

DOMESTIC VIOLENCE IN CHINA: IN SEARCH OF LEGAL AND SOCIAL RESPONSES

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INTRODUCTION

The status of Chinese women has changed dramatically since the establishment of the People's Republic of China in 1949.¹ However, they still have a long way to go to reach a condition of ultimate freedom and true equality in society. Violence against women is manifested by torture, rape, persecution and violence by intimate partners. Home, traditionally seen as a safe haven, has become a war zone for many women, even during times of peace. Although violence against women is illegal, or at least in theory carries the possibility of some legal sanction, the violence still continues. Domestic violence is an issue that has long been ignored by the government and wrongly perceived by Chinese society as acceptable until very recently. It was not until the 1990s that increasing attention started to be paid to the nature, severity and magnitude of the epidemic of domestic violence in China.

At the international level, violence against women is finally being seen as a violation of the rights and fundamental freedoms of women as well as an impairment or nullification of their enjoyment of those rights and freedoms.² It is an obstacle to the achievement of equality, development and peace as recognized in the *Nairobi Forward-looking Strategies for the Advancement of*

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1. The most recent comprehensive review of women's status in China was conducted by the Women's Studies Institute of the All China Women's Federation. See *A REVIEW OF THE SOCIAL STATUS OF WOMEN IN CHINA* (Tao Chunfang & Jiang Yongping eds., 1995).

2. See *UN Declaration on the Elimination of Violence Against Women*, U.N. GAOR, 48th Sess., Agenda Item 111, U.N. Doc. A/Res/48/104 (1994) [hereinafter *DEVAW*].

Women,³ which recommended a set of measures to combat violence against women. These recommendations impose on governments a legal and moral duty to eliminate domestic violence through a combination of various means.

This article is divided into three parts. Part One examines the extent, causes and impacts of domestic violence in China. Data are provided to show the gravity of the problem in Chinese society, with an investigation into the causes and impacts of domestic violence. Part Two reviews and assesses current legal measures dealing with domestic violence and points out the inadequacy of the legal protection provided to women suffering from domestic violence. Part Three attempts to outline a holistic approach to tackling the social problem of domestic violence in China. Such an approach includes reforming current legal measures, proposing new specialized legislation, improving the social support system and promoting public awareness of the issue. Reference is made to valuable international norms and foreign experiences with the view of improving China's legal and social mechanisms to fight against domestic violence.

I. DOMESTIC VIOLENCE IN CHINA

The problem of violence against women in China is enormous and multi-faceted, as it is around the world.⁴ It is deeply intertwined with a traditional prejudice which views women as inferior and as the property of their male partners, and requires women to be obedient and to sacrifice their needs to serve men.

Despite the widespread existence of domestic violence and its grave consequences in China, the term "domestic violence" is a new one in Chinese society,⁵ and its first appearance in national legislation is found in the draft amendment to the *Marriage Law of the People's Republic of China*.⁶ Throughout China's long his-

3. See REPORT OF THE WORLD CONFERENCE TO REVIEW AND APPRAISE THE ACHIEVEMENTS OF THE UNITED NATIONS DECADE FOR WOMEN: EQUALITY, DEVELOPMENT AND PEACE, U.N. Doc. A/CONF. 116/Rev.1, U.N. Sales No. E.85.IV.10 (1986).

4. The epidemic proportions of domestic violence are seen in the United States. Statistics show that one out of every four American women report that a husband or boyfriend at some point in their lives has physically or sexually assaulted them. See PATRICIA TJADEN & NANCY TEONNES, U.S. DEP'T OF JUSTICE, PREVALENCE, INCIDENCE, AND CONSEQUENCES OF VIOLENCE AGAINST WOMEN: FINDINGS FROM THE NATIONAL VIOLENCE AGAINST WOMEN SURVEY 6 (1998).

5. The term and concept of "domestic violence" (*Jiating baoli*) was first introduced into China in 1994 by the ZHONGGUO FUNU BAO. See *Society Should not be Indifferent to Domestic Violence*, ZHONGGUO FUNU BAO [CHINA WOMEN NEWS], Feb. 11, 1994, at 3 [hereinafter CHINA WOMEN NEWS].

6. The Chinese Marriage Law (Draft Amendment) was originally drafted by family law scholars and then submitted to the NPC Standing Committee for review and revision. The Draft that is now circulated nationwide has gone through the

tory of civilization, domestic violence was seen neither as a crime nor as a societal problem to be addressed by courts or legislative bodies. The epidemic of violence affects the lives of hundreds of millions of Chinese women. The tragedy is that wife battering has long been accepted by Chinese society. Even though from time to time one hears condemnation of domestic violence from the media, until recent years, there has never been serious thought given to the prevention and elimination of such violence by legal and social means.⁷

A. UNDERSTANDING DOMESTIC VIOLENCE

Domestic violence refers to the victimization of an individual with whom the abuser has or has had an intimate or romantic relationship. Researchers on domestic violence have not agreed upon a uniform definition of what constitutes "violence." The prevailing suspicion about domestic violence is that assaults are "physical, frequent, and life-threatening."⁸ Advocates for battered women contend that financial abuse and property abuse are also forms of domestic violence perpetrated against women.⁹ Whatever the definition, it is important to understand that domestic violence, both emotional and psychological abuse as well as physical violence, is prevalent in society, and the abuse can be stemmed only through a multi-disciplinary approach.

Violence in a relationship can range from one isolated instance of abuse to a full-blown battering relationship. Lenore Walker, an expert on domestic violence, describes a battered woman as "a woman who has been physically, sexually, or seriously psychologically abused by a man in an intimate relationship, without his regard for her rights, in order to coerce her into doing what he wants her to at least two times, often in a specific cycle."¹⁰ Women trapped in a cycle of violence often believe they are helpless to change their situation and either feel they

review and revision of the Eighteenth and Nineteenth Meetings of the Ninth NPC Standing Committee. The full text of the Draft Amendment can be found from all major news media including RENMIN RIBAO [PEOPLE'S DAILY] (Jan. 11, 2001), ZHONGGUO RENDA XINWEN [NPC NEWS] (Jan. 11, 2001), FAZHI RIBAO [LEGAL DAILY] (Jan. 11, 2001) [hereinafter LEGAL DAILY], etc.

7. "When questioned about violence against women in the PRC by experts on the CEDAW Committee, China's representative said that 'violence against women had not been a serious social problem in China.' China's 1994 White Paper on Women states: 'Strong measures have been adopted against unlawful cruel treatment of women,' yet the term 'domestic violence' [was] not mentioned." *Caught Between Tradition and the State: Violations of the Human Rights of Chinese Women*, 17 WOMEN'S RTS. L. REP. 285, 288 (1996) [hereinafter *Human Rights of Chinese Women*].

8. Karla Fisher et al., *The Culture of Battering and the Role of Mediation in Domestic Violence Cases*, 46 SMU L. REV. 2117, 2120 (1993).

9. See *id.*

10. LENORE WALKER, *TERRIFYING LOVE* 35 (1989).

cannot leave or are afraid to leave for fear of retaliatory violence.¹¹ One researcher characterizes “domestic violence” by pointing out the following elements:

- (a) Conduct perpetrated by adults or adolescents against their intimate partners in current or former dating, married, or cohabitating relationships of heterosexuals, gay men, and lesbians.
- (b) A pattern of assaultive and coercive behaviours, including physical, sexual, and psychological attacks as well as economic coercion.
- (c) A pattern of behaviours including a variety of tactics – some physically injurious and some not, some criminal and some not – carried out in multiple, sometimes daily, episodes.
- (d) A combination of physical attacks, terrorist acts, and controlling tactics used by perpetrators that result in fear as well as physical and psychological harm to victims and their children.
- (e) A pattern of purposeful behaviour, directed at achieving compliance from or control over the victim.¹²

B. DEFINING DOMESTIC VIOLENCE

The legal definition of domestic violence directly affects the extent and effectiveness of legal mechanisms aimed at protecting women from domestic violence. Although there has been no consensus reached in defining domestic violence in China, one finds a general acceptance of the approach taken by the international community.

11. A “cycle of violence,” present in an estimated two-thirds of battering relationships, is a cycle of three stages: the tension-building phase, the acute battering incident and the honeymoon phase. During the tension-building phase, the abuser inflicts “minor battering incidents” on the victim such as psychological abuse, slapping and pinching. The victim does whatever she can to prevent an escalation of violence, exhibiting behaviour ranging from nurturing the batterer to avoiding him. As the tension builds, the victim experiences such psychological terror of what she feels is the inevitable, acute incident of violence that she completely withdraws psychologically and physically. The acute phase is distinct from the minor battering stage by the escalation of violence to the point of injury and sometimes death. The victim feels that attempts to reason with the batterer are futile and may make the attack more severe. The victim is often taken by surprise at the timing and nature of the attack. During the honeymoon phase, both the batterer and the victim experience a sense of relief that the tension and violence have passed. The batterer often begs for forgiveness and promises never to hurt the victim again. The victim may convince herself that the promises are true and may even feel responsible for the batterer’s psychological well-being. She will stay with the batterer in hopes that he will change. However, batterers do not usually change and the cycle will repeat itself, with repetitions occurring more frequently. For more discussion on the nature and circle of domestic violence, see *id.* at 42-46.

12. Anne L. Ganley, *Understanding Domestic Violence, in IMPROVING THE HEALTH CARE RESPONSE TO DOMESTIC VIOLENCE: A RESOURCE MANUAL FOR HEALTH CARE PROVIDERS* 15, 16 (Debbie Lee et al. eds., 2d ed. 1995).

The *Declaration on the Elimination of Violence against Women* (DEVAW) defines the term “violence against women” as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”¹³ It further lists select forms of violence occurring in the family, such as “battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation.”¹⁴

Foreign experience has provided valuable resources in China’s search for the legal definition of “domestic violence.” A preliminary investigation of the U.S. experience reveals a diversity of definitions for “domestic violence” in various state codes. In Colorado, “domestic violence” is defined as “an act or threatened act of violence upon a person with whom the actor is or has been involved in an intimate relationship.” Domestic violence also includes the “invasion of home or property or threat thereof.” Crimes such as harassment or assault become domestic violence crimes based on the “intimate relationship” of the perpetrator and victim. Felony-level crimes against property are classified as domestic violence when used as a method of coercion, control, punishment, intimidation or revenge against an intimate victim.¹⁵ In Florida, domestic violence is defined as any “assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another who is or was residing in the same single dwelling unit.”¹⁶

1. *The Meaning of “Domestic”*

Who are victims of domestic violence? The spectrum of people who can be protected by anti-domestic violence laws varies significantly with the different understanding of the term “domestic.” Currently, the extent of “domestic” violence in China tends to be limited within the context of family, which is based

13. *DEVAW*, *supra* note 2, art. 1.

14. *Id.* art. 2.

15. See Melody K. Fuller & Janet L. Stansberry, *1994 Legislature Strengthens Domestic Violence Protective Orders*, 23 *COLO. LAW.* 2327, 2328 (1994).

