

# 综合建议

## 对中国制定反家暴立法的综合建议

- 1. 在立法中明确规定预防和制止家庭暴力是国家的责任。**国家有责任和义务制定相关法律、完善防治家庭暴力的各项制度和措施，禁止任何形式的家庭暴力，保护家庭暴力的受害人，确保反家庭暴力法的执行。
- 2. 应当进一步明确家庭暴力的概念，使家庭暴力的概念更具有包容性。**适当扩大家庭成员的范围，除婚姻法规定的家庭成员，即除夫妻、父母子女（包括继父母与继子女、养父母与养子女）、祖（外）父母孙（外）子女、兄弟姐妹以及儿童的其他法定监护人外，应适当扩大家庭暴力的主体，包括恋爱关系、同居关系、前配偶及因日常照顾、护理等关系而共同生活者。
  - 家庭暴力行为应包括实施或威胁实施身体暴力、性暴力、精神暴力、经济控制、忽视儿童以及使儿童接触家庭暴力等，实施暴力行为的频率、严重程度或意图都不应作为家庭暴力定义的前提条件。
- 3. 建立多部门合作的反家庭暴力干预机制。**有必要协调相关部门，及时、有效地识别和保护家庭暴力受害人，并为其提供援助。干预机制中协调合作的机构应包括：公安、法院、检察院、教育部门、卫生系统、民政部门、社会服务机构、妇联和其他相关部门。
- 4. 明确资金预算，为反家庭暴力法的实施提供所有必要的资源，**包括为所有应对家庭暴力的部门提供物质支持。
- 5. 建立一个可靠、保密性好，广泛宣传且易于使用的家庭暴力举报系统，**明确规定报告的流程。警察、法官、检察官、教育工作者、社会工作者以及医疗人员有义务报告虐待妇女、儿童、老年人和残疾人的事件，将家暴受害人与急救、社会服务、社会救助以及康复机构联系起来。

- 6. 进行社会性别与反家暴培训教育。**通过媒体及其各级各类学校进行广泛地社会性别与反家暴的宣传教育，提高公众的社会性别观念、自我保护意识、非暴力的教育理念与反家暴意识。特别要为执法人员提供专门的社会性别、反家暴意识与法律的培训，确保执法者具有社会性别观念与反家暴的敏感性。
- 7. 建立人身安全保护令制度。**在保护令中规定申请人的范围、申请的条件及程序，保护令的种类及其效力，核发、执行保护令的机构以及违反保护令后所应承担的法律责任。
- 8. 保护家庭暴力受害人的住房权利。**发生家庭暴力后，无论受害人是否享有房屋的所有权，均有权选择继续留在原住宅中，或者选择离开。选择离开的家庭暴力受害人享有优先使用公共住房、紧急和临时住房的权利。
- 9. 保障儿童安全。**在监护人虐待儿童的情况下，应临时转移或剥夺其监护权。相关政府机构应指定另一位监护人在规定的时间内对儿童履行监护义务，只有在确保儿童不再受到暴力伤害的情况下，才能够让他/她回家。相关机构应提供儿童家庭监护情况调查评估、监护教育指导、替代照料养育、帮扶转介等针对受暴儿童的服务。
- 10. 进一步完善对家庭暴力幸存者的专业服务。**建立由政府出资的庇护服务设施，或政府主导，社会组织设立的庇护，鼓励和支持社会组织和个人兴建社区家庭暴力庇护服务，为受害人提供临时性或较长时间的庇护，包括提供无偿食宿、医疗帮助、法律援助、心理辅导、咨询服务和其他基于受害人个人需要的康复服务等。
- 11. 完善证据规则，**减轻受害人的举证责任，解决家庭暴力受害人举证困难的问题。
- 12. 建立对施暴人的心理、精神、戒瘾等辅导与治疗机制，**帮助施暴人尽快认识到实施家庭暴力的危害及其恶果，戒除施暴行为。为施暴人提供康复服务，有利于减少家庭暴力事件的发生。
- 13. 完善对施暴人的惩戒措施和追究法律责任制度。**国家应当制定法律法规，准许拘捕家庭暴力现行犯和嫌疑人。对施暴人的经济处罚应包括令其赔偿受害人因家庭暴力而产生的所有费用，包括但不限于医疗费、因失业而损失的收入以及住宿费等其他费用。此外，虐待罪应统一适用公诉程序，其中有轻伤以上犯罪事实的，按照故意伤害罪和虐待罪数罪并罚。

# Overall Suggestions

## for Chinese Family Violence Law

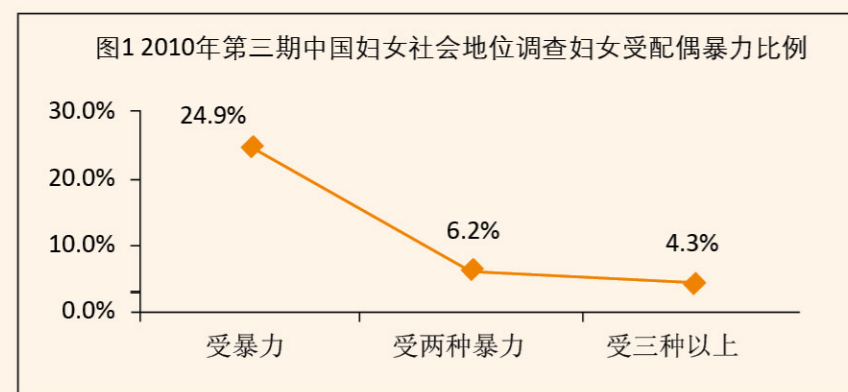
1. **Clearly stipulate that the state is responsible for the prevention and elimination of family violence.** The state has the responsibility and obligation to adopt laws, rules and measures to prevent family violence, forbid all forms of family violence, protect victims of family violence and ensure the implementation of the national Family Violence Law.
2. **Further define family violence and make it more inclusive.** The definition of family violence should include all family members – spouses, parents, step-parents, children, grandparents, grandchildren, brothers and sisters as well as other legal guardians of children. Intimate relationships should be included in the definition as well, specifying that family violence may occur between individuals who are married, cohabitating, cohabitating with children, dating, or in same-gender relationships. An additional category for inclusion in the family violence definition is caregivers. A caregiver may be a family member or a non-family member.
  - Behaviors and actions that constitute family violence in the law should consist of any threats of or actual physical abuse, sexual abuse, emotional abuse, economic abuse, neglect as well as the exposure of children to family violence. The frequency, severity or intension of family violence behavior shall not become preconditions for defining family violence.
3. **Establish an intervention system to eliminate family violence through cooperation among different institutions.** Coordination among various institutions is imperative to effectively identify, protect, and provide support to victims of family violence in a timely manner. Institutions that coordinate within the family violence intervention system should include: public security institutions, the court system, the education system, the health care system, civil affairs system, social service organizations, the women's federation, and other relevant agencies and communities throughout the country.
4. **Designate funding in the budget and provide all the necessary resources specifically for implementation of the law prohibiting family violence,** including physical and material resources for social and legal services to prevent and eliminate family violence.
5. **Develop a reliable and secure reporting system for family violence with clear reporting procedures.** For an effective reporting system, it is vital that law enforcement personnel, judges, prosecutors, educators, social workers and health care professionals become mandatory reporters of violence against women, children, the elderly, and persons with disabilities. The reporting system should be well advertised and easily accessed by victims of family violence. In addition, the reporting system should connect victims with emergency services, social services, social relief and rehabilitation services.
6. **Provide training and education on gender equality and measures against family violence** through the media and the school system to increase public awareness. Special training for law enforcement officers on gender equality and measures against family violence is needed to increase their knowledge and sensitivity to these issues.
7. **Establish a civil protection order process.** A civil protection order process should consist of institutions that are responsible for approving, issuing, implementing, and enforcing said orders.
8. **Protect the housing right of victims of family violence.** After family violence occurs, the victim should have the right to remain in the home, regardless of home ownership status. If the victim chooses to leave the home, priority should be given for placement in public, emergency, or temporary housing.
9. **Ensure safety of children.** In case of child survivors of violence, a guardian who abuses a child should be suspended or deprived of his/her guardianship. The responsible government agency should designate an alternate guardian to care for the child for a designated period of time and the child should be returned home only when the agency can ensure the safety of the child. Safety survey, guardian guide, alternative care and referral services have to be provided to the child.
10. **Improve and further develop specialized services for survivors of family violence.** Establish a shelter system that is government funded and supervised, but operated by social service organizations. Encourage and support social service organizations and individuals to build shelters for family violence victims and provide temporary or long time support that includes free of charge meals and accommodations, medical treatment, legal assistance, counseling and other rehabilitative services based on the individual needs of survivors.
11. **Improve the standard of proof.** Re-evaluate the current level of evidence required by victims of family violence in order to bring charges against perpetrators.
12. **Establish a system to provide psychological counseling and addiction treatment to perpetrators.** To eliminate family violence, the attitudes and behaviors of perpetrators must change. A system that provides rehabilitative services to perpetrators will assist in reducing family violence.
13. **Improve the disciplinary measures and legal liability of perpetrators.** The government should create laws and policies that allow for the arrest of abusers as well as individuals suspected of family violence. Economic punishment should be introduced that includes but is not limited to – the perpetrator reimbursing the victim for any costs incurred as a result of violence such as medical bills, lost wages if a job is lost because of the violence, and living expenses. Further, prosecution of perpetrators should increase under the provisions of combined punishment and the crime of intentional injury and abuse.

## 一、针对妇女的家庭暴力及防治事实描述

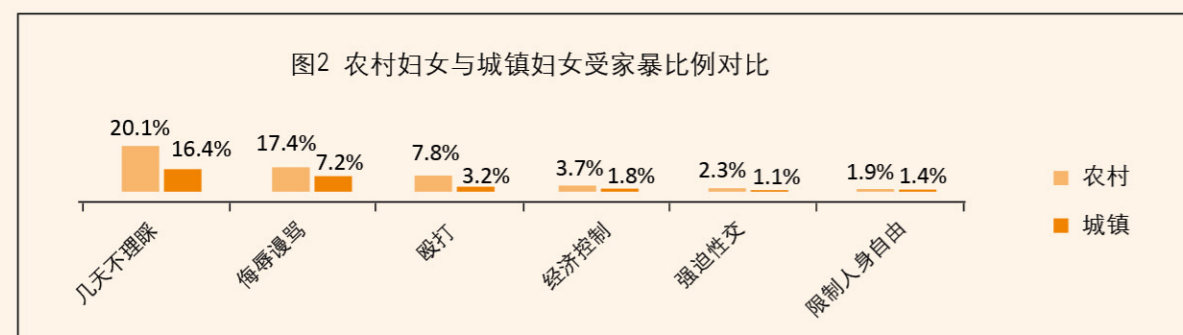
### 1. 一些针对妇女的家庭暴力调研数据

1995年在北京召开的第四届世界妇女大会将反家庭暴力的理念引入中国，启动了中国反家暴法的研究和立法工作。在中国，近十年来，针对妇女的家庭暴力案件经常见诸媒体，渐获社会各界的广泛关注。中国政府各部门、各省市也非常关注和重视这一问题，并就此开展了系列调研。

调研表明，中国针对妇女的家庭暴力情况严重。2000年中国法学会反家暴网络从浙江、湖南、甘肃收回的3543份抽样问卷结果表明，34.7%的女性表示夫妻曾动手打架。<sup>1</sup>2010年国家统计局与全国妇联所做的第三期中国妇女社会地位调查考察了女性在半年以及整个婚姻生活中曾遭受配偶限制人身自由、殴打、侮辱谩骂、持续不理睬、强迫性生活、经济控制等不同形式家庭暴力的状况，调研结果详见图1。<sup>2</sup>



2010年第三期中国妇女社会地位调查发现，生活在农村的女性遭受各种形式家庭暴力的情况比生活在城镇的女性更为严重，见图2。<sup>3</sup>



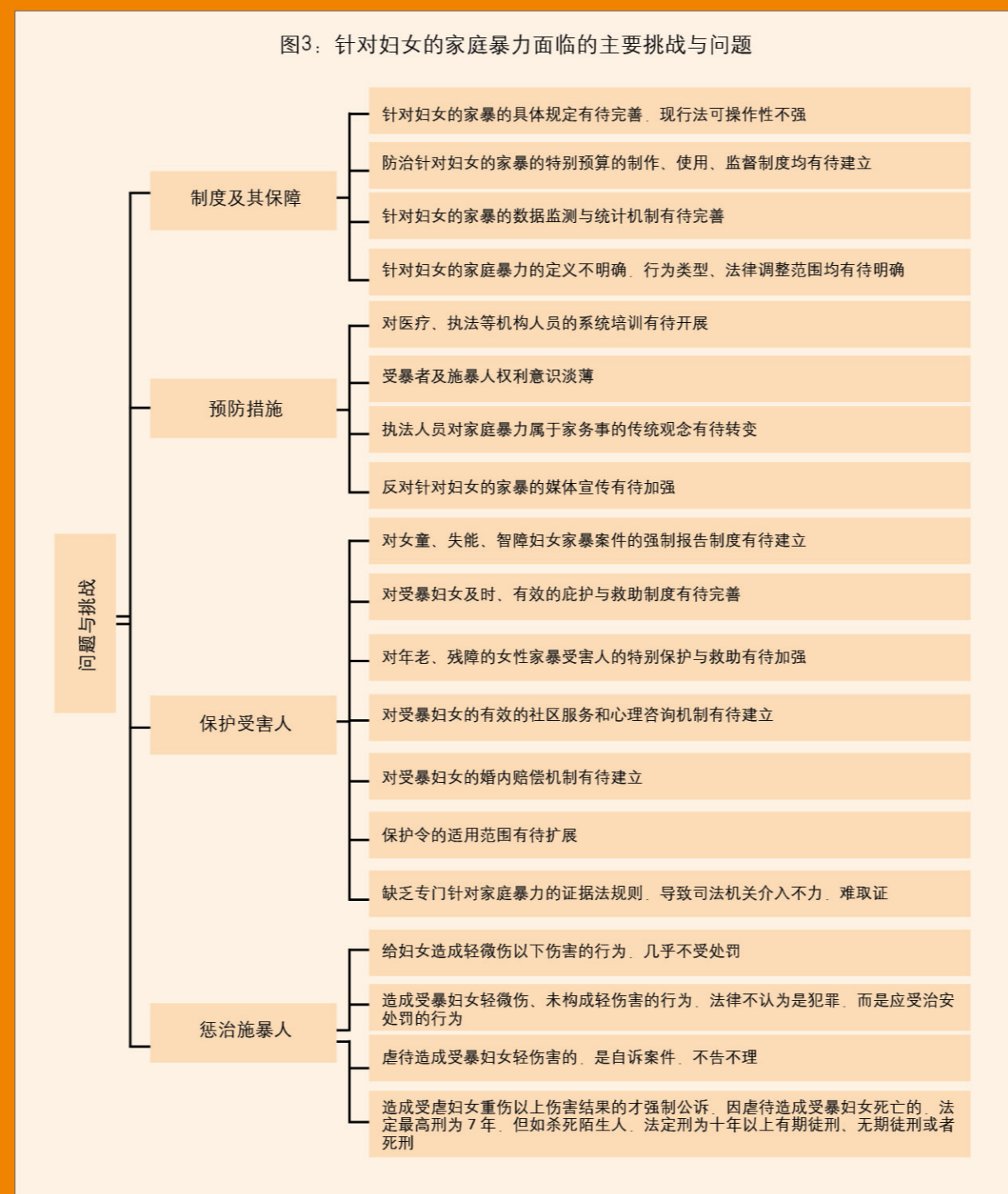
<sup>1</sup> 参见陈明侠、夏吟兰、李明舜、薛宁兰主编，《家庭暴力防治法基础性建构研究》，中国社会科学出版社2005年版，第240页。

