

**REFUGEE WOMEN AND  
DOMESTIC VIOLENCE:  
COUNTRY STUDIES**

**China**

**A report by**

**Refugee Women's Resource Project**

**Asylum Aid**

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Copies of Parts 1 and 2 of the report, provided in a ring binder to which this and subsequent issues can be added, can be obtained from RWRP at the address below at £10 each. Alternatively, the reports can be downloaded from our website at [www.asylumaid.org.uk](http://www.asylumaid.org.uk).

Please note: we have highlighted in bold sections of the text which we consider may be particularly relevant for ease of reference.

### **Refugee Women's Resource Project March 2002**

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# PEOPLE'S REPUBLIC OF CHINA

## 1. Introduction

### 1.1 Political background

The Chinese Communist Party lead the political system in the People's Republic of China, with an ideology based on socialism but currently incorporating economic reforms. The US State Department report for 2000 notes:

*“The People's Republic of China (PRC) is an authoritarian state in which the Chinese Communist Party (CCP) is the paramount source of power. At the national and regional levels, Party members hold almost all top government, police, and military positions. Ultimate authority rests with members of the Politburo. Leaders stress the need to maintain stability and social order and are committed to perpetuating the rule of the CCP and its hierarchy. Citizens lack both the freedom peacefully to express organized opposition to the Party-led political system and the right to change their national leaders or form of Government. Socialism continues to provide the theoretical underpinning of Chinese politics, but Marxist ideology has given way to economic pragmatism in recent years, and economic decentralization has increased the authority of regional officials. The Party's authority rests primarily on the Government's ability to maintain social stability, appeals to nationalism and patriotism, Party control of personnel, media, and the security apparatus, and the continued improvement in the living standards of most of the country's almost 1.3 billion citizens. The Constitution provides for an independent judiciary; however, in practice the Government and the CCP, at both the central and local levels, frequently interfere in the judicial process, and the Party and the Government direct verdicts in many high-profile political cases.*

*“The security apparatus is made up of the Ministries of State Security and Public Security, the People's Armed Police, the People's Liberation Army, and the state judicial, procuratorial, and penal systems. Security policy and personnel were responsible for numerous human rights abuses.”<sup>1</sup>*

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<sup>1</sup> U.S. Department of State (2001), *2000 Country Reports on Human Rights Practices*, Washington, Bureau of Democracy, Human Rights, and Labor

## 1.2 Human rights practice

Human rights abuses continue to occur, including in relation to freedom of expression, religion and political opinion, and there were abuses by security forces and within the judicial system. Human Rights Watch noted in its 2001 report:

*“Chinese authorities showed no signs of easing stringent curbs on basic freedoms. Their preoccupation with social stability, fueled by a rise in worker and farmer protests, severe urban unemployment, and separatist movements in Tibet and Xinjiang, led to tight political control. The leadership continued to see unauthorized religious practices as potentially subversive.*

*“China reacted to perceived threats with repression, control of information, and ideological campaigns. It released a few dissidents before their prison terms expired, but it imprisoned many more for acting in support of their political or religious beliefs. The government attempted to cut off the free flow of information within China and between China and other countries. The Internet and its potential for free exchange of ideas generated particular alarm in official circles, but academics, journalists, publishers, and film makers all faced censorship. On the ideological side, President and Party Secretary Jiang Zemin initiated two campaigns, the “three stresses” and the “three represents,” to reinforce unity within the Chinese Communist Party (CCP) and convince China’s citizens of benefits of the CCP’s role.*

*“On the positive side, Chinese authorities continued to reform the legal system, seeking international expertise to help design new legal structures, train judicial and legal personnel, and help disseminate information on the reforms to the public, the courts, and the police.*

*“Legal reform moved forward, but judicial abuses were still common. In Hebei province, a high court on three occasions overturned murder convictions against four peasants, citing doctored evidence, torture, and threats. Local officials, however, decided to try the men again. **In Guangzhou, in July 1999, a migrant woman who appeared upset and who failed to present identification to police, was gang raped after police took her to a psychiatric ward. Her decision to press for an investigation led to destruction of evidence and allegations that she had fabricated the case. Only after the case had been publicized in November 1999 was one of the perpetrators charged with rape and eventually convicted, and three police reportedly dismissed.***

*“Chinese courts continued to impose the death penalty for a wide variety of offenses, a list that grew as authorities stepped up their anti-corruption campaign. In October, China’s highest court issued a judicial interpretation calling for more aggressive use of the death penalty against smugglers of arms, counterfeit currency, and endangered*

*species, and against government officials who aided them. The executions of two high CCP officials were extensively publicized as warnings to other officials involved in bribe-taking: Cheng Kejie, former vice-chairman of the Standing Committee of the National People's Congress (China's legislature), executed on September 14, was the highest ranking official executed since the founding of the PRC in 1949; Hu Changqing, former governor of Jiangxi province and former deputy director of the Religious Affairs Bureau, was sentenced in February and executed March 8.*

*“South Korean NGOs reported the forcible repatriation of North Korean refugees by Chinese authorities, but independent confirmation was not possible.”<sup>2</sup>*

The U.S. State Department report notes that in 2000:

*“The Government's poor human rights record worsened, and it continued to commit numerous serious abuses. The Government intensified crackdowns on religion and in Tibet, intensified its harsh treatment of political dissent, and suppressed any person or group perceived to threaten the Government. However, despite these efforts, many Chinese had more individual choice, greater access to information, and expanded economic opportunity. Nonetheless by year's end, thousands of unregistered religious institutions either had been either closed or destroyed, hundreds of Falun Gong leaders had been imprisoned, and thousands of Falun Gong practitioners remained in detention or were sentenced to reeducation-through-labor camps or incarcerated in mental institutions. Various sources report that approximately 100 or more Falun Gong practitioners died as a result of torture and mistreatment in custody. Controls on religious practice and freedom of expression also were intensified in Tibet and remained tight in Xinjiang. Only a handful of political dissidents remained active publicly. The Government's respect for religious freedom deteriorated markedly during the year, as the Government conducted crackdowns against underground Christian groups and Tibetan Buddhists and destroyed many houses of worship. The Government significantly intensified its campaign against the Falun Gong movement, which it accused in October of being a reactionary organization, as well as against "cults" in general. A number of qigong groups were banned.*

*“The Government continued to commit widespread and well-documented human rights abuses in violation of internationally accepted norms. These abuses stemmed from the authorities' extremely limited tolerance of public dissent aimed at the Government, fear of unrest, and the limited scope or inadequate implementation of laws protecting basic freedoms. The Constitution and laws provide for fundamental human rights; however, these protections often are ignored in practice. Abuses included instances of extrajudicial killings,*

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<sup>2</sup> Human Rights Watch (2001), *World Report 2000*, available at [www.hrw.org](http://www.hrw.org)

*the use of torture, forced confessions, arbitrary arrest and detention, the mistreatment of prisoners, lengthy incommunicado detention, and denial of due process. In May the U.N. Committee Against Torture issued a report critical of continuing serious incidents of torture, especially involving national minorities. Prison conditions at most facilities remained harsh. In many cases, particularly in sensitive political cases, the judicial system denies criminal defendants basic legal safeguards and due process because authorities attach higher priority to maintaining public order and suppressing political opposition than to enforcing legal norms. The Government infringed on citizen's privacy rights. The Government maintained tight restrictions on freedom of speech and of the press and increased its efforts to control the Internet; self-censorship by journalists continued. The Government severely restricted freedom of assembly and continued to restrict freedom of association. The Government continued to restrict freedom of religion and intensified controls on some unregistered churches. The Government continued to restrict freedom of movement. Citizens do not have the right peacefully to change their Government. The Government does not permit independent domestic nongovernmental organizations (NGO's) to monitor publicly human rights conditions.*

*“Violence against women (including coercive family planning practices-which sometimes include forced abortion and forced sterilization); prostitution; discrimination against women; trafficking in women and children; abuse of children; and discrimination against the disabled and minorities are all problems. Particularly serious human rights abuses persisted in Tibet and Xinjiang. The Government continued to restrict tightly worker rights, and forced labor in prison facilities remained a serious problem. Child labor exists and appears to be a growing problem in rural areas as adult workers leave for better employment opportunities in urban areas. Trafficking in persons is a serious problem.”<sup>3</sup>*

### **1.3 China and international legal instruments**

China is a party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Covenant on Economic, Social, and Cultural Rights. It has reaffirmed its support for the Universal Declaration of Human Rights and has signed but not yet ratified the International Covenant on Civil and Political Rights.<sup>4</sup>

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<sup>3</sup> U.S. Department of State (2001), op.cit.

<sup>4</sup> see Office of the United Nations High Commissioner for Human Rights (2001) *Status of Ratifications of the Principal International Human Rights Treaties as of 18 May 2001*, Geneva, Switzerland, available at [www.unhcr.ch](http://www.unhcr.ch)

Human Rights in China<sup>5</sup> made the following comments on China's latest report to the CEDAW committee on its implementation of the convention. In section 2 are included HRIC's comments on the Law on the Protection of Women's Rights and Interests (Women's Law), the principal mechanism the government has established for the enforcement of the provisions of CEDAW.