16. The statute defines a family or household member as “spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who have a child in common regardless of whether they have been married or have resided together at any time.” *FLA. STAT.* ch. 741.28(2) (2000).

on formally-registered marriage.¹⁷ Thus, women staying with their intimate partners without marital status are left without the legal protection of all the existing and proposed laws pertaining to domestic violence. By the same token, women suffering from the physical abuse of their former husband are also excluded from the protection of anti-domestic violence laws, a significant omission since violence at the hands of a former spouse has been a major source of abuse in China.¹⁸

The Chinese understanding of “domestic” violence has thus been significantly narrower than the U.S. approach. The *Texas Penal Code* defines “family,” when dealing with assault perpetrated against a family member, to include not only members of the defendant’s family or household, but additionally people falling into the following categories: being related to the defendant by blood, being currently or previously married to the defendant, or having a child with the defendant. “Victims who have previously lived with or currently live with the defendant, but who have never been married or had a child with the defendant, now fall within the definition of ‘family’ for the purposes of the statute.”¹⁹ In addition to various state codes, the federal *Safe Homes for Women Act*²⁰ provides the first step in a nationwide program for understanding and preventing domestic violence. According to the *Act*, domestic violence is perpetrated by:

[(i)] a spouse, a former spouse, a person who shares a child in common with the abuser, and a person who cohabits or has cohabited with the abuser as a spouse; and [(ii)] any other person similarly situated to a spouse who is protected by the domestic or family violence laws of the State in which the injury occurred or where the victim resides.²¹

17. As a matter of fact, the Chinese equivalent of “domestic violence” is *jiating baoli* (literally meaning family violence). There has been no proposal to the knowledge of the author on extending the concept to cover intimate relationships not based on marriage or where marriage was already terminated.

18. No nationwide statistics are available, but from the complaints dealt with by a local women’s federation in Harbin, we can see that out of the total of 230 cases where the women’s federation was consulted, 19% related to violence inflicted by former husbands. Lu Pin, *Qian Fu Baoli Saorao Falu Wu Ke Nai He?* [*Law Loses Power in Face of Violent Harassment from Former Husband*], CHINA WOMEN NEWS, Feb. 3, 2000, at C.

19. Bree Buchanan & Cindy Dyer, *76th Legislative Session Domestic Violence Laws Update*, 62 TEX. B.J. 922, 924-25 (1999).

20. Safe Homes for Women Act of 1994 addresses domestic violence exclusively and includes grants for diverse services which can assist battered women of low-income and immigrant groups. See Safe Homes for Women Act of 1994, Pub. L. No. 103-332, Title IV, Subtitle B, Sept. 13, 1994, 108 Stat. 1925-1940 (codified as amended in scattered sections of 18 & 42 U.S.C.A.).

21. *Id.* at 1931.

2. *The Meaning of "Violence"*

The other issue remaining unsettled in China is whether domestic violence should be limited to physical torture and injury inflicted on family members or should be extended to include emotional torture and sexual abuse.

The narrow approach views "act of violence," which could result in either physical or psychological injury or both, as an essential element in any discussion of domestic violence.²² Battering is the most common form of domestic violence, although the consequences of a battery incident can vary. Some incidents result in death or serious physical injury, which constitute the crimes of murder,²³ and of seriously injuring others,²⁴ respectively. Some result in less serious physical injury that is at most a violation of the administrative regulations.²⁵ In addition, battering is a direct infringement of women's rights of the person according to the *General Principles of Civil Law of the People's Republic of China*.²⁶

The broad approach, on the other hand, endeavours to include both emotional and sexual abuse into the definition of domestic violence. Some even go so far as to extend domestic

22. Zheng Zhaofang, *Fandui zai Jiating Zhong dui Funü de Baoli yu Fuquan Zhuyi* [Opposing Domestic Violence against Women and the Authority of the Husband], in JIANJUE ZHIZHI HE XIAOCHU DUI FUNÜ DE BAOLI [A DETERMINATION TO PROHIBIT AND ELIMINATE VIOLENCE AGAINST WOMEN] at 93-101 (Ma Yuan ed., 1997); Wu Miaohua, *On Defining Domestic Violence and Measures to Combat It*, 111-118, in *id.*

23. Criminal Law of the People's Republic of China [Chinese Crim. L.] art. 232. The law was adopted at the second Session of the Fifth National People's Congress on July 1, 1979, and revised at the Fifth Session of the Eighth National People's Congress on March 14, 1997. The English text of the law can be found in 9 LEGISLATIVE AFFAIRS COMMISSION OF THE STANDING COMMITTEE OF THE NATIONAL PEOPLE'S CONGRESS OF THE P.R.C., THE LAWS OF THE PEOPLE'S REPUBLIC OF CHINA 21-149 (1998).

24. *Id.* art. 234.

25. The Regulations of the People's Republic of China on Administrative Penalties for Public Security § 22. The law was adopted at the Seventeenth Meeting of the Standing Committee of the Sixth National People's Congress on September 5, 1986, and revised at the Seventh Meeting of the Standing Committee of the Eighth National People's Congress on May 12, 1994. The English text of the law can be found in 6 LEGISLATIVE AFFAIRS COMMISSION OF THE STANDING COMMITTEE OF THE NATIONAL PEOPLE'S CONGRESS OF THE P.R.C., THE LAWS OF THE PEOPLE'S REPUBLIC OF CHINA 169-81 (1996).

26. The General Principles of Civil Law of the People's Republic of China art. 119. The law was adopted at the Fourth Session of the Sixth National People's Congress, promulgated on April 12, 1986 and became effective as of January 1, 1987. The English text of the law can be found in 2 LEGISLATIVE AFFAIRS COMMISSION OF THE STANDING COMMITTEE OF THE NATIONAL PEOPLE'S CONGRESS OF THE P.R.C., THE LAWS OF THE PEOPLE'S REPUBLIC OF CHINA 225-49 (1987).

violence to neglect of, or refusal to, support family members.²⁷ It has been argued that, while emotional abuse does not involve physical injury, it inflicts severe suffering upon women. Constant verbal insults, extra-marital affairs and long-term neglect are all seen as emotional abuse, and therefore incidents of domestic violence.²⁸ This broad approach seems to stretch too far the concept of "domestic violence." I would submit that "act of violence" or at least "threat of act of violence" should be an essential element in the definition of domestic violence.

The claim of spousal, sexual abuse has inherent practical difficulty, as Chinese criminal law is vague on marital rape. According to Liu Zhumei, the claim of marital rape has only been supported in the following three circumstances: (1) within forced or purchased marriage; (2) during a period of separation; (3) during divorce proceedings.²⁹ Some are of the opinion that marital rape occurs where the husband ignores the wife's objection to sexual intercourse based on appropriate reasons such as illness.³⁰

To summarize, the generally accepted definition of "domestic violence" in China should be an act of violence or threat of violence against family members which results in physical, sexual or psychological harm or suffering, be the victim husband, wife, child, parent, grandparent or grandchild.

C. EXTENT OF DOMESTIC VIOLENCE IN CHINA

There have been various surveys conducted in the 1990s on the extent of domestic violence in China. In Beijing, a survey conducted by the Beijing Women's Federation of eight districts and counties around the capital revealed that domestic violence occurred in 20% of the families surveyed, and wife abuse accounted for 80% of the domestic violence cases. In a more recent survey conducted by the Chinese Academy of Social Sciences, 21% of married men in Beijing admitted to researchers that they beat their wives. One percent admitted giving their wives serious beatings. Another survey conducted by the Beijing Marriage and Family Research Committee resulted in similar findings. "The committee reported an admitted abuse rate of

27. See Liu Zhumei, in Ma Yuan ed., *supra* note 22, at 86-92; Jin Xiufu, in Ma Yuan ed., *supra* note 22, at 102-110; and Zhang Rongli, *Using Law to Prevent Domestic Violence*, paper presented at the Conference on One Country-Two Systems, held in Hong Kong on November 19-20, 1999 (paper on file with author).

28. See Liu, *supra* note 27, at 87.

29. *Id.* at 88. A recently publicized marital rape case confirmed the above position. The Shanghai Qingpu District Court convicted a husband for raping his wife. The rape occurred after the couple had obtained the court judgement granting them divorce but before the judgement took effect.

30. See Jin, *supra* note 27, at 108-09.

20%. Fifteen percent of men questioned said they rarely beat their wives, 4% were responsible for occasional attacks and 0.9% were frequent offenders."³¹ In Shanghai, a report showed that 29-33% of all domestic disputes between 1991-92 "involved physical violence" and another 1993 study showed that 21.2% of urban wives and 31.4% of rural wives experienced violent quarrels.³²

Nationwide surveys revealed similar results, with higher rates of domestic violence occurring in rural areas. In 1990, the All China Women's Federation conducted a nationwide survey on the social status of Chinese women which concluded that a total of over 29% of wives suffer from their husbands' use of physical force.³³ A 1991 nationwide survey on the status of women reported that 26.9% of rural women and 17.9% of urban women had been beaten by their husbands.³⁴ Information from the judiciary shows that 50% to 60% of divorce cases are attributed to domestic violence.³⁵

These surveys and reports have shown that domestic violence affects women of all social strata, although it may be more pronounced in rural areas where traditional attitudes towards women are more entrenched. "County-level women's federation officials in a central China rural area said that 80% of the complaints they dealt with involved domestic violence."³⁶ Many confirm that husbands are battering³⁷ and murdering³⁸ their wives and that battered women are killing their abusive husbands.³⁹

31. *21% of Capital's Husbands Admit Battering Their Wives*, S. CHINA MORNING POST, October 6, 1998, at 6.

32. U.S. DEPT. OF ST., CHINA HUMAN RIGHTS PRACTICES, 1993 12 (1994).

33. Owing to the deep-rooted traditional Chinese belief that "family shame should not be aired in public," there is reason to believe that these figures may still contain some underreporting.

34. Tao & Jiang eds., *supra* note 1, at 474.

35. *Ying Mingque Guiding Zhizhi Jiating Baoli - Quanguo Fulian Xiugai Hunyin Fa Jianyi Zhi'er* [Domestic Violence Shall Be Expressly Prohibited - Suggestion on Draft Marriage Law by the All China Women's Federation], LEGAL DAILY, Sept. 28, 2000 [hereinafter *Suggestion*].

36. *Human Rights of Chinese Women*, *supra* note 7, at 291.

37. In a study in rural China, the All China Women's Federation reported that 90% of the women surveyed said that they had been beaten by their husbands and that marital rape is even more prevalent. See Jiang Wandu, *Development of Women's Rights in China*, BEIJING REVIEW, Nov. 15, 1993, at 19-20. A 1991 nationwide survey reports 24.9% of women had been beaten by their husbands. See Tao & Jiang eds., *supra* note 1, at 474. Two Beijing studies found that 80% of all domestic violence cases involved wife abuse, see *Human Rights of Chinese Women*, *supra* note 7, at 291, and that "23% of husbands had beaten their wives," *Beijing Marriage and Family Institute Conducts Marriage Survey*, XINHUA NEWS AGENCY, Mar. 9, 1995.

38. See Guo, *An Analysis of 100 Cases of Criminal Domestic Violence*, 26 CHINESE WOMEN & SOC'Y 14 (1993).

39. See Sun Xingzhong, *A Survey of 217 Women Murders*, 26 CHINESE EDUC. & SOC'Y 7, 8-9 (1993).

These reports indicate that domestic abuse is a serious problem in China, one that should be tackled as one of the nation's top priorities in both legislation and the relevant policy-making processes.

