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# GENDERCIDE AND THE CULTURAL CONTEXT OF SEX TRAFFICKING IN CHINA

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by

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# Gendercide and the Cultural Context of Sex Trafficking in China

by

Susan Tiefenbrun<sup>1</sup> and Christie J. Edwards<sup>2</sup>

*“When a son is born,  
Let him sleep on the bed,  
Clothe him with fine clothes,  
And give him jade to play with.  
How lordly his cry is!  
May he grow up to wear crimson  
And be the lord of the clan and the tribe.*

*When a daughter is born,  
Let her sleep on the ground,  
Wrap her in common wrappings,  
And give her broken tiles for playthings.  
May she have no faults, no merits of her own,  
May she well attend to food and wine,  
And bring no discredit to her parents.*

- Book of Songs (800 – 600 B.C.)<sup>3</sup>

## I. Introduction

### A. Background of China's Demographic Crisis

Women in China are bought and sold, murdered and made to disappear in order to comply with a governmental policy that coincides with the cultural phenomenon of male-child preference. China is experiencing a demographic crisis that arguably rises to the level of “gendercide.”<sup>4</sup> In 1979, the Chinese government instituted a One-Child Policy to control the enormous population expansion. In order to comply with the One-Child Policy and to ensure that the family has a coveted boy child, millions of people in China

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<sup>3</sup> Cited in ELISABETH J. CROLL, FEMINISM AND SOCIALISM IN CHINA 23 (1978).

<sup>4</sup> Eric Baculinao, *China Begins to Face Sex-Ratio Imbalance*, MSNBC NEWS, Sept. 14, 2004, available at <http://www.msnbc.msn.com/id/5953508> [hereinafter Baculinao].

have committed sex-selective abortions, infanticide of their own baby girls, non-registration of the first or second infant in the family, and the abandonment or sale of their own girl children. Demographers estimate that there are between 50 and 100 million missing women in China.<sup>5</sup> In answer to the resulting scarcity of women, gangs, “specialist households” and “specialist villages” have been working in an organized chain to kidnap and sell women in China.<sup>6</sup> Several factors work interdependently to cause a serious shortage of women in China. Women are disappearing because of the social pressures of male-child preference, the zealous enforcement of the One-Child Policy by local government authorities, and the murderous responses to this policy undertaken by millions of ordinary people in China who are desperate to have a son. The 2000 official Chinese census reported that there were 117 boys born for every 100 girls, compared to the global average of 105 or 106 boys to every 100 girls.<sup>7</sup> This disparity may be linked to the practice of aborting female fetuses and killing female babies. The scarcity of women has produced a gender imbalance and an increase in prostitution and human trafficking in China.

Trafficking in China has many forms: the purchase of women for brides, the purchase of a male son, or the sale of unwanted female children. Men, primarily in rural China, are desperately seeking a bride in a country where women are in short supply. These men will resort to purchasing a trafficked woman for marriage. Couples seeking a

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<sup>5</sup> World Health Organization [WHO], WHO Regional Office for the Western Pacific, *Women's Health in a Social Context in the Western Pacific Region*, 27 (1997) [hereinafter *Women's Health*]; Calum MacLeod, *Life Begins Again For Chinese Girl Sold As Slave at 12*, THE INDEPENDENT, May 17, 2000, available at [http://findarticles.com/p/articles/mi\\_qn4158/is\\_20000517/ai\\_n14313948](http://findarticles.com/p/articles/mi_qn4158/is_20000517/ai_n14313948) [hereinafter MacLeod].

<sup>6</sup> Hong Ju, Jianhong Liu, Alicia Crowther, *Female Criminal Victimization and Criminal Justice Response in China*, 46 BRIT. J. CRIMINOLOGY 859, 861 (Sept. 2006) [hereinafter *Female Criminal Victimization*].

<sup>7</sup> Celia W. Dugger, *The World; Modern Asia's Anomaly: The Girls Who Don't Get Born*, N.Y. TIMES, May 6, 2001, available at <http://query.nytimes.com/gst/fullpage.html?res=9902EEDC1138F935A35756C0A9679C8B63> [hereinafter Dugger].

male child will sell, drown or even murder their girl child in order to make room for the purchase of a trafficked baby boy. Young adult women and infants are bought and sold like cargo in China. Human trafficking in China is a lucrative international business that is expanding due to several factors: the aggressive implementation of the One-Child Policy, a faulty legal system, and the blind adherence to long standing cultural traditions that devalue women. In China, Communist Party directives overshadow the legislative and judicial process. The primacy of government policy results in the ineffectiveness of laws that theoretically protect women and female children in China.<sup>8</sup>

### **B. Chinese Culture**

Women's inferiority is deeply ingrained in the Chinese culture and is reflected in the *Five Classics*, a canonical literary text ascribed to Confucius. The Confucian view of woman is clearly stated:

“The female was inferior by nature, she was dark as the moon and changeable as water, jealous, narrow-minded and insinuating. She was indiscreet, unintelligent, and dominated by emotion. Her beauty was a snare for the unwary male, the ruination of states.”<sup>9</sup>

In Chinese culture, girls typically marry into the husband's family, leave home, and take care of their husband's parents. China's feudal tradition continuously subjected women to subordination by their father, husband, and even their son due to a patriarchal and patrilineal system. In addition, according to the rules of primogeniture, only the first male born traditionally inherited the parents' fortune. Moreover, only boys can continue

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<sup>8</sup> Xiaorong Li, *License to Coerce: Violence Against Women, State Responsibility, and Legal Failures in China's Family Planning Program*, 8 YALE J.L. & FEMINISM 145, 184 (1996) [hereinafter *License to Coerce*].

<sup>9</sup> Richard W. Guisso, *Thunder Over the Lake: The Five Classics and the Perception of Women in Early China*, in WOMEN IN CHINA: CURRENT DIRECTIONS IN HISTORICAL SCHOLARSHIP 59 (Richard W. Guisso & Stanley Johannesen, eds., 1981) [hereinafter *The Five Classics*].

the patrilineal family line. Thus, girl babies are considered financial burdens because they are unavailable to take care of their elderly parents who, upon retirement, do not receive enough money from the inadequate social services system in China. If only one child is allowed, the general consensus in China is that it better be a boy!

Between 1949 and 1978, the Communist rule under Mao Zedong temporarily tried to relieve the subjugation of women by giving them the legal right to vote, education, employment, marriage and inheritance rights. Prostitution was eradicated completely during this period.<sup>10</sup> Nevertheless, the economic reforms set in place later by Deng Xiaoping in 1978 brought significant transformations in Chinese society and a setback to women's equality. With the transition from a planned economy under Communism to a free market economy in 1979, China saw the reemergence of prostitution and the abduction of women for the sex trade and for marriage. Trafficking of women became rampant as Chinese society moved forward toward a free market system. This transition also promoted wider differences between urban and rural societies. Ironically, while the economic reform produced greater wealth for China, it also produced greater discriminatory treatment of women.<sup>11</sup>

### **C. Trafficking in China**

Trafficking of women in China is a serious human rights violation. Domestic trafficking is “the most significant problem in China,”<sup>12</sup> and an estimated 10,000 to 20,000 victims are trafficked internally each year.<sup>13</sup> From 1991 to 1996 police freed

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<sup>10</sup> *Female Criminal Victimization*, *supra* note 6, at 859.

<sup>11</sup> *Id.*

<sup>12</sup> DEPARTMENT OF STATE, TRAFFICKING IN PERSONS REPORT [TIP Report] 91 (2008), available at <http://www.state.gov/documents/organization/105501.pdf> [hereinafter TIP Report 2008].

<sup>13</sup> DEPARTMENT OF STATE, TRAFFICKING IN PERSONS REPORT 80 (2007), available at <http://www.state.gov/documents/organization/82902.pdf> [hereinafter TIP Report 2007].

88,000 kidnapped women and arrested 143,000 people for engaging in slave trade.<sup>14</sup> From 2001 to 2003, China's police freed more than 42,000 kidnapped women and children.<sup>15</sup> How many more women in China today remain enslaved in brothels and forced marriages is difficult to determine because of the unsavory nature of the crime and the lack of transparency in China. China is designated as a source, transit, and destination country for women and children trafficked for the purpose of sexual exploitation and forced labor.<sup>16</sup> Trafficking occurs mainly within China's borders, but Chinese citizens are also trafficked out of China into Africa, Asia, Europe, Latin America, the Middle East and North America.<sup>17</sup> Poor and desperate Chinese women are lured abroad with false promises of legitimate work only to be forced into prostitution and commercial sexual exploitation. They are trafficked typically into Taiwan, Thailand, Malaysia and Japan. Foreign women and children are trafficked into China from Mongolia, Burma, North Korea, Russia and Vietnam for purposes of forced labor, marriage, and prostitution.<sup>18</sup>

Experts believe that China's One-Child Policy has resulted in a male-female birth ratio imbalance, and the scarcity of women has contributed mightily to the increase in trafficking of women for brides.<sup>19</sup> The government of China is making efforts to comply with minimum standards for the elimination of trafficking, but it fails to adequately punish traffickers or protect Chinese and foreign victims of trafficking.<sup>20</sup> China still continues to treat trafficking victims as criminals and regularly deports North Korean

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<sup>14</sup> Chen Yiyung, *Trying To Stand On Two Feet*, NEWSWEEK, June 29, 1998, available at <http://www.newsweek.com/id/92948/page/1> [hereinafter Yiyung].

<sup>15</sup> Baculinao, *supra* note 4.

<sup>16</sup> TIP Report 2008, *supra* note 12, at 91.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 92.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*



trafficked women back to horrendous conditions in their home country.<sup>21</sup> In December 2007, China released a National Action Plan to Combat Trafficking in December 2007, but the government has not allocated enough funds to implement the plan.

#### **D. Definitions of Trafficking**

Trafficking in women and children is viewed as an illegal form of international trade and is associated with forced prostitution. Trafficking is the “trade of women for the purpose of prostitution.”<sup>22</sup> Each year, more than 2.4 million victims of sex trafficking are bought and sold for the purpose of sexual exploitation.<sup>23</sup> Trafficking typically involves the transportation of a woman across an international border,<sup>24</sup> but it is not smuggling, which is a different crime. Human trafficking involves movement of people with force, fraud or deception in order to have them engage in exploitative, slave-like labor. Forced labor is also a form of trafficking and is a significant problem in China.

Although there is no consensus among scholars or governments on the definition of trafficking, in 1995 the United Nations General Assembly defined trafficking broadly in this way:

“the illicit and clandestine movement of persons across national and international borders, largely from developing countries and some countries with economies in transition, with the end goal of forcing women and girl children into sexually or economically oppressive and exploitative situations for the profit of recruiters, traffickers and crime syndicates, as well as other illegal activities related to trafficking, such as

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<sup>21</sup> *Id.*

<sup>22</sup> Roelof Haveman, *Traffic in Persons as a Problem*, in *COMBATING TRAFFIC IN PERSONS* 137, 139 (1994) [hereinafter *Traffic in Persons*].

<sup>23</sup> U.N. International Labor Organization, *A Global Alliance Against Forced Labor* 10 (2005), available at [http://www.ilo.org/dyn/declaris/DECLARATIONWEB.DOWNLOAD\\_BLOB?Var\\_DocumentID=5059](http://www.ilo.org/dyn/declaris/DECLARATIONWEB.DOWNLOAD_BLOB?Var_DocumentID=5059).

<sup>24</sup> *Traffic in Persons*, *supra* note 22, at 144.

forced domestic labor, false marriages, clandestine employment and false adoption.”<sup>25</sup>

The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime [Palermo Protocol] defines “trafficking in persons” as a form of slavery, forced labor, and forced prostitution:

“The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”<sup>26</sup>

The U.S. Trafficking Victims Protection Act of 2000<sup>27</sup> distinguishes between sex trafficking and “severe forms of trafficking in persons.” Severe forms of trafficking, which provide victims when rescued with enhanced benefits, include trafficking a minor or trafficking a person with forced violence:

- (A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- (B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.”

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<sup>25</sup> The Secretary General, *Report of the Secretary-General on Traffic of Women and Girls*, ¶ 8, G.A. Res 49/166, U.N. Doc. A/50/369 (Aug. 24, 1995) available at <http://daccessdds.un.org/doc/UNDOC/GEN/N95/260/58/PDF/N9526058.pdf?OpenElement>.

<sup>26</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, art. 3(a), Dec. 12, 2000, G.A. Res. 55/25, U.N. Doc. A/55/383 (2000) [hereinafter Palermo Protocol].

<sup>27</sup> Trafficking Victims Protection Act of 2000, 22 U.S.C.A § 7101 (2000) [hereinafter TVPA].

“Sex trafficking” is defined as: “the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.”<sup>28</sup> By contrast, China’s definition of trafficking does not include acts of forced labor, debt bondage, coercion, or involuntary servitude, or offenses committed against male victims.<sup>29</sup>

Trafficking involves the forced movement of human beings from poor source countries through transition countries and into relatively rich destination countries, such as the United States, Western Europe, North America, Australia, China and Japan.<sup>30</sup> Globalization, the advancement of technology, and the expansion of internet use increase people’s access to remote parts of the world and facilitate trafficking. The ease with which traffickers can transport their victims across international borders through modern technology also increases the incidences of trafficking.<sup>31</sup> According to the International Organization of Migration, trafficking follows migration routes. Women move because of poverty, economic disparity among nations, a general lack of economic opportunities for women (especially in poor or transition countries) and the cultural and political marginalization of women in source countries.<sup>32</sup> The World Bank has encouraged the promotion of tourism as a development strategy, but tourism has also contributed to the rise in trafficked women for prostitution.<sup>33</sup> Women from developing countries are highly susceptible to traffickers who

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<sup>28</sup> TVPA, *supra* note 27.

<sup>29</sup> TIP Report 2008, *supra* note 12, at 93.

<sup>30</sup> Susan Tiefenbrun, *The Saga of Susannah – A U.S. Remedy for Sex Trafficking in Women: The Victims of Trafficking and Violence Protection Act of 2000*, 2002 UTAH L. REV, 107, 111 (2002) [hereinafter Tiefenbrun, *Saga of Susannah*]; Radhika Coomaraswamy & Lisa M. Kois, *Violence Against Women*, in WOMEN AND INTERNATIONAL HUMAN RIGHTS LAW 177, 203 (1999) [hereinafter *Violence Against Women*].

