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AN ALTERNATIVE TO IMPACT LITIGATION IN CHINA: THE PROCURATOR AS A LEGAL AVENUE FOR CASES IN THE “PRIVATE FAMILY SPHERE” OF DOMESTIC VIOLENCE

Hai-Ching Yang[†]

Abstract: Impact litigation, a popular technique among non-governmental organizations, while yielding numerous benefits, exercises limited influence over traditional family matters in China, like those of domestic violence. A closer examination of the factors attributed to the failure of the domestic violence case litigated by the Peking University’s Center for Women Law Studies and Legal Aid Services highlights the need to explore the potential of the procurator. As cases and events show “family matters” transgressing from the private to the public sphere and as setbacks continue to plague non-governmental organizations in their struggle to advance social causes, the institutionalized procurator can utilize its traditional function and legal authority as a public interest advocate to litigate domestic violence cases. By implementing its existing authority and cooperating with the legal aid centers, government agencies, women’s federations, and judiciaries, the procurator may be able to achieve more optimal results for victims where external techniques have attained limited success through its multilateral approach and internal channels.

I. INTRODUCTION

“The wife is like a horse bought . . . subject to my disposal at will.”¹ For many abusive husbands in China, this traditional idea is a reflection of their thinking—that wives are “private property subject to their control.”² In one case, an abusive husband boasted without shame in front of a court, that he has beaten his wife many times and that his whippings were an effective method to control her.³ Unfortunately, violence has become a means for an abusive husband to maintain his authority and to solve

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¹ PEKING UNIVERSITY CENTER FOR WOMEN’S STUDIES AND LEGAL AID SERVICES, DOMESTIC VIOLENCE AND LEGAL ASSISTANCE 192 (Chinese Academy of Social Science, 2003). The Center quoted this phrase to illustrate the traditional gender ideas surrounding the husband’s authority.

² *Id.*

³ *Id.*

problems in the family.⁴ Faced with the challenges of domestic violence and patriarchal norms, numerous non-governmental organizations and legal aid centers have explored different means of publicizing domestic violence cases to the general public. One effective measure is the use of impact litigation by organizations such as the Peking University Center for Women Law Studies and Legal Aid Services (“the Center”).⁵ This technique publicizes “typical cases” through media and awareness efforts and creates a ripple effect, sometimes resulting in a favorable judicial decision for the plaintiff victim.⁶

Despite its numerous benefits, impact litigation suits in domestic violence cases have been stymied by structural setbacks in the legal and enforcement processes. One explanation for the limited effect of impact litigation suits could be that such lawsuits target issues that require further internal reforms in mentality and practice among judicial actors and government officials. Traditional concepts of gender, and position and duty within the family, for example, may reinforce gender stereotypes and encourage the acceptance of domestic violence.⁷ Traditional notions of gender may also inhibit judicial and governmental actors from effectively participating in cases in the “private family sphere,” such as domestic violence cases, creating higher barriers for victims to bring successful lawsuits.⁸ With multiple impediments in the legal and enforcement systems, questions point towards the need for an internal monitoring mechanism, perhaps a different party, to initiate suit where external techniques achieved limited success.

In Shi Changqing and Song Jie’s article, “Exploring The Problem of the Procurator’s Civil Litigation Activities,” the authors recommend the procurator⁹ as an important agent in cases for the public’s interest.¹⁰ The

⁴ *Id.*

⁵ Peking University Center for Women Law Studies and Legal Aid Services Homepage, Center’s Summary, <http://www.woman-legalaid.org.cn/about.asp#> (last visited Oct. 5, 2010).

⁶ CONGRESSIONAL-EXECUTIVE COMM. ON CHINA, ACCESS TO JUSTICE IN CHINA—ROUNDTABLE BEFORE THE CONGRESSIONAL-EXECUTIVE COMM. ON CHINA, 108th Cong., 2d Sess., at 15 (2004), http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_house_hearings&docid=f:95346.pdf (last visited Oct. 18, 2010) [hereinafter CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA]. Liebman further explains the importance of media in court decisions in his 2007 article, “China’s Courts: Restricted Reform”: “Such claims also highlight a characteristic of public litigation and cause lawyering in China: when such claims succeed, it is rarely because of court decisions. The primary goal of many such lawsuits is to generate public, and in particular media, attention sufficient to compel official action.” Benjamin L. Liebman, *China’s Courts: Restricted Reform*, 21 COLUM. J. ASIAN L. 1, 34-35 (2007).

⁷ PEKING UNIVERSITY CENTER FOR WOMEN’S STUDIES AND LEGAL AID SERVICES, DOMESTIC VIOLENCE AND LEGAL ASSISTANCE 193 (Chinese Academy of Social Science, 2003).

⁸ *Id.*

⁹ The “procurator” refers to the prosecuting attorney, while the “procuratorate” refers to the prosecutorial bureau.

procurator is the equivalent to the American version of prosecutor. By litigating in cases where the litigant is unable to do so due to threats, physical, and economic difficulties,¹¹ and working with internal bureaus and external organizations, the procurator can play a crucial role in domestic violence cases.

This comment provides a closer examination of the procurator's role as one who can potentially transverse this gray area of domestic violence, once considered to be solely in the "private family sphere." Such an approach may successfully achieve more positive results for victims than a purely impact litigation approach. Part II surveys the growth of legal aid and laws protecting women's rights in China, in particular the rise of quasi-legal organizations such as the Center. Part III elaborates on the Center's use of impact litigation and its limitations in "private family matters" through case illustrations. Part IV argues that litigating through the procurator, despite its shortcomings, may be a more effective legal channel than external impact litigation in the gray area of domestic violence.

II. WITH THE RISE OF LEGAL AID, QUASI-LEGAL ORGANIZATIONS HAVE EXERCISED IMPACT LITIGATION TO ADVANCE WOMEN'S RIGHTS' PROTECTION

In the past decade, Chinese laws and regulations pertaining to women's rights increased exponentially. Simultaneously, the growth of quasi-independent legal organizations began addressing the legal landscape of women's rights. Particularly one organization, the Peking University Center for Women Law Studies and Legal Aid Services, aggressively utilizes impact litigation to advance women's rights' protection.

A. *While Gaps Exist in Current Legal Provisions on Domestic Violence, Laws and Legal Aid Efforts Protecting Women's Rights in China Are Increasing*

Over the years, China's approach to "public interest" activities and legal aid organizations appear to be edging toward ensuring legal aid and women's rights. From virtually no government-supported legal aid centers in 1994, China had more than 2,400 legal aid offices in 2002¹² and 3,023 by

¹⁰ Shi Changqing & Song Jie, *Exploring The Problem of the Procurator's Civil Litigation Activities*, 18(1) J. YANTAI U. 30 (2005).

¹¹ *Id.*

¹² CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA, *supra* note 6.

the end of 2004¹³ to address the rise in legal aid cases. Encouraging legal aid, the Chinese government has passed a series of laws outlining the responsibility of lawyers and government entities to protect disadvantaged groups. For example, the 1996 Lawyers Law¹⁴ marks the first time China imposed an affirmative obligation on lawyers to engage in legal aid work.¹⁵ Also, the 2003 Regulations on Legal Aid¹⁶ expressly stipulate the government's responsibility to provide free legal aid for citizens in dire circumstances, therefore supplying aid to impoverished women whose rights are infringed.¹⁷

Furthermore, the Chinese government passed a number of laws closely related to women's rights and interests, including Law on Protection of Rights and Interests of Women,¹⁸ Labor Law,¹⁹ Population and Family Planning Law,²⁰ Law on Rural Land Contracting,²¹ as well as laws related to criminal, civil and marriage law that forbid violence against women by

¹³ Information Office of the State Council of the People's Republic of China, *Gender Equality and Women's Development in China*, WHITE PAPER (Beijing), Aug. 24, 2005, at 20. This paper does not specify which entities constitute as governmental legal aid institutions. Regarding university-sponsored legal aid centers, Professor Liebman has categorized such centers as quasi-independent structures in his 1990s study of Chinese public interest litigation. While these programs are formally attached to state institutions—universities or research institutes—the programs operate autonomously, with no government funding and little government oversight. Benjamin L. Liebman, *Legal Aid and Public Interest Law in China*, 34 TEX. INT'L L. J. 211, 233 (1999).

¹⁴ Law on Lawyers (promulgated on May 15, 1996, effective as of Jan. 1, 2007) (P.R.C.), available at <http://www.lawinfochina.com/law/display.asp?db=1&id=1155&keyword=Law of the People's Republic of China on Lawyers> (stipulating that "lawyers are professionals who, with a lawyer's license obtained according to law, provide legal services to society."). The promulgation and implementation of the Lawyers Law is crucial to safeguarding lawyers' rights and their operation according to law, protecting the legitimate rights and interests of litigants, and implementing laws correctly. This law was amended on December 29, 2001 and revised on October 28, 2007 at the 30th session of the Tenth National People's Congress.

