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# **How the Concept of *the Ideal Victim* of Trafficking Contributes to Re-victimize Vulnerable Populations**

**-Human Trafficking in the People's Republic of China  
Analyzed Through the Lenses of Feminist Victimology**

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## **Abstract**

The aim of this thesis is to demonstrate how the concept of *the ideal victim* of crime contributes to re-victimize significant populations exploited by human traffickers. The argument is that seeing women trafficked in the sex industry as the norm together with a focus only on “women and children” as victims/survivors contribute to further hide-and therefore re-victimize-men and young boys. The People’s Republic of China is analyzed as a country-case study to exemplify how upholding the concept of *an ideal victim* impedes the protection of a large part of victims/survivors and at the same time hinders the possibility of seeing and judging many criminals as middlemen/women and/or as traffickers engaged in the exploitation human beings. This is not to say that trafficking only occurs in China. The People’s Republic of China is only an example of a country where this crime happens. Trafficking is a crime occurring globally. The concept of the *Victimological Other* will be instrumental in highlighting some of the victims/survivors that don’t receive the help and protection they deserve as *de facto* injured parties of the trafficking crime. The concept of the *Criminological Other* will also be partially examined to shed some light upon some criminals that are not enough studied. Chinese laws and case studies have been translated and analyzed through the lenses of feminist victimology. The ultimate argument of this thesis is that being recognized as a victim/survivor of trafficking and consequently receiving proper protection, compensation, care and rehabilitation are fundamental rights of every human being regardless of provenience, age, class, gender and sex and regardless of the sector where the exploitation takes place.

*Keywords: Human Trafficking, Victimological Other, Criminological Other, Ideal Victim, Male Victim, Chinese Crime.*

## 摘要：

这篇论文的主要目的是阐释犯罪“典型受害者”的概念定义如何再次伤害一些已经被人贩子剥削的人。如果只把在色情业被剥削的妇女和儿童当成唯一的焦点，或者把他/她们看成是唯一的受害者/幸存者，这会导致了男人和未成年男孩被忽视以及间接受害。这篇文章把中华人民共和国研究作为一个国家案例研究。对“典型受害者”的概念定义阻碍了所有对受害者/幸存者的保护，这个概念定义同时也阻碍了对所有犯罪的媒介及人贩子的判断和观察。论文的宗旨在说明拐卖人口不只是在中国的现象，中国只是案例发生的地点。拐卖人口是个全球性的问题。“他者受害者”的概念定义引用用来突出一些受害者/幸存者没有得到足够的帮助和保护。“他者犯罪分子”的概念定义也是用来研究突出一些不够研究的犯罪分子。中华人民共和国法律和案例是被翻译和研究用于女权主义受害者心理学。

这篇论文的终极目的是争论所有受害者/幸存者得得到足够保护，赔偿和护理。无论受害者/幸存者有什么经历，年龄，阶级，性别以及不管他/她们在哪儿受到剥削，他/她们都有同样的权利。

**关键词：**人口拐卖，他者受害者，他者犯罪分子，典型受害者，男性受害者，中国犯罪。

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## **Acronyms**

<b>UN</b>	<b>United Nations</b>
<b>UNIAP</b>	<b>United Nations Inter-Agency Project Against Trafficking in People</b>
<b>UNODC</b>	<b>United Nations Office Against Drugs and Crime</b>
<b>IOM</b>	<b>International Organisation for Migration</b>
<b>ILO</b>	<b>International Labor Organisation</b>
<b>UNICEF</b>	<b>United Nations Children’s Fund</b>
<b>TIP</b>	<b>Trafficking in Persons</b>
<b>IMOAT</b>	<b>State Council Inter-ministerial Meeting Office Against Human Trafficking</b>
<b>INGO</b>	<b>International Non-Governmental Organisation</b>
<b>MPS</b>	<b>Ministry of Public Security of the People’s Republic of China</b>

To facilitate the reading, this study utilizes the term “China” to indicate the Peoples’ Republic of China.

## 1. Introduction

This thesis is not an attempt to argue that China is the only country where human trafficking takes place. Human trafficking is a global problem. This grave and heinous crime (OSCE, Decision No.14/2006) knows no boundaries and covers almost all countries in the world as demonstrated by UNODC's Global Report on Trafficking in Persons (2009) and by the TIP Report published yearly by the U.S. Department of State since 2001<sup>1</sup>. Further, it would be a mistake not to recognize the successes and improvements that the Chinese Government has made in combating this crime. As shown by the Progress Update Report on China's National Plan of Action on Combating Trafficking in Women and Children (2008-2012) published by IMOAT, China has made major steps forward in recent years in combating trafficking by-among other measures-improving coordination mechanisms at State, provincial and local level, by organizing several symposiums, workshops and national campaigns and by improving relief and rehabilitation centers for trafficking victims. Further, the Chinese Government has been supported by and has cooperated with international organizations such as UNIAP, UNICEF, ILO and IOM and with INGOS (such as World Vision and Save the Children UK) to further strengthen awareness of this crime and implement prevention strategies.<sup>2</sup> In December 2009 China also ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000) and has started amending national laws in order to align national policies to the Chinese Government's international commitment in combating trafficking.<sup>3</sup> However, it must also be recognized that along these major improvements, China is still facing challenges in combating trafficking. One of these challenges is the recognition of trafficking as a crime that not only interests certain specific

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<sup>1</sup> The TIP Reports are available at the following site: <http://www.state.gov/g/tip/rls/tiprpt/>.

<sup>2</sup> For more thorough information about the Chinese progress in combating trafficking, please see the Progress Update Report on China's National Plan of Action on Combating Trafficking in Women and Children (2008-2012) ,2009, IMOAT.

<sup>3</sup> Ibid.

populations such as women and children. This thesis is an encouragement for China to continue its achievements in anti-trafficking by including men in its definition of “victim/survivor”.

### **1.1 Background: Victims/Survivors of Human Trafficking in China**

*The incident of cruel and abusive labor<sup>4</sup> in Hong Tong county is only the tip of an iceberg. There are still thousands of lives in danger. Pity the hearts of all the parents on earth! We are giving up our self-respect, kneeling on our knees and begging our Government: please save our kids!*

*More than 400 fathers crying out their grief and indignation*

(extract from the second open letter to authorities written by The Old Pi of Central China,

*Zhongyuan Laopi*, 中原老皮 first published on a blog on *Dahe Wang*, 大河网, an online forum

used mainly by people from the Henan Province. The original letters have been removed from the Dahe website but are reported in their entirety in other blogs<sup>5</sup>).

In June 2007, a Chinese woman wrote on a blog two open letters to denounce the fact that her nephew had been kidnapped and forced to work in a brick kiln in the Shanxi Province (Zhu Hongjun, Nanfang Zhoumo, 12 July, 2007<sup>6</sup>). For fear of disclosing her name, she pretended initially to be a man and a father of a kidnapped boy and called herself *Zhongyuan Laopi*, 中原老皮, The

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<sup>4</sup> The Chinese version of this extract is: “洪洞”虐工事件，只是冰山一角，还有一千多个生命正在遭遇危难，可怜天下父母心，我们用自己的尊严，跪拜我们的政府，救救我们的孩子吧!” (“*Hong Tong nuegong shijian, zhi shi bingshan yi jiao, hai you yi wan duo shengming zhengzai zaoyu weinan, kelian tianxia fumu xin, women yong ziji de zunyan, guibai women de zhengfu, jiu jiu women de haizi ba!*”). It should be noted that in Chinese the terminology “Hong Tong Nuegong Shijian”, “洪洞”虐工事件”, literally means “Hong Tong’s labor abuse incident”. *Nue* 虐 means cruel, abusive and *nuedai*, 虐待 means to maltreat.

<sup>5</sup> The second open letter to authorities is available in Chinese at the following site:  
<http://www.xcclub.com/bbs/a/a.asp?B=1&ID=4247>.

<sup>6</sup> <http://www.nbweekly.com/magazine/cont.aspx?artiID=2960>.

Old Pi of Central China (ibid). She ended the two letters with the signature: “More than 400 fathers” (Ibid). After the publication of the first letter, several parents united in what has been called *xunzi lianmeng*, 寻子联盟, The League For the Search of Children (Fang Ying, March 14, 2008, Nandu Zhoukan<sup>7</sup>). After the publication of the second letter, the news was picked up and reported by newspapers and reporters started making documentaries (Franceschini, 2009).<sup>8</sup> Volunteers from all over the country went to Shanxi uniting with the parent’s league looking for the children that were enslaved in the kilns (Ibid). An official communicate from the MPS shows that authorities started a major rescue campaign as a reaction to media’s reports and saved both adults and children who were forced to work (Ministry of Public Security of The People’s Republic of China’s Webpage, June 20, 2007<sup>9</sup>). The inspections and the raids were carried out in brick kilns, in smaller coal mines and in iron ore mines (Ibid). 379 people were rescued by police forces (Huanghe Xinwen Wang, June 15, 2007<sup>10</sup>). All sources I have consulted indicate that the majority of the victims/survivors were boys and adult men. The campaign ended with satisfaction of authorities who declared that the case was closed and that all the victims had been saved (Franceschini, 2009). However, even one year after the raids had ended, there were still parents who were looking for their children as witnessed by media articles interviewing the parents members of the League For the Search of Children (Fang Ying, March 14, 2008, Nandu Zhoukan<sup>11</sup> ).

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<sup>7</sup> Article available at the following site: [http://www.360doc.com/content/08/0616/13/142\\_1339176.shtml](http://www.360doc.com/content/08/0616/13/142_1339176.shtml).

<sup>8</sup> The documentaries used as sources by this thesis and related to this case were shown by Henan TV Station City Channel (*Henan Dianshitai Dushi Pindao*, 河南电视台都市频道) on June 18, 2007 and can be viewed at the following sites: [http://www.youtube.com/watch?v=ewoxTae85yE&feature=player\\_embedded#at=135](http://www.youtube.com/watch?v=ewoxTae85yE&feature=player_embedded#at=135), [http://www.youtube.com/watch?v=69WJTxaIGWw&feature=player\\_embedded](http://www.youtube.com/watch?v=69WJTxaIGWw&feature=player_embedded).

<sup>9</sup> <http://www.mps.gov.cn/n16/n1252/n1657/n2062/138348.html>.

<sup>10</sup> <http://www.sxgov.cn/bwzt/djhzy/456533.shtml>.

<sup>11</sup> [http://www.360doc.com/content/08/0616/13/142\\_1339176.shtml](http://www.360doc.com/content/08/0616/13/142_1339176.shtml).

This case demonstrates that boys and men can be victims/survivors of human trafficking and challenges the common assumption that trafficking only involves women exploited in the sex sector.

### **1.1 Purpose of the Study**

The purpose of this study is to offer a more nuanced understanding of the victims and partially also of offenders of human trafficking. In particular, my aim is to challenge the idea of “the ideal victim of trafficking” that influences both laws and counter-trafficking measures, both at national (in this case in China) and at international level. This thesis advocates a more inclusive approach towards victims rather than the often used exclusive approach. It is in fact important to recognize that also boys and men can be victims of trafficking. This thesis is an attempt to challenge some of the myths that surround human trafficking victims/survivors and at the same time it is a call for the Chinese Government to continue its efforts in revising laws and designing national policies that include men in the definition of “victim/survivor of trafficking”. The aim of this thesis is not to try to quantify the number of victims exploited in one particular sector nor to downplay the importance that anti-trafficking efforts targeting women exploited in the sex industry have. It is further absolutely not an attempt to deny the sufferance that women and girls endure while exploited for sex purposes. Research conducted on female and adolescent victims/survivors clearly demonstrates that the sexual, physical and psychological violence that these women and girls suffer is severe and horrible.<sup>12</sup> More research and more targeted efforts should be directed towards preventing more women and

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<sup>12</sup> For further information on how human trafficking severely affects the health of women and young victims/survivors, please see among others *The health risks and consequences of trafficking in women and adolescents-findings from a European study*, 2003, London School of Hygiene & Tropical Medicine.

children to be exploited in the sex sector. This study will analyze only domestic trafficking (e.g. trafficking within China's borders<sup>13</sup>) and is a preliminary attempt to answer the following questions:

**Theoretical Question:**

How can the concept of the *Victimological Other* lead to a better understanding of who the victims of trafficking are and consequently prevent them from being exploited and offer them the protection they need?

**Empirical Question:**

-Who are *the Other* victims of human trafficking in modern-day China?

## **1.1 Methodology**

The underlying thesis is an qualitative study on human trafficking. The study employs only secondary sources and analyses Chinese laws and cases to exemplify how certain populations are excluded from the mainstream debate about trafficking. The theoretical framework is constituted by theories that come from post-feminist victimology.

## **1.2 Sources**

Research in the field of human trafficking is difficult for many reasons. Perhaps one of the most challenging factors is that most of the populations relevant to the study of human trafficking, such as prostitutes, traffickers, victims/survivors, or illegal immigrants constitute so-called *hidden*

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<sup>13</sup> Given the size of the country and space limitations, this thesis doesn't aim to be exhaustive and cover all Chinese provinces and administrative regions. The cases presented aim to stress the urgency of further research about the hidden populations victims of the trafficking trade.

*populations* (Heckathorn, 1997). A hidden population is a group of individuals for whom the size and boundaries are unknown, and for whom no sampling frame exists (ibid). Heckathorn is referring in particular to quantitative studies on trafficking. However, the same argument can be applied to qualitative studies. Conducting research about human trafficking is challenging: data continues to be unreliable and deficient (Trafficking in Women and Girls, Report of the Secretary General, A/65/209). These challenges are further complicated if we examine the subject in the Chinese context. According to the Chinese legislation, cases of trafficking are not considered as State secret<sup>14</sup> but as *neibu* 内部, e.g. internal matters.<sup>15</sup> However, child labor (which is an important aspect related to trafficking) is considered to be *jimi*, 机密 e.g. “secret”.<sup>16</sup> Since all these legal provisions refer to *undisclosed* information, I have therefore used *only already disclosed* information, e.g. information on cases published in China by the Chinese press and in documentaries shown on television in China and that have therefore already passed State censorship. To these challenges, it must also be noted that the official statistics released by the MPS are not disaggregated (TIP Report, 2010) and are not published directly by a specific government authority but are made public through communicates to the press (Liu, 2010a). In order to find data and in particular case studies on the victims I have employed the same strategy employed by UN agencies, by the US Congress and Department of State and by academic researchers<sup>17</sup> e.g. I have used cases taken from newspaper articles and reportages showed by the Chinese local and cable television

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<sup>14</sup> According to Chapter 2, Art. 9 of the Law on the Protection of State Secrets (1988), State secrets in China are classified into three categories: top secret, highly secret and secret (source: State Secrets: China’s Legal Labyrinth, Human Rights in China, 2007).