<sup>31</sup> *Violence Against Women*, *supra* note 30, at 202.

<sup>32</sup> INTERNATIONAL ORGANIZATION OF MIGRATION, *TRAFFICKING IN WOMEN TO COUNTRIES OF THE EUROPEAN UNION: CHARACTERISTICS, TRENDS & POLICY ISSUES* 6 (1996).

<sup>33</sup> *Violence Against Women*, *supra* note 30, at 202.

falsely promise them high paying jobs or advantageous marriages in developed countries.<sup>34</sup> However, these women are duped and ultimately sold to brothel owners or to men who buy them as wives or concubines for the purpose of slave labor and exploitation.<sup>35</sup>

Sex trafficking laws around the world are either weak or non-existent; those that exist are either not enforced or often enforced to the detriment of the victim, rather than the perpetrator.<sup>36</sup> For example, China has a trafficking law but it is not well enforced.<sup>37</sup> In addition, national laws that prohibit prostitution often discourage victims from seeking help from the authorities who might either throw the trafficking victims in jail for engaging in illegal prostitution or deport them to their home countries, where they are forced to live as social outcasts in horrific conditions.<sup>38</sup> However, legalized prostitution facilitates trafficking because the trafficked women forced to engage in sex work against her will cannot be distinguished from the voluntary prostitute. Because the criminal penalties for trafficking in women are typically very light, international crime syndicates are drawn to the sex trade industry.<sup>39</sup> Sex trafficking is the third most lucrative international crime, after the traffic of arms and drugs.<sup>40</sup> The economic advantages of human trafficking make it difficult to eradicate.

This Article will address sex trafficking in China and the root causes of this human rights violation and international crime that has developed from the

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<sup>34</sup> *Id.* at 203.

<sup>35</sup> *Id.*

<sup>36</sup> Tiefenbrun, *Saga of Susannah*, *supra* note 30, at 114.

<sup>37</sup> TIP Report 2008, *supra* note 12, at 93.

<sup>38</sup> Tiefenbrun, *Saga of Susannah*, *supra* note 30, at 113-114.

<sup>39</sup> *Id.* at 114.

<sup>40</sup> *Id.*

strict enforcement of a governmental One-Child Policy and the cultural phenomenon of male-child preference. The disappearance of women in China due to the One-Child Policy and the male-child preference is referred to as “gendercide,” or the systematic destruction of a group (women) based on their gender. The Article is organized in six parts. Part II will examine the laws protecting women in China from trafficking; Part III will discuss specific problems related to sex trafficking in China; Part IV will unearth root causes of sex trafficking in China based on the One-Child Policy and the increasing scarcity of women; Part V will address the changing role of women in Chinese society and the need for cultural reform; and Part VI will offer policy suggestions to combat the growth of sex trafficking in China and to encourage the Chinese government to protect the lives and rights of women.

## **II. Laws Protecting Women from Trafficking in China**

### **A. International Instruments Regulating Trafficking**

There are many international instruments regulating trafficking because it is both a human rights violation and an international crime.<sup>41</sup> Trafficking is at the crossroads of slavery, forced prostitution, torture, and forced labor. Therefore, trafficking benefits from the legislation prohibiting these crimes and human rights violations. Trafficking also involves the illegal sale of children and the trafficking of children for their use as soldiers.<sup>42</sup> Some of the international instruments that protect trafficking victims include

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<sup>41</sup> Susan Tiefenbrun, *Child Soldiers, Slavery and the Trafficking of Children*, 31 *FORDHAM INT’L L. J.* 415 (2008).

<sup>42</sup> See generally Susan Tiefenbrun, *Sex Sells but Drugs Don’t Talk: Trafficking of Women Sex Workers and an Economic Solution*, 24 *T. JEFFERSON L. REV.* 161 (2002).

the International Agreement for the Suppression of the White Slave Traffic (1904);<sup>43</sup> the International Convention for the Suppression of Traffic in Women and Children (1921);<sup>44</sup> the Convention to Suppress the Slave Trade and Slavery (1926);<sup>45</sup> the Forced Labor Convention (1930);<sup>46</sup> the International Convention for the Suppression of the Traffic in Women of Full Age (1933);<sup>47</sup> the U.N. Charter (1945);<sup>48</sup> the Universal Declaration of Human Rights (1948);<sup>49</sup> the Geneva Convention for the Suppression of the Traffic of Persons and the Exploitation of the Prostitution of Others (1950);<sup>50</sup> the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institution and Practices Similar to Slavery (1957);<sup>51</sup> the International Covenant on Civil and Political Rights (1966);<sup>52</sup> the Convention on the Elimination of All Forms of Discrimination Against Women (1979);<sup>53</sup> the Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment (1984);<sup>54</sup> the Convention on the Rights of the Child

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<sup>43</sup> International Agreement for the Suppression of the White Slave Traffic, May 18, 1904, 2 U.S.T. 1997, T.I.A.S. No. 2332, 30 U.N.T.S. 23 (1904).

<sup>44</sup> International Convention for the Suppression of Traffic in Women and Children, Sept. 30, 1921, 9 L.N.T.S. 416 (1921).

<sup>45</sup> Convention to Suppress the Slave Trade and Slavery, Sept. 25, 1926, 46 Stat. 2183, 60 L.N.T.S. 253 (1926).

<sup>46</sup> Forced Labor Convention, June 28, 1930, 39 U.N.T.S. 55 (1930).

<sup>47</sup> International Convention for the Suppression of the Traffic in Women of Full Age, Oct. 11, 1933, 150 L.N.T.S. 431 (1933).

<sup>48</sup> U.N. Charter, June 26, 1945, 59 Stat. 1031, T.S. No. 933 (1945).

<sup>49</sup> Universal Declaration of Human Rights, Dec. 10, 1948, G.A. Res. 217(III), U.N. GAOR, 3d Sess., Supp. No. 13, U.N. Doc. A/810 (1948).

<sup>50</sup> Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, Mar. 21, 1950, 96 U.N.T.S. 271 (1950).

<sup>51</sup> Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, Apr. 30, 1957, 266 U.N.T.S. 40 (1957).

<sup>52</sup> International Covenant on Civil and Political Rights, Dec. 19, 1966, G.A. Res. 2200A, U.N. GAOR, 21st Sess., Supp. No. 16, 999 U.N.T.S. 171, U.N. Doc. A/6316 (1966).

<sup>53</sup> Convention on the Elimination of All Forms of Discrimination against Women, Dec. 18, 1979, G.A. Res. 34/180, 34 U.N. GAOR, Supp. (No. 46), U.N. Doc. A/34/46 (1979) [hereinafter CEDAW].

<sup>54</sup> Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, G.A. Res. 39/46, Annex, U.N. Doc. A/Res/39/46/Annex (1984) [hereinafter CAT].

(1989);<sup>55</sup> the Convention Against Transnational Organized Crime: Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children<sup>56</sup> and the Protocol Against Smuggling of Migrants by Land, Sea and Air (2000);<sup>57</sup> and the Optional Protocols to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts and on the Sale of Children, Child Prostitution and Child Pornography (2000).<sup>58</sup>

China is not a signatory to the International Covenant on Civil and Political Rights or the International Covenant on Economic, Social and Cultural Rights, which along with the Universal Declaration of Human Rights comprise the “International Bill of Rights.” However, China has ratified CEDAW,<sup>59</sup> which grants positive and negative reproductive rights to women. Article 16 of CEDAW provides:

“States Parties shall take all appropriate measures to . . . ensure, on a basis of equality of men and women . . . the same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights.”<sup>60</sup>

The strict regulation of women’s reproduction choices through compulsory birth control measures and limited forms of contraceptives deny Chinese women the freedom to make their own reproductive decisions.<sup>61</sup> Access to information and education about

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<sup>55</sup> Convention on the Rights of the Child, Nov. 20, 1989, G.A. Res. 44/25, annex, U.N. GAOR, 44th Sess., Supp. No. 49, U.N. Doc. A/RES/44/25 (1989) [hereinafter CRC].

<sup>56</sup> Palermo Protocol, *supra* note 26.

<sup>57</sup> Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention Against Transnational Organized Crime, Nov. 15, 2000, U.N. GAOR, 55th Sess., Annex 3, U.N. Doc. A/55/383 (2000).

<sup>58</sup> Optional Protocols to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts and on the Sale of Children, Child Prostitution and Child Pornography, May 25, 2000, G.A. Res. 54/263, Annexes I and II, respectively, U.N. GAOR, 54th Sess., Supp. No. 49, U.N. Doc. A/54/49 (2000).

<sup>59</sup> CEDAW, *supra* note 53.

<sup>60</sup> *Id.* at art. 16.

<sup>61</sup> *License to Coerce*, *supra* note 8, at 184.

contraceptives in China is also extremely limited, in addition to a severe lack of quality reproductive care in rural areas.<sup>62</sup> Thus, the restrictive birth planning regulations under the Chinese One-Child Policy violate Chinese women's reproductive rights under CEDAW.

China also signed the Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment<sup>63</sup> and the Convention on the Rights of the Child.<sup>64</sup> These treaties give China international obligations to protect women and children from trafficking, slavery and torture or other forms of cruel, inhumane or degrading treatment. Thus, international treaties protecting the traffic of women are abundant, but trafficking still exists and is thriving. Clearly, the fault lies in the lack of enforcement of these treaties to which China and other nations assisting China in its traffic of women are in serious non-compliance.

### **B. Chinese Trafficking Laws**

In addition to China's marriage, family planning, and inheritance laws, which do theoretically protect women and children, China has enacted several laws that specifically address trafficking, kidnapping and sexual exploitation of women and children. In 1991, the National People's Congress Standing Committee criminalized the purchase of women by enacting a "Decision Relating to the Severe Punishment of Criminal Elements Who Abduct and Kidnap Women and Children," [the Decision] making the abduction and the sale of women and children separate offenses.<sup>65</sup> Prior to the promulgation of this

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<sup>62</sup> *Id.*

<sup>63</sup> CAT, *supra* note 54.

<sup>64</sup> CRC, *supra* note 55.

<sup>65</sup> Decision Relating to the Severe Punishment of Criminal Elements Who Abduct and Kidnap Women and Children (promulgated by the Standing Comm. Nat'l People's Cong., September 4, 1991) *available at* <http://english.mofcom.gov.cn/aarticle/lawsdata/chineselaw/200211/20021100053260.html>



Decision, many traffickers who sold women that others had kidnapped were released by the courts.<sup>66</sup> Now both the kidnapper and seller are prosecuted under this Decision. The use of force to prevent the rescue of trafficked women was also specifically criminalized.<sup>67</sup> In 1992, the Law on the Protection of Women's Rights and Interests [LPWRI]<sup>68</sup> was passed, which was the first basic law to protect women's rights and interests in China.<sup>69</sup> The LPWRI prohibits kidnapping, trafficking and buying women, though it fails to prescribe any specific penalties for these offenses.<sup>70</sup> The LPWRI also fails to provide a definition of discrimination against women.<sup>71</sup> However, those who buy abducted women and force them to have sex may be tried for the crime of rape under the Chinese Criminal Code.<sup>72</sup> Other types of violence against abducted women are subject to penalties under the Chinese Criminal Code.<sup>73</sup> The rights of women in Hong Kong are protected by the Sex Discrimination Ordinance (1995) and the Family Status Ordinance (1997).<sup>74</sup>

Article 236 of the Criminal Code provides a 3 to 10 year sentence for rape, while sexual exploitation of girls under the age of 14 can receive a sentence of life

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<sup>66</sup> Human Rights in China, *Caught Between Tradition and the State: Violations of the Human Rights of Chinese Women*, 17 WOMEN'S RTS. L. REP. 285, 290 (1996) [hereinafter *Caught Between Tradition and the State*].

<sup>67</sup> *Caught Between Tradition and the State*, *supra* note 66.

<sup>68</sup> Law Protecting Women's Rights and Interests (promulgated by Order No. 58 of the President of the P.R.C. on April 3, 1992, effective October 1, 1992), available at [http://www.unescap.org/esid/psis/population/database/poplaws/law\\_china/ch\\_record002.htm](http://www.unescap.org/esid/psis/population/database/poplaws/law_china/ch_record002.htm) [hereinafter LPWRI].

<sup>69</sup> U.N. Gen. Assembly, Comm. Convention on the Elimination of All Forms of Discrimination against Women, *Report of the Committee on the Elimination of Discrimination Against Women*, ¶ 272, U.N. Doc. General Assembly, fifty-fourth session, Supplement No. 38, A/54/38 Rev. 1, 30, 289, 27 ¶ 272 (Jan. 19, 1999) [hereinafter CEDAW Report].

<sup>70</sup> LPWRI, *supra* note 68.

<sup>71</sup> CEDAW Report, *supra* note 69, at ¶ 283.

<sup>72</sup> Criminal Law arts. 236, 241 (adopted by Nat'l People's Cong. July 1, 1979, revised March 14, 1997), available at [http://www.unescap.org/esid/psis/population/database/poplaws/law\\_china/ch\\_record010.htm](http://www.unescap.org/esid/psis/population/database/poplaws/law_china/ch_record010.htm) [hereinafter Criminal Law].

<sup>73</sup> *Caught Between Tradition and the State*, *supra* note 66, at 290.

<sup>74</sup> CEDAW Report, *supra* note 69, at ¶ 260.

imprisonment or the death penalty.<sup>75</sup> Article 240 prohibits abducting and trafficking a woman or child and specifies a 5 to 10 year sentence for this crime.<sup>76</sup> A 10 year to lifetime sentence or the death penalty may be imposed on those who abduct and traffic a woman or child, rape or prostitute the woman, steal an infant for the purpose of selling the victim, or sell the victim outside of China.<sup>77</sup> Purchasing an abducted woman or child carries a punishment of up to three years, although the punishment can be combined with other provisions in instances of rape or other crimes in order to give the perpetrator a longer sentence.<sup>78</sup> China's Criminal Code does not prohibit commercial sexual exploitation involving coercion or fraud, nor does it prohibit all forms of trafficking, such as debt bondage.<sup>79</sup> Chinese law enforcement efforts to arrest and prosecute perpetrators of these crimes are seriously lacking, and China does not even report statistics on prosecutions, convictions or sentences for these crimes.<sup>80</sup>

The Fourth World Conference on Women was held in Beijing, China in September 1995, where the Beijing Declaration and Platform for Action were adopted.<sup>81</sup> Subsequently, China made some efforts to implement the Beijing Declaration and Platform for Action and to advance the goals of equality, development and peace for Chinese women.<sup>82</sup> The Program for the Development of the Chinese Women [the Program] was also created to “promote the progress and development of Chinese

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<sup>75</sup> Criminal Law, *supra* note 72, at art. 236.

