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THE CHANGING LANDSCAPE OF WOMEN'S RIGHTS ACTIVISM IN CHINA: The Continued Legacy of the Beijing Conference¹

Rangita de Silva de Alwis and
Katherine Schroeder

ABSTRACT

The Beijing Conference was a watershed moment in the history of the global women's movement and had an unprecedented impact in the Global North and South on lawmaking, institution building, and movement building. This Article details the development of women's activism in China since the Beijing Conference and how a changing legal landscape impacts this activism. While its progress is emblematic of the inconsistencies in the progression of women's rights activism since the Beijing Conference, China's efforts have been significant and varied and represent a model for other countries seeking to reform women's rights legislation. This Article identifies important lines of inquiry that merit further investigation in China and offers insights for conducting similar investigations elsewhere. This Article also outlines a framework for the shifting nature of women's legal activism from 1995 to 2020 and the ways that the international community can capitalize on these changes and continue to galvanize efforts toward legislative and cultural reform. This Article concludes that the Beijing Conference's goals may be actualized with financial backing and an apolitical and academic focus, and asserts that increased unity among activist groups is needed in China.

1. The authors engaged in extensive conversations with former Ford Foundation Program Officers Titi Liu at Stanford Law School and Katherine Wilhelm at New York University Law School. We are especially grateful to the guidance of preeminent women's rights activists in China, including Cai Yiping, Guo Jianmei, and Xiaonan Liu. Younger scholars who have requested anonymity have also contributed to our understanding of the evolution of the contemporary women's rights movement in China.

ABOUT THE AUTHORS

Rangita de Silva de Alwis is Associate Dean of International Affairs at the University of Pennsylvania Carey Law School where she teaches International Women's Human Rights. She is also the Leader-in-Practice at the Harvard Kennedy School's Women and Public Policy Program (2019–2021), Distinguished Advisor to Under Secretary General Phumzile Mlambo Ngcuka—the Executive Director of UN Women—and Hillary Rodham Clinton Fellow on Gender Equality at Georgetown Law School (2021–2022). She dedicates this Article to Secretary Clinton (2008–2013), whose words at the Beijing Conference electrified the global women's movement and marked the beginning of a twenty-five year odyssey to address gender inequalities around the world. In the words of Secretary Clinton, this remains the “unfinished business of the twentieth century.” Reflecting on the Beijing Conference, Guo Jianmei has said, “*The participants' concern for the protection of women's rights and for the NGOs worked like a warm current. I instantly felt that I had found my home.*” De Silva de Alwis worked closely for twenty years with scholars and practitioners in China's women's rights groups and was the inaugural director of the Women in Public Service Project launched by Secretary Clinton in 2011.

Katherine Schroeder is a recent graduate of the University of Pennsylvania Carey Law School. She was a Teaching Assistant to the class on International Women's Human Rights. The authors began this Article as part of the class's critical examination of the impact of the twenty-fifth anniversary of the Beijing Platform of Action.

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INTRODUCTION: THIS MOMENT IN HISTORY

Twenty-five years ago at the Beijing Conference, then-first lady Hilary Clinton victoriously declared that “women’s rights are human rights.”² Any anniversary celebrations of the conference in 2020 were severely diminished by the COVID-19 outbreak, and instead only an informal procedural meeting was held by the Commission on the Status of Women, the UN branch dedicated to gender equality.³ The Beijing Conference was a watershed moment in the history of the global women’s movement⁴ and had an unprecedented impact in the Global North and the South on lawmaking, institution building, and movement building.⁵ Over a

2. Hillary Clinton, Remarks While First Lady to the United Nations Fourth World Conference on Women, Plenary Session in Beijing, China (Sept. 5, 1995).

3. Charlotte Bunch, *Women's Rights as Human Rights: Toward a Re-Vision of Human Rights*, 12 HUM. RTS. Q. 486 (1990). See generally Carolyn Hannan, *Empowering Women: Ten Years After the Beijing Conference*, 7 GEO. J. INT'L AFFS. 173 (2006); Rebecca J. Cook, *Effectiveness of the Beijing Conference: Advancing International Law Regarding Women*, 91 AM. SOC'Y INT'L L. PROC. 310 (1997); Nicole Streeter, *Beijing and Beyond . . .*, 11 BERKELEY WOMEN'S L.J. 200 (1996).

4. The term “women’s movement” can reference a range of political and social movements and cannot be limited to a single term of reference. Within the context of this Article, we use the term “women’s movement” to refer to the network of organizations, individual movements, and political activism that has occurred in the wake of the Beijing Conference. Given the vast scope of organizations that push forward women’s rights in China, it is impossible to contextualize and concretize all of the efforts that have taken place. However, our framework for the women’s movement in China attempts to include the actions and trajectory of a range of organizations within Chinese civil society, including government-sponsored non-governmental organizations (NGOs) such as the All China Women’s Federation (ACWF), China’s primary organizational network for women.

5. Margaret Plattner, *The Status of Women Under International Human Rights Law and the 1995 UN World Conference on Women, Beijing, China*, 84 KY. L.J. 1249 (1995).

quarter century after the Conference's conclusion, women's rights-centered legal reform in China has seen both successes and failures as activists face increasing institutional and political challenges.⁶

While the progress of women's rights-centered activism and movement building in China has met resistance over the past twenty-five years, key trends emerge across the decades. In its early days, women's activism was primarily policy-based, state-focused, and rooted in normative theories of international law.⁷ This original approach has since given way to a new breed of activism exemplified by three key movements: the recent MeToo movement, which gave a platform to victims of sexual harassment; the "Occupy Bathrooms" movement, which represented a dramatic and controversial vehicle for addressing issues that, previously, were not considered crucial to the women's movement; and movements such as those advocating LGBTQ rights that moved from the fringe to the forefront of China's women's rights movement.⁸ Unlike earlier efforts, these movements are not centered around relationships with the Chinese government but instead have an activist bent.

Despite the controversy that initially surrounded each of these movements, their impetus is characterized by the concept of the "tipping point" which spurs broadscale change in Chinese society. As Cass Sunstein outlines, different forms of "nudges" can create change and push social forces in particular directions.⁹ They not only motivate individuals to act by bringing to light the gravity of particular social problems, but they also create the societal support necessary for individuals to begin embracing and participating in protest actions. This motivation in turn translates to greater acceptability and awareness among the general population.¹⁰

The COVID-19 pandemic is one notable tipping point. Though its devastating impacts were unplanned, the virus's deleterious effect on women's rights in China is unsurprising and indicative of the

6. See Timothy Webster, *Ambivalence and Activism: Employment Discrimination in China*, 44 VAND. J. TRANSNAT'L L. 643 (2011).

7. Rangita de Silva de Alwis, *Domestic Violence Lawmaking in Asia: Some Innovative Trends in Feminist Lawmaking*, 29 UCLA PAC. BASIN L.J. 176 (2012) [hereinafter de Silva de Alwis, *Domestic Violence Lawmaking*]; Rangita de Silva de Alwis, *Why Women's Leadership Is the Cause of Our Time*, 18 UCLA J. INT'L L. & FOREIGN AFFS. 87 (2013).

8. See *infra* Part III.

9. CASS R. SUNSTEIN, *HOW CHANGE HAPPENS* (2019). Tipping points as an explanatory mechanism are also referenced in other contexts, such as pushing for political change. See Daniel Yankelovich, *The Tipping Points*, FOREIGN AFFS., May/June 2006, at 115 (detailing that tipping points were a key influencer in American foreign policy during the period of the Iraq war).

10. SUNSTEIN, *supra* note 9.

extreme setbacks that often accompany the country's persistent progress. Women in China were at the epicenter of the pandemic: they made up "more than half the doctors and 90 percent of nurses in frontline areas."¹¹ Though women contributed significantly to slowing and controlling the pandemic, they lacked necessary support from the Chinese government. For example, the government refused to provide women with menstrual supplies and used the public health crisis to justify unsafe work conditions.¹² The pandemic also affected domestic violence victims. Throughout the spring of 2020, mandatory quarantines trapped these women at home with their abusers and the government had little capacity—or interest—to address domestic violence complaints.¹³ The COVID-19 pandemic and other emergencies unmask and exacerbate existing inequalities in China and elsewhere, and provide a stark reminder of why a strong women's movement is critical in resisting state excesses or inaction.

In the context of women's rights in China, domestic violence activism and legislation progressed primarily after the watershed Beijing Conference—and later the massive publicity that surrounded the Kim Lee domestic violence case—brought women's issues to the global stage.¹⁴ Though the issue of sexual harassment has existed in the public consciousness, the world—including China—responded only after the Harvey Weinstein allegations served as a dramatic tipping point. Arguably, tipping points are most important in the Chinese context, as the government's limitations on women and cultural stigmas make the price of speaking out higher than for women in other countries, thus necessitating a catalyzing force to push women toward change.

This Article details the development of women's activism in China since the Beijing Conference and the impacts legal reforms have had on women's rights activism. Although this Article focuses on China, its analysis carries significance for the broader study of

11. Qianer Liu & Sue-Lin Wong, *Anger Over Portrayal of Women in China Coronavirus Propaganda*, FIN. TIMES (Mar. 2, 2020), <https://www.ft.com/content/6fdaa854-5798-11ea-abe5-8e03987b7b20> [<https://perma.cc/8DAN-J9WQ>].

12. Aria Chen, *Video of Female Medics in China Having Their Heads Shaved Sparks Backlash Over Propaganda in the Coronavirus Fight*, TIME (Feb. 21, 2020, 6:12 AM), <https://time.com/5788592/weibo-women-coronavirus> [<https://perma.cc/2YAA-PA8Q>].

13. Sophie Mak, *China's Hidden Epidemic: Domestic Violence*, DIPLOMAT (Apr. 6, 2020), <https://thediplomat.com/2020/04/chinas-hidden-epidemic-domestic-violence> [<https://perma.cc/F9EV-R7WB>].

14. Mimi Lau, *'Crazy English' Guru's Wife Kim Lee Granted 12m Yuan in Divorce*, S. CHINA MORNING POST (Feb. 4, 2013, 4:00 PM), <https://www.scmp.com/news/china/article/1142768/crazy-english-gurus-wife-kim-lee-granted-12m-yuan-divorce> [<https://perma.cc/4HX7-BHGP>].

feminist engagement with the Beijing Conference and the Platform of Action. Progress in China is emblematic of the inconsistencies that plague women's rights activism since the Beijing Conference, and its significant and varied efforts represent a model for other countries working toward legal change. This Article outlines a theoretical framework for understanding broad trends in the nature of women's rights activism from 1995 to 2020 and the ways that the international community can capitalize on these changes and continue to galvanize efforts toward legislative and cultural reform.

Using both the nuances of women's rights activism as well as a dearth of research on movement building in the context of Chinese women's rights, this Article utilizes textual interpretation and secondary sources as well as interviews with China's leading feminist stakeholders about advocacy and the struggle for gender equality.¹⁵ Interview subjects include thought leader and activist Titi Liu¹⁶ and others with knowledge about and involvement in nongovernmental organization (NGO) funding; women who have focused directly on organizational work, including Cai Yiping,¹⁷ Guo Jianmei,¹⁸ and Xiaonan Liu;¹⁹ and women on the front lines of current women's protest efforts.

This Article proceeds in five Parts. Part I outlines the theoretical background of activist movements generally and women's rights movements in China specifically, including the ways in which women in China have used the theoretical backdrop to implement change. Part I also tracks changes in the ways in which the Chinese government has monitored and controlled activists' movements directly or through regulations, such as those applied to NGOs. In addition, Part I outlines the goals of the 1995 Beijing Conference and the reasons that the Conference became a focal point of the women's movement in China.

