

**Refugee Review Tribunal  
AUSTRALIA**

**RRT RESEARCH RESPONSE**

**Research Response Number:** CHN31123  
**Country:** China  
**Date:** 19 December 2006

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This response was prepared by the Country Research Section of the Refugee Review Tribunal (RRT) after researching publicly accessible information currently available to the RRT within time constraints. This response is not, and does not purport to be, conclusive as to the merit of any particular claim to refugee status or asylum.

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**Questions**

- 1. Is domestic violence a national problem in PRC?**
- 2. Is there any PRC or Liaoning Province law criminalising domestic violence?**
- 3. Can you think of any reason why a woman could not relocate to avoid her ex-husband?**

**RESPONSE**

**1. Is domestic violence a national problem in PRC?**

The US Department of State's *Country Reports on Human Rights Practices 2005* provides the following information on the problem of domestic violence in China:

According to a 2004 survey by the All-China Women's Federation (ACWF), 30 percent of families had experienced domestic violence, and 16 percent of husbands had beaten their wives. The ACWF reported that it received some 300 thousand letters per year complaining about family problems, mostly domestic violence. The actual incidences were believed to be higher because spousal abuse went largely unreported. According to experts, domestic abuse was more common in rural areas than in urban centers (US Department of State 2006, *Country Reports on Human Rights Practices 2005 – China*, 8 March, Section 5 Women – Attachment 1).

Question 1 of *Research Response CHN16670* dated 6 May 2004 provides further information on the incidence of domestic violence in China (RRT Country Research 2004, *Research Response CHN16670*, 6 May – Attachment 2).

**2. Is there any PRC or Liaoning Province law criminalising domestic violence?**

Reports state that there is no national law specifically on domestic violence in China. The Marriage Law and the Law on the Protection of Women's Rights both mention domestic violence. However, definition deficiencies, problems with implementation and lower penalties hinder their effectiveness. In 2000, Liaoning Province enacted regulations on domestic violence.

The information provided in response to this question has been organised under the following three headings:

- [Marriage Law](#);
- [Law on the Protection of Women's Rights](#);
- [Protective Order](#); and
- [Liaoning Province](#).

According to the US Department of State's *Country Reports on Human Rights Practices 2005*, there was no national law criminalising domestic violence in China (US Department of State 2006, *Country Reports on Human Rights Practices 2005 – China*, 8 March, Section 5 Women – Attachment 1).

## **Marriage Law**

The Marriage Law of the People's Republic of China was adopted at the Third Session of the Fifth National People's Congress on 10 September 1980. Article 3 of the Marriage Law prohibits domestic violence. The Marriage Law provides for mediation and administrative penalties in cases of domestic violence:

Article 43 In regard to the domestic violence to or maltreatment of family member(s), the victim shall have the right to make a request, and the neighborhood or villager committee as well as the units in which the parties concerned work shall dissuade the wrongdoer, and offer mediation.

In regard to the domestic violence being committed, the victim shall have the right to make a request, the neighborhood or villager committee shall dissuade the wrongdoer, and the public security organ shall stop the violence.

If, in regard to the domestic violence to or maltreatment of family member(s), the victim makes a request, the public security organ shall subject the wrongdoer to administrative penalty in accordance with the relevant provisions of administrative sanctions for public order.

...Article 45 If bigamy, domestic violence to or maltreatment and desertion of family member(s) constitute a crime, the criminal responsibility of the wrongdoer shall be investigated according to law. The victim may institute a voluntary prosecution in a people's court in accordance with the relevant provisions of the criminal procedure law. The public security organ shall investigate the case according to law and the people's procuratorate shall initiate a public prosecution according to law (Marriage Law of the People's Republic of China, Adopted at the Third Session of the Fifth National People's Congress on 10 September 1980 – Attachment 3).

A report dated June 2006 by Chinese NGO Human Rights in China reports that the definition of domestic violence in the Marriage Law is limited in scope and excludes threats of physical violence and marital rape:

The PRC Marriage Law prohibits "familial violence," and also provides for administrative punishment against perpetrators of "family violence." However, there is a lack of clarity on what acts actually constitute "family violence." The definition cited by the PRC in their response to the Committee's list of issues and questions for the 5th and 6th periodic report comes from Interpretation No. 1 of the Supreme People's Court on Several Issues in the

Application of Marriage Law of the People's Republic of China, which, compared with the definition in the 1995 Beijing Platform for Action, remains limited in scope and excludes other forms of abuse, including threats of physical violence and marital rape. That the Chinese government refers to the Marriage Law as the means of addressing domestic violence is itself an indication of the limited means used to address such a serious problem. (Human Rights in China 2006, *Implementation of the Convention on the Elimination of All Forms of Discrimination Against Women in the People's Republic of China*, June, Para 68 <http://hrichina.org/public/PDFs/HRIC-CEDAW-REPORT.6.26.2006.pdf> – Accessed 15 December 2006 – Attachment 4).