<sup>76</sup> *Id.* at art. 240.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.* at art. 241.

<sup>79</sup> TIP Report 2007, *supra* note 13, at 80.

<sup>80</sup> TIP Report 2008, *supra* note 12, at 93.

<sup>81</sup> U.N. Division for the Advancement of Women, Fourth World Conference on Women, Beijing, China, (September 1995) available at <http://www.un.org/womenwatch/daw/beijing/>.

<sup>82</sup> CEDAW Report, *supra* note 69, at ¶ 275.

women” by the All-China Women’s Federation [Women’s Federation] in 1995.<sup>83</sup> The Program aimed to improve the status and equality of women in China by establishing agencies to increase women’s political and decision making power; guarantee labor rights for women; develop education rights and opportunities for women; improve women’s health and rights within the family; contain violence against women and the criminal acts of abducting and prostituting women; and give aid to poverty-stricken women in rural areas.<sup>84</sup> China renewed the Program in 2001 in order to further promote the full participation of women in economic and social development and to achieve greater equality for women in China.<sup>85</sup> The Committee on the Elimination of Discrimination Against Women lauded this Program for its achievements “in securing social and economic rights for hundreds of millions of people” in China.<sup>86</sup> If this Program were properly enforced, the plight of trafficked women and children in China would be greatly improved.

The Law on the Protection of Minors, adopted in 1991, was revised in 2006 and became effective in June 2007.<sup>87</sup> This law specifically prohibits the trafficking, kidnapping and sexual exploitation of minors.<sup>88</sup> The chairman of the Standing Committee of the National People’s Congress has “urged tighter supervision on the

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<sup>83</sup> The Program for the Development of the Chinese Women (1995-2000) (promulgated by the All-China Women’s Federation 1995) *available at* [http://www.unescap.org/esid/psis/population/database/poplaws/law\\_china/ch\\_record016.htm](http://www.unescap.org/esid/psis/population/database/poplaws/law_china/ch_record016.htm).

<sup>84</sup> *Id.*

<sup>85</sup> The Program for the Development of the Chinese Women (2001-2010) (promulgated by the All-China Women’s Federation 1995) *available at* [http://www.womenofchina.cn/Policies\\_Laws/Policies/1458.jsp](http://www.womenofchina.cn/Policies_Laws/Policies/1458.jsp).

<sup>86</sup> CEDAW Report, *supra* note 69, at ¶ 273.

<sup>87</sup> Law on the Protection of Minors (adopted by the Standing Comm. Nat’l People’s Cong., September 4, 1991, revised December 29, 2006, effective June 1, 2007) *available at* [http://www.npc.gov.cn/englishnpc/Law/2007-12/12/content\\_1383869.htm](http://www.npc.gov.cn/englishnpc/Law/2007-12/12/content_1383869.htm).

<sup>88</sup> *Id.* at art. 41.

implementation of the law,” and warns that inspection teams will be visiting several provinces in the summer of 2008 to investigate compliance with the law.<sup>89</sup>

In December 2007, the Chinese government established a new Office for Preventing and Combating Crimes of Trafficking in Women and Children.<sup>90</sup> At that time, China also released its much-anticipated National Action Plan to Combat Trafficking, but “there are no plans for resources to be allocated to local and provincial governments for the implementation of the plan. Additionally, the action plan covers only sex trafficking of females, and does not address labor trafficking or male victims of sex trafficking.”<sup>91</sup>

### **C. U.S. Trafficking Law**

The Trafficking Victims Protection Act of 2000 [“TVPA”]<sup>92</sup> is the U.S. law with an international prong that is designed to combat human trafficking by punishing traffickers, protecting victims, and preventing trafficking.<sup>93</sup> On October 28, 2000, President William Clinton signed the TVPA in order to provide an international solution to an international crime. This law severely punishes sex trafficking as if it were a crime as serious as rape. Trafficking is punishable by a sentence of twenty years to life imprisonment.<sup>94</sup> The TVPA has been hailed as the “most significant human rights legislation of [the U.S.] Congress.”<sup>95</sup>

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<sup>89</sup> Embassy of the People’s Republic of China in the United States of America, *China’s Top Legislator Urges Better Protection of Minors*, June 2, 2008, available at <http://www.china-embassy.org/eng/xw/t443171.htm>.

<sup>90</sup> TIP Report 2008, *supra* note 12, at 92.

<sup>91</sup> *Id.*

<sup>92</sup> TVPA, *supra* note 27.

<sup>93</sup> *Id.*

<sup>94</sup> Trafficking with Respect to Peonage, Slavery, Involuntary Servitude or Forced Labor, 18 U.S.C. § 1590 (2000).

<sup>95</sup> Press Release, Eric Hotmire, *Senate Passes Brownback, Wellstone Trafficking Victims Protection Act* (July 27, 2000), available at <http://brownback.senate.gov/pressapp/record.cfm?id=175961&&year=2000&>; President Clinton stated that the TVPA was “the most significant step we’ve ever taken to secure the health

The TVPA provides desirable financial assistance, benefits, protection, services and education to victims of trafficking, both in the United States and abroad, as well as the right to permanent residency in the U.S. and a work permit if the trafficked victim cooperates in the prosecution of her trafficker[s].<sup>96</sup> The TVPA establishes the very real threat of prosecution and severe punishment for sex traffickers.<sup>97</sup> Since the passage of the TVPA in 2000, the U.S. government has spent over \$528 million dollars in programmatic assistance abroad to help foreign governments and organizations eliminate trafficking.<sup>98</sup> The U.S. has been the catalyst for international cooperation on anti-trafficking efforts. President George Bush issued the first National Security Presidential Directive on Trafficking<sup>99</sup> and called for more countries to join the U.S. in the fight to eliminate sex trafficking.<sup>100</sup> In a bipartisan commitment to the eradication of trafficking and the protection of trafficked victims, President George W. Bush and the Republican-led Congresses signed the Trafficking Victims Protection Reauthorization Acts [“TVPRA”] in 2003 and 2005.<sup>101</sup> Bush also signed the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act [“PROTECT Act”] of 2003, which is designed to protect children from sexual predators.<sup>102</sup> The PROTECT Act has

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and safety of women at home and around the world.” Deb Riechmann, *Clinton Signs Law to Combat Violence*, DAYTON DAILY NEWS, October 29, 2000, at 3A.

<sup>96</sup> TVPA, *supra* note 27.

<sup>97</sup> *Id.*

<sup>98</sup> TIP Report 2008, *supra* note 12, at 2.

<sup>99</sup> Press Release, Office of the Press Secretary, *Trafficking in Persons National Security Presidential Directive* (Feb. 24, 2003), available at <http://www.whitehouse.gov/news/releases/2003/02/20030225.html>; Paula J. Dobriansky, Under Sec’y of State for Global Affairs, U.S. Dep’t of State, Remarks to Conference to Stop Child Trafficking: Modern-Day Slavery (June 3, 2003), available at [http://www.usis.it/file2003\\_06/alia/A3060506.htm](http://www.usis.it/file2003_06/alia/A3060506.htm).

<sup>100</sup> President George W. Bush, *President Bush Addresses United Nations General Assembly* (September 23, 2003), available at <http://www.whitehouse.gov/news/releases/2003/09/20030923-4.html>.

<sup>101</sup> Trafficking Victims Protection Reauthorization Act of 2003, 22 U.S.C.A § 7101 (2003); Trafficking Victims Protection Reauthorization Act of 2005, 22 U.S.C.A § 7101 (2005).

<sup>102</sup> Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003, 18 U.S.C.A § 1 (2003).

extraterritorial reach, and any U.S. citizen who engages in sex with a minor overseas, even in a country where this act is legal, will be investigated, prosecuted and convicted.<sup>103</sup> The 2007 TVPRA has been passed by the House of Representatives and is now awaiting a vote in the Senate.<sup>104</sup> The frequent reauthorization of the TVPA demonstrates the U.S. government's firm commitment to the eradication of human trafficking.

In addition to providing protection for victims, prosecution for perpetrators, and prevention of the crime of trafficking, the TVPA also intends to "encourage foreign governments to take effective actions to counter all forms of trafficking in persons" by enacting or amending sex trafficking legislation.<sup>105</sup> The TVPA seeks to strengthen enforcement policies and coordinate international anti-trafficking efforts through the publication of the annual Trafficking in Persons Report [TIP Report] by the U.S. State Department.<sup>106</sup> The first TIP Report, published in July 2001, reported on the trafficking status of eighty-two countries in the world.<sup>107</sup>

The TIP Report divides countries into three tiers based on the individual government's efforts to combat trafficking within the country.<sup>108</sup> Countries placed on Tier 1 have to meet the minimum standards set forth in Section 108(a) of the TVPA. The minimum standards are as follows: the government must prohibit and punish severe forms of trafficking in persons; the punishment must be commensurate with that for grave crimes such as forcible sexual assault or rape; the punishment must be sufficiently

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<sup>103</sup> *Id.*

<sup>104</sup> William Wilberforce Trafficking Victims Protection Reauthorization Act of 2007, H.R. 3887, available at <http://thomas.loc.gov/cgi-bin/bdquery/z?d110:H.R.3887>.

<sup>105</sup> TIP Report 2008, *supra* note 12, at 5.

<sup>106</sup> *Id.*

<sup>107</sup> *Id.* at 1.

<sup>108</sup> DEPARTMENT OF STATE, TRAFFICKING IN PERSONS REPORT 4-5 (2001), available at <http://www.state.gov/documents/organization/4107.pdf> [hereinafter TIP Report 2001].

stringent to deter the crime and to reflect its heinous nature; and finally, the government must make serious and sustained efforts to eliminate severe forms of trafficking in persons.<sup>109</sup> Governments can demonstrate “serious and sustained efforts” to combat trafficking by investigating and prosecuting traffickers, protecting victims and encouraging them to help in the prosecution of the traffickers, starting education programs to alert potential victims about the dangers of trafficking, extraditing traffickers at the request of other countries, monitoring immigration and by investigating public officials who may be complicit in the trafficking process.<sup>110</sup>

Countries are placed on Tier 2 if they do not fully comply with the minimum standards of the TVPA but are nevertheless making significant efforts to bring themselves into compliance by committing to take additional future steps over the next year.<sup>111</sup> Tier 2 countries often do not have anti-trafficking legislation or specific criminal punishments for the crime of trafficking, but are making serious and sustained efforts to enact legislation to address the problem of trafficking.<sup>112</sup> In 2003, the TVPA also created the Tier 2 Watch List to monitor countries in danger of falling into Tier 3.<sup>113</sup> A Tier 2 country can be placed on the Tier 2 Watch List if the country has a significant number of trafficking victims or the number of victims is significantly increasing and the country fails to provide evidence of increasing efforts to combat trafficking and complicity by public officials.<sup>114</sup>

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<sup>109</sup> TIP Report 2008, *supra* note 12, at 284.

<sup>110</sup> TIP Report 2008, *supra* note 12, at 284.

<sup>111</sup> *Id.* at 12.

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> *Id.* at 12-13.

Countries are placed on Tier 3 if they do not comply with the minimum standards of the TVPA and are not making significant efforts to become compliant by enacting or enforcing trafficking laws.<sup>115</sup> Countries placed on Tier 3 may be subject to sanctions by the U.S. Government.<sup>116</sup> The U.S. Government may withhold non-humanitarian, non-trade related assistance, and the U.S. may register its opposition to international assistance from financial institutions such as the World Bank or the International Monetary Fund.<sup>117</sup> Many of the worst offenders on Tier 3 fear that sanctions and the stigma of being placed on Tier 3 might negatively affect their international trade, tourism and international aid, and they have asked the U.S. for assistance to move up from Tier 3.<sup>118</sup>

As stated above, China fell down from Tier 2 to the Tier 2 Watch List in 2005 for its failure to comply with the minimum standards of the TVPA.<sup>119</sup> China was on Tier 2 in 2001 but Hong Kong was on Tier 1.<sup>120</sup> China was on Tier 2 in 2002 because it did not meet minimum standards, although China maintains a database of abducted and rescued people, and a DNA database to facilitate the return of abducted children to their families.<sup>121</sup> China was on Tier 2 again in 2003, and the PRC continued its public awareness campaigns against trafficking of women and children. In 2003, women were

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<sup>115</sup> *Id.* at 12.

<sup>116</sup> *Id.* at 13.

<sup>117</sup> *Id.* at 15.

<sup>118</sup> *Id.* at 18.

<sup>119</sup> *Id.* at 91.

<sup>120</sup> TIP Report 2001, *supra* note 108, at 15.

<sup>121</sup> DEPARTMENT OF STATE, TRAFFICKING IN PERSONS REPORT 39 (2002), *available at* <http://www.state.gov/documents/organization/10815.pdf>.



reintegrated into their communities through resettlement centers offering legal, medical and psychological help.<sup>122</sup>

China was on Tier 2 again in 2004, and the TIP Report mentioned China's 1992 Law Protecting Women's Rights and Interests that specifically outlaws trafficking or kidnapping of women, as well as China's Criminal Code, which imposes the death penalty for traffickers who coerce girls under 14 into prostitution.<sup>123</sup> In 2005, China moved down to the Tier 2 Watch List due to its "failure to provide evidence of increasing efforts to combat trafficking, specifically its inadequate protection for trafficking victims, specifically foreign women and P.R.C. women identified from Taiwan."<sup>124</sup> The Chinese government also did not take measures to protect foreign women who were trafficked for commercial sexual exploitation and forced marriages with Chinese men.<sup>125</sup>

In 2006, China again was placed on the Tier 2 Watch List, even though China's Women's Federation reportedly provided some assistance to trafficked women.<sup>126</sup> In 2007, China stayed on the Tier 2 Watch List because protection services were reportedly "inadequate,"<sup>127</sup> and China still had not adopted its draft National Action Plan to Combat Trafficking. China has still not ratified the Palermo Protocol.<sup>128</sup> In the latest TIP Report 2008, China remains on the Tier 2 Watch List for the fourth consecutive year. The TIP Report 2008 specifically refers to an increase in trafficking due to the need for "women

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<sup>122</sup> DEPARTMENT OF STATE, TRAFFICKING IN PERSONS REPORT 47 (2003), available at <http://www.state.gov/documents/organization/21555.pdf>.

