Labor Law states, "Women and men enjoy equal rights to employment." However, the reality is that women do not enjoy the same rights as men in the existing structure. Despite the existence of such laws and regulations which protect a variety of rights relating to employment, women have suffered disproportionately from layoffs and unemployment resulting from economic restructuring, encounter widespread discrimination in hiring and promotion, are deprived of benefits employers are required to provide for them under the law and often have to face working conditions which violate national laws on health and safety and work practices, endangering their lives and health.

Evidence from China's workplaces contradicts the claim in the government's report that "Labor departments at various levels have paid close attention to the implementation of the labor-related laws and regulations by stepping up supervision over employers' implementation and dealing with violations of the lawful rights and interests of women workers."

In the face of serious problems regarding employment, women find few avenues available to challenge discrimination and abusive working environments, since most relevant laws contain only administrative mechanisms for enforcement, and the reality of a lack of official action demonstrates that addressing such problems is not a high priority for central or local governments.

This section concentrates primarily on women in the urban workforce, including migrants from the rural areas. For issues relating to women and employment in the rural areas, see Article 14.

1.a right to work

The government's report talks about how reforms in the industrial sector will expand employment opportunities for women. But it fails to mention the fact that industrial restructuring is in fact resulting in increased layoffs and forced early retirement for many women in the state-owned sector, and that for the last decade women have suffered disproportionately from unemployment. Massive unemployment means that competition is keen and makes it even more difficult for women workers to find new jobs.

Layoffs have soared as the government has initiated reform of the system of state-owned enterprises (SOEs). In a process which was accelerated by decisions taken at the 15th CCP Congress, the Chinese authorities are selling off or closing down money-losing state-owned firms, while concentrating resources and energy on a small number of profitable large enterprises. The situation for workers is evidently set to worsen. The textile industry, traditionally a major employer of women, has been singled out to be a "pioneer" in restructuring, and thus has been particularly hard hit by layoffs. According to the World Bank, 28 million workers could be laid off from state enterprises without affecting output, and the Chinese government estimated that half of the state sector's 75 million workforce was redundant.⁸⁸

With the impact of the Asian financial crisis hitting China's export sector, in which large numbers of women workers are employed, jobs in enterprises making goods for export are now threatened.⁸⁹ The impact is likely to be felt most in the Special Economic Zones and in south China, and to affect the group of workers already least protected in the current system: migrants from the rural areas.

Some Chinese commentators have pointed to a kind of fad for layoffs, restructuring, mergers and takeovers among Chinese companies. For example, a recent signed article in the official *Legal Daily* complained:

⁸⁸ Judy M. Chen, "A ricebowl in pieces, the unemployment crisis bites," *China Rights Forum*, Spring 1998.

⁸⁹ Renee Lai, "Official warns of export fall," *South China Morning Post*, November 20, 1998.

Just now unemployment, layoffs and the reemployment project are hot topics, and a focus of the news propaganda has been urging the laid off workers to change their attitudes and find themselves new jobs, but articles asking employers to change their attitudes and actively recruit laid off workers so as to help them escape their economic and psychological difficulties have been pitifully rare. At the moment, arranging for workers to be laid off seems to have become a fad. Those enterprises which are not doing well cannot but 'reduce personnel to increase efficiency,' while those which are making profits just jump on the bandwagon. Some companies use the trend of 'reducing personnel to increase efficiency' as an excuse to cut down their workforce, pushing the responsibility for the workers onto the society. This way of doing things is not only grossly irresponsible towards the workers, but it is also a kind of violation of the rights and interests of the workers, which has led some workers to ask the following questions: "Are we still the masters of the enterprise?" "Who, after all, is the master of the enterprise?"⁹⁰

How many are unemployed?

The Chinese authorities do not make available clear figures about unemployment in general in China, let alone unemployment among women. Rural dwellers are never counted among the unemployed, nor are rural-to-urban migrant workers, neither are a variety of other categories of jobless people, described below.

Officially, there were 5.528 million jobless people in China at the end of 1996, an unemployment rate of 3 percent.⁹¹ But the official news agency Xinhua reported in early 1997 that the unemployment rate was 7.5 percent, creating a total of 15.5 million urban jobless. The official unemployment rate excludes a major category: those laid off (*xiagang*) from SOEs. According to an ACFTU study, around 11.5 million workers had been laid off from SOEs by the end of 1997.⁹² Some other media reports put the number of people laid off at 15 to 17 million. In addition, in 1995, 54 million people entered the labor force, but there were only 38 million jobs available for them.⁹³ Thus a conservative estimate puts the urban unemployed at least 30 million. Based on a variety of statistics, we believe that over 60 percent of the total unemployed are female.

As well as *xiagang* workers, the official unemployment rate also leaves out those forced to take early retirement, young people "waiting for work," people on long-term "holidays" or "maternity leave" and out-of-work migrants from the countryside in the cities. The rural areas are not even considered to have unemployment, but around 150 million are in the category of what is officially called "surplus labor": under- or unemployed people. (See Article 14 for more on this issue.)

Perhaps the largest category of unemployed is the *xiagang* workers, who remain attached to their enterprise and are generally paid a small "living allowance," which is supposed to be not less than a minimum set by the individual provinces.⁹⁴ But since these workers are not considered "unemployed" they are often not eligible for unemployment benefits, where these are available. And in many cases factories cease paying the allowance, and may refuse to cover medical expenses.

⁹⁰ Tong Jingchen, "The labor market: many secret worries behind the flourishing surface," *Legal Daily*, September 8, 1998.

⁹¹ *China Labor Statistical Year Book, 1997* (Beijing: China Statistical Publishing House, 1997), p.8.

⁹² Zhao Huamin, "Union's Duty to Give Skills, Laid off Workers Hit 11.5 million," *China Daily*, February 8, 1998.

⁹³ *China Society News*, June 9, 1998.

⁹⁴ Regulations Concerning the Arrangement of Surplus Workers of the State Owned Enterprises, Article 11.

There is unemployment across the country, but the highest levels are recorded in the northeastern provinces of Liaoning, Jilin and Heilongjiang, once the heartland of the nation's heavy industry where as many as a third of the workers are unemployed, as well as in inland provinces such as Sichuan, Henan, Hubei and Anhui.⁹⁵

Women particularly hard hit

From the first, women have suffered disproportionately from layoffs. In a 1987 survey by the ACFTU Women Workers Committee, 64 percent of workers who had been laid off were women. The rate was even higher in some provinces. For example, women made up 75 percent of the laid off workers in Jiangsu Province, and 80 percent in Heilongjiang.⁹⁶ Similar surveys conducted by the ACFTU in 1992 and in 1993 respectively found that around 60 percent of laid off workers were women. Another study of layoffs in the 1990s in seven provinces and four cities found that the ratio of women among the laid off workers in Jiangxi and Heilongjiang were very high, at 80 percent and 73 percent respectively.⁹⁷ This demonstrates clearly that the situation has not improved during the last ten years.

According to the government and the ACWF, many of the women laid off have a low level of education, making it difficult for them to find new employment. Most are under 35.⁹⁸ In many enterprises, women workers have been effectively laid off by being forced to take prolonged "vacation" or "maternity leave," or being pressured into "early retirement," sometimes as young as 35.⁹⁹ A survey in 1996 found that among women laid off from 224 factories in Jiangxi Province, 53 percent had been asked to retire, although most were aged between 30 and 40.¹⁰⁰ As well as depriving them of their right to work, such discriminatory practices mean that since women end up working fewer years than men, they have lower pensions and less opportunity to save for their old age.

Another category of disguised unemployment is "job-waiting youths" (*daiye qingnian*). Since the early 1980s, women have made up a large proportion of those in this category, with 53 percent in 1982; 60 percent in 1985; 59 percent in 1988; and 57 percent in 1992.¹⁰¹

The central government requires that state-owned enterprises which lay off workers be responsible for finding new jobs for these employees, relocate them to other departments or other business of their enterprises or to other companies. As mentioned in the government's report,¹⁰² the authorities have enacted Regulations Concerning the Arrangement of Surplus Workers of the State Owned Enterprises which lay out these responsibilities. Although they were passed in 1993 when the disproportionate burden of layoffs on women was already abundantly clear, these regulations fail to address the issue of discrimination in layoffs. Indeed, these regulations legitimize certain types of disguised retrenchment of women workers, allowing for "fixed-term vacations" and two-year long maternity leaves (Article 8), as well as early retirement (Article 9). In all these cases, such layoffs are supposed to be voluntary, but in practice employees generally have little choice.

⁹⁵ Chen, "A ricebowl in pieces, the unemployment crisis bites."

⁹⁶ Meng Xianfan, *Chinese Women and Reform* (Beijing: Chinese Academy of Social Sciences, 1995), pp.48-49. Quoted in Women Workers Working Committee, ACFTU, "New Employment Problems Facing Urban Women", *Labour Movement Bulletin*, No.2, 1998.

⁹⁷ Lu Xueyi and Li Peilin, ed.s, *Report on Social Development of China in a New Era, 1991-1995* (Liaoning People Press, 1997), p.556.

⁹⁸ Meng, *Chinese Women and Reform* p.51.

⁹⁹ "Consistently implement the Law on the Protection of Women's Rights and Interests," *Labour Movement in China*, July 4-7, 1997.

¹⁰⁰ World Bank, *Sharing Rising Incomes: Disparities in China*, *China 2020 Series*, Washington D.C., 1997.

¹⁰¹ UNDP, *China Human Development Report: Human Development and Poverty Alleviation 1997*, February 1998.

¹⁰² CEDAW/C/CHN/3-4, p.20.

The 1992 Law on the Protection of Women's Rights and Interests (LPWRI), and almost all the province-level administration Implementation Regulations for the law, contain programmatic provisions prohibiting discrimination against women in employment and dismissal on the ground of pregnancy, child birth or lactation. Many of the Implementation Regulations tacitly acknowledge that women are more likely to be laid off than men by troubled enterprises as they include statements such as the following: "When an enterprises restructures its operation mechanism or reforms its personnel, labor or wage system, it can not discriminate against women employees on the ground of sex. *For those women who are no longer fit for new positions* within the enterprise, support shall be provided to facilitate the women to switch to new employment or self-employment."¹⁰³ Some regulations require that an enterprise consult with the trade union before terminating a woman employee.¹⁰⁴ Such provisions may provide additional protection to women employees if they are actually implemented, and if union leaders are committed to ensuring equal opportunities for women.

In addition, in September 1997, the State Council issued a directive ordering all cities to set up minimum living standards for *xiagang* workers by the end of 1999.¹⁰⁵ Under such provisions, local governments are required to set up reemployment centers for these workers, who are to be paid a living allowance not less than 70 percent of the locality's minimum wage for two to three years and covered for out-patient medical care. During this period, the centers are to recommend workers to different enterprises. They may not refuse to go for interviews set up by the centers, and if they do so on two occasions, their assistance will be terminated.¹⁰⁶

Protests

Layoffs, unemployment and non-payment of wages, pensions, *xiagang* allowances and benefits of various kinds have been a major focus of a growing tide of demonstrations and protests across China in the last couple of years.

The economic and psychological hardships of unemployment are exacerbated by the frequent non-payment of promised allowances. An unofficial survey carried out by a network of activists in cities across the country found that the overwhelming majority of laid off workers had to fend for themselves, and were finding it difficult to do so. Of the respondents to their survey, 63 percent were female, and 98 percent agreed that layoffs were inequitable. Only 1.2 percent were receiving relief aid, and 67.8 percent had to rely on their families for assistance. The survey found that although a third of cities had announced designated subsistence levels, only 3.7 percent were actually providing payments to those below the level.¹⁰⁷

Although the officially unemployed are theoretically entitled to benefits, what is allocated cannot meet demand. For example, an unemployment insurance fund in Guangzhou has 920,000 subscribers, but can provide funds to only 16,000. For the *xiagang* workers, the situation is worse. According to the State Statistical Bureau, only half of these workers receive the stipends they are promised, payments which only average 130 *yuan* a month, not nearly enough to live on. Laid off workers may be pushed out of company housing, lose their entitlement to some free medical care and may even be forced to pay for their children's education.¹⁰⁸

Facing threats to their very survival, many workers have taken to the streets, and staged sit-downs, blocked traffic, or even resorted to violence on occasion. Frequently used

¹⁰³ Emphasis added. See, for example, the regulations of Anhui, Beijing, Fujian, Guangxi, Ningxia, Shandong, Shaanxi, Shanxi and the Tibet Autonomous Region.

¹⁰⁴ See regulations of Anhui, Henan, Jiangxi.

¹⁰⁵ *Shaanxi Workers' Daily*, July 15, 1998.

¹⁰⁶ *Ibid.*

¹⁰⁷ Chinese Conscience and Care Organization, "On their own: a survey of laid off workers," translated and excerpted in *China Rights Forum*, Spring 1998.

¹⁰⁸ Chen, "A ricebowl in pieces, the unemployment crisis bites."

slogans have included: “We want to eat!” and “Give us back our right to subsistence.” However, such incidents are almost never reported in the domestic Chinese media, and thus the following are just a few examples of reports which reached the Hong Kong or international press during the past couple of years.

- In Taiyuan, Shanxi Province, laid off workers were staging frequent protests during the summer of 1998, often carrying banners saying “We want to eat, we want to live.” The majority of the city’s SOEs were reportedly operating at a loss, and many were not paying their workers or pensioners on time. Some laid off workers were not receiving their monthly living allowance of 120 *yuan*. City residents said there had been protests in front of the provincial party headquarters nearly every week in 1998.¹⁰⁹
- In August 1997, more than 500 shoe workers in Chengdu, capital of Sichuan Province, blocked traffic on one of the city’s main highways to demand negotiations with their factory’s management after learning from a newspaper report that the factory was bankrupt and they were likely to lose their jobs. They carried banners saying “We want to work” and “Our children want to go to school.” Following the report, the workers were told by members of the enterprise’s staff and workers’ committee that in discussions with management, they had already agreed that there would be redundancy payments of 50 *yuan* for each year of service at the factory.¹¹⁰
- The central city of Wuhan has seen regular protests by laid off workers during the past year, including a January 1998 gathering in which around 1,000 people demonstrated against the closure of two factories in the city.¹¹¹
- In July 1997, thousands of laid off textile workers staged several days of marches in the Sichuan city of Mianyang. They demanded payment of the welfare benefits to which they were entitled after the state-owned factories where they had been employed declared bankruptcy. They charged that these payments had not been made because officials had embezzled the unemployment funds. The paramilitary People’s Armed Police were called in to suppress the demonstrations, resulting in a number of arrests and injuries of demonstrators.¹¹²

Retraining programs

The authorities have launched various retraining programs to accompany the efforts of enterprises to deal with their displaced workers. The central government has pressured local administrations to set up such programs, and have generally reported great success in these endeavors, as does the government’s report. According to the official figures, most workers who have gone through retraining programs have been able to find new jobs. But many of the problems with retraining efforts have been overlooked.

The above mentioned article in *Legal Daily* called the labor market “chaotic,” seriously lacking in coordination between agencies and any kind of planning, and unable to cope with demand. The majority of complaints from job seekers related to the charging of fees by agencies and employers.¹¹³

The government claims that the retraining program equips workers with skills which allow them to use new technology in their work, and that different courses are made available in accordance with workers’ interests and needs. However, few such courses are provided free of charge. Laid off workers have only a small amount of money from their former employers, and find it difficult to cover even their basic needs. There is no way for them to afford extra money for training courses. According to a report in *Hunan Labor News*:

¹⁰⁹ Jasper Becker, “Axed workers take to streets as province suffers,” *South China Morning Post*, June 2, 1998.

¹¹⁰ “The right to work,” *China Labour Bulletin*, Issue 37, August 1997.

¹¹¹ “Street sit-in as 1,000 fume over factory closures,” *South China Morning Post*, January 10, 1998.

¹¹² “News Update,” *China Rights Forum*, Fall 1997.

¹¹³ Tong, “The labor market: many secret worries behind the flourishing surface.”

*When laid off workers apply for jobs in some enterprises, they are charged 50 to 100 yuan as a registration fee. Once employment is confirmed, workers will be charged a further 5,000-10,000 yuan as an employment fee.... Worse, some of the enterprises have no vacancies, but they still recruit workers and charge them various kinds of fees. This becomes a way for such enterprises to collect money. Finally, those laid off workers are laid off again after paying the money.*¹¹⁴

There are questions about the quality of some retraining programs. Many programs for women are aimed at getting them into occupations such as domestic service or child care.¹¹⁵

Moreover, even if they have completed retraining programs, women may still not be able to find work due to discrimination. As a study of the impact of such programs on women's search for work put it: "Enterprises would rather employ peasant workers from other provinces than local laid off workers, especially women workers, because peasant workers are willing to accept lower pay and have fewer demands. The enterprises need not take care of their living situation. Moreover, new enterprises and service enterprises will mostly employ those under 25. For them, laid off women workers are too old."¹¹⁶

Thirdly, the Chinese authorities claim that they will improve the existing social security system and try to expand the coverage of the schemes. But achievement is not so clear. An article points out the difficulties of the laid off women workers under the existing social security system, "Implementation of social security lags far behind and cannot protect the laid off workers.... Moreover, many SOEs are losing money so that they are unable to pay workers a minimum standard of living."¹¹⁷

Encouraging workers to run business is the fourth way the Chinese authorities are tackling layoffs. Some laid off women workers become self-employed as home helps or child care workers. Some local authorities will lend money to workers at low interest to encourage them to set up small business. However, no benefits or protections are attached to such kinds of jobs.

1.b right to same opportunities

At a time when women workers are increasingly being shut out of the labor force due to traditional prejudices against them and employers' cost-reduction calculations, the Chinese government's report does not address the extent and gravity of discriminatory practices against women workers. Nor does it mention the shortcomings of "administrative and judicial protection" against such discrimination, in particular the labor disputes arbitration committees and the lack of provisions for legal action. Such a lack of redress effectively means that women workers are locked in this unfavourable situation. According to the UNDP's China Human Development Report:

*[W]ith the ideological relaxation of recent years, old-fashioned sexist attitudes have re-emerged in public, shouldering aside the principle of ensuring equal rights and opportunities for women. In a labor surplus economy, there have been constant calls – and some tangible pressures – for returning women to the home. Employers' want-advertisements frequently reveal bias, specifying "men only" or requiring that female applicants be young and attractive. Social gender roles reinforce such prejudices. With women still largely responsible for child care and elder care, employers often avoid hiring women on the "efficiency" grounds that they will be absent more often.*¹¹⁸

¹¹⁴ Hunan Labor News, November 19, 1997.

¹¹⁵ See for example, Henry Chu, "China's reforms bring big step back for city women," *Los Angeles Times*, November 23, 1998.

¹¹⁶ "Study on layoffs and retraining of women workers," *Guangdong Labor Post*, April 14, 1997.

¹¹⁷ "What are difficulties for women workers to get reemployed?" *Labour Times*, November 15, 1997.

¹¹⁸ UNDP, *China Human Development Report*.

While the government's report points out that in 1994, the 270 million working women made up 44.8 percent of the total working population, it presents no statistics on the situation of women workers in the industrial sector, in which sex discrimination in hiring is more common, despite the fact that such figures are available. Women with work in the formal sector in urban areas made up 38.6 percent of this workforce in 1995.¹¹⁹ However, among the employees of state-owned enterprises—who still generally enjoy better working conditions, labor protections and social security benefits than in other economic sectors—women constituted 36.1 percent of the workforce.¹²⁰

Part of the reason there are fewer women in such jobs is widespread discrimination. Although the LPWRI prohibits refusing to hire women because of their sex or setting higher standards for their employment than for male counterparts,¹²¹ discrimination in recruitment is openly practiced. According to even the official media, women are the first fired and the last hired.¹²² During her recent visit to Shanghai, High Commissioner for Human Rights Mary Robinson expressed concern about the fact that a model reemployment project she was taken to visit allowed employers to specify whether they wanted to recruit a man or a woman.¹²³

Government departments are no exception. At job fairs for new graduates of higher education in 1996, 27 out of 42 organizations under the State Council recruiting employees refused any women candidates.¹²⁴ Women made up 34.6 percent of the university graduates that year, yet they constituted almost 55 percent of the job-seekers in this group rejected by employers.¹²⁵ Potential employers, including government departments, institutes, schools and hospitals, looking for new recruits at Qinghua University, one of China's top institutions, said that they preferred male graduates.¹²⁶ More recently, a study of 413 company managers in 14 provinces and cities conducted by the women's department of the ACFTU in 1997 found that 71.6 percent said they would not hire women even if they were more suited to the post in question.¹²⁷

Officials in charge of recruitment evince a resigned attitude to discrimination against women. "[It] is a social problem" which can only be solved "when social values and economic levels have climbed," Gan Beilin, director of the Beijing Graduate Employment Consulting Center said.¹²⁸

The spread of discriminatory recruitment practices is reflected in terms such as "sex-determined occupation" (*xingbie zhiye*) and "youthful occupation" (*qingchun zhiye*)—which refer to jobs performed mostly by women, particularly young women—which have become common usage in recent years.¹²⁹ Types of work considered "sex-determined occupations" are public relations, secretarial work, catering and hospitality services.

Employers are reluctant to hire women, generally because they bear children and are seen as responsible for the care of their family members, and most employers are still

¹¹⁹ *State Statistical Yearbook*, 1996.

¹²⁰ *State Statistical Yearbook*, 1996.

¹²¹ LPWRI, Article 22.

¹²² See "China's women workers first in firing line," UPI, July 23, 1994, quoting *China Daily*.

¹²³ "UN human rights chief addresses women workers, religious rights in China," Agence France Presse, September 13, 1998.

¹²⁴ "Female graduates face high refusal rate in job market," China News Digest, April 6, 1996, citing UPI report.

¹²⁵ Ruth Youngblood, "Jobs for the boys in China," UPI, reprinted in *South China Morning Post*, December 30, 1996.