D. CAUSES OF DOMESTIC VIOLENCE

Each domestic violence case may have its particular direct causes, but there is one common deep-rooted cause shared by all—the unequal distribution of power between men and women, which leads to the domination over and discrimination against women by men. Tolerance of domestic violence only aggravates the subordinate position of women in family and society. This unequal power relation can be seen from historical, economical and social perspectives.

The traditional male-dominated culture has a long history in China. There have developed various doctrines of subordinating women under their male counterparts. One dogma that has bound Chinese women for thousands of years and is still firmly rooted in many people's beliefs, is known as the "three obediences" (*san cong*). That is, a woman is required to "obey her father before marriage, obey her husband during her married life, and obey her sons in widowhood."⁴⁰ This short dictum clearly depicts the role and status of women in the traditional Chinese family, where they have no rights or freedom of any kind. The tradition of male superiority is so deep-rooted that it continues to guide people's behavior even in current society. Husbands view it as their right to resolve domestic disputes by violence. Although the history of modern China has seen the awakening of women's awareness to gender equality in society and great progress has been made in raising women's social status, domestic violence has never been considered as a significant social and legislative issue simply because it pertains to a "private matter."

Economic inequality between men and women in society reinforces the male perception of power and authority within the family. In the countryside where the vast majority of women have no income, they have to accept their subservient position in the family and suffer and tolerate any forms of abuse from their husbands. Women in the urban areas are not immune from economic inequality. In recent years, economic reform and transformation from planned economy to market economy has resulted in redundancy of employees in state-owned enterprises. Women are almost always the first to be fired and last to be hired. With-

40. JIA GONGYAN, *YI LI ZHU SHU* 581 (1999).

out income, their status in the family is also downgraded. Laid-off women workers in urban areas have become an identifiable group that are particularly vulnerable to domestic violence. Engels once wrote that to emancipate a woman and to make her the equal of a man would remain impossible so long as the woman was shut out from social productive labor and restricted to private domestic labor. The emancipation of women will only be possible when a woman can take part in production on a large social scale and domestic work no longer claims anything but an insignificant amount of her time.⁴¹ He predicted that, as women's economic independence increased through participation in paid labor, women's liberation would naturally flow. He believed that men traditionally have been able to rule over women because of their superior economic power, which was achieved when men came to produce goods outside the home that had a higher value than that of the goods produced by women inside the home.⁴² "Women with limited or no economic resources who are restricted by socially-constructed sexual stereotypes and forced to be passive are more likely to suffer from physical abuse in the home."⁴³

Although the social status of Chinese women has been elevated since 1949, there is extensive evidence that the PRC remains a patriarchal society in which inequality based on gender persists.⁴⁴ The unequal power relation between men and women in society is reflected and reinforced by the discrimination suffered by women in employment and education. Among China's 600 million women, more than 100 million are still illiterate. That is 70% of China's 140 million illiterate population. Peasant parents often refuse to send their daughters to school due to the feudal attitude that because girls are going to be married into another family their education would be a waste of the parents' money.⁴⁵ The vicious circle that subordinates women to their male counterparts starts within the family as soon as a girl is born, extends into society at large in the form of deprived or disadvantaged opportunities for education and employment, and culminates in the marital family with her subordinate status to her husband.

41. FREDERICK ENGELS, *THE ORIGIN OF THE FAMILY, PRIVATE PROPERTY AND THE STATE* 199 (Lawrence & Wishart 1978) (1884).

42. See *id.* at 199-200.

43. Ann D. Jordan, *Human Rights, Violence Against Women, and Economic Development (The People's Republic of China Experience)* 5 COLUM. J. GENDER & L. 216, 265 (1996).

44. Ann D. Jordan, *Women's Rights in the People's Republic of China: Patriarchal Wine Poured From a Socialist Bottle* 8 J. CHINESE L. 47, 47 (1994).

45. Dorinda Elliott, *Trying to Stand on Two Feet*, NEWSWEEK, June 29, 1998, at 48.

E. IMPACT OF DOMESTIC VIOLENCE

The impact of domestic violence is multi-faceted and by no means "domestic," that is, limited within a family. In addition to the serious physical and psychological injuries directly suffered by women victims, the continuing and endemic nature of domestic violence limits the opportunities for women to achieve legal, social, political and economic equality in society. Apart from the victimization of women, domestic violence also results in broken families and troubled children, which cause extensive social problems.

1. *Women As Victims*

The direct consequence of domestic violence is the violation of women's rights. This is not to exclude men as victims of domestic violence, but in the large majority of cases, it is the women who have fallen victim to domestic violence. They suffer physically and emotionally. They seem to have only two choices: accepting the reality and continuing to tolerate violence against them, or walking out of the family. Most women in the past opted for the first alternative because divorce was referred to as "flood and monster" in Chinese society—capable of causing serious damage to one's reputation. Some women victims have become mental patients, while others have resorted to street justice by taking revenge on their batterers. According to an investigation conducted in Liaoning Province, over 50% of female criminal delinquency cases result from domestic violence, and as many as 80% of those females convicted for the crimes of murder or seriously injuring other people revealed that domestic violence caused them to commit the crimes.⁴⁶

2. *Broken Families*

The 1980s saw great change in people's attitudes towards marriage. Prior to the enactment of the 1980 *Marriage Law*, no-fault divorce was not permitted in China. Following the promulgation of the new law, the "breakdown of affection" (*ganqing polie*) between spouses was sufficient ground for a court ordered divorce. With the opening up of Chinese society in the 1980s, there has been less and less social pressure on couples to avoid seeking divorce. Although economic constraints such as housing and medical benefits continue to hinder less economically independent women from resorting to divorce, more and more wo-

46. Wang Xingjuan, *Yingdang Lifa Jinzhi Jiating Baoli [Legislating against Domestic Violence]*, in HUNYIN FA XIUGAI LUNZHENG [DEBATES ON AMENDING MARRIAGE LAW] 398-409, 403 (Li Yinhe & Ma Yinan eds., Guangming Daily Publishing House, 1999).

men have started to see divorce as a viable choice to escape domestic violence, resulting in more and more broken families in society. Despite the fact that the break-up of families is still officially discouraged and the mediation system tries to prevent it whenever possible, the divorce rate in both rural and urban areas has steadily risen since 1982. A recent study of the All China Women's Federation shows that domestic violence is a factor in 50% to 60% of divorce cases.⁴⁷

3. *Children: The Silent Victims*

Children are almost always the silent and forgotten victims of domestic violence. Children growing up within domestic violence tend to suffer from emotional and developmental problems. They are more prone to feelings of fear and anxiety. They have difficulty developing trust in people and their behavior tends to be more anti-social. What is even more alarming is the finding that they are more likely to resort to violence and to commit violent crimes. It is argued that gender-based domestic violence "plays a role . . . in the formation of adult personality and in the perpetuation of discrimination and violence in families and the society."⁴⁸

When one parent perpetrates violence against the other parent, the image of the home as the ultimate source of love and support is shattered. Children living in such an environment have no sense of peace or security. The role of the child in a violent family is customarily that of the omnipresent "witness."⁴⁹ Witnessing domestic violence affects children psychologically, emotionally, and physically. "The emotional and psychological trauma these child witnesses suffer can often equal that of children who experience direct physical abuse themselves."⁵⁰ "A great number of children internalize their anguish, which culminates in a state of constant anxiety, low self-esteem, and

47. See *Suggestion*, *supra* note 35.

48. Rhonda Copelon, *Recognizing the Egregious in the Everyday: Domestic Violence as Torture*, 25 COLUM. HUM. RTS. L. REV. 291, 349 (1994). For more, see Howard Davidson, American Bar Association, *The Impact of Domestic Violence on Children* (1994).

49. Daniella Levine, *Children in Violent Homes: Effects & Responses*, 68 FLA. B.J. 62, 63 (1994). According to Levine, the vast majority of children living in violent homes either hear or see the abuse as it occurs. It is not uncommon for them to witness a parent being beaten, subjected to ominous threats, and worse. "In addition, children may experience 'inferred witnessing,' in which they view the harrowing aftermath of the violent attack, such as black eyes, broken bones, and bruises." Leslie D. Johnson, Student Article, *Caught in the Crossfire: Examining Legislative and Judicial Response to the Forgotten Victims of Domestic Violence*, 22 L. & PSYCHOL. REV. 271, 274 (1998).

50. Johnson, *supra* note 49, at 274-275.

depression.”⁵¹ Children who witness domestic violence “are at an above-average risk for self-destructive behaviour, such as suicide, alcohol and drug abuse, and sexual promiscuity. Children also may develop various physical problems. Bedwetting, uncontrollable crying, and sleep disorders are among the natural reactions displayed as a result of violent surroundings.”⁵² In addition, witnessing domestic violence may lead to a myriad of behavioural problems at a later stage. “Researchers have uncovered a cyclical pattern indicating that female children who witness parental abuse are more likely to be abused themselves as adults . . . [and] male children who witness parental abuse are more likely to replicate this behaviour by becoming abusers.”⁵³

II. CURRENT LEGAL MECHANISMS DEALING WITH DOMESTIC VIOLENCE

The current legal mechanisms dealing with domestic violence in China can be found in relevant provisions of various pieces of laws and regulations, ranging from the Constitution,⁵⁴ the *Criminal Law*,⁵⁵ the *General Principles of Civil Law*,⁵⁶ the *Marriage Law*,⁵⁷ and the *Law on the Protection of Women's Rights and Interests*,⁵⁸ to the *Regulations on Administrative Penalty for Public Security*.⁵⁹

51. *Id.*, at 274. “Studies have indicated that children exposed to violence in the home often develop post-traumatic stress disorder, . . . [t]he effects [of which] are extreme aggression, anxious hypervigilance, emotional numbing, and flashbacks of the traumatic events.” *Id.*

52. *Id.*, at 274-75.

53. *Id.* at 275.

54. The Constitution of the People's Republic of China was passed by the Fifth Session of the Fifth National People's Congress on December 4, 1982. It was subsequently amended in 1988, 1993 and 1999. The English text of the Constitution can be found in 1 LEGISLATIVE AFFAIRS COMMISSION OF THE STANDING COMMITTEE OF THE NATIONAL PEOPLE'S CONGRESS OF THE P.R.C., *supra* note 26, at 1-32.

55. Chinese Crim. L., *supra* note 23.

56. The General Principles of Civil Law of the People's Republic of China, *supra* note 26.

57. The Marriage Law of the People's Republic of China was adopted by the Third Session of the Fifth National People's Congress on September 10, 1980 and became effective on January 1, 1981. The English text of the law can be found in 1 LEGISLATIVE AFFAIRS COMMISSION OF THE STANDING COMMITTEE OF THE NATIONAL PEOPLE'S CONGRESS OF THE P.R.C., *supra* note 26, at 184-89.

58. The Law of the People's Republic of China on the Protection of Rights and Interests of Women was adopted by the Fifth Session of the Seventh National People's Congress on April 3, 1992. The English text of the law can be found in 4 LEGISLATIVE AFFAIRS COMMISSION OF THE STANDING COMMITTEE OF THE NATIONAL PEOPLE'S CONGRESS OF THE PEOPLE'S REPUBLIC OF CHINA, *THE LAWS OF THE PEOPLE'S REPUBLIC OF CHINA 373-84* (Beijing: Science Press) (1993).