¹⁵ Benjamin L. Liebman, *Legal Aid and Public Interest Law in China*, 34 TEX. INT'L L. J. 211, 220 (1999).

¹⁶ Regulation on Legal Aid (promulgated by the 15th Executive Meeting of the State Council, July 21, 2003, effective as of Sept. 1, 2003) (P.R.C.), available at <http://www.lawinfochina.com/law/display.asp?db=1&id=3023&keyword=Regulation on Legal Aid>.

¹⁷ Information Office of the State Council of the People's Republic of China, *supra* note 13.

¹⁸ Law on Protection of Rights and Interests of Women (promulgated by the Standing Comm. of the Nat'l People's Cong., Aug. 28, 2005, effective as of Oct. 1, 1992) (P.R.C.), available at <http://www.lawinfochina.com/law/display.asp?db=1&id=1217&keyword=protection of rights and interests of women>.

¹⁹ Labor Law (promulgated by the Eighth Meeting of the Standing Comm. of the Eighth Nat'l People's Cong., July 5, 1994, effective as of Jan. 1, 1995) (P.R.C.), available at <http://www.lawinfochina.com/law/display.asp?db=1&id=705&keyword=Labor law>.

²⁰ Law on Population and Family Planning (promulgated by the 25th Meeting of the Standing Comm. of the Ninth Nat'l People's Cong., Dec. 29, 2001, effective as of Sept. 1, 2002) (P.R.C.), available at <http://www.lawinfochina.com/law/display.asp?db=1&id=2209&keyword=population family law>.

²¹ Law on the Contracting of Rural Land (promulgated by the Standing Comm. of the Ninth Nat'l People's Cong., Aug. 29, 2002, effective as of Mar. 1, 2003) (P.R.C.), available at <http://www.lawinfochina.com/law/display.asp?db=1&id=2433&keyword=Contracting of Rural Land>.

anyone and in any form.²² Legal mechanisms that pertain to domestic violence can be found in a variety of laws, which together create a general policy of protecting a woman's right of person.²³ Article 49 of Chinese Constitution prohibits the abuse of elderly people, women, and children.²⁴ Article 104 of General Principles of Civil Law protects marriage, family, the elderly, mothers and children.²⁵ Article 3 of Marriage Law prohibits abuse and abandonment among family members, while Article 9 maintains that husbands and wives enjoy equal status in the family.²⁶ Article 35 of Law on the Protection of Women's Rights and Interests stipulates that a woman's rights to life and health shall not be infringed.²⁷ The implementation of these domestic violence provisions are rooted in Criminal Law, General Principles of Civil Law and Regulations on Administrative Penalty for Public Security, by which perpetrators may be given criminal sanctions or administrative penalties, and possibly be ordered to pay civil penalties depending on the seriousness of the violence.²⁸ It is important to note that these provisions, though detailed, do not necessarily cover all types domestic violence that can occur.

Criminal sanctions can be imposed on perpetrators whose actions result in particularly grave consequences, such as mistreatment of family members, domestic abuse resulting in death or serious bodily injury, and sexual abuse.²⁹ For example, for mistreating family members, Article 260 of Criminal Law provides for sentences of up to two years in prison in cases of flagrant physical abuse, and sentences of up to seven years if the violence results in serious injury or death.³⁰ This provision, however, does not

²² Information Office of the State Council of the People's Republic of China, *supra* note 13.

²³ Yuhong Zhao, *Domestic Violence in China: In Search of Legal and Social Responses*, 18 UCLA PAC. BASIN L.J. 211, 225 (2001). A woman's right of person generally means rights that every woman should have as a human being.

²⁴ XIAN FA [Constitution] art. 49 (1982) (P.R.C.), available at <http://www.lawinfochina.com/law/display.asp?db=1&id=3437&keyword=constitution>.

²⁵ General Principles of Civil Law, art. 104 (promulgated by Nat'l People's Cong., Apr. 12, 1986, effective as of Jan. 1, 1987) (P.R.C.), available at <http://www.lawinfochina.com/law/display.asp?db=1&id=1165&keyword=general principles of civil law>.

²⁶ Marriage Law, arts. 3 & 9 (promulgated by the Standing Comm. of Nat'l People's Cong., Apr. 28, 2001, effective as of Jan. 1, 1981) (P.R.C.), available at <http://www.lawinfochina.com/law/display.asp?db=1&id=1793&keyword=marriage law>.

²⁷ Law on Protection of Rights and Interests of Women, art. 35 (P.R.C.), available at <http://www.lawinfochina.com/law/display.asp?db=1&id=1217&keyword=protection of rights and interests of women>.

²⁸ Yuhong Zhao, *supra* note 23, at 225.

²⁹ *Id.* at 226.

³⁰ Criminal Law, art. 260 (promulgated by Nat'l People's Cong., Mar. 14, 1997, effective as of Oct. 1, 1997) (P.R.C.), available at <http://www.lawinfochina.com/law/display.asp?db=1&id=354&keyword=criminal law>.

account for minor injuries, nor does it provide for circumstances where ex-husbands are the perpetrators, and hence do not fall under “family members.”³¹ For domestic abuse resulting in death or serious bodily injury, courts resort to Article 232 (crime of murder) and Article 234 (crime of inflicting injury on others) of Criminal Law to impose punishment on abusers in extreme cases.³² Similarly, this provision does not protect injuries that do not result in grave consequences as death or “bodily injury.”³³ For sexual abuse, Article 236 of Criminal Law provides the punishment for the crime of rape, from minimum of three years to life imprisonment or death, depending on the severity of the offense.³⁴ This provision, however, does not provide protections against marital rape.³⁵

Regulations on Administrative Penalties for Public Security (“Regulations on Administrative Penalties”) impose administrative penalties on people who have infringed other's rights of person, where such violation does not constitute crime, but these regulations are rarely enforced.³⁶ Under section 22(1), the Public Security Bureau³⁷ can impose an administrative penalty on such occasions where one strikes another causing slight injury,

³¹ Yuhong Zhao, *supra* note 23 at 226.

³² Criminal Law, arts. 232 & 234 (P.R.C.), available at <http://www.lawinfochina.com/law/display.asp?db=1&id=354&keyword=criminal law>.

³³ Yuhong Zhao, *supra* note 23, at 227.

³⁴ Criminal Law, art. 236 (P.R.C.), available at <http://www.lawinfochina.com/law/display.asp?db=1&id=354&keyword=criminal law>.

³⁵ Charles J. Ogletree, Jr. & Rangita de Silva-de Alwis, *The Recently Revised Marriage Law of China: The Promise and the Reality*, 13 TEX. J. WOMEN & L. 251, 275 (2004).

³⁶ Regulations on Administrative Penalties for Public Security, sec. 22 (promulgated by Standing Comm. of the Nat'l People's Cong., May 12, 1994, effective as of May 12, 1994) (P.R.C.), available at <http://www.lawinfochina.com/law/display.asp?db=1&id=147&keyword=regulations on administrative penalties for public security>. Under this regulation, a defendant who commits an act that is not serious enough for criminal punishment is detained for a maximum of 15 days and fined a maximum of 200 yuan. This regulation has recently been replaced by Law of the People's Republic of China on Public Security Administration Punishments, which similarly imposes light punishment for intentional beating and injury of a person's body and mistreating a family member. Under Article 43, defendant would be detained for only 10-15 days and fined for 500-1,000 yuan for injuring a pregnant woman or beating a person for two or more times. Article 45 detains the defendant for five or less days or gives him a warning for mistreating his family members. Law on Public Security Administration Punishments, arts. 43 & 45 (promulgated by the Standing Comm. of the Tenth Nat'l People's Cong., Aug. 28, 2005, effective as of Mar. 1, 2006) (P.R.C.), available at <http://www.lawinfochina.com/law/display.asp?db=1&id=4549&keyword=law on public security administration punishments>. While the replacement law has increased the fines for similar offenses under the previous regulation, little information is available regarding the effectiveness and utilization of these provisions.