¹²⁶ Tan Shen, "Situation of Women's Development in China, 1996," *1997 Blue Book on Society* (China Social Sciences Publishing House, 1997).

¹²⁷ "71 percent of company managers refuse to hire women, says poll," AFP, reprinted in *South China Morning Post*, December 19, 1997.

¹²⁸ "Female graduates face high refusal rate in job market," China News Digest, April 6, 1996, citing UPI report.

¹²⁹ Tan Shen, "Social transformation and women's employment," *China Women's News*, February 15, 1995.

responsible for providing or paying for maternity-related benefits, as the cost of these is linked exclusively to female employees except where such benefits have been “socialized” (see 11(2), below). Many enterprises only wish to recruit women who are in the “golden age” of 18 to 22, in other words, before marriage and child-bearing, and they frequently get rid of young female employees when they reach the age of marriage. It is this kind of discrimination which has given rise to the term “youthful occupation.”

For those who are in employment, a principal avenue of protection should be the stipulations of the contract which is legally required to be concluded between every worker and their employer under the Labor Law. However, many workers have no contracts. In most cases where workers are on contract, these generally last between three and five years. Such contracts allow employers to hire young women during their “golden years” and legally let them go when their times for marriage and pregnancy begin.¹³⁰

At the end of their working life, women also suffer discrimination. The differing retirement ages for men and women are clearly discriminatory. For most urban workers, the age of retirement for men is 55, while it is 50 for women. For professionals, the ages are 60 for men and 55 for women. However, in 1990 the State Council issued an order “allowing” “high-level” women intellectuals to retire at 60, the same age as men. Since for urban workers pensions have in the past been determined by years of service, lower retirement ages mean that women also receive lower pensions. If a woman has worked 35 years, her pension will be 88 percent of her salary, but if she has only worked 20-30 years, her pension will be 75 percent of her salary.

Women’s “quality” is frequently mentioned as a reason for discrimination against them, including in the government’s report. While upgrading women’s skills and providing them with training and educational opportunities are, of course, praiseworthy endeavors, such an assessment has a “blame the victim” flavor. The government’s report says that “Women make up a larger share of the laid off workers as a result of their disadvantaged educational and technical background.”¹³¹ But as with most stereotypes this is a myth. The UNDP China Human Development Report illustrates that for some time most women in the urban formal sector have actually been better educated than their male counterparts and have spent longer in education:

*Chinese women have consistently registered high in relative human capital formation. The 1982 census found that among formal employees women on average had slightly more schooling than men. More than a decade later, in 1993, their advantage persisted. Among the administrative staffs of both enterprises and government organs, women had on average a third to a half year’s more education than men.*¹³²

1.c right to choice of profession

Some economists in China have argued that women should be discouraged from working, and there has been a constant debate about whether women should “return to the home.”¹³³ Most recently, this centred on yet another proposal, floated by some officials and entitled “Periodic Employment for Women,” to formally extend maternity leave to several years to relieve unemployment. In reality, this is already being done through enforced maternity leave in a number of areas. While this proposal was not officially adopted after protests from the

¹³⁰ Jia Junling, “Protection of women’s rights in contractual employment relationships,” *1997 Annual Report of Center for Women’s Law Studies and Legal Services* (Beijing University, 1998).

¹³¹ CEDAW/C/CHN/3-4, p.22.

¹³² UNDP, *China Human Development Report*, p.50.

¹³³ For example, in a 1998 talk in Hong Kong an influential economist in the Chinese Academy of Social Sciences, Hu Angang, said that countries with lower rates of female employment would have higher rates of economic growth, and thus it would be better for China if more women could stay home.

ACWF, the fact that it, and other similar suggestions, are publicly discussed indicates a significant degree of support for such measures.¹³⁴

In fact, extended maternity leave is sanctioned by Regulations on the Placement of Surplus Workers in State-Owned Enterprises, which purport to protect women's interests and are mentioned in the government's report.¹³⁵ Under these regulations, women may "apply" for leave of up to two years, and after three months' statutory maternity leave, they are to be paid "living expenses." In fact, some women are pressured into taking such leave, as they are into taking "early retirement," as mentioned above.

Official statements on women's unemployment often say that more jobs "suitable for women" should be created, implying an acceptance of growing occupational segregation. At a disproportionate rate, women are increasingly moving into service jobs, part-time and casual work, with lower wages and benefits. More and more women are employed as domestic helpers, an occupation being officially encouraged. Commonly-held opinions of women's capacities are expressed by the following widely-accepted sayings: "Men serve as generals, women serve as soldiers," and "women should work, while men should manage."

According to research conducted over the past decade, more than 40 percent of women workers have been employed in the manufacturing industry.¹³⁶ Most of these women are concentrated in labor-intensive industries and in low-skilled jobs.

The LPWRI incorporates the idea that certain types of work are "unsuitable" for women, stating that such jobs may be exempted from the provisions on equality in employment,¹³⁷ and that "all units shall not assign to [women] work or physical labor not suitable to [them]."¹³⁸ Certain regulations mention night work, mining and heavy lifting jobs as "unsuitable." However, the vagueness of the LPWRI's provisions on this and of the concept of "unsuitability" mean that they can be used as an excuse for discrimination.¹³⁹ In practice, types of work beyond the categories specifically mentioned in regulations are widely considered as "unsuitable" for women.

The LPWRI Implementation Regulations in some province-level administrations reinforce such an impression, going beyond the national law. For example, the Gansu Implementation Regulations state:

Article 20: For all those professions or positions that are suitable for women, women with equal qualification shall be given priority.

Article 22: The relevant departments shall actively initiate or support industries or enterprises that are suitable for women, and shall create environments to encourage employment or self employment of women. For those women employees from bankrupt enterprises and those excess women workers from other enterprises, the relevant department shall actively create conditions to find employment channels suitable for women and help them to resettle.

The regulations of Heilongjiang, Hebei and Hubei contain similar provisions.

A woman should have the right to decide what kind of employment is suitable for her. The determination should not be left to each employer, or even to local governments. All workers should be protected from harmful conditions of employment. But if the state finds it absolute necessary to keep women from certain activities proved harmful to them, such

¹³⁴ "Women's Federation strikes out at extended maternity leave," AFP, March 3, 1998, citing a *China Daily* article attacking the idea of extending maternity leave to between one and five years. See also Vivien Pik-Kwan Chan, "Stay-at-home plan for mothers condemned," *South China Morning Post*, September 6, 1998.

¹³⁵ CEDAW/C/CHN/3-4, p.22.

¹³⁶ Li Yinhe, *Rise of Women Power* (Beijing: China Social Sciences Press, 1997), p.26.

¹³⁷ LPWRI Article 22.

¹³⁸ LPWRI Article 25.

¹³⁹ For more on this issue, see Ann Jordan, "Women's rights in the People's Republic of China: patriarchal wine poured from a socialist bottle," *Journal of Chinese Law*, Vol.8, No.1, 1994.

exceptions should be very narrowly and specifically set forth in the law. The statutory language should leave no vagueness such that if broadly applied by an employer, it could be used as a legal basis for discrimination against women in employment.

1.d equal pay

Contrary to the statement in the government's report that equal pay for equal work "has been implemented by and large"¹⁴⁰ there is still a substantial wage gap between men and women, which is actually growing in some areas. Such a trend is contrary to the guarantee of equal pay for equal work in China's constitution and in the Law on the Protection of Women's Rights and Interests (LPWRI).

As women are the first to be laid off and the last to be hired, the proportion of female workers in high-status and high-benefit jobs may actually be declining. As mentioned above, women hold a much lower proportion of highly paid jobs than men, and are often paid less even in the same occupations as their male counterparts.

An examination of nationwide official statistics on wages found that the male/female wage gap in the formal sector overall is much greater than the government claims, and women's wages are continuing to decline in relation to men's, falling from 0.553 in 1988 to 0.418 in 1994.¹⁴¹

However, there is great variation in the male/female wage gap between economic sectors. One reason for the overall low rate of female pay is that women are increasingly concentrated in low-wage industries. As the proportion of women in a given sector rises, wage rates show a steady decline.¹⁴² Furthermore, the rise in the male/female wage gap in the state sector, controlled by the government, has been even more pronounced than the overall decline.¹⁴³

Even within high paid sectors, inequality persists. For example, a study found that women working as factory directors or managers were paid 89.5 percent of what men in similar positions received, while for female chief engineers, chief economists or chief accounts in factories, the corresponding figure was only 64.2 percent.¹⁴⁴

For women in rural areas, official figures show a large male/female wage gap for those working outside agriculture. In agriculture, women earned 84.6 percent of what men did, according to the Ministry of Labor, but in non-agricultural work women's pay was only 50.7 percent of men's.¹⁴⁵ A study of rural to urban migrants in the Pearl River Delta in Guangdong Province found that women were concentrated in lower-paid jobs, earning up to 500 *yuan* per month, while men tended to have higher paid jobs in the 500-800 *yuan* range and over.¹⁴⁶

Despite such clear concerns about the male/female wage gap for women across the country, the government's commitment to equal pay for equal work has remained almost entirely rhetorical. Women who suffer discrimination of this type cannot bring suit against

¹⁴⁰ CEDAW/C/CHN/3-4, p.20.

¹⁴¹ Margaret Maurer-Fazio, Thomas G. Rawski and Wei Zhang, "Inequality in the rewards for holding up half the sky: gender wage gaps in China's urban labor markets, 1988-1994" forthcoming in the *China Journal*.

¹⁴² Ibid.

¹⁴³ Ibid. "In the state sector, the ratio of female to male wages based on the total wage gap and the gap controlling for location declines in each year, as do the (statistically significant) results based on regressions with controls for location and industry. In the state sector, both the unadjusted wage ratio and the ratio adjusted for location decline by approximately 20 percentage points between 1988 and 1994; adding controls for industry suggests an equally large decline in the period from 1992-1994."

¹⁴⁴ Cited in *China Market Economic News*, December 9, 1995.

¹⁴⁵ Statistics from Labor Force Sample Survey on Rural Employment and Labor Mobility conducted in January 1995 by the Employment Department of the Ministry of Labor in 8 representative provinces, covering 4,000 rural households and 80 villages selected from 24 counties.

¹⁴⁶ "The Situation of Peasant-Workers in the Pearl River Delta From Other Areas," *Social Sciences in China*, No.4, 1995, p97.

employers for failing to respect the law, but have to rely on government departments to take action, which they are not known to have done. In any case, the administrative sanctions available under the LPWRI are toothless remedies, particularly against private firms.

Unpaid work

The government's report does not contain any information on efforts to measure the value of unpaid work by women. To our knowledge, no such studies have been carried out, although some reports have looked at the burdens family responsibilities and housework place on women. As the UNDP points out:

*Most Chinese women still bear a triple burden, working outside the home and also assuming responsibility for housework and child and elder care. This of course considerably impedes women's ability to participate fully in social and political life.*¹⁴⁷

Women's family responsibilities are one of the principal reasons for discrimination against them in employment, as mentioned above.

1.e social security and benefits

Although the right to "material assistance" for the old, ill and disabled are guaranteed in China's constitution,¹⁴⁸ it has no provision for a broader social security system as it stipulates that "Citizens of the PRC have the right as well as the duty to work."¹⁴⁹ Thus it does not address the situation of the unemployed and assumes that benefits, such as health care, are provided by employers. Furthermore, both the system of the past and the current plans almost entirely exclude the majority of the population: rural residents (see Article 14 for more on this).

China has not yet adopted a national social security law, but various elements of such a legislative framework are under discussion. Currently, provincial governments and enterprises bear most of the responsibilities for welfare provision for the urban workforce. As well as the Ministry of Labor and Social Security, government departments and institutions which are involved in social security include finance, civil affairs, health, personnel, family planning and so on. There is a significant degree of overlap between the functions of different departments, and this, combined with the lack of legislation, causes inefficiencies and even chaos in the management of social security funds.¹⁵⁰

The Chinese social security system is currently in a transitional period; even the definition of social security itself remains unclear. The existing social security system has few guarantees and provides limited resources. While state-owned and collective enterprises generally cover social security for their workers and their dependents, including through insurance schemes, private and commercial enterprises generally do not provide such benefits. And of course women working in the informal sector or in agriculture do not have access to benefits.

There are provisional national regulations on social insurance,¹⁵¹ and various provisions of such laws as the LPWRI, the 1994 Mother and Infant Health Care Law and the Provisional Measures on Maternity Insurance for Women Workers in Enterprises contain protections for women. For example, Article 2 of the LPWRI provides that the state shall

¹⁴⁷ UNDP, *China Human Development Report*, p.48.

¹⁴⁸ Article 45.

¹⁴⁹ Article 42.

¹⁵⁰ Chu Han, Chong Xiao and Pi Xiaojie, *Handbook on Social Security for Workers: Talking with Workers on Reform of the Social Security System* (China Construction Materials Industry Publishing House, August 1998), pp.19-21.

¹⁵¹ For example, Ministry of Labor, Measures on Reforming the System of Wages and Social Insurance for Trial Implementation in the Modern Enterprise System, June 9, 1995.

gradually perfect its social security system with respect to women. Similarly, Article 27 provides that "the state shall develop social insurance, social relief and medical and health services to create conditions allowing old, ill or disabled women to obtain material assistance." However, as is characteristic of most such provisions in these laws, this is unacceptably vague as it does not indicate what type of social security, social insurance or social relief the state plans to provide, or by what time such programs will be developed. According to some Chinese scholars, this vagueness is intentional, since it allows for the variety of conditions across the country.¹⁵²

However, in practice this means that some enterprises and businesses have taken advantage of this situation to ignore stipulations regarding women workers' rights, and thus end up violating the rights of such workers. Numerous studies have found that existing provisions on social security for women have not yet been implemented.

For instance, employers neglect special provisions made for women in the "four periods," menstruation, pregnancy, child-birth and nursing, and do not bother to provide the women's washrooms, and rooms for women's medical treatment and breast-feeding, nor pregnant women's rest lounges, all required by law. Non-state owned enterprises also do not provide such facilities. "More seriously, they have used all types of strategies to evade responsibility for pregnancy and child-birth among their female staff. Some even clearly state in employment contracts that women cannot become pregnant during their employment."¹⁵³ These companies are clearly violating legal protections for women.

Among the reasons why enterprises have failed to fulfill such responsibilities are a decline in enterprise profits. But most importantly, the leaders of many enterprises simply do not consider it a priority to provide for the well-being of women workers; they are not conscious of the need to protect these workers.

In a survey of 1,500 women workers, only 3 percent felt that the management was concerned about women employees' needs, while 22.9 percent and 51.7 percent respectively felt that their supervisors were not very concerned or were not concerned at all. Furthermore, managers of 15 enterprises were interviewed as part of the same survey, which found that a large number of managers understood very little about the legal provisions protecting women workers, with some not even being aware of the protections for the "four periods."¹⁵⁴

A major reason for both the lack of awareness of employers' responsibilities and the lack of enforcement of the rules is the failure of government officials to play a proper role of inspecting work places and punishing violators. (For more on this see section on legal provisions, below.)

The LPWRI states that women should enjoy equal rights with men regarding housing and other benefits. But in practice, urban housing has been allocated to men according to the unwritten rule "give to men but not to women" (*fen nan bu fen nü*). Most urban dwellers are given their housing by their work units. Some units which do not refuse housing to women have instituted disguised forms of discrimination, such as setting women higher standards for seniority required for eligibility for unit housing.

With housing reform now ending work unit allocation of housing, new forms of discrimination have appeared. According to UNDP:

Some work units have charged women workers more than men to build houses for them, while other units have simply refused to allow their women workers to buy housing. Such institutional discrimination exists even in some government organs: to buy an allotted house

¹⁵² Ma Yinan, "A few thoughts on improvement of the Law on Protecting Women's Rights and Interests," *China Law Science Journal*, vol. 5, page 101 (1995), and Wang Deyi, "The basic contents and characteristics of the Law on the Protection of Women's Rights and Interests," *China and Foreign Law Science Journal*, Vol. 4, 1992.

¹⁵³ Jiang Yongping, Zhang Huixia, "The existence and development of women workers in non-state owned enterprises," *Collection of Women's Studies*, March 1997.

¹⁵⁴ Xiao Yang, Jiang Xiuhua, Hu Yukun, "Affects of the transformation of the economic system on the health of women workers," *Collection of Women's Studies*, March 1997.

*a male employee might be charged only 10,000 yuan while a female employee must pay 50,000 yuan.*¹⁵⁵

1.f occupational health and safety

Working conditions in the industrial sector

The government's report makes no mention of occupational health and safety for women, despite the fact that this has become a subject of serious concern in recent years. As women make up a high proportion of workers in the informal sector and in export processing zones, such as the Pearl River Delta, we believe that they face particular danger to their health and safety.

According official statistics, during 1996 there were a total of 20,865 incidents in which people were killed or wounded at work in enterprises, involving over 29,036 persons.¹⁵⁶ This figure has been steadily increasing year after year, and official statistics are thought to underreport the scale of the problem.

Since the open policy was introduced in 1978, many non-state owned enterprises have been established. The original regulations on work safety and protection did not cover these enterprises, and although the Labor Law and associated work safety provisions are now extended to them, workers in this sector are still insufficiently protected, as the regulations are not properly enforced and there are still too many loopholes and inconsistencies in the law.

The Labor Law requires that employers set up health and safety insurance schemes for all workers, but in reality many fail to do so, and various loopholes remain in the laws. In 1996, the Ministry of Labor issued Trial Regulations on Industrial Accident Victims, under which enterprises were asked to join a central insurance scheme to cover industrial accidents. However, since it is only a trial regulation, this policy is now being tested in several provinces. In provinces where it is not used, local regulations are based on a set of rules passed in 1963, which are entirely out of date and not in accord with changes in the economy.

Specific issues of concern for those provinces still using the 1963 rules are that temporary and migrant workers may have particular difficulties getting compensation in case of accidents at work. According the 1989 Provisional Regulations on the Management of Temporary Workers in State-Owned Enterprises, if a temporary worker is killed, compensation should be paid to his or her family. However, this does not apply outside the state sector, and those who are injured or suffer from occupational diseases may only get compensation if they have worked for the state-owned firm for more than three years. For those workers without urban residency, a major problem is that compensation for occupational injury or death is not transferred across provincial boundaries.

To give a specific example of the gaps created by this system, Shenzhen has passed its own regulations on industrial accidents, but it cannot require that all enterprises join an insurance scheme covering such events. Many have failed to do so, particularly in the private sector. Since most of the enterprises contributing to the scheme are state-owned, and many of these are losing money, the financial health of the scheme is called into question. According to the regulations, enterprises which do not participate in the insurance scheme are fully responsible for compensating for any injuries. Thus if an enterprise has no money, workers may not be able to get compensation at all.

In such factories in the Pearl River Delta, more than 70 percent of all workers are women,¹⁵⁷ many of whom are young migrants from the rural areas, with particular concentrations in labor intensive industries such as shoes, toys, garments and electronics. Many of these women workers face conditions which violate the Labor Law, such as low

¹⁵⁵ UNDP, *China Human Development Report*, p.51.

¹⁵⁶ *China Labor Statistical Yearbook* (China Statistics Publishing House, 1997) p.429. This figure does not include work-related accidents in rural areas.

¹⁵⁷ Li Yinhe, Tan Shen et al, "The situation of rural migrant workers in the Pearl River Delta," *China Social Science*, No.4, 1995.

wages and long working hours, as well as poor living conditions and unfair management practices.

Economic efficiency is always the top priority for such enterprises, and this means pressure on workers. Workers are left with little time for rest and recreation. Although the Labor Law now limits the normal working week to 40 hours and sets monthly overtime at 36 hours or less.¹⁵⁸ However, 56 percent of migrant workers interviewed for a study said they worked 10.5 to 12 hours a day.¹⁵⁹ Many factories set daily quotas for workers, which they must finish before they can leave work. Workers often have no choice but to work the overtime managers require, as otherwise they may be fired or penalized. The practice of forced overtime is a clear violation of the Labor Law. In such conditions, workers' health may suffer ill effects and accidents also become more frequent.

The buildings of some factories are unsafe, and conditions in dormitories are frequently very poor. Fire safety is often neglected, with fire exits blocked or even locked in some plants. A number of examples of safety problems make clear the scale of the problem:

- A 1991 factory fire in Dongguan, Guangdong Province, killed 72 young women workers.¹⁶⁰ Two years later, in 1993, another fire in a toy factory in the Shenzhen Special Economic Zone claimed 81 lives, 79 of the dead were women, and many more were injured.¹⁶¹
- In mid-February 1998, an explosion in a private cosmetics factory in Guangzhou killed 11 workers, eight women and three men. Media reports said that, owing to a poor safety record and the management's repeated failure to rectify the situation, the factory had been ordered to close several times in 1996 and 1997. At the time of the accident, it was still under such an order, but had never halted production.¹⁶²

Poor working conditions such as dim lighting, noise, poor ventilation, unprotected machines and dangerous chemicals damaged the health of many workers, revealing inadequate workplace protection for women workers in the non-state sector.

- A report in a Guangzhou newspaper this year said that unannounced inspections carried out by the local occupational diseases prevention hospital in an unnamed provincial city found that statutory limits of poisonous contaminants were exceeded in more than 90 percent of enterprises. As a result, 50 percent of women workers suffered abnormal physical symptoms and 10 percent were confirmed to have been poisoned by the chemicals.¹⁶³
- In July 1996, 76 female workers of the Huikai Electronics Factory in Shenzhen were taken ill with chemical poisoning. Upon inspection it was found that 4.6 times the normal level of hexane was present in the factory. The management knew that breathing in or

¹⁵⁸ This provision of the law took effect on May 1, 1997, prior to which normal working hours were 44 per week with the same amount of total overtime. However the Labor Law allows employers to extend the working day after "consultation" with workers according the "requirements of its production or business." Local regulations may allow for exemptions. In Dongguan, for example, it is common for enterprises to have received permits from the local government to extend overtime over the legally-mandated maximum, apparently on an on-going basis.

