

Congressional-Executive Commission on China
The Future of Women in China: #MeToo, Censorship, and Gender Inequality

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Chairman Merkley, Co-Chair McGovern, and Members of the Commission:

Good morning, and thank you for the opportunity to testify before you on this important topic. My name is Aaron Halegua. I am a lawyer based in New York City as well as a research fellow at NYU Law School's U.S.-Asia Law Institute and Center for Labor and Employment Law.

I have studied Chinese labor issues, including discrimination and sexual harassment, for nearly 20 years. This work has included interactions with Chinese judges, academics, lawyers, advocates, and workers about these subjects. In the summer of 2021, I published the report [*Workplace Gender-Based Harassment and Violence in China: Harmonizing Domestic Law and Practice with International Standards*](#). I described the current state of Chinese law and practice in this area based on a number of sources, including my research team's review of over 100 Chinese court decisions that mentioned the term "sexual harassment." I also made recommendations for the Chinese government, Chinese employers, and global brands on how to better comply with the International Labor Organization's *Convention Concerning the Elimination of Violence and Harassment in the World of Work* (No. 190), adopted in 2019, which seeks to create a "zero tolerance" environment towards gender-based harassment and violence for all working people. I encourage you to review the full report, which is attached as an appendix to these remarks. Today, I will share a few observations from my research and developments since I published my report.

China has ratified international instruments concerning the protection of women's rights and the elimination of gender discrimination. China has already ratified several United Nations and ILO instruments obligating it to ensure women's rights and eliminate discrimination, including: the *United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)* in 1980; the *ILO Convention on Equal Remuneration* (No. 100) in 1990; the *ILO Convention on Discrimination (Employment and Occupation)* (No. 111) in 2006; and the *International Covenant on Economic, Social and Cultural Rights (CESCR)* in 2001. In 1995, China hosted the United Nations' Fourth World Conference on Women—a significant moment for China to reaffirm its commitment to achieving gender equality and the empowerment of women. The meeting adopted declarations recognizing the prevalence of gender-based violence and sexual harassment in the workplace and called upon governments, employers, unions, and other stakeholders to address these problems. China also largely supported the adoption of ILO Convention 190, agreeing that a convention was preferable to a non-binding resolution and backing the instrument's mission of promoting a "zero tolerance" environment for not just "workers" but all "persons" in the world of work. However, since the ILO adopted Convention 190 in 2019, it has not yet been ratified by China.

China continues to improve its legislation aimed at combatting sexual harassment in the workplace, but there remains room for improvement. The first instance of China prohibiting sexual harassment against women in its national legislation were the 2005 amendments to the *Law on*

the Protection of Women's Rights and Interests, giving victims the right to sue harassers and complain to their employers and government organs. (This statute is in the process of being amended again.) In 2012, the State Council's *Special Regulation on the Labor Protection of Female Employees* required employers to "prevent and prohibit" sexual harassment in the workplace. These measures were a notable first step in building a legal framework, but still left much room for improvement, as explained in my report. Amongst other issues, no clear legal liability was established for employers who failed to prevent and prohibit harassment at work.

While there was some legislative activity at the local level after 2012, the next major national developments only came after the #MeToo movement. In 2018, China's judiciary established a new "cause of action" that allows victims to bring a lawsuit on a claim of sexual harassment. In 2020, China adopted a new *Civil Code*, which has a provision (Article 1010) on sexual harassment that further defines the term to include not only physical contact but also unwelcome verbal comments, written messages, or images; establishes liability for perpetrators of sexual harassment; and requires employers to adopt measures to investigate, prevent, and stop workplace sexual harassment. However, one notable shortcoming is that the *Civil Code* still does not clearly establish liability for employers who fail to do so. Nonetheless, at a minimum, adoption of the new provision does signal the central government's recognition of the problem of sexual harassment and some level of commitment to addressing the issue. Moreover, in the short time since the promulgation of the *Civil Code*, some localities, like the municipality of Shenzhen, have issued far more detailed and quite impressive guidance (albeit nonbinding) on how to effectuate the spirit of the new legislative provision.

Of course, the next question is: to what extent and in what ways are these legislative provisions actually implemented? And, do they provide any meaningful protection for Chinese workers?

Some Chinese employers have demonstrated a willingness to discipline perpetrators of sexual harassment. Although legislation directing Chinese employers to prevent sexual harassment has existed for a decade, several studies reported that few companies had actually adopted policies prohibiting sexual harassment, let alone procedures to lodge, investigate, and resolve complaints. Therefore, one of the more interesting findings from my review of Chinese judicial decisions was that the largest group of cases did not involve victims suing harassers, but rather individuals suing their former employers after being fired for allegedly engaging in sexual harassment. In China, employees may only be terminated after clearly violating an established work rule, which it is the employer's burden to demonstrate; otherwise, the improperly terminated employee must be paid compensation. In fact, my analysis revealed that the disciplined employee actually wins in the majority of these unjust dismissal claims because the employer is unable to meet its burden of proving that the harassment occurred. But there is a silver-lining to this finding: it means that at least these Chinese employers are willing to fire these individuals accused of sexual harassment and stand by their decision, even if it means that they will need to pay compensation to these individuals.

But victims of sexual harassment still face significant obstacles in obtaining legal remedies. Both my own research and that of other scholars confirms that very few victims of sexual harassment are filing lawsuits against the perpetrators. One study by a team at Yale Law School identified 83 sexual harassment cases decided from 2018 to 2020 and found that only six of them involved victims suing their harassers. Moreover, of that small group, only a handful have prevailed in court, and those who do win often receive very little, if any, compensation for their suffering. There are several explanations for this phenomenon. For instance, one difficulty for victims and courts is an insufficiently clear definition of sexual harassment or the threshold at which it becomes "illegal."

Another particularly significant obstacle for victims is that Chinese courts will not find that sexual harassment occurred based on the oral testimony of the victim alone; instead, some corroborating physical evidence is required. However, given the nature of sexual harassment claims, and the fact that most perpetrators seek to ensure that there are no witnesses to or evidence of their wrongdoing, victims often lack corroborating physical evidence. As for the remedy, those few victims who prevail in court generally receive little or no monetary compensation. Indeed, when a Shanghai court awarded a woman RMB 98,000 (US \$15,000) after enduring daily disturbing text messages from her colleague for a six-month period, commentators described the compensation as “unprecedented” in a sexual harassment case. These significant obstacles and limited remedies disincentivize victims from coming forward to file a lawsuit against their harasser or employer.

And worse, sexual harassment victims who complain often face defamation lawsuits or other forms of retaliation. As in many other countries, workers who complain about sexual harassment are often retaliated against by their employer, who may terminate them, force them to resign, or harass them in other ways. In China, however, it is also common for victims who complain to then get sued for defamation by the alleged harasser, who claims that their reputation has been ruined. The aforementioned Yale study found that 23 of the 83 sexual harassment cases it identified were defamation cases against the victim. One female worker who published an online account of being invited to her supervisor’s hotel room, where he forcibly kissed, groped and undressed her, was later ordered by a court to pay RMB 11,712 (roughly US \$1,800) for the supervisor’s hurt feelings and his litigation expenses. The defamation lawsuit filed against Xianzi by the television host she accused of harassing her during an internship at CCTV is another paradigmatic example. Survey data already suggests that only a small fraction of sexually harassed victims ever come forward and complain. If there continues to be little to gain from filing a complaint, but a great deal to lose, it is unlikely that more victims will be willing to come forward.

China’s government, employers, and worker organizations should take further steps towards creating a “zero tolerance” environment for sexual harassment. My report recommends steps that stakeholders within China can take to combat sexual harassment and get closer to achieving the standards of ILO Convention 190. For instance, the Chinese government should explicitly make employers liable for failing to prevent or address sexual harassment, revise evidentiary rules for sexual harassment cases, and protect victims from defamation claims and other retaliation. Chinese employers should establish procedures to investigate and resolve complaints, and global brands should ensure Chinese partners have such mechanisms in place. The U.S. government should commend China for the steps that it has taken thus far, but encourage it to do more to harmonize its domestic law and practice with the most recent international standards.

* * *

In conclusion, my view is that China has made important rhetorical commitments and taken some positive legislative step towards eliminating sexual harassment, but there has not yet been sufficient action by officials, courts, or employers to realize those commitments. In practice, Chinese women still routinely suffer sexual harassment at work and have little hope of obtaining meaningful redress.

Thank you for your attention to this important set of issues. I look forward to answering any questions that you may have.

Enclosures:

Appendix A: Aaron Halegua, [*Workplace Gender-Based Harassment and Violence in China: Harmonizing Domestic Law and Practice with International Standards*](#), Global Labor Justice - International Labor Rights Forum and the U.S.-Asia Law Institute, NYU School of Law (June 2021).

Appendix B: Aaron Halegua & Shikha Silliman Bhattacharjee, “Are countries fulfilling the promise of the Violence and Harassment Convention?”, [*openDemocracy*](#) (June 21, 2021).

APPENDIX A



Workplace Gender-Based Violence and Harassment in China:

Harmonizing Domestic Law and Practice with International Standards

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Executive Summary

- A Chinese assembly-line worker at Foxconn, a supplier of electronics to global brands like Apple, BlackBerry, Nokia, Nintendo and PlayStation, described conditions at her factory in 2018:

Loud dirty jokes, ridiculing female colleagues about their looks and figures, using the excuse of “giving direction” to make unnecessary body contact—this “sexual harassment culture” is prevalent in our factory workshops, and particularly serious for unmarried female workers. Many of us have grown accustomed to it. If a woman who is sexually harassed protests, she is likely to be accused of being “too sensitive” and “unable to take a joke.” A lack of administrative safeguards is also a major reason for rampant sexual harassment in factory workshops.¹

- In 2014, while still a college intern at China Central Television (“CCTV”), Zhou Xiaoxuan (who goes by Xianzi) alleged that she was sexually harassed by the renowned television show host, Zhu Jun. When she reported the incident to the police, Xianzi was encouraged not to pursue the complaint.² The police told her to consider her reputation and the impact this accusation would have on Chinese society. The police contacted her parents, both government employees, and told Xianzi that she must consider how pursuing this case would harm them. It was not until four years later, after reading the #MeToo stories published online by other women, that Xianzi decided to do the same. Her story attracted national attention, resulting in Zhu Jun suing Xianzi for damaging his reputation. Xianzi then counter-sued Zhu for “infringement of her right to personality.” In December 2020, the Beijing court rejected Xianzi’s claim, stating that sexual harassment claims are only actionable in the educational context.³ The second hearing, originally scheduled for May 21, 2021, was delayed without explanation.⁴

- When Huang Xueqin, a female journalist, was working at a Chinese news agency, a senior male reporter and mentor tried to grope and kiss her in a hotel room. She was only

able to escape his advances by kicking him in the groin and running away. Huang felt she needed to quit this job, but told her colleagues that the reason was that she wanted to “try something new.” After hearing about the experiences of other Chinese women, she decided to tell her #MeToo story, which then inspired more people to come forward. In 2017, Huang conducted a survey of female journalists on WeChat and found that 80 percent of the respondents had experienced sexual harassment.⁵

The incidents discussed above provide a glimpse into the widespread gender-based violence and harassment (“GBVH”) that exists in the Chinese workplace, as well as the significant forces that keep victims from complaining about their mistreatment. While China continues to make progress by issuing laws and regulations denouncing sexual harassment, much work remains to translate those documents into meaningful protections for workers.

In June 2019, the International Labour Organization (“ILO”) adopted the *Convention Concerning the Elimination of Violence and Harassment in the World of Work* (“ILO Convention 190”). China largely supported this global effort, agreeing that a convention was preferable to a non-binding resolution, and backing both the instrument’s mission of promoting a “zero tolerance” environment towards GBVH and its expansive scope in protecting not just “workers” but all “persons” affected by GBVH in the world of work.⁶ Domestically, in May 28, 2020, in the wake of the global #MeToo movement, China enacted a *Civil Code* in which it adopted the first national-level legal provision (Article 1010) explicitly creating liability for perpetrators of sexual harassment and obligating employers to adopt measures to investigate, prevent, and stop sexual harassment in the workplace.⁷

The new Chinese legal provision took effect on January 1, 2021 and ILO Convention 190 celebrates its second anniversary on June 21, 2021. With these complementary and mutually reinforcing international and national standards in place, this report considers how China can harmonize its law and

practice with ILO Convention 190 standards. A key step in this direction would be for China to ratify ILO Convention 190. While that process is ongoing, however, this report considers other concrete steps that the Chinese government can take to align its domestic law and practice with the substance of ILO Convention 190, as well as what Chinese employers, Chinese workers' organizations, and global brands can do to address GBVH in the Chinese workplace.

Part I of this report details how China, at least on paper, has committed to fighting GBVH in the workplace. China has adopted certain international instruments and participated in various fora concerning women's rights, gender equality, and discrimination. Numerous domestic laws and regulations also address these areas, including several explicit provisions on sexual harassment. Nonetheless, as covered in Part II, GBVH in China, as in all countries, undoubtedly persists. However, there is little comprehensive data about how GBVH protections are enforced in China, and GBVH cases are not widely reported in the Chinese media.

Addressing this evidentiary gap, Part III of this report draws from a review of over 100 civil cases from the database of judicial decisions maintained by China's Supreme People's Court ("SPC") that mention the term "sexual harassment," including cases since Article 1010 took effect, to provide insight into incidents of GBVH in China and how they are handled by the legal system. Analysis of these cases reveals that few GBVH victims seek redress through litigation, and those who do encounter significant obstacles in realizing the rights guaranteed under Chinese law. These obstacles include an unclear definition of sexual harassment, a high burden of proof and an emphasis on physical evidence, and a reluctance to award meaningful damages. There is some positive news: the decisions demonstrate that many employers have disciplined or terminated employees accused of engaging in GBVH at work. Moreover, employers are willing to take these actions despite the fact that alleged harassers often file successful legal claims for unjust dismissal that require the employers to pay

them compensation. As for the victims of workplace GBVH, however, they rarely receive any significant compensation or meaningful remedy. Instead, sexual harassment complainants often become the subject of an adverse employment action by the employer, defamation lawsuit by the harasser, or other form of retaliation.

Building upon these empirical insights, Part IV of the report offers a set of recommendations aimed at encouraging China to harmonize its domestic law and practice with the protections in ILO Convention 190 and international best practices. There are separate recommendations directed at the Chinese government, Chinese employers, workers' organizations, and global brands. It is the author's intention that this report may serve as a resource to these actors in promoting compliance with the text and spirit of ILO Convention 190.