<sup>2</sup> 参见宋秀岩，《新时期中国妇女社会地位调查研究》，中国妇女出版社2013年版，第489页。

<sup>3</sup> 参见宋秀岩，《新时期中国妇女社会地位调查研究》，中国妇女出版社2013年版，第495页。

## 2. 防治针对妇女的家庭暴力所面临的问题与挑战

男尊女卑和夫权思想以及不完备的法律规定是现实中国防治针对妇女的家庭暴力所面临的重大问题，针对妇女的家庭暴力的防治在应对、预防和保护受害人、惩罚施暴人等方面存在诸多挑战，如下图3所示。



## 3. 外国法的相关规定综述

根据反家暴国际经验交流会的交流成果，可以将各国反家暴法的主要规定归纳如下。

利亚等国均设立了相应机构，主管预防和制止家庭暴力的相关事宜；西班牙设立的反对基于性别的暴力政府办公室，以及针对妇女的暴力国家观察中心；澳大利亚设立的减少对妇女和儿童暴力国家委员会。

3.2对预防和制止家庭暴力明确规定财政预算，或专门拨款，确保反家暴法律的实施。如美国国会分别于1994年、2000年、2005年、2013年通过了专项拨款授权法案。

3.3建立多机构合作机制，全方位防治家庭暴力。各国通过设立咨询热线、提供专项法律服务、设立受害人庇护机构和经济支持措施等方式，全方位地防治家庭暴力，为受害者提供支持与帮助。许多国家还建立了家庭法院或家庭法庭，由有经验的法官从事家庭暴力案件的审理，确保公正及时地审理家庭暴力案件，使受害者能够及时得到法律的救助。如奥地利的《防止家庭暴力联合法案》。

3.4进行广泛的反家暴培训教育，提高公众的反家暴意识，确保执法者具有反家暴的敏感性。培训教育包括学校对学生的教育，国家或机构对教师、医护人员、警察、法官及其相关执法者的培训，以及各种媒体、公益广告等对公众的教育。如韩国的《家庭暴力预防与受害人保护法》即有明确规定。

3.5建立预防和制止家庭暴力的具体制度及救助措施，及时干预救助受害人并惩罚施暴者。各国反家暴的救助措施和法律手段不断发展，包括颁布保护令、禁止令、赔偿令等，以及对施暴者强制逮捕并追究刑事责任。对于违反保护令或禁令者可以予以罚款、拘留或判处徒刑，确保干预及救助措施的执行。芬兰《保护令法案》规定受害人只要收集到一个证据，即使是间接证据，也可提起保护令诉讼。英国《1996年家庭法》规定将违反禁止骚扰令视为刑事犯罪，经公诉程序定罪的可判处不超过五年的有期徒刑或罚金或两项并处；经简易程序定罪的可判处不超过十二个月的有期徒刑或罚金或两项并处。南非《反家庭暴力法》对执行保护令规定了特别措施，以确保受暴者不再受到进一步的伤害，包括必须有一名治安官员陪同原告到指定地点协助安排拿取个人财物，法院可以发出指令确保原告的实际地址不被披露，法庭可命令被告人支付应急现金救济，以满足原告及子女的生活需要。

3.6在反家暴法或者特别法中规定对妇女的特殊保护，后者如日本制定的《防止虐待配偶和保护受害人法》，认为在夫妻间丈夫施暴案件中，需要考虑潜在严重、持续的暴力及虐待的问题，因此需要为妇女这一特殊群体提供特殊保护，特别法比统一法更有效。

## 4. 对中国反家暴立法保护女性受害者的建议

4.1女性是家庭暴力的主要受害人，除婚姻关系外，女性在同居关系、恋爱关系、未婚但有共同子女的关系、以及前配偶关系中均易遭受各种家庭暴力。而女童、老年女性、残障女性更是家庭暴力受害人中的弱势群体。

4.2应当进一步明确家庭暴力的概念，使家庭暴力的概念更具有包容性。适当扩大家庭成员的范围，除婚姻法规定的家庭成员，即除夫妻、父母子女（包括继父母与继子女、养父母与养子女）、祖（外）父母、祖（外）孙子女、兄弟姐妹以及儿童的其他法定监护人外，应当适当扩大家庭暴力的主体，包括恋爱关系、同居关系、前配偶及因日常照顾、护理等关系而共同生活者。

4.3在反家暴法中应对禁止针对妇女的家庭暴力做出原则性的规定，并且在相关的专门法律法规中针对妇女群体做出专门的保障性和救助性的规定。

4.4将社会性别与反家暴教育纳入学校教育、教学的内容。对不同种类、不同层级的学生进行持续不断地社会性别与反家庭暴力的宣传教育。

4.5通过媒体进行广泛地社会性别与反家暴的宣传教育，提高公众的社会性别观念与反家暴意识。特别要对警察、法官、检察官、医生、护士、教师等相关专业人员进行社会性别与反家暴意识及法律的培训，确保执法者和专业人员具有社会性别观念与反家暴的敏感性。

4.6设立对受暴妇女及时、有效的庇护救助制度。为受暴妇女提供临时性或较长时间的庇护，包括提供食宿、医疗帮助、法律援助、心理辅导等救助措施。

4.7设立社区家庭暴力救助中心或咨询中心，或者在妇女之家为受暴妇女提供投诉、求助、心理辅导、法律咨询、转介等各种服务，帮助受暴妇女尽快走出家暴困境。

4.8公安机关应当对施暴人进行强制矫治，并对其处以强制性经济处罚，罚金作为支付受暴妇女的医疗费用及其与子女共同生活的费用。

4.9对因长期遭受家庭暴力而以暴制暴的女性，在定罪量刑时应当充分考虑其曾经遭受家暴的事实和证据，作为从轻、减轻或免除刑罚的考量因素。

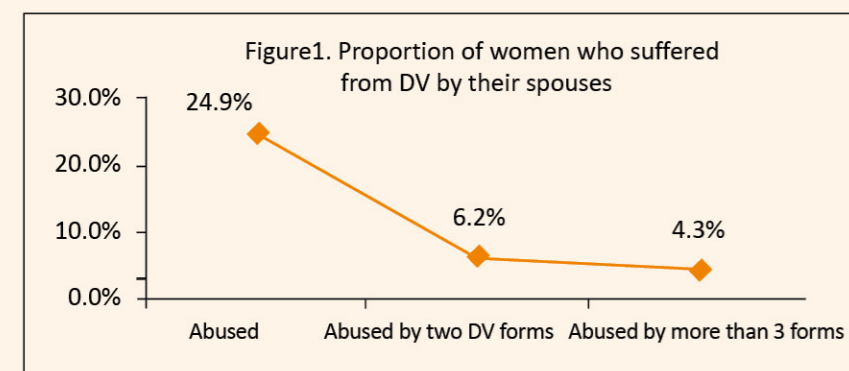
# I. Factsheet on Domestic Violence (DV)

## 1. Data on Family Violence against Women, namely DV in China

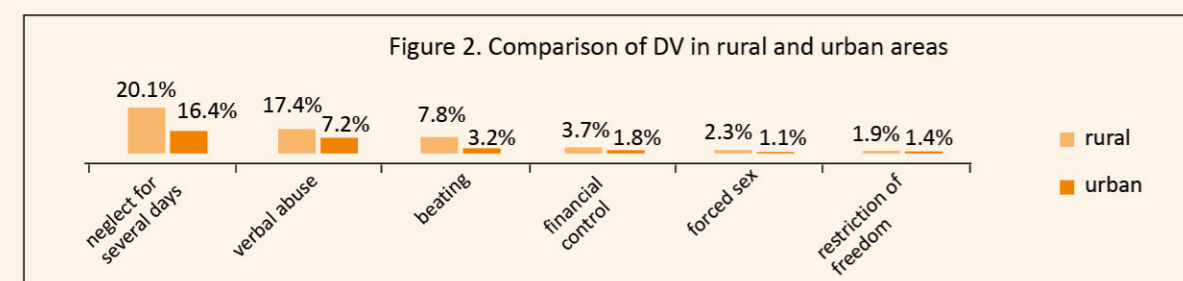
In 1995, the Fourth World Conference on Women was held in Beijing and introduced the concept of Domestic Violence (DV) to China. This event prompted the first Chinese DV study and Family Violence legislation. Over the past decade, the issue of DV has received widespread attention, specifically with the media reporting more on DV cases. Today, Chinese government departments, provinces, and municipalities consider DV an important issue that requires additional attention. Since 1995, the Chinese government and other institutions have conducted several surveys to learn more about the prevalence of violence against women in China.

Multiple studies on DV provide evidence of the severity of the

issue for Chinese women. Anti-DV Network by China Law Society conducted a survey with 3543 respondents from Zhejiang, Hunan, and Gansu Provinces. Results showed that 34.7% of women experienced physically violence by their husbands and family members<sup>1</sup>. The 2010 Third Wave Survey on the Social Status of Women in China conducted by the National Bureau of Statistics and All China Women's Federation demonstrated that 24.9% of women encountered violence in different forms such as restrictions on personal freedom, physical and verbal abuse, forced sex, long-time neglect, financial control, and other types of DV at some point in their marriage (see Figure 1)<sup>2</sup>



Findings from the 2010 Third Wave Survey on the Social Status of Women suggested that DV is more severe for women living in rural areas compared to those living in cities and towns (see Figure 2)<sup>3</sup>.



## 2. Issues and Challenges Concerning DV

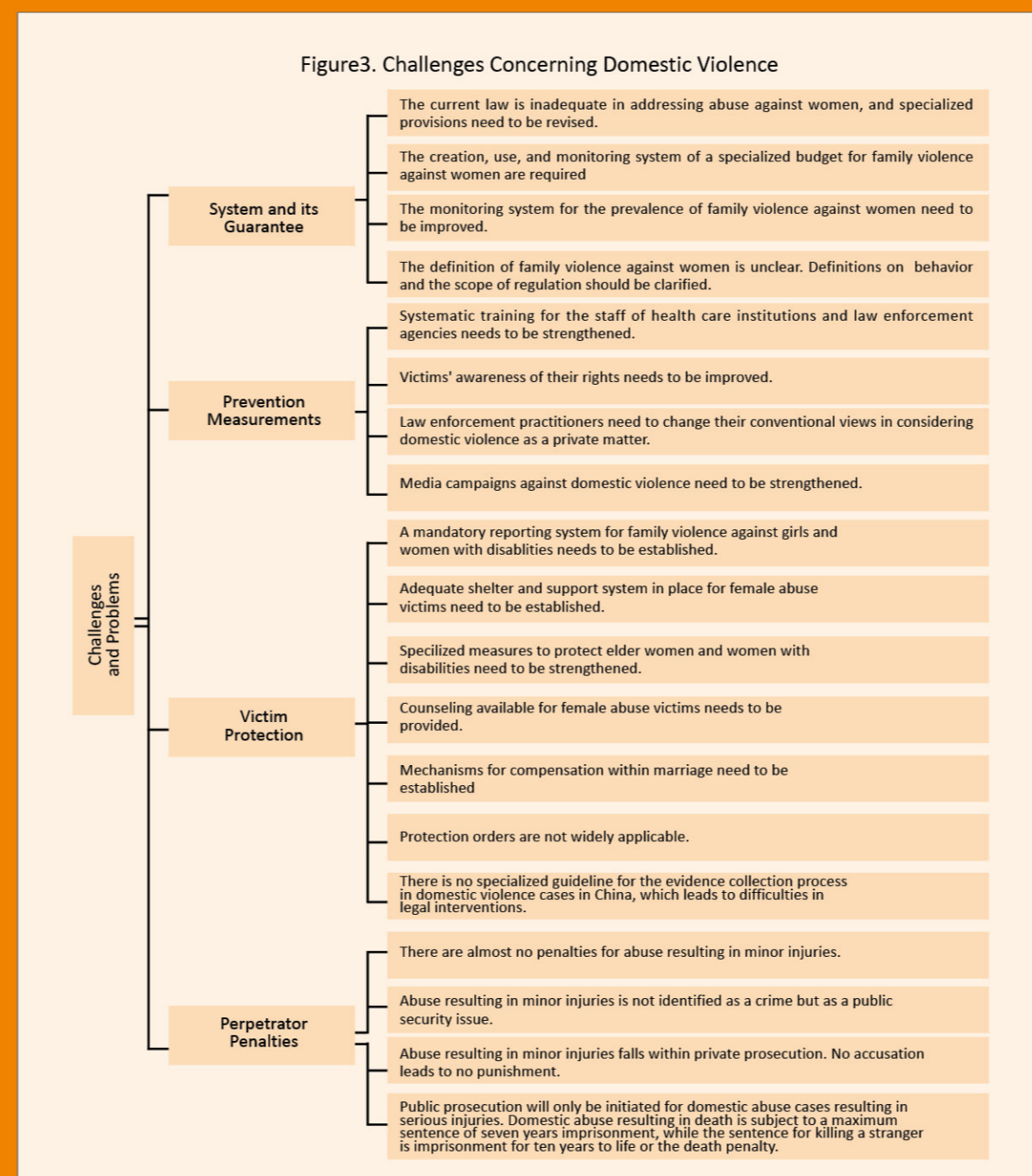
China faces difficulty in its efforts to prevent and respond to DV. Challenges include but are not limited to: 1) the traditional culture that perpetuates the concept of men being superior to women; 2) the belief that husbands have supreme authority

over the wife; and 3) the limitations of current laws. Figure 3 shows China's challenges in the areas of prevention, response, protection and punishment of DV.