¹⁵⁹ Li Yinhe, Tan Shen et al, "The situation of rural migrant workers in the Pearl River Delta," *China Social Science*, No.4, 1995.

¹⁶⁰ Ministry of Labor, *Typical cases of accidents causing serious injury and death involving health and safety issues in the workplace in China and abroad* (China Procuracy Publishing House, 1995) p.545-548.

¹⁶¹ *Ibid*, p.552-554.

¹⁶² Hong Kong Christian Industrial Committee (HKCIC), *Change—Women Workers in China*, March 1998.

¹⁶³ "Ninety percent of factories exceed pollutant standards, some by two thousand times, 10 percent of Guangzhou women workers suffer industrial poisoning," *Apple Daily*, May 19, 1998, reporting on a story which appeared on May 18, 1998, in the *Yangcheng Evening News*.

touching hexane was harmful to health but did not inform the workers nor take protective measures. There was no ventilation system. The management provided workers with gloves only. After the incident, the factory moved the hexane gas to the open air rooftop and continued to use the chemical, but took none of the measures the authorities had ordered to improve conditions.¹⁶⁴

- According to data collected by the Guangdong Social Insurance Bureau, every day the province has an average of ten cases in which workers fingers or arms are cut off. In 1996, Guangdong Province had more than 3,000 such incidents.¹⁶⁵

The disproportionate effect of layoffs on women (see section on Article 11.1.a above) has put a great deal of mental pressure on those affected, as well as those worried about losing their jobs. This effect is demonstrated in a 1996 survey of 1,500 women workers in state owned enterprises, mostly between 30 and 44 years old, who were interviewed about their health. Of the medical conditions suffered by the women, the survey found that 33.5 percent suffered from gynecological problems, 29.7 percent had digestive disorders, 27.1 percent had nervous system problems while 10 had skin diseases.¹⁶⁶

Some of the illnesses the women reported were clearly work-related. They said that noise pollution was the most serious problem in the work environment, with dust coming second. Others they mentioned include hazardous materials, high temperatures and abnormal vibrations. About 70 percent of the women interviewed said that poor working conditions had had a negative effect on their health.¹⁶⁷

But 60 percent said that prevention of workplace injuries and illnesses had not improved in recent years, while nearly 50 percent mentioned that the means of prevention had not been updated, and protective equipment was getting old. According to 13.5 percent of the women, some facilities for employees to wash after work had been eliminated by the enterprises.¹⁶⁸

2. Maternity benefits

China has enacted comprehensive laws and regulations which mandate employers to provide maternity benefits to their female employees and which prohibit discrimination against women on the grounds of their reproductive role, but in practice such protections are increasingly being flouted. Furthermore, the existence of laws requiring provision of maternity benefits is regularly cited by employers as a reason for refusing to hire women.

According to the 1994 Labor Law, which covers all workers, women are entitled to 90-day paid maternity leave (Article 62). There are also provisions restricting the workload and working hours for women workers while they are menstruating, pregnant or nursing,¹⁶⁹ and requiring employers to provide facilities and breaks for nursing.¹⁷⁰ The LPWRI prohibits dismissal of women workers during the “three periods” of pregnancy, childbirth and nursing.¹⁷¹ The provincial-level Implementing Regulations for the law also incorporate language on employers’ responsibilities for maternity benefits and other protections for women.

¹⁶⁴ HKCIC, *Change—Women Workers in China*.

¹⁶⁵ HKCIC, *Change—Women Workers in China*.

¹⁶⁶ Xiao Yang, Jiang Xiuhua, Hu Yukun, “Effects of the Transformation of the Economic System on the Health of Women Workers,” *Collection of Women’s Studies*, March 1997.

¹⁶⁷ *Ibid.*

¹⁶⁸ *Ibid.*

¹⁶⁹ Labor Law, Article 63

¹⁷⁰ Regulations on Labor Protection for Female Workers and Staff, Articles 9-11.

¹⁷¹ According to Article 26 of the LPWRI, employers cannot dismiss women staff and workers or unilaterally terminate employment contracts for reasons including marriage, pregnancy, maternity leave and nursing.

However, in practice more and more enterprises ignore protections and rest provisions the law allows women during the "four periods" (menstruation, pregnancy, childbirth and nursing). A study of 20 state-owned Shandong enterprises found that of those laid off during the course of restructuring, 64 percent were women, and 70 percent of these women were pregnant or nursing.¹⁷²

As mentioned above, the need to provide maternity benefits to women, as well as their child care responsibilities, are the most frequently-cited reasons for employers refusing to hire women. In the past, employers of urban women were required to pay for such benefits directly. (The employers of fathers of children have not been required to contribute in any way to the cost of prenatal care, childbirth and maternity leave.)

"Trial" regulations "socializing" maternity benefits by setting up insurance to cover their cost are now in place in two thirds of China's provinces and cities according to the government's report.¹⁷³ These are provided for in the Implementation Regulations for the LPWRI in a number of province-level areas, which require that counties "gradually" establish maternity funds, but do not specify the procedure for establishment, the exact function of the funds nor any time line by which they should be in place.¹⁷⁴ The more detailed of these Implementation Regulations allocate to provincial, municipal or county governments the task of regulating the method of establishing and administering such funds. However, none of the Implementation Regulations impose any penalty on counties which fail to establish maternity funds or some other insurance system for maternity benefits. Thus in practice, even when a province has adopted the new socialized system, it may not be in effect in many areas in its jurisdiction.

Hebei requires only those regions that can afford them to establish maternity funds, while certain administrations— Guangdong, Hunan, Ningxia, Qinghai, Shenzhen and Xinjiang—do not even mention them in their Implementation Regulations.

A further concern is that maternity funds do not provide coverage for those outside formal employment, for rural women or for the unemployed. (See Article 14)

The workers who don't exist: conditions in the sex industry

A growing number of women are working in extremely unsafe conditions in the sex industry, often subject to exploitation and abuse by officials, people involved in the business and their clients, as well as facing threats to their health and survival. However, such women are not considered workers at all by the Chinese authorities or under Chinese law, and thus are not covered by any of the available legal protections for workers. They are generally not considered to have rights at all.

While China's second periodic report acknowledged the resurgence of prostitution in the PRC, the current report contains no information about this issue but merely describes laws relating to prostitution, despite the fact that it has been the subject of a significant degree of public concern and discussion in recent years and that the Committee asked a written question on the subject during its consideration of China's second report. The government's addendum to the third and fourth report focuses only on trafficking and says nothing about the sex industry.

There are no accurate figures for the number of sex workers in China. However, according to the most recent officially-published estimates, China has three to four million sex workers.¹⁷⁵ Some reports point to much higher numbers. The overwhelming majority of

¹⁷² Zeng Xianshu ed., *The Practical Tasks of Social Insurance and Dealing with Social Insurance Disputes*, People's Courts Press, May 1997, p.237.

¹⁷³ CEDAW/C/CHN/3-4, p.21-22.

¹⁷⁴ See the Implementation regulations of Anhui, Beijing, Fujian, Gansu, Guangxi, Heilongjiang, Henan, Hubei, Jiangsu, Jiangxi, Liaoning, Shandong, Shanghai, Shaanxi, Shanxi, Sichuan, Yunnan, Zhejiang.

¹⁷⁵ See *China Responds to AIDS: HIV/AIDS Situation and Needs Assessment Report*, China Ministry of Health and UNAIDS, November 1997, p.12.

sex workers are women, and an unknown number of trafficked women are forced to work in the sex industry. (See also Article 6.) In recent years, many researchers have studied prostitution, and thus a wide range of analyses and recommendations is available.¹⁷⁶

The 1997 revisions to the Criminal Code represent an improvement over previous formulations in that the new law focuses exclusively on those who profit from the prostitution of others, rather than on sex workers themselves. The relevant chapter of the Code is entitled “Crimes of organizing prostitution; forcing, inducing or introducing into prostitution; and harboring prostitution.”¹⁷⁷ The revisions increased the penalties for such acts, which are now punishable by death in serious cases.¹⁷⁸ Penalties are particularly severe for offenses involving minors, defined here as girls under 14.¹⁷⁹ Unlike earlier laws which specified women as the sex workers, both sexes are now covered under the law. The one exception is Article 360, which states that clients who purchase sex with girls under 14 can be sentenced to over five years in prison. Article 360 also says that sex workers or their clients who engage in commercial sex when they “clearly know” they are suffering from “serious” STDs may be sentenced to up to five years in prison.

However, in reality the main targets of police action against prostitution continue to be female sex workers. The authorities regularly denounce prostitution as one of the “six evils,” and order “crackdowns” in which large numbers of sex workers are rounded up and detained. Between 1988 and 1995, arrests of sex workers and their clients increased by 10 percent annually, with 288,000 arrests in 1994. In the first five months of 1995, just prior to the convening of the U.N. Fourth World Conference on Women in Beijing, the number of arrests rose by more than 32 percent.¹⁸⁰ No breakdown is available for these statistics.

We believe that such crackdown campaigns are often used by local authorities as a way of making money by extorting fines from sex workers and others involved in the trade. Such campaigns mainly target the most vulnerable and poorest kind of sex workers—those on the street—and leave their higher class counterparts alone.¹⁸¹ In addition, although the authorities claim that other persons who work in the sex industry and those who visit prostitutes are equally targets of punishment, coverage in the media of crackdowns almost always shows women sex workers being arrested, and makes them the targets of moral censure. Furthermore, while customers of sex workers are usually subject to fines, the women themselves are more often detained (see below).¹⁸²

The combination of the censorious official attitude towards those engaged in prostitution and the repressive laws which push the business underground mean that sex workers have no recourse if they are abused by their employers or their clients, since going to the police or other authorities for help may land them in more trouble. Furthermore, some reports have indicated complicity or even involvement of the police and other official actors in sex-related businesses.¹⁸³ Even local women’s federations have been accused of involvement in hotels which are fronts for prostitution.¹⁸⁴ In many southern cities, it is routine

¹⁷⁶ See for example, *Report of Expert Workshop on HIV and Prostitution: Social, Ethical and Legal Issues*, Chinese Academy of Social Sciences, October 1996.

¹⁷⁷ Criminal Code, Chapter 6, Section 8.

¹⁷⁸ A Beijing woman was sentenced to death in November 1998 for “organizing a prostitution ring” which reportedly involved running a brothel in the city. See “Woman gets death for pimping prostitutes,” *Agence France Presse*, November 18, 1998.

¹⁷⁹ Articles 358, Clause 2, and 359.

¹⁸⁰ Zhang Beichuan et al, “Survey of prostitutes in a certain Chinese city,” in *Report on Expert Workshop on HIV and Prostitution: Social, Ethical and Legal Issues*, Chinese Academy of Social Sciences, 1996.

¹⁸¹ See for example, Vincent E. Gil et al, “Plum blossoms and pheasants: prostitutes, prostitution and social control mechanisms in contemporary China,” *International Journal of Offender Therapy and Comparative Criminology*, 38(4), 1994.

¹⁸² Zhang, “Survey of prostitutes in a certain Chinese city.”

¹⁸³ See, for example, Vincent E. Gil et al, “State-sanctioned aggression and the control of prostitution in the People’s Republic of China,” *Aggression and Violent Behavior*, Vol.3, No.2, 1998.

¹⁸⁴ *Ibid.*

for police to extort money from sex workers, and witnesses have seen marked police cars cruising the streets and stopping to collect “fees” from street walkers. In some areas the authorities have a somewhat more lenient attitude: in eight cities across China, including Shenyang, Fuzhou, Putian and Dongguan, local authorities have instituted what are essentially systems to tax sex work, through levies on “hostesses”¹⁸⁵ or on women employed in entertainment businesses including saunas, karaoke bars, dance halls, hair salons and night clubs.¹⁸⁶

Police practices in some areas actually discourage the use of condoms. “The main reason prostitutes give for why it is ‘inconvenient to carry’ condoms is that police consider carrying condoms as legal evidence of prostitution. This demonstrates that our policy of attacking prostitution has a threatening effect, since most prostitutes feel more threatened by the law than by the threat of STDs.”¹⁸⁷ An official told the same researchers: “It is very difficult to determine if someone is involved in prostitution. When you detain them and take them in for investigation, whether they are carrying condoms is the most important evidence. If you don’t discover any condoms, only if they admit they were soliciting customers can you prove it.”¹⁸⁸ This may not be officially sanctioned, but police are still using such tactics.

This is of particular concern in the light of the fact that STD infection rates across China have soared in recent years. In the first half of 1998, reported STD infections increased 41 percent compared with 1997, and 1997 saw an increase of 16 percent over the 1996 rate.¹⁸⁹ HIV/AIDS is also spreading fast, and an expert recently said he was “not optimistic” about the situation.¹⁹⁰ (See also Article 12.)

Sex workers are particularly at risk, since most have little access to health information, health services, counselling or testing for HIV/AIDS.¹⁹¹ They also find it very difficult to get clients to use condoms, with trafficked women, those held in closed brothels and the youngest sex workers being particularly vulnerable. Although HIV infection rates among sex workers are still thought to be low, according to the government, an average of 30 percent of sex workers in Women’s Custody and Education Centers were infected with STDs.¹⁹² Unofficial studies have put the rate much higher: one which included data both on women in detention and women visiting clinics found that between 42 and 85 percent of sex workers had contracted gonorrhea, while 49 percent had more than one bacterial STD.¹⁹³ A study of detained women in an unidentified city in China found that 80 percent were infected with STDs or contagious hepatitis.¹⁹⁴ Testing for STDs and HIV/AIDS is not available for free, and women sometimes must pay thousands of *yuan* for treatment. Some doctors in

¹⁸⁵ Known in Chinese literally as “three accompanies misses” (*sanpei xiaojie*), as they accompany men in drinking, singing and dancing, such women generally work in night clubs, bars, karaoke clubs, restaurants and other entertainment locations.

¹⁸⁶ See, for example, “Fiscal revenues surge as tax collection net widens: Putian slaps heavy taxes on ‘three-accompanies ladies’,” *Ming Pao*, August 28, 1997. The article reported that women working in such businesses in Putian would be asked to pay 100 *yuan* per month to the tax department.

¹⁸⁷ *Ibid.*

¹⁸⁸ *Ibid.*

¹⁸⁹ Dai Zhicheng, “AIDS prevention and control in China,” paper presented at a November 13, 1998, conference in Hong Kong. Dai is vice-chair of the China Association for the Prevention and Treatment of STDs and HIV/AIDS and deputy director of the Expert Consultative Group on HIV/AIDS Prevention set up by the Ministry of Health.

¹⁹⁰ *Ibid.*

¹⁹¹ In the name of regulating clinics treating STDs, Guangzhou has banned all advertizing by clinics offering such treatment and requires that they get special licenses to provide such services. See “Guangzhou bans advertizing for treatment of STDs,” *Ming Pao*, August 28, 1997.

¹⁹² *China Responds to AIDS*.

¹⁹³ Vincent E. Gil et al, “Prostitutes, prostitution and STD/HIV transmission in mainland China,” *Soc. Sci. Med.*, Vol.42, No.1, 1996.

¹⁹⁴ “Survey of prostitutes in a certain Chinese city.”

public hospitals see sex workers as “money trees” and they face discrimination from health workers.¹⁹⁵

Most “education” provided by the authorities is directed at women who are in custody and focusses on changing their “evil ways,” and some doctors have been criticized for “corrupting children” because they tried to provide safe sex education to such women.¹⁹⁶ Some leaders, both on a local and national level, continue to believe that sex workers bring disease on themselves and should not be given any help.¹⁹⁷ So far campaigns on HIV/AIDS have been rather general and have not provided sex workers with information they can use to protect themselves. According to one activist, few sex workers in southern cities even know what HIV/AIDS is.

Although they are not subject to punishment under the Criminal Code, sex workers may be administratively detained under the 1986 Security Administration Punishment Act¹⁹⁸ and the provisions on Reeducation Through Labor. Such administrative sentences are regularly used to punish prostitutes. A large number of sex workers every year are subject to arbitrary detention in Women’s Custody and Reeducation Centers (*funü shourong jiaoyu suo*, *fujiaosuo* for short), “a compulsory administrative measure of education and treatment for STDs”¹⁹⁹ specially for prostitutes. These centers are actually reformatories in which the government attempts to convince women to leave the sex industry and become “good women.”

Women may be held in such centers at the discretion of police for up to two years, without the benefit of any trial.²⁰⁰ Conditions in the centers are often very poor, and according to some informants, women in some of them are forced to work long hours and may have their sentences extended if they do not meet assigned piece-work quotas. The regulations allow for girls aged 14 to 18 to be held in such centers together with adult women. Some detained women resist being detained in this way, but they have no avenue of appeal.²⁰¹ In some centers in the south, treatment for STDs is only provided to those inmates who are able to pay. Furthermore, women who are able to obtain a bribe are frequently able to obtain their release.

No distinction appears to be made between women who have chosen to enter the sex industry and those who are forced into it. Both categories of women are punished equally although women who have been forced directly or by trafficking into the industry are victims according to Chinese law. But victim status is only attached to women and girls who are discovered while in the process of being trafficked or who have only been forced to work in the sex industry for a short time. Those arrested after some time in the industry are no longer considered victims. Instead of addressing the human rights abuses suffered by trafficked women and other women forced into the sex industry, the government locks them up for working as prostitutes. (For more on trafficking, see Article 6.)

¹⁹⁵ Ibid.

¹⁹⁶ Wan Yanhai, “Health is a human right: the public health challenge to social taboos,” *China Rights Forum*, Winter 1997-8.

¹⁹⁷ For a range of views, see “What’s to be done? Experts debate AIDS education,” *China Rights Forum*, Winter 1997-8.

¹⁹⁸ Article 30 reads: “Prostitution, having sexual relations with a woman secretly engaged in prostitution and introducing or harboring prostitution or sexual relations with a woman secretly engaged in prostitution shall be strictly prohibited. Violators shall be punished by detention of not more than 15 days, a warning, and shall be ordered to sign a statement of repentance, or reeducation through labor shall be carried out in accordance with the provisions. In addition, a fine of not more than 5,000 yuan may be imposed.”

¹⁹⁹ Fujian Province Provisional Regulations on Custody and Education for Prostitute Women, October 13, 1990. Such provincial regulations are generally modelled on a national rule.

²⁰⁰ As with Reeducation Through Labor, those who do not accept their sentence of custody and education may appeal to the higher level of the public security bureau, and if their appeal is rejected, may apply for review by a court. But the difficulty of doing so when incarcerated cannot be overstated, and in our experience, appeals against Reeducation sentences almost never succeed.

²⁰¹ Zhang, “Survey of prostitutes in a certain Chinese city.”

Sex workers who have been returned from Hong Kong after serving sentences or paying fines following being convicted of prostitution or working illegally are generally subject to further punishment when they return. They are usually required to pay fines of 3,000 to 5,000 *yuan*, and if they are unable to do so, they will be detained in a *fujiaosuo*.

Recommendations produced by Chinese doctors, sociologists, social workers and feminists following a 1996 conference on prostitution and HIV/AIDS in China held in Beijing called for further research into both subjects. The conference found that the authorities' "crackdown" policy was unlikely to eliminate commercial sex, but it was more likely to "put the socially marginalized prostitutes into a more disadvantaged and more vulnerable position. Some people in society already used it to further exploit, manipulate and stigmatize them." Finally, the conference said the focus must be on protecting the rights of prostitutes, and providing them with education, including on condoms and STDs.²⁰²

Legal protections for women's employment rights

—Labor law

China's laws and regulations regarding employment, including those specifically addressing women, generally contain comprehensive safeguards for employees' basic rights and their health and safety. But as we have shown above, the authorities are failing to implement many of these laws and regulations. This fact has a particularly severe impact on women, as they face threats to their right to work, discrimination, hazardous working conditions and erosion of their pay and benefits.

It is clear, however, that the state has the power to enforce and execute laws and policies it considers a priority. The ruthless suppression of independent labor organizing, the population control policy and the recent campaign against smuggling are but two examples.

The Labor Law is supposed to apply to all workers, regardless of their status, setting normal working hours, limits on overtime, rates for overtime pay, mandatory rest time, provisions protecting women and a system for setting a minimum wage in particular areas.²⁰³ However, in reality large categories of workers are excluded from the protections of the Labor Law, including domestic helpers, sex workers and rural workers, apart from those in township and village enterprises. Others in the informal sector may also face difficulties in invoking its protections. Thus, a large proportion of those workers excluded from the protection of the law are women. Separate regulations cover civil servants, members of the armed forces and the employees of institutional units²⁰⁴ and social organizations who are subject to the same regulations as civil servants.

The Labor Law establishes a two-tier system for dealing with workers' complaints about violations of the law: first they must approach the Labor Disputes Arbitration Committees (LDAC), and if they do not agree with the decision of this body, they may then take the case to court. Workers cannot take cases directly to the courts without going through arbitration.

A number of factors contribute to serious weaknesses in the implementation of these laws and the use of the dispute procedures. As enterprise autonomy has grown, managers have much greater power than before, so they may easily punish workers who make complaints. A common saying is: "The factory head has the last word," and often factory managers are now also Party secretaries, thus concentrating authority. Managers determine workers' levels of compensation and bonus and evaluate their job performance.

With greater enterprise autonomy, the factory head can punish troublemakers by not allocating them work or by giving them the dirtiest, most dangerous, or least-paying jobs. Due to the large gap between the base salary and salary plus bonus, managers also have

²⁰² "Consensus and recommendations on HIV and prostitution," *Report of Expert Workshop on HIV and Prostitution: Social, Ethical and Legal Issues*.

²⁰³ Hilary K. Josephs, "Labor law reflects new realities," *China Rights Forum*, Fall 1996.

