

# China's Pragmatic Approach to International Human Rights Law

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*China has adopted a pragmatic approach to international human rights law in the early 21st century, characterized by pragmatic experimentation in the appropriation and modification of human rights norms, selective decoupling of international and domestic human rights rules, and divergent enforcement in the legislative and practical responses to various human rights issue areas. This approach permits significant gaps between “law on the books” and “law in action,” as well as between domestic rules and international law. Analysis of China’s engagement with the ICCPR and CEDAW, respectively focused on criminal procedural rights and women’s rights, reveals the complex and uneven nature of China’s human rights governance. While China has gradually reduced overt violations of human rights within criminal procedures, it has concurrently developed a more opaque and institutionalized punitive system. In comparison, despite recent legislative advances, limited practical enforcement and increased state control on feminist activists characterize women’s rights protections in China. Understanding China’s pragmatic approach is crucial for effectively addressing human rights concerns within the country.*

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## INTRODUCTION

China's relationship with international human rights law has consistently been a matter of contention. Despite frequent criticism regarding its human rights record, China has actively promoted its own norms and standards of human rights in recent years. In June 2021, the State Council published a White Paper titled "The Communist Party of China and Human Rights Protection – a 100-Year Quest" (hereinafter the "2021 White Paper"), which presented the Chinese government's comprehensive framework for the protection and enforcement of human rights, incorporating new formulations of civil and political rights and law-based governance.<sup>1</sup> In 2023, *Xi Jinping: On Respecting and Protecting Human Rights*, a "little yellow book" consisting of President Xi's quotes, was published and soon translated into several foreign languages.<sup>2</sup> Simultaneously, international human rights organizations have faced expulsion from China or have had to shift focus to less politically sensitive areas of work since the enactment of the Law on the Administration of Overseas Nongovernmental Organizations in 2016.<sup>3</sup> Numerous domestic rights activists have been persecuted, harassed, or silenced, hindering the continuation of their work.<sup>4</sup> Meanwhile, various forms of human rights violations continue to occur across China, including the extreme control measures during the COVID-19 pandemic. This stark contrast between rhetoric and practice renders China's approach to human rights increasingly perplexing.

This article argues that China has adopted a pragmatic approach to international human rights law in the early 21st century, characterized by three main

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1. ST. COUNCIL INFO. OFF. OF CHINA, THE COMMUNIST PARTY OF CHINA AND HUMAN RIGHTS PROTECTION — A 100-YEAR QUEST (2021), [http://english.scio.gov.cn/whitepapers/2021-06/24/content\\_77584416.htm](http://english.scio.gov.cn/whitepapers/2021-06/24/content_77584416.htm).

2. XI JINPING, XI JINPING ON RESPECTING AND PROTECTING HUMAN RIGHTS (2022).

3. Heike Holbig & Bertram Lang, *China's Overseas NGO Law and the Future of International Civil Society*, 52 J. CONTEMP. ASIA 574 (2022).

4. Zheng Wang, *Detention of the Feminist Five in China*, 41 FEMINIST STUD. 476 (2015); Hualing Fu, *The July 9th (709) Crackdown on Human Rights Lawyers: Legal Advocacy in an Authoritarian State*, 27 J. CONTEMP. CHINA 554 (2018).

features: (1) *pragmatic experimentation* in the appropriation and modification of human rights norms; (2) *selective decoupling* of international and domestic human rights rules; and (3) *divergent enforcement* in the legislative and practical responses to various human rights issue areas. Contrasting the normative approach of the United States, which closely links human rights to democracy and the rule of law, China's pragmatic approach is defined not only by the prioritization of social and economic rights over civil and political rights, as frequently shown by its critics,<sup>5</sup> but also by the flexible applications of human rights rules in its lawmaking and enforcement. This approach permits significant gaps between "law on the books" and "law in action," as well as between domestic rules and international law.

Numerous manifestations of China's pragmatic approach can be observed across various aspects of international human rights law. This article concentrates on two pivotal areas: (1) the International Covenant on Civil and Political Rights (ICCPR)<sup>6</sup> and the procedural rights of criminal suspects and defendants; and (2) the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)<sup>7</sup> and women's rights. In the four decades since the 1980s, China's lawmaking and law enforcement trajectories in these two human rights domains have displayed significant disparities.

Despite striving to reform domestic laws and regulations to enhance the protection of women's rights and those of criminal suspects or defendants, China continues to receive criticism from the international community. The Xi Jinping administration's crackdowns on human rights lawyers and feminist activists since 2015 underscore the Chinese government's quandary in advancing human rights domestically.<sup>8</sup> However, a detailed analysis of the "law on the books" and "law in action" reveals two distinct trajectories. While reforms of the People's Republic of China (PRC) Criminal Procedure Law (CPL) primarily took place between the 1990s and the early 2010s, significant lawmaking activities concerning women's rights did not emerge until the 2010s. In contrast, women's rights mobilization faced greater repression in the 2010s than in earlier decades, while the procedural protections of criminal suspects and defendants markedly improved in practice following the 2012 CPL revision, this improvement was undermined by the new plea leniency system introduced in the 2018 CPL revision.

In the subsequent sections, we begin by examining the current literature on China and international human rights law, highlighting the contrasting orientations between the Chinese government's official discourse and the critiques from overseas human rights scholars and advocates. Next, we outline the three primary

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5. See, e.g., Yu-Jie Chen, *China's Challenge to the International Human Rights Regime*, 51 N.Y.U. J. INT'L L. & POL. 1179 (2019); PITMAN B. POTTER, EXPORTING VIRTUE? CHINA'S INTERNATIONAL HUMAN RIGHTS ACTIVISM IN THE AGE OF XI JINGPING 5 (2021); RANA SIU INBODEN, CHINA AND THE INTERNATIONAL HUMAN RIGHTS REGIME (2021).

6. U.N. International Covenant on Civil and Political Rights, art. 19, Dec. 19, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) [hereinafter ICCPR].

7. U.N. Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW].

8. Wang, *supra* note 4; Fu, *supra* note 4.

components of China's pragmatic approach: pragmatic experimentation, selective decoupling, and divergent enforcement. Following this, we conduct a detailed analysis of China's engagement with the ICCPR and CEDAW in the two issue areas of criminal procedural rights and women's rights, focusing on the domestic enforcement of the two United Nations (UN) international treaties. Finally, we conclude by discussing the theoretical and policy implications of this pragmatic approach to international human rights law.

#### I. HUMAN RIGHTS WITH CHINESE CHARACTERISTICS?

Similar to many other concepts adopted during China's reform and opening-up since the late 1970s, human rights have taken on numerous "Chinese characteristics." Yu-Jie Chen identifies three key components of these characteristics: (1) an emphasis on economic, social, and cultural rights, particularly the rights to subsistence and development; (2) a demand for respect of its national conditions by other governments and non-interference in its domestic affairs; and (3) a focus on the unity of duties and rights, as well as the balance between collective rights and individual rights.<sup>9</sup> Rana Siu Inboden also highlights that China's perspective on human rights is characterized by the primacy of state sovereignty and the prominence of national, developmental, social, and cultural aspects.<sup>10</sup>

Furthermore, many scholars argue that China's stance towards international human rights has become more assertive in recent years.<sup>11</sup> Both Inboden and Chen note that, before the Xi Jinping administration, China primarily aimed to protect itself from human rights criticism, seldom attempting to independently change international human rights norms.<sup>12</sup> However, under Xi Jinping, the Chinese government has shifted from Deng Xiaoping's dictum "hide capacities and bide the time" (韬光养晦) to a more assertive and confident posture.<sup>13</sup> Inboden contends that China has assumed various roles in the international human rights regime, acting both as a "taker" and a "constrainer."<sup>14</sup> In areas where international norms do not exert significant pressure on its domestic laws, such as labor law, China is content to assume a "taker" role without challenging human rights law in international organizations.<sup>15</sup> Conversely, in areas where international human rights law directly conflicts with its domestic law, such as laws against torture, China has notably transitioned from a "taker" to a "constrainer" that "resists attempts to strengthen the [international human rights] regime or seeks to alter the existing regime by rolling back the regime's authority or detracting from existing

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9. Chen, *supra* note 5.

10. INBODEN, *supra* note 5.

11. See e.g., POTTER, *supra* note 5; Rana Siu Inboden, *China and Authoritarian Collaboration*, 31 J. CONTEMP. CHINA 505 (2022); INBODEN, *supra* note 5; Chen, *supra* note 5; Yongjin Zhang & Barry Buzan, *China and the Global Reach of Human Rights*, 241 CHINA Q. 169 (2020).

12. See generally Inboden, *supra* note 11; INBODEN, *supra* note 5; Chen, *supra* note 5.

13. INBODEN, *supra* note 5, at 6.

14. *Id.* at 5.

15. *Id.* at 159.

mechanisms and procedures.”<sup>16</sup>

Pitman Potter takes this analysis a step further, arguing that China is transitioning into a player that aims to shape international human rights standards to align with its own orthodoxy.<sup>17</sup> According to Potter, this orthodoxy of regime-led development is based on three interrelated precepts: party supremacy, conditionality of rights, and stability for development.<sup>18</sup> Since Xi Jinping assumed power in 2012, party supremacy has gained greater significance and is now evident in every aspect of the Chinese legal system.<sup>19</sup> The conditionality of rights juxtaposes the notion of “rights” as specific privileges granted at the discretion of the party-state, emphasizing socio-economic interests over legally specified rights.<sup>20</sup> Moreover, the party-state’s understanding of human rights is centered on the concept of stability, which is deemed a prerequisite for economic development.<sup>21</sup>

Yongjin Zhang and Barry Buzan analyze the historical process through which China has evolved from being “a human rights pariah state to an active participant in, and shaper of, global human rights governance.”<sup>22</sup> The Chinese government utilizes human rights not only to justify its “developmental relativism” but also to engage in “moral globalization” within a morally complex and divided world.<sup>23</sup> Zhang and Buzan argue that this has arguably “strengthened the standing of human rights within global international society against the charge that it is merely a new ‘standard of civilization’ imposed by the West.”<sup>24</sup> In contrast to this relatively positive view, Tanner Larkin terms China’s rise in international human rights governance as a “normfare” and examines its impact on African states and elites, arguing that this “normfare” extends China’s geopolitical power and reinforces its regime stability “by neutralizing the perceived threat of liberal human rights norms.”<sup>25</sup>

Hence, there is a general consensus among international scholars regarding China’s increasing assertiveness and global influence in international human rights law. Many of their perspectives reflect the perception of China as a threat to the U.S.-led international order. The “normfare” argument is particularly telling—as Larkin concludes his provocative essay with a stark warning: “By spreading an illiberal, authoritarian ‘human rights’ doctrine, China’s leadership seeks to use international law to support authoritarian regimes and undermine human rights defenders . . . . It must not succeed.”<sup>26</sup>

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16. *Id.* at 13.

17. POTTER, *supra* note 5, at 6–7.

18. *Id.* at 19–32.

19. *Id.* at 20–25.

20. *Id.* at 28–29.

21. *Id.* at 29–32.