1 Chen Minglan, Xia Yinlan, Li Mingshun, Xue Ninglan, Research on Legislation Foundation for Family Violence Prevention, China Social Sciences Press (2005), page 240

2 Song Xiuyan, Investigation of Chinese Women's Social Status in New Era, China Women Publishing House (2013), page 489

3 Song Xiuyan, Investigation of Chinese Women's Social Status in New Era, China Women Publishing House (2013), page 495



## 3. Foreign Experiences of Domestic Violence

3.1 China's national and local governments should establish departments that are responsible for the coordination, supervision, and advocacy of DV programs. Countries like Korea, Spain, the United States, and Australia already have relevant departments or institutions that focus on prevention and respond to DV. For example, Spain established an anti-gender based violence office and a national observation center that specializes in violence against women. Australia's National Council, moreover, created a national plan to reduce violence against women and children.

3.2 The state should develop a financial budget and allocate funds specific to the Family Violence Law. Funding is necessary for effective implementation of the law to prevent and stop DV. The United States is an example of a country that allocates funds in 1994, 2000, 2005 and 2013 towards the prevention and protection of women against violence through special appropriation bills.

3.3 The state should consider developing a multi-sectoral coordination mechanism to prevent and stop DV. Specialized services to protect DV victims might include a counseling hotline, legal services, shelters for victims of domestic

violence, and financial support. In many countries the establishment of family courts allows for experienced judges to handle DV cases, helping to ensure timely justice and redress for victims. For example, the Austrian Protection against Violence Act allowed for the formation of family courts to better manage its DV cases.

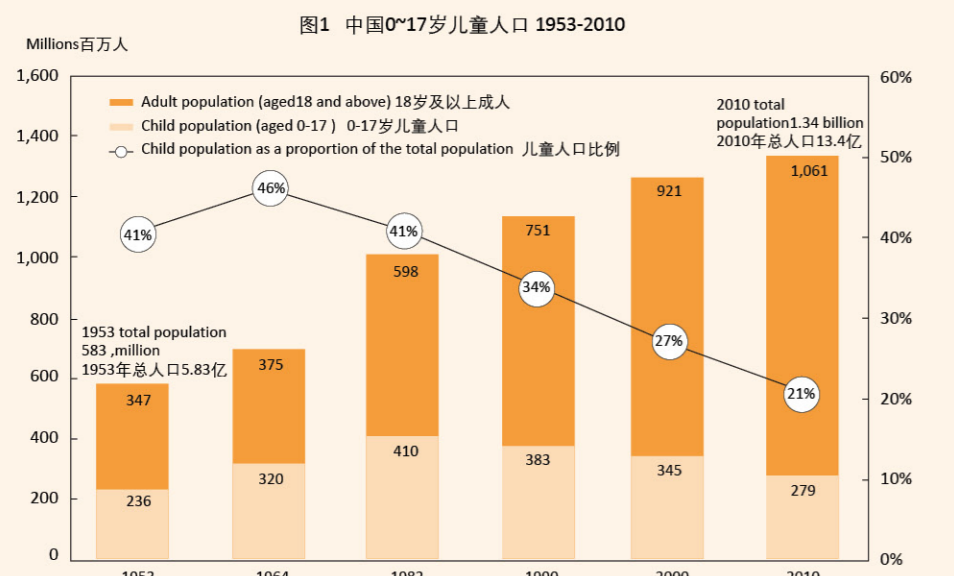
- 3.4 The state should raise public awareness of DV in terms of prevention and protection. Public officials who are responsible for assisting victims of violence, such as law enforcement and social service personnel, need comprehensive education and training to increase their knowledge of and sensitivity in handling DV cases. Schools are another area of focus for raising public awareness. School-based anti-DV curricula for students and teachers would assist with prevention and protection efforts. Education and training is essential for medical personnel too. Furthermore, the state should use multiple media platforms and public interest advertisement to educate the public about DV. Korea's Prevention of DV and Protection of the Victim Law includes all of the above-mentioned training and education processes.
- 3.5 The state should set up specific institutions to provide timely protection measures for victims, and punish perpetrators. Rescue measures for victims of violence are common practice in many countries. These measures include: protection orders, restraining orders, compensation orders, and mandatory arrest and prosecution of the perpetrator. To ensure enforcement of protection measures such as protection orders and restraining orders, many governments impose fines, detention, or imprisonment of perpetrators for violation of said orders. Various countries have mechanisms in place to protect victims of violence. Under the Finnish Protection Order, the victim has the right to file a lawsuit based on one piece of evidence, including indirect evidence. According to the British Family Law Act of 1996, violation against a non-molestation order is defined as a criminal offense, which could lead to a maximum of 5 years imprisonment, a fine, or both by public prosecution, or a maximum of 1 year imprisonment, a fine, or both by summary procedure. Finally, the Domestic Violence Act in South Africa requires specific actions to protect victims from further injury: the victim must be accompanied by one security official when retrieving his/her personal property; the court has the right to withhold the address of the plaintiff; and the court has the right to request a contingency fund or reasonable payment from the defendant to support the plaintiff and his/her children's living expenses.
- 3.6 China's Family Violence Law should contain special protection measures or a specialized law to address the needs of DV victims. For example, Japan developed the Law for the Prevention of Spousal Violence and Protection of Victims, which stipulates that severe and continuous violence between spouses should be fully considered in DV cases. A specialized law is highly recommended to protect women because it would attend to the unique circumstances of women victims.

## 4. Suggestions for China's Family Violence Law

- 4.1 Research confirms that women are the primary DV victims. Women report various types of DV regardless of living arrangements, meaning that women suffer from violence in: marital relationships, cohabitation, stable relationships, unmarried but have a child, and in ex-spouse relationships. Violence against women is an issue for female children, elderly females and women with disabilities. Each of these groups of women is vulnerable to family violence.
- 4.2 The definition of family violence should be clarified to provide a more inclusive and comprehensive concept. A more inclusive family violence definition should consist of parents and children; grandparents and grandchildren, brothers and sisters, ex-spouses, intimate partners who are not married, sexual partners, and people who raise children together or share the same household whether or not they are married. Under China's Marriage Law, the definition is limited to husband and wife.
- 4.3 China's Family Violence Law should prohibit violence against women. Specialized laws and regulations should address specialized provisions to protect and rescue women who are DV victims.
- 4.4 To increase public awareness of youth, knowledge on gender and anti-DV should be taught in schools and discussed in textbooks. Students require continuing education on this topic to help change attitudes and behaviors towards violence against women.
- 4.5 To increase general public awareness, the government should use social media to educate the citizens and to help change attitudes and behaviors towards violence against women. Trainings on gender and the Family Violence Law are essential for police, justice, prosecutor, doctors, nurses, teachers and other relevant professionals to increase awareness and sensitivity of DV victims and to provide necessary protection and services.
- 4.6 The state should develop shelters and relief services for DV victims. Shelters should provide temporary or long-term service, including accommodations. Relief services offered by shelters should consist of health care, legal aid, and psychological counseling. Shelters along with relief services should provide a comprehensive level of care that allows for more successful recovery efforts for victims.
- 4.7 The state and local governments should establish community relief centers or counseling centers when shelters are unable to provide service. Services offered by counseling centers should include a system for reporting violence, psychological counseling, legal assistance, and community referrals, to protect and treat DV victims.
- 4.8 In a DV case, the perpetrator should receive mandatory correction by the public security bureau. The perpetrator should receive a fine and made responsible for the victim's medical costs and the living expenses.
- 4.9 For female perpetrators who are victims of DV and resort to violence, law enforcement and the courts should take into consideration their DV history. In cases where a woman protected herself against violence through violent means, law enforcement and the courts should weigh the evidence to determine whether charges should be dismissed.

## 二、 针对儿童的家庭暴力概要

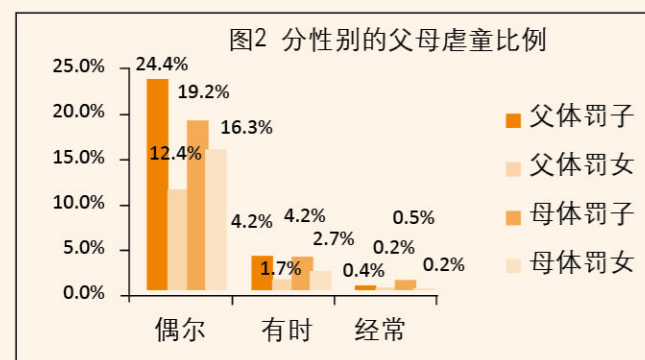
在过去的60年间,中国总人口的增长速度远超过儿童人口的增长速度。中国儿童人口自1980年代以来逐年下降,这一趋势在过去的十年间更为明显。根据第



Sources: National Bureau of Statistics, 1953, 1964, 1982, 1990, 2000 and 2010 Population Censuses

### 1. 关于针对儿童的家庭暴力的一些数据

2010年国家统计局和全国妇联开展的第三期中国妇女社会地位调查显示,中国家庭虐童的实际状况比较严重,详见图<sup>1</sup>。



2005年北京大学受联合国儿童基金会资助,针对青年开展的一项关于儿童期暴力回顾性调查发现,只有20.1%的男童与29.5%的女童在16岁之前未受任何暴力。(见图表3)这项调查发现不同背景包括城乡、独生或者多子女家庭等差别,并不明显影响暴力的发生率。父母初中毕业还是高中毕业也跟暴力发生率无明显关联。<sup>2</sup>

2004年对河北省528名在校大、中专学生的儿童期家暴回顾性问卷调查,发现36.2%的学生报告16岁前曾受到来自父母的体罚及情感虐待。<sup>3</sup> 2005年在针对沈阳的185名小学生父母的调查中发现:(1)父母亲在童年曾被家长或者教师当众羞辱的,对子女进行情感虐待行为的相对无此经历的家长高2.9倍;(2)父母亲在童年曾被家长身体虐待的,对子女实施身体虐待的相对高5.32倍。<sup>4</sup>

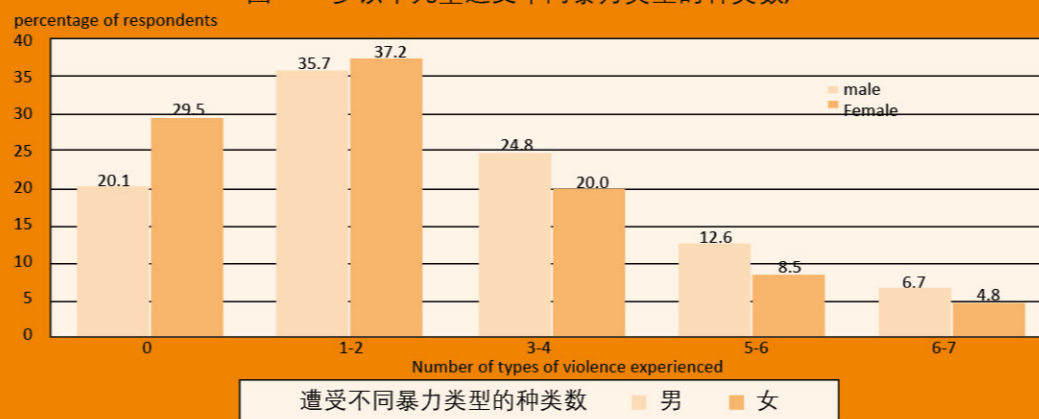
1 参见宋秀岩:《新时期中国妇女社会地位调查研究》,中国妇女出版社2013年版,第776页。

2 调研于2005年3、4月间开展,广东、浙江、湖北、山西、黑龙江、北京的4327名大中专生作为调查对象参与匿名问卷调查,共回收3577份完整问卷,占发放问卷的82.7%,其中男生1643名(占45.9%),女生1934名(占54.1%)。调查区分了17种暴力类型,其中有4种身体暴力,7种精神暴力以及6种性暴力。