²⁰⁴ These are public institutions such as educational establishments, hospitals and cultural institutions.

*great discretion in deciding the pay of individual workers. This practice of 'vague wages,' along with the system of demerits for breaches of labor discipline, gives managers ample opportunity to harass, intimidate and punish workers who attempt to use the law to defend their rights.*²⁰⁵

As well as the problems of representation mentioned above under Article 11, at the same time the position of the official union in enterprises has weakened. Unions depend on management to collect dues from workers, and are sometimes short of funds. Some enterprises have fired union officials in the name of restructuring. In many areas, unions are actually part of management and do not represent workers at all.²⁰⁶

But most crucially, the local governments who play the principal role in ensuring that the laws are observed and in punishing those who violate them are often partners in the enterprises in question, or have a distinct interest in attracting or keeping the investment made in those factories. As one academic puts it: "The blurred line between the local governments and businesses creates an environment where those designated as the protectors of labor are either intimately connected with or even the same as those who are violating the workers' rights."²⁰⁷

Although workers may file any complaint about a violation of the Labor Law or the Trade Union Law with a LDAC, in practice there are significant difficulties facing workers who wish to do so. Firstly, according to the law workers must provide evidence of the abuse or breach of contract, which may be hard if they do not have a contract or have copies of company documents. Secondly, there is a 60 day time limit following the occurrence of the cause of a dispute for filing a case with the LDAC. Since workers often initially seek to have their complaints dealt with through the government departments in charge of inspecting work places and ensuring that the laws and regulations are being observed, the time period may have already elapsed by the time workers find out that there has not yet been satisfactory resolution of the case in question. In addition, the emphasis on attempting to find mediated agreements on disputes prior to arbitration means that this time limit is even more likely to have expired by the time workers are ready to file a case. A related point is that if workers do not file a case with a LDAC, they forfeit their right to bring a suit in court. Thirdly, workers have to cover any costs of bringing a case, and there are very few institutions in the country providing legal assistance or advice to workers. Finally, LDACs have enormous discretion to refuse to hear their complaints.

One example is a case involving multiple violations of the law, in which 25 women migrant workers claimed that they were beaten, verbally abused, forced to work 16-hour days, given food unfit to eat and had one and a half years' worth of wages withheld by the management of the Beijing garment factory where they were employed. The women sought the assistance of the Labor Department, but after a month, the investigator said that "the legal representative of the factory in question could not be found," and thus they refused to do anything further about the case. The women then went to newspapers, the Women's Federation, the Trade Union and other departments without finding any help, despite the seriousness of the violations involved, before finding assistance at a legal aid center set up by Beijing University.²⁰⁸ A lawyer who worked on the case raised the question of why, when rights clearly stipulated in the Labor Law had been violated, the Labor Department had not taken action.

²⁰⁵ Mary Gallagher, "An unequal battle: why labor laws and regulations fail to protect workers," *China Rights Forum*, Summer 1997.

²⁰⁶ A survey in Shekou found that of 250 basic level unions, 248 union chairpersons served concurrently in management positions, 33 of whom were also factory heads. See Gallagher, "An unequal battle: why labor laws and regulations fail to protect workers."

²⁰⁷ *Ibid.*

²⁰⁸ Liu Wei, "Why is it so hard for these working sisters to get their wages?" *Center for Women's Law Studies and Legal Services 1997 Annual Report* (Beijing University, 1997).

*One of the reasons is that the system of supervision of labor conditions in our country is incomplete and that the supervision agencies do not exert themselves. This is particularly so in the privately-owned enterprises and those which individuals have taken on responsibility contracts for running, where effective mechanisms for supervising the implementation of the law are lacking. Thus there is a disjuncture between the law and its enforcement. In practice, the supervision and investigation functions of the departments responsible for the supervision of labor conditions are sluggish and dilatory, and they lack a sense of initiative in this work. Only when workers report complaints about an employing unit violating the law will the supervisory agencies exercise supervision.*²⁰⁹

After mediation with their employer failed, their lawyer tried to file a case in court. But the court refused to hear the suit, claiming the law was unclear on remuneration and requesting guidance from the government on the matter. Only after eight months of intensive work was the lawyer able to get an LDAC to take on the case, after persuading the Committee to use a provision of the Civil Procedure Law on time limits for filing cases to find the case in question still open. The women eventually won their case.²¹⁰

But even if there is a judgment in favor of workers made by following mediation by the Labor Department, or a decision of a LDAC or a court, there are often serious problems with enforcing such decisions. “Even if a grievance is filed, many enterprises can ignore with impunity the decisions of the [LDAC] or the court. Not only are ordered changes not made, but workers are targeted for making trouble.”²¹¹ This is part of a larger problem of lack of enforcement of laws, regulations and court judgments across China.

—Women’s law

As mentioned above, the LPWRI requires that women be treated equally in their right to work, pay, benefits and promotions, and prohibits dismissing women workers on the grounds of marriage, pregnancy, maternity leave or lactation. Provincial implementation regulations generally repeat such provisions.

However, this law, and its implementing regulations, lack mechanisms for enforcement. Those with complaints must rely on government departments deciding to take action to punish violators, thus officials have enormous discretion to ignore violations if they do not consider upholding a particular law to be a priority. Furthermore, as penalties are purely administrative in nature—the LPWRI does not even allow for the imposition of fines—they have little force, particularly on privately-owned businesses.

A central deficiency of the LPWRI and its province-level Implementing Regulations is that they fail to define discrimination, or provide for any individual right of action to assert claims based on these laws. (For a discussion of this, see Article 1)

Questions to ask the Chinese government representatives:

1. In the light of the disproportionate effect of layoffs, unemployment and other types of joblessness on women and the evidence that the existing measures have been woefully inadequate, what concrete proposals does the government have to better protect women’s right to work? What specific actions has the government taken to punish those who discriminate against women in hiring, firing, or other ways? Please provide numbers of cases of various types, and some particular examples.
2. Can the government provide details of what kind of jobs women employees get after being laid off or becoming unemployed, as well as on what kind of benefits the jobs in question include, how the salaries compare with those for the work the women did before and how long the jobs last?

²⁰⁹ Ibid.

²¹⁰ Ibid.

²¹¹ See Gallagher, “An unequal battle: why labor laws and regulations fail to protect workers.”

3. Can the government provide the number of persons working as domestic workers broken down by sex and age, giving details of salary levels, as well as information about legal protections available for such workers. Can the government provide the number of persons working in the informal sector, broken down by sex and age, giving details of salary levels, as well as information about legal protections available for such workers. For this latter category, please provide a breakdown into different sectors or work, including the sex industry. Lastly can the government provide an estimate of the value of the labor performed in the informal sector, broken down by sex.
4. How many women are currently covered by different types of maternity benefit systems, what types of work are they engaged in, what do the various such systems cover and what are the specific plans for change in this area?

Recommendations:

On discrimination:

- Government departments and the state-owned sector must take the lead in eliminating discrimination against women in employment. They should actively encourage the recruitment of more women, including in positions of leadership, including through affirmative action policies.
- Women workers should not be forced to bear a disproportionate burden of the negative effects of economic restructuring. The government must take action to create real jobs for women. This should not mean pushing workers into self-employment or other ways of ridding the authorities of responsibility for their welfare.
- Women in all occupations should benefit from the same treatment as men, including the same retirement age.
- The government should immediately enact revisions to the LPWRI which incorporate the definition of discrimination contained in the Convention. It should define discriminatory treatment both in hiring and for those in employment and should encourage and support women wishing to sue employers under these new provisions.
- The government should encourage and fund studies which challenge the myths about women employees, such as that they cost more, are less efficient and of lower “quality.”

On legal issues and labor disputes:

- The Labor Law should be revised so that it covers all workers, including those employed as domestic helpers, in the informal sector and the sex industry.
- The Labor Law should be revised to give workers more time to file cases with LDACs, ensuring that, in conformity with the Civil Procedure Law, if a case is being reviewed by the Labor Department or is in mediation, the clock stops while these processes are being carried out.

On equal pay:

- The Chinese government should fully implement ILO Convention 100 and CEDAW Article 11.1.d.

On health and safety:

- The government should enact a comprehensive national health and safety law which covers all workers in all enterprises and which requires that all employers participate in the industrial accident insurance scheme. This law should incorporate best practice from all provinces and/or ILO conventions, and should require that employers provide rehabilitation, physical therapy and counselling for victims of workplace accidents. All provincial governments should set up their own implementing regulations for this law to clarify fully the investigation and enforcement powers of labor administrations.

- The government should formulate an action plan to carry out proper monitoring and enforcement of the standards contained in ILO Chemicals Convention No.170 and the Benzene Convention No.136.
- The government must strengthen monitoring procedures to ensure that enterprises strictly implement laws and regulations on fire prevention and occupational health and safety. The government should ensure that enterprises provide training for workers dealing with chemicals and provide quality protective gear and materials.

On workers in the sex industry:

- Sex work should be recognized as a form of legitimate labor, as advocated recently by the ILO. The necessary legislative changes should be made to make the legal protections available to other workers available to sex workers as well.
- The authorities should make more of an effort to punish those officials who abuse or exploit sex workers. Police and other officials should protect the rights of sex workers and investigate complaints of abuse brought by them in a serious manner.
- Arbitrary detention in Women's Custody and Education Centers should be eliminated. Such centers should continue to provide free training and treatment on a voluntary basis for those who request it.
- An extensive safe sex education campaign should be targeted at intravenous drug users, sex workers, clients and clients' other sex partners, and spread through the media in general. Free testing for STDs and HIV/AIDS, appropriate counselling and treatment should be provided for all infected persons. The government should provide high quality condoms, free or at low cost, to the public and require businesses involved in the sex industry to make them available.
- There should be more transparency on the part of governments at all levels concerning laws, regulations, policies and results of investigations relating to the sex industry. Individuals need to know what their rights are so they can protect them.

On benefits:

- The government should enact a national social security law which covers all workers in all enterprises and which requires inter-provincial transfer of compensation.
- Maternity benefits should be available for all women, not just those in formal employment and in urban areas.

Article 12: Equality in access to health care

Overview

In so far as China's national health policies consider the specific needs of women, they focus almost entirely on their role as mothers and link health interventions directed at women to family planning and the survival and health of children. This is apparent in the government's report, which contains hardly any data on the health status of women in China today, and fails to address some of the major emergencies in women's health, such as the high suicide rate among rural women, the heightened mortality rate of female under-fives and the "missing" girls indicated by unbalanced sex ratios among newborns and infants (for the latter two issues, see Article 16).

While many of the measures relating to maternal and infant health are positive and welcome, since the report fails to fill in the context of a health care system which has been moving rapidly towards primarily fee-for-service medicine, it leaves unanswered serious questions about the access of growing sectors of the population, particularly the poor and rural residents, to such services and programs as the report describes.

Effects of health care reform

Traditional prejudices against women and girls and the effects of economic reform combine to cause significant discrimination against women in the field of health care.²¹² Although China has taken steps to promote maternal and child health care, such measures have been limited in effectiveness and scope. Chinese women's overall access to general health services still requires significant improvement.

As China shifts to a system of fee-for-service medicine, with 79 percent of Chinese people now not covered by any kind of health insurance or benefits, women are particularly disadvantaged. Women workers have been the last hired and the first fired, and are increasingly employed in informal and temporary jobs that carry limited or no benefits. They also make up the majority of the unemployed, leaving many completely uninsured. Women also have less income to cover health care needs. The female share of earned income is 38.1 percent, compared to 61.9 percent for males.²¹³ The lower status of girls and women means that they are less likely to receive care which is increasingly expensive.

Unfortunately, information that compares access of men and women to health care was not provided by the government report, and is not readily available. However, anecdotal evidence has found that women less frequently have health insurance, are less often admitted to the hospital, have shorter hospital stays when they are admitted and may receive less treatment during their stay than men.²¹⁴

According to official statistics, life expectancy at birth for Chinese females is 71.3, while that of males is 67.3.²¹⁵ Although according to this measure life expectancy is relatively high for women, the four-year difference between the sexes falls slightly short of the expected five-year gap in life expectancy for countries where men and women have equal access to health and survival resources.²¹⁶ Furthermore, in a survey covering 55 countries, China ranked considerably higher on the probability of death for women versus that of men.²¹⁷ While the probability of death for men placed China in the middle ranks of the survey sample, China ranked in the top twelve for the probability of death for women. This discrepancy reveals continued problems in Chinese women's access to healthcare.

Economic reform has had some devastating effects on the country's social safety net, including its health care system. Basic health care was formerly provided largely through urban work units and rural cooperative insurance schemes.²¹⁸ But with state-owned enterprises cutting their workforces and a growing proportion of the urban population working for the collective, private or informal sectors, more and more people in the cities are without health coverage. Even the fortunate 11 percent of the population who are covered through government or work-unit insurance schemes now have to pay a portion of the costs of their health care.²¹⁹ In the rural areas the situation is much worse: the cooperative insurance

²¹² Veronica Pearson, "Women and health in China: anatomy, destiny and politics," *Journal of Social Politics*, Vol.25, No.4, 1996.

²¹³ UNDP, *Human Development Report 1998*, p.132.

²¹⁴ Pearson, "Women and health in China: anatomy, destiny and politics."

²¹⁵ UNDP, *Human Development Report 1998*, May 1998, p.148.

²¹⁶ Pearson, "Women and health in China: anatomy, destiny and politics."

²¹⁷ World Bank, *China: Strategies for Reducing Poverty in the 1990s*, 1992b, cited in *ibid*.

²¹⁸ Health care in China was never "free for all," as some continue to believe (even UNICEF repeats such myths). Medical care was simply unavailable to many people in the poorest, most remote rural areas, and large numbers of rural residents continued to pay for what care they could get. Furthermore, we are not as optimistic as the UNDP about the health status of the Chinese population prior to the reform era. Official statistics are notoriously unreliable. See the note on statistics in the introduction to this report.

²¹⁹ Michael R. Phillips, "The transformation of China's mental health services," *The China Journal*, No.39, January 1998, provides an excellent overview of issues relating to psychiatry and provision of medical care in general in China today.

schemes which once provided for the basic health needs of over 75 percent of residents in the countryside now only covers about 10 percent of the rural population.²²⁰

According to 1993 figures, 79 percent of China's population was uninsured, consisting of 15 percent from urban areas and 64 percent from rural areas, respectively.²²¹ A 1993 survey of 30 poor counties found that 88.4 percent of the residents had to pay for all of their own health care.²²² In 1993, out of pocket payments made up 42 percent of the health sector's revenue, transforming its financial base.²²³

The health expenditure share of the governmental budget has fallen from 32 percent in 1986 to 14 percent in 1993.²²⁴ Medical care accounts for only 3.2 percent of GNP,²²⁵ and in 1994, accounted for only 2.02 percent of national financial expenditure.²²⁶ Even China's then Minister of Health, Chen Minzhang, has complained about insufficient government investment in health, calling distribution of medical resources unbalanced and criticizing wastage of resources.²²⁷

While government health spending nearly tripled in real terms between 1978 and 1993, it was out-paced by private health spending, which increased by a factor of ten.²²⁸ In the past ten years, the relative cost of health care to those who have to pay for it has increased two or three times.²²⁹ In the context of rising costs for health care, even if more is spent, less may be being achieved.

As well as moving towards fee-for-service medicine, "reform" in the health sector has generally meant that resources have increasingly been concentrated on purchase of expensive diagnostic equipment and outfitting of state-of-the-art hospitals, which results in less funds being available for preventive care and basic health. This is because the government has fixed fees for certain medical services at a low rate, while allowing charges for use of new technology and for drugs to be determined by the market. Drugs already account for 50 percent of costs for inpatients, and 67 percent for outpatient treatment.²³⁰ In late 1997, the then health minister criticized the resulting overuse of expensive treatments and drugs, identifying them as the main causes of spiraling medical costs.²³¹ The focus of health care providers who have to make their institutions pay has thus become giving expensive treatments to those who can afford them.

Health emergency: lack of psychiatric care

While mental health services in China have long suffered from general neglect—few doctors want to specialize in psychiatry because of the low status of the field and lack of funding for it²³²—this fact has especially devastating consequences for women. According to the available evidence, women's access to psychiatric care is significantly lower than that of men, while women suffer disproportionately from mental illness.

A 1982 WHO study, while finding a relatively low incidence of mental disorders in China at 3.2 percent as compared with other countries, found that women suffered disproportionately from such disorders, with eight times as many women as men suffering

²²⁰ UNDP, *China Human Development Report: Human Development and Poverty Alleviation 1997*, February 1998, p.37.

²²¹ World Bank, *China 2020: Financing Health Care*, 1997, Figure 1.2, p.15.

²²² UNDP, *China Human Development Report*, p.37, Table 3.8.

²²³ World Bank, *China 2020: Financing Health Care*, p.19.

²²⁴ *Ibid.*

²²⁵ Phillips, "The transformation of China's mental health services."

²²⁶ Vivien Pik-Kwan Chan, "Warning on health care's sick state," *South China Morning Post*, December 13, 1997.

²²⁷ *Ibid.* The new health minister, appointed in early 1998, is Zhang Wenkang.

²²⁸ World Bank, *China 2020: Financing Health Care*, p.19.

²²⁹ Phillips, "The transformation of China's mental health services."

²³⁰ *Ibid.*

²³¹ Chan, "Warning on health care's sick state."

²³² Phillips, "The transformation of China's mental health services."

from various neurotic illnesses and the rate of schizophrenia being 60 percent higher for women than men. Furthermore, the World Bank's Global Burden of Disease study found that while psychiatric disorders are among the most important causes of ill-health generally in China, very few of those afflicted receive any treatment.²³³ As a Western psychiatrist who has worked in mental hospitals in China for 12 years describes the problem:

*Despite the identification of a wide range of mental health problems by the Chinese psychiatric establishment, mental health services have largely focused on those problems that law and order institutions identify as both prevalent and posing a significant societal burden—that is, psychotic disorders.*²³⁴

This is particularly worrying in the light of one of the major emergencies for women's health in China: the epidemic of suicide. China has the fourth highest rate of suicide of all the countries which provide data on the matter to the WHO, and in the Burden of Disease study suicide ranked fifth among China's health "burdens." Rural suicide rates are three times urban rates. China is the only country in the world where higher rates of suicide are reported for women than for men: with only 21 percent of the world's women, it has 56 percent of the female suicides.²³⁵ Such suicides peak in the 20-24 year old age bracket, in which the suicide rate for urban areas is 15.9 per hundred thousand and is five times greater in rural areas, at an alarming 78.3 per hundred thousand.²³⁶ Virtually all publicly-owned psychiatric hospitals are in urban or suburban areas, and there are serious questions about the quality of private psychiatric care, which sometimes consists of little more than being locked up somewhere.²³⁷

In 1996 the magazine *Rural Women Knowing All* published a notice asking for information about the issue of suicide of rural women. In the course of the year which followed, the magazine received 344 letters on the subject, which gave information about 260 suicides that occurred between 1995 and 1996. Family conflicts were the most common reason for suicide attempts. Other reasons included issues relating to virginity and loss of it, and poverty or lack of support. Of the 260 women who died, 238 were aged 15-34; 16 were 35-60; and 6 were over 60. Among them 178 were married, 56 were unmarried, while the marital status of 26 was unclear. The vast majority, 213, committed suicide by ingesting poison. The reasons cited by the informants were as follows: discord between husband and wife: 46; verbal arguments between husband and wife: 44; wife battering: 21; abandonment: 10; disputes in natal family: 11; arranged marriage: 18; attitudes of males being superior to females in natal home: 4; disputes with mother-in-law: 17; issues relating to virginity: 19; no means of support: 34; and unclear: 37.²³⁸

Yet despite the severity of this issue, and its impact on the health and survival of women, little attention is devoted to it. As a psychiatrist writes:

[Suicide] is not perceived as a serious problem, so few resources are allocated for suicide prevention. There are relatively few professional articles about suicide, no public education campaigns about suicide, and with the exception of a small suicide prevention clinic in Nanjing and recently established telephone hotlines in a few large cities, no counseling services are provided for suicidal individuals.

There are several reasons for the near-invisibility of the suicide problem. The traditional reluctance of government to publish figures that demonstrate the existence of social problems is only gradually being replaced by an increased openness about the actual

²³³ Ibid.

²³⁴ Ibid.

²³⁵ Ibid.

²³⁶ Antoaneta Vezlova, "Development-China: speaking up for invisible rural women," Inter Press Service, August 30, 1998.

²³⁷ Phillips, "The transformation of China's mental health services."

²³⁸ Zheng Rongchang, "Report on Suicides Among Rural Women," *Southern Weekend*, May 15, 1998.

*social conditions in the country, and so few are aware of the magnitude of the problem. Suicidal individuals do not cause the disruption of, say, schizophrenic patients, so the law and order institutions have no vested interest in addressing the issue. Suicide is, moreover, typically seen as a response to social stress, not the result of a mental illness; and so both the community at large and psychiatric professionals do not see suicide as a problem that should be primarily addressed by the mental health system.*²³⁹

And, it should be emphasized, the majority of victims are female.

However, the available evidence indicates that women are less likely to receive psychiatric care. According to a study of a long-term psychiatric hospital in China, twice as many men as women had their fees paid for by health insurance.²⁴⁰ This fact is salient in light of the strong correlation found between the length of stay in psychiatric hospitals and whether hospital costs were met by insurance or paid for out of pocket.²⁴¹ Neither diagnosis nor severity of condition was as important for determining length of stay. At an acute psychiatric hospital, where treatments in addition to basic bed, board and medication were charged for separately, men received significantly more treatment than women, which suggests that provision of care was based on ability to pay rather than need, and implies an indirect bias against women.²⁴²

HIV/AIDS—insufficient action

Unfortunately, there is no gender-specific information on HIV/AIDS or related health services. But women are at special risk because they are often unable to exercise control in their sexual lives. Sex workers and trafficked women (see Article 11 and Article 6 respectively) present the most extreme examples.²⁴³

According to the Chinese Association of STD/AIDS Control and Prevention, up to 80 percent of sex workers in rural provinces had never heard of HIV or AIDS.²⁴⁴ While sex workers in cities were slightly better informed, they are not generally in a position to insist on condom use. And women's higher risk of contracting the disease through unprotected sex means that the general lack of information on HIV and STDs impacts particularly on them.