15. While there were many other women who contributed to this Article, several preferred that their specific insights and advice remain anonymous given the politically charged nature of women's rights activism within China.

16. *Biography of Mina Titi Liu*, STAN. L. SCH., <https://law.stanford.edu/directory/mina-titi-liu> [<https://perma.cc/3UNW-45EH>].

17. *Biography of Yiping Cai*, U.N. RSCH. INST. FOR SOC. DEV., [http://www.unrisd.org/unrisd/website/people.nsf/\(httpPeople\)/45D1F99AD36EBB2BC-12579C20058FE73?OpenDocument](http://www.unrisd.org/unrisd/website/people.nsf/(httpPeople)/45D1F99AD36EBB2BC-12579C20058FE73?OpenDocument) [<https://perma.cc/3S4R-7X5S>].

18. Yaxue Cao, *Guo Jianmei, Zhongze, and the Empowerment of Women in China*, CHINA CHANGE (Feb. 14, 2016), <https://chinachange.org/2016/02/14/guo-jianmei-zhongze-and-the-empowerment-of-women-in-china> [<https://perma.cc/F6LK-ZSMN>].

19. *Asia Law Weekly: Xiaonan Liu*, U.S.-ASIA L. INST., <https://usali.org/events/asia-law-weekly-xiaonan-liu> [<https://perma.cc/5WHM-RHQT>].

Part II explores traditional forms of activism through a case study on post-1994 domestic violence activism in China. Such activism, led primarily by the mass national organization All China Women's Federation (ACWF), was nondisruptive due to a focus on connectedness with the government,²⁰ adherence to stringent NGO regulations like access to foreign funding, and a preoccupation with the important task of translating international human rights norms into national law. In addition, this first wave of leadership in the domestic violence movement utilized a more traditional form of advocacy and mobilization that centered on legal aid and legal reform compared to modern methods, such as performance art. The last ten years have seen changes—social media activism, including the landmark Kim Lee case,²¹ and tightening government regulations that have made it increasingly difficult for NGOs to work on legal reform for women—that have necessitated new forms and channels of activism.

Part III analyzes emergent forms of activism that are joining traditional approaches. This analysis focuses on the MeToo movement (#WoYeShi) in China and the “Occupy Bathrooms” movement—a series of protests involving young women who advocated for a more equitable distribution of female to male public bathrooms. Dividing the trends of activism into (artificially demarcated categories of) traditional and emergent waves provides a lens with which to analyze the changing structure of activist movements in China. This approach, however, does not capture the complexities of China's path since the Beijing Conference. There have been many forms of activism that eschew neat categorization or segregation into different waves. Since 1995, Chinese women have represented a wide range of interests and utilized many different tools, both with and without the funding of foreign organizations.

Finally, Part IV details the implications of activism's shifting form, including an analysis of the key differences and similarities between the two “waves” of activist movements. Part IV also outlines the increased importance of forming connections between both waves of activism, given the strengths each wave brings to the table. Regardless of the type of activism used, collaboration

20. See generally Zhen Angela Lu, *The Broadening of Legal Aid and Women's Rights in China: Cooperation and Collaboration Between the All-China Women's Federation and the Beijing University Center for Women's Law Studies and Legal Services*, 3 NW. INTERDISC. L. REV. 78 (2010).

21. Louisa Lim, *American Woman Gives Domestic Abuse a Face, and Voice, in China*, NPR (Feb. 7, 2013, 2:51 PM), <https://www.npr.org/2013/02/07/171316582/american-woman-gives-domestic-abuse-a-face-and-voice-in-china> [<https://perma.cc/Z4B6-5HCL>]; Lau, *supra* note 14.

between the first wave's traditional policy-based activism as well as the more recent wave's ability to seek innovative solutions is needed for broadscale change in China. Part V concludes that increased support from transnational stakeholders would facilitate that process of collaboration.

I. BACKGROUND

To frame the women's rights movement, we first provide a history of feminist theory and how it interplayed between feminist research in the United States as well as China. We next detail how activists have taken the concept of women's rights to the real world from the Mao era until the Beijing Conference. Next, we provide an overview of the Beijing Conference itself and the key role international law played in shaping the trajectory of China's women's right movement.

A. *Toward an Intersectional Theory of Feminism*

A dynamic feminist theory provides an intellectual framework for how activism in China has developed over time. More recently, different strands and types of feminist theory are emerging, each a response to the intersecting forms and experiences through which women face inequality under the law.²² Flexibility in the ways in which feminism in the law is applied means that multiple theories have been put forward for how to make the law equal for women and men. Specifically, Deborah Rhode detailed a system "requiring both lawyers and judges to examine particular laws and actions within the context in which they are situated" in order to ensure that the real-world impacts of laws were considered by stakeholders.²³ The law also does not need to relate primarily to women to be a woman's issue, as "Mary Joe Frug has demonstrated that any contract (or any legal) doctrine can be subjected to a feminist analysis by demonstrating the relationship of the interpreter to the text."²⁴ Several areas of legal theory have grown in prominence over the last twenty-five years, including sexual harassment and intersectional feminism—for example, the intersection of disability and gender identity.²⁵ These changes have impacted China's feminist advocates too.

22. Katharine T. Bartlett, *Gender Law: After Twenty-five Years*, 27 DUKE J. GENDER L. & POL'Y 1 (2020).

23. Carrie Menkel-Meadow, *Mainstreaming Feminist Legal Theory*, 23 PAC. L.J. 1493, 1513 (1992).

24. *Id.* at 1521.

25. Bartlett, *supra* note 22.

As it relates to the legal field, feminist theory first focuses on law's overwhelming male nature.²⁶ Most laws have been written by men, are about men, and relate to the interests of men as both rights bearers and receivers.²⁷ Laws against sexual assault are but one example, as "[t]he law of rape protects rapists and is written from their point of view to guarantee impunity for most rapes."²⁸ While this framework has been previously examined primarily through Western scholarship, we must also acknowledge the importance and awareness of a contextual approach. Chinese women have rewritten legal narratives to include their own unique needs, however politically difficult this process may have been.

Because of the ways in which male voices have traditionally dominated laws, the 1950s trended toward women pushing to write laws themselves and women in China began authoring domestic violence regulations.²⁹ This was not a new development: for decades, women in China had attempted to shape the legal field by creating laws that served their unique needs.³⁰ Of particular note, the Central Committee of the Chinese Communist Women's Federation pushed for China's 1950 marriage legislation.³¹ The legislation included a mediation provision that vice-chair Deng Yingchao described as a mechanism to protect women who themselves wanted to initiate a divorce.³² While the actual impacts of the marriage law are difficult to localize, the efforts of women to enact legislation may have played a role in China's 1975 and 1978 constitutions stipulating that women are to "enjoy equal rights with men in all respects."³³

Women were pushing for a seat at the table not only by serving as legal drafters, but also by broadening the scope of feminist issues to include areas not traditionally encompassed by traditional feminist theory. In the United States, formal equality marked early feminist jurisprudence whereas intersectional feminism currently informs the law.³⁴ The former is part of China's current feminist

26. See generally Judith A. Baer, *Feminist Theory and the Law*, in THE OXFORD HANDBOOK OF POLITICAL SCIENCE 305 (Robert E. Goodin ed., 2008).

27. *Id.* at 313.

28. *Id.* (quoting Catharine MacKinnon).

29. *Id.*

30. Linda Wong, *Family Reform Through Divorce Law in the PRC*, 1 UCLA PAC. BASIN L.J. 265, 274 (1982).

31. *Id.*

32. *Id.* at 275.

33. *Id.* at 276.

34. Intersectional feminism has been the basis for many scholars in their analysis of the ways the law impacts women of different identities. See Beverley Baines, *Gender and Constitution: Is Constitutionalism Bad for Intersectional*

jurisprudence and shares characteristics with disability rights and LGBTQ rights movements.³⁵ While there is no consensus on one feminist jurisprudence in China,³⁶ as in the United States, multiple strands of feminist action interconnected with other social movements will continue to create a more dynamic force for social change. Feminism and feminist theory in China have transformed such that women are not viewed as monolithic, but as members of multiple identities that can result in potential sources of discrimination.³⁷

Despite the potential for movements to increase equality in China, problems still remain. Even legal reform that purports to support women's rights by protecting women can occasionally backfire and create inequality for women instead. For instance, economic laws in the 1990s meant to protect women from harmful working conditions in China resulted in employers using the legislation as a means to discriminate against women.³⁸ Specifically, these laws provided that certain types of work were not fit for women.³⁹ Further, the laws gave women the option of extended time off for childbirth or an earlier retirement.⁴⁰ While well-intended in theory, the laws in practice caused women to have a more difficult time obtaining employment as employers had no desire to adjust to the additional regulations that would follow from hiring women.⁴¹

Other complications with the real impact of feminist theory are more subtle. Women's movements may not have the currency that other social movements—like the climate change movement—possess.⁴² Instead, political action is sometimes limited to legal reform. Given China's political environment, movement building

Feminists?, 28 PENN STATE INT'L L. REV. 427 (2010).

35. Wen Liu, Ana Huang & Jingchao Ma, *Young Activists, New Movements: Contemporary Chinese Queer Feminism and Transnational Genealogies*, 25 FEMINISM & PSYCH. 11 (2015).

36. See generally *id.*; Ulises Moreno-Tabarez, Karma R. Chávez, Stephen J. Leonelli, Ana Huang, Stijn Deklerck & Carina Rother, *Queer Politics in China: A Conversation With "Western" Activists Working in Beijing*, 1 QED: J. GLBTQ WORLDMAKING 109 (2014).

37. *Id.*

38. Charles J. Ogletree & Rangita de Silva-de Alwis, *When Gender Differences Become a Trap: The Impact of China's Labor Law on Women*, 14 YALE J.L. & FEMINISM 69 (2002).

39. *Id.*

40. *Id.*

41. *Id.*

42. Climate change has been called the "defining crisis of our time" by the United Nations, indicating the primacy of the global focus on climate issues above other problems. See *The Climate Crisis—A Race We Can Win*, UNITED NATIONS, <https://www.un.org/en/un75/climate-crisis-race-we-can-win> [https://perma.cc/6PVL-QGWK].

takes a completely different form of cautious and careful planning. Specific theories that make up feminist theory in China represent an “ambiguous background against which our current feminist endeavor is understood and conceived, where the forgotten history of women in the imperial era, state-sponsored socialist feminism, and the Western notions of women’s rights are present to us at the same time.”⁴³ In fact, Western notions of feminism and the highly Western nature of feminist scholarship and rhetoric have complicated China’s relationship with the term, particularly as China has globalized.

B. *The Post-Beijing Women’s Rights Movement in China? Snapshots From a Quarter Century of Activism*

Given this theoretical framework, an analysis of how the women’s movement in China has evolved must be examined. In order to fully contextualize the environment of women’s rights in China during the Beijing Conference, a historical overview of women’s rights in China before 1995 is instructive.

There exists a longstanding tension between gendered female activism and the goals of the Chinese government, a conflict that has shaped the development of activist groups in China. Starting in 1949, “China declared gender equality to be a fundamental state policy.”⁴⁴ The campaigns promoting “radical sameness” between men and women created exemplary “iron girls” across the country.⁴⁵ However, this changed in the early 1980s and femininity became a focal point once more. Scholars explain that “in the post-Mao era, intellectual women began to reject the making of women by the party-state.”⁴⁶ This stemmed from both the increasing presence of Western feminism in the Chinese public sphere, as well as internal efforts to take down Maoist policies—a trend that spilled over into the area of women’s rights.⁴⁷

This tension developed most clearly during the early 1990s as women’s rights in China experienced an internationalization. Propelled by organizations like the Ford Foundation and their corresponding funding, Chinese women began engaging with

43. Liu, Huang & Ma, *supra* note 35, at 12.

44. *Id.*

45. *Id.* See Jin Yihong, *Rethinking the ‘Iron Girls’: Gender and Labour During the Chinese Cultural Revolution*, 18 *GENDER & HIST.* 613, 613–14 (Kimberley Ens Manning & Lianyun Chu, trans.) (2006) (detailing that “iron girls” were women who participated in jobs previously considered men’s work).

