

**Submission by the China Violence Against Women Concern Group to the
Committee on the Elimination of All Forms of Discrimination Against
Women**

On the occasion of the Committee's Review of the Implementation of CEDAW
in the People's Republic of China at the 59th Session

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Executive Summary

This joint submission to the Committee on the Elimination of All Forms of Discrimination against Women (“CEDAW Committee”) has been prepared by the China Violence Against Women Concern Group (“China VAW Concern Group”), a coalition of Chinese women’s rights and gender equality activists and experts. Its content is based on the documentation and research undertaken by the China VAW Concern Group in consultation with other human rights NGOs, academics and lawyers. The names of the participating activists and experts are withheld due to concerns for possible retaliation by the Chinese government.

The CEDAW Committee has repeatedly urged China to “ensure that all forms of violence against women and girls, both in the public and private spheres, constitute a crime punishable under criminal law” and has called upon China “to provide immediate means of redress and protection to women and girls victims of violence.” (2006 Concluding Observations, ¶ 22.) The Committee has also encouraged the Chinese government to “enhance victims’ access to justice and redress” and to “strengthen its system of data collection in regard to all forms of violence against women and to include such information in its next report.” (*Id.*, ¶ 22.) Although the China VAW Concern Group welcomes the steps that the Chinese government has taken to address pervasive domestic violence in China, it regrets that Chinese authorities continue to interpret “violence against women” only as spousal violence, to the exclusion of the many other forms of violence that women in China face. The China VAW Concern Group also regrets that this restricted view is reflected in China’s State Report which only submitted information relating to domestic violence in its discussion of Article 5 of the Convention.

The China VAW Concern Group hopes that this submission will provide the CEDAW Committee with a fuller picture of violence committed against women in China, so as to ensure that China fulfills its state obligation under the Convention to eliminate *all* forms of violence against women and girls. This submission therefore focuses on several key rights guaranteed to all women in China, including: (1) the rights of women to control their bodies; (2) the rights of women to participate in political and public life; (3) the rights of women to be free from violence in both the public and private spheres; and (4) the rights of women to equal employment. In light of these issues, we have the following recommendations:

- 1) We urge the Chinese government to recognize that the State has a responsibility to address all forms of violence against women and that this responsibility requires the state to respect, protect and fulfill the rights of all women to be free from all forms of violence perpetuated by both state and non-state actors.
- 2) We urge the Chinese government to review and amend all laws and policies, at both the national and local levels, to ensure that they are in full compliance with China’s obligations under CEDAW. In particular, we urge the Chinese government to (a) remove all measures that allow local government officials to inflict violence against women within the family planning system; (b) to amend laws that differentiate between minor victims of sexual violence; and (c) to ensure that all regulations on sexual harassment provide an actionable definition of such acts.

- 3) Though we welcome existing prohibitions against certain forms of violence against women, we ask the Chinese authorities to adopt a comprehensive approach to preventing, investigating and punishing violence against women, so these laws are effectively implemented. In order to do so, the government should establish clear mechanisms for combating all forms of violence against women (including sexual harassment in the workplace, sexual violence in schools and violence perpetuated by state actors), and ensure that the government allocates sufficient resources across the country to implement these mechanisms effectively.
- 4) The Chinese government should also collect disaggregated data on the various forms of violence against women and make such information available to the public.
- 5) We urge the Chinese government to proactively seek independent civil society participation and monitoring of the implementation of its legislation and policies. Significant barriers to women's full participation in public affairs continue to exist, and we urge the Chinese government to establish comprehensive measures to realize these rights and to protect all women from violence while exercising such rights.

Chapter One: Articles 1, 2, and 3 (Discrimination Against Women)

1. According to CEDAW General Recommendation 19, “discrimination” against women includes gender-based violence that is directed against a woman because she is a woman, or that affects women disproportionately” and “includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.”(Gen. Rec. 19, ¶ 6.) State parties have “a comprehensive obligation to eliminate discrimination in all its forms.” (Gen. Rec. 19, ¶ 10.)
2. In its 2006 Concluding Observations, the Committee required China to “include a definition of discrimination against women in its domestic law, encompassing both direct and indirect discrimination.” (2006 Concluding Observations, ¶ 10.) Although China indicated in its response to the 2006 Concluding Observations that the lack of definition does not hinder its ability to effect its obligations under CEDAW, the reality is that the lack of a working definition of “discrimination” under Chinese national law, and the consequent lack of conceptual clarity about discrimination (including in the family, and in the workplace) has affected women’s ability to use the law to protect themselves against various forms of violence.
3. The Committee also urged China to “adopt a comprehensive law on violence against women and to ensure that all forms of violence against women and girls, both in the public and private spheres, constitute a crime punishable under criminal law.” (2006 Concluding Observations, ¶ 22.) Eight years later, however, China still lacks a comprehensive law on violence against women. Further, we regret that the State Report’s discussion regarding the situation of eliminating violence against women only refers to family violence in the private sphere; this restrictive view of violence against women does not consider violence against women in the public sphere including sexual harassment in the workplace, sexual violence in schools, violence committed against women human rights defenders and violence against women in the family planning system.