<sup>123</sup> DEPARTMENT OF STATE, TRAFFICKING IN PERSONS REPORT 92 (2004), available at <http://www.state.gov/documents/organization/34158.pdf>.

<sup>124</sup> DEPARTMENT OF STATE, TRAFFICKING IN PERSONS REPORT 83 (2005), available at <http://www.state.gov/documents/organization/47255.pdf>.

<sup>125</sup> *Id.* at 84.

<sup>126</sup> DEPARTMENT OF STATE, TRAFFICKING IN PERSONS REPORT 92 (2006), available at <http://www.state.gov/documents/organization/66086.pdf>.

<sup>127</sup> TIP Report 2007, *supra* note 13, at 81.

<sup>128</sup> Palermo Protocol, *supra* note 26.

for brides” and cites forced labor as a continuing source of serious trafficking.<sup>129</sup> The Report specifically mentions corrupt local officials who are complicit in the trafficking of women.<sup>130</sup> However, in 2008, the National Action Plan to Combat Trafficking was finally released.<sup>131</sup> China has made some progress in the protection of trafficked victims, but there are not enough shelters to take care of these women.

Although new laws designed to combat trafficking in China have been enacted, there is a serious lack of enforcement in the most vulnerable areas.<sup>132</sup> In addition, most of the Chinese laws that pertain to underlying crimes that lead to trafficking, such as kidnapping, infanticide, child abandonment, sex selective abortions and patriarchal inheritance, are rarely enforced.

### **III. Sex Trafficking in China**

#### **A. Domestic Trafficking of Women Within China**

According to the 2008 U.S. State Department Trafficking in Persons (TIP) Report, China remains “a source, transit, and destination country for men, women and children trafficked for the purposes of sexual exploitation and forced labor.”<sup>133</sup> After spending four years on Tier 2<sup>134</sup> of the TIP rankings from 2001 to 2004, China was dropped to the Tier 2 Watch List in 2005, where it has remained up to the present due to its non-compliance “with the minimum standards for the elimination of trafficking ....”<sup>135</sup> Some of the factors impeding progress in China’s anti-trafficking efforts include “tight controls over civil society organizations, restricted access of foreign anti-trafficking

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<sup>129</sup> TIP Report 2008, *supra* note 12, at 92.

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> *Id.* at 91.

<sup>133</sup> *Id.*

<sup>134</sup> *Id.* at 93.

<sup>135</sup> *Id.* at 92.

organizations, and the government's systematic lack of transparency," as well as its failure to "address labor trafficking or male victims of sex trafficking."<sup>136</sup>

Because of the scarcity of women in China due to the impact of the One-Child Policy and the force of the male-child preference, domestic trafficking is one of the leading problems in China today. In 2007, the TIP Report stated that there are a minimum of 10,000 to 20,000 victims trafficked internally per year.<sup>137</sup> The profit earned in human trafficking in China is more than \$7 billion annually, more than arms trafficking or drug trafficking.<sup>138</sup> International organizations state that 90 percent of the trafficking victims are women and children from the Anhui, Henan, Hunan, Sichuan, Yunnan, and Guizhou Provinces who are sent to wealthier provinces in the East and trafficked primarily for sexual exploitation.<sup>139</sup>

The abducted women are usually between the ages of 13 and 24.<sup>140</sup> While many women are sold into forced and exploitative prostitution, most are purchased as brides in rural parts of China.<sup>141</sup> As the number of available women decreases and the number of peasant families moving to urban areas for jobs increases, peasant men look to traffickers to supply them with a wife.<sup>142</sup> Some say it is economically cheaper to purchase a wife than to pay for a wedding and dowry gifts.<sup>143</sup> Local villagers often sympathize with the husband whose bought bride tries to escape, and villagers sometimes will return the purchased wife to her husband even if she complains of abuse.<sup>144</sup>

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<sup>136</sup> *Id.*

<sup>137</sup> TIP Report 2007, *supra* note 13, at 80.

<sup>138</sup> *Female Criminal Victimization*, *supra* note 6, at 863.

<sup>139</sup> TIP Report 2007, *supra* note 13, at 80.

<sup>140</sup> MacLeod, *supra* note 5.

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

## **B. International Trafficking Into and Outside of China**

International trafficking of Chinese citizens to Africa, Asia, Europe, Latin America, the Middle East and North America is increasing.<sup>145</sup> Many poor Chinese women are duped by false promises of legitimate jobs in Taiwan, Thailand, Malaysia and Japan, only to be sold into prostitution upon their arrival.<sup>146</sup> Although trafficking remains illegal in China, this crime is inadequately enforced, especially in the vulnerable southern provinces near Thailand and Taiwan.<sup>147</sup> In relation to the number of women and children trafficked in China, there are relatively few investigations of trafficking and even fewer trials or convictions.<sup>148</sup> In 2006, Anhui Province, one of the major sources of trafficking victims, only six traffickers were convicted and sentenced to life imprisonment.<sup>149</sup> In 2007, China did not report any country-wide conviction records for trafficking.<sup>150</sup>

In 2007, the Chinese government “reported investigating 2,375 cases of trafficking of women and children..., which is significantly lower than the 3,371 cases it cited in 2006.”<sup>151</sup> These figures are likely based on China’s definition of the term “trafficking,” which “does not include acts of forced labor, debt bondage, coercion, or involuntary servitude, or offenses committed against male victims.”<sup>152</sup> Although China “sustained its record of criminal law enforcement against traffickers,” the US State Department reports that these government statistics are difficult to verify.<sup>153</sup> Finally, in 2007, “Chinese law enforcement authorities arrested and punished some traffickers

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<sup>145</sup> TIP Report 2008, *supra* note 12, at 91.

<sup>146</sup> *Id.* at 91-92.

<sup>147</sup> TIP Report 2007, *supra* note 13, at 81.

<sup>148</sup> TIP Report 2008, *supra* note 12, at 92.

<sup>149</sup> TIP Report 2007, *supra* note 13, at 80-81.

<sup>150</sup> TIP Report 2008, *supra* note 12, at 92.

<sup>151</sup> *Id.* at 93.

<sup>152</sup> *Id.*

<sup>153</sup> *Id.* at 92.

involved in forced labor practices and commercial sexual exploitation, but did not provide data on prosecutions, convictions, or sentences.”<sup>154</sup> The lack of transparency in the Chinese judicial system exacerbates the problem of data verification.

Trafficking is not only limited to women and children but also includes infant girls.<sup>155</sup> In poor rural districts of China, the preference for male children is high, and family planning rules are strictly enforced. The OCP limits the number of children that women may bear, and many women prefer to sell their infant daughter for relatively large sums of money in order to try again for a son.<sup>156</sup> Many women are afraid of the social stigma as well as large fines and penalties imposed on them for violating the one-child limit.<sup>157</sup> While many families are willing to pay the fines if a son is born, most “would never pay that kind of fine for a daughter.”<sup>158</sup> The trafficked infant girls are often sold to childless urban parents or rural farmers who desire a girl to help with the housework. Some girls in China are even raised to be child brides for farmers in remote villages.<sup>159</sup>

### **C. Complicity of Corrupt Local Officials**

One of the big issues facing the Chinese government’s efforts to combat trafficking is “the significant level of corruption and complicity in trafficking by some local government officials.”<sup>160</sup> In many cases, corrupt local officials participate in the sexual exploitation of women, making it difficult to combat the trafficking industry on a

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<sup>154</sup> *Id.* at 93.

<sup>155</sup> Elizabeth Rosenthal, *Bias for Boys Leads to Sale of Baby Girls in China*, N.Y. TIMES, July 20, 2003, available at <http://query.nytimes.com/gst/fullpage.html?res=9E06EEDB1E3CF933A15754C0A9659C8B63&sec=&spo n=&pagewanted=1> [hereinafter Rosenthal].

<sup>156</sup> Rosenthal, *supra* note 155.

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup> TIP Report 2008, *supra* note 12, at 92.

national level.<sup>161</sup> Many of these officials do not view trafficking as a serious crime and do not take steps to prevent it.<sup>162</sup> At times, officials even accept bribes in order to overlook trafficking.<sup>163</sup>

Slave labor is a variant of trafficking. In May and June 2007, several cases of slave labor in brick kilns in China's Henan and Shanxi Provinces were discovered. Over 1,000 farmers, teenagers, and children were confined, subject to physical abuse and forced to work without pay for their labor.<sup>164</sup> The brick kiln operators claim to have paid off local officials to turn a blind eye to the slave labor and sweat shop conditions.<sup>165</sup> There are unconfirmed press reports that some local officers have resold rescued children to similarly abusive factories in other districts.<sup>166</sup> According to the latest 2008 TIP Report, "[t]he Chinese government has not demonstrated concerted efforts to investigate, prosecute, and punish government officials for complicity in trafficking."<sup>167</sup> In addition, "Chinese law does not prohibit commercial sexual exploitation involving coercion or fraud, nor does it prohibit all forms of trafficking."<sup>168</sup> Chinese law recognizes only abduction as constituting a means of trafficking but does not recognize other forms of coercion.<sup>169</sup> Finally, Chinese law specifies only a three-year sentence for purchasers of women and children, but this light sentence is rarely implemented.<sup>170</sup>

#### **D. Criminalization Of and Reprisals Against Trafficking Victims**

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<sup>161</sup> *Id.*; CEDAW Report, *supra* note 69, at ¶¶ 291-292.

<sup>162</sup> *Caught Between Tradition and the State*, *supra* note 66, at 290.

<sup>163</sup> *Id.*

<sup>164</sup> TIP Report 2008, *supra* note 12, at 93.

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

<sup>167</sup> *Id.*

<sup>168</sup> *Id.*

<sup>169</sup> *Id.*

<sup>170</sup> Criminal Law, *supra* note 72, at art. 241; MacLeod, *supra* note 5.

One main obstacle to the eradication of trafficking in China is the criminalization and punishment of the victims rather than the traffickers.<sup>171</sup> Prostitution is illegal in China, and authorities often falsely or mistakenly accuse trafficked women of engaging in unlawful prostitution.<sup>172</sup> Authorities fail to distinguish between a trafficked woman who was forced into prostitution and a voluntary prostitute. China arrests trafficked women for prostitution and does not refer them to organizations providing services.<sup>173</sup> In other words, China treats the victims of trafficking as mere criminals.<sup>174</sup> “Victims are sometimes punished for unlawful acts that were committed as a direct result of their being trafficked—such as violations of prostitution or immigration/emigration controls.”<sup>175</sup>

In the southern border provinces, local authorities rely heavily upon non-governmental organizations to identify trafficking victims and to provide victim protection services since the local governments there lack significant resources and are severely under-funded.<sup>176</sup> Many trafficking victims are returned home without any rehabilitation.<sup>177</sup> Foreign trafficking victims are forcibly evicted from China and sent back to their home countries, where they often face punishments and rejection.<sup>178</sup> North Korean trafficking victims are treated solely as illegal economic migrants, and a few hundred of them are deported each month to North Korea where they may face severe penalties.<sup>179</sup> Some Chinese trafficking victims also face punishments in the form of fines

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<sup>171</sup> TIP Report 2008, *supra* note 12, at 93.

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

<sup>175</sup> *Id.* at 92.

<sup>176</sup> *Id.* at 93.

<sup>177</sup> *Id.*

<sup>178</sup> *Id.*

<sup>179</sup> *Id.* at 93-94.

for leaving China without proper authorization, even if they were coerced to leave by authorities.<sup>180</sup> China clearly continues to punish the victims of trafficking.

Trafficked women face discrimination from their own families and communities upon their release and return home.<sup>181</sup> Families feel that the trafficking victim has caused them shame and “a loss of face” by having sex with her purchaser, even if she was forced to do so.<sup>182</sup> A commonplace view in China is that the woman is at fault for being trafficked.<sup>183</sup> Moreover, people believe that a woman’s virtue is the property of the man; if a woman’s virtue is ‘used’ by another, it loses its value.<sup>184</sup> These beliefs are a sign of the pervasiveness of feudal attitudes deeply entrenched within the Chinese culture.<sup>185</sup>

#### **IV. Root Causes of Trafficking**

##### **A. One-Child Policy [“OCP”]**

During the period of the Great Leap Forward and the Cultural Revolution, which were designed to spur on China’s industrial growth and eradicate political enemies, Mao also encouraged population growth and accepted the idea of an unbridled population increase.<sup>186</sup> In the 1970’s, a “population crisis” developed, and demographers reported that the continuing population growth of the country would hinder the developing economic progress of China.<sup>187</sup> The population overgrowth was touted as the cause of “many of the world’s ills – including poverty, hunger, health problems, housing shortages, transportation problems, illiteracy, lack of education, unemployment,

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<sup>180</sup> *Id.* at 93.

<sup>181</sup> *Caught Between Tradition and the State*, *supra* note 66, at 291.

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

<sup>184</sup> *Id.*

<sup>185</sup> *Id.*

<sup>186</sup> JOHN S. AIRD, *SLAUGHTER OF THE INNOCENTS: COERCIVE BIRTH CONTROL IN CHINA* 6 (1990) [hereinafter *Slaughter of the Innocents*].

<sup>187</sup> *Slaughter of the Innocents*, *supra* note 186, at 7.



overcrowding, resource depletion, soil erosion, and environmental degradation.”<sup>188</sup>

China has about a fifth of the world’s population and only about 7% of the world’s arable land.<sup>189</sup> There is no question that China has an exponential population growth which, if unchecked, will have serious consequences. But for the governments of developing nations, a population crisis “has the added virtue of putting the blame for socioeconomic problems on the reproductive habits of the people rather than on defective political leadership or misconceived politics.”<sup>190</sup>

In 1970, the “Wan-Xi-Shao” or “Later-Longer-Fewer” (later marriages, longer spacing between children and fewer births) family planning program began to show a decrease in Chinese fertility rates.<sup>191</sup> In 1979, the “One-Child Policy” (OCP) was launched.<sup>192</sup> This policy was outlined in countless Communist Party directives, with hopes that the population would be slowed to 1.2 billion by the year 2000, rather than the projected 1.4 billion.<sup>193</sup> At first, only third children or more were prohibited, but the policy was revised after only a few years to forbid couples from having more than one child.<sup>194</sup> Vice Premier Deng Xiaoping declared, “In order to reduce the population, use whatever means you must, but do it! With the support of the Party Central Committee, you will have nothing to fear.”<sup>195</sup> In 1980, The Chinese Marriage Law was enacted, requiring family planning for all married couples and prescribing age restrictions for

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<sup>188</sup> *Id.*

<sup>189</sup> International Fund for Agricultural Development, *The Status of Rural Women in China* 82 (1995) (prepared by Farhana Haque Rahman).