46. Wang Zheng, *Maoism, Feminism, and the UN Conference on Women: Women’s Studies Research in Contemporary China*, 8 *J. WOMEN’S HIST.* 126, 132 (1997).

47. See generally *id.*

international scholars at the highest level, further diversifying the scope of feminist ideas.⁴⁸ This international engagement was also followed by the increased presence of women's rights movements in the academic community and included extensive collaboration between institutions in China and others across the globe.⁴⁹

The seminal role of the Ford Foundation, and the NGOs it supported, tells a unique story of the civil society space in China that focuses on women's rights. NGO structure in China is unique given the highly privatized nature of the government. Specifically, a range of Government Organized NGOs (GONGOs) exist in China, including the ACWF.⁵⁰ The ACWF is one of eight other GONGOs within China that focuses on specific interests.⁵¹ Within the space of the women's movement, this organization works with both regional private NGOs as well as international organizations.⁵² However, reasons for optimism are largely overshadowed by the reported crackdown that has occurred in the spaces that the Chinese government provides for gendered NGOs to continue promoting women's rights across China.

In the early years, NGO law in China was not highly codified. Unable to properly register, many NGOs—particularly those with international funding—operated in a legal gray area.⁵³ However, 2009 brought increased restrictions in the form of a regulation from the State Administration on Foreign Exchange.⁵⁴ The regulation required that “both domestic and international NGOs . . . operate more transparently in China by mandating recipients of foreign donations to have a bank account (which required registration with authorities), a written agreement for how the funds

48. *Id.*

49. Interviews with Guo Jianmei, China's leading women's rights lawyer.

50. Chen Jie, *The NGO Community in China: Expanding Linkages With Transnational Civil Society and Their Democratic Implications*, 68 CHINA PERSPS. 29 (2006).

51. *Id.*

52. The Chinese government has begun to accept the necessity of engaging with women's groups; as of 2010, over 60 Chinese universities were home to research institutions devoted to women's studies. See Wei Guoying, *From Female Research to Discipline Construction of Female Studies, the Development of Women's Studies in Colleges and Universities*, 1 J. SHANDONG WOMAN UNIV. 6 (2012).

53. Shawn Shieh, *The Origins of China's New Law on Foreign NGOs*, CHINAFILE (Jan. 31, 2017), <https://www.chinafile.com/reporting-opinion/view-point/origins-of-chinas-new-law-foreign-ngos> [<https://perma.cc/254D-UUDQ>].

54. Scott Wilson, *China's NGO Regulations and Uneven Civil Society Development*, ASIA DIALOGUE (Feb. 15, 2017), <https://theasiadialogue.com/2017/02/15/chinas-ngo-regulations-and-uneven-civil-society-development> [<https://perma.cc/N5BY-2G4M>].

were to be used, and proof that the foreign organization was a registered nonprofit organization abroad.”⁵⁵ Organizations such as the Ford Foundation were forced to alter their programming in China given the increased operational requirements for NGOs.⁵⁶ However, the most significant action taken against NGOs occurred in 2017 with the passage of the Law of the People’s Republic of China on Administration of Activities of Overseas Nongovernmental Organizations in China.⁵⁷ The law “mandates that foreign NGOs must register with the Ministry of Public Security (MPS) or its provincial-level equivalents before establishing an office within mainland China.”⁵⁸ In addition, NGOs “‘must not endanger China’s national unity, security, or ethnic unity; and must not harm China’s national interests, societal public interest,’ or engage in or fund for-profit, political, or religious activities.”⁵⁹ While the Chinese government defended the law as a necessary regulation and it did not specifically target NGOs focused on women’s issues, the restrictions limited funding and shuttered NGO activity across the country as NGOs did not want to open themselves up to investigations from the Chinese government.⁶⁰

C. *The Beijing Conference*

Even with the challenges faced by civil society, the Beijing Conference helped move women’s rights into the international sphere, as well as helped legitimize political action within China. We chose the Beijing Conference as the focal point of our analysis because of its seminal nature across the globe and in China, where it served to focus women’s efforts.

Hilary Clinton’s message, “women’s rights are human rights,”⁶¹ helped shape the eventual Beijing Platform and set the tone for the conference organized by the UN Commission on the Status

55. *Id.*

56. Interview with Titi Liu, Stanford Law (Apr. 2020).

57. *Law of the People’s Republic of China on Administration of Activities of Overseas Nongovernmental Organizations in the Mainland of China*, CHINA NGO PROJECT, <https://www.chinafile.com/ngo/laws-regulations/law-of-peoples-republic-of-china-administration-of-activities-of-overseas> [https://perma.cc/C47B-QR5R].

58. *Fact Sheet on China’s Foreign NGO Law*, CHINA NGO PROJECT (Nov. 1, 2017), <https://www.chinafile.com/ngo/latest/fact-sheet-chinas-foreign-ngo-law> [https://perma.cc/ZC9Y-Q69Y].

59. *Id.*

60. *China: New Law Escalates Repression of Groups*, HUM. RTS WATCH (Apr. 28, 2016, 7:57 AM), <https://www.hrw.org/news/2016/04/28/china-new-law-escalates-repression-groups> [https://perma.cc/8ENL-K56M].

61. Clinton, *supra* note 2.

of Women. Based on past conferences in 1975 in Mexico, 1980 in Copenhagen, and 1985 in Nairobi, the Beijing Conference provided “action-oriented recommendations.”⁶² The conference involved 189 countries, UN organizations, and nonprofit organizations, and had the highest attendance of any UN conference.⁶³ According to the UN, “[t]he success of the Platform for Action will require a strong commitment on the part of Governments, international organizations and institutions at all levels.”⁶⁴ Clinton’s message, coupled with the UN’s stance, demonstrate the conference’s focus on change.

The Beijing Declaration and Platform for Action outlined the key goals of the Beijing Conference. According to its mission statement, the Platform “aim[ed] at accelerating the implementation of the Nairobi Forward-looking Strategies for the Advancement of Women and at removing all the obstacles to women’s active participation in all spheres of public and private life through a full and equal share in economic, social, cultural and political decision-making.”⁶⁵ As an indication of the seriousness of these goals, the document stated that “immediate and concerted action by all” is necessary.⁶⁶ The document further outlined key areas requiring improvement to advance women’s rights, including health care inequalities, general violence against women, and poverty.⁶⁷

The pervasive impact of violence—particularly domestic violence—against women was a key theme of the conference.⁶⁸ Not only is a desire to control violence against women referenced throughout the Platform’s text, it has also been a key theme of discussions that occurred after the conference.⁶⁹ Follow-up from the conference also referenced the importance of “address[ing] all forms of violence against women through[] the adoption and

62. *Id.*

63. *The Fourth World Conference on Women Met in Beijing in September, 1995*, MINISTRY FOREIGN AFFS. PEOPLE’S REPUBLIC CHINA, https://www.fmprc.gov.cn/mfa_eng/ziliao_665539/3602_665543/3604_665547/t18026.shtml [<https://perma.cc/T47M-YG2U>].

64. *The United Nations Fourth World Conference on Women*, UN WOMEN, <https://www.un.org/womenwatch/daw/beijing/platform/plat1.htm#statement> [<https://perma.cc/WX7C-KPFJ>].

65. Fourth World Conf. on Women: Beijing Declaration and Platform for Action 7 (Sept. 15, 1995), <https://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf> [<https://perma.cc/VKL7-68YD>].

66. *Id.*

67. *Id.* at 16.

68. *See supra* note 64.

69. *See* UN WOMEN, SUMMARY REPORT: THE BEIJING DECLARATION AND PLATFORM FOR ACTION TURNS 20, 9 (2015), http://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2015/sg%20report_synthesis-en_web.pdf?la=en&vs=5547 [<https://perma.cc/A4GC-F2PD>].

reform[] of laws.”⁷⁰ Given the fact that many jurisdictions offered impunity for domestic violence against women, this focus on combating violence through legal change was critical. The nonprofit organization CARE (Cooperative for Assistance and Relief Everywhere) compiled a report revealing that approximately 35 percent of women have been victims of violence by a partner.⁷¹ This figure does not address other forms of violence, nor does it account for underreporting or other cultural standards that may impact how violence is evaluated.⁷² Thus, “[d]omestic violence has been acknowledged as one of the most heinous threats against women’s security.”⁷³

The UN Commission on the Status of Women has carried out reviews of the Beijing Platform for Action every five years since the 1995 signing of the call to action.⁷⁴ This included a review after ten years, as well as a fifteen-year overview of the Platform.⁷⁵ In 2015, the commission evaluated progress over the past two decades via national reviews and a special session.⁷⁶ The results of this review in 2015 were mixed, and the UN called for increased national legislation and action to help reach Beijing’s objectives.⁷⁷ An analysis of the recent progress reviews unveils the difficulty in merging mainstream ideas with women’s rights. Even the UN Commission details that “[a] meaningful integration of gender-responsive environmental analysis into mainstream policy frameworks is still lacking.”⁷⁸

70. *Id.* at 21.

71. CARE, COUNTING THE COST: THE PRICE SOCIETY PAYS FOR VIOLENCE AGAINST WOMEN 3, https://www.care-international.org/files/files/Counting_the_costofViolence.pdf [<https://perma.cc/5A9U-7XHB>].

72. *Id.*

73. de Silva de Alwis, *Domestic Violence Lawmaking*, *supra* note 7, at 178.

74. *Fourth World Conference on Women: Action for Equality, Development and Peace 4–15 September 1995*, UN WOMEN, <http://www.un.org/womenwatch/daw/beijing/official.htm> [<https://perma.cc/2W9G-RM9D>]; *Beijing Plus Five*, UN WOMEN, <http://www.un.org/womenwatch/daw/followup/reports.htm> [<https://perma.cc/8G3L-XJW4>]; *Beijing Plus Ten*, UN WOMEN, <http://www.un.org/womenwatch/daw/csw/csw49/documents.html> [<https://perma.cc/F4BN-Z8GN>]; *Beijing Plus Fifteen*, UN WOMEN, <http://www.un.org/womenwatch/daw/beijing15/documentation.html> [<https://perma.cc/9GYA-6LCC>]; *Beijing Plus Twenty*, UN WOMEN, <http://www.unwomen.org/en/csw/previous-sessions/csw59-2015/official-documents> [<https://perma.cc/P99Z-FC82>].

75. *Beijing and Its Follow-up*, UN WOMEN, <https://www.un.org/womenwatch/daw/beijing> [<https://perma.cc/QW2A-NT6B>].

76. *20th Year Review of the Beijing Declaration and Platform for Action in Central Asia*, UN WOMEN, <http://eca.unwomen.org/en/digital-library/publications/2014/11/20th-year-review-of-the-beijing-declaration-and-platform-for-action-in-central-asia> [<https://perma.cc/8LZP-FJXP>].

77. *See supra* note 69.

78. Rep. of the Expert Group from the Sixty-fourth Session of the

The commission planned to continue these reviews in 2020, with a similar structure of national reviews divided by region, although the COVID-19 outbreak has made any real collaboration difficult.⁷⁹

Beyond official, UN-conducted reviews, other scholars and organizations have explored the impacts of the Beijing Platform. Many articles on the impact of Beijing focus on individual countries, such as the ways the conference has altered the political space for Nigerian women or action that has occurred in Ghana.⁸⁰ Other scholars have detailed the legislative history of domestic violence in China since the Beijing Conference to provide draft law recommendations.⁸¹ However, more research is needed to reflect recent developments in national legislation, as many of the previous reports, while instructive, were drafted more than five years ago.