## **Law on the Protection of Women's Rights (LWPRI)**

In 1992, China passed the Law on the Protection of Women's Rights. The LWPRI did not refer to domestic violence but did prohibit "abusing, or injuring women":

Despite the LWPRI's explicit prohibitions, the law offered no enforcement mechanisms or penalties, leaving prosecution up to lenient existing criminal codes. The Security and Administration Punishment Act stipulates: "Violation of such personal rights as beating other people and causing minor injuries, maltreating family members, or illegally restricting other people's personal freedom is subject to 15 days or less of detention, or a fine of 200 yuan or less, or a warning if the violation is not serious enough for criminal punishment."

The Criminal Code is barely more severe; in the case of "odious" physical abuse of family members, the sentence is two years imprisonment or less, while death or injury of the victim may be punished by up to seven years in prison. The penalty for injuring or killing a family member is far less than if the victim were a stranger (Zia, Helen 2004, 'China – The Other Half of the Sky', Family Violence Prevention Fund website – Attachment 5).

In August 2005, the National People's Congress amended the LWPRI to specifically prohibit domestic violence (US Department of State 2006, *Country Reports on Human Rights Practices 2005 – China*, 8 March, Section 5 Women – Attachment 1).

An article dated 23 August 2005 in *The China Daily* reports that the LWPRI "fails to outline detailed preventative measures and does not state which government bodies are responsible" for the law. Lawyers from the Law Research and Service Centre for Women have come across the following problems when dealing with domestic violence cases in China:

Evidence is difficult to collect because domestic violence usually happens behind closed doors.

Without witnesses, statements from victims alone cannot be treated as evidence.

Many still treat violence as a mere family dispute, and consider it normal. Victims are often misunderstood, and usually blamed if they take their husbands to court.

Neighborhood and residents' committees usually refuse to provide information when lawyers try to collect evidence.

Some public security officers regard a husband beating his wife as an everyday occurrence, although some cities' police stations have put such cases on file for investigation in recent years ('Anti-domestic Violence Drive Needs Legal Support' 2005, *China Daily*, 23 August, China Internet Information Centre website <http://www.china.org.cn/english/GS-e/139393.htm> – Accessed 15 December 2006 – Attachment 6).

An article dated 6 September 2005 in *The People's Daily* reports that the LWPRI fails to clearly outline whether psychological damage, economic control and verbal threats qualify as domestic violence. The LWPRI also does not extend to divorced couples or lovers ('Law experts call for law against domestic violence' 2005, *People's Daily*, source: *Xinhua*, 6 September [http://english.peopledaily.com.cn/200509/06/eng20050906\\_206776.html](http://english.peopledaily.com.cn/200509/06/eng20050906_206776.html) – Accessed 19 December 2006 – Attachment 7).

The US Department of State's *Country Reports on Human Rights Practices 2005* reports that "critics complained that the provision fails to define domestic violence" (US Department of State 2006, *Country Reports on Human Rights Practices 2005 – China*, 8 March, Section 5 Women – Attachment 1).

A report dated June 2006 by Human Rights in China reports that requiring a direct victim complaint in most cases of domestic violence and lower penalties for perpetrators of domestic violence prevents domestic violence laws in China from being "fully effective":

Beyond inadequate definitions, the implementation mechanisms in Chinese domestic violence law are problematic and prevent the laws from being fully effective. Article 46 of the Law on the Protection of Rights and Interests of Women prohibits domestic violence and requires various organizations to prevent and stop domestic violence within the scope of their respective duties. However, under Article 260 of the Criminal Law, domestic violence is not considered a crime unless serious injury is sustained, or if the following two conditions are met: (1) the victim files a complaint; and (2) the mistreatment occurs under flagrant circumstances. ...Requiring a direct victim complaint in most cases of domestic violence leads to the gross under-reporting of these cases in China. The PRC reply to the issues and questions of the Committee states that of the estimated 102,993 criminal cases heard by Chinese courts since 2003 that involved women's rights in some way, only one percent involved abuse. Of the approximately 3.5 million civil cases involving women's rights during the same period, no statistics were provided on domestic violence, though only 4.3 percent of cases fall outside the otherwise-defined parameters. These figures suggest that many choose not to make a complaint or seek criminal prosecution, due to social taboos, the influence of others, or ignorance of the law.