³⁷ The Public Security Bureau, or the “police” bureau, refers to the government office that handles matters in crime control, public security, social order, as well as immigration and visitor affairs. Public Security Bureaus exist in both the provincial and municipal levels. See Beijing Municipal Public Security Bureau Homepage, <http://www.bjgaj.gov.cn/eng/gajjjAction.do?methodname=gajjjIndex&cateCode=GAJJJ> (last visited Nov. 16, 2010).

which can happen in a family context.³⁸ It may also impose administrative penalties on people who mistreat their family members, subject to request by the victims under section 22(4).³⁹ However, the Public Security Bureau has traditionally refrained from interfering in family disputes—rather than exercising this legal provision to impose penalties, the bureau often refers victims to Women’s Federations.⁴⁰

Under Article 119 of General Principles of Civil Law, those who have caused injury to other people are liable for compensation of medical costs, loss of salary as a result of absence from work, and subsistence for disabled persons.⁴¹ Those who have caused death are liable for payment of funeral costs and subsistence for dependants of the victim.⁴² Although this provision allows civil remedies to those who suffer injury inflicted by spouses, whether battered wives would go through the hassle to utilize this channel to claim compensation, however, is debatable.⁴³

Despite gaps in these existing operative provisions regarding certain types of domestic violence, these laws and regulations illustrate a general trend towards protecting women’s rights and interests. In addition to legal protections, the Chinese government has provided support on the grassroots level, such as aiding NGO efforts to establish hotlines and legal consultation centers that provide legal aid and similar services for women.⁴⁴

Several factors can explain the Chinese government’s push for legal aid. Expanding legal aid helps push disputes into formal legal channels and constrain lawless behavior at the local level.⁴⁵ As an important component of China’s efforts to develop “socialism with Chinese characteristics,”⁴⁶ legal aid also coincides with the state policy of addressing income inequalities and assists those who have been left behind by China’s rapid development.⁴⁷ Additionally, legal aid is perceived as an important aspect of a modern legal system to which China aspires.⁴⁸ Although the State encourages legal aid and tries to maintain control over its development, some of the most

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Yuhong Zhao, *supra* note 23, at 229.

⁴¹ General Principles of Civil Law, art. 119 (P.R.C.), available at <http://www.lawinfochina.com/law/display.asp?db=1&id=1165&keyword=general principles of civil law>.

⁴² *Id.*

⁴³ Yuhong Zhao, *supra* note 23, at 230. Zhao notes that in practice, battered wives seldom take the trouble of going through the legal process to claim compensation from their husbands and that this provision only becomes relevant in cases where a battered woman is also seeking a divorce.

⁴⁴ Information Office of the State Council of the People’s Republic of China, *supra* note 13.

⁴⁵ See CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA, *supra* note 6.

⁴⁶ Liebman, *supra* note 15, at 224.

⁴⁷ CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA, *supra* note 6.

⁴⁸ *Id.* at 35.

important developments in legal aid stem from a quasi-independent sector,⁴⁹ composed of university-based centers and women's organizations.⁵⁰

B. Quasi-Independent Legal Aid Centers Function as a Legal Channel

The founding Chinese attorneys who established non-governmental legal aid centers were mostly liberal reformers who sought to closely replicate public interest lawyers in other countries, particularly the United States.⁵¹ Exposed to American public interest lawyers through exchanges and conferences, these domestic attorneys developed a form of litigation that closely tracks the American impact litigation model.⁵² For example, they would use individual cases to highlight systemic issues. They would also advocate through multiple channels, such as the media and local people's congress.⁵³

One unique characteristic of these quasi-independent legal aid centers is that they are able to challenge local authorities precisely because their goals are consistent with those of the State.⁵⁴ Whether these centers advocate for laborers, the environment, or women's rights, they view their work as one that benefits the public's interest and preserves social harmony—goals congruent with the Chinese government's development plan.⁵⁵ Generally, government officials do not view these centers as hostile.⁵⁶ The centers' positions within prestigious state-run universities give them credibility and insulation from scrutiny.⁵⁷ The Peking University Center for Women Law Studies and Legal Aid Services ("the Center") is one example that illustrates the development of legal aid and public interest advocacy without lawyers directly conflicting with the central government in the arena of women's rights.

⁴⁹ Quasi-independent sector refers to the non-governmental legal aid centers that are housed within state-run universities. See Liebman, *supra* note 15, at 233.

⁵⁰ CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA, *supra* note 6, at 7.

⁵¹ Titi M. Liu, *Transmission of Public Interest Law: A Chinese Case Study*, 13 UCLA J. INT'L L. & FOREIGN AFF. 263, 278 (2008).

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Liebman, *supra* note 15, at 279. There are many instances where local authorities violate national laws or where local authorities do not enforce national policies. Where local policies clash with national policies, quasi-independent legal aid centers and other nongovernmental legal aid providers have taken legal action to challenge local authorities.

⁵⁵ This is a common view among attorneys that the author has worked with at the Peking Women's Center as well as attorneys from other quasi-independent legal aid organizations. The way to push forward legal aid development in China is to do so without threatening the government's plan of social stability and development.

⁵⁶ Liebman, *supra* note 15, at 270.

⁵⁷ *Id.* at 279.

C. *Impact Litigation Is Aggressively Used by Legal Aid Organizations, Particularly the Center*

The Center extensively utilizes impact litigation in its social justice activities for women rights' protection. Established in December 1995, the Center provides legal aid to women in a variety of contexts, such as employment discrimination, sexual harassment, labor disputes, land rights, divorce and domestic violence.⁵⁸ The Center relies on a small staff of full-time and part-time lawyers, law professors, Chinese and international student volunteers,⁵⁹ as well as an advisory board consisting of members who hold prominent government posts or are well-known academics.⁶⁰ Similar to many legal aid programs in China, much of the work of the Center consists of answering inquiries through their telephone hotline, in person, or by mail.⁶¹ Unlike other Chinese legal aid centers, the Center identifies "impact litigation" and advocating legislative changes as its explicit goals.⁶² This fact is noteworthy because the organization has an openly activist agenda in China's state-controlled legal and media environment. Besides its litigation activities, the Center sponsors academic symposiums on women's issues and conducts research that advises the government on proposed legislation.⁶³ The Center also extended its activities to create Women's Watch-China, a policy research think tank, as well as a Public Interest Lawyers' Network, a forum that connects attorneys and advances public interest law in China.⁶⁴

From 1995 to 2010, the Center received over 8,000 inquiries across China, represented plaintiffs in approximately 3,000 cases, and litigated over

⁵⁸ *Id.* at 235.

⁵⁹ *Id.* Also based on the author's experience at the Peking University's Center for Women's Law Studies and Legal Services from 2006-2008.

⁶⁰ *Id.* at 236.

⁶¹ *Id.* at 235.

⁶² *Id.* See also Peking University Center for Women Law Studies and Legal Services Homepage, <http://www.woman-legalaid.org.cn/about.asp> (last visited Oct. 22, 2010). One can also think of the Center's attorneys as "structural legal aid lawyers," who use a political approach to challenge legal and political structures that generate and perpetuate injustice to the poor, and seek to assist the poor as a class rather than individuals. ONE BILLION RISING: LAW, LAND AND THE ALLEVIATION OF GLOBAL POVERTY 379 (Roy Prosterman, Robert Mitchell, & Timothy Hanstad eds., 2009).

⁶³ Based on the author's experience at the Peking University Center for Women Law Studies and Legal Services from 2006-2008.

⁶⁴ Based on the author's experience at the Peking University Center for Women Law Studies and Legal Services, as Deputy Secretary-General of Women's Watch-China. See also Women's Watch-China Homepage, <http://www.womenwatch-china.org/> (last visited Oct. 22, 2010); Public Interest Lawyers' Network Homepage, <http://www.wrpil.org.cn/> (last visited Oct. 22, 2010).

200 large-scale, high-impact public interest cases.⁶⁵ Its attorneys seek to concentrate their energy on cases with large social impact in order to maximize the effectiveness of their efforts.⁶⁶ By litigating complicated “representative” cases, the Center’s attorneys hope to produce an impact beyond a particular client’s legal rights.⁶⁷ Unlike American impact litigation, which focuses on a legal precedent that then binds subsequent cases,⁶⁸ Chinese impact litigation focuses on utilizing media in publicizing a social issue.⁶⁹ According to Professor Benjamin L. Liebman, impact litigation cases

[Have] impact because the media picks up on it, covers it widely—it is that action that actually leads to changes and leads to a broader change and to laws sometimes being revised, or simply problems being addressed through policy mechanisms rather than through a case being laid down in law and taken as precedent.⁷⁰

Through impact litigation, the Center’s attorneys are willing to undertake cases in order to highlight problems in the legal system.⁷¹

III. THE “PRIVATE FAMILY AREA” OF DOMESTIC VIOLENCE ILLUSTRATES THE INADEQUACIES OF RESOLVING CASES THROUGH EXTERNAL IMPACT LITIGATION

Impact litigation, however, is often not effective in the area of private family matters. While impact litigation can be an effective tool for public interest litigation, the following case example shows why the Center’s impact litigation has been ineffective in domestic violence cases. One reason for its restricted effect is the prevalent view among judicial and law enforcement officials that domestic violence is a private family matter, not

⁶⁵ Peking University Center for Women Law Studies and Legal Aid Services Homepage, Center’s Summary, <http://www.woman-legalaid.org.cn/about.asp#> (last visited Oct. 10, 2010).

⁶⁶ Liebman, *supra* note 15, at 235-36.

⁶⁷ Based on the author’s discussions with attorneys during her experience at the Peking University’s Center for Women’s Law Studies and Legal Services from 2006-2008.

⁶⁸ CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA, *supra* note 6, at 15.

⁶⁹ *Id.* In fact, maintaining good relations with the media is important, particularly when representing weak or disadvantaged clients who are in disputes with locally influential individuals. Lawyers often seek out journalists to assist with such cases. Benjamin L. Liebman, *Watchdog or Demagogue? The Media in the Chinese Legal System*, 105 COLUM. L. REV. 1, 93 (2005).