*"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."*

*"Article 1 of CEDAW defines discrimination against women as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women... of human rights and fundamental freedoms." This explanation clearly indicates that both intentional and unintentional discrimination are prohibited by the Convention, both by public and private actors. Article 2 obligates states to take action to condemn discrimination and eliminate it through constitutional, legal and practical means, and Article 4 permits positive discrimination in favor of women in pursuit of such aims.*

*"China's 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. However, throughout the report there is a distinct lack of information about the nature and extent of current discriminatory practices, or how they are addressed. 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."<sup>6</sup>*

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<sup>5</sup> Human Rights In China is an independent international non- governmental organization founded by Chinese scientists and scholars in March 1989. HRIC monitors the implementation of international human rights standards in the People's Republic of China and carries out human rights advocacy and education among Chinese people inside and outside the country. HRIC's objectives are to develop a grassroots human rights movement in China and to promote international scrutiny of China's human rights situation. HRIC publishes the bilingual quarterly magazine China Rights Forum. The journal includes interviews with dissidents, commentaries on all sides of the human rights issue, and updates on the human rights situation in China.

<sup>6</sup> Human Rights in China, Asia Monitor Resource Centre, China Labour Bulletin, Hong Kong Christian Industrial Committee (1998) *Report on Implementation of CEDAW in the People's Republic of China: A Report with Recommendations and Questions for the Chinese Government Representatives*, available at [www.hrichina.org](http://www.hrichina.org)



## 1.4 Women's human rights

It appears that women's status in Chinese society has regressed in the 1990's. The Government's focus on economic reform and political stability appears to have made the pursuit of gender equality a secondary priority, and women are being encouraged or forced back into traditional roles.

The US State Department report for 2000 notes:

*"A high female suicide rate is a serious problem. According to the World Bank, Harvard University, and the World Health Organization, some 56 percent of the world's female suicides occur in China (about 500 per day). The World Bank estimated the suicide rate in the country to be three times the global average; among women, it was estimated to be nearly five times the global average. Research indicates that the low status of women, and social and economic pressures due to the rapid shift to a market economy are among the leading causes.*

*"There were credible reports of trafficking in persons, and the kidnapping of women for sale into prostitution or marriage is a serious problem.*

*"There is no statute that outlaws sexual harassment in the workplace, although there has been some discussion by legislators about the need for such legislation. The problem remains unaddressed in the legal system and often in society. There have been reports that due to the lack of legal protections and to women's increasing economic vulnerability, many victims of sexual harassment do not report it out of fear of losing their jobs. However, experts state that more women are raising their concerns about sexual harassment because of greater awareness of the problem.*

*"The Government has made gender equality a policy objective since 1949. The Constitution states that "women enjoy equal rights with men in all spheres of life." The 1992 Law on the Protection of Women's Rights and Interests provides for equality in ownership of property, inheritance rights, and access to education. <sup>[7]</sup> Women's economic and political influence has increased. **Nonetheless female activists increasingly are concerned that the progress that has been made by women over the past 50 years is being eroded and that women's status in society regressed during the 1990's. They assert that the Government appears to have made the pursuit of gender equality a secondary priority as it focuses on economic reform and political stability. Social and familial pressure also has grown for women to resume their traditional roles as wives and mothers. A recent study of how women are portrayed in the media revealed that images of a woman's worth increasingly are linked to her ability to attract a wealthy husband and be a good mother.***

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<sup>7</sup> However, see section 2 for commentary on the lack of effectiveness of this law

*“The 1992 Law on the Protection of Women's Rights and Interests was designed to assist in curbing gender-based discrimination. However, women continued to report that discrimination, sexual harassment, unfair dismissal, demotion, and wage discrepancies were significant problems. Efforts have been made by social organizations as well as the Government to educate women about their legal rights, and there is anecdotal evidence that women increasingly are using laws to protect their rights.<sup>[8]</sup> For example, at Fudan University in Shanghai, the Women's Study Center with the support of Shanghai's labor union has established a hot line to inform workers, mainly women, of their legal rights. Nevertheless, women frequently encounter serious obstacles in getting laws enforced. According to legal experts, it is very hard to litigate a sex discrimination suit because the vague legal definition makes it difficult to quantify damages. As a result, very few cases are brought to court.<sup>[9]</sup> Some observers also have noted that the agencies tasked with protecting women's rights tend to focus on maternity-related benefits and wrongful termination during maternity leave rather than sex discrimination or sexual harassment.<sup>[10]</sup> The structure of the social system also prevents women from having a full range of options. Women who seek a divorce face the prospect of losing their housing since government work units allot housing to men when couples marry.*

*“The law promises equal pay for equal work. According to a 1997 World Bank report, women's salaries, on average, were 80 to 90 percent of the salaries of their male counterparts. However, a recent Government survey found that women were paid only 70 to 80 percent of what men received for the same work. Most women employed in industry work in lower skilled and lower paid jobs.”<sup>11</sup>*

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<sup>8</sup> However, see Section 4 for limitations on the effectiveness of legal remedies

<sup>9</sup> Sophia Woodman, Director of Research at Human Rights in China, comments: *I do not agree with this statement. It seems to imply that it is possible to litigate such a suit. The fact is that the only remedies prescribed in the LPWRI for acts of discrimination are administrative. Please see the Article 2 section of our CEDAW report. I have not heard of any cases being brought to court.*

<sup>10</sup> Sophia Woodman, Director of Research at Human Rights in China, comments: *This is because they are relying on specific laws/regulations other than LPWRI that provide for litigation as a remedy.*

<sup>11</sup> U.S. Department of State (2001), op.cit.

## 2. Domestic violence

Domestic violence in China has been largely ignored and, despite some recent partial measures being introduced to protect women, is a phenomenon that is not taken seriously and is largely viewed as a private, family matter. Efforts by women's organisations have brought about small changes but the reality for women is that very little, if any protection is in fact available.

The U.S. State Department report for 2000 notes:

*“Violence against women is a problem. Violence against women can be grounds for prosecution under the law, but there is no national law specifically targeting domestic violence, although proposed amendments to the 1980 Marriage Law are aimed in part at providing protection against spousal abuse. **In recognition of the seriousness of spousal abuse, 13 provinces and provincial-level cities have passed legislation to address the problem.**”<sup>[12]</sup> Sociologists note that there has been no detailed research on the extent of physical violence against women. However, anecdotal evidence suggests that **the reporting of domestic abuse is on the rise**, particularly in urban areas, because greater attention has been focused on the problem. A July survey report by the All-China Women's Federation<sup>[13]</sup> found that violence occurs in 30 percent of families, with 80 percent of cases involving husbands abusing their wives. The survey implies that one in four married women suffers abuse. Actual figures may be higher because spousal abuse still goes largely unreported. According to experts, the percentage of households in which domestic abuse has occurred is higher in rural areas than in urban centers. The July survey found that domestic violence occurs at all socioeconomic levels. According to some experts, many women do not report domestic violence to the police because, **even when appropriate legislation exists, local law enforcement authorities frequently choose not to interfere in what they regard as a family matter.** Nonetheless in two recent cases in Liaoning Province, men were successfully prosecuted for severe cases of domestic violence. Despite an increasing awareness of the problem of domestic violence, there are no shelters for victims of domestic violence. Rape is illegal.”<sup>14</sup>*

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<sup>12</sup> China consists of 32 provinces, autonomous regions, and municipalities (Source: CIA World Factbook)

<sup>13</sup> The All-China Women's Federation (ACWF) is a state-run organisation with a membership of affiliated women's groups. According to the state news agency, “Aiming to represent and defend the interests of women, the federation devotes itself to promoting sexual equality and raising women's position in society.” (Source: Information Office of the State Council Of the People's Republic of China, June 1994, Beijing, *The Situation of Chinese women*, Chapter VII, 'Organizational Guarantees of the Rights and Interests of Chinese Women' available at [www.china.org.cn/e-white/chinesewoman/11-7.htm](http://www.china.org.cn/e-white/chinesewoman/11-7.htm))

<sup>14</sup> U.S. Department of State (2001), op.cit.