II. TRADITIONAL FORMS OF ACTIVISM: FIRST GENERATION OF ACTIVISM POST BEIJING

To analyze forms of traditional activism, we first look at efforts to control domestic violence in China before the start of the Beijing Conference. We then outline the legislation of the early 2000s that helped serve as a crucial first step towards formalizing anti-domestic violence policies. Next, we explore the ways that NGOs have shaped recent domestic violence efforts. Finally, we turn to the current progress that civil society has made despite the limitations in modern China.

Commission on the Status of Women, Beijing +25: Current Context, Emerging Issues and Prospects for Gender Equality and Women's Rights, at 9, U.N. Doc. EMG/B25/2019/REPORT (2019) <https://www.unwomen.org/-/media/headquarters/attachments/sections/csw/64/egm/un%20women%20expert%20group%20meeting%20csw%2064%20report%202019.pdf?la=en&vs=3153> [<https://perma.cc/2EP6-F5KW>].

79. *CSW64/Beijing+25 (2020)*, UN WOMEN, <http://www.unwomen.org/en/csw/csw64-2020> [<https://perma.cc/3TLD-DGJH>] (detailing the key themes and efforts that the global community has taken in 2020 to promote the goals of the 1995 Beijing Conference).

80. See Manuah Anyidoho, 'To Beijing and Back': Reflections on the Influence of the Beijing Conference on Popular Notions of Women's Empowerment in Ghana, *IDS BULL.*, July 2015, at 19; Boniface Ifeanyi Orji, *Beijing Conference Protocols on Women: Awakening Women Political Consciousness in Nigeria (a Case of Ebonyi State) 1999–2015*, 6 *J. GENDER, INFO. & DEV. AFRICA* 117 (2017).

81. See generally Rangita de Silva de Alwis & Jeni Klugman, *Freedom From Violence and the Law: A Global Perspective in Light of the Chinese Domestic Violence Law*, 37 *U. PA. J. INT'L L.* 1, 52 (2015).

A. *Domestic Violence Efforts Post Beijing*

China maintained a vaunted position as the host of the Beijing Conference, but the country has since both embraced and fallen short of the goals of the Beijing Platform and its quest to control domestic violence. Domestic violence in China is comparable to an epidemic, with reportedly a quarter of Chinese women experiencing violence at some point during their marriages.⁸² Accurate statistics on how rates of domestic violence have shifted are scarce, and underreporting is common.⁸³ Given these difficulties, an evaluation of the unique ways that enforcement occurs is needed to show China's progress toward the Beijing Conference goals. Legislation against domestic violence is on the books in China, but significant positive change in domestic violence law cannot occur without first increasing support for NGOs and international legal institutions. This is especially true given the recent changes China has made to limit advocacy organizations and foreign funding for NGOs.

B. *Legislation*

In the first twenty years after the Beijing Conference—an era that we loosely define as the first generation of activism post Beijing—China made slow but steady steps to pass state and then national legislation addressing domestic violence.⁸⁴ In 2005, legislation on the “Protection of the Rights and Interests of Women” was passed to hold institutions accountable for controlling domestic violence.⁸⁵ This legislation was not binding, but other action ensured the legal system worked functionally for women who were victims of abuse, including over “3,200 tribunals [that had] been set up by local courts, including ‘tribunals on the protection of rights

82. *China Passes First Domestic Violence Law*, GUARDIAN (Dec. 27, 2015, 6:34 AM), <https://www.theguardian.com/world/2015/dec/27/china-passes-first-domestic-violence-law> [https://perma.cc/HS4G-3J43].

83. *UN Joint Statement: Family Violence Law Takes a Historical Step Forward for Women's and Children's Protection*, UN DEV. PROGRAMME (Mar. 4, 2016), <https://www.cn.undp.org/content/china/en/home/presscenter/press-releases/2016/03/04/joint-statement-family-violence-law-takes-a-historical-step-forward-for-women-s-and-children-s-protection.html> [https://perma.cc/D5YG-EJJQ].

84. See de Silva de Alwis & Klugman, *supra* note 81; de Silva de Alwis, *Domestic Violence Lawmaking*, *supra* note 7.

85. *Law on the Protection of the Rights and Interests of Women*, UN WOMEN: GLOB. DATABASE ON VIOLENCE AGAINST WOMEN, <http://evaw-global-database.unwomen.org/en/countries/asia/china/2005/law-on-the-protection-of-the-rights-and-interests-of-women-as-amended-in-2005> [https://perma.cc/HGG9-3KHN].

and interests.”⁸⁶ Furthermore, nearly 30 “provinces, autonomous regions and municipalities have enacted relevant laws and regulations . . . on the prevention of domestic violence.”⁸⁷ Provinces also worked to establish shelters and created guidelines to implement the new laws and regulations.⁸⁸ However, while this local action was a key step toward progress, real change did not occur in China until much later.

Nearly six years later, the Kim Lee case became another flashpoint for legal reform. Kim Lee was an American woman married to a well-known Chinese educator who was abusing her.⁸⁹ In 2011, Lee published a photo of her beaten face on social media, a post that galvanized mass public support for Lee.⁹⁰ Lee’s husband confirmed the abuse, admitting that “I hit her sometimes, but I never thought she would make it public since it’s not Chinese tradition to expose family conflicts to outsiders.”⁹¹ Initially, police officers in China had to be persuaded to file a report and eventually stopped any investigation into her husband’s conduct.⁹² Part of the reason that Lee’s story rose to such prominence was because of her decision to remain in China to address the domestic violence case and divorce instead of returning to the United States.⁹³ The renowned women’s rights lawyer Guo JianMei represented Lee in court in China’s first case on domestic violence as a basis for divorce.⁹⁴ The court ruled that domestic violence had occurred and Lee was entitled to financial compensation from her husband.⁹⁵ While the outcome was significant for Lee, the case and surrounding controversy may have opened the door for the 2015 legislative

86. UN PROGRESS MADE BY THE CHINESE GOVERNMENT IN IMPLEMENTATION OF THE “BEIJING DECLARATION” AND “PROGRAM OF ACTION” AS WELL AS THE “OUTCOME DOCUMENT” OF THE UNITED NATIONS GENERAL ASSEMBLY OF ITS TWENTY-THIRD SPECIAL SESSION 5, [https://www.un.org/womenwatch/daw/beijing15/responses/escap/China_\(English\).pdf](https://www.un.org/womenwatch/daw/beijing15/responses/escap/China_(English).pdf) [https://perma.cc/NJ43-P3J4].

87. *Id.*

88. de Silva de Alwis & Klugman, *supra* note 81, at 26–27.

89. Lim, *supra* note 21.

90. *Id.*

91. *Id.*

92. *See id.*

93. Simon Denyer, *Battered Women in China Could Finally Get a Measure of Legal Protection*, WASH. POST (March 6, 2015), https://www.washingtonpost.com/world/asia_pacific/battered-women-in-china-could-finally-get-a-measure-of-legal-protection/2015/03/05/31e542c4-c1a8-11e4-a188-8e4971d37a8d_story.html [https://perma.cc/29Z4-9FM7].

94. Didi Kirsten Tatlow, *In China’s Most-Watched Divorce Case, 3 Victories, 1 Defeat*, N.Y. TIMES (Feb. 5, 2013), <https://cn.nytimes.com/china/20130205/c05tatlow/en-us> [https://perma.cc/U9NV-CWNP].

95. Lau, *supra* note 14.

protections, drafted by China's State Council's Legislative Affairs Office.⁹⁶ The legislation was a consequence of the longstanding lobbying efforts by NGOs and women's rights groups in China,⁹⁷ and worked to both define domestic violence as an act by family members involving physical harm and create civil protections for those who experience domestic violence.⁹⁸ The law also focuses on safety provisions including protective orders and penalties for institutions that fail to report cases.⁹⁹ However, the law is based in civil—not criminal—law, which limits remedies to administrative fines or temporary detention.¹⁰⁰

While China's 2015 law may appear progressive, the structure of the legislation leaves room for improvement. In many cases, this law is “nothing more than a framework,” as it does not provide enough guidance “for the implementation of Written Warning procedures and Personal Safety Protection Orders.”¹⁰¹ The limited nature of the law is clear through its reliance on the term “family relations,” leaving out many women in nonconventional relationships.¹⁰² The law's existence outside the criminal code also means that some types of violent conduct may go underpunished. Even for women who experience extreme instances of domestic violence, the bar for what qualifies as “criminal” is high. Specifically, conduct needs to be “egregious,” a term that the law does not clearly define.¹⁰³

96. *See generally* 中华人民共和国反家庭暴力法 [现行有效] [Anti-domestic Violence Law of the People's Republic of China] (promulgated by the Standing Comm. of the Nat'l People's Cong., Dec. 27, 2015, effective Mar. 1, 2016) PEKING U. CTR. FOR LEGAL INFO., <http://en.pkulaw.cn/display.aspx?c-gid=261780&lib=law> [<https://perma.cc/F23P-TP5Q>] [hereinafter Anti-domestic Violence Law of the People's Republic of China]; de Silva de Alwis & Klugman, *supra* note 81, at 27.

97. SU LIN HAN, YALE L. SCHOOL PAUL TSAI CHINA CTR., CHINA'S NEW DOMESTIC VIOLENCE LAW: KEEPING VICTIMS OUT OF HARM'S WAY? 2 (2017).

98. *Id.* at 2. *See also* Anti-domestic Violence Law of the People's Republic of China, *supra* note 96.

99. Anti-domestic Violence Law of the People's Republic of China, *supra* note 96.

100. Hannah Feldshuh, *China's Domestic Violence Law: A Mandate Unfulfilled*, DIPLOMAT (Aug. 18, 2018) <https://thediplomat.com/2018/08/chinas-domestic-violence-law-a-mandate-unfulfilled> [<https://perma.cc/9369-JFX7>].

101. Qiumeng Wang, Domestic Violence Law of China and the Institutional Design of Counter-DV Mechanism 14 (2016) (M.A. thesis, University of Washington) (*available at* https://digital.lib.washington.edu/researchworks/bitstream/handle/1773/38552/Wang_washington_0250O_16775.pdf?sequence=1 [<https://perma.cc/2TGV-C4LV>]) (detailing that third parties had an obligation to report domestic violence).

102. Anti-domestic Violence Law of the People's Republic of China, *supra* note 96.

103. SU LIN HAN, *supra* note 97, at 7.

In other sections of Chinese law, “medium” injuries include broken ribs and facial cuts under six centimeters, indicating women may have to prove near-fatal violence to show their offender falls under a criminal statute.¹⁰⁴

Although China’s legislation is a step in the right direction for combating domestic violence, the actual impacts of the law remain unclear. Women who face domestic violence continue to encounter various legal problems. Human Rights Watch reported on a 2017 case in which a judge refused to give a woman a divorce after her husband abused her.¹⁰⁵ The court reasoned that the abuse did not rise to the level of “domestic violence” because it was a one-time occurrence.¹⁰⁶ Problems with implementation may be due in part to the China’s long history of considering domestic violence a private aspect of society and outside the purview of third-party enforcement—a phenomenon that cannot be addressed with just legislative change.¹⁰⁷

C. *The Role of NGO Action*

Leading up to the Kim Lee case and the 2015 legislative efforts, a richly-textured advocacy existed that was marked by internal dialogue and transnational exchanges.¹⁰⁸ Domestic organizations in China were able to capitalize on a political environment that was generally supportive of efforts to increase the legal rights of women across the country. Empowered by the framework of the Beijing Conference, several organizations emerged as leaders in the fight against domestic violence.