Sexual Harassment in the Workplace

4. The State Report declares that the 2005 revision of the Law of the People’s Republic of China on the Protection of Rights and Interests of Women (hereinafter “LPRIW”) added new provisions prohibiting sexual harassment. (2012 State Report, ¶ 12.) While the LPRIW and the Special Regulations on Employment Protections for Women Workers explicitly state that “sexual harassment against women is prohibited,” there is no clear definition of what constitutes sexual harassment. The laws also do not provide specific methods for implementing such a prohibition, nor do they designate the government departments with responsibilities to prevent such actions and penalties for violations of the prohibitions.¹ Although most provincial and local level regulations that implement the LPRIW do have more specific regulations regarding sexual harassment, several problems remain. First, local regulations do not have a national scope, and therefore, victims of

¹ For instance, Article 40 of the *Law of the People's Republic of China on the Protection of Rights and Interests of Women* specifies that, “Sexual harassment against women is prohibited. The female victims shall have the right to file complaints with the units where they work and the departments concerned.” See *Law of the People's Republic of China on the Protection of Rights and Interests of Women* http://www.gov.cn/gongbao/content/2005/content_77755.htm. However, the wording of the legislation is too general, lacking concrete measures, specification of responsible authorities, provisions for punishment, etc.

sexual harassment in the workplace will not be able to invoke such provisions to safeguard their rights if they are located in provinces without implementing regulations that articulate substantive protections for sexual harassment in the workplace. Second, even where implementing regulations have been enacted, there remain problems over which government agency bears the responsibility to prevent, investigate and punish sexual harassment in the workplace. For example, Art. 29 of the Guangdong Province Measures for the Implementation of the LPRIW state that women who have been sexually harassed have “the right to complain to the authorities,” but do not specify to which government unit such complaints would be addressed. They also do not articulate the process by which such complaints could be brought.

5. We therefore recommend that the Chinese government amend national legislation to include a specific definition of “discrimination” and also define what constitutes sexual harassment in the workplace in relevant national laws like the LPRIW, the Labor Law and the Employment Protection Law. The Chinese government should also establish unified national implementation measures aimed at combatting sexual harassment in the workplace, designating the responsible government departments and specific penalties for violations of the regulations.

Sexual Abuse of Girls in Schools

6. Since 2013, numerous cases of sexual assault and abuse of girls within Chinese schools and campuses have been exposed by the national media. In 2013 alone, Chinese media has reported 125 cases of such abuse—in terms of perpetrators, 33 of the cases were committed by teachers, 10 by school principals and 6 by government officials. Yet the Chinese government has been very passive in its responses to prevent sexual assault and abuse in schools. Although the Supreme People’s Court released its “Opinions on the Punishment of Crimes of Sexual Abuse of Minors” (the SPC Opinion) in October 2013 as an attempt to address the pervasiveness of sexual abuse within schools, it only serves to provide guidelines to prosecutors and police on how to handle sexual assault cases as the SPC Opinion is a guiding opinion and not a law.² The filing of cases against perpetrators remains difficult as is the collection of evidence, while the standards by which cases are accepted by courts are also uneven. Furthermore, some investigation protocols used by public security organs also require law enforcement officials to “check if (the victim) was a virgin”³ as the police often use different standards for so-called innocent or chaste victims and those they deem to be somehow more culpable for their abuse. Such differentiation is further reinforced in the SPC Opinion, which distinguishes between girls who were “lured into” performing sex acts and those who were “actively and consensually engaging in sex work.”⁴

² Supreme People’s Court: *Opinions on Punishing the Crimes of Sexual Abuse of Minors Pursuant to the Law*, October 2013, [2013] No. 12, <http://www.chinacourt.org/law/detail/2013/10/id/147056.shtml>.

³ It is reported in a science journal that police would check the victim’s hymen to determine if she is a virgin or not, and to use such medical findings as evidence in court. See Chen Yelei, “Sexual abuse of young girls should be convicted as rape” (“性侵幼女 都定强奸罪”), *Science Life Weekly* (科学新生活), 723, 26 May 2013, <http://www.kxxsh.cn/news.aspx?id=2583>.

⁴ Supreme People’s Court, *Opinions on Punishing the Crimes of Sexual Abuse of Minors Pursuant to the Law*, October 2013, [2013] No. 12, <http://www.chinacourt.org/law/detail/2013/10/id/147056.shtml>, ¶¶ 19-21.

7. Although the 2006 Concluding Observations (para. 22) called on China to enhance its data collection system on *all forms of violence against women*, the 2012 State Report has only included limited data on rape, leaving out data on sexual abuse of minors (including disaggregated data relating to gender and rural-urban distribution) and the number of cases of sexual assault on campus. There appears to be a lack of government statistics on on-campus sexual assaults,⁵ and government departments do not appear to believe that they can or should publicizing sexual abuse that takes place within the public service arena (especially in education sphere) as part of their job responsibilities.⁶ Therefore, without information about cases of sexual abuse in their communities (in kindergartens, schools and universities) and information about mechanisms in place to handle such cases, the public cannot take precautions against such abuse nor can it effectively monitor the response of schools, local education authorities and the Ministry of Public Security to such abuse.
8. We therefore recommend that the Chinese government issue regulations specifically targeting the comprehensive prevention and punishment of sexual abuse in schools. The government should also collect data and other information regarding the sexual abuse of minors, and promptly disseminate information relating to cases of sexual abuse that occur in schools (including information on their geographic distribution and the corresponding information regarding case investigation and legal proceedings).

Violence Against Women in the Family Planning System

9. Since the 1970s, the Chinese government has implemented a comprehensive national family planning policy. Although this policy has alleviated some of the burdens associated with childbirth and has increased opportunities for urban females from single-child homes, China's family planning policy is mandatory and not service-oriented in nature, and has led to violence against women in the course of the policy's implementation. Women are disproportionately affected by the forced implementation of the family planning policy, and are also the primary victims of violence. Yet the State Report fails to include any mention of family planning laws and policies within its discussion of laws and policies that disproportionately affect women, nor does it contain information or data about the impact of such laws and policies on women.
10. The Sept. 2002 Population and Family Planning Law created a "one-child for one couple policy," and authorized provincial and local level governments to formulate local rules to achieve this objective. Although China's Legislation Law requires that these local rules be inconsistent with the

⁵ In Oct. 2013 and May 2014, activists from the NGO (妇女权利关注网络 Network on Women's Rights) made open government information requests to 244 public security and education departments in the provinces of Shanxi, Henan, Guangdong, Yunnan, Zhejiang and Gansu, seeking information about the number of sexual abuse cases and the results of those cases within each jurisdiction between January 2013 and May 2014. The NGO reported that only 19 departments disclosed any information, but less than 10 departments admitted that sexual abuse cases in public schools had occurred in their jurisdiction (for a total of 15 on-campus sexual assault cases). In contrast the group had recorded at least 72 on-campus sexual assault cases reported in the media during the same time period. *See* Zhao Xinying, 'Schools rarely disclose sexual assaults', China Daily, Aug. 12, 2014, http://www.chinadaily.com.cn/china/2014-08/12/content_18291097.htm.