Recommendations to effectuate ILO Convention 190 in China

RECOMMENDATION	CONVENTION 190	RECOMMENDATION 206
Recommendations for the Chinese government		
1. Improve the legislative framework		
Expand the definition of prohibited GBVH conduct.	Art.7	
Establish clear legal liability for employers.	Art. 9 Art. 10(b), (d)	Para. 14(d)
Adopt appropriate evidentiary rules and ensure meaningful remedies in litigation.	Art. 4(2)(e) Art. 10(b), (e)	Para. 14(a)-(e) Paras. 16(a)-(e)
Create safeguards against retaliation and confidentiality protections.	Art. 4(2)(e) Art. 10(b)(iv), (c)	
2. Strengthen government monitoring and enforcement		
Expand government monitoring, enforcement, and dispute resolution mechanisms.	Art. 4(2)(d), (h) Art. 10(b)(i)-(v)	
Create and conduct trainings for government officials.		Para. 20 Para. 23(b)
3. Expand legal and other victim services		
Make legal and other services available to GBVH victims.	Art. 4(2)(e) Art. 10(b)(v) Art. 10(e)	Para. 16 Para. 17
Recommendations for Chinese employers		
Establish employer policies and mechanisms to address GBVH.	Art. 9(a) Art. 10(b)	Para. 7
Conduct training and prevention initiatives within the workplace.	Art. 4(2)(g) Art. 9(c), (d) Art. 11(b)	Para. 8
Recommendations for workers' organizations		
Engage in tripartite dialogue at the national and local levels to inform inclusive approaches to address GBVH.	Art. 4(2)	
Participate in risk assessments, and the design and monitoring of GBVH policies, at the sector and workplace levels.	Art. 9(c)	Para. 4 Para. 7
Provide context-specific education and training to workers about their rights and how to enforce them.	Art. 9(d) Art. 11	Para. 23(b)
Recommendations for global brands		
Implement policies to prevent, investigate, and end GBVH at the company's workplaces in China.	Art. 9(a) Art. 10(b)	Para. 7
Conduct a human rights due diligence analysis of the supply chain to identify GBVH risks and take steps to mitigate those risks.	Art. 8(b), (c) Art. 9(c)	
Incentive suppliers to adopt best practices regarding GBVH and monitor their compliance.	Art. 4(2)(d), (g) Art. 9(c), (d) Art. 11(b)	Para. 8
Advocate for China to ratify ILO Convention 190 and adopt the measures described above.	Art. 11	

I. China's adoption of international and domestic legal standards on GBVH

For at least two decades, China's push for gender rights has been intertwined with a broader international movement. Since the 1980s, China has adopted numerous international instruments designed to protect women and female workers. For instance, China ratified the United Nations *Convention on the Elimination of All Forms of Discrimination Against Women* in 1980 as well as the ILO Conventions on equal pay (Convention 100) and eliminating discrimination in employment (Convention 111).⁸ In 1995, China hosted the United Nations' Fourth World Conference on Women—a significant moment for China to reaffirm its commitment to achieving gender equality and the empowerment of women. The meeting adopted declarations recognizing the prevalence of gender-based violence and sexual harassment in the workplace and called upon governments, employers, unions, and other stakeholders to address these problems.⁹

China has also supported the most recent international initiative to develop binding legal standards to end GBVH in the workplace, which culminated in the adoption of ILO Convention 190 and an accompanying non-binding Recommendation (No. 206) on how countries should best implement its provisions. This Convention primarily requires Member States to adopt measures designed to ensure a “zero tolerance” environment for workplace violence and harassment. These measures include establishing: a national law prohibiting violence and harassment; a comprehensive strategy on GBVH; strong enforcement and monitoring mechanisms; access to remedies and support for victims; sanctions for violators; education and training to raise awareness; and effective inspection and investigation of cases.¹⁰

ILO Convention 190 seeks to address GBVH against all working people, and thus has a broad scope of coverage. The Convention protects not just “employees” or even “workers,” but all “persons in the world of work...irrespective of their contractual status,” including trainees, apprentices, interns, and jobseekers.¹¹ The definition of “violence and harassment” is

similarly expansive, encompassing “a range of unacceptable behaviors and practices” that may or do result in “physical, psychological, sexual or economic harm.”¹² Further, ILO Convention 190 not only prohibits GBVH inside the workplace, but also during work-related travel, trainings, commutes to and from work, or as part of work-related communications.¹³

Recognizing that employers have a crucial role to play in combatting violence and harassment, ILO Convention 190 also calls on governments to adopt laws and policies requiring employers to take certain steps, such as: adopting and implementing a workplace policy on violence and harassment; identifying and addressing particular hazards and risks; and providing accessible training to relevant persons.¹⁴ Consistent with the ILO's tripartite approach, ILO Convention 190 calls for all such laws, policies, and other measures to be developed in consultation with both employers' organizations and workers' organizations.¹⁵

Over the last twenty years, China has sought to translate international commitments to combat GBVH and gender-based employment discrimination into domestic laws. The Chinese Constitution, promulgated in 1982, protects equal rights and equal pay for women and men.¹⁶ The 1994 *Labor Law* similarly demands the equal treatment of women in employment and prohibits discrimination against them, as does the 2007 *Employment Promotion Law*.¹⁷ The *Women's Protection Law*, as amended in 2005, demands equality, forbids discrimination, and prohibits sexual harassment, even providing victims the right to file a complaint against the harasser with their employer, the relevant administrative agency, or in court.¹⁸ In 2012, an employment-specific provision was issued as part of the *Special Regulation on the Labor Protection of Female Employees*, which provided that “employers shall prevent and prohibit the sexual harassment of female employees in their workplaces.”¹⁹ Most recently, following the adoption of ILO Convention 190, and perhaps in response to the #MeToo movement, China enacted a *Civil Code* in 2020 that includes a provision (Article

1010) establishing liability for perpetrators of sexual harassment and obligating employers to adopt measures to investigate, prevent, and stop workplace sexual harassment.²⁰

These various domestic laws and regulations also have significant limitations though. For instance, the operative text addressing sexual harassment is vague and fails to define key terms or specify what acts are prohibited. Furthermore, the legal liability for employers who fail to adopt adequate measures to prevent or address GBVH remains unspecified, and there are no clear penalties. Moreover, despite China's legislative progress, ending GBVH requires surmounting persistent problems of gender-based discrimination, violence, and harassment in the Chinese workplace and society.

II. GBVH in the Chinese workplace

GBVH in China's workplaces should be understood in the broader context of women's participation in the Chinese workforce. In the Maoist period, women were celebrated as "holding up half the sky" and encouraged to enter the workforce. However, the era of economic liberalization re-introduced traditional Chinese views on gender roles and the manifestation of the problems commonly found in capitalist societies. The recalibration of social values ushered in by Xi Jinping exacerbated these trends. Far from advocating workforce participation, President Xi has called on women to embrace their "unique role" in the family and "shoulder the responsibilities of taking care of the old and young, as well as educating children."²¹

As a result of these trends, women's labor force participation rates dropped from 73 percent in 1990 to 61 percent in 2019.²² The wage gap between working women and their male peers has also grown. Thirty years ago, Chinese women earned around 80 percent of what men made. By 2010, however, according to official data, women in Chinese cities earned only 67 percent of their male counterparts' earnings, and women in the countryside only made 56 percent of the amount made by men in rural areas.²³ One study, conducted by a leading recruitment service in China, concluded that women are paid 22 percent less than their male counterparts.²⁴ In 2018, over 30 percent of Chinese women reported feeling that they had fewer career opportunities than men.²⁵ In fact, gender has a larger impact on income inequality than whether one is from the countryside or a big city.²⁶

Gender-based discrimination towards female workers begins with the hiring process. National legislation bars women from working in certain "physically demanding" professions, such as logging and mining.²⁷ In other industries, employers simply choose to exclude women. Job advertisements in China routinely specify "men only," "men preferred," or "suitable for men"—this was even the case for 19 percent of national civil service job postings in 2018.²⁸ One motivating factor for this discrimination is that companies must offer at least 14 weeks

of paid leave to women having children, but fathers typically get only two weeks. Some employers seek to circumvent this protection by forcing female employees to sign an agreement promising not to get pregnant, despite the illegality of this practice.²⁹ Many other employers will simply decline to hire women, especially those perceived as likely to have children in the near future.

The preamble to ILO Convention 190 recognizes that gender stereotypes, discrimination, and unequal power relations are both "underlying causes" and "risk factors" for GBVH in the workplace—and this is consistent with women's experiences in China. Scholars have attempted to gauge the prevalence of sexual harassment in the Chinese workplace: for instance, a 2007 survey found that 80 percent of working Chinese women have experienced sexual harassment.³⁰ These findings were reinforced by a 2017 poll conducted by Huang Xueqin—introduced in the Executive Summary of this report—who found that over 80 percent of the 255 female journalists she surveyed reported being subjected to varying degrees of sexual harassment at work.³¹ Other studies have produced lower but still significant numbers. For instance, one survey of 2,000 urban Chinese women found that just under 20 percent reported experiencing sexual harassment in the workplace.³² These numbers are even more remarkable when one considers the global trend in underreporting instances of GBVH due to fear of stigma and other reasons.³³

Chinese court decisions show numerous other forms of GBVH. For instance, one manager required his employee to watch pornographic material with him. Several managers invited their female employees to have sex or affairs with them.

Workplace GBVH occurs in various forms in China. In what is often considered China's first sexual harassment lawsuit, a woman complained that her boss repeatedly touched her body while promising her a better job, invited her to his hotel room, and withheld her bonus when she complained.³⁴ A review of other Chinese court cases reveals instances of harassment not only by those in positions of authority within the workplace, but also by customers and co-workers. GBVH is most commonly perpetrated through verbal comments, touching, and chat messages. Indeed, a study by the Chinese Academy of Social Sciences in the 1990s, in which 84 percent of female workers reported experiencing harassment, found that the two most common forms were unwelcome touching (70.48%) and sexual jokes or comments (60.36%).³⁵ Chinese court decisions show numerous other forms of GBVH. For instance, one manager required his employee to watch pornographic material with him.³⁶ Several managers invited their female employees to have sex or affairs with them.³⁷

Like in other parts of the world, GBVH in China also affects blue-collar workers.³⁸ One study found that 70 percent of female factory employee respondents in Guangzhou experienced some form of GBVH at work, and 15 percent were compelled to quit their jobs due to the harassment.³⁹ As highlighted in the Executive Summary, a former Foxconn worker described the factory's "prevalent...sexual harassment culture" in which a woman who complains is likely to be accused of being "too sensitive" and "unable to take a joke."⁴⁰ Female workers in Chinese Walmart stores reported similar experiences: after complaining of being inappropriately touched by store patrons in 2017, their managers dismissed their grievance and retorted "the customer is always right."⁴¹

While this report focuses on the workplace, it should be noted that GBVH in China extends beyond that arena. The first manifestation of the #MeToo movement in China concerned college campuses: in January 2018, Luo Xixi alleged that she was sexually assaulted by her former thesis advisor. Indeed, a 2016 survey of more than 6,000 students and recent graduates found that over 70 percent reported being sexually harassed; however, only 4 percent said they reported it to the university or police.⁴² A study by the China Family Planning Association found that over 30 percent of university students experienced sexual harassment or violence.⁴³ A Nanjing University survey revealed that 16 percent of female respondents had experienced sexual harassment, and 23 percent of them claimed that the perpetrators were university professors or staff.⁴⁴ Outside the educational context, women also report encountering GBVH in other parts of their daily lives. For instance, in Beijing, more than half of female respondents to a 2017 *China Youth Daily* survey said they, or someone they knew, had experienced sexual harassment while riding the metro.⁴⁵

III. The impact and limits of China's legal protections against GBVH

China has had a national law prohibiting sexual harassment and authorizing victims to file complaints since 2005, and a national regulation requiring employers to prevent and respond to sexual harassment in the workplace since 2012. However, the effectiveness of this legal regime to prevent and stop sexual harassment has been seriously hampered because key terms were not defined, the obligations of various actors were not specified, and punishments were not prescribed. It is routine in Chinese legislative practice, where administrative enforcement is largely carried out by local government agencies, for local governments to adopt measures that provide more detail to the often-vague national dictates. Indeed, this is what happened in the field of sexual harassment, with some localities providing more specific definitions of sexual harassment or more defined duties for employers.⁴⁶ However, after 2012, there was little legislative activity at the national level concerning sexual harassment for nearly one decade.

In 2020, China took a significant step forward when the National People's Congress enacted the *Civil Code*. This included a new provision on sexual harassment, Article 1010, which took effect on January 1, 2021:

A person who has been sexually harassed against their will by another person through oral words, written language, images, physical acts, or the like, has the right to request the actor to bear civil liability in accordance with law.

The State organs, enterprises, schools, and other organizations shall take reasonable precautions, accept and hear complaints, investigate and handle cases, and take other like measures to prevent and stop sexual harassment conducted by a person through taking advantage of his position and power or a superior-subordinate relationship, and the like.⁴⁷

The legislation clearly establishes that perpetrators of “sexual harassment” may bear civil liability and provides the beginnings of a definition of that term. Article 1010 also creates an obligation for state organs, employers, and other institutions to take measures to prevent sexual harassment as

well as accept and investigate complaints. Nonetheless, key questions—including whether and when an employer may face legal liability—remain unanswered.

However, the effectiveness of this legal regime to prevent and stop sexual harassment has been seriously hampered because key terms were not defined, the obligations of various actors were not specified, and punishments were not prescribed.

At least one local government has already acted to fill in some of the gaps left open by Article 1010. In March 2021, the Shenzhen government issued the *Shenzhen Municipal Guideline on the Prevention of Sexual Harassment* (the “*Shenzhen Guideline*” or “*Guideline*”), which, according to the preamble, draws upon “advanced domestic and international practices.”⁴⁸ As detailed below, although the 13-page *Shenzhen Guideline* is not legally binding, it breaks new ground by providing a more developed definition of sexual harassment, specifying the steps that employers should take to prevent sexual harassment and how complaints are to be handled, prescribing specific punishments for perpetrators based on the severity of the misconduct (including that the employer order an apology, demotion, warning, dismissal, or blacklisting), instructing government departments to take certain actions, and stressing that sexual harassment complaints and investigations be kept confidential.

But, to what extent do these Chinese laws and regulations provide meaningful protections or remedies for workers? Information and data on this topic are limited. Therefore, the author conducted a broad review of cases from the SPC's database of Chinese judicial decisions to investigate what types of GBVH incidents are occurring in Chinese workplaces, how GBVH disputes are handled, and how Chinese courts treat these claims.⁴⁹

The author began by searching for all cases in the database issued prior to 2021 that mention the term “sexual

harassment” (性骚扰), which yielded 881 total hits. After eliminating the criminal and administrative cases, there were 577 civil judgments, which included 187 tort disputes alleging an infringement of the right to personality and 233 labor disputes.⁵⁰ For these two types of cases, the author’s research team read through all of the trial-level decisions that were not duplicates and that actually concerned sexual harassment.⁵¹ The author then searched for all decisions containing the word “sexual harassment” issued after January 1, 2021, when Article 1010 took effect, which yielded 33 hits, of which 22 were civil cases—including 5 personality rights disputes and 7 labor disputes.⁵² The author’s research team also read and analyzed all of these decisions.