On February 1 and 2, 1999, the most recent report from China under the Convention on the Elimination of Discrimination Against Women (CEDAW) was reviewed at the United Nations. Human Rights in China noted in their summary of the session that:

*“The Committee expressed concern about violence against women, committed by the state and by private actors. It recommended that the government review its policies on this issue, enact legislation on sexual harassment and domestic violence, and provide services, including shelters, for victims of spousal abuse. The Committee called on the government to invite the U.N. Special Rapporteur on Violence Against Women to visit China as a way of demonstrating the seriousness of the government’s commitment to ending such abuse.”<sup>15</sup>*

The same organisation reported in 1995 in *“The Property of Men: The Trafficking and Domestic Abuse of Women”* that:

*“In China domestic violence is receiving belated attention from academics and feminists, but until very recently has been largely ignored officially -- the Chinese government's report on its implementation of the Nairobi Forward Looking Strategies (henceforth INFLS report) does not raise the issue specifically. When questioned about violence against women in the PRC by experts on the CEDAW Committee, China's representative said that "violence against women had not been a serious social problem in China." China's 1994 White Paper on Women states: "Strong measures have been adopted against unlawful cruel treatment of women," yet the term "domestic violence" is not mentioned. However, the official newspaper Legal Daily recently acknowledged that domestic abuse was on the rise and little had been done to combat it.*

*“Domestic violence is certainly not new to Chinese society, where a male-centered cultural system in which women are required to be subservient to men has been in place for thousands of years. Neither in the history of modern China nor in the development of Chinese women's movements has domestic violence been considered as a significant social and legislative issue, since, as in so many countries, it has been viewed as a private matter. Although progress has been made in terms of drafting laws protecting women, establishing organizations to work on women's issues and raising public consciousness on gender equality, neither the government nor other social actors have implemented many specific measures to prevent domestic violence or to provide protection for battered women. Moreover, **domestic violence has never been discussed as a question of human rights.** Thus the various obvious deficiencies of definition, legislation, social response and public awareness have*

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<sup>15</sup> Human Rights in China (1999), available at [www.hrichina.org/crf/english/99spring/e10\\_scrutiny.htm](http://www.hrichina.org/crf/english/99spring/e10_scrutiny.htm)

*hindered the development of a real campaign against domestic violence in China.*

*“In China, feminists, women's studies scholars and activists are starting to try to change the perception of domestic violence as a private, family matter. Although statistics and research on the scope of domestic violence are still insufficient, they are significant enough to evidence its seriousness as a social reality.*

*“According to a survey conducted by the Beijing Women's Federation of eight districts and counties around the capital, domestic violence occurred in 20 percent of the families surveyed, and wife abuse accounted for 80 percent of the domestic violence cases. In 1990, the ACWF conducted a nation-wide survey on the social status of Chinese women which concluded that a total of over 29 percent of wives suffer from their husbands' use of physical force. Owing to the common belief that **“family shame should not be aired in public”**, there is reason to believe that these figures may still contain some underreporting. The surveys have shown that domestic violence affects women of all social strata, although it may be more pronounced in the rural areas where traditional attitudes towards women are more entrenched. County-level women's federation officials in a central China rural area said that 80 percent of the complaints they dealt with involved domestic violence. Women came to them when they could get no assistance from local officials. There are generally few avenues open for battered women to seek support and protection or prosecution of those who abuse them.*

*“Official Attitudes and Social Awareness*

*Some of the lack of awareness about domestic violence is due to the way it is generally reported by the government-controlled media, which is also related to the lack of attention to the problem in Chinese society. In circumstances where the occurrence of domestic violence is an unquestioned part of the male-dominated cultural tradition and is widely tolerated by society, the media could have a significant impact in changing attitudes and developing awareness. However, with some notable exceptions such as publications on women's studies and China Women's News, so far the media has generally failed to play this progressive role.*

*“When domestic violence cases do appear in the media, they are generally treated as isolated and individual cases, rather than as part of a general social problem. Also, those cases which do get reported tend to be extreme instances in which either the female victim died or was brutally maimed or disfigured. This has hindered the development of a social consensus which views domestic violence as a social problem that needs urgent attention and social reform. The prevailing conception of such abuse also makes it difficult for battered women to escape from violence, since they and those around them may not view abuse that does not result in serious injury as sufficient cause to justify breaking up their families. Some changes in this pattern have been*

*seen recently: in the run up to the Fourth World Conference on Women, examination of this issue has increased, particularly in publications directed at women. It is to be hoped that more publications will take the lead from these media to increase coverage of domestic abuse and its consequences.*

*“HRIC believes that the Chinese government has not taken sufficient action to combat domestic violence and provide assistance to victims, as it is required to do under the DEVAW<sup>[16]</sup>. The fact that most of the material HRIC has used on these issues comes from documentary sources is an indication of the crucial role that journalists, academics and women's groups in China are playing in exposing them. However, significant restrictions on such reporting remain and controls on freedom of association have hindered the development of the independent initiatives, such as telephone hotlines, shelters and counseling centers, which are essential if domestic violence is to be properly addressed. Although they are few and far between, some of the new solutions Chinese women are proposing to deal with domestic violence, if expanded broadly to other areas of the country, could have a significant impact. Services provided by the women's federations also need to be increased, improved and provided with more funding. If the authorities are serious about combatting domestic violence, such new approaches must be encouraged in every possible way. Domestic abuse must be explicitly legislated against and anomalies in the Criminal Code mandating lesser penalties for crimes against relatives should be eliminated.”<sup>17</sup>*

Amnesty International notes in its 1995 report on Women in China:

*“Domestic violence in general was long assumed to be suffered mainly by rural women in impoverished villages where ideas that the “man is lord and master of the family, and woman is his private possession” persist. However, sample surveys of spiralling urban divorce cases indicate that wife beating is cited in at least a quarter of all cases. **Women are often blamed and brutalised for infertility or the birth of a girl.** Reports from rural areas indicate that “domestic” violence against rural women often involves members of the husband’s extended family. Rural women are particularly vulnerable as it is the norm for the wife to be the outsider, having moved to her husband’s home village.”<sup>18</sup>*

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<sup>16</sup> UN Declaration for the Elimination of Violence Against Women

<sup>17</sup> Human Rights in China (1995) *The Property of Men: The Trafficking and Domestic Abuse of Women*, China Rights Forum, available at [www.hrichina.org](http://www.hrichina.org)

<sup>18</sup> Amnesty International (1995) *Women in China: Imprisoned and abused for dissent*, London, Amnesty International

A report from 2001 on the official state news website describes the high prevalence of domestic violence and notes:

*“Issues in Focus for New Marriage Law: Should There Be Provisions Against Domestic Violence*

*In the first half of 1999, various women's federation in the 29 provinces, autonomous regions, and the municipalities directly under the central government handled a total of 55,892 complaints by letter and personal visits which were related to marital and family problems. Of this figure, 8,862 complaints involved domestic violence. These two figures went up to 110,070 and 20,148 respectively in the second half of the year. The complaints reveal that ever more relentless and cruel means have been adopted in domestic violence crimes, which has become less covert and ever more overt. For example, in November 1998 in Ningxia, three horrific cases of wife murder involved stabbing with a knife, battering with a stick or being set alight with oil. For the time being, however, law enforcement was the top priority, since many victims have encouraged continued violence by not being aware of their legal rights or regarding it as humiliating to admit to violence within the family. In addition, the public security departments seem to feel it “rather hard for an upright official to deal with his own domestic affairs”. And the courts even believe such cases are not serious enough to be judged as maltreatment, resulting in only a few perpetrators being tried and punished. In Guangdong, courts dealt with only five cases in 1998, rising to seven in 1999. ACWF proposed that domestic violence be clearly defined in the new marriage law, along with the rights and obligations of each party. Clear consequences for varying degrees of serious violence should also be established as a deterrent measure. A public opinion poll organized by ACWF also shows that 96.1 percent of respondents agree there must be a clear definition of what constitutes domestic violence in all its forms. The first such local code in the country, Resolution of the Standing Committee of the Hunan Provincial People’s Congress on the Prevention and Prohibition of Domestic Violence was adopted and took effect on March 31, 2000. It, according to Professor Yang, provides valuable guidelines for national legislation.”<sup>19</sup>*

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<sup>19</sup> China Internet Information Centre (2001) *Issues in Focus for New Marriage Law*, at [www.china.org.cn](http://www.china.org.cn)



### 3. Domestic violence and the law

#### 3.1 Criminal Law

The Criminal Law of the People's Republic of China (1997) states penalties for some acts of physical and sexual violence but does not mention domestic violence specifically. Relevant articles are reproduced below:

***“Criminal Law Chapter 4***

***CHAPTER IV CRIMES OF INFRINGING UPON CITIZENS' RIGHT OF THE PERSON AND DEMOCRATIC RIGHTS***

***Article 232*** *Whoever intentionally commits homicide shall be sentenced to death, life imprisonment or fixed-term imprisonment of not less than 10 years; if the circumstances are relatively minor, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years.*

***Article 233*** *Whoever negligently causes death to another person shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years; if the circumstances are relatively minor, he shall be sentenced to fixed-term imprisonment of not more than three years, except as otherwise specifically provided in this Law.*

***Article 234*** *Whoever intentionally inflicts injury upon another person shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance.*

*Whoever commits the crime mentioned in the preceding paragraph, thus causing severe injury to another person, shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years; if he causes death to the person or, by resorting to especially cruel means, causes severe injury to the person, reducing the person to utter disability, he shall be sentenced to fixed-term imprisonment of not less than 10 years, life imprisonment or death, except as otherwise specifically provided in this Law.*

***Article 235*** *Whoever negligently injures another person and causes severe injury to the person shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention, except as otherwise specifically provided in this Law.*

***Article 236*** *Whoever rapes a woman by violence, coercion or any other means shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years.*

*Whoever has sexual intercourse with a girl under the age of 14 shall be deemed to have committed rape and shall be given a heavier punishment.*

*Whoever rapes a woman or has sexual intercourse with a girl under the age of 14 shall, in any of the following circumstances, be sentenced to fixed-term imprisonment of not less than 10 years, life imprisonment or death:*

- (1) the circumstances being flagrant;*
- (2) raping a number of women or girls under the age of 14;*
- (3) raping a woman before the public in a public place;*
- (4) raping a woman with one or more persons in succession; or*
- (5) causing serious injury or death to the victim or any other serious*



consequences.

