

Remarks to the Congressional Executive Commission on China

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Introduction

Over the last few years The Spangenberg Group under the auspices of the United States Department of State^[1] 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 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 conditions^[6] and provide work-related 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.

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]

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 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 five 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. [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]

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 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.

^[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 seven 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% 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”.

[4] The 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 two year leave of absence for female employees during pregnancy or breast feeding. By giving women the option of early retirement or a two-year leave of absence after childbirth, employers can request that women workers retire early. Further, female workers are required to retire at age fifty (certain female government officials retire at age fifty-five), while male workers are allowed to remain employment until age sixty.

[5] A case which illustrates this is the case of Ms. He and twenty four Migrant Workers. Ms. He and twenty-four 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).

[6] The 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 antenatal 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 ninety Days of maternity leave, fifteen 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 seven 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 seven months pregnant must be given adequate rest during the work day. *Id.* at art 7.

[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 five 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 macro-environment 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 from the Centre 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 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.

[11] In 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.

[12] Article 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% of Ms Wei's face, upper limbs, and torso had suffered level 2 or level 3 severe burns. About 10% 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).

[14] Many 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.

[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 three years and not more than ten 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 UN 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 money was saved. Despite his wealth, Mr. Gao was very stingy towards 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 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 Mr. 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 two 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 five 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.

[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, a 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 victim's 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 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 three 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. Secondly, 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, two 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).

[31] Li 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.

[32] There 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.

[33] Some 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

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