...Disparities in criminal penalties also suggest that gender-based violence is not being addressed as a serious concern. The PRC Criminal Law prescribes less severe penalties when the victim of violence is a family member. For instance, the mistreatment of a family member carries a maximum sentence of two years, whereas the maximum sentence for the intentional injury of a non-family member is set at three years. Similarly, the infliction of serious injury upon a family member brings a maximum sentence of seven years, but similar treatment of a non family member brings a maximum of ten years. This penalty disparity contributes to a sustained perception of domestic abuse as being a less serious crime, which in turn may negatively affect victims' willingness to make a direct complaint. In addition to the problems of requiring direct victim complaints and different penalties for family versus non family victims, gender discrimination also prevents the successful prosecution of domestic violence cases (Human Rights in China 2006, *Implementation of the Convention on the Elimination of All Forms of Discrimination Against Women in the People's Republic of China*, June, Paras 69-70 <http://hrichina.org/public/PDFs/HRIC-CEDAW-REPORT.6.26.2006.pdf> – Accessed 15 December 2006 – Attachment 4).

## Protective Order

An article dated 7 December 2006 in *China Women's News* reports that Guo Jianmei, Director of the Research and Service Centre of Women's Law in the School of Law of Peking University, announced that China's first protective or restraining order for domestic violence will be issued in the Autonomous Region of Inner Mongolia:

According to Guo, the Research and Service Center of Women's Law has been working with the Women's Federation in the Autonomous Region of Inner Mongolia to set up experimental areas for implementing restraining orders.

Courts will define how victims are to be protected in coordination with the court's verdict. Then the courts will send written suggestions to the place of employer of the abuser and require the employer to take action ('China's First Protective Order for Domestic Violence to Be Issued in Inner Mongolia' 2006, Women of China website, source: *China Women's News*, 7 December <http://www.womenofchina.cn/news/society/11681.jsp> – Accessed 15 December 2006 – Attachment 8).

## Liaoning Province

In 2000, the public security organs and judicial departments of Liaoning issued "Regulations about Preventing and Combating Domestic Violence" and "Regulations about Treating Domestic Violence in Liaoning Province". No further information was found amongst the sources consulted ('Domestic Violence put under the spotlight' 2003, *People's Daily*, 11 December [http://english.peopledaily.com.cn/200312/11/eng20031211\\_130144.shtml](http://english.peopledaily.com.cn/200312/11/eng20031211_130144.shtml) - Accessed 15 December 2006 – Attachment 9).

A report dated June 2006 by Human Rights in China provides the following comment on the effectiveness of local regulations against domestic violence:

The *de facto* effectiveness of these regulations, however, is seriously impeded by a flawed definition of domestic violence under Chinese law. Implementation is made more difficult given the requirement of a direct victim complaint and inadequate penalties for perpetrators of domestic violence (Human Rights in China 2006, *Implementation of the Convention on the Elimination of All Forms of Discrimination Against Women in the People's Republic of China*, June <http://hrichina.org/public/PDFs/HRIC-CEDAW-REPORT.6.26.2006.pdf> – Accessed 15 December 2006, Para 67 – Attachment 4).

### 3. Can you think of any reason why a woman could not relocate to avoid her ex-husband?

For information on *hukou* or household registration in China please see the following:

- Question 2 of *Research Response CHN30936* dated 4 December 2006 (RRT Country Research 2006, *Research Response CHN30936*, 4 December – Attachment 10);
- Question 2 of *Research Response CHN30196* dated 30 May 2006 (RRT Country Research 2006, *Research Response CHN30196*, 30 May – Attachment 11);
- Immigration and Refugee Board of Canada response dated 26 April 2006 (Immigration and Refugee Board 2006, *CHN101198.E – China: The hukou; whether there remains a distinction between urban and rural hukou; social services available to persons holding an urban or rural hukou; the temporary hukou; and whether a person who is not*

registered in an urban area can obtain social services, including a hukou (2005-2006), 26 April – Attachment 12); and

- Immigration and Refugee Board of Canada issues paper dated February 2005 (Immigration and Refugee Board of Canada 2005, *China: Reforms of the Household Registration System (Hukou) (1998-2004)*, February – Attachment 13).