59. The Regulations on Administrative Penalty for Public Security was adopted at the Seventeenth Meeting of the Standing Committee of the Sixth National People's Congress on September 5, 1986. It was revised at the Seventh Meeting of the

Article 49 of the Chinese Constitution provides that it is prohibited to abuse the elderly, women, and children. Article 104 of the *General Principles of Civil Law* provides that the law protects marriage, family, the elderly, mothers and children. Article 3 of the *Marriage Law* provides that abuse and abandonment among family members are prohibited. Article 9 provides that husbands and wives enjoy equal status in the family. Article 35 of the *Law on the Protection of Women's Rights and Interests* provides that a woman's rights to life and health shall not be infringed.

Together these various provisions create a general policy of protecting a woman's right of person. However, there is a lack of any meaningful or operative mechanisms to provide remedies for abused women, nor are there any specific implementing measures to control and prevent domestic violence in China. In none of the above legislation is the term "domestic violence" mentioned. The first time the term found its way into a legal document is in 1995 when the *National Program for the Development of Women (1995-2000)* was issued as a regulation.⁶⁰ One of its tasks is to effectively curb violence against women, as well as all forms of criminal activities against women including trafficking, trading of women, and forced prostitution.⁶¹ It expressly provides that women's equal status in the family should be protected and domestic violence be firmly prevented.⁶² However, it gives no further definition of domestic violence. Neither does it propose any operational measures to carry out its policy statement.

In dealing with domestic violence cases in practice, it is possible to identify some operative provisions in the *Criminal Law*, the *General Principles of Civil Law* and the *Regulations on Administrative Penalty for Public Security*, by which perpetrators may be given criminal sanctions or administrative penalties, and possibly be ordered to pay civil remedies depending on the seriousness of the violence.

Standing Committee of the Eighth National People's Congress on May 12, 1994. The English text of the law can be found in 6 LEGISLATIVE AFFAIRS COMMISSION OF THE STANDING COMMITTEE OF THE NATIONAL PEOPLE'S CONGRESS OF THE PEOPLE'S REPUBLIC OF CHINA, *supra* note 25.

60. THE NATIONAL PROGRAM FOR THE DEVELOPMENT OF WOMEN (1995-2000) was promulgated in 1995 and to be implemented under the supervision of the State Council's Working Committee on Women and Children's Affairs.

61. THE NATIONAL PROGRAM FOR THE DEVELOPMENT OF WOMEN (1995-2000) art. 4(7).

62. THE NATIONAL PROGRAM FOR THE DEVELOPMENT OF WOMEN (1995-2000) art. 11.

A. CRIMINAL SANCTIONS

Criminal sanctions can be imposed on those perpetrators of domestic violence whose transgressions result in particularly grave consequences. Such cases can generally be divided into three categories: mistreatment of family members, domestic abuse resulting in death or serious bodily injury, and sexual abuse.

1. *Mistreatment of Family Members*

Mistreatment of family members is covered by the chapter of the *Criminal Law* entitled "Crimes of Disrupting Marriage and Family." Article 260 provides for the crime of mistreating family members:

Those mistreating their family members, *if the case is serious*, are to be sentenced to 2 years or less in prison, or put under criminal detention or control.

Those committing crimes stipulated in the above paragraph and causing the victims to suffer severe injuries or death are to be sentenced to 2 to 7 years in prison.

Those committing crime stipulated in the first paragraph of this article are to be investigated *only if they are sued*. (Emphasis added).

Although the law provides for sentences of up to two years in prison in cases of particularly "odious" physical abuse, and sentences of up to seven years if the violence results in "serious injury or death," it is worth noting that the "mistreatment of family members" will constitute a crime only if "the case is serious," which is taken to exist in the following circumstances in judicial practice: (i) where the behavior of mistreatment exists for a prolonged period of time; (ii) where the mistreatment occurred with high frequency, even if it may only exist for a short period of time; (iii) where the motivation behind the conduct is particularly mean, such as coercing the wife into agreement to divorce because she has given birth to a daughter or because the husband wants to start another relationship; (iv) where the means of mistreatment is cruel and inhumane, such as needle-punching, fire-burning, boiling-water splashing, belt-whipping, etc.; (v) where the consequence is grave, such as mental disorder, paralysis, injury and disability, death, and suicide.⁶³

Further, the government will not prosecute the perpetrator unless and until the perpetrator is taken to court for prosecution

63. SU CHANGQING, *THE CRIMES OF VIOLATION OF CITIZENS' DEMOCRATIC RIGHTS AND INFRINGEMENT OVER MARRIAGE AND FAMILY* 374-75 (1999).

by the victim.⁶⁴ This provision effectively takes the overwhelming majority of cases out of the arena of judicial remedy, as most women suffering from domestic violence in China do not want to see their abusive spouses criminally punished for various reasons, ranging from economic dependence to fear of retaliation.

2. *Domestic Violence Resulting in Death or Serious Bodily Injury*

Apart from article 260, courts can deal with domestic violence that results in death or serious bodily injury by resorting to article 232 (crime of murder) and article 234 (crime of inflicting injury on others) of the *Chinese Criminal Law*. Article 232 provides for the crime of murder and can be used to deal with domestic violence incidents where women are killed:

Whoever intentionally kills another is to be sentenced to death, life imprisonment or not less than ten years of fixed-term imprisonment; when the circumstances are relatively minor, he is to be sentenced to not less than three years and not more than ten years of fixed-term imprisonment.

Article 234 provides for the crime of inflicting injury on other people:

Whoever intentionally injures the person of another is to be sentenced to not more than three years of fixed-term imprisonment, criminal detention, or control.

Whoever commits the crime in the preceding paragraph and causes a person's serious injury is to be sentenced to not less than three years and not more than ten years of fixed-term imprisonment; if he causes a person's death or causes a person's serious deformity by badly injuring him with particularly ruthless means, he is to be sentenced to not less than ten years of fixed-term imprisonment, life imprisonment, or death penalty. Where this Law has other stipulations, matters are to be handled in accordance with such stipulations.

Both article 232 and article 234 provide criminal sanctions for perpetrators of domestic violence. They are useful only to the extent of imposing punishment on abusers in extreme cases, i.e., where death or severe bodily injury was intended and has actually resulted. In practice, however, the overwhelming majority of domestic violence cases do not yield such grave consequences as death or "bodily injury" as defined by the *Provisional Regulation*

64. Chinese Crim. L. art. 260(3). The people's procuratorates may intervene directly in exceptional cases, such as where death results. The English text of the law can be found in 9 LEGISLATIVE AFFAIRS COMMISSION OF THE STANDING COMMITTEE OF THE NATIONAL PEOPLE'S CONGRESS OF THE P.R.C., *supra* note 23.

on *Minor Injuries Certification*,⁶⁵ and are thus unable to invoke articles 232 and 234 of the *Chinese Criminal Law*.

3. *Sexual Abuse*

Sexual abuse is also a prevalent form of domestic violence in China, but has been left undealt with where the sexual abuse or sexual assault occurs within a marital relationship. Article 236 of the *Chinese Criminal Law* provides for the crime of rape. It does not, however, expressly recognize or exclude marital rape. The provision is as follows:

Whoever, by violence, coercion or other means, rapes a woman is to be sentenced to not less than three years and not more than ten years of fixed-term imprisonment.

Whoever has sexual relations with a girl under the age of 14 is to be deemed to have committed rape and is to be given a heavier punishment.

Whoever rapes a woman or has sexual relations with a girl involving one of the following circumstances is to be sentenced to not less than ten years of fixed-term imprisonment, life imprisonment, or death:

- (1) Rape a woman or have sexual relations with a girl and where the circumstances are odious;
- (2) Rape several women or have sexual relations with several girls;
- (3) Rape a woman in a public place and in the public;
- (4) Rape a woman in turn with another or more persons;
- (5) Cause the victim serious injury, death, or other serious consequences.

This provision does not provide much help for women suffering from sexual violence inflicted by an abusive husband, except in the following circumstances where sexual intercourse occurred without consent of the woman: (1) in forced or purchased marriage; (2) during the period of separation; or (3) after an application for divorce has been filed.

The first conviction in a marital rape case in Shanghai was decided by Qingpu District People's Court on December 24, 1999. The defendant Wang was convicted and sentenced to three years in prison. He forced his former wife Qian to have sex with him after the court had granted their petition for divorce in October 1997 and before the court decision took effect. The case was widely reported in China and was seen by many as an important step taken in recognizing marital rape through the judicial pro-

65. The regulation was jointly promulgated by the Supreme People's Court, Supreme People's Procuratorate, the Ministry of Public Security and the Ministry of Justice on June 20, 1990. Article 2 of the regulation provides that "minor injuries are those which impair organ functions due to physical, chemical or biological forces on the human body."

cess. It was, however, not representative of the overwhelming majority of sexual abuse cases that occur while couples are still married.

B. ADMINISTRATIVE MEASURES

The *Regulations of the People's Republic of China on Administrative Penalties for Public Security (Regulations on Administrative Penalties)*⁶⁶ impose an administrative penalties on people who have infringed other's rights of person, where such infringement does not constitute crime. Section 22 is particularly relevant to domestic violence:

Whoever commits one of the following infringing acts upon a citizen's rights of the person, but not serious enough for criminal punishment, shall be detained for a maximum of fifteen days, fined a maximum of 200 *yuan* or given a warning:

- (1) Striking another person, causing slight injury;
- (2) Illegally limiting others' personal freedom or illegally breaking into others' houses;
- (3) Openly insulting other persons or fabricating stories to slander other persons;
- (4) Mistreating family members, where the victims thereof ask for disposition;
- (5) Threatening others' safety or disturbing others' normal lives by writing letters of intimidation or by other methods;
- (6) Coercing or inveigling a person under the age of eighteen to give frightening or cruel performances, ruining the person's physical and mental health;
- (7) Hiding, destroying, discarding or illegally opening another person's articles or telegrams.

The Public Security Bureau is expressly granted the power by section 22(1) to impose an administrative penalty on such occasions where one strikes another causing slight injury, which can happen in a family context. It may also impose administrative penalties on people who mistreat their family members, subject to request by the victims under section 22(4). However, the Public Security Bureau has traditionally refrained from interfering in family disputes. According to a survey conducted by the Changsha Women's Federation of Hunan Province, section 22 of the *Regulations on Administrative Penalty*, the only legal mechanism that can be used to deal with domestic violence that does not

66. It was adopted at the Seventeenth Meeting of the Standing Committee of the Sixth National People's Congress on September 5, 1986, and revised in accordance with the Decision on Revising the Regulations of the People's Republic of China on Administrative Penalties for Public Security adopted at the Seventh Meeting of the Standing Committee of the Eighth National People's Congress on May 12, 1994. The English text of the law can be found in 6 LEGISLATIVE AFFAIRS COMMISSION OF THE STANDING COMMITTEE OF THE NATIONAL PEOPLE'S CONGRESS OF THE P.R.C., *supra* note 25.

constitute a crime, has never been used by the local public security bureaus.⁶⁷ The victims were often referred to the Women's Federation for help.⁶⁸

C. CIVIL REMEDIES

According to article 119 of the *General Principles of Civil Law*, those who have caused injury to other people shall be liable for compensation of medical costs, loss of salary as a result of absence from work, and subsistence for disabled persons. Those who have caused death shall be liable for payment of funeral costs and subsistence for dependants of the victim.⁶⁹ Theoretically this provision provides civil remedies to those who suffer injury inflicted by others, including their spouses. In practice, battered wives seldom take the trouble of going through the legal process to claim compensation from their husbands. The provision only becomes meaningful in cases where the battered woman is also seeking a divorce.