3 陈晶琦等:《大中专学生童年期被父母体罚及情感虐待经历的回顾性调查》,载《中国心理医学杂志》2008年第2期。

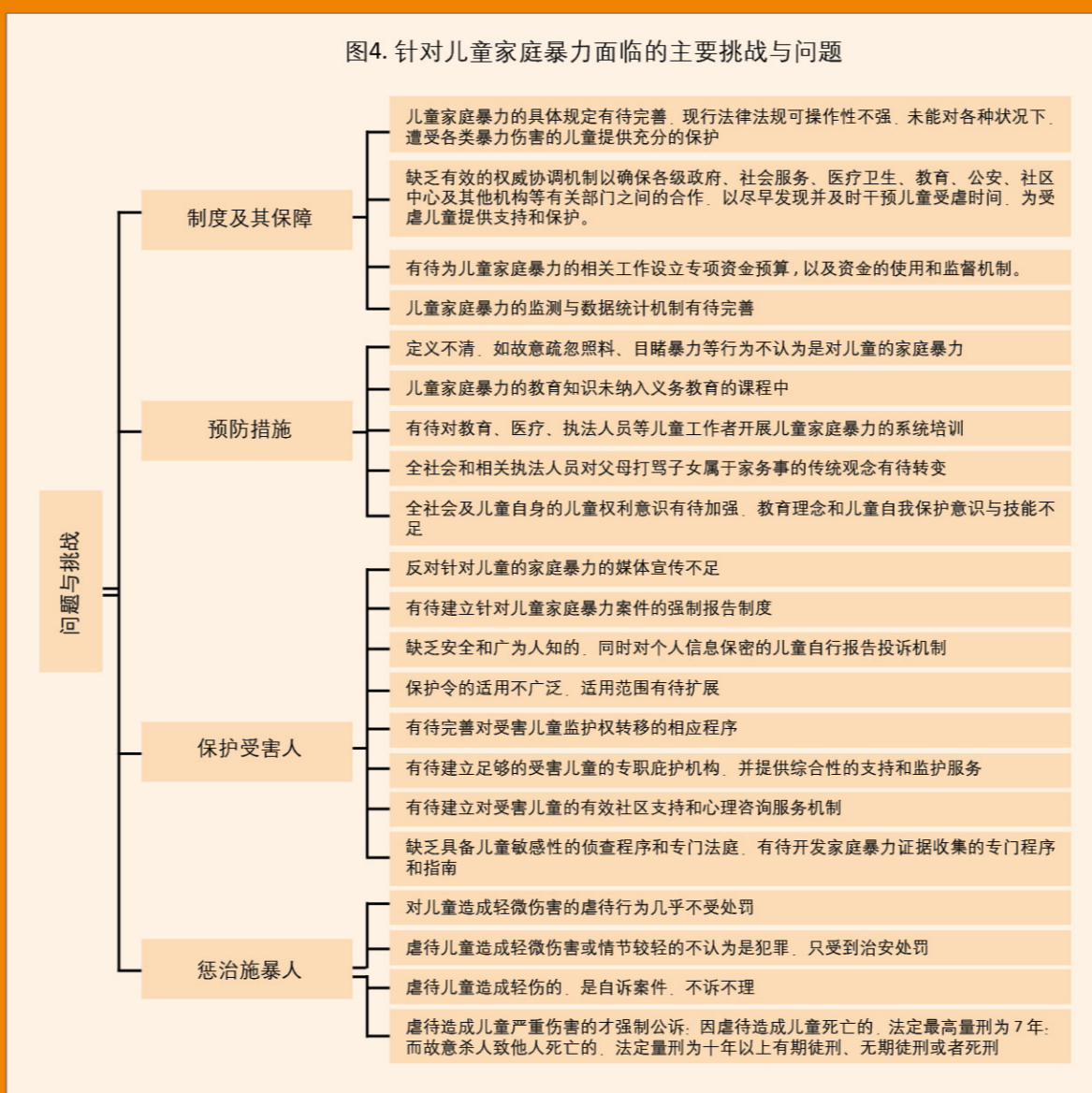
4 参见陈晶琦:《小学生父母躯体虐待状况及其影响因素分析》,载《中国学校卫生》2006年第9期。

图3 16岁以下儿童遭受不同暴力类型的种类数, 2005



### 2. 防治针对儿童的家庭暴力所面临的问题与挑战

防治针对儿童的家暴在如何预防家暴的发生、如何保护受暴儿童以及如何应对包括惩罚施暴人等方面均存在挑战,如下图4所示。



### 3. 外国法的相关规定综述

3.1 几位专家建议在全国性反家暴法中规定对儿童的特殊保护, 比如澳大利亚的研究表明有暴力家庭比无暴力的家庭生养孩子的可能性更大, 有暴力家庭有5岁及以下儿童的比例显著高于无暴力家庭。5有的国家(如韩国), 在家庭暴力法中有专门关于儿童的规定, 而其他国家(如日本), 有保护儿童的专门法律。在英国, 在涉及家庭暴力的案件中也有对儿童的保护。

3.2 几位专家建议全国性家庭暴力法对儿童家暴的定义应当包括置儿童于家庭暴力之下。比如, 澳大利亚2011年家庭法修正关于儿童家庭暴力和儿童虐待的定义, 包含了儿童暴露于家庭暴力, 将其定义为: “如果儿童看到或者听到家庭暴力或者曾受家庭暴力的影响, 那么就暴露于家庭暴力。”

3.3 规定强制报告义务。如美国等国规定, 在发现或者怀疑有儿童受暴的情况下, 父母、医护人员、教师、保姆、托儿所、学校等与儿童密切接触、负有责任的人员和机构有必须报告的义务。

3.4 发布保护令。法院接受申请后应根据情况对受暴儿童签发紧急保护令或一般保护令。警察在紧急情况下可以将儿童转移至医院或庇护场所, 如英格兰的《儿童法》。

3.5 禁止施暴人接触受暴儿童。为确保儿童利益的最大化, 法院可禁止施暴人接触该儿童, 或只有在特定条件下才允许施暴人接触儿童。如南非的《反家庭暴力法》。

3.6 设立替代性儿童照料体系对保护儿童是至关重要的。建立基于社区的替代性儿童照料服务, 如庇护机构或家庭式社区之家, 为受害儿童或目睹家庭暴力的儿童提供照料或食宿等各种救助。参加经验交流会的各国均设立了此类保护或救助服务设施。就此而言, 应慎重考虑社会福利机构的功能与责任范围, 机构式的照料应作为最后采取的救助方式。

### 4. 对中国反家暴立法中保护儿童受暴人的建议

4.1 中国反家暴法应当对家庭暴力行为进行综合性的、列式性的定义, 包括所有形式的身体暴力和精神暴力, 忽视及性虐待, 没有提供适当的医疗卫生条件、食物、衣物、教育或居所, 对儿童监管不当, 置儿童于家庭暴力的环境中, 使孩子目睹双亲间的攻击行为等。

4.2 在反家暴法中, 对禁止针对儿童的家庭暴力作出原则性

的规定。同时, 应当在专门的法律法规中对预防和制止针对儿童的家庭暴力作出更为明确具体的规定, 包括更加具体的地设立强制报告义务、制定特殊的救助与保障措施以及支持系统。针对儿童这个特定群体制定特别法规比制定统一法规效率更高, 更有利于保护受害儿童。此外, 强烈建议修改所有相关的现行法律, 以有效保护儿童在各种场合下免受各种暴力。

4.3 设立强制性报告义务。所有公民均有举报儿童家庭暴力的义务。法律应明确规定哪些人员对儿童家庭暴力事件有法定报告义务。儿童的监护人、抚养人、看护人或其他家庭成员, 医疗机构、教育机构及有关社会组织的工作人员在履行职务过程中发现家庭暴力的, 有义务向公安机关报案。儿童所在幼儿园、学校及住所地民政部门、基层自治组织、社区、庇护单位或其他与儿童密切接触、负有责任的机构或工作人员发现或有理由怀疑儿童可能遭受家庭暴力的, 应当及时向公安机关报告。

4.4 应当为警察、法官、检察官、社会工作者、医疗卫生人员及其他与受害儿童有关的工作人员提供有关社会性别和家庭暴力的培训, 包括识别与干预虐待事件、提供服务信息和保护受害儿童的合法权益。学校应开展关于健康人际关系和性别平等的义务教育, 消除认可伴侣关系间暴力的错误性别观念, 加强对家庭暴力的防范意识。

4.5 提供专门的照料服务。国家及社会应当为受暴儿童及目睹暴力的儿童提供专门的庇护和照料服务, 根据儿童的具体情况为其提供食宿、看护、照料以及心理辅导。向儿童、施虐人和其他家庭成员提供康复性、综合性和支持性的服务, 将家庭暴力对儿童的负面影响减至最低。由经过专业训练的协调人员负责督导和管理, 确保在此过程中人权得到充分的尊重。

4.6 在整个决策过程中, 应确保儿童享有表达意愿的权利, 并使其意见得到应有的重视。在做任何与儿童相关的决定时, 法院和儿童保护机构应以儿童利益最大化作为首要考量因素。

4.7 法院应当采取适当措施, 以避免儿童因提供与家庭暴力有关的证词而遭受伤害。儿童的证词可以作为认定家庭暴力的证据。

4.8 设立替代性监护制度。对实施家庭暴力的监护人, 应当基于儿童利益最大化的原则, 根据具体情况, 中止或剥夺其监护权, 为受暴儿童另行指定监护人或监护机构。

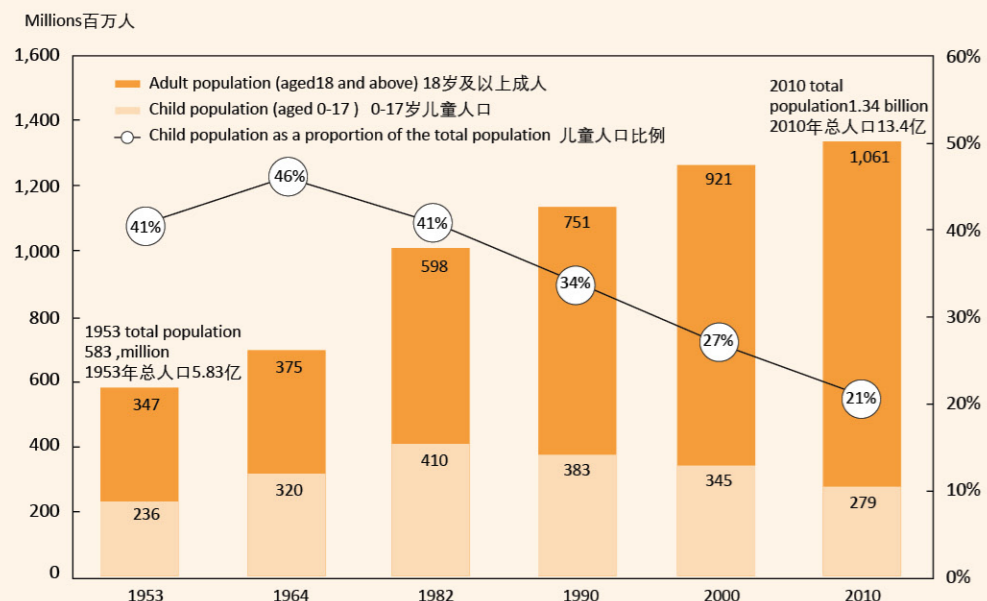
4.9 受暴儿童返回家庭后, 应由社会工作者或者基层社会组织定期密切监督其家庭情况, 确保儿童不再受到暴力伤害。

5 Kelly Richards, Children's Exposure to Domestic Violence in Australia (24 August 2011) Australian Institute of Criminology, Trends and Issues in Crime and Criminal Justice No. 419 <<http://www.aic.gov.au/publications/current%20series/tandi/401-420/tandi419.html>>.

## II. Factsheet on Family Violence against Children

Over the past 60 years in China, the total population has grown much faster than the child population. While China's child population has continually declined since the 1980s, the decline has been even more significant in the past 10 years. According to data from the Sixth National Census, the child population aged 0-17 in China was 279 million in 2010, accounting for 21% of the total national population (see Figure 1).

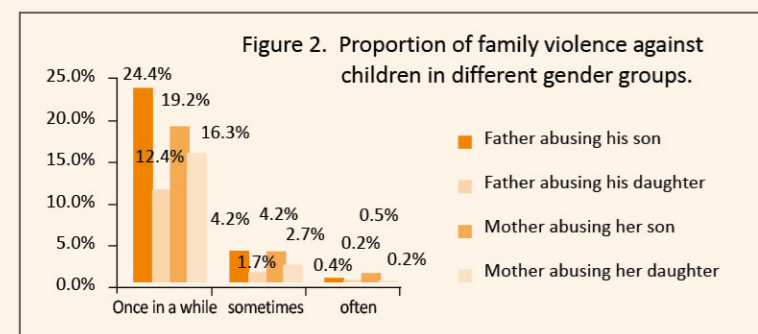
Figure 1: Size of child population aged 0-17,China,1953-2010



Sources: National Bureau of Statistics, 1953, 1964, 1982, 1990, 2000 and 2010 Population Censuses

### 1. Data on Family Violence against Children

According to the third study of Chinese Women's Social Status, conducted by the National Bureau of Statistics and All-China Women's Federation in 2010, family violence against children is a grave issue in China (see Figure 2).<sup>1</sup>



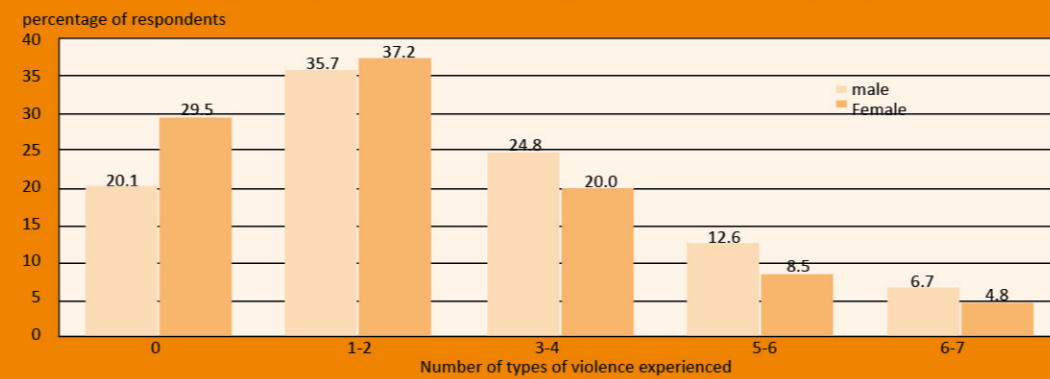
According to a UNICEF -supported Retrospective Survey on Childhood Violence Experiences of Young People in China conducted in 2005 by Peking University,<sup>2</sup> only 20.1 % of boys and 29.5% of girls reported not having experienced any type of violence before the age of 16. The survey also found that no significant difference was detected in the rates of violence among respondents of different backgrounds, whether from urban or

rural areas, or single-child or multiple-child families. Neither was any significant difference in rates of violence detected among children raised by junior-high-school-educated or senior-high-school-educated parents.

<sup>1</sup> Song Xiuyan, Investigation of Chinese Women's Social Status in New Era, China Women Publishing House (2013), page 776

<sup>2</sup> The survey was conducted among a convenience sample of technical secondary schools and colleges/universities in Guangdong, Zhejiang, Hubei, Shanxi, Heilongjiang and Beijing in March and April of 2005. Four thousand three hundred and twenty seven students were invited to participate in an anonymous questionnaire survey. Of these, 3577 questionnaires were completed, with the response rate of 82.7%. Among the 3577 students, 1643 (45.9%) were male and 1934 (54.1%) were female. The survey listed a total of 17 types of violence: four types of physical violence, seven types of psychological violence, and six types of sexual violence.