<sup>15</sup> Art. 3 (5) of the Regulation on State Secrets and the Specific Scope of Each Level of Secrets in Public Security Work (Source: State Secrets: China’s Legal Labyrinth, Human Rights in China, 2007).

<sup>16</sup> Article 3.1.1 of the Regulation on State Secrets and the Specific Scope of Each Level of Secrets in Labor and Social Security Work, issued on January 27, 2000 (Source: State Secrets: China’s Legal Labyrinth, Human Rights in China, 2007).

<sup>17</sup> Examples of reports and academic articles referring to cases reported by media are the following: Lee, 2005 (IOM), Siren China Country Report 2010 (UNIAP), TIP Report 2011, Country Narratives/China (US Department of State), Congressional-Executive Commission on China-Annual Report, 2009 (US Congress), Jiang and Sánchez-Barricarte (2009).

channels. Employing newspaper articles and media-reports is a double-edged sword: on one side, because of the sensationalistic and even commercial aspect related to news published (or showed, in the case of documentaries). As argued by Greer, news are influenced in fact by the so-called “newsworthiness” or news values, that is those criteria that determine which events and to what extent news should be reported (Greer in Davies et al., 2007) . On the other side, as the case of the brick kilns demonstrates, if both new and traditional media hadn’t taken up the debate, many children and adults hadn’t perhaps been rescued. Further it must be recognized that conducting research about trafficking is dangerous (Wang, 2007). Many of the journalists who have made the documentaries, interviewed the victims and written newspaper articles and books, have risked their lives. While recognizing the courage of these journalists and at the same time being aware of the sensationalistic aspects of media, how can this information be used in an academic paper? I have chosen to treat these cases as the UN and academic researchers do, namely treating these cases as *anecdotal evidence*, while stressing the need of further research on the subject. I have further summarized the cases instead of offering a word-by-word translation from the Chinese sources in order to avoid the sensationalistic wording and ways of presenting stories employed by newspaper reports and articles. Using newspaper articles has further the advantage of showing recent cases while the only cases (about trafficking in women) that are available in academic reports are of twenty years ago. Trafficking is a crime that follows historical transformations as demonstrated for example by the research conducted by Zhang on trafficking in people in the Miao frontier in Guizhou during the early Qing Dynasty (Zhang, 2009).<sup>18</sup> Trafficking at that time in that particular area was caused by a relaxed legislation, by corrupted local bureaucrats, by a peasant uprising and by opportunistic soldiers who saw in the trade of human beings a way to replenish a meager salary (ibid). Trafficking in modern-day China is part of the country’s social and economic

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<sup>18</sup>The Qing Dynasty ruled between 1644-1912 AD. The documents of Zhang’s research refer in particular to the period between the years 1729-1747 AD.

transformations (Zhuang, 1998). It is therefore important to try to find updated information in order to provide the most accurate understanding of the crime as it occurs today. Finally, as the Chinese law as we will see doesn't recognize men as victims of trafficking, there is virtually no research on trafficking of males. In this sense, newspaper articles and TV documentaries are the only source of information to highlight men's and also boy's situation as victims/survivors of the slave trade.

### **1.3 Previous Research**

A review of academic articles, UN and NGO reports, revealed that the great majority of these studies focus on women and children and/or on women exploited in the sex sector. There is also a presence of articles both in Chinese and in English that treat the subject Chinese women trafficked for the purpose of marriage. However, both international and Chinese research that highlights how Chinese men (and in part how boys) are exploited by human traffickers is almost absent.

### **1.4 Ethical considerations**

Given that the sources I have used disclose personal information about the victims and the traffickers, I have chosen to change the names of the victims, not to reveal the exact provenience/village/township name and to approximate their age (but I have clearly indicated if the victim/survivor is a minor or not<sup>19</sup>). Names of traffickers have also been changed. This is obviously not to protect the criminals. It must be considered that some of the sentences are currently pending.

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<sup>19</sup> For the UN, a minor is a person below 18 years of age. The Chinese definition of minor is more controversial and not clear-cut. The thresholds for the Chinese legislation are 14 years, 16 years and 18 years as we will see in the section examining Chinese laws. This has been taken into consideration and the approximated age reflects both this international and Chinese definition in order not to create misunderstandings.

This is a strategy commonly used in academic research while analyzing news reported by media.<sup>20</sup> Sometimes I have employed squared parenthesis [...] in the translation to indicate that while the original text discloses information such as name, age, etc. I am not revealing it. Further, this study doesn't employ pictures of the victims/survivors in order to not re-victimise them such as newspapers articles and media reports do. It must always be kept in mind that no matter if the person reporting is an academic, a journalist, a Government or non-government official, confidentiality and anonymity of victims/survivors should be ensured to the greatest possible extent.<sup>21</sup>

### **1.5 Limitations**

The fact that this study only presents cases and laws related to domestic trafficking doesn't mean that trafficking interesting China is limited to its borders. According to the TIP Report in fact, China is a source, transit and destination country for men, women, and children subjected to forced labor and sex trafficking (TIP Report 2011). Moreover, the analysis of Chinese laws and legal documents regarding trafficking doesn't aim to be exhaustive. Only laws contained in the Penal Code have been analyzed. These laws are important in that they provide a definition of human trafficking according to Chinese policies. The reader must also take into consideration that the Chinese legal system is at the time of writing being reformed. Further, the cases presented don't mean to be exhaustive to determine ALL the victims/survivors of this crime in China. More research is needed to highlight all the populations that are exploited by traffickers. In this sense for example, women

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<sup>20</sup> An example of the use of this technique to divert the attention from the individuals to the facts can be found in Smolej, M. (2010).

<sup>21</sup> For more information on ethical standards in conducting research about trafficking, please see *UNIAPs Guide to Ethics and Human Rights in Counter Trafficking* (2008). See also the document *Ethical Issues at Lund University* from 2005 (*Etikfrågor vid Lunds Universitet. En vägledning*), in particular part 2 concerning research ethics.

exploited in the labor sector haven't been mentioned. This is not to deny that this kind of exploitation takes place. Reasons of space prevent me however from examining more cases of trafficking. Illegal adoption hasn't moreover been analyzed. There's currently a debate whether illegal adoption should or should not be considered as trafficking in human beings. The Chinese law sees it as trafficking while for example the TIP Report of 2010 doesn't consider illegal adoption as trafficking as this crime does not necessarily involve the use of force, fraud, or coercion to compel services from a person (TIP Report, 2010). The international definition of this crime is therefore controversial. This thesis doesn't go into this debate but leaves it as a suggestion for further research. Finally, the variables that are examined in this thesis are sex and gender. More research should examine how these two variables shape our understanding of victim/survivor together with variables such as class, race and provenience of the victim/survivors.<sup>22</sup>

## 1.6 Theoretical Framework

Questions upon who the victims are and about what we know about them even if apparently “disarmingly and misleadingly simple” are “highly problematic, often controversial and generally call for highly nuanced answers” (Dignan, 2004). The field of study that best help us to put victims at the center of the research is a sub-discipline of criminology and is called victimology. The difference between the two fields is that “[w]hereas the latter is very broadly concerned with the study of crime and criminals, victimology focuses equally broadly on crime and its victims” (Dignan, 2004). In 1986 Nils Christie dubbed the concept of ‘*the ideal victim*’. Christie describes *the ideal victim* as a person or category of individuals who-when hit by crime-most readily are

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<sup>22</sup> A UK report published by Anti-Slavery International shows for example that victims/survivors of trafficking are treated differently in Britain depending on their provenience (*Wrong Kind of Victim? One year on: an analysis of UK measures to protect trafficked persons*, 2010).

given the complete and legitimate status of being a victim. This group includes those who are perceived as vulnerable, defenseless, innocent and worthy of sympathy and compassion. Christie suggests that while elderly women and children are typical victims, men and other groups may find it more difficult to achieve legitimate victim status.<sup>23</sup> Paraphrasing Christie, Dignan has defined *the ideal victim* as having six characteristics. Out of these, five<sup>24</sup> depict according to this thesis the common representation of a “the ideal victim” with particular reference to the trafficking crime:

1. The victim is weak in relation to the offender-the ‘ideal victim’ is likely to be either female, sick, very old or very young (or a combination of these);
2. The victim is, if not acting virtuously, then at least going about their legitimate, ordinary everyday business.
3. The victim is blameless for what happened.
4. The victim is unrelated to and does not know the ‘stranger’ who has committed the offence.
5. The offender is unambiguously big and bad.

Feminist criminological theories have gone a step further by introducing the idea of a *Victimological Other*.<sup>25</sup> This concept is even more nuanced than Christie’s in that it stresses the gender perspective in defining a victim. As evidenced by Walklate, “when the term *gender* is used,

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<sup>23</sup> For further discussion on Christie’s classical concept of ideal victim, please see Christie in Fattah, E. A (1986).

<sup>24</sup> The sixth attribute of an *ideal victim* is that “the victim has the right combination of power, influence or sympathy to successfully elicit victim status without threatening (and thus risking opposition from) strong countervailing vested interests”. This latter category doesn’t apply to a typology of victim of trafficking as a challenge of this assumption would imply that a victim of trafficking has a strong vested interest in claiming his/her status. The physical, psychological, emotional and financial damages that a victim of trafficking experience are the proof that there’s never a vested interest in claiming for example compensation for the harm that he/she has encountered.

<sup>25</sup> For a thorough discussion about how feminists apply the concept of *The Other* to crime see Walklate (2005 and 2007).

it does not only refer to women. It refers to men as well” (Walklate, 2005). A feminist analysis of crime helps us therefore to challenge the idea that crime is predominantly a male occupation and that male crime is committed only against women (Ibid.). When introducing the concept of the *Victimological Other*, Walklate explains that “[t]his equation, male=criminal, female=victim, became a double edged sword resulting in hiding male victimization and to a certain extent female criminality” (Ibid.). The same assumption can be made for criminals. One of the most famous criminal anthropologists, Cesare Lombroso, applied a darwinistic approach to criminology and in particular the concept of atavism according to which certain people are born as criminals<sup>26</sup>. As noted by Walklate, “however odd these ideas might sound in contemporary terms [...] Lombroso’s work set an important agenda for criminology [...] first in the continuing presence of *biological positivism* and second in ideas around who is, and who is not, likely to be criminal: the *Criminal Other*” (Ibid.). Biological positivism reflects a deeply rooted assumption that the criminal is always male while the female offender is doubly deviant.<sup>27</sup> Recent research clearly show that this assumption is not correct. As stressed by the Executive Director of UNODC Antonio Maria Costa, female offenders have a more prominent role in present day slavery than in most other forms of crime (UNODC, Global Report on Trafficking in Persons, 2009). This fact needs to be addressed, especially the cases where former victims have become perpetrators (ibid). We need therefore to move away from the idea that women cannot be criminals and from the most common stereotypical idea about crime that sees women as risk prone while men are risk-free (Walklate, 2007). Such view, not only resonating with Lombrosian criminology, leaves men, and their experiences of victimization, out of the picture. Their victimization and their experience of victimization are hidden (Ibid.). As stressed by Aronwitz, “much less is known about male victims of trafficking than

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<sup>26</sup> Lombroso argued that criminals shared a number of physical attributes such as sloping foreheads, receding chins, excessively long arms, and other physical characteristics. On the basis of these observations he constructed four criminal types: the insane, the opportunist, the passionate, and the born criminal (Walklate, 2005:9).

<sup>27</sup> For further discussion, please see Walklate Criminology, the basics and Walklate Imagining the victim of crime.

about female and child victims. In part this is due to the emphasis that has traditionally been placed on trafficking for sexual exploitation” (Aronwitz, 2009). The UNODC Global Report on Trafficking in Persons (2009) acknowledges the fact that sexual exploitation is by far the most commonly identified form of human trafficking and that this might be a result of a statistical bias since exploitation of women is more visible (UNODC, 2009). This thesis argues that the focus only on female victims exploited in the sex trade might have impeded the identification of other victims/survivors. The stereotypical assumption that males are always criminals and can never be victims while females are always victims and can never be criminals needs therefore to be challenged. Another important contribution that feminist victimology has given to the debate about victims’ definition is the concept of victim/survivor. While the term victim usually emphasizes passivity and powerlessness, the term survivor indicates active resistance to oppression that women routinely engage in to sustain their survival (Walklate, 2004). However, it must also be noted that not all victims are survivors. Using one term or the other is problematic in that it fails to capture the process of victimization (Walklate, 2005). It is in fact possible that an individual at different points in time in relations to different events could be an active victim, a passive victim, an active survivor, a passive survivor, and a whole range of points in between (ibid). In this thesis, I have therefore chosen to use the term victim/survivor to capture the resistance not only of females against patriarchal structures but also of all other victims/survivors of the slave trade to evidence their own condition and resistance in relation to particular structures/individuals. The same term victim/survivor is also used by the 2010 UN Report (A/65/209) on Trafficking in Women and Girls. While the feminist critique is introducing the concept of a white, heterosexual, reasonable male as the *Victimological Other* to differentiate the victim from the non-victim (Walklate, 2007), this thesis is “borrowing” this concept and applying it to the Chinese context. In this sense, the *Victimological Other* becomes the Chinese man that according to this stereotypical image is unthinkable as victim/survivor. This thesis applies the term “The Other” in the context of trafficking

(both to the terms *Victimological Other* and *Criminological Other*) to an individual that has been marginalized and often ignored by laws and by researchers, e.g. the man as victim of trafficking is the *Victimological Other* while the woman as offender in the trafficking crime is the *Criminological Other*. Moreover, this thesis will go a step further in the debate arguing that the idea of the *Victimological Other* and the *Criminological Other* apply to all the individuals that are left out not only by Chinese laws but also by the academic research and sometimes even by media (both Chinese and international). We can also say in fact that *the Other* in trafficking is every victim/survivor and every criminal that has been excluded from the debate. In this sense, while for example women exploited in prostitution are the norm, women exploited in marriage are *the Other*. The same definition can be applied to children in the Chinese context. While bought and sold children for illegal adoption or exploited as beggars are the norm in that they have received attention from authorities, children exploited in construction sites, in disguised study-programs or in brick kilns are *the Other* in that they have been more or less marginalized by counter-trafficking strategies. We will return to this question with concrete examples in the following sections while discussing Chinese laws and analyzing case studies.

### **1.7 Outline of the Thesis**

In Chapter 2 the international and the Chinese definitions of human trafficking and of victims/survivors are analyzed. Chapter 3 will present and examine case studies and exemplify some of the hidden populations that need further attention. Chapter 4 contains the conclusions of this study.