Health services and education on HIV/AIDS and other sexually transmitted diseases (STDs) are deficient but desperately needed. According to China's Ministry of Health, 10,676 people were confirmed as infected with HIV as of September 1998.²⁴⁵ However, experts believe these figures are far too low, and some have said that as many as one million may already be infected.²⁴⁶ According to one official, 36.3 percent of those infected are members of ethnic minority groups.²⁴⁷ In November, Health Minister Zhang Wenkang said, "China will

²³⁹ Phillips, "The transformation of China's mental health services."

²⁴⁰ Veronica Pearson, *Mental Health Care in China: State Policies, Professional Services and Family Responsibilities* (Gaskell, London and the American Psychiatric Press, New York, 1995), and Veronica Pearson, "Goods on which one loses: women and mental health in China," *Social Science and Medicine*, Vol.41, No.8.

²⁴¹ M.R. Phillips, W. Xiong, Z.A. Zhao, *Issues Related to the Use of Assessment Instruments for Negative and Positive Psychiatric Symptoms* (Science and Technology Press, Hubei, 1990), cited in, Pearson, "Women and health in China: anatomy, destiny and politics."

²⁴² *Ibid.*

²⁴³ "Mainland seeks HK help over AIDS fear," *South China Morning Post*, October 20, 1997.

²⁴⁴ *Ibid.*

²⁴⁵ "China fears AIDS cases could reach huge proportions," Agence France Presse, November 25, 1998. See also "AIDS Virus Has Spread to 31 Provinces and Municipalities," *Ming Pao*, July 29, 1998.

²⁴⁶ Wan Yanhai, "Health is a human right: the public health challenge to social taboos," *China Rights Forum*, Winter 1997-8.

²⁴⁷ Dai Zhicheng, "AIDS prevention and control in China," paper presented at a November 13, 1998, conference in Hong Kong. Dai is vice-chair of the China Association for the Prevention and Treatment

be confronted with an AIDS situation as serious as in India and Thailand... if we fail in prevention and control efforts.”²⁴⁸

Exacerbating this situation, testing is limited, and it is common practice not to tell individuals if they have tested positive for HIV, in order not to “upset” them. Some officials have said that they should not be told as they may completely let go of themselves, infecting others in revenge at their fate.²⁴⁹ Although China has launched various initiatives including education, research and training of personnel,²⁵⁰ media coverage and public knowledge of AIDS is still low. In 1996 and 1997, the total annual budget for such activities was a pitiful US\$1.8 million, which was already triple the 1995 budget amount.²⁵¹

The deputy director of the Ministry of Health’s Expert Consultative Group on HIV/AIDS Prevention said recently that he was “not optimistic” about the situation regarding HIV/AIDS in China. He identified the main problems as the following:

First, some of the leaders of the government and the relevant departments are not sufficiently aware of the probability and danger of HIV/AIDS spreading widely in our country or of the special factors contributing to increasing the speed of the spread of the disease and the fact that it can quickly move from affecting the high risk population to the population at large; or else due to the scarcity of reports about cases they do not take it very seriously. Others do not know what to do about the rapid spread of HIV/AIDS, or have all kinds of worries, so much so that they do not dare to report the true situation of the disease, and this has had an impact on the development of propaganda and education work and the implementation of preventive measures.

Second, the public generally lacks knowledge about protective measures. The mass media and propaganda and education networks in remote countryside and rural towns have not developed enough propaganda on prevention of HIV/AIDS, and so the public has very limited opportunities to receive information on this topic.

Third, health care and treatment services are insufficient, while the work of disease surveillance, management of the public blood supply and prevention of spread through medical resources is weak.

Fourth, not enough has been put into prevention and control work. A system of the government taking the lead in investing with collection of funds from a multitude of sources has still not been established, while there is a shortage of expert personnel.

Fifth, the necessary laws and regulations are lacking. Various problems which have emerged in the course of prevention and control have no support in law, including protections for the basic rights to treatment, employment, marriage and so on of people infected with HIV and sick with AIDS, the scope of mandatory testing for HIV/AIDS and the issue of labor protection for medical workers involved in the work of AIDS treatment and HIV testing.

*Sixth, there is a lack of effective measures and experience in controlling the spread of the disease among high risk groups such as drug users and the sexually promiscuous, there are still no appropriate policies or support for adopting methods considered effective internationally in our country, and so on.*²⁵²

As mentioned in this account, the government has done little or nothing to educate or protect women in high risk groups from HIV infection. As mentioned in the section on sex work

of STDs and HIV/AIDS and deputy director of the Expert Consultative Group on HIV/AIDS Prevention set up by the Ministry of Health.

²⁴⁸ “China fears AIDS cases could reach huge proportions.”

²⁴⁹ “What’s to be done? Experts debate AIDS education,” *China Rights Forum*, Winter 1997-8.

²⁵⁰ See China Ministry of Health and UN Theme Group on HIV/AIDS in China, *China Responds to AIDS: HIV/AIDS Situation and Needs Assessment Report*, November 1997, for details.

²⁵¹ This figure includes both national and provincial government expenditures. *China Responds to AIDS*, p.26.

²⁵² Dai, “AIDS prevention and control in China.”

under Article 11, women are actually discouraged from carrying condoms as police may use this as evidence of their involvement in prostitution. The illegal nature of the sex industry means that women have insufficient control over their work, and are not in a position to insist on condom use. This is particularly the case for women trafficked into sex work.

In China there is virtually no mention, either in statements by officials or in news reports, of what provisions are available for counseling those who test positive for HIV, or about treatment of people who develop full-blown AIDS. In a chapter entitled “What are the needs? And how can the international community support China’s AIDS effort?”, *China Responds to AIDS* includes a section on the need to improve care for people living with HIV/AIDS, but otherwise the document makes no mention of the current situation of such people. Anecdotal evidence suggests that such individuals face discrimination, sometimes quarantine, and that little treatment is available.

Other health issues

The government’s report contains little discussion of women’s access to primary health care or treatment for noncommunicable diseases like stroke, cancer, heart disease and chronic lung disease that account for most mortality for age groups beyond child-bearing years. China has a rapidly growing elderly population, and almost 10 percent of people in the PRC are already over 60.²⁵³

Other pressing areas that require greater government attention include infectious and parasitic diseases. While China’s 1995 National Health Service Investigation claimed that the occurrence of these afflictions had dropped considerably since the mid-1980s, it admitted that infectious diseases, as well as diseases resulting from malnutrition were still serious problems in rural areas.²⁵⁴ Furthermore, a China-wide survey report on human parasitic diseases—which received top honors from the Ministry of Health in 1994—found that the total infection rate of parasites is about 62.63 percent, that 780 million people are affected by parasites, and that the number of cases of parasitic diseases is well over 1.2 billion.²⁵⁵ (An individual can be affected by nine kinds of parasites at the same time.) The threat has increased since the 1998 flooding, which caused new outbreaks of infectious and parasitic diseases such as cholera, malaria and snail fever.

This highlights the lack of access of rural dwellers to basic health care. Currently about 60 percent of public health spending is disbursed for 15 percent of the population who live in cities or are employed by government, and in 1993, only 4 percent of spending covered the needs of the poorest quarter of the rural population.²⁵⁶ “Many poor rural residents cannot receive even the most basic medical services,” former Health Minister Chen said in 1997.²⁵⁷ As a scholar who recently studied health care provision in a number of poor rural areas writes:

China’s rural health system had founded its success on two great principles: preventive care and universal access to treatment; the reforms have swallowed them up.... While Shanghai’s infant mortality rate is lower than New York’s, tens of thousands of country children die from lack of treatment, for bronchitis, or diarrhea, or an abscess. It is the

²⁵³ Hiroyuki Akita, “Chinese re-evaluate one-child limit as birthrate falls, population ages,” *The Nikkei Weekly*, October 6, 1997.

²⁵⁴ “China: public health survey findings reported,” Xinhua News Agency, January 17, 1995, cited by BBC Monitoring Service.

²⁵⁵ “China: survey shows parasitic diseases widespread,” China News Agency, April 4, 1995, cited by BBC Monitoring Service.

²⁵⁶ Charlotte Cailliez, “The collapse of the rural health system,” *China Perspectives*, No. 18, July-August 1998.

²⁵⁷ Chan, “Warning on health care’s sick state.”

*“absence of the state” that is at the root of the problem: the lack of any public funding or control.*²⁵⁸

According to a recent survey of 320 poor counties in six provinces conducted by the Amity Foundation, a church-founded Chinese organization, 15,407 villages had no medical presence whatsoever.²⁵⁹ In many other villages, there are only private doctors, who need fees from patients to make a living. A 1996 survey of 180 villages in poor areas found that 30 percent had no doctors at all, and that 28 percent of the population did not seek health care when ill because they could not afford the cost; 51 percent who were advised to go to hospital refused because they could not afford the cost; 25 percent had to borrow money to pay for health care and 6 percent had to sell their assets to pay for care.²⁶⁰

A survey of peasants in counties in the suburbs of Beijing found that 84.4 percent were most worried about medical problems.²⁶¹ People who cannot pay for health services are now frequently turned away from hospitals, even if they are in critical condition. The following are two examples:

- A woman, Xu Xinhong, gave birth to a baby boy in Rongcheng Township, Hubei Province, during the 1998 floods. Her family had been displaced, and was housed temporarily in a school. The hospital reduced the 200 *yuan* fee for delivery to 180 *yuan* because of the disaster, but discharged mother and child the day after the birth. The next day, Xu and her baby became sick and wanted to return to hospital for treatment. But she and her husband could not afford the 900 *yuan* deposit demanded by the hospital. Sickness and poor diet made Xu unable to breast-feed her son, and the baby only survived because her sister was also nursing an infant, and was thus able to feed him too.²⁶²
- In December 1996, Zhou Luyun, 20, a waitress from Hunan at a hotel in Dongguan, was suddenly taken ill with appendicitis. Everyone knew she was lying in bed in intense pain, but the manager just gave her some pain-killers as he did not want to pay for her treatment, or the deposit the hospital would require to admit her. Finally, someone told a police officer about her illness, and when he took her to the hospital, he had to sign a statement saying he would personally pay her bill before she could receive treatment.²⁶³

Problems with maternal health

As discussed at length in the government’s report, China has introduced legislation, educational campaigns and cooperative projects focused on maternal and child health. While these efforts should be commended, their existence alone does not ensure success. The government’s report provides a list of unexplained figures and project objectives, with little detail about implementation or effectiveness. Also, the report neglects to mention that such programs are heavily reliant on user fees, which prove prohibitive to most rural women.²⁶⁴

In contrast to the government’s positive portrayal of maternal and child health, some studies have shown that the infant mortality rate stopped declining in 1982, and has actually

²⁵⁸ Cailliez, “The collapse of the rural health system.” Cailliez raises questions about the reliability of health data based on her experience in some of China’s poorest counties: “As for collecting epidemiological data, no one is doing it; one may wonder where the Ministry of Public Health gets its statistics.”

²⁵⁹ Cited in *ibid.*

²⁶⁰ Cited in Marion E. Jones, “Rising inequality and declining living standards in China since 1983,” unpublished paper, 1997.

²⁶¹ “Peasants in the vicinity of Beijing become poor due to illness,” *Ming Pao*, May 21, 1997.

²⁶² “Tiniest flood refugee is sick and lacks milk,” *Ming Pao*, August 21, 1998.

²⁶³ From a letter from a witness to the events on file with Human Rights in China.

²⁶⁴ World Bank, *China 2020: Financing Health Care*, Box 5.3, p.45.

increased in many provinces.²⁶⁵ While the infant mortality rate stands at 14.2 per thousand in urban areas, in rural areas it is 41.6 per thousand, and even higher in some poor areas.²⁶⁶ The mortality rate of children under five shows the same disparity, with the figure of 16.4 per thousand in cities and 51.1 per thousand in the countryside.²⁶⁷ With an overall under-five mortality rate of 47, China ranks 82 out of a study of 189 countries.²⁶⁸ Furthermore, the maternal mortality rate in urban areas is 39.2 per hundred thousand, while it is 76 per hundred thousand in rural areas.²⁶⁹

A survey of China's 300 poorest counties conducted by China's Ministry of Health, with assistance from UNICEF and UNFPA, provides similar information highlighting the inadequacies of maternal and child health. According to this survey, only one-third of women polled received any pre- or post-natal care; 60 percent of births were unattended; and only 36 percent of deliveries met with basic standards of hygiene. In the surveyed counties, maternal mortality averaged 202 per hundred thousand.²⁷⁰

Despite China's spirited children's health campaigns, including vaccination drives, unexpected outbreaks of immunizable diseases have been reported in some areas.²⁷¹ According to the official *China Daily*: "Twenty million babies born in China each year urgently need to have regular inoculations, but are presently neglected."²⁷² The World Health Organization and UNICEF are concerned that the level of vaccination coverage for children against infectious diseases has fallen since 1983. Particularly at risk are unregistered children, whose parents may have to pay to have their children inoculated. (See Article 16.) Moreover, a joint study by the Chinese Academy of Preventive Medicine and UNICEF found that 310,000 babies die from malnutrition each year and that 39 percent of rural children suffer from below-normal growth rates due to lack of food.²⁷³

Regarding iodine deficiency, the Addendum to the government's report claims: "Preventive measures, such as universal use of iodized salt and providing iodine oil for pregnant women and other people in need have also been adopted."²⁷⁴ This appears to imply that universal provision has already been achieved. In fact this is not the case, as according to *China Daily* "national coverage of iodized salt... has now reached 87 percent."²⁷⁵

Questions to ask the Chinese government representatives

1. Can the government provide information on the health status of women of different ages, ethnic groups, socio-economic backgrounds and occupations, broken down by province and disaggregated into urban and rural areas. Can the government provide information about rates of hospitalization and outpatient treatment for a range of different illnesses disaggregated by gender and by province and rural and urban areas.
2. Addendum 1 to the government's report states that benchmarks and monitoring of implementation of health plans are to be improved.²⁷⁶ Can the government provide information on what indicators it uses to measure women's health, and what efforts are

²⁶⁵ See World Bank, *China: Long-Term Issues and Options in the Health Transition*, 1992, and World Bank, *Tackling Health Transition in China*, August 1997.

²⁶⁶ UNDP, "Education, health and women's issues in China," <http://www.edu.cn/undp/shd/social.htm>.

²⁶⁷ Ibid.

²⁶⁸ UNICEF, *The State of the World's Children 1998 Summary*, page 15.

²⁶⁹ UNDP, "Education, health and women's issues in China."

²⁷⁰ See World Bank, *China: Strategies for Reducing Poverty in the 1990s*, 1992.

²⁷¹ UNICEF, "Comments on maternal and child health needs and strategies for the 1990s in China," New York, (no date) cited in World Bank, *China 2020: Financing Health Care*, p.12.

²⁷² Cited in "Urban health care seen as top priority," *South China Morning Post*, May 7, 1997.

²⁷³ Tom Korski, "310,000 Chinese babies dies from malnutrition," *South China Morning Post*, December 17, 1997.

²⁷⁴ CEDAW/C/CHN/3-4/Add.1, p.9.

²⁷⁵ Guo Nei, "Nation to meet target for IDD elimination," *China Daily*, June 10, 1998.

²⁷⁶ CEDAW/C/CHN/3-4/Add.1, p.8.

- being made to ensure that monitoring takes into account women's health status and needs?
3. Can the government provide information on how many years of training the various types of medical workers listed in the report have received and what the training consists of? E.g. "200,000 professionals, 340,000 rural women doctors and 350,000 midwives."²⁷⁷
 4. Can the government provide specific information about the situation regarding women and HIV/AIDS, including educational programs aimed at them (if any), availability of testing in different areas, what kind of counseling is available for women found to be HIV-positive, and treatment available for women with AIDS.

Recommendations

The Chinese government should:

- Sponsor studies disaggregated by sex that produce and make public statistics on health and health care in order to identify the health status and needs of women.
- Rapidly increase spending on health care, focusing on reaching the poorest people, especially women, and make it a priority to rebuild basic health infrastructure in rural areas.
- Immediately allocate funds to set up a nationwide gender-specific suicide prevention program, concentrating on reaching rural women, and providing necessary mental health services, especially services provided by women trained in women's mental health.
- Initiate a national campaign of education on STDs and HIV/AIDS, with particular information available to women. Testing and counseling should be provided for free. Ensure women access to effective treatment for such diseases. All information, testing, counselling and treatment should be provided on a basis of confidentiality.

Article 14: Rural Women

Overview

The Chinese government's report provides little information about the situation of rural women, focusing only on programs to eliminate illiteracy and to provide training in agricultural technology to them.²⁷⁸ Other aspects of the report do mention programs which also cover rural women, such as legal education campaigns, anti-trafficking measures, health programs and basic education.

The report entirely fails to mention the many ways in which rural women continue to experience particular disadvantages as compared to their urban sisters, including suffering disproportionately from poverty, poor living conditions and sanitation, lack of adequate health care, abuses relating to the population policy, effects of traditional prejudices against women and girls, domestic violence and lack of access to quality education, among other problems. It does not address the effects on women of the growing inequality between urban and rural areas. It also neglects the fact that most of the innovative programs which address women's rights, women's mental and physical health and so on are concentrated in the cities. Furthermore, the primary role of rural ACWF officials in enforcing the population policy means that they may not be trusted by women or available to assist with other types of problems.

Many of the principal types of discrimination and violence faced by rural women are covered in other parts of this report, including trafficking (Article 6), lack of health care and the epidemic of suicide (Article 12), the many violations associated with the population control policy (Article 16) and domestic violence (Article 16). This section will give a brief

²⁷⁷ CEDAW/C/CHN/3-4, p.24

²⁷⁸ CEDAW/C/CHN/3-4, p.27, and CEDAW/C/CHN/3-4/Add.1, p.6.

overview of the context for rural women: growing urban-rural inequality, widespread poverty, under- and unemployment in the countryside, lack of social security benefits and the feminization of agriculture. It will also outline how the residence registration (*hukou*) system perpetuates the second class status of rural women even when they migrate to the cities, and makes them particularly vulnerable to exploitation and abuse. Overall, this section will highlight the government's failure to act to protect the rights of rural women.

Growing inequality

As they are already substantially poorer than men,²⁷⁹ women are also disproportionately affected by China's growing gap between rich and poor. According to the World Bank, inequality in general in China has seen a steep rise in recent years, with the gulf between rural and urban areas continuing to be particularly pronounced.

*The income gap between China's rural and urban population is large and growing. According to State Statistical Bureau data, rural-urban disparities accounted for more than one-third of inequality in 1995 and about 60 percent of the increase in inequality between 1984 and 1995.... Adjusting these data for some of the shortcomings noted... reveals an even starker picture. Adjusted, rural-urban disparities accounted for more than 50 percent of inequality in 1995 and explain 75 percent of the increase between 1984 and 1995... China's rural-urban income gap is large by international standards... Rural incomes were only 40 percent of urban incomes in 1995, down from a peak of 59 percent in 1983.*²⁸⁰

Income alone is not a sufficient measure of inequality, as people who live in the cities enjoy much better public services than those in the countryside, which increase their incomes by an average of 80 percent. Until recently, most urban residents have enjoyed secure employment, virtually free housing, pensions and health care coverage, but rural residents have been mostly left to fend for themselves.

Other U.N. treaty bodies have expressed concern about the degree of urban-rural inequality in China. For example, the Committee on the Rights of the Child stated at its 1996 review of China's report that it was concerned about "the prevailing disparities between urban and rural areas and between regions in relation to the provision of and access to social services, including in the fields of education, health and social security."²⁸¹

As a number of scholars have noted, since 1949 the Chinese government has consistently followed a policy of giving preference to the needs of city dwellers.²⁸² In the reform era, concentration on developing the coastal provinces has created new disparities between the interior and those provinces. Thanks to their geographically advantageous position, the coastal provinces are also attracting a significant amount of foreign investment which further emphasizes the effect of preferential government policies.

Fiscal decentralization has also exacerbated existing inequalities, particularly in crucial areas such as financing of health care and education. In effect, such decentralization means that there is even less redistribution of resources than before, so poorer areas are left to cover most of the costs of health and education from their own locally-raised resources. As one scholar puts it:

While the discipline of the market with its ruthless budgetary constraints may contribute to more efficient investment of both public and private development resources in

²⁷⁹ According to the 1998 UNDP Human Development Report, the female share of earned income in China is 38.1 percent, compared to 61.9 percent for males.

²⁸⁰ World Bank, "Sharing Rising Incomes, Disparities in China," *China 2020 Series*, Washington, D.C., 1997.

²⁸¹ Committee on the rights of the Child, 12th Session, Jun 1996, CRC/C/15/Add.56.

²⁸² See for example, Martin King Whyte, "City Versus Countryside in China's Development", *Problems of Post-Communism*, January-February 1996.

*more prosperous areas, the evidence suggests that self-reliance and hard budget constraints deprive poorer localities and provinces of the most basic revenues needed for survival purposes, not to speak of productive investment.*²⁸³

According to some scholars, the impact of such changes are already visible in vital statistics about the rural population which show stagnant infant mortality rates (increased infant mortality for females), and increased crude death rates in certain provinces since the dissolution of the cooperative medical system.²⁸⁴

Widespread, persistent poverty

Much of China's rural population lives in constant fear of being poor. Some mothers are able to send their children to school, but others struggle just to provide for their basic needs: food, shelter, clothes.²⁸⁵

According to the World Bank's poverty line of one dollar per person per day, as many as 350 million people in China may be classified as poor.²⁸⁶ While there was a rapid reduction of the number of people living in poverty in the first half of the 1980s as incomes rose during the early phase of the economic reform program, since then the number of poor has remained relatively constant at around nine percent of the population, and many of those above the official poverty line remain highly vulnerable.²⁸⁷ The overwhelming majority of poor people live in the countryside.

