

HOLDING UP HALF THE SKY: WOMEN'S RIGHTS IN CHINA'S CHANGING ECONOMY

ROUNDTABLE

BEFORE THE

CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

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HOLDING UP HALF THE SKY: WOMEN'S RIGHTS IN CHINA'S CHANGING ECONOMY

MONDAY, FEBRUARY 24, 2003

CONGRESSIONAL-EXECUTIVE
COMMISSION ON CHINA,
Washington, DC.

The roundtable was convened, pursuant to notice, at 2 p.m., in room 2200, Rayburn House Office building, John Foarde [staff director] presiding.

Also present: Jennifer Goedke, office of Representative Marcy Kaptur; Susan Weld, general counsel; Andrea Worden, senior counsel; Keith Hand, senior counsel; Selene Ko, chief counsel for trade and commercial law; Lary Brown, specialist on labor issues.

Mr. FOARDE. As I told our panelists a moment ago, people come and go during our roundtables, which of course they should do if they cannot stay the whole time. So, we will expect to be joined by others as we go on.

Before I introduce our three panelists, I would like to say welcome to this staff-led issues roundtable of the Congressional-Executive Commission on China [CECC].

On behalf of Congressman Doug Bereuter, the chairman of the CECC, and Senator Chuck Hagel, the co-chairman, today's roundtable concerns women's rights in China, and particularly in the context of China's changing economy.

We have three distinguished and learned panelists this afternoon. I will introduce them in a moment. But, first, I would like to make an administrative announcement or two.

Our next staff-led issues roundtable will be an open forum on Monday, March 10, at 2 p.m. in this very room, room 2200, Rayburn. The open forum format was very successful for us last year.

The rules are, roughly, that any person who wishes to speak for 5 minutes on a topic within the Commission's mandate is welcome to sign up with us—the deadline is just a couple of days before the roundtable date itself—and then can sit and make a presentation and give us a written statement, if they wish, that goes into the record. Each panelist will be asked questions by the staff panel once all of the panelists have spoken. So, again, that is Monday, March 10.

On Monday, March 24, at 2:30 p.m. in room 2255, Rayburn, we will hold another issues roundtable on non-governmental organizations in China and freedom of association issues. We will put more information about that roundtable on our Web site, and also out to our e-mail information list.

While I am on that topic, you are all welcome to sign up for e-mail announcements from us about CECC roundtables and hearings, and occasionally other bits of news related to our mandate, via the CECC Web site, which is *www.cecc.gov*.

There is also a physical sign-up sheet for those of you who prefer to do things that way that is being circulated, and you can give us your name and your e-mail address and we will sign you up. If at any time you need to unsubscribe from the list, you can do that on our Web site very easily.

Another feature of the Web site is that all of our roundtable and hearing transcripts are available for both viewing and downloading as PDF files. Normally, there is a 4- to 6-week time lag between the date of one of our events and the appearance of the final transcript. That is so we can give our panelists time to correct the draft and get it back to us, process it, and put it up. But normally we have their written statements online the day of the event, so you can find them there.

Helping us today understand more about women's rights in China's changing economy are Margaret Woo, from the Northeastern University School of Law. She is going to look at one aspect of the set of issues for us on women's use of the court system in China.

Following her will be Rangita de Silva from The Spangenberg Group, looking at the grassroots enforcement of women's rights and interests.

And, finally, Christina Gilmartin from the Department of History at Northeastern University about marriage migrations in contemporary China.

Panelists, we have a high-tech system here with a set of lights. Once I introduce you, I am going to hit the button and the green light will light. You have 10 minutes to make your presentation.

Unfortunately, we do not have an amber light, so I will kind of look at you and wave after about 8 minutes so you know you need to wrap things up. Then when the red light turns on, we hope you could wrap up extremely quickly so we could go on to the next panelist.

When all three of you have had a chance to make your presentations, then we will open it up to questions from the staff group up here. We will go as long as the conversation is interesting, or until 3:30, whichever is first, since we have pledged to the International Relations Committee to vacate the room by 3:45.

So, without further ado, let me ask Margaret Woo to make a presentation. Let me also ask you to speak directly into your microphones so that we can get a good transcript of today's roundtable.

Margaret, thank you.

**STATEMENT OF MARGARET WOO, PROFESSOR,
NORTHEASTERN UNIVERSITY SCHOOL OF LAW, BOSTON, MA**

Ms. WOO. Well, it is certainly an honor to participate in this roundtable before the Commission on the People's Republic of China, focusing on private property rights and women.

My fields of specialization are comparative law and Chinese legal reforms. In the last 15 years, I have worked on topics looking at legal reforms and economic developments in China, and in particular its implications for Chinese women and equality.

Certainly, one cannot understand the extent of substantive private property protections in China without understanding how such rights are enforced in the courts today.

The question of how women's rights have been implemented through the legal system has added significance. Certainly, the test of a legal system is its ability to protect the most vulnerable. Women, arguably, make up the subgroup of the Chinese population with the most ambiguous relationship to the Chinese state.

So how Chinese women are using the courts to enforce their rights entails an assessment of whether, and how, law is being used as an instrument for citizen empowerment.

For rule of law ideals truly to take root, the idea of legality and legal instruments to settle rights and social problems must exist at the grassroots and at the level of ordinary citizens.

Now, to understand Chinese women's use of the legal system, it makes sense to begin with a brief summary of the kinds of issues Chinese women are facing since the reform and how the legal system responded.

Certainly with the deepening of economic reforms and greater reliance on markets, women's social status has increased in some ways, but decreased in others. While the market economy has offered women greater freedom and mobility, such mobility also has resulted in greater threats for women at home and in the workplace.

As I have written elsewhere, the market economy has led to two kinds of contrasting migratory trends for women: (1) in the private sector, Chinese women are migrating out of the rural areas to urban areas for labor and for marriage; and (2) in the state sector area, Chinese women are asked to "migrate" from the public "workplace" to the private sphere of home and hearth.

Now, as to the first trend, very quickly, to summarize, it is estimated that over 50 million women have given up farming for industrial sector labor. Known as "dagongmei," or laboring sisters, these migrating women constitute the majority of migrant workers in the exploding numbers of foreign-invested township and private enterprises, which have been the focus of economic reforms.

Now, since these migrating women often take non-contractual, less desirable temporary jobs without urban residence registration, they work without the social benefits normally guaranteed for state workers. Since they are often uneducated, they can be subject to sexual abuses.

In 1999, women workers earned an average of 70 percent of men's pay, really a decrease from the 83 percent back in the early 1990s.

Rural women are also migrating outward from rural areas to wealthier areas for marriage. I know that Professor Gilmartin will be speaking on that, so I will just leave that issue aside.

But just to mention that, even in the best of circumstances, the fact that women are migrating out of their local localities leaves them vulnerable, since they cannot significantly draw on the support of their natal families, resulting in greater dislocation and possible abuse for Chinese women.

Now, the second form of migration which I will again summarize very briefly is in the state sector, where women are asked to leave

the public workplace to return to the private sphere. China's economic reforms have led to redundancies in the workforce, with women often the first to be laid off, last to be hired.

So, while constituting only 39 percent of China's workforce, women constitute nearly 60 percent of its laid-off workers in some areas, such as Liaoning Province, and are officially recognized as being 50 percent of the laid-off workers nationwide.

More than 75 percent of the women laid off were still unemployed after 1 year, in contrast to 50 percent of their male counterparts. So, there is a great problem that women are facing in the labor area.

In combination with this, of course, is the increased commodification of women as "beauty objects." With marketization and privatization, women are now viewed as both consumers and products, and often in the market sphere relegated to the role of wives and mistresses rather than as equal workers "holding up half the sky," as they supposedly did during the Mao era.

So the relocation of women to the private sphere of home can add to women's loss of status as they no longer contribute to the family funds. Extramarital affairs have grown, as has the number of divorces. In divorce, women can suffer both financial and emotional setbacks because the often receive the short end of property and housing divisions.

So what are the Chinese laws and legal system doing about this? Well, there are a number of formal legal protections for women. Women's equality and civil rights are guaranteed both by the Constitution and the civil code.

There are a number of national laws that contain specific equality protection for women. These include the Marriage Law that was revised in 2001, the Inheritance Law, the Labor Law, and the Law on Maternal and Infant Health Care.

In 1995, China even enacted "Funu Quanli Baozhang Fa," which is The Law on the Protection of the Rights and Interests of Women, known generally as the Women's Rights Law.

So the Women's Rights Law and the Marriage Law set forth protections for women's freedom in marriage, as well as equality in property ownership in marriage, divorce, and inheritance. This protection is especially defined for rural women, who often face great threats of discrimination in the distribution of village land.

In the labor area, also, formal protection is contained in the Labor Law that specifically addresses problems of discrimination in promotion, hiring, layoffs. There is protective legislation with provisions for maternity leave and labor protections. The National People's Congress [NPC], was also considering legislation that would punish sexual harassment in the workplace.

With reference to bodily harm, criminal law prohibits the abduction, sale, and kidnapping of women and children. The Criminal Code punishes traffickers. The recent Marriage Law, for the first time, recognized and prohibited domestic violence. So, it looks pretty good on the books in terms of the formal legal rights.

My interest, however, is how are these rights being enforced, and how are Chinese women using the laws to protect their rights?

Well, since the establishment of the legal system in 1979, courts in China have been in increasing demand. Between 1989 and 1996,

the number of civil lawsuits grew by 70 percent. This grew by a further 36 percent in the last 5 years, between 1997 to 2001.

Private litigants are going to court in China in growing numbers, and they dispute over, primarily, housing, debt, and family issues. In 1999, debt, family, and marriage cases constituted the bulk of civil cases that comprise, respectively, 40.2 percent and 39.66 percent of all cases. So, you have debt and marriage cases really being the bulk of the civil cases.

Women litigants have not shied away from civil litigation. It is generally understood that the cases involving women tend to coalesce around the civil and criminal realm and less in the economic realm.

Interviews with Chinese lawyers, as well as surveys of the Chinese legal material, suggest that litigation involving women as plaintiffs usually concern matters of marriage, family, and bodily injury.

Now, between 1997 and 2001, divorce cases increased by 14 percent from the prior 5 years, with women often the initiators and plaintiffs of such litigation. That is consistent with the national statistics, where women were the petitioners in nearly 70 percent of divorce cases tried by the civil court since 1980.

The main reasons for divorce are incompatibility and domestic violence. According to the All China Women's Federation, domestic violence is involved in some fashion in about 30 percent of the divorce cases, with an even higher incidence in the rural areas.

Significantly, there is an increasing recognition that emotional well-being can be key reasons for divorce. Reform and greater freedom has led not only to possibilities of greater chasms in relationships, but also to greater expectations for what a marriage should be, and a growing sense of entitlement.

However, while seeking a divorce is no longer difficult for Chinese urban women, the same may not be the case for Chinese women in rural areas. There are still substantial problems with interference in their legal rights.

Despite legal protections on paper, women can, in practice, suffer both financial and emotional setbacks in divorces because they often receive the short end of property and housing divisions.

The housing problem for women in divorce is attributable to a combination of housing shortages, residuals from the "danwei" allocation system, as well as, in general, to courts' lack of understanding of gender issues.

Despite the 1996 Supreme People's Court directive urging courts to take account of a woman's situation in the distribution of housing, property, and especially housing, have often become the bargaining chip in contested divorces.

I know my time is short, so let me just jump a little bit over to labor cases. It is surprising to me, but there are few labor cases in which individual women workers challenge state or company policies that are detrimental to her.

While labor disputes must first be submitted to administrative resolution, this exhaustion requirement does not explain the low numbers of litigated cases because administrative decisions can be appealed to the court.

In 1999, labor cases constituted only 1 percent of the total of civil cases. From 1997 to 2001, the number of housing and divorce cases filed increased by 71 percent, and 68 percent, and debt was up by 60 percent. By contrast, labor cases increased only by 19 percent.

There could be a number of reasons for the paucity of labor cases. There is, in part, the problem with women not understanding their labor rights. There is also the issue that many women do not have written contracts on which they can sue.

But then there is also the issue of having a very short, 60-day time period during which an aggrieved worker can challenge and raise labor issues to either the arbitration, mediation, or, finally, to the courts. So the very short, 60-day time period makes it difficult for women to challenge these issues in court.

Finally, though, it could also be that women might be more likely to assert their rights as plaintiffs in private litigation involving marriage and divorce and less likely to touch on pressing public issues such as labor policy, where the defendant tends to be powerful companies or the Chinese state.

It may be that the court is now really more an avenue in the area of social rights than political rights, and more an avenue to contest local abuses than to oppose national policies such as economic development.

Finally, just because I do want to mention the obstacles to the use of the courts, and perhaps I will save my recommendations until later when we have a little time to discuss what the Commission might want to propose, I think that the obstacles to the use of the courts are two-fold.