⁶ The Network on Women's Rights reported that, of the 244 departments approached, only 8% were willing to release their data on sexual assaults in schools, but only 3% of the departments admitted that sexual assaults had occurred within their jurisdiction. *See*, Beijing Times, "8% of government departments willing to 'speak out'", Aug. 12, 2014, http://epaper.jinghua.cn/html/2014-08/12/content_113785.htm. More than 200 departments declined to release the information to the Network on Women's Rights; several stated that this data should not be made available to the public because of victims' privacy, or because the disclosure would incite fear or social instability. *See*, Zhao, *id.* The NGO's Chinese language report is on file with the China VAW Concern Group and is available on request.

Constitution and national level laws, many of these local family planning regulations are even stricter than the Population and Family Planning Law, for example, directly prohibiting reproduction or requiring the termination of pregnancy.⁷ In practice, these regulations have since been interpreted to allow for the forced inductions of pregnant women.⁸

11. The inconsistencies among provincial and local level regulations have also resulted in differing standards for family planning policy violations and inconsistent standards for collecting penalties (called social maintenance fees) across China.⁹ In many provinces, family planning policies have become intrinsically bound up with other fundamental rights of women and their family members. For example, officials have required women to use intrauterine devices before permitting the issuance of the household registration (hukou) documents for their children; children have not been allowed to register and attend school without family planning certificates;¹⁰ and authorities have refused to register a child without the payment of extremely high social maintenance fees.
12. We request that the Chinese government review and amend relevant local legislation and policies on family planning to ensure that violence against women is prevented and punished. Specifically, we request that the government remove legislation that require the termination of pregnancy and sterilization, remove legal requirements for forced contraception, and remove policies that link family planning policies with rights of children to education or access to social services. We also request that the Chinese government provide data relating to the impact of family planning laws and policies on women.

Chapter Two: Article 5 (Violence Against Women)

Sexual Harassment in the Workplace

13. Although sexual harassment constitutes gender-based violence and a form of discrimination against women (Gen. Rec. 19, ¶ 7), the State Report indicates that the Chinese government does not consider sexual harassment to be a form of gender-based violence. (2012 State Report, ¶ 5.) Moreover, the State Report does not contain any data relating to female victims of sexual

⁷ For example, Article 18 of the *Regulations of Zhejiang Province on Population and Family Planning* states that “a married couple should only have one child. Pregnancy outside of the permitted circumstances is strictly forbidden.” In addition, Article 27 of the *Regulations of Anhui Province on Population and Family Planning* and Article 18 of similar regulations in Shenzhen state that “Couples of child-bearing age shall consciously implement contraceptive measures in family planning, take pregnancy examinations and accept guidance on family planning technology services. It is also recommended that couples who already have one child undergo sterilization process. Termination of pregnancy is required if the pregnancy violates provincial family-planning regulations.” Article 43 of the Shenzhen regulation continues to dictate steep fines for those who do not undergo or delay contraception, and punishments for the “excessive” bearing of children.

⁸ In June 2012, twenty to thirty government officials of Ankang City, Shaanxi Province covered the seven-month-pregnant Feng JianMei’s head with clothes, took her to Zhenping County Hospital and forced her to induce an abortion. See “*Seven-month-pregnant woman forced to terminate her pregnancy. Officials said they have obtained her consent*,” Ankang Tekuai, 12 June 2014, <http://ankang.hsw.cn/system/2012/06/14/051344244.shtml>. The picture of Feng and her dead baby was widely shared on the Internet, attracting extensive media coverage and arousing public debates on the cruel birth control policy. A lot of similar cases were uncovered by the media. See “*Officials deny forcing woman to undergo abortion in 2005*,” Eastday, 4 Aug. 2012, <http://news.eastday.com/society/2012-08-04/11182.html>.

⁹ Art. 41 of the Population and Family Planning Law stipulates that citizens who do not conform with Article 18 shall pay social maintenance fees (as penalties); these regulations governing the imposition of these fees (and the specific standards for such fees) are prescribed by provincial/local governments according to Article 3 of the Administrative Measures for the Collection of Social Maintenance Fee. These social maintenance fees are calculated based on individual net income.

¹⁰ These permits indicate that a couple was granted permission to have a child by the family planning authorities.

harassment, nor does its statistics in annex 19 provide disaggregated information about cases of sexual harassment in the workplace. This is in contravention of General Recommendations Nos. 12, 19 and 25 that ask state parties to compile and list statistical data and information for all forms of gender-based violence. (Gen. Rec. 12, ¶ 4; Gen. Rec. 19 (¶ 24; Gen. Rec. 25, ¶ 35.)

14. Without clear laws on sexual harassment and systems for processing sexual harassment cases, many victims face significant difficulties in seeking redress even though sexual harassment appears to be widespread. A November 2013 report by a Shenzhen-based labor rights NGO¹¹ indicated that more than 70% of the 500 women factory workers surveyed in Guangzhou and Shenzhen have suffered sexual harassment, but only 10% would seek help from trade unions or the local women's federation. Moreover, nearly half of those seeking help were unable to resolve their cases.¹² Police and other public security organs have also posed obstacles to access to justice for victims as they often do not record or investigate cases of sexual harassment or treat these cases as being of low priority.¹³
15. We recommend that the Chinese government establish clear mechanisms and policies on the prevention of sexual harassment in the workplace that clearly indicate management responsibility, penalties, and recourse mechanisms; the government should then ensure that such information is distributed to the public. We also recommend that the evidentiary standards that victims are required to meet to prove sexual harassment should be reduced and the burden of proof shifted to the alleged perpetrators. Finally, we recommend that the Chinese government collect and disseminate disaggregated statistical data on sexual harassment in the workplace (include information regarding time, place and outcomes of cases) in order to create and monitor effective systems of preventing sexual harassment in the workplace.