Drawing upon the author’s analysis of these civil cases as well as other sources, the paragraphs that follow examine the landscape of Chinese actors and institutions involved in enforcing the legal prohibition on sexual harassment in the workplace. Specifically, this section evaluates the role played by Chinese employers, administrative agencies, and courts in preventing and addressing instances of GBVH.

A. Enforcement by Chinese employers

The 2012 *Special Regulation on the Labor Protection of Female Employees* required employers to prevent and prohibit sexual harassment of female employees in their workplaces. Article 1010 of the *Civil Code* builds upon this obligation by directing employers to adopt measures to receive and investigate complaints, and prevent and stop sexual harassment. However, no penalties are prescribed for when employers fail to do so, which begs the question: to what extent are employers adhering to these requirements?

An employer that seeks to prevent and address workplace sexual harassment and other forms of GBVH might issue an anti-harassment policy, establish a complaint mechanism, or provide training to workers and managers. There is not a great deal of data, however, regarding employer compliance in this area; and the data that exists is not very encouraging. For instance, in a 2018 survey of 100 respondent companies, 81 percent reported that the company had no anti-sexual harassment policy, while 12 percent reported that a written policy existed but was not implemented.⁵³ According to Huang Xueqin’s survey of journalists, only three percent reported having received any information or training on sexual harassment.⁵⁴ Discussions with Chinese employment lawyers suggest that outside of foreign-owned companies, it is quite rare to see an explicit anti-sexual harassment policy or complaint mechanism, let alone for an employer to pay for training.⁵⁵ Even

after Article 1010 took effect, consultants report that Chinese employers are reluctant to adopt policies or pay for trainings.⁵⁶

The court cases examined for this study bring a bit of positive news. A large portion of the lawsuits were brought by employees who had been disciplined for engaging in sexual harassment—meaning that employers in these cases responded to complaints of misbehavior and stood by their decision to discipline employees even in the face of a lawsuit. In fact, a 2020 study of 199 labor disputes relating to sexual harassment found that alleged harassers who are disciplined or terminated by their employers actually prevail on their unjust dismissal claim 70 percent of the time—a finding consistent with the author’s review of relevant cases.⁵⁷ In other words, employers terminated alleged harassers even though it often cost them money in court. The 2020 study also suggests that employers may be paying more attention to sexual harassment than in the past: a majority of companies involved in these lawsuits at least had a provision in their employee handbook prohibiting sexual harassment.⁵⁸ That being said, none of the cases reviewed by the author discussed an instance where the employer compensated a sexual harassment victim.

The above analysis demonstrates that, regardless of whether the employer’s Article 1010 obligations to adopt measures to prevent, investigate, and stop sexual harassment carry penalties, it is still in employers’ self-interest to adopt such measures. Chinese labor law only permits the termination of an employee without compensation where a clear work rule has been violated. If an employee challenges their termination in court, the employer has the burden to establish that a violation of an established rule occurred.⁵⁹ Accordingly, employers would be wise to adopt clear policies prohibiting GBVH and routinely gather evidence when complaints of sexual harassment arise. Failing to do so will make it difficult for an employer to justify its dismissal of the alleged harasser. By contrast, in one case where the employer did prohibit sexual harassment in the employment contract, and the employer established that the alleged harasser had been making sexual remarks and touching his female coworker, the court upheld the termination without compensation.⁶⁰

B. Enforcement by the Chinese government

Prior to 2021, there is little evidence of China’s various government agencies actively assisting in fighting GBVH in the workplace, particularly where it does not rise to the level of a criminal act. The Chinese lawyers and other stakeholders interviewed for this study were unaware of any case in which the Chinese government reprimanded an employer

for lacking a policy prohibiting or preventing sexual harassment. Furthermore, rather than helping victims seek redress, there are numerous reports of government agencies trying to dissuade victims from pursuing their case. When Xianzi, the harassed CCTV intern introduced in the Executive Summary, complained to the police, she was encouraged not to pursue the accusation against Zhu Jun and told to consider her reputation and family, as well as the negative social impact of bringing a complaint. This dissuasion also occurs outside of the employment context: one university student, Xin Yue, who sought information from administrators about a prior rape case involving another student was faced with intimidation by the school's authorities, who hinted that the student might not graduate and threatening to contact her parents.⁶¹

C. Enforcement through the Chinese courts

This section considers what happens when sexual harassment victims seek redress through the Chinese courts. While various national and local measures have made progress in defining “sexual harassment” and explicitly authorizing victims to sue in court, few workers have brought lawsuits against their harasser, and those who do face an uphill battle, particularly in regard to obtaining meaningful remedies and avoiding retaliation. The paragraphs that follow discuss these issues.

1. Small number of cases

Even prior to the issuance of Article 1010, Chinese law provided sexual harassment victims the option to file a claim in court. Nonetheless, despite the prevalence of GBVH in the Chinese workplace, there are not many sexual harassment court cases. A 2018 study performed by the Beijing Yuanzhong Gender Development Center found only 34 judicial decisions from 2010 to 2017 where sexual harassment in the workplace was the primary issue—and only two of these were brought by victims.⁶² The author was able to find a few more than two cases in which an employee alleged being a victim of sexual harassment; but, as described above, cases brought by targets of sexual harassment are still far fewer than those brought by employees terminated due to an allegation of sexual harassment. At present, there is no evidence that the situation has changed dramatically since Article 1010 took effect in January 2021. In fact, this study identified only four decisions that have been issued in tort cases mentioning “sexual harassment”

since January 2021.⁶³ However, in fairness, it may be too early to tell—particularly as Article 1010 only applies in cases where the conduct occurred after January 1, 2021. The remainder of this section focuses on the experiences of workers that have filed GBVH claims in the Chinese courts and considers issues they face in obtaining justice.

2. Defining “sexual harassment”

The lack of a clear definition of sexual harassment, or a threshold at which point objectionable behavior becomes legally actionable, has created obstacles for Chinese claimants. Article 1010 marks a step forward by noting the types of acts that may constitute harassment—“oral words, written language, images, physical acts, or the like”—but does not speak to the threshold at which such acts create liability for the perpetrator or employer. By way of comparison, even under the standard for establishing that a hostile work environment exists under federal law in the United States—that the harassment be either sufficiently “severe” or “pervasive”—judges may disagree as to whether a set of facts meets this threshold.⁶⁴ In China, the courts lack even an amorphous standard of this sort to guide them.

The *Shenzhen Guideline* makes significant progress in this regard by fleshing out a definition of sexual harassment: “sexual harassment is nonconsensual, sexual-in-nature, unwelcome tortious conduct, through oral words, written language, images, physical acts, or the like, that offends, intimidates, or humiliates the person, resulting in negative emotions, or a hostile, unfriendly work (study) environment.”⁶⁵ The *Guideline* then elaborates on three important aspects of the definition. First, the *Guideline* states that conduct constituting “sexual harassment” must have three components: (i) it is sexual in nature; (ii) it is unwelcome by the target (using a subjective standard); and (iii) it results in a violation of the person’s right to personality and causes negative emotions, or a “hostile or unfriendly work ... environment” (敌意、不友好的工作 ... 环境).⁶⁶ Second, the *Guideline* provides explanations and examples of the four types of harassing acts (oral words, written language, images, physical acts) identified in Article 1010. As an example, the *Guideline* notes that “oral words” may include commenting on a person’s sensitive body parts, unwelcome teasing, sexual and dirty jokes, or other unwelcome comments. Third, the *Guideline* recognizes two primary

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forms of sexual harassment: (i) using one's power, status, or advantages to make the person to conduct sexual acts, or (ii) creating a hostile work environment.⁶⁷ This definition provides far more guidance to Chinese judges than existed previously.

The *Shenzhen Guideline*, nonetheless, does not fully answer the question of when unwelcome behavior becomes legally actionable. The *Guideline* improves upon Article 1010 by clarifying that a subjective standard should be used to determine whether the allegedly harassing conduct is unwelcome. The *Guideline* also provides useful examples of conduct that does not constitute sexual harassment, such as inadvertent or accidental physical contact, an accidental or solitary sexual comment, or certain socially-acceptable language or behaviors. However, it does not affirmatively articulate at what point harassing comments, touching, or behavior does, for instance, constitute a “hostile or unfriendly work environment.” The result may be that Chinese judges seeking to use the *Guideline* as a reference in deciding sexual harassment cases must still develop their own standards.

While marking a major step forward, the definition of sexual harassment in the *Shenzhen Guideline* is also still not as expansive as ILO Convention 190's coverage of the “range of unacceptable behaviors and practices” that may or do result in “physical, psychological, sexual or economic harm.”⁶⁸ However, the model employer policy that is issued along with the *Shenzhen Guideline* is largely consistent with ILO Convention 190's expansive definition of the workplace, as it not only prohibits sexual harassment at the regular place of work, but also misconduct at any work-related meetings, training events, business trips, or other activities that take place outside the employer's premises.⁶⁹

3. Proving sexual harassment

The issue of what evidence, or how much evidence, is necessary to support a finding of sexual harassment has been a formidable obstacle for plaintiffs. Chinese courts often require plaintiffs to prove facts to a “high degree of likelihood” to prevail on their claims, which some legal scholars have described as requiring certainty of 85 percent or more.⁷⁰ Moreover, the Chinese legal system places a strong emphasis on physical evidence and attributes very little evidentiary weight to oral testimony. Indeed, court guidelines for civil cases provide that a party's testimony cannot be the sole basis for establishing a fact in a case—some corroboration is necessary.⁷¹ For instance, in seeking compensation from her employer for being subjected to unlawful working conditions, Ms. Zhao testified about being harassed by her manager while on a business trip and being frequently forced to share a hotel room with male colleagues. However, the

Moreover, the Chinese legal system places a strong emphasis on physical evidence and attributes very little evidentiary weight to oral testimony. Indeed, court guidelines for civil cases provide that a party's testimony cannot be the sole basis for establishing a fact in a case—some corroboration is necessary.

court denied her claim because she had no physical evidence to corroborate her testimony.⁷² Since sexual harassment cases often involve verbal comments or unwelcome touching, physical evidence rarely exists. Even in instances where the victim introduced evidence of harassing messages coming from the defendant's social media account, the court found that the plaintiff was unable to adequately demonstrate that the defendant is the one who had sent them.⁷³ In fact, Walmart had the same problem when it terminated an employee for sending harassing messages: the court found that Walmart could not demonstrate that the social media posts were actually sent by the employee and thus the dismissal without compensation was not legal.⁷⁴

Article 1010 does not address any issues concerning the evidentiary standard for plaintiffs or the weight that oral testimony should be given, nor does the *Shenzhen Guideline*. Interestingly, however, the *Guideline* does direct companies to train workers and managers on how to preserve physical evidence of harassing behavior, further underscoring the primacy of physical evidence in Chinese legal proceedings.⁷⁵

4. Remedies for victims

Even where a GBVH victim prevails in litigation, the remedies ordered by the courts have been paltry and disappointing. In one early case, back in 2002, a local court in Hainan Province ordered a 68-year-old man to apologize for harassing three young men, but only ordered that he pay them 1 RMB each for emotional suffering.⁷⁶ In what some call the first “successful” sexual harassment case in Guangzhou, where a supervisor hugged an employee from behind and then strangled her neck when she tried to break free, the victim was only awarded RMB 3,000 (US \$470) by the court—and was also fired after bringing the litigation.⁷⁷

Victims have not fared much better in more recent cases, as the courts remain reluctant to award damages. In the first successful case filed since the SPC declared “sexual harassment” an explicit cause of action, which was even selected as one of China’s “top 10” public interest lawsuits for 2019, the court found that sexual harassment occurred, but denied the claim for monetary compensation—only ordering that the defendant apologize.⁷⁸ Even where the defendant in a case already agreed to pay the plaintiff RMB 12,000 (US \$1,883), the court unilaterally declared the number to be too high and reduced the compensation to RMB 5,000.⁷⁹

It is not yet clear to what extent Article 1010 may improve the situation. On the one hand, in March 2021, a Shanghai court awarded RMB 98,000 (\$15,000) to a plaintiff who alleged that her colleague sent disturbing text messages to her daily for six months—an “unprecedented” award in a sexual harassment lawsuit.⁸⁰ However, a few months later, in a May 2021 decision that cites Article 1010, the female plaintiff alleging that her coworker touched her breasts and buttocks requested RMB 30,000 (US \$4,709) in damages, but the court found insufficient evidence that the sexual harassment caused the plaintiff’s depression and awarded only RMB 5,000 (US \$784).⁸¹ These limited monetary awards, particularly after overcoming the numerous other litigation obstacles outlined above, will likely further discourage victims from ever acting upon their sexual harassment claims.

5. Retaliation and defamation suits

Victims who complain about GBVH not only have a low likelihood of obtaining meaningful redress, but also face considerable retaliation. Employers and others may dissuade victims from pursuing complaints in the first place. For instance, one manager lobbied a female employee to withdraw her police complaint about a coworker who repeatedly ejaculated into her teacup.⁸² Victims have faced terminations, forced resignations, and retaliatory harassment.⁸³ Restaurant managers in Guangdong forcibly evicted a worker from the company dormitory after she complained about sexual harassment.⁸⁴ In one litigation, the defendant requested that the court order a psychological evaluation of the complainant.⁸⁵ GBVH may even be used as a form of retaliation: after Walmart employee Xiaoli complained about the flexible working hour system, her manager assigned her to clean the store toilets and took photos of her while she used the bathroom.⁸⁶

GBVH victims who complain or make their allegations public often get sued for defamation, as in the case of Xianzi, who complained that a television news anchor harassed her during an internship. In fact, the SPC database contains a

total of 113 civil case judgments containing the word “sexual harassment” in which defamation is a cause of action. Since the start of the #MeToo movement, numerous defamation cases have been filed against women who shared accounts of being victimized by GBVH. Ms. Wang, a former World Wildlife Fund employee, was sued for defamation after posting an account of sexual harassment by her boss on social media. The court found Ms. Wang’s testimony inadequate to establish that the harassment occurred, and thus ordered Ms. Wang to delete the post and apologize.⁸⁷ In another matter, after He Qian published an online account of being invited to her supervisor’s hotel room, where he forcibly kissed, groped and undressed her, she was greeted by a defamation lawsuit and ordered to pay RMB 11,712 (roughly US \$1,800) for the supervisor’s hurt feelings and litigation expenses.⁸⁸ Despite the lack of any legal authority providing that the burden of proof is reversed in defamation suits, the judge in He Qian’s case found that it was her burden to show that the alleged acts occurred, but that she failed to do so.⁸⁹ Her lawyer equated this ruling to telling a humiliated victim “that if you don’t have audio recordings or videos of the event, then you better hurry up and shut your mouth.” The attorney predicted that such cases will have a definite chilling effect on victim’s coming forward.⁹⁰

These acts of retaliation and the filing of defamation lawsuits arise in a context where Chinese victims are already hesitant to complain. A 2015 survey by *Sina.com* found that only four percent of women and three percent of men who were sexually harassed had filed complaints with the police.⁹¹ A poll of Chinese journalists found that only 3.2 percent reported the encounter to their company, and only 0.6 percent made a police report.⁹² Some experts have remarked on China’s “culture of silence,” in which victims feel embarrassment over having been involved in such instances and choose not to discuss or share the experience. In a system where few plaintiffs prevail, and those who do receive little reward, filing a lawsuit hardly seems worthwhile, especially in light of the potential retaliation and reputational damage. In the words of a Beijing lawyer who has handled nearly 20 sexual harassment cases since 2005, the outcome for most victims who sue is that they lose their case and lose their husband or boyfriend in the process.⁹³

IV. Recommendations

China has made notable progress in combatting GBVH, including adopting specific measures since the enactment of ILO Convention 190. However, as in most Member States, there remains much work to do before every Chinese worker can enjoy a workplace free from violence and harassment. Government, employer, worker, and other civil society stakeholders each need to make concerted efforts to end all forms of workplace violence and harassment.

