9. GENDERCIDE AND THE CULTURAL CONTEXT OF SEX TRAFFICKING IN CHINA

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.)

I. INTRODUCTION

A. Background of China’s Demographic Crisis

China is experiencing a demographic crisis that arguably rises to the level of gendercide. Women in China are bought and sold, murdered, and made to disappear to comply with a governmental policy that coincides with the cultural phenomenon of male-child preference. In 1979, the Chinese government instituted a One-Child Policy to control the enormous population expansion. To comply with the One-Child Policy and ensure that the family has a coveted boy child, millions of people in China have committed sex-selective abortions,
infanticide of their own baby girls, non-registration of the first or second infant in the family, and abandonment or sale of their own girl children. Demographers estimate that there are between fifty and one hundred million missing women in China. 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.

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 there were 117 boys born for every 100 girls, compared to the global average of 105 or 106 boys to every 100 girls. 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 abduction and/or 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 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, the 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 governmental


policy results in the laws that theoretically protect women and female children in China being ineffective.  

**B. Chinese Culture**

Women’s inferiority is deeply ingrained in the Chinese culture as 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.

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 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 had 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, and marriage and inheritance rights. Prostitution was eradicated completely during this period. 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 one 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, although the economic reform produced greater wealth for China, it also produced greater discriminatory treatment

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10. See Hong Ju et. al., supra note 5, at 859.

11. See id.
of women, which continues today especially in the rural parts of China where tradition and cultural values remain the same as they have been for centuries.\textsuperscript{12}

\section*{C. Trafficking in China}

Trafficking of women in China is a serious human rights violation. Domestic trafficking is "the most significant problem in China,"\textsuperscript{13} and an estimated 10,000 to 20,000 victims are trafficked internally each year.\textsuperscript{14} From 1991 to 1996, police freed 88,000 kidnapped women and arrested 143,000 people for engaging in the slave trade.\textsuperscript{15} From 2001 to 2003, China’s police freed more than 42,000 kidnapped women and children.\textsuperscript{16} 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.\textsuperscript{17} 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.\textsuperscript{18} 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 Japan, Malaysia, Thailand, and Taiwan. Foreign women and children are trafficked into China from Burma, Mongolia, North Korea, Russia, and Vietnam for purposes of forced labor, marriage, and prostitution.\textsuperscript{19}

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.\textsuperscript{20} 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

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\textsuperscript{12} See id. See also Jacobs, supra note 5: “The centuries-old tradition of cherishing boys—and a custom that dictates that a married woman moves in with her husband’s family—is reinforced by a modern reality: Without a real social safety net in China, many parents fear they will be left to fend for themselves in old age.” Id.


\textsuperscript{14} See id.


\textsuperscript{16} See id.


\textsuperscript{18} See id.

\textsuperscript{19} See id. at 92.

\textsuperscript{20} See id.
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trafficking. China still continues to treat trafficking victims as criminals and regularly deports North Korean trafficked women back to horrendous conditions in their home country. In December 2007, China released a National Action Plan to Combat Trafficking, 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 that is associated with forced prostitution. Trafficking is the “trade of women for the purpose of prostitution.” Each year, more than 2.4 million victims of sex trafficking are bought and sold for the purpose of sexual exploitation. Trafficking typically involves the transportation of a woman across an international border, 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 U.N. General Assembly defined trafficking broadly in this way:

[T]he 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 forced domestic labor, false marriages, clandestine employment and false adoption.


21. See id.
22. See id.
23. See id.
defines *trafficking in persons* as a form of slavery, forced labor, and forced prostitution:

[T]he 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.  

The U.S. Trafficking Victims Protection Act of 2000 (TVPA) 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.

*Sex trafficking* is defined as: “the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.” 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.

Trafficking involves the forced movement of human beings from poor source countries through transition countries into relatively rich destination countries, such as the United States, Western Europe, North America, Australia, China,

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30. Id. § 7102(8).

31. Id. § 7102(9).

32. See TIP REPORT 2008, supra note 17, at 93.
and Japan.\textsuperscript{33} 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.\textsuperscript{34}

According to the International Organization of Migration, trafficking follows migration routes. Women move because of poverty, economic disparity among nations, general lack of economic opportunities for women (especially in poor or transition countries), and the cultural and political marginalization of women in source countries.\textsuperscript{35} 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.\textsuperscript{36} Women from developing countries are highly susceptible to traffickers who falsely promise them high paying jobs or advantageous marriages in developed countries.\textsuperscript{37} 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.\textsuperscript{38}

Sex trafficking laws around the world are either weak or nonexistent; those that do exist are either not enforced or often enforced to the detriment of the victim rather than the perpetrator.\textsuperscript{39} For example, China has a trafficking law, but it is not well enforced.\textsuperscript{40} 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 would be forced to live as social outcasts in horrific conditions.\textsuperscript{41} Even legalized prostitution facilitates trafficking because the trafficked woman 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 and the economic benefits of trafficking are very great, international crime
syndicates are drawn to the sex trade industry. Sex trafficking is the third most lucrative international crime after the traffic of arms and drugs. The economic advantages of human trafficking make it difficult to eradicate.

This chapter will address sex trafficking in China and the root causes of this human rights violation and international crime that has developed from the 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 chapter 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 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. Part VII will discuss the literary representation of the human rights violations of women in China as expressed in Lisa See’s beautiful novel Snow Flower and the Secret Fan. Part VIII will offer some suggestions to help eliminate the trafficking of women in China.

II. LAWS PROTECTING WOMEN IN CHINA FROM TRAFFICKING

A. International Instruments Regulating Trafficking

There are many international instruments regulating trafficking because it is both a human rights violation and an international crime. Trafficking is at the crossroads of slavery, forced prostitution, torture, and forced labor. Therefore, the aim to eliminate human trafficking benefits from legislation prohibiting these other crimes and human rights violations. Trafficking also involves the illegal sale of children including their use as soldiers. Some of the international instruments that protect trafficking victims include the International Agreement for the Suppression of the White Slave Traffic (1904); the International

42. See id. at 114, 132.
43. See id. at 137.
Convention for the Suppression of Traffic in Women and Children (1921);47 the Convention to Suppress the Slave Trade and Slavery (1926);48 the Forced Labor Convention (1930);49 the International Convention for the Suppression of the Traffic in Women of Full Age (1933);50 the U.N. Charter (1945);51 the Universal Declaration of Human Rights (1948);52 the Geneva Convention for the Suppression of the Traffic of Persons and the Exploitation of the Prostitution of Others (1950);53 the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1957);54 the International Covenant on Civil and Political Rights (1966);55 the Convention on the Elimination of All Forms of Discrimination Against Women (1979);56 the Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment (1984);57 the Convention on the Rights of the Child (1989);58 the Convention Against Transnational Organized Crime: Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children;59 the Protocol Against Smuggling of Migrants by Land, Sea and Air (2000);60 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).\footnote{61}

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, which grants positive and negative reproductive rights to women.\footnote{62} 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.\footnote{63}

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.\footnote{64} In addition to the severe lack of quality reproductive care in rural areas, access to information and education about contraceptives in China is also extremely limited.\footnote{65} 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 (CAT)\footnote{66} and the Convention on the Rights of the Child (CRC).\footnote{67} These treaties give China international

63. See CEDAW, supra note 56, art. 161(1)(e).
64. See Li, supra note 8, at 184.
65. See id.
obligations to protect women and children from trafficking, slavery, torture, and other forms of cruel, inhumane, or degrading treatment. Thus, international treaties protecting the traffic of women are abundant, but trafficking still exists and thrives. 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 noncompliance.