Two organizations—the ACWF and the Beijing Zhongze Women’s Legal Counseling and Service Center—were instrumental in raising consciousness on domestic violence. The ACWF is a longstanding fixture in China, due in part to its origins as the organization controlling women’s work as part of the communist party.¹⁰⁹ The ACWF has maintained a strong connection with the Chinese government, including continuous attempts to convince

104. *Id.* at 7.

105. Yaqiu Wang, *Chinese Courts Give Domestic Abusers a Pass*, HUM. RTS. WATCH (Nov. 26, 2018, 8:01 PM) <https://www.hrw.org/news/2018/11/26/chinese-courts-give-domestic-abusers-pass> [<https://perma.cc/C5YB-EKM6>].

106. *Id.*

107. Lu Pin, *Two Years On: Is China’s Domestic Violence Law Working?*, AMNESTY INT’L (Mar. 7, 2018), <https://www.amnesty.org/en/latest/campaigns/2018/03/is-china-domestic-violence-law-working> [<https://perma.cc/7KBA-F6L3>].

108. Liu, *supra* note 56.

109. Lu Zhang, *Chinese Women Protesting Domestic Violence: The Beijing Conference, International Donor Agencies, and the Making of a Chinese Women’s NGO*, MERIDIANS, Mar. 2009, at 66, 71–72 (2009).

the National People's Congress to codify anti-domestic violence legislation.¹¹⁰ Under the stewardship of Guo JianMei, the Beijing Zhongze Women's Legal Counseling and Service Center has also been a leader in domestic violence legislative reform, but has a more traditional NGO structure than the ACWF.¹¹¹ The center began with a \$30,000 grant from the Ford Foundation and was known for providing assistance for women who were victims of domestic violence and needed legal counsel.¹¹² From 1995 to 2010, the center was able to "provide free legal advice to more than 70,000 people, take on close to 3,000 cases, carry out more than 80 training sessions and seminars on women's rights, submit over 70 recommendations on laws and regulations, and publish 13 books and over 200 articles."¹¹³

Given the structure of Chinese organizations, international organizations and the funding they provided were of particular importance to local NGOs. Private funding was in short supply, which scholars attributed to the fact that there "is not only a lack of philanthropic tradition, there is also a lack of cultural acceptance of charitable giving and of a supportive legal infrastructure to encourage philanthropic donations."¹¹⁴ In addition, state funding was limited, particularly given the uneasy relationship between civil society and the government even during times of relative political stability.¹¹⁵ These factors meant that foreign funding sources—despite their many problems—were a vital force in China during the 1990s and beyond.

One key organization in the region during the wake of the Beijing Conference was the development-focused Ford Foundation. The Ford Foundation's efforts to create an important transnational exchange of international scholars and practitioners with China's women's rights activists were important in transforming modes of discourse and practice.¹¹⁶ The organization began its work in China in 1979, focusing on connecting members of different organizations

110. *Id.*; BEIJING ZHONGZE WOMEN'S LEGAL CONSULTING SERVS. CTR., THE SHADOW REPORT OF CHINESE WOMEN'S NGOS ON THE COMBINED SEVENTH AND EIGHTH PERIODIC REPORT SUBMITTED BY CHINA UNDER ARTICLE 18 OF THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN, (2014), https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/CHN/INT_CEDAW_NGO_CHN_18139_E.pdf [<https://perma.cc/6FE5-VQNY>].

111. Liu, *supra* note 56.

112. Cao, *supra* note 18.

113. *Id.*

114. Zhang, *supra* note 109, at 78.

115. Liu, *supra* note 56.

116. *See generally* de Silva de Alwis & Klugman, *supra* note 81.

and then working with those organizations to make them more effective within China.¹¹⁷ The Ford Foundation's focus emphasized law as a means of change, particularly the framework of international law and specifically new treaties including the Convention on the Elimination of All Forms of Discrimination (CEDAW).¹¹⁸ While the Ford Foundation did not directly influence decision-making within NGOs, it was able to provide significant support to a range of organizations within China. In fact, one of the Ford Foundation's goals was to create programs outside of major cities because of the unique problems faced by women in rural China and the lack of attention received by those outside of major metropolitan areas.¹¹⁹

D. *Current Progress*

Changes in cultural perceptions toward domestic violence, media campaigns, and NGO activism were responsible for China's 2015 legislative efforts.¹²⁰ NGO leadership may be one of the answers for successful implementation and formation of legislation, but operational problems exist. Notwithstanding purported high-level support for women's rights from Chinese government policy, ancillary legislation that impacts funding sources and NGO autonomy threatens the successful implementation and development of change.¹²¹ Chinese civil society is already highly regulated and fraught with legal complications, meaning that NGOs operate in a space where exact regulation depends on the political climate and executive whims.¹²² Such instability only worsened after 2016, when legislation that governs foreign NGOs changed, signaling an even lower government tolerance to many NGO organizations.¹²³ This has produced an environment where an "overseas NGO and

117. *Our Work Around the World: China*, FORD FOUND., <https://www.fordfoundation.org/our-work-around-the-world/china> [<https://perma.cc/SW72-PAZK>].

118. INT'L CTR. FOR RSCH. ON WOMEN, RECOGNIZING RIGHTS PROMOTING PROGRESS (2010), <https://www.icrw.org/wp-content/uploads/2016/10/Recognizing-Rights-Promoting-Progress-CEDAW.pdf> [<https://perma.cc/4P5E-QJJG>].

119. *Id.*

120. Pin, *supra* note 107.

121. Didi Kirsten Tatlow, *China Is Said to Force Closing of Women's Legal Aid Center*, N.Y. TIMES (Jan. 29, 2016), <https://www.nytimes.com/2016/01/30/world/asia/beijing-women-legal-aid-guo-jianmei.html> [<https://perma.cc/8XSG-VSK4>].

122. *See Law of the People's Republic of China on Administration of Activities of Overseas Nongovernmental Organizations in the Mainland of China*, *supra* note 57.

123. *Id.*; see also Anna Jane High, *Grassroots NGO Regulation and China's Local Legal Culture*, 9 SOCIO-LEGAL REV. 1 (2013).

its Chinese partner will need to file the required materials about their collaboration and any necessary approvals with the police,” hardly a conducive environment for supporting and implementing support programs.¹²⁴

Changes to NGO laws along with changes in activism meant that organizations such as the Ford Foundation have now left China after years of continuous support for smaller organizations.¹²⁵ Given the absence of these support structures and the presence of regulations, it has become more difficult for organizations to continue to make an impact. Within the context of domestic violence centers, particularly within the legal field, everything from events to individual legal representation has faced strict scrutiny. NGO operators told stories of spending a significant amount of time, since the 2016 legislation change, working to comply with the government’s increasingly hostile regulations on NGOs and women’s rights advocacy groups, requiring everything from special registration to severe funding restrictions.¹²⁶ This also creates a culture of fear at organizations that are attempting to balance supporting clients against avoiding government sanctions. Even in cases where no trigger or “violation” appears to exist, the government has shown a willingness to curtail or even shut down women’s rights groups.¹²⁷ Not only do these regulations prevent domestic Chinese support for victims, but they also make it difficult for international bodies to provide support for implementation efforts and effectively end processes, such as academic collaborations between NGOs and foreign universities. Given the highly international nature of the domestic violence discussion in China, dwindling connections with foreign universities and international funding pools are particularly concerning.

While the broader framework of NGO action in China has created difficulties, the domestic violence laws themselves have also created concerns. Perhaps the most significant problem with China’s domestic violence law is the limited scope of its coverage, with no provisions for women who are not part of a conventional family structure.¹²⁸ Furthermore, women who are injured are not able to

124. Chongyi Feng, *The NGO Law in China and Its Impact on Overseas Funded NGOs*, COSMOPOLITAN CIV. SOCIETIES: AN INTERDISC. J. 95, 98 (2017).

125. See *Urge Chinese Authorities to Reopen The Center for Women’s Law Studies and Legal Services*, CHANGE.ORG, <https://www.change.org/p/chinese-authorities-stand-with-guo-jianmei-and-the-center-for-women-s-law-studies-and-legal-services> [https://perma.cc/TU4A-39ZK].

126. Liu, *supra* note 56.

127. See Tatlow, *supra* note 121.

128. See Mak, *supra* note 13.

work within the criminal system without meeting a very high injury standard. Thus, revision needs to be made to broaden the scope of the law.

One key barrier to domestic violence improvement in China is the recent COVID-19 outbreak, which has revealed legislation to be insufficient at controlling and punishing domestic violence offenses. The actual increase in domestic violence cases is all but impossible to measure, but a recent report from the Hubei province indicated a coronavirus-related increase from 47 to 162 cases in 2020.¹²⁹ Women staying home have nowhere to go to escape a potential abuser, and the authorities appear to be devoting little effort to controlling patterns of abuse. For instance, “a woman in Guangdong Province, who suffered from life-threatening violence when staying at her ex-husband’s house in January, was told by local officials that she was prohibited from leaving her village even after she explained the situation.”¹³⁰ Yet the pandemic may only be exposing government attitudes toward domestic violence that were already in place. As activist Feng Yuan details, “[i]t looks to me like the epidemic has not affected [the government’s] law enforcement capacity. . . . If they use the epidemic as an excuse to not deal with domestic violence cases, that’s not acceptable.”¹³¹ The government’s unwillingness to protect women against domestic violence during the era of COVID-19 is perhaps a sign of shifting attitudes away from regulation, a trend that has forced activists to also adapt.

III. CURRENT FORMS OF ACTIVISM: IS IT A NEW WAVE?

In part because of the recent changes in government procedures, activism is shifting from the center to the edges of civil society. Instead of following traditional paths, activists are attempting to capitalize on new forms of technology and escape government censorship. It is difficult to define in absolutist terms whether this is a new wave of advocacy or existing advocacy in a new guise. Because of tighter regulations promulgated by the Chinese federal government, tight connections between NGOs and the government are no longer as practical and the politically connected domestic violence NGOs of the past have been reduced in capacity and power.

129. *Id.*

130. Jiayun Feng, *Covid-19 Fuels Domestic Violence in China*, SUPCHINA (Mar. 24, 2020), <https://supchina.com/2020/03/24/covid-19-fuels-domestic-violence-in-china> [https://perma.cc/29E3-XY64].

131. Zhang Wanqing, *Domestic Violence Cases Surge During COVID-19 Epidemic*, SIXTH TONE (Mar. 2, 2020), <https://www.sixthtone.com/news/1005253/domestic-violence-cases-surge-during-covid-19-epidemic> [https://perma.cc/4Z-JD-DRNZ].

What is clear is that the domestic violence framework originally created in the early 2000s has served as a foundation for a range of new women's rights movements in China, which are using the law as a medium for change. Although shifts in activism cannot be pinned down or reduced to labels, we like to broadly categorize this as a second wave or second generation of post-Beijing gender activism—a shift from primarily women's rights activism to gender-based activism. Imperfect as these categories are, they help develop an organizing framework of analysis.

The current wave of activism is diverse insofar as the level of engagement that groups have with the law, as a source of reform for women's rights, varies significantly. Movements such as MeToo have embraced traditional elements of legal reform and demonstrate a more direct desire to influence the culture surrounding sexual harassment in China. In contrast, performance activism groups, such as the women who formed the "Occupy Bathrooms" movement, a group of women protesting the ratio of women's to men's bathrooms, only marginally turned to the law as a means of change and instead focused on awareness. Finally, some activism has continued to take place in the courtroom, such as the developing transgender rights movement.