22. Zhang & Buzan, *supra* note 11, at 169.

23. *Id.* at 185–86.

24. *Id.* at 186.

25. Tanner Larkin, *China’s Normfare and the Threat to Human Rights*, 122 COLUM. L. REV. 2285, 2300 (2022).

26. *Id.* at 2321.

Ironically, if we accept Larkin's definition of "normfare" as "the diffusion of norms by state actors for strategic purposes,"<sup>27</sup> then the most successful nation in global human rights "normfare" is arguably his own country: the United States. China is merely a latecomer to this geopolitical game. To this day, the scope and impact of China's "normfare" remain relatively limited and are hardly comparable to the extensive and highly influential human rights "normfare" propagated by the U.S. around the world.

Setting aside political rhetoric, a more pressing academic question is whether China has truly developed a coherent set of human rights norms. While the prevailing opinion among international scholars seems to affirm this notion, a thorough examination of the Chinese government's own human rights documents and writings of domestic Chinese scholars suggests a different conclusion. Although Chinese human rights researchers have observed an "indigenous turn" in their scholarship since the 2010s and have advocated for the construction of "a theoretical system for human rights with Chinese characteristics under socialism,"<sup>28</sup> this ambitious theoretical project remains aspirational to this date, without producing any new or alternative human rights paradigm.

In the most systematic formulation of human rights theory in China, composed by the Human Rights Theory Research Team at Guangzhou University in 2015, Li Buyun and his colleagues propose a balanced view of human rights building upon both mainstream Western human rights theories and a Marxist view of human rights. While recognizing human rights as "the common ideals and value principles of humankind" and "the inalienable rights of humans,"<sup>29</sup> they emphasize cultural and historical influences on the realization of human rights and oppose the "hegemonic orientation in international human rights cooperation."<sup>30</sup> They view human rights as "a historical concept" that is "constrained by the economic, cultural, and social conditions of a country," and advocate for the spirit of "harmony" and "tolerance" in addressing differences due to religion, customs, or cultural practices.<sup>31</sup> They criticize the politicization of human rights and caution against the "deterioration of human rights as instruments of political struggles and hegemony."<sup>32</sup>

This balanced view has shifted toward more assertive arguments in recent years. In line with the Chinese government's official policy, many scholars advocate

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27. *Id.* at 2295.

28. Liu Zhiqiang (刘志强), *Xinshidai Zhongguo Renquan Huayu Tixi de Biaoda* (新时代中国人权话语体系的表达) [Articulating China's Human Rights Discourse Scheme in the New Era], *Falü Kexue* (法律科学) [Sci. Law], no. 5, 2018, at 14.

29. Guangzhou Daxue Renquan Lilun Yanjiu Ketu Zu (广州大学人权理论研究课题组) [Human Rights Theory Research Team at Guangzhou University], *Zhongguo Tese Shehui Zhuyi Renquan Lilun Tixi Lungang* (中国特色社会主义人权理论体系论纲) [Outline of the System of Human Rights Theory with Chinese Characteristics under Socialism], *Faxue Yanjiu* (法学研究) [Chinese J. Law], no. 2, 2015, at 62.

30. *Id.* at 56.

31. *Id.* at 58.

32. *Id.* at 64.

for “the construction of a coherent human rights discourse scheme” as a means to elevate China’s influence in the international human rights regime.<sup>33</sup> Liu Zhiqiang, for example, summarizes the essence of this discourse scheme as “the unity of individual and collective human rights, the coordination of basic and primary human rights, the equality between rights and obligations, the balance between public and private rights, the inclusion of law and morality, and the parallel of domestic and international protection of human rights.”<sup>34</sup> He proposes a “three-dimensional discourse scheme” in which “the party takes the lead, academia makes its voice heard, and the public participates.”<sup>35</sup> He also calls attention to the acceptability of China’s human rights language in international discourses and cautions against “the rigid application of party slogans on international occasions.”<sup>36</sup>

This is easier said than done, however. Under the leadership of the Chinese Communist Party (CCP), Chinese scholars have limited freedom to deviate from official party propaganda in their academic writings. Xi Jinping’s speeches and the CCP’s party documents are often used as the theoretical sources for their scholarship. It is difficult to make any real innovation in China’s human rights theory unless it comes from the top leadership. As a result, most Chinese scholars adopt a cautious and eclectic approach when discussing human rights. They typically emphasize the political and historically contingent nature of human rights, as well as the importance of subsistence and development as collective rights.

Even the Chinese government’s White Papers reflect this eclectic attitude toward various human rights issues. For instance, the 2021 White Paper not only prioritizes economic and social rights such as education, employment, healthcare, social security, and environmental protection, but also acknowledges the importance of the right to life and dignity, the right to vote, freedom of religious belief, and the “rights to know, to be involved, to express views, and to supervise the exercise of power.”<sup>37</sup> It further emphasizes the need to establish an open, impartial, clean, efficient, and honest government with well-defined functions, statutory powers, and responsibilities, and strict law enforcement to safeguard the basic rights of the people. This official document does not set any new agenda but exhibits a delicate balance between adherence to international human rights norms

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33. See, e.g., Mao Junxiang (毛俊响), *Guoji Renquan Huayuquan de Shengcheng Lujing, Shizhi yu Zhongguo de Yingdui* (国际人权话语权的生成路径、实质与中国的应对) [The Pathway to International Human Rights Discourse, Its Essence, and China’s Responses], *Fashang Yanjiu* (法商研究) [Stud. L. & Bus.], no. 1, 2017, at 153; Ren Danhong (任丹红) & Zhang Yonghe (张永和), *Lun Zhongguo Renquan Huayu Tixi de Jiangou yu Guoji Huayuquan de Zhengqu* (论中国人权话语体系的建构与国际话语权的争取) [Constructing China’s Human Rights Discourse Scheme and Striving for International Discourse Power], *Xinan Zhengfa Daxue Xuebao* (西南政法大学学报) [J. Sw. Univ. Pol. Sci. & L.], no. 1, 2019, at 64; Ye Shulan (叶淑兰), *Zhongguo Waijiao Huayuquan de Lishi Yanjin, Jiben Jingyan ji Shengcheng Luoji* (中国外交话语权的历史演进、基本经验及生成逻辑) [The Historical Evolution, Basic Experiences, and Logical Generation of China’s Diplomatic Discourse Power], *Guoji GuanCha* (国际观察) [Int’l Rev.], no. 5, 2021, at 53; Liu, *supra* note 28.

34. Liu, *supra* note 28, at 18.

35. *Id.* at 20–22.

36. *Id.* at 22.

37. ST. COUNCIL INFO. OFF. OF CHINA, *supra* note 1, at 34.

and the presence of distinctive “Chinese characteristics.”

The disparity between domestic and international perspectives on China’s approach to human rights is strikingly evident. Has China truly established a unique human rights “orthodoxy” and an arsenal for “normfare,” as some foreign observers suggest? Our in-depth analysis of official and scholarly materials from China, particularly those in the Chinese language, points to a probable “no.” More specifically, while Xi Jinping and the Chinese government may have aspirations to develop such an orthodoxy and expand its global influence, it remains in the early stages of a work in progress. There is no coherent human rights theory distinct from Western ideologies, nor is there compelling government propaganda that resonates with numerous foreign nations. Even within China, human rights scholarship holds a marginal status in the legal academia. A mere handful of articles have been published in major Chinese law reviews over the past two decades. Instead of a distinctive human rights theory embodying Chinese characteristics, we find an extensive amalgamation of party propaganda, government policies, and quotes attributed to Xi Jinping.

## II. CHINA’S PRAGMATIC APPROACH

If there is no coherent theory, then what is China’s approach to human rights? More specifically, how does China enforce, adapt, or challenge international human rights law? We argue that this approach is best characterized as a pragmatic one, as opposed to the normative approach often adopted by the United States and other Western countries. The pragmatic approach is not based on any rational design or normative commitment; instead, it draws on habit and creativity when facing uncertainty, or what the American pragmatist philosopher John Dewey calls a “fork in the road” situation.<sup>38</sup> The Chinese government’s pragmatic approach to international human rights law is developed incrementally from its experiences in dealing with both domestic problems and international human rights norms over several decades, especially in the reform era since the 1980s. It rests on three main features, namely, *pragmatic experimentation*, *selective decoupling*, and *divergent enforcement*.

The first feature, pragmatic experimentation, is well illustrated by a famous Chinese saying often quoted by Deng Xiaoping and other CCP leaders: “Cross the river by touching stones.” Since the 1980s, China’s human rights policies have been shaped by its continuous interactions with international human rights rules and actors—including international organizations, foreign governments, and non-governmental organizations (NGOs)—in various domains of human rights. In this process, the Chinese government has adopted and challenged many human rights norms and rules, yet there is no coherent theoretical foundation or strong normative commitment emerging from its engagement with international human rights law.

Instead, China’s approach is experimental and highly pragmatic. As Potter observes, the philosophical foundation of this approach to international human

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38. See, JOHN DEWEY, *THE QUEST FOR CERTAINTY* (1929).

rights lies in the *ti-yong* challenge that China has faced since the late Qing Dynasty. This challenge involves the balance between Chinese learning as the core (*ti* 体) and foreign learning as functional utility (*yong* 用).<sup>39</sup> More than a century later, the Chinese government has inherited this tradition but has gradually shifted from the appropriation of foreign learning to a more proactive strategy to transform international norms. This strategy seeks to adapt or even alter the content of *yong*, making its application more favorable to the *ti* of the party-state's sovereignty and ideology.<sup>40</sup> In other words, rather than being a “taker” or a “constrainer” as Inboden argues, China has been a “pragmatic experimenter” in its engagement with international human rights law.

Secondly, China selectively decouples international human rights rules from its domestic law. Although China has signed and ratified many international covenants and supported most mainstream human rights norms, only a selection of those norms and rules are embodied in PRC law – a phenomenon that Pitman Potter termed “selective adaptation” in his earlier work.<sup>41</sup> Echoing the *ti-yong* distinction, this practice enables the Chinese government to utilize those human rights rules that help China gain global and local legitimacy while resisting rules that could potentially be subversive to its governance. The selective decoupling is achieved through a variety of techniques, such as making reservations when signing an international covenant, delaying the rectification of a covenant, omitting key concepts or provisions in domestic rules, or using judicial interpretations to limit the scope of rule application. Through these techniques, China is able to selectively decouple international human rights rules from its domestic law, enabling the government to maintain control over its domestic human rights landscape and strengthen political stability while still proactively engaging with the international human rights community.

Yet, decoupling is not a synonym of adaptation. It emphasizes both the symbolic aspect of legal change and what happens in actual practice.<sup>42</sup> China has created the veneer of a conforming member of the international human rights regime. Underneath this veneer, however, many key components of human rights rules are decoupled from domestic enforcement. When criticized by international human rights organizations or foreign governments on its human rights practices, the Chinese government can nevertheless use the veneer to make counterarguments. More importantly, the selective decoupling of international law helps the government maintain its domestic legitimacy and justify its suppression of its citizens' rights demands. This makes an interesting contrast to the human rights approach taken by Taiwan, which is not a member of the UN but chooses to enforce the ICCPR and the International Covenant on Economic, Social and Cultural Rights

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39. POTTER, *supra* note 5, at 14–15.