The government's anti-poverty programs²⁸⁸ are targetted only at rural counties where the average income is below an amount which can provide for a daily intake of 2100 calories. Researchers estimate that as many of half of the absolute poor live outside these areas, and thus are not eligible for such programs. Some analysts have said that even within the poverty counties, production-oriented programs may not reach the poorest people, including the women.

*The result of this definition and approach [to determining poverty] is that scores of millions of rural people who, by income and consumption standards should be classified as destitute, yet who do not reside in areas that have been classified as poverty zones, must rely exclusively on household resources and the market to secure their meagre sustenance.*²⁸⁹

Unfortunately, to our knowledge the government has not collected gender disaggregated data on poverty. The most recent figures available show that in 1987, 107 million women lived in areas officially designated as poor.²⁹⁰ Many poor women belong to ethnic minority groups. Among the 592 officially-recognized poverty-stricken counties, 257 are populated primarily by minorities.

Under- and unemployment

²⁸³ Mark Selden, "China's rural welfare systems: crisis and transformation," Hong Kong Journal of Social Sciences, No.10, 1997.

²⁸⁴ Marion Jones, "Rising inequality and declining living standards in China since 1983," paper presented at the 1997 meeting of the Association for Asian Studies.

²⁸⁵ Govind Kelkar and Wang Yunxian, "Notes from the field: Farmers, women and economic reform in China," *Bulletin of Concerned Asian Scholars*, Vol.29, No.4, 1997.

²⁸⁶ The World Bank, *Poverty Reduction and the World Bank: Progress and Challenges in the 1990s*, Washington, D.C., 1996.

²⁸⁷ Selden, "China's rural welfare systems: crisis and transformation."

²⁸⁸ These are primarily focussed on food-for-work projects aimed at setting up new income generating programs in the areas in question, and until recently, have rarely included non-economic elements.

²⁸⁹ Selden, "China's rural welfare systems: crisis and transformation."

²⁹⁰ World Bank, *China Human Development Report*, February 1998.

The government does not recognize the existence of unemployment in the countryside, referring to those rural people who do not have work or are under-employed as “surplus labor.” According to official figures, however, there are about 150 million people in rural areas who are in this category. Some estimates put the number of “surplus” rural workers at up to 220 million.²⁹¹ No breakdown as to what proportion of these are women is known to be available.

Some urban workers are now seeking jobs in the township and village enterprises which have been a growing source of employment for rural workers in the last two decades (such enterprises are mainly concentrated in richer areas near big cities).²⁹² And despite the shortage of jobs in the countryside, the authorities are offering incentives such as tax exemptions and long leases on land to urban unemployed people who leave the cities to farm.²⁹³

Workers with rural residency in the cities who are laid off from their jobs or whose contracts are not renewed after completion are not counted as unemployed, and are ineligible for any unemployment benefits. Since they must have a job to be able to obtain an urban work permit, such migrant workers may also face expulsion from the city.

Although the government is now setting up retraining programs and unemployment benefits for urban jobless, no such programs are on the agenda for rural workers.

Lack of social security

While a relatively comprehensive social welfare system has, until recently, covered most residents of urban China, and new programs are now being created to patch some of the holes in the safety net created by the end of guaranteed employment, social welfare in the rural areas has been, and continues to be, neglected. As one scholar writes: “The extension of [the] social security system [for urban workers in state-owned and collective enterprises] to the non-state urban population has been given a top priority by the World Bank, but few large policy-making bodies appear to be interested in the extension of this social safety net to rural areas.”²⁹⁴

Some collectively-funded programs were operated under the old commune system, but when it was dismantled, responsibility for such assistance fell back almost exclusively onto families.²⁹⁵ Thus although the dissolution of the communes in the late 1970s and early 1980s resulted in an equitable land reform, it also generally meant the termination of collective health insurance and government-funded education. For many households, land is now held as a guarantee against recession and unemployment, and is retained even if the majority of household income comes from non-agricultural work.

One of the most problematic aspects of the lack of social security in the countryside is the government’s failure to set up a proper pension system, particularly in the light of the rapid greying of the Chinese population. Many commentators have pointed out that in the absence of such provisions, rural parents’ insistence on having a son is a understandable, as this is the only guarantee that they will have someone to care for them in their old age. This fact is a principal cause of the continuing conflict between the authorities and the rural population around the implementation of the population control policy, conflict which results in severe abuses of the rights of women and girls. (See Article 16)

²⁹¹ Daniel Kwan, “Economist predicts 28 percent jobless figure by 2000,” *South China Morning Post*, March 16, 1998; “Up to 260 million ‘out of work’ on the mainland,” Reuters, September 28, 1998.

²⁹² Chan Yee Hon, “Graduates look to township jobs as state work dries up,” *South China Morning Post*, May 20, 1998.

²⁹³ “Beijing sends jobless off to the fields,” Agence France Presse, March 25, 1998; Mark O’Neill, “Jobless balk at work on farms,” *South China Morning Post*, June 2, 1998.

²⁹⁴ Marion Jones, “Rising inequality and declining living standards in China since 1983,” paper presented at the 1997 meeting of the Association for Asian Studies.

²⁹⁵ Selden, “China’s rural welfare systems: crisis and transformation.”

Some efforts have been made to introduce voluntary pension schemes, but inevitably these are most used in the richer areas where people also have most chance of finding off-farm employment.²⁹⁶ Workers in township and village enterprises that exceed a certain size, such as 50 or 100 workers, might soon be included in a proposed mandatory pension scheme for urban workers. These enterprises employed about half the non-agricultural labor force in 1993.²⁹⁷

Lack of quality education

The deterioration of the economic status of many rural residents has been exacerbated by cutbacks in community health (see Article 12) and education services.

As mentioned above, fiscal decentralization has left many poor communities with insufficient money to provide basic education for free. In 1990, almost 100 percent of expenditures for primary education had to be raised by local governments.²⁹⁸ Although according to the Compulsory Education Law, nine years of education should be provided to all children for free, in practice fees are now charged in many rural schools under the title of “miscellaneous fees,” “book-bag fees,” “school building fees” and so on.²⁹⁹

Because the poorest areas have the lowest resource base, fees charged may actually be higher in these areas than in more well-off locations. According to the little information available, fees for primary school students are around 100 plus *yuan* per semester, with higher fees charged for middle school children.

According to the UNDP: “The most pressing problem faced by education in China is that of inadequate resources.” Yet the share of GDP devoted to government expenditure on education has continued to fall, with only 2 percent being allocated in 1995, well below the level of other developing countries. And some funds which should go to education have been misappropriated.³⁰⁰

When families find themselves unable to pay for their children’s education, the first to be withdrawn from school are the girls. In 1990, according to official statistics, 1.8 million children failed to go to school, about 1 million of whom were girls. A 1995 State Education Commission survey found that not being able to afford the fees was the reason given by families in about half the cases in which girls were not in school, and in the remaining cases, families said they wanted the girls to work.³⁰¹

Although the government now reports very high enrollment rates for primary education, 98.8 percent in 1996, even the UNDP has questioned these figures, stating: “Actual school enrollment rates may be somewhat lower than [the] officially reported rates.” In some areas enrollment rates are as low as 46 percent. Three quarters of the children not enrolled in

²⁹⁶ World Bank, “Old Age Security,” China 2020 Series, Washington, D.C., 1997, Box 1.1, p. 19.

In 1991 the Ministry of Civil Affairs introduced a voluntary pension insurance system for farmers and workers in township and village enterprises. The plan is being tried in 1,400 counties across the country on an experimental basis. So far, 50 million people are reported to be participating in this scheme and 4 billion *yuan* has been accumulated. The plan is based on voluntary deposits in savings accounts for retirement use. Participation is higher in the richer urban areas along the coast and nearby.

While at first glance the plan appears to be a success, a closer look reveals that in fact participants are contributing minuscule amounts. At only about 2 percent of a farmer’s annual income, this amount is unlikely to generate more than a 5 percent replacement rate of income after retirement.

²⁹⁷ Ibid.

²⁹⁸ UNDP, *China Human Development Report*, February 1998, p.43.

²⁹⁹ In response to a question from the Committee on the Rights of the Child in 1996 about school fees, the Chinese government insisted that compulsory education remained free so there were no “school fees.” But this is merely a semantic point; whether they are called school fees or given other names, students are being charged for basic education.

³⁰⁰ UNDP, *China Human Development Report*, February 1998, p.41.

³⁰¹ Ibid, p.49.

school have been found to be girls.³⁰² According to UNICEF, in some poor areas in the country, nearly all girls and close to half of boys do not attend school and will never learn to read.³⁰³

Discrimination against women

Although according to the LPWRI women have equal rights to land, in reality this is often not observed. Lease contracts for land and housing plots are generally still in the name of men.

Men and women are supposed to receive equal shares of land, but in some villages studied by researchers while an unmarried man receives 2.3 shares of land, (including one share for his future wife and 0.3 for his future child), an unmarried woman is allotted only one share of land because she is supposed to leave her village when she marries. And in some villages, if she fails to marry out she must pay for the privilege of staying. If a family has no sons, only one of the daughters can remain in the village after marriage.³⁰⁴

Like their urban counterparts, rural women apparently earn less than men, although their actual income is harder to assess.³⁰⁵ But, according to a 1995 survey by the Ministry of Labor, women working in agriculture earned 80 percent of what men did, while wages for rural women in non-agricultural work in the countryside were only 51 percent of men's.³⁰⁶

Feminization of agriculture

Whereas urban women are said to face a "double-burden," their rural sisters shoulder an even heavier load: the triple burden of farm work, child care and care for the elderly.³⁰⁷

Although women made up 47 percent of the rural labor force in 1995, they held 41 percent of the jobs in township and village enterprises, and only 21 percent were engaged in non-agricultural work, as compared to 43 percent of their male counterparts.

Thus there has been a feminization of agricultural work. According to the 1990 national census, more than 50 percent of the agricultural workers in developed areas such as Beijing, Shanghai, Jiangsu, Shandong are female, while studies have indicated that women's labor is responsible for between 50 and 70 percent of agricultural production.³⁰⁸

Unfortunately, the fact that women are responsible for working the family's land, operating sideline activities, in the management of the house and in child-care does not necessarily mean that their status rises.³⁰⁹

Second class status of rural migrants

Created in 1950s, and still in effect today, the elaborate system of migration restrictions which fixes an individual's place of residence registration (*hukou*) is "the most powerful reason for the growing urban/rural income gap," according to a senior scholar.³¹⁰ Contrary to the government's claim that it "does not place restrictions on the movement of persons and choices of residence,"³¹¹ in reality the system continues to have a profound impact on mobility.

³⁰² Ibid, p.39-42.

³⁰³ Quoted in *ibid*, p.44.

³⁰⁴ Govind Kelkar and Wang Yunxian, "Farmers, Women, and Economic Reform in China", *Bulletin of Concerned Asian Scholars*, October/December 1997, Volume 29, Number 4, p. 75.

³⁰⁵ Most income is earned by the household as a unit.

³⁰⁶ UNDP, *China Human Development Report*, p.50.

³⁰⁷ UNDP, *China Human Development Report*, p.68.

³⁰⁸ *Ibid*, p.49.

³⁰⁹ Govind Kelkar and Wang Yunxian, "Farmers, Women, and Economic Reform in China", *Bulletin of Concerned Asian Scholars*, October/December 1997, Volume 29, Number 4, p. 74.

³¹⁰ Martin King Whyte, *Ibid.*, p. 12.

³¹¹ CEDAW/C/CHN/3-4, p.28.

In essence, the *hukou* regulations divide Chinese society into two segments: urban/nonagricultural and rural/agricultural. At birth, children are registered at their mother's place of permanent residence, even if they were actually born at a different location. Those with *hukou* from rural areas who are not state employees are classified as belonging to "agricultural households," are ineligible for most state assistance and can only take up temporary employment and residence in the cities.

According to the law, rural-to-urban migrants require permits to leave their place of residence in order to seek work in another place, as well as a work permit from the city where they have a job, proof that they are unmarried or using birth control and various other official permissions depending on the locality. This system is complex, differing from place to place, and a newcomer may never be sure that he or she has all the right permits. This makes migrants highly susceptible to exploitation and abuse by employers and officials. If an individual does not have the required permits, she may be expelled from the city and repatriated to her home village.

This system is one of the reasons why migrant workers often endure harsh working and living conditions without complaint. Women migrants are particularly vulnerable in this regard.

Questions to ask the Chinese government representatives:

1. Please provide comprehensive data on the position of rural women and girls broken down by province, including information about such matters as employment, income, nutritional status, access to land, social security coverage, health insurance or other health care coverage, education status and so on.
2. Can the government provide details of government anti-poverty programs directed at women, and how general anti-poverty programs seek to include rural women?
3. What plans does the government have to extend pension systems to the poor areas, and to women in those areas in particular?
4. Can the government provide details of actions taken, including legal action, to ensure rural women equal access to land and inheritance?
5. What action is the government taking to increase funding for education in rural areas and to ensure that children in rural areas, girls in particular, are not prevented from going to school because they cannot afford the fees?

Recommendations:

1. Immediately begin a reallocation of resources to end the favored position of cities and decrease inequality between rural and urban areas. Ensure that such resources fully benefit rural women and contribute to improving their status. Particular emphasis should be placed on investing in education for rural children and adults.
2. As recommended under Article 2, the LPWRI should be amended to allow for women whose rights under the law have been violated to seek redress or remedy in the courts. In particular, sanctions should be enumerated against those who violate women's rights to equal shares of land and to inheritance. Women who have suffered discrimination of this type should be provided with assistance to seek redress.
3. Work should begin on devising a pension system which will provide basic coverage for all rural residents, including the poorest people.

Article 16: population policy

Introduction

Despite the concern expressed by the Committee during its review of China's previous report about aspects of the PRC's population policies and their effects, as well as the focus on this issue in the review of China's first report to the Committee on the Rights of the Child,³¹² the Chinese government devotes hardly any space in the present report to this subject, referring to it only in passing in reference to policies aimed at improving women's health.³¹³ The government report does not even mention any of the negative effects population policies have had.³¹⁴

Of course the population policy³¹⁵ has provided many women with access to the family planning services which are their right, and in this respect, should be affirmed. But too often the pursuit of demographic goals has overridden the needs and interests of women and girls, and has led to the use of physical violence and other coercive measures. The state's insistence on meeting demographic targets has combined with traditional attitudes and practices to threaten the survival, health, wellbeing and status of many women and girls. Increasingly, the burden of such misguided policies is falling disproportionately on the poor and politically powerless.

The population policy remains a "priority national policy," as we describe below, and the structural causes of the violations which its implementation can cause have not been changed. The problems and rights abuses associated with it cannot be discussed publicly in the Chinese media, however, in academic meetings and other private fora, advocates of women's rights in China have criticized some of the effects the policy has had on women and girls.³¹⁶

The authorities generally attribute those effects to "feudal thinking," implying that they have no responsibility for them. However, some researchers have found that most Chinese families actually want girl children as well as boys, but the population policy may

³¹² Committee on the Rights of the Child, 12th Session, June 1996, CRC/C/15/Add.56. The relevant sections from the concluding observations of the Committee on the Rights of the Child read as follows:

36. It is the Committee's view that family planning policy must be designed to avoid any threat to the life of children, particularly girls. The Committee recommends in this regard that clear guidance must be given to the population and personnel involved in the family planning policy to ensure that the aims it promotes are in accordance with principles and provisions of the Convention, including those of its article 34. The State party is urged to take further action for the maintenance of strong and comprehensive measures to combat the abandonment and infanticide of girls as well as the trafficking, sale and kidnapping or abduction of girls.

37. The Committee acknowledges the information provided by the State party on the results of two population censuses conducted in 1982 and 1990 and that the non-registration of new born girls is a major factor contributing to the imbalance in the ratio of boys and girls. The Committee, while noting that the State party had assorted measures to reduce the under-reported cases of girl children, recommends that urgent measures be taken to develop more widespread awareness of the importance of registration. In light of recent developments such as population movements within the country, the Committee also recommends that the State party consider the possibility of reviewing the effectiveness of the existing system of registration.

³¹³ See for example, CEDAW/C/CHN/3-4, p.11, pp.24-26.

³¹⁴ For the history and content of the population policy up until 1995, see Human Rights in China, *Caught between Tradition and the State: Violations of the Human Rights of Chinese Women*, August 1995.

³¹⁵ Here we use the term "population policy" or "population control policy" to translate the Chinese government's term *jihua shengyu zhengce*. This does not mean "family planning," as it is so often translated as doing. We believe that "population control policy" is closer to the Chinese term and to the intent of the government's efforts.

³¹⁶ See for example papers presented at Seminar on Reproduction, Sexuality, Ethics and Women's Rights: Feminist Perspectives, Chinese Academy of Social Sciences, 1994. On file with the authors.

make it impossible for them to have both.³¹⁷ Furthermore, since there are virtually no pension schemes for rural dwellers and women almost always marry away from their natal families while sons stay at home, people in the countryside need to have a son to provide for them in their old age.

The lack of reporting on abuses relating to the policy inside the country combined with the fact that the most serious rights violations occur in the countryside means that evidence is necessarily anecdotal. However, over the years independent accounts from reliable sources across the country point to a consistent pattern of official actions which constitute gross violations of human rights. The government has not only failed to take action to halt such abuses, but has also ignored the serious discriminatory effects of the policy, such as the imbalances in sex ratios at birth. This inaction means that the government has not adhered to the standards articulated in the Convention, nor those in the ICPD Plan of Action or the Beijing Platform for Action.

There are some positive developments worthy of mention. We are pleased to note that after a two-year interruption of UNFPA's assistance in China, in 1997 the Chinese government gave the go-ahead for a long-discussed UNFPA pilot program to be carried out in a number of rural counties which aims to show the effects of a purely voluntary family planning program concentrating on providing quality services without using coercive methods or demographic targets. We hope that this pilot program, which is scheduled to run until 2000, will be properly monitored and that its methods will be widely adopted. Another development is the recent change in the Adoption Law, which, if interpreted in a flexible manner as it should be, will mean that the many abandoned children and infants in welfare institutions can quickly find good homes and that the status of those in informal adoptions can be regularized so they are eligible for benefits available to other children.

Overview of abuses relating to the policy

In 1979, the Chinese government launched the "One Child Per Couple Policy." Harsh implementing measures and practices severely affecting the rights and health of women and girl children have been at best tolerated by the government, which has failed even to enforce existing protections contained in national laws, and at worst, such abuses have been encouraged by government policy.

The major elements of the population policy as currently practiced are as follows: couples have to apply for birth permits before starting a pregnancy; in some rural and all minority populations, couples can have two children, especially if the first-born is a girl, but a third is forbidden; after having the permitted number of children, women are required to wear an IUD or be sterilized, or use other contraceptive measures; unauthorized pregnancies have to be terminated; after having an out-of-plan child, one spouse must be sterilized.

In 1991, the government significantly tightened enforcement of the population control policy, issuing a document entitled Decision on Stepping Up Family Planning Work and Strictly Controlling Population Growth, which brought about major changes still in force today. Most crucially, this change tied the evaluation of the performance of population planning personnel and other local cadres strictly to the achievement of centrally-allocated birth quotas in their area: failure to keep the number of births within the quota may entail sanctions such as demotion or a loss of bonus.³¹⁸ In order to avoid such punishments and the resulting damage to their political careers, population officials may resort to drastic measures, which include acts of violence against women and girl children, as well as detention of pregnant women or members of their families.

³¹⁷ See, for example, Kay Johnson, "Adoption and Infant Abandonment in China," *Population and Development Review*, September 1998.

³¹⁸ According to observers of some regions of rural China, officials are assessed according to various different measures, but achievement of population quotas is the one aspect of the assessment which they are not permitted to fail.

Punishments for individuals and families who do not abide by population planning rules include heavy fines, loss of job, confiscation of property and demolition of homes. In order to meet rigid quotas, women have sometimes been subjected to forced abortions, sterilizations, or forced IUD insertion. Surgeries, including very late-term abortions, can be rushed, performed in unsanitary conditions and may result in medical complications. Sterilization, one of the principal forms of birth control, may also be performed when parents suffer from alleged “genetic disorders,” a practice justified by the eugenic objective of “improving the quality of the population.” In many places, there is a lack of proper family planning counseling and over-reliance on the use of sterilization and IUDs for contraception, which has serious effects on women’s health. In addition, the policy puts unfair burdens on women by not ensuring male participation in birth control practices.

Girl children, as well as some children with disabilities, face threats to their survival including sex-selective abortion, infanticide, neglect, non-registration and abandonment. These practices are officially banned, but in reality they continue as the objective of meeting quotas appears to override concerns about children’s health and survival. Sex-selective abortion, while illegal, is widely practiced and the large number of ultrasound machines in use makes eliminating it very difficult while the current demographic targets remain in place. The practices of infanticide and abandonment have returned with a vengeance since the early 1980s following the launch of the policy. Children whose births are unreported or who are born “out-of-plan” may not have an official legal identity: until registered, they are not eligible for such services as are available in their areas of residence, including immunization, public education and medical care.

Overall, official policy has contributed to a resurgence of harmful practices reflecting the traditional devaluing of girls and women, perpetuating social biases against them. A major consequence has been serious imbalances in sex ratios at birth.

Laws and regulations

The Constitution stipulates that the state should promote the practice of family planning (Article 25) and invokes the duty of couples to practice family planning (Article 49). The Marriage Law forbids marriage before the age of 22 for males and 20 for females, calling for “late marriage and late birth.”