B. Chinese Trafficking Law

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. Prior to the promulgation of this Decision, many traffickers who sold women that others had kidnapped were released by the courts. Now both the kidnapper and seller can be prosecuted under this Decision. The use of force to prevent the rescue of trafficked women was also specifically criminalized.

In 1992, the Law on the Protection of Women’s Rights and Interests (LPWRI) was passed, which was the first basic law to protect women’s rights and interests in China. The LPWRI prohibits kidnapping, trafficking, and buying women, though it fails to prescribe any specific penalties for these offenses. The LPWRI

68. See generally CAT, supra note 57; CRC, supra note 58.


71. See id.


74. See LPWRI, supra note 72, art. 36.
also fails to provide a definition of discrimination against women.\textsuperscript{75} 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.\textsuperscript{76} Other types of violence against abducted women are subject to penalties under the Chinese Criminal Code.\textsuperscript{77} The rights of women in Hong Kong are protected by the Sex Discrimination Ordinance (1995) and the Family Status Ordinance (1997).\textsuperscript{78}

Article 236 of the Chinese Criminal Code provides a three-to-ten year sentence for rape, while those who sexually exploit girls under the age of fourteen can receive a sentence of life imprisonment or the death penalty.\textsuperscript{79} Article 240 prohibits abducting and trafficking a woman or child and specifies a five-to-ten year sentence for this crime.\textsuperscript{80} A ten year-to-lifetime sentence or the death penalty may be imposed on those who abduct and traffic a woman or child, rape or prostitute a woman, steal an infant for the purpose of selling the victim, or sell the victim outside of China.\textsuperscript{81} 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 to give the perpetrator a longer sentence.\textsuperscript{82} However, 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.\textsuperscript{83} 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.\textsuperscript{84}

The Fourth World Conference on Women was held in Beijing, China in September 1995, where the Beijing Declaration and Platform for Action were adopted.\textsuperscript{85} 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. The Program for the Development of the Chinese Women (“the Program”) was also created to “promote the progress and development of Chinese women” by the All-China Women’s Federation (“Women’s Federation”) in 1995. 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. China renewed the Program in 2001 to further promote the full participation of women in economic and social development and to achieve greater equality for women in China. The Committee on the Elimination of Discrimination Against Women lauded this Program for its achievements “in ensuring social and economic rights for hundreds of millions of people” in China. 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. This law specifically prohibits the trafficking, kidnapping, and sexual exploitation of minors. The chairman of the Standing Committee of the National People’s Congress has “urged tighter supervision on the implementation of the law,” and warns that inspection teams will be visiting several provinces in the summer of 2008 to investigate compliance.

In December 2007, the Chinese government established a new Office for Preventing and Combating Crimes of Trafficking in Women and Children. 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

86. See CEDAW Report, supra note 73, Sect. 275.
88. See generally id.
90. See CEDAW Report, supra note 73, Sect. 273.
92. See id. art. 41.
94. See TIP REPORT 2008, supra note 17, at 92.
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.”

C. U.S. Trafficking Laws
The Trafficking Victims Protection Act of 2000 (TVPA) is the U.S. law with an international prong that is designed to combat human trafficking by punishing traffickers, protecting victims, and preventing trafficking. On October 28, 2000, President Bill Clinton signed the TVPA 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 with a sentence of twenty years to life imprisonment. The TVPA has been hailed as the “most significant human rights legislation of the 106th U.S. Congress.” It 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 United States and a work permit if the trafficked victim cooperates in the prosecution of her trafficker[s]. The TVPA establishes the very real threat of prosecution and severe punishment for sex traffickers. 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. The United States has been the catalyst for international cooperation on anti-trafficking efforts. President George W. Bush issued the first National

95. Id.
96. TVPA, supra note 29.
97. See generally id.
100. See Press Release, Eric Hotmire, Senate Passes Brownback, Wellstone Trafficking Victims Protection Act (July 27, 2000), http://brownback.senate.gov/pressapp/record.cfm?id=175961&&year=2000&; see generally TVPA, supra note 29. President Clinton stated that the TVPA of 2000 was “the most significant step we’ve ever taken to secure the health and safety of women at home and around the world.” Deb Riechmann, Clinton Signs Law to Combat Violence, Dayton Daily News, Oct. 29, 2000, at 3A.
101. See generally TVPA, supra note 29.
102. See id. §§ 111–12.
103. See TIP REPORT 2008, supra note 17, at 2.
Security Presidential Directive on Trafficking\(^\text{104}\) and called for more countries to join the United States in the fight to eliminate sex trafficking.\(^\text{105}\) 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.\(^\text{106}\) 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.\(^\text{107}\) The PROTECT Act has 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.\(^\text{108}\) The 2007 TVPRA was passed by the House of Representatives on December 4, 2007 but was not passed by the Senate before the end of the session. The TVPRA of 2008 was passed by both Houses and enacted on December 23, 2008.\(^\text{109}\) 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.\(^\text{110}\) 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. Department of State.\(^\text{111}\) The first TIP Report,

\(\text{\textsuperscript{108}}\) See generally id.
\(\text{\textsuperscript{110}}\) See TIP REPORT 2008, supra note 17, at 5.
\(\text{\textsuperscript{111}}\) See id.
published in July 2001, reported on the trafficking status of eighty-two countries in the world.112

The TIP Report divides countries into three tiers based on the individual government’s efforts to combat trafficking within the country.113 Countries placed on Tier 1 have to meet the minimum standards set forth in Section 108(a) of the TVPA, which are: (1) the government must prohibit and punish severe forms of trafficking in persons; (2) the punishment must be commensurate with that for grave crimes such as forcible sexual assault or rape; (3) the punishment must be sufficiently stringent to deter the crime and to reflect its heinous nature; and (4) the government must make serious and sustained efforts to eliminate severe forms of trafficking in persons.114 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 investigating public officials who may be complicit in the trafficking process.115

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.116 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.117 In 2003, the TVPA also created the Tier 2 Watch List to monitor countries in danger of falling into Tier 3.118 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.119

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.120 Countries placed on Tier 3 may be

112. See id. at 1.
115. See id. at 284–85.
116. See id. at 12.
117. See id. at 284.
118. See id. at 13.
119. See id. at 12–13.
120. See id. at 12.
subject to sanctions by the U.S. Government, which may withhold non-humanitarian, non-trade related assistance, and the United States may register its opposition to international assistance from financial institutions such as the World Bank or the International Monetary Fund. Many of the worst offenders on Tier 3 fear that sanctions and the stigma of being placed on that tier might negatively affect their international trade, tourism, and international aid, and they have asked the United States for assistance to move up.