40. *Id.* at 15.

41. Pitman B. Potter, *Selective Adaptation and Institutional Capacity: Perspectives on Human Rights in China*, 61 INT'L J. 389 (2006).

42. Mark C. Suchman & Lauren B. Edelman, *Legal Rational Myths: The New Institutionalism and the Law and Society Tradition*, 21 L. & SOC. INQUIRY 903 (1996).

(ICESCR)<sup>43</sup> in its domestic laws in order to boost its global legitimacy.<sup>44</sup>

The third feature of China's pragmatic approach lies in the divergent legislative and practical responses to various human rights issue areas. The legislative history of China's domestic human rights rules is highly uneven across issue areas, with no general patterns or pathways in the past four decades. Our analysis of the two cases of ICCPR and CEDAW in Parts IV and V will demonstrate this with ample evidence. Although China signed and ratified the CEDAW earlier than the ICCPR, which remains to be ratified to this date, its domestic legislation of criminal procedure law was given more priority than laws related to women's rights. Furthermore, the implementation of women's rights and the rights of criminal suspects and defendants in practice also varies significantly in different time periods. The gaps between "law on the books" and "law in action" can be widened or shortened according to the interests of the party-state.

This last feature provides the most compelling empirical evidence of China's pragmatic approach. If China had indeed developed a coherent set of human rights norms or a mature system of human rights rules for exportation or even "normfare," then we would expect less variation across different issue areas and fewer gaps between legislation and law enforcement. This, however, is not the case. The so-called human rights "orthodoxy" only exists in party propaganda and government documents, yet the reality of China's human rights practice is filled with inconsistency and contradictions, which often are the pragmatic responses to domestic problems and international pressure on different human rights issues. In the next two sections of this article, we will examine this pragmatic approach in two major issue areas, namely, criminal procedural rights and women's rights. With these two case studies, we aim to provide a deeper understanding of the pragmatic nature of China's human rights governance.

### III. THE ICCPR AND CRIMINAL PROCEDURAL RIGHTS

China signed the ICESCR in 1997 and the ICCPR in 1998. Although the ICESCR was ratified by the Standing Committee of the National People's Congress in 2001, the ICCPR has not been ratified to this date. Nevertheless, the ICCPR served as a significant source of international influence in China's criminal procedure reforms from the 1990s to the early 2010s, culminating in two revisions of the PRC Criminal Procedure Law (CPL)<sup>45</sup> in 1996 and 2012. For both Chinese and overseas scholars, CPL reforms have been regarded as a nexus between crime

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43. International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR].

44. Yu-Jie Chen, *Isolated but Not Oblivious: Taiwan's Acceptance of the Two Major Human Rights Covenants*, in *TAIWAN AND INTERNATIONAL HUMAN RIGHTS: A STORY OF TRANSFORMATION* 207 (Jerome A. Cohen et al. eds., 2019).

45. Xingshi Susong Fa (刑事诉讼法) [Criminal Procedure Law] (promulgated by the Standing Comm. Nat'l People's Cong., July 7, 1979, effective Jan 1, 1980) 8TH NAT'L PEOPLE'S CONG. GAZ. (China) [hereinafter CPL].

control and human rights protection,<sup>46</sup> or between coercion and accountability.<sup>47</sup> Assessing human rights protection in the Chinese criminal justice system requires evaluating how these competing objectives are balanced through the interaction, rather than solely the gap, between law on the books and law in action.

In this section, we first examine how the ICCPR and China's CPL reforms have strengthened the protection of criminal procedural rights in domestic law. Subsequently, we evaluate the practical enforcement of the ICCPR through two specific instances: freedom from torture and the right to fair trials. We argue that China has gradually reduced overt violations of human rights within criminal procedures, yet concurrently developed a more opaque and institutionalized punitive system that operates beneath the international human rights radar.

#### *A. Criminal Procedural Reforms*

In the first three decades following the establishment of the PRC in 1949, there was no formal criminal code or criminal procedural code in place. Instead, China's approach to criminal processes and punishment was primarily shaped by broad principles and political campaigns.<sup>48</sup> The overarching goal during this period was social control, which manifested in criminal processes characterized by informal, clandestine, and coercive investigations.<sup>49</sup> These proceedings lacked any meaningful procedural safeguards provided by the court or legal representation.<sup>50</sup> The Cultural Revolution exacerbated this situation by effectively immobilizing the entire criminal justice system, replacing it with unregulated mass penalties. It was not until 1979 that China's first criminal code and criminal procedural code were enacted.

The 1979 CPL established a cooperative relationship among the police, procuracy, and court (公检法) rather than a criminal justice system characterized by checks and balances. Defense lawyers were granted access to defendants only when the case reached the trial stage, with a strict time limit of no more than seven days for preparation before trial (Article 110).<sup>51</sup> This crime-control model left minimal room for the protection of defendants' human rights. The absence of a focus on human rights in the 1979 CPL can be partly attributed to the limited influence of international human rights law. The ICCPR and ICESCR were not implemented by the United Nations (UN) until 1976, which coincided with the ending of the Cultural Revolution in China. Therefore, the 1979 CPL lawmaking was largely uninfluenced by the ICCPR.

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46. See Zhiyuan Guo, *Criminal Procedure, Law Reform and Stability*, in *THE POLITICS OF LAW AND STABILITY IN CHINA* (Susan Trevaskes et al. eds., 2014).

47. See Elisa Nesossi & Susan Trevaskes, *Procedural Justice and the Fair Trial in Contemporary Chinese Criminal Justice*, in *BRILL RSCH. PERSP. GOVERNANCE & PUB. POL'Y CHINA* 10 (2017).

48. See JEROME COHEN, *THE CRIMINAL PROCESS IN THE PEOPLE'S REPUBLIC OF CHINA: 1949-1963* (1968).

49. *Id.* at 48-49.

50. Sida Liu & Terence C. Halliday, *Recursivity in Legal Change: Lawyers and Reforms of China's Criminal Procedure Law*, 34 *L. & SOC. INQUIRY* 922, 911-950 (2009).

51. *Id.* at 925.

The 1996 CPL represented a notable advancement in the procedural protections of criminal suspects and defendants. It was designed to strengthen adversarial proceedings, enhance defendants' rights, and expand the roles and responsibilities of defense lawyers.<sup>52</sup> However, it is important to note that the 1996 CPL reform emerged as a product of compromise between the conflicting ideologies of crime control and human rights protection.<sup>53</sup> There were serious debates and diagnostic struggles among the police, judicial agencies, and legal scholars regarding various issues during the legislative process, such as the presumption of innocence, exemptions from prosecution, and the implementation of an adversarial trial system.<sup>54</sup> As a result, the 1996 CPL contains contradictory concepts and provisions, which lead to problems and inconsistencies in its enforcement. For instance, while the 1996 CPL provided defense lawyers with limited access to criminal suspects during police investigation, the police retained the ability to dictate the scheduling and location of lawyer-suspect meetings and could even be present at such meetings.

To a large extent, the 1996 CPL revision was an effort to conform to international human rights law, as it paved the way for the Chinese government to sign the ICCPR in 1998. And the ICCPR continued to shape China's criminal procedure reforms afterward. As Liu and Halliday note, "As a major global standard for protecting human rights and restricting government power, the ICCPR strongly infuses criminal procedure law reforms in national contexts. In the process of ratifying the ICCPR, the Tenth National People's Congress (NPC) (2003–2008) put another round of CPL revision into its five-year legislation agenda, which initiated the third legislative cycle of China's CPL reform."<sup>55</sup>

With the ICCPR as a modeling international standard, the 2012 CPL amendment addresses several key areas of procedural protections for criminal defendants. It adopted a set of exclusionary rules to prevent torture and the collection of illegal evidence during police investigation.<sup>56</sup> The 2012 CPL also strengthened the criminal defense system by expanding the scope of legal aid and granting lawyers a bigger role in the stage of criminal investigation.<sup>57</sup> Despite these improvements, the 2012 CPL revision has been criticized as "mostly old wine in new bottles."<sup>58</sup> Serious issues such as excessive police power, hardship of criminal

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52. See e.g., WEI LUO, *THE AMENDED CRIMINAL PROCEDURAL LAW AND THE CRIMINAL COURT RULES OF THE PEOPLE'S REPUBLIC OF CHINA* (2000); JONATHAN HECHT, *OPENING TO REFORM? AN ANALYSIS OF CHINA'S REVISED CRIMINAL PROCEDURE LAW (1996)*; H. L. Fu, *Criminal Defence in China: The Possible Impact of the 1996 Criminal Procedural Law Reform*, 153 CHINA Q. 31 (1998).

53. Liu & Halliday, *supra* note 50, at 926–931.

54. *Id.*

55. *Id.* at 937.

56. Zhiyuan Guo, *Research on the Development of Chinese Criminal Procedure Law in the Past Four Decades*, 9 CHINA LEGAL SCI. 3, 3–30 (2021).

57. SIDA LIU & TERENCE C. HALLIDAY, *CRIMINAL DEFENSE IN CHINA: THE POLITICS OF LAWYERS AT WORK* 40 (2016).

58. Joshua Rosenzweig et al., *The 2012 Revision of the Chinese Criminal Procedure Law: (Mostly) Old Wine in New Bottles* (May 17, 2012) (Occasional paper, Chinese University of Hong Kong) (on file with author).

defense, and the lack of fair trials remained prevalent. Nevertheless, the reform helps to protect specific areas of human rights and conform with international conventions, especially regarding monitoring police investigation.<sup>59</sup>

The ICCPR's influence on Chinese criminal justice waned in the 2010s. When the CPL was amended again in 2018, merely six years after the 2012 CPL, the legislative agenda was mostly driven by domestic concerns. For example, the abolition of reeducation through labor (RETL) in 2013 dramatically changed the architecture of punishment in China.<sup>60</sup> Previous RETL cases were diverted into either public security administration punishment or criminal punishment.<sup>61</sup> The new plea leniency system introduced in the 2018 CPL can be seen as a tool to help courts more efficiently handle the overwhelming number of minor criminal cases. Although it has implications for the human rights of criminal defendants as discussed below, the reform was not driven by the ICCPR or concerns of global legitimacy.

### B. Freedom from Torture

The right to freedom from torture and cruel punishment is one of the most fundamental human rights. Two bodies of international law govern the issue of torture: the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)<sup>62</sup> and the ICCPR (Article 7).<sup>63</sup> China signed CAT in 1986 and ratified it in 1988. Since then, the PRC has engaged in several reporting cycles to the UN in 2005, 2008, 2012, and 2016. All CAT reports show a mixed result. In the 2016 CAT report, for instance, the UN committee recognized China's positive legal advancements to curb torture but also pinpointed numerous lingering issues that make torture hard to prevent in practice.<sup>64</sup> Meanwhile, empirical studies on Chinese criminal justice have shown the persistent use of torture by the police, the state security apparatus, and other investigative agencies in their interrogations of criminal suspects.<sup>65</sup>

The establishment of exclusionary rules is an example of combating torture in criminal investigations in China. In response to a series of high-profile wrongful conviction cases and the resulting public dissatisfaction with the criminal justice system, the Supreme People's Court (SPC), the Supreme People's Procuracy (SPP), the Ministry of Public Security, the Ministry of State Security, and the Ministry of

59. Guo, *supra* note 56, at 11.

60. See Sarah Biddulph, *Punishments in the Post Re-education Through Labour World: Questions About Minor Crime in China*, in CHINESE LEGAL REFORM AND THE GLOBAL LEGAL ORDER: ADOPTION AND ADAPTATION 15–43 (Yun Zhao & Michael Ng eds., 2018).