## 2. Definitions

### 2.1 International Definition of Human Trafficking: Where Are the Men Victims of the Trade?

*Human trafficking injures, traumatizes and kills. It devastates families and threatens global security. And it involves abhorrent practices, including debt bondage, forced labour, torture, organ removal, sexual exploitation and slavery-like conditions. [...] There is still much to do to boost international cooperation in combating such heinous practices. **That is why I have launched a global campaign to prevent all forms of violence against women.** I ask you to join with me in making this commitment: **no tolerance for trafficking in women and girls.** (the emphasis is mine).*

*(From the opening address of Banki-Moon, Secretary General of the United Nations at the third global forum on migration and development, Athens, 4 November 2009).*

The United Nations Convention against Transnational Organised Crime contains two protocols.<sup>28</sup> Of these, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, **Especially Women and Children** (my emphasis), supplementing the United Nations Convention against Transnational Organized Crime sets the international standard for defining human trafficking. This Protocol is conventionally also called “the Palermo Protocol” as the document was signed in the Sicilian city of Palermo. Human trafficking is defined by art. 3 (a) of the Protocol as following:

*“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of*

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<sup>28</sup> The other protocol contained in the convention is the Protocol against the Smuggling of Migrants by Land, Sea and Air. Given that this thesis only analyses domestic trafficking, this Protocol hasn't been analyzed.

*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.*

There are therefore three elements that have to occur according to this definition to define a person a victim of trafficking: *an act* (recruitment, transportation, harbouring, receipt); *the means* (force, threat, deception, coercion, abuse) and *a purpose* (exploitation). Further, it must also be noted that trafficking and smuggling are not the same crime. While smuggling necessarily involves border crossing, trafficking also includes internal movement. Further, a case of smuggling doesn't necessarily end up in trafficking. The two crimes are therefore distinguished by the UN Convention Against Organized Crime.

When it comes to children, art. 3 (sections c and d) state that:

*The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article.*

*"Child" shall mean any person under eighteen years of age.*

According to this definition, there are two elements that have to occur in order to define a child a victim of trafficking: the act and the purpose.

We shall now analyze the wording of the Palermo Protocol stressing who the victims are and who by consequence should be entitled of particular protection according to this document. In the Protocol we read the following statements (the emphasis in bold are mine):

*The States Parties to this Protocol,*

*Declaring that effective action to prevent and combat trafficking in persons, **especially women and children** [...] (Preamble of the Protocol)*

*Taking into account the fact that, despite the existence of a variety of international instruments containing rules and practical measures to combat the exploitation of persons, **especially women and children** [...] (Preamble of the Protocol)*

*Recalling General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, inter alia, an international instrument **addressing trafficking in women and children**, [...] (Preamble of the Protocol)*

*Convinced that supplementing the United Nations Convention against Transnational Organized Crime with an international instrument for the prevention, suppression and punishment of trafficking in persons, **especially women and children**, will be useful in preventing and combating that crime, [...] (Preamble of the Protocol)*

The purposes of this Protocol are:

(a) *To prevent and combat trafficking in persons, **paying particular attention to women and children***; (Article 2 (a)-Statement of purpose)

*To protect victims of trafficking in persons, **especially women and children**, from revictimization.*  
(Art. 9.1 (b) Prevention)

*States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, **especially women and children**, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.*(article 9 (4)-Prevention).

Despite article 6 (4) of the Protocol stresses the need for States to take into account the age, gender and special needs of victims of trafficking in persons and despite the crime is called throughout the Protocol “trafficking in persons” (e.g. using a gender-neutral definition) it is evident that women and children are at the center of the international community when designing policies to prevent, suppress and punish trafficking. Quoting Walklate when she examines the *Victimological Other*, I would like to stress that this observation shouldn’t be seen as a denial of the overwhelming evidence that women and children suffer most at the hands of men (Walklate, 2004). The question is however if-as indicated also in the UNODC report on Trafficking in People-women exploited in the trafficking crime are the most visible type of victim to the point that statistics might be biased (UNODC Global Report on Trafficking in Person, 2009). What I would like to highlight here is that it is questionable whether emphasis should be put **ONLY** on women and not **ALSO** on men. What is argued here is that all human beings should be entitled the same rights regardless of age, gender and sex. The question is however if the wording of the Palermo Protocol doesn’t contribute to the construction of who victims are and thereby reinforce the idea of who should be protected, e.g. of

who an “ideal victim” of trafficking is and of who is marginalized. The comments of the Secretary General Ban Ki-Moon quoted above may also be inserted in the assumption that because women and girls are the most visible victims in the trafficking crime, all anti-trafficking efforts should be directed towards them. Women and girls certainly deserve protection, and violence against women should unquestionably never be tolerated. But doesn't men and boys victim of this crime also deserve attention? How long should the violence directed towards *them* be tolerated?

We shall now see how the Chinese legislation defines trafficking. The case of China shows how an amendments of the wording of the Protocol to be more gender-neutral in defining victims might help to put men on the anti-trafficking agenda and encourage single states such as China to focus more on this marginalized group of victims.

## **2.2. The Chinese Legislation on Human Trafficking**

On December 26, 2009 China ratified the Palermo Protocol. The ratification hasn't however led to date to an anti-trafficking law. With no united body of law addressing this crime, human trafficking is punished under a plethora of articles scattered into different laws (Liu, 2010a,b). These are articles contained in the Penal Code, in laws concerning the protection of human rights of women, laws protecting the right of a child, labor law, adoption laws and administrative laws concerning the protection of the public order (Liu, 2010a). As argued by Liu, how human trafficking is being handled depends on the interpretation of these laws (Liu, 2010a). The result of this scattered model of legislation (*fensan lifa moshi*, 分散立法模式, Liu, 2010b) is that the pertinent anti-trafficking regulations are not coordinated, that they are often in conflict with each other and also in disaccord with the UN convention (Liu, 2010a). On the positive side, after the ratification of the Palermo

Protocol, China is slowly moving towards anti-trafficking international standards. The Penal Code from 1997 together with other laws is in fact currently being amended.<sup>29</sup> As an example, in February 2011 art. 244 of the Penal Code was revised in order to inflict more severe penalties to traffickers: the new penalties regard a person who forces its employees to work by violence, threat or restricting their personal freedom. Sentences always include fines and the term of imprisonment has been revised from the former up to three years of imprisonment-provision, to a sentence of minimum three years to maximum ten years of imprisonment.<sup>30</sup> We shall now see the most important among these laws and examine how the way they are written is influenced by the concept of the *Victimological Other*.

### 2.3 The Chinese Definition of Human Trafficking

As stressed in the previous paragraph, China doesn't have an anti-trafficking law. There is therefore not one single and clear-cut definition of what trafficking is. Moreover, in Chinese, there are several words used to indicate trafficking (or practices similar to trafficking) in human beings. In the Chinese Penal Code (1997) the used terms is *guaimai* (拐卖, litt. *kidnapping and selling*). This definition emphasizes the means-kidnapping-and the purpose-selling). In academic articles, apart from the word *guaimai*, I have also found the expressions *fanmai renkou*<sup>31</sup> (贩卖人口. *Fanzi* 贩子在 Chinese means literally “dealer” so according to this definition trafficking is “dealing with the

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<sup>29</sup> Progress Update Report on China's National Plan of Action on Combating Trafficking in Women and Children (2008-2012), 2009

<sup>30</sup> For more information about the current revisions, please visit: Peking University Center for Legal Information, <http://vip.chinalawinfo.com/newlaw2002/slc/slc.asp?db=chl&gid=145719>

<sup>31</sup> Zhang 张 (2009) writes of 人口贩卖活动, *renkou fanmai huodong*, lit. act/activity of dealing with the sale of people.

sale of people”. This definition poses emphasis on the “sale” as purpose) and *fanyun renkou* as in Liu (2010,a&b) (贩运人口, lit. *transporting people for sale*. The character *yun* 运 means literally “to transport”. This definition emphasizes the act). Another term used<sup>32</sup> is *guaipian* (拐骗, which literally means “to abduct, to kidnap”. The word is composed by two characters. The former, *guai* 拐 means “to abduct” while the latter, *pian* 骗 means “to cheat/to swindle”. This definition emphasizes only the means). Finally, in Yu (2010) I have also found the expression 买卖妇女和婴儿 (*maimai funü he ying'er*, lit. buying and selling women and infants. This definition emphasizes the act-buying and the purpose-selling). If we compare the Chinese definition of human trafficking with the international one, it is evident that there are major differences (Cai, 2005). As we have seen in the chapter examining the Palermo Protocol, the UN definition of trafficking has to include three elements for adults to be defined as “victim of trafficking”: the act, the means and the purpose, and two elements for children (the act and the purpose). However, whenever one of the four mentioned terms is used in China, one or more of these elements are missing. In particular, one of the biggest problems is linked to the purpose of the crime. Whereas two of the Chinese definitions of trafficking (*guaimai renkou* and *fanmai renkou*) see trafficking as having the *purpose of selling people*, the international definition sees trafficking as a crime conducted with the *purpose to exploit people* (Cai, 2005 and Liu, 2010b). Understanding this difference is fundamental when trafficking is discussed for example in relation to illegal adoption. For the Chinese law, illegal adoption is defined as trafficking while for the international definition, this question is controversial as illegal adoption-at least as defined by the TIP Report (2010)-doesn’t necessarily involve the exploitation of a human being.

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<sup>32</sup> The word is contained for example the news about the State Council declaring the steps to take to solve the case of Shanxi’s brick kiln incident ([http://news.xinhuanet.com/politics/2007-06/20/content\\_6269432.htm](http://news.xinhuanet.com/politics/2007-06/20/content_6269432.htm)).

The Chinese definition of a minor is unclear. As indicated by Liu (2010a), according to art. 2 of the Law of P.R. of China on the Protection of Minors (2007), the term “minor” indicates a citizen under the age of eighteen. The Provisions on Prohibition of Child Labour (2002) state that all units and individuals are prohibited from providing job placement service to minors under the age of 16. Chapter 7 art. 58 of the Chinese Labour Law (1994) states that underage workers are individuals between 16 and 18 years old. According to art. 64 it is not allowed to assign underage workers (aged between 16 and 18 years) to work in mines, coal shafts or in toxic and harmful jobs. The threshold for crimes of rape or sexual harassment punished under the Penal Code (1997) is 14 years old.<sup>33</sup> However, Art.236, 358, 359 and 350 of the Chinese Penal Code (1997) only mention women and girls as we will see in the following section.

#### **2.4 The Chinese Definition of Victim of Human Trafficking**

The Chinese word for “victim” indicated in the Chinese Penal Code (1997) is *shouhaizhe* (受害者) or also *shouhairenyuan* (受害人员) as in official communicates to the press<sup>34</sup> or *beihazhe* 受害者 (Liu, 2010a). These words don’t contain any female character and are therefore *per se* gender-neutral.<sup>35</sup> The most common way of talking about victim of trafficking is the wording used by legal texts in Chinese. Here the victim of trafficking is defined as *bei guaimai de* (被拐卖的, which literally followed by a subject that is invariantly either *funü* (妇女, woman/women) or *ertong* (儿童,

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<sup>33</sup> For further discussion on trafficking in China is related to the age of a child, please see Liu (2010,a&b).

<sup>34</sup> An example of a communicate containing this word is available at the following site:  
[http://news.xinhuanet.com/politics/2007-06/20/content\\_6269432.htm](http://news.xinhuanet.com/politics/2007-06/20/content_6269432.htm).

<sup>35</sup> As noted by Walklate, in some languages the word victim is gendered. In French for example, the word victim is feminine, *la victime* (Walklate, 2007).

child/children). When talking about the act of trafficking human beings, the wording *guaimai funü, ertong* (拐卖妇女, 儿童, literally abducting and selling women and children) is used. This second definition of both the offense and about the victim is clearly gendered. As the following examples will demonstrate, whenever we encounter the word *trafficking* in official documents (e.g. whenever trafficking is being *defined*), the term is always associated with women and children. Analyzing the Chinese definition of trafficking, Cai (2005) takes as example a document published jointly by the Supreme Court of the PRC, the People's Procuratorate, the Ministry of Public Security, the Ministry of Public Affairs, the Ministry of Justice and the All China Women's Federation.<sup>36</sup>

*Anyone who has engaged in the activity of kidnapping and selling women and children<sup>37</sup>, as long as this person<sup>38</sup> has committed one of the following acts: abduction, kidnapping, purchasing, peddling, transferring women and children for the purpose of selling them and regardless of the numbers of victims and if this person has obtained a profit, he/she will be accused with the charge of committing the crime of kidnapping and selling women and children (quoted in Cai, 2005:2).*

This statement was contained in a document from year 2000, e.g. it is a text published prior to China's ratification of the Palermo Protocol. However, in 2009, as we can read in a communicate from the the Ministry of Public Security, this view hasn't changed.

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<sup>36</sup> The full-name of the document is "Note on the suppression of the crime of abducting and selling women and children issued by the Supreme Court of the PRC, the People's Procuratorate, the Ministry of Public Security, the Ministry of Public Affairs, the Ministry of Justice and the All China Women's Federation" (2000) (最高人民法院、最高人民检察院、公安部、民政部、司法部、全国妇女联合会关于打击拐卖妇女儿童犯罪有关问题的通知, 2000).

<sup>37</sup> Here the term *guaimai* is used in the Chinese text. I decided therefore to give its litteral translation instead of using the word "trafficking" as it better exemplifies the Chinese above mentioned authorities' understanding of this crime.

<sup>38</sup> There is no indication in this particular text about the gender of the criminal. This is the reason why I have decided to use in the translation the neutral word "person".

*As abducting and selling children and women is a serious violation of human rights and a vicious criminal activity that endangers social stability, it has always been at the centre of attention of the public security organs. (Source: official communicate on the Chinese Government’s website<sup>39</sup>).*

From the wording of the document,<sup>40</sup> we can notice once again that the relationship among the words “kidnapping and selling” and “women and children” is unchanged: the first two words defining the crime are always in connection with the last two, indicating the (“ideal”) victims of this crime. Men are *never* mentioned in relationship to the crime of “kidnapping and selling”.

## **2.5 Chinese Most Important Laws Dealing with Trafficking of Human Beings-An Analysis of Articles Related to Anti-trafficking Contained in the Penal Code (1997)**

Chapter IV (art. 236, 237, 238, 240, 241, 242 and 244) and Chapter VI (articles 358, 359 and 360) of the Chinese Penal Code (1997) deal with offences related to trafficking crimes.<sup>41</sup> In particular **art. 240** contains the definition of trafficking in human beings according to the Chinese law:

*Abducting and selling<sup>42</sup>women and children refers to (the acts of) abducting, kidnapping, buying, peddling, transporting or transferring women or children for the purpose of sale.*

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<sup>39</sup> The text is available at the following site: [http://www.gov.cn/gzdt/2009-05/08/content\\_1308149.htm](http://www.gov.cn/gzdt/2009-05/08/content_1308149.htm).