As stated above, China fell from Tier 2 to the Tier 2 Watch List in 2005 for its failure to comply with the minimum standards of the TVPA. China was on Tier 2 in 2001 while Hong Kong was on Tier 1. 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. 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 reintegrated into their communities through resettlement centers offering legal, medical, and psychological help.

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 fourteen into prostitution. 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.” 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.

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

121. See id. at 13–15.
122. See id. at 15.
123. See id. at 18.
124. See id. at 93.
130. See id. at 84.
women. In 2007, China stayed on the Tier 2 Watch List because protection services were reportedly “inadequate,” and China still had not adopted its draft National Action Plan to Combat Trafficking. China has still not ratified the Palermo Protocol. In the TIP Reports 2008 and 2009, China remains on the Tier 2 Watch List for the fifth consecutive year. The TIP Report 2008 specifically refers to an increase in trafficking due to the need for “women for brides” and cites forced labor as a continuing source of serious trafficking. The Report specifically mentions corrupt local officials who are complicit in the trafficking of women. However, in 2008, the National Action Plan to Combat Trafficking was finally released. 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. In addition, most of the Chinese laws that pertain to underlying crimes and elements 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.” After spending four years on Tier 2 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 noncompliance “with the minimum standards for the elimination of trafficking. . . .” Some of the factors impeding progress in China’s anti-trafficking efforts include “tight controls over civil organizations,

133. See TIP Report 2008, supra note 17, at 94. See also TIP Report 2009, at www.state.gov/g/tip. at p. 22.
134. See id. at 92.
135. See id.
136. See id.
137. See id. at 93.
138. See id.
139. See id. at 93–94.
140. See id. at 91.
141. See id. at 93.
142. See id. at 92.
and the government’s systematic lack of transparency,” as well as its failure to “address labor trafficking or male victims of sex trafficking.”

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 there are “an estimated minimum of 10,000 to 20,000 victims trafficked internally per year.” The profit earned in human trafficking in China is more than US$7 billion annually, more than arms trafficking or drug trafficking. International organizations state that 90 percent of the trafficking victims are women and children from the Anhui, Guizhou, Henan, Hunan, Sichuan, and Yunnan Provinces who are sent to wealthier provinces in the east and trafficked primarily for sexual exploitation.

The abducted women are usually between the ages of thirteen and twenty-four. While many women are sold into forced and exploitative prostitution, most are purchased as brides in rural parts of China. 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. Some say it is economically cheaper to purchase a wife than to pay for a wedding and dowry gifts. Local villagers often sympathize with the husband whose bride tries to escape, and villagers sometimes will return the purchased wife to her husband even if she complains of abuse.

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. 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

143. See id. See also Jacobs, supra note 5, at 8: “The reluctance of the [Chinese] police to investigate such cases [of child abduction]” is a serious problem in China. China claims the problem of trafficking and stolen children is “exaggerated.” Id. The persistence of old Chinese government practices (including false reporting of statistics and strong oppression of the people by “public criticism,” “education,” and force or violence producing fear) reminds us of the State-sponsored terrorism under Mao’s leadership. See Jonathan Mirsky, The China We Don’t Know, in N.Y. REVIEW OF BOOKS (Feb. 26, 2009), vol. LVI, No. 3, at 38.
144. See TIP REPORT 2007, supra note 13, at 80.
145. See Hong Ju et al., supra note 5, at 863.
146. See TIP REPORT 2007, supra note 13, at 80.
147. See MacLeod, supra note 4, at 14.
148. See id.
149. See id.
150. See id. para. 6.
151. See id. para. 1.
152. See TIP REPORT 2008, supra note 17, at 91.
arrival. Although trafficking remains illegal in China, this crime is inadequately enforced, especially in the vulnerable southern provinces near Thailand and Taiwan. 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. In 2006 in Anhui Province, one of the major sources of trafficking victims, only six traffickers were reported convicted and sentenced to life imprisonment. In 2007, China did not report any countrywide conviction records for trafficking.

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.” 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.” Although China “sustained its record of criminal law enforcement against traffickers,” the U.S. Department of State reports that these government statistics are difficult to verify. Finally, in 2007, “Chinese law enforcement authorities arrested and punished some traffickers involved in forced labor practices and commercial sexual exploitation, but did not provide data on prosecutions, convictions, or sentences.” The lack of transparency in the Chinese judicial system exacerbates the problem of data verification.

Trafficking is not limited to women and children, but also includes infant girls. In poor rural districts of China, the preference for male children is high, and family planning rules are strictly enforced. The One-Child Policy 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. Many women are afraid of the social stigma as well as large fines and penalties imposed on them for violating the one-child limit. While many families are willing to pay the fines if a son is born, most “would never pay that kind

153. See id. at 91–92.
158. Id. at 93.
159. Id.
160. See id. at 92.
161. Id. at 93
163. See id.
164. See id.
of fine for a daughter.” 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.

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.” In many cases, corrupt local officials participate in the sexual exploitation of women, making it difficult to combat the trafficking industry on a national level. Many of these officials do not view trafficking as a serious crime and do not take steps to prevent it. At times, officials even accept bribes to overlook trafficking.

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 one thousand farmers, teenagers, and children were confined, subjected to physical abuse, and forced to work without pay for their labor. The brick kiln operators claim to have paid off local officials to turn a blind eye to the slave labor and sweatshop conditions. There are unconfirmed press reports that some local officers have resold rescued children to similarly abusive factories in other districts. 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.” In addition, “Chinese law does not prohibit commercial sexual exploitation involving coercion or fraud, nor does it prohibit all forms of trafficking.” Chinese law recognizes only abduction as constituting a means of trafficking, not other forms of coercion. Finally, Chinese law specifies only a three-year sentence for purchasers of women and children—and this light sentence is rarely implemented.

165. See id.
166. See id.
167. See TIP REPORT 2008, supra note 17, 92.
168. See id.; see also CEDAW Report, supra note 73, ¶ 291–92.
169. See Human Rights in China, supra note 70, at 290.
170. See id.
171. See TIP REPORT 2008, supra note 17, at 93.
172. See id.
173. See id.
174. Id.
175. See id.
176. See id.
177. See Criminal Law, supra note 76, art. 241; MacLeod, supra note 4, at 14.
D. Criminalization Of and Reprisal Against Trafficking Victims

One main obstacle to the eradication of trafficking in China is the criminalization and punishment of the victims rather than the traffickers.\textsuperscript{178} Prostitution is illegal in China, and authorities often falsely or mistakenly accuse trafficked women of engaging in this crime.\textsuperscript{179} 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.\textsuperscript{180} In other words, China treats the victims of trafficking as mere criminals.\textsuperscript{181} “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.”\textsuperscript{182}

In the southern border provinces, local authorities rely heavily upon nongovernmental organizations to identify trafficking victims and to provide victim protection services because the local governments there lack significant resources and are severely underfunded.\textsuperscript{183} Many trafficking victims are returned home without any rehabilitation.\textsuperscript{184} Foreign trafficking victims are forcibly evicted from China and sent back to their home countries where they often face punishment and rejection.\textsuperscript{185} 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.\textsuperscript{186} Some Chinese trafficking victims also face punishments in the form of fines for leaving China without proper authorization, even if they were coerced to leave by authorities.\textsuperscript{187} 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.\textsuperscript{188} 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.\textsuperscript{189} A commonplace view in China is that the woman is at fault for being trafficked.\textsuperscript{190} Moreover, people believe that a woman’s virtue is the property of the man; if a woman’s virtue is “used” by

\begin{itemize}
\item 178. See TIP Report 2008, supra note 17, at 93.
\item 179. See id.
\item 180. See id.
\item 181. See id.
\item 182. Id. at 92.
\item 183. See id. at 93.
\item 184. See id.
\item 185. See id.
\item 186. See id. at 93–94.
\item 187. See id. at 93.
\item 188. See Human Rights in China, supra note 70, at 291.
\item 189. See id.
\item 190. See id.
\end{itemize}
another, it loses its value. These beliefs are a sign of the pervasiveness of feudal attitudes deeply entrenched within the Chinese culture.