61. *Id.* at 2.

62. U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85 (entered into force June 26, 1987) [hereinafter CAT].

63. ICCPR *supra* note 6, art. 7.

64. Margaret Lewis, *Freedom from Torture*, in HANDBOOK ON HUMAN RIGHTS IN CHINA 348, 348–369 (Sarah Biddulph & Joshua Rosenzweig eds., 2019).

65. See Wei Wu & Tom Vander Beken, *Police Torture in China and Its Causes: A Review of Literature*, 43 AUSTL. & N.Z. J. CRIMINOLOGY 557 (2010).

Justice jointly established the Rules Concerning Questions About Examining and Judging Evidence in Death Penalty Cases and the Rules Concerning Questions About Exclusion of Illegal Evidence in Handling Criminal Cases in 2010.<sup>66</sup> Those two rules were further incorporated into the 2012 CPL. The Chinese leadership used the exclusionary rules as a tool of public relations overseas in response to reports of human rights abuses and concerns over China's long-awaited ratification of the ICCPR.<sup>67</sup>

The scope of the exclusionary rules includes both oral and physical evidence to show China's commitment to fighting torture. However, the emphasis is on the exclusion of oral evidence as the rules set up merely a discretionary exclusion model for physical evidence.<sup>68</sup> In practice, physical evidence is rarely excluded.<sup>69</sup> Moreover, the 2012 CPL does not address the issue of repeated confessions. Chinese police often pressure defendants to make multiple confession statements in order to ensure a "legally" secured confession is obtained.<sup>70</sup>

Although their enforcement is far from ideal, the exclusionary rules have had a positive impact on the criminal process. As Zhiyuan Guo points out, "the exclusionary rules have had an important influence on interrogators' mindset. . . . [I]nterrogators have started paying attention to the legality of their work and are avoiding interrogation methods that could potentially be illegal and subject to exclusionary rules when a case goes to trial."<sup>71</sup> In other words, the exclusionary rules have promoted a culture of legality, which makes excessive illegal methods of obtaining evidence or confession more difficult in the Chinese criminal justice system.

Following the 2012 CPL revision, instances of corporal punishment and torture have become less frequent.<sup>72</sup> Yet, it is difficult to assess to what extent this is because of the exclusionary rules or because of the introduction of new technology. Article 121 of the 2012 CPL requires audiotaping and videotaping in the interrogations of major criminal cases and permits the use of such technologies in other cases. In practice, with the increasing availability of audiotaping and videotaping in police stations across China, the use of these technologies has become common practice in police interrogations.<sup>73</sup> It has arguably helped reduce corporal punishment during police investigation. Therefore, although the

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66. Guo, *supra* note 56.

67. Margaret Lewis, *Controlling Abuse to Maintain Control: The Exclusionary Rule in China*, 43 N.Y.U. J. INT'L L. & POL. 629 (2011).

68. See Jeremy Daum, *Tortuous Progress: Early Cases Under China's New Procedures for Excluding Evidence in Criminal Cases*, 43 N.Y.U. J. INT'L L. & POL. 699 (2011).

69. See, Chen Guangzhong (陈光中) & Guo Zhiyuan (郭志媛), *Feifa Zhengju Paichu Guize Shishi Ruogan Wenti Yanjiu* (非法证据排除规则实施若干问题研究) [Research on the Various Problems Concerning the Application of Exclusionary Rules], *Faxue Zazhi* (法学杂志) [Legal Sci. Mag.], no. 9, 2014, at 1–16.

70. Zhiyuan Guo, *Torture and Exclusion of Evidence in China*, 1 CHINA PERSP. 45, 48 (2019).

71. *Id.* at 48.

72. *Id.* at 49.

73. *Id.* at 47.

introduction of exclusionary rules shows China's commitment to the ICCPR and the CAT through law on the books, its impact on law in action is only effective when supported by the increasing use of technology in Chinese domestic governance. Procedural rules alone are insufficient in reducing torture.

### *C. The Right to Fair Trials*

A fair trial has been considered a hallmark of human rights in criminal processes. Article 14 of the ICCPR states that:

All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.<sup>74</sup>

A fair trial encompasses various rights, such as presumption of innocence, freedom from interrogative torture, and adequate criminal defense. In this section, we focus on criminal defense and the plea leniency system and discuss their implications for the right to fair trials in China.

Defense lawyers have been a marginalized group in Chinese criminal justice.<sup>75</sup> In the 1979 CPL, lawyers could only get involved in a case during the trial phase. Subsequent reforms have gradually expanded the scope of lawyers' involvement and the materials they could access. The 2012 CPL amendment finally gives lawyers the status of defender during the investigation phase. Yet, Chinese criminal defense lawyers still face daunting challenges and risks in their work, including basic tasks like meeting suspects, accessing case files, and collecting evidence.<sup>76</sup> Lawyers could also be detained and charged with perjury according to Article 306 of the PRC Criminal Law, though the number of lawyer perjury cases has declined after Article 42 of the 2012 CPL shifts the authority for initiating such cases to the police or procuracy in a different jurisdiction.<sup>77</sup> This change has reduced the risk of retaliation against defense lawyers by local police or prosecutors with vested interests in the case.

Under the slogan "governing the nation in accordance with the law," (依法治国) the "trial-centeredness" (以审判为中心) initiative was introduced in 2014. It emphasizes three key concepts: criminal culpability must be determined within a trial; guilt can only be established by rigorously examining facts in court, not just written testimony; and all evidence presented must be legally obtained.<sup>78</sup> To complement this, "full coverage of criminal defense" (刑事辩护全覆盖) was promoted, providing government-funded legal aid and "duty lawyers" (值班律师) to ensure a lawyer's presence in every criminal case.<sup>79</sup> Both initiatives aim to

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74. ICCPR, *supra* note 6, art. 14(1).

75. LIU & HALLIDAY, *supra* note 57.

76. *Id.*

77. *Id.* at 40.

78. Nesossi & Trevaskes, *supra* note 47, at 27.

79. Sarah Biddulph, *Arbitrary Detention*, in HANDBOOK ON HUMAN RIGHTS IN CHINA 371,

improve the fairness and effectiveness of China's criminal justice system.

It is important to acknowledge that the improvements highlighted, along with the well-documented human rights violations, provide only a partial perspective of the complex relationship between the Chinese criminal justice system and international human rights law. By using the ICCPR as our benchmark for comparison, we may inadvertently overlook numerous punitive practices that fall outside the scope of international human rights norms. These hidden and routine practices effectively shield the Chinese government from global criticism while allowing the state to maintain its authoritarian governance. This demonstrates the pragmatic nature of China's approach to international human rights law. We use the plea leniency system as an example to illustrate this point.

In 2016, the SPC and the SPP jointly introduced a plea leniency system called "leniency for acknowledging guilt and accepting punishment" (认罪认罚从宽). This system was formally integrated into the CPL in 2018 and has since become the most significant mechanism for processing criminal cases in contemporary China. As of 2021, 89.4% of criminal cases are resolved through the plea leniency system.<sup>80</sup> On the surface, the plea leniency system does not overtly violate human rights. The fundamental principle of the Chinese plea leniency system bears resemblance to the American plea bargain system, as it facilitates a "negotiation" process between a defendant and a prosecutor, particularly when the defendant pleads guilty. Within this framework, the prosecutor can propose a sentencing recommendation that aligns with specific levels of leniency as explicitly defined in the SPC regulations.

Nonetheless, while avoiding overt human rights violations, the plea leniency system has made "trial-centeredness" an empty promise. As Xin He argues in a recent study, plea leniency has shifted the focus toward a "prosecution-centered" approach to criminal proceedings.<sup>81</sup> This system significantly enhances prosecutorial power while marginalizing the role of courts and defense lawyers. Prosecutors wield a low-profile but influential power, compelling defendants to confess and offering sentencing recommendations. Presenting a meaningful defense during trial becomes exceedingly challenging once the plea leniency procedure is invoked. Moreover, as demonstrated by Yu Mou's ethnographic study, police frequently pressure defendants to sign documents "acknowledging guilt and accepting punishment" during the interrogation phase, often without affording defendants sufficient time to review the document.<sup>82</sup> In some cases, police resort to fabricating defendants' statements and employing verbal threats to elicit

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380–81 (Sarah Biddulph & Joshua Rosenzweig eds., 2019).

80. Dai Jia (戴佳), *Jinnian 1 Yue Zhi 9 Yue Renzui Renfa Congkuan Zhidu Shiyong Lu Da 90.5%* (今年 1 月至 9 月认罪认罚从宽制度适用率达 90.5%) [The "guilty plea leniency system" had an application rate of 90.5% from January to September this year], *Jiancha Ribao* (检察日报) [Prosecutorial Daily], no. 10016, 2022, at 4.

81. Xin He, *Plea Leniency and Prosecution Centredness in China's Criminal Process*, 254 CHINA Q. 1 (2023).

82. YU MOU, *THE CONSTRUCTION OF GUILT IN CHINA: AN EMPIRICAL ACCOUNT OF ROUTINE CHINESE INJUSTICE* 11, 59 (2020).

confessions.<sup>83</sup>

The plea leniency system epitomizes a concealed and institutionalized form of coercive power that effectively achieves the objective of social control under the guise of legality and leniency. It allows China to proficiently manage criminal cases in an efficient yet punitive manner while remaining relatively unnoticed by the international human rights community. Furthermore, it renders many progressive reforms toward the ICCPR made in the 1996 and 2012 CPL revisions meaningless in practice, as the overwhelming majority of criminal suspects and defendants are now processed through the simplified procedure in the plea leniency system without going through the full criminal procedure prescribed in the CPL. It is an excellent example of the selective decoupling of formal law and international human rights norms from law in action.

In sum, the changing relationship between the ICCPR and Chinese criminal justice presents a complex landscape of both progress and setbacks. While the 1996 and 2012 CPL revisions have introduced various improvements toward the future ratification of the ICCPR, the plea leniency system introduced in 2018 highlights the limitations of these reforms and reveals the Chinese government's pragmatic approach to international human rights. This underscores the importance of scrutinizing not only overt human rights violations but also the hidden, institutionalized practices that enable authoritarian governance to persist and evade international criticism.