<sup>190</sup> *Slaughter of the Innocents*, *supra* note 186, at 8.

<sup>191</sup> JAMES Z. LEE & WANG FENG, ONE QUARTER OF HUMANITY: MALTHUSIAN MYTHOLOGY AND CHINESE REALITIES, 1700-2000 93 (1999) [hereinafter *One Quarter of Humanity*]; CECELIA NATHANSEN MILWERTZ, ACCEPTING POPULATION CONTROL: URBAN CHINESE WOMEN AND THE ONE-CHILD FAMILY POLICY 16 (1997) [hereinafter *Accepting Population Control*].

<sup>192</sup> *One Quarter of Humanity*, *supra* note 191, at 94.

<sup>193</sup> Penny Kane & Ching Y. Choi, *China’s One Child Family Policy*, 319 BRIT. MED. J. 992 (1999).

<sup>194</sup> *One Quarter of Humanity*, *supra* note 191, at 93.

<sup>195</sup> STEVEN W. MOSHER, A MOTHER’S ORDEAL: ONE WOMAN’S FIGHT AGAINST CHINA’S ONE CHILD POLICY 274 (1993) [hereinafter *A Mother’s Ordeal*].

marriage.<sup>196</sup> For example, according to this law, women cannot marry before they are 20, and men cannot marry before the age of 22.<sup>197</sup> Late marriage and late childbirth are strongly encouraged.<sup>198</sup> The 1982 Chinese Constitution also required all Chinese citizens to practice family planning.<sup>199</sup>

The OCP is not outlined in a single national law. It is a policy that has been strictly and even coercively enforced throughout the country since 1979 in order to limit couples as to the time and manner of conception.<sup>200</sup> The 1982 Constitution stipulates that the absolute leadership of the Central Communist Party is one of the four cardinal principles that govern China.<sup>201</sup> Therefore, adherence to Communist Party directives is equivalent or superior to codified legislation.<sup>202</sup> As one scholar states, “The leadership of the Communist Party, the guidance of Marxism-Leninism and Mao Zedong thought, the preservation of socialism, and the continuation of the proletarian dictatorship are commonly known as the four cardinal principles of the [Chinese] [C]onstitution.”<sup>203</sup> Individual rights are thus subordinate to the State’s interest.<sup>204</sup> Although women and children are given some rights under the Law Protecting Women’s Rights and Interests

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<sup>196</sup> Marriage Law (promulgated by Order No. 9 of the Chairman of the Standing Comm. Nat’l People’s Cong., September 10, 1980, effective January 1, 1981), *available at* [http://www.unescap.org/esid/psis/population/database/poplaws/law\\_china/ch\\_record003.htm](http://www.unescap.org/esid/psis/population/database/poplaws/law_china/ch_record003.htm) [hereinafter Marriage Law].

<sup>197</sup> Marriage Law, *supra* note 196.

<sup>198</sup> *Id.*

<sup>199</sup> XIAN FA art. 25 (1982) (P.R.C.), *available at* <http://english.people.com.cn/constitution/constitution.html> [hereinafter Chinese Constitution].

<sup>200</sup> *License to Coerce*, *supra* note 8, at 151.

<sup>201</sup> The Preamble to the 1982 Constitution states, “Under the leadership of the Communist Party of China and the guidance of Marxism- Leninism and Mao Zedong Thought, the Chinese people of all nationalities will continue to adhere to the people’s democratic dictatorship...” Chinese Constitution, *supra* note 199, at Preamble ¶ 3.

<sup>202</sup> *Id.*

<sup>203</sup> *License to Coerce*, *supra* note 8, at fn. 21.

<sup>204</sup> *Id.* at 152.

[LPWRI]<sup>205</sup> and the Maternal and Infant Health Care Law [MIHCL],<sup>206</sup> the family planning policies of the State necessarily infringe on the reproductive rights of all Chinese women.

In China, family planning is a revolutionary motto that takes hold of the people by subtle forms of brainwashing. Family planning directives are pervasive and have “almost replaced revolutionary rhetoric in contemporary media,” evidenced by:

“Advertisements, billboards, blackboards, books, cartoons, cassettes, CDs, comics, movies, news, paintings, plays, poems, posters, radio, songs, television, videos, VCDs, even web sites, numerous speeches, and, of course, endless group meetings are devoted to the exhortation to have only one child.”<sup>207</sup>

Family planning is a basic part of everyone’s sex education beginning in grade school.<sup>208</sup> It is continued during premarital counseling, and it is widespread in the popular culture.<sup>209</sup> Chinese citizens all receive an ideological education in order to ensure their awareness of and adherence to all the OCP requirements.<sup>210</sup> Chinese citizens are instructed in the significance of the population policy and its relationship to China’s overall economic development.<sup>211</sup> The sacrifice of having only one child in Chinese culture is routinely glorified as obedience to duty and an expression of the love of one’s country.<sup>212</sup> Those who exceed the family planning limits are publicly vilified as

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<sup>205</sup> LPWRI, *supra* note 68.; *License to Coerce*, *supra* note 8, at 152.

<sup>206</sup> Maternal and Infant Health Care Law (promulgated by Order No. 33 of the President of the P.R.C. on October 27, 1994, effective June 1, 1995), *available at* [http://www.unescap.org/esid/psis/population/database/poplaws/law\\_china/ch\\_record006.htm](http://www.unescap.org/esid/psis/population/database/poplaws/law_china/ch_record006.htm) [hereinafter MIHCL]; *License to Coerce*, *supra* note 8, at 152.

<sup>207</sup> *One Quarter of Humanity*, *supra* note 191, at 134.

<sup>208</sup> *Id.*

<sup>209</sup> *Id.*

<sup>210</sup> *Id.*

<sup>211</sup> *Accepting Population Control*, *supra* note 191, at 75.

<sup>212</sup> *One Quarter of Humanity*, *supra* note 191, at 134.

“irresponsible free-riders.”<sup>213</sup> However, one Chinese Minister of Agriculture called the idea of persuading peasants to adhere to family planning standards “an illusion.”<sup>214</sup> He stated, “Only coercive measures can be effective in alleviating the problems caused by [the] population explosion... From the perspective of future generations... temporary coercion is actually a philanthropic and wise policy.”<sup>215</sup> Thus, force and various forms of intrusive persuasion are used to implement the OCP.

### **1. Chinese Birth-Planning Workers or Agent Informants**

Approximately fifteen million Chinese women have volunteered to become government agents in order to implement and enforce the OCP through the Women’s Federation.<sup>216</sup> The basis of the OCP is a system of government quotas granting permission to bear children, government regulations of birth control methods and menses cycles, and intense ideological peer pressure to conform to Communist ideals based on a theory of the sacrifice of the individual for the good of the country.<sup>217</sup> Every woman is “continuously and closely monitored by both her street committee and work unit.”<sup>218</sup> Under the OCP, all women in China are forced to use the same form of birth control, and “[b]irth control pills or [a surgically implanted] IUD are the preferred methods” of contraception.<sup>219</sup> Intrauterine devices (IUDs) are inserted into women who have not yet received their quota permission to have a child, as well as women who have had their first child and before the child passes the age of high mortality.<sup>220</sup> Women who have had a child are often pressured into signing a “One-Child Agreement” with the government

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<sup>213</sup> *Id.*

<sup>214</sup> *Slaughter of the Innocents*, *supra* note 186, at 83.

<sup>215</sup> *Id.*

<sup>216</sup> *Accepting Population Control*, *supra* note 191, at 95; *A Mother’s Ordeal*, *supra* note 195, at 117.

<sup>217</sup> *A Mother’s Ordeal*, *supra* note 195, at 267; *One Quarter of Humanity*, *supra* note 191, at 135.

<sup>218</sup> *Accepting Population Control*, *supra* note 191, at 106.

<sup>219</sup> *A Mother’s Ordeal*, *supra* note 195, at 146.

<sup>220</sup> *Accepting Population Control*, *supra* note 191, at 107.

and to undergo sterilization through tubal ligation.<sup>221</sup> While the OCP does not specify whether males or females should undergo the sterilization process, it is exceptionally rare for a man in China to have a vasectomy.<sup>222</sup> There is an underlying stigma associated with the loss of a man's virility after a vasectomy, and this stigma exists throughout Chinese culture, which accounts for increased female sterilizations.<sup>223</sup>

## 2. Forced Abortions

The coercive tactics of the Chinese officials are not just limited to enforcing strict contraceptive requirements. Chinese officials also force abortions upon women who have conceived outside of the quota system.<sup>224</sup> While official government policy states that participation in family planning must be voluntary and that coercion is forbidden, actual practice within the country is in direct contrast to the government policy.<sup>225</sup> A radio broadcast in 1986 declared,

“Regarding pregnancies not covered by the plan, it is necessary to conduct education by persuasion and take remedial measures to terminate the pregnancies. If education by persuasion has no effect, those concerned can be fined and subjected to administrative discipline.”<sup>226</sup>

Women who are illegally pregnant are typically subjected to weeks of high pressure tactics by members of the Women's Federation and Communist Party leaders using threats, financial pressure, and public family planning “study sessions.”<sup>227</sup> Women are actually escorted by officials to abortion clinics to ensure that they go through with

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<sup>221</sup> *A Mother's Ordeal*, *supra* note 195, at 215

<sup>222</sup> *Id.* at 199.

<sup>223</sup> *Id.*

<sup>224</sup> *Id.* at 250.

<sup>225</sup> *Slaughter of the Innocents*, *supra* note 186, at 30.

<sup>226</sup> *Slaughter of the Innocents*, *supra* note 186, at 102.

<sup>227</sup> *Id.* at 17; *A Mother's Ordeal*, *supra* note 195, at 268.

the abortion procedure.<sup>228</sup> In order to avoid the coercive tactics of the government officials seeking to abort an over-quota child, some mothers choose “childbirth on the run.”<sup>229</sup> These women flee their city or village where their pregnancy would be monitored in order to go to the home of a distant friend or relative who can keep the birth a secret.<sup>230</sup> On occasion, such women are caught and forced into a late-term abortion and forcibly “sterilized at the same time.”<sup>231</sup>

Due to the strict monitoring efforts by the Women’s Federation and population control officials, illegal pregnancies are often detected in the early stages, and mothers are encouraged to take immediate “remedial measures.”<sup>232</sup> The term “remedial measures” is a common Chinese euphemism for mandatory abortions.<sup>233</sup> “Technical services” is a different term referring to birth control surgeries such as IUD insertions, sterilizations and abortions.<sup>234</sup> Suction abortions can be performed in the first few months of pregnancy. Chinese doctors have also used far more inhumane methods to abort babies, such as inducing premature labor and “inject[ing] pure formaldehyde into the fetal brain through the fontanel, or soft spot” before the baby comes through the birth canal; doctors have also been known to “reach in with forceps [to] crush the baby’s skull.”<sup>235</sup>

### 3. Forced Sterilizations

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<sup>228</sup> *Slaughter of the Innocents*, *supra* note 186, at 17.

<sup>229</sup> *A Mother’s Ordeal*, *supra* note 195, at 280.

<sup>230</sup> *Id.*; *Slaughter of the Innocents*, *supra* note 186, at 17.

<sup>231</sup> *A Mother’s Ordeal*, *supra* note 195, at 285.

<sup>232</sup> *Id.* at 252.

<sup>233</sup> *Slaughter of the Innocents*, *supra* note 186, at 12.

<sup>234</sup> *Id.*

<sup>235</sup> *A Mother’s Ordeal*, *supra* note 195, at 255.

For women in China who are caught giving birth to over-quota children, forced sterilizations in addition to abortions are required.<sup>236</sup> At the height of the coercive population planning campaigns, “sterilization presently emerged as the principal ‘technical measure’” to control the population growth.<sup>237</sup> The number of sterilizations exploded between 1970 and 1985.<sup>238</sup> In the 1970s, the number of sterilizations typically ranged between 2 and 3 million, compared to over 16 million sterilizations reportedly performed in 1983.<sup>239</sup> During many of the “propaganda month” campaigns, extreme efforts were made to ensure that a “spouse of every couple with two or more children was sterilized.”<sup>240</sup> Mass mobilizations and extreme physical coercion were initiated at the hands of the birth planning cadres.<sup>241</sup> One newspaper stated, “We should implement thoroughly our policy on sterilization in those areas and resort to remedial measures when dealing with pregnancies that do not comply with planning.”<sup>242</sup> One woman who chose “childbirth on the run” in order to carry her third pregnancy to full term was immediately arrested by birth planning authorities after her return home, “taken under guard to the commune medical clinic...and given a tubal ligation the same day.”<sup>243</sup>

#### **4. Carrot and Stick Coercion for Compliance**

A strong sense of egalitarianism in family planning has produced a highly effective atmosphere of public intimidation in order to implement population controls.<sup>244</sup> Punitive coercive measures for disobedience of the OCP also exist and are used to

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<sup>236</sup> Kay Johnson, et al., *Infant Abandonment and Adoption in China*, 24 *POPULATION & DEV. REV.* 469, 477 (1998) [hereinafter Johnson, *Infant Abandonment*].

<sup>237</sup> *Slaughter of the Innocents*, *supra* note 186, at 33.

<sup>238</sup> *Id.* at 40.

<sup>239</sup> *Id.*

<sup>240</sup> *Id.* at 100.

<sup>241</sup> *Id.* at 17.

<sup>242</sup> *Id.* at 44.

<sup>243</sup> *A Mother's Ordeal*, *supra* note 195, at 243.