<sup>40</sup> Note that the term children is juxtaposed in the opening of the document and placed in front of the term “women” as to stress authorities’ engagement to protect the most vulnerable. The document continues in fact highlighting the remarkable results obtained by all relevant authorities protecting those who are considered to be the most vulnerable populations, e.g. children and women.

<sup>41</sup> For a translation of the laws of the Penal Code (1997) dealing with human trafficking, please see Appendix 1.

<sup>42</sup> The word *guaimai*, 拐卖 is used in this article to define trafficking.

The penalties for offenders vary from five to ten years in prison plus a fine. Further, the article lists eight aggravating circumstances that if proven can lead the offender to be sentenced to death penalty. These aggravating circumstances include the role of the offender in a trafficking ring, raping abducted women, stealing infants for the purpose of selling them.<sup>43</sup> Men as victims are never mentioned.

**Art. 241** refers to penalties to be inflicted to the buyer. The penalties for buying women and children according to this article is maximum three years. Penalties are more severe for buyers who restrict the physical freedom of the victims and who rape their victims. There is however one worrying aspect of this article worth to notice, namely the last part where it is stated that:

*Anyone buying abducted and sold women or children but not obstructing bought women from returning to their original place of residence in accordance with their wishes, or not abusing bought children and not obstructing efforts to rescue them, may not be investigated for their criminal liability.*

As stressed by Liu, while this clause allows to impede the obstruction during the rescue phase of women and children, at the same time China's lenient legislation towards buyers of women and children is detrimental in the efforts to contain the trade, letting the buyer almost go free from punishment (Liu, 2010a).

Finally, it must be stressed that this article doesn't mention penalties to be inflicted to buyers of men.

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<sup>43</sup> For a translation of the whole art. 240 please see Appendix I.

**Art. 242** refers to those people who use force or coercion impeding public officials from rescuing bought women and children. Important to notice is that those who through violent means or coercion impede officers from rescuing men, are not punished according to this regulation specifically referring to the crime of “kidnapping and selling” people.

**Art. 244** has recently been modified. This article regulates the penalties to be inflicted on persons of employing units who force laborers to work by restricting their physical freedom in violation of labor management laws and regulations. Sentences have been raised from a penalty of imprisonment of maximum three years to a penalty that is minimum three years and maximum ten years of imprisonment. Important to notice is that this is the only gender-neutral article referring to abducting and selling people in the Chinese Penal Code. This means that this is the only article that recognizes that men can be exploited for work purposes even though it doesn't explicitly refer to *guaimai nanren* 拐卖男人 (kidnapping and selling men). This term is absent from the Chinese legislation and as such men can only be seen as victims of labour exploitation but not of trafficking. This is apparently a paradox: while throughout the Chinese legislation women and children are considered to be victim of trafficking for the purpose of sale but men are ignored, the only article that includes males refers to trafficking as an activity conducted for the purpose of exploitation.

**Article 236** refers to punishments inflicted upon those who rape women and girls. According to this article

*Anyone who has sexual relations with a girl who's under the age of 14, shall be condemned to have committed rape and will be severely punished.*

As stated by Liu, this means that if someone sexually assaults a boy or rapes him, this person cannot be charged with the accusation of rape (Liu, 2010a). The same thing is valid for adult men as confirmed by a recent case occurred in 2010 in which a Chinese male guard in his forties raped a young adult (for both international and Chinese law) man. The offender was not sentenced with the accusation of “rape” but for “deploying intentional violence on another person” and was sentenced to a fine of 20.000 yuan and to one year of fixed-term imprisonment (<http://news.sina.com.cn/c/2011-01-04/132621756447.shtml>). The victim/survivor received as a consequence of the rape minor physical injuries (ibid). If there had not been any physical-and therefore visible-injuries, the crime would perhaps not have been punished (ibid). If the young adult man had been a woman, the penalty for the offender would have been according to art. 236 of the Chinese Penal Code (1997) “no less than three years and not more than 10 years of fixed-term imprisonment”.<sup>44</sup> Not amending this article poses serious challenges in protecting boys and men. As for the crime of trafficking, given that men and boys are also at risk of rape and sexual assault while being trafficked, it is of pivotal importance of including boys and men in the definition of “rape/sexually assaulted victim/survivor”.

The same can be said for the provisions contained in **articles 358** (clause 2), **359** and **350**. Art. 358 contains provisions on offenders who force others into prostitution and in paragraph 2 states that the offender will be sentenced to ten years of imprisonment if he/she has forced *young girls under the age of 14 into prostitution*. According to art. 359 those *seducing young girls under 14 years of age into prostitution* are to be sentenced to five years or more in prison in addition to a fine. Art. 360 states that *those who visit young girls under 14 years of age engaged in prostitution* will be sentenced to five years or more in prison and in addition will be paying a fine.

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<sup>44</sup> Please see in Appendix I the articles in full text referring to the punishment of crime of rape in China.

As for what stressed about the crime of rape and sexual assault, according to Chinese laws a victim of prostitution cannot be a boy. This means on one side that those who rape, sexually assaults or force boys into prostitution or introduce others into the sexual exploitation of boys or buy sex from boys will not be punished under the correct crime label by the Chinese law. Further, this also means that boys (and adult men) constitute a hidden population in the trafficking trade that not only is ignored but doesn't even receive protection by the law and by consequence are re-victimized by the system. Paraphrasing Walklate, we can say that the end result of the above mentioned laws is that only women and girls in China can be considered as victims of prostitution while boys (and adult men) become the *Victimological Other*: that which cannot be spoken.<sup>45</sup>

Finally, it is important to stress that China's current National Plan of Action for Combating Trafficking only refers to women and children. The name of the five-year Plan of Action is in fact 中国反对拐卖妇女儿童行动计划 (2008-2012), *Zhongguo Fandui Guaimai Funü Ertong Xingdong Jihua* (2008-2012) which literally means "China National Plan of Action on Combating Abducting and Selling Women and Children (2008-2012)".<sup>46</sup> Men are not mentioned by the plan. This means in practice that specific policies aimed at combating exploitation of men and protecting them from traffickers don't exist in the Chinese context. Men as victims of trafficking are in this sense *The Other* and as such invisible for laws and policies.

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<sup>45</sup> The original quote refers to the construction of the white, heterosexual male as the *Victimological Other* (Walklate, 2005: 19).

<sup>46</sup> Background and provisions contained in the document can be downloaded from the following link: [http://www.gov.cn/zwgk/2007-12/20/content\\_839479.htm](http://www.gov.cn/zwgk/2007-12/20/content_839479.htm).

### **3. Human Trafficking in Modern-day China: *The Other Victims Of The Trade- Case Studies***

As indicated by UNIAP, among the most common myths around human trafficking, there's the assumption that human trafficking relates mostly to women and girls being exploited within the sex industry. The reality is however that a significant portion of trafficking is for the purposes of labor exploitation, victimizing men, women and children. Forced labour and slavery-like practices exist within a number of labor settings including exploitative factories, domestic servitude, fisheries, and plantations. Despite this some national laws in Southeast Asia still limit the definition of trafficking to women and children (UNIAP, Counter-Trafficking Training Manual, 2009). This discourse is valid even for China as the following case studies will demonstrate. This is not to understate the importance that counter-trafficking measures have in curbing the sexual exploitation of women and children. On the contrary, it is an attempt to call for the need of a more nuanced definition and understanding of trafficking that includes populations that till now have widely been ignored both by researchers and especially by policy makers.

#### **3.1 Trafficking of Adult Men and Boys**

##### **3.1.1 Case 1: The Case of Yong, Adult Male Victim, Liaoning Province (March, 2007)**

*At the age of 20, Yong left his village in the North-east to look for work in another province. At the railway station, he was approached by a man in his 30s (a middleman) who offered him a job. The man told Yong that he would be paid 30 yuan a day and that the employer would offer food and lodging. The work offered was relatively close to the province of his home village so Yong accepted*

*the offer and followed the man in a factory. When he entered the factory, Yong saw that 20 people were working. The man who had approached him at the railway station took into the factory one after the other five other people, the youngest two under 18 and the oldest above 50. The six boys and men were later transferred to a resident compound where they were sold to a trafficker. They ate, lived and worked in a cellar. They received one meal a day consisting in cabbage, radish and rice. They were often beaten with sticks and verbally humiliated both by the trafficker and by the nine people who watched over them. The entrance of the cellar was surveilled day and night by two people which made it impossible to escape. They were then re-sold to a middle aged man who took them to a railway station. Despite the fact that in the waiting room of the station there were many people, they didn't dare to escape as they were watched by the people working for the trafficker. From the date printed on the train ticket, Yong saw that they had been enslaved for two months in the cellar. Once arrived at destination, they started working in a forest in a timber factory. They slept in sleeping bags, received meals consisting in white cabbage and potatoes and worked under heavy conditions. Their shoulders were often swollen. The initial group of men was separated. They only met during meals. Four of them decided to escape. On the road, they met a local Government border control post. They asked the personnel to help them but the guards called instead the trafficker. They were taken back to the working place and during the night they were heavily beaten with sticks and tortured to punish them and so that the other prisoners could hear them. One of the boys decided to escape and was not found by the trafficker. Yong decided to escape as well. He chose another road than the other victims who had been found in order to avoid the local government control post. He walked through the forest and didn't eat nor drink for two nights. He asked if he could sleep in a hostel but he was denied entrance. It was winter and the temperature can reach minus 30 degrees in these areas. Yong was exhausted. He fell asleep in front of a house and after some time was finally rescued by some people who helped him and took him into their home. They called the police who accompanied Yong into a hospital. His father arrived. Yong*

*needed a surgery. Part of his toe had to be cut to avoid the gangrene spreading into his leg. His father had only 200 RMB. The cost of the surgery was more than 500 RMB. The doctor decided to make the surgery anyway and the personnel of the hospital collected money to pay for the cost of the surgery, food and medicines. Yong was saved. (Source: Zhang Qiang, Heilongjiang Morning Paper, March 12, 2007. 张强, 黑龙江晨报<sup>47</sup>).*

This story illustrates how a young, adult and-before being exploited-healthy man was trafficked, or in a Chinese terminology, was *pian* (骗, lured) and ultimately “kidnapped and sold”. Despite this, he is not a victim of human trafficking according to Chinese law. This means that if these traffickers and the middleman have been arrested, they won’t be condemned for the crime of trafficking but for other crimes (most probably for labor exploitation). Moreover, given that “Yong” was not considered to be a victim of trafficking, he wasn’t entitled the rehabilitation assistance that victims of trafficking should be granted. He was saved thanks to the humanity of the personnel of the hospital, not to a right that should be granted and protected by the law.

### **3.1.2 Case 2. A Case From the Xinjiang Province (April 2011)**

*In July 2006, husband and wife registered a chemical factory in Xinjiang. The factory produced talk powder used in paper making, pharmacy and other industries. The factory also produced chicken feed additives. The male factory owner traveled two times to an orphanage in the Sichuan province that sheltered mentally-impaired children who had a past as vagabonds and who had survived on the streets thanks to people’s charity. The man made an agreement with the director of the centre that he would have paid the workers 300 RMB per month. At the end, some people were paid 260*

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<sup>47</sup> The whole article is available at the following site: <http://news.sina.com.cn/s/l/2007-03-12/102412494565.shtml>.

*RMB while some didn't receive a pay at all despite being exploited in the man's factory. In total, eight mentally-impaired boys and men were exploited. They were not paid, they were menaced, beaten and their movements were restricted. The man confessed that one of the workers accidentally activated a machine and that one of the workers died strangled. The man told the workers of his factory to liberate the body, to wrap the body in a cloth and abandon it in the Gobi desert, at ten kilometers from the factory. The case of the worker's death was not reported to authorities. The couple-husband and wife-were sentenced to have infringed the Labour Law with the aggravating accusations of having forced people to work and with the accuse of being responsible of the death of the worker. (Source: Zhengyi Wang (Justice Net), April 4, 2011, 正义网<sup>48</sup>).*

This case is significant due to several aspects. First of all, the traffickers are a couple, a man and a woman. This proves that criminals in the human trade are not only men but also women. This case demonstrates in other words that as well as there is a *Victimological Other*, there is also a *Criminological Other*. Secondly, the victims in this case are mentally-impaired boys and men. This highlights a severe problem in China: not only this group of people is extremely vulnerable and often turn to begging as only mean of survival. They are also highly vulnerable and at risk for human traders. Thirdly, the director of the orphanage clearly stipulates an agreement with the trafficker. We don't know from the article if this man knew about the real conditions of the boys and men that were taken out of the orphanage. However, at minimum, he had the responsibility to protect these human beings from exploitation. It is also questionable whether he had the right to decide which work they would be engaged in and their salary. From the cases reported in Chinese newspapers, it emerges that while there's the need for more institutions sheltering and providing care and vocational trainings for mentally impaired children and adults, there is also one worrying aspect that needs further investigation. As we will see in next case, the question of managers of

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<sup>48</sup> Article available at the following site: <http://news.sina.com.cn/c/2011-04-07/135422251002.shtml>.

orphanages engaging in agreements with traffickers should be explored more deeply. This is not to accuse all the staff of these organizations. If it were not for the help provided at grassroots-level by these organizations, many of these human beings-especially orphans-would be living in even more severe conditions. However, if further research reveals that traffickers have infiltrated orphanages and that what reported in the newspapers are not isolate cases but agreements that happen frequently, there's the need for stricter controls on the management of these institutions by competent authorities.

### **3.1.3 Case 3: Trafficking Doesn't Only Occur in Factories-A Case From The Sichuan Province Countryside (December, 2010).**

*Cheng is a 46-year old farmer from Sichuan, former member of the administrative board in his county's association of industry and commerce. Cheng initial activity was raising pigs. In 1993 he took to his farm a former "tao kouzi" ("讨口子", local dialect for vagrant beggar) to help him raise pigs. When the activity of the farm increased, he "adopted" two mentally impaired homeless people (also former "taokouzi") to work in his farm. Local newspapers started writing about this "swine heard and his three former beggars" receiving approval from the local government. In 1999 the swine heard "adopted" ten more mentally impaired, vagrant men. A swine heard from the Xinjiang province contacted Cheng asking if he could "send" him five of his workers to help him raise pigs in Xinjiang. These five men were then sold to a third person and Cheng received a back payment. Cheng discovered that this activity was more lucrative than raising pigs so from then on, he started training and "sending out" (shuchu, 输出) these mentally impaired men. His training methods included beating the men if they disobeyed his orders. A neighbor witnessed of hearing screams of these men during the night. In order to find more vagrants, Cheng contacted pedicab and taxi drivers. For every beggar they could introduce to him, they received between 100 and 300 RMB.*

*Cheng also started organizing a team for “collecting” the men. One of the victims recalled that two cars stopped on the street where he was begging and forced him to enter a car. He then received a training for 13 days and was later sent to Qinghai to work for a factory producing cement. He and thirteen other men-also former vagrants-worked during a year without receiving any salary. The director of the local center aimed at providing aid to beggars was also involved in the trafficking activity, earning money from the sale of the mentally impaired men. Cheng continued his “vagrant business trade” for 17 years. Between 1993 and 2006 he trafficked 137 mentally impaired men and sold them to Beijing, Tianjin, Shenzhen, Xingjiang and Xining. Of the 62 men sheltered in a local NGO in Beijing, 33 (at the time of the article) had been send home. (Source: Yang Wangguo 杨万国, Xin Jingbao 新京报, New Beijing Gazette, January 1, 2011<sup>49</sup>).*

This article clearly proves that the trafficking crime occurs in various settings, e.g. not only in factories or in brothels but also in other sectors (in this case, in a countryside farm). Important to notice also the network of pedicabs and taxi drivers involved as actors in the crime. It is also astonishing how local newspapers and authorities praised the man for taking these vagrants out of the streets in the belief that he was helping them and not exploiting them. Obviously, more labor inspection controls from independent officials are needed. More controls are also needed on the managers of the institutions aimed at protecting the mentally impaired children and adults. Important to notice is also that these men were sent home risking to be re-victimised and without obtaining post-trafficking rehabilitation services. Once again, this is due to the fact that they are not considered victims of trafficking by the law.