As a preliminary matter, it must be noted that successfully preventing and ending GBVH requires workers and their organizations to play a central role in the design and implementation of GBVH policies at the political, sectoral, and workplace levels, as recognized by ILO Convention 190. In other jurisdictions, trade unions traditionally play the role of representing workers' interests in these activities, but the situation in China is more complex in this regard. The All-China Federation of Trade Unions ("ACFTU") does, technically, have the largest membership of any union in the world. However, the ACFTU is far from a democratic institution that zealously represents the interests of workers; instead, the trade union functions essentially as part of the Chinese government and its mission is to harmonize relations between employers and employees. The institution is comprised of union officials who are essentially civil servants placed at the various levels of government as well as workplace-level union branches that are generally dominated by the employer.⁹⁴ In this context, the ACFTU has occasionally demonstrated an ability to promote workers' interests at the policy level (such as by promoting certain legislation) or through work that is not specific to any one workplace (like developing training materials, conducting public education, or arranging legal aid services for workers), but it has been largely ineffectual in protecting employees and their interests at the workplace level.⁹⁵ In light of this reality, the report discusses the ACFTU both in its recommendations to the Chinese government and to Chinese workers' organizations.

Given the limitations of the ACFTU, there is a need in China for other civil society actors to play a role in advocating for and protecting workers with regards to GBVH and related issues. However, Chinese authorities have clamped down on many of the civil society actors focused on GBVH and thus greatly limited opportunities for them to do meaningful work in this area. For instance, back in 2015, the "Feminist Five"—a group of five young female activists who advocated against gender inequality, domestic violence, and sexual harassment—were arrested because they planned to hand out stickers on the Beijing subway to raise awareness about sexual harassment.⁹⁶ In 2016, Chinese authorities shut down the country's first women's rights legal aid center, which represented low-income Chinese women free of charge and also brought impact litigation cases.⁹⁷ As the #MeToo movement gained steam, the government cracked down on non-governmental organizations working on feminist advocacy and women rights issues, closed online discussion forums, and limited coverage in the official media.⁹⁸ Chinese censors had initially banned information about Xianzi's sexual harassment allegations against the CCTV host, and only began reporting on them once Zhu Jun had filed his defamation claim against Xianzi.⁹⁹

The above actions took place in the context of a broader tightening of the space for labor rights activists in China. In December 2015, the Chinese government targeted a group of labor rights NGOs in Guangzhou, arresting dozens of NGO staff and prosecuting three of the leaders.¹⁰⁰ From the summer of 2018 to the spring of 2019, the government clamped down on student and labor activists that unionized workers at the Jasic factory in Shenzhen, and then subsequently widened the repression to broader networks of labor rights advocates.¹⁰¹ This wider crackdown included labor NGOs in Shenzhen, journalists who operated social media platforms focused on labor rights, and leaders of community organizations.¹⁰² The level of government intimidation and harassment has not softened since then.

Accordingly, the author recognizes the significant limitations that the ACFTU and civil society actors may face in conducting certain types of advocacy for workers relating to GBVH. Nonetheless, the report offers recommendations for workers' organizations to engage in tripartite dialogue at national and local levels, participate at the sector and workplace levels in risk assessments and GBVH policy design and monitoring, and provide context-specific education and training of workers regarding their rights and how to enforce them.

Additionally, for every recommendation that follows, in line with Article 4(2) of ILO Convention 190, the report recommends that the Chinese government adopt “an inclusive, integrated, and gender-responsive approach for the prevention and elimination of violence and harassment in the world of work.” This means including the perspective of workers from all sectors and demographics in crafting legislation or regulations (that define GBVH, strengthen employer liability, establish standards regarding evidence or remedies, prohibit retaliation, and expand government enforcement) and in setting goals and priorities that contribute to resource allocation (towards enforcement of these laws, training of government officials, and funding for victim services).

A. Recommendations for the Chinese government

1. Improve the legislative framework¹⁰³

ILO Convention 190 recognizes that effectively combating sexual harassment requires Member States to create an appropriate legal framework.

- Article 4(2) of ILO Convention 190 calls on each Member State to “adopt, in accordance with national law and circumstances and in consultation with representative employers’ and workers’ organizations, an inclusive, integrated and gender-responsive approach for the prevention and elimination of violence and harassment in the world of work.”

The paragraphs that follow will highlight specific recommendations in regard to revising China’s legislative framework. In keeping with provisions from ILO Convention 190, the recommendations include: expanding the definition of prohibited GBVH conduct, establishing clear legal liability for employers, adopting appropriate evidentiary rules and meaningful remedies in litigation, and creating safeguards against retaliation and confidentiality protections.

a. Expand the definition of prohibited GBVH conduct

ILO Convention 190 requires each Member State to adopt legislation prohibiting GBVH.

- Article 7 of ILO Convention 190 obligates Member States to “... adopt laws and regulations to define and prohibit violence and harassment in the world of work, including gender-based violence and harassment.”

As laid out in this report, China has taken a few positive steps at the national level since the rise of the #MeToo movement. These include creating an explicit cause of action for “harm caused by sexual harassment” in December 2018 as well as adopting Article 1010 as part of the *Civil Code* in 2020. At a minimum, these legislative efforts demonstrate a recognition of the problem and signal the government’s commitment to addressing it.

Nonetheless, these measures are only an initial step towards building a sufficient legal framework to counter GBVH. The Article 1010 clause creating civil liability for perpetrators of sexual harassment still leaves many questions unanswered. The provision reads in relevant part: “[a] person who has been sexually harassed against their will by another person through oral words, written language, images, physical acts, or the like, has the right to request the actor to bear civil liability in accordance with law.”¹⁰⁴ One academic involved in drafting Article 1010 argues that the provision only creates liability for harassment targeted at specific individuals, but not acts that create a harassing environment more generally.¹⁰⁵ Indeed, one women’s rights lawyer pointed out that the academic’s interpretation reflects that sexual harassment in China is still being viewed as an ordinary tort, akin to one party punching another, rather than as a more systemic GBVH issue.¹⁰⁶

As discussed above, the *Shenzhen Guideline* issued earlier this year fills in some of the gaps in Article 1010’s vague definition, such as by identifying three components to a “sexual harassment” claim, providing examples of prohibited conduct, and articulating the two conceptions of sexual harassment (one based on coerced sexual acts and one based on a hostile work environment). China should encourage all localities to not only adopt similar measures, but to promulgate them with the force of law rather than as non-binding guidelines. In addition, any legislation should make explicit the threshold for when unwelcome or inappropriate behavior becomes legally actionable, such as by defining terms like “hostile and unfriendly work environment.”¹⁰⁷

b. Establish clear legal liability for employers

Employers play a crucial role in preventing and addressing GBVH. ILO Convention 190 calls upon Member States to require employers to control and prevent GBVH through adopting policies, identifying and addressing risks, providing information and training to workers and other persons, and establishing investigation and complaint procedures as well as workplace-level dispute resolution mechanisms. The section below on recommendations for employers specifies the components to be included in such policies and mechanisms. This section addresses how the Chinese government can ensure that employers fulfill these responsibilities.

- Article 9 of ILO Convention 190 calls upon Member States to “adopt laws and regulations requiring employers to take appropriate steps commensurate with their degree of control to prevent violence and harassment in the world of work, including gender-based violence and harassment, and in particular, so far as is reasonably practicable, to:

- adopt and implement, in consultation with workers and their representatives, a workplace policy on violence and harassment;
- take into account violence and harassment and associated psychosocial risks in the management of occupational safety and health;
- identify hazards and assess the risks of violence and harassment, with the participation of workers and their representatives, and take measures to prevent and control them; and
- provide to workers and other persons concerned information and training, in accessible formats as appropriate, on the identified hazards and risks of violence and harassment and the associated prevention and protection measures, including on the rights and responsibilities of workers and other persons concerned in relation to the policy referred to in subparagraph (a) of this Article.”

- Article 10 of ILO Convention 190 calls upon Member States to take measures to “(b) ensure easy access to appropriate and effective remedies and safe, fair and effective reporting and dispute resolution mechanisms and procedures in cases of violence and harassment in the world of work, such as: (i) complaint and investigation procedures, as well as, where appropriate, dispute resolution mechanisms at the workplace level...”.

- Article 10 also calls upon Member States to take measures to “(d) provide for sanctions, where appropriate, in cases of violence and harassment in the world of work.” Paragraph 14 of Recommendation 206 further elaborates on this provision, adding that sanctions could include the right to resign with compensation, reinstatement, or “orders requiring measures with immediate executory force to be taken to ensure that certain conduct is stopped or that policies or practices are changed.” This elaboration makes clear that Article 10 envisions a legal regime that places liability not just on GBVH offenders, but also on employers, who are the ones equipped to offer remedies such as reinstatement or a change in workplace policy.

Turning to China’s domestic law, while Article 1010 and local regulations create obligations for employers to prevent or stop sexual harassment, what are the repercussions when an employer fails to do so? Prior to the issuance of the *Civil Code*, it was fairly clear that no national law or regulation created liability for an employer; only the harasser could be held liable. Article 1010 is similarly silent as to whether an employer may face any punishment, either in the form of civil liability or an administrative sanction, for failing to adopt measures to prevent or address sexual harassment.

An essential component of ensuring that employers have the proper incentives to prevent, investigate, and stop sexual harassment is the threat of legal liability. Indeed, several Chinese commentators argue that Article 1010’s lack of any explicit punishment means it is unlikely to actually change employer behavior: as Professor Shen Yifei questioned, “If a regulation has neither mechanisms for punishment nor incentives, how can it be implemented?”¹⁰⁸ One Chinese scholar believes that Chinese employers may be held liable under Article 1010, but only if the plaintiff proves that the company’s failures to adopt a sexual harassment policy caused the harm—a difficult standard to meet.¹⁰⁹ Looking to the United States, avoiding the payment of large monetary awards to victims is an important motivation for many companies to establish policies to prevent and address GBVH.

Local regulations in China have been more explicit about the issue of employer liability. A regulation issued by Jiangsu Province in 2018 explicitly provides that the employer is obligated to prevent and address workplace sexual harassment and, where an employer fails to meet its obligations, female workers may file administrative complaints or court actions against the employer.¹¹⁰ A Sichuan Province regulation provides that an employer is liable for a victim’s injury due to

sexual harassment if the employer committed wrongdoing.¹¹¹ (However, no cases were found in the SPC database that referenced the employer's obligation to prevent sexual harassment under either the Jiangsu or Sichuan regulation). The *Shenzhen Guideline* also hints at the idea of employer liability: it states that the employer can avoid liability by adopting reasonable prevention measures or a reasonable dispute-processing mechanism.¹¹² However, the *Guideline* does not state the conditions to establish liability of an employer or the applicable penalties.

Accordingly, if China is to incentivize employers to adopt mechanisms to prevent and stop GBVH, it must create clear liability for employers with explicit penalties, whether enforced through civil litigation or by a government agency.

c. Adopt appropriate evidentiary rules and meaningful remedies in litigation

ILO Convention 190 calls for Member States to take a variety of measures in relation to remediating acts of GBVH.

- Article 4(2)(e) calls for Member States to adopt an approach to GBVH that includes “ensuring access to remedies and support for victims.”

- Article 10(b) provides further specificity, requiring Member States to adopt measures to “ensure easy access to appropriate and effective remedies and safe, fair and effective reporting and dispute resolution mechanisms and procedures in cases of violence and harassment in the world of work, such as:

- i. complaint and investigation procedures, as well as, where appropriate, dispute resolution mechanisms at the workplace level;
- ii. dispute resolution mechanisms external to the workplace;
- iii. courts or tribunals;
- iv. protection against victimization of or retaliation against complainants, victims, witnesses and whistle-blowers; and
- v. legal, social, medical and administrative support measures for complainants and victims.”

- Article 10(e) requires Member States to take steps to “provide that victims of gender-based violence and harassment in the world of work have effective access to gender-responsive, safe and effective complaint and dispute resolution mechanisms, support, services and remedies.”

Recommendation 206 accompanying ILO Convention 190 contains particular guidelines for courts and other complaint and dispute resolution mechanisms.

- Paragraph 14 lays out the remedies to be made available pursuant to ILO Convention 190, Article 10(b), “includ[ing]:

- a. the right to resign with compensation;
- b. reinstatement;
- c. appropriate compensation for damages;
- d. orders requiring measures with immediate executory force to be taken to ensure that certain conduct is stopped or that policies or practices are changed; and
- e. legal fees and costs according to national law and practice.”

- Paragraph 16 specifies that “[t]he complaint and dispute resolution mechanisms for gender-based violence and harassment referred to in Article 10(e) of the Convention should include measures such as:

- a. courts with expertise in cases of gender-based violence and harassment;
- b. timely and efficient processing;
- c. legal advice and assistance for complainants and victims;
- d. guides and other information resources available and accessible in the languages that are widely spoken in the country; and
- e. shifting of the burden of proof, as appropriate, in proceedings other than criminal proceedings.”