## List of Sources Consulted

### Internet Sources:

#### **Government Information & Reports**

Embassy of the People's Republic of China in China <http://www.chinaembassy.org.in/>

Immigration and Refugee Board of Canada [http://www.irb-cisr.gc.ca/cgi-bin/foliocgi.exe/refinfo\\_e](http://www.irb-cisr.gc.ca/cgi-bin/foliocgi.exe/refinfo_e)

UK Home Office <http://www.homeoffice.gov.uk/>

US Congressional-Executive Commission on China <http://www.cecc.gov/>

US Department of State <http://www.state.gov/>

#### **United Nations (UN)**

UN <http://www.un.org/>

UNHCR <http://www.unhcr.ch/cgi-bin/texis/vtx/home>

UNIFEM, East and Southeast Asia <http://unifem-eseasia.org/>

#### **Non-Government Organisations**

Amnesty International <http://www.amnesty.org/>

Human Rights in China <http://hrichina.org/public/index>

Human Rights Watch <http://www.hrw.org/>

#### **International News & Politics**

China Internet Information Centre <http://www.china.org.cn/english/>

*China News Digest* <http://www.cnd.org/>

*News Guangdong* <http://www.newsgd.com/>

*People's Daily* <http://english.peopledaily.com.cn/>

Women of China <http://www.womenofchina.cn/a>

#### **Topic Specific Links**

All-China Women's Federation <http://www.women.org.cn/>

International Centre for Research on Women <http://www.icrw.org/>

International Women's Rights Action Watch <http://iwwraw.igc.org/>

The Network for Combating Domestic Violence <http://www.stopdv.org.cn/>

#### **Search Engines**

Google <http://www.google.com.au/>

### Databases:

FACTIVA (news database)

BACIS (DIMA Country Information database)

REFINFO (IRBDC (Canada) Country Information database)

ISYS (RRT Country Research database, including Amnesty International, Human Rights Watch, US Department of State Reports)

RRT Library Catalogue

## List of Attachments

1. US Department of State 2006, *Country Reports on Human Rights Practices 2005 – China*, 8 March.
2. RRT Country Research 2004, *Research Response CHN16670*, 6 May.
3. Marriage Law of the People's Republic of China, Adopted at the Third Session of the Fifth National People's Congress on 10 September 1980.
4. Human Rights in China 2006, *Implementation of the Convention on the Elimination of All Forms of Discrimination Against Women in the People's Republic of China*, June <http://hrichina.org/public/PDFs/HRIC-CEDAW-REPORT.6.26.2006.pdf> – Accessed 15 December 2006.
5. Zia, Helen 2004, 'China – The Other Half of the Sky', Family Violence Prevention Fund website.
6. 'Anti-domestic Violence Drive Needs Legal Support' 2005, *China Daily*, 23 August, China Internet Information Centre website <http://www.china.org.cn/english/GS-e/139393.htm> – Accessed 15 December 2006.
7. 'Law experts call for law against domestic violence' 2005, *People's Daily*, source: *Xinhua*, 6 September [http://english.peopledaily.com.cn/200509/06/eng20050906\\_206776.html](http://english.peopledaily.com.cn/200509/06/eng20050906_206776.html) – Accessed 19 December 2006.
8. 'China's First Protective Order for Domestic Violence to Be Issued in Inner Mongolia' 2006, Women of China website, source: *China Women's News*, 7 December <http://www.womenofchina.cn/news/society/11681.jsp> – Accessed 15 December 2006.
9. 'Domestic Violence put under the spotlight' 2003, *People's Daily*, 11 December [http://english.peopledaily.com.cn/200312/11/eng20031211\\_130144.shtml](http://english.peopledaily.com.cn/200312/11/eng20031211_130144.shtml) - Accessed 15 December 2006.
10. RRT Country Research 2006, *Research Response CHN30936*, 4 December.
11. RRT Country Research 2006, *Research Response CHN30196*, 30 May.
12. Immigration and Refugee Board 2006, *CHN101198.E – China: The hukou; whether there remains a distinction between urban and rural hukou; social services available to persons holding an urban or rural hukou; the temporary hukou; and whether a person who is not registered in an urban area can obtain social services, including a hukou (2005-2006)*, 26 April.
13. Immigration and Refugee Board of Canada 2005, *China: Reforms of the Household Registration System (Hukou) (1998-2004)*, February. (REFINFO)