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<sup>49</sup> The original article is available at the following site: <http://news.bjnews.com.cn/2011/0112/105040.shtml>.

### 3.1.4 Case 4- The Shanxi 2007 Illegal Brick Kiln Incident

As stated in the Introduction chapter of this thesis, in 2007 an incident<sup>50</sup> broke out in China involving children, mentally impaired, old and younger men (the majority coming from the Henan Province) exploited in illegal brick kilns in the province of Shanxi. After the publication on a blog of two open letters to authorities, traditional media picked up the news and the public reaction pushed the Central Government to respond. On June 20, 2007 Xinhua published the news that a report about the initial stages of the investigation on the incident of Shanxi's brick kilns was presented to the State Council. After the hearings, the State Council came to the following conclusions:

*Shanxi's 'illegal brick kilns' incident not only involves serious illegal employment, but also serious criminal activities such as vicious gangs kidnapping people, restriction of personal freedom, forced labor, child labor, intentionally inflicting body injuries and murder. This incident must be thoroughly investigated and severely dealt with; the illegal activities and criminal organizations must be stopped; all the victims must be rescued; the criminals must be severely punished; the population must be firmly protected and especially the legal rights and interests of minors and mentally impaired people must be safeguarded; impartial social justice must be upheld.*<sup>51</sup>

(Xinhuanet, June 20, 2007<sup>52</sup>).

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<sup>50</sup> In Chinese, the expression used is *heizhuanyao shijian*, 黑砖窑事件, literally "illegal brick kilns incident".

<sup>51</sup>The original Chinese version is the following: 会议指出, 山西“黑砖窑”不仅存在严重非法用工问题, 而且存在黑恶势力拐骗、限制人身自由、强制劳动、雇佣童工、故意伤害甚至致人死命等严重违法犯罪行为。要彻底查清、严肃处理这一事件, 严厉打击违法犯罪行为和黑恶势力, 解救全部受害人员, 严惩违法犯罪分子, 坚决维护人民群众特别是未成年人和智障人员的合法权益, 维护社会公平正义。

<sup>52</sup> [http://news.xinhuanet.com/politics/2007-06/20/content\\_6269432.htm](http://news.xinhuanet.com/politics/2007-06/20/content_6269432.htm).

The criminal activities listed in the above extract have all the elements to describe the crime of trafficking. However, in the statement the incident of illegal brick kilns is never called “kidnapping and selling” people (as we have seen in the previous chapters, this is the word used in the Chinese Penal Code of 1997). The Chinese word used in the above passage is *guaipian* (拐骗, e.g. abducting/kidnapping through deception) and not *guaimai* (拐卖, e.g. kidnapping and selling). Important to notice is also that adult men not affected by handicaps are not mentioned. Testimonies from the parents of the survivors who went looking for their children in the mines of Shanxi indicate however that the age and health conditions of the workers varied significantly. One of the fathers, founder with five other parents of the The League For the Search of Children, witnessed that among the victims of the trade, there were children of less than 16 years, young boys of less than 18 years, young men between 20 and 30 years, old men of over 60 years and mentally impaired men (Fang Ying, Nandu Zhoukan, March 14, 2008<sup>53</sup>). Both newspaper reports and the reportages with a hidden camera done by journalists, seem to indicate that the majority of the victims were young boys and men. However, in one reportage, there’s also one young girl that the journalist tries to interview (Henan Television City Channel, Broadcasted on: June 18, 2007<sup>54</sup>). The victims were approached by middlemen (the majority of articles seem to indicate that the majority of the middlemen are males, but in one article one boys recalls that he was picked up at a railway station by a woman<sup>55</sup>) at railways stations and long-distance bus terminals. The victims were then

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<sup>53</sup> Article available at the following site: [http://www.360doc.com/content/10/0903/08/963899\\_50806443.shtml](http://www.360doc.com/content/10/0903/08/963899_50806443.shtml). The fact that there were young men of 18 or above working in the kilns is also reported by the following article: Cheng Jiang , Nandu Zhoukan, 23 July 2007. <http://news.sina.com.cn/c/2007-07-23/141713508707.shtml>.

<sup>54</sup> [http://www.youtube.com/watch?v=ewoxTae85yE&feature=player\\_embedded#at=135](http://www.youtube.com/watch?v=ewoxTae85yE&feature=player_embedded#at=135).

<sup>55</sup> As one article says: After one day of work, [one of the boys] sees the woman who took him to [X] railway station (he would later know that it was [the *baogongtou*'s] wife) . He prayed her to let him go reminding her that their agreement was to let him return home after two days of trial if he was unhappy. The answer he receives is: “I wouldn’t let you go even if you gave me 1000 RMB” (Cheng Jiang , Nandu Zhoukan, 23 July 2007 <http://news.sina.com.cn/c/2007-07-23/141713508707.shtml>).

convinced to follow these snakeheads through the promise of a job (Zhu Hongjun, Nanfang Zhoumo, June 14, 2007<sup>56</sup>). As one 15-year old boy who managed to escape from a kiln said in an interview before showing his scars (he had beaten with a stick by the criminals):

*“I was promised 800-900 yuan, but he never gave me one single fen”.*<sup>57</sup>

There are however also stories of abduction as the one of a boy who was on his way to school and was asked to help some men lifting boxes onto a minibus. The boy was then kidnapped (Zhu Hongjun, Nanfang Zhoumo, June 14, 2007<sup>58</sup>). There are also testimonies of the criminals drugging their victims before kidnapping them (Ibid). After the victims agreed to follow the middlemen/women or after they were abducted, they were conducted in apartments and locked up. These apartments were rented in the surroundings of the stations and were located in neighborhoods with a high concentration of immigrants and where controls of the police are scarce (Ibid). Once they were five or six in a room, a minibus came to pick them up and conducted them to the kilns (Ibid). The victims were forced to hand over their ID documents to the criminals and were given new names to elude controls. As Chen Jiang writes:

*Before, they all had an identity: they were primary, junior or high school students, farmers, cooks, carpenters; but afterwards, they all an identity: that of slaves. Apart from being slaves, they could only be slaves, unless they agreed to become goons.*<sup>59</sup>*Before, they all had a name [...]; afterwards, they became “Big Head”, “Glasses”, “Crooked Neck”, “Old Xinjianese”, “Little One”, “Yang*

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<sup>56</sup> <http://news.sina.com.cn/c/2007-06-14/151912022906s.shtml>.

<sup>57</sup> 1 yuan=0,156 USD. 800-900 yuan=approximately 125/140 USD. 1 fen=1/10 of a Chinese yuan. The reportage can be viewed at: [http://www.youtube.com/watch?v=69WJTxaIGWw&feature=player\\_embedded](http://www.youtube.com/watch?v=69WJTxaIGWw&feature=player_embedded).

<sup>58</sup> <http://news.sina.com.cn/c/2007-06-14/151912022906s.shtml>.

<sup>59</sup> In Chinese the word used for a goon (e.g. “a guard”) is *dashou*, 打手 which literally means “a battering hand”.

*County”, “Big Treasure”, “Second Treasure”, “Saddam”...In the moment their money and identity documents were taken away from them, they seized to be human beings and while losing their freedom and dignity, they also lost the only thing they had left: their name.*

(Cheng Jiang, Nandu Zhoukan, 23 July 2007<sup>60</sup>).

As indicated by the testimony of one boy interviewed by Cheng Jiang and who was enslaved at the age of eighteen, there was a strict six-level hierarchy in the kilns. The boy resembles the whole brick kiln to an animal food chain divided into six levels: the owner of the kiln>the *baogongtou*>the goons>the old slaves>the new slaves>the mentally impaired (Ibid). The lower in the hierarchy, the worse were the conditions of the victims. As one boy recalls:

*The new arrived were first of all beaten not by a goon, but by an old worker. The aim was to show he had power and prestige so that you later didn't dare to take advantage of him[...]. When I think about it now, the only way for the old workers to show their loyalty and obtain money and gain the trust from the *baogongtou* was by tormenting, beating and insult us. In this way they had more chances to escape.*

(Ibid).

At the end of this hierarchy there were the mentally impaired men. According to the organization of the kilns, their assignment was to take out the bricks from the ovens when they were still warm. To do this job, they were only wearing gloves made with the rubber of old tires (Ibid.). As for the working conditions, three interviewed boys/young men between 17 and 19 recall that they had to work fast without talking. Those who talked were punished and were forced to either extract the

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<sup>60</sup> <http://news.sina.com.cn/c/2007-07-23/141713508707.shtml>.

hundreds degrees warm bricks from the ovens or were beaten with a brick till they were bleeding. The choice of punishment depended only by the state of mind of the goons at that particular moment (Ibid). One boy recalls that he had to transport the kilns back and forth 40 times a day on a cart and every time he had to walk for several hundred meters. On every cart there were 251 bricks (every raw brick had a weight of 3 Kg while the weight of a cooked brick was 2 and 1/2 Kg). If he couldn't finish the work he was beaten (Ibid.).

The six founders of the League For the Search of Children (three mothers and three fathers) in one month liberated alone more than one hundred children imprisoned in the brick kilns (Fang Yiren, Nandu Zhoukan, June 16, 2008<sup>61</sup>). After the journalist Fu Zhenzhong had reported on the documentaries shown by the Henan Television City Channel, several volunteers went to Shanxi helping the League members. 1340 people were liberated, of which 367 mentally impaired people (ibid). However, there are still parents who look for their children (Franceschini, 2009). Among these, one of the fathers founder of the league was in 2008 still looking for his disappeared son (Fang Yiren, Nandu Zhoukan, June 16, 2008<sup>62</sup>). As shown by the following article, there is a risk that the “incident” of the black brick kiln is still continuing today.

### **3.1.5 Case 5: Black Brick Kilns Today-A Case From The Hebei Province (2010)**

*Dewei is a man in his early twenties originary from Shanxi. Dewei traveled to Shijiazhuang, capital of the Hebei Province, to look for an employment. At the railway station he was approached by a man who offered him a job. Dewei was cheated and was forced to work in an illegal brick kiln*

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<sup>61</sup> [http://www.360doc.com/content/08/0616/13/142\\_1339176.shtml](http://www.360doc.com/content/08/0616/13/142_1339176.shtml).

<sup>62</sup> [http://www.360doc.com/content/08/0616/13/142\\_1339176.shtml](http://www.360doc.com/content/08/0616/13/142_1339176.shtml).

together with other migrant workers. They had to work between 14 and 18 hours per day. They were constantly kept under control by the goons of the kiln. Even when they had to go to the toilet, they were followed by the goons. When they were sleeping their room was locked. If they were protesting, they were beaten, injured by the goons with a machine that gave them electric shocks, threatened and their personal freedom was restricted. They were not paid. Dewei tried to escape two times. The first time he was recaptured and is savagely beaten. The second time he succeeded and reported the case to the police. The police raided the kiln and arrested eleven people. Eight of them were the goons, two of them were two brothers owners of the kiln, one was the baogongtou originary from the Henan province and one was his wife. 25 of the workers obtained retroactive salaries. The police helped them to buy the train tickets and they returned home. The other eight rescued workers were taken in custody by the local Civil Affairs bureau till their relatives were found. (Source: Jinghua Shibao, May 30, 2010<sup>63</sup>).

The references that are made to the crime of trafficking in the article are several. When the journalist is describing what happened to one of the victims, he writes that the migrant man was *bei pian*, “被骗”, e.g. “cheated”. The article uses also the terms such as forced labour (*qiangpo gongren congshi laodong*, 强迫工人们从事劳动, literally “forcing the workers to engage in labour”), restricting their personal freedom (*xianzhi ziyou*, 限制自由). When the reporter describes the use of force made by the people who ran the factory and by the goons who savagely beat the workers (*duda*, 毒打), and also inflicted them electric shocks (*dianji*, 电击), he uses terms that the Palermo Protocol considers under the headings “use of force” and “abuse of power”. Further, all the workers were migrants who were cheated and transported from the railway station to the kiln. Even if the case contains the elements (movement, means, purpose of exploitation) to define this a trafficking

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<sup>63</sup> <http://henan.sina.com.cn/news/2010-05-30/121325300.html>.

case according to an international standard, the Chinese law (even if aggravating circumstances will probably be taken into consideration while inflicting the final sentence) considers this to be a case of labour exploitation. The offenders will therefore be judged for breaking labour laws not for committing the crime of trafficking. This also means that even if compensation was given to the workers in terms of retroactive salaries, these men were re-sent back home without proper health and psychological assistance. We don't know if a competent authority accompanied them from the police station to their homes granting them protection along the way. What we know for sure is that these men constitute a highly vulnerable group and face the risk of being re-victimized. They are also likely to have received a severe trauma from their enslavement in the kiln. However, these men are not entitled the right of receiving proper health treatment as the law doesn't consider them victims of trafficking.

### **3.1.6 Other Cases of Child Trafficking**

When it comes to trafficking for labour purposes, according to the 2011 TIP report “[t]here continue to be reports that some Chinese children are forced into prostitution, and various forms of forced labor, including begging, stealing, and work in brick kilns and factories; in previous years, there were reports of children forced into flower selling. Some children in work-study programs supported by local governments have been reported to face conditions of forced labor in factories and farms” (TIP report, 2011). A recent case (April 2011) reported how a child of 14 died due to an electric shock on a construction site in Beijing while he was trying to repair a damaged electric cable. The boy was from another province and had followed an adult men from his home village to work in the capital. The boy had neither working permit (he was 14 so according to the Chinese law

he officially couldn't work) nor had received a training (Beijing Wanbao, April 5, 2011<sup>64</sup>). From the information contained in the article, it's not possible to ascertain if this is a clear-cut case of trafficking or most probably of labor exploitation of a minor. It shows however that migrant children are certainly one group that deserves special attention due to the risk of being trafficked.