#### IV. THE CEDAW AND WOMEN'S RIGHTS

China is one of the earliest countries to sign and ratify the CEDAW in 1980. The CEDAW was the first core international human rights treaty that China ratified, and it only took two months from its signing to ratification.<sup>84</sup> Since then, the Chinese government has actively participated in the CEDAW reporting process. China submitted its initial report in 1983, just one year after the establishment of the UN Committee on the Elimination of Discrimination Against Women ("CEDAW Committee"). To this date, China has submitted nine reports which has been reviewed five times by the CEDAW Committee over the course of four decades. The most recent ninth periodic report was considered by the CEDAW Committee in May 2023.

According to the government reports, China has established a comprehensive legal framework for the protection of women's rights, primarily anchored in the PRC Constitution and centered around the Law on the Protection of Women's Rights and Interests ("LPWRI").<sup>85</sup> Equality between men and women is established

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83. *Id.* at 55–64.

84. LIU XIAONAN (刘小楠), 20 NIAN, WOMEN ZOULE DUOYUAN? ——95 SHIFUHUI HOU ZHONGGUO FUNÜ QUANLI FAZHAN ZHUANGKUANG YANJIU (20年, 我们走了多远? ——95世妇会后中国妇女权利发展状况研究) [HOW FAR HAVE WE COME IN 20 YEARS? A STUDY ON THE DEVELOPMENT OF WOMEN'S RIGHTS IN CHINA AFTER THE 1995 WORLD CONFERENCE ON WOMEN] 227 (2015).

85. U.N. Comm. on the Elimination of Discrimination against Women, Ninth periodic Rep.

as a basic state policy.<sup>86</sup> The Chinese government has also implemented numerous measures to promote gender equality, actively advancing women's rights in various areas, including political participation, education, employment, and health.<sup>87</sup>

In practice, however, China's CEDAW enforcement is not as rosy as portrayed in the reports. Even though the Chinese government claims to support women's rights, the policy focus is not always on women. The promotion of gender equality is often more performative than substantive. The enforcement of the CEDAW is an exemplary case of this performance, which illustrates China's pragmatic approach to international human rights law. To achieve credible performances to the United Nations, China selectively decouples its domestic laws from international human rights standards. Many provisions in Chinese law related to women's rights are merely symbolic statements with little practical value in the judicial process. Accordingly, there is a significant disparity between the "law on the books" concerning women's rights and its implementation. Furthermore, the advancement of women's rights has been under strong and persistent state control, while grassroots feminist movements are increasingly suppressed in recent years.

#### *A. China's Engagement with the CEDAW*

When China signed the CEDAW in July 1980, the ratification proposal submitted by the State Council to the Standing Committee of the National People's Congress cites three reasons for CEDAW ratification: (1) it reflects the demands and concerns of third-world countries and people living under colonial rule or foreign occupation for the protection and improvement of women's rights; (2) it safeguards self-determination and national sovereignty and combats hegemony, racism, and colonialism; (3) it is not in conflict with the PRC Constitution, Marriage Law, or other Chinese law.<sup>88</sup> China's first state report to the CEDAW Committee primarily emphasized four aspects of women's rights: political participation, education, employment, and marriage.<sup>89</sup> It did not reveal any severe violations of women's rights.<sup>90</sup> During the first two CEDAW reporting processes, China's reports were reviewed in a relatively gentle manner. The CEDAW Committee expected that China would provide more data and information. For example, in the second reporting process, the chairperson expressed the hope that the committee "would receive more details on the percentages of women and on procedures to

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submitted by China under art. 18 of the Convention, ¶ 19, U.N. Doc. CEDAW/C/CHN/9(Dec. 16, 2020).

86. *Id.* ¶ 8.

87. *Id.*

88. Guowuyuan Guanyu Tiqing Pizhun Lianheguo <Xiaochu Dui Funü Yiqie Xingshi Qishi Gongyue> de Yian (国务院关于提请批准联合国《消除对妇女一切形式歧视公约》的议案) [The State Council's Proposal for the Approval of the United Nations Convention on the Elimination of All Forms of Discrimination against Women] (submitted by the St. Council to the Standing Comm. Nat'l People's Cong., Sep. 20, 1980), St. Council Gaz., no. 15, 1980, at 454 (China).

89. U.N. Comm. on the Elimination of Discrimination against Women, Initial Reps. of States Parties: China, U.N. Doc. CEDAW/C/5/Add. 14 (May 25, 1983).

90. *Id.*

overcome old habits.”<sup>91</sup>

In the 1990s, the Chinese government increasingly associated women’s rights with economic development. The Fourth World Conference on Women (“FWCW”) held in Beijing in 1995 was a significant event not only for the advancement of women’s rights but also for China’s global legitimacy. Yet, the primary reason for hosting the FWCW in China has little to do with women.<sup>92</sup> The FWCW was used as a means for the Chinese government to change its damaged international image,<sup>93</sup> reenter the world,<sup>94</sup> and continue its economic reform after its crackdown of the 1989 Tiananmen student movement.<sup>95</sup> In June 1994, the State Council released a white paper titled *The Situation of Chinese Women*, which emphasizes that “[i]mprovement of the economic status of women constitutes the most important foundation for achieving sexual equality.”<sup>96</sup> In preparation for the FWCW, the State Council released the *Outline of Women’s Development in China (1995-2000)* (“1995 Outline”) in July 1995.<sup>97</sup> It was China’s first governmental plan for women’s development.<sup>98</sup>

In September 1995, the FWCW was convened in Beijing. President Jiang Zemin declared during the opening ceremony, “We attach great importance to the development and progress of women and have made equality between men and women a basic state policy for social progress in China.”<sup>99</sup> It was the first time that the Chinese government publicly committed to enforcing equality between men and women as a basic state policy. Moreover, the conference adopted the Beijing Declaration and the Platform for Action (PFA), both aimed at empowering women.<sup>100</sup>

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91. U.N. Comm. on the Elimination of Discrimination against Women, Rep. of the Comm. on the Elimination of Discrimination against Women on Its Eleventh Session, ¶ 218, U.N. Doc. A/47/38 (Jun. 24, 1992).

92. See, e.g., Wang Zheng, *Maoism, Feminism, and the UN Conference on Women: Women’s Studies Research in Contemporary China*, 8 J. WOMEN’S HIST. 126, 142 (1997); Dongxiao Liu, *When do National Movements Adopt or Reject International Agendas? A Comparative Analysis of the Chinese and Indian Women’s Movements*, 71 AM. SOCIO. REV. 921, 935 (2006).

93. Wang, *supra* note 92, at 142.

94. Zheng Wang & Ying Zhang, *Global Concepts, Local Practices: Chinese Feminism since the Fourth UN Conference on Women*, 36 FEM. STUD. 40, 40–41 (2010).

95. Liu, *supra* note 92, at 935.

96. ST. COUNCIL INFO. OFF., THE SITUATION OF CHINESE WOMEN (1994), [http://za.china-embassy.gov.cn/eng/zt/zgrq/200604/t20060425\\_7639069.htm](http://za.china-embassy.gov.cn/eng/zt/zgrq/200604/t20060425_7639069.htm) (China).

97. GUOWUYUAN FUNÜ ERTONG GONGZUO WEIYUANHUI (国务院妇女儿童工作委员会) [NAT’L WORKING COMM. ON CHILDREN AND WOMEN UNDER ST. COUNCIL], ZHONGGUO FUNÜ FAZHAN GANGYAO (1995-2000 NIAN) (中国妇女发展纲要 (1995-2000年)) [OUTLINE FOR THE DEVELOPMENT OF CHINESE WOMEN (1995-2000)] (1995), *reprinted at* NAT’L WORKING COMM. ON CHILDREN AND WOMEN UNDER ST. COUNCIL (Apr. 5, 2017), <https://www.nwccw.gov.cn/2017/04/05/99338966.html>.

98. *Id.* at *Preface*.

99. Jiang Zemin (江泽民), Jiang Zemin Zhuxi Zai Lianheguo Disici Shijie Funü Dahui Huanying Yishi Shang de Jianghua (江泽民主席在联合国第四次世界妇女大会欢迎仪式上的讲话) [Remarks of Jiang Zemin at the Opening Ceremony of the FWCW] (1995), *reprinted at* Zhongguo Fun Wang (中国妇女网) [ALL-CHINA WOMEN’S FED’N] (Sept. 6, 2019), <https://www.cnwomen.com.cn/2019/09/06/99172210.html>.

100. Beijing Declaration and Platform for Action, Sep. 15, 1995, A/CONF.177/20 (1995).

Two years after the FWCW, China submitted the combined third and fourth periodic reports, in which the government stated that it had made a serious effort to implement the PFA.<sup>101</sup> The combined reports also placed a significant emphasis on the 1992 LPWRI<sup>102</sup>, which established a comprehensive legal framework for the protection of women's rights. Afterward, LPWRI underwent three revisions in 2005, 2018, and 2022. In Article 1 of the LPWRI, there is a particular emphasis on fully harnessing the role of women in "socialist modernization construction."<sup>103</sup> This statement has been consistently retained through the subsequent three revisions of the law. In 2022, the phrase "carrying forward socialist core values" was added to this article.<sup>104</sup> The LPWRI, however, declares women's rights without taking adequate measures to protect them. A lack of concrete and effective punitive measures, coupled with ambiguous legal provisions, contributes to its weak enforcement.

The combined third and fourth periodic reports also emphasized the role of NGOs in implementing the PFA and the 1995 Outline.<sup>105</sup> Not surprisingly, one NGO was highlighted in the report: the All-China Women's Federation (ACWF), which is a government-organized NGO (i.e., GONGO) that acts as an agent of the CCP in implementing their policies for advancing women's rights.<sup>106</sup> Nevertheless, the CEDAW Committee relies heavily on information provided by NGOs when evaluating China and other states,<sup>107</sup> and this role was certainly not performed by the ACWF. The participation of other NGOs has increased since China's combined fifth and sixth periodic reports.<sup>108</sup> In 2006, only three NGOs participated in the

101. U.N. Comm. on the Elimination of Discrimination Against Women, Third and Fourth Periodic Reports of States Parties: China, at 24–26, U.N. Doc. CEDAW/C/CHN/3-4 (Jun. 10, 1997).

102. *Id.* at 5.

103. Funü Quanyi Baozhang Fa (2005 Xiuzheng) (妇女权益保障法 (2005 修正)) [Law of the People's Republic of China on the Protection of Women's Rights and Interests (2005 Revision)] (promulgated by the Standing Comm. Nat'l People's Cong., Aug. 28, 2005, effective Dec. 1, 2005), art. 1, 2005 ST. COUNCIL GAZ. no. 40 (China) [hereinafter LPWRI (2005)].

104. Funü Quanyi Baozhang Fa (2022 Xiuding) (妇女权益保障法 (2022 修订)) [Law of the People's Republic of China on the Protection of Women's Rights and Interests (2022 Revision)] (promulgated by the Standing Comm. Nat'l People's Cong., Oct. 30, 2022, effective Jan. 1, 2023), art. 1, BEIDA FABAO (北大法宝) [LAWINFOCHINA], <https://www.lawinfochina.com/display.aspx?id=39908&lib=law> (China) [hereinafter LPWRI (2022)].