<sup>244</sup> *One Quarter of Humanity*, *supra* note 191, at 134.

implement the policy.<sup>245</sup> State officials at all levels are responsible for their own compliance and for the compliance of all those under their jurisdiction.<sup>246</sup> Failing to meet the birth quota limits in an official's jurisdiction can result in his or her demotion or even dismissal.<sup>247</sup> Therefore, officials use any means possible to enforce the family planning program to ensure the success of their own careers.<sup>248</sup> Although the government policy officially disallows coercion, the authorities use a very narrow definition of "coercion", referring only "to overt physical coercion and the use of administrative commands without accompanying propaganda."<sup>249</sup>

Chinese authorities presume that a majority of the population will conform to the birth planning regulations as a result of a pervasive and persuasive ideological education that begins for all Chinese citizens at a very early age.<sup>250</sup> Not only are couples that do not comply subjected to increasing economic penalties, but the birth planning workers and fellow employees of state-run agencies are also subject to fines or loss of yearly bonuses.<sup>251</sup> Thus, strong group pressure to comply with family planning measures ensures compliance by most couples to the OCP.<sup>252</sup>

Far more extreme measures have also been reported to retaliate against families with over-quota births or even those who refuse to sign the One-Child Agreement.<sup>253</sup>

These people are denied food, given less drinking water and electricity,<sup>254</sup> see their

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<sup>245</sup> *Id.* at 135.

<sup>246</sup> *Id.* at 132.

<sup>247</sup> *Id.*

<sup>248</sup> *Id.*

<sup>249</sup> *Slaughter of the Innocents*, *supra* note 186, at 16.

<sup>250</sup> *Accepting Population Control*, *supra* note 191, at 88.

<sup>251</sup> *Id.* at 89.

<sup>252</sup> *Id.* at 90.

<sup>253</sup> Trent Wade Moore, *Fertility in China 1982-1990: Gender Equality As A Complement to Wealth Flows Theory*, 17 *POPULATION & DEV. REV.* 197, 198 (1998).

<sup>254</sup> *Slaughter of the Innocents*, *supra* note 186, at 16.



homes destroyed, refused shelter because their friends are forbidden to help them, fired from jobs, fined up to several times their annual salaries, and denied the right to register their child's birth.<sup>255</sup> A child who is not registered cannot receive healthcare or education services.<sup>256</sup> In 1995, in a village called Xiaoxi, a man named Huang Fuqu, along with his wife and children, was ordered out of his house, which was then blown up with dynamite by government officials.<sup>257</sup> On a nearby wall, the officials painted a warning: "Those who do not obey the family planning police will be those who lose their fortunes."<sup>258</sup> In 1996, in the town of Shenzhen, 906 families were given 15 days to leave because they had produced too many children.<sup>259</sup> Government officials confiscated their residence permits, revoked their licenses to work and ordered the housing department not to rent them houses or shops.<sup>260</sup>

By contrast, parents who comply with the OCP are rewarded with economic incentives. They receive a "signing bonus," after they sign the "One-Child Agreement."<sup>261</sup> Parents receive monthly healthcare cash payments until their child turns 14, milk subsidies for young children, childcare subsidies and priority in free healthcare and education.<sup>262</sup>

## 5. Scarcity of Women

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<sup>255</sup> *Id.* at 72.

<sup>256</sup> *Id.* at 73.

<sup>257</sup> Patrick Tyler, *Birth Control in China: Coercion and Evasion*, N.Y. TIMES, June 25, 1995, available at <http://query.nytimes.com/gst/fullpage.html?res=990CE6D61438F936A15755C0A963958260&sec=&spon=&pagewanted=3>.

<sup>258</sup> *Id.*

<sup>259</sup> Graham Hutchings, *Chinese Town Expels 906 Families for Over-Breeding*, THE TELEGRAPH, Dec. 4, 1996, available at <http://www.telegraph.co.uk/htmlContent.jhtml?html=/archive/1996/12/04/wchin04.html> [hereinafter Hutchings].

<sup>260</sup> Hutchings, *supra* note 259.

<sup>261</sup> *Accepting Population Control*, *supra* note 191, at 90.

<sup>262</sup> *Id.* at 91.

Since the inception of the OCP in 1979, population statisticians estimate that millions of infant girls are missing from projected birth rates.<sup>263</sup> In September 1997, the World Health Organization's Regional Committee for the Western Pacific released a report stating that "more than 50 million women are 'missing' in China, victims of female feticide,<sup>264</sup> selective malnourishment of girls, lack of investment in women's health and various forms of violence."<sup>265</sup> Other reports project even higher estimates of missing women – up to 100 million.<sup>266</sup> In the latest census in China in 2000, 117 boys were born for every 100 girls compared to the global average of 105 or 106 boys to every 100 girls.<sup>267</sup> In some rural areas, the imbalance is even higher- 130 boys to 100 girls.<sup>268</sup> Approximately 15% of the girls missing are due to "excess female mortality" stemming from sex-selective abortions, abandonment, neglect and female infanticide.<sup>269</sup>

#### **a. Abandonment of Infant Girls**

One of the major sources of gendercide and the decimation of the female population in China is the abandonment of infant girls. The strict birth planning controls of the 1980s revitalized the problems of abandonment and infanticide of female children.<sup>270</sup> There is a longstanding "tradition" of "throwing away" very young children in the Hubei province.<sup>271</sup> In a Chinese/American study that examined parents who abandoned babies and those that adopted them, the majority of children that parents

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<sup>263</sup> *Women's Health*, *supra* note 5, at 27.

<sup>264</sup> This term refers to the killing of the girl fetus.

<sup>265</sup> *Women's Health*, *supra* note 5, at 27.

<sup>266</sup> MacLeod, *supra* note 5.

<sup>267</sup> Dugger, *supra* note 7.

<sup>268</sup> Justin McCurry and Rebecca Allison, *40 Million Bachelors and No Women...The Birth of a New Problem for China*, THE GUARDIAN, March 9, 2004, available at <http://www.guardian.co.uk/world/2004/mar/09/china.justinmccurry> [hereinafter McCurry and Allison].

<sup>269</sup> Susan Greenhalgh, *Fresh Winds in Beijing: Chinese Feminists Speak Out on the One-Child Policy and Women's Lives*, 26 SIGNS: JOURNAL OF WOMEN IN CULTURE AND SOCIETY 847, 872 (2001).

<sup>270</sup> Johnson, *Infant Abandonment*, *supra* note 236, at 472.

<sup>271</sup> Kay Johnson, *The Politics of the Revival of Infant Abandonment in China, with Special Reference to Hunan*, 22 POPULATION & DEV. REV. 77, 78 (1996) [hereinafter Johnson, *Politics of Infant Abandonment*].

admitted to abandoning were first or second-born daughters.<sup>272</sup> Many hoped that by abandoning their newborn daughter, they would be permitted to try again for a son.<sup>273</sup> Child abandonment, particularly of girls and children with disabilities, is a huge problem throughout China, in both rural and urban areas.<sup>274</sup> Many parents leave their children close to their homes to ensure that the babies are found, such as on well-traveled roads, on doorsteps, or at orphanages.<sup>275</sup> Other parents travel great distances to abandon their girl baby in a crowded public place, such as railways or bus stations.<sup>276</sup> One official in the district of Shenyang stated, “Every year, no fewer than 20 abandoned baby girls are found in dustbins and corners.”<sup>277</sup>

Over 95% of babies in state-run orphanages are healthy baby girls.<sup>278</sup> However, due to the poor conditions of the orphanages, a high percentage of the baby girls die within months.<sup>279</sup> In the Shanghai Children’s Welfare Institute, the most prominent orphanage in China, the rate of deaths after admission was a staggering 77.6% in 1991, with an increase in 1992 for the months reported.<sup>280</sup> In 1995, Human Rights Watch published “Death by Default,” a report that chronicled the horrifying conditions of Chinese orphanages, including “waiting for death” where undesired infant girls were left to starve to death or died from neglect.<sup>281</sup> A British documentary entitled “The Dying Room” chronicled many orphanages where baby girls sit on bamboo benches in the

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<sup>272</sup> Johnson, *Infant Abandonment*, *supra* note 236, at 475.

<sup>273</sup> *Id.* at 476.

<sup>274</sup> HUMAN RIGHTS WATCH, DEATH BY DEFAULT: A POLICY OF FATAL NEGLECT IN CHINA’S STATE ORPHANAGES 132 (1996) [hereinafter *Death by Default*].

<sup>275</sup> Johnson, *Infant Abandonment*, *supra* note 236, at 479.

<sup>276</sup> *Id.* at 478.

<sup>277</sup> Hutchings, *supra* note 259.

<sup>278</sup> Brian Woods, THE DYING ROOM, (Lauderdale Productions 1995), available at [http://www.channel4.com/fourdocs/archive/the\\_dying\\_room\\_player.html](http://www.channel4.com/fourdocs/archive/the_dying_room_player.html) [hereinafter *The Dying Room*].

<sup>279</sup> Johnson, *Infant Abandonment*, *supra* note 236.

<sup>280</sup> *Death by Default*, *supra* note 274, at 136.

<sup>281</sup> *Id.* at 126.

middle of a courtyard with their wrists and ankles tied to the armrests and legs of the bench, rocking listlessly back and forth.<sup>282</sup> Baby girls suffered from liver failure, vitamin deficiency, disease and sheer neglect, dying in large numbers after their arrival at the orphanages.<sup>283</sup>

According to the Marriage Law of 1980 and in the omnibus Law Protecting the Rights and Interests of Women and Children,<sup>284</sup> child abandonment is illegal but has become endemic in Chinese society since the promulgation of the OCP nearly 30 years ago.<sup>285</sup> Parents who have abandoned their children are subject to fines, sanctions and even forced sterilizations.<sup>286</sup> Even though the laws make child abandonment illegal, there are few provisions for the prosecution of parents who abandon their children.<sup>287</sup> Even as the number of abandoned children has increased since the late 1980s, there are only a few, rare cases of successful prosecution and sentencing of these parents.<sup>288</sup> Child abandonment is generally considered to be within the purview of the birth planning authorities who levy fines on parents for exceeding birth-quota limits. However, these punishments are not considered civil or criminal offenses for endangering or violating the rights of the child.<sup>289</sup> China ratified the Convention on the Rights of the Child on April 1, 1992.<sup>290</sup> In its initial report to the Committee on the Rights of the Child, China stated

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<sup>282</sup> *The Dying Room*, *supra* note 278.

<sup>283</sup> *Id.*

<sup>284</sup> Marriage Law, *supra* note 196; MIHCL, *supra* note 206.

<sup>285</sup> Johnson, *Infant Abandonment*, *supra* note 236.

<sup>286</sup> *Id.* at 478.

<sup>287</sup> *Id.* at 479.

<sup>288</sup> Johnson, *Politics of Infant Abandonment*, *supra* note 271, at 84.

<sup>289</sup> Johnson, *Infant Abandonment*, *supra* note 236, at 480.

<sup>290</sup> CRC, *supra* note 55.

that it would only consider the abandonment of children a crime “where the circumstances are grave enough.”<sup>291</sup>

In the rural Yunnan province, rather than merely abandoning their babies, many women sell their newborns on the black market to smugglers. They resell the babies to wealthier or childless parents in eastern China who need an extra set of hands to work on farms or who do not want to wait through China’s endless adoption system.<sup>292</sup> The mothers who sell their daughters do so for many reasons: the fear of exceeding the limits set forth in the OCP, or their hope to have a male child in a future pregnancy, or their need for extra money to pay off their debts.<sup>293</sup> Highly-coveted male babies are also sold if the mother has exceeded the OCP or wants to make extra money.<sup>294</sup>

The Adoption Law of China<sup>295</sup> requires adoptive parents to be childless and over the age of 30.<sup>296</sup> Childless adoptive parents who do not meet the 30 year age requirement are not usually subjected to fines. Nevertheless, many people report that they cannot in fact register their adoption or obtain a proper household registration until they reach 30 years of age.<sup>297</sup> This delay subjects the child to an unregistered status, which deprives the child of benefits and human and civil rights protections.<sup>298</sup> Adoption of abandoned babies also carries risks for the adoptive parents who have other children. These adoptive parents are subjected to steep fines and even sterilizations because the Adoption Law

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<sup>291</sup> U.N. Comm. on the Rights of the Child, *Initial Reports of States Parties Due in 1994: China*, ¶ 100, U.N. Doc. CRC/C/11/Add.7 (August 1, 1995), available at [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.11.Add.7.En?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CRC.C.11.Add.7.En?Opendocument).

<sup>292</sup> Hannah Beech Xicheng, *China’s Infant Cash Crop*, TIME PACIFIC, January 29, 2001, available at <http://www.time.com/time/pacific/magazine/20010129/china.html> [hereinafter Xicheng].

<sup>293</sup> Xicheng, *supra* note 292.

<sup>294</sup> *Id.*

<sup>295</sup> Adoption Law (adopted by the Standing Comm. Nat’l People’s Cong., December 29, 1991, revised November 4, 1998), available at [http://www.unescap.org/esid/psis/population/database/poplaws/law\\_china/ch\\_record008.htm](http://www.unescap.org/esid/psis/population/database/poplaws/law_china/ch_record008.htm).

<sup>296</sup> Johnson, *Infant Abandonment*, *supra* note 236, at 482.

<sup>297</sup> *Id.*

<sup>298</sup> *Id.*

requires the adoptive parent to have no other children.<sup>299</sup> A few families were even forced to give up their adoptive children to a State-run orphanage, where, paradoxically, the State incurred the cost of raising the child until another adoptive family could be found.<sup>300</sup>

### **b. Infanticide**

Infanticide has been practiced in China since the early part of the first millennium by all classes of society.<sup>301</sup> While male infants also suffered from infanticide, the majority of victims have been female infants due to the traditional Chinese preference for male children to carry on the bloodline and for ancestor worship.<sup>302</sup> Infanticide has even been sanctioned at times in religious practice.<sup>303</sup> Throughout Chinese history, the practice of female infanticide was caused by changes in the economy, the high cost of living and the scarcity of food.<sup>304</sup> Historically, infanticide was not considered immoral. In some areas, up to half of all infants were killed by their parents.<sup>305</sup> In sixteenth and seventeenth century Chinese Buddhist culture, parents were ordered not to kill their babies, but this injunction was placed alongside orders not to leap over food served on the floor, not to step over a person lying on a floor mat, and not to spit at a shooting star or point at a rainbow.<sup>306</sup> Today, infanticide is generally considered immoral in China and also illegal under Chinese law.<sup>307</sup>

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<sup>299</sup> *Id.*

<sup>300</sup> *Id.*

<sup>301</sup> *One Quarter of Humanity*, *supra* note 191, at 47.

<sup>302</sup> *Id.*

<sup>303</sup> VALERIE M. HUDSON & ANDREA M. DEN BOER, *BARE BRANCHES: SECURITY IMPLICATIONS OF ASIA'S SURPLUS MALE POPULATION 14 (2004)* [hereinafter *Bare Branches*].