**Article 237** *Whoever acts indecently against or insults a woman by violence, coercion or any other forcible means shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention.*

*Whoever gathers a number of people to commit the crime mentioned in the preceding paragraph or commits the crime before the public in a public place shall be sentenced to fixed-term imprisonment of not less than five years.*

*Whoever acts indecently against a child shall be given a heavier punishment in accordance with the provisions of the preceding two paragraphs.*

**Article 238** *Whoever unlawfully detains another person or unlawfully deprives the personal freedom of another person by any other means shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention, public surveillance or deprivation of political rights. If he resorts to battery or humiliation, he shall be given a heavier punishment.*

*Whoever commits the crime mentioned in the preceding paragraph and causes serious injury to the victim shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years; if he causes death to the victim, he shall be sentenced to fixed-term imprisonment of not less than 10 years. If he causes injury, disability or death to the victim by violence, he shall be convicted and punished in accordance with the provisions of Article 234 or 232 of this Law.”<sup>20</sup>*

### 3.2 Law Safeguarding Women's Rights and Interests

The Law Safeguarding Women's Rights and Interests of the People's Republic of China again makes no mention of domestic violence, but states in Chapter VI, Rights of the Person:

**“Article 33.** *The state protects the rights of the person, which women enjoy equally with men.*

**Article 34.** *Women's rights of the person brook no infringement. It is prohibited to detain women unlawfully or use other unlawful means to deprive them of or restrict their freedom of the person. It is prohibited to make an unlawful body search of a woman.*

**Article 35.** *Women's rights to life and health brook no infringement. It is prohibited to drown, forsake, or cruelly injure or kill baby girls. **It is prohibited to discriminate against or abuse women who give birth to baby girls or bear no children. It is prohibited to cruelly injure or kill women by superstitious or violent means.** It is prohibited to abuse or forsake elderly women.”<sup>21</sup>*

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<sup>20</sup> People's Republic of China (1997) *Criminal Law of the People's Republic of China*, National People's Congress, available at [www.qis.net/chinalaw](http://www.qis.net/chinalaw)

<sup>21</sup> People's Republic of China (1992) *Law Safeguarding Women's Rights and Interests of the People's Republic of China*, National People's Congress, available at [www.qis.net/chinalaw](http://www.qis.net/chinalaw)

However, this law (often known as the 'Women's Law') "*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.*"<sup>22</sup> See the following section for information on its effectiveness.

### **3.3 Amendments to marriage law**

A possibly significant recent development is the passing by the National People's Congress in April 2001 of amendments to the Marriage Law which specifically name and prohibit domestic violence. The following news report gives further information:

*"Marriage Law to better protect women, children  
BEIJING, April 30 (Xinhuanet) --Women and children will now get more legal support to protect their rights within the family unit following the adoption of amendments to the Marriage Law by senior legislators, according to today's China Daily.*

*The Standing Committee of the Ninth National People's Congress (NPC), the nation's top legislative body, passed the long-debated amendments to the Marriage Law on Saturday when it closed its 21st session. [...]*

*The amendments to the 20-year-old Marriage Law were adopted with a vote of 127 approvals, one objection and nine abstentions from national legislators.*

*One of the guiding principles behind revising the law was to protect the rights of women and children, according to Wang Shengming, a legislative official with the Legal Affairs Commission of the NPC Standing Committee.*

*Most of the 33 major changes to the law were made in favour of women and children.*

*The legislation bans domestic violence, outlaws bigamy and prohibits married people from cohabiting with anyone other than their spouses. Women and children are widely considered to be most vulnerable in these circumstances.*

*Domestic violence occurs in three out of every 10 families and has been cited in three-fifths of the country's divorce cases, according to figures from the All-China Women's Federation."<sup>23</sup>*

Coming within the remit of the Marriage Law, domestic violence (often referred to as "family violence") appears to be defined as violence within a marital relationship, and the emphasis appears to be on women and children as the "victims". Physical violence is the only form of violence that is specifically mentioned in current commentary on the legislation; however a full

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<sup>22</sup> Human Rights in China et al (1998), op.cit.

<sup>23</sup> China.com (2001), *Marriage Law to better protect women, children*, at [www.china.com](http://www.china.com). The full text of the amendments was not available at the date of publication of this report.

definition may not have yet been officially clarified, as there is still debate on the issue of whether rape in marriage should constitute “family violence”.

The following report on the official state news website gives some background to the Marriage Law amendments:

*“Legal experts and women rights advocates are urging new changes to the existing Marriage law. “Banning family violence is a necessary part of the marriage law,” said Hu Kangsheng, deputy director of the Legislative Affairs Commission under the National People’s Congress (NPC) Standing Committee. Family violence happens in 30 percent of Chinese families, according to surveys conducted by the All-China Women’s Federation. Of the bruised wives, 32.1 percent were regularly beaten four times a month, and 39 percent more than once every month, according to another survey by the Women’s Federation of Guangdong Province. Hu said that four out of five married women in the United States are physically assaulted by men. In China, high-degree injuries inside marriages is rising rapidly. Out of 270 million families in China, more than 100,000 are break down every year because of family violence, he said. The Chinese Constitution, criminal codes and other administrative regulations all prohibit family violence and the maltreatment of family members. In south China’s Guangdong Province, only seven were punished by courts at all levels last year. Pi Xiaoming, author of “White Paper on Family Violence” and a well-known woman lawyer, said that Chinese women were usually victimized because of their physical disadvantage, their economic dependence on men, and poorer educational backgrounds. According to the NPC official, experts and officials have no disagreements on the ban of family violence, but they differ in defining what exactly constitutes family violence. “For instance, should the sexual act not consented by the wife constitute family violence?” he said. Officials and experts also advocated that in addition to the existing punitive laws and regulations on family violence and maltreatment of family members, the new marriage law should also strengthen efforts to aid victims and deter perpetrators, and thus better protect the rights and interests of women, children and the elderly. The local legislature of Hunan Province passed a resolution on the prevention of family violence in March this year which has been hailed as China’s first legislation against family violence. (Xinhua)”<sup>24</sup>*

However, Amnesty International notes that in some areas 80% of marriages are unregistered, leaving women outside the protection of the Marriage Law, notwithstanding any improvements in it (see Section 4).

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<sup>24</sup> China Internet Information Centre (2001) *Ban on Family Violence Urged in China*, at [www.china.org.cn](http://www.china.org.cn)

### 3.4 Local regulations

Under the Chinese administrative system, provinces can introduce their own local regulations. Some provinces have introduced regulations relating to domestic violence. For example, a report by Canada's Immigration and Refugee Board states:

*"On 10 January 1996 the **Chinese city of Changsha, in Hunan province, became the first city in China to establish local rules according to which family violence was officially recognized as a public order problem (ibid.). Under the new rules public prosecutors were instructed to permit arrests and "criminal procedures" in cases of domestic violence (ibid.).***

.....

*"The Chinese press reported in July 1996 that the **local authorities in Tangshan had promulgated "regulations for the prevention and stopping of domestic violence" (Xinhua 12 July 1996). The regulations suggested that local courts order abusive husbands to divorce their wives and pay them compensation, among other things (ibid.).***

*"On 18 June 1997 a man in Henan province was convicted of causing "malicious bodily harm" to his wife after **the court rejected his claim that spousal abuse was beyond the court's purview (WIN News Spring 1998, 54). The husband was forced to pay a sum of money to his wife to defray expenses incurred by the injury (Ibid.).***

.....

*"It was reported in September 1998 that **special regulations relating to domestic abuse had been formulated in Hunan province, after a man threw his wife from a building (Beijing Xinhua 5 Sept. 1998). As a result of the new regulations, a county official who had abused his wife was punished with dismissal (ibid.)."***<sup>25</sup>

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<sup>25</sup> Immigration and Refugee Board (1999) *Response to Information Request CHN32888.E*, Ottawa, Research Directorate

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Beijing Xinhua [in English]. "Beijing Declares War Against Family Violence." (FBIS-CHI-98-248 5 Sept. 1998/WNC)

China Daily [Beijing]. 14 January 1999. "China NGOs aid women in distress." (NEXIS)

Far Eastern Economic Review [Hong Kong]. 22 August 1996. "China Establishes Its First Centre for Victims of Domestic Violence." (C.I.S. On-Line Information Services) Reuters. 6 February 1996. BC Cycle. Jane Macartney. "China Passes First Rules to Stop Wife-beating." (NEXIS)

WIN News [Lexington, Mass.]. Spring 1998. Vol. 24, No. 2. "China: Spousal Abuse Is Illegal and Punished by the Courts."

Xinhua. 20 June 1998. "Protecting Chinese Women Against Violence." (NEXIS)

12 July 1996. "China Courts Urged to Sentence Violent Husbands to Divorce." (NEXIS)

Professor of Law, Queen's University, Kingston. 14 October 1999. Correspondence.