Followingly, we shall see an example of exploitation of child work that is not widely researched.

### **3.1.7 Case 6: Trafficking of Girls and Boys Disguised as Work-study Program (case from 2010, Reported by media on Maj 2011).**

*Fang, Ming and Mei-Hua are three girls from Shanxi's countryside below 16 years old at the time of the facts. The three of them come originally from the Shanxi Province countryside and like other almost one hundred students enrolled at what they thought was a vocational school in the Shanxi province. The school was however very different from what they had read on the advertisement. It was very small, there were not so many classrooms and the students were not so many as they had expected. The classrooms were also ruined and their size very small. The headmaster approached the three girls asking them to recruit other students. For each and every student that they were able to introduce to the school, they would have earned 300 Chinese yuan.<sup>65</sup> The headmaster of the school was a retired cadre of the local bureau of education. They paid 1.460 yuan<sup>66</sup> to attend the school. All the books should have been included in the study fee but once enrolled they were told that they had to buy the majority of the books by themselves. Computer class consisted only of two theory lessons without practice with the computer. They attended in total ten days of class. The*

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<sup>64</sup> [http://news.xinhuanet.com/edu/2011-05/04/c\\_121378730.htm](http://news.xinhuanet.com/edu/2011-05/04/c_121378730.htm).

<sup>65</sup> Approximately 47 USD.

<sup>66</sup> Approximately 228 USD.

children were told that they were going to work as interns during a period of two and a half to three months. If they refused to attend the work-program, they had to pay 2.300 yuan<sup>67</sup> e.g. a whole year's study-fee. Under the guidance of a "teacher", they took first a bus to Luoyang (capital city of the Henan province) and then a train to Suzhou (in the Jiangsu province). The children were accommodated in an apartment building for workers. The "teacher" talked with an intermediary (a woman) and afterwards told the children to hand over their certificate of residence to him. They also had to take a picture in order to prepare the working certificate. Because the students were too young to have an ID certificate number, "the teacher" changed their names and information about their address and age. Those students aged 14 resulted to be 18 years old in the new documents. The home addresses of the students were all changed. "The teacher" asked some of the parents help providing the new ID information. One of the student's mother provided the ID information of another student of the same village as her child. The resident certificates were forged also using a red stamp from an unexisting police bureau. "The teacher" told them to memorize the details of their new identity He also told them that they shouldn't forget it as this new ID information would be part of an examination. The children had later to pay 50 yuan<sup>68</sup> each to attend a physical examination. Once they became "regular workers", they were transferred from Suzhou to other cities. Mei-Hua had specialized in computer studies at school and was sent to work in a computer factory together with other children. Those children who didn't pass the physical examination were taken by "the teacher" to another factory. The "training" at the computer factory is very hard and the children ask "the teacher" to either be able to return home or to change factory. "The teacher" talked to the factory management and afterwards some students were transferred to another factory while some had to stay. Mei-Hua passed the factory's examination and became an assembly line

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<sup>67</sup> Approximately 359 USD.

<sup>68</sup> Approximately 7.8 USD.

worker. The pay should have been 1100-1200 yuan<sup>69</sup> but she and the other children didn't receive this money. The children had to work twelve hours a day, from 8 o'clock in the evening till 8 o'clock the morning after. The children complained and were transferred to another factory that produced computer wires. The factory had an inspection on that same day and "the teacher" instructed them to tell the officers that they are about to go home. On the second day, the children were transferred to a factory located in another city that produces mobile phones. The children called the teacher transferring between the different factories renfanzi, 人贩子 e.g. trafficker. The children were told that they would receive 200 yuan a month as pocket money. They were never given this money. As one girl stated: "At the beginning we came to[ this] school to learn some skills, in order to one day have some professional skills. I didn't expect to be working, not studying. Is this the life that is in front of us?". The children finally tired and depressed called their parents who contacted the Bureau of Education. The children were re-sent back home. As their "internship" period had had a varied length, they were compensated for their work with different salaries for a total sum that varied between 300 and 600 yuan.<sup>70</sup> According to locals testimonies, the school had changed names several times. One of the names was "[...] county vocational training school for coal-related occupations" and operated for half a year in 2009. The registered capital of this school for coal-related professions was 100.000 yuan<sup>71</sup> and the chairman of the board was the same owner of the vocational school described in this case.

(Source: Legal Weekly, March 5, 2011<sup>72</sup>).

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<sup>69</sup> Approximately 172-187 USD.

<sup>70</sup> Approximately 46-93 USD.

<sup>71</sup> Approximately 15.000 USD.

<sup>72</sup><http://www.legalweekly.cn/content.jsp?id=166943&lm=%25E7%2589%25B9%25E5%2588%25AB%25E8%25B0%2583%25E6%259F%25A5>.

More information is needed to clearly state that this is a case of trafficking in children. However, the two elements (the act and the purpose) that according to the Palermo Protocol (2000) define a case of trafficking of a child are present: the children have been recruited under false promises to study and learn technical skills, they haven't been given a training that is in accordance to the law that states that only after 1200 hours of class a training period can begin (Legal Weekly, March 5, 2011), they have been transferred to different working sites, they have been harbored in dormitories for workers, they have been forced to work for long hours without receiving a payment (e.g. they have been exploited). Moreover, the criminals have been using typical methods to hide the victims/survivors: they have forced the children to give them their documents, they forged the children's records and replaced them with ID cards, they have given them another name and identity and have intimidated the children through various methods. More research is needed on these schools that disguise trafficking under the naming "work-study programs".

### **3.2 Women: Not Only Trafficked For Sex Purposes**

In this section I would like to challenge two myths: the first myth is that women are only trafficked for sex purposes. The second assumption that I would like to contest is together with Wang, the idea that trafficked women "lack rationality" and are "stupid and ignorant" (Wang, 王 2007). This doesn't mean that trafficking can be a choice. My standpoint is that trafficking is *never* a choice. Further, this thesis totally rejects the suggestion of Cai&Cai (2010) that there should be more lenient penalties for traffickers and criminals involved in this crime if the consent of the victim is proved. A trafficking victim/survivor never chooses to be exploited or abused. However, what must be taken into consideration while planning counter-trafficking strategies is that the decisions that

are made prior to the trafficking situation can lead an individual to put oneself at danger and become a pray of this crime. It is therefore important to analyze both the structural factors that determine vulnerability but also the individual choices and household strategies of survival that may put a person at risk. Finally, it is also important to acknowledge the role that women have not only as victims/survivors of the trade but also as offenders. We shall first examine one type of trafficking that women may encounter in China and that is not related to the sex industry, namely trafficking for marriage purposes.

### **3.2.1 Women Trafficked as Wives**

As evidenced in Zhuang (1998), the practice of trafficking women for the purpose of marriage has followed the economic and social transformations of the Chinese society. In fact, during the period that goes between '49 and '77, there was an emancipation of women thanks to the Chinese Constitution of 1950 that defined the equal legal status for women and men, thus serving to push women forward both economically and politically and quickly improving their social standing (Zhuang, 1998). This doesn't mean that trafficking in women didn't occur during this period. However, in the 80s the phenomenon of trafficking in women for the purpose of marriage revived and rapidly spread to almost all provinces in mainland China, especially in the provinces of Sichuan, Hunan, Guizhou, Shandong, Hebei, Henan, Anhui and Neimengu<sup>73</sup> (Ibid.). The two major historical transformations that influenced this crime and increased the number of trafficked women for the purpose of marriage were first of all the introduction of the birth control policy and secondly a market-driven economy replacing the planned economy (Ibid.).

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<sup>73</sup> Chinese name that indicates Inner Mongolia.

The introduction of the birth control policy coupled with a traditional Confucian belief that men are more important than women (Yu, 2010) led to the abortion of many female fetuses and a consequent imbalanced sex ratio. The fifth population census conducted in China in 2000<sup>74</sup> revealed that the provinces with the highest imbalance rate the provinces of Jiangxi, Hainan, Anhui and Henan with a ratio of 138 males per 100 women (Ibid.). It is easy to see how these numbers reveal a major problem in the Chinese society and how this imbalanced sex-ratio can be one of the root causes of trafficking in women for marriage purposes. In Yu's words "if there is a situation where there are 300 or 400 thousand more men in marrying age than women, this is undoubtedly an assault to the establishment of a monogamous and stable marriage system" (Ibid.). Yu individuates several responses both at household and at individual level to counter the scarcity of wives, among which: alternative marriage; *yizhi hunyin*, 异质婚姻 (indicating marriages that are made on a "voluntary" bases but where the social, cultural, age and economic conditions of the man and the woman vary a lot); cross-border marriages (both as a semi-voluntary transaction and as a result of trafficking. The wives come in this case from Korea, Vietnam, Burma/Myanmar, Thailand, Cambodia) and the re-appearance in society of old practices such as "mercenary marriage" (*maimaihunyin*, 买卖婚姻), wife-borrowing practices (*jiaohuanhun*, 交换婚), child marriages and domestic trafficking (Yu, 2010). Important to notice is that some women were sold "voluntarily" into marriage along with women forced into the trade (Zhuang, 1998). Zhuang's research reveals that there is a major difference in the conditions of those wives who had married "voluntarily" (through for example a "matchmaker") and those who were abducted. The latter could be re-sold to another buyer if the first one was not satisfied and were often treated with extreme mental and physical cruelty (Ibid.). In Zhuang's words "[w]ith huge profits at stake, it was not uncommon for traffickers to intimidate, bribe, anesthetize or use even harsher methods of enslavement if they

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<sup>74</sup> This statistics excludes Tibet and Xinjiang.

thought it was necessary” (Ibid.). Apart from an imbalanced sex-ratio, another important determinant that has influenced the vulnerability of many women is according to Zhuang the shift from a planned economy that guaranteed an “iron rice bowl” to a market driven economy that has brought advantages along with new challenges. Women (as well as men) must now compete for work in the cities while in the countryside they have been left to bear the major burden in the agricultural production (Ibid.). Women are also the most penalized in education. Many children have been required to discontinue their education because they need to help their families to help the household economy. Girls are the first to make this sacrifice and be forced to quit school (Ibid.). A study published by the Chinese Social Sciences Academic Press and financed by Save the Children examining the causes of trafficking, reveals that the main causes rendering women vulnerable and an ideal target for traffickers are the provenience from a rural and mountainous areas; the burden of having to endure long hours of work to support the family and the deprivation of the right to attend school for nine years due to the need to work to support their families. Many of these women see marriage as a way to escape from these harsh conditions and live a better life.<sup>75</sup> A report written by Shaanxi’s county Higher People’s court confirms that traffickers actively search for women that come from poor households located in remote areas and that are looking for an affluent husband (People’s Judicature, Shaanxi’s People’s Court, July 1983). Unless the women are kidnapped, some of the women know that they are going to migrate in order to marry a man. They are however often cheated about the actual conditions of the “husband’s” households economic conditions and about the husband itself: he might be older than expected or they have been lied when it comes to the actual economic and/or health conditions of the man they are going to marry (Wang, 1997 ). In the Chinese Social Sciences Academic Press/Save the Children study, six women who were *guaipian*, 拐骗 (cheated) into marrying a man were interviewed. It is not clear whether

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<sup>75</sup> Report financed by Save the Children in the provinces of Zhejiang, Shangdong, Anhui and Jiangsu (Wang 王, 2007)

these six cases would be classified as trafficking cases in the Western terminology.<sup>76</sup> However, these case studies allow us to discuss trafficking as a result not of kidnapping but of an uninformed migration process (called in academic literature blind migration) that put these women at high risk for being exploited. The six women of the study (aged between 16 and 19 at the time when they were *guapian*) migrated either encouraged by their parents or on a voluntary basis. The six women of the study followed either a relative or a local villager into cities in the Zhejiang province. They all came from mountainous areas in the Yunnan province. Their education level varied between second grade of elementary school to having obtained a secondary high school diploma. The reasons for migrating to a richer province were that they had heard from their relatives or acquaintances that in the city they could obtain a high salary, that they could live a good life, that the new place would be like heaven, that there would be no mountains (indicating that infrastructures would be developed and the living conditions better than in Yunnan),<sup>77</sup> that would be very happy and/or that they would not work at all (because their husband would support them). The push factors of migration individuated by the researchers in these six cases were the lack of opportunities at source, the curiosity of seeing more of the world than just mountains and the prospects of living a better life (especially in economic terms) than in Yunnan. The six women agreed to follow their acquaintances or relatives (in the majority of cases, a woman) and leave Yunnan either alone or with one or two girls/young women from the same village. At destination they were introduced to a husband (with an age difference that varied between 1 and 13 years between the woman and the man) and in all cases the middleman/woman was paid a fee by the husband (from 400 RMB up to 20-30.000 Chinese yuan<sup>78</sup>). Once married, the husband and the

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<sup>76</sup> The study refers to women who have been both *guaimai* 拐卖 kidnapped and sold, and *guaipian* 拐骗, cheated.

<sup>77</sup> In Chinese, the reasons to migrate to a city are indicated with the following words: 工资高 (*gongzi gao*), 生活好 (*shenghuo hao*), 像天堂 (*xiang tiantang*), 没有山 (*meiyou shan*), 很开心 (*hen kaixin*), 不干活 (*bu gan huo*).

<sup>78</sup> Approximately, from 62 USD to 3.129-4.693 USD.

family of the husband used two strategies to prevent them from escaping. The girls/young women were either treated very well through what the researchers call “persuasion through affection” (e.g. the family members were cooking for them and taking their side in family fights) or they were menaced. Below, an extract of an interview with one of the women:

*Researcher: Did you ever think of escaping?*

*Respondent: I was young at that time and very afraid. I didn't know what to do and where to go. I didn't even want to escape. I heard people saying, if you get caught (once you have escaped), then you will get beaten. There are people who have escaped and they have been stripped off their clothes. Very scaring! So I thought I didn't want to escape. The family members treat me very well.*

*Researcher: Have you seen anyone who has been beaten?*

*Respondent: No, I haven't, I just heard people saying so.*

*Researcher: Who said so?*

*Respondent: The family members said so. Also the neighbors said so. Everybody told me, money has been spent (to buy you). If you escape, isn't that obvious that we will beat you if we catch you?*

(interview extract from Wang, 2007).