The remedies laid out in ILO Convention 190 have been largely unavailable to Chinese victims of sexual harassment and other forms of GBVH. The Chinese courts' high evidentiary threshold for plaintiffs, insistence upon physical evidence, and almost wholesale discounting of victim testimony make it extremely difficult for victims to prevail. There exist certain types of cases in which Chinese judges are instructed to apply different evidentiary rules based on the nature of the dispute. For instance, when a terminated employee sues for wrongful termination, the employer has the burden to show the dismissal was justified because it is generally the employer who has access to evidence on which the termination was based.¹¹³ China should consider the practices of other jurisdictions that have applied a similar burden-shifting scheme in cases involving victim allegations of GBVH in the workplace.¹¹⁴

China might also provide guidance to judges on how to evaluate evidence in GBVH cases, including instructions allowing them to place greater weight on oral testimony where it is known that physical evidence is often unavailable or hard to obtain. In the United States, for instance, guidelines issued by the Equal Employment Opportunity Commission (“EEOC”), which investigates discrimination and harassment claims under federal law, explicitly provide that “in appropriate cases, the Commission may make a finding of harassment based solely on the credibility of the victim’s allegation.”¹¹⁵

Another area that must be addressed, either through legislation or a court rule, is the range of remedies available to GBVH litigants. Paragraph 14(c) of Recommendation 206 states that “appropriate compensation for damages” must be available to victims. Even in the rare instances where Chinese victims prevailed in court, the monetary damages were paltry. In order for victims to be willing to litigate these claims—and for violators to be sufficiently deterred—more significant monetary damages are necessary. One obstacle is that court awards for emotional distress in China, regardless of the type of case, are generally low. Guidance from the SPC instructing judges on what an appropriate range of such damages would be for various types of cases might be helpful in this regard. The creation of some form of “special damages” can also be considered. In the United States, this role is played by “punitive damages,” which are available to punish particularly outrageous conduct and may result in substantial monetary awards to victims.

Paragraph 14(e) of Recommendation 206 also states that remedies for GBVH victims should include an award of legal fees and costs to GBVH victims. This measure is much-needed in China, where contingency fee arrangements are generally prohibited and victims who want to hire a lawyer must pay upfront. The result is that a significant proportion of Chinese workers are forced to navigate the judicial system without representation.¹¹⁶ The same paragraph of Recommendation 206 also mentions the need for certain non-monetary remedies, such as ordering reinstatement, the right to resign with compensation, or injunctive relief commanding that the abusive behavior stop. The SPC might explicitly authorize courts to order such relief in GBVH cases.

d. Create safeguards against retaliation and confidentiality protections

ILO Convention 190 calls for Member States to protect complainants, victims, witnesses, and whistle-blowers against retaliation, and to protect the privacy of those individuals involved.

- Article 10(b)(iv) calls for Member States to take measures to protect against “victimization of or retaliation against complainants, victims, witnesses and whistle-blowers.”

- Article 10(c) calls for Member States to take measures to “protect the privacy of those individuals involved and confidentiality, to the extent possible and as appropriate, and ensure that requirements for privacy and confidentiality are not misused.”

The preceding sections detailed the retaliation faced by individuals who report GBVH. These retaliatory measures, including defamation lawsuits, undoubtedly deter many victims from ever coming forward. Complaint mechanisms and investigations will be largely useless if victims are unwilling to report abuse and witnesses are unwilling to provide information. While China has legislated to protect complainants in other areas, such as whistleblowers of financial crimes, no comparable provisions to protect victims of harassment exist in China’s national legislation.¹¹⁷ The non-binding *Shenzhen Guideline* does state that complaint mechanisms should take steps to prevent retaliation and the investigation process should be treated as confidential, but the details are sparse.

China’s national legislation should explicitly prohibit retaliation against those who complain of harassment, assist in an investigation, or serve as a witness. The law should include a definition and examples of prohibited behavior, and specific penalties sufficient to deter retaliation. Filing a lawsuit against someone *because* that person complained of sexual harassment should be explicitly listed as such an act.¹¹⁸ In other jurisdictions, GBVH victims who complain are provided specific legal protections: for instance, in 2018, California passed a law that protects employees who make sexual harassment complaints to their employer.¹¹⁹ In addition, as discussed below, explicit anti-retaliation provisions should be included in employers’ policies and procedures.

To protect victims and witnesses and to encourage them to come forward, measures to protect their privacy are also recommended. While sometimes difficult to achieve in harassment cases, reasonable efforts should be made to keep the identity of victims confidential, if this is requested by the complainant. At a minimum, confidential information should be shared only with those who have a need for that information. Employers and administrative mechanisms may be better-suited to maintain a level of confidentiality than courts.

2. Strengthen government monitoring and enforcement

a. Expand government monitoring, enforcement, and dispute resolution mechanisms

ILO Convention 190 recognizes the role of government enforcement in several articles.

- Article 4(2)(d) calls upon Member States to establish and strengthen enforcement and monitoring mechanisms.
- Article 4(2)(h) calls upon Member States to ensure “effective means of inspection and investigation of cases of violence and harassment, including through labour inspectorates or other competent bodies.”
- Article 10(b) addresses “easy access to appropriate and effective remedies and safe, fair and effective reporting and dispute resolution mechanisms and procedures in cases of violence and harassment in the world of work.” It calls upon Member States to ensure access to various mechanisms and procedures, “such as:
 - i. complaint and investigation procedures, as well as, where appropriate, dispute resolution mechanisms at the workplace level;
 - ii. dispute resolution mechanisms external to the workplace;
 - iii. courts or tribunals;
 - iv. protection against victimization of or retaliation against complainants, victims, witnesses and whistle-blowers; and
 - v. legal, social, medical and administrative support measures for complainants and victims.”

While employers should create internal complaint mechanisms and victims should have access to the courts where those mechanisms fail, China should also consider establishing administrative dispute resolution mechanisms. Employer mechanisms may sometimes be inadequate or unable to act fairly where high-level executives are the perpetrators of the GBVH. Some victims may be unable to pursue a lawsuit on their own, or fear retaliation if they do so. An administrative agency could provide a free, more accessible alternative to the courts.

In this regard, China can look to the numerous jurisdictions that have developed administrative mechanisms to

address discrimination and harassment claims. For instance, in the United States, the EEOC receives complaints, monitors compliance, conducts investigations, orders compensation to victims and the payment of penalties to the government, and mandates certain preventive or remedial action by employers when necessary. Other countries have created special mandates for labor inspectors, providing them with special tasks forces, training, guidelines or special powers in relation to workplace violence and harassment. For example, in El Salvador, the Ministry of Labor and Social Security developed a national training module for labor inspectors on discrimination and sexual and other forms of harassment at work. Salvadorian labor inspectors are also tasked with conducting preventive inspection visits where they can identify all types of violence against women, including violence and harassment. Spanish labor inspectors carry out campaigns in sectors most vulnerable to violence and harassment, such as schools, hospitals, and shops.¹²⁰ A significant advantage of labor inspectorates is that they are often more accessible to GBVH victims than the more formalistic court system. In the Republic of Korea, the Ministry of Employment and Labor even developed a smartphone application through which workers can report sexual harassment and request counselling services.¹²¹

China should additionally consider creating a specialized body that not only investigates and processes complaints, but also is dedicated to all aspects of eliminating GBVH. Numerous government functions are necessary to comply with ILO Convention 190, and having a single agency to oversee and coordinate such efforts may be beneficial. In addition to handling enforcement and dispute resolution functions, the body could educate employees on their rights while also providing guidance to employers, such as model policies or training curriculum. Furthermore, the agency could develop proposals for legislation, regulations, judicial interpretations, or other actions by various government bodies that would assist in the goal of combatting GBVH. In the United States, the EEOC plays all of these aforementioned roles at the federal level. In Argentina, the Ministry of Labour, Employment and Social Security has created the Advisory Office on Violence in the Workplace to sensitize, train and disseminate information on the issue of violence and harassment in the workplace as well as to streamline complaint procedures.¹²²

There is already some experience with this in China: Shenzhen’s Municipal Office for the Promotion of Gender Equality is charged by the *Shenzhen Guideline* with, amongst other tasks, researching sexual harassment, providing education and training, collecting statistics and representative cases, and developing a “blacklist” system. This example should be considered by the national government and other localities.

***b. Create and conduct trainings
for government officials***

ILO Recommendation 206 recognizes the importance of training for government officials.

- Paragraph 20: “Labour inspectors and officials of other competent authorities, as appropriate, should undergo gender-responsive training with a view to identifying and addressing violence and harassment in the world of work, including psychosocial hazards and risks, gender-based violence and harassment, and discrimination against particular groups of workers.”

- Paragraph 23: “Members should fund, develop, implement and disseminate, as appropriate: ... (b) gender-responsive guidelines and training programs to assist judges, labour inspectors, police officers, prosecutors and other public officials in fulfilling their mandate regarding violence and harassment in the world of work, as well as to assist public and private employers and workers and their organizations in preventing and addressing violence and harassment in the world of work.”

In line with these recommendations, China should work towards providing gender-responsive training to its public officials. The Republic of Korea, for example, established through statute the Institute for Gender Equality Promotion and Education, which provides sexual harassment prevention and counseling education to government officials.¹²³

The *Shenzhen Guideline* takes steps toward meeting this international legal standard by stating that not only employers, but all state organs must work to educate the public and train their own personnel. The trade union, women’s federation, educational institutions, courts, and the police are all directed to engage in education and training. An additional component of this program should be specific GBVH trainings for professionals in these institutions, such as judges and police officers, that are targeted towards their work. For example, judges should not only understand sexual harassment as it impacts their own workplace, but also receive trainings on the subject that will assist them as mediators and adjudicators of sexual harassment disputes.

3. Expand legal and other victim services

ILO Convention 190 calls for Member States to take measures to ensure access to various victim services.

- Article 10(e) calls for Member States to take measures to “provide that victims of gender-based violence and harassment in the world of work have effective access to gender-responsive, safe and effective complaint and dispute resolution mechanisms, support, services and remedies.”

Recommendation 206 provides specific guidance on legal and victim services.

- Paragraph 16 details specific measures that should be contained in the complaint and dispute resolution mechanisms for gender-based violence and harassment referred to in Article 10(e), “such as:

- a. courts with expertise in cases of gender-based violence and harassment;
- b. timely and efficient processing;
- c. legal advice and assistance for complainants and victims;
- d. guides and other information resources available and accessible in the languages that are widely spoken in the country; and
- e. shifting of the burden of proof, as appropriate, in proceedings other than criminal proceedings.”

- Paragraph 17 lays out specific measures that should be included in the support, services and remedies for victims of gender-based violence and harassment referred to in Article 10(e) of the Convention, “such as:

- a. support to help victims re-enter the labour market;
- b. counselling and information services, in an accessible manner as appropriate;
- c. 24-hour hotlines;
- d. emergency services;
- e. medical care and treatment and psychological support;
- f. crisis centers, including shelters; and
- g. specialized police units or specially trained officers to support victims.”

Laws alone will not be sufficient to tackle the problem of GBVH. Legal services are necessary to inform victims of their rights and help enforce them. China’s legal aid system should make available a corps of competent, trained lawyers to represent victims unable to afford private counsel.¹²⁴ As mentioned above, China should also adopt measures to make litigating these cases affordable for victims and attractive to lawyers, such

as increasing victim compensation, awarding attorneys' fees to prevailing victims, and removing the restriction on contingency fee arrangements.

Services to address the physiological and emotional harm caused by sexual harassment are also necessary, including labor market re-entry support, accessible counseling services, and medical and psychological support. Some grassroots groups already provide mental health counseling or psychological support to victims, but on a small scale.¹²⁵ There may be an opportunity for local branches of the All-China Women's Federation or ACFTU to play a role here in providing these services, or at least serving as an access point to connect victims with the right assistance.

B. Recommendations for Chinese employers

1. Establish employer policies and mechanisms to address GBVH

Article 9 of ILO Convention 190 calls upon Member States to require employers to control and prevent sexual harassment by adopting appropriate workplace policies. Further guidance as to the policies and mechanisms that employers should establish is provided in Article 10 and Recommendation 206. The best practice is for employers to adopt a comprehensive policy that includes all the elements listed in Table 1 below, which is drawn from these international standards.

- As described above, ILO Convention 190 Article 10(b) creates an obligation on Member States to “ensure that workers have access to safe, fair and effective reporting and dispute resolution mechanisms,” including at the workplace level.

- Paragraph 7 of Recommendation 206 provides further specification as to the components of an employer's workplace policy, including that “workers and their representatives should take part in the design, implementation and monitoring of the workplace policy referred to in Article 9(a) of the Convention, and such policy should:

- a. state that violence and harassment will not be tolerated;
- b. establish violence and harassment prevention programmes with, if appropriate, measurable objectives;

- c. specify the rights and responsibilities of the workers and the employer;
- d. contain information on complaint and investigation procedures;
- e. provide that all internal and external communications related to incidents of violence and harassment will be duly considered, and acted upon as appropriate;
- f. specify the right to privacy of individuals and confidentiality, as referred to in Article 10(c) of the Convention, while balancing the right of workers to be made aware of all hazards; and
- g. include measures to protect complainants, victims, witnesses and whistle-blowers against victimization or retaliation.”

Article 1010's directive to employers that they adopt measures to prevent and stop sexual harassment is not sufficiently specific to meet the international standard. However, some Chinese localities have provided greater detail on employers' obligations in this area. For example, the 2018 *Jiangsu Regulation* requires employers to formulate rules and regulations prohibiting sexual harassment, conduct training activities, and develop mechanisms to make filing complaints accessible, handle them promptly, and protect the privacy of the parties.¹²⁶ The *Shenzhen Guideline* provides the most comprehensive and detailed instructions for employers regarding sexual harassment, which includes establishing channels for registering employee complaints, procedures for investigating complaints, and rules for disciplining wrongdoers. Employers can also draw upon the practices of other countries. The labor inspectorate in Australia, for example, has issued detailed guidance for employers on the steps necessary to effectively manage and address the risks of workplace harassment, including performing a risk assessment, implementing and regularly evaluating a system for addressing incidents of harassment, conducting training, and encouraging workers to report harassment.¹²⁷

The best practice for Chinese employers is to adopt policies that include the elements set forth in Table 1, which is drawn from international standards and practices. Specifically, employer policies should issue a zero tolerance statement; define what conduct is prohibited; establish programs with measurable objectives; specify the rights and obligations of employers and employees; establish processes for employees to share and obtain information about GBVH; create complaint channels; promise to investigate complaints promptly, impartially, and thoroughly; encourage employees to report GBVH conduct and participate in investigations; establish and provide information on workplace dispute resolution mechanisms;

TABLE 1. Key Components of an Employer Anti-GBVH Policy

- Issue a statement that there is zero tolerance for violence and harassment;
- Define prohibited conduct consistent with the scope of ILO Convention 190, including examples;
- Establish violence and harassment prevention programs with, if appropriate, measurable objectives;
- Specify the rights and responsibilities of the workers and the employer;
- Establish processes for employees to both formally and informally share or obtain information about GBVH;
- Create and provide information on a GBVH complaint system that includes multiple, easily accessible reporting avenues;
- Issue a statement that the employer will conduct a prompt, impartial, and thorough investigation;
- Encourage employees to report conduct that they believe may be prohibited GBVH and to participate in investigations;
- Establish and provide information on workplace-level dispute resolution mechanisms to address complaints, including mediation in appropriate situations;
- Commit to keeping confidential the identity of individuals who report or are victims of GBVH and other information obtained during an investigation;
- Promise to take immediate and proportionate corrective action where GBVH has occurred; and
- Unequivocally prohibit retaliation against those who report GBVH conduct or participate in investigations.

commit to confidentiality; promise to take corrective action whenever GBVH occurs; and prohibit retaliation against anyone who report or participates in investigations of GBVH.