### 3.5 Medical and legal services provided by state institutions

Some local authorities have established medical and legal services. The report quoted above by Canada's Immigration and Refugee Board states:

*"In 1994, China's first "forensic medicine centre," specializing in violence against women, was established in Beijing (Reuters 6 Feb. 1996). By February 1996 the clinic had received calls from hundreds of abused women and reportedly helped about 50 of them to file lawsuits against their husbands (ibid.).*

....

*"China's first government institution dedicated to eliminating domestic violence, the Tangshan Anti-Domestic Violence Association, was established by local authorities in that city in April 1996, and had dealt with over 200 cases by August (Xinhua 12 July 1996; Far Eastern Economic Review 22 Aug. 1996).*

....

*"On 20 June 1998 Li Hui, a female judge on the Supreme People's Court, stated in a seminar that **China had established 170 special courts to deal with divorce, abandonment and domestic violence** (Xinhua 20 June 1998).*

....

*"The article [China Daily 14 Jan. 1999] also reports a large increase in the number of women filing court cases against their husbands in Qianxi county in Hebei province following the establishment of 17 legal aid centres, 40 per cent of whose cases dealt with domestic violence (ibid.)."<sup>26</sup>*

### 3.6 Non-Governmental Organisations (NGOs)

The report quoted above also mentions two women's legal aid services run by NGOs:

*"The Chinese press reported in 1999 that a legal aid project for women, "Women's Hotline," had been established in Beijing by sociologists from the Chinese Academy of Social Sciences, staffed by over 100 volunteers (China Daily 14 Jan. 1999). In addition, there is a legal aid NGO for women called the Beida Women and Law Consultation and Research Centre, which often deals with cases of domestic violence (ibid.)."<sup>27</sup>*

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<sup>26</sup> Immigration and Refugee Board (1999) op. cit.

<sup>27</sup> Immigration and Refugee Board (1999) op. cit.

Attempts have been made by women's NGOs to open refuges for women experiencing domestic violence. However, the report on China's implementation of CEDAW quoted above notes:

*"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."*<sup>28</sup>

Sophia Woodman from Human Rights in China also comments:

*"It is also important to note that attempts by NGOs to establish shelters for battered women have encountered significant obstructions from the authorities. There are still very few such shelters in China. One in Shanghai was opened and then closed a few months later, after the municipal women's federation objected because it was not run by them. In Beijing, as far as I know, women activists have been trying to open a shelter since around 1993-4, but have been unable to obtain permission."*<sup>29</sup>

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<sup>28</sup> Human Rights in China et al (1998), op. cit.

<sup>29</sup> Sophia Woodman, Human Rights in China, correspondence

## 4. The reality of seeking protection

### 4.1 The police and reporting procedures

Canada's Immigration and Refugee Board's Research Directorate notes that domestic violence may be reported either to the neighbourhood committee or the police:

*"The following information is based on correspondence with a Professor of Law at Queen's University, Kingston who has published on the subject of Chinese family law and who is in contact with Chinese lawyers.*

*"In cases of domestic violence that is not severe, women will generally report it to the neighbourhood committee, which can try to persuade the husbands to mend their ways (Domestic violence is rated "severe" or "not severe" according to the degree of injury, the frequency of the abuse, and the health situation of the victim). Women may also go to the police to complain. The police will record the facts and, if they believe there is credible evidence of abuse, they can detain the husband for up to 15 days and fine him up to 200 Yuan and warn the man not to abuse his wife again. The police are able to impose these punishments without a trial under their administrative punishment authority."<sup>30</sup>*

Human Rights in China's report describes the efforts of a teacher to escape from her violent ex-husband, where her efforts to obtain protection by repeatedly reporting the offences were fruitless:

*"In 1992, a Guangzhou newspaper published a letter entitled, "The Voice of a Helpless Woman." The letter described how Xu Wenni, a secondary school teacher, suffered four years of repeated harassment, physical violence, verbal abuse, threats and humiliation at the hands of her ex-husband, Qiu Guangmin, after she had divorced him. Xu received no protection from Qiu, who was never prosecuted for any crime against her. According to the letter to the editor of Yangcheng Evening News and a follow-up investigation by a reporter at the paper, Xu Wenni had repeatedly appealed for assistance to many "concerned departments," and had reported the abuse she was suffering, but in vain. One major reason was that officials thought that Qiu's actions were not serious enough to be considered "criminal."*

#### *"Official Monitoring of Domestic Violence*

*In order to curb instances of domestic violence effectively, China needs to set up an effective monitoring system as well as centers providing help for battered women. Under the current system, a woman suffering from repeated domestic violence may report her case many times, but each of her reports may be treated as an isolated instance if each time she sees a different official. Unless a woman can show evidence of*

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<sup>30</sup> Immigration and Refugee Board (1999), Ottawa, Research Directorate at [www.irb.gc.ca](http://www.irb.gc.ca)



*being critically injured, her complaint will not generally be treated seriously. If each time she reports being abused her complaints can be recorded in a single file, particularly if she suffers from repeated abuse and yet is not seriously injured, this may later on become important evidence in future adjudication of marital disputes, or criminal prosecution of maltreatment, intentional injury or murder.”<sup>31</sup>*

## 4.2 The judicial and legal system

### 4.2.1 Inadequacies of the legal system

On the subject of violence against women, Human Rights In China notes that:

#### *“Legal Provisions*

*Although new laws have raised the issue of violence against women, the legal system remains severely inadequate in addressing this problem. The formulation "domestic violence" has not been used in any of the new laws and awareness among judicial and legal personnel remains low. Furthermore, owing to the lack of development of the legal system in the countryside, rural women have little access to any legal recourse in cases of domestic violence.*

*“In comparison to previous legislation protecting women's personal rights, the LPWRI [Law Protecting Women's Rights and Interests] is more detailed and specific. Moreover it covers some areas that have never before been mentioned in law, such as infanticide, persecution of women who give birth to female children or are infertile and the maltreatment of elderly women. However, no part of the law is drafted specifically to protect all women from domestic violence. Obviously domestic violence as a social problem was again overlooked by the government, legal institutions and society. Furthermore, according to both the Criminal Code and the Security Administration Punishment Act, penalties for physically abusing and even killing family members are much lighter than those for such crimes committed against strangers. Minor assaults are not prosecuted, so victims have to bring private actions in such cases.”<sup>32</sup>*

Amnesty International notes in its 1995 report on Women in China:

***“In some areas, nearly 80 per cent of marriages are unregistered and therefore outside the protection of the Marriage Law. Divorce is not a viable option for the majority of women, and few are aware of their rights in law. The Criminal Law includes two separate crimes of battery, depending on whether or not the parties are members of the same family. Comparison of the different penalties indicates that punishment for battery within the family is less severe. Women's issues experts in Shanghai claim***

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<sup>31</sup> Human Rights in China (1995), op.cit.

<sup>32</sup> Human Rights in China (1995), op.cit.



***that the judicial authorities do not take domestic violence seriously and may refuse to certify women’s injuries. Where mediators are involved, for rural women these may be members of her husband’s extended family.”***<sup>33</sup>

Canada’s Immigration and Refugee Board notes that:

*“A woman may also go to court in severe cases of abuse (few actually do). There is a special department of the court with responsibility for ensuring that abused women have proper medical treatment and that the requisite medical evidence is gathered. The court may impose punishment on husbands who are guilty of wife abuse. Normally the sentence is two years imprisonment, but it could go up to seven years. If a husband kills his wife or causes her extremely serious injury (e.g. by destroying her face by throwing acid at her), he may be sentenced to death. A woman must go to a separate court if she wants to divorce an abusive husband.”*<sup>34</sup>

#### **4.2.2 Law protecting women’s rights and interests (the ‘Women’s Law’)**

Below is a full explanation of the limitations of the Women’s Law in terms of protecting women from discrimination and abuse, taken from a report by Human Rights in China.

*“Although some Chinese legal scholars have claimed that the Women’s Law is an “anti-discrimination law” and the Chinese government has stated that the law was passed to give effect to CEDAW, according to the government’s report the general premise of the Women’s Law is “protecting the lawful rights and interests of women.” 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. Although the words “discrimination” and “discriminate” are used in the Women’s Law and the province-level implementing regulations which have been enacted to give it local application, neither contain a definition of discrimination.*

[.....]

*“Implementing laws and policies  
The Women’s Law 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 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***

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<sup>33</sup> Amnesty International (1995), op.cit.

<sup>34</sup> Immigration and Refugee Board (1999), Ottawa, Research Directorate at [www.irb.gc.ca](http://www.irb.gc.ca)

**enforce them.** In essence, the Women's Law 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 an American scholar of Chinese law, Jonathan Hecht, puts it:

*Despite frequent assertions that the [Women's Law] 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.*

Article 48 of the Women's Law 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 Women's Law 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.**

[.....]

*"Administrative enforcement*

*In the absence of direct channels for legal action, women whose rights under the Women's Law 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.<sup>[35]</sup> 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*

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<sup>35</sup> This would be the case for a woman suffering domestic violence.