From this interview it appears evident that the purchase of a wife is not only a matter that interests two individuals (the husband and the wife). Several people are part of the trafficking process, from the middleman/woman, to the family of the husband to the neighbors. From the cases that have been reported in this thesis and that interest both women and men, we can notice that there is a dual attitude of the surroundings towards the matter of trafficking: either resistance (as indicated by the reaction of the *netizens* and volunteers reacting violently against the news that children were exploited into brick kilns) or connivance (as reported in the above extract with the neighbors menacing the woman). There have even been cases in which villagers have been attacking police

officers trying to liberate the woman. In a case reported by Chen&Song (1996) for example, the villagers that attacked both the police officer and the (bought) wife were villagers obeying the orders of local cadres. When it comes to connivances, research evidence moreover that local authorities favored the practice of buying wives through what the researchers call “stabilization strategy”. In the belief that “importing” women from other provinces would ease the local difficulties of finding wives to the local men and that this would stabilize society, local authorities were supported the practice by easily issuing a new *hukou* (e.g. a household registration certificate) for the wives and by supporting the household through various forms of economic and financial assistance (Wang, 2007).

While curbing kidnapping practices and connivances from villagers requires-among others-changing ideas about the fact that it is acceptable to buy a woman for marriage purposes, it is important to acknowledge also the fact that a blind migration as noted by Cai (2005) and Pearson (2005) might be one of the main causes that render women (but I would also argue that boys and men are at risk) vulnerable and at risk of being trafficked. One solution might be the one showed through pilot projects in Guangxi by Save the Children and that consists in the introduction in rural schools of the subject “safe migration” (Wang, 2007).

### **3.2.2 Women as Offenders: The Criminological Other**

Are there female offenders in the trafficking crime? This is I believe one of the crucial questions to understand to combat this crime and prosecute more offenders engaged in this criminal activity. We have seen in the theoretical section how a positivist school of thought constructed the *Ideal Victim*

as opposed to the *Victimological Other*. The same thing could be said-albeit if reversed-for female offenders. As a result “women form part of the *Criminological Other*, that is marginal to the concerns of the discipline [of criminology] and outside of its understanding” (Walklate, 2005). Being a criminal in general or an offender engaged in trafficking people in particular, is not an offence that has to do with being male. Women can be criminals as well as the following case studies will demonstrate.

### **3.2.3 Case 7: From Victim to Trafficker**

*Lei, a second school graduate and native of the Henan Province, was at the time in her late 20s when she started engaging in trafficking women for the purpose of selling them as wives. The facts occurred in what has been known in China as the “First Bought-People Village”. The name indicated that out a village composed by approximately 600 inhabitants, 80% of them were “kidnapped and sold” from other cities/provinces to become wives of the local men. Lei had herself been kidnapped and sold to a man of this village. Seeing the considerable profits that her trafficker made from the trade, she escaped from her buyer and sought up the man who had previously trafficked her. Lei told her former trafficker that she wanted to marry him and engage in the same business. The trafficker had in its turn bought his own wife from another trafficker. His wife didn’t agree to engage in this criminal activity and often helped the women who her husband had bought to escape. She was beaten several times. When she gave birth to their baby, she was sent back to her parent’s home in Shaanxi. Lei was told about these facts but didn’t care about it. She took her “trafficker” to her hometown and introduced him to all her friends and relatives as her partner. They married and started engaging in the trafficking business together. They started abducting women from Lei’s home province, Henan. In April 1994, after not yet one month of activity, Lei*

*abducted and sold more than 20 women from Zhengjiu, Shangqiu and Luoyang, gaining more than ten thousand yuan<sup>79</sup> in profit (Cheng&Song,1996).*

This case of a woman transforming herself from victim to trafficker is not isolated. Previous research demonstrates how in 1987, 77 women from the Yunnan province were rescued by the police, returned to their home villages and later in their turn abducted 200 other women (Sun, 2004). A report from the Shaanxi's people High Court also stresses the fact that cases in their possession show that previously abducted women colluded with traffickers to lure other women (People's Judicature, Shaanxi's People's Court, July 1983). Jiang (2009) states that due to the severe shocks the women were subject to, they would live an unstable and unbalanced state once victimized. As a result they might develop a vindictive mentality or accept the crime. Then, they might imitate the criminals and become traders in human beings themselves (Jiang&Sánchez-Barricarte, 2009). It is not possible here to examine more deeply the reasons why women engage into trafficking. One reason could be the trauma they have suffered as Jiang suggests. Another could be the promise of quick and considerable profits. But there are certainly more reasons both at structural level and at individual level that need further investigation. Followingly, I have summarized another case seeing a woman as an offender. In this case, the woman is not a former victim of the trade but holds what is commonly considered a "respectable position" in society, namely vice-principal of a school.

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<sup>79</sup> Approximately 1.564 USD.

### **3.2.4 Case 8: *The Vice-Principal of a Special School for Hearing Impaired Children***

*On the first of April 2007, in a special school accommodating children bearing various types of handicaps (the majority of the children are hearing impaired), four boys disappeared. At lunchtime one of the teachers noticed that one boy was missing and went out of the school to look for him in an internet bar where the boy had previously been found. The boy wasn't there. He had disappeared and with him three other schoolmates. Families were contacted but the boys hadn't returned home. On April 18, four girls went missing as well. A schoolmate witnessed that she had seen the four girls packing their bags and then leaving. On April 26, two more girls went missing. On Maj 4<sup>th</sup>, the principal of the school discovered that someone has used his computer to chat with a program called QQ.<sup>80</sup> The conversation hadn't been erased and the principal noticed that the two last lines of the conversation were "Hurry up to go to Zhengzhou to meet people" (sent from the principal's computer). The reply was "I am going immediately". This last line's provenience was from an older man. The video chat allowed the principal to see that it was an older man chatting. The principal recognized the man and notified the police. The older man had visited several times the school. He was an elementary school classmate of the vice-principal, a woman. The police investigation showed that this woman was the leader of the criminal gang trafficking children and selling them to a shetou.<sup>81</sup> The gang was composed by her as the chief, the older man-himself hearing impaired-in the role of middleman, and two younger men (one of which a relative of the older man) who had the task of both kidnapping some of the children and picking them up at destination. The gang sold the children to a shetou for 500 yuan<sup>82</sup> each. The children were sold to*

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<sup>80</sup> This is one of the most used internet programs used in China for chat conversations. The user has the option of utilizing a camera for the conversations.

<sup>81</sup> A *shetou* 蛇头, a snakehead, is commonly used to refer to a middleman in Chinese.

<sup>82</sup> Approximately 78 USD.

*Shanghai and Anhui. All the members of the ring were arrested and all the children were rescued by the police.* (source: Chongqing Satellite TV . TV Program “Interpretation of Today’s Case”. Documentary called Criminals Stretching their Hands Towards a School<sup>83</sup>).

This case demonstrates how women can play a central role in the trafficking business. Data and information is too limited at present to engage into discussions on the reasons why women engage in the trade or to make any comparisons with male offenders. This hasn’t moreover been the aim of this study. What’s important to stress here is that bounded assumptions of who can and who cannot be a criminal as well as assumptions about who can and who cannot be a victim (Walklate, 2005) impede a thorough understanding of the trafficking crime. The information provided in this chapter proves that a trafficker or a middleman can be a woman and encourages more research to be made about the role female offenders have in buying, selling and exploiting other human beings.

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<sup>83</sup> The program can be viewed at the following site: [http://v.youku.com/v\\_show/id\\_XNzAzMzY0NA==.html](http://v.youku.com/v_show/id_XNzAzMzY0NA==.html).

## 4. Conclusions

Given that many of the case-studies used to demonstrate different types of trafficking are taken from newspaper articles and documentaries, it's not possible to draw some clear-cut generalizations about trafficking trends in today's China. The anecdotal evidence from these news needs to be confirmed by further research. What these cases tell us is however one important aspect of the trafficking crime: a victim/survivor of human trafficking is not an *ideal victim* who has several pre-fixed stereotypical characteristics. This study has attempted to give a more nuanced understanding of the victims of trafficking, of its offenders and also of the crime in general. In relation to the five points introduced in the theoretical part, the conclusions drawn from this country case-study on China are the following:

1. **The victim is weak in relation to the offender-the 'ideal victim' is likely to be either female, sick, very old or very young (or a combination of these).** The cases presented in this study clearly show that a victim of trafficking can also be a healthy, adult man. Variables such as age, sex and gender should be further studied in relation to this crime but should not serve as *a priori* indicators of who a victim is.
2. **The victim is, if not acting virtuously, then at least going about their legitimate, ordinary everyday business.** The means of kidnapping human beings and/or luring them are very diversified. Sometimes victims are kidnapped from their homes. Sometimes boys have been kidnapped on their way to school. Some children have been kidnapped within institutions. Sometimes both adults and children have been sold by the people who they trusted the most or who were supposed to protect them. Sometimes the victims/survivors have voluntarily migrated to look for a job and trusted people offering them a legal occupation. Understanding the diversity of trafficking and the various means of criminals to

kidnap and/or lure human beings, help us understanding and combating the crime in a more effective way.

3. **The victim is blameless for what happened.** Trafficking is NEVER a choice. As a consequence, a victim of trafficking is blameless. This thesis argues however that the choices that a victim makes *prior* to his/her enslavement (unless obviously the victim has been kidnapped from his/her home) might put the victim in a highly vulnerable position. For example, an unformed migration and blindly trusting a relative or an acquaintance has shown to be detrimental for many women, men and children who have been enslaved and exploited.
4. **The victim is unrelated to and does not know the ‘stranger’ who has committed the offence.** As the cases have shown, victims/survivors of the slave trade have often trusted a relative, an acquaintance or a person who was supposed to protect them (as in the case of deaf impaired children or of women trafficked for marriage purposes).
5. **The offender is unambiguously big and bad.** As we have seen examining the *Criminological Other*, a trafficker and/or a middleman can also be a woman. In many cases, the woman is someone who the victim trust and can even be a relative, a neighbor or even a vice-principal of a school as in case number eight of this study.

Feminist victimology with the concepts of *Victimological Other* and *Crimonological Other* help us to challenge the image of the *ideal victim* that is upheld by laws both at national level (as in the case of China) and partially also at international level (as in the case of the Palermo Protocol). This thesis stresses the importance to understand the victim and the offender as complex characters while challenging the ideas of a victim/survivor of trafficking *only* as “woman exploited in the sex industry” and a trafficker *only* as “a big and bad male stranger”. This stereotypisation of “victim”

and “offender” poses severe challenges on the way laws are written, on the way counter-trafficking measures are designed and on the way they really can reach at the heart of the problem, prevent trafficking to occur, protect vulnerable populations and properly punish offenders. As we have seen examining cases in the Chinese context, men are one hidden population group. Men are not only enslaved by traffickers but also re-victimised by a system that denies them the status as victims/survivors. This thesis is a contribution to shed some light upon *who* should be protected and albeit limited due to space limitation, of *who* should be punished in the Chinese context and advocates for a more inclusionary rather than exclusionary approach in defining the victims, the criminals and the crime of trafficking in general. Crime has no gender and the trafficking crime is not an exception.

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## APPENDIX I

### **Selection of Laws Related to The Crime of Trafficking in the Chinese Penal Code (Adopted by the Second Session of the Fifth National People's Congress on July 1, 1979 and amended by the fifth Session of the Eight National People's Congress on March 14, 1997)**

#### **Article 236**

Whoever by force, threat or other means rapes a woman, shall be sentenced to not less than three years and not more than ten years of fixed-term imprisonment.

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

Any of the following categories of persons who rape a woman or has sexual relations with a girl shall be sentenced to fixed-term imprisonment of not less than ten years, life imprisonment or death:

- (1) those who rape a woman or have sexual relations with a girl and the circumstances are particularly severe;
- (2) those who rape several women or have sexual relations with several girls;
- (3) those who, in a public place, rape a woman in public;
- (4) two or more persons who rape the same victim in succession; or
- (5) those who cause the victim severe injury, death or cause other serious consequences.

#### **Article 237**

Whoever uses violence, coercion or other means to force, molest or humiliate a woman, shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention.

Whoever, by means of gathering a crowd or in a public place and in public, commits the crime mentioned in the preceding paragraph shall be sentenced to fixed-term imprisonment of not less than five years.

Whoever molests a child shall be given a heavier punishment according to the provisions of the preceding two paragraphs.

#### **Article 238**

Whoever unlawfully detains another person or deprives another person of his personal freedom by any other means shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention, public surveillance or deprivation of political rights. In circumstances of beating or humiliation are involved, the offender shall be given a heavier punishment.

Whoever, by committing the crime mentioned in the preceding paragraph, causes severe injury to another person shall be sentenced to fixed-term imprisonment of not less than three years and not more than ten years.

If he causes the death of another person, he shall be sentenced to a fixed-term imprisonment of not less than ten years. If he causes another person disability or death by violent means, the offender shall be punished according to the provisions of Article 234 or Article 232 of this Law.

Whoever unlawfully detains or takes somebody into custody for the purpose of extorting the payment of debts, shall be punished according to the provisions of the preceding two paragraphs.

A State employee who abuses his authority to commit any of the crimes mentioned in the preceding three paragraphs shall be given a heavier punishment according to the provisions of the preceding three paragraphs.

#### **Article 240**

Whoever abducts and sells women or children shall be sentenced to fixed-term imprisonment of not less than five years and not more than ten years, and in addition be sentenced to a fine. Those falling under any of the following circumstances, shall be sentenced to a fixed-term imprisonment of not less than ten years or to life imprisonment, and be sentenced to a fine or confiscation of property. If the circumstances are especially serious, the offender shall be sentenced to death and to I addition to confiscation of property:

- (1) being a ringleader of a group engaged in the abduction and selling of women and/or children;
- (2) abducting and trafficking three or more women and/or children;
- (3) raping the woman who is abducted for the purpose of selling her;
- (4) enticing or forcing the woman who is abducted for the purpose of being sold to engage in prostitution, or selling such woman to any other person or persons who will force the woman to engage in prostitution;
- (5) kidnapping a woman or a child by means of violence, threat or drugging the victim for the purpose of sale;
- (6) stealing a baby for the purpose of sale;
- (7) causing abducted women and/or children, or their family members, serious injuries or death or other serious consequences;
- (8) selling a woman and/or a child outside the country.

**Abducting and selling a woman and/or a child refers to any act of abducting, kidnapping, buying, transporting and selling, receiving or sending, transferring a woman and/or a child for the purpose of selling the victim.**

#### **Article 241**

Whoever buys a woman or a child who is abducted and sold shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance.

Whoever buys a woman who is abducted and sold and has sexual relations with her against her will shall be convicted and punished according to the provisions of Article 236 of this Law.

Whoever buys a woman or a child who is abducted and sold and illegally deprives him/her of his/her personal freedom or restricts his/her personal freedom or injures or insults him/her, shall be convicted and punished according to the relevant provisions of this Law.

Whoever buys a woman or a child who is abducted and sold in and commits any criminal act as prescribed in the second and third paragraph (of this article) shall be punished for committing more than one crime.

Whoever buys a woman or a child who is abducted and sold and re-sells the victim shall be convicted and punished according to the provisions of Article 240 of this Law.