Beyond these general distinctions, there appear to be several defining characteristics of modern-day activism in China that focus on gender issues. Not only are activism organizations smaller and more granular, but they also have fewer connections to upper-level Chinese legislation bodies and the government. Feminist scholar Leta Hong Fincher points to this phenomenon in her description of younger women without traditional professional experience—sometimes even as young as high school aged—joining activist groups and volunteering for budding feminist movements.¹³² While the political capital and average age of activists may be decreasing, Chinese women have proven their capacity to organize around new issues and circumvent government regulations in both traditional and contemporary activist movements.

In addition, contemporary activism—even activism for transgender rights, which has used the courtroom to create change—appears to be turning away from strictly legal reform and instead focusing first on cultural changes. This may be a consequence of problems with past legislative change, as well as the gap women growing up in China have experienced between laws on paper and in reality. For instance, China's 2015 domestic violence

132. See LETA HONG FINCHER, *BETRAYING BIG BROTHER: THE FEMINIST AWAKENING IN CHINA* (2018).

legislation was progressive and represented a monumental change in Chinese policy, but women in China still underreport violence or face resistance from law enforcement when reporting domestic violence instances.¹³³ This deficiency has only been underlined by the COVID-19 pandemic, as women across China found themselves with no escape from violent households during the peak of the pandemic. In the face of these obstacles, women hoping to push forward change may be abandoning legal reform as a primary element of their platform.

A. *MeToo Movement and the Role of the Internet in Advancing Women's Rights*

While China is known for strict online regulations that curtail citizens' access to media and capacity to speak freely, this has not stopped women from embracing the goals and activism of the worldwide MeToo movement originally formed in 2006.¹³⁴

Unlike the area of domestic violence where China appears willing to legislate, there have been markedly few legislative and law-based developments in the area of sexual harassment. The resistance to MeToo is both cultural and legal. The current Chinese legal system does not include extensive protections for women facing sexual harassment. For instance, Article 40 of the Law of the People's Republic of China on the Protection of Women's Rights and Interests (2005 Amendment), states that "sexual harassment against women is prohibited," and "victims have the right to lodge complaint to unit or organ concerned," but this legislation is not clear about the definition of sexual harassment or the potential consequences for those who violate the law.¹³⁵ Furthermore, Article 58 of the 2005 Amendment states that "[if] anyone commits sexual harassment or family violence against a woman to violate this Law, and if his act constitutes a violation of the public security administration, the victim may require the public security organ to give the violator an administrative punishment or may initiate a civil action in the people's court."¹³⁶ Like Article 40, there is little clarification within the text of Article 58 to define the scope of the protection, rendering the law ineffective in practice. A different

133. See *supra* Subpart II.A.

134. See Trina Jones & Emma E. Wade, *Me Too?: Race, Gender, and Ending Workplace Sexual Harassment*, 27 DUKE J. GENDER L. & POL'Y 203 (2020).

135. See *Law on the Protection of Women's Rights and Interests of the People's Republic of China (Revised 2005)*, REFWORLD, <https://www.justice.gov/sites/default/files/eoir/legacy/2013/11/08/Protection%20of%20Women%27s%20Rights.pdf> [<https://perma.cc/ZE2U-3URT>].

136. *Id.*

provision created in 2012 made employers responsible for instances of sexual harassment, and in 2013 men became protected under sexual harassment policies.¹³⁷

Women have promulgated the MeToo hashtag in China, just as activists before them pushed for action against domestic violence. Women in China face significant cultural barriers in the arena of sexual harassment, as Asian women are significantly less likely than other groups to report sexual assault.¹³⁸ In part because of these barriers, the movement began slowly in China with a focus on diaspora communities, a segment of the population removed from the watchful eye of the Chinese government. Women online have had to get creative to avoid government censorship, for example by using different hashtags like “Rice Bunny” and “WoYeShi” to represent the original MeToo phrase.¹³⁹ Efforts have gone even more high-tech, as some sexual assault activist groups have used blockchain websites in order to avoid censorship and encrypted messages to ensure privacy.¹⁴⁰

One salient example of activism against sexual harassment in China is the case of Luo Qianqian, a woman who was assaulted by her Ph.D. supervisor in Beijing.¹⁴¹ In 2018, Luo, a former student at Beihang University in Beijing, posted to her Weibo page using the “WoYeShi” hashtag to shed light on her assault and promote the MeToo movement in China.¹⁴² The assault had taken place nearly thirteen years before Luo—motivated by the world’s response to the Harvey Weinstein accusations—spoke out.

Some positive change has occurred since the Luo case. A group of students and graduates from Chinese universities signed an open letter that stated, “[s]exual harassment is in fact rampant

137. *Memorabilia on Anti-Sexual Harassment in China (1995–2019)*.

138. Wei Sun, *Rice Bunny and #WoYeShi: Online Reactions of Overseas Chinese to the #MeToo Movements in China and the West*, 31 *How. J. COMM’NS* 245, 247 (2020).

139. *Id.* at 246.

140. Maria Repnikova & Weile Zhou, *#MeToo Movement in China: Powerful Yet Fragile*, *ALJAZEERA* (Oct. 22, 2018), <https://www.aljazeera.com/indepth/opinion/metoo-movement-china-powerful-fragile-181022082126244.html> [<https://perma.cc/7WAZ-DSG8>].

141. Tom Phillips, *China’s Women Break Silence on Harassment as #MeToo Becomes #WoYeShi*, *GUARDIAN* (Jan. 8, 2018, 10:45 PM), <https://www.theguardian.com/world/2018/jan/09/china-women-break-silence-harassment-metoo-woyeshi> [<https://perma.cc/P6FF-PG4U>].

142. Viola Zhou & Sarah Zheng, *Chinese Students Use #MeToo to Take Fight Against Sexual Harassment to Elite Universities*, *S. CHINA MORNING POST* (Jan. 15, 2018, 10:19 AM), <https://www.scmp.com/news/china/society/article/2128341/chinese-students-use-metoo-take-fight-against-sexual-harassment> [<https://perma.cc/C2A2-RS7M>].

on Chinese college campuses, and victims, under coercion from their instructors, usually have nowhere to file their allegations. Even if they are brave enough to speak up, justice is not served in many cases.”¹⁴³ This form of action is particularly risky in China, as authorities have been known to jail activists who engage in conduct as benign as handing out stickers on sexual harassment on public transportation.¹⁴⁴ The Chinese government responded in January 2018 to the Luo Qianqian protests, “applaud[ing] Beihang for not hiding evil nor covering up the crimes,” and noting that it has “zero tolerance for teachers who violate professional ethics.”¹⁴⁵

Actual legal reform has also taken place. The Ministry of Education in China outlined a new zero tolerance policy against sexual harassment and planned to establish a new mechanism to prevent sexual harassment.¹⁴⁶ Proposals to the sexual harassment laws are being drafted for passage as early as 2020.¹⁴⁷ Women-only subway cars have also been introduced in Guangzhou as a means to control sexual assault that occurs on public transit, and in the province of Jiangsu, a new sexual harassment rule established a duty for companies change policies to prevent sexual harassment in the workplace.”¹⁴⁸

Several administrative guidelines have also been put in place to further support women facing sexual violence. This includes the newly amended Civil Code IV, which now stipulates that victims are able to obtain standing in civil court against their perpetrators.¹⁴⁹ In addition, the criminal code was expanded so that an individual who secretly takes pictures or attempts to sexually harass an individual

143. Xiao Meili, *China Must Combat On-Campus Sexual Harassment: An Open Letter*, SUPCHINA (Jan. 8, 2018), <https://supchina.com/2018/01/08/china-must-combat-on-campus-sexual-harassment-an-open-letter> [<https://perma.cc/7N8Q-67FP>].

144. See HONG, *supra* note 132, at 1–2.

145. Jiayun Feng, *People's Daily Encourages More 'Silence Breakers' In Nod to #MeToo Movement*, SUPCHINA (Jan. 12, 2018), <https://supchina.com/2018/01/12/peoples-daily-encourages-silence-breakers-nod-metoo-movement> [<https://perma.cc/ZM9Z-FAQG>].

146. AFP, *China Plans Law Against Sexual Harassment*, HONG KONG FREE PRESS (Aug. 28, 2018), <https://www.hongkongfp.com/2018/08/28/china-plans-law-sexual-harassment> [<https://perma.cc/B5GE-PQHG>].

147. *Id.*

148. Nico Han, *The #MeToo Movement in China*, GLOBE (Nov. 8, 2018), <https://www.nytimes.com/2018/03/04/business/china-women-only-subway-cars.html>.

149. Xiaonan Liu, *New Developments in Sexual Harassment Lawmaking in China*, CHINA UNIVERSITY OF POLITICAL SCIENCE AND LAW.

by distributing private information will face short-term detentions and fines.¹⁵⁰

Instances of sexual harassment are not limited to the educational sphere, and women across all professions have reported harassment. Zhou Xiaoxuan gained international recognition for her 3000-character essay detailing the sexual assault she experienced as an intern for a famous television host.¹⁵¹ Her harasser, Zhu Jun, is a famous anchor in China. Thus, Zhou became both a face for the bravery of the MeToo movement in China as well as a target for Zhu, who reportedly filed a lawsuit against Zhou.¹⁵² A lawyer commenting on the cases stated that “[m]ore young people are willing to stand up and speak” because of the impact of Zhou and the MeToo movement.¹⁵³ Zhou has undeniably motivated the spread of the movement within China, even if in a limited way.¹⁵⁴

The Chinese government’s limitations and controls on internet posting motivate activists’ efforts to increase the presence of the MeToo movement. As discussed above, the government has censored “WoYeShi” petitions. Further, almost no celebrity support in China exists for the movement. The state also shut down the WeChat account of NGO group Feminists’ Voices in response to the movement.¹⁵⁵ These obstacles indicate that many steps are still needed for China to effectively allow activism and control harassment.¹⁵⁶ However, as China continues to globalize, the power of the Chinese government to exert control becomes more limited. Just as a historic domestic violence reform involved American plaintiff Kim Lee, here too women outside of China are better positioned to speak out on the MeToo movement and avoid potential sanctions. Thus, the globalized nature of the internet may be a window for future action for women in China, both in the MeToo movement and beyond.

B. *Occupy Bathrooms Movement and Performance Activism*

Action is occurring both online and through more unconventional methods. A surprise wave of activism in China was the 2012 “Occupy Bathrooms” movement. This was an unlikely focus for

150. *Id.*

151. See Javier C. Hernández, *She’s on a #MeToo Mission in China, Battling Censors and Lawsuits*, N.Y. TIMES (Jan. 4, 2019), <https://www.nytimes.com/2019/01/04/world/asia/china-zhou-xiaoxuan-metoo.html> [https://perma.cc/7XUF-KT9X].