Violence Against Women in the Family Planning System

16. In discussing violence against women, the CEDAW committee has strongly stated that “[c]ompulsory sterilization or abortion adversely affects women's physical and mental health, and infringes the right of women to decide on the number and spacing of their children. (Gen. Rec. 19, ¶ 22.) In its 2006 Concluding Observations, the CEDAW Committee expressed its concern about “the impact of the adverse sex ratio” in China, and urged the Chinese government to “strengthen its monitoring of the implementation of existing laws against selective abortion and female infanticide and to enforce them through fair legal procedures that sanction officials acting in excess of their authority.” It also urged China “to investigate and prosecute reports of abuse and violence against ethnic minority women by local family planning officials, including forced sterilization and forced abortion.” (2006 Concluding Observations, ¶ 31-32.)

¹¹ Hand in Hand Workers' Activity Space, *Seeing Sexual Harassment: A Public Interest Survey Worker's Experiences with Sexual Harassment*, 21 November 2013, <http://www.ngocn.net/?action-viewnews-itemid-88753>.

¹² *Id.*

¹³ The Nov. 2013 report detailed the case of Zhaojie, a typical case of sexual harassment against factory workers. Although Zhaojie went to the police to report sexual harassment six times in a single year, she was unable to get the police to investigate any of the cases, and she did not receive a single written record of the reports she made. Her failure to do so demonstrates that workplace sexual harassment is often not resolved by administrative or judicial personnel, and that the police lacked the gender awareness needed to resolve cases of harassment, to the point that they used conventional prejudiced discourse to attack female workers seeking to report instances of sexual harassment. *See, id.*, pp.14-15.

17. The State Report did not include information about violence against women in the family planning system in its entire discussion of Article 5. (State Report, ¶ 79-99.) Unfortunately, the State Report only focused on policy speeches by high ranking officials that “efforts must be made towards a comprehensive solution to the issue of high sex ratio at birth” and the development of a research group (State Report ¶ 80-82), but did not refer to the specific measures that have been taken to address this issue or to any relevant data. The State Report further responded to the Committee’s concern through the lens of demographic changes, therefore ignoring the specific impact that family planning policies have on women. Unfortunately, violence against women is often committed in the implementation of family planning policies in China. Such violence includes forced abortion, forced sterilization, unlawful confinement, verbal insults and abuse, international injury, robbery and destruction of property.¹⁴
18. We strongly urge the Chinese government to investigate the enforcement of family planning policies by local officials, especially where there are cases of violence against women, punish those officials which inflict such violence, and provide victims of such violence with redress.

Situation of Women Human Rights Defenders

19. Although the CEDAW Committee has stated that CEDAW “applies to violence (against women) perpetuated by public authorities” (Gen. Rec. 19, ¶ 8), the Chinese government has shied away from reporting on violence faced by many women human rights defenders in the process of their activism. There is no information in the State Report regarding the physical, psychological and verbal violence perpetuated by state actors against women human rights defenders and activists. Many women human rights defenders have faced various forms of violence and physical assault, as well as arrests and detentions, while seeking to participate in public affairs. Typical cases include the case of Liu Ping who was arrested under various charges after demanding that top officials disclose their assets and that China ratify the ICCPR;¹⁵ the physical abuse and arrests of Ye Jinghuan and Yang Lingyun for their attempts to stand as independent candidates for community elections;¹⁶ and the arrest and detention of Cao Shunli for her attempts to participate in the United Nations Universal Periodic Review process which ultimately led to her untimely death.¹⁷ (See Chapter Three for more discussion).

¹⁴ See footnote no. 7.

¹⁵ Liu Ping began her rights activism in 2009 by fighting for labor rights and she ran for a seat in her local People’s Congress in 2011. Together with Wei Zhongping and Li Shihua, she was arrested on charges of illegal assembly, public disorder, and “using a cult to undermine implementation of the law” when they joined an anti-corruption campaign calling for top officials to disclose their wealth and demanded the Chinese government to ratify the ICCPR. See BBC News, “Liao Minyue, daughter of Liu Ping’s daughter, Liao Minyue, prevented from leaving country for “provoking quarrels and stirring trouble,” 22 June 2014, http://www.bbc.co.uk/zhongwen/trad/china/2014/06/140622_china_liuping.shtml.

¹⁶ See “Beijing independent candidates in coma for 2 days suffering electric shock. Police refuses to response after Chen Xi was detained for 7 days”, Radio Free Asia, 25 November 2011, <http://www.rfa.org/mandarin/yataibaodao/cx-10252011095102.html>.

¹⁷ Cao Shunli, a human rights activists, disappeared after she was taken away by airport security before boarding a flight to Geneva, where she was participate in China’s Universal Periodic Review. Chinese authorities only acknowledged her detention a month later, when she was arrested on charges of “provoking quarrels and stirring trouble.” Her health seriously deteriorated in detention but Cao was denied medical treatment and the authorities refused numerous applications for medical release. She subsequently died in hospital on 14 March 2014. See “Jailed Chinese human rights activist Cao Shunli dies in detention after denied treatment”, South China Morning Post, 15 Mar. 2014, <http://www.scmp.com/news/china/article/1448999/dissident-cao-shunli-dies-detention-after-denied-treatment>.

20. We urge the Chinese government to recognize that violence against women for their participation in public affairs (including violence perpetuated by government actors) is an act of discrimination and should be forbidden. We also urge the Chinese government to collect data on violence perpetuated against women within the public security sphere, including information regarding the violence faced by women activists while in extra-legal detention, and include this information in their CEDAW report. We also urge the Chinese government to adopt policy measures to eliminate all obstacles to women's participation in public affairs and ensure their protection from violence, as well as to increase governmental support for women's public participation.