One, is that China has been experimenting with an adversarial system. That is, they are very much focusing on developing a system of party autonomy to supplement its inquisitorial civil law-based system.

In the Chinese court, this is now called “dangshiren zhuyi,” where the litigants have the obligation and responsibility to bring forth proof rather than the old system of having judges do the investigation and learn about the parties and the facts.

Now, placing responsibility on individual litigants is great in the development of greater rights’ consciousness, but it can present special problems for those without power.

Certainly, without financial resources and legal knowledge, it is difficult for litigants to navigate this complicated judicial system to understand how to obtain proof, or even to know what proof is necessary.

Some problems have already surfaced in the divorce area where, according to many Chinese lawyers, wealthy husbands often hide money and other family assets from a divorcing wife, and the wife is having a difficult time in proving and getting her share of the property.

So what it does mean is that a more adversarial-based system requires the role and greater involvement of lawyers. Unfortunately, in China today, despite great growth in the legal profession, the number of lawyers is still really small in comparison to the population of 1.3 billion. Right now China has about 150,000 to 175,000 lawyers. Women constitute only 20 percent of the legal profession.

More problematically, the maldistribution of legal services over China's vast geography and in the subject areas requiring representation means that women litigants are left out.

Family and marriage cases are not as profitable as commercial cases, so the marketplace of legal services has resulted in fewer lawyers going into that area. Even with the growth of lawyers, the number of lawyers is found to be greater in urban areas such as Shanghai, but found to be a scarce commodity in the rural areas.

Mr. FOARDE. All right. Margaret, thank you very much. We are going to come back to some of these very interesting issues in the question and answer period because it raises so many interesting questions.

Ms. WOO. All right.

Mr. FOARDE. I would like to go on to Rangita de Silva, please.

STATEMENT OF RANGITA de SILVA, DIRECTOR, INTERNATIONAL PROGRAMS, THE SPANGENBERG GROUP, NEWTON, MA

Ms. DE SILVA. Over the last few years, The Spangenberg Group, under the auspices of the U.S. Department of State and the Ford Foundation, has conducted research, and provided training and technical assistance to legal services organizations and women's studies centers in China, particularly on issues concerning low-income women.

Our programs are unique in that they are aimed at putting women's rights into action in concrete ways. Working with local programs, we identify areas of women's rights reform, which are pushing the boundaries of the law.

Although facially equitable laws prohibiting discrimination in employment, property ownership, inheritance, marriage, and divorce have been enacted, the difference between equality in law and equality in fact lies with the implementation of those laws.

The lack of corresponding enforcement mechanisms is a major drawback in the effectiveness of these laws. I wish to speak to you about some areas on labor, domestic violence, and property that deeply impact women in China, the strengths and weaknesses of these laws, and the efforts made by some creative women's rights advocates and organizations to overcome the challenges posed by some of these laws and, finally, how, with the support of the State Department and the Ford Foundation, The Spangenberg Group has been assisting in some of these programs.

Although since China opened its doors to a program of economic reform there is much progress for women seeking employment outside the home, many women find that the very laws designed to protect them subject them to discrimination and disadvantage in the labor market.

It is evident that, by emphasizing the biological differences between men and women, the law limits women's employment opportunities and places an added burden on employers who hire women.

An emphasis on women's uniquely productive capabilities and their roles as child bearers and rearers, have the potential to perpetuate gender segregation in the workplace and relegate women into lower-paying, traditionally female tasks.

On the other hand, while greater mobility has resulted in greater opportunities for women, many migrant women workers suffer exploitation and discrimination. Further, laws that might improve working conditions and provide work-related benefits are under enforced, and the capacity to monitor and enforce these laws is weak.

The revisions made to the Marriage Law in 2002 are among some of the more significant changes made to the law in China. These revisions include domestic violence as a ground for divorce, and allow the spouse in a divorce proceeding to seek compensation from the other party if he or she is at fault due to certain specific grounds, including domestic violence.

The reintroduction of fault into divorce is seen as an attempt to grapple with the feminization of poverty in divorce. Despite these ground-breaking reforms in the law, Chinese women's rights advocates have argued that, in the absence of a clear definition of domestic violence, it would be very difficult to institute an action for civil compensation for domestic violence.

Domestic violence is not broadly defined to cover threats of violence to the woman and her family members, psychological damage, sexual abuse, and rape within marriage. Also, the question arises whether a claim for compensation can be made during the existence of the marriage. Due to the discretion left to the judges, similar cases can be decided differently.

Women also find it difficult to meet the high standard of proof required under the criminal law to hold batterers criminally responsible. In order to invoke article 260 of the Criminal Law on crimes disrupting marriage and family, a woman has to prove that the crime was particularly "evil" and the abuse was "continued, regular, and consistent." On the other hand, the crime of "intentional injury" requires the forensic authentication of the injury, and that the injury amount to at least a flesh wound.

In the absence of a clear definition of what constitutes domestic violence, it is most often interpreted as an injury that results in severe bodily harm, broken limb, loss of eyesight, et cetera. Most courts and prosecutors will not address what is considered a minor physical injury as domestic violence.

Another reason why the revisions to the Marriage Law might remain largely symbolic is the fact that the Public Security Bureaus often hesitate to intervene in family disputes.

Thus, without corresponding intervention procedures to make it mandatory for Public Security personnel to intervene in domestic violence issues, it would be very difficult for women to gather forensic authentication and proof of domestic violence in order to seek protection during marriage, or civil compensation at divorce.

The Chinese law also does not expressly recognize or exclude marital rape. There is a general recognition that where sexual intercourse occurred without the consent of the woman, that is, in a forced or purchased marriage, during separation, or after an application for divorce has been filed, it could amount to rape or a crime of intentional injury.

The law provides that during the marriage, neither side can transfer property without the consent of the other party. However, often in cases involving domestic violence or adultery leading to divorce, spouses in China attempt to transfer property to a third

party, so as to avoid equitable distribution of property. Many women find it difficult to trace the illegal transfer of property made by their spouses.

Married women are frequently unaware of the full extent of their husband's income or property. Given certain procedural difficulties, it is very difficult to gather real evidence on property transfer or compel witnesses to testify as to concealed property. The challenges of proving the ownership or concealment of property constitute an enormous burden to women in China.

Despite provisions in the law protecting women's property rights, the reality is that property division and divorce depend largely on availability of housing units. Frequently, in present day China, women are faced with the untenable situation of sharing a bedroom in the ex-husband's apartment. This arrangement has caused many serious problems, such as the increase in the incidence of domestic violence.

Sometimes sharing housing with a former spouse is allowed by the court as temporary housing for a stipulated period of time, or until the woman remarries. Further, the Supreme People's Court has ruled that a house that cannot be divided should be assigned to one party, and that party should compensate the other party for half the value of the house.

Unfortunately, the reality is that a woman often lacks the resources to reimburse her spouse, and the house automatically goes to the husband. As is manifest in court decisions, there is no uniform policy governing this area of the law.

Even though the revised marriage law applies uniformly to both urban and rural women, rural women encounter unique challenges in property use and ownership that have not been fully addressed by the revised Marriage Law.

Despite guarantees of equal distribution of "responsibility land," in practice, certain village committees will not allocate separate "responsibility land" to women who are divorced.

A widow returning to her village could encounter similar problems. A married woman who leaves the village, in common parlance, is considered "water splashed out" and loses her right to the land in the village.

In the case of migrant workers, too, so long as their residence has not been transferred to the city, they should retain the right to the responsibility land in their village.

However, in reality, women who go to work as migrant workers to the city have their land reallocated. Even though this is against the law, very few of these migrant workers are able to come back to their village in the event that they lose their jobs in the city.

Despite legal guarantees of equality, women's rights in the areas of marriage, divorce, employment, and property continue to face procedural obstacles. On the other hand, the changes in the law have not always had the desired impact on women.

At the same time, a review of The Spangenberg Group's work in China in the last 5 years shows that there has been a rapid maturation and development in the area of women's rights advocacy in China.

The work of some women's legal aid organizations in China has become a catalyst for change. These organizations have not only

positively impacted the lives of the disadvantaged, but have brought to the surface many issues hitherto ignored, such as domestic violence, marital rape, sexual harassment, and employment discrimination.

The women's legal aid centers have provided a forum for debate and discussion on these areas of the law and have engaged in a number of activities including: legal services for the poor, domestic violence hotlines, impact literature, law reform efforts, and training of law enforcement and judicial officers.

The cases brought to court by these centers have formed a rich body of jurisprudence on women's rights. Claims lost in court are still publicized and used to raise gender consciousness.

Our seminars help women's rights advocates in China address the inherent duality and contradictions in some of the protectionist provisions of the Chinese labor laws, and we view them in the context of analogous labor laws in other transitional countries and their disparate impact on women.

Our programs focus on how to identify gender bias and sexual harassment in employment, and how to challenge these discriminatory practices. Our programs identify various laws and regulations that prohibit gender discrimination and emphasize vigorous advocacy skills necessary to make novel anti-discrimination claims.

We also draw examples from successful litigation strategies used by Chinese women's legal services organizations. Even though successful outcomes for struggling female workers are not common, significant cases taken to court by some women's legal services groups demonstrate how women workers, after many a legal battle, have successfully vindicated their rights.

Women's legal services organizations in China are also crafting novel and indigenous advocacy strategies to protect women's property rights. These range from advising women to enter into notarized agreements with their husbands so as to ensure equitable ownership of property and to argue for civil compensation for fault to be awarded during an ongoing marriage.

In the area of domestic violence, our seminars assist women's rights advocates to identify some of the challenges women face due to gaps in the law and inaction on the part of law enforcement officials. Together, we look at ways in which to stretch the boundaries of advocacy and make women's rights and perspectives central to lawmaking.

In doing so, we draw examples from advocacy strategies in the United States and other parts of the world. Our seminars also focus on how, in the absence of an explicit marital rape exemption, a broad interpretation of China's rape laws could include marital rape.

By looking creatively, first, at local laws and then at international norms, women's rights advocates in China are developing exciting and innovative methods of problem solving.

Women's rights advocates and lawyers in China have done much to advance the frontiers of the law in the area of women's rights reform in China. Their continuing critique of discriminatory laws and practices affecting women and their creative initiatives to challenge these discriminatory practices have brought about a transformation in the lives of women who seek to vindicate their rights.

Even though much has taken place in the last few years, much remains to be done. Women's empowerment foreshadows the transformation of a society and is a benchmark of a functioning rule of law. Supporting the work of women's rights groups remain critical to the further strengthening of the rule of law in China.

Thank you.

[The prepared statement of Ms. de Silva appears in the appendix.]

Mr. FOARDE. Thank you very much.

Let us go on to Christina Gilmartin, please.

**STATEMENT OF CHRISTINA GILMARTIN, ASSOCIATE
PROFESSOR OF HISTORY, NORTHEASTERN UNIVERSITY,
BOSTON, MA**

Ms. GILMARTIN. I want to thank the Commission for inviting me to come speak about some of my recent research that I think shows the need for much greater legal training for women.

The economic reforms that were instituted in China in the late 1970s have brought tremendous changes, both positive and negative, for women. An explosion of internal migration streams of extraordinary proportions in China has drawn not only men, but also women.

Migration can be seen as a form of human agency by women who are aiming to make use of global, social and economic transformations to improve their survival odds and achieve personal empowerment.

However, a large segment of these Chinese migrant women have also faced an increasing vulnerability that has heightened public awareness and policy concerns.

Much scholarly and journalistic attention has been devoted to Chinese labor migrations, including women labor migrants. My statement concerns one aspect of Chinese migrations that have thus far not received much Western attention: voluntary marriage migrations.

Intertwined with both illegal marriage migration streams and economic migrations, this phenomenon has provided rural women with an important opportunity to improve their economic well-being.

However, these women also face unusual risk as they move beyond the security network of their kinship lines, and thus have few resources to rely upon if subjected to difficult circumstances in their new communities.

What constitutes a marriage migrant, one might ask? Women have almost always moved at the time of marriage in China. Village exogamy was held up as a norm and was widely followed.

The great majority of rural women who observed the strong taboos against same-village marriages during the Mao period, 1949 to 1976, however, married within a radius of 10 kilometers, and usually in the same county.

One study shows that women who did marry into wealthy villages from poor villages might move a bit further than that 10 kilometers, often marrying the poorest men in the village.

This marriage market migration that I am talking about in the economic reform era is, in many ways, a radical expansion of the Mao era. Women have begun to travel much larger distances, crossing county and provincial borders.

Within a few years, some women began to venture hundreds, and even thousands, of miles in order to marry. By 1990, the numbers of marriage migrants were estimated to be somewhat over 4 million, and this estimate is probably low.

These female marriage migrants constituted 28 percent of overall female migration in China in the 1980s. Although the data for the 2000 census has not been published, preliminary indications are that this figure has continued to rise.