IV. ROOT CAUSES OF TRAFFICKING

A. One-Child Policy

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. However, in the 1970s, a “population crisis” developed, and demographers reported that the continuing population growth of the country would hinder the developing economic progress of China. 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, overcrowding, resource depletion, soil erosion, and environmental degradation.” China has about a fifth of the world’s population but only about 7 percent of the world’s arable land. There is no question 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.”

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. In 1979, the One-Child Policy was launched. This policy was outlined in countless Communist Party directives with hopes that growth would be slowed and population would be 1.2 billion by

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191. See id.
192. See id.
194. See id. at 6–7.
195. Id. at 7.
197. Aird, supra note 193, at 8.
199. See Lee & Feng, supra note 198, at 94.
2000 rather than the projected 1.4 billion. At first, only three children or more were prohibited, but the policy was revised after only a few years to forbid couples from having more than one child. 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.” In 1980, The Chinese Marriage Law was enacted requiring family planning for all married couples and prescribing age restrictions for marriage. For example, according to this law, women cannot marry before they are twenty, and men cannot marry before the age of twenty-two. Late marriage and late childbirth are strongly encouraged. The 1982 Chinese Constitution also required all Chinese citizens to practice family planning.

The One-Child Policy 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 to limit couples as to the time and manner of conception. The 1982 Constitution stipulates that the absolute leadership of the Central Communist Party is one of the four cardinal principles that govern China. Therefore, adherence to Communist Party directives is equivalent or superior to codified legislation. As one scholar states, “[t]he 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] Constitution.” Individual rights are thus subordinate to the State’s interest. Although women and children are

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201. See id.
204. Id.
205. Id.
207. Li, supra note 8, at 151–59.
208. 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 206, pmbl. ¶ 3.
209. Id.
210. Li, supra note 8, at 151 n.21.
211. Id. at 152.
given some rights under the LPWRI\textsuperscript{212} and the Maternal and Infant Health Care Law (MIHCL),\textsuperscript{213} 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” as evidenced by the following statement:

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.\textsuperscript{214}

Family planning is a basic part of everyone’s sex education beginning in grade school.\textsuperscript{215} It is continued during premarital counseling, and it is widespread in the popular culture.\textsuperscript{216} Chinese citizens all receive an ideological education to ensure their awareness of and adherence to all the One-Child Policy requirements.\textsuperscript{217} They are instructed in the significance of the population policy and its relationship to China’s overall economic development.\textsuperscript{218} The sacrifice of having only one child in the Chinese culture is routinely glorified as obedience to duty and an expression of the love of one’s country.\textsuperscript{219} Those who exceed the family planning limits are publicly vilified as “irresponsible free-riders.”\textsuperscript{220} However, one Chinese Minister of Agriculture called the idea of persuading peasants to adhere to family planning standards “an illusion.”\textsuperscript{221} 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.”\textsuperscript{222} Thus, force and various forms of intrusive persuasion are used to implement the One-Child Policy.

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 One-Child Policy through the Women’s

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\textsuperscript{212} LPWRI, \textit{supra} note 72; Li, \textit{supra} note 8, at 152.
\textsuperscript{213} MIHCL, \textit{supra} note 72; Li, \textit{supra} note 8, at 152.
\textsuperscript{214} \textsc{Lee & Feng}, \textit{supra} note 198, at 134.
\textsuperscript{215} \textit{Id}.
\textsuperscript{216} \textit{Id}.
\textsuperscript{217} \textit{Id}.
\textsuperscript{218} Milwertz, \textit{supra} note 198, at 75.
\textsuperscript{219} \textsc{Lee & Feng}, \textit{supra} note 198, at 134.
\textsuperscript{220} \textit{Id}.
\textsuperscript{221} Aird, \textit{supra} note 193, at 83.
\textsuperscript{222} \textit{Id}.
Federation. The basis of the One-Child Policy 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. Every woman is “continuously and closely monitored by both her street committee and work unit.” Under the One-Child Policy, all women in China are forced to use the same form of birth control, and “[b]irth control pills or [surgically implanted] intrauterine devices (“IUDs”) are the preferred methods” of contraception. 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. Women who have had a child are often pressured into signing a “One-Child Agreement” with the government and to undergo sterilization through tubal ligation. While the One-Child Policy 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. 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.

2. Forced Abortions The coercive tactics of the Chinese officials are not limited to just enforcing strict contraceptive requirements. Chinese officials also force abortions upon women who have conceived outside of the quota system. Although 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. 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.

223. Milwertz, supra note 198, at 95; Mosher, supra note 202, at 117.
224. Mosher, supra note 202, at 267; Lee & Feng, supra note 198, at 135.
225. Milwertz, supra note 198, at 106.
226. Mosher, supra note 202, at 147.
227. Milwertz, supra note 198, at 107.
228. Mosher, supra note 202, at 199.
229. Id.
230. Id.
231. Id. at 250.
233. Id. at 102.
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.” Women are actually escorted by officials to abortion clinics to ensure that they go through with the abortion procedure. To avoid the coercive tactics of the government officials seeking to abort an over-quota child, some mothers choose “childbirth on the run.” These women flee their city or village where their pregnancy would be monitored to go to the home of a distant friend or relative who can keep the birth a secret. On occasion, such women are caught and forced into a late-term abortion and forcibly “sterilized at the same time.”

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.” “Remedial measures” is a common Chinese euphemism for mandatory abortions. “Technical services” is a different term referring to birth control surgeries such as IUD insertions, sterilizations, and abortions. Suction abortions can be performed in the first few months of pregnancy. However, 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.”

3. Forced Sterilizations For women in China who are caught giving birth to over-quota children, forced sterilizations in addition to abortions are required. At the height of the coercive population planning campaigns, “sterilization presently emerged as the principal ‘technical measure’” to control the population growth. The number of sterilizations exploded between 1970 and 1985. In the 1970s, the number of sterilizations typically ranged between two and three million, compared to over sixteen million sterilizations reportedly performed in 1983. During many of the “propaganda month” campaigns, extreme efforts

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234. Id. at 17; Mosher, supra note 202, at 267–68.
235. Aird, supra note 193, at 17.
236. Mosher, supra note 202, at 280.
237. Id.; Aird, supra note 193, at 17.
238. Mosher, supra note 202, at 285.
239. Id. at 252.
240. Aird, supra note 193, at 12.
241. Id.
242. Mosher, supra note 202, at 255.
244. Aird, supra note 193, at 33.
245. Id. at 40.
246. Id.
were made to ensure that a “spouse of every couple with two or more children was sterilized.”