⁷⁰ *Id.* It is important to note that China’s civil law system is not based on judicial precedence, a common characteristic of common law jurisdictions.

⁷¹ Liebman, *supra* note 15, at 236.

appropriate for external intervention. This ideological view prevents judicial and law enforcement officials from adjudicating domestic violence cases. By denying the adjudication of such cases, judicial and law enforcement officials overlook the reality that domestic violence is in fact a public social harm and welfare concern.

A. *The Impact Litigation Technique Has Been Effective Through Its Use of the Media in Highlighting Social Concerns and Monitoring Accountability.*

As a litigation strategy, the reasons for impact litigation's effectiveness are numerous. First, impact litigation can have broad-based influence through media, attracting the attention of people of varying backgrounds and geographic regions.⁷² The average person can participate and discuss these issues through publications or the Internet.⁷³ He or she can learn to understand and protect her right.⁷⁴ Second, the media attention garnered by impact litigation can potentially inform other non-governmental organizations and plaintiffs across the nation on model litigation cases and the success of certain techniques. Third, impact litigation can raise awareness on social issues that can invoke sympathy among the public for its underlying causes. This may be helpful since judges must take account of public opinion where there is public reporting of a case.⁷⁵ Impact litigation, with the aid of media, pressures judges to adjudicate a case. Judges note that they are more likely to pay close attention to a case if a case is the subject of media coverage.⁷⁶ Internal media reports of cases attracting Party-state officials' interest often result in written instructions from such officials, either directing that the case should be handled in a certain way or simply stating that the case should be "emphasized."⁷⁷ Lastly, impact litigation can serve as a check on the executive power and encourage judicial reform through both its direct and ancillary effects—whether through proposed legislative changes or academic symposiums on the legal

⁷² Xu Dahai, *Lun yin xiang xing su song* [Discussing Impact Litigation], 4 LEGAL RES. 32 (2009).

⁷³ Wang Jian & Song Xiaohong, *Wu Ge: yong "xing xiang xing su song" tui dong si fa jing bu*. [Wu Ge: Using Impact Litigation to Advance the Judicial System], 9(17) LAW & LIFE 30 (2007).

⁷⁴ *Id.*

⁷⁵ Benjamin L. Liebman, *Watchdog or Demagogue? The Media in the Chinese Legal System*, 105 COLUM. L. REV. 1, 91 (2005) ("A Beijing district court judge attending a conference at Beijing University commented that there are many cases in which media involvement influences outcomes and that media coverage often has a negative effect on the fairness of proceedings . . . Judges note that they are more likely to pay close attention to a case, and in some cases are more likely to assign a heavy sentence if a case is the subject of media coverage.").

⁷⁶ *Id.* See also *id.* at n. 416 (citing to Liebman's Interview 2002-13).

⁷⁷ *Id.* at 100.

difficulties of the “model” cases.⁷⁸ For a highly politicized legal system, impact litigation can be an effective external technique in pushing forward legal reform.

B. Impact Litigation Has Its Limits and Drawbacks in “Private Family Matters”

Even though much discussion focused on the positive effects of impact litigation, little attention has been paid to its limitations. For example, results may vary depending on the level of the court.⁷⁹ Additionally, the media is less able to influence higher-ranking courts, as opposed to courts at the local level.⁸⁰

Impact litigation may also result in varying outcomes depending on the type of media coverage, which may be positive or negative, and journalism bias. While impact litigation may, for instance, help highlight the inadequacies of the State’s regulations, it might not resolve the underlying problems. Vague or inoperable regulations are internal structural issues that are unlikely to be reformed by the judicial process and would need to be changed by the government organs. Furthermore, even though lawyers may succeed in stirring public debate on social issues or in generating legislative changes for individual rights, whether lawyers have created a systematic response from government actors to their legal and constitutional arguments remains to be seen.⁸¹

Impact litigation in some cases may also exacerbate issues for the plaintiff victim. In sensitive domestic violence cases, generated media attention may cause humiliation or even further harm, as some abusers will use publicized information against the plaintiff victim.⁸² Moreover, the effect of impact litigation on traditional “private family issues” may be limited due to the traditional patriarchal concepts of gender roles that are entrenched in the minds of the judicial actors.⁸³ These limitations have

⁷⁸ Wang Jian & Song Xiaohong, *supra* note 73.

⁷⁹ Liebman, *supra* note 75. *See id.* at n. 416 (citing to Liebman’s Interview 2002-12).

⁸⁰ *Id.*

⁸¹ Thomas E. Kellogg, *Constitutionalism with Chinese Characteristics? Constitutional Development and Civil Litigation in China*, 7 INT’L J. CONST. L. 215, 245 (2009).

⁸² PEKING UNIVERSITY CENTER FOR WOMEN’S STUDIES AND LEGAL AID SERVICES, *supra* note 1, at 285.

⁸³ *Id.*

negatively affected case outcomes, as seen in Huang's Domestic Violence and Divorce case.⁸⁴

C. *The Huang Domestic Violence and Divorce Case Illustrates the Inadequacies of Impact Litigation*

The *Huang* case demonstrates some of the deficiencies of impact litigation, particularly in areas of private family matters. Ms. Huang's case is characteristic of many domestic violence cases litigated by the Center. Mr. Wang, during his 20-year marriage with Ms. Huang, engaged in a long history of serious gambling.⁸⁵ The severity of his gambling habit led to him to steal money and valuables from the home.⁸⁶ Due to his substantial debt, debt collectors often beat up Mr. Wang, leaving Ms. Huang to take him to the hospital and to repay his debts.⁸⁷ Rather than reciprocating her kindness, Mr. Wang battered and threatened Ms. Huang.⁸⁸ After forcing Ms. Huang to leave the home, Mr. Wang brought home a mistress to live with him.⁸⁹ Ms. Huang's three requests for divorce at court were unsuccessful.⁹⁰ The current litigation in this case revolved around Mr. Wang's request for divorce and Ms. Huang's demand for compensation for the injury caused.⁹¹

The Center's attorneys decided to litigate this case because battery of wives by husbands due to gambling activities is typical of many domestic violence divorce cases.⁹² Evidence in this case was considered stronger when compared to other domestic violence cases.⁹³ The Center's attorneys collected evidence on Mr. Wang's gambling habit, his battery of Ms. Huang, and his mistress, including witness testimony, medical evidence of battery, public security bureau documentation, and receipts of Ms. Huang's annual rent payment for the house.⁹⁴

⁸⁴ Women's Watch-China, Huang mou jia bao li hun an [Huang's Domestic Violence and Divorce Case] (Oct. 31, 2007), <http://womenwatch-china.org/PageInfo/ShowNews.aspx?ID=20090823000002> (last visited Oct. 20, 2010).

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.* The reasons why Ms. Huang's three requests for divorce were denied are not explained in the case.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.* Center's attorneys collected receipts of Ms. Huang's annual rent payment for the house to illustrate her continual support of household expenses and to persuade the judges in allowing Ms. Huang to have her stake in the house.

Even in a case with relatively sufficient evidence and a potentially promising outcome, the court ruled against the plaintiff and the Center. While the court granted divorce and allowed minimum monetary compensation for Ms. Huang, it rejected Ms. Huang's evidence and other claims of battery.⁹⁵ The appellate court affirmed the lower court's decision.⁹⁶ The legal system, in essence, only lightly punished Mr. Wang's abusive behavior, as the house remains the husband's property.⁹⁷

This disappointing result illustrates the systematic legal problems surrounding domestic violence. The Center believes that Ms. Huang did not recover more money for several reasons: 1) the public security bureau and other governmental organs refuse to interfere with domestic violence because it is considered a private family matter; 2) collecting sufficient evidence is difficult, especially because of the high burden of proof on victims; 3) in adjudicating the cases, the judges lack gender perspective; and 4) perpetrators are given low punishments for their acts.⁹⁸

While all these factors attribute to the outcomes of this domestic violence case, the most problematic issue is the judicial and government actors' refusal to deal with private family matters. This is detrimental to battered wives because this mentality contributes to greater social harm and ignores the fact that domestic violence is progressing from the private sphere to a public realm where the legal system encompasses the authority to interfere with societal matters.

1. *Denying the Adjudication of Domestic Violence Is a Political Excuse to Overlook Domestic Violence as a General Social Harm*

Perhaps the main reason for the limited impact of the *Huang* case is that the court assumed domestic violence cases to be private family matters.⁹⁹ Usually, battered wives' cases often do not end up in court because the police advise parties to resolve marital problems peacefully and without official involvement.¹⁰⁰ Even when such cases end up in court,

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.* See the subparagraph 4 on court's ruling. The court designated the house to Mr. Wang under the fourth reason.

⁹⁸ *Id.* Typically, collecting sufficient evidence for domestic violence cases in a timely manner is very difficult. In this case, Center's attorneys note that evidence was more than the usual domestic violence case. The case hints at judge's bias against Ms. Huang.