105. U.N. Comm. on the Elimination of Discrimination Against Women, *supra* note 101, at 10–11.

106. GONGO is an abbreviation for "government-organized non-governmental organization." GONGOs in China are closely allied with the government. Typically, they originate as offshoots of government agencies or public institutions. See, Shawn Shieh, *Mapping the dynamics of civil society, in* NGO GOVERNANCE AND MANAGEMENT IN CHINA 48 (Reza Hasmath & Jennifer Y. J. Hsu eds., 2016); Wang Zheng, "State feminism"? *Gender and Socialist State Formation in Maoist China*, 31 FEM. STUD. 519, 521 (2005).

107. SALLY ENGLE MERRY, HUMAN RIGHTS AND GENDER VIOLENCE: TRANSLATING INTERNATIONAL LAW INTO LOCAL JUSTICE, 88 (William M. O'Barr & John M. Conley eds., 2005) (where Bayefsky concluded from a detailed survey of all six treaty bodies that "[t]he treaty bodies have been heavily dependent on information from NGOs in preparing for the dialogue with states parties.>").

108. Nüquan Xiaozao (女权小灶), Qinli Lianheguo Xiaoci Gongyue Shenyi: Zhongguo Zhengfu zai Taiqian zuo Biaomian Wenzhang, Women zai Muhou gei Weiyuan "Da Xiaobaogao" (亲历联合国消歧公约审议：中国政府在台前做表面文章,我们在幕后给委员"打小报告")

reporting process: the Women's Media Watch Network, the Anti-Domestic Violence Network (ADVN), and the Center for Women's Legal Studies and Legal Services at Peking University.<sup>109</sup> In 2014, NGOs submitted over forty shadow reports to the Committee.<sup>110</sup> In 2023, the Committee received approximately fifty shadow reports during the review of the ninth periodic report.<sup>111</sup> The number of reports submitted by GONGOs increased substantially.

### B. Domestic Violence

From the FWCW in 1995 to the promulgation of the PRC Anti-Domestic Violence Law in 2015, domestic violence had arguably been the most prominent issue concerning women's rights in China. China's first two periodic reports to CEDAW did not refer to "violence." The initial report only stated that "physical abuse of women still occurs."<sup>112</sup> When the CEDAW Committee considered the second report in 1992, it requested information on the level of violence against women in China and what measures had been introduced to protect women from violence, abuse, and exploitation.<sup>113</sup> A government representative, however, answered that "violence against women had not been a serious social problem in China."<sup>114</sup>

During the reporting process in 1999, the CEDAW Committee devoted more time to discussing issues related to violence against women, including domestic violence.<sup>115</sup> Specifically, the Committee recommended that the government update laws and policies on violence against women—including the establishment of a dedicated domestic violence law and support services like shelters and hotlines for survivors—while also underscoring the need to train law enforcement and

[*Watching the CEDAW Review: China's Government Puts on a Front, While We Provide "Behind-the-Scenes Briefings" to the Committee*], WaiNao (歪脑) [WAINAO.ME] (May 31, 2023), <https://www.wainao.me/wainao-reads/united-nations-china-womens-rights-05312023>.

109. Feng Yuan (冯媛), Xiaoqi Gongyue Zhongguo Shenyi 15 Nian: Funü NGO de Canyu (消歧公约中国审议 15 年: 妇女 NGO 的参与) [*15 Years of CEDAW Review in China: Involvement of Women's NGOs*], Zhongguo Renquanwang (中国人权网) [HUM. RTS. CHINA] (Dec. 17, 2015), <https://www.humanrights.cn/html/special/2015/1217/806.html>.

110. CEDAW - Convention on the Elimination of All Forms of Discrimination against Women: 59 Sess., OFF. OF THE HIGH COMM'R FOR HUM. RTS. (20 Oct. 2014 – 07 Nov. 2014), [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/SessionDetails1.aspx?SessionID=816&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/SessionDetails1.aspx?SessionID=816&Lang=en) (see the number of submissions under the "Info from Civil Society Organizations" section).

111. CEDAW - Convention on the Elimination of All Forms of Discrimination against Women: 85 Sess., UN Treaty Body Database, OFF. OF THE HIGH COMM'R FOR HUM. RTS. (08 May 2023 - 26 May 2023), [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/SessionDetails1.aspx?SessionID=2648&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/SessionDetails1.aspx?SessionID=2648&Lang=en) (see the number of submissions under the "Info from Civil Society Organizations" section).

112. U.N. Comm. on the Elimination of Discrimination against Women, *supra* note 89, at 15.

113. U.N. Comm. on the Elimination of Discrimination against Women, *supra* note 91, ¶ 170.

114. *Id.* ¶ 171.

115. U.N. Comm. on the Elimination of Discrimination against Women, Rep. of the Comm. on the Elimination of Discrimination against Women on Its Twentieth Session, U.N. Doc. A/54/38 (Part I) (May 4, 1999).

healthcare personnel in handling domestic violence cases.<sup>116</sup> In response, China amended the Marriage Law in 2001, stating in Article 3 that “Domestic violence shall be prohibited.”<sup>117</sup> Furthermore, the SPC provided a detailed definition of “domestic violence” in Article 1 of its Interpretation on Certain Issues Concerning the Application of the Marriage Law.<sup>118</sup> Domestic violence clauses were also incorporated into the first revision of the LPWRI in 2005.<sup>119</sup>

In its review of the combined fifth and sixth periodic reports submitted in 2006, the CEDAW Committee expresses concerns about the absence of comprehensive national legislation addressing violence against women, as well as the lack of comprehensive statistical data on all forms of violence against women.<sup>120</sup> In July 2008, the CCP’s Publicity Department, the SPP, the ACWF, and four state ministries jointly developed the Opinions on Preventing and Combating Domestic Violence.<sup>121</sup> Article 8 mandates that public security authorities include domestic violence reporting within the scope of the “110” emergency response system.<sup>122</sup> In the same year, the SPC’s Institute for Applied Jurisprudence issued The Judicial Guidelines on Marriage Cases Involving Family Violence. In 2013, the Standing Committee of the National People’s Congress added the Anti-Domestic Violence Law to its legislative agenda.<sup>123</sup> During the assessment of the combined seventh and eighth periodic reports in 2014, the CEDAW Committee recommended that the draft anti-domestic violence law should incorporate provisions for issuing protection orders and establishing sufficient, well-equipped shelters for women who are victims of violence.<sup>124</sup> In 2015, China’s first Anti-Domestic Violence Law was enacted.

116. *Id.* ¶¶ 285–86.

117. Hunyin Fa (婚姻法) [2001 Marriage Law] (promulgated by the Standing Comm. Nat’l People’s Cong., Apr. 28, 2001, effective Apr. 28, 2001), art. 3, ST. COUNCIL GAZ., no. 51, 2001 (China).

118. Zuigao Renmin Fayuan Guanyu Shiyong <Zhonghua Renmin Gongheguo Hunyin Fa> Ruogan Wenti de Jieshi (I), Fashi (2001) Sanshi Hao (最高人民法院关于适用《中华人民共和国婚姻法》若干问题的解释(一), 法释【2001】30号) [Judicial Interpretations Respecting Several Issues in the Application of the Marriage Law, Judicial Interpretation No. 30 [2001]] (promulgated by the Judicial Comm. Sup. People’s Ct., Dec. 25, 2001, effective Dec. 27, 2001), art. 1, Sup. People’s Ct. Gaz., Dec. 25, 2001, <http://gongbao.court.gov.cn/details/ea9abc5cd273b7091a762bd99f0d5a.html> (China).

119. LPWRI (2005), *supra* note 103, art. 46.

120. U.N. Comm. on the Elimination of Discrimination against Women, Concluding Comments of the Comm. on the Elimination of Discrimination against Women: China on Its Thirty-Sixth Session, U.N. Doc. CEDAW/C/CHN/CO/6 (Aug. 25, 2006).

121. U.N. Comm. on the Elimination of Discrimination against Women, Combined Seventh and Eighth Periodic Rep. of States Parties: China, ¶ 90, U.N. Doc. CEDAW/C/CHN/7-8 (Jan. 17, 2013).

122. *Id.*

123. Shierjie Quanguo Renda Changweihui Lifa Guihua (十二届全国人大常委会立法规划) [*The Legislative Agenda of the 12th National People’s Congress Standing Committee*], XINHUA NEWS AGENCY (Oct. 30, 2013), *reprinted at* NAT’L PEOPLE’S CONG. (Oct. 31, 2013), [http://www.npc.gov.cn/zgrdw/npc/lfzt/2014/2013-10/31/content\\_1875001.htm](http://www.npc.gov.cn/zgrdw/npc/lfzt/2014/2013-10/31/content_1875001.htm) (China).

124. U.N. Comm. on the Elimination of Discrimination against Women, Concluding Observations on the Combined Seventh and Eighth Periodic Rep. of China on Its Fifty-Ninth Session, ¶¶ 26-27, U.N. Doc. CEDAW/C/CHN/CO/7-8 (Nov. 14, 2014).

While Chinese legislation regarding domestic violence shows notable progress, these rules are often ambiguous and insufficient when it comes to practice. For instance, both the 2001 Marriage Law and the 2015 Anti-Domestic Violence Law use the soft term “dissuasion” (劝阻) to address domestic violence. Article 43 of the 2001 Marriage Law states that neighborhood committees, village committees, and employers are obligated to dissuade domestic violence.<sup>125</sup> Article 13 of the Anti-Domestic Violence Law also states that “any entity or individual who discovers an ongoing act of domestic violence shall have the right to dissuade promptly.” Aside from dissuasion, the Anti-Domestic Violence Law specifies that relevant units receiving complaints of domestic violence should assist and resolve the issue.<sup>126</sup> These clauses are difficult to enforce in practice because no legal consequences are specified. They are a symbolic display of the government’s concern for women’s rights without requiring substantive enforcement. It is typically necessary to invoke other laws, such as the Criminal Law or the Public Security Administration Punishments Law, to hold perpetrators accountable.<sup>127</sup> Yet, police officers are generally reluctant to intervene in domestic violence cases.

Furthermore, there is a substantial disparity between the law on books and its effectiveness in practice. One example of this is the issuance of personal safety protection orders. Article 23 of the Anti-Domestic Violence Law stipulates that when a party applies to a court for a personal safety protection order due to experiencing domestic violence or facing a genuine risk of domestic violence, the court shall accept the application.<sup>128</sup> However, as reported in China’s 2020 periodic report, by the end of 2018, all Chinese courts had issued merely 3,718 restraining orders.<sup>129</sup> From 2016 to 2023, over 15,000 personal safety protection orders had been issued by Chinese courts.<sup>130</sup> With more than 3,000 courts nationwide, this statistic means that, over the course of seven years, on average every Chinese court issued fewer than one personal safety protection order per year.

Domestic violence-related divorce cases are another example of judicial practice not matching the law on the books. In General Recommendation No. 33, the CEDAW Committee identifies six interrelated and essential components necessary to ensure women’s justice access: justiciability, availability, accessibility, quality, provision of remedies for victims, and accountability within justice systems.<sup>131</sup> Moreover, it recommends that evidence rules, investigations, and other

125. 2001 Marriage Law, *supra* note 117, art. 43.