D. LIMITATIONS OF THE CURRENT LEGAL FRAMEWORK

The current legal framework dealing with domestic violence suffers from serious inadequacy and ineffectiveness both in terms of the legislation itself and the implementation and enforcement of the law.

1. Restriction of "Self-brought Prosecution"

Both the *Chinese Criminal Law* and the *Regulations on Administrative Penalty for Public Security* provide that the crime of mistreating family members and inflicting injury upon family members will be dealt with by the people's courts or the public security bureaus only if the victims request punishment of their abusers by bringing cases to court or otherwise actively seeking help from the public security bureaus.⁷⁰ In the overwhelming majority of domestic violence cases, the women victims will not bring cases to judicial bodies for resolution, either out of fear of revenge from their abusive husbands, or out of the concern for

67. Jiang Wenjing, *Xianxingzhe de Sikao* [Meditation of the Vanguard], GONGREN RIBAO [WORKER'S DAILY], Nov. 3, 1997, at 7 [hereinafter WORKER'S DAILY].

68. *Id.*

69. The General Principles of Civil Law of the People's Republic of China art. 119, *supra* note 26.

70. Chinese Crim. L. art. 260 (3). The English text of the law can be found in 9 LEGISLATIVE AFFAIRS COMMISSION OF THE STANDING COMMITTEE OF THE NATIONAL PEOPLE'S CONGRESS OF THE P.R.C., *supra* note 23; Regulations on Administrative Penalty for Public Security art. 22 (4). The English text of the law can be found in 6 LEGISLATIVE AFFAIRS COMMISSION OF THE STANDING COMMITTEE OF THE NATIONAL PEOPLE'S CONGRESS OF THE P.R.C., *supra* note 25.

the continuing existence of the family and related issues such as children's welfare, housing and medical benefits, and so forth. What these abused women need more is injunctive relief targeted at ongoing abusive and violent conduct rather than punishment of their spouses.

2. *Ineffective Enforcement of the Law*

Both the public security bureaus and the people's procuratorates feel reluctant to intervene into family disputes even where they have already developed into domestic violence. Intervention by arrest and prosecution seldom occurs unless serious consequences such as death or serious bodily injury result.

In most cases, the public security bureaus are the first official agency to which victims of domestic violence turn for help. They frequently refrain, however, from interfering in family disputes, based on the excuse that domestic violence is a private matter which is best settled within a family, or a women's matter that should be dealt with by the women's federations—non-governmental organizations without any law enforcement powers. The procuratorates share the same attitude and are further restrained by the legislative restrictions over "self-brought prosecution" in making prosecution decisions.

That can be shown by a case represented by the Women's Legal Research and Service Center of Peking University Law School. The victim, Zhang Xiulan, was pushed down on the floor and brutally battered by her husband because she returned home from work too late—around 8:00 o'clock in the evening, September 18, 1998. After a round of beating, the abuser, Wang Shugen, splashed a bottle of gasoline over Zhang's face and body, and set her on fire. Zhang was seriously burnt and sent to hospital for treatment. As soon as she was awake, she sought help from the public security bureau, but was told that because Wang had injured her because of his suspicion of her private life this was a family dispute and not within the control of the public security bureau.⁷¹

71. Zhang then sought the legal assistance from the Women's Legal Research and Service Center of Peking University Law School. The Center managed to get the cooperation of the public security bureau and arrested the criminal suspect Wang Shugen. It then represented the victim in the criminal case attached with a civil claim. Wang was sentenced to fourteen years in prison and ordered to pay over RMB 80,000 to Zhang Xiulan as compensation on April 14, 1999. See CHINA: ACTIONS UNDERTAKEN AGAINST DOMESTIC VIOLENCE (China Working Group Against Domestic Violence ed., 2000).

3. *Judicial Attitude*

Judges tend to view domestic violence as a domestic problem. "The view that it is a lesser crime for a man to break his wife's jaw than his neighbor's predates the invention of the wheel."⁷² Very often, battered wives' cases do not end in prosecutions as the police usually advise people to solve their problems peacefully and without official involvement. Even when they end up in court, offenders are likely to get a light sentence.⁷³

In one extreme case, a wife was constantly abused physically during her twenty years of marriage, suffering injuries a total of thirty-four times, sixteen of which were supported by hospital records.⁷⁴ She suffered two broken ribs, seriously impaired eyesight, dizziness and brain concussion, and had ultimately lost her employability when she found the courage to bring her abusive husband to the county court.⁷⁵ The county court heard the evidence and accepted proof of ten instances of physical abuse and battering.⁷⁶ The court, however, refused to find the defendant guilty of the crime of mistreating family members based on the reasoning that ten instances of battering over a period of twenty years cannot be characterized as "occurring with high frequency," an essential element of the crime.⁷⁷ What is more ridiculous is the judges' reasoning that the defendant had no intention to mistreat the victim, since each instance of violence occurred with good cause.⁷⁸ These so-called good causes were that the wife was not obedient to her husband regarding trivial family matters on various occasions.⁷⁹

In summary, "domestic violence" has been viewed by judicial and law enforcement officers as a private family matter rather than a general social harm. This lack of awareness of the social impact of domestic violence helps explain the reason for heretofore inadequate anti-domestic violence legislation as well as ineffective implementation of existing laws.

72. *Violence in the Home*, S. CHINA MORNING POST, March 23, 1998, at 16. In Hong Kong in 1997, 344 cases of wife beating were investigated by police, but only 33 provided sufficient evidence for convictions. Among the 10% of cases which ended in conviction, 80% of those involved a fine of \$4,000 or less. *Id.*

73. See Stella Lee, *Wife-beater's Sentence "Encourages Violence"*, S. CHINA MORNING POST, March 22, 1998, at 2.

74. Xiang Yin, *Zheban Ougi, Hai Bu Suan Nuedai?* [Such Wife-Battering Doesn't Constitute Maltreatment], CHINA WOMEN NEWS, Mar. 2, 2000, at page C.

75. *Id.*

76. *Id.*

77. *Id.*

78. See *id.*

79. See *id.*

III. A Holistic Approach to Eliminating Domestic Violence

The present legal framework provides no specific measures to prevent domestic violence or to render timely protection for battered women. Deficiencies in legislation, social responses and public awareness have hindered the development of an effective campaign against domestic violence in China. The pervasive nature of the problem calls for urgent and effective steps to eliminate its incidence.

China as a state bears the responsibility to eliminate violence against women and children under international law. In light of China's obligations under the standards set by the *Convention for the Elimination of All Forms of Discrimination Against Women* (CEDAW) of 1981, the *Convention on the Rights of the Child* (CRC), and the *Declaration on the Elimination of Violence Against Women* (DEVAW) of 1993, efforts made by the Chinese government have been insufficient to ensure that the human rights of women and children are respected and protected.

DEVAW calls on states to "develop, in a comprehensive way, preventive approaches, including all those measures of a legal, political, administrative, and cultural nature that promote the protection of women against any form of violence."⁸⁰ Recognizing domestic violence as a violation of women's human rights, DEVAW defines "violence" as including physical, sexual and psychological abuse both inside and outside the home.⁸¹ Article 3 of CEDAW explicitly mentions the responsibility of state parties to take active measures, including legislation, in the political, social, economic, and cultural fields, to guarantee women the exercise and enjoyment of human rights on a basis of equality with men.⁸² Gender-based domestic violence is a serious violation of the human rights of women, and the state has a duty to take action to combat the phenomenon. In the *Beijing Declaration and Platform for Action*,⁸³ one of the central issues of discussion is the elimination of violence against women, and it remains one of the persistent themes throughout the *Platform for Action*.

A holistic approach to fighting against domestic violence should emphasize prevention, control and elimination of this social vice instead of merely focusing on punishment. It should in-

80. DEVAW, *supra* note 2, art. 4(f).

81. *Id.* art. 1. Article 4 of the Declaration stated: "States should pursue by all appropriate means and without delay a policy of eliminating violence against women." *Id.* art. 4.

82. CEDAW, art. 3.

83. The Declaration was adopted by the Fourth World Conference on Women: Action for Equality, Development and Peace, held in Beijing, China on September 15, 1995.

clude reforming current legal measures so as to provide remedies in a more effective manner, enacting anti-domestic violence legislation that provides more preventive measures, establishing a corresponding social support system and promoting public awareness through various means.

A. REFORMING EXISTING LAWS TO DEAL WITH DOMESTIC VIOLENCE

DEVAW calls on State governments to do the following:

Develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence; women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided by national legislation, to just and effective remedies for the harm that they have suffered; States should also inform women of their rights in seeking redress through such mechanisms.⁸⁴

There is urgent need for China to establish a system of legal protection for victims of domestic violence. This can be done by reforming major pieces of law that can be used to deal with the issue in addition to proposing specialized legislation targeted at the control and prevention of domestic violence. The combination of these measures can provide a comprehensive legislative framework to fight the epidemic of domestic violence in China. In that regard, foreign experience provides valuable guidance for China as it seeks to reform existing laws to deal with domestic violence in a more effective manner.

1. *Reforming Criminal Law and Criminal Procedure Law*

Domestic violence should be expressly recognized as a crime in the *Chinese Criminal Law*, punishable by detention, control, and imprisonment. Many state statutes in the United States specifically provide for the crime of domestic violence. For instance, the *California Penal Code* clearly spells out the crime of domestic violence as follows:

Any person who wilfully inflicts upon his or her spouse, former spouse, cohabitant, or any person who wilfully inflicts upon any person who is the mother or father of his or her child, corporal injury resulting in a traumatic condition, is guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not more than one year, or by a fine of up to six thousand dollars (\$6000) or by both.⁸⁵

84. DEVAW, *supra* note 2, art. 4(d).

85. CAL. PENAL CODE § 273.5(a) (2001).

To serve the function of deterrence adequately, the law should impose a heavier penalty on repeat offenders. This principle has been adopted in many jurisdictions. For example, the state of Texas has a statute providing stiff penalty enhancements for repeat domestic violence offenders. A first offense of assault perpetrated against a family member constitutes a class A misdemeanor. A second conviction is elevated to a third degree felony.⁸⁶

The corresponding provisions in the *Chinese Criminal Procedural Law* should also be amended to deal with domestic violence more effectively. For example, measures such as emergency protection and detention of batterers should be adopted. In Texas, a magistrate may issue an order, enforceable under threat of criminal sanction, to protect victims of domestic violence between the time the respondent is released from jail and the time a final protective order can be obtained. "A violation of the order's prohibitions against committing further offenses involving family violence and going near the victim constitutes a criminal offense."⁸⁷ Magistrates can also detain a defendant up to 48 hours if there is "probable cause to believe that the defendant committed the charged offense and that the violence will continue if the defendant is released."⁸⁸ In China, therefore, one fundamental reform that should be carried out is to remove domestic violence cases from the category of self-brought prosecutions, so as to allow more active intervention by the people's procuratorates.