In contrast to the millions of women who have migrated to marry, few men have been involved in this process. The main reason for such low male participation in this type of migration is the tenacity of patrilocal marriage patterns.

Even after the establishment of commune systems in China in the 1950s, government initiatives were unable to motivate men to undertake virilocal marriages.

Those few men who have moved to another village to take up residence in the homes of their wives have not been accorded full rights and social status in their new communities, and thus have led to very low participation of men in marriage migrations.

What kind of women migrate to marry? The great bulk of these women come from agricultural backgrounds. In one study, we know that 97.2 percent of female marriage migrants originally farmed for a living.

In this respect, then, they are very different than the labor migrants that we know much more about, who, according to the 1990 census, came disproportionately from farming and factory backgrounds.

So essentially what we have here is a process where women migrants are moving from poorer rural communities into wealthier rural communities. Their destinations have primarily been rural because of the "hukou" system of residence permits.

Those women who have managed to enter the boundaries of the large metropolitan areas of Beijing, Tianjin, Shanghai, and Chongqing have not ended up in the urban areas, but in the outlying rural districts.

The main reason for these large-scale marriage migrations is the existence of a sex ratio imbalance that has been growing over the last two decades. The figures are showing that, in the rural areas, up through 1990, in fact, the sex ratios are not as great as they were afterward and they are going to be in the next two decades.

However, in the rural areas the sex ratios were, in fact, great because of so many women leaving to work. So what we see in 1990 is the gender ratio of Chinese women to men, for unmarried people between the ages of 15 and 19, was 108.91. That is, almost 109 unmarried men for every 100 unmarried women. But if we look in the 20–24 age group, it would be 161.97, and for the 25–29 age group, 508.91.

It is clear that these marriage migrations are linked with both labor migrations and what I would call illegal involuntary marriage migrations. We know that the labor migrations, to start with, helped to decrease the type of stigma attached to single, unmarried women migrating.

Once factories started to hire a large number of these women migrant workers, we see large numbers of women start to be willing to engage in marriage migrations.

At the same time, we also know that male labor migrants stimulated female marriage migrants. For instance, in one village in Henan called "Ten Mile Inn," there was a tendency to recruit Sichuan men to work in the mines because of the unwillingness of the local people to continue doing such dangerous work.

These Sichuan men soon began to arrange for their female relatives to be married into the families of Ten Mile Inn, Henan, and by 1996 there were 20 Sichuan brides in the community. By 1999, the number had doubled.

There is also evidence to show that illegal marriage trafficking in women spurred the emergence of legal, voluntary marriage migrations. Again, cases where women end up in a village far from their homes, and once they regain their freedom, they then start to arrange for neighbors to come live in their villages as marriage migrants.

The marriage migration in the economic reform eras have tended to flow in certain geographical patterns. In general, they originate in the poorer areas of the southwest and travel to the rural areas of the richest sections of the eastern coast, particularly Jiangsu and Zhejiang Provinces. Also, Guangdong and Hebei are destinations.

As early as 1989, the per capita net income in rural Zhejiang was more than 400 yuan above the national average, and approximately 450 yuan above Hunan's level. So we get some sense of the disparities early in the economic reform, and they are much greater now.

Economic factors have been critical in the decisions of men to marry female marriage migrants from outside their localities. The bride price paid for immigrant women is usually significantly less than that which is required for local brides.

In Zhejiang, for instance, the bride price for a local woman has been going up precipitously since the early economic reform years. We now know that many of these marriages to local women are costing over 100,000 yuan.

Now, there are many concerns about this marriage migration for the status and the well-being of the women. They are using a traditional method of social mobility that has been used by women in marriage. In so doing, we find, in many cases, that it is very difficult for them to have egalitarian marriages.

Many of these women do not have any legal rights to start with. Their marriages are not registered, in large part because they break up so easily and there is a high divorce rate of these marriages in the first years.

Also, there is evidence that these women do not have a "hukou" either, which means they do not have rights to land. The countless reports of wife battering and female suicides in rural areas suggest that such acts may well be disproportionately occurring in these types of marriages. We need more research to show if this is true or not.

It does appear that these women face a great deal of discrimination and hostility in the communities, with the result that they cling to their new-found families and lead fairly solitary existences, refusing to assume jobs in the public domain.

The relatively hostile environment, coupled with the absence of nearby relatives, means that, in the main, emotional and economic support for these women comes from their husband's families. But when these marriages are ridden with conflict, as is often the case, women find themselves without many resources.

The last thing I just want to point out, is that this is a situation in which women would benefit greatly from with more legal knowledge. I think that this would have to be done in different ways than has been the common practice of NGOs in China thus far. Particularly important is to get down to the county level.

Last, I think that with a minimal amount of resources, much more research by Chinese scholars could be encouraged.

Thank you.

[The prepared statement of Ms. Gilmartin appears in the appendix.]

Mr. FOARDE. Thank you very much. Three fascinating, but also very sobering, presentations.

We will now move to the question and answer session of our panel for the remaining 45 minutes or so. I would like to begin by posing a question, really to all three of you, but principally to Margaret Woo.

I understood you to say in your presentation that when state-owned enterprises fail, women are more likely to be laid off than men. Is that so, in the first place? Then, if so, can women employees get access to money paid on their behalf into pension, health and social security accounts?

Do women make effective use of the labor laws and regulations that are available to them? How well are they represented, if at all, by the All China Federation of Trade Unions and its branches?

Ms. WOO. It is true that women are, by and large, bearing the brunt of the layoffs. China generally has a 2-year retraining program, theoretically, for all laid-off workers.

Part of the problem, however, for women workers, is that once they are laid off, there is also a tremendous amount of pressure to stay being laid off. Not too long ago, in the 1990s, there was even an official "return home" policy for women, that is, that they were encouraged to stay home.

I think the latest revisions to the Labor Law recognized a variety of different kinds of labor, including temporary labor. It is the fear of women's rights groups that, yet again, this will be the track that most women will be encouraged to take.

How well are they being represented by the Women's Federation? I have to say that the All China Women's Federation has changed throughout the years.

In the past, they have primarily been a conduit for national policies. Increasingly, they are speaking up as advocates for women, and they have done a tremendous amount in terms of helping women understand their labor rights.

By and large, part of the problem—in fact, my recommendation is similar, I think, to Chris' and Rangita's—is that there is a need to educate and spread the word to women, as well as to law enforcement professionals what the rights of women are. So, there are plenty of labor rights issues right now that women do not even know that they can contest.

Mr. FOARDE. You spoke about the Women's Federation. But what about the All China Federation of Trade Unions, the ACFTU? Are they doing anything at all for women, or anything special for women?

Ms. WOO. Yes. The trade union is interesting. Part of the problem is that few of the violations occur in the state-owned enterprises where the trade unions are established.

Many of the poor labor conditions happen in the special economic zones, in the joint ventures, and so on where trade unions have not been able to get as strong a hold.

So, in fact, the All China Women's Federation is, by and large, where women go when they do have a problem. In fact, I would think that what your Commission can do is to encourage American companies, when they do go abroad to places like China, that they be open to allowing cooperation with trade unions or cognizant of labor standards.

Mr. FOARDE. Thank you very much.

I would like to open it up now to my colleagues on the staff. We will start, I think, with Jennifer Goedke, who represents Congresswoman Marcy Kaptur.

Jennifer, please.

Ms. GOEDKE. Thank you. I guess my question can go to the whole panel. In the United States, and in many other countries, women and children who are victims of domestic violence can look toward shelters, whether it is through faith-based or non-faith-based organizations. They can look to shelters for protection and even temporary housing. Does China have any similar establishments? If so, what are the legal ramifications of that?

Ms. DE SILVA. Right. That is a problem that has been identified by women's rights advocates in China. But, at the same time, there are some creative and innovative organizations that are creating such shelters.

For instance, in Hubei Province, where we have a program, a local philanthropist donated space in his hotel to shelter abused women. A group of women's rights advocates and Women's Federation cadres garnered support from the local Red Cross to support this shelter.

The important thing is that this idea is growing and there is an expanding understanding that there is a need for shelters. Through innovative, localized, and indigenous means, these organizations have become part of the fabric of women's rights advocacy in China.

Ms. GILMARTIN. But I think it is also important to point out that until the Fourth World Women's Conference in 1995, this was a totally submerged issue. There was no public recognition of this problem and no public discussion.

So, in a society that does not rely heavily on NGOs, these types of organizations do take a long time to emerge. So even though they are hopeful indicators here, I think it is very safe to assume that for most women who suffer domestic violence, there really is no place to go.

Ms. GOEDKE. And if I have time for one more question.

Mr. FOARDE. You have plenty of time.

Ms. GOEDKE. How does the legal system help women get access to better, or slightly improved, health care? Are women using the courts at all to get, whether it is better health plans at the workplace, or just even getting access into certain research activities, or any other areas like that?

Ms. WOO. That is a very difficult question. As you know, now many of the social services have been privatized. In the past, if you were affiliated with the "danwei" or work unit, then the work unit was in charge of everything, from housing, to welfare, to health care. And, of course, the state, with a special interest with the one child policy, would keep very close track of a woman's health and monthly cycles.

Today, many hospitals and doctors work on a private fee basis and the legal system really is not doing that much to meet that need because it is not something you could sue on. There are no grounds to sue when it is a matter of the market failing to provide sufficient health services at reasonable costs.

Mr. FOARDE. Next, I would like to recognize my friend and colleague, Susan Roosevelt Weld, the general counsel of the Commission. Susan.

Ms. WELD. Thank you. I would like to follow up on the question of popular legal education; educating women on what their rights are on the books, and also on what their rights are under certain international conventions that China is party to.

In your opinion, each of you, in just a few words, what is the best way to provide that kind of education? How is it being provided now? How should it be best provided, and could this Commission consider any ways to promote that sort of education?

Ms. DE SILVA. As you know, China was one of the first state parties to ratify the CEDAW at the convention in 1980, and it was ratified without any reservations, which is an extremely symbolic act considering that so many developing nations in Asia ratified with reservations.

Ms. WELD. Does everybody know what CEDAW means?

Ms. DE SILVA. It is the Convention for Elimination of Discrimination Against Women which was adopted in 1979.

So, in our opinion, it has been a hugely powerful tool of advocacy in China, both symbolically as well as substantially.

At different levels, it has remained powerful. At one level, as you know, CEDAW is not self-executing in the sense that you have to enact domestic legislation to give effect to CEDAW.

The LPWRI, the Law on the Protection of Women's Rights and Interests, which Margaret mentioned, was enacted as part of China's obligations under Article II of the CEDAW. So, that was a step in the right direction.

What is important about CEDAW is that it also establishes that not only should discriminatory laws be abolished, but also that any laws that might have discriminatory impact should be looked at very carefully.

So, that is an issue that is huge in China right now, where women's rights advocates are looking at facially neutral laws and looking at what is the impact of these laws, and using the CEDAW as a guideline.

So I feel that CEDAW provides the guidelines for accountability. It provides a standard to aspire to. Second, given the fact that there are certain vague and undeveloped, what Chinese advocates call “imperfections” in the law, the CEDAW provides a good fill-in.

One way of using the CEDAW is to look at local laws and interpret those local laws in the spirit of the CEDAW. So it provides, once again, a good benchmark. One example of this is, as I mentioned, that domestic violence is not defined very well in the Chinese laws.

So, given that there is no definition of that, women’s rights advocates are looking at international conventions, and international declarations. Unfortunately, the CEDAW itself does not define domestic violence.

Chinese advocates are looking at the DEVAW, which is the Declaration on the Elimination of Violence Against Women, because it is a U.N. declaration and, as a member nation of the United Nations, it does have authority, if not binding effect.

So they are looking at the DEVAW and its very broad definition of domestic violence to tell the courts how domestic violence is defined. The DEVAW definition includes marital rape, it includes psychological damage, it includes threats to the family and to the person, so as to give a broad and wider interpretation to local laws. The reporting requirements are also very important.

Obviously, the CEDAW itself does not allow access to the Committee on the Elimination of Discrimination Against Women by individuals or groups, but there is an optional protocol that was passed in 2001 which allows individuals and groups access to the Committee. Now, China has not signed that as yet, but it has just come into operation.

We, in our advocacy, talk about how to engage the state in writing these reports, how it is possible for NGOs to write shadow reports to the Committee, how it is important to hold the state responsible for exercising what is known as due diligence under the Convention.

The state is not accountable under the CEDAW for any private acts of violence, but the state can be held responsible for inaction, for not taking enough notice of violence or not passing legislation or enforcement mechanisms to enforce certain laws. So, there are all these levels at which the CEDAW, we feel, has been very powerful.

Ms. WOO. I just want to quickly follow. There is no question that CEDAW is a great normative guide for Chinese grassroots groups to use to advocate for Chinese laws to formulate substantive rights protection.