126. Fan Jiating Baoli Fa (反家庭暴力法) [Anti-Domestic Violence Law] (promulgated by the Standing Comm. Nat’l People’s Cong., Dec. 27, 2015, effective Mar. 1, 2016), art. 13, ST. COUNCIL, Dec. 28, 2015, [https://www.gov.cn/zhengce/2015-12/28/content\\_5029898.htm](https://www.gov.cn/zhengce/2015-12/28/content_5029898.htm) (China).

127. *Id.* art. 33.

128. *Id.* art. 23.

129. U.N. Comm. on the Elimination of Discrimination against Women, *supra* note 85, ¶ 46.

130. Huang Xiaowei (黄晓薇), Guowuyuan Guanyu Fan Jiating Baoli Gongzuo Qingkuang de Baogao (国务院关于反家庭暴力工作情况的报告) [State Council Report on the Situation of Combating Domestic Violence], NAT’L PEOPLE’S CONG. (Aug. 28, 2023), [http://www.npc.gov.cn/npc/c2/c30834/202309/t20230901\\_431398.html](http://www.npc.gov.cn/npc/c2/c30834/202309/t20230901_431398.html) (China).

131. U.N. Elimination of Discrimination against Women Comm., General recommendation No. 33 on Women’s Access to Justice, ¶ 14, U.N. Doc. CEDAW/C/GC/33 (Aug. 3, 2015).

legal and quasi-judicial procedures are impartial and do not reflect gender stereotypes or prejudice.<sup>132</sup> However, as recent empirical studies by Xin He, Ethan Michelson, and Ke Li have shown repeatedly, Chinese judges often display significant gender bias in divorce cases.<sup>133</sup> Victims of domestic violence are rarely granted divorce on their first attempt.<sup>134</sup> The burden of proof for domestic violence required by the courts is exceptionally high. Women suffer as a result of decisions made by judges consciously or inadvertently due to institutional constraints related to efficiency and stability.<sup>135</sup> Most judges do not take domestic violence seriously until they are confronted with overwhelming evidence, sometimes to the point that the plaintiff's life is at risk.<sup>136</sup>

In the effort to combat domestic violence, NGOs that have emerged since the FWCW in 1995 have played a critical role. Taking the ADVN as an example. This specialized NGO, advocating against domestic violence, was founded in 2000.<sup>137</sup> Over a span of fourteen years, they have focused on preventing and addressing domestic violence through activities such as research, gender training, and legal advocacy.<sup>138</sup> In 2002, the ADVN and the ACWF jointly released China's first public service advertisement against domestic violence on Beijing streets.<sup>139</sup> Since 2003, the ADVN has developed and submitted several draft and formal proposals to the National People's Congress and the Chinese People's Political Consultative Conference for the formulation of the Law of China on Domestic Violence Prevention and Control.<sup>140</sup> In 2014, the ADVN, Beijing Zhongze Women's Legal Consulting Services Center, and China Women's University jointly submitted a Shadow Report to the CEDAW Committee, providing recommendations on preventing and addressing domestic violence.<sup>141</sup>

Due to its limited political influence, the ADVN strategically collaborates with the ACWF, leveraging this partnership to engage in a dialogue with the state and

132. *Id.* at ¶ 17 (e).

133. See, e.g., XIN HE, DIVORCE IN CHINA 223–38 (2021); ETHAN MICHELSON, DECOUPLING: GENDER INJUSTICES IN CHINA'S DIVORCE COURTS 453 (2022); KE LI, MARRIAGE UNBOUND: STATE LAW, POWER, AND INEQUALITY IN CONTEMPORARY CHINA 229 (2022).

134. See, MICHELSON, *supra* note 133, at 271.

135. HE, *supra* note 133, at 10–12.

136. Kwai Hang Ng, *Evidentialism and the Denial of Domestic Violence by Chinese Courts* 33 (U.C. San Diego 21st Century China Center, Research Paper No. 2022-3, 2022).

137. Lu Zhang, *Domestic Violence Network in China: Translating the Transnational Concept of Violence against Women into Local Action*, 32 WOMEN'S STUD. INT'L F. 227 (2009).

138. *Id.* at 228.

139. Tiqui Quanshehui Guanzhu Beijing Jietou Chuxian Fan Jiating Baoli Gongyi Guanggao (提起全社会关注 北京街头出现反家庭暴力公益广告) [*Raising Nationwide Awareness: Public Service Anti-Domestic Violence Advertisements on Beijing Streets*], Xinhua Wang (新华网) [XINHUA NET] (Aug. 6, 2002), <https://news.sohu.com/85/73/news202497385.shtml>.

140. Anti-Domestic Violence Network / Beijing FanBao, Beijing Zhongze Women's Legal Consulting Serv. Ctr. & China Women's Univ., *The Shadow Report of Chinese Women's NGOs on the Combined Seventh and Eighth Periodic Report Submitted by China under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women* (Sept. 2014), [https://www.ecoi.net/en/file/local/1334342/1930\\_1411548958\\_int-cedaw-ngo-chn-18139-e.pdf](https://www.ecoi.net/en/file/local/1334342/1930_1411548958_int-cedaw-ngo-chn-18139-e.pdf).

141. *Id.*

open political channels for their advocacy efforts.<sup>142</sup> The ADVN also used its association with the semi-official China Law Society as a means to gain approval within the Chinese state.<sup>143</sup> However, in 2010, the ADVN was forced to end its previously successful partnership with the China Law Society due to China's strict division between foreign funding and NGO management.<sup>144</sup> Lü Pin, a veteran Chinese feminist activist, argues that this marks a clear distinction between grassroots and official channels for advocating against domestic violence, with the ACWF taking the lead and civil society organizations primarily providing external encouragement and oversight.<sup>145</sup> Consequently, the legitimacy that the ADVN had acquired inside the state apparatus was weakened, making it increasingly difficult for it to acquire tangible resources from the government.<sup>146</sup> On May 18th, 2014, the year before the Anti-Domestic Violence Law was passed, the ADVN announced its closure and ended its operations.<sup>147</sup>

The legislation of the Anti-Domestic Violence Law in the 2010s coincided with the rise of a new generation of Chinese feminists, who are often labelled "action-oriented feminists" (女权行动派). These young feminists creatively used performance art and social media to promote public awareness of domestic violence in Chinese society and in several legal cases.<sup>148</sup> Their actions contributed to the enactment of the Anti-Domestic Violence Law in 2015. However, it was also in 2015 that the "Feminist Five" were detained by the police for thirty-seven days for their activism, which marked a watershed in China's feminist movement.<sup>149</sup> Since the "Feminist Five" incident, the Chinese government has heightened its surveillance on feminist activists across China and imposed many legal and institutional constraints on their collective action.<sup>150</sup> Nevertheless, feminist activism persisted in China, partly thanks to the global rise of the #MeToo movement against sexual harassment.

### C. Sexual Harassment

Until the #MeToo movement, the Chinese government had paid little attention to sexual harassment. The topic of sexual harassment was first addressed in 1999 when the CEDAW Committee reviewed China's combined third and fourth

142. Zhang, *supra* note 137, at 227–232.

143. Yige Dong, *The Rise and Fall of the Anti-Domestic Violence Network*, 61 CHINA DEV. BRIEF (2014), <https://chinadevelopmentbrief.org/reports/problems-cohabitation-rise-fall-anti-domestic-violence-network/>.

144. *Id.*

145. Lü Pin (吕频), *Weiwan de Kangzheng—Fan Jiabao Fa Shishi Liangzhounian (未完的抗争—反家暴法实施两周年) [The Ongoing Struggle—Two Years of Implementing the Anti-Domestic Violence Law]*, AMNESTY INT'L (Mar. 8, 2018), <https://zh.amnesty.org/content-type/more-resources/two-years-china-domestic-violence-law-struggles-continue/>.

146. Dong, *supra* note 143.

147. *Id.*

148. Di Wang & Sida Liu, *Performing Artivism: Feminists, Lawyers, and Online Legal Mobilization in China*, 45 L. & SOC. INQUIRY 678 (2020).

149. Wang, *supra* note 4.

150. Wang & Liu, *supra* note 148, at 691.

periodic reports. The Committee urged the Chinese government to establish regulations against sexual harassment and to provide legal remedies for female victims of workplace sexual harassment.<sup>151</sup> In 2005, the revised LPWRI adopted Article 40, which explicitly prohibits sexual harassment and grants victims the right to file complaints with the relevant authorities.<sup>152</sup> It was the first time that the term “sexual harassment” had been included in China’s legal provisions, though there was no specific definition of this term, and like domestic violence, holding perpetrators accountable requires the invocation of other laws.

In the 2006 reporting process, the CEDAW Committee reiterated its concerns about sexual harassment at work and recommended that China “ensure[s] that women workers are protected from hazardous working environments and that adequate sanctions are in place for discrimination against women in the employment field in both the public and private sectors, including sexual harassment.”<sup>153</sup> In 2012, the State Council issued the Special Rules on the Labor Protection of Female Employees (hereinafter the “2012 Special Rules”), and Article 11 explicitly stated that “Employers shall take measures to prevent and address sexual harassment of female employees in the workplace.”<sup>154</sup> In 2013, the term “sexual harassment” was first raised in China’s report.<sup>155</sup> This report emphasized the 2005 LPWRI revision and also referenced several government meetings and projects related to sexual harassment.<sup>156</sup> During the reporting process, the CEDAW Committee pointed out the absence of legal provisions mandating employers to bear responsibility for sexual harassment and recommended that legal provisions be adopted requiring employers to take responsibility for addressing sexual harassment at work.<sup>157</sup>

In December 2018, the SPC revised the Provisions on the Causes of Action for Civil Cases, introducing “disputes over liability for damage caused by sexual harassment” as an independent cause of action.<sup>158</sup> China’s first uniform Civil Code was enacted in 2020, which provides a definition of sexual harassment and outlines

151. U.N. Comm. on the Elimination of Discrimination against Women, *supra* note 115, at ¶ 286.

152. LPWRI (2005), *supra* note 103, art. 40.

153. U.N. Comm. on the Elimination of Discrimination against Women, *supra* note 120, at ¶ 286.

154. Nü Zhigong Laodong Baohu Tebie Guiding (女职工劳动保护特别规定) [Special Rules on the Labor Protection of Female Employees] (promulgated by the St. Council, Apr. 18, 2012, effective Apr. 28, 2014), St. Council Ord., no. 619, May 5, 2012, [https://www.gov.cn/zwggk/2012-05/07/content\\_2131567.htm](https://www.gov.cn/zwggk/2012-05/07/content_2131567.htm) (China) [hereinafter Special Rules on the Labor Protection of Female Employees].

155. U.N. Comm. on the Elimination of Discrimination against Women, *supra* note 120.

156. *Id.* ¶¶ 159–60.