2. *Reforming Family Law*

China is currently revising its 1980 *Marriage Law*, and the issue of domestic violence—whether and how to write it into the law—has been a major topic of debate among scholars, legislators, NGOs, and members of the public. The most up-to-date *Chinese Marriage Law (Draft Amendment)* was promulgated by the NPC Standing Committee nationwide on January 11, 2001 to solicit public comments.⁸⁹ Article 3 of the *Draft Amendment* ex-

86. TEX. PENAL CODE § 22.01(b)(2) (2000). The minimum sentence for a third degree felony is two years. See also Buchanan & Dyer, *supra* note 19, at 924.

87. Buchanan & Dyer, *supra* note 19, at 923.

88. *Id.* at 924.

89. The Chinese Marriage Law (Draft Amendment) was originally drafted by family law scholars and then submitted to the NPC Standing Committee for review and revision. The Draft that is now circulated nationwide has gone through the review and revision of the Eighteenth and Nineteenth Meetings of the Ninth NPC Standing Committee. The full text of the Draft Amendment can be found from all major news media including RENMIN RIBAO [PEOPLE'S DAILY] (Jan. 11, 2001), ZHONGGUO RENDA XINWEN [NPC NEWS] (Jan. 11, 2001), FAZHI RIBAO [LEGAL DAILY] (Jan. 11, 2001), etc.

pressly prohibits domestic violence and other forms of mistreatment of family members. In addition, domestic violence is recognized as a valid cause in application for divorce.⁹⁰ Where domestic violence forms the cause or one of the causes for divorce, the innocent party has a right to claim damages against the party at fault.⁹¹ Victims of domestic violence may ask the Villagers Committee, the Residents Committee, or Units where they are employed to conduct mediation among family members. As for ongoing domestic violence in a family relationship, the victims may seek rescue from the public security bureaus, or seek interference by the Villagers Committee or the Residents Committee.⁹² Perpetrators of domestic violence may have administrative sanctions imposed by the public security bureaus upon request of the victims,⁹³ or be criminally liable where the circumstances are serious and the victims choose to initiate the criminal proceedings.⁹⁴

Incorporating the issue of domestic violence into the *Chinese Marriage Law (Draft Amendment)* is a big progressive step in itself, but there is still great room for improvement when compared with the family law mechanisms dealing with domestic violence in other jurisdictions. The following are some of the important measures that have proved to be effective in controlling domestic violence:

(1) Setting Guidelines for Visitation by Batterers

The granting of post-divorce visitation rights to a domestic violence perpetrator should be made with great caution. The *Texas Family Code* mandates that a parent who has “a history or pattern of committing family violence” during the two years prior to or during the suit may only have access to the child if the court finds that: (i) awarding the parent access to the child would not endanger the child’s physical health or emotional welfare; and (ii) access would be in the child’s best interest.⁹⁵ Only if both conditions are met may the court then render an order for visitation; however, that order must be designed to protect the safety and well-being of the child and victim parent. The legislation even provides several options for the court to order at its discretion. Such options include “supervision of the visitation, exchange of the child in a protective setting, prohibition of the use of drugs or alcohol by the batterer during or prior to the visit, or

90. *Id.* art. 32.

91. *Id.* art. 46.

92. *Id.* art. 43 (1) & (2).

93. *Id.* art. 43 (3).

94. *Id.* art. 45.

95. Tex. Fam. Code Ann. § 153.004(d)(1) (2000).

mandated participation in a battering intervention and prevention program.”⁹⁶

(2) Waiver of Mediation in Family Law Cases Involving Domestic Violence

Mediation has always been a favored method of alternative dispute resolution in China. It is even mandatory for courts to engage in mediation before a divorce proceeding.⁹⁷ While the amicable resolution of a dispute may be an admirable goal, successful mediation is based upon equal bargaining power between the participants, an equality that does not exist between batterer and victim. The power and control dynamics that existed during the relationship may also corrupt the mediation process, making it difficult for the victim to advocate for herself and the best interests of any children involved. To address this problem, Texas legislation has thus allowed the victims to obtain a “mediation waiver.”⁹⁸

(3) Custody and Visitation Rights Linked to Mandatory Treatment Programs

Foreign research studies have found that through individualized, strategic treatment programs, “batterers can ‘unlearn’ abusive behavior” patterns.⁹⁹ The law therefore should encourage violence perpetrators to participate in such treatment programs by mandating batterers’ treatment programs as a condition precedent to custody or visitation rights.

Louisiana is the only state in the United States that has mandated treatment for batterers as a prerequisite to custody.¹⁰⁰ It requires batterers to complete a treatment program in order to have even partial custody of their children.¹⁰¹ “The structure and format of these programs may vary. Each program contains standard components such as anger management, skill-building techniques, and resocialization incorporation.”¹⁰² The aim is to show batterers “how the benefits of nonviolent behavior outweigh the consequences of violent reactions, and . . . teach[] them how to

96. Buchanan & Dyer, *supra* note 19, at 923.

97. Chinese Marriage Law (Draft Amendment) art. 32.

98. See Buchanan & Dyer, *supra* note 19, at 923.

99. Lindsay Cadwallader, *Mandating Batterers’ Treatment Programs as a Condition to Granting Custody or Visitation Rights to Batterers*, 14 PROB. L.J. 1, 18 (1997).

100. See Johnson, *supra* note 49, at 277. In 1995, Louisiana enacted a child custody statute, the Post-Separation Family Violence Relief Act, which created a presumption against awarding sole or joint custody to a parent who has a history of spousal abuse or family violence. See *id.*

101. See LA. REV. STAT. ANN. § 9:364 (2000).

102. Johnson, *supra* note 49, at 278.

retain control over stressful situations."¹⁰³ Based on studies done several years ago of twenty-two treatment programs, fifty to seventy percent of batterers invariably stopped their abusive behaviors altogether after completion.¹⁰⁴

3. *Reforming Civil Law and Administrative Measures*

Relevant civil law and administrative regulations should be amended to provide that persons convicted of domestic violence must make restitution to the victims for medical care, transportation, child care costs, attorney fees, and any other losses suffered. This general principle must be followed with more concrete provisions to calculate the loss.

B. SPECIALIZED LEGISLATION ON CONTROL AND PREVENTION OF DOMESTIC VIOLENCE

In recent years, as more and more local governments in China have started to realize the extensive occurrence of domestic violence and the severe social consequences, they have started to promulgate local policies to tackle the problem.¹⁰⁵ For example, the municipal governments of both Changsha and Tangshan issued *Several Provisions on Preventing and Eliminating Domestic Violence* in 1996.¹⁰⁶ A *Temporary Provision on Preventing and Eliminating Domestic Violence* was issued by the city government of Xi'an in 1997.¹⁰⁷ These local policies were issued by the people's governments instead of being passed by the local people's congress. They may serve as a municipal government's declaration of commitment to a certain cause, but they are not law by nature and do not have any legally binding force.

As for legislation, at least two provinces, Shaanxi province and Hunan province, are drafting local legislation to fight against the ever-serious problem of domestic violence. The *Provision*

103. *Id.* "The Duluth Program has been recognized as the most advanced and successful batterer treatment program in the country. 'The program involves a twenty-six week confrontational group counseling program that seeks to change the power and control beliefs of batterers.' Other programs have been successfully modeled after Duluth." *Id.* (quoting Cadwallader, *supra* note 99, at 3).

104. See Richard M. Tolman & Larry W. Bennett, *A Review of Quantitative Research on Men Who Batter*, 5 J. INTERPERSONAL VIOLENCE 87 (1990), cited in Naomi Cahn & Joan Meier, *New Approaches to Poverty Law, Teaching, and Practice: Domestic Violence and Feminist Jurisprudence: Towards a New Agenda*, 4 B.U. PUB. INT. L.J. 339, 361 n.24 (1995).

105. Tian Xiaomei, Tian Yao and Zhang Rongli, *Fan Jiating Baoli Lifa Shi Zai Bi Xing [Anti-Domestic Violence Legislation—the Necessary Way Out]*, WORKER'S DAILY, Nov. 3, 1997, at 7.

106. *Id.*

107. *Id.* For more on the anti-domestic violence provisions of the city of Changsha, see Jiang, *supra* note 67, and Jiang Wenjing, *Shijian Zhong de De yu Shi [Experiences and Lessons from Practice]*, CHINA WOMEN'S NEWS, Nov. 19, 1997, at 3.

against Domestic Violence of the Shaanxi Province (hereinafter *Shaanxi Regulation (Draft)*) was submitted to the provincial People's Congress in 1999. The first local legislation in China against domestic violence was passed by the Standing Committee of People's Congress of Hunan Province in early 2000. It is called the *Decision on Preventing and Eliminating Domestic Violence* (hereinafter *Hunan Regulation*).¹⁰⁸

Legislating against domestic violence has been recognized as an effective and essential way to protect women from the torture of domestic violence. There is an urgent need to pass specialized national legislation focusing on prevention, control and elimination of domestic violence in China. Within the context of reforming criminal and criminal procedure laws, family law, civil law and administrative regulations, China's anti-domestic violence law should emphasize at least these four areas: early intervention into domestic violence, clear identification of the legal duties of responsible authorities, recognition of domestic violence as a cause for divorce and recognition of "battered-women syndrome."

1. *Timely Intervention Into Domestic Disputes*

An effective anti-domestic violence law should combine sanction with prevention and rehabilitation. Prevention of domestic violence can be achieved through various means. Providing timely and efficient protection to women suffering from ongoing domestic violence can effectively reduce incidence of death and severe injury. One of the important foreign experiences in preventing harm to victims of domestic violence is the use of an "injunction" or "protection order" to render immediate and timely protection and to prevent violence from escalating to aggravated consequences. Violation of a restraining order is a crime in itself and punishable by contempt of court proceedings. "The *Colorado Criminal Code* (Title 18) provides that any person arrested on domestic violence charges is automatically issued a 'mandatory restraining order,' or no-contact bond"¹⁰⁹

In Hong Kong, there has been a *Domestic Violence Ordinance* in place since 1986. This legislation provides for the use of an injunctive order issued by courts in order to protect the life and safety of battered women and children. Breach of an injunctive order is a criminal offence. Section 3 of the Ordinance provides:

108. The law was passed by the Fourteenth meeting of the Ninth Hunan Provincial People's Congress Standing Committee on March 31, 2000.

109. Fuller & Stansberry, *supra* note 15, at 2329.

(1) On an application by a party to a marriage the District Court, if it is satisfied that the applicant or a child living with the applicant has been molested by the other party to the marriage and subject to section 6, may grant an injunction containing any or all of the following provisions –

- (a) a provision restraining that other party from molesting the applicant;
- (b) a provision restraining that other party from molesting any child living with the applicant;
- (c) a provision excluding that other party from the matrimonial home, or from a specified part of the matrimonial home, or from a specified area whether or not the matrimonial home is included in that area;
- (d) a provision requiring that other party to permit the applicant to enter and remain in the matrimonial home or in a specified part of the matrimonial home, whether or not any other relief is being sought in the proceedings.

(2) In the exercise of its jurisdiction to grant an injunction containing a provision mentioned in subsection (1)(c) or (d) the District Court shall have regard to the conduct of the parties, both in relation to each other and otherwise, to their respective needs and financial resources, to the needs of any child living with the applicant and to all the circumstances of the case.