Figure 3 Experience with different types of violence before age 16, 2005

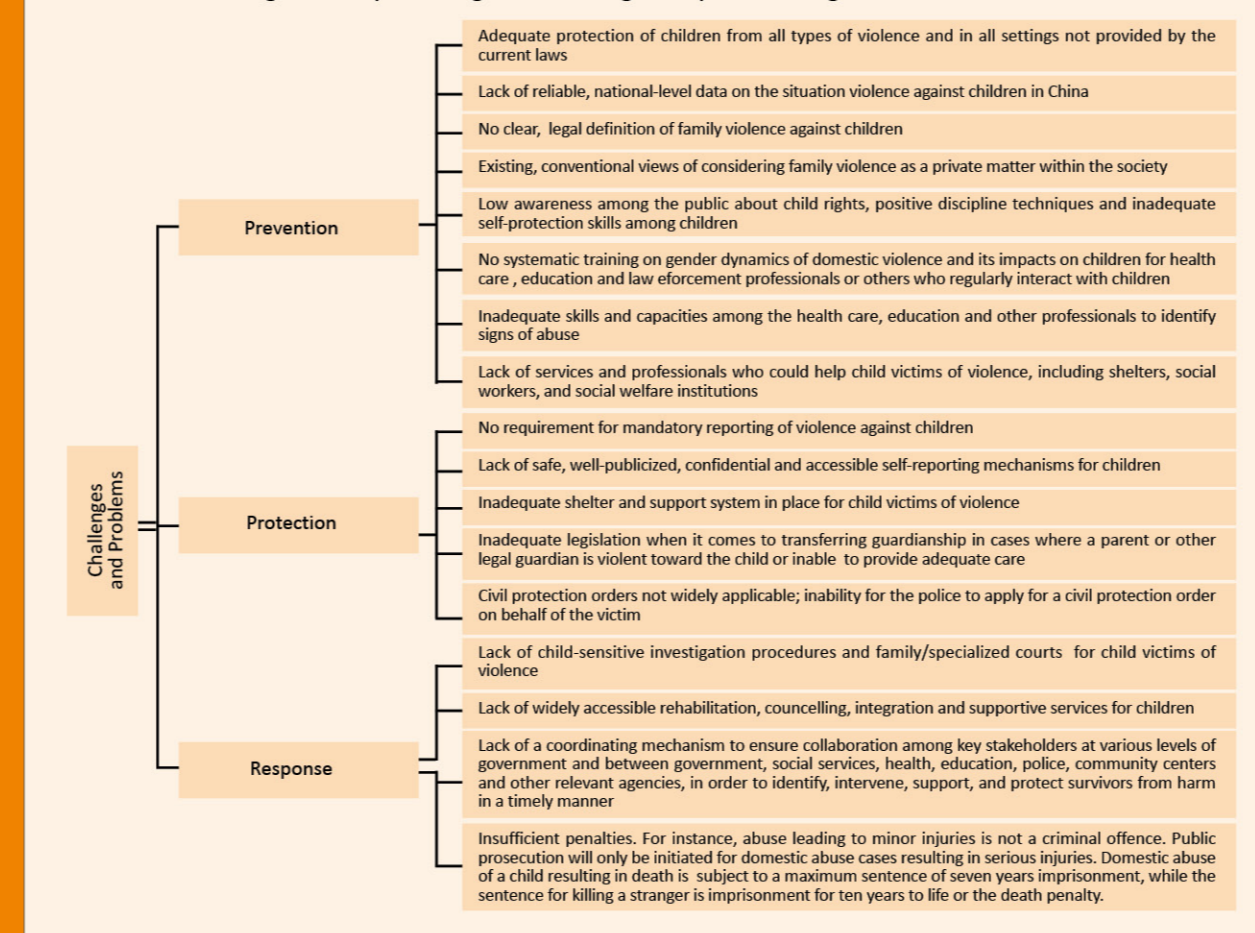


Further, a 2004 retrospective survey of family violence in childhood of 528 college and secondary school students in Hebei Province showed that 36.2% of the students experienced corporal punishment and emotional abuse from their parents before the age of 16.<sup>3</sup> A 2005 study of 185 parents of primary school students also found that: 1) parents who suffered from public humiliation by their parents or teachers in childhood were 2.9 times more likely to inflict emotional abuse on their own children; and 2) parents who suffered from physical abuse by their parents in childhood were 5.32 times more likely to inflict physical abuse on their children.<sup>4</sup>

### 2. Issues and Challenges Concerning Family Violence against Children

There are still many challenges when it comes to preventing violence, protecting children from violence and punishing the perpetrators as outlined in Figure 3.

Figure 4. Key Challenges concerning Family Violence against Children



<sup>3</sup> Chen Jingqi, Transactional Study on Physical Abuse by Parents and the Influencing Factors Among Pupils, Chinese Journal of School Health, 2006.No.9  
 Kelly Richards, Children's Exposure to Domestic Violence in Australia (24 August 2011) Australian Institute of Criminology, Trends and Issues in Crime and Criminal Justice No. 419  
 <http://www.aic.gov.au/publications/current%20series/tandi/401-420/tandi419.html>

<sup>4</sup> Chen Jingqi, Transactional Study on Physical Abuse by Parents and the Influencing Factors Among Pupils, Chinese Journal of School Health, 2006.No.9

## 3. International Experiences on Family Violence against Children

3.1 Several experts recommended inclusion of specific protections for children in national legislation that addressed family violence. For instance, research in Australia indicated that violent households are significantly more likely to have children than non-violence households and that violent households have a significantly higher proportion of children aged five years and under.<sup>5</sup> Some countries, like Korea, have specialized sections in their Family Violence Laws, while others, such as Japan have laws specific to the protection of children. In the U.K., protections for children are available within the context of a family where there is a factual nexus with domestic violence.

3.2 Several experts recommended that the definition of family or domestic violence in the national law include children's exposure to family violence. For example, in Australia, the Family Law Act of 2011 amended the definitions of family violence and abuse to include exposure to family violence defined as: "a child is exposed to family violence if the child sees or hears family violence or otherwise experiences the effects of family violence."

3.3 Mandatory reporting should be stipulated by law. Countries such as the United States require parents, medical personnel, teachers, baby sitters, social workers and other persons or institutions having close contact with children to report any suspected cases of child abuse.

3.4 In cases of child abuse, the court should issue an urgent protection order or a general protection order, depending on the circumstances, immediately upon receiving an abuse petition. England's Children Act allows law enforcement to transfer a child to a hospital or shelter under suspicion of being abused.

3.5 In some countries, courts prohibit the perpetrator from contacting the abused child or allowing the perpetrator to contact the child only under certain conditions. For instance, South Africa's Family Violence Law includes both of these provisions.

3.6 An alternative care system is essential for the protection of abused children. Community-based, alternative care options, such as shelters and family-type community homes, provide the care necessary for children who are victims of abuse. Many countries have agencies at the national and local levels to protect children as well as residential facilities for children affected by abuse. In this regard, the functions and scope of responsibilities for social welfare institutions need to be considered carefully with institutional care only as a last resort.

## 4. Suggestions for China's Family Violence Law

4.1 China's Family Violence Laws should include a comprehensive, non-exhaustive list of specific behaviors that taken alone or together constitute family violence, including all forms of physical or mental violence, injury or abuse, maltreatment or

exploitation, sexual abuse and neglect or negligent treatment such as failure to meet children's physical and psychological needs, failure to protect them from danger, failure to provide the child with basic necessities including basic health care, food, accommodation, clothing or education. The laws should also include language pertaining to improper custody, that is, leaving a child in a violent environment or exposing a child to spousal violence between his/her parents.

4.2 In addition to the Family Violence Law, clear and concrete special protection measures are necessary to prevent family violence against children and protect children who are victims of abuse. The government should establish mandatory reporting guidelines, protection measures, and support systems for abused children. In addition to a special law on family violence, it is strongly recommended to revise all relevant, existing legislative documents in order to effectively protect children from all forms of violence and in all settings.

4.3 Mandatory reporting should be stipulated in law. The laws should specify who is responsible for reporting suspected cases of child abuse such as child custodians, caregivers and other family members as well as staff working in hospitals, schools, and other organizations that have contact with children.

4.4 A mandatory training on gender and dynamics of domestic violence, including identification of abuse, and appropriate response, information about support programs and legal rights of child victims should be required by experts in police, judges, prosecutors, social workers, healthcare providers, and anyone who works with child victims of violence. Furthermore, mandatory education should be introduced in schools about healthy relationships and gender equality, addressing harmful gender stereotypes and misconceptions related to the legitimacy of violence in intimate relations in school syllabi, including family violence awareness and prevention.

4.5 The government and communities should develop specialized care for abused children including accommodation, protection, and psychological counseling. To assist with a child's recovery, these shelters should provide restorative, comprehensive and supportive services to the child, the perpetrator, and the family. The process must protect the human rights of the participants and must be supervised by well-trained moderators.

4.6 A child's right to full expression and the value given to a child's opinion should be ensured systematically during the policy-making process. Courts and agencies responsible for the protection of children must keep the best interest of a child at the forefront when making any decisions that may affect a child.

4.7 When collecting testimony from a child, the court should take measures to reduce any harm that might result from testifying against the perpetrator. The testimony of the child should be admitted as evidence of family violence.

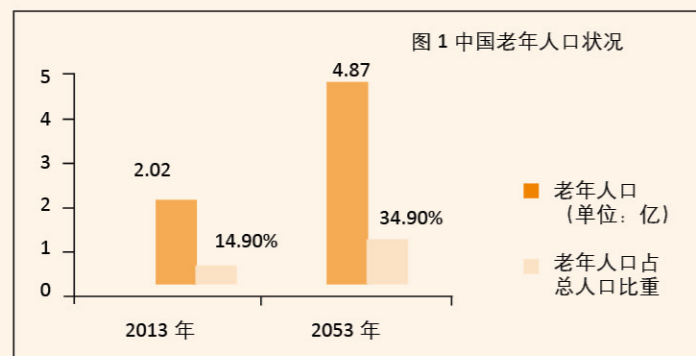
4.8 China should continue to develop its alternative guardianship system. A guardian who abuses a child should be suspended or deprived of guardianship. In such cases, the responsible government agency should designate an alternate guardian to care for the child for a designated period of time.

4.9 After the child returns to his/her family, social workers or local social organizations should closely monitor the family at regular intervals to ensure that the child is kept safe from further harm.

<sup>5</sup> Kelly Richards, Children's Exposure to Domestic Violence in Australia (24 August 2011) Australian Institute of Criminology, Trends and Issues in Crime and Criminal Justice No. 419  
 <http://www.aic.gov.au/publications/current%20series/tandi/401-420/tandi419.html>

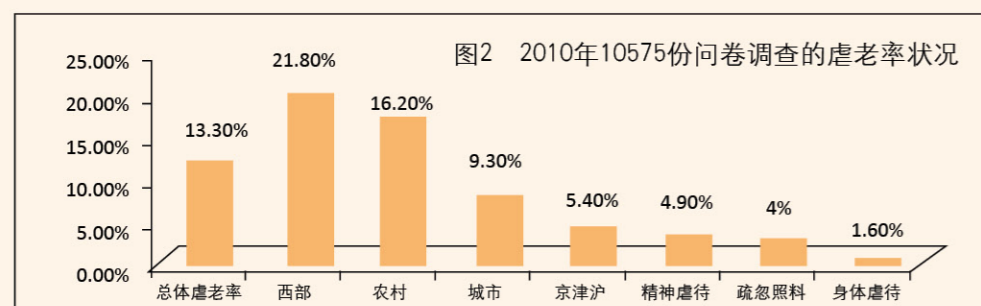
## 三、针对老年人的家庭暴力及防治事实描述

据全国老龄办数据,有预测指出从2013年到2053年的40年间,中国老年人口及其占总人口比重将进入迅速增长阶段,详见图1。

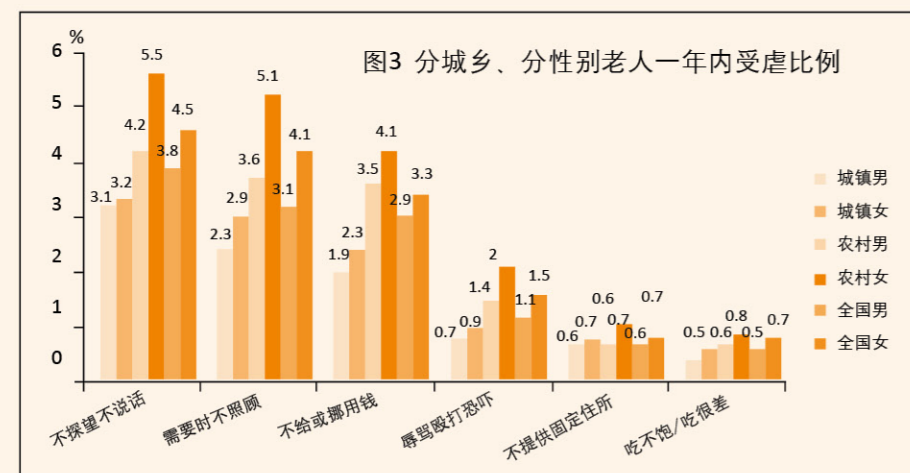


### 1. 一些针对老年人的家庭暴力数据

中国对家庭内虐待老年人的数据较少。2010年,全国妇联、国家统计局开展“第三期中国妇女社会地位调查”,针对65岁以上老年人群体的10575份有效问卷调查结果显示,中国家庭内老年人虐待发生率(下文简称“虐老率”)为13.3%。农村虐老率高于城市,社会经济条件越好的地区虐老率越低,身体虐待发生率最低(见图2)。<sup>1</sup>