When the employer's investigation detects concerning behavior, or a dispute has arisen, there should be a workplace-level dispute resolution mechanism, which should include informal mechanisms like mediation for appropriate cases. This is consistent with China's general system of labor dispute resolution, which calls upon enterprises to form a mediation mechanism to resolve cases before the parties resort to arbitration or litigation.¹²⁸ Indeed, having a zero-tolerance statement prohibiting sexual harassment in the workplace and specific policies to thoroughly investigate complaints will not only bring the employer in compliance with international standards and local regulations; it may also be a crucial risk mitigation measure. In the event that the employer dismisses the alleged harasser, evidence demonstrating that the harasser engaged in prohibited conduct will be critical for the employer's defense if the alleged harasser sues for unjust dismissal.

The 2021 *Shenzhen Guideline* is a positive example for the rest of China in this area. The document specifies what should be addressed in an employer's policy and includes many of the elements outlined in Table 1.¹²⁹ Prudently, the *Guideline* also provides a model policy in its appendix that employers can choose to adopt. Building upon these good practices in the *Guideline*, China should provide specific guidance at the national level on what should be addressed in a model policy that complies with ILO Convention 190, provide a model policy for adoption, and mandate that all employers adopt and continually update such a policy.

2. Conduct training and prevention initiatives within the workplace

ILO Convention 190 calls upon employers to not only remediate workplace violence, but also to take measures to prevent workplace violence. In keeping with these legal standards, employers should identify where risks of GBVH exist and take active measures to mitigate those risks. Employers must also educate personnel about company policies and procedures, and the individual's rights and responsibilities.

These measures are covered in Articles 4(2)(g), 9(c) and 9(d), and 11(b) of ILO Convention 190, with guidance on operationalizing these provisions set forth in Recommendation 206, paragraph 8.

- Article 4(2)(g) of ILO Convention 190 calls upon each Member State to “develop[] tools, guidance, education and training, and

raising awareness, in accessible formats as appropriate.”

- Article 9(c) of ILO Convention 190 calls upon employers to “identify hazards and assess the risks of violence and harassment, with the participation of workers and their representatives, and take measures to prevent and control them.”
- Paragraph 8 of Recommendation 206 provides specific guidelines on workplace risk assessments: “The workplace risk assessment referred to in Article 9(c) of the Convention should take into account factors that increase the likelihood of violence and harassment, including psychosocial hazards and risks. Particular attention should be paid to the hazards and risks that:
 - a. arise from working conditions and arrangements, work organization and human resource management, as appropriate;
 - b. involve third parties such as clients, customers, service providers, users, patients and members of the public; and
 - c. arise from discrimination, abuse of power relations, and gender, cultural and social norms that support violence and harassment.”
- Article 9(d) of ILO Convention 190 calls upon employers to “provide to workers and other persons concerned information and training, in accessible formats as appropriate, on the identified hazards and risks of violence and harassment and the associated prevention and protection measures, including on the rights and responsibilities of workers and other persons concerned in relation to the policy referred to in subparagraph (a) of this Article.”
- Article 11 calls upon Member States to ensure that “... (b) employers and workers and their organizations, and relevant authorities, are provided with guidance, resources, training or other tools, in accessible formats as appropriate, on violence and harassment in the world of work, including on gender-based violence and harassment.”

Within the workplace, employers should be required to provide training to all relevant personnel. Sexual harassment training has shown to have a significant positive impact on trainees’ acquisition of knowledge related to sexual harassment, their ability to identify behavior involving sexual harassment, and their willingness to report such behavior.¹³⁰ Although some

studies have criticized traditional sexual harassment training as reinforcing gender stereotypes and being insufficient on its own to prevent sexual harassment, well-designed trainings have been found to contribute to the prevention and reduction of sexual harassment in the workplace.¹³¹ In New York State and New York City, for instance, annual sexual harassment training for every employee is now a legal requirement.¹³² These governments also provide a model online training course that can be shown to employees to fulfill this requirement. However, even these online trainings could be improved by conducting live, interactive trainings in which the trainees can ask questions.

China should also consider requiring GBVH training for all employees. The *Shenzhen Guideline* contains such an instruction, even specifying certain topics to be covered with employees (such as how to collect and preserve evidence) and topics for supervisors and managers (like how to identify sexual harassment).¹³³ China should consider making this a national requirement and developing training materials that can be easily adopted by employers. The ACFTU has already developed some useful materials for this purpose—namely, a handbook on gender equality that includes specific examples of how sexual harassment might manifest in the workplace and who the potential victims might be.¹³⁴

C. Recommendations for Chinese workers’ organizations

1. Engage in tripartite dialogue at the national and local levels to inform inclusive approaches to address GBVH

ILO Convention 190 addresses the role of workers’ organizations in designing national approaches to address GBVH and all other forms of violence in the world of work.

- Article 4(2) provides that each Member State’s should adopt “an inclusive, integrated and gender-responsive approach for the prevention and elimination of violence and harassment in the world of work” should be done “in consultation with representative employers’ and workers’ organizations.”

Consistent with these standards, workers through their organizations and trade unions should engage in tripartite dialogue at the national and local levels to inform inclusive, integrated, and gender-responsive approaches to address GBVH and all other forms of violence in the world of work. Worker participation in framing standards and practices should strive to include perspectives and experiences from across

sectors and workplace demographics, including the specific concerns of workers across all ages, social identity categories, and migration status.

2. Participate in risk assessments, and the design and monitoring of GBVH policies, at the sector and workplace levels

ILO Convention 190 and Recommendation 206 call upon Member States to require employers to engage workers and their representatives in assessing the risks of violence and harassment in the workplace, and to involve workers and their representatives in the design, implementation and monitoring of the workplace policy. These instruments also call upon Member States to support the use of collective bargaining in reaching workplace agreements.

- Article 9 of ILO Convention 190 requires that “[e]ach Member shall adopt laws and regulations requiring employers to take appropriate steps commensurate with their degree of control to prevent violence and harassment in the world of work, including gender-based violence and harassment, and in particular, so far as is reasonably practicable, to: ... (c) identify hazards and assess the risks of violence and harassment, with the participation of workers and their representatives, and take measures to prevent and control them.”

- Recommendation 206, paragraph 4 calls upon Member States to promote the effective recognition of the right to collective bargaining, and to “support such collective bargaining through the collection and dissemination of information on related trends and good practices regarding the negotiation process and the content of collective agreements.”

- Recommendation 206, paragraph 7 call upon Member States to specify that “workers and their representatives should take part in the design, implementation and monitoring of the workplace policy.”

International standards as well as China’s domestic laws and policies recognize that it is necessary to involve workers in formulating workplace policies and governing the workplace. Workers have the first-hand knowledge of the hazards related to GBVH and therefore must be part of any effort to identify and assess these risks; they are also most likely to be able to

develop and evaluate practical solutions to these problems. Accordingly, workers must be engaged in identifying all forms of physical, mental, sexual or other harm and suffering, as well as coercion, threats, retaliation, and deprivations of liberty that may be occurring within the workplace, including any gendered aspects of these issues.

In terms of formulating workplace policies, China’s *Labor Contract Law* already requires that when establishing or modifying any material workplace policy, the employer must first engage in discussions with either the staff and worker representative congress (“SWRC”) at the enterprise level or all of the workers, and then “consult ... on equal footing” with the SWRC or trade union about the policy.¹³⁵ Indeed, at least one provincial-level ACFTU branch has stated that the topic of preventing sexual harassment in the workplace should be introduced in all such employer consultations and a related provision should be included in all collective contracts.¹³⁶ In the past, collective contracts in China will do little more than restate the relevant legal provision. However, the trade union, SWRC, or other workers’ organization should instead strive to meaningfully engage in identifying GBVH risks at the workplace and crafting policies that address those specific concerns.

Trade unions and workers’ organizations in other countries have been successful in this exercise of identifying GBVH risks in a particular sector and then effectuating change at the workplace. For instance, janitorial workers in California—often immigrant women who worked alone at night and were supervised by untrained, unaccountable subcontractors—were able to negotiate for the inclusion of provisions addressing sexual harassment in their union’s collective bargaining agreements, including a statement of zero-tolerance, complaint and investigation procedures, a prohibition on retaliation, and a prohibition on romantic relationships between supervisors and subordinates.¹³⁷ The trade union’s efforts also led to the adoption of a state law requiring janitorial employers to provide sexual harassment and violence trainings.¹³⁸ Examples like this may be instructive for workers’ organizations in China.

3. Provide context-specific education and training to workers about their rights and how to enforce them

As referenced above, Article 9(d) of ILO Convention 190 calls upon employers to provide training to workers on the hazards and risks of violence and harassment, prevention and protective measures, and workers’ rights and responsibilities, while Article 11 requires Member States to ensure that worker organizations are provided with “guidance, resources, training or other tools,

in accessible formats as appropriate, on violence and harassment in the world of work.” Recommendation 206, paragraph 23(b) further provides that Member States should develop “gender-responsive guidelines and training programmes ... to assist public and private employers and workers and their organizations in preventing and addressing violence and harassment in the world of work.”

Workers’ organizations should not only ensure that employers are fulfilling this obligation to conduct training and disseminate information, but also provide their own trainings to workers. The information provided to workers, wherever possible, should be tailored to the specific sector of employment or the particular workplace. It is particularly important that workers’ organizations address issues that an employer may be more hesitant or reluctant to emphasize, such as the legal rights of workers and the availability of legal services or other resources outside the workplace. The ACFTU has already demonstrated a willingness to provide useful information about sexual harassment in the workplace by issuing the aforementioned handbook.¹³⁹ The ACFTU, together with other workers’ organizations, should build upon these efforts. In addition, civil society actors with expertise on labor rights, domestic violence, women’s issues, or other relevant topics should also be involved in training and educating workers.

D. Recommendations for global brands

Global brands operating in China, like in other countries, can play a role in countering the prevalence of GBVH in the world of work.

The most obvious place to start is at the company level. Brands that are themselves employers should implement best practices at those workplaces—such as implementing GBVH workplace policies that satisfy the elements set out in Table 1 above—thus setting a model for employers in that industry. If they have relationships with Chinese suppliers, brands should ensure that their contracts require those suppliers to also adopt these best practices.¹⁴⁰

Brands should also be engaging in a due diligence analysis to detect either the presence of GBVH or risk factors associated with GBVH at their suppliers. Upon detecting any such issues, brands should take action to mitigate any adverse impacts of those issues or address those risks.

Brands must not only create policies and requirements on paper, but incentivize and monitor compliance with those demands. Experts have indicated that China’s recent legislative

measures directing employers to prevent sexual harassment and address complaints have not translated into action by domestic companies. Particularly as the law lacks any “teeth,” there remains little incentive for employers to act. Therefore, external pressure from brands and multinationals may be necessary to bring about action by suppliers. To ensure GBVH training is done properly, committed brands can help design the curriculum and pay for the training, including the workers’ wages for that time. Brands should also promote transparency by publicly reporting on implementation of their policies, GBVH incidents identified and remediated, the impact of purchasing practices, and strategies to do better.

There have been some positive steps in this direction. The Asia Society worked with the China National Textile and Apparel Council, in a program funded by the Levi Strauss Foundation, to train 100 garment factory line-workers and managers on workplace sexual harassment.¹⁴¹ Multinationals or industry associations should consider similar initiatives with their suppliers. There are also NGOs and consultants within China who are now seeking to conduct such workplace trainings, but have trouble convincing employers of their value.¹⁴² Brands should find ways to partner with these providers and persuade employers to engage their services.

Finally, brands should use their influence to advocate for China to ratify ILO Convention 190 and adopt policies that effectuate its intent.

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9. U.N. Fourth World Conf. on Women: Action for Equality, Development and Peace, *Beijing Declaration and Platform for Action*, U.N. Doc. A/CONF.177/20/Rev.1 (Sept. 15, 1995) (recognizing the problems of gender-based violence and sexual harassment in the workplace (¶¶113(b), 161) and the lack of data about these issues (¶¶120, 206(j)), and calling upon governments, employers, and unions to eliminate these problems (¶¶126(a), 178(c), 290)).
10. *ILO Convention Concerning the Elimination of Violence and Harassment in the World of Work* (No. 190) (adopted by the Int'l Lab. Conf., June 21, 2019, effective June 25, 2021) (hereinafter, "ILO Convention 190"), Art. 4.
11. *Id.* Art. 2.
12. *Id.* Art. 1.
13. *Id.* Art. 3.
14. *Id.* Art. 9.
15. *Id.* Art. 4.
16. *PRC Constitution* [中华人民共和国宪法] (promulgated by the Nat'l People's Cong., Dec. 4, 1982, amended Mar. 11, 2018), Art. 48.
17. See *PRC Labor Law* [中华人民共和国劳动法] (promulgated by the Standing Comm. Nat'l People's Cong., Jul. 5, 1994, effective Jan. 1, 1995), Art. 12; *PRC Employment Promotion Law* [中华人民共和国就业促进法] (promulgated by the Standing Comm. Nat'l People's Cong., Aug. 30, 2007, effective Jan. 1, 2008), Art. 3.
18. *PRC Law on the Protection of Women's Rights and Interests* [中华人民共和国妇女权益保障法] (promulgated by the Nat'l People's Cong., Apr. 3, 1992, effective Oct. 1, 1992), Arts. 40, 58.
19. *Special Regulation on the Labor Protection of Female Employees* [女职工劳动保护特别规定] (promulgated by the St. Council, Apr. 28, 2012, effective Apr. 28, 2012), Art. 11.
20. *PRC Civil Code* [中华人民共和国民法典] (promulgated by the Nat'l People's Cong., May 28, 2020, effective Jan. 1, 2021), Art. 1010.
21. Amy Qin, *A Prosperous China Says 'Men Preferred,' and Women Lose*, N.Y. TIMES, Jul. 16, 2019.
22. World Bank Group, *Labor Force Participation Rate, Female (% of Female Population Age 15+)* (Modeled ILO Estimate) (last visited June 12, 2021).
23. All-China Women's Fed'n & Nat'l Bureau of China, *Report on Major Results of the Third Wave Survey on the Social Status of Women in China* [第三期中国妇女社会地位调查], INFO. OFF. OF THE ST. COUNCIL, Oct. 21, 2011.
24. *2018 Investigative Report on Chinese Female's Workplace Situation* [2018 中国女性职场现状调查报告], ZHILIAN ZHAOPIN [智联招聘] (2018), 1.
25. Frank Zhang, FT Confidential Research, *Chinese Women Struggle for Workplace Equality*, FINANCIAL TIMES, June 13, 2018 (finding that 31.6 percent of women reported having fewer opportunities than men in their careers).
26. Jane Golley et al., *Inequality of Opportunity in China's Labor Earnings: The Gender Dimension*, 1 CHINA & WORLD ECON. 28, 46 (2019).
27. *Workplace Discrimination*, CHINA LABOUR BULLETIN, Jul. 7, 2020.
28. *"Only Men Need Apply": Gender Discrimination in Job Advertisements in China*, HUMAN RIGHTS WATCH, Apr. 23, 2018.
29. See Qin, *supra* note 21.
30. D.K. Srivastava & Minkang Gu, *Law and Policy Issues on Sexual Harassment in China: Comparative Perspectives*, 11 OR. REV. INT'L L. 43, 46 (2009) (citing Dai Xiaolin, *Survey Shows that 80% of Chinese Women Suffered Sexual Harassment*, JISHI NET, Apr. 4, 2007).
31. Catherine Lai, *Over 80% of Female Journalists in China Have Experienced Workplace Sexual Harassment, Poll by Journalist Shows*, HONG KONG FREE PRESS, Mar. 7, 2018.
32. *Survey: Sexual Harassment Affects Almost 40% Female Workers* [调查: 性骚扰影响近40%职场女性], IFENG.COM, May 4, 2011.