<sup>304</sup> Johnson, *Infant Abandonment*, *supra* note 236, at 472.

<sup>305</sup> *One Quarter of Humanity*, *supra* note 191, at 47.

<sup>306</sup> *Bare Branches*, *supra* note 303, at 13.

<sup>307</sup> *One Quarter of Humanity*, *supra* note 191, at 61.

Despite its illegality, female infanticide has increased dramatically since the OCP was put into practice in 1979. Infanticide can be committed by parents who want to have a son in the future and at birth by doctors in hospitals because the babies are unauthorized.<sup>308</sup> Several sources report the practice of female infanticide by obstetricians who administer injections to women giving birth in order to cause stillbirths or delivery of nonviable babies.<sup>309</sup> In 1983, in a report from Guangzhou, doctors were being required to kill babies to ensure that any infant born without a permission slip from the mother's employer was not allowed to leave the hospital alive.<sup>310</sup> The doctors were allowed to use any method to kill the babies, even strangulation.<sup>311</sup> In 1989, another report was uncovered disclosing infants being killed by having gauze stuffed into their mouth and being given alcohol or ether injections.<sup>312</sup> In rural clinics, there are reports that babies were "thrown into boiling water and scalded to death or placed in airtight jars and smothered."<sup>313</sup>

Reports of prosecutions for infanticide are extremely rare because no enforcement mechanism exists for the relevant laws prohibiting infanticide.<sup>314</sup> Under Chinese law, the government typically fails to act unless the victim presses charges.<sup>315</sup> Since the victims here are infants, it is unlikely that charges could be brought, especially if the perpetrators are the infant's parents. Family planning measures take precedence over individual

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<sup>308</sup> Coercive Population Control in China: Evidence of Forced Abortion and Forced Sterilization: Hearing Before the Subcomm. on Int'l Relations House of Representatives, 107<sup>th</sup> Cong. 16 (2001) (testimony of Stephen Mosher, President, Population Research Institute) *available at* [http://commdocs.house.gov/committees/intlrel/hfa75761.000/hfa75761\\_of.htm](http://commdocs.house.gov/committees/intlrel/hfa75761.000/hfa75761_of.htm).

<sup>309</sup> *A Mother's Ordeal*, *supra* note 195, at 255.

<sup>310</sup> *Slaughter of the Innocents*, *supra* note 186, at 91.

<sup>311</sup> *Id.*

<sup>312</sup> *Id.* at 92.

<sup>313</sup> *A Mother's Ordeal*, *supra* note 195, at 255.

<sup>314</sup> LPWRI, *supra* note 68.; Criminal Law, *supra* note 72, at art. 241.

<sup>315</sup> *License to Coerce*, *supra* note 8, at 167.

rights. This protection typically exempts physicians from prosecution for infanticide because they are deemed to be carrying out the State's birth-rate goals.<sup>316</sup>

### c. Sex-Selective Abortions

In addition to the abortions required by the family planning officials for over-quota pregnancies, many women choose to have sex-selective abortions after determining the sex of the baby through ultrasound.<sup>317</sup> Population expert Professor Chu Junhong states: "Prenatal sex selection was probably the primary cause, if not the sole cause, for the continuous rise of the sex ratio at birth."<sup>318</sup> The popularity of sex-selective abortions has grown with the increase of technology and the accessibility of mobile ultrasound machines.<sup>319</sup> Illegal scanning and backstreet hospitals can provide a sex scan for as little as \$50.<sup>320</sup> The strong preference for male children has increased the use of ultrasound machines.<sup>321</sup> Although it has been forbidden by law since 1998 for ultrasound technicians or doctors to reveal the sex of the fetus,<sup>322</sup> many doctors will perform this service for a small fee or as a favor to friends and family.<sup>323</sup> Enforcement of the laws prohibiting the use of sonograms for sex selection is practically non-existent, and law enforcement agents seem to be unable or unwilling to implement them.<sup>324</sup> Several factors

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<sup>316</sup> *Id.* at 169.

<sup>317</sup> *Accepting Population Control*, *supra* note 191, at 61.

<sup>318</sup> Baculiniao, *supra* note 4.

<sup>319</sup> *Accepting Population Control*, *supra* note 191, at 61.

<sup>320</sup> Baculiniao, *supra* note 4.

<sup>321</sup> *Accepting Population Control*, *supra* note 191, at 61.

<sup>322</sup> *Id.*; Regulation on Prohibiting Fetal Sex Identification and Selective Termination of Pregnancy for Non-Medical Reasons (adopted by the Standing Comm. Nat'l People's Cong., November 21, 1998), available at [http://www.unescap.org/esid/psis/population/database/poplaws/law\\_china/ch\\_record021.htm](http://www.unescap.org/esid/psis/population/database/poplaws/law_china/ch_record021.htm)

<sup>323</sup> *License to Coerce*, *supra* note 8, at 170.

<sup>324</sup> *Id.*



contribute to the lack of enforcement, including widespread participation by the medical community, strict birth control measures and the strong desire by couples for a son.<sup>325</sup>

#### **d. Non-Registration of Children At Birth**

Article 2 of the Maternal and Infant Health Care Law<sup>326</sup> declares that, “[t]he State shall develop the maternal and infant health care undertakings and provide necessary conditions and material aids so as to ensure that mothers and infants receive medical and health care services.”<sup>327</sup> This law endeavors to provide increased rights to mothers and their children, but it only applies to sanctioned births within the strict family planning guidelines.<sup>328</sup> Parents who give birth to an over-quota child and parents who adopt an abandoned child will often avoid registering the birth of the child in order to avoid steep fines or risk losing the child.<sup>329</sup> Many of the “missing women” in China and the unbalanced sex-ratios stem from under-reporting or non-registration of female births.<sup>330</sup> Under-reported births are tied to female abandonment or infanticide, and the non-registration of female children leads to fewer resources and fewer educational opportunities for these women as they grow older.<sup>331</sup>

Many provincial regulations punish parents with over-quota births by imposing stiff financial penalties.<sup>332</sup> Moreover, over-quota children are not entitled to State subsidies and are deprived of admission to public education and access to public health

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<sup>325</sup> *Id.*

<sup>326</sup> MIHCL, *supra* note 206.

<sup>327</sup> *Id.*

<sup>328</sup> *License to Coerce*, *supra* note 8, at 171.

<sup>329</sup> Johnson, *Infant Abandonment*, *supra* note 236, at 493.

<sup>330</sup> *Accepting Population Control*, *supra* note 191, at 60.

<sup>331</sup> *Id.*

<sup>332</sup> *License to Coerce*, *supra* note 8, at 157.

care.<sup>333</sup> Couples that have over-quota children also invalidate the benefits of their first child.<sup>334</sup> These parents are even required to pay back the benefits that the first child received, and they also face large fines.<sup>335</sup> They are at risk for salary reductions or loss of their jobs.<sup>336</sup> These penalties also apply to parents who illegally adopt abandoned children.<sup>337</sup> In effect, the government punishes over-quota children for being born by withdrawing their entitlement (and that of their siblings) to basic services.<sup>338</sup>

## B. Recent Changes to the OCP

In light of the growing scarcity of women in China and the surge in trafficking of baby girls, in 2004 the Chinese government “diversified” its birth control policy.<sup>339</sup> According to Population Vice-Minister Zhao Baige, one child is allowed in China’s cities, two in the rural regions, and three in the ethnic regions.<sup>340</sup> China also began a

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<sup>333</sup> Tianjin Shi Jihua Shengyu Tiaoli [Tianjin Family Planning Regulations] art. 22 ¶¶ 1, 25, 27, 28 (adopted by the Standing Comm. Tianjin People's Cong., November 2, 1988), in 1989 Zhongguo Falu Nianjin [Law Year Book of China] 341; Shangdong Sheng Jihua Shengyu Tiaoli [Shandong Family Planning Regulations] arts. 29, 32, (adopted by the Standing Comm. Shandong People's Cong., July 20, 1988), 1989 Zhongguo Falu Nianjin [Law Year Book of China] 419; Anhui Sheng Jihua Shengyu Tiaoli [Anhui Family Planning Regulations], (adopted by the Standing Comm. Anhui People's Cong., October 31, 1988), art. 22, 1989 Zhongguo Falu Nianjin [Law Year Book of China] 397, 399; *cited in License to Coerce, supra* note 8, at 157.

<sup>334</sup> Hebei Sheng Jihua Shengyu Tiaoli [Hebei Family Planning Regulations] art. 24, (adopted by the Standing Comm. Hebei People's Cong., March 14, 1989), 1990 Zhongguo Falu Nianjin [Law Year Book of China] 422; Heilongjiang Sheng Jihua Shengyu Tiaoli [Heilongjiang Family Planning Regulations], art. 29 ¶ 4, (adopted by the Standing Comm. Heilongjiang People's Cong., December 13, 1989), in 1990 Zhongguo Falu Nianjin [Law Year Book of China] 457; *cited in License to Coerce, supra* note 8, at 157.

<sup>335</sup> *Id.*

<sup>336</sup> Heilongjiang Sheng Jihua Shengyu Tiaoli [Heilongjiang Family Planning Regulations], art. 29 ¶ 2, (adopted by the Standing Comm. Heilongjiang People's Cong., December 13, 1989), in 1990 Zhongguo Falu Nianjin [Law Year Book of China] 457; Tianjin Shi Jihua Shengyu Tiaoli [Tianjin Family Planning Regulations] art. 22 ¶¶ 1, 25, 27, 28 (adopted by the Standing Comm. Tianjin People's Cong., November 2, 1988), in 1989 Zhongguo Falu Nianjin [Law Year Book of China] 341; *cited in License to Coerce, supra* note 8, at 157.

<sup>337</sup> Hebei Sheng Jihua Shengyu Tiaoli [Hebei Family Planning Regulations] art. 24, (adopted by the Standing Comm. Hebei People's Cong., March 14, 1989), 1990 Zhongguo Falu Nianjin [Law Year Book of China] 422; Heilongjiang Sheng Jihua Shengyu Tiaoli [Heilongjiang Family Planning Regulations], art. 29 ¶ 4, (adopted by the Standing Comm. Heilongjiang People's Cong., December 13, 1989), in 1990 Zhongguo Falu Nianjin [Law Year Book of China] 457; *cited in License to Coerce, supra* note 8, at 157.

<sup>338</sup> *License to Coerce, supra* note 8, at 170.

<sup>339</sup> Baculinao, *supra* note 4.

<sup>340</sup> *Id.*

“Girl Care Project” in order to encourage the birth of girls by cracking down on sex-selective abortions, female infanticide and abandonment by rewarding families that give birth to girls.<sup>341</sup> Preferential treatment in housing, healthcare and employment is now provided to families with only daughters, as well as financial incentives and pensions.<sup>342</sup> In some provinces, school fees for girls have been reduced or eliminated, and propaganda banners advocate that preferring boys over girls is “old thinking.”<sup>343</sup> Recently, reports have circulated in China about a new policy allowing two children to be born in a family in which both the husband and the wife were themselves only children.

## V. Changing Role of Women in Chinese Society

### A. Low Image of Women in Chinese Society: Confucius

One of the fundamental teachings of Confucius, found in his “Five Classics,” is that an essential difference between men and women must be upheld to preserve the cosmic order.<sup>344</sup> Women are inferior to men because of their temperamental personalities and limited intellectual abilities.<sup>345</sup> Confucius emphasized the need for women to be quiet, obedient, neat, chaste, and hard-working within the home, all of which furthered their seclusion and isolation.<sup>346</sup> For centuries, Chinese women’s feet were bound for aesthetic reasons that also rendered them crippled and dependent on men. Chinese women became increasingly viewed in society as a mere commodity since they cost their

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<sup>341</sup> Baculinao, *supra* note 4.

<sup>342</sup> Lesley Stahl, *China: Too Many Men*, CBS NEWS, April 16, 2006, available at <http://www.cbsnews.com/stories/2006/04/13/60minutes/main1496589.shtml>.

<sup>343</sup> *Id.*

<sup>344</sup> *The Five Classics*, *supra* note 9, at 48; see also CHINA’S STOLEN CHILDREN (HBO Documentary Films 2008) which provides a vivid example of the hardships that the OCP wields on Chinese families and on women in particular. The documentary confirms the human rights violations of women in China, the persistent discrimination against women, and the low opinion that many Chinese people have of women in Chinese society.

<sup>345</sup> LIN YUTANG, MY COUNTRY AND MY PEOPLE 154 (1935).

<sup>346</sup> *Id.* at 153.

parents money in the form of a dowry, even though the girl children ultimately move out to live with the husband's family.<sup>347</sup>

## **B. Historical Patriarchy; Women As a Commodity**

*“Daughters are like water that splashes out of the family and cannot be gotten back after marriage.”*

- Traditional Chinese saying

A strong preference for sons in China has existed since the second and third millennia B.C. and can be traced to the custom of ancestor worship.<sup>348</sup> This practice was reinforced by a strong patrilineal system, which systematically discriminated against daughters.<sup>349</sup> Sons are responsible for caring for their parents' spirits in the afterlife “so they do not wander for eternity as hungry ghosts.”<sup>350</sup> Only sons could sacrifice to the family spirits or carry on the family name.<sup>351</sup> Daughters marry out of the family, are required to have a large dowry supplied by their father, but must support and take care of their husbands' parents.<sup>352</sup> In Chinese history, women were never full members of the family they were born into or the family they married into, and they could not inherit property.<sup>353</sup>

In the southeast of China, daughters are referred to as “goods on which one loses one's capital” since it costs money to raise a daughter, only to hand them over to their husband's family.<sup>354</sup> “The triple threat of patrilocality, male-oriented food provision systems and the dowry” has made “female infanticide ... a rational choice” in Chinese

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<sup>347</sup> *Bare Branches*, *supra* note 303, at 135.

<sup>348</sup> *One Quarter of Humanity*, *supra* note 191, at 47.

<sup>349</sup> *Id.*

<sup>350</sup> Dugger, *supra* note 7.

<sup>351</sup> *One Quarter of Humanity*, *supra* note 191, at 47.

<sup>352</sup> *Id.* at 60; Johnson, *Infant Abandonment*, *supra* note 236, at 475.

<sup>353</sup> *Accepting Population Control*, *supra* note 191, at 46.