Mass mobilizations and extreme physical coercion were initiated at the hands of the birth planning cadres. One newspaper stated, “[w]e 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.” One woman who chose “childbirth on the run” to carry her third pregnancy to full term was immediately arrested by birth planning authorities after her return home, “taken under guard to commune medical clinic [and] . . . given a tubal ligation the same day.”

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. Punitive coercive measures for disobedience of the One-Child Policy also exist and are used to implement the policy. State officials at all levels are responsible for their own compliance and for the compliance of all those under their jurisdiction. Failing to meet the birth quota limits in an official’s jurisdiction can result in the official’s demotion or even dismissal. Therefore, officials use any means possible to enforce the family planning program to ensure the success of their own careers. 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.”

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. 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. Thus, strong group pressure to comply with family-planning measures ensures compliance by most couples to the One-Child Policy.

247. Id. at 100.
248. Id. at 17.
249. Id. at 44.
250. Mosher, supra note 202, at 243.
251. Lee & Feng, supra note 198, at 134.
252. Id. at 135.
253. Id. at 132.
254. Id.
255. Id.
256. Aird, supra note 193, at 16.
257. Milwertz, supra note 198, at 88.
258. Id. at 89.
259. Id. at 90.
Far more extreme measures have also been reported to retaliate against families with over-quota births or even those who simply refuse to sign the One-Child Agreement.260 These people are denied food, given less drinking water and electricity,261 forced to see their 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.262 A child who is not registered cannot receive health-care or education services.263 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.264 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.”265 In 1996, in the town of Shenzhen, 906 families were given fifteen days to leave because they had produced too many children.266 Government officials confiscated their residence permits, revoked their licenses to work, and ordered the housing department not to rent them houses or shops.267

By contrast, parents who comply with the One-Child Policy are rewarded with economic incentives. They receive a “signing bonus” after they sign the “One-Child Agreement.”268 Parents receive monthly health-care cash payments until their child turns fourteen, milk subsidies for young children, child-care subsidies, and priority in free health-care and education.269

5. Scarcity of Women Since the inception of the One-Child Policy in 1979, population statisticians estimate that millions of infant girls are missing from projected birth rates.270 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,"271 selective malnourishment of girls, lack of investment in women’s health and

261. AIRD, supra note 193, at 16.
263. Id.
265. Id.
267. Id.
268. Milwertz, supra note 198, at 91.
269. Id.
270. Women’s Health, supra note 4, at 27.
271. This term refers to the killing of the girl fetus.
various forms of violence." Other reports project even higher estimates of missing women—up to 100 million. 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. In some rural areas, the imbalance is even higher—130 boys to 100 girls. Approximately 15 percent of the girls missing are due to “excess female mortality” stemming from sex-selective abortions, abandonment, neglect, and female infanticide.

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. There is a long-standing “tradition” of “throwing away” very young children in the Hubei province. In a Chinese/American study that examined parents who abandoned babies and those who adopted them, the majority of children whom parents admitted to abandoning were first or second-born daughters. Many hoped that by abandoning their newborn daughter, they would be permitted to try again for a son. Child abandonment, particularly of girls and children with disabilities, is a huge problem throughout China in both rural and urban areas. 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. Other parents travel great distances to abandon their girl baby in a crowded public place, such as railways or bus stations. One official in the district of Shenyang stated, “every year, no fewer than 20 abandoned baby girls are found in dustbins and corners.”

272. Women’s Health, supra note 4, at 27.
273. MacLeod, supra note 4, at 14.
274. Dugger, supra note 6, at 44.
277. Johnson et al., supra note 243, at 472.
279. Johnson et al., supra note 243, at 475.
280. Id. at 476.
283. Id. at 478.
284. REPORT ON IMPLEMENTATION OF CEDAW, supra note 262, at 83.
Over 95 percent of babies in State-run orphanages are healthy baby girls.\(^{285}\) However, due to the poor conditions of the orphanages, a high percentage of the baby girls die within months.\(^{286}\) In the Shanghai Children’s Welfare Institute, the most prominent orphanage in China, the rate of deaths after admission was a staggering 77.6 percent in 1991, with an increase in 1992 for the months reported.\(^ {287}\) In 1995, Human Rights Watch published “Death by Default,” a report that chronicled the horrifying conditions of Chinese orphanages, including a “waiting for death room” where undesired infant girls were left to starve to death or die from neglect.\(^ {288}\) A British documentary entitled “The Dying Room” chronicled many orphanages where baby girls sit on bamboo benches in the middle of a courtyard with their wrists and ankles tied to the armrests and legs of the bench, rocking listlessly back and forth.\(^ {289}\) Baby girls suffered from liver failure, vitamin deficiency, disease, and sheer neglect, dying in large numbers after their arrival at the orphanages.\(^ {290}\)

According to the Marriage Law of 1980 and the omnibus Law Protecting the Rights and Interests of Women and Children (LPWRI),\(^ {291}\) child abandonment is illegal but has become endemic in Chinese society since the promulgation of the One-Child Policy nearly thirty years ago.\(^ {292}\) Parents who have abandoned their children are subject to fines, sanctions, and even forced sterilizations.\(^ {293}\) Even though the laws make child abandonment illegal, there are few provisions for the prosecution of parents who abandon their children.\(^ {294}\) 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.\(^ {295}\) 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.\(^ {296}\) China ratified the Convention on the Rights


\(^{286}\) Johnson et al., supra note 243, at 469.

\(^{287}\) Human Rights Watch, supra note 281, at 135–36.

\(^{288}\) Id. at 126.

\(^{289}\) See generally The Dying Room, supra note 285.

\(^{290}\) Id.

\(^{291}\) Marriage Law, supra note 203; LPWRI, supra note 72.

\(^{292}\) Id.

\(^{293}\) Id. at 478.

\(^{294}\) Id. at 479.

\(^{295}\) Johnson, supra note 278, at 84.

\(^{296}\) Johnson et al., supra note 243, at 480.
of the Child on April 1, 1992. In its initial report to the Committee on the Rights of the Child, China stated that it would only consider the abandonment of children a crime “where the circumstances are grave enough.”

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. The mothers who sell their daughters do so for many reasons: the fear of exceeding the limits set forth in the One-Child Policy, their hope to have a male child in a future pregnancy, or their need for extra money to pay off their debts. Highly coveted male babies are also sold if the mother has exceeded the One-Child Policy or wants to make extra money.

The Adoption Law of China requires adoptive parents to be childless and over the age of thirty. Childless adoptive parents who do not meet the 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 age thirty. This delay subjects the child to an unregistered status, which deprives the child of benefits and human and civil rights protections. 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 requires the adoptive parent to have no other children. 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.