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 that should be responsible for dealing with it.** As Chinese legal scholar Ma Yanan 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.*

*She concludes that despite the enactment of the Women's Law, **“there are still no reliable guarantees for the protection of women's legal rights and interests.”**<sup>36</sup>*

#### **4.2.3 Rape and the legal system**

Legal and societal attitudes towards rape and sexual violence seriously hinder women's access to protection or redress. Amnesty International notes in its 1995 report on Women in China:

*“In a 1990 survey on women's status, nearly 70% of all respondents agreed with the statement that “a woman's virginity is more important than her life”. The stigma and the social consequences of rape and sexual violation are such that speaking out may be totally against the interests of any woman. In 1992 rape accounted for 3 per cent of reported crime and, according to Chinese experts, was a factor in a large proportion of murder and assault cases. Women who attempt to report incidents to families have been driven out of their homes. Others fear they will lose their jobs through characterisation as the guilty party.*

*“Pursuing a rape case is difficult in itself. An official casebook on the crime of rape published in 1991 urges law enforcement officials not to take the “moral character of the woman” as the only determining factor. A textbook on the state compensation law provides insights into other difficulties; a woman who in 1982 accompanied an alleged rape victim to the police station was charged with “false accusations and charges”*

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<sup>36</sup> Human Rights in China (1998), op.cit.

*and sentenced to three years' imprisonment. She was released one year later after a successful appeal, but received no compensation. "In recent years there has been much debate around the issue of non-consensual sex within marriage. It seems unlikely that non-consensual sex forced on a woman by her husband alone within a marriage that was still legally binding would be considered rape. Chinese legal scholars have stressed a couple's rights and duties towards sexual relations within a marriage. A legal casebook goes further: "If a husband forces a woman to have sex against her will only in order to satisfy the requirements of a sex life, rape is not a suitable definition. If the husband's intentions are obscene, or designed to humiliate, etc, where the circumstances are serious, this may be defined as the offences of humiliation or hooliganism."*<sup>37</sup>

Human Rights In China notes that:

*"Another problem is the issue of marital rape. The Chinese legal system has not recognized marital rape as a crime unless the husband and wife have separated and divorce papers have been filed. Legal commentators have argued that husbands have a "right of cohabitation" with their wives, regardless of whether the women agree. There have been several cases recently in which husbands were convicted of raping their wives. All, however, involved estranged husbands who abducted the woman as well as forcing her to have sex."*<sup>38</sup>

### **4.3 Other support services**

Human Rights in China notes the difficulties in accessing the tiny number of support services that are available:

*"The first hotline specifically devoted to assisting battered women went into operation in Beijing in October 1994 and other cities, such as Nanning, have radio call-in programs to provide counseling for women facing problems of all kinds. However, assistance programs are extremely limited and such efforts must be rapidly expanded, particularly to the rural areas."*<sup>39</sup>

The Immigration and Refugee Board's report states:

*"There are few shelters for battered women in China. Normally, women go to stay with their mothers to get away from abusive husbands. A woman in those circumstances normally takes her children with her, particularly if the children are young. It is not difficult to get the required*

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<sup>37</sup> Amnesty International (1995), op.cit.

<sup>38</sup> Human Rights in China (1995), op.cit.

<sup>39</sup> Human Rights in China (1995), op.cit.

*approval and documentation to live in a new town,<sup>[40]</sup> but if the woman does not have relatives there she will have difficulty finding a place to live. It is legally possible for a woman to force her abusive husband to leave their housing unit, but women don't try to enforce this legal right because of the prevailing view that the housing belongs to the husband.”<sup>41</sup>*

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<sup>40</sup> In fact, “*It is difficult, for example, for a person to move to a city unless he or she has a permanent job and a housing permit.*” Source: Paul Halsall, Brooklyn College, City University of New York, available at <http://academic.brooklyn.cuny.edu/core9/phalsall/texts/chinfect.html>. Sophia Woodman, Director of Research at Human Rights in China, also comments: *This is completely wrong. Changing one's place of registered residence remains very difficult in China unless one has a lot of money to pay for the necessary papers. It is also important to note that attempts by NGOs to establish shelters for battered women have encountered significant obstructions from the authorities. There are still very few such shelters in China. One in Shanghai was opened and then closed a few months later, after the municipal women's federation objected because it was not run by them. In Beijing, as far as I know, women activists have been trying to open a shelter since around 1993-4, but have been unable to obtain permission.*

<sup>41</sup> Immigration and Refugee Board (1999), Ottawa, Research Directorate at [www.irb.gc.ca](http://www.irb.gc.ca)

## 5. The situation of separated or divorced women

### 5.1 Seeking a divorce from a violent husband

Human Rights in China's report shows significant barriers to divorce, including lack of housing and an emphasis on mediation:

***“The chronic shortage of housing means that a battered woman may find herself with no place to live if she leaves her husband, and many women have been prevented from filing for divorce by the lack of available housing. This is just one of many barriers placed on divorce in China, barriers which may force women to stay with abusive husbands.***

#### *“Problems of Divorce*

*Prior to the enactment of the 1980 Marriage Law, no-fault divorces were not permitted in China. Following the promulgation of the new law, if both parties agreed, the "breakdown of affection" (ganqing polie) was sufficient grounds for a divorce. The break-up of families is still officially discouraged and the mediation system tries to prevent it if possible, but the divorce rate in both rural and urban areas has steadily risen since 1982. In 1990, 60 percent of petitions for divorce in the Beijing Intermediate People's Court were initiated by women, and according to recent studies in Beijing, wife abuse was cited in between 20 and 25 percent of divorce cases.*

*“According to a Chinese legal scholar who clerked for a judge, 70 to 80 percent of divorce cases were supposed to be dealt with through mediation and judges always preferred to have divorce petitions withdrawn, which would be considered "successful mediation." In such circumstances, a woman may be put under tremendous pressure to accept a settlement which is not advantageous to her and an abusive husband may have further incentive to intimidate his wife into withdrawing her case. Interviews in the late 1980s with five women who had been imprisoned for bigamy found that all had been repeatedly abused and had again and again withdrawn petitions for divorce. In the end, they just left their violent husbands and set up house with other men.”<sup>42</sup>*

### 5.2 Social attitudes, abuses and discrimination

The position of single and divorced women in China is fraught with difficulties, as they face discrimination both from individuals and society, and also from institutional structures, particularly in relation to rights to housing and employment.

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<sup>42</sup> Human Rights in China (1995), op.cit.

### 5.3 Property rights

Dia Warren explains in her report on women's housing rights in China, that

*“The Women’s Rights Law [Law Safeguarding Women's Rights and Interests] says that “[t]he State shall guarantee that women enjoy the equal right, with men, to property” (Article 28). More specifically, the Law nominally protects common property in case of a divorce and succession rights (Articles 29,31)....*

*“Despite its grand pretensions, the Women’s Rights Law has been criticised as consisting more of form than substance, as it lacks legal enforcement mechanisms, and whatever protection there is remains at state discretion. The language is all too often ambiguous. Article 44, for example, provides: “If the wife has no housing to live in at the time of divorce, the husband shall help her in this regard whenever he can afford to.” Because this is an ambiguous legal standard, the main strength of the Women’s Rights Law may be as a consciousness-raising tool rather than as an effective legal tool (Jordan, 1994: 96; Stearns, 1993: 54; J. Hecht, 1995: 4-6).*

*“The Women’s Rights Law has accorded some degree of protection against discriminatory housing practices. But it does not yet seem to be consistently applied, and the question remains whether it adequately combats discrimination against women as a group or merely serves the few individuals who have access to the system. Furthermore, patriarchal and virilocal practices, and women’s ignorance of their own rights, may impede many cases from reaching the courts at all.”<sup>43</sup>*

In rural areas, the village authority owns the land and is responsible for allocating its use to families, women receiving a share in their parents' or their spouse's family property.