But I would also want to emphasize that legal education should not only teach the substantive rights that women in China have, or should have, but rather how they can enforce them.

In other words, it really needs to be funding additional legal education as to simple steps that women can take to enforce their rights, whether it is going to the police, whether it is going to the courts. It needs to de-mystify the process such that women themselves can take authority into their own hands.

Ms. GILMARTIN. Yes. I would like to also add that often we see reports in the newspaper. For instance, yesterday there was a re-

port in the Boston Globe which talked about a woman in Chongqing Shi using her legal rights.

This may give a false sense that there is a growing cognizance of people's legal consciousness. But I think it is important to distinguish between rural and urban settings.

There is such little knowledge in rural areas. I have been doing a lot of research in southwest China in Sichuan, Chongqing Shi, and also in Hubei and central China. I find that many older women are functionally illiterate and that younger women generally have no understanding of what their legal rights are.

So, a program that tries to focus on rural situations in ways that not only are dispensing knowledge to women, but also at the same time retraining the legal personnel in the county courts so that they also are much more cognizant of the situations facing women.

Mr. FOARDE. Very useful. Thank you very much.

Let us go on to my colleague and friend, Lary Brown, who handles labor issues for us. Lary, do you have a question or two?

Mr. BROWN. I do. I have two questions, actually.

The first one: Dr. Woo mentioned in her presentation that the number of litigated divorces is increasing in China. My question is, are women getting a fair judgment from this litigation? Getting into court is only part of the battle.

Ms. WOO. And your second? Or should I just answer the first?

Mr. BROWN. Answer that one and I will come back.

Ms. WOO. It is an interesting question, because it is certainly hard to generalize and say, for the numbers of divorces filed for in China, that women are not getting a fair shake.

I would say, however, that women are having difficulties in the divorce process, primarily because in the litigation process there are so many more procedural hurdles. For example, the latest evidence laws now make the entry of evidence very restrictive.

I was looking at Women in China Today, and there was a story in there that talks about how a woman who wanted to sue under the latest Marriage Law for compensation from her spouse for a fault-based divorce could not come up with sufficient evidence to meet the court's requirements.

She finally ended up getting a lawyer to help her and was thereby a little more successful. So, until we have better legal services for women, I think they will continue to face obstacles.

Ms. GILMARTIN. I just wanted to add that we have to realize there is another problem. Women rarely know what their husband's economic resources are, and there is no way to get this information. The husband is not filing income tax every year. Unless she has a bank account number and knows the specific branch that his accounts are in, she is unable to make claims on his resources.

So this means, in terms of women getting any fair economic settlements in divorce cases, that they are extremely crippled.

Ms. DE SILVA. I think that is why it is so important to have what women's legal advocates in China call a "specialized cadre" of women's rights lawyers who are able to handle women's rights issues, because this comes up all the time.

That is one of the biggest barriers to the claims. It is impossible to trace property that has been transferred, or they do not have a good awareness of what the husband's property is.

The narratives that the victims tell us, or the narratives the women's lawyers tell us, are very interesting. There are ingenious advocacy efforts that are being made right now to get this evidence.

We have been told all the time about how they go and speak to the husband's work unit and find out, does he have a mistress somewhere, and if he has a mistress, do you have the telephone number? Or they ask the woman to call, to look at the telephone records and look to see whether there is a number that has been regularly called.

So, it is just by the sheer willpower of the women's rights advocates that even the little evidence that can be submitted can be found. I want to add that it is difficult to subpoena witnesses and also that witnesses are reluctant to talk. Unless you have lawyers who are trained as advocates, it is impossible to get this kind of evidence.

Mr. BROWN. Thank you.

My other question is: Margaret Woo mentioned in her presentation that a very small proportion of the civil cases are actually related to labor issues. I would ask all three of you, if you could, what is it going to take to increase that proportion?

Ms. WOO. Oh, that is a tough one.

Mr. BROWN. You hinted at different things. But I would kind of like to hear your broader perspective on that.

Ms. WOO. I will have to think about that. That is very difficult. There are procedural, systemic obstacles as well as the broader political obstacles. So, it really would be a two-prong process, I would assume.

I did mention the procedural obstacles, is the fact that many women workers do not have signed contracts, so it is difficult for them to sue. There is also a very short statute of limitations period. I think it is, like, 60 days, where they have to file with the Arbitration Board if they want to contest anything. So there could be laws that could be changed in that form or fashion that would be very useful. But the other, more kind of politically sensitive, would be really to push a greater recognition or give greater priority to rights.

I think we have wonderful rights on the books right now to protect women, but it is unclear what happens to these rights when they run up against other goals of the state, or other rights within the legal system.

So, I think one way, really, would be to push for greater clarification as to what the priority of these rights are, and thereby encourage people to understand that this is, indeed, a right that the state is supporting and will back through the litigation process.

Ms. GILMARTIN. Yes. A second factor, I think, is if the discourse, whether it is from the All China Women's Federation in their journals or in other TV/media types of presentations, started to address these problems so that women felt there was more public support and they had more understanding of the possibilities, I think that you would see some shifts. Right now, the All China Women's Federation is really focused on very different areas of pursuit.

Mr. FOARDE. Let me recognize our colleague, Andrea Worden, who is a senior counsel working on grassroots legal reform issues, if she has some questions.

Ms. WORDEN. Thanks, John.

I have a two-part question that I think probably makes sense for Rangita to address first. Then I would also love to hear from the rest of the panel.

In addition to legal aid centers, I am curious what other sorts of NGOs exist in China that focus on women's rights issues?

Ms. DE SILVA. Right. I think one of the most important organizations right now in China working on these issues is the All China Women's Federation. It is a quasi-non-governmental organization.

But what is interesting about this network, is that it has these many layers and goes right down to the village and the county level, so you have a village-level Women's Federation offices, the county-level office, and then the provincial-level office. Depending on the seriousness of the case, it might come up to the provincial-level Women's Federation office.

What is interesting about these organizations, is there is a discreet group of lawyers whom they call "falü gongjiao," paralegals, working for these organizations. They are under the rubric of what is known as full-time rights protection cadres of the Women's Federation.

They are the ones to whom women first come with their claims. These women's federation offices have now got the status and the clout to employ volunteer lawyers who belong to private law firms who volunteer their services.

What is exciting about this, is that by volunteering their services, maybe at the beginning rather reluctantly, they have now realized how important and how fascinating an area of law this is and now there is this kind of enthusiasm to volunteer more of their services. So, it is almost contagious.

What is important about some of the seminars that we do is not only to broaden the capacity of a rather discreet and small group of volunteer lawyers, but also to capture their imagination, to capture their attention to the importance of these rights and these new areas of law and new areas of rights protection.

So we find that there is a growing group of private attorneys who are volunteering their services to the Women's Federation, and that is growing. They are doing more and more cutting-edge work.

Then the Women's Federation cadres do the intake of the cases, and then they see those cases. What they can handle, they will handle, which is just talking to an administrative official or giving legal advice. When it comes to very important cutting-edge work, they will then contact the lawyer.

Ms. WOO. Actually, I think Chris would probably be able to speak more in detail about this, but there is a whole growing body of women's studies in departments and schools around the country and that is definitely a result of the Fourth World Conference on Women, and a result of the various United States and Chinese exchanges. That group of very active women has been pushing Chinese reforms for greater protection of women's rights.

Ms. GILMARTIN. Yes. To add a little bit more besides the women's study centers, there are also hotlines in the large cities that have been very effective. Sometimes they have one specific day a week where they just deal with legal issues regarding women, and they have legal specialists on board.

They then will publish some of the most interesting issues that they're dealing with so that there will be a great deal of dissemination of some of these cases.

I think it is also important to talk about the role of the Ford Foundation, too, in terms of providing support for legal knowledge being disseminated. At Wuhan University, for instance, a very important legal center was set up.

Lawyers were paid to provide services free to women. I spent a lot of time talking to some of those lawyers about the kind of cases that they took up that never would have been handled if that service had not been available.

Ms. DE SILVA. I just want to add to that. There is, as she pointed out, a burgeoning feminist consciousness in China which I find is very exciting. Right now, the Ford Foundation is funding a women's rights research center at the Chinese Academy of Social Sciences.

As a seminal project of this group, we are taking international and American feminist theory experts to teach a course on gender and the law. That will feed into actualizing some of these laws and theories because it is going to be feminist theory as put into practice in China. That is going to be very exciting.

As she pointed out, hotlines are very important. The hotlines run by these women's organizations are more accessible than the 110 hotline that the police use, and also law schools increasingly are building legal aid clinics as one way of training their lawyers and providing legal services.

Ms. WORDEN. I have a quick follow-up. Besides the All China Women's Federation, I am wondering if there are legal aid centers, legal aid clinics, or NGOs working on women's rights in western China, for example, in Tibet and Xinjiang.

Ms. WOO. Yes, that is hard. Well, I do not know. You raised a very, very good point. A lot of research generally focuses in the eastern part of China and the more accessible areas. For the west, I cannot give you particular data. I do know that law schools, say for example in Sichuan, have very active legal aid clinics. Also, in Guizhou as well. So there are legal aid clinics affiliated to law schools in the western area.

But, overall, however, the western area falls behind the coastal region in terms of the poverty index. I think the average person earns half of what people in the east would earn, so the availability of legal aid there is much, much less.

Mr. FOARDE. Let me recognize Selene Ko, our senior counsel for commercial rule of law development.

Ms. KO. Professor Woo discussed in her presentation the pay disparity and the lack of female managers in the private sector, as well as the pressure to stay home when women leave the state-owned enterprises in the public sector.

Given the rapidly developing private sector in China, are there any official or unofficial efforts that are aimed primarily at improving women's status in the private sector in general, or specifically at improving their availability to take advantage of this growing sector of the economy? This is for any of you to answer. Thank you.

Ms. WOO. I know a little bit about it. I cannot profess to be an expert in this area, but I know of some programs out in the poorer

regions, where the government is doing what the World Bank has done in many poverty-stricken areas, which is to give what is called “micro-enterprise credits” to women.

But, also, they would sometimes tie it to fertility policies. That is, you could get a credit if, in fact, you are following the family planning policies. So, the state is benefiting, and in the eyes of many women, too, that they have family planning, as well as some micro enterprise credits. It has been fairly successful. But, again, I do not know it very well, so I cannot profess to be an expert in that.

Mr. FOARDE. Keith Hand is another senior counsel, who works on national level legal reform issues.

Keith.

Mr. HAND. My question is really to the whole panel. I would like to get your sense for how accurate the Chinese media is in reporting on women’s issues, and how much latitude the authorities tend to give the media, and also NGOs, to aggressively report on these issues.

Ms. DE SILVA. I think most of the women’s rights advocates in the women’s rights organizations that we work with, both in Beijing, in Hebei, in Hubei, and in Hunan, all use the media to their advantage. They actually have learned to manipulate the media to their advantage.

We have heard of cases where the women’s rights lawyer will take the newspaper with them when they go to interview the client, and that has worked successfully in most cases.

There are a couple of cases where the over-interference of the media has resulted in decisions that have not been always fair to the woman, just because the courts have seen the press coverage as interference or meddling with the court and judges have thought the stories are overly harsh or overly critical. But, overall, the media has been a very powerful tool in advancing women’s rights at different levels.

One issue that I wanted to talk about is that there is a lot of exciting advocacy work going on in the area of battered women and self-defense, where women’s rights advocates are using cutting-edge theories that have resonated in the United States and in Canada in very creative and localized ways.

For instance, the battered women’s syndrome, the learned helplessness theories all grew here in the United States. But they have been identified in China, where Chinese attorneys are using a gender-neutral critique to look at the self-defense of provocation, and saying that women and men think and act differently.

So provocation, which demands that the threat be imminent, is really unfair to women. So, they are using some of the critiques and the discourses that have grown and have had success in this part of the world in a very creative, localized way.

Again, it is the tip of the iceberg. I am not trying to maintain that this is happening all over China. But there is this kind of very sophisticated thinking that is developing and being made use of in China. The media is using this, too. I am coming to the media. Yes. So the media is publicizing these creative advocacy decisions.

Ms. WOO. The media is interesting in China because every time I open up the “Zhongguo Fazhibao,” which is the China Legal

News, or even Women in China, I would see stories about the “Qinguan,” the wonderful judges who acted judiciously to protect women’s rights.

So, in part, the media is one way of advocating women’s rights, but also advocating for the courts, as a kind of propaganda for the state of the importance or the legitimacy of the courts.

One thing that the media does that I find very exciting is that it will conduct investigative reporting on local officials. I am sure, in your prior panels, you have focused on this issue, that China is a huge country and that the central government is having a hard time keeping abreast of local provincial problems.

Sometimes when litigants and women have problems getting a fair shake in the local courts, they will go the media and national attention can sometimes bring correct results.