298. Id.
300. Id.
301. Id.
303. Johnson et al., supra note 243, at 482.
304. Id. at 492.
305. Id. at 482.
306. Id. at 491–92.
307. Id. at 492.
b. Infanticide. Infanticide has been practiced in China since the early part of the first millennium by all classes of society.\(^{308}\) Although 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.\(^{309}\) Infanticide has even been sanctioned at times in religious practice.\(^{310}\) 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.\(^{311}\) Historically, infanticide was not considered immoral. In some areas, up to half of all infants were killed by their parents.\(^{312}\) 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.\(^{313}\) Today, infanticide is generally considered immoral in China and also illegal under Chinese law.\(^{314}\)

Yet despite its illegality, female infanticide has increased dramatically since the One-Child Policy 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.\(^{315}\) 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.\(^{316}\) In 1983, it was reported from Guangzhou that 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.\(^{317}\) The doctors were allowed to use any method to kill the babies, even strangulation.\(^{318}\) In 1989, another report was uncovered disclosing infants being killed by having gauze stuffed into their mouth and being given alcohol or ether injections.\(^{319}\) In rural clinics,
there are reports that babies were “thrown into boiling water and scalded to
death or placed in airtight jars and smothered.”

Reports of prosecutions for infanticide are extremely rare because no enforce-
ment mechanism exists for the relevant laws prohibiting infanticide. Under
Chinese law, the government typically fails to act unless the victim presses charg-
es. Because 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 rights. This protection typically
exempts physicians from prosecution for infanticide because they are deemed to
be carrying out the State’s birth-rate goals.

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.
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.” The popularity of sex-selective abortions has grown with the
increase of technology and the accessibility of mobile ultrasound machines.
Illegal scanning and backstreet hospitals can provide a sex scan for as little as
fifty dollars. The strong preference for male children has increased the use of
ultrasound machines. Although it has been forbidden by law since 1998 for
ultrasound technicians or doctors to reveal the sex of the fetus, many doctors
will perform this service for a small fee or as a favor to friends and family.
Enforcement of the laws prohibiting the use of sonograms for sex selection is
practically nonexistent, and law enforcement agents seem to be unable or unwill-
ing to implement them. Several factors contribute to the lack of enforcement,
including widespread participation by the medical community, strict birth

320. Mosher, supra note 202, at 255.
321. LPWRI, supra note 72; Criminal Law, supra note 76, art. 241.
322. Li, supra note 8, at 167.
323. Id. at 169.
324. Milwertz, supra note 198, at 61.
325. Baculinao, supra note 2, para. 16.
326. Milwertz, supra note 198, at 60.
327. Baculinao, supra note 2, para. 15.
328. Milwertz, supra note 198, at 61.
329. 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., Nov. 21, 1998),
http://www.unescap.org/esid/psis/population/database/poplaws/law_china/ch_
record021.htm.
330. Li, supra note 8, at 170.
331. Id.
control measures, and the strong desire by couples for a son. In a 2008 study by Professor Wei Xing Zhu, Professor Li Lu, and Therese Hesketh published in the *British Medical Journal*, these doctors concluded: “Sex selective abortion accounts for almost all the excess males. One particular variant of the one-child policy, which allows a second child if the first is a girl, leads to the highest sex ratios.”

d. Non-Registration of Children at Birth. Article 2 of the Maternal and Infant Health Care Law declares: “The 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.” 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. 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 to avoid steep fines or the risk of losing the child. Many of the “missing women” in China and the unbalanced sex-ratios stem from underreporting or non-registration of female births. Underreported 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.

Many provincial family-planning regulations punish parents with over-quota births by imposing stiff financial penalties. Moreover, over-quota children are not entitled to State subsidies and are deprived of admission to public education and access to public health care. Couples that have over-quota children also

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332. Id.
334. MIHCL, supra note 72.
335. Id.
336. Li, supra note 8, at 171.
337. Johnson et al., supra note 243, at 492–93.
338. Milwertz, supra note 198, at 60.
339. Id.
340. Li, supra note 8, at 157.
invalidate the benefits of their first child. These parents are even required to pay back the benefits the first child received, and they also face large fines. These penalties also apply to parents who illegally adopt abandoned children. In effect, the government punishes over-quota children for being born by withdrawing their entitlement (and that of their siblings) to basic services.

**B. Recent Changes to the One-Child Policy**

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. 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. China also began a “Girl Care Project” to encourage the birth of girls by cracking down on sex-selective abortions, female infanticide, and abandonment by rewarding families who give birth to girls. Preferential treatment in housing, healthcare, and employment is now given to families with only daughters, as well as financial incentives and pensions. In some provinces, school fees for girls have been reduced or eliminated, and propaganda banners advocate that preferring


343. Id.


346. Li, supra note 8, at 157.

347. See generally, Baculinao, supra note 2.

348. Id.

349. Id.

boys over girls is “old thinking.” 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. Women are inferior to men because of their temperamental personalities and limited intellectual abilities. 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. 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 as they cost their parents money in the form of a dowry, even though the girl children ultimately move out to live with the husband’s family.

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 that has existed since the second and third millennia B.C. can be traced to the custom of ancestor worship. This practice was reinforced by a strong patrilineal system that systematically discriminated against daughters. Sons are responsible for caring for their parents’ spirits in

351. Id.
353. Guisso, 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 One-Child Policy 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.
354. LIN YUTANG, MY COUNTRY AND MY PEOPLE 154 (1935).
355. Id. at 153.
356. HUDSON & DEN BOER, supra note 310, at 135.
357. LEE & FENG, supra note 198, at 47.
358. Id.
the afterlife “so they do not wander for eternity as hungry ghosts.”\textsuperscript{359} Only sons could sacrifice to the family spirits or carry on the family name.\textsuperscript{360} 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.\textsuperscript{361} 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.\textsuperscript{362}

In the southeast of China, daughters are referred to as “goods on which one loses one’s capital” as it costs money to raise a daughter, only to hand her over to her husband’s family.\textsuperscript{363} “The triple threat of patrilocality, male-oriented food provision systems, and the dowry” has made “female infanticide . . . a rational choice” in Chinese culture.\textsuperscript{364} 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.\textsuperscript{365} Most men have higher earning power than women because the pay scale for men versus women remains unequal.\textsuperscript{366} Couples prefer to have a son who can better afford to take care of them as well as extended family members in later life.\textsuperscript{367}

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.\textsuperscript{368} Decisions regarding fertility and childbearing still largely remain in the realm of the husband’s family rather than this decision being up to the woman and her husband.\textsuperscript{369} Mothers who give birth to sons receive a higher quality of medical care and better nutrition, and they are expected to perform less housework.\textsuperscript{370} Male babies also receive better food, finer clothing, and more expensive gifts at traditional ceremonies, emphasizing the greater hopes parents have for male children.\textsuperscript{371}

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.\textsuperscript{372} Under the slogan, “Women hold up half the

\begin{thebibliography}{100}
\bibitem{359} Dugger, \textit{supra} note 6.
\bibitem{360} \textsc{Lee & Feng}, \textit{supra} note 198, at 47.
\bibitem{361} \textit{Id.} at 60; Johnson et al., \textit{supra} note 243, at 475.
\bibitem{362} Milwertz, \textit{supra} note 198, at 46.
\bibitem{363} Hudson & den Boer, \textit{supra} note 310, at 17.
\bibitem{364} \textit{Id.} at 11.
\bibitem{365} Johnson et al., \textit{supra} note 243, at 475.
\bibitem{366} Milwertz, \textit{supra} note 198, at 155.
\bibitem{368} Milwertz, \textit{supra} note 198, at 16
\bibitem{369} \textit{Id.} at 80.
\bibitem{370} Women’s Health, \textit{supra} note 4, at 29.
\bibitem{371} \textit{Id.} at 29.
\bibitem{372} Hudson & den Boer, \textit{supra} note 310, at 148.
\end{thebibliography}
“gendercide and the cultural context”