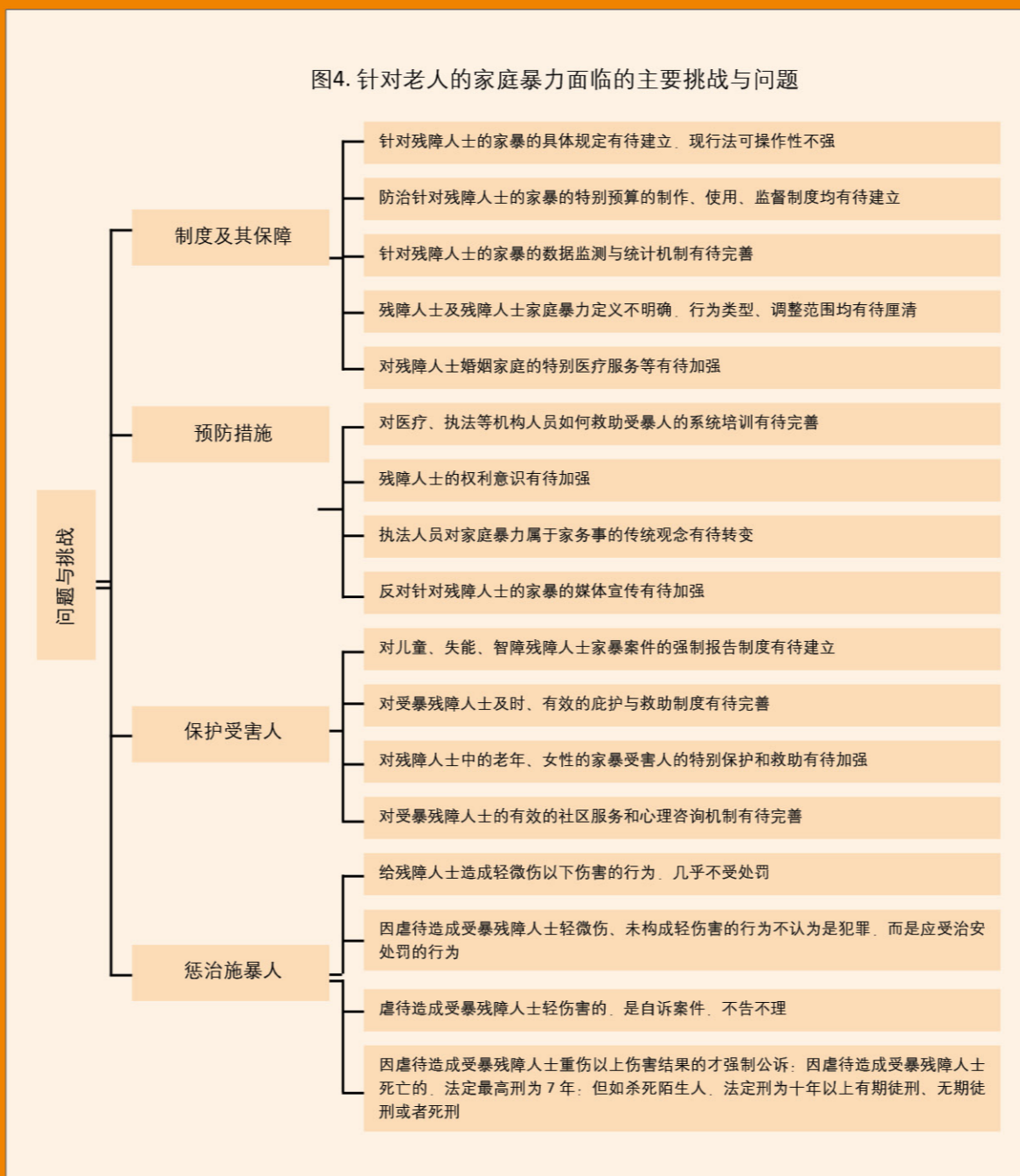
2010年中国妇女社会地位调查区分城乡、性别的调研结果显示,过去一年老年女性受虐率高于男性,农村老人受虐率高于城镇,详见图3。<sup>2</sup>



1 参见伍小兰、李晶：《中国虐待老人问题现状及原因探析》，载《人口与发展》2013年第19卷第3期，第85-91页。  
2 参见宋秀岩：《新时期中国妇女社会地位调查研究》，中国妇女出版社2013年版，第856页。

## 2. 防治针对老人的家庭暴力面临的问题与挑战

中国正快速迈入老龄化社会。在此背景下,防范和制止对老年人的家庭暴力、保护老年受暴人以及惩戒施暴人等方面存在诸多挑战,如下图4所示。



## 3. 外国法的相关规定综述

根据反家暴国际经验交流会的交流成果,可以将各国反家暴法中保护老年人的主要规定归纳如下:

3.1在反家暴法中强调对老年受害人的特殊保护或者制定相应的专门立法,根据其特殊需求进行特殊保护。在虐待老人事件中,要更多地考虑家庭赡养、养护者以及社会福利与社会保障的问题。针对老年人这一特定群体,制定特别法规比制定统一法规效率更高,更有利于保护受害人。

3.2关于老年人家庭暴力或虐待的概念大于一般家暴的概念,如日本的《防止虐待高龄者及养护者支援法》涵盖了家庭环境中的虐待、看护人的疏忽行为以及护理人员及护理服务提供机构人员对老年人的虐待。其虐待行为包括:身体虐待、照料疏忽、心理虐待、性虐待、经济虐待。此外,英国还将对老年人的虐待扩展至机构虐待,即护理机构或养老机构低水平的护理和严重的不良行为、故意或非故意地拒绝或失于承担照顾义务,且具有经常性和持续性。实践中可以将对老年人的虐待概括为三种形式:(1)家庭环境中看护人实施的对老年人的虐待;(2)住在护理机构的老年人受到机构人员的虐待;(3)护理服务提供机构的工作人员对老年人的虐待。

3.3为老年人提供特殊的保障体系,设计整体联合方案,扩展跨机构协同工作的概念。如日本在每个城市建立全面的社区支持中心,受理老年人暴力的举报,县级政府负责不同部门间的协调,提供信息以及任何必须的支持和建议。政府有责任通过宣传教育使公众明确知晓受理虐待事件举报的机构,以及有哪些防止虐待老人和帮助看护人的合作机关。

3.4举报义务。所有公民在发现老年人受虐情形时,均有举报的义务。护理机构、医院、社区康复中心及其他涉及老年人福利的机构的人员、医生、护士、律师有义务及早发现虐待老人事件并及时举报。

3.5及时为受虐老年人提供救助。如日本规定,当有人报告虐待事件或老人自报受虐事件时,市政府必须首先保证受虐老人的安全,必须及时调查,并与社区中“虐待老人事件应对协调人员”讨论应对该虐待事件的处理方式。对于受虐事件中生命和健康处于极大危险之中的老人,市政府必须对其做出适当安排,确保将老人临时安置在短期停留的庇护机构中。

3.6对养护者提供支持。为养护人员提供培训、教育,当判断或知道看护人无法承受看护责任、难以负担物质和心理压力时,政府和社会应当为其提供支持,进行疏导和帮助。

## 4. 对中国反家暴立法中保护老年受暴人的建议

4.1针对老年人的家庭暴力主要包括:身体暴力,如用不同工具造成疼痛或伤害,限制人身自由等;精神暴力,如情感勒索等;性暴力,任何未经同意而对老年人的性接触;经济控制,如非法或不当利用和/或使用养老金或其他老年人的财物;忽视,故意或非故意地拒绝或失于承担照顾义务。

4.2在反家暴法中对禁止针对老年人的家庭暴力作出原则性的规定,并且应当在相关的专门法律法规中有针对性地制定更加具体的报告义务、救助措施和支持系统,如家庭赡养、养护者以及社会福利与社会保障的问题。

4.3规定强制举报义务。所有公民、家庭成员以及特别是养老院、护理机构、医院、社区服务中心及其他涉及老人福利机构的医生、护士、护理人员,均有义务及早发现虐待老人事件并及时进行举报。

4.4反家暴法应以专门条文强调保护老年女性,规定专门的庇护机构以便保护老年女性家暴受害人,并制定具体的救助措施。

4.5制定专门的防止虐待老年人法律。中国已进入老龄化社会,家庭成员及其养老机构中虐待老人事件时有发生,应当制定专门的法律,或者在老年人权益保障法中明确规定虐待老年人的定义及其情形,将护理人员虐待及机构虐待均纳入虐待的定义中,以更好地保护老年人的权益。

4.6明确国家和政府在反对虐待老年人方面的责任。在全社会进行广泛的宣传教育,提倡尊老爱老、赡养老人;在社区为老年人提供支持保障系统,推行专门教育和社会服务项目,以及提供机构内部服务的项目;对公民特别是护理人员有针对性地进行教育培训,包括社会性别培训,以提升包括家庭成员和机构在内的护理者的素质和能力。

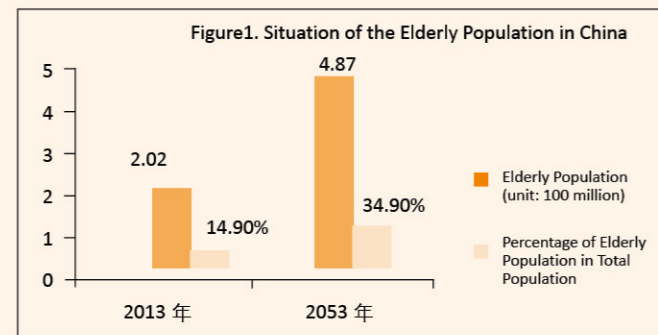
4.7开展由国家主导的受虐老年人支持项目,如:免费医护、康复服务、心理辅导以及其他护理服务等社会福利。

4.8国家应当推动养护机构的发展,对养护者及养护机构在财政上予以支持,通过减免税收及提供财政补贴的方式,鼓励养护者积极履行养护义务与养护责任。

4.9为养护者和照料者提供技术与心理支持,包括技能培训、教育、心理辅导与帮助的制度化安排。

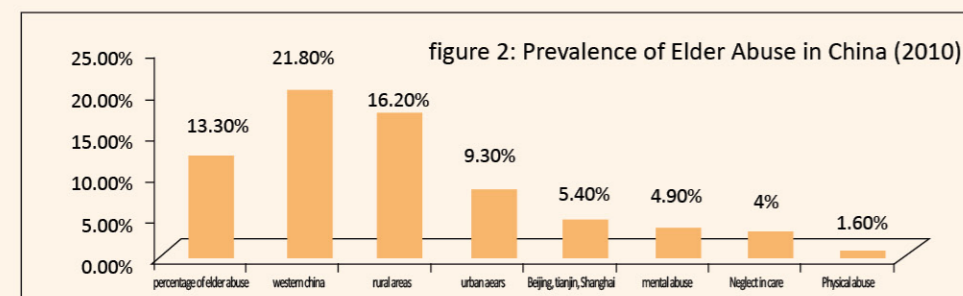
### III. Factsheet on Family Violence against Elders

China's National Committee on Ageing projects that the proportion of elderly within the Chinese population will rise rapidly over the next 40 years. Figure 1 provides estimates of China's aging population from 2013 to 2053.<sup>1</sup>

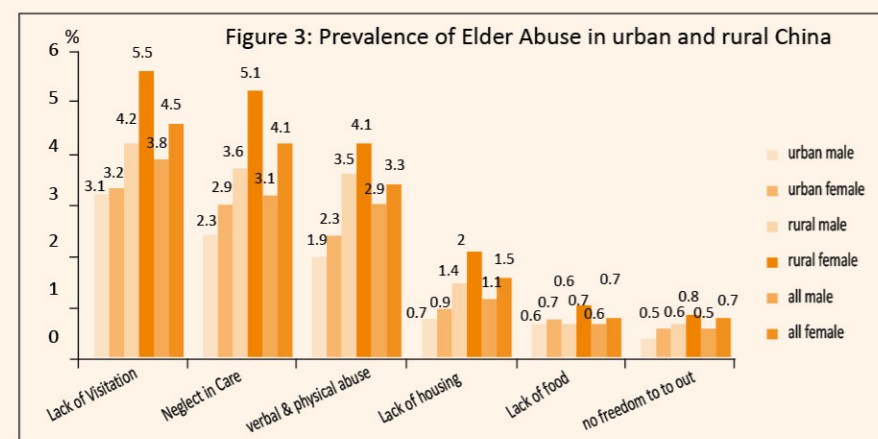


#### 1. Data on Family Violence against the Elderly

Limited data exist on family violence against the elderly in China. In 2010, the All-China Women's Federation (ACWF) and the National Bureau of Statistics carried out the Third National Survey on Chinese Women's Social Status. The study received 10,575 valid responses to questionnaires with persons aged 65 and older. Results of the questionnaires indicated that 13.3% of elders experienced family violence. Findings also showed that the prevalence of violence was higher in rural areas than urban areas; and regions with better socio-economic conditions had lower rates of elder abuse. Mental abuse (4.9%) was the most common form of abuse against elders, while physical abuse (1.6%) was the least common form of abuse (see Figure 2).<sup>2</sup>



Evidence from the 2010 Third National Survey on Chinese Women's Social Status showed that the prevalence of family violence against elderly females was higher compared to elderly males. Furthermore, the prevalence of family violence was higher in rural areas compared to urban areas (see Figure 3).<sup>3</sup>



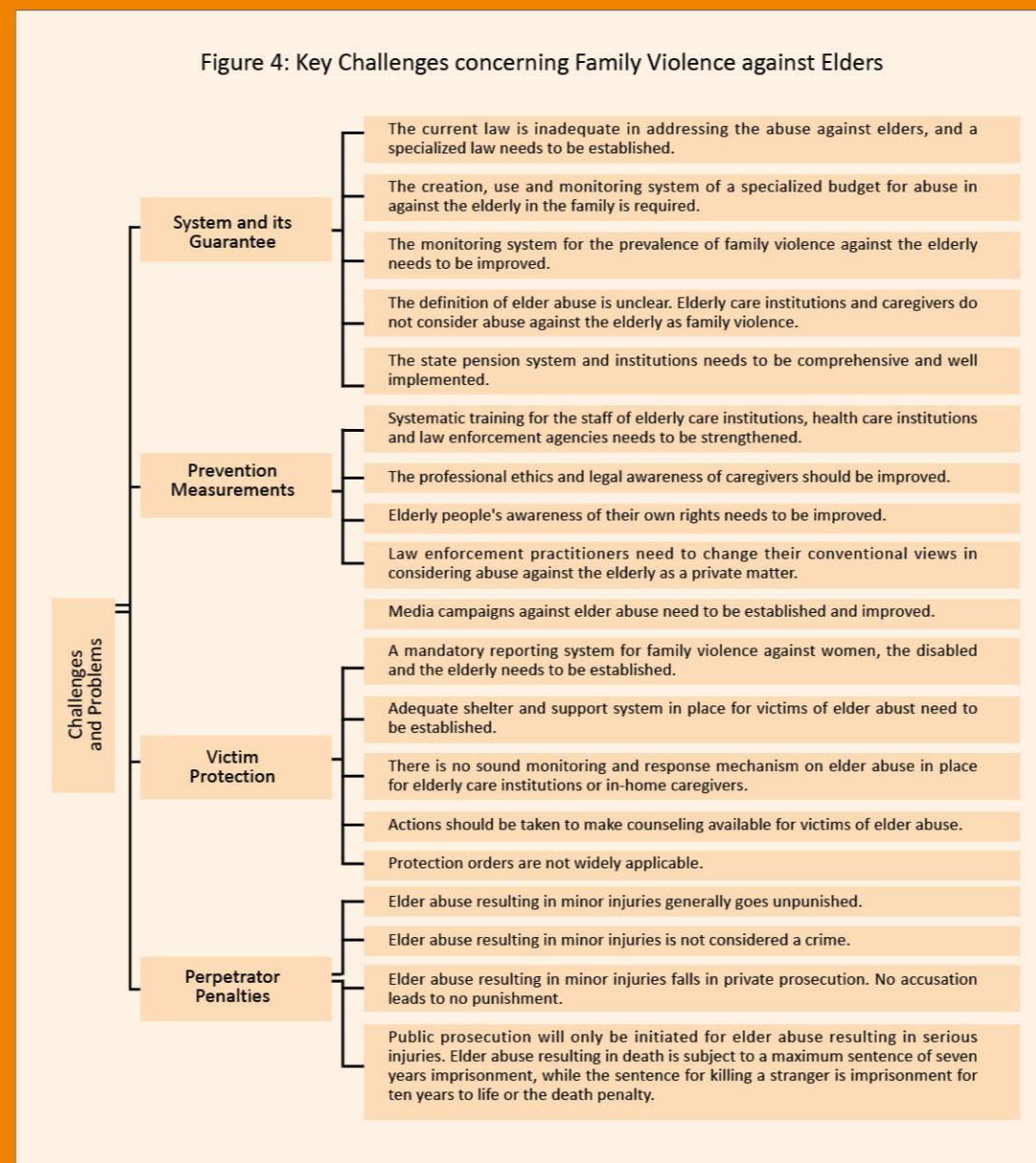
<sup>1</sup> Notice of China National Committee on Ageing about the Fourth Survey on Ageing Population in Urban and Rural China, retrieved June, 2014 from the website of China National Committee on Ageing at <http://www.cncaiprc.gov.cn/zixin/50105.jhtml>