Ms. DE SILVA. Given that there is no system of precedent in China, I think the media is a very good way of educating people.

Mr. FOARDE. Susan, do you have a final set of questions for our panelists?

Ms. WELD. I do.

Mr. FOARDE. We are running out of time, but I am sure you have a question or two, so please go ahead.

Ms. WELD. This is something I have been curious about for a long time. It is really the balance of power inside the hu unit. In many instances in the rural areas, land rights are owned by the hu, or household.

Who really controls the economic nut of an agricultural family? Who controls it? Are there any laws that reach inside the household to see that women get their fair shake in that sort of a situation?

Ms. GILMARTIN. What I am aware of is very different patterns in China. In some areas, men are totally out of agriculture. In other areas, they pretty much dominate agriculture, so you are going to see different patterns there.

What women report a lot of times is that the decisionmaking—it is not the legal rights, but the decisionmaking—around the land often is male, even if they are doing most of the labor. So, when women are working the land, it does not necessarily mean they are in full control in deciding about those situations.

I just have not read that much—maybe Margaret has read more—where people have gotten to look at some of the legal issues in terms of land use and women going to court. I just have not seen anything on this.

Ms. WOO. In terms of land use rights, I have seen some cases in which women tried to sue to get their rural land rights recognized as a collective body. It is often difficult for rural women, uneducated rural women, to act individually to challenge an authority like the village head, or challenge the authority of the household, to recognize their rights. Collective action actually has been quite useful for women in that regard.

Mr. FOARDE. We have got some time. Do you have another one?

Ms. WELD. I get to go further! It seems to me from your testimony that one problem is bargaining power. In order to solve problems of bargaining power for women, especially in the rural areas, collective action, as you said, Margaret, is one way.

But what are the other ways? What other kinds of organizations or entities can put their thumb on the balance of power in favor of women so that they can begin to get their rights under law, domestic law, or international conventions?

Ms. WOO. Well, actually, getting back to the Women's Federation, I would encourage some coordination with the Women's Federation because they have changed so much, I think, in the last 10 years.

But from the lawyers that I have talked to, when the Women's Federation gets involved in the litigation, if they actually send a representative to court, the judges will listen. So the Women's Federation has the potential to transition into being advocates for women.

Ms. WELD. So for this Commission, what does that suggest?

Ms. WOO. For the Commission?

Ms. WELD. Yes.

Ms. WOO. In general, I certainly would encourage greater coordination, greater contact, and greater support. So, if it would mean either funding or supporting groups in the United States that can work with both the Women's Federation as well as more independent women's groups in China, that would be terrific.

I guess my basic point is not to leave the Women's Federation out of the picture. Oftentimes, the tendency is to say, we have got to promote civil society in China, that trade unions, and the Women's Federation, are really arms of the state, and so we really do not want to deal with them. That would really, I think, give the Women's Federation short shrift.

Ms. GILMARTIN. I also would like to see creative ways of funding more research out of the women's study centers at universities because the way that these women's studies center really exist is primarily through research and only secondarily, if at all, through teaching women's studies curricula. Funding obviously is highly competitive for any research project.

I do feel that finding ways of making more funds available for these type of projects, which they would be very interested in undertaking, not only brings more knowledge into public awareness, but I think in so doing helps a variety of government and NGO agencies to be much more alert and cognizant of these issues.

Ms. DE SILVA. A very active women's rights organization in Beijing has recommended introducing gender equality into the school curriculum, and I find that a very interesting proposition, to start them on it early.

Another recommendation that has been made to us by both the NGO sector, the truly independent women's rights groups, as well as the Women's Federation groups, is to network locally among these groups. That is important.

They do not speak to each other very well, so it is very important to find a mechanism to bring these groups together. One program that we hope to implement at the end of the second phase of our program is to have this networking conference where you get independent advisors, and more Women's Federation cadres to come together and think of these common issues. There is no doubt that they are all sincere about their commitment to these issues. It is a different approach.

Ms. WOO. Just to reemphasize, the focus definitely needs to be at the local level as opposed to the national level. I think the national level, you would tend to get more of the status quo.

So, in other words, it is great to have coordination between the truly independent NGOs and the Women's Federation, but some of the more exciting things that I have seen happen at the local level.

Ms. DE SILVA. That is so true. When you go down to the grass-roots level, there is no difference between the independent voice and the voice of the Women's Federation cadres, because they get that authenticity, get that passion for the work that they are doing and the use of law and processes.

Mr. FOARDE. We have come to the end of the time we have today, since we have to give up the room to another group.

On behalf of the Members of the Congressional-Executive Commission on China, I would like to thank Margaret Woo, Rangita de Silva, and Christina Gilmartin for spending time with us this afternoon and sharing your expertise with us.

I would like, also, to remind everyone here that the next issues roundtable will be 2 weeks from today. It is an open forum. An announcement will be going out later in the week about signing up, and the rules. But it will be at 2 p.m., again in this room, 2200 here in Rayburn.

Thank you all very much for coming. Thanks to our panelists and to our staff colleagues for participating. We will gavel this issues roundtable to a close. Thank you.

[Whereupon, at 3:32 p.m. the roundtable was concluded.]

A P P E N D I X

PREPARED STATEMENTS

PREPARED STATEMENT OF RANGITA DE SILVA

FEBRUARY 24, 2003

INTRODUCTION

Over the last few years The Spangenberg Group under the auspices of the United States Department of State¹ and the Ford Foundation has conducted research, provided training and technical assistance to legal services organizations and women's studies centers in China, particularly on issues concerning low-income women. Our programs are unique in that they are aimed at putting women's rights into action in concrete ways. Working with local programs, we identify areas of women's rights reform, which are pushing the boundaries of the law.

Although, facially equitable laws prohibiting discrimination in employment, property ownership, inheritance, marriage and divorce have been enacted,² the difference between equality in law and equality in fact, lies with the implementation of those laws. The lack of corresponding enforcement mechanisms is a major drawback in the effectiveness of these laws.

I wish to speak to you about some areas of the law on labor, violence and property that deeply impact women in China, the strengths and weaknesses of these laws and the efforts made by some creative women's rights advocates, and organizations to overcome the challenges posed by some of these laws. Finally, how with the support of the State Department and the Ford Foundation, The Spangenberg Group has been assisting in some of these programs.

WOMEN AND LABOR

Although, since China opened its doors to a program of economic reform, there is much progress for women seeking employment outside the home, many women find that the very laws designed to protect them subject them to discrimination and disadvantage in the labor market.³ It is evident that by emphasizing the biological differences between men and women, the law limits women's employment opportunities, and places an added burden on employers who hire women. An emphasis on women's unique reproductive capabilities, and their roles as child bearers and

¹ Future projects will be funded, in part, through grant Number S-LMAQM-03-H-0009. The opinions, findings and conclusions or recommendations expressed herein are those of the Author and do not necessarily reflect those of the Department of State.

² Women in the People's Republic of China enjoy equal rights with men in all spheres of life, in political, economic, cultural, social, and family life. See P.R.C. Const., arts.33, 34, 48,49 and The Law on the Protection of Women's rights and Interests (LPWRI) of 1992. The LPWRI reflects China's desire to fulfill its state's parties obligations under the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW). Women enjoy equal rights to employment with men. See Labor Act of the People's Republic of China, ch.11, Sec.13 (1994).

³ Women's employment opportunities are in certain instances limited by laws that prevent them from performing certain physically arduous jobs. Such legislation include generalized statutory laws, specific regulations, local regulations, and administrative rules promulgated by government departments. Women are altogether prohibited from engaging in work that is considered particularly hazardous, such as mining on hills or underground, scaffolding work, work that involves logging timber, high altitude work that entails continuously carrying the weight of twenty kilograms or carrying over twenty-five kilograms at different intervals, and other work categorized as physically intense. See Labor Act of the People's Republic of China, Ch. VII, arts. 59-63 (1994). Further, women laborers who have been pregnant for 7 months should not be arranged for night shifts or overtime. If women find it difficult to work, they can apply for prenatal leave. The salary during this period should not be below 75 percent of the standard salary. Furthermore, pregnant women who are unable to complete the original work can on orders lighten their work assignments or be asked to be assigned to other work. See State Council of the People's Republic of China, Provisions of Labor Safety and Health for Women Workers, art.7 (1988). Regulations have also been promulgated to provide special on-the-job facilities for women, including health care rooms, anterooms for pregnant women, feeding rooms, nurseries, and kindergartens. See State Council of the People's Republic of China, Provisions of Labor safety and Health for Women Workers, art. 11 (1988). The law also directs special attention to women's sexuality and the gendered differences between men and women. Under Article 60 of the Special Protection for Female Staff and Workers and Juvenile Workers, "It is prohibited to arrange for female staff and workers during their menstrual periods to engage in work high above the ground, under low temperature, or in cold water or work with Grade 111 physical labor intensity as prescribed by the State."

rearers have the potential to perpetuate gender segregation in the workplace and relegate women into lower paying, traditionally female tasks.⁴

On the other hand, while greater mobility has resulted in greater opportunities for women, many migrant women workers suffer exploitation and discrimination.⁵ Further, laws that might improve working conditions⁶ and provide work-related

⁴The State Council has promulgated the Regulations on the Arrangement of Redundant Staff in State-Owned Enterprises, which allows employees at state-owned enterprises to apply for resignation or early retirement or to terminate labor contracts by proper procedure. These regulations also provide for a 2-year leave of absence for female employees during pregnancy or breast feeding. By giving women the option of early retirement or a 2-year leave of absence after childbirth, employers can request that women workers retire early. Further, female workers are required to retire at age 50 (certain female government officials retire at age 55), while male workers are allowed to remain employment until age 60.

⁵A case which illustrates this is the case of Ms. He and 24 Migrant Workers. Ms. He and 24 other migrant women workers from Laishui County, Hebei Province, China, worked for Beijing's "H" garment factory from 1995 to 1997. The women often worked overtime under extremely harsh conditions. They were routinely beaten and insulted by their bosses. When wages were not paid at the end of each month, some of the women complained to the district labor supervisory committee. The committee took no action. A group of women workers then petitioned governmental departments for aid. When the Centre for Women's Law Studies and Legal Services of Peking University took over the case, the lawyer handling the matter contacted the department in charge of "H" Garment Factory and its controlling company several times. The department responded that, although it is a state-owned enterprise, the garment factory is operated by a private party to whom the state-owned enterprise contracted the business. When the lawyer contacted the manager of the factory, he challenged the women to bring suit in court. When the lawyer attempted to initiate a suit in court, the court informed her that she must first bring her labor dispute to the Labor Arbitration Department. When the lawyer petitioned the Labor Arbitration Department, however, she was told that the issue of payment must be settled in court. When the lawyer returned to court she was told that this issue of payment for labor was not clearly defined in the law and that there was insufficient legal basis to file the case. It was only after the intervention of higher authorities that the Arbitration Committee of the Municipal Bureau of Labor agreed to hear the case. Throughout the process, legal representatives for the garment factory failed to appear. In the face of the defendants' open defiance to the law, the Arbitration Committee passed a verdict by default. The Committee held that the factory's controlling company should pay 160,000 yuan to the women workers in unpaid wages. The factory then refused to comply with the verdict. The legal aid lawyers persuaded the court to reopen the case and used the media to gain public support. Ultimately, the migrant women workers were awarded 170,000 yuan as back wages and economic compensation. It took three years to completely resolve the case. See Centre for Women's Law Studies and Legal Services of Peking University, A Research Report of the Legal Aid Cases Undertaken by the Center for Women's Law Studies and Legal Services Under the Law School of Peking University 9-11 (1996-2000).