<sup>354</sup> *Bare Branches*, *supra* note 303, at 17.

culture.<sup>355</sup> Today, there is no significant social security system in China, so sons are expected to take care of their parents financially in their old age.<sup>356</sup> Most men have higher earning power than women since the pay scale for men versus women remains unequal.<sup>357</sup> Couples prefer to have a son who can better afford to take care of them as well as extended family members in later life.<sup>358</sup>

In rural areas of China, women are held responsible for the sex of their children, and instances of physical assault, persistent abuse, violent beatings and even murder have been documented for women who give birth to girls.<sup>359</sup> Decisions regarding fertility and child-bearing still largely remain in the realm of the husband's family rather than leaving this decision up to the woman and her husband to decide.<sup>360</sup> Mothers who give birth to sons, on the other hand, receive a higher quality of medical care, better nutrition, and are expected to perform less housework.<sup>361</sup> Male babies also receive better food, finer clothing and more expensive gifts at traditional ceremonies, emphasizing the greater hopes that parents have for male children.<sup>362</sup>

One of the goals of the Chinese Communist Revolution of 1949 was to achieve equality, including gender equality, by granting equal economic, social and cultural rights to men and women.<sup>363</sup> Under the slogan, "Women hold up half the sky," the new government led by Mao Zedong made attempts to provide equal access to education and jobs for men and women. Mao attempted to give women more domestic rights, marriage

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<sup>355</sup> *Id.* at 11.

<sup>356</sup> Johnson, *Infant Abandonment*, *supra* note 236, at 475.

<sup>357</sup> *Accepting Population Control*, *supra* note 191, at 155.

<sup>358</sup> B.G. Rosenberg & Qicheng Jing, *A Revolution in Family Life: The Political and Social Structural Impact of China's One-Child Policy*, 52 J. SOC. ISSUES 51, 56 (1996).

<sup>359</sup> *Accepting Population Control*, *supra* note 191, at 16.

<sup>360</sup> *Id.* at 80.

<sup>361</sup> *Women's Health*, *supra* note 5, at 29.

<sup>362</sup> *Id.* at 29.

<sup>363</sup> *Bare Branches*, *supra* note 303, at 148.

rights and inheritance rights.<sup>364</sup> Despite the reforms under Mao, women were often placed in menial positions and paid far less than a man for similar work.<sup>365</sup> During the period of decentralization, privatization and economic efficiency in the 1980s under the leadership of Deng Xiaoping, huge numbers of government positions held by women were the first to be cut.<sup>366</sup>

Although women in China have increasingly entered the workforce, their identity is still strongly tied to their role as a wife and mother. Women are expected to maintain the household as well as work outside the home.<sup>367</sup> “A virtuous wife and good mother ... is ... first of all defined in how a woman minds her home, her husband and her child.”<sup>368</sup> Women also consistently receive lower wages than men even when their labor is the same.<sup>369</sup> A common saying in China is that “[a] fine worker who neglects her husband and beats her children is a bad woman. A fine worker who neglects his wife and beats his children is a fine worker.”<sup>370</sup>

In 1996, it was reported that women make up the majority of the workers laid off or unemployed, and men are commonly preferred for hiring and promotion.<sup>371</sup> Women also work in more dangerous and untenable working conditions, exposed to toxins and accident-prone factories.<sup>372</sup> Female migrant workers face the harshest working conditions. They are prone to exploitation and abuse from employers because of their

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<sup>364</sup> *Id.* at 148-149.

<sup>365</sup> *Id.* at 150.

<sup>366</sup> EMILY HONIG & GAIL HERSHATTER, *PERSONAL VOICES: CHINESE WOMEN IN THE 1980S* 250 (1988).

<sup>367</sup> *Id.* at 255; *Accepting Population Control*, *supra* note 191, at 154.

<sup>368</sup> *Accepting Population Control*, *supra* note 191, at 167.

<sup>369</sup> *Id.* at 155.

<sup>370</sup> MARGERY WOLF, *REVOLUTION POSTPONED* 182 (1985).

<sup>371</sup> *Caught Between Tradition and the State*, *supra* note 66, at 299.

<sup>372</sup> *Id.*

economic desperation and generally submissive natures.<sup>373</sup> Protection for pregnant female migrant workers is usually non-existent and contributes to a high level of gynecological disorders.<sup>374</sup> Sexual harassment in the workplace is a common phenomenon and many women report that the degree and frequency of harassment has risen.<sup>375</sup>

### **C. Impact on Men of Shortage of Women**

The Chinese vernacular for young adult males who will never marry is *guang gun-er*, or “bare branches” – those who will never marry because they cannot find spouses.<sup>376</sup> Scholars across a wide array of social sciences, including anthropology, biology, criminology, psychology, organization behavior and sociology, agree that large numbers of bare branches lead to increased instability, violence and a potential threat to Chinese society.<sup>377</sup> Bare branches tend to share similar characteristics: they belong primarily to the lowest socioeconomic class; they are likely to be underemployed or unemployed; they are typically transient with few ties to the communities where they work; and they live with other bare branches, creating a distinctive bachelor subculture.<sup>378</sup>

In a speech on the demographic crisis in China, Li Weixiong, an advisor to China’s political consultative conference on population issues, states that “[s]uch serious gender disproportion poses a major threat to the healthy, harmonious and sustainable growth of the nation’s population and would trigger such crimes and social problems as

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<sup>373</sup> *Id.* at 300.

<sup>374</sup> *Id.* at 301.

<sup>375</sup> *Id.* at 301.

<sup>376</sup> *Bare Branches*, *supra* note 303, at 187-188.

<sup>377</sup> *Id.* at 20.

<sup>378</sup> *Id.* at 188-190.

abduction of women and prostitution.”<sup>379</sup> An official magazine entitled “Theory and Time,” published in Shenyang, China, predicts that the disproportionate gender balance will lead to “a large army of bachelors composed of 90 million men” as well as a severe breakdown in social order and the abduction and sale of women.<sup>380</sup> Other scholars agree that as Chinese families consciously select male children over female children, there “will be a significant increase in societal, and possibly intersocietal, violence”<sup>381</sup> – a terrifying prospect for an elite governing class.<sup>382</sup>

In addition to the high probability of civil unrest, the consequences for women in high sex-ratio countries are dire and typically cause their already low societal status to decline further.<sup>383</sup> “[T]heir levels of literacy and labor-force participation are low ... and [t]heir suicide rate, relative to men’s, is high.”<sup>384</sup> Women are also more likely to be kidnapped or sold.<sup>385</sup> “From 1991 through 1996, Chinese police freed 88,000 kidnapped women and children and arrested 143,000 people for participating in the slave trade.”<sup>386</sup> In a major campaign against human trafficking in 2000, police claim to have rescued 100,000 women and children, in addition to breaking up kidnapping gangs.<sup>387</sup> These figures are viewed as conservative since law enforcement agencies face large obstacles

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<sup>379</sup> McCurry and Allison, *supra* note 268.

<sup>380</sup> Graham Huchings, *Female Infanticide ‘Will Lead to Army of Bachelors,’* THE TELEGRAPH, April 11, 1997, available at <http://www.telegraph.co.uk/htmlContent.jhtml?html=/archive/1997/04/11/wchi11.html>.

<sup>381</sup> *Bare Branches*, *supra* note 303, at 200 (2004).

<sup>382</sup> ROBERT WRIGHT, *THE MORAL ANIMAL: THE NEW SCIENCE OF EVOLUTIONARY PSYCHOLOGY* 98-101 (1994).

<sup>383</sup> *Bare Branches*, *supra* note 303, at 202.

<sup>384</sup> Scott J. South and Katherine Trent, *Sex Ratios and Women’s Roles: A Cross-National Analysis*, *AMERICAN JOURNAL OF SOCIOLOGY* 1096, 1112 (1988).

<sup>385</sup> Yiyung, *supra* note 14.

<sup>386</sup> *Id.*

<sup>387</sup> *China’s Kidnap Victims Freed*, BBC NEWS, September 16, 2000, available at <http://news.bbc.co.uk/2/hi/asia-pacific/927309.stm>.



when trying to enforce the kidnapping and slavery laws. Moreover, there is strong community support of men who buy kidnapped women.<sup>388</sup>

The black market trade in infants, especially girls, has increased dramatically due to the desire of some childless couples to have a daughter. The growing sex trade and the increased popularity of foreign adoptions has caused some orphanages to buy healthy children from parents or traffickers.<sup>389</sup> High sex-ratio societies usually have higher levels of prostitution.<sup>390</sup> During the 1990s, an increased number of brothels were reported, servicing mainly urban areas populated by unmarried migrant workers.<sup>391</sup>

## **VI. Policy Suggestions to Combat Sex Trafficking in China**

China must improve its trafficking record. To do so, China must provide adequate funding to local and regional governments to effectively implement the new National Action Plan to Combat Trafficking. The Chinese judiciary is currently under serious reform in order to build people's confidence in the legal system. The judiciary must remain independent and its officials must prosecute and severely punish sex traffickers as well as recruiters and employers of forced labor. The government must provide meaningful protection to foreign and domestic victims of forced labor and sex trafficking, including formal victim identification, rehabilitation, and financial as well as psychological and medical services. The legal system must actively investigate, prosecute and convict public officials who participate in or facilitate trafficking. Chinese trafficking laws need to be revised in order to criminalize all forms of labor that rise to

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<sup>388</sup> Yiyung, *supra* note 14.

<sup>389</sup> Beth Loyd, *China's Lost Children*, ABC NEWS, May 12, 2008, available at <http://a.abcnews.com/International/story?id=4774224&page=1>.

<sup>390</sup> *Bare Branches*, *supra* note 303, at 205.

<sup>391</sup> Vincent E. Gil, Marc Wang, Allen F. Anderson, and Guao Matthew Lin, *Plum Blossoms and Pheasants: Prostitutes, Prostitution, and Social Control Measures in Contemporary China*, 38 INTERNATIONAL JOURNAL OF OFFENDER THERAPY AND COMPARATIVE CRIMINOLOGY 322-323 (1994).

the level of slavery. Laws must be revised to criminalize sex trafficking in accordance with international standards. The Chinese government must conduct effective and widespread public awareness campaigns through local NGOs in order to inform the public of the dangers and risks of trafficking.<sup>392</sup>

In addition, China must provide foreign victims trafficked into China with legal alternatives to the current inhumane practice of deporting them to their own country where they may face serious hardship or retribution upon re-entry. China must adhere to its obligations under the 1951 Refugee Convention and its 1967 Protocol by not deporting North Korean women protected by these treaties. China must cooperate with the United Nations Refugee Agency in the exercise of its functions.

The national laws of China that protect rights of women and children must be enforced. The health and reproductive rights found in the Law Protecting Women's Rights and Interests<sup>393</sup> and the Maternal and Infant Health Care Law<sup>394</sup> must not be subjugated to State policies that deny individual rights. China cannot allow coercive measures to be taken in order to force women to adhere to the One-Child Policy. Greater law enforcement measures must be taken against doctors and those individuals who murder and abandon their own infant daughters, as well as those who choose sex-selective abortions in order to have a male child. The State should actively prosecute these cases, rather than rely on the families of the victims, who are often the perpetrators themselves, to press charges. Medical personnel that perform illegal ultrasound scans or infanticide must be held legally accountable.

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<sup>392</sup> See recommendations in TIP Report 2008, *supra* note 12, at 92.

<sup>393</sup> LPWRI, *supra* note 68.

<sup>394</sup> MIHCL, *supra* note 206.

Finally, the One-Child Policy must be drastically revised in order to comport with the basic international human rights laws to which China is a signatory. The population growth can be checked by providing incentives to limit the number of children, not by inflicting coercive or harsh persuasive tactics. China must begin to address effectively the long-standing cultural prejudices against women. Government practices that promote active discrimination against women in the country must be stopped. Although the inheritance laws in China state that males and females are equal in their right to inheritance, in practice women are rarely given a share of their parents' estate since they are considered part of their husband's family after marriage.<sup>395</sup>

If strict enforcement of the existing laws in China were a government priority, women in China could be given equality in their inheritance rights, as well as wage parity and job opportunities, so that men and women alike are able to sufficiently care for their parents in later years. Substantial pension systems or retirement plans should also be established for people in rural as well as urban areas in China in order to alleviate the elderly's high level of economic dependence upon their children for financial security in agricultural communities. Finally, China must address the illiteracy rate of over 100 million women by abolishing school fees which exclude rural girls from the right to education.<sup>396</sup> Textbooks in China must be revised to eliminate gender stereotypes. The implementation of these measures could pave the way toward cultural reform in China. The revision of the One-Child Policy, the eradication of male preference, and the

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<sup>395</sup> Law of Succession (promulgated by Order No. 24 of the President of the People's Republic of China, April 10, 1985, effective October 1, 1985), *available at* [http://www.unescap.org/esid/psis/population/database/poplaws/law\\_china/ch\\_record004.htm](http://www.unescap.org/esid/psis/population/database/poplaws/law_china/ch_record004.htm).

<sup>396</sup> CEDAW Report, *supra* note 69, at ¶ 257.

elimination of discrimination against women in Chinese society will reduce trafficking in women.

## **VII. Conclusion**

Failures in China's One-Child Policy, the inadequate enforcement of Chinese laws protecting women, and the longstanding cultural preference for males have led to discrimination against women and an increase in forced prostitution and trafficking in China. Millions of women are missing in China because of female child abandonment and infanticide. The scarcity of women has resulted in a major increase in the trafficking and sale of foreign women into China. As China shifted from a planned economy to a market economy in 1979, the price of women in China increased in accordance with the market economy principle of supply and demand. The One-Child Policy has caused women to become a high cost commodity.

In order to reverse the deleterious effects of the One-Child Policy and its commodification of women, the Chinese government must make a commitment to implement laws and policies that can reverse longstanding cultural trends and combat discriminatory traditions against women. Civil rights laws enacted in the U.S. in the 1960s have had a profoundly ameliorative affect on reducing discrimination against African-Americans in American society. There is no reason why the adoption and strict enforcement of Chinese civil rights and trafficking laws could not similarly result in profound cultural change and equality for women in a traditionally male-dominated society now in transition. Since 1979, China has instituted economic reform policies that miraculously work in harmony with a Communist political system. Now China needs to perform another miracle: the adoption of cultural reforms that produce gender parity and

that stop the marginalization of women in Chinese society. Only then will the lucrative business of trafficking in women be reduced, if not eliminated entirely.