Sexual Abuse against Girls in Schools

21. Guaranteeing gender equality in the field of education requires that campus environments (from kindergartens to universities) are secure and gender-friendly, with zero tolerance for sexual violence. However, Chinese law has only considered the enrollment of girls in schools but makes no mention of sexual abuse and sexual harassment on school campuses, nor does it discuss how government bodies will protect the rights of women and girls to education. Although the Ministry of Education issued regulations¹⁸ in January 2014 requiring punishment of unprofessional conduct by grade school teachers where sexual harassment or improper relationships occurred,¹⁹ there is little evidence that government departments have taken action to create systems of monitoring, reporting and punishment that could address sexual abuse or harassment in schools. Moreover, the problems of sexual abuse or harassment of girl students by school authorities is treated as a problem of morals or ethics on the part of individual teachers or principals rather than a systemic problem, and does not acknowledge that the fundamental cause of such violence against women and girls is a result of gender inequality.²⁰ The government's approach to the problem also does not recognize the need to address such violence through systematic reforms focused on the prevention, monitoring, processing and investigation of such cases through inter-sector cooperation.
22. We urge the government to recognize that the problem of sexual abuse of girls in schools is not merely a problem of morals on the part of individuals, but that such violence requires comprehensive and systematic reform. We recommend that the Chinese government amend the Law on the Protection of Minors, the Compulsory Education Act and the LPRIW to include legislative text on the elimination of gender-based violence within schools. Such legislation should specify the responsibilities of local education authorities to create a clear accountability mechanism for the prevention, investigation, punishment of sexual abuse and violence within schools, as well as

¹⁸ Ministry of Education, *Solution on Punishing Primary and Secondary School Teachers on Violation of Occupational Ethics in Workplace.*, 11 January 2014, http://www.gov.cn/gzdt/2014-01/28/content_2577296.htm.

¹⁹ The regulations require national education authorities to establish a "filing system" that records violations of ethics provisions such as "sexual harassment or inappropriate behavior towards students; when such a case is recorded, the teacher should be removed from a teaching role. See *id.*, ss.4(6) and 7(3).

²⁰ As noted in footnote 5, a Chinese NGO, Network on Women's Rights, sought information on existing mechanisms to prevent and address sexual assault in school campuses from 244 government departments. Of the 19 replies they received, 16 stated that efforts to prevent sexual assault on campuses focused on ethics building and the creation of teacher files. Several also banned male students and teachers from entering female students' dorms, hoping that would also prevent cases of sexual assault. See "Ningxia Restricted access to female dorms to prevent sexual assaults" (《宁夏出台规定预防性侵少儿, 女生宿舍实行封闭管理》), Huaxia News (华夏经纬网), 14 May 2014, <http://www.huaxia.com/ssjn/nxyw/2014/05/3884726.html>.

government responsibilities for support to victims after such incidents. The legislation should also provide a mechanism to hold such departments accountable for their actions (or lack of response). Students in the basic education system should also receive appropriate sex education that incorporates gender equality and sexual assault prevention.

23. The CEDAW Committee has called on China to protect all women and girls from violence and to provide remedies to victims of all forms of gender-based violence. It has also stated that “[t]he obligation to protect rights relating to women’s health requires States parties, their agents and officials to take action to prevent and impose sanctions for violations of rights by private persons and organizations.” (Gen. Rec. 25, ¶ 15.) Recognizing that gender-based violence is “a critical health issue for women”, the CEDAW Committee has required States parties to ensure the enactment and effective enforcement of laws and the formulation of policies, including health care protocols and hospital procedures to address violence against women and abuse of girl children and the provision of appropriate health services” as well as “gender-sensitive training to enable health care workers to detect and manage the health consequences of gender-based violence.” (Gen. Rec. 25, ¶15 (a)-(b).)
24. However, in discussing medical assistance provided to victims of violence, the State Report only focuses on victims of domestic violence, to the exclusion of victims of other forms of gender-based violence. In reality, victims of sexual abuse in educational institutions are not provided with remedial measures, medical assistance or psychological counseling.²¹ An analysis of media reports on sexual assault cases from January 2013 to April 2014 indicates that 44.8% of the victims in 581 reported cases were under the age of 14. Yet, there are no legal requirements for government bodies to provide any rehabilitation or mental health services, and therefore access to those services is rarely afforded.²²
25. Since government education department does not currently take on the responsibility of rehabilitating or supporting victims of sexual abuse in schools, victims may also face secondary harm from teachers, fellow students and society. Education departments have not provided alternative schooling arrangements for victims or provided them with a rehabilitative support system, eventually leading to many victims to drop out of school.²³
26. We strongly urge the Chinese government to establish a comprehensive system for the psychological rehabilitation for minor victims of sexual assault and to establish specialized agencies that will be responsible for the physical and mental rehabilitation of such victims. We also recommend that

²¹ Young victims of sexual abuse often have to face tremendous secondary damage: stigmatization, process of repetitive interrogation, lack of adequate compensation, psychological counseling and social support, just to name a few. See “Expert says the government has clear intention to ‘freeze’ the abuse of young-girl prostitution law as legal backdoor” (专家:《意见》冻结“嫖宿幼女罪”意图明显), People.cn, <http://politics.people.com.cn/BIG5/n/2013/1025/c70731-23320953.html>.

²² Victims have reported to the members of the China VAW Concern Group that they had asked government bodies for help but had been refused on the grounds that the government is not legally bound to provide such services.

²³ For example, 13 female victims (aged 5 to 8) who were sexually assaulted by their male teacher in a small Ningxia village all dropped out of school after their parents discovered and reported their abuse. These 13 victims constituted all the female students in the village school; although new teachers were brought in after the arrest of the perpetrator, only male students have continued their education. This means that all the girl students in the village are no longer in the education system. See The Beijing News, “A Ningxia Village Teacher Is Accused of Sexually Abusing 13 Girls (宁夏一乡村教师被指性侵 13 名女生)”, May 1, 2014, <http://www.bjnews.com.cn/news/2014/05/01/315232.html>.

these rehabilitative systems be developed in conjunction with the education department so as to ensure that the education rights of victims of sexual violence are not compromised.