157. U.N. Comm. on the Elimination of Discrimination against Women, *supra* note 124, ¶¶ 36–37.

158. Zuigao Renmin Fayuan Guanyu Zengjia Minshi Anjian Anyou de Tongzhi, Fa [2018] Saibaisishisi Hao (最高人民法院关于增加民事案件案由的通知, 法【2018】344号) [Notice of the Supreme People’s Court on Additional Causes of Action for Civil Cases, Court Document No. 344 [2018]] (promulgated by the Sup. People’s Ct., Dec. 12, 2018, effective Jan. 1, 2019) Hangzhou Laodong Zhengyi Wang (杭州劳动争议网) [Hangzhou Lab. Disp.], <http://www.hzldzy.com/detail-3780.html> (China).

the obligations of employers, educational institutions, and other entities to prevent and address this behavior.<sup>159</sup> The LPWRI also underwent its third revision in 2022, adding provisions to prevent sexual harassment. Specifically, Article 25 details the preventive measures that employers can implement against sexual harassment.<sup>160</sup> Individuals found guilty of sexual harassment against women may receive warning letters issued by the police under Article 80 of the LPWRI.

The new regulations regarding the prevention of sexual harassment enacted since 2018 are partly in response to the rapid rise of the #MeToo movement in China. On January 1, 2018, Luo Xixi published an article on *Weibo* and revealed several instances of Beihang University professor Chen Xiaowu's sexual harassment of female students.<sup>161</sup> This article is often regarded as the beginning of China's #MeToo movement. Afterward, over twenty allegations were made against university professors during the first seven months of 2018.<sup>162</sup> In July 2018, a former intern of the CCTV with the pseudonym Xianzi published a long letter accusing a renowned TV host, Zhu Jun, of sexual harassment.<sup>163</sup> Chinese censors immediately deleted any articles related to it in the name of maintaining social stability.<sup>164</sup>

Human Rights Watch's (HRW) shadow report to the CEDAW Committee in 2021 addresses Chinese government attacks on women's rights activists, including those related to the #MeToo movement. The HRW report pointed out that "Chinese women's rights activists face a political environment in which the Chinese Communist Party's control over the internet, media, and independent activism is tighter than the previous 30 years."<sup>165</sup> In the Concluding Observations on China's ninth periodic report in 2023, the CEDAW Committee raised concerns regarding the protection of women human rights defenders from intimidation, harassment, and reprisals for their work.<sup>166</sup>

159. Minfa Dian (民法典) [Civil Code] (promulgated by the Standing Comm. Nat'l People's Cong., May 28, 2020, effective Jan. 1, 2021), art. 1010, 2020 STANDING COMM. NAT'L PEOPLE'S GAZ. 2, <http://www.npc.gov.cn/wxzlhgb/c27214/gb2020/202006/P020230313538731037747.pdf> (China).

160. LPWRI (2022), *supra* note 104, art. 25.

161. @cici 小居士, Woyao Shiming Jubao Beihang Jiaoshou, Changjiang Xuezh Chen Xiaowu Xingsaorao Nüxuesheng (我要实名举报北航教授、长江学者陈小武性骚扰女学生) [I Want to Report Professor Chen Xiaowu, a Changjiang Scholar at Beihang University, for Sexually Harassing Female Students], Weibo (微博) [WEIBO] (Dec. 31, 2017), <https://weibo.com/ttarticle/p/show?id=2309404191293831018113&mod=zwenzhang>.

162. Jing Zeng, #MeToo as Connective Action: A Study of the Anti-Sexual Violence and Anti-Sexual Harassment Campaign on Chinese Social Media in 2018, 14 JOURNALISM PRAC. 171, 179 (2020).

163. Zhaoyin Feng & Tessa Wong, Xianzi: The #MeToo icon China is trying to silence, BBC NEWS (Sept. 27, 2021), <https://www.bbc.com/news/world-asia-china-58629102>.

164. Alexandra Stevenson & Zixu Wang, *Battling Violence and Censors, Women in China Become 'Invisible and Absent'*, N.Y. TIMES (Sept. 6, 2022), <https://www.nytimes.com/2022/09/06/business/china-women-metoo.html>.

165. *Submission to the Committee on the Elimination of Discrimination against Women on China*, HUMAN RIGHTS WATCH (Feb. 9, 2021, 5:36AM EST), <https://www.hrw.org/news/2021/02/09/submission-committee-elimination-discrimination-against-women-china>.

166. U.N. Comm. on the Elimination of Discrimination against Women, Concluding Observations on the Ninth Periodic Rep. of China on Its Eighty-Fifth Session, ¶ 36, U.N. Doc.

Similar to the case of domestic violence, vague regulations, the lack of effective punitive measures, and limited practical utility characterize anti-sexual harassment legal provisions in China. Sexual harassment was mentioned in the 2005 revised LPWRI, but no clear definition was provided. Although it acknowledges that sexual harassment is illegal and should be punished, it calls for the invocation of other laws in order to hold perpetrators accountable. The 2012 Special Rules provide that employers shall take measures to prevent and address sexual harassment, but they do not provide specific guidance on how to address sexual harassment, and do not specify punishment for failure to do so.<sup>167</sup> As a result, these provisions are more like declarations than enforceable measures, and they do not result in effective sanctions. Judges rarely cited them in cases involving sexual harassment.

Victims of sexual harassment encounter significant challenges within the judicial system. Prevailing in court is an arduous task. Aaron Halegua examines 577 civil judgments mentioning the term “sexual harassment” before 2021.<sup>168</sup> According to his study, physical evidence is heavily emphasized in Chinese law, whereas oral testimony is given little weight. Another study conducted by Darius Longarino notes that Chinese courts often require victims to prove facts to a “high degree of likelihood” to win.<sup>169</sup> Furthermore, there is still no clarity regarding the civil liability that employers face for failing to prevent and address sexual harassment under the revised LPWRI of 2023 and the 2021 Civil Code. To this date, no Chinese court has held an employer civilly liable for sexual harassment.

While China’s state laws and policies, especially those since the 2010s, may give the impression of continuously refining its engagement with the CEDAW to advance women’s rights, the promotion of gender equality is often more performative than resulting in substantial progress. This is evident in China’s reluctance to provide a clear legal definition of discrimination against women,<sup>170</sup> the limited quantity of data in reports submitted to the CEDAW Committee,<sup>171</sup> and the non-ratification of the Optional Protocol to CEDAW,<sup>172</sup> all of which reflect its

CEDAW/C/CHN/CO/9 (May 31, 2023).

167. Special Rules on the Labor Protection of Female Employees, *supra* note 154, art. 11.

168. AARON HALEGUA, WORKPLACE GENDER-BASED VIOLENCE AND HARASSMENT IN CHINA: HARMONIZING DOMESTIC LAW AND PRACTICE WITH INTERNATIONAL STANDARDS (2021), <https://usali.org/workplace-gender-based-violence-and-harassment-in-china>.

169. Darius Longarino, et al., *Legal Obstacles to #MeToo Cases in China’s Courts*, 21 CHINA BRIEF (May 7, 2021 02:42 PM), <https://jamestown.org/program/legal-obstacles-to-metoo-cases-in-chinas-courts/>.

170. Starting in 1999, the committee consistently recommended the inclusion of a comprehensive definition of discrimination against women in the Chinese legal system. *See, e.g.*, Concluding observations on the ninth periodic report of China, *supra* note 166, ¶¶ 13–14; Concluding observations on the combined seventh and eighth periodic reports of China, *supra* note 124, ¶¶ 12–13; Concluding comments of the Committee on the Elimination of Discrimination against Women: China, *supra* note 120, ¶¶ 9–10; Rep. of the Comm. on the Elimination of Discrimination against Women on Its Twentieth Session, *supra* note 115, ¶ 284.

171. Since the Committee commenced its review of China’s initial report, it has consistently requested that China provide more gender-related data.

172. U.N. Comm. on the Elimination of Discrimination against Women, *supra* note 166, ¶¶ 11–12.

pragmatic approach. Legislation concerning women's rights in China—characterized by vague regulations, ineffective punitive measures, and a significant disparity between the legal framework and practical implementation—also reflects this approach of selective decoupling. This is accentuated by the stringent control measures on advancing women's rights and the increasing suppression of grassroots feminist movements.

#### CONCLUSION

In the pursuit of legitimacy within the international human rights community, China has not established a normative approach to international human rights law grounded in a relatively coherent set of values and principles. The country lacks a mature theoretical framework on human rights, and it does not have the global legitimacy or influence to engage in “normfare,” as some Western observers suggest. Our analysis in this article, spanning from the 1980s to the present, reveals that China has employed a highly pragmatic approach when addressing human rights issues, both domestically and internationally. In its interactions with international human rights organizations and treaties, the Chinese government operates not merely as a “taker” or a “constrainer,” but as a “pragmatic experimenter” that explores various engagement strategies across different issue areas and time periods without adhering to a specific set of norms. When incorporating international human rights law into domestic law, China selectively decouples rules that are incompatible with its development or stability agendas, rendering them symbolic regulations solely for the purpose of global legitimacy. Moreover, the Chinese government frequently alters its policy stances on key issues or actors, exemplified by its starkly contrasting approach to women's rights and the feminist movement between the 1990s and the 2010s.

In this article, we have analyzed the implementation of the ICCPR and the CEDAW in China, illustrating how these two major international human rights treaties are selectively decoupled from China's domestic lawmaking and practices, albeit in distinct ways. While China has engaged with the CEDAW consistently and extensively through the reporting process over four decades, a significant gap exists between the government's portrayal of women's rights in its reports to the CEDAW Committee and the promotion of these rights within domestic law. Conversely, even though China has not ratified the ICCPR and lacks a reporting process, its criminal procedure reforms utilized the ICCPR as a primary international standard to align with during both the 1996 and 2012 CPL revisions. Since Xi Jinping's rise to top leadership, the ICCPR's influence on Chinese law has waned, and recent criminal justice reforms have been predominantly driven by domestic and practical concerns. However, domestic legislation on women's rights has advanced since the enactment of the Anti-Domestic Violence Law in 2015, even though these new regulations against domestic violence or sexual harassment are often inadequately enforced. Furthermore, feminist activists and groups have experienced increased state control and repression in recent years.

The divergent enforcement of international human rights law in the two areas

of criminal procedural rights and women's rights challenges the prevailing Western narrative that portrays China as an increasingly aggressive opponent of the international human rights regime. China's pragmatic approach is neither coherent nor consistent. It has not formulated an original theory of human rights, let alone export it to other countries. As the old Chinese saying goes, "If the skin does not exist, the hair cannot attach" (皮之不存, 毛将焉附). Instead, China addresses specific human rights issues in a variety of ways based on the policy priorities and practical needs of the party-state, such as development, stability, and crime control. A signed international treaty can remain unratified for a quarter century, and domestic legislative progress can coexist with severe repression of rights activism.

For anyone seeking to improve human rights conditions in China, including foreign governments and human rights NGOs, it is important to fully comprehend the complexity of the pragmatic approach that has been adopted since China's reform era. The Chinese government has viewed human rights as exogenous to its governance, treating them as something to manage and utilize rather than a set of values and norms to believe in. By recognizing the pragmatism in China's engagement with international human rights law, scholars, policymakers, and rights activists can more effectively address human rights concerns within the country. If the government seeks to cross the river of international human rights by touching stones, then it would be useful to make the "stones" stick, promoting more consistent adherence to these rights in both law on the books and law in practice.