⁹⁹ PEKING UNIVERSITY CENTER FOR WOMEN'S STUDIES AND LEGAL AID SERVICES, *supra* note 1, at 193-96. The Center talks extensively about the idea of domestic violence as "private family matter." It also bases its conclusion from the 15 cases described in the book.

¹⁰⁰ Yuhong Zhao, *supra* note 23, at 232.

offenders are likely to receive a light sentence,¹⁰¹ as seen in the case above. Previous reports also found courts refusing to find a defendant guilty of the crime of mistreating family members by defining a higher threshold for violent conduct necessary to prove a crime.¹⁰² Additionally, courts have excused defendants based on discriminatory reasons—one being that each instance of violence occurred with good cause, such as the wife not being obedient to her husband.¹⁰³

The Public Security Bureaus' reluctance to intervene in domestic violence disputes is also problematic.¹⁰⁴ While the public security bureaus are the first official agency to which victims of domestic violence turn for help,¹⁰⁵ abused women often view the public security bureaus as last resorts.¹⁰⁶ These agencies frequently refrain from interfering in family disputes, based on the excuse that domestic violence is a private matter, or that it is a women's matter that should be dealt with by the women's federations.¹⁰⁷ Intervention by arrest and prosecution seldom occurs unless serious consequences such as death or serious bodily injury result.¹⁰⁸

By viewing domestic violence as a private family matter, judicial and enforcement officials neglect to view domestic violence as a general social harm.¹⁰⁹ Their inaction leads the abusive husband to believe that he will not be punished for beating his wife, continuing this endless cycle of battery, mental abuse, and violence.¹¹⁰

Government officials' lack of awareness regarding the social impact of domestic violence also helps to explain the reason for inadequate anti-

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.* Here, Zhao provides a case example in which "the violence occurred with good cause." A wife was constantly abused physically during her twenty years of marriage, suffering injuries a total of thirty-four times, sixteen of which were supported by hospital records. She eventually brings suit against her husband when she lost her employment. While the county court accepted the evidence, it refused to find the defendant guilty of the crime of mistreating family members based on the reasoning that ten instances of battering over a period of twenty years cannot be characterized as "occurring with high frequency," an essential element of the crime. The judge further reasoned that the defendant had no intention to mistreat the victim since each instance of violence occurred with good cause. The so-called good cause is that the wife was not obedient to her husband regarding trivial family matters on various occasions.

¹⁰⁴ Huang's Domestic Violence and Divorce Case, *supra* note 84.

¹⁰⁵ Yuhong Zhao, *supra* note 23, at 231.

¹⁰⁶ Huang's Domestic Violence and Divorce Case, *supra* note 84.

¹⁰⁷ Yuhong Zhao, *supra* note 23, at 231. Women's federation here refers to the All-China Women's Federation, which is a mass organization supported by the Chinese Communist. The basic functions of the Federation are to represent and safeguard the rights and interests of women and promote gender equality.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at 232.

¹¹⁰ PEKING UNIVERSITY CENTER FOR WOMEN'S STUDIES AND LEGAL AID SERVICES, *supra* note 1, at 285.

domestic violence legislation and ineffective implementation of existing laws.¹¹¹ However, with increased national and international attention to domestic violence in China,¹¹² judicial and enforcement officials are faced with the possibility that domestic violence may in fact be a pervasive issue in Chinese society that is beyond the private domain.

2. *Evidence Shows Domestic Violence as a Vague Gray Area Transgressing Both the Public and the Private Spheres*

Although domestic violence is viewed as a private family matter, the reality is that domestic violence is not limited only within the family but is increasingly confronted in the public sphere. In addition to the serious physical and psychological injuries directly suffered by battered women, the widespread nature of domestic violence limits the opportunities for women to achieve legal, social, political and economic equality in society.¹¹³ Tolerance for domestic violence starts with the subordination of a girl within the family at birth, extends into society in the form of unequal education and employment opportunities, and culminates in the marital family with her subordinate status to her husband,¹¹⁴ leading to further possible acts of domestic violence. Domestic violence also results in broken families and disturbed children, which cause extensive social problems.¹¹⁵

While the operability and implementation of anti-domestic violence legislation is debatable,¹¹⁶ recognition and response against domestic

¹¹¹ Yuhong Zhao, *supra* note 23, at 232. "Legal regulations in respect [to] domestic violence are vague and [difficult to implement in practice]. Although [China's Marriage Law] has defined domestic violence and affirmed its illegality . . . no explicit provisions [exist] in judicial practice on how to understand the relationship between domestic violence and abuse, whether the compensation for [psychological damage] should be included in the compensation for damages in a [divorce] case [caused by] domestic violence, and what the criterion is for compensation . . . At the same time, the provisions in respect of measures of assistance against domestic violence are too principled in the Marriage Law, with no explicit prescriptions [regarding] the functions and responsibilities of the authorities concerned. [R]egulations to supervise and urge these authorities to help the battered females and stop domestic violence are not strict enough." PEKING UNIVERSITY CENTER FOR WOMEN'S STUDIES AND LEGAL AID SERVICES, *supra* note 1, at 199. See *infra* Part II.A. for more discussion on legal provisions pertaining to domestic violence.

¹¹² PEKING UNIVERSITY CENTER FOR WOMEN'S STUDIES AND LEGAL AID SERVICES, *supra* note 1, at 162. The 1995 World Women's Conference held in China has brought international attention and awareness to the issue of domestic violence. Domestically, non-governmental organizations such as the Center, Beijing Hongfeng Center of Psychological Consultation and Services for Females, Shanxi Center for Women's Law Studies and Legal Services have highlighted the problems of domestic violence and have developed activities addressing this issue.

¹¹³ Yuhong Zhao, *supra* note 23, at 222. See also Yuhong Zhao's explanation of root causes of domestic violence in Section I.D. of Zhao's paper. Yuhong Zhao, *supra* note 23, at 220-21.

¹¹⁴ *Id.* at 221.

¹¹⁵ *Id.* at 222.

¹¹⁶ See *infra* Part II.A. for more discussion on legal provisions pertaining to domestic violence.

violence have been rising. Legislation and judicial practice have stressed the consequences against perpetrators in civil and criminal cases and that active legal aid should be provided to the victims.¹¹⁷ In recent years, some Chinese regions enacted local statutes outlawing domestic violence.¹¹⁸ In fact, 22 provinces formulated such rules, policies, and measures by the end of 2004.¹¹⁹

The Chinese government has also cooperated actively with NGOs to launch intervening projects, as well as vigorous publicity, education, and training activities.¹²⁰ Other governmental efforts include setting up alarm centers, injury assessment centers, and women's aid stations, establishing anti-domestic violence hotlines, and providing multiple services for female victims, including consultation, shelter, medical care, and psychological help.¹²¹ In other words, evidence of the government's actions shows that domestic violence is increasingly acknowledged as a social problem that needs to be addressed by the government.

However, lacking explicit legal provisions that govern relevant authorities involved in domestic violence cases and strict regulations that aid battered victims, the question becomes whether there can be an internal monitoring mechanism within the government that would remedy current efforts in domestic violence. The procurator presents the possibility of an institutionalized authority that would litigate and monitor domestic violence cases on behalf of the public's interest.

IV. THE PROCURATOR IS AN INSTITUTIONALIZED SOLUTION FOR DOMESTIC VIOLENCE CASES

One should view the role of the procurator as a legal avenue for plaintiffs in domestic violence cases because domestic violence entails public welfare and government responsibility. Laws and regulations governing the procurator's authority support this notion. Evidence also indicates that the procurator is expanding its role in other public interest cases. While government-initiated prosecutions involve drawbacks, the government has taken measures to address these problems, including establishing additional checks on the procurator. Ultimately, the procurator can supplement a non-governmental organization's impact litigation activities to increase the success of domestic violence cases.

¹¹⁷ Information Office of the State Council of the People's Republic of China, *supra* note 18.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

A. *The Procurator Possesses the Legal Authority to Litigate Public Interest Cases*

Because domestic violence is transgressing to a gray area where private family matters can be of public social concern, the question becomes whether there are any other agents that can also advocate on behalf of the battered female victims. The procurator,¹²² a traditional advocate for the public's interest, is one potential agent of change "within the system."