A Court of First Instance may exercise the powers of a District Court in a case of urgency, or where the Court of First Instance is satisfied that special circumstances are present which make it appropriate for the Court of First Instance rather than the District Court to exercise those powers.¹¹⁰ The injunctive order is normally granted for a period of no more than 3 months,¹¹¹ but the courts have the power to extend it up to a total of 6 months.¹¹²

Arrests can be made for breach of an injunctive order under section 5(1) and (2) of the *Domestic Violence Ordinance*:

(1) Where, on an application by a party to a marriage, the Court of First Instance or the District Court grants an injunction (whether pursuant to jurisdiction conferred by this Ordinance or pursuant to any other jurisdiction) containing a provision, in whatever terms, which –

- (a) restrains the other party from using violence against the applicant or a child living with the applicant; or
- (b) excludes that other party from the matrimonial home or from a specified part of the matrimonial home or from a specified area, the Court of First Instance or the District Court, as the case may be, if it is satisfied that the other party has caused actual bodily harm to the applicant or, as the case may be, to the child concerned, may, subject to section 6, at the same time as it grants the injunction or at

110. Domestic Violence Ordinance § 4, Hong Kong Laws (Cap.189).

111. Domestic Violence Ordinance § 6, Hong Kong Laws (Cap.189).

112. Domestic Violence Ordinance § 7, Hong Kong Laws (Cap.189).

any time during the period for which the injunction is granted, attach to the injunction a power of arrest in the prescribed form.

(2) Where under subsection (1) a power of arrest is attached to an injunction a police officer may arrest without warrant any person whom he reasonably suspects of being in breach of the injunction by reason of that person's use of violence or, as the case may be, his entry into any premises or area specified in the injunction, and the police officer shall have all necessary powers including the power of entry by the use of reasonable force to effect that arrest.

China's local legislatures have not adopted the measure of "injunction" or "protection order" widely used in other places. The *Shaanxi Regulation (Draft)* provides that in case of emergency, victims of domestic violence may dial "110" to seek protection¹¹³ and the public security bureaus shall not ignore such emergency calls from victims of domestic violence.¹¹⁴ The *Hunan Regulation* aims to prevent domestic violence from escalating by encouraging public participation. It provides that citizens have the right to persuade and prevent instances of domestic violence and report them to relevant authorities. Those entities or individuals who have successfully prevented, reconciled, reported or investigated instances of domestic violence should be rewarded by the people's governments.¹¹⁵ In order to secure early intervention into domestic violence, the *Hunan Regulation* expressly requires the mediation groups of the village (and neighbourhood) committees to mediate family disputes in time to resolve disputes and prevent them from developing into violence.¹¹⁶

2. *Clear Identification of The Roles of Responsible Authorities*

To implement the law effectively, there must be clear and detailed provisions regarding the responsibilities of the law enforcement bodies, including the public security bureaus, the people's procuratorates, and the people's courts.

The *Hunan Regulation* has made important progress in clearly prescribing the roles and functions of the public security bureaus, the people's procuratorates, and the people's courts in dealing with domestic violence cases. They are under legal obligation to accept complaints of domestic violence and to deal with it properly according to law.¹¹⁷ It is clear now that domestic violence is no longer exclusively a family matter that can be turned

113. Shaanxi Anti-Domestic Violence Regulation (Draft) art. 22.

114. *Id.* art. 38.

115. Hunan Decision on Preventing and Eliminating Domestic Violence art. 11.

116. *Id.* art. 3.

117. *Id.* art. 4.

away easily from official involvement. Article 5 of the *Hunan Regulation* provides that public security bureaus must deal with domestic violence cases and punish abusers by either imposing an administrative penalty if the circumstances are not serious, or engaging in further investigation with the purpose of transferring the case to the procuratorates for prosecution. The people's procuratorates have important roles to play as well. They are not only responsible for granting approvals for arrest and initiating prosecution, but also for supervising the work of the public security bureaus and the people's courts.¹¹⁸ The people's courts should conduct hearings for domestic violence cases in a timely manner. Where bodily injury and property damage have resulted from domestic violence, the court should impose civil liability on the abusers as well.¹¹⁹

To give teeth to the above provisions, the *Hunan Regulation* further provides for legal liabilities in case of failure to perform one's duty. Where a party has the legal obligation to prevent and deal with domestic violence but fails to do so, which failure leads to the intensification of disputes and grievous consequences, those who are directly responsible will be personally liable.¹²⁰

The *Shaanxi Regulation (Draft)* even identifies the roles, functions and responsibilities of mediation committees, women's federations, schools, hospitals and clinics, and lawyers in identifying, preventing, tracking, and fighting against the epidemic of domestic violence.¹²¹

3. *Domestic Violence as a Good Cause for Divorce*

Domestic violence can be a reasonable cause for divorce, as well as a factor for consideration when the court divides property between parties in divorce proceedings. The *Hunan Regulation* provides that the courts should treat victims of domestic violence favorably in dividing property between the two parties in divorce proceedings, be it court-decided divorce or divorce by mediation.¹²² The *Shaanxi Regulation (Draft)* provides that victims who do not want to endure domestic violence have the right to apply for divorce and claim compensation.¹²³ The newly revised draft of the *Marriage Law* has similar provisions which point out that divorce shall be granted following the failure of mediation in

118. *Id.* art. 6.

119. *Id.* art. 7(1).

120. *Id.* art. 10.

121. Shaanxi Anti-Domestic Violence Regulation (Draft) art. 37.

122. Hunan Decision on Preventing and Eliminating Domestic Violence art. 7 (2).

123. Shaanxi Anti-Domestic Violence Regulation (Draft) art. 25.

cases of domestic violence,¹²⁴ and the innocent party has a right to claim civil compensation where divorce is caused by domestic violence.¹²⁵

4. *Recognizing Battered-Women Syndrome*

There should be formal recognition of “battered-women syndrome” as a valid defense for women victims of domestic violence who have committed violent crimes against their batterers. The *Shaanxi Regulation (Draft)* expressly provides that victims of domestic violence who, while suffering from violence, go beyond what is necessary for self-defence and emergency escape, and cause death or grievous injury to the batterer, should be treated leniently in determining their criminal liability.¹²⁶

C. STRENGTHENING OF LAW ENFORCEMENT INSTITUTIONS

Legislation alone cannot protect women from the epidemic of domestic violence. It needs cooperation between and coordination from law enforcement institutions, including the police, the prosecutors, and the courts. Such a law enforcement network built against domestic violence has been seen in Michigan. There, police have been required to respond to domestic violence disputes and give victims “statutory notice” of the right to secure a “personal protection order.”¹²⁷ Judges were required to issue a personal protection order if they believed any two of the following: (i) the defendant has committed an act of domestic violence within the past year, (ii) the defendant may commit an act of domestic violence, or (iii) good cause exists.¹²⁸ Violations of these injunctions might have led to warrantless arrests by the police.¹²⁹ The prosecuting attorneys were under an affirmative duty to proceed on behalf of petitioners when personal protection orders were violated.¹³⁰ Law enforcement officers were also required to prepare domestic violence reports and file copies with the prosecuting attorney within forty-eight hours after investigating or intervening in a domestic dispute.¹³¹ Law enforcement officers were required to document and investigate all complaints

124. Chinese Marriage Law (Draft Amendment) art. 32.

125. *Id.* art. 46.

126. Shaanxi Anti-Domestic Violence Regulation (Draft) art. 24.

127. See MICH. COMP. LAWS § 764.15C(1) (2000).

128. MICH. COMP. LAWS § 600.2950(2) (1994). A petitioner may obtain a personal protection order (injunction) against another person who has threatened to kill or physically injured the petitioner. Such order can be applied against individuals with whom the victim had a child in common or have or had a dating relationship. *Id.* § 600.2950(1).

129. MICH. COMP. LAWS § 764.15b (2000).

130. *Id.* § 764.15b(7).

131. *Id.* § 764.15C(3).

of domestic violence.¹³² Courts had an affirmative duty to consider domestic violence as a factor in the decision-making process.¹³³

In China, such a law enforcement network should include the public security bureaus, the people's procuratorates and the people's courts.

1. *Public Security Bureaus*

In China the public security bureaus play the role of the police. Although newly passed legislation, such as the *Hunan Regulation*, clearly mandates their duties, it still suffers from the weakness of being too general and vague compared to provisions in other jurisdictions. Chinese anti-domestic violence law lacks provisions mandating active intervention into domestic violence cases by the public security bureaus.

In many U.S. states, the police are required to carry out mandatory arrests when dealing with domestic violence complaints. For example, Connecticut has a mandatory arrest statute. The officer is required, upon determination that a family violence crime has been committed, to arrest the person suspected of the commission of the crime. The officer cannot make the decision to arrest based on the consent of the victim, the relationship of the parties or the request of the victim.¹³⁴ Colorado law also mandates the arrest of domestic violence perpetrators and restraining order violators. "Peace officers are now authorized to transport children, as well as protected parties, to a shelter, even where the perpetrator has custody pursuant to a court order."¹³⁵

Many U.S. states allow warrantless arrests in domestic violence cases. The state of Florida has a strong warrantless arrest statute, allowing a law enforcement official to arrest a person if "(t)here is a probable cause to believe that the person has committed an act of domestic violence."¹³⁶

In some jurisdictions, the police have a mandatory duty to notify victims of domestic violence about the release of the perpetrator. For instance, a Minnesota statute clearly details that once an officer has made an arrest on domestic violence charges, the officer cannot issue a citation to the individual charged, but

132. *See id.* § 764.15C(2).

133. For more on Michigan legislation against domestic violence, see Matthew J. Wiese, *Recent Legislation Changes Create a More Proactive Approach to Domestic Violence*, 74 MICH. B.J. 930 (1995).

134. CONN. GEN. STAT. § 46b-38b(a) (1999).

135. Fuller & Stansberry, *supra* note 15, at 2329.

136. FLA. STAT. ch. 901.15(7) (2000).

must take the perpetrator to the police station or county jail.¹³⁷ Immediately after the arrested person is issued a citation or ordered released, but before the actual release, the agency holding the person in custody must make a "reasonable and good faith effort" to orally inform the victim.¹³⁸ When a conditional release is entered, the law enforcement agency must mail or personally deliver a copy to the victim.¹³⁹

2. People's Procuratorates

In China, the people's procuratorates can play a more important role than their counterparts in common law jurisdictions, such as the United States. Their function is not limited to prosecuting the perpetrators, but includes approving arrests to be carried out by the public security bureaus.¹⁴⁰ What is more, the people's procuratorates supervise the work of both the public security bureaus and the people's courts.¹⁴¹ As seen in the *Hunan Regulation*, where the procuratorate believes that the public security bureau should have investigated a domestic violence case and transferred it to the procuratorate for prosecution but has failed to do so, or where a victim has complained to the procuratorate about the failure to perform their duties by the public security bureau, the procuratorate has the power to request an explanation from the public security bureau. Where the explanation is not convincing, the public security bureau may be required to conduct an investigation into the relevant case.¹⁴² The people's procuratorates also have the power to supervise the work of the people's court. Where the court fails to accept a domestic violence case that is brought by the victim, the people's procuratorates may intervene.¹⁴³

137. MINN. STAT. § 629.72(1) (2000).

138. *Id.* § 629.72(6)(a) (2000).

139. *Id.* § 629.72(6)(b).