Chapter Three: Article 7 (Political and Public Life)

27. The CEDAW Committee has explained that Art. 7(b) requires States parties to ensure that women have the right to participate fully in and be represented in public policy formulation in all sectors and at all levels. (Gen. Rec. 23, ¶ 25.) States parties also have a responsibility, “as a matter of course, to consult and incorporate the advice of groups which are broadly representative of women's views and interests” and “to ensure that barriers to women's full participation in the formulation of government policy are identified and overcome.” (Gen. Rec. 23, ¶ 26-27.) Although we welcome the Chinese government’s many efforts to increase the proportion of women civil servants and women leaders in government positions (State Report, ¶¶ 116-131), many of these measures do not directly address systematic obstacles to women’s full participation in the formulation of government policy at all levels. Moreover, Chinese legal commitments to ensure women’s equality in the political sphere,²⁴ and supervise (管理) the government’s work²⁵, have yet to be effectuated.
28. Although the State Report indicates that the proportion of female civil servants nationwide is higher than 23 per cent (State Report, ¶ 131), significant structural barriers to women’s entry into the civil service remain. As a threshold issue, the physical examination requirements for women candidates for the civil service are much more detailed, in-depth and physically invasive than those required for men; moreover, many of these physical requirements bear no relationship to job functions. The physical examination (which requires detailed information about menstruation, sexual activity, and gynaecological inspection)²⁶ often damages candidates’ self-esteem and sense of dignity, and is a significant deterrent to potential female civil servants. The physical examination standards for women candidates are also higher and more complicated, increasing the likelihood of their failing the physical examination.
29. Despite constitutional guarantees that all adult citizens “have the right to vote and stand for election,”²⁷ several prominent women human rights activists have faced different forms of obstacles and violence when seeking to stand for community elections as independent candidates. Women activists have been subject to arrest, physical violence, surveillance, illegal searches, and serious interference with the lives of their family. Women activists’ campaigns have been interrupted or cancelled and their supporters intimidated into removing their support or not voting.²⁸

²⁴ PRC Constitution, Art. 48 (equality of men and women in political, economic, cultural, social and family life); Art. 34 (right to vote and stand for election).

²⁵ LPRIW, Art. 10 (stating that “Women have the right to conduct state affairs, manage economic and cultural undertakings and administer social affairs through various channels and in various ways”).

²⁶ According to the “Civil Servants Recruitment Medical Check-up Menu” (《公务员录用体检操作手册(试行)》), the medical check-up for female civil servants is a complicated process, and includes rectal and vaginal examinations. Patient’s general medical history, including the year of the patient’s first menstruation, cycle and volume of blood discharge etc., will also be asked.

²⁷ Article 34 of PRC Constitution states “All citizens of the People’s Republic of China who have reached the age of 18 have the right to vote and stand for election, regardless of ethnic status, race, sex, occupation, family background, religious belief, education, property status or length of residence, except persons deprived of political rights according to law.”

²⁸ See footnote no. 14, 15 and 16.

30. Women human rights activists have suffered very serious obstruction and violence in seeking to participate in national or international policy-making on human rights. These acts of violence include detention, forced disappearances, inhumane treatment, and the lack of access to proper medical treatment. Those who are associated with them have also faced retaliation.
31. We urge the Chinese government to remove all physical examination requirements that do not relate to job functions, so as to ensure that women have equal opportunities to join the civil service. We also urge the Chinese government to ensure that women from all walks of life are able to participate in public and international affairs free from intimidation and violence, and to provide practical protection measures when women activists may face retaliation for their participation. The Chinese government should also punish individuals or organizations responsible for such violence against women and provide appropriate remedies for women victims of violence.

Chapter Four: Article 11 (Employment Rights of Women)

32. The CEDAW Committee has clearly stated that “equality in employment can be seriously impaired when women are subjected to gender-specific violence, such as sexual harassment in the workplace.” (Gen. Rec. 19, ¶ 17.) The CEDAW Committee has explained that sexual harassment “constitute[s] a health and safety problem,” and such conduct “is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile working environment.” (Gen. Rec. 19, ¶ 18.) Moreover, such “discrimination is not restricted to action by or on behalf of governments” and the Chinese government has responsibilities under the due diligence standard to prevent violations of rights, to investigate and punish acts of violence and provide compensation, even where the discrimination (and violence) is perpetuated by non-state actors. (Gen. Rec. 19, ¶ 9.)
33. The CEDAW Committee has urged the Chinese government to ensure that “adequate sanctions are in place for discrimination against women in the employment field in both the public and private sectors, including sexual harassment.” (2006 Concluding Observations, ¶ 30.) Although efforts have been taken by a Chinese NGO to develop systems to prevent sexual harassment within three enterprises in 2008 and 2009 (2012 State Report, ¶ 160), the Chinese government has taken little action to implement such systems throughout the domestic labor market. In 2014, the sexual harassment prevention system referred to in the State Report has not been implemented in outside of those three companies nor has such a system been instituted within the government civil service system. These efforts are woefully insufficient when considering the 937 million persons in the Chinese labor force.²⁹ Moreover, women in the workplace seeking to protect their rights face very high costs (both financially and career-wise) in making their claims, as taking any action against sexual harassment can also hinder their career paths.³⁰

²⁹ The number of people in the Chinese labor force in 2012 was reported as 937,270,000 individuals. Chinese government statistics assume that all individuals between the ages of 15 and 59 are part of the labor force. *See* International Business Times, “Chinese National Statistics Bureau: Last year’s labor force around 900 million, decreasing”, Feb. 23, 2013, <http://www.ibtimes.com.cn/trad/articles/22100/20130223/tongjiju.htm>.

³⁰ For example, one of the few successful sexual harassment cases was that of Ms. Luo, whose case was decided in 2009. Ms. Luo was subjected to constant sexual harassment by a company executive, and one of which was eventually caught on camera at a company event in 2008. Ms Luo

34. As the country's largest employer, we urge the Chinese government to create and implement systems to prevent sexual harassment within the civil service and other government agencies. In order to ensure that legal prohibitions are effective, we recommend that the Chinese government require state-owned and private companies to incorporate sexual harassment prevention and punishment into their employment policies and monitor all companies to ensure that they implement these policies. The Chinese government should also ensure that there are clear and punitive penalties for sexual harassment in the employment sphere.