⁶The employer is prohibited from terminating the contract of women workers during pregnancy and nursing. Law Safeguarding Women's Rights and Interests of the People's Republic of China, ch. IV, art 26 (1992). This is further emphasized in regulations issued by the Labor Department: "The labor contract with women employees should not be terminated during their pregnancy, maternity leave and breast feeding period even though the contract has matured. Instead the contract should be prolonged to the end of the breast feeding period." Ministry of Labor of the People's Republic of China, Response to the Termination of the Labor Contract with Women Employees During their Pregnancy, Maternal leave and Breast Feeding Period in the Foreign Investment Enterprises, No.21, art.4 (1990). The Labor Law of China provides that all laborers in enterprises within the nations boundaries enjoy reproduction insurance according to law as long as they have signed a labor contract with the employers. See Labor Act of the People's Republic of China, ch. IX, Sec.73 (1994). Further, every female employee shall be entitled to leave after childbirth for a period of not less than 90 days. *Id.* at ch. VII, sec. 62 (1994). Further regulations have been promulgated to provide special on-the-job facilities for women, including health care rooms, anterooms for pregnant women, feeding rooms, nurseries, and kindergartens. The labor law also provides special consideration for pregnant or lactating women. For example, the time of ante natal examination of pregnant women employees should be treated as work time and employers should arrange for some rest time for pregnant employees during work time, and breast feeding mothers should be given thirty minutes for breast feeding twice a day. An additional thirty minutes will be added during the break for each baby. The time spent on breast feeding and travel time to the nursery should be treated as work time. See State Council of the People's Republic of China, Provisions of Labor Safety and Health for Women Workers, art. 9 (1988). Also, a pregnant woman worker may receive prenatal examination during her working hours and this time spent on the examination will be included as time spent on work. *Id.* at art.7. Apart from the 90 days of maternity leave, 15 more days will be added for anyone who has a difficult labor. *Id.* at art.8. The unit may also assign a pregnant woman worker to any physical work falling within the Grade Three level of physical intensity as stipulated by the State. The work hours of a pregnant woman worker cannot be extended, nor can a woman over 7 months pregnant be allotted night work. Based on the hospital recommendations, the work unit should reduce the intensity of labor performed by pregnant women workers. Women workers over 7 months pregnant must be given adequate rest during the work day. *Id.* at art 7.

benefits, are under-enforced and the capacity to monitor and enforce these laws is weak.⁷

WOMEN AND VIOLENCE

Domestic violence

The revisions made to the Marriage Law in 2002 are among some of the most significant changes made to the law in China.⁸ These revisions include domestic violence as a ground for divorce and allow a spouse in a divorce proceeding to seek compensation from the other party if he/she is at fault due to certain specific grounds including domestic violence.⁹ The re-introduction of fault into divorce is seen as an attempt to grapple with the feminization of poverty on divorce.

Despite these groundbreaking reforms in the law, Chinese women's rights advocates have argued that in the absence of a clear definition of domestic violence, it will be very difficult to institute an action for civil compensation for domestic violence. Domestic violence is not broadly defined to cover threats of violence to the woman and/or her family members, psychological damage, sexual abuse and rape within marriage. Also, the question arises whether a claim for compensation can be made during the existence of marriage.¹⁰ Due to the discretion left to the judges, similar cases can be decided differently.

⁷ Furthermore, private enterprises adopt rules known as rules of the enterprise, which often override Chinese labor legislation and deny payment of social insurance benefits. Migrant women often face greater exploitation, including unpaid overtime and unsigned contracts. Consider the following case: "Starting from 1995, 36 women peasant workers came in succession to work in a certain fur processing factory, and signed work contract separately with the factory. In 1996, they signed another work contract with the factory collectively, on a term of 5 years. The contract would expire on December 1, 2000. On August 5, 1998, the factory unilaterally terminated the work contract, with the reason that the factory had been adversely affected by the macroenvironment of the national economy, and there was a drastic decrease of the production materials and a redundancy of workers. As a result there was a serious problem in the management of production. In order to protect the employment of urban workers, the factory decided to terminate the work contract with peasant workers. According to the number of years from the time when they became contract workers to the time when their contract was terminated, the factory would pay an extra months wage for each full year to the women peasant worker as compensations. While the women peasant workers were still working in the factory, the factory had deducted a certain amount of money from their monthly wages on the ground of paying for the insurance of their old-age pensions, unemployment insurance, and medical insurance. But the factory did not really pay this amount of money for the workers insurance, but saved it for other purposes. After the termination of the work contract, the factory returned to the women peasant workers the deducted money for the insurance of old-age pension and unemployment insurance, but did not return the deducted money for medical insurance. The 36 women workers did not accept the factory's unilateral decision to terminate their work contract, and in August 1998, they made a petition to the Labor Arbitration Committee. As attorney for the women workers, the lawyer proposed to the Labor Arbitration Committee that it was illegal for the factory to terminate unilaterally the work contract and to pay the economic compensation according to the number of years since they had become contract workers. The factory should pay the compensation according to the number of years since they had actually worked for the factory. It was a disguised form of embezzlement if the factory refused to return to them the deducted money meant for medical insurance for the women workers. After the hearing, the Arbitration Committee for Labor Disputes supported the demand of the women workers, and passed a verdict on October 29, 1998, ordering the factory to pay another 40,000 odd yuan to the 36 women workers as their economic compensation. But the verdict did not support the women workers demand for various social insurance benefits. Thus with the termination of their work contract, the women workers had lost their various social insurance benefits." See A Research Report of the Legal Aid Cases Undertaken by the Center for Women's Law Studies and Legal Services Under the Law School of Peking University (1996-2000).

⁸ On April 2002, the Standing Committee of the Ninth National People's Congress, China's highest legislative body passed the long-debated and much awaited amendments to the Marriage law.

⁹ Civil compensation for fault can be awarded if there is a finding of: bigamy, co-habitation with another person, subjecting another to domestic violence and abandonment of family members. See Article 46 of the Revised Marriage Law.

¹⁰ Even though civil compensation for abuse is available at divorce, it is not clear whether it is available during the existence of a marriage. Due to efforts of legal services lawyers there is at least one instance in which a court has granted compensation during an ongoing marriage. Zhang Xiulan had suffered severe burns when her husband Wang had poured gasoline on her body and lit it. When Zhang's elder sister reported the case to the local security authority, the local authority refused to file the case calling it a family matter. The court on the other hand requires forensic authentication of the burns in order to file the case. With the cooperation of the women's federation of the district and the efforts of the legal services lawyer from the Beijing Centre, the authentication was processed. On the basis of this, a public prosecution was initiated and the legal services lawyer instituted a civil suit for compensation for physical damages. At the first instance, the court dismissed the civil suit on the basis that the parties were

Women also find it difficult to meet the high standard of proof required under the criminal law to hold batterers criminally responsible. In order to invoke Article 260 of the Criminal Law on Crimes Disrupting Marriage and Family, a woman has to prove that the crime was particularly “evil” and the abuse was “continued and consistent.”¹¹ On the other hand the crime of “intentional injury”¹² requires the forensic authentication of the injury and that the injury amount to at least a “flesh wound.” In the absence of a clear definition of what constitutes domestic violence, it is most often interpreted as an injury that results in severe bodily harm, broken limb, loss of eyesight etc. Most courts and prosecutors will not address what is considered a minor physical injury as domestic violence. Another reason why the revisions to the marriage laws might remain largely symbolic is the fact that the public security bureaus often hesitate to intervene in family disputes.¹³ Thus, without corresponding intervention procedures to make it mandatory for public security personnel to intervene in domestic violence issues, it will be very difficult for women to gather forensic authentication and proof of domestic violence, in order to seek protection during marriage or civil compensation at divorce.¹⁴

still married and civil compensation can be awarded only at divorce. After much negotiation, the judge awarded 80000 yuan to Zhang by way of compensation. This is one of the first known awards of this kind. See Report and Summary in Respect of the Sub-Project of Legal Assistance Against Family Violence. Centre for Women’s Law Studies and Legal Services of Peking University, July 2002.

¹¹In a certain case, 13 instances of abuse during a 20-year marriage was considered insufficient to prove a crime of evil. The court made the adjudication of the first instance, deeming, “the private prosecutor and the accused have been married for over 20 years and often quarreled because of their different natures. The fact that the accused beat the private prosecutor 10 times has been proved. But the assault and battery of the accused occurred only by accident, it was not of regularity, continuity and consistency and there was a good reason for it. The accused had no intention to abuse the private prosecutor. Thus, the conduct of the accused has not constituted the crime of abuse.” See Report and summary in respect of the sub-project of legal assistance against family violence. Centre for Women’s Law Studies and Legal Services of Peking University, July 2002.

¹²Article 234 of the Criminal law of PRC.

¹³“Ms Wei , female aged 34, physically and mentally abused by her husband during the dozen years of their marriage. On September 18, 1998, after a dispute between the two, the husband poured gasoline on her body and lit the fire, with the result that several parts of Ms. Wei’s body and face were severely burned. After this incident, the elder sister of Ms Wei reported the case to the local public security authorities, but the latter refused to take this case, on the ground that it belonged to the category of family dispute. . . . After accepting her request for legal aid services, the Center’s lawyer went to the jurisdictional police station to report the case, and pointed out to them that the nature of this case had already formed the crime of intentional injury, and it had brought about serious consequences. The police station could not just reject the case on the ground that a family dispute was beyond the limit of legal restraint. Yet people at the police station still argued that if her husband had been arrested, who would pay the hospital bills for her medical treatment? With this as a pretext, the police station still refused to make necessary investigation of the case. With the help of the district federation of women, the lawyer made an application to Beijing Municipal Forensic Institution for Scientific and Technological Appraisals, to obtain a forensic appraisal of the degree of Ms Wei’s injury and disability. The appraisal concluded that 30 percent of Ms Wei’s face, upper limbs, and torso had suffered level 2 or level 3 severe burns. About 10 percent of her body had suffered level 3 severe burns. The degree of injury was classified as that of serious injury. With this forensic appraisal, the lawyer went to the jurisdictional police station again to demand the law enforcement authorities to take forcible measures against the perpetrator of this crime. Yet the police station was still indifferent to this case. They asked the lawyer instead to look for a witness, and when the lawyers found the witness, they again laid aside the case, on the ground that the person in charge of the matter was absent. As a last resort, the lawyer reported the case to the District Bureau of Public Security. Under the latter’s supervision and urge, the jurisdictional police station eventually arrested the husband of Ms Wei, and filed this case for investigation and prosecution.” See A Research Report of the Legal Aid Cases Undertaken by the Center for Women’s Law Studies and Legal Services Under the Law School of Peking University (1996–2000).

¹⁴Many women’s rights advocates and women’s legal services lawyers in China have drawn attention to the need to promulgate special sanctions and enforcement mechanisms such as restraining orders and mandatory arrest to control family violence. See Report and Summary in respect of the sub-project of legal assistance against family violence, Centre for Women’s Law Studies and Legal Services of Peking University, July 2002; Summary of the Conference on Combating Domestic Violence against Women and the Commemoration of the Second Anniversary of the International Day for Elimination of Violence against Women, China Law Society. Certain provinces such as Shaanxi Province and Hunan province have passed innovative laws to address family violence. Shaanxi province has passed the Methodologies of the Implementation of the LPWRI and Hunan Province has passed the Decision to Protect and Stop Family Violence which includes sexual abuse as a form of domestic violence.

Marital rape

The Chinese law does not expressly recognize or exclude marital rape.¹⁵ There is a general recognition that where sexual intercourse occurred without the consent of the woman, (1) in forced or purchased marriage, (2) during separation, or (3) after an application for divorce has been filed, it could amount to rape or a crime of intentional injury.¹⁶

PROPERTY RIGHTS

The law provides that during the subsistence of marriage, neither side can transfer property without the consent of the other party.¹⁷ However, often in cases involving domestic violence or adultery leading to divorce, spouses in China attempt to transfer property to a third party, so as to avoid equitable distribution of property.¹⁸ Many women find it difficult to trace the illegal transfer of property made by their spouses. Married women are frequently unaware as to the full extent of their husband's income or property. Given certain procedural difficulties, it is very difficult to gather real evidence on property transfer or compel witnesses to testify as to concealed property. The challenges surrounding proving the ownership or concealment of property constitutes an enormous burden to women in China.

Distribution of property at divorce

Despite provisions in the law protecting women's property rights,¹⁹ the reality is that, property division on divorce will depend largely on availability of housing

¹⁵ Article 236 of the Criminal law states: (1) Whoever by violence, coercion or other means rapes a woman involving one of the following circumstances is to be sentenced to not less than 3 years and not more than 10 years of fixed-term imprisonment: (a) rape a woman or have sexual relations with a girl where the circumstances are odious; (b) rape several women or have sexual relations with several girls; (c) rape a woman in turn with another or more persons; (d) cause the victim serious injury, death or other serious consequences. (2) Whoever has sexual relations with a girl under the age of 14 is to be deemed to have committed rape and is to be given a heavier punishment.

¹⁶ Some scholars have recognized marital rape in specific instances, for example, when the husband, (1) forces wife to have sex with others; (2) aids and abets others in raping wife; (3) rapes his wife under mistaken identity; and (4) when husband and wife are living apart or in the process of divorce. Theory and Practice of Protection of Women's Rights and Interests in Contemporary China, Investigation and Study on the Enforcement of U.N. Convention on the Elimination of all forms of Discrimination Against Women in China. The Center for Women's Law Studies and Legal Services of Peking University, at 468.

¹⁷ According to Article 47 of the Revised Marriage Law, during the subsistence of marriage, neither side can transfer property without the consent of the other party. Further, if a party transfers property held in common to a third party, such transfer is invalid. If the third party was acting in good faith, the spouse transferring property should compensate the other spouse for losses incurred. Further, Article 102 of the Civil Procedure Law provides that, "The side who has illegally concealed, transferred and refused to hand out the shared properties of both sides, or illegally sold or destroyed the shared properties should be designated a smaller share or even no property."