*“In case of divorce, a woman may technically be allocated housing rights in her husband’s village; however, this is rarely practiced, as the housing distributor is its own regulator. Furthermore, there is such a strong social stigma attached to divorce that a divorced woman may be castigated within the local community if she chooses to stay (and a large proportion of the village would be relatives of her former husband). Often, the only option is to return to the family home and village. Even then it is often difficult to acquire land rights. The same factors discussed above – cultural biases against divorced women, lack of bureaucratic checks – may stand in her way, and in addition there may not be housing available.”<sup>44</sup>*

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<sup>43</sup> Warren, Dia (1999), 'Chinese Women's Housing Rights: An International Legal Perspective' in Tinker, Irene & Summerfield, Gale (eds) *Women's Rights to House and Land: China, Laos, Vietnam*, London, Lynne Rienner Publishers, p 169

<sup>44</sup> Warren, Dia (1999), *op.cit.*, p 171

In addition, the growth in unregistered marriages poses another threat to women:

*“By not obtaining state sanction for their marriage, women forfeit the legal guarantee to property that they have... Protection of property arrangements associated with unlawful cohabitation differ sharply from those related to marriage, and joint ownership will often not be recognized by the court in case of divorce, usually to the disadvantage of the woman.”*<sup>45</sup>

The situation is no better for women in the cities:

*“In urban China, women usually live with their parents until they marry and then live in a house belonging to their husband’s work unit [dan wei]. Women who remain single usually have difficulties finding housing units of their own...”*

*“Following the promulgation of the Women’s Rights Law in 1992, discrimination remains pervasive. The All China Trade Union Female Workers Department surveyed 103 dan wei in five regions after the Women’s Rights Law was passed and found excessive discrimination.... In Hebei, one factory’s rules required a woman to be employed for twenty years before she became eligible for housing, while men had to work for four years before their housing rights accrued.”*<sup>46</sup>

In summary, Warren notes that:

***“Reasons for discrimination in housing allocation are related to women’s limited ability to enforce their evolving legal rights. They include: (1) male dominance in positions of control, (2) lack of adequate independent legal recourse against dan wei, (3) insufficient access to legal aid and judicial ignorance of the recent policies, (4) women’s own lack of adequate legal education and knowledge of their own rights, and (5) no effective independent channel that women can use to protect their rights.”***<sup>47</sup>

## **5.4 Economic security**

The ongoing reforms of the housing and labour markets are having negative effects on women, which would particularly affect single or divorced women:

*“The removal of guaranteed jobs, moreover, has already weakened housing security; a person who is permanently laid off from her/his state-owned enterprise job or whose work unit declares bankruptcy cannot expect to continue living in the work unit’s housing. Women are*

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<sup>45</sup> Warren, Dia (1999), op.cit., p 171

<sup>46</sup> Warren, Dia (1999), op.cit., pp 171-172

<sup>47</sup> Warren, Dia (1999), op.cit., pp 173-174



*more likely to lose their jobs as firms cut costs..... Women are discriminated against in the labor market because firms consider them more expensive compared to men (due to maternity leaves and health care costs, such as prenatal care, that the firm had to cover) and because of traditional biases.*

*“The separation of employment and housing may make access to housing harder for women who do not have the support of a husband or father regardless of whether they are gainfully employed; the gap between women’s and men’s wages is increasing, and women face growing discrimination in the emerging labor market. In the housing market, women face a direct bias – managers may not want to rent to single women whom they consider immoral – as well as an indirect bias – rising prices will make the difference in wages more obvious.”<sup>48</sup>*

The U.S. State Department report also notes these problems, which would impact particularly on a single woman without husband or family support:

*“Women have borne the brunt of the economic reform of state-owned enterprises. As the Government’s plan to revamp state-owned enterprises is carried out, millions of workers have been laid off. Of those millions, a disproportionate percentage are women, many of whom do not have the skills or opportunities to find new jobs. A December 1998 Asian Development Bank report noted that almost 70 percent of the 23 million persons who could lose their jobs as a result of state-owned enterprise reform were women, even though they only constituted 36.4 percent of the work force. A 1998 All-China Federation of Trade Unions (ACFTU) report estimated that 80 percent of those laid off from state-owned enterprises in Heilongjiang Province were women. Women between the ages of 35 and 50 were the most affected, and the least likely to be retrained. In addition female employees were more likely to be required to take pay cuts when a plant or company was in financial trouble. There have been reports that many women have been forced or persuaded into early retirement as well. Discriminatory hiring practices appear to be on the rise as unemployment rises. Increasingly companies discriminate by both sex and age, although such practices violate labor laws.*

*“Many employers prefer to hire men to avoid the expense of maternity leave and childcare and some even lower the effective retirement age for female workers to 40 years of age (the official retirement age for men is 60 years and for women 55 years). Lower retirement ages have the effect of reducing pensions, which generally are based on years worked.”<sup>49</sup>*

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<sup>48</sup> Summerfield, Gale & Aslanbeigui, Nahid (1999), ‘Housing Reform in Urban China’, in Tinker, Irene & Summerfield, Gale, op. cit., pp 184-185

<sup>49</sup> U.S. Department of State (2001), op.cit.

## 6. Case law

### 6.1 Canada

The following claimant in Canada was granted refugee status, as there was found to be no state protection available to her:

CRDD U97-02858, Schlanger, November 2, 1998.

*“The claimant feared persecution at the hands of her abusive boyfriend, who raped her twice and stalked her when she tried to end the relationship. She reported both rapes to the Public Security Bureau (PSB) but her boyfriend was released for lack of evidence and because the PSB viewed the matter as a “domestic dispute”. The boyfriend’s uncle had power and influence within the PSB. **The Refugee Division found that no state protection was available to the claimant in the circumstances. There is no national spousal abuse law in China and women are regarded as the property of their male relatives. Although some victims of domestic violence may have an internal flight alternative (IFA) within China, the claimant had no IFA because she would have to obtain a permit to move and her boyfriend could then find her through his uncle’s PSB sources. If she became part of the large itinerant population of China without official residence status, she would not have full access to social services and education and would have to pay a premium for those services. Moreover, young rural women in such situations are frequently subject to sexual assault.**”*<sup>50</sup>

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<sup>50</sup> Immigration and Refugee Board, Research Directorate, Canada, at [www.irb.gc.ca](http://www.irb.gc.ca)

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4. Ann D. Jordan, “Women’s Rights in the PRC: Patriarchal Wine Poured from a Socialist Bottle”, *Journal of Chinese Law*, August 1994
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## Appendix A

### Home Office Country Information and Policy Unit, October 2000: Country Assessment, China

#### *“Women*

**5.134.** Article 48 of the 1982 Constitution states that "Women in the PRC enjoy equal rights with men in all spheres of life, political, economic, cultural and social, including family life. The state protects the rights and interests of women, applies the principle of equal pay for equal work for men and women alike and trains and selects cadres from among women." The Communist regime has consistently articulated the ideal of gender equality and has enacted a series of laws to protect women's rights. However, the persistence of traditional views on the position of women, the government's family planning policies (see paragraphs 6.5-6.11) and the preference for sons, and the economic reform programme (see paragraph 3.18) are obstacles to the effective application of these laws.**[3c]**

**5.135.** Deeply entrenched social habits and customs that mitigate against gender equality are the major cause of the continuing violence against women in China, especially in the rural areas. The roots of this discrimination against women lie in Chinese philosophy, religion and popular culture. The social organisation of rural society, which views women as temporary residents in their natal families until they move to their husband's residence, is also a significant factor. Domestic abuse reportedly is more frequent in rural areas. Women in urban areas are usually more educated and tend to have a better understanding of their rights, although there is no national spousal abuse law. Some localities (eg. Hunan province) have passed legislation to address the problem.**[3c,2d]** The central authorities have pledged to tackle injustices in rural areas, particularly in the fight against domestic violence and in trafficking of women. **[4ek]** New economic pressures have fuelled early retirement amongst female workforce. The economic downturn has seen an increased domestic violence, coercion into prostitution, and a marked difference between men and women in suicide figures. **[4ba]**

#### **Abduction**

**5.136.** The abduction and sale of women is on the rise in China. These practices, which occurred in traditional Chinese society, have seen a resurgence as a result of the economic reform programme which has loosened strict communist moral controls at the same time that it has unleashed the profit motive; the growing shortage of women; and the increase in cost of betrothal gifts. Chinese authorities have consistently condemned the practise of the abduction and sale of women. In 1991 tougher penalties were enacted, imposing sentences of between 10 years in prison and death for gang leaders, up to 3 years in prison for those who buy women and children, and 2-7 years in prison for government cadres who obstruct who obstruct rescue attempts. Campaigns to catch and convict those involved in the abduction of women are regularly organised.**[3c,10o]** In 1999, police claimed that they had rescued 23,000 women and 4,260 children who were kidnapped, broke up 8,000 kidnapping gangs, and arrested 26,000 people between 1996 and 1998.**[4ag]**

#### **Divorce**

**5.137.** It is relatively easy for a woman to get a divorce under China's Marriage Law (1980). Women, however, may be discouraged from applying for a divorce because of the housing shortage in China. During marriage women usually live in a house belonging to their husbands' work unit. After divorce, if a woman's own unit does not assign her a house, she is forced to seek housing with family and friends.**[3c]**

#### **All China Women's Federation**

**5.138.** *The government-sponsored All China Women's Federation (ACWF) plays a key role in promoting and safe-guarding women's rights and interests. The ACWF is a mass organisation, with branches at each government level, and has 89,000 professionals specialised in working with women. Since 1980, the ACWF has sponsored a nationwide effort to develop family planning education, including counselling services. The organisation actively protests cases in which women are discriminated against by the hiring practices of companies and factories. Women's protection committees, medical schemes, domestic abuse hotlines and emergency centres been set up in some areas.***[3c,7g,4p]**

#### **Children**

**5.139.** *The 1992 Law on the Protection of Juveniles forbids infanticide, as well as mistreatment or abandonment of children. Physical abuse of children can be grounds for criminal prosecution. The Constitution provides for 9 years of compulsory education.***[2d]**

**5.140.** *There have been reports of female infanticide. A World Health Organisation paper in 1997 reported that the national ratio of male to female births was 117:100 (the worldwide statistical norm = 106:100). Part of the gap may be attributable to female infanticide, sex-selective abortion and abandonment; or to the underreporting of female births by couples trying to evade family planning laws to try to have a son (see 'One Child Policy').***[2d]**