However, no national law has been enacted specifically to regulate family planning. Relevant stipulations are included in various laws, including the 1981 Marriage Law, the 1992 PRC Law Protecting Women’s Rights and Interests (LPWRI), and the 1994 PRC Law on Maternal and Infant Health Care (MIHCL). National regulations on population control for migrant workers have been passed.

In September 1980, the CCP Central Committee issued an Open Letter calling for radical curtailing of population growth by limiting each couple to one child. The 1982 PRC Constitution and the 1980 Marriage Law called this Party policy a “basic national policy,” in other words a national priority. This policy and its implementing measures have proceeded from state level to the provinces and down to townships and rural units, all of which have discretion to enact population control regulations containing concrete measures to implement the policy. Enforcement varies greatly in different regions and much is left to the discretion of local officials.

Most provinces and municipalities have enacted laws providing for enforcement of the policy, all of which state that their intent is to implement the national policy. Governments below provincial level have also passed local regulations. Many of the provincial population control regulations explicitly provide for coercive measures, for example, stating that in case of an unauthorized pregnancy, known as an “out-of-plan” pregnancy, “remedial measures” must be taken to end it.³¹⁹ But none of these regulations, nor any national law or public policy statement, have prohibited any specific enforcement measures as cruel and illegitimate.

³¹⁹ “Remedial measures” is a commonly used euphemism for abortion.

Thus local authorities are implicitly given the green light to use whatever means necessary to meet the central government's targets for the number of births per year that are allocated from the top down to cities, townships and work units or villages. In particular, the majority of provincial laws and regulations do not place any limit on gestational age for abortions, and no national law or regulation containing such limits has been enacted. Although the 1992 LPWRI bans the use of violence against women and girls, no enforcement mechanisms are attached to the law (see Article 1).

Official actions associated with the population policy are specifically cited as being among the permitted subjects of administrative law suits under the Administrative Litigation Law, which allows citizens to sue government departments for violating laws and regulations in pursuit of their duty.³²⁰ However, informants from different areas have reported that courts have sometimes been ordered to refuse all suits relating to enforcement of the population policy, and we have not been able to document a single case in which an official has been prosecuted for malfeasance in relation to implementation of the policy.

Current trends and perspectives

Official statements continue to insist that the population policy is a successful endeavor which should be pursued at all costs.

According to the official China Population Information Center, China's average female fertility rate dropped to 1.8 in 1997, a below-replacement rate.³²¹ However, owing to its sheer size, the population is still growing at an annual rate of 13 million, with 21 million births registered in 1997.³²² As a result, the 1.2 billion target set for 2000 was already reached in 1994.³²³ In 1997, then Premier Li Peng reaffirmed that in order to meet the new goal of 1.3 billion population set for 2000,³²⁴ the current implementation methods should be retained, including the encouragement of late marriage and late birth, one child per couple, the responsibility system for family planning personnel and adequate services to ensure planned births.³²⁵ More recently, an editorial published in *People's Daily* spelled out the government's priorities: "[T]he Socialist system cannot sustain too many children. Natural resources are limited, and the environment is polluted. The only solution is to strengthen the One Child policy and make sure this dike will not burst."³²⁶

The population control policy has proved easier to implement in urban areas, where approximately 25 percent of the population live. The higher number of maternal and childcare clinics in cities and the tighter watch on women's reproductive functions allowed by the work unit system means that the policy is more successfully implemented. The effects of fertility transition seen in other countries are also apparent. The government emphasizes the connection between family size and economic wealth in slogans like "With two children you can afford a 14-inch TV, with one child you can afford a 21-inch TV."³²⁷

The strongest resistance to the policy has been in rural areas. Thus the main emphasis of enforcement is also placed there: "Put the stress on the rural areas, strengthen work at the

³²⁰ Suits can only be brought if the area of official action in question is explicitly included in the remit of the Administrative Litigation Law.

³²¹ United Nations Population Division, *World Population Prospects: The 1998 Revision*, forthcoming, p. 24. The level necessary for the replacement of generations is a fertility rate of approximately 2.1.

³²² "Bid to ensure low growth in population," *Xinhua*, February 14, 1997.

³²³ Public Information Committee of the China Organizing Committee for the Fourth World Conference on Women, <http://solar.rtd.utk.edu>.

³²⁴ "Premier calls for better work in family planning," *Xinhua*, July 24, 1997.

³²⁵ "Premier calls for better work in family planning," *Xinhua*, July 24, 1997.

³²⁶ "The One Child policy has burst too," *Renmin Ribao* (People's Daily), October 23, 1998.

³²⁷ "The one child family policy: the good, the bad and the ugly," *Health in China*, part 3, by Therese Hesketh and Wei Kingzhu, British Medical Association, *British Medical Journal*, June 7, 1997.

grassroots levels” is how the national population plan for 1995-2000 put it.³²⁸ “The promotion of family planning will be integrated with developing the rural economy to help the farmers become better-off,” the Minister then in charge of the State Family Planning Commission, Peng Peiyun, declared in 1997.³²⁹

In some areas the policy is actually being tightened. An example is Guangdong Province, which enacted new population control regulations in October 1998 specifying that ethnic minorities, originally allowed to have three children, are now restricted to two; and that rural couples can only have one child if the first-born is a boy. A second child is permitted only if the first one is a girl or is disabled, subject to official approval.³³⁰

State-sanctioned violence

Although the central government has repeatedly denied that it condones the use of force in the implementation of the population control policy, accounts of such violence continue to emerge. The government claims that officials who do use force will face punishment, yet we have not been able to document a single case in which an official has been prosecuted for such abuses. In our view, the lack of action against those who implement the policy through violent means combined with the pressure on local officials to meet strict targets for birth rates constitutes a tacit acceptance of these violations.

Over the years, there have been many accounts of how local officials have used force in carrying out the policy, including many testimonies by serving and former officials. In a recent example, a 22-year-old female population control officer described her daily work in an industrializing city suburb in Zhejiang Province in a spring 1998 interview:

Some of the people we are trying to control want to escape from us. Then we hold someone else in the family in a cell—the mother, the father...—for several weeks, several months, sometimes until the person in question shows up.

Occasionally the whole family disappears, they go off to another region. Then we burn their house....

The first time I went to a village, I was very shocked by the violent behavior of my colleagues: they shout and threaten people with truncheons. But now I'm used to it. It is necessary for the enforcement of the rules. There are too many people in China.³³¹

Accounts of raids, destruction of houses, beatings and detentions are very familiar from other testimonies of officials.

In her 1998 report, the UN Special Rapporteur on Violence against Women referred to the case of a Chinese man who was denied asylum in Canada because he was found to have “been an active participant in persecutory acts amounting to crimes against humanity.” A former birth control officer, he had taken part in “seeking out women who had violated the one-child policy ... tying the women up with ropes and taking them to the hospital where they were forcibly aborted or sterilized. He testified that he was aware of all the methods used to

³²⁸ *People's Daily*, February 24, 1995, in “Family planning work outlined for 1995-2000,” BBC Monitoring Services, March 27, 1995.

³²⁹ Closing ceremony of the 23rd IUSSP General Population Conference, Beijing, October 11-17, 1997, *China's Population Policy*, in *Population and Development Review*, Vol. 23, No. 4, December 1997, Document Section.

³³⁰ Zheng Caixiong, “Guangdong's birth rate too high,” *China Daily*, October 20, 1998, and “Guangdong cracks down on population explosion,” *South China Morning Post*, October 22, 1998.

³³¹ Interview with family planning official, spring 1998, on file with the authors. Residents of the area have “rural” household registration and are thus generally entitled to have two children. The fine for an out-of-plan birth in the district was 10,000 *yuan*, the official said.

implement the one-child policy in his commune, including forcible abortion on women in advanced stages of pregnancy and the killing by injection of fetuses born alive.”³³²

According to former population control official Gao Xiaoduan, population personnel can detain suspected violators of the policy without the involvement of the Public Security Bureau.³³³ Such detentions are illegal according to current Chinese law. In the facility she described, detainees include women who are pregnant out-of-plan, and others who are about to be sterilized or who have to pay fines. Inmates have to pay 8 *yuan* a day for food, and they are not allowed to make phone calls or write letters.

According to a testimony from a former detainee,³³⁴ local governments in Zhunyang County, Henan Province, maintain detention centers where they routinely hold hundreds of people. In most of these centers—the very existence of which violates national law—conditions are very poor, beatings are frequent and men and women are held in the same room. Elderly people and children have been detained in such centers as hostages to get family members to comply with the birth planning policy. As his account describes:

In August 1995 the Dalian Township government had set up three detention centers: one in the government compound, one in the rabbit farm and one in the Dongge School. Anywhere from 200 to 400 people, including 40 to 50 women, might be locked up at one time. Approximately 2,000 to 3,000 people were held in these detention centers between early July to August 18.

In Sunzhuang Village of Dalian Township, people say whenever they hear the sound of a motor vehicle, it doesn't matter if it's day or night, they think it's the Township government's Birth Planning Special Action Team come to grab someone. Everybody scatters and hides. Terrified children watch parents and grandparents get carted off. The adults live every day in fear...

The township government here detains pregnant women arbitrarily and as a matter of course.... Everybody knows the danger to a pregnant woman if caught by the township government's Special Action Team. She will be detained, and pressured to have an abortion. If she refuses, her family must pay a fine and only when the money is delivered will she be released.

*According to an elderly resident of Dalian Village, one summer morning in 1994 a pregnant woman from Gedian Township came to Dalian to do some shopping. She was picked up by the Special Action Team and taken into custody. Only after her family came and paid a fine to the township government was she released.*³³⁵

Those whose pregnancies are unauthorized can sometimes face forcible terminations. More commonly, individuals are put under such pressure that they “consent” to abortions.

- Former population official Gao Xiaoduan states that of 112 abortions performed by the Population Planning Office of Yonghe Township, Fujian, between January and September 1996, 71 were on women more than three months pregnant.³³⁶

³³² Commission on Human Rights, 54th session, Report of the Special Rapporteur on Violence against Women, its causes and consequences, Ms. Radhika Coomaraswamy, 26 January 1998, E/CN.4/1998/54

³³³ Forced Abortion and Sterilization in China: The View from Inside, Subcommittee on International Operations and Human Rights, Committee on International Relations, House of Representatives, June 9, 1998, Testimony of Gao Xiaoduan.

³³⁴ This testimony, written as an appeal to the Fourth World Conference on Women, was prepared by a peasant who lives in the locality and had experienced first hand conditions inside the detention centers. Dated August 20, 1995, the original is on file with Human Rights in China.

³³⁵ This case demonstrates the arbitrary nature of the detentions with particular clarity: as the woman in question was not from that township, the local population control cadres had no responsibility for her childbearing, yet they detained her anyway, merely for being pregnant.

³³⁶ Forced Abortion and Sterilization in China: The View from Inside, testimony of Gao Xiaoduan.

- A 24-year-old Beijing factory worker who had conceived out-of-plan said in an interview that her work unit forced her to abort when she was more than five months pregnant: “They sent me to the hospital. I was afraid. Even the doctors were against it.”³³⁷
- A company in a city in Shandong Province issued an order to an employee which stated that since she did not have a birth permit and she had not become pregnant at an age which fell under the definition of “late birth” according to the provincial population regulations (despite the fact that she was 22 and married), her pregnancy was “out of plan” and she should terminate it. The letter states: “Therefore you are hereby notified that you should immediately go to the XX City Hospital to undergo an induced abortion so as to end your pregnancy.”³³⁸

In order to ensure that out-of-plan children are not born, abortions are performed very late in pregnancy, including in the final trimester. The available evidence indicates that any termination prior to birth is considered an abortion. There have been repeated accounts of babies born alive being killed at birth by population personnel, in an officially-sanctioned form of infanticide. Gao Xiaoduan recalls her own experience:

*Once I found a woman who was nine months pregnant, but did not have a birth-allowed certificate. According to the policy, she was forced to undergo an abortion surgery. In the operation room, I saw how the aborted child’s lips were sucking, how its limbs were stretching. A physician injected poison into its skull, and the child died, and it was thrown into the trashcan.*³³⁹

According to a gynecologist, who worked in hospitals in Beijing and in a provincial city between 1983 and 1993, doctors and nurses are told that when a woman is sent in for an abortion, even if her child is born alive, it must not be permitted to live. Those medical personnel who ignore such instructions and allow babies born alive in such operations to survive will face administrative discipline, the doctor said.³⁴⁰

Like abortion, sterilization is a major implementing tool of the population control policy. For example, according to the “Jinjiang City Report on Planned-Birth Work” of October 11, 1997, 94.2 percent of the 71,801 women with two children and 99.4 percent of the 80,000 women with more than two children had been sterilized.³⁴¹ Although more research has reportedly been done on male sterilization,³⁴² figures show that the vast majority of sterilizations are performed on women: an official report said that in 1992, 95 percent of all sterilizations were performed on women.³⁴³

According to a survey of 186,000 individuals released by the State Family Planning Commission in 1998, of married couples who use birth control methods, 40 percent of women had been sterilized, as compared with 9 percent of men. Furthermore, the same report revealed that in 1997 only 39 percent of all women who underwent tubal ligation had counseling before surgery.³⁴⁴

Sterilization can also be used as a form of sanction against women. The Decision on Intensifying Implementation of Goals of Planned Birth Work in Yonghe Township, Fujian Province, issued on January 1, 1996, states: “All those who marry early and give birth early

³³⁷ “Officials trumpet contraceptive program,” *InterPress Service*, May 15, 1996.

³³⁸ Case materials on file with the author. City is unidentified to protect the person involved.

³³⁹ Forced Abortion and Sterilization in China: The View from Inside, testimony of Gao Xiaoduan.

³⁴⁰ Interview on file with Human Rights in China.

³⁴¹ Forced Abortion and Sterilization in China: The View from Inside, Subcommittee on International Operations and Human Rights, Committee on International Relations, House of Representatives, June 9, 1998, Testimony of Harry Hongda Wu.

³⁴² “China Population Officials Trumpet Contraceptive Program,” *InterPress Service*, May 12 1996.

³⁴³ “Women and Health in China: Anatomy, Destiny and Politics,” Veronica Pearson, *Journal of Social Politics*, Vol.25, No.4, 1996, citing *Beijing Review*, October 24, 1994.

³⁴⁴ “For One-Child Policy, China rethinks iron hand,” *New York Times*, November 1, 1998.

shall without exception undergo sterilization surgeries and shall be levied heavy fines.”³⁴⁵ An example of this policy in action is a woman in Bacuo Village in the same district who became pregnant without having obtained a birth permit. She decided to have an abortion as she did not want to violate the population policy. Later, population officials were told by an informant that the couple had given birth to a daughter and was hiding her. After a perfunctory examination, and despite the woman’s explanation that her uncle was on his way with a copy of the “Induced-Abortion Certificate,” they forcibly sterilized her. Because she was unable to have children, her husband beat her and repudiated her.³⁴⁶

Economic sanctions and fees

In order to make penalties more effective in rural areas where wage employment is not the norm, provincial regulations now tend to specify the amounts of the fines, formerly a percentage of planned birth violators’ wages. Such fines are a significant source of local government revenue. For example, in 1996 alone, Yonghe Township collected 3,559,860 *yuan* from violators of the policy.³⁴⁷

In its newly revised Family Planning Ordinance, Guangdong Province has increased penalties for those who violate birth regulations: fines have been increased from 1,000-3,000 *yuan* to 5,000-10,000 *yuan*.³⁴⁸ In some provinces like Guangxi and Hebei, new regulations specify that even when a second baby is allowed, parents have to pay "birth fees," which include the costs of giving birth and hospitalization. In some places, people have to pay to get a birth permit allowing them to begin a pregnancy.

Provincial regulations stipulate that out-of-plan children cannot be counted as members of families applying for “land use rights,” and in serious cases of violation, the “land use rights” can be revoked. This is a particularly severe penalty against peasant families, in a system where the surface of land allotted depends on the family size.

Such fees and penalties have a particular impact on the poor, and the concentration on fining violators of the quotas also mean that the policy is more likely to be enforced on poor families who are unable to pay.

Impunity

The Chinese government insists that coercion is not allowed, with the then head of the State Family Planning Commission, Peng Peiyun stating: “In no case is coercion allowed as a means of implementing family planning policy.”³⁴⁹ It does not condone violations committed by local officials³⁵⁰ and refuses to take responsibility for them.

However, such statements hardly ever appear in the Chinese domestic media, being primarily issued for foreign consumption. There is no indication that any such officials have been prosecuted. According to Gao Xiaoduan,

*To avoid being criticized and punished by their superiors (there is a very strict system of encouragement and punishment), planned birth cadres will resort to anything to achieve planned-birth goals set by their superiors ... However brutally such cadres infringe on human rights, they are never impeached and never punished for their actions.*³⁵¹

³⁴⁵ Forced Abortion and Sterilization in China: The View from Inside, Testimony of Harry Hongda Wu.

³⁴⁶ Forced Abortion and Sterilization in China: The View from Inside, Testimony of Gao Xiaoduan.

³⁴⁷ Forced Abortion and Sterilization in China: The View from Inside, Testimony of Mr. Harry Hongda Wu.

³⁴⁸ “Guangdong cracks down on population explosion,” *South China Morning Post*, October 22, 1998.

³⁴⁹ “Officials trumpet contraceptive program,” *InterPress Service*, May 12, 1996.

³⁵⁰ “China admits strong-arming families,” AAS, June 13, 1998.

³⁵¹ Forced Abortion and Sterilization in China: The View from Inside, testimony of Gao Xiaoduan.

Gao Xiaoduan's testimony at the US Congress prompted several officials to deny that population control officials were granted impunity, without providing further detail. Peng Peiyun, now NPC vice-chairwoman, said: "Family planning workers must act in accordance with the constitution, related laws and local family planning regulations... and an interior supervision mechanism must be set up so that problems can be discovered and solved promptly." Peng also warned against coercion and "excessive charges for service."³⁵²

Such statements, while welcome, overlook the fact that provincial and local regulations on the policy explicitly provide for harsh punishment and a certain degree of coercion. Furthermore, her comments point to the occurrence of illegal actions by family planning personnel, to the lack of a monitoring mechanism and to continuing impunity. By failing to take action against local cadres, the Chinese government implicitly condones coercion.

Eugenic measures

Under the 1994 MIHCL, people with serious hereditary diseases, "legal contagious diseases" or "relative mental disorders" are prohibited from bearing children. Those with any of the diseases listed in the law "may marry if they agree to take long-lasting contraceptive measures or give-up child-bearing by undergoing litigation" (Article 10).

This eugenics policy does not have any scientific basis. Under the law, a consent to termination of pregnancy or ligation operation has to be signed by the pregnant women or, if she is "legally incompetent," by her guardian (Article 19). This safeguard may not be sufficient to withstand the tremendous pressures involved in population control campaigns, when women or their guardians are likely to be pushed into signing agreements for abortion or sterilization.

In August 1998, *Xinhua* announced the government's intention to revise the provisions of the MIHCL that impose severe restrictions on the rights to marry and have children.³⁵³ This announcement was made during the 18th International Congress of Genetics held in Beijing, when China's eugenics policies came under severe criticism from foreign scientists.³⁵⁴ The provisions of the MIHCL contradict a statement from the Congress which said: "New genetic technology should be used to provide individuals with reliable information on which to base personal reproductive choices, not as a tool of public policy or coercion." Such a position requires that the medical personnel involved receive appropriate training. In China this is not happening, as a researcher found that two thirds of all Chinese genetics counselors thought that almost all genetic disorders were "severe enough to warrant termination."³⁵⁵

Access to family planning services

Routine monitoring of women's menstrual periods, use of contraception, births, IUD insertions and abortions is carried out as part of the population policy. Work units, neighborhood committees and individual officials are involved in maintaining such records. The objective is evidently to control women's reproductive behavior rather than giving them access to quality reproductive health care.

Despite recent reports on an easier access to condoms and other forms of contraception, as in so many countries, the responsibility for birth control overwhelmingly falls on women. According to a recent survey on 186,000 individuals by the State Family

³⁵² "China warns officials not to use force in family planning," *Agence France Presse*, July 7, 1998.

³⁵³ In October 1998 there were reports that the Family Planning Commission had issued circulars to order its branch organizations to stop the practice of forced abortions or sterilizations on eugenics grounds. No further detail is available.

³⁵⁴ "Eugenics law prompts conference boycott call," *South China Morning Post*, May 10, 1998.

³⁵⁵ "Roots of a controversy," *South China Morning Post*, August 16, 1998.

Planning Commission, 83 percent of married women use “some kind of contraceptive.”³⁵⁶ This estimate has to be compared to data released in 1992 by the China Population Information and Research Centre, which claimed that 93.6 percent of all contraception-users Chinese couples were using either sterilization or the IUD.³⁵⁷ According to more recent information, this percentage has fallen somewhat, with methods of contraception being used in 1995 as follows: IUD, 40 percent; tubal ligation, 40.3 percent; vasectomy, 11.4 percent; oral pill or injectable 3.6 percent; condoms, 3.6 percent; spermicide, 0.6 percent; and others 0.5 percent.³⁵⁸

However, the relative lack of male participation is particularly worrying in the light of the effects on women’s health of sterilization operations and the IUD use, especially in circumstances when women may have little access to health professionals who can assist in case of problems. Furthermore, there have been instances reported of enforced IUD insertion, and doctors may be penalized if they remove IUDs without permission, even for medical reasons.³⁵⁹

In September 1997 in Gaozhou City, Guangdong, dozens of people threw stones at the police to protest the death of a woman reportedly caused by a defective IUD. Local officials denied that that was the case and some 1,000 police officers rushed in to quell the demonstrations. The protests occurred after Zhaojiang county was raided by family planning personnel checking women with more than one child, to ensure that they had been sterilized or fitted with an IUD.³⁶⁰

Greater choice and availability of contraceptives and information about them, whatever the age and marital status of women, could help reduce the number of abortions and sterilizations. This is the broad line followed by some provinces like Heilongjiang, which added in its regulations on the subject that “family planning should focus on education and propaganda and contraceptive measures.” So far, government initiatives in this area have taken the form of pilot projects on a limited scale. Their common characteristics are a focus on education, counseling and informed choice.³⁶¹

While such a shift of emphasis is welcome, there is no indication that the demographic targets are being lifted in places where they are being carried out, which may mean that coercive practices could continue despite the new programs.