Whoever, having bought a woman or a child who is abducted and sold, does not obstruct the woman from returning to her original place of residence according to her will, or does not maltreat the child nor obstructs their rescue, may be exempted from being investigated for criminal responsibility.

#### **Article 242**

Whoever obstructs using violence or threat State functionaries from rescuing a woman or a child who have been bought shall be convicted and punished according to the provisions of Article 277 of this Law.

Any ringleader who obstructs, by means of gathering a crowd, state functionaries from rescuing a woman or a child who has been bought shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention. Any other person who uses violence or threat shall be punished according to the provisions of the preceding paragraph.

#### **Article 244**

If any employing unit, in violation of labour administration laws and regulations, forces employees to work depriving their personal freedom, and if the circumstances are serious, the people directly responsible for the crime shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention, and concurrently or independently be sentenced to a fine.<sup>84</sup>

(This article has been revised in February 2011.

#### **Article 358**

Whoever organizes or forces any other person or persons to engage in prostitution shall be sentenced to a fixed-term imprisonment of not less than five years and not more than ten years, and in addition be sentenced to a fine. Whoever commits any of the following acts shall be sentenced to fixed-term imprisonment of not less than ten years or life imprisonment, and in addition be sentenced to a fine or confiscation of property:

(1) organizing other person(s) to engage in prostitution and the circumstances being serious;

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<sup>84</sup> The sentences for someone who uses violence, threatens or restricts another person's freedom and forces him/her to work are from February 2011 no less than three years and not more than ten years of fixed term imprisonment.

Source: [www.npc.gov.cn](http://www.npc.gov.cn).

- (2) forcing a girl under the age of 14 to engage in prostitution;
- (3) forcing many persons to engage in prostitution or forcing any other person to engage in prostitution for many times;
- (4) forcing the victim to engage in prostitution after raping her;
- (5) causing serious injury or death to the person being forced to engage in prostitution or causing other severe consequences.

Whoever commits any of the acts mentioned in the preceding paragraph, if the circumstances are especially serious, shall be sentenced to life imprisonment or death, and in addition be sentenced to confiscation of property.

Whoever assists in organizing another person to engage in prostitution shall be sentenced to fixed-term imprisonment of not more than five years and concurrently be sentenced to a fine; if the circumstances are serious, the offender shall be sentenced to fixed-term imprisonment of not less than five years and not more than ten years, and concurrently be sentenced to a fine.

#### **Article 359**

Whoever lures, shelters or procures any other person or persons to engage in prostitution shall be sentenced to fixed-term imprisonment of not more than five years, criminal detention or public surveillance, and in addition be sentenced to a fine; if the circumstances are serious, the offender shall be sentenced to fixed-term imprisonment of not less than five years and in addition be sentenced to a fine.

Whoever lures a girl under the age of 14 to engage in prostitution shall be sentenced to fixed-term imprisonment of not less than five years and in addition be sentenced to a fine.

#### **Article 360**

Whoever suffers from serious venereal diseases such as syphilis and gonorrhea and knowingly engages in prostitution or visits prostitutes shall be sentenced to fixed-term imprisonment of not more than five years, criminal detention or public surveillance, and in addition be sentenced to a fine.

Whoever visit a girl who is under 14 and is engaged in prostitution, shall be sentenced to fixed-term imprisonment of not less than five years and concurrently be sentenced to a fine.

中华人民共和国刑法（1979年7月1日第五届全国人民代表大会第二次会议通过  
1997年3月14日第八届全国人民代表大会第五次会议修订）

第二百三十六条以暴力、胁迫或者其他手段强奸妇女的，处三年以上十年以下有期徒刑。

奸淫不满十四周岁的幼女的，以强奸论，从重处罚。

强奸妇女、奸淫幼女，有下列情形之一的，处十年以上有期徒刑、无期徒刑或者死刑：

- （一）强奸妇女、奸淫幼女情节恶劣的；
- （二）强奸妇女、奸淫幼女多人的；
- （三）在公共场所当众强奸妇女的；
- （四）二人以上轮奸的；
- （五）致使被害人重伤、死亡或者造成其他严重后果的。

第二百三十七条以暴力、胁迫或者其他方法强制猥亵妇女或者侮辱妇女的，处五年以下有期徒刑或者拘役。

聚众或者在公共场所当众犯前款罪的，处五年以上有期徒刑。

猥亵儿童的，依照前两款的规定从重处罚。

第二百三十八条非法拘禁他人或者以其他方法非法剥夺他人人身自由的，处三年以下有期徒刑、拘役、管制或者剥夺政治权利。具有殴打、侮辱情节的，从重处罚。

犯前款罪，致人重伤的，处三年以上十年以下有期徒刑；致人死亡的，处十年以上有期徒刑。使用暴力致人伤残、死亡的，依照本法第二百三十四条、第二百三十二条的规定定罪处罚。

为索取债务非法扣押、拘禁他人的，依照前两款的规定处罚。

国家机关工作人员利用职权犯前三款罪的，依照前三款的规定从重处罚。

第二百四十条拐卖妇女、儿童的，处五年以上十年以下有期徒刑，并处罚金；有下列情形之一的，处十年以上有期徒刑或者无期徒刑，并处罚金或者没收财产；情节特别严重的，处死刑，并处没收财产：

- （一）拐卖妇女、儿童集团的首要分子；
- （二）拐卖妇女、儿童三人以上的；
- （三）奸淫被拐卖的妇女的；
- （四）诱骗、强迫被拐卖的妇女卖淫或者将被拐卖的妇女卖给他人迫使其卖淫的；
- （五）以出卖为目的，使用暴力、胁迫或者麻醉方法绑架妇女、儿童的；
- （六）以出卖为目的，偷盗婴幼儿的；
- （七）造成被拐卖的妇女、儿童或者其亲属重伤、死亡或者其他严重后果的；
- （八）将妇女、儿童卖往境外的。

**拐卖妇女、儿童是指以出卖为目的，有拐骗、绑架、收买、贩卖、接送、中转妇女、儿童的行为之一的。**

第二百四十一条收买被拐卖的妇女、儿童的，处三年以下有期徒刑、拘役或者管制。

收买被拐卖的妇女，强行与其发生性关系的，依照本法第二百三十六条的规定定罪处罚。

收买被拐卖的妇女、儿童，非法剥夺、限制其人身自由或者有伤害、侮辱等犯罪行为的，依照本法的有关规定定罪处罚。

收买被拐卖的妇女、儿童，并有第二款、第三款规定的犯罪行为的，依照数罪并罚的规定处罚。

收买被拐卖的妇女、儿童又出卖的，依照本法第二百四十条的规定定罪处罚。

收买被拐卖的妇女、儿童，按照被买妇女的意愿，不阻碍其返回原居住地的，对被买儿童没有虐待行为，不阻碍对其进行解救的，可以不追究刑事责任。

第二百四十二条以暴力、威胁方法阻碍国家机关工作人员解救被收买的妇女、儿童的，依照本法第二百七十七条的规定定罪处罚。

聚众阻碍国家机关工作人员解救被收买的妇女、儿童的首要分子，处五年以下有期徒刑或者拘役；其他参与者使用暴力、威胁方法的，依照前款的规定处罚。

第二百四十四条用人单位违反劳动管理法规，以限制人身自由方法强迫职工劳动，情节严重的，对直接责任人员，处三年以下有期徒刑或者拘役，并处或者单处罚金。<sup>85</sup>

第三百五十八条组织他人卖淫或者强迫他人卖淫的，处五年以上十年以下有期徒刑，并处罚金；有下列情形之一的，处十年以上有期徒刑或者无期徒刑，并处罚金或者没收财产：

- （一）组织他人卖淫，情节严重的；
- （二）强迫不满十四周岁的幼女卖淫的；
- （三）强迫多人卖淫或者多次强迫他人卖淫的；
- （四）强奸后迫使卖淫的；
- （五）造成被强迫卖淫的人重伤、死亡或者其他严重后果的。

有前款所列情形之一，情节特别严重的，处无期徒刑或者死刑，并处没收财产。

协助组织他人卖淫的，处五年以下有期徒刑，并处罚金；情节严重的，处五年以上十年以下有期徒刑，并处罚金。

第三百五十九条引诱、容留、介绍他人卖淫的，处五年以下有期徒刑、拘役或者管制，并处罚金；情节严重的，处五年以上有期徒刑，并处罚金。

引诱不满十四周岁的幼女卖淫的，处五年以上有期徒刑，并处罚金。

第三百六十条明知自己患有梅毒、淋病等严重性病卖淫、嫖娼的，处五年以下有期徒刑、拘役或者管制，并处罚金。

嫖宿不满十四周岁的幼女的，处五年以上有期徒刑，并处罚金。

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<sup>85</sup>刑法第二百四十四条修改为：“以暴力、威胁或者限制人身自由的方法强迫他人劳动的，处三年以下有期徒刑或者拘役，并处罚金；情节严重的，处三年以上十年以下有期徒刑，并处罚金。来源：[www.npc.gov.cn](http://www.npc.gov.cn)。”

第三百六十条明知自己患有梅毒、淋病等严重性病卖淫、嫖娼的，处五年以下有期徒刑、拘役或者管制，并处罚金。

嫖宿不满十四周岁的幼女的，处五年以上有期徒刑，并处罚金。

## APPENDIX II

### Chinese Dictionary Of Trafficking-related Terms Used in This Study (literal translation of the terms)

<i>Baogongtou</i> , 包工头	<i>labor contractor, foreman</i>
<i>Bei guaimai de</i> , 被拐卖的	<i>lit. someone who has been kidnapped and sold</i>
<i>Dashou</i> , 打手	<i>lit. a battering hand; a goon (e.g. a “guardian” in a kiln)</i>
<i>Fanmai renkou</i> , 贩卖人口	<i>lit. dealing with the sale of people</i>
<i>Fanzi</i> , 贩子	<i>lit. a dealer</i>
<i>Fanyunrenkou</i> , 贩运人口	<i>lit. transporting people for sale</i>
<i>Guaimai</i> , 拐卖	<i>lit. kidnapping and selling (guai, 拐 to kidnap; mai, 卖 to sell)</i>
<i>Guaipian</i> , 拐骗	<i>to abduct, to kidnap (guai, 拐 to kidnap; pian, 骗 to cheat, to swindle)</i>
<i>Guamai funu, ertong</i> , 拐卖妇女, 儿童	<i>lit. kidnapping and selling women and children</i>
<i>Guaimai nanren</i> , 拐卖男人	<i>lit. kidnapping and selling men</i>
<i>Guaimai renkou</i> , 拐卖人口	<i>lit. kidnapping and selling people</i>
<i>Pian</i> , 骗	<i>to cheat, to swindle</i>
<i>Qiangpo laodong</i> , 强迫劳动	<i>forced labor</i>
<i>Rengfanzi</i> , 人贩子	<i>lit. a dealer in people (e.g. a trafficker)</i>
<i>Shetou</i> , 蛇头	<i>lit. a snakehead (e.g. a middleman)</i>
<i>Shouhaizhe</i> , 受害者	<i>lit. someone who has been harmed, e.g. a victim</i>
<i>Shouhairenyuan</i> , 受害人员	<i>lit. an individual who has been harmed, e.g. a victim</i>
<i>Shouhaizhe/xingcunzhe</i> , 受害者/幸存者	<i>a victim/survivor</i>
<i>Xianzhi ziyou</i> , 限制自由	<i>to restrict personal freedom</i>

## Appendix III

### Explanation of Terminology Used in the Theory Section

***The Ideal Victim:*** the concept was dubbed by Christie (in Fattah, 1986) to indicate *a person or a category of individuals who-when hit by crime-most readily are given the complete and legitimate status of being a victim* (ibid.). Christie exemplified this concept taking as example the little old lady on her way home in the middle of the day after having cared for her sick sister. If she is hit on the head by a big man who thereafter grabs her bag and uses the money for liquor or drugs, she is considered to be the ideal victim e.g. is she is weak, old, on her way carrying out a respectable project (caring for her sister) and she was on the street during daytime while the offender was big, bad and was unknown to her (e.g. the ideal criminal). What Christie meant is in sum an oversimplified picture of both victim and offender. The two categories of ideal victim and ideal offender are uni-dimensional characters and everyone who falls behind these “types” are not immediately considered to be neither victim nor offender. But as Christie stresses, we live in a complex reality where most offenders and most victims are non-ideal. Women kidnapped and exploited in the sex sector are “ideal victims” while men exploited by traffickers are an example of non-ideal victims. This doesn’t mean that women and girls are not exploited by traffickers. The argument is that there are other victims that are “non-ideal” and that are therefore invisible, e.g. almost ignored by researchers and often excluded by anti-trafficking policies and laws.

***The Victimological Other:*** Walklate (2005; 2007) stresses the fact that the debate around victim and offender has for a long time been characterized by bounded assumptions about who can and who cannot be a criminal and about who can and who cannot be a victim. These bounded assumptions divide the world into male/female, normal/abnormal, rational/irrational, culture/nature, etc. Such typisation has led to ideas that crime is predominantly a problem associated with being male, while the status as victim is associated with being female, old, sick and so on. This doesn’t mean that the latter cannot be victims. What is advocated by Walklate is that there is a category-the *Victimological Other*-that needs more attention. *The Victimological Other* is a victim/survivor that “we don’t see”, a person who has often been excluded by the academic debate and by policies and who needs to be further analyzed not as category or as type but as a multi-dimensional character. In this thesis, boys, men and women not exploited in the sex sector exemplify some of *the Victimological Others*.

***The Criminological Other.*** Empirical evidence demonstrates that women can also be criminals (Walklate, 2004). Despite this, males are often characterized as criminals while women are almost always seen as victims/survivors. We need to move away from these images of “typical victims” and “typical offenders”. Women can be criminals as well as men and the role that women play in crime needs to be further investigated. In this thesis, women have been called the *Criminological Other* in order to stress that while the debate has widely ignored them, there is evidence that they take an active role as intermediaries and as traffickers.

Gender is only one of the factors that contribute to create “victim” and “offender” typologies. Other aspects that need to be considered (and that haven’t been analyzed in this thesis due to space limitations) are-among others-age, provenience and class.

For further reading about these concepts, please see Christie, N. (1986) ‘The Ideal Victim?’, In E.A. Fattah (ed.), *From Crime Policy to Victim Policy*. Walklate, Sandra (2003) *Can there be a feminist Victimology?* In Davies, P., Francis, P. and Jupp, V. (eds) *Victimisation: Theory, Research and Policy*. London: Macmillan; Walklate, S. (2004) *Gender, Crime and Criminal Justice*, Cullompton: Willan Publishing; Walklate, S. (2007) *Imagining The Victim of Crime*. London: MacGraw-Hill; Walklate, S. (2005) *Criminology: the basics*. London: Routledge.