Chapter Five: Article 12 (Health)

35. Under CEDAW, States Parties have the obligation “to take appropriate legislative, judicial, administrative, budgetary, economic and other measures to the maximum extent of their available resources to ensure that women realize their rights to health care” (Gen. Rec. 24, ¶ 17.) This includes services related to family planning (Art. 12 (1)). The CEDAW Committee has also required States Parties to report on government measures to ensure that women have access to “acceptable” health care services, explaining that “[a]cceptable services are those which are delivered in a way that ensures that a woman gives her fully informed consent, respects her dignity, guarantees her confidentiality and is sensitive to her needs and perspectives.” (Gen. Rec. 24, ¶ 22.) Furthermore, the CEDAW Committee clearly states that State Parties “should not permit forms of coercion, such as non-consensual sterilization.” (Gen. Rec. 24, ¶ 22.)
36. Although the State Report has stated that it has ensured “general access” to reproductive health services (State Report, ¶ 171-72), including the vigorous promotion of family planning services to the migrant populations in urban areas (State Report, ¶ 191), the Chinese government has not provided relevant evidence on such universal access, nor does it set out the measures taken to guarantee that women enjoy free service. The State Report also states that “[t]he population and family planning authorities in China have continued to promote the informed choice of contraceptive methods, guiding married women of childbearing age to voluntarily choose safe, effective and appropriate contraceptive measures” (State Report, ¶ 185), but does not mention any specific measures taken to guarantee women’s right to informed choice, especially in terms of reproductive health. Moreover, in practice, what is “free” is the forced monitoring of women to ensure that they were not pregnant and were using intrauterine devices, or coercive birth control and sterilization.³¹

went through company channels asking for an apology from the perpetrator and a guarantee that no such harassment would not occur again, but was fired on other pretexts upon recommendation of the company's trade union. Ms. Luo then sued the executive in the local court, asking for CNY 400,000 in compensation. The court found that the executive's conduct did constitute sexual harassment yet it only sentenced the executive to compensation of CNY 3,000 and a written apology. *See* “Female employee of Japanese corporation wins in court for sexual harassment claim”, qq news, 19 December 2009, <http://news.qq.com/a/20091219/000063.htm> (citing other media outlets like the *Information Times* and *China Daily*).

³¹ In Art.25 of the “Regulations of Guangdong Province on Population and Family Planning”, couples at the child-bearing age are required to use contraceptive measures, and to participate in pregnancy tests. Art.43 of the “Regulations of Fujian Province on Population and Family Planning” even specifies that a fine of RMB500 will be imposed on those who violate the family planning regulations, remedial measures or refused to participate in the related medical tests. The authorities have also laid down a set of detailed measures to guarantee the enforcement of compulsory pregnancy and intrauterine device tests (“查孕查环”). The government website of Xiangshan County, Zhejiang clearly states that their enforcement goal for the compulsory pregnancy and intrauterine device tests was 96% of the population. Therefore, participation in the various medical tests aimed at reproductive control has become a legal obligation for Chinese female citizens. During the Annual Meeting of the

37. The State Report also mentions that “tentative efforts have been made to mainstream the gender perspective into quality family planning services” (State Report, ¶ 185) but does not describe the specific measures that have been taken. This is in contravention of the CEDAW Committee’s strong recommendation in 2006 that “the State party introduce mandatory gender-sensitivity training for family planning officials.” (2006 Concluding Observations, ¶ 32.) Moreover, in reporting the rates of contraceptive use among women of child bearing age (85%) and among men (15.33%), the report does not address that the disproportionate burden that women bear in family planning is a manifestation of gender inequality. The State Report also does not mention the specific contraceptive methods used, nor does it mention their potential health effects. The most widely used form of contraception in China is intrauterine devices (IUDs) for women.³² Although studies have indicated that the effectiveness of IUDs as contraception methods have significantly improved over the past 20 years, their side effects (e.g. bleeding, infection, abdominal pain, back pain) have not.³³ Family planning departments across China are not willing to introduce and promote alternative contraception methods and often force women to use invasive forms of contraception, such as IUDs and tubal ligation procedures, in order to enhance contraceptive prevalence rates. In many of these cases, women’s rights to privacy, health, life, and their right to informed consent are arbitrarily violated.³⁴
38. Furthermore, the use of coercive family planning methods is entrenched in the current civil service system because regulations continue to tie effectiveness in maintaining population control with job performance evaluations.³⁵ Under this so-called one-vote (“一票否决”) veto system, meeting the

National People’s Congress and Chinese People’s Political Consultative Conference 2013, Huang Xihua, a delegate from Guangdong had called for abolishing the compulsory pregnancy and intrauterine device tests policy. She pointed out a study’s result showing that imposition of intrauterine device, ligation and abortion had been made compulsory in real life practices, while official documents found in many provinces and counties referred the family planning controls as “must” or “compulsory”. Some units still link pecuniary awards with enforcement of compulsory pregnancy and intrauterine device tests.

³² The use of intrauterine device is the most common form of contraception for women in China. The statistics of medical surgeries resulting from the family planning policy can be found in the 2010 report delivered by the China Ministry of Health. After 1983, imposition of intrauterine device consists 30%-40% of contraceptive measures surgeries. Since 2000, there are around 6-7 million intrauterine device imposition surgeries every year, with 7,818,000 cases in 2009 being the most. The reason of the large amount of intrauterine device surgery is because not all of the participants are voluntary. See “Intrauterine device before household registration: A question asked by 11,400,000 women”, Zhanjian News (湛江日报), 2 August 2013, http://gdzjdaily.com.cn/cooperate/jkcc/2013-08/02/content_2338725.htm; also <http://health.qq.com/a/20121126/000017.htm>.