<sup>2</sup> Wu, Xiaolan & Li, Jing: Current Situation Analysis on Elder Abuse in China, Population and Development, 2013, volume 19, Issue 3, 85-91

<sup>3</sup> Song Xiuyan, Investigation of Chinese Women's Social Status in New Era, China Women Publishing House (2013), page 776

#### 2. Issues and Challenges Concerning Family Violence against the Elderly

China has a rapidly ageing population that requires protection against family violence. Policies and practices need to be put in place to help protect the elderly against violence. Effective legal avenues are also necessary to prosecute and punish perpetrators of violence.



#### 3. Foreign Experiences on Family Violence against the Elderly

3.1 To afford better protection of the elderly population, a specific law to address violence against the elderly would be more effective than a general Family Violence Law. The elderly require special protection measures to protect them against violence. Areas where more consideration is necessary to protect the elderly from abuse include: family support, care giving, social welfare, and social security issues.

3.2 International definitions of elder abuse are more comprehensive than a general family violence definition. For example, Japan's Law for Preventing the Abuse of Older People and Providing Assistance to Caregivers recognizes elder abuse by family members, caregivers, and staff at elderly care institutions or care providers. Common forms of abuse include physical abuse, neglect, psychological abuse, sexual abuse, and economic abuse. In England, the concept of elder abuse is extended to abuse in institutions. The forms of abuse consist of poor basic services, severe misconduct, and deliberately or unintentionally refusing to assume the duty of care on a continuous basis. The elderly are vulnerable to abuse: 1) in the home, 2) in care institutions, and 3) by care providers.

3.3 To protect elders from abuse, other countries developed specialized protection systems and use multi-sector coordination efforts. Japan, for example, established comprehensive community support centers to handle reports of elder abuse. In Japan, the government must inform the public where to report elder abuse cases and disclose which institutions and organizations are responsible for preventing and investigating elder abuse as well as for providing support to caregivers.

3.4 In many countries, any citizen who suspects elder abuse is obliged to make a report to the appropriate authority. Staff is mandated to report cases of elderly abuse in care institutions, hospitals, community health centers and other elder welfare institutions. Mandated reporters also include doctors, nurses and lawyers.

3.5 Timely relief efforts are necessary for victims of elder abuse. For instance, Japanese law stipulates that the government must ensure the safety of the abused elder, conduct an investigation as quickly as possible, and discuss the handling process with "anti-elderly abuse coordinators" that are present in each community. Moreover, the government should ensure that victims of elderly abuse have adequate access to temporary shelters.

3.6 The government and society should educate, train and support caregivers. Additional supports are also necessary for caregivers. When caregivers encounter economic and psychological difficulty in caring for the elderly, they need access to support and, counseling services.

#### 4. Suggestions for China's Family Violence Law

4.1 Family violence against elders consists of: physical violence, restriction of personal freedom, psychological violence, sexual violence, economic control, such as illegal use or misuse of the elder person's retirement pension or other property, and neglect that includes deliberate or unintentional refusal to assume the duty of care.

4.2 The Family Violence Law should contain specialized provisions and principles that are specific to elder abuse. These provisions should include reporting obligations, relief mechanisms, and support systems to address family support, caregiving, social welfare, and social security.

4.3 The Family Violence Law should stipulate who is responsible for reporting elder abuse and who is a mandated reporter. These laws should state that all citizens, families, staff in elder care institutions, communities and other welfare institutions, including doctors, nurses, and caregivers, are obligated to report elder abuse cases in a timely manner.

4.4 The Family Violence Law should include specialized provisions for shelters for female victims of elderly abuse.

4.5 A specialized law against elder abuse should be developed. With China's rapidly aging society, the amount of elder abuse cases by family members or care providers is increasing. To better protect the rights and interests of the elderly, the definition of elder abuse should be clear and specific. The definition also should include abuse by caregivers and nursing institutions.

4.6 The Chinese government is responsible for prohibiting elder abuse. The government should conduct comprehensive publicity and education campaigns about the need to respect and support the elderly. The government should develop support and protection systems within communities. Training and education is necessary for all citizens, especially for caregivers and staff personnel responsible for the care of elder Chinese.

4.7 The government should support projects that assist elders, such as free medical care, restorative services, psychological counseling, and other nursing services as well as social welfare.

4.8 The government should financially support and promote the development of care providers and elder care institutions by reducing taxes and increasing financial support.

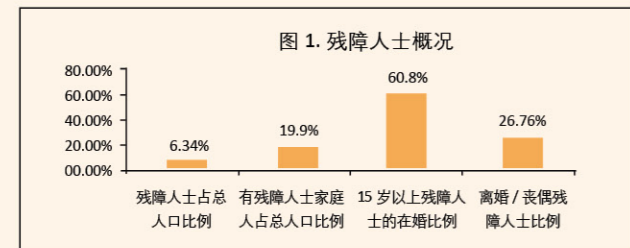
4.9 Care providers and elder care institutions should receive technical and psychological support, including training, education and counseling services.



## 四、针对残障人士的家庭暴力及防治事实描述

### 1. 缺乏针对残障人士的家庭暴力数据

针对残障人士的家庭暴力,只有个案可供考察,没有成规模的调研数据可供参考。2006年第二次全国残障人士抽样调查的概况见图1。<sup>1</sup>2012年人口普查表明当时我国共有残障人士8500万人。<sup>2</sup>



2012年中国残联监测全国31个省、自治区、直辖市的有效样本39825人。监测推断显示,1500多万残障人士尚未脱贫,260多万城镇残障人士生活还十分困难。



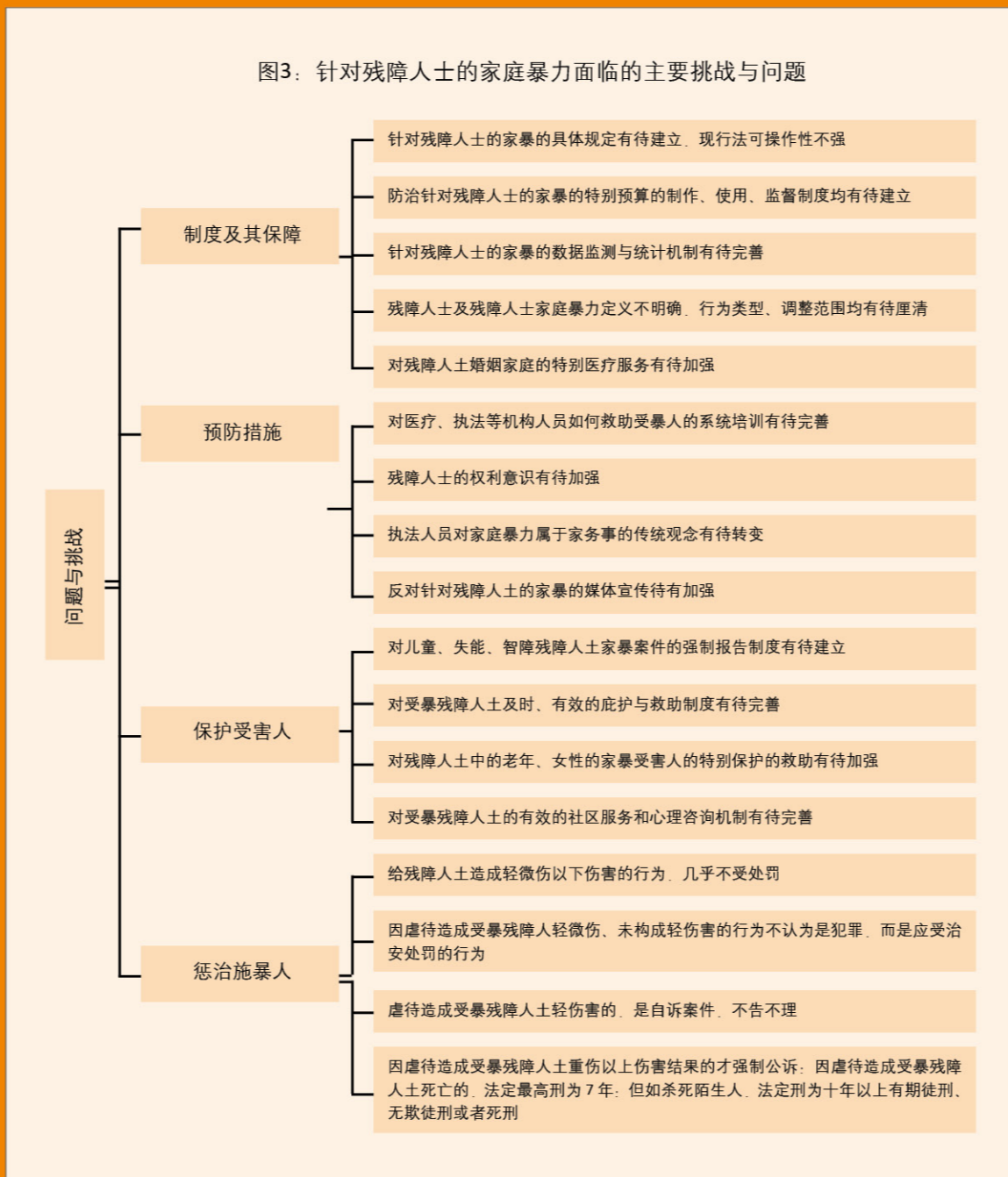
残障人士家庭生活压力大的原因包括：一是我国残障人士权利保障制度不完善,老年养老服务、儿童抚养、教育等保障不足。如截止到2012年底,全国有未入学适龄残障儿童少年9.1万人;<sup>5</sup>又如据统计,中国每年有超过1万名儿童被父母遗弃,其中超过90%是残障儿童。残障女童较之男童更易受父母遗弃,二者比例为1.41:1。<sup>6</sup>二是由于就业不充分,经济条件差,使得残障人士的医疗服务和健康得不到保障、家庭负担加重:如2006年的数据表明,在业的城镇残障人士为297万人,不在业的城镇残障人士为470万人;<sup>7</sup>三是婚姻不自

1 数据参见:《2006年第二次全国残疾人抽样调查主要数据公报(第二号)》http://www.gov.cn/fwxw/cjr/content\_1311943.htm, 2014年6月8日最后访问。  
2 数据来源于: http://www.cdpf.org.cn/sytl/content/2012-06/26/content\_30399867.htm,2014年6月8日最后访问。  
3 数据参见陈新民:《2012年度全国残疾人状况监测工作总结》,http://www.cdpf.org.cn/lilun/content/2013-10/21/content\_30452598.htm, 2014年6月8日最后访问。  
4 关于开展第二十四次全国助残日活动的通知》[残工委发〔2014〕1号] http://www.cdpf.org.cn/ggzt/content/2014-03/20/content\_30456017.htm。  
5 数据参见《2012年全国残疾人小康实现程度为68.4%》http://www.cdpf.org.cn/lilun/content/2013-07/08/content\_30449434.htm, 2014年6月8日最后访问。  
6 数据来源于:《2012年中国残疾人事业发展统计公报》,http://www.gov.cn/fwxw/cjr/content\_2421000.htm, 2014年6月20日最后访问。  
7 数据参见: Xiaoyuan Shang, Karen R. Fisher, Jiawen Xie, 2009, Discrimination against children with disability in China, Int J Soc Welfare 2011: 20: 298-308。  
8 数据参见:《2006年第二次全国残疾人抽样调查主要数据公报(第二号)》,http://www.gov.cn/fwxw/cjr/content\_1311943.htm, 2014年6月8日最后访问。

由,一些残障人士婚姻多是父母包办,名义上是成家,实际上是走进了围城。这些都是残障人士生活压力大的原因。这些压力难以得到有效排解,是出现家庭暴力的原因之一。

### 2. 针对残障人士的家庭暴力的问题与挑战

防治针对残障人士的家庭暴力面临着应对与预防残障人士受暴、保护受害人、惩罚施暴人等多重挑战,如图3所示。



### 3. 外国法的相关规定综述

根据反家暴国际经验交流会的交流成果,可以将反家暴法中对残障人士保护的主要规定归纳如下:

3.1关于残障人士的定义: 根据联合国《残疾人权利公约》第二条: 残障人士包括肢体、精神、智力或感官有长期损伤的人, 这些损伤与各种障碍相互作用, 可能阻碍残障人士在与其他人平等的基础上充分和切实地参与社会。