152. *Id.*

153. *Id.*

154. *Id.*

155. See Repnikova & Zhou, *supra* note 140.

156. See *id.*

activist movements that typically address broadscale issues, where instead this issue specifically addresses how women are inconvenienced by being forced to wait in long lines for public restrooms given unequal stall ratios in China.¹⁵⁷ Activists connected this small inequality to the greater human rights framework, including international human rights treaties such as the CEDAW. Given the elevated need for women's bathrooms compared to men's bathrooms, activists advocated for the gendered bathroom ratio of one-to-one by having women across China walk into men's bathrooms and refuse to exit.¹⁵⁸ They bore slogans such as: "[i]f you love her, don't force her to wait," and "[g]reater convenience for women is gender equality" to emphasize the movement's focus on the legitimacy of convenience as a right worth advocating for.¹⁵⁹

The movement, while small, was carefully planned and implemented with an organizational fervor reminiscent of the NGO activists that preceded them. While the protests began in the Guangzhou region, they quickly garnered publicity among women from other areas of China and eventually spread to twelve cities.¹⁶⁰ Furthermore, the specific strategies used were carefully planned, taking into account everything from police activity to lessons learned from extensive research on a similar "Occupy Bathrooms" movement that took place in Taiwan in 1996.¹⁶¹ According to organizers of the movement, "[w]e also encourage women's participation in seemingly very small successes, area by area We wanted to encourage women to take their own problems into consideration in the framework of national or local public policy so that they have courage to take action and speak out."¹⁶² Activists in charge of the movement focused on the nontriviality of issues that may appear trivial, stating that "[t]he significance of occupying the men's toilet is to let women everywhere realize that even the small problems, such as toilet waiting times, are not their own [problems] but they are problems that public policies should face and deal with their issues in a two-way process."¹⁶³

157. Derek Mead, *The Women Behind China's Occupy Toilet Movement Has Been Canned*, VICE (Mar. 5, 2012, 11:15 AM), <https://www.vice.com/en/article/jppkk4/the-leader-of-china-s-occupy-men-s-bathroom-movement-has-been-canned> [<https://perma.cc/Z2EU-Y76C>]; Interview with anonymous source (Apr. 2020).

158. Anonymous source, *supra* note 157.

159. *Id.*

160. *Id.*

161. *Id.*

162. *Id.*

163. *Id.*

Despite the innocent nature of the protest and the seemingly apolitical nature of bathroom politics, the women who spoke out have faced a range of pushback from the government.¹⁶⁴ For instance, activist leader Li Tingting was routinely targeted by government officials for her role in the bathroom activism.¹⁶⁵ What began as subtle attempts to stop her persistent protests eventually became openly aggressive tactics when the government began to follow her family and threaten her academic standing.¹⁶⁶ Tingting was not alone in the attention she received from the government. Other members of the protest were arrested for their participation, and several were threatened with prison sentences of up to ten years.¹⁶⁷

The bathroom movements may have long passed, yet the influence of this form of performance activism continues to serve as inspiration to find a new path for the feminist movement in China. In a country where the internet is not free to post about MeToo and NGOs are not able to serve as advocates for domestic violence victims, the activists of the current generation are resorting to unconventional methods to have their voices heard. Specifically, they seek to capture the power of grassroots activism, as well as lean into intersectionalities.

For example, the Feminist Five are a symbol of the pervasiveness of women's rights activism in China. Like the bathroom movement, the group is known for public protests, which have included dressing up in bloody wedding dresses to protest domestic violence or head shaving to protest the gender gap.¹⁶⁸ Other actions include planning to hand out stickers in support of

164. Eric Fish, *A Chinese Woman Walks Into a Men's Room . . . and Ends Up in the Cross-Hairs of State Security. What Happened?*, FOREIGN POL'Y (Mar. 19, 2015, 1:37 PM), <https://foreignpolicy.com/2015/03/19/china-gender-sex-issues-dissident> [<https://perma.cc/6MGV-SJ45>].

165. *Id.*; See also Didi Kirsten Tatlow, *Year After Detentions, Chinese Feminists Mark Setbacks and Progress*, N.Y. TIMES (Mar. 7, 2016), <https://www.nytimes.com/2016/03/08/world/asia/china-feminists-women-domestic-violence.html> [<https://perma.cc/3G7E-FYPJ>].

166. Fish, *supra* note 164.

167. Leta Hong Fincher, *China's Feminist Five*, DISSENT MAG. (Fall 2016), <https://www.dissentmagazine.org/article/china-feminist-five> [<https://perma.cc/Q4QC-VYVJ>]; Edward Wong, *Despite Release, Feminists' Case Shows China's Hostility Toward Civic Action*, N.Y. TIMES (Apr. 14, 2015), <https://www.nytimes.com/2015/04/15/world/asia/out-of-beijing-jail-chinese-women-activists-still-under-eye-of-the-police.html> [<https://perma.cc/4BX5-4HTC>].

168. Wong, *supra* note 167; Diana Fu, *Why Is Beijing Afraid of Chinese Feminists?*, WASH. POST (July 27, 2017, 4:00 AM), <https://www.washingtonpost.com/news/monkey-cage/wp/2017/07/27/why-is-beijing-afraid-of-chinese-feminists/> [<https://perma.cc/7H9U-G3LB>].

International Women's Day, an act that resulted in the detention of all five women.¹⁶⁹ It was not until thirty-seven days later, when social and diplomatic pressure increased, that the women were finally released.¹⁷⁰

The Feminist Five—and women's activism as a whole—has also taken their performance activism to fuel intersectional activism, particularly through the advocacy of LGBTQ issues. In part because of China's lack of dialogue surrounding these issues, there is a reported gap in Western understandings of the LGBTQ movement in China and the ways in which feminism has informed this movement.¹⁷¹ Starting in 2012, "a group of anonymous queer feminists engaged in fierce online debates with gay male activists, drawing heavily from queer theory to challenge what was seen as the latter's conservative biological essentialist views on sexuality."¹⁷² The foundation of the Feminist Five also has roots in the LGBTQ world, as protestor and Feminist Five member Li Maizi describes herself as "a lesbian and an international slut," a satirical reference to the tendency in China to avoid any topics of a sexual nature, and is open about her experiences as an LGBT woman and how this shapes her protest.¹⁷³ Similar to the Feminist Five movements, LGBTQ efforts are also heavily controlled by the Chinese government, with Chinese authorities limiting everything from online content to demanding that an LGBTQ art space in Shanghai be dismantled.¹⁷⁴

169. Tania Branigan, *Five Chinese Feminists Held Over International Women's Day Plans*, GUARDIAN (Mar. 12, 2015, 2:03 PM), <https://www.theguardian.com/world/2015/mar/12/five-chinese-feminists-held-international-womens-day> [https://perma.cc/UYY8-8YPV].

170. *Id.*; Leta Hong Fincher, *China's Women's Movement Has Not Only Survived an Intense Crackdown, It's Grown*, GUARDIAN (Mar. 7, 2019, 12:57 AM), <https://www.theguardian.com/world/commentisfree/2019/mar/07/chinas-womens-movement-has-not-only-survived-an-intense-crackdown-its-grown> [https://perma.cc/W4VE-PBXP].

171. Moreno-Tabarez, Chávez, Leonelli, Huang, Deklerck & Rother, *supra* note 36.

172. Liu, Huang & Ma, *supra* note 35, at 15.

173. Echo Huang, *Activist Li Maizi on Why Feminism Is "Going Backwards" in China*, QUARTZ (Mar. 13, 2017), <https://qz.com/928560/feminist-five-activist-li-maizi-on-why-feminism-is-going-backwards-in-china> [https://perma.cc/CJK3-2JGB].

174. Steven Jiang, *China's LGBTQ Artists Persevere as Censors' Grip Tightens*, CNN (June 30, 2019), <https://www.cnn.com/style/article/china-lgbtq-artists/index.html> [https://perma.cc/RB44-Q6YX].

C. *Burgeoning LGBTQ Advocacy: First-in-Class Cases*

New forms of activism have embraced a turn away from the law as an avenue for change in China, a trend not surprising given the limitations of legal reform as a way to create meaningful change. However, within the area of transgender rights, traditional forms of activism that harken back to the early days in the wake of the Beijing Conference continue. While the details of many cases related to transgender rights in China are difficult to unearth, there appear to be two distinct cases that defined the movement for legislative reform on transgender rights and shaped the ways that legislative changes can be utilized.

The first ever case in China to involve a question on transgender employment discrimination moved through Chinese courts from 2017 to 2018 and involved a general labor dispute.¹⁷⁵ The case involved a transgender man who was fired from his job for a period of one week for wearing men's clothing to work.¹⁷⁶ The court stated that “[o]ne’s gender identity and gender expression belong under the protected scope of the right to dignity. . . . The gender identity and expression of an individual should be respected.”¹⁷⁷ The court’s holding was clear, but the damages appeared to be mainly symbolic, as the employer was forced by the court to pay the man only around \$300.¹⁷⁸ The case was argued by an LGBTQ advocacy organization named Common Language, reminiscent of the seminal role that NGOs played during the domestic violence legislation and cases of years past.¹⁷⁹ Common Language, the organization in question here, “focuses on Chinese communities suffering from

175. Jonathan Kaiman, *China’s First Transgender Employment Discrimination Case Heads to Court*, L.A. TIMES (Apr. 11, 2016, 10:27 AM), <https://www.latimes.com/world/asia/la-fg-china-transgender-20160411-story.html> [<https://perma.cc/5KLG-74EM>].

176. *Id.*

177. Common Language, *Republish: Chinese Transgender Employment Discrimination Case Wins Groundbreaking Court Statement*, OUTRIGHT ACTION INT’L (Feb. 6, 2018), <https://outrightinternational.org/content/republish-chinese-transgender-employment-discrimination-case-wins-groundbreaking-court> [<https://perma.cc/E797-36Z6>].

178. Emily Rauhala, *Transgender Chinese Man Wins First-of-Its-Kind Labor Discrimination Case*, WASH. POST (July 27, 2017, 3:34 AM), <https://www.washingtonpost.com/news/worldviews/wp/2017/07/27/transgender-chinese-man-wins-first-of-its-kind-labor-discrimination-case> [<https://perma.cc/C5W2-86M4>].

179. Zou Yun, *China’s First Employment Discrimination Case Involving Transgender Man Ends With Signs of Progress*, CHINA DEV. BRIEF (Feb. 13, 2018), <https://chinadevelopmentbrief.cn/reports/chinas-first-employment-discrimination-case-by-a-transgender-man-ends-with-signs-of-progress> [<https://perma.cc/RHF6-NU9V>].

discrimination and violence based on sexual orientation, gender identity and expression . . . advocating for equal rights, public awareness, and combating violence and discrimination through community empowerment, direct aid services, public education, and policy advocacy.”¹⁸⁰ In an era when NGOs in China are carefully monitored and controlled by the central government, this level of success on a controversial case is significant and unique given that comparable organizations are rare throughout China.

The second case occurred from 2018 to 2019 and stemmed from allegations of misconduct in the Xiao Ma V. Ci Yuan company, where a woman was fired from her job for receiving gender confirmation surgery.¹⁸¹ The case represents the strain that China has often expressed toward members of the transgender community, even as public attitudes toward homosexuality have become more accepting. The woman at the center of the lawsuit explained the nuance when, “[a] lot of times, people think an LGBTQ-friendly company or environment is . . . actually being friendly to homosexuals or gay men, but not friendly to transgender[] [people].”¹⁸² The woman had standing to sue for harms caused by her employer’s discrimination thanks to changes to the Chinese law on employment rights as related to standing.¹⁸³ Chinese attorney Zhu Bao explained the importance of these changes to Chinese employment law in creating change: “Prior to the 2018 law provision, the court wouldn’t be able to try such cases . . . Put simply, one does not even have a chance to lose their case.”¹⁸⁴

While these positive changes to transgender rights and legislation demonstrate the continued power of legal reform as a path to change, it still remains to be seen how much these cases will practically impact transgender rights within China. Despite victories in the courtroom, there have been multiple setbacks; for example, the “police canceled an LGBT conference called Speak Out 2017 in the city of Xian and reportedly detained the organizers for eight

180. *About Us*, COMMON LANGUAGE, <http://www.tongyulala.org/en/index.html> [<https://perma.cc/C64T-KHLX>] (last visited Apr. 17, 2021).

181. Kelly Wang, *Trans Woman Puts Chinese Law to the Test in Landmark Case*, HONG KONG FREE PRESS (Dec. 10, 2019), <https://hongkongfp.com/2019/12/10/trans-woman-puts-chinese-law-test-landmark-case> [<https://perma.cc/KL9J-GW-MG>].

182. *Id.*

183. *Id.* (detailing “a 2018 provision added to the law by China’s Supreme People’s Court governing ‘equal employment rights disputes’”).

