

# WOMEN IN A CHANGING CHINA

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### Introduction

I wish to first thank the Commission for the opportunity to discuss China's protection of women's rights, especially on International Women's Day. Amidst China's transition from a socialist to a more market-oriented country, a host of social problems has emerged that disproportionately affect women. How has the Chinese state responded? Building on Rangita's insightful analysis, I will highlight three areas of progress and four remaining challenges by drawing on developments from domestic violence, land rights, and employment discrimination.

### Areas of progress

#### *Improved laws and policies*

Within the past thirty years, the central government has released national laws and policies that prohibit domestic violence, employment discrimination, and the violation of women's land rights. Gender equality is one of the seven basic state policies. Yet it is often local areas such as Hunan province that continually push legislative boundaries. On the heels of the Beijing Conference on Women, it issued the first local regulations on domestic violence in 1996. In April 2009, the Hunan High People's Court issued the *Guiding Opinions Regarding Strengthening Judicial Protections for Women Who Suffer from Domestic Violence (Trial)*. Intensely debated and only 21 articles long, this is China's first guiding opinion by a provincial-level court specifically on domestic violence cases.

#### *Increased services, awareness, and access to justice*

There have also been increasingly more social services available to women, whether in the form of national and local hotlines for domestic violence or human trafficking, shelters, or activity centers that provide vocational training. In addition to greater public awareness as a result of media campaigns, more women are using the courts and other dispute resolution channels to seek redress for their grievances. This has resulted in a small but growing group of successful cases, including the first criminal case involving sexual harassment. An increase in legislation and social services reflects both the prevalence of these social problems and the state's desire to address these problems through institutionalized or semi-formal channels.

#### *Advocacy efforts*

One of the exciting developments in women's rights revolves around innovative advocacy efforts by NGOs, scholars, women federation officials, and allies within the state. Advocates began to notice an increase in the use of violence by women against their batterers in numerous

provinces.<sup>1</sup> Partly as a way to provide alternatives and to allow for normal court proceedings, the Supreme People's Court introduced protection orders on a trial basis in 2008 in select courts involving divorce cases. The preliminary impact of protection orders include (1) enforcement that has exceeded expectations and the encouragement of women who previously felt afraid to come forward and request protection (2) greater interagency cooperation, especially between courts and the police (3) the mobilization of advocates in their push for legislation against domestic violence. Specifically, in January 2009 a woman seeking divorce due to domestic violence was brutally assaulted by her husband. Her brother had previously asked the municipal court to issue a protection order on her behalf. The court refused, galvanizing advocates to draft a judicial interpretation experts' proposal that would make protection orders available nationwide. Many advocates see the passage of a judicial interpretation as a "seat warmer" for the release of the long-awaited Anti-Domestic Violence Law in China. Lastly, protection orders have also (4) generated public debate, most noticeably online.

In the case of Hunan province, which has issued the most protection orders, active engagement by women federation officials, judges, police officers, as well as the support of the political-legal committee in the capital Changsha, has played a pivotal role in the number and kinds of protection orders that have been issued. For example, they have issued protection orders that go beyond prohibiting violence to specifying that the perpetrator must stay 200 meters away from the victim's residence, place of work, or her family's place of residence.

## **Remaining Challenges**

### *Lagging implementation and the need for more public awareness*

Despite written legislation, implementation lags. Notwithstanding vague legislation, officials may ignore, circumvent, or not know about certain legislation, especially when work related to gender equality is not linked to an official's performance assessment and promotion prospects. Similarly, enterprises and other organizations, when faced with who bears the cost of pregnancy and maternal leave, discriminate women at every stage of her employment from recruitment, compensation and benefits, promotion to retirement. In other words, the Chinese state has created inadequate structural incentives and the distribution of resources to enforce policy related to gender equality. Though organizing bodies such as the All-China Women's Federation exist, they are understaffed and have limited power; some provincial-level women's federation offices may only have four or fewer personnel. In addition, some officials see economic development and the preservation of the family as incompatible with the promotion of women's rights, so that the former takes precedence.

Lastly, the lack of knowledge about legislation and services that help women, even by women federation officials, reinforce the need to increase awareness. For example, the existence of

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<sup>1</sup> According to data from Shaanxi province women's prisons, there was a 32.47 percent increase in 2005 from the same period in 2004 of female offenders who committed crimes involving the use of violence to counter violence and entered prison. There was a 21.43 percent increase in 2006 from 2005. Katherine Zhao, Trans. of Zhao Yuling and Wang Huiling, "Investigation and Reflections on the Situation of Women Who Use Violence to Counter Violence By Committing Crimes of Murder," in Guo Jianmei, Li Ying, eds. *Women's Rights and Public Interest Litigation* (Beijing: China People's Public Security University Press), 2009.

government-run shelters is sometimes intentionally not publicized for fear that it will create demand that surpasses capacity.

#### *Unintentional effect of laws and policies*

Another impediment to the realization of women's rights involves Chinese legislation that unintentionally affects women negatively. Population planning policies, for example, that allow the parents of a daughter to have another child unwittingly further the belief that daughters are not as good as sons. Another subset of legislation includes protective laws that dictate women's early retirement age or participation in certain types of work. In this regard, conducting a gender impact assessment might be helpful in anticipating possible harmful effects of legislation on millions of Chinese citizens.

#### *Constraints on advocacy, access to justice, and the realization of the rule of law*

Wider institutional controls on freedom of speech and assembly as well as rule by law not only contravene China's international commitments and its own laws, but make it difficult for China's female citizens to address their grievances through formal channels. For example, courts sometimes refuse to take cases involving land, and even when cases are successful, enforcement of the ruling remains an issue.

#### *Lingering patriarchal norms*

Norms impede the full protection of women's rights, and are often tied to discriminatory practices. The practice of women marrying out of the village, for example, fuels the preference for sons because parents believe that it is sons who will take care of them in old age. It also makes these women vulnerable to the deprivation of their access to land, including shares of monies that are earned from land appropriation for urban or commercial development. At another level, slogans often heard in rural areas such as "pumpkins aren't vegetables, women aren't people," and "why is a woman running [for village head], did all the men die?" erode the state's commitment to gender equality, especially when condoned by those in power.

In conclusion, Chinese women increasingly have more tools to protect their rights, such as the law, yet in practice, victims cannot readily access these protections due to various hurdles. In the most motivated areas, women enjoy greater access to justice because there is a network of key institutions and stakeholders that publicize and enforce legislation related to gender equality.

I look forward to questions you may have and further discussion. Thank you.