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**Women in a Changing China: Translating and Transforming Women's Human Rights in China**

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The Beijing Women's Conference in 1995 and its progeny the Beijing Platform of Action marked a watershed event in the history of local and global women's movements. The clarion call to take Beijing back home resonated both locally and globally and reverberated in China among women's rights scholars and practitioners.

Fifteen years after this historic event and 30 years after the landmark Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) that China has ratified provides an important turning point to reflect on how the CEDAW has catalyzed gender-based lawmaking and mobilized women's groups in China to hold stakeholders accountable to the letter and spirit of the guarantees enshrined in the CEDAW. In the final analysis, as a universally recognized norm setting instrument, the CEDAW has become a powerful benchmark for women's rights groups in China to monitor the implementation of existing legislation. Most importantly, as an universal bill of rights for women, the CEDAW legitimizes and augments the voices of Chinese women's rights groups in their call for reform in law and practice in China. These calls in China echo the reforms taking place in analogous areas in other countries.

However, international norms are sometimes a double edged sword. For despite the fact that they are powerful tools to advocate for and monitor women's rights, China too has cloaked weak lawmaking in the garb of international norms. In spite of the rhetoric of the Chinese State which emphasized at the CEDAW Committee hearings in 2006 that the new reforms to the Law on the Protection of Women's Rights and Interests (LPWRI) were governed by the CEDAW committees Concluding Observations, the CEDAW Committees Concluding Observations made after the 5<sup>th</sup> and 6<sup>th</sup> State report in 2006 were very similar to and reinforced prior Concluding Observations made after the 3<sup>rd</sup> and 4<sup>th</sup> State report in 1999. This leads one to question the actual impact of these Concluding Observations on the State. What in fact had been adopted were the form and not the substance of international human rights norms.

The Chinese delegation acknowledged to the CEDAW Committee that there lies ahead "a fairly long historical process to progress from de jure equality to de facto equality".

Juxtaposed with the State's change resistant articulation of women's rights, China's women's rights scholars and practitioners innovative use of international women's rights norms has powerful transformative potential. The 2005 reforms to the LPWRI of 1995 was a milestone in women's rights advocacy in China and spawned a panoply of gender based law reform initiatives both locally and nationally.

I will share with you a thumbnail sketch of the highlights of the new and emerging developments in gender and the law in China and the exciting way in which these reformist initiatives have sparked local to global engagements. Firstly, the new laws manifest a marked movement away from the paternalistic notions on the protection of women towards embracing a more human rights based concept of the empowerment of women. Secondly, an indirect consequence of the ambiguous and the aspirational nature of the national laws such as the LPWRI has led women's groups to redirect their efforts to mobilize strong guidelines at the provincial level thus creating greater opportunities for the vindication of women's rights at the local level. For example, 19 of the 31 provinces and, autonomous regions have formulated implementing regulations for operationalizing the women's law and 24 provinces have some sort of services for victims of domestic violence.

### **Domestic Violence:**

Although domestic violence has now been clearly prohibited by the revisions to the LPWRI, as well as addressed by provisions of the revised Marriage Law, China still lacks national legislation on domestic violence. "The horse I buy and the wife I own are mine to beat" is a popular folk saying and the concept of woman as man's property still exists in many parts of China.

The existing provisions are ambiguous in nature and are silent on a definition of domestic violence or the scope of the law as required by international human rights guarantees. However, women's groups have been creative in their search for redress and have seized for themselves the mantle of change. Some of the most vibrant new developments are in the area of domestic violence law and policy making and the women's rights groups have helped shape a trail of reform

*The Supreme People's Court Trial Guide to Domestic Violence Related Cases, March of 2008*, was published by the Applied Legal Institute of the Supreme People's Court and breaks new ground by providing protection orders in pilot courts under limited circumstances. Leading women's rights advocates hail this as a "small step in law theory but a big step in judicial practice." The challenge now is to expand the protective orders beyond the 9 pilots and push the boundaries of its scope.

*Another new development, the Several Opinions on Prevention and Prohibition from Domestic Violence in August 2008* provides an inter department collaboration for addressing and handling domestic violence cases.

Informed and animated by the Declaration on the Elimination of Violence against Women, (DEVAW), the CEDAW and new developments in domestic violence lawmaking around the world, the anti- domestic violence network has developed a strong experts draft on domestic violence. This experts draft is a blue print for national law reform and embraces many of the international law definitions on domestic violence including physical, sexual, verbal and psychological violence; broadens the scope of the law and provides much needed remedies for victims. Set up in

2000, the domestic violence network is one of the strongest networks of civil society advocates in China spanning 28 provinces and autonomous regions and is an important narrative of civil society engagement in China.