A procurator's role is a curious one; besides prosecuting perpetrators, his or her function includes both supervising the work of both the public security bureaus and the people's courts.¹²³ The procurator maintains the authority to request an explanation from the public security bureau and to require an investigation into a case.¹²⁴ Where a court fails to hear a victim's domestic violence case, for example, the procurator may also intervene.¹²⁵

Several laws and regulations pertain to the procurator's legal functions.¹²⁶ Article 14 of Civil Procedure Law, for example, states that "[t]he people's procuratorates shall have the right to exercise legal supervision over civil proceedings."¹²⁷ Administrative Procedure Law also provides the authority for procurators to supervise administrative proceedings,¹²⁸ as well as the right to lodge a protest according to judicial supervision procedures, if the procuratorate finds that the laws or regulations are being violated in a legally effective judgment or people's court order.¹²⁹ Additionally, Organic Law of the People's Procuratorate specifies

¹²² China's procuratorates, the state bureau for procurators, are state organs for legal supervision, established at four levels corresponding to the courts and special procuratorates. The Supreme Procuratorate exercises leadership over local and special procuratorates at various levels. Higher procuratorates exercise control over the work of lower procuratorates. Additionally, chief procurators at all levels are elected and removed by the corresponding Congresses. Other procurators are appointed and removed by the corresponding Congresses' standing committees upon the chief procurator's recommendation. In sum, all local procuratorates are responsible to both the corresponding congress and its standing committee, and their superior procuratorates. Zongling Shen, *The Role of Lawyers In Social Change: China*, 25 CASE W. RES. J. INT'L L. 163, 166 (1993).

¹²³ Yuhong Zhao, *supra* note 23, at 245.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ These laws and regulations pertaining to the procurator include: Civil Procedure Law, Administrative Procedure Law, Organic Law of the People's Procuratorate, and Public Procurators Law.

¹²⁷ Civil Procedure Law, art. 14 (promulgated by Standing Comm. of the Nat'l People's Cong., Oct. 28, 2007, effective Apr. 9, 1991) (P.R.C.), available at [http://www.lawinfochina.com/law/display.asp?db=1&id=19&keyword=the civil procedure law](http://www.lawinfochina.com/law/display.asp?db=1&id=19&keyword=the%20civil%20procedure%20law).

¹²⁸ Administrative Procedure Law, art. 10 (promulgated by Nat'l People's Congress, Apr. 4, 1989, effective as of Oct. 1, 1990) (P.R.C.), available at [http://www.lawinfochina.com/law/display.asp?db=1&id=1204&keyword=administrative procedure law](http://www.lawinfochina.com/law/display.asp?db=1&id=1204&keyword=administrative%20procedure%20law).

¹²⁹ Administrative Procedure Law, art. 64 (P.R.C.), available at [http://www.lawinfochina.com/law/display.asp?db=1&id=1204&keyword=administrative procedure law](http://www.lawinfochina.com/law/display.asp?db=1&id=1204&keyword=administrative%20procedure%20law).

procuratorial authority over criminal cases, including but not limited to conducting criminal investigations, reviewing public security bureau investigated cases, initiation of public prosecutions, and judicial activities of people's courts.¹³⁰ While typically the procurator can handle a case only when the victim files a criminal complaint, Article 98 of Criminal Law provides an exception—that if the victim is unable to file a complaint because of coercion or intimidation, a people's procuratorate may also file the complaint.¹³¹ Lastly, the enactment of Public Procurators Law helps “to enhance the quality of public procurators, to reinforce the administration of public procurators, to ensure that the People's Procuratorates exercise legal supervision and exercise procuratorial authority according to law, to ensure that the public procurators perform their duties according to law and to guarantee the judicial justice.”¹³²

Reinforcing the above laws, the Supreme People's Procuratorate¹³³ also drafted a 2001 regulation to ensure that the procuratorate would pursue civil litigation activities and implement legal supervision over administrative procedures pursuant to the above laws.¹³⁴ Article 2 of the 2001 Regulations captures the mandate of the procuratorate. Article 2 stipulates that the procuratorate “must provide for the legal supervision of civil and administrative case handling, safeguard national and societal public interests, ensure judicial independence and authority, as well as enforce national law correctly and uniformly.”¹³⁵ The question is therefore whether the procurator in practice can serve as an adequate remedy to safeguard the

¹³⁰ Organic Law of the People's Procuratorates, art. 5, (promulgated by Standing Comm. of the Nat'l People's Cong., Sept. 2, 1983, effective Dec. 2, 1986) (P.R.C.), available at <http://www.lawinfochina.com/law/display.asp?db=1&id=6225&keyword=organic law of the people's procuratorates of the People's Republic of China>. Decision of the Standing Committee of the NPC Regarding the Revision of the Organic Law of the Local People's Congresses and Local People's Governments of the People's Republic of China, effective on Dec. 2, 1986, made amendments to the previous 1983 law. Statutory language for Article 5 remains the same.

¹³¹ Criminal Law, art. 98 (P.R.C.), available at <http://www.lawinfochina.com/law/display.asp?db=1&id=354&keyword=criminal law>.

¹³² Public Procurators Law (promulgated by Standing Comm. of the Nat'l People's Cong., July 1, 1995, effective July 1, 1995) (P.R.C.), available at <http://www.lawinfochina.com/law/display.asp?db=1&id=1913&keyword=public Procurators law>.

¹³³ The Supreme People's Procuratorate of P.R.C., <http://www.spp.gov.cn/site2006/2006-02-23/00016-324.html> (last visited Oct. 25, 2010). The Supreme People's Procuratorate is the highest legal supervisory agency, responsible for uniform and correct application of national law of P.R.C.

¹³⁴ Zui Gao ren min jian cha yuan [Supreme People's Procuratorate]: Regulation On People's Procuratorate's Handling of Civil and Administrative Litigation Cases (promulgated by the Supreme People's Procuratorate of the P.R.C., Sept. 30, 2001) (P.R.C.), available at <http://www.spp.gov.cn/site2006/2006-02-22/00024-200.html>.

¹³⁵ *Id.*

public's interest in domestic violence cases in not only criminal context, but also civil context.

A recent article by Shi Changqing and Song Jie on "Exploring The Problem of the Procurator's Civil Litigation Activities" answers the question in the affirmative and provides the logical possibilities that the procurator can offer for plaintiff victims in such public interest cases.¹³⁶ Here, Shi and Song discuss some of the major issues debated regarding the procurator's role in public interest cases and the procurator's ability to maintain independence.¹³⁷ Shi and Song state that because the procurator has always had the responsibility of protecting the public's interest, it is especially appropriate that the procurator bring suits in its defense. Shi and Song consider two pertinent questions.

1. *Can the Procurator Bring Any Lawsuit that Involves Public Interest Characteristics?*

Although it is believed that a procurator's pronounced powers are only in criminal prosecutions,¹³⁸ Shi and Song argue that once a case entails national or societal public interests and no one brings the suit, the procurator has power to bring the civil litigation suit.¹³⁹ If someone has already brought suit, the procurator cannot bring suit again, but he or she can join the lawsuit depending on the circumstances.¹⁴⁰

Shi and Song base their argument on legal authority that the role of the procurator does not fall strictly on criminal lawsuits, as the conventional view implies.¹⁴¹ Article 14 of Civil Procedure Law provides the legal authority for the procurator to expansively participate in civil proceedings.¹⁴² As supported by Article 2 of the 2001 Regulations of the Supreme People's Procuratorate,¹⁴³ if a civil lawsuit involves a matter of national, social, and public interest, the procurator is able to participate in some form during the

¹³⁶ Shi Changqing & Song Jie, *supra* note 10.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ A lawyer at the Peking University's Center for Women's Law Studies and Legal Aid Services stated that typically, the procurator is viewed as only an effective force on the criminal cases. This conventional view may be due to the procurator's extensive and historical involvement in investigating and prosecuting criminal cases as well as coordinating with police authorities.

¹⁴² Civil Procedure Law, art. 14 (promulgated by Standing Comm. of the Nat'l People's Cong., Oct. 28, 2007, effective April 9, 1991) (P.R.C.), available at [http://www.lawinfochina.com/law/display.asp?db=1&id=19&keyword=the civil procedure law](http://www.lawinfochina.com/law/display.asp?db=1&id=19&keyword=the%20civil%20procedure%20law).

¹⁴³ Zui Gao ren min jian cha yuan [Supreme People's Procuratorate]: The Regulation On People's Procuratorate's Handling of Civil and Administrative Litigation Cases, art. 2 (P.R.C.), available at <http://www.spp.gov.cn/site2006/2006-02-22/00024-200.html>.

course of the lawsuit. Even local regulations governing the procurator, such as the Hunan Regulation, demonstrate the point that domestic violence is no longer exclusively a family matter that can be easily turned away from official involvement.¹⁴⁴ Under the Hunan Regulation, the procuratorate is under the legal obligation to accept domestic violence complaints and to handle them accordingly to the law¹⁴⁵ and on behalf of the public's interest.

Through its roles in prosecuting perpetrators, approving public security bureau arrests, and supervising the work of the public security bureau and people's courts,¹⁴⁶ the procurator can legitimately and effectively exercise its authority at every step of the process in domestic violence cases, whether it is a criminal or civil proceeding. Where an act of domestic violence results in a criminal offense, the procurator can automatically bring the lawsuit because criminal cases are deemed "public interest" cases. But even where an act of domestic violence is not severe enough to result in criminal penalties, the procurator can still participate and bring suit in a civil proceeding, since domestic violence can technically be viewed as "a matter of national, social, and public interest." A hypothetical example would be where a husband strikes his wife, but the wife's injuries are not severe enough to warrant criminal penalties for the husband. The procurator in this case can file a civil proceeding for compensatory damages, such as medical costs or lost working time.