¹⁸ Ms. Gao and her husband got married in 1981. At the time they were both ordinary workers. In 1988, Mr. Gao went into business and made a success of it and amassed a lot of money and private property. As his wealth grew he began adulterous relationships with other women. Even though Mr. Gao told Ms. Gao several times that they had a million yuan in savings, he never told her where this was money was saved. Despite his wealth, Mr. Gao was very stingy toward his wife and child. However, Ms. Gao suspected that he spent lavishly on his extra marital affairs. When Ms. Gao confronted him with this information, he beat her savagely. In fear, Ms. Gao and the child went to her parents home. While she was at her parents, Mr. Gao filed for divorce. When Ms. Gao visited her husband's office to ask him for child support, by chance, she found a contract for a transfer of a restaurant owned by them. She sought advice from a legal services organization to seek equitable division of property. See Centre for Women's Law Studies and Legal Services of Peking University, A Research Report of the Legal Aid Cases Undertaken by the Centre for Women's Law Studies and Legal Services Under the Law School of Peking University (1996-2000).

¹⁹ According to Article 17 of the Marriage Law properties obtained during the subsistence of marriage belong to both husband and wife. Further, according to Article 39 of the Marriage Law, at divorce, common property must be divided based on mutual agreement. If the two parties cannot come to an agreement, property should be divided taking into consideration the economic needs of women and children. Article 44 of the LPWRI provides that at the time of divorce, husband and wife shall divide their jointly owned house in accordance with their agreement. If the parties fail to reach an agreement, the people's court shall pass judgment in accordance with the principle of giving favorable consideration to the wife and children. The Supreme Court has also stipulated certain considerations to be taken into account on distribution of property. These considerations include, women and children's interests, fault of a spouse, whether a spouse is guilty of illegal transfer of property, housing considerations of the parties and child rearing responsibilities. See Problem No. 3 of Solutions to Several Problems Concerning the Use and Leasing of the Public Houses in Trying Divorce Cases by the Supreme Court. In

units. Frequently, in present day China, women are faced with the untenable situation of sharing a bedroom in the ex-husband's apartment.²⁰ This can and has caused many serious problems such as increase in the incidents of domestic violence. Sometimes sharing housing with a former spouse is allowed by the court, as temporary housing for a stipulated period of time or until the woman remarries.²¹ Further, the Supreme People's Court has regulated that a house that cannot be divided should be assigned to one party, and that party should compensate the other party for half the value of the house. Unfortunately, the reality is that a woman often lacks the resources to reimburse her spouse and the house automatically goes to the husband.²² As is manifest in court decisions, there is no uniform policy governing this area of the law.

Rural women's property rights

Even though the Revised Marriage Law applies uniformly to both urban and rural women, rural women encounter unique challenges in property use and ownership that have not been fully addressed by the Marriage Law. Despite guarantees of equal distribution of "responsibility land,"²³ in practice, certain village committees will not allocate separate "responsibility land" to women who are divorced. A widow returning to her village could encounter similar problems. A married woman who leaves the village in common parlance is considered "water splashed out" and loses her right to the land in the village. In the case of migrant workers too, so long as their residence has not been transferred to the city, they should retain the right to the responsibility land in their village. However, in reality, women who go to work as migrant workers to the city have their land reallocated. Even though this is against the law, very few of those migrant workers are able to come back to their village in the event that they lose their jobs in the city.²⁴

CONCLUSION

Despite legal guarantees of equality, women's rights in the areas of marriage, divorce employment and property continue to face procedural obstacles. On the other hand, the changes in the law have not always had the desired impact on women. At the same time, a review of The Spangenberg Group's work in China in the last 5 years shows that there has been a rapid maturation and development in the area of women's rights advocacy in China.

dividing property on divorce, different provinces also take into consideration whether a woman has lost her reproductive capacity due to birth.

²⁰ Article 9 of the Supreme People's Court's Explanation of a Few Problems Involving the Use and Rental of Housing in Divorce Case Trials, 1996 provides that each party can reside in half of the public housing allocated by the housing unit. The following case illustrates the point. Ms. Z was brutally beaten by her unemployed husband during the period of her marriage to him. If she ever complained to him about his neglect of his family, the beatings became worse and Ms. Z suffered from severe health problems due to the beatings. Ms. Z filed for divorce. At the first hearing, the court gave the custody of the child to Ms. Z and allowed Mr. Z to remain in the two bedroom unit. Ms. Z was asked to find her own accommodation. A lawyer with a legal services organization helped her appeal this decision. On appeal, the court ruled that Ms. Z could remain in the larger bedroom in the apartment while Ms. Z remained in the smaller room. What followed was a nightmare for Ms. Z. her ex-husband would frequently kick the door of her bedroom cursing and swearing in an effort to drive her away. Since it was the middle of the winter, Ms. Z bore this harassment rather than be homeless in the winter. Things began to degenerate in this unusual living arrangement. Mr. Z started to let out his room for prostitution and boasted to the daughter as to how much he made from this trade. On occasion, Mr. Z would pursue his ex-wife and daughter with a knife in his hand and once actually wounded Ms. Z. The situation became unbearable and Ms. Z and her husband were forced to flee the apartment. Ms. Z once again went to court to ask for readjustment in the living arrangement. After much negotiation with the housing units, the housing unit agreed to give Ms. Z another apartment in exchange for her former apartment. See A Research Report of the Legal aid Cases Undertaken by the Center for Women's Law Studies and Legal Services Under the Law School of Peking University (1996-2000).

²¹ In cases where neither party owns a house which can be shared, courts have allowed the wife to live in the house of the husband's work unit for a maximum, period of 2 years pending divorce. In cases where the couple rents a house, the wife seeking a divorce has been allowed to remain in the housing unit if the parties have been married over 5 years.

²² Even though Article 42 of the Revised Marriage Law states that a party who is having problems subsisting at the time of divorce should be helped by the other party, this provision without any corresponding enforcement mechanisms remains merely symbolic.

²³ See Article 30 of the LPWRI.

²⁴ Certain provinces such as Hunan Province have enacted legislation stipulating that when rural women marry or divorce, the village where their residence belongs to should allocate the relevant fields or mountains to them. Article 4 of the Hunan Province Stipulations of the Legal Rights and Interests of Women and Children.

The work of some women's legal aid organizations in China has become a catalyst for change.²⁵ These organizations have not only positively impacted the lives of the disadvantaged but have brought to the surface many issues hitherto marginalized. These issues deal with the exposure of traditionally silenced or ignored areas such as domestic violence, marital rape, sexual harassment and employment discrimination. The women's legal aid centers have provided a forum for debate and discussion on these areas of the law and have engaged in multifarious activities including: legal services for the poor, domestic violence hotlines, impact litigation, test case litigation,²⁶ law reform efforts,²⁷ training of law enforcement and judicial officers, community empowerment and public education programs,²⁸ working with the media, and conducting research on challenges facing the enforcement of women's rights. The cases brought to court by these centers have formed a rich body of jurisprudence on women's rights litigation. Claims lost in court are still publicized and used to raise gender consciousness.

The Spangenberg Group's seminars help women's rights advocates in China address the inherent duality and contradictions in some of the protectionist provisions of the Chinese labor laws, and we view them in the context of analogous labor laws in other transitional countries and their disparate impact on women. Our training programs focus on how to identify gender bias and sexual harassment in employment and how to challenge these discriminatory practices. Our programs identify various laws and regulations that prohibit gender discrimination and emphasize vigorous advocacy skills necessary to make novel anti-discrimination claims.²⁹ We also draw examples from successful litigation strategies chartered by Chinese women's legal services organizations. Even though successful outcomes for struggling female workers is not common, significant cases taken to court by some women's legal services groups demonstrate how women workers after many a legal battle have successfully vindicated their rights.³⁰

²⁵ Some of the legal services organizations like Hubei Province Women's Federation and the Hebei Province Women's Federation reflect the decentralized nature of their networks. Most of these organizations are so structured that complaints and concerns are first dealt with locally at the village and town level, then at the city/council level, the district level and finally at the provincial level.

²⁶ There is a growing interest in litigating issues involving differential treatment of men and women in employment, sexual harassment in employment and defending battered women charged with crime.

²⁷ Some of the legal services organizations have influenced policy and been the force behind local domestic violence legislation implementing the rights enshrined in the LPWRI. The Shaanxi Research Association for Women and Family (SRAWF) was in the forefront of drafting and advocating for the adoption of the Shaanxi Methodologies of the Implementation of the Rights and Interests on Protecting of Women of PRC in China. This local law gives concrete expression and provides enforcement mechanisms to the values enshrined in the 1992 Law on the Protection of Women's Rights and Interests. SRAWF first convinced the Shaanxi Province Women's Federation to support the initiative. A speech made by the leader of the Federation to the Standing Committee of the Provincial People's Congress was prepared by the Association. Soon after, Congress accepted the motion on opposing domestic violence made by the Provincial Federation. The next step was to set up a collaborative working group of legal experts and scholars to draft the Regulations. The draft written in consultation with Chinese and international legal scholars, grass roots organizations and women victims of domestic violence was then submitted to the Provincial People's Republic.

²⁸ Many rural legal aid organizations employ creative ways in which to create rights awareness among the community. Gender awareness literature distributed by vans driven around villages is an effective tool of information dissemination. A person with legal training generally travels in the van and responds to rudimentary questions on how to seek help in the area of domestic violence.

²⁹ Many of the legal services organizations use the cases they handle to study common problems concerning women. Successes in certain cases have been achieved only through diligent investigation and advocacy. These efforts include a repertoire of advocacy efforts including talking to witnesses, collecting documents, using the media to harness public support and meeting with different government agencies. Based on their experiences they make comments and recommendations to the local governments on reforms needed in the law. One such report called upon the Eighth National Women's Representative Assembly to protect the rights of women experts over the age of 55. Since there isn't an explicit provision prohibiting employment discrimination based on sex, it is difficult to launch constitutional challenges to certain discriminatory practices such as the differential retirement ages for women and men.

³⁰ Most victories in court are achieved due to unrelenting advocacy on the part of women's rights lawyers and legal workers. Sometimes, even when a major victory is won in court, follow-up advocacy is needed to enforce the order. The following case is an example of this kind of advocacy: Li, an 18 year old mentally retarded high school student was allegedly sexually harassed by the principal of her high school in Hebei Province. The County Bureau of Education had investigated Li's allegations and confirmed the victims account. Tragically, Li committed suicide. The relatives of the victim sued the school principal in court but during the trial, the family received an administrative penalty from the public security authorities. At the direct

Women's legal services organizations are also crafting novel advocacy strategies to protect women's property rights. These range from advising women to enter into notarized agreements with their husbands,³¹ so as to ensure equitable ownership of property, to arguing for civil compensation for fault to be awarded during an ongoing marriage.

In the area of domestic violence, our seminars assist women's rights advocates to identify some of the challenges women face due to gaps in the law and inaction on the part of law enforcement officials. Together, we look at ways in which to stretch the boundaries of advocacy and make women's rights and perspectives central to law making. In doing so, we draw examples from advocacy strategies in the United States, and other parts of the world. Our seminars also focus on how in the absence of an explicit marital rape exemption, a broad interpretation of China's rape laws could include marital rape. By looking creatively at local laws, and international norms, women's rights advocates in China are developing exciting and innovative methods of problem solving.³²

Women's rights advocates and lawyers in China have done much to advance the frontiers of the law in the area of women's rights reform in China. Their continuing critique of discriminatory laws and practices affecting women and their creative initiatives to challenge these discriminatory practices have brought about a transformation in the lives of women who seek to vindicate their rights.³³ Even though

intervention of the Ministry of Public Security the trial was able to continue. However, the county procuratorate and the trial court based the case on the charge of indecent behavior instead of rape. The defendant received a 3 years probated sentence. Two lawyers from a Legal Aid Centre visited the county to investigate this case. The lawyers were accompanied by a journalist from China Women's Daily. The investigation revealed that the school principal had abused his authority to sexually harass a mentally retarded girl and have sexual intercourse with the girl. The court had dismissed the case. The court had also not conducted any independent investigation. Second, the judges reasoned that a probated sentence will allow the defendant to earn money to compensate the victim. The court opined that a prison sentence would not have made it possible for the defendant to make civil compensation. After much persuasion the court agreed to grant compensation to the family. However, 2 years after the trial no compensation had been paid to the family. The legal aid lawyers persuaded the court to reopen the case and judges agreed to make changes to the original verdict. See A Research Report of the Legal Aid Cases Undertaken by the Centre for Women's Law Studies and Legal Services Under the Law School of Peking University (1996-2000).