184. Qin Chen, *Chinese Transgender Woman Sues Ex-employer in Landmark Case*, INKSTONE (Dec. 12, 2019), <https://www.inkstonenews.com/society/chinese-transgender-woman-sues-ex-employer-landmark-case/article/3041804> [<https://perma.cc/7932-2MZS>].

hours. [Then i]n June, regulators moved to ban LGBTQ content from video platforms.”¹⁸⁵ These examples indicate that while legal victories have occurred, transgender rights are far from protected in China.

IV. DISCURSIVE DISCUSSION

This background of activism provides clues for how the women's movement has progressed in China. Several key trends and insights emerge and provide context for the past decades of activism.¹⁸⁶ Differences in the size and scope of organizations as well as the methods utilized have changed with the development of technology and a new political climate; however, the overarching goals of the movements have remained intact.

A. *Key Distinctions*

From to the changes that occurred, there are several distinctions between the two “waves” of women's activism in China that have emerged. One such distinction is regarding the size of NGOs. The development of the second wave of activism in China indicates a departure from previously employed methods in the immediate wake of the Beijing Conference. Women have gone from organizing through established NGOs with political, academic, and international ties to smaller and more localized movements. This is best exemplified through the leading NGO that emerged in the post-Beijing space: the Women's Legal Counseling and Service Center, an organization that was itself integral to the political push toward the Beijing Conference.¹⁸⁷ These politically powerful organizations were successful after the Beijing Conference when it seemed that government leaders would take female advocates seriously and foreign aid for nonprofit organizations continued to find its way into China.¹⁸⁸

However, new regulations on the kinds of legal representation that can be provided have made it all but impossible for organizations to provide legal assistance for women who have faced domestic violence within the home. While small and large organizations have played an integral role in the development of the women's movement across every stage in China, the current political limitations on NGOs and the platform that online media

185. Rauhala, *supra* note 178.

186. Note that any trends over time must be qualified by the complex nature of NGO action in China and the broad scope of the women's rights movement.

187. Tatlow, *supra* note 121.

188. *See supra* Part II.

provides individuals mean that many activists are not NGOs but rather small groups or even individual women. Sites like Weibo allow for women to express their opinion and convey a particular message to the general public. Individuals' vital importance is most prevalent in the MeToo movement, where women are posting alone for the world to see.¹⁸⁹

Given the increased restrictions that have occurred in civil society in China, as well as the ever-developing tendency for the government to turn away from academic or grassroots movements when making policy decisions, activism was forced to change. While these "first wave" activist organizations continue to exist, they have not experienced the success—at least as it relates to legal reform—that was once considered possible, a result that has spurred the growth of a new wave of activism in China. This activist trend may have been informed by its seniors, yet the form is markedly different. New activists are younger, utilize online tools, and are willing to grapple with issues at the edges. Instead of primarily focusing on "classic" women's rights issues like domestic violence, they are instead turning to other burgeoning issues that have been ignored, from bathroom rights to sexual assault. Not only are these issues more controversial within China, but they also represent areas of the law that have been ignored by even Western activists until recently.

The COVID-19 crisis provides another example of the adaptability of women's rights groups, as activism and criticism have gone online while women are confined to their homes.¹⁹⁰ These developments illustrate the ways the women's rights movement has responded to a new political atmosphere, as well as how it has adapted to let activists' voices be heard despite new challenges and restrictions that were not in play in 1995.¹⁹¹

Beyond the tools activists use to get their message across, the structure of activism and the goals Chinese women are fighting for have changed as well. Women of the modern wave of activism appear to be more willing to embrace intersectionalities, such as the ways that LGBTQ rights come together with women's rights. For instance, several members of the famous present-day Feminist Five group not only promoted themselves as activists for women's rights but also for queer women or women with disabilities who face even

189. Repnikova & Zhou, *supra* note 140; Phillips, *supra* note 141.

190. Jonathan Pinckney, *Amid Coronavirus, Online Activism Confronts Digital Authoritarianism*, U.S. INST. PEACE (Apr. 28, 2020) <https://www.usip.org/publications/2020/04/amid-coronavirus-online-activism-confronts-digital-authoritarianism> [https://perma.cc/WV5W-38Z3].

191. See generally Rangita de Silva de Alwis, *Opportunities and Challenges for Gender-Based Legal Reform in China*, 5 E. ASIA L. REV. 197 (2010).

more challenges in China.¹⁹² The intersections between feminism and the movement for disability rights has also emerged as one key link despite government pressure faced by disabilities rights leadership.¹⁹³ The increase in intersectionalities¹⁹⁴ may be a product of a cultural and political increase in popularity of these types of rights, as issues from LGBTQ rights have moved from the fringe toward the center in China. Thus, modern movements appear to have accomplished one element of the feminist dream: the ability to give women flexibility. Legal activism in today's China does not only mean small NGO action or a deal with the central government, but instead can cover everything from in-person protests to individual women posting their own experiences with sexual assault for the world to witness.

B. *Unifying Traits*

Distinctions among the two waves of activism are worth noting, yet the similarities that bind these groups together are of greater significance. Movements over time have dealt with changing circumstances, but the overarching goals and desired outcome of activism efforts have remained relatively constant over time.

During both waves of activism, there appears to be a continued desire to turn outwards for inspiration and to encourage legal reform. In the 1990s, international law was one tool that the women's movement used as a source of authority within China, with women turning to institutions such as the UN or international agreements, including the CEDAW. Specific standards agreed upon during the Beijing Conference were adopted by China, and the authority of the conference gave credence to women pushing for change. This ability to look to other sources has continued with developments such as the MeToo movement, where Chinese women not only adopted the strategies used across the world to call attention to sexual harassment but also modified the approach used to circumvent potential censorship.

In addition, both movements have shown an ability to look toward a combination of both aspirational and unconventional goals as part of their platforms. In China in the early 1990s, a focus on domestic violence and the aggressive steps proposed to

192. Liu, Huang & Ma, *supra* note 35.

193. See, e.g., *China: Government Should Release Disability Rights, Internet Activists*, FREEDOM HOUSE, (July 28, 2019), <https://freedomhouse.org/article/china-government-should-release-disability-rights-internet-activists> [https://perma.cc/4HMN-D4BR].

194. Liu, Huang, & Ma, *supra* note 35; Moreno-Tabarez, Chávez, Leonelli, Huang, Deklerck & Rother, *supra* note 36.

combat it were all but unheard of, making the proposals and litigation that surrounded the early days of domestic violence activism of particular significance. This capacity to embrace controversial legal and social change has continued throughout the years as more and more rights are won for women. For instance, the recent litigation concerning transgender rights is a significantly controversial area of Chinese law. Thus, both traditional legal and performative activism-based movements have had the ability to push forward women's rights and raise awareness of women's issues that had not, at the time of the Beijing Conference, been of key concern.

CONCLUSION: THE PATH FORWARD

Looking forward, additional connections between these groups as well as transnational groups is needed to help merge both traditional and modern women's activism in China. Organizers of the new generation have been called the "Beijing-conference generation," but this references mentalities, not the types of connections utilized.¹⁹⁵ In some locations, the connections between older and younger feminists in China is apparent, as the pro-feminist cultures in larger cities in China "provided a common ground for feminists of varied ages to engage in feminist struggles across age and generational boundaries."¹⁹⁶ Yet particularly since many new movements focus on individuals¹⁹⁷ and the range of issues that now makes up the women's movement has significantly broadened since the 1990s, there appear to be fewer connections across groups. Notably, forums such as Weibo have become particularly divisive given the diversity of voices the site draws, as "[s]ome first-generation 'academic' feminist bloggers are unhappy with the ways Weibo has influenced feminist discourse, mainly because they don't like the idea of a feminism that's simplistic, brutal, and dogmatically obsessed with 'career planning.'"¹⁹⁸ Despite a range of different strands of activism and methods, the central goals of all these movements are unified: a desire to promote women's rights within China and ensure equal and fair treatment under the law.

195. Anonymous source, *supra* note 157.

196. Qi Wang, *Young Feminist Activists in Present-Day China: A New Feminist Generation?*, CHINA PERSPS., no. 3, 2018, at 59, 65 (2018).

197. For instance, the MeToo movement has consisted of primarily individual women willing to share their own stories.

198. Li Jun, *How Weibo Sold China on 'Commercially Correct' Feminism*, SIXTH TONE (July 7, 2020), <http://www.sixthtone.com/news/1005896?from=timeline> [https://perma.cc/8WPK-LJNP] (detailing the often-contradictory narratives sites such as Weibo include in their feminist discourse, a trend that has contributed to the supposed fracturing of the feminist movement).

Increased collaboration can benefit feminist movements in China, both young and old. Organizations such as the ACWF and experienced women's rights lawyers that spearheaded the initial Beijing Conference offer experience working with the Chinese government, political capital both inside and outside of China, and historical knowledge of the women's rights movement in China. Stalwarts of the women's rights movement have also been responsible for present day change in China's legal policies, including the 2015 changes to domestic violence legislation as advanced by organizations such as the Beijing Zhongze Women's Legal Counseling and Service Center.¹⁹⁹ Structural legal change requires legal acumen and experience that decades of work in the women's movement provides.

In contrast, younger activists have their own unique attributes that help them contribute to legal reform for women in China. According to Qi Wang, the younger activists have "little tolerance for gender inequality; they react spontaneously to gender discrimination . . . they do not see the state as a friend and have developed a more 'oppositional' and 'confrontational' profile."²⁰⁰ In part because of this discontent with official forums, younger women in China are increasingly able to focus their activism on cultural change, a trait of young activists that complements the traditional reforms of the older generation. If the past twenty-five years are any indication, the presence of legislation alone does not mean that laws or official state policy will translate to action on the ground. Activists and foreign scholars often push to implement legislative changes that create a broader definition for the scope of domestic violence or sexual assault and specific relief for victims.²⁰¹ These changes may indeed be necessary, but they are only powerful if they are accompanied by structural change that allows legal organizations for abused women to operate without hyper-regulation.²⁰² Combined with the knowledge of the older generation, the skills and drive of the younger generation may combat the ineffectual legislative changes made and push for structural change.

Finally, greater global support is needed to help facilitate the work of women activists in China. Financial restrictions on funding from international organizations to NGOs may limit the ability of international organizations to contribute to causes in the way that the Ford Foundation once did. However, the international

199. See *supra* Part II.

200. Wang, *supra* note 196, at 66.

201. Jia Hao, *Legal Countermeasures for Domestic Violence: From the Perspective of Family Law in China*, 5 FRONTIERS L. CHINA 302, 303-04 (2010).

202. See *supra* Part II.

community can support the work of Chinese women in a myriad of other ways. The Beijing Conference once used the UN as a platform to bring women into the spotlight in China, and this form of endorsement must continue. Notably, the UN, despite its former engagement with women's groups across China, often does not speak out about violations, such as the detention of the Feminist Five.²⁰³ But it is not only multilaterals such as the UN that have a responsibility to support and speak out. International lawyers and transnational advocates alike owe it to women in China to engage in Chinese feminist issues, provide women's advocates with a platform, and advertise both the progress that has occurred as well as the setbacks that women have faced. Thus, to actualize Clinton's famous words from 1995, women's activists in China need financial backing, an apolitical and academic focus, and increased unity among activist groups. This first quarter century post-Beijing is just the beginning.

203. Wang Zheng, *Detention of the Feminist Five in China*, 41 FEMINIST STUD. 476, 482 (2015) ("We need feminist communities to raise their voices at this time to make both the United Nations and the Chinese government understand: the test for whether China is qualified to host the September 2015 Global Summit for Women is whether the Feminist Five are completely freed or not.").