# People's Republic of China

## Appendix B

### Update March 2002

#### 1.4 Women's human rights

The 2002 U.S. State Department report comments:

*"Women*

*"There is no statute that outlaws sexual harassment in the workplace. The problem remains unaddressed in the legal system and often in society. There have been reports that due to the lack of legal protections and to women's increasing economic vulnerability, many victims of sexual harassment do not report it out of fear of losing their jobs. However, experts state that more women are raising their concerns about sexual harassment because of greater awareness of the problem.*

*"The Government has made gender equality a policy objective since 1949. The Constitution states that "women enjoy equal rights with men in all spheres of life." The 1992 Law on the Protection of Women's Rights and Interests provides for equality in ownership of property, inheritance rights, and access to education. Women's economic and political influence has increased. Nonetheless, female activists increasingly are concerned that the progress that has been made by women over the past 50 years is being eroded and that women's status in society regressed during the 1990's. They assert that the Government appears to have made the pursuit of gender equality a secondary priority as it focuses on economic reform and political stability. Social and familial pressure also has grown for women to resume their traditional roles as wives and mothers. A recent study of how women are portrayed in the media revealed that images of a woman's worth increasingly are linked to her ability to attract a wealthy husband and be a good mother.*

*"The Law on the Protection of Women's Rights and Interests was designed to assist in curbing gender-based discrimination. However, women continued to report that discrimination, sexual harassment, unfair dismissal, demotion, and wage discrepancies were significant problems. Efforts have been made by social organizations as well as the Government to educate women about their legal rights, and there is anecdotal evidence that women increasingly are using laws to protect their rights. For example, at Fudan University in Shanghai, the Women's Study*

*Center with the support of Shanghai's labor union has established a hot line to inform workers, mainly women, of their legal rights.*

*"Nevertheless, women frequently encounter serious obstacles in getting laws enforced. According to legal experts, it is very hard to litigate a sex discrimination suit because the vague legal definition makes it difficult to quantify damages. As a result, very few cases are brought to court. Some observers also have noted that the agencies tasked with protecting women's rights tend to focus on maternity-related benefits and wrongful termination during maternity leave rather than sex discrimination or sexual harassment. The structure of the social system also prevents women from having a full range of options. Women who seek a divorce face the prospect of losing their housing since government work units allot housing to men when couples marry.*

*"Women have borne the brunt of the economic reform of state-owned enterprises. As the Government's plan to revamp state-owned enterprises is carried out, millions of workers have been laid off. Of those millions, a disproportionate percentage are women, many of whom do not have the skills or opportunities to find new jobs. Women between the ages of 35 and 50 were the most affected, and the least likely to be retrained. In addition female employees are more likely to be required to take pay cuts when a plant or company is in financial trouble. There have been reports that many women have been forced or persuaded into early retirement as well. Discriminatory hiring practices appear to be on the increase as unemployment rises. Increasingly companies discriminate by both sex and age, although such practices violate labor laws.*

*"Many employers prefer to hire men to avoid the expense of maternity leave and childcare and some even lower the effective retirement age for female workers to 40 years of age (the official retirement age for men is 60 years and for women 55 years). Lower retirement ages have the effect of reducing pensions, which generally are based on years worked.*

*"The law provides for equal pay for equal work. However, a recent Government survey found that women were paid only 70 to 80 percent of what men received for the same work. Most women employed in industry work in lower skilled and lower paid jobs.*

*"According to the most recent figures, women made up approximately 70 percent of the country's illiterate population. A 1998 Asian Development Bank report estimated that 25 percent of all women are semi-literate or illiterate, compared with 10 percent of men; illiteracy in rural areas generally is higher. The Government's "Program for the Development of Chinese Women (1995-2000)" set as one of its goals the elimination of*



*illiteracy among young and middle-aged women by the end of the century; however, this goal was not met.*

*“A high female suicide rate is a serious problem. According to the World Bank, Harvard University, and the World Health Organization, some 56 percent of the world's female suicides occur in China (about 500 per day), a far higher percentage than the country's claim to 22 percent of the world's population. The World Bank estimated the suicide rate in the country to be three times the global average; among women, it was estimated to be nearly five times the global average. Research indicates that the low economic and social status of women is among the leading causes.*

*“While the gap in the education levels of men and women is narrowing, men continue to constitute the majority of the relatively small percentage of the population that receives a university-level education. However, educators in the large cities have reported that there is a trend toward greater gender balance in universities. Some academics have reported that in some departments women are beginning to outnumber men—even in some graduate schools. Women with advanced degrees report an increase in discrimination in the hiring process as the job distribution system has opened up and become more competitive and market driven.”<sup>51</sup>*

## **2. Domestic Violence**

The US State Department report for 2002 noted

*“Violence against women is a significant problem. Violence against women can be prosecuted under the law. There is no national law specifically targeting domestic violence, although amendments to the Marriage Law, adopted in April, are aimed in part at providing protection against spousal abuse. NPC members claim that most of the 33 changes to the Marriage Law were designed to support the rights of women and children. In recognition of the seriousness of spousal abuse, 13 provinces and provincial level cities have passed legislation to address the problem. Sociologists note that there has been no detailed research on the extent of physical violence against women. However, anecdotal evidence suggests that the reporting of domestic abuse is on the rise, particularly in urban areas, because greater attention has been focused on the problem. A July 2000 survey report by the All China Women's Federation (ACWF) found that violence occurs in 30 percent of families, with 80 percent of cases*

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<sup>51</sup> U.S. State Department (2002), *Country Reports on Human Rights Practices, 2001: China*, Washington, Bureau of Democracy, Human Rights and Labor, available at [www.state.gov/g/drl/rls/hrrpt/2001/eap/8289.htm](http://www.state.gov/g/drl/rls/hrrpt/2001/eap/8289.htm)

*involving husbands abusing their wives. Actual figures may be higher because spousal abuse still goes largely unreported. According to experts, the percentage of households in which domestic abuse has occurred is higher in rural areas than in urban centers. The survey found that domestic violence occurs at all socioeconomic levels. According to ACWF research, 40 percent of the complaints it fielded in 2000 involved family violence, and 60 percent of divorces were due to family violence. According to some experts, many women do not report domestic violence to the police because, even when appropriate legislation exists, local law enforcement authorities frequently choose not to interfere in what they regard as a family matter. Nonetheless in two recent cases in Liaoning province, men successfully were prosecuted for severe cases of domestic violence. Despite an increasing awareness of the problem of domestic violence, there are no shelters for victims of domestic violence. Rape is illegal.*

[...]

*“Trafficking in women and children and the kidnaping and sale of women and children for purposes of prostitution and/or marriage are serious problems.”<sup>52</sup>*

### **3. Domestic violence and the law**

#### **3.3 Amendments to marriage law**

The newspaper China Daily reported at the end of 2001 on a judicial interpretation to the April 2001 amendments to the Marriage Law which further defined domestic violence:

*“The Supreme People's Court yesterday issued a judicial interpretation of the amendments to the Marriage Law in an effort to better protect the rights of innocent parties and to improve judges' handling of cases.*

....

*Yesterday's judicial interpretation said that beating, tying up, restricting personal freedom and other practices that lead to physical or mental harm are all forms of domestic violence.”<sup>53</sup>*

### **6. Case law**

#### **6.1 Canada**

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<sup>52</sup> U.S. State Department (2002), op. cit.

<sup>53</sup> China Daily (2001), *Law on Marriage Clarified by Court*, 27 December 2001, available at [www1.chinadaily.com.cn/cndy/2001-12-27/49670.html](http://www1.chinadaily.com.cn/cndy/2001-12-27/49670.html)

The following is an example of a successful case where the court accepted that State protection was not available.

CRDD TA0-03535

*“This claim was part of a group of similar claims which included a constitutional challenge based on section 15 of the Canadian Charter of Rights and Freedoms. The teenaged claimant based her claim on membership in a particular social group: female minors incapable of protecting themselves in abusive family situations. As a preliminary matter, the Minister’s counsel sought unsuccessfully to have the interpreter replaced. The claimant was subjected to physical and psychological abuse by her family and was sent to North America against her will. According to the documentary evidence, Chinese government policies encourage or tacitly accept human rights abuses against women and girls, China’s population control policy depicts girls as problematic for families, and hundreds of millions of females suffer from domestic violence with no state agency or support system to turn to for help. The claimant’s youth and gender rendered her vulnerable. She would be persecuted if she returned to China, and state protection would not be available to her. The Refugee Division considered the Guidelines concerning Women Refugee Claimants Fearing Gender-Related Persecution and the Guidelines concerning Child Refugee Claimants: Procedural and Evidentiary Issues. CRDD TA0-03535, Milliner, Okhovati, March 6, 2001 (reasons signed May 1, 2001).”<sup>54</sup>*

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<sup>54</sup> Reflex, (2001) Case CRDD TA0-03535, Issue 167 - March 6, 2001, Available at: [www.cisr.gc.ca/legal/reflex/articles/refugee/167/167-005\\_e.htm](http://www.cisr.gc.ca/legal/reflex/articles/refugee/167/167-005_e.htm)