3.2残障人士享有被保护的权力。新西兰的法律规定, 残障人士有获得法律保护的权力, 在政府工作中应开发强有力的干预措施, 即将家庭暴力预防工作主流化。重点通过社区的积极参与和社区发展模式的完善, 改变文化规范, 使残障人士获得社会的广泛认同。

3.3增加残障人士的可见度, 确保塑造一个更加公正和包容的社会, 让他们能够与他人享有相同的权利。

3.4调查残障人士及其遭受家庭暴力的状况。新西兰《暴力干预计划》是一项筛查家庭暴力的医疗服务计划。所有寻求医疗服务的16岁以上的女性, 都会被问及是否遭受过家庭暴力。为增强对于残障人士的保护力度, 中国需要对医护人员进行培训, 并建立协调机制以满足残障人士的服务需求。

### 4. 对中国反家暴立法中保护残障受害人的建议

4.1在反家暴法中强调对残障人士的特殊保护或者制定相应的专门立法, 根据其需求给予特殊保护。在虐待残障人士事件中, 要更多的考虑家庭赡养、养护者以及社会福利与社会保障的问题, 因此针对这一群体制定特别法比制定统一法效率更高, 更有利于保护受害人。

4.2保障残障人士免受家庭暴力的情况应当受到国家和社会的高度关注。残障人士是更易遭受家庭暴力的群体, 特别是老年女性残障人士, 且往往易被社会所忽视。应当对残障人士家庭暴力开展调查并进行分性别的数据统计, 以全面了解情况, 增加与残障人士相关问题的可见度。

4.3反家暴法应将保护老年女性残障人士列为专门条款。设立专门庇护机构以保护老年女性残障人士。

4.4对残障人士家庭暴力的概念应当更具有包容性。除家庭成员外, 应将社会福利机构的护理人员虐待及机构虐待均纳入家庭暴力的定义中, 以更好地保护残障人士的权益。

4.5为进一步完善社会福利与社会保障, 国家应在财政上为残障人士的家庭提供救助, 鼓励家庭成员养护残障人士。

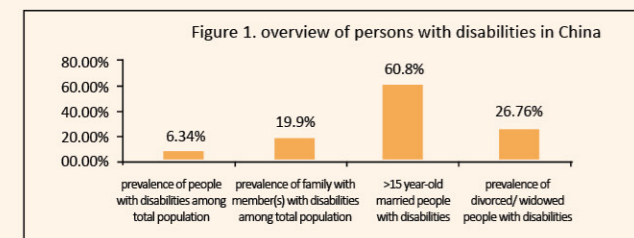
4.6确保法院系统、执法机关和审判员采用适用于残障人士的便捷程序, 以便于残障人士寻求法律保护, 为残障受害人提供法律援助。

4.7对利用残障人士的残障进行犯罪的行为应作为加重情节加重处罚。

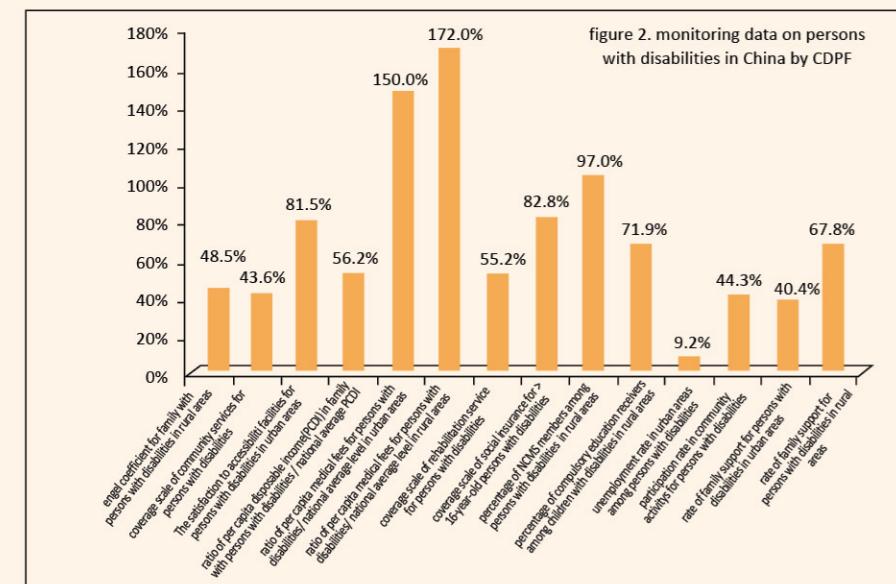
## IV. Factsheet on Family Violence against Persons with Disabilities

### 1. Lack of data on Family Violence against Persons with Disabilities

To date, the only data on violence against persons with disabilities in China consist of small-scale surveys and case studies. Figure 1 indicates an overview of persons with disabilities in China based on the 2006 Second National Sample Survey on Persons with Disabilities.<sup>1</sup> The 2012 population census estimates that there are 85 million people living with disabilities in the country.<sup>2</sup>



In 2012, the China Disabled Persons' Federation conducted a sample survey of 39,825 persons with disabilities in all 31 provinces, autonomous regions and municipalities directly under the central government. Extrapolated, the results of the survey showed that 15 million persons with disabilities live in poverty, more than 2.6 million persons with disabilities have difficulty making a living, and 2.6 million persons with



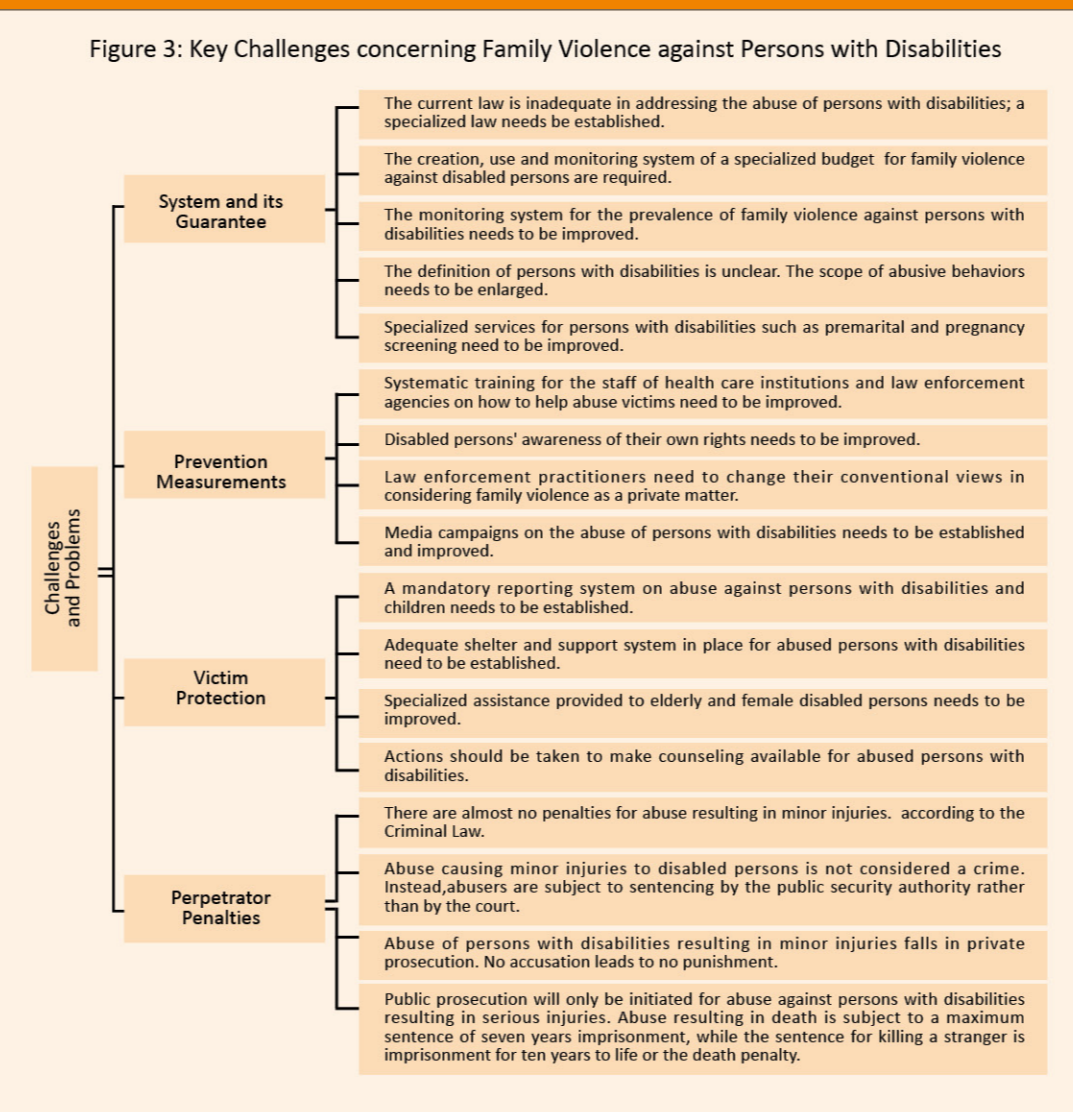
1 Source: [http://www.gov.cn/fwxw/cjr/content\\_1311943.htm](http://www.gov.cn/fwxw/cjr/content_1311943.htm)  
 2 Source: [http://www.cdpf.org.cn/sytl/content/2012-06/26/content\\_30399867.htm](http://www.cdpf.org.cn/sytl/content/2012-06/26/content_30399867.htm) [latest follow-up in 2014 June 8]  
 3 Source: 2012 national monitoring data summary of people with disabilities, [http://www.cdpf.org.cn/llun/content/2013-10/21/content\\_30452598.htm](http://www.cdpf.org.cn/llun/content/2013-10/21/content_30452598.htm) [latest follow-up in 2014 June 8] and the 2014 No. 1 notice issued by the China Disabled Persons' Federation to commemorate the 24th national day for persons with disabilities, [http://www.cdpf.org.cn/ggtz/content/2014-03/20/content\\_30456017.htm](http://www.cdpf.org.cn/ggtz/content/2014-03/20/content_30456017.htm)  
 4 Source: 68.4% people with disabilities in China achieved well-off level, [http://www.cdpf.org.cn/llun/content/2013-07/08/content\\_30449434.htm](http://www.cdpf.org.cn/llun/content/2013-07/08/content_30449434.htm) [latest follow-up in 2014 June 8]

and persons with disabilities report pressure in a number of areas. First, social protection system for the rights of people with disabilities is weak due to lack of pensions, child support, and education services. By the end of 2012, China had 91,000 school-aged children with disabilities who were not attending school.<sup>3</sup> Research suggests that more than 10,000 children are abandoned by their parents each year. Of these children, approximately 90% have a disability with a ratio of 1.41:1 between girls and boys.<sup>4</sup> Second, insufficient employment, poor economic conditions, and limited access to health service

for persons with disabilities, increases the emotional and financial burden of families. Survey data from 2006 showed that, 2,970,000 persons with disabilities were employed, while 4,700,000 were unemployed.<sup>7</sup> Third, persons with disabilities experience limited freedom to marry. Parents often arrange marriages but for persons with disabilities, many report feeling trapped in these marriages. The weight of these responsibilities increases the likelihood of violence against persons with disabilities.

### 2. Issues and Challenges Concerning Family Violence against Persons with Disabilities

There are many challenges concerning family violence against persons with disabilities, including insufficient response, prevention, protection, and punishment. The figure 3 below identifies the challenges in each category.



5 Source: 2012 statistical bulletin on persons with disabilities, [http://www.gov.cn/fwxw/cjr/content\\_2421000.htm](http://www.gov.cn/fwxw/cjr/content_2421000.htm)  
 6 Source: Xiaoyuan Shang, Karen R. Fisher, Jiawen Xie, 2009, Discrimination against children with disability in China, Int J Soc Welfare 2011; 20: 298-308.  
 7 Source: [http://www.gov.cn/fwxw/cjr/content\\_1311943.htm](http://www.gov.cn/fwxw/cjr/content_1311943.htm)

### 3. Foreign Experiences on Family Violence against Persons with Disabilities

3.1 The definition for persons with disabilities should be clear and specific. According to Article 2 of the UN Convention on the Rights of Persons with Disabilities, persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments. A disability in conjunction with various barriers may hinder a person's full and effective participation in society on an equal basis with others.

3.2 Persons with disabilities are entitled to specialized legal protection. The government should develop effective and robust intervention and prevention systems to protect persons with disabilities against violence. A culture respecting persons with disabilities should be encouraged through community participation and community development.

3.3 The visibility of persons with disabilities should be enhanced to increase public acceptance and to ensure that they have the same rights as persons without disabilities.

3.4 Additional research is needed on family violence against persons with disabilities. In New Zealand, for example, all women requesting special healthcare who are over the age of 16 are interviewed about whether they have suffered from family violence. To enhance China's support of persons with disabilities, training is needed for staff in healthcare institutions and systems must be established for the coordination of support service institutions that are responsible for assisting persons with disabilities.

### 4. Suggestions for China's Family Violence Law

4.1 China should consider a specialized law to protect persons with disabilities against violence. The law must acknowledge the role of family support, caregiving, social welfare and social security in abuse cases. A specialized law will be more effective in protecting victims because of the complex requirements of this vulnerable group. A general Family Violence Law should have special provisions to protect the rights and interests of persons with disabilities in family violence cases.

4.2 The government and society should pay more attention to the issue of violence against persons with disabilities. This group, especially women with disabilities, is vulnerable to family violence and is often neglected by society. Research on violence against persons with disabilities is imperative to better understand the prevalence and types of violence that persons with disabilities encounter. Additional research will allow for the development of policies and practices that best meet the needs of this population.

4.3 The Family Violence Law requires specialized provisions to protect elderly women and children with disabilities, such as shelters with accessible facilities and services.

4.4 The definition of family violence against persons with disabilities should be more comprehensive. To afford better protection to persons with disabilities, the definition of perpetrators of abuse should include family members as well as caregivers and staff in social welfare institutions.

4.5 The state should improve its specialized social welfare and social security system for persons with disabilities. The government should financially support and encourage families of persons with disabilities to take care of and protect them.

4.6 Court and law enforcement proceedings should be clear, comprehensible, and convenient for persons with disabilities to effectively protect their rights and interests. Legal aid should be available for persons with disabilities in family violence cases.

4.7 Courts should impose harsher punishment for perpetrators of violence against persons with disabilities because of their vulnerable group status.