2. *If the Case Only Entails Private Interests and Does Not Involve Societal Public Interests, Does that Mean that the Procurator Has No Power to Interfere with the Case?*

The procurator may litigate a case even where public interests are not directly affected. Generally speaking, Shi and Song state that the procurator cannot interfere with the litigant's exercise of private rights, including the litigant's right to bring suit according to the private right of autonomy.¹⁴⁷ However, if the litigant is unable to bring suit due to economic difficulties, physical limitations, or is afraid to bring suit due to threats, the procurator—as a representative of the country—should intervene in the lawsuit to reflect judicial assistance to the socially disadvantaged.¹⁴⁸ In this type of case, the procurator's lawsuit does not directly reflect the protection of public

¹⁴⁴ Yuhong Zhao, *supra* note 23, at 241-42.

¹⁴⁵ *Id.* at 241.

¹⁴⁶ *Id.* at 245.

¹⁴⁷ Shi Changqing & Song Jie, *supra* note 10.

¹⁴⁸ *Id.*

interests.¹⁴⁹ Yet helping those who cannot bring suit, similarly, is also a public interest goal.¹⁵⁰ It is a type of assistance that targets all of society because each person has to face such possible difficulties.¹⁵¹ Shi and Song conclude that this is also the conventional civil litigation function of different procurators around the world.¹⁵²

Here, Shi and Song interpret more broadly the idea of “public interest” cases. Even in cases where private rights are at stake and public interests are not directly implicated, the procurator can technically bring suit in the name of the public interest if the litigant cannot bring suit due to her own social or economic difficulties.¹⁵³ This applies to the domestic violence victim, who may be financially unable to bring a lawsuit or even fearful of bringing a lawsuit due to threats by her abusive husband. Based on Shi and Song’s argument, there are two scenarios in which the procurator can litigate domestic violence cases: 1) if domestic violence is considered a general social welfare concern, the procurator can in effect litigate on behalf of the public’s interest; 2) even if domestic violence entails private interests and not national or societal interests, the procurator can bring suit for a public interest goal where plaintiffs are unable to do so due to economic, social, and physical difficulties. This reasoning can similarly be applied to domestic violence cases in the criminal context.¹⁵⁴

Shi and Song’s creative argument is persuasive. Both laws and regulations do not prohibit the interpretation of public interest as one where the procurator brings suit if plaintiffs are unable to do so because of economic difficulties, physical limitations, or fear of bringing suit. While one may argue that Shi and Song’s interpretation stretches the idea of what constitutes societal public interest, procurators have taken cases that fall

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.* Shi Changqing and Song Jie believe that there are seven categories in which the procurator can bring suit. These can include cases that entail 1) loss of state-owned resources; 2) environmental pollution, natural resources exploitation, and other similar public harms; 3) monopoly, unfair competition, and other such economic damaging processes; 4) parties maliciously colluding, harming national and societal public interests, and where no one brings suit; 5) parties legitimate civil rights are significantly harmed and parties cannot bring suit. This may include inability to bring suit, fear of bringing suit, and other involuntary circumstances; 6) null marriage; and 7) other harms to national and societal public interests.

¹⁵⁴ In fact, Article 98 of Criminal Law provides that “if the victim is unable to bring a complaint because of coercion or intimidation, a People’s Procuratorate or a close relative of the victim may bring a complaint.” Criminal Law, art. 98 (P.R.C.), available at <http://www.lawinfochina.com/law/display.asp?db=1&id=354&keyword=criminal law>.

within this realm where public interests are not directly at stake, yet a public interest goal is served. The *Zhang* case is an example.¹⁵⁵

Ms. Zhang was severely burned when her husband poured and ignited gasoline on her during a dispute.¹⁵⁶ Living in the fear of her husband, Ms. Zhang questioned whether the law would have any effect against her husband.¹⁵⁷ After the procurator initiated the public prosecution and the Center's attorneys filed an incidental civil proceeding, the court finally ruled that the husband acted with particular cruelty, intentionally causing bodily harm and severe injury to the plaintiff.¹⁵⁸ The court punished him severely with a fourteen-year prison term and forced him to pay Ms. Zhang a sum of eighty thousand yuan as compensation.¹⁵⁹ Ms. Zhang's case is further evidence that the procurator's participation is both permissible and effective in a case where public interests are not directly entailed, yet a public interest goal of aiding domestic violence victims under threat and with difficulties bringing suit is achieved.

B. Evidence of the Procurator's Expanded Role in Other Public Interest Cases, Such as Environmental Cases, Further Supports Its Authority in Domestic Violence Cases

Further mounting evidence has shown the procurator litigating social issues concerning the public's interest, such as environmental cases. In fact, procuratorates have already brought civil lawsuits for environmental damage.¹⁶⁰ In May 2004, the Yan Jiang Procuratorate in Sichuan Province took action against eight stone materials factories that were causing serious local river pollution after the factories ignored the local environmental protection bureau orders.¹⁶¹ Local residents were hesitant to bring suit

¹⁵⁵ PEKING UNIVERSITY CENTER FOR WOMEN'S STUDIES AND LEGAL AID SERVICES, *supra* note 1, at 172-76. Ms. Zhang case was handled by both the Center's attorneys and the procurator.

¹⁵⁶ *Id.* at 172-73.

¹⁵⁷ The Peking University Center for Women Law Studies and Legal Aid Center—Women's Watch-China, *Jia ting bao li bu shi jia wu jiu fen [Domestic Violence Is Not a Family Dispute]* (Aug. 1, 2006), available at <http://womenwatch-china.org/PageInfo/ShowNews.aspx?ID=20090823000032>. Ms. Dong's case is the exact same case as Ms. Zhang, except under a different pseudonym. Ms. Dong is Ms. Zhang.

¹⁵⁸ PEKING UNIVERSITY CENTER FOR WOMEN'S STUDIES AND LEGAL AID SERVICES, *supra* note 1, at 175.

¹⁵⁹ *Id.* Interestingly, Ms. Zhang's sister brought the complaint against Ms. Zhang's husband to the local police station. The police station, however, ignored the case due to the fact that it was considered a private family matter. Ms. Zhang eventually brought the case to the Center, who had solicited help from both the Women's Federation and Public Security Bureau. Yet, it was the final procurator prosecution that brought the case to its final conclusion.

¹⁶⁰ Alex Wang, *The Role of Law in Environmental Protection in China*, 8 VT. J. ENVTL. L. 195, 222 (2006-2007).

¹⁶¹ *Id.*

because they believed “the cost to be prohibitive and their chances of success in the courts to be slim.”¹⁶²

Here, the merits of the procurator’s role are exemplified, especially in cases where plaintiffs have difficulty bringing the case themselves and where the public interest is involved. Statistics show evidence of the procurator’s success. Since 1997, at least 200 environmental cases have been brought around China.¹⁶³ In the 70 cases with known court decisions, the procuratorate prevailed in every case.¹⁶⁴ Defendants did not appeal a single case.¹⁶⁵ The efficiencies of procuratorate-led public interest litigation resulted in huge support by environmental officials of a public interest litigation system involving the procuratorate.¹⁶⁶ Environmental cases therefore show the potential of the procurator and the success enjoyed by government-initiated prosecutions in other areas.

The procurator’s successful involvement in environmental cases can potentially extend to domestic violence cases. Similar to environmental cases, the public’s interest is largely at stake in domestic violence cases. Like plaintiffs in environmental cases, plaintiffs in domestic violence cases may encounter various difficulties in bringing suit or may be reluctant in bringing suit against their perpetrators.¹⁶⁷ In such cases, the procurator, as part of the government’s institutional structure, may be the most suitable agent to enforce consequences to the polluters or domestic violence perpetrators. It is therefore completely feasible to foresee the procurator playing a greater role as a public advocate in domestic violence cases, once demonstrated that the procurator is litigating on behalf of a general social welfare concern.

C. *This Solution Does Have Limitations; However, the Chinese Government Is Taking Measures to Address Drawbacks*

While the procurator appears to be the best channel and watchdog for domestic violence victims, corruption and abuses by the procurator have

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.* at 223.