“Give me the sky,” the new government led by Mao Zedong attempted to provide equal access to education and jobs for men and women.373 Mao also tried to give women more domestic rights, marriage rights, and inheritance rights.374 Yet despite the reforms under Mao, women were often placed in menial positions and paid far less than a man for similar work.375 During the period of decentralization, privatization, and economic efficiency in the 1980s under the leadership of Deng Xiaoping, a huge number of government positions held by women were the first to be cut.376

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.377 “A virtuous wife and good mother [is] . . . first of all defined in relation to how a woman minds her home, her husband, and her child.”378 Women also consistently receive lower wages than men even when their labor is the same.379 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.”380

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.381 Women also work in more dangerous and untenable working conditions, exposed to toxins and accident-prone factories.382 Female migrant workers face the harshest working conditions. They are prone to exploitation and abuse from employers because of their economic desperation and generally submissive natures.383 Protection for pregnant female migrant workers is usually nonexistent and contributes to a high level of gynecological disorders.384 Sexual harassment in the workplace is a common phenomenon, and many women report that the degree and frequency of harassment has risen.385

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374. Id. at 148–49.
375. Id. at 150.
376. Honig & Hershatter, supra note 373, at 250.
377. Id. at 255; Milwitz, supra note 198, at 154.
379. Id. at 155.
381. Human Rights in China, supra note 70, at 299.
382. Id.
383. Id. at 300.
384. Id. at 301.
385. Id.
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. 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. 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.

In a speech on the demographic crisis in China, Li Weixiong, an advisor to China’s political consultative conference on population issues, states “[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 abduction of women and prostitution.” An official magazine entitled Theory and Time published in Shenyang 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. 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”—a terrifying prospect for an elite governing class.

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. “[T]heir levels of literacy and labor-force participation are low,” and “[t]heir suicide rate, relative to men’s, is also high.” Women are also more likely to be kidnapped or sold. “From 1991 through 1996, Chinese police freed 88,000 kidnapped women and children and arrested 143,000 people.

387. Id. at 20.
388. Id. at 188–90.
389. McCurry & Allison, supra note 275, at 3.
391. Hudson & den Boer, supra note 310, at 200.
for participating in the slave trade.”

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. These figures are viewed as conservative since law enforcement agencies face large obstacles when trying to enforce the kidnapping and slavery laws. Moreover, there is strong community support of men who buy kidnapped women.

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. High sex-ratio societies usually have higher levels of prostitution. During the 1990s, an increased number of brothels was reported, servicing mainly urban areas populated by unmarried migrant workers.

VI. POLICY SUGGESTIONS TO COMBAT SEX TRAFFICKING IN CHINA

China must improve its trafficking record. To do so, it 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 become and remain independent, and its officials must prosecute and severely punish sex traffickers as well as recruiters and employers of forced laborers. 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 to criminalize all forms of labor that rise to the level of slavery. Laws must also be revised to criminalize sex trafficking effectively and in accordance with international standards. The Chinese government must conduct widespread

396. Id.
400. Hudons & den Boer, supra note 310, at 205.
public awareness campaigns through local nongovernmental organizations to inform the public of the dangers and risks of trafficking.\(^{403}\)

In addition, China must provide foreign victims trafficked into China with legal alternatives to the current inhumane practice of deporting them to their own countries where they may face serious hardship or retribution upon reentry. 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 also 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\(^{404}\) and the Maternal and Infant Health Care Law\(^ {405}\) must not be subjugated to State policies that deny individual rights. China cannot allow coercive measures 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 themselves the perpetrators) to press charges. Medical personnel who perform illegal ultrasound scans or infanticide must be held legally accountable.

Finally, the One-Child Policy must be drastically revised to comport with basic international human rights laws (such as CEDAW, CAT, and CRC) to which China is a signatory. The population growth can be checked by providing incentives to limit the number of children rather than by inflicting coercive or harsh tactics.

China must also 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 as they are considered part of their husband’s family after marriage.\(^ {406}\)

If strict enforcement of the existing laws in China were a government priority, women in China could be given equality in their inheritance rights. They should have wage parity and job opportunities so that men and women alike are able to sufficiently care for their parents in later years. Substantial pension

\(^{403}\) See TIP Report 2008, supra note 17, at 92.

\(^{404}\) LPWRI, supra note 72.

\(^{405}\) MIHCL, supra note 72.

systems or retirement plans should also be established for people in rural as well as urban areas in China 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 that exclude rural girls from the right to education. 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 elimination of discrimination against women in Chinese society will reduce trafficking in women.

VII. LISA SEE, SNOW FLOWER AND THE SECRET FAN

A. Women’s Life in China in the Nineteenth Century
Lisa See has written a beautiful novel that takes the reader back in time to nineteenth century China when wives and daughters were forced to obey and to endure the excruciating pain of footbinding. Women then lived in almost total seclusion in the private area of the house known as the women’s quarters upstairs. To survive this isolation and inhumanity perpetrated upon an entire gender, women in a remote Hunan county developed their own secret language called nu shu (“women’s writing”), which was their own coded form of communication and expression of rebellion, if not empowerment. Some girls in this remote and secluded male-dominated society were lucky enough to be paired by their parents to another similarly situated little girl (laotong or “old same”). The two little girls would remain emotionally tied all their lives, painting letters to each other in coded communication on silk fans, embroidering secret messages on handkerchiefs, and writing stories for each other in order to survive in their utter loneliness and hopeless existence. This secret coded language was their only source of pleasure and communication with the outside world.

407. CEDAW Report, supra note 73, ¶ 257.
408. LISA SEE, SNOW FLOWER AND THE SECRET FAN, A NOVEL (2005) (“I always understood that two Confucian ideas ruled our lives. The first was the Three Obediences: “when a girl, obey your father; when a wife, obey your husband; when a widow, obey your son.”). 409. Id. at 28 (“Mama yanked me out of the chair. The word pain does not begin to describe the feeling. My toes were locked under my feet so that my body weight fell entirely on the top of those appendages. I tried to balance backward on my heels. When Mama saw this, she hit me. “Walk!” I did the best I could. As I shuffled toward the window, Mama reached down and pulled Third Sister to her feet, dragged her to Elder Sister, and said, “Take her back and forth across the room ten times.”).
410. Id. at 4 (“I have spent my life in upstairs women’s rooms.”).
411. Id. at 4 (“My only rebellion came in the form of nu shu, our women’s secret writing.”).
Lily is the narrator of this very sad and realistic story about her life with her dear friend Snow Flower whom she has known since the age of seven. Snow Flower is the unlucky girl who marries a brutal man (the “butcher”). Snow Flower commits the ultimate sin of giving birth to a girl child. Her husband continues to beat her senselessly throughout their horrible marriage simply because she fails to conceive a male child.\textsuperscript{412} Lily, on the other hand, marries a kind man and has a better life. The whole novel rests on the antithesis between Lily’s good life with a kind husband and Snow Flower’s horrid life with a cruel husband.