Incubating developments include the new *Supreme Court Interpretation on Handling Marriage Cases Involving Domestic Violence* and an *ACWF Guideline on the Prevention of Domestic Violence*. These efforts to draft provincial level laws and national level guidelines complement the continuing call for a national domestic violence law and echo international guarantees to prevent and address domestic violence.

### **Gender Discrimination in Employment:**

Although the employment of women in public and private enterprises have increased, women are still concentrated in the lower strata of the informal sector.

Feminization of part time work, gender bias in advertisements and recruitment that call for particular height, weight and looks among applicants, sex segregation in employment, the commodification and objectification of women, family based discrimination, and cross-cutting and multiple forms of discrimination disadvantage and subordinate women in China. Differential retirement practices that force both blue collar and professional women to retire ten years ahead of their male counterparts are some of the biggest threats to economic development in China.

*The Law of Employment Promotion 2008* breaks new ground by outlawing discrimination on the grounds of nationality, race, gender, religious belief, age and physical disability. The *Labor Contract Law which came into force in 2008* too reflects a paradigm change in labor relations as it articulates that a contract must be based on principles of lawfulness, fairness, equality, voluntariness, negotiated consensus and good faith. Despite these good faith efforts, these laws have had a disproportionate impact on women workers. The disparate impact of these laws result in more women being forced into part-time employment. The under implementation of these laws in a time of global economic strain is a thread that runs through most laws.

Provincial level laws provide for more effective articulations of gender equality. For example, *the Ways for the Implementation in Guangdong Province* establishes that no woman worker can suffer the termination of labor or decrease in wages or responsibility due to marriage, pregnancy, maternity leave, lactation or other reasons.

In the absence of a national anti-discrimination law, anti-discrimination scholars and practitioners in China have developed a model anti-discrimination law based on ILO guidelines and other international norms. This draft law known as “The Expert’s Draft on Anti-Discrimination, outlaws discrimination based on multiple grounds of discrimination including: “nationality, genders, status, religion, beliefs, disability, physical characteristics, age, health conditions, sexual orientation and other factors which harm equal opportunities and treatment in employment and occupation of laborers.” These unique experts draft laws in different areas of law in China including domestic violence,

anti-discrimination and sexual harassment are often blue prints for reform and catalysts for action.

### **Sexual Harassment:**

A similar experts draft on sexual harassment and a sexual harassment guideline for companies are two exciting new developments initiated by Chinese scholar practitioners and are informed by ILO Conventions as well as the CEDAW.

These dynamic initiatives by civil society scholars fill the lacuna left by inoperable and normative laws. For example, although the revised LPWRI for the first time outlaws sexual harassment, this provision remains aspirational. The law does not provide a definition of sexual harassment, nor does it provide the elements of the offense. So far of the 19 national cases that have gone to courts no case has articulated sexual harassment as a cause of action but based a claim for damage on other provisions in the law.

### **Rural Women's Property Rights**

With seventy percent of women in rural areas, the face of poverty in China is often that of a woman. Due to patriarchal norms, male dominated village committees and autonomous village committee regulations, women who are married out, divorced, widowed or single are deprived of access to land tenure or "responsibility land".

Here too, women's rights leaders have seized the opportunity for reform to call for a form of judicial review of village committee rulings. Thus Article 63 of the *Property Law of 2007* allows an aggrieved party to appeal to the People's Court when her rights have been threatened by decisions made by a collective economic organization or villagers committee. In another instance of creative advocacy, women in Nanjing and Guandong have mobilized efforts locally to engage in more egalitarian decision making at the village level. As a result, the revised village rules include a greater role for women in participation in community affairs.

The Land Management Law that is currently being drafted provides a new opportunity for women to have their voices heard in the law making process.

**In conclusion**, although international human rights norms are yet to be read directly into lawmaking or judicial decision making in China, women's rights advocates use these norms as a model to inform their advocacy and to bolster their arguments before a public or political forum. To this extent, human rights norms have been important building blocks of the emerging and ongoing reform processes on behalf of women in China. China's women's groups have galvanized around the universally shared rather than unilaterally held goals of the CEDAW. It has sparked a process of transnational engagements and a more multilateral and comparative approach to law and practice. These internationalization processes have provided useful interpretive tools and litmus tests to gauge the gap between laws and practice.

In the final analysis the rights rhetoric remains largely symbolic and is not always fully translated into action. However, women's rights groups in China have emerged and reinvented themselves as the true agents of change who have ignited debates that would otherwise be dormant. Though China's progress in women's rights law making has not delivered on all its promises, in fact, as seen in the Chinese context, the process for change does not end but begins with the drafting of a law. Seizing the political moment, women's groups continue to forge platforms to shape public opinion and policy. The journey continues and Chinese women's group are constantly challenging themselves to find new and alternative ways of addressing unresolved issues and re-imagining strategies.