¹⁶⁷ In both pollution cases and domestic violence cases, plaintiffs are sometimes reluctant to bring cases to judicial bodies. For pollution victims, victims might not bring suit because they believe the cost to be prohibitive and their chances of success in courts to be slim. Wang, *supra* note 161, at 222. For domestic violence victims, they might not bring suit, either out of fear of revenge from their abusive husbands, or out of concern for the continuing existence of the family and related issues such as children’s welfare, housing and medical benefits. Yuhong Zhao, *supra* note 23, at 230-31.

prohibited it from reaching its greatest potential.¹⁶⁸ For instance, Chinese investigators discovered that procurators mishandled 1,454 of the 50,000 cases in a 1998 crackdown on procuratorial and judicial misconduct.¹⁶⁹ Government policies in response to the waves of crime and official corruption in recent decades have also exacerbated procuratorial misconduct.¹⁷⁰ Procuratorates and law enforcement agencies often neglected criminal procedural rules in their dash to strike hard at crime and show substantive results.¹⁷¹

Furthermore, procurators seem to face few meaningful external checks by either the People's Congresses or the judiciary.¹⁷² While people's congresses exercise supervision over the procuratorate in their formal function, real power to dismiss government officials still lies with local Communist Party officials.¹⁷³ The judiciary also possesses limited power to remedy procurator misconduct in the pretrial phase.¹⁷⁴ Furthermore, the reliance on self-policing¹⁷⁵ by the procuratorate and the lack of explicit provisions in State Compensation Law¹⁷⁶ holding procurators liable for compensation expenses when they commit intentional or grossly negligent acts of misconduct¹⁷⁷ make it uncertain that the procurator will be accountable for any misconduct. Lastly, previous studies assert that the procurators share stereotypical attitude regarding the family.¹⁷⁸

Even with the deficiencies of procurators, they will be able to litigate effectively if a strengthened system of checks and balances is put in place. The system should monitor the procuratorate for independence and penalize it for biases and deviance from statutory duties. Shi and Song recommend three possible fixes to ensure the independence of the procuratorate under the current system: 1) designate the procurator's supervisory process as one that happens after the litigation process, 2) establish two independent

¹⁶⁸ Keith Hand, *Watching the Watchdog: China's State Compensation Law As a Remedy For Procuratorial Misconduct*, 9 PAC. RIM L. & POL'Y J. 95, 98 (2000).

¹⁶⁹ *Id.* at 99.

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.* at 99-102.

¹⁷³ *Id.* at 100.

¹⁷⁴ *Id.* at 101.

¹⁷⁵ *Id.* at 102.

¹⁷⁶ *Id.* at 118. State Compensation Law was intended to guarantee victims of illegal government acts the right to state compensation and to encourage procurators and other officials to carry out their duties lawfully. *Id.* at 103-04. As a supplement to existing laws and measures, future laws should include explicit provisions governing the scope of the procurator's compensation which will resolve many concerns related to the procurator. *Id.* at 123-24.

¹⁷⁷ *Id.* at 124.

¹⁷⁸ Yuhong Zhao, *supra* note 23, at 231.

departments within the procuratorate—one responsible for initiating public interest litigation and the other accountable for monitoring the process, and 3) create specialized procuratorates depending on their functions.¹⁷⁹

Interestingly, the government seems to have taken similar measures to strengthen the independency of the procurator. Currently, the Supreme People's Procuratorate established a number of internal departments, including an Investigation and Supervision Bureau, Public Prosecution Office and Supervisor of the Public Prosecutor's Office.¹⁸⁰ Additionally, notices have been issued "to strengthen the supervision within the procuratorial organs, guarantee the procuratorial organs' and their staffers' legal performance of functions and correct exercise of powers, tighten the procuratorial disciplines, and ensure the smooth execution of procuratorial orders."¹⁸¹ If the procurator breaches his duties, he may be penalized through criticism and education, organizational punishment such as transferring or removal from office, disciplinary punishment, or criminal punishment, depending on the circumstances.¹⁸²

With comprehensive structures in place, one can only hope that the government would heavily enforce such laws and regulations. Despite existing shortcomings, the procurator can still successfully aid efforts in domestic violence prevention, as well as initiate influential government-led lawsuits.

D. Due to Its Unique Position, the Procurator Can Supplement NGO Impact Litigation Activities and Recruit Multiple Agencies to Act Effectively, Increasing the Success of Domestic Violence Cases

As seen in other public interest cases, the procurator can increase domestic violence cases' probability of success due to its unique position as both a State arm and an advocate for the public. In a highly politicized environment, working within the system as opposed to working externally through impact litigation has its benefits. With family matters being pushed

¹⁷⁹ Shi Changqing & Song Jie, *supra* note 10.

¹⁸⁰ Supreme People's Procuratorate of P.R.C. Homepage, Internal Structure of the Supreme People's Procuratorate, <http://www.spp.gov.cn/site2006/region/00050.html> (last visited Oct. 25, 2010).

¹⁸¹ Zui Gao ren min jian cha yuan [Supreme People's Procuratorate]: Notice of the Supreme People's Procuratorate on Printing and Issuing the Interim Provisions on the Procuratorial Supervision and Inspection Work of the Supreme People's Procuratorate (effective as of Oct. 8, 2007) (P.R.C.), *available at* <http://www.lawinfochina.com/law/display.asp?ID=6505&DB=1>.

¹⁸² Zui Gao ren min jian cha yuan [Supreme People's Procuratorate]: Notice of the Supreme People's Procuratorate on Printing and Distributing the Regulation on Inquiry into the Liability of Procuratorial Workers for Faults in Law Enforcement (effective as of Sept. 26, 2007) (P.R.C.), *available at* <http://www.lawinfochina.com/law/display.asp?id=6726&keyword=>.

out to the public sphere, a procurator still presents possibilities of untapped potential. An active procurator can act as a tremendous supplement to existing resources, including the Center's current litigation activities. In fact, the Center has expressed the need for the procurator to take a more active role in domestic violence cases.¹⁸³ According to the Center, it is necessary and feasible to establish a system of public prosecution in domestic violence cases.¹⁸⁴ Abusive husbands will be deterred by the law and will feel pressure to restrict their behavior after the procurator's public action.¹⁸⁵ Through public prosecution, procurators will help punish abusive actors more efficiently, provide an outlet for wives in such an embarrassing situation, reduce domestic violence cases, and protect women's rights more effectively.¹⁸⁶ Furthermore, the procurator can help individual plaintiffs to litigate cases if they do not reach an NGO or where access to such resources is limited. Therefore, it is crucial for procurators to actively participate in domestic violence cases.

Their increased involvement can compliment the work of existing NGOs, such as those of the Center and women's federations. This can be seen in the previous case of Ms. Zhang.¹⁸⁷ In this case, one can see the cooperative efforts between the Center, women's federations, and the procurator office. With the help of the Center's collection of evidence and the Women's Federation assistance with the forensic authentication of Zhang's wounds, the procurator office was able to initiate a public prosecution suit against Zhang's husband.¹⁸⁸ While one may argue that the procurator played a passive role in the *Zhang* case, the success of the lawsuit as well as general high success rate for procurator-initiated litigation should encourage procurators to take a more aggressive approach in serving as public interest advocates in domestic violence cases.

By working with NGOs, women's federations, and other relevant judicial and law enforcement authorities, the procurator can greatly enhance the positions of the plaintiff victims, ultimately paving way for a successful lawsuit. In return, the impact litigation cases, awareness campaigns, and trainings by quasi-independent legal aid centers will help instill a gender perspective for the procurators in their work. While one cannot completely

¹⁸³ PEKING UNIVERSITY CENTER FOR WOMEN'S STUDIES AND LEGAL AID SERVICES, *supra* note 1, at 288.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ *Id.* at 172-73. Ms. Zhang was a Beijing farmer whose husband burned her by lighting gasoline on her body while quarreling.

¹⁸⁸ *Id.* at 173-74.

prevent procurators from assuming traditional ideas about domestic violence, their legal duties obligate them to serve as vigorous advocates for the plaintiff victims and to ensure that justice is attained in the process.

To further ensure the effectiveness of the procurator, legal regulations should be created to mandate gender-sensitivity trainings for procurator, judges and other relevant departments when handling domestic violence cases. These trainings, coupled with amendments to clarify and supplement existing legal provisions on domestic violence, enforcement of these provisions, heavy penalties for repeat domestic violence offenders, clear identification of relevant authorities' responsibilities, increased awareness of domestic violence issues, as well as the cooperation of all legal and law enforcement actors, would greatly address domestic violence victims' grievances.¹⁸⁹

V. CONCLUSION

In China, domestic violence stands as a complex issue that requires a multilateral approach by multiple agencies. As domestic violence transverses from the private to public sphere, the procurator, as the public's legal advocate, possesses the legal authority to litigate such cases, whether in criminal or civil proceedings. An institutionalized agency, such as the procurator, can have a positive effect on domestic violence cases through initiating lawsuits on behalf of victims. This need for the procurator is further amplified, particularly due to recent developments that the Center had lost its affiliation with Peking University in April 2010, which may hinder its impact litigation work in the future.¹⁹⁰ With laws and regulations strengthening the independence of the procurator, as well as cooperative efforts with legal aid centers, government agencies, women's federations, and judiciaries, the procurator will be able to effectively counter domestic violence and achieve optimal results for victims.

¹⁸⁹ Yuhong Zhao, *supra* note 23, at 233-50.

¹⁹⁰ Human Rights Watch, *China: Chokehold on Civil Society Intensifies*, Apr. 12, 2010, <http://www.hrw.org/en/news/2010/04/11/china-chokehold-civil-society-intensifies>.