The story begins when Snow Flower writes a secret poem for Lily in \textit{nu shu} on a silk fan that seals their deep female friendship for life. Lily describes in vivid detail the torturous process of footbinding that she and all the girls in her family and all the girls in China were forced to endure. Footbinding was done for esthetic reasons, to please men so as to attract the best husband possible. Footbinding involved breaking the bones of the little girl’s feet, folding the toes towards the heel, and being forced by beatings and threats to walk on these crippled feet even though the pain was excruciating.\textsuperscript{413} One of Lily’s sisters actually died from “the pus, blood and infection caused by this long-standing custom and dangerous procedure.”\textsuperscript{414}

\textsuperscript{412} \textit{Id.} at 207 (“He proceeded to beat her so badly that she miscarried in a violent gush of black blood that stained the icy slopes throughout our campsite. She was not very far along, so we never found a fetus, but the butcher was convinced that he’d rid the world of another girl. ‘There is nothing so evil as a woman’s heart,’ he recited again and again, as though none of us had heard that saying before . . . When I look back, I think it was a miracle that Snow Flower survived those last two weeks in the mountains as she passively accepted beating after beating. Her body weakened from the loss of blood from the miscarriage. Her body bruised and tore from the daily punishment her husband rained down on her.”).

\textsuperscript{413} \textit{Id.} at 30 (“One day, as I made one of my trips across the room, I heard something crack. One of my toes had broken. I thought the sound was something internal to my own body, but it was so sharp that everyone in the women’s chamber heard it. My mother’s eyes zeroed in on me. ‘Move! Progress is finally being made!’ Walking, my whole body trembled. By nightfall the eight toes that needed to break had broken, but I was still made to walk. I felt my broken toes under the weight of every step I took, for they were loose in my shoes. The freshly created space where once there had been a joint was now a gelatinous infinity of torture.”).

\textsuperscript{414} \textit{Id.} at 31. “Mama began to unwrap the bindings. A disgusting odor infused the room. Aunt gagged. Although it was snowing, Elder Sister tore away the rice paper that covered the windows to give the stench an exit. Finally, Third Sister’s feet were fully exposed. The pus was dark green and the blood had coagulated into brownish, putrid mud. Third Sister was brought to a sitting position and her unbound feet set into a steaming bowl of water. She was so far away in her mind that she did not cry out . . . She died four days later, enduring more suffering and pain than was fair for such a short life.” \textit{Id.} at 33.
Matchmaking and early arranged marriages\textsuperscript{415} were the custom in China in the nineteenth century, and this custom continues even today in other modern nations such as India. Lily writes that in China women were considered “worthless branches on the family tree . . . [a] drain [on] the family resources” because the father must provide a dowry for a daughter even though he reaps no real “benefit” because the married daughter must by custom leave to remain under the sometimes tyrannical rule of her husband’s family. “We are raised by one family for another,” says Lily.\textsuperscript{416} It seems that women in China were fated to lead a bad life. “But this is how it is for women. You can’t avoid your fate. It is predestined.”\textsuperscript{417}

Lily explains that women in Chinese society are “seen as completely useless . . . a burden” to their families, forced to marry “into new families; go to our husbands sight unseen, do bed business with them as total strangers, and submit to the demands of our mothers-in-law. If [women] are lucky, we have sons and secure our positions in our husband’s homes. If not, we are faced with the scorn of our mothers-in-law, the ridicule of our husband’s concubines, and the disappointed faces of our daughters.”\textsuperscript{418}

Women are raised to be silent and obedient. The woman’s subservience to a man, her enslavement to her father and husband, and her imprisonment in isolated quarters of the house continues throughout her life in the many roles she is forced to play in Chinese society. Women are born for one purpose: to give birth to a son. “My husband says it is better to have a dog than a daughter.”\textsuperscript{419} When Snow Flower gives birth to a dead baby girl, she writes a letter to her dear friend Lily that reveals the depths of women’s plight in China:

“Lily,

My daughter was born dead. She left without planting roots, so she knew nothing of the sorrows of life. I held her feet in my hands. They would never know the agony of footbinding. I touched her eyes. They would never know the sadness of leaving her natal home, of seeing her mother for the last time, of saying goodbye to a dead child. I put my fingers over her heart. It would never know pain, sorrow, loneliness, shame. I think of her in the afterworld. Is my mother with her? I don’t know either of their fates . . . I cannot stop thinking about my dead baby girl.

Snow Flower\textsuperscript{420}

\begin{footnotes}
\item[415] Id. at 41. Girls as young as eight or nine in China were matched up by a matchmaker for marriage.
\item[416] Id. at 59.
\item[417] Id. at 78.
\item[418] Id. at 127.
\item[419] Id. at 163.
\item[420] Id. at 165–66.
\end{footnotes}
Lily tells us that stillbirths were common in China, but they were considered dreadful only if the baby was a son.\textsuperscript{421} The duty of all women then was to keep trying to give birth to sons.\textsuperscript{422} Snow Flower miscarried four daughters; she says, “If I had carried all my children to term, I would have four daughters—a disaster.”\textsuperscript{423} Only sons in China were entitled to an education, not daughters.\textsuperscript{424} The isolation of girls into the private sector further guaranteed their ignorance.\textsuperscript{425} A woman’s worth was measured by her husband’s status, and once her husband died, the widow had nothing more to do but contemplate suicide.\textsuperscript{426} Lily sums up the sad life of women in China, a cultural slice of life that gives us a window into the root causes of trafficking in modern-day China:

If it is perfectly acceptable for a widow to disfigure herself or commit suicide to save face for her husband’s family, why should a mother not be moved to extreme action by the loss of a child or children? We are their caretakers. We love them. We nurse them when they are sick. In the case of sons, we prepare them to take their first steps into the men’s realm. In the case of daughters, we bind their feet, teach them our secret writing, and train them to be good wives, daughter-in-laws, and mothers, so they will fit into the upstairs chambers of their new homes. But no woman should live longer than her children. It is against the law of nature. If she does, why wouldn’t she wish to leap from a cliff, hang from a branch, or swallow lye?\textsuperscript{427}

Wife abuse may have been common in nineteenth-century China, and Snow Flower exemplifies the despondent, beaten, starved, and abused wife who was subject to the constant brutality of her husband.\textsuperscript{428} Snowflower’s only source of joy was the coded language with which she used to communicate to her spiritual sister, Lily. By decoding the letters and placing them in the context of the Chinese culture, we can better understand how and why the trafficking of women in China today has developed into such a big business despite the serious human rights violations perpetrated on defenseless little girls and undervalued women.

\begin{footnotes}
\item[421] Id. at 166.
\item[422] Id.
\item[423] Id. at 185.
\item[424] Id. at 169.
\item[425] Id. at 174.
\item[426] Id. at 175.
\item[427] Id. at 210.
\item[428] Id.
\end{footnotes}
VIII. 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.

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 long-standing cultural trends and combat discriminatory traditions against women. Civil rights laws enacted in the United States 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.