140. The Organic Law of the People's Procuratorates of the People's Republic of China art. 5 (2) & (3). The law was adopted at the Second Session of the Fifth National People's Congress on July 1, 1979, and amended at the Second Meeting of the Standing Committee of the Sixth National People's Congress on September 2, 1983. The English text of the law can be found in 2 LEGISLATIVE AFFAIRS COMMISSION OF THE STANDING COMMITTEE OF THE NATIONAL PEOPLE'S CONGRESS OF THE P.R.C., *supra* note 26, at 48-54.

141. The Organic Law of the People's Procuratorate of the People's Republic of China, art. 5 (4), *supra* note 140.

142. Hunan Decision on Preventing and Eliminating Domestic Violence art. 6 (2).

143. *Id.* art. 6 (3).

3. Courts

China has set up 170 special courts at the local level to handle cases of divorce, abandonment, domestic violence and to teach women how to use legal means to protect their rights and interests.¹⁴⁴ In provinces such as Shanxi, Hebei, Heilongjiang, Jilin, Liaoning, Henan, Jiangsu, among others, the local level people's courts have cooperated with women's federations to build up a body of people's jurors specializing in women's rights cases.¹⁴⁵

Training of judges on issues relevant to domestic violence has been carried out randomly; such training has not been a mandatory course for judges to take. Such training can improve judges' understanding of the complex and delicate nature of domestic violence cases so that they can be more sensitive to the needs of the victims in deciding cases. Training can also change judicial attitudes of domestic violence as a social issue or a rights issue rather than a private family matter.

An effective coordination of efforts among the people's courts, the people's procuratorates and the public security bureaus can significantly strengthen the legal mechanisms in combating the problem of domestic violence.

D. ESTABLISHING SOCIAL SUPPORT FOR VICTIMS OF DOMESTIC VIOLENCE

An effective legal framework cannot exist independently from its social context. It is crucial to provide a social support network to victims of domestic violence through multiple channels. China's newly emerging non-governmental organizations, particularly women's organizations, have been playing a pivotal role in the battle against domestic violence. In various parts of China, different organizations have already input great human and financial resources to combat domestic violence.

1. Institution-Building

(1) Women's Organizations

The largest women's organizations in China are the Women's Federations. They extend from the All China Women's Federation at the national level to the provincial and municipal level women's federations, forming a widespread network covering the whole country. They accept women's complaints and

144. *China: Supreme Court Judge Reports Measures to Protect Women*, XINHUA NEWS AGENCY, Jun. 20, 1998.

145. *A Review of Government Efforts Against Domestic Violence in China 8* (China Working Group Against Domestic Violence ed., Beijing, China) (2000).

provide assistance to women who wish to assert their rights. The women's federations have also played an important role in improving law-making for the protection of women's rights. For example, the local women's federations were actively involved in the planning and drafting of the anti-domestic violence regulations in both Hunan and Shaanxi.

An unprecedented Anti-Domestic Violence Task Force was formed in Beijing in early 2000 to lead and coordinate the efforts against domestic violence. This task force has managed to provide to women who are victims of family abuse legal services, free consultation, and a hotline dial-in radio talk show. The Task Force is composed of three major women's organizations in Beijing and one in Shaanxi Province. They are the Peking University Women and Law Research and Service Center,¹⁴⁶ the Maple Women's Psychological Counseling Center,¹⁴⁷ the Women Counseling and Development Center of the China Women's College and the Shaanxi Women's Legal Research and Service Center.

(2) Community Networks

Community networks should be established to provide more support to victims. With the existence of the Residents' Committees in urban areas and Villagers' Committees in the countryside, it should be easy to provide community support to families suffering from domestic disputes. Early intervention in the form of consultation, mediation or conciliation can be an effective way to prevent and reduce incidents of domestic violence.

(3) Women's Shelters

Women's shelters are essential for victims of domestic violence to stay away from ongoing physical brutality and to have moments of peace of mind. It may even be possible to incorporate rehabilitation facilities into such shelters. Such assistance may include rehabilitation, treatment, counselling, health and social services and all other measures to promote their sense of safety and physical and psychological rehabilitation.

146. The Peking University Women and Law Research and Service Center was established in December 1995, with the funding support from the Ford Foundation. It provides legal consultation, represents women in court and conducts research on women's issues. (Information obtained upon author's visit to the center and interview with the person in charge).

147. The Maple Women's Psychological Counseling Center started to study the issue of domestic violence in 1994. It established the first Women's Hotline specifically devoted to assisting battered women in October 1994. It also hosts radio call-in programs to provide counseling for women facing problems of all kinds. The center also engages in research work on women's issues and has published relevant books and articles on the subject. (Information obtained upon author's visit to the center and interview with the person in charge).

There have been such women's shelters set up with various degrees of success. In 1995, the "New Sun Women's Marriage Stop" was established by a female entrepreneur in Hubei Province. The 200 square meter shelter was able to house fifty beds to women in need, free of charge. In 1996, another entrepreneur set up a "Help Center for Women and Children Suffering from Domestic Violence in South China" in Shanghai. Apart from consultation activities, the center also provides ten beds to women and children.¹⁴⁸ Such isolated cases of women's shelters are far from being able to provide the basic sheltering needs of women whose lives are in danger from domestic violence.

2. *Empowering Women*

The idea of empowering, rather than merely protecting, women has emerged in China since 1995. Among the most urgent strategies to empower women in China are the education of girls, the implementation of progressive anti-violence laws, the dissemination of information to women about their rights, the fostering of women's economic autonomy, the training of police and judiciary in gender equality and the political participation of women.

NGOs, oriented towards women's issues in China, have been very active in the work of empowering women by informing them of their rights and of channels for asserting such rights. Training courses have been provided to women on how their legal rights are protected by state laws and regulations, and legal consultation, and services have been provided to women free of charge or at a reduced rate. Leaflets and booklets are distributed or made available to women to inform them of their rights and outline skills to protect themselves in case of emergency.

3. *Role of Medical Practitioners*

The role of medical practitioners should be enhanced. The crucial role played by the medical staff in blowing the whistle and thus allowing for timely intervention in domestic violence cases can be seen in foreign countries.

[T]he Florida Legislature has taken bold steps to require that every health care professional licensed in the state receive ongoing education concerning how to identify and screen for domestic violence victims, and what measures should be taken to ensure that the victim and her family receive referral to the proper resources."¹⁴⁹

148. *Review of NGO's Actions against Domestic Violence in China 7* (China Working Group Against Domestic Violence ed., Beijing, China) (2000).

149. Marjorie Conner Makar, *Domestic Violence: Why the Florida Legislature Must Do More to Protect the "Silent" Victims*, 72 FLA. B.J. 10, 10 (1998).

These steps are known as the mandatory reporting requirements. California provides the most specific statutory mandates, requiring physicians to report suspected domestic violence abuse to the authorities. One statute provides that any health care practitioner must report known and suspected abuse.¹⁵⁰ The statute is fairly specific in describing what constitutes “assaultive or abusive conduct.”¹⁵¹ The statute requires that the report be made immediately by telephone to a law enforcement agency and that the verbal report be followed up by a written report within two working days of the verbal report.¹⁵² The law further requires that the physician or surgeon to make very specific findings in the patient’s medical record to include “the name of any persons suspected of inflicting the wound, other physical injury, or assaultive or abusive conduct upon the person” and “a map of the injured person’s body showing and identifying injuries and bruises at the time of the health care.”¹⁵³ The physician also must include a copy of the law enforcement reporting form in the medical record.¹⁵⁴ The statute also “recommends that the physician or surgeon refer the person to local domestic violence services if the person is suffering or suspected of suffering from

150. CAL. PENAL CODE § 11160(a) (2000). The statute provides that:

(a) Any health practitioner employed in a health facility, clinic, physician’s office, local or state public health department, or a clinic. . . who, in his or her professional capacity or within the scope of his or her employment, provides medical services for a physical condition to a patient whom he or she knows or reasonably suspects is a person described as follows, shall immediately make a report in accordance with subsection (b):

(1) Any person suffering from any wound or other physical injury inflicted by his or her own act or inflicted by another where the injury is by means of a firearm.

(2) Any person suffering from any wound or other physical injury inflicted upon the person where the injury is the result of assaultive or abusive conduct. *Id.*

151. *Id.* § 11160(d) (2000). Assaultive and abusive conduct includes murder, manslaughter, mayhem, aggravated mayhem, torture, assault with intent to commit mayhem, rape, sodomy, or oral copulation, administering controlled substances or anaesthetic to aid in commission of a felony, battery, sexual battery, incest, throwing any vitriol, corrosive acid, or caustic chemical with intent to injure or disfigure, assault with a stun gun or laser, assault with a deadly weapon, firearm, assault weapon, or machine gun, or by means likely to produce great bodily injury, rape, spousal rape, procuring any female to have sex with another man, child abuse or endangerment, abuse of spouse or cohabitant, sodomy, lewd and lascivious acts with a child, oral copulation, genital or anal penetration by a foreign object, elder abuse, or an attempt to commit any of these specified crimes. *Id.*

152. *Id.* § 11160(b) (1) & (2).

153. *Id.* § 11161(b)(1) & (2) (2000).

154. *Id.* § 11161(b)(3) (2000).

domestic violence."¹⁵⁵ Finally the statute makes it a misdemeanor for failing to report an incident.¹⁵⁶

In China, the role and function of medical doctors in the domestic violence context have not been adequately recognized, and it was not until 1994 that the Forensic Clinic of Beijing High People's Court started to file cases of injuries from domestic violence as a special category. It is the first government supported and recognized forensic clinic that provides injury certification for women victims of domestic violence. A similar body was set up in Qingdao, Shandong Province in 1998. It is known as the "Domestic Violence Injury Certification Center," jointly established by the Qingdao Intermediate People's Court and Qingdao Women's Federation.¹⁵⁷

E. PUBLIC AWARENESS

A lot can be done in raising public awareness of the extent and harm of domestic violence and in changing social attitudes towards violence against women. The power of the media can never be overstated. It could play a very important role in exposing domestic violence cases, raising public awareness as to the extent and gravity of the problem, and drawing on moral power from the community to condemn the intolerable blight of domestic violence.

Early education is another crucial channel to pass on the message that any form of violence against women is unacceptable. It is never too early to start educating the future generation about the idea and concept of gender equality and mutual respect.

CONCLUSION

To effectively control, prevent and eliminate the epidemic of domestic violence in China, we need to build up a comprehensive legislative framework that incorporates criminal sanctions, civil remedies, administrative measures and preventive mechanisms. The legislation must be supported by a strong and effective law enforcement network and extensive women-support social facilities. To ensure that all the legal and social responses to domestic violence will work in China, we need joint efforts from the public security bureaus, the people's procuratorates, the people's courts, legal service providers, medical and forensic centers, victim shelters, women's organizations, mass media and va-

155. *Id.* § 11161(c) (2000).

156. *Id.* § 11162.

157. China Working Group Against Domestic Violence ed., *supra* note 145, at 6.

rious educational bodies. With full confidence in China's progress on the development of a sound legal system based on the notion of "rule of law," these legal and social responses will, hopefully, reshape the conventional, gender based power relationship in China. It is only when women have gained their place as strong and equal members of society that violence against them will be viewed as a shocking aberration, rather than the norm.