33. See Abhilasha Sahay, *The Silenced Women: What Works in Encouraging Women to Report Cases of Gender-Based Violence?* WORLD BANK BLOGS, Mar. 26, 2021.
34. Aaron Halegua, *What Is the Significance of China's #MeToo Movement?* CHINAFILE, Mar. 20, 2018.
35. Can Tang, *The Existence of Sexual Harassment in China—A Case Study of 169 Female Workers* [性骚扰在中国的存在—169名女性的个案研究], 2 CHINA ACAD. J. ELEC. PUBL'G HOUSE, 31, 32 (1995).
36. Pan Runhua and Cen Meiyuan, Southern Metropolis Newspaper Defamation Dispute First Instance Civil Judgment [潘润华与岑美媛、南方都市报社名誉权纠纷一案一审民事判决书] (Guangdong Province Zhuhai City Xiangzhou Dist. People's Ct., 2015) (China), available at: <http://wenshu.court.gov.cn>.
37. Halegua, *#MeToo*, *supra* note 34.
38. The Asia Floor Wage Alliance (“AFWA”) and Global Labor Justice conducted a particularly comprehensive study of GBVH in garment supply chains that included perspectives from 898 workers employed in 142 factories across Bangladesh, Cambodia, India, Indonesia and Sri Lanka, and found that sexual harassment of the predominantly female workforce was routine. See, e.g., AFWA et al., *Gender Based Violence in the H&M Garment Supply Chain* (2018).
39. *Up To 70 Percent of Women Factory Workers in Guangzhou Sexually Harassed*, CHINA LABOUR BULLETIN, Dec. 6, 2013.
40. Feng, *Foxconn*, *supra* note 1.
41. Aaron Halegua, *Sexual Harassment at Walmart's Stores and Suppliers in China*, OPENDEMOCRACY, June 13, 2018.
42. Laurie Chen, *Chinese Universities Urged to Do More to Fight Sexual Harassment in Wake of #MeToo Cases*, S. CHINA MORNING POST, Mar. 8, 2019.
43. Christian Shepherd, *China's #MeToo Movement in Colleges Initially Encouraged by Authorities, then Frustrated*, REUTERS, Jan. 30, 2018.
44. Laurie Chen, *Sexual Harassment at China's Elite Nanjing University in Survey Spotlight*, S. CHINA MORNING POST, Aug. 8, 2019.
45. See Lijia Zhang, *Sex Pests on the Subway: China Is Finally Cracking Down, Thanks to Its Brave Women*, S. CHINA MORNING POST, Jul. 6, 2018 (citing the study reported in the *China Youth Daily*).
46. See, e.g., Beijing Zhongze Women Legal Center & Women Watch China, *Handbook on the Prevention of Workplace Sexual Harassment* [防治工作场所性骚扰知道手册], 19–22 (collecting local government measures on sexual harassment).
47. *PRC Civil Code*, *supra* note 20, Art. 1010.
48. *Shenzhen Municipal Guideline on the Prevention of Sexual Harassment* [深圳市防治性骚扰行为指南] (promulgated by the Shenzhen All-Women's Fed'n et al., Jan. 15, 2021, effective Jan. 15, 2021) (hereinafter, “*Shenzhen Guideline*”). The *Shenzhen Guideline* was jointly issued by numerous municipal-level government departments, including the women's federation, trade union, human resources and social security department, public security department, education department, and the people's court.
49. See Benjamin L. Liebman et al., *Mass Digitization of Chinese Court Decisions: How to Use Text as Data in the Field of Chinese Law*, 8 J. OF L. AND COURTS, 177 (2020) (describing the “promise and pitfalls” of using the SPC database for research, such as certain information missing from the dataset). Other databases of Chinese judicial decisions also exist, such as itslaw.com and Chinalawinfo, a commercial database operated by Peking University. Future research may explore whether these datasets include any decisions not available in the SPC database.
50. The SPC database permits users to filter cases based on the cause of action (案由), which is how these statistics were generated. The precise methodology used by the SPC to categorize cases by cause of action is unknown, however. Prior to the adoption of sexual harassment as an explicit cause of action in 2018 (effective January, 2019), most victims bringing lawsuits against the perpetrator filed a claim under the tort of “infringement of the right to personality disputes” (人格权纠纷). In fact, even after the “sexual harassment” cause of action came into effect in January, 2019, some victims continued to file claims based on the infringement of personality rights.
51. Since searching for the term “sexual harassment” is a fairly imprecise way of identifying cases, not all of the decisions in this sample actually dealt with the issue of sexual harassment. For instance, some decisions simply mentioned the term “sexual harassment” in the context of reciting the content of an employer's workplace rules, or to describe an allegation made by an employee about a manager, but those issues were not relevant to the merits of the case. In other cases, the three Chinese characters meaning sexual harassment (性骚扰) were being used as part of another term unrelated to sexual harassment. There were also some duplicate decisions that appeared in the database.
52. The database was last searched on June 6, 2021. Technically speaking, however, Article 1010 would not apply in all cases that were decided after January 1, 2021, but only in those cases where the conduct occurred after that date. See Li Da et al. Internet Tort Second Instance Civil Judgment [李达等网络侵权责任纠纷二审民事判决书] (Beijing Fourth Intermediate People's Ct., 2021) (China), available at: <http://wenshu.court.gov.cn> (finding that the *Civil Code* is not applicable in a case where the injury predates the effective date of the legislation).
53. Darius Longarino, *Will China's Civil Code Finally Get Companies to Take Fighting Sexual Harassment Seriously?* DIPLOMAT, Dec. 4, 2020.
54. Mandy Zuo, *Why Chinese Women Don't Speak out about Sexual Harassment in the Workplace*, S. CHINA MORNING POST (Apr. 21, 2018).
55. *But see* Qian Qian Law Firm, *The Establishment of Company Sexual Harassment Preventative Policy is the Key Move to Curb Workplace Sexual Harassment* [建立企业性骚扰防治机制是有效应对职场性骚扰的关键举措], Jan. 28, 2019 (reporting that a state-owned brewery and a hotel have established mechanisms to prevent sexual harassment, including clear rules and regulations that define sexual harassment in the workplace, publicity and education activities, a system of rewards and punishments, confidentiality measures, anti-retaliation provisions, and a complaint mechanism). However, few details are provided concerning the use or performance of these systems.
56. Longarino, *China's Civil Code*, *supra* note 53.
57. Xi Li & Ning Yu, *How Should Employers Respond to Workplace Sexual Harassment—From the Perspective of Trying Labour Disputes* [用人单位应对职场性骚扰问题研究—以劳动争议案件审理为视角], J. OF CHINA'S WOMEN UNIV., No. 1, 2020. See also Weilun Xu, *Judge's Reminder: The Key to Workplace Sexual Harassment Disputes is Evidence* [法官提醒: 处置职场性骚扰关键是有据可查], People.cn, Mar. 21, 2019 (finding that in 75 percent of cases in which an alleged harasser prevailed on an unlawful discharge claim, the reason was that the employer failed to provide sufficient evidence to justify its action).
58. See Xi Li & Ning Yu, *supra* note 57.
59. Chenyang Zhang & Ran Ren, *Burden of Proof in China - Guide to China's Civil Evidence Rules (12)*, CHINA JUSTICE OBSERVER, Oct. 11, 2020.
60. Zhao Jian and Yianxin Info. Dev. (Shanghai) Ltd. Lab. Dispute Civil Judgment [赵健与易安信信息技术研发(上海)有限公司劳动合同纠纷审判监督民事裁定书] (Shanghai Higher People's Ct., 2021) (China), available at: <http://wenshu.court.gov.cn>.

61. Xin Yue, *A Public Letter to the Faculty and Students of the Peking University* [致北京大学师生的一封公开信], CHINA DIGITAL TIMES, Apr. 22, 2018.
62. Yuanzhong Gender Development Center, *Breaking Silence, Refusing Compromise—A Case Study of the Sexual Harassment Law and Judicial Judgments in China* [打破沉默, 拒绝妥协—中国防治职场性骚扰法律与司法审判案例研究报告], June 13, 2018.
63. The author is well-aware of the limited generalizations that can be drawn based solely on a review of decisions from the SPC database. These decisions certainly do not represent the total number of legal claims asserted by GBVH victims in China. For instance, some individuals may be able to negotiate a resolution of their dispute without filing a lawsuit. Furthermore, it is possible that the strongest cases are successfully mediated prior to a decision being issued, which would result in a sample that does not capture the best outcomes for victims. Nonetheless, interviews with legal and other experts also suggest that the number of sexual harassment victims bringing legal claims remains quite limited.
64. See Miriam F. Clark, *Testimony of Miriam F. Clark, President of NELA/NY*, NAT'L WOMEN L. CENTER, Jan. 28, 2019 (providing examples of conduct that New York courts did not find to be sufficiently "severe or pervasive" to create an impermissible hostile work environment).
65. See *Shenzhen Guideline*, *supra* note 48, Art. 2(2).
66. *Id.* Art. 2(1).
67. This provision is similar to the legal standard adopted in other countries. For instance, the jurisprudence under U.S. federal discrimination law distinguishes between "*quid pro quo*" sexual harassment and "hostile work environment" sexual harassment.
68. ILO Convention 190, *supra* note 10, Art. 1.
69. *Id.* Art. 3 ("This Convention applies to violence and harassment in the world of work occurring in the course of, linked with or arising out of work: (a) in the workplace, including public and private spaces where they are a place of work; (b) in places where the worker is paid, takes a rest break or a meal, or uses sanitary, washing and changing facilities; (c) during work-related trips, travel, training, events or social activities; (d) through work-related communications, including those enabled by information and communication technologies; (e) in employer-provided accommodation; and (f) when commuting to and from work").
70. See Darius Longarino et al., *Legal Obstacles to #MeToo Cases in China's Courts*, 21 CHINA BRIEF 22, 23, May 7, 2021.
71. *Id.* (citing *Some Provisions on Evidence in Civil Procedures* [最高人民法院关于民事诉讼证据的若干规定] (promulgated by Sup. People's Ct., Dec. 6, 2001, effective Apr. 1, 2002), Art. 90).
72. Zhao Manli Sues Qiangzhuang (Beijing) Biotechnology Ltd. [赵曼丽诉强壮(北京)生物科技有限公司] (Beijing Fangshan Dist. People's Ct., 2017) (China), available at: <http://wenshu.court.gov.cn>. See also *Plaintiff Loses China's First Sexual Harassment Case*, PEOPLE'S DAILY ONLINE, Dec. 23, 2001 (discussing a case from Shaanxi Province).
73. See Qin Yi and Wang Haining Civil Defamation Dispute First Instance Civil Judgment [秦漪与王海宁名誉权纠纷一案民事判决书] (Hubei Province Wuhan City E. Xihu Dist. People's Ct., 2016) (China), available at: <http://wenshu.court.gov.cn>. Although this case did not explicitly address sexual harassment, it demonstrates a significant obstacle for plaintiffs bringing harassment claims.
74. Walmart Department Store, Nanjing New Road Branch Labor Dispute with Ma Ying [沃尔玛华东百货有限公司南京新街口分店与马鹰劳动争议一案的判决书] (Nanjing City Qinhu Dist. People's Ct., 2013) (China), available at: <http://wenshu.court.gov.cn>.
75. *Shenzhen Guideline*, *supra* note 48, Art. 3(4), (5).
76. *Old Man Ordered to Apologize for Sexual Harassment of Male Workers*, PEOPLE'S DAILY, Jan. 3, 2002.
77. Xiaoguang Yan, *Female Worker at a Japanese Company Fed up with Sexual Harassment from Her Superior, Sued, and Won (with Pictures)* [日企女职员不堪上司性骚扰起诉获胜(组图)], SINA, Dec. 19, 2009.
78. Wangqing Zhang, *Plaintiff Wins China's First Sexual Harassment Lawsuit*, SIXTH TONE, Jul. 8, 2020.
79. Yuan Moumou and Ye Moumou Civil Defamation Dispute First Instance Civil Judgment [袁某某与叶某某名誉权纠纷一案民事判决书] (Zhejiang Province Jiaying City Nanhu Dist. People's Ct., 2010) (China), available at: <http://wenshu.court.gov.cn>.
80. Darius Longarino, *A Woman Won a Landmark #MeToo Case in China. Why is Winning so Hard?* WASH. POST, Mar. 20, 2021; see also Jing Li, *When Inappropriate Verbal Comments Suffice as Sexual Harassment, the First Judgment on Sexual Harassment in Shanghai since the Implementation of the New Civil Code* [不当言语也构成性骚扰, 民法典实施后上海首例性骚扰纠纷判了], THE PAPER, Mar. 8, 2021.
81. Lü Limin and Du Bin Sexual Harassment Dispute First Instance Civil Judgment [吕立敏与杜兵性骚扰损害责任纠纷一案民事判决书] (Beijing Daxing Dist. People's Ct., 2021) (China), available at: <http://wenshu.court.gov.cn>. See also Lai Mou 1 and Li Jun Dispute over Life, Health, and Bodily Integrity First Instance Civil Judgment [赖某1与李军平生命权、健康权、身体权纠纷一案民事判决书] (Jiangxi Province Ganzhou City Gan County Dist. People's Ct., 2021) (China), available at: <http://wenshu.court.gov.cn> (plaintiff developed a psychological disorder after being sexually molested by defendant while she was a minor and sued for RMB 30,000 in damages, but the court awarded RMB 20,000).
82. Grace Yang, *China Sexual Harassment Law*, CHINA LAW BLOG, Jun. 18, 2016.
83. *Why Sexual Harassment Persists in the Workplace*, CHINA LABOUR BULLETIN, Jan. 9, 2017.
84. Lin Qian and Dong Sujuan Dispute over Life, Health, and Bodily Integrity First Instance Civil Judgment [林倩与董素娟生命权、健康权、身体权纠纷一案民事判决书] (Guangdong Province Foshan City Nanhai Dist. People's Ct., 2015) (China), available at: <http://wenshu.court.gov.cn>.
85. See Halegua, *#MeToo*, *supra* note 34.
86. Halegua, *Walmart's Stores*, *supra* note 41.
87. Sui-Lee Wee & Li Yuan, *They Said #MeToo. Now They Are Being Sued*, N.Y. TIMES, Dec. 26, 2019 (discussing numerous defamation lawsuits against GBVH victims in China).
88. See Longarino et al., *Legal Obstacles*, *supra* note 70.
89. Huizhong Wu, *Chinese Court Finds #MeToo Allegations Defamed Journalist*, AP NEWS, Jan. 7, 2021.
90. *Id.*
91. Quanbao Jiang, *Sexual Harassment in China*, U. OF NOTTINGHAM ASIA RSCH. INST., Jan. 29, 2018.
92. Lai, *supra* note 31.
93. Jiang, *supra* note 91.
94. See generally, Cynthia Estlund & Aaron Halegua, *What Is Socialist about Labour Law in China?* in SOCIALIST L. IN SOCIALIST E. ASIA 257, 257–87 (Hualing Fu et al. eds., 2018).