The only case in which coercion has theoretically been ruled out is the UNFPA-run project mentioned in the government’s report.³⁶² This stands out because it is intended to replace coercive implementation methods with counseling and education, and to exclude economic incentives and birth quotas. Instead, the project will rely on voluntary family planning, based on the fundamental principle that individuals have the right to decide on the size of their family and the spacing of their children. For example, couples will be presented with a choice of five different kinds of contraceptives, and the programs will also include sex education for teenagers and information about sexually transmitted diseases.³⁶³ There has not

³⁵⁶ “Contraceptive methods gain in popularity,” *South China Morning Post*, July 13, 1998.

³⁵⁷ Population in Asia, Warren C. Sanderson and Jee-Peng Tan, The World Bank, Washington D.C., 1995, p. 123.

³⁵⁸ Zheng Xiaoying, “Post-Cairo changes in population policies and programs in China,” in *Changes in Population Policies and Programs Post-Cairo*, ARROW, 1996, citing 1995 State Family Planning Commission study.

³⁵⁹ For more on this issue, see Human Rights in China, *Caught Between Tradition and the State*.

³⁶⁰ One-child policy warned on abuse, *South China Morning Post*, September 17, 1997.

³⁶¹ For example, in 1995 the State Family Planning Commission launched a pilot project in 11 counties involving more modern facilities, better training of family planning workers, and more education about contraceptive options. Since then, the project has reportedly been extended to another 100 counties, “Birth control policy to remain unchanged,” *China Daily*, March 16, 1998.

³⁶² For details about the program, see: UNFPA: Proposed Projects and Programmes, “Recommendations by the Executive Director, Assistance to the Government of the People’s Republic of China,” DP/FPA/CP/196, July 7, 1997.

³⁶³ “Women’s health is focus of project,” *China Daily*, March 21, 1998. “Beijing abandons one-child policy in certain pilot areas,” *The Irish Times*, March 16, 1998, quoting Business Weekly.

been any indication whether this approach, if found to be successful, could be systematically extended to the rest of the country.

Discrimination against the girl child

The traditional preference for boys combined with the requirements of the single child policy have exacerbated the discrimination against the girl child, reinforcing the secondary status of daughters and exacerbating pressures on mothers to give birth to sons. This discrimination may entail violent practices which the government has failed to prevent, as laws and regulations are not enforced.³⁶⁴

Ultimately, they are among the causes of a net imbalance in the Chinese population between the number of men and women. Although estimates vary, they all point to the same result. A magazine noted that there were 36.8 million more men than women in the Chinese population in 1995.³⁶⁵ According to the United Nations Population Division, in 1995, there were 54,549,000 boys in the 0-4 age group compared with 49,038,000 girls, and 61,614,000 boys in the 5-9 age group compared with 55,988,000 girls.³⁶⁶

The discrepancy is also apparent in the under-5 mortality rate, where the female/male ratio was 1.24 boy per girl in 1997.³⁶⁷ It is even more apparent in rural/urban disaggregated data: in 1994, the mortality rate in the 0-5 age group was 6.37 for boys and 7.58 for girls in cities, and 6.88 for boys and 8.38 for girls at county level.³⁶⁸ Demographers found that girls' probability of dying between 0 and 4 had increased since 1981, whereas in 1978 the rates were very close: 37 per thousand for boys and 38 per thousand for girls.³⁶⁹

Altogether, the sex ratio at birth was estimated at 113 boys per 100 girls in 1987,³⁷⁰ 118 or 119 male births for 100 female ones in 1994,³⁷¹ and again 118 boys per 100 girls in 1997.³⁷² The imbalance was found to be even higher among migrant workers in Beijing, where an average of 139 male births for 100 female ones was recorded.³⁷³ Furthermore, the sex ratio becomes more skewed at the third and fourth (and above) order births,³⁷⁴ an indication that, as parents' hopes of having a boy decrease, girls' risks of "disappearing" increase. Thus the preference for boys stands in the way of fertility reduction, since parents with no son want more children.

The "missing" girls

The government has not produced a satisfactory accounting of what is happening to these missing girls, but sex-selective abortion, infanticide, neglect, abandonment and non-registration are responsible in unknown proportions.

Sex-selective abortions have been outlawed nationwide, a prohibition mirrored in provincial regulations. For example, Heilongjiang Province adopted a regulation that specifies that parents who terminate a second pregnancy without legitimate reason will lose their special permission for a second birth. In spite of such legislative measures, a 1996 report by

³⁶⁴ See *Caught Between Tradition and the State* for more details.

³⁶⁵ News Update, *China Rights Forum*, Spring 1998, citing *The People's Forum*.

³⁶⁶ United Nations Population Division, *Sex and Age Distribution of the World Populations: The 1996 Revisions, 1997*.

³⁶⁷ *The World Health Report 1998*, World Health Organization, 1998.

³⁶⁸ Pearson, *Women and Health in China: Anatomy, Destiny and Politics*, citing the official *Beijing Review*.

³⁶⁹ Yves Blayo, *Des politiques démographiques en Chine*, INED, PUF, Paris, 1997

³⁷⁰ *Caught...*, p. 49.

³⁷¹ "118 boys born for every 100 girls, conference told," *South China Morning Post*, October 18, 1997.

³⁷² "118 boys born for every 100 girls, conference told," *South China Morning Post*, October 18, 1997

³⁷³ "118 boys born for every 100 girls, conference told," *South China Morning Post*, October 18, 1997.

³⁷⁴ Yves Blayo, *Des politiques démographiques en Chine*, INED, PUF, Paris, 1997, p. 337.

the State Statistical Bureau acknowledged that the practice of finding out the sex of the fetus through ultra-sound and aborting if it was female was still common in rural areas.³⁷⁵

Although the death of both male and female infants appears to be under-reported in China, demographers have noted an abnormally high mortality rate among girls after one month.³⁷⁶ In addition to killing at birth, neglect could be a primary cause for this phenomenon, for example less medical attention and treatment being provided for girls. This is supported by the results of a six-year survey of three Shaanxi villages which found that under-reporting of births accounted for only 10 per cent of the missing girls. This suggests that 90 per cent of them were killed, abandoned or died of neglect.³⁷⁷

For obvious reasons, there are few accounts of infanticide. A rare story in a Chinese magazine described a man in north-east China who had suffocated his two daughters in order to start a new family with a son. "I was unable to continue the family line for my ancestors. What a sin!"³⁷⁸ Infanticide is a crime under both the LPWRI and the Criminal Code, but this practice continues in reality, and reports of prosecutions for infanticide or abandonment are extremely unusual. The Chinese government has consistently refused to take any responsibility for the reported surge in the number of infanticides, blaming "feudal attitudes." Media reports about the issue of infanticide have been discouraged by propaganda authorities.

Abandonment, primarily of girls and children with disabilities, is a major problem across China, both in urban and rural areas.³⁷⁹ The evidence shows that the problem increased since the introduction of the One Child Policy. Officials in Shenyang said that in one district of the city alone, "Every year, no fewer than 20 abandoned baby girls are found in dustbins and corners."³⁸⁰ Abandoned children may die of exposure, end up in welfare institutions where many also die due to poor conditions and poor health, or be adopted.³⁸¹ Observers have stated that 90 percent of "orphans" are girls, an indication that parents chose to abandon their daughter if it means getting another chance of having a son. For example, 92 percent of the 16,000 children abandoned in Hunan between 1986 and 1990 were girls.³⁸²

A 1991 report by the Hunan Civil Affairs Bureau found that while the number of foundlings was on the rise since the late 1980s, there was not a single case of successful prosecution and sentencing of people who abandoned children, and it criticized the authorities for failing to enforce the law.³⁸³ In its initial report to the Committee on the Rights of the Child, the Chinese government stated that only "where the circumstances are grave enough" does Chinese law consider the abandonment of children a crime. The ACWF has reportedly found it difficult to take up the cause of abandoned girls, because drawing attention to this issue is seen as an implicit criticism of the population control policy.³⁸⁴

The available evidence indicates that many of the abandoned infants and girls have actually been informally adopted within China.³⁸⁵ Previously, the Adoption Law meant that

³⁷⁵ "Young women threaten plan to control numbers," *South China Morning Post*, October 9, 1996.

³⁷⁶ Morbidité, Mortalité: problèmes de mesure, facteurs d'évolution, essai de prospective, La mortalité selon le sexe des jeunes enfants en Chine, INED, Yves Blayo, 1996.

³⁷⁷ Pearson, "Women and Health in China: Anatomy, Destiny and Politics," citing Greenhalgh et al.

³⁷⁸ "Female infanticide 'will lead to an army of bachelors'," *The Daily Telegraph*, April 11, 1997, citing magazine *Theory and Time*.

³⁷⁹ For an account of conditions in some of China's orphanages, see Human Rights Watch/Asia, *Death by Default, A Policy of Fatal Neglect in China's State Orphanages*, 1996.

³⁸⁰ "Female infanticide 'will lead to an army of bachelors'," *The Daily Telegraph*, April 11, 1997, citing magazine *Theory and Time*.

³⁸¹ For a child's account of conditions in one orphanage, see Sophia Woodman, "Fighting a tradition of abuse, an interview with Ai Ming," *China Rights Forum*, Spring 1996.

³⁸² Morbidité, Mortalité: problèmes de mesure, facteurs d'évolution, essai de prospective, La mortalité selon le sexe des jeunes enfants en Chine, INED, Yves Blayo, 1996.

³⁸³ Kay Johnson, "The politics of the revival of infant abandonment in China, with special reference to Hunan," *Population and Development Review*, 22(1), March 1996.

³⁸⁴ Johnson, "The politics of the revival of infant abandonment in China, with special reference to Hunan."

³⁸⁵ Johnson, "Adoption and Infant Abandonment in China."

childless couples under 35 and those who already had children were not permitted to adopt children or infants with disabilities. Sometimes those who have adopted foundlings have faced population control policy sanctions, including fines and other penalties.³⁸⁶ The revisions to the law, which come into force next April, allow anyone over the age of 30 to adopt, and lift the one-child limit, both welcome changes which should make it easier for abandoned infants to be moved quickly out of welfare institutions into families.

Children born out-of-plan who have not been registered have no legal identity. If their parents want to register them, they incur punishment: According to an unwritten rule, out-of-plan births for which a fine has not been levied cannot be entered into the residence register.³⁸⁷ *Xi'an Evening News* reports on a meeting about a city-wide census and clean-up of the hukou system in the city: "This meeting ... clarified that all those children of mothers registered in Xi'an whose births had not yet been registered should be permitted to register their residence, and that on no account were people to be prevented from registering their children's residence as a form of punishment for out-of-plan births."³⁸⁸

A slogan painted on the outside wall of an apartment block in rural Hubei Province, Laohekou City, National Route No. 316, tells of the discrimination suffered by out-of-plan children and their families: "The family wealth of those having children out-of-plan should all be lost. The families of those having children out-of-plan should be broken up and dispersed. Laohekou City Glass Fiber Factory No.2."³⁸⁹

Groups of particular concern

—Migrants

Rural to urban migrants are a particular focus of the population planning authorities, with special regulations enacted in a number of cities directed at migrants. Official statements in both official and mass media support popular belief that migrants are having more children than allowed by population planning policies. Labels such as "above-plan birth guerillas" or "corps that break the birth control policy" perpetuate a common belief that rural women migrate to the city specifically to escape reproductive controls at home.³⁹⁰ These portrayals of migrant fertility build upon and heighten urban residents' resentment of newcomers, particularly female ones.

In an effort to control their fertility, many municipal and provincial governments adopted population planning measures directed at migrants in the late 1980s. National measures to achieve this goal were adopted in 1991. In line with official concerns, these policies focus on binding migrants within and under the watch of a unit responsible for population control.³⁹¹ Migrants are now required to carry special population planning certificates, without which they cannot get a job, be issued a temporary residence permit or other official documents, or rent housing. Landlords who rent to migrants must ensure that their tenants are following population planning policies, and report those who do not to local street committees.

³⁸⁶ The paper cited above describes a case in which a couple, both approaching 60 and with grown up children, took in a foundling abandoned near their home. Population control officials forced them to pay a fine for adopting this "out-of-plan" child, and insisted that one of them be sterilized. The husband had a vasectomy.

³⁸⁷ Yu Xirong, "Measures for Dealing with Coordination Between Household Registration Management and Family Planning Management," *Population Research*, Vol.21, No.6, November 1997.

³⁸⁸ *Xi'an Evening News*, November 8, 1997.

³⁸⁹ According to the reader who sent the photo to the Internet Chinese language publication "Small Reference" (*Xiaocankao*), the slogan, painted in one meter high letters, has been there for around two years. Published October 4, 1998, on <http://www.geocities.com/Athens/Parthenon/2833/birth.jpg>

³⁹⁰ Gang Liu and Sidney Goldstein, "Migrant-Nonmigrant Fertility Differentials in Anhui, China," in Chan, *Internal Migration in China*.

³⁹¹ Dorothy, Solinger, *Contesting Citizenship in Urban China: Peasant Migrants, the State, and the Logic of the Market* (University of California Press, forthcoming).

Those who do not comply may be expelled from the cities. For example, in the fall of 1996, the Shenzhen authorities ordered over 700 female migrant workers with more than one child to leave the city, as a punishment for violating the population control policy.³⁹²

—**The poor**

UNFPA noted that in China there are “great socio-economic disparities, especially between urban and rural areas in terms of income and access to and availability of social services including health care, particularly reproductive health care.”³⁹³ As a result of the shift from central to local and provincial governments in the provision of welfare, reproductive health is under-funded in some regions. In poor areas, Chinese women thus do not enjoy equal access to family planning services. For example, according to UNFPA, in some rural areas, the maternal mortality rate is reported to be between 400 and 700 deaths per 100,000 live births.

In the system of economic sanctions, workers who have benefits and bonuses associated with their jobs will be deprived of these if they have a third or a fourth child. Similarly, peasants may lose their contracted land and any welfare benefits available to them. Low income families may be devastated by these kinds of sanctions and their living conditions can degenerate dramatically. Yet some provincial regulations make such punishments non-negotiable and state that no government assistance should be provided even when a couple under such sanctions consequently faces subsistence difficulties. Economic penalties thus worsen the living conditions of society’s poorest and most disadvantaged people, and their children.³⁹⁴

Questions to ask the Chinese government representatives:

1. The central government has repeatedly stated that it does not condone the use of coercion in the implementation of the population policy. Can the government provide details of how it defines coercion in this context? Can the government provide details of how it has communicated the prohibition on coercion to officials responsible for enforcing the policy, including providing copies of any circulars or other documents containing such prohibitions, and how it has communicated this to the public? Can the government provide details of cases in which officials have been prosecuted for using force in the implementation of the policy, or been otherwise disciplined? Can the government provide details of cases in which people have lodged complaints and law suits relating to problems in implementing the population policy, including the nature of the cases and their outcomes?
2. Can the government provide any estimates it has compiled on the number of children whose births are not reported, and on the prevalence of sex-selective abortion, infanticide and abandonment. What measures have been undertaken to end such practices?

Recommendations

- A law should be enacted, or other laws should be amended to specifically prohibit the use of physical force or other excessive methods in the implementation of the population control policy. Forced abortion, forced sterilization and forced IUD insertion and the killing of babies born alive should be explicitly outlawed, and clear standards should be set for what types of behavior by officials or others enforcing the policy are unacceptable. Officials, and others, who violate these legal provisions should be prosecuted and/or removed from their posts. The protections available under the LPWRI and the MIHCL should be given legal force to ensure they are actually implemented.

³⁹² “Migrants with more than one child expelled,” *South China Morning Post*, October 30, 1996.

³⁹³ United Nations Population Fund Proposed Projects and Programmes, Recommendation by the Executive Director, Assistance to the Government of China, 8 July 1997, DP/FPA/CP/196.

³⁹⁴ For more detail on this issue, see Human Rights in China, *Caught Between Tradition and the State*.

- A high-level commission of independent experts from inside and outside China should be given wide powers to investigate what has happened to the “missing” girls and formulate appropriate strategies, both in law and policy, to prevent infanticide, sex-selective abortion, abandonment and neglect of female children. All unregistered children should be registered, and the practice of preventing registration of “out-of-plan” children should be eliminated. Any measures allowing for discrimination against “out-of-plan” children must be abolished.
- The practice of linking demographic targets to the assessment of officials should be eliminated, and family planning programs should shift their emphasis from achieving fixed birth quotas to providing quality care, expanded choices and enhanced counselling services, including providing a wider range of contraceptive methods from which couples can choose. All decisions on reproductive health should be made by the women involved on the basis of the fullest possible information. Male participation should become a central focus of family planning programs.
- Free and extensive reporting about violations of human rights and other problems associated with the population control policies should be permitted to allow full public discussion of the whole range of issues involved. Such reporting should make clear that the use of illegal force against women and children is a crime, whoever commits it.
- Scientists and health experts must be able to air their opinions openly on questions relating to genetic testing and proper scientific training on such issues should be provided to policy-makers, health officials and family planning providers.
- All eugenics provisions in laws and regulations should be repealed, particularly those in the MIHCL, and any mentions of “quality” births should be eliminated. Any sterilizations performed on people with disabilities must be strictly on a voluntary basis, and violations of this principle should be penalized.
- The government should take concrete steps to enhance the status of women in rural areas and start to establish a comprehensive pension system in rural areas.

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Asia Monitor Resource Center (AMRC) is an independent NGO which provides information, research, publishing, training, labor networking and related services to trade unions, labor groups, and other development NGOs in the region on Asian labor issues. The Center's main goal is to support the democratic and independent labor movement in Asia. AMRC upholds the principles of workers' empowerment and gender consciousness, and follows a participatory framework. We believe that the following conditions will help workers to become truly empowered: workers must have access to information, tools and skills, as well as opportunities for the exchange of experiences and ideas; men and women must work together as equal partners; the international solidarity of workers must be strengthened; and workers' perspectives and alternatives must be articulated and translated into action, including education and training programs, campaigns and other organizing strategies. The major services provided by AMRC are the following:

1. Research: AMRC undertakes research on major issues affecting workers in the region as a whole or in individual countries. Some projects are undertaken with the participation of regional or local labor groups. Research projects can be industry specific, issue specific, country specific, cross-country, theoretical, etc.
2. Publications:
 - a) "Asian Labor Update"(ALU), a quarterly newsletter which examines important labor issues and current events in the Asia-Pacific region from the workers' perspectives.
 - b) Books, research reports and monographs on specific labor issues in Asian countries.
 - c) "ALARM Update": For 1998, AMRC is responsible for putting out the monthly ALARM Update containing news briefs and feature articles related to APEC.
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The chief goal of China Labour Bulletin (*CLB*) is to promote the establishment of independent trade unions and workers' organisations in China. The organization was founded by Beijing labour activist Han Dongfang after he was expelled from China in 1994. Han was an elected leader and spokesperson for the Beijing Workers' Autonomous Federation during the 1989 Democracy Movement.

CLB is in regular contact with Chinese workers through our twice weekly radio broadcasts into China on labour issues. Much of our information and analysis is based on direct contact via telephone and mail. We publish a regular bulletin, *China Labour Bulletin*, in both Chinese and English, the aim of the latter being to raise awareness of the labour situation in China in the international trade union and labour movement. *CLB* also publishes special reports on working conditions in specific industries such as food, mining and electronics and among working groups such as women and migrant workers.

We are funded by international labor unions and secretariats and foundations from Europe and North America.

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Hong Kong Christian Industrial Committee (CIC) is an ecumenical labor NGO founded in 1968. It is a church mission to Hong Kong workers and the poor. For the last 30 years, CIC has been independently involved in the autonomous trade union movement, trade union education, labor education and advocacy, including for changes in government policy. CIC also extends its concern about workers' rights to other countries.

Since 1991, Mainland China has been one of CIC's main concerns. In 1991, it set up a project for migrant workers from Mainland China in 1991 and in 1993, a documentation service on working conditions in China. These give alternative pictures of the situation of Chinese workers under economic reform and economic globalization. Research papers produced so far have covered working conditions in the Pearl River Delta. CIC has also organized campaigns in Hong Kong and around the world against the violation of the rights of Chinese workers by trans-national corporations and their suppliers. Information provided by CIC has been widely used by the international community, including the United Nations, trade unions, NGOs, academics and the media.

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Human Rights in China (HRIC) is an international, non-governmental organization focused on monitoring and promoting human rights in the People's Republic of China. HRIC's research, education and advocacy projects aim at promoting human rights and at increasing awareness about the human rights situation in China. HRIC's program areas include: information collection and dissemination; humanitarian assistance; legal support; human rights education and outreach; research and publications; and advocacy at the U.N. and other international fora. HRIC conducts systematic research and analysis of social and economic conditions in China with the aim of encouraging the integration of a human rights perspective into China's development project. The organization's research examines concrete problems facing women, workers, children and migrants. In doing so, HRIC illustrates the indivisibility and universality of rights, and the vital connections between the protection of social and economic rights and the enjoyment of civil and political rights.

HRIC carries out educational activities through its own publications in both Chinese and English which are distributed inside and outside China, as well as on the Internet. HRIC's Chinese language handbooks contain educational information about international rights standards and on how to use domestic and international mechanisms. Its thematic reports are distributed worldwide to the United Nations, government officials, scholars, scientists, reporters and NGOs. China Rights Forum, the quarterly journal published by HRIC, links together the various strands of the organization's work.