³¹Li and her husband opened a factory and through hard work amassed much wealth. Li's husband after a few years of marriage started beating her and threatened to kill her several times. Li petitioned the court for divorce, but persuaded by her friends consented to give her husband another chance. Her lawyer however advised her to enter into an agreement with her husband whereby she would become the sole owner of half the property acquired during the marriage. This agreement was then notarized. That way Li's property rights would be protected even if she decided to go ahead with a divorce. See Report and Summary in respect of the sub-project of legal assistance against family violence, Center for Women's Law Studies and Legal Services of Peking University, July 2002.

³²There is a growing interest among women's rights advocates on the application of international conventions and norms especially the Convention on the Elimination of Discrimination against Women (CEDAW) in local lawmaking and to learn from advocacy and law reform efforts from across the world.

³³Some of the critiques focus on the following areas and range from defining domestic violence as discrimination against women to holding the state accountable to taking all appropriate measures to prevent violence against women. Many of the critiques focus on the inaction on the part of law enforcement officials, the need for community education, judicial bias in decision-making, "imperfect legislation," the fact that there are no explicit provisions in the marriage law as to compensation for psychological injury or compensation for family violence during the subsistence of the marriage. Many women's rights advocates argue that in the absence of legislation on domestic violence only a small portion of cases are able to meet the standards of slight injury or severe injury defined by the criminal law. "A lot of women who have been beaten or abused by their husbands tend to have their cases turned down by court when the court feels it is groundless or difficult to accept the case." See Research Centre of Women's Development and Rights, the Northwest Industrial University, Challenges to Legal Treatment of Violence against Women and Strategies in Response. Some of the critiques also draw upon the need to assimilate lessons learned in other jurisdictions and the need for analogous injunctive reliefs and civil protection orders similar to the reliefs available in the United States and other jurisdictions. As countermeasures against family violence, the Centre for Women's Law Studies and Legal Services of Peking University suggests: introducing theories of gender equality into the school curriculum and community education materials; being able to suspend the theory of joint ownership of property and dividing the marital property in the case of violence in an ongoing marriage; establishing a special family tribunal to deal with cases of family violence; improving the availability of housing for divorced women; establishing social support networks for women victims of abuse; building a specialized cadre of lawyers able to handle women's rights issues; work with the media to garner support for victims of abuse; making available compensation for injury during the marriage and dividing marital property and notarizing such division so that

Continued

much has taken place in the last few years much remains to be done. Women's empowerment foreshadows the transformation of a society and is a benchmark of a functioning rule of law. Supporting the work of women's rights groups remains critical to the further strengthening of the rule of law in China.

PREPARED STATEMENT OF CHRISTINA GILMARTIN

FEBRUARY 24, 2003

RURAL WOMEN, MARRIAGE MIGRATIONS, AND GENDER EQUALITY IN CONTEMPORARY CHINA

The Economic Reforms that were instituted in China in the late 1970s have brought tremendous changes, both positive and negative for women. An explosion of internal migration streams of extraordinary proportions in China have drawn not only men, but also women. It is noteworthy that these women have come from a wide variety of social groups and from both urban and rural localities. In addition, these migration patterns have been characterized by a shift from a traditional family migration to the migration of unmarried women. Migration can be seen as a form of human agency by women who are aiming to make use of global social and economic transformations to improve their survival odds and achieve personal empowerment. However, a large segment of these Chinese migrant women have also faced an increasing vulnerability that has heightened public awareness and policy concerns.

Much scholarly and journalistic attention has been devoted to Chinese labor migrations, including the experiences of women labor migrants (i.e., Chow, 1998 and 2002; Salaff, 2002; Tan Shen, 1994 and 2001). This statement concerns one aspect of Chinese female migrations that has thus far not received much western attention: voluntary marriage migrations. Intertwined with both illegal marriage migration streams and economic migrations, this phenomenon has provided rural women with an important opportunity to improve their economic well-being. However, these women also faced unusual risks, as they moved beyond the security network of their kinship lines, and thus had few resources to rely upon if subjected to difficult circumstances in their new communities. Indeed these marriages have been very prone to conflict and dissolution.

ORIGINS

Women have almost always moved at the time of marriage in China. Village exogamy was held up as a norm and was widely followed. The great majority of rural women who observed the strong taboos against same-village marriages during the Mao period (1949–1976), however, married with a radius of ten kilometers, and usually in the same county (Gu 1991). William Lavelly (1991) found that the distances a women moved at the time of marriage varied depending on economic factors. Wealthy villages were able to lure women from farther way than less well off localities. Moreover, those women who came from afar generally ended up with husbands from the poor strata of the community, indicating that these men were less able to attract women from surrounding villages. This pattern clearly revealed the existence of a marriage market even at a time when economic forces were weak and marriage decisions were greatly influenced by political factors.

The marriage market of the Mao era was radically expanded with the introduction of the Economic Reforms in 1978. Women began to travel much larger distances, crossing county and provincial borders. Within a few years, some women began to venture hundreds and even thousands of miles in order to marry. By 1990, the numbers had reached 4,325,747, and these female marriage migrants comprised 28 percent of the overall female migration in China. Although the data for the 2000 census has not yet been published, preliminary indications are that these figures have continued to climb. In contrast to the millions of women who have migrated to marry, few men have been involved in this process. The main reason for such low male participation in this type of migration is due to the tenacity of patrilocal marriage patterns. Even after the establishment of a commune system in China, government initiatives were unable to motivate men to undertake virilocal marriages. Those few men who moved to another village and took up residence in the homes of their wives were not accorded full rights and social status in their new communities.

women's property rights are preserved. See Report and Summary in respect of the sub-project of legal assistance against family violence, July 2002.

What kind of women migrated to marry in the first decade of the Economic Reform era? The great bulk of marriage migrants came from agricultural backgrounds. In one Jiangsu case study, 97.2 percent of female marriage migrants originally farmed for a living. In this respect they differed from female labor migrants, who according to the 1990 census, came only somewhat disproportionately from farming and factory backgrounds. Marriage migrants have not, for the most part, been able to switch their rural residences for urban ones through the migration process. Their destinations have primarily been rural, in large part because of the limitations imposed by the hukou system of residence registrations. Those who have managed to enter the boundaries of the large metropolitan areas of Beijing, Tianjin, Shanghai, or Chongqing have not ended up in the urban areas, but in the outlying rural districts.

These marriage migrations owe their existence to the sex ratio imbalances that exist in rural China. To be sure, the imbalances of the 1980s and 1990s were of a different magnitude than those that have been produced as a result of the one-child family policy after it was implemented in 1979. Indeed, the 1990 census data show that the gender ratio of the total rural population in the 15–39 year-old group was relatively normal. But local women leaving the countryside to work in urban areas or in the special economic zones led to a sizable shortage of women of marriageable age in many rural communities. As a result, the gender ratios for the unmarried rural population were adversely affected. In 1990, for instance, the gender ratio of Chinese rural unmarried people between the ages of 15 and 19 was 108.91, that is almost 109 unmarried men for every 100 unmarried women. In the 20–24 age group, it was 161.97 and in the 25–29 age group, it was a whopping 508.91. In the older age groups, there were essentially no unmarried women in the rural areas. In such circumstances, the prevailing bias against the acquisition of an “outsider” as a bride dissolved among those families who were unable to secure a local woman.

CONNECTIONS WITH LABOR MIGRATIONS AND MARRIAGE TRAFFICKING

The demographic data show that marriage migrations began in a gradual manner in the first years of the Economic Reform era. Certain case studies in the prosperous province of Zhejiang indicate it was only after 1985 that this type of migration began to develop. It appears that in the early years rural women were not able to overcome family constraints and participate in these types of voluntary marriage migrations. It may well be that female labor migrations helped to stimulate marriage migrations. As factories showed an increasing interest in young women migrant workers, certain social practices changed. We find that by 1995 all the factory girls who had migrated from rural areas to the urban areas of Guangdong province (near Hong Kong) were unmarried. This is also true for many of the export processing factories in the special economic zones of Shenzhen and Tanggu. As small companies run by local rural governments, joint ventures and foreign companies increasingly preferred to hire young unmarried female workers, the customary constraints against any type of unmarried female migrant began to weaken in the rural areas. This changed attitude may well have provided a more conducive atmosphere for unmarried female migration, both for the purposes of work and marriage.

Labor migrations were intertwined with marriage migrations in other ways as well. Ten Mile Inn, a village in Henan, for instance, began to recruit Sichuan men to work in its mines because of the unwillingness of local people to continue such dangerous work. These Sichuan men soon began to arrange for their female relatives to be married into the families of Ten Mile Inn. By the end of 1996 there were 20 Sichuan brides in the community, and by 1999 the number had doubled.

There is some evidence to indicate that illegal marriage trafficking may also have spurred the emergence of a legal, voluntary marriage migration. In the first years of China's Economic Reform era, alarming stories appeared in Chinese and Western newspapers about women falling prey to kidnappers and being sold as wives to poor farmers. Traffickers usually targeted women from poor rural areas who were quite young, unsophisticated, and easily duped. Transported hundreds of miles from their homes, these women found themselves imprisoned in villages where everyone in the community sympathized with the men who had spent much of their life savings to acquire these wives. Some of these women managed to escape, but the majority gave birth to children. At this time, they were deemed trustworthy and released from surveillance on the assumption that they would not abandon their children. Allowed to communicate with their distraught natal families, they slowly became resigned to their circumstances and no longer sought to return to their natal communities. In order to reduce their isolation in their new localities and create a more supportive network in an unfriendly environment, they began to encourage other women from their natal villages to migrate to their new communities. Such an en-

clave of Yunnan women started in Huiyang county, Henan in 1990. In this way, illegal and legal marriage migrations became intertwined. Indeed, in the minds of some scholars, women who had been kidnapped and forced into a marriage against their will were also considered to be marriage migrants. One study that was conducted in 1994, for instance, found that involuntary marriage migrants constituted 14.21 percent of the almost 18,000 female marriage migrants in his survey.

DESTINATIONS

Marriage migrations in the Economic Reform era have tended to follow certain distinct geographical patterns. In general, they originate in the poorer areas of the southwest and travel to the rural areas of the richer sections of the eastern coast, especially Jiangsu and Zhejiang provinces. As early as 1989, for instance, in certain areas of Zhejiang, in every 51 households there was one female marriage migrant. Another study found that one county in Zhejiang accepted 71 percent of its female marriage migrants from the four provinces of Sichuan, Guizhou, Anhui, and Yunnan. By the early 1990s, it was clear that the most common destinations for interprovincial marriage migrants were Jiangsu, Hebei, Guangdong, Shandong, Anhui, and Zhejiang. These geographical trends reflect specific economic realities. Jiangsu, Zhejiang, Guangdong and Hebei are among the richest provinces in China, while the southeastern provinces of Sichuan, Yunnan, and Guizhou are among some of China's poorest. Even as early as 1989, the per capita net income in rural Zhejiang was more than 400 yuan above the national average, approximately 450 yuan above Hunan's level, and more than double that of the rural areas in Guizhou, Guangxi and Sichuan. This economic gap has continued to grow in the last decade.

Economic factors are critical in the decisions of those men who marry female migrants. The bride price paid for immigrant women is usually significantly less than what is required for local brides. In Zhejiang, for instance, the bride price for local women has gone up precipitously since 1982. From the engagement of the couple to the wedding party, the bride price might be as high as 100,000 yuan. For a sizable percentage of the men's families, this type of marriage might be the only possibility, as no woman in the local community would be willing to marry into a poor family.

CONCERNS

Marriage migrants are using a traditional method of social mobility for women: marriage. Many end up in much more affluent areas, and may well be satisfied. Many are never registered, which means that they are not official. In such cases, women are not able to rely on the legal protections if their marriages fail. And it does appear that these marriages are more problematic. Some case studies report that these women experience a higher level of dissatisfaction with their marriages than women who marry locally. One study in Shandong, for instance, found that only half of the marriages between local men and female immigrants were stable. The countless reports of wife battering and female suicides in the rural areas may well be disproportionately occurring in this types of marriages. It has also been found that these women report that their lives are more difficult than they had been in their home localities. It also appears that these women face a great deal of discrimination and hostility in the community, with the result that they cling to their newfound families and lead fairly solitary existences, refusing to assume jobs in the public domain. The relatively hostile environment coupled with the lack of nearby relatives means that the main course of emotional and economic support for these women is their husband's families. But when these marriage are ridden with conflict, as is often the case, these women can find themselves without many resources. If the marriages fail, these women rarely seek a legal divorce.

While it has been argued that women's participation in these marriage migrations constitutes a type of female agency, it seems unlikely that these marriages are contributing to the creation of more egalitarian marriages. By relying on their roles as wives and mothers to effect this shift from the poorer to the richer regions of China, they are in fact reinforcing male power within marriage relationships.

CONCLUSION

Traditional method of using marriage as a means of social upward mobility. Numerous accounts of urban women pressing their legal rights in courts. Boston Globe on Sunday, February 23rd ran a very interesting example.