³³ A report by the National Health and Family Planning Commission indicated that although there is an increasing variety and quality of intrauterine devices over the last two decades, cases of adverse effects (i.e. bleeding, infection, abdominal and back pain) did not decrease but, in fact, rose compared with statistics from the 80s. The report also pointed out that from January 2000 to June 2005, there were 41,586 abortion surgeries and within which 20.20% of cases were resulting from the intrauterine device detachment (and 12.3% due to IUD pregnancy). 24.09% were resulting from failure of other contraceptive measures, while 55.7% were due to failure to take contraceptive measures at all. See National Health and Family Planning Commission of People’s Republic of China, *Population Studies* (《人口研究》), 2007(5), pp.62-65, <http://www.eywedu.com/Renkouyanjiu/rkyj2007/rkyj20070508-1.html>.

³⁴ For example, in 19 March 2013, a 42-year-old woman, Shen Hongxia died after sterilization surgery in Tongshan county, Hubei. The county ranked the last in the previous year’s family planning internal job performance evaluation and the County Directorate of Family Planning Commission was subsequently dismissed. As a result, the county government took forceful measures against women who had violated the family planning regulation by giving birth to more than one child. Although Shen had multiple gynecological diseases and her condition was unsuitable for sterilization surgery, the officials from Shen’s village insisted that her doctors carry out the operation. Shen died as a result. See “Intrauterine device and Sterilization are My Own Decisions!”, Wangyi Women, March 2013, <http://lady.163.com/special/sense/2013lianghui03.html>. See also “Officials offer 1 million to pay off family after woman died of coercive sterilization surgery,” Yunnan News Report, 9 April 2013, <http://news.ynxxb.com/content/2013-4/9/N10313790889.aspx>.

³⁵ See Art.3(4), *Opinion of Amendment of Family Planning Policy*. People’s Daily, *Opinion of Amendment of Family Planning Policy*, 31 December 2013,

population target is mandatory for a positive evaluation. Some local regulations have even tied several years' bonuses and job promotions of leaders within government departments to their ability to meet specific population control targets.³⁶

39. We recommend that the Chinese government assess and report to the CEDAW Committee (and the Chinese public) the impact of existing reproductive health services on women as soon as possible. The Chinese government should also take measures to ensure that women's rights to privacy, informed consent and the right to choose which forms of contraception are protected in health care services. We also recommend that the Chinese government stop using contraceptive prevalence rates (especially women's use of IUDs and tubal ligation rates) as indicators to evaluate the job performance of government officials.

Chapter Six: Article 16 (Family Life and Marriage)

40. Although the State Report declares that the PRC Marriage Law "is fully consistent with the provisions of Article 16 . . . as to the principle of non-discrimination in all matters relating to marriage and family relations," the Marriage Law only sets out that fathers and mothers both have the duty to practice family planning, without any statements about women's rights under Article 16 to decide freely and responsibly the number and spacing of their children, nor their rights to access the information, education and means to exercise these rights. The CEDAW Committee has recognized that "[d]ecisions to have children or not, while preferably made in consultation with spouse or partner, must not nevertheless be limited by spouse, parent, partner or Government. (Gen. Rec. 21, ¶ 21-22.) However, in practice, the government's family planning policy restricts reproduction, requiring couples to apply for "reproduction service certificates" (previously named birth permits) as a prerequisite to having a child. The processes required to obtain these certificates are highly onerous and regulations dictate not just when a married couple can have children but also how many they are allowed to have. While the China VAW Concern Group welcomes the recent loosening of family planning policies (which allows more of the population to have more than one child), it regrets that local governments have persisted in tying forced contraception to a couple's receipt of these "reproductive service certificates," for example, by requiring that the wife undergo tubal ligation after the birth of the second child in order to gain access to such certificates.³⁷
41. These restrictions also affect the reproductive rights of unmarried women as the acquisition of a birth permit requires a marriage certificate, residence records and identification cards. Unmarried women are therefore not eligible for these birth permits (regardless of whether they become

http://paper.people.com.cn/rmrb/html/2013-12/31/nw.D110000renmrb_20131231_1-04.htm#fin.

³⁶ For example, Art.5 of the Chun'an County Family Planning Policy specifies that any level of governments and units who were vetoed are barred from (1) running for honor title of the current and next year; and (2) the person-in-charge will not be given "excellence" or "satisfactory" in the year's internal evaluation and barred from running any honor titles. If the person-in-charge is vetoed twice during his term of appointment, he or she will be demoted or discharged. See *Measures of enforcement of Chun'an County Family Planning Policy (Temporary)*, <http://www.qdhnews.com.cn/col1498/article.htm?id=970505>. Similar examples can be found in other parts of Zhejiang province, for example, see Fenghua city Family Planning Authority, *Fenghua city enforcement of Family Planning Policy and One-vote Veto system*, http://843331.134209.20la.com.cn/News_View.asp?NewsID=366.

³⁷ See "One-Vote Veto system is the reason for compulsory sterilization against women who give birth to second child," Shenzhen News, 4 April 2014, http://wb.sznews.com/html/2014-04/04/content_2831490.htm.

pregnant or seek to do artificial insemination).³⁸ Provinces also levy such penalties on unwed mothers (even where they are only expecting their first child), forcing them to incur enormous economic and psychological pressures. In some cases, the payment of such penalties requires that both parents appear and certify the identity of themselves and their child; in many cases of absent fathers, these payments are not accepted and any attempts to register the child (to gain access to social services) rejected. Children born of unmarried women therefore face significant systematic discrimination.

42. We urge the Chinese government to remove the system of “reproductive service certificates” or “birth permits” that allows for the state to control women’s reproduction. We further request that the Chinese government to remove all links between reproduction to marriage status within the family planning system, so as to ensure that government policy does not discriminate between women who are married and women who are not. Finally we urge the Chinese government to remove the systematic barriers that children who are born to unmarried women face in accessing education, health services and other fundamental services.

³⁸ See “Pregnant woman who did not want to get married was not able to get birth permit,” China News, 5 March 2013, <http://www.chinanews.com/sh/2011/05-03/3012415.shtml>.