95. *Id.*; see also Aaron Halegua, *Who Will Represent China's Workers? Lawyers, Legal Aid, and the Enforcement of Labor Rights*, U.S.-ASIA L. INST. 30 (2016) (discussing legal aid provided to workers by the ACFTU).
96. Maizi Li, *I Went to Jail for Handing out Feminist Stickers in China*, GUARDIAN, Mar. 7, 2017; Andrew Jacobs, *Taking Feminist Battle to China's Streets, and Landing in Jail*, N.Y. TIMES, Apr. 5, 2015.
97. Didi Kristen Tatlow, *China is Said to Force Closing of Women's Legal Aid Center*, N.Y. TIMES, Jan. 29, 2016.
98. See Jiayun Feng, *Guangzhou Gender and Sexuality Education Center Shuts Down*, SUPCHINA, Dec. 6, 2018; Ziyi Tang & Echo Huang, *A platform for Female Factory Workers Has Disappeared from China's Twitter*, QUARTZ, Jul. 16, 2018; Echo Huang, *The Future of #MeToo in China Hinges on a Lawsuit against the Country's Most Famous TV Presenter*, QUARTZ, Jan. 31, 2019.
99. Vincent Ni, *China #MeToo: Court to Hear Landmark Case of Intern versus TV Star*, BBC NEWS, Dec. 2, 2020.
100. Michael Forsythe & Chris Buckley, *China Arrests at Least 3 Workers' Right Leaders amid Rising Unrest*, N.Y. TIMES, Dec. 5, 2015.
101. Keegan Elmer, *At Least Five Labour Rights Activities Arrested across China*, S. CHINA MORNING POST, Jan. 22, 2019.
102. Keegan Elmer & Guo Rui, *Three More People Detained as China Continues to Crack down on Labour Groups*, S. CHINA MORNING POST, Jan. 22, 2019.
103. This Part IV offers examples of the practices in various countries to illustrate the recommendations being made. While many of the examples are from the United States, this is primarily because the author is most familiar with that jurisdiction—not because these practices are necessarily the best way to comply with the standards of ILO Convention 190. Indeed, China may find better examples by looking to the practices of other countries, particularly those with civil law systems more akin to its own.
104. PRC Civil Code, *supra* note 20, Art. 1010.
105. Darius Longarino, *Under New Civil Code, Suing Employers for Sexual Harassment Will Still Be Hard*, CHINA L. TRANSLATE, Aug. 13, 2020.
106. Longarino, *China's Civil Code*, *supra* note 53.
107. The author is by no means advocating for the adoption of the “severe or pervasive” standard under U.S. federal law. In fact, the best practice is a standard that is far easier for victims to meet. For instance, New York City’s anti-discrimination law explicitly rejects the federal standard and permits a finding of unlawful discrimination whenever an act “subjects an individual to inferior terms, conditions or privileges of employment,” although the behavior must amount to more than “petty slights and trivial inconveniences.” N.Y. Exec. Law § 296(1)(h) (McKinney 2019). California permits a finding of unlawful harassment based upon any incident that “unreasonably interfered with the plaintiff’s work performance.” Cal. Gov’t Code § 12923(b) (West 2019). See Kathryn Barcroft, *Hostile Work Environment: Is NYC’s Standard the Path Forward in the Era of #MeToo?* N.Y. L. J., April 11, 2019 (describing numerous localities that have rejected the federal law standard). In these schemes, there is a lower bar to finding that liability exists and the question of severity is addressed in determining the appropriate damages. These formulations are arguably more consistent with ILO Convention 190, which prohibits all acts of GBVH without requiring a certain level of severity or pervasiveness. See ILO Convention 190, *supra* note 10, Art. 1 (defining “violence and harassment”); Robin R. Runge, *What a Feminist International Labor Standard can Teach the U.S. about Addressing Sexual Harassment in the Workplace*, 59 U. LOUISVILLE L. REV. 453, 478 (2021) (noting the lack of a severity or pervasiveness requirement in ILO Convention 190’s definition of prohibited conduct).
108. See Longarino et al., *China’s Companies*, *supra* note 7.
109. Longarino, *New Civil Code*, *supra* note 105.
110. See *Jiangsu Provincial Special Regulation on the Protection of Female Workers* [江苏省女职工劳动保护特别规定] (promulgated by the People’s Gov’t of Jiangsu Province, May 8, 2018, effective Jul. 1, 2018) (hereinafter “*Jiangsu Regulation*”), Arts. 19, 23.
111. *Sichuan Provincial Regulation on Implementing the Law on the Protection of Women’s Rights and Interests (Amended 2007)* [四川省《中华人民共和国妇女权益保障法》实施办法 (2007修正)] (promulgated by the Standing Comm. People’s Cong. Sichuan Province, Sept. 27, 2007, effective Sept. 27, 2007), Arts. 33 (obligating employer to end workplace sexual harassment), 47 (employer liable for victim’s injuries).
112. This formulation is quite similar to the federal law in the United States that allows an employer to avoid liability for harassment where it can demonstrate: (1) that the employer took reasonable steps to prevent and promptly correct sexual harassment in the workplace, and (2) the aggrieved employee unreasonably failed to take advantage of the employer’s preventive or corrective measures. See *Faragher v. City of Boca Raton*, 118 S.Ct. 2275 (1998); *Burlington Industries, Inc. v. Ellerth*, 118 S.Ct. 2257 (1998).
113. Zhang & Ren, *supra* note 59.
114. See, e.g., Directive 2006/54/EC, of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, 2006 O.J. (L 204) 23, 25 (shifting the burden of proof to the respondent when there is a prima facie case of discrimination, including sexual harassment); §§7, 9, Employment (Equal Opportunities) Law, 5748–1988 (Isr.) (shifting burden of proof to employer when the employer commits sexual harassment against an employee); Employment Equity Act 55 of 1988 §§ 6(3), 11 (S. Afr.) (shifting burden of proof to the employer against whom a sexual harassment allegation is made).
115. U.S. Equal Emp. Opportunity Comm’n, *Policy Guidance of Current Issues of Sexual Harassment*, Mar. 19, 1990.
116. See generally, Halegua, *China’s Workers*, *supra* note 95.
117. Aaron Halegua, *Employees in China Should Be Allowed to Protest against Work Conditions without Fear of Reprisals*, S. CHINA MORNING POST, Apr. 19, 2016.
118. In the United States, for instance, many courts have held that a defamation lawsuit against a worker who alleged illegal workplace conduct may constitute illegal retaliation if the lawsuit was filed without a reasonable basis and for an improper purpose. See Daniel Watson, *Rehabilitating a Federal Supervisor’s Reputation through a Claim of Defamation*, THE FED. LAWYER, 69 (Oct. 2014).
119. Madison Pauly, *She Said, He Sued: How Libel Law is Being Turned against MeToo Accusers*, MOTHER JONES, Mar. 2020.
120. ILO, *Ending Violence and Harassment against Women and Men in the World of Work*, ¶317, Int’l Lab. Conf., 107th Session, 2018, ILC.107/V/1 (1st ed. 2017).
121. *Id.*
122. *Id.* ¶344; see also Ministerio del Trabajo, *Créase la Oficina de Asesoramiento sobre Violencia Laboral* [Establishment of the Office of Counseling on Labor Violence] (2007) (Arg.).
123. ILO, *Ending Violence*, *supra* note 120 ¶356.
124. Feilong Tian, *The Context and Pathway for Anti Sexual Harassment Legislation in China* [反性骚扰立法的中国语境及路径], DW NEWS BLOG, Jan. 29, 2018.

125. Maria Repnikova & Weile Zhou, [#MeToo Movement in China: Powerful Yet Fragile](#), AL JAZEERA, Oct. 22, 2018.
126. *Jiangsu Regulation*, *supra* note 110, Art. 19.
127. SAFE WORK AUSTRALIA, [PREVENTING WORKPLACE SEXUAL HARASSMENT – GUIDANCE FOR SMALL BUSINESSES](#) (2021) (Austl.); *see also* ILO, *Ending Violence*, *supra* note 120 ¶358 (describing employers’ initiatives to improve workplace policies on GBVH in various Member States).
128. *See* Aaron Halegua, *Getting Paid: Processing the Labor Disputes of China’s Migrant Workers*, 26 BERKELEY J. OF INT’L L. 256, 286 (2008).
129. *See Shenzhen Guideline*, *supra* note 48, Arts. 2, 3, and 4.
130. Mark V. Roehling & Jason Huang, *Sexual harassment training effectiveness: An interdisciplinary review and call for research*, 39 JOB ANNUAL REV. (Special Issue) 134, 142–143, 145 (2018).
131. *Id.* at 140, 144 (concluding that factors such as organizational context—i.e. support from leadership, policies and practices that align with training outcomes, and the climate and culture of the organization—and whether the training was designed based on science-based principles may contribute to the success of the training); Claire Cain Miller, *Sexual Harassment Training Doesn’t Work. But Some Things Do.*, N.Y. TIMES, Dec. 11, 2017 (describing studies that have criticized sexual harassment training as reinforcing gender stereotypes and being ineffective on its own).
132. *See, e.g.*, N.Y. Lab. Law § 201-g (McKinney 2019) (“Such sexual harassment prevention training shall be provided to all employees on an annual basis”).
133. *See Shenzhen Guideline*, *supra* note 48, Arts. 2, 3.
134. All-China Federation of Trade Unions, [THE HANDBOOK ON THE PROMOTION OF GENDER EQUALITY AT WORKPLACES \[促进工作场所性别平等指导手册\]](#) (2019).
135. *PRC Labor Contract Law [中华人民共和国劳动合同法]* (promulgated by the Standing Comm. Nat’l People’s Cong., June 29, 2007, effective Jan. 1, 2008), Art. 4. For a discussion of the evolution and features of China’s SWRCs, *see* Cynthia Estlund, *Will Workers Have a Voice in China’s “Socialist Market Economy”? The Curious Revival of the Workers Congress System*, 36 COMPAR. LAB. L. & POL’Y. J. 69 (2015) (arguing that while the SWRCs, like the trade union, are generally seen as largely ineffectual at the enterprise level, there are initial indications that the SWRCs may be able to play a more meaningful role in workplace governance).
136. Shanshan Liu & Bing Peng, *Jilin Trade Union Launches Activities for Female Worker Rights Protection Month [吉林工会开展女职工维权月活动]*, ALL-CHINA FED’N TRADE UNION NEWS, Mar. 17, 2021.
137. *See generally* [Collective Bargaining Agreement between San Francisco Maintenance Contractors Association and SEIU Local #87, Service Employees International Union](#), 45, Apr. 18, 2017; Helen Chen et al., *The Perfect Storm: How Supervisors Get Away with Sexually Harassing Workers who Work Alone at Night*, LABOR OCCUPATIONAL HEALTH PROGRAM—UNIVERSITY OF CALIFORNIA, BERKELEY, 1, May 2016; Bernice Yeung, *How a Group of Janitors Started a Movement to Stop Sexual Abuse*, KQED, Jan. 16, 2018.
138. Yeung, *supra* note 137.
139. All-China Federation of Trade Unions, *HANDBOOK*, *supra* note 134.
140. *See* ILO, *Ending Violence*, *supra* note 120 ¶358 (discussing IKEA’s requirement that “suppliers must implement policies and routines on preventive and corrective measures against various forms of violence and must not engage in such conduct in the workplace and living (domestic) space.”)
141. Lesley Wynn, *Curbing Sexual Harassment in China’s Garment Industry*, ASIA FOUND., Mar. 13, 2019.
142. Darius Longarino, *Converting the Converters: Advocates in China Make the Case for LGBT-Affirming Mental Health Care*, CHINAFILE, Oct. 18, 2019.



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APPENDIX B

BEYOND TRAFFICKING AND SLAVERY: ANALYSIS

Are countries fulfilling the promise of the Violence and Harassment Convention?

Aaron Halegua and Shikha Silliman Bhattacharjee

21 June 2021

On this day in 2019, labour, feminist, and human rights allies celebrated the International Labour Organization's (ILO) adoption of the [Violence and Harassment Convention \(No. 190\)](#). This landmark international standard called upon member states to adopt measures to prevent and eliminate workplace violence and harassment, particularly workplace gender-based violence and harassment (GBVH). While this legal standard was being negotiated, women across the globe spoke out against sexual violence and harassment at work in unprecedented numbers, linking their individual victimisation to the collective experience of persistent GBVH in their workplaces and society simultaneously brought to the forefront by the #MeToo movement.

Zhou Xiaoxuan (or Xianzi) is one of the millions who spoke out. In 2014, Xianzi was sexually harassed by a famous television host during a college internship at China Central Television. When she reported the incident to the police, they persuaded her not to pursue the claim, implying it would harm both her parents' careers and Xianzi's reputation. Four years later, inspired by other women sharing their stories, Xianzi posted her account of the incident online.

Instead of receiving an apology, Xianzi was sued in 2018 for defamation. When she counter-sued for sexual harassment, the court rejected her claim. Further hearings were scheduled in May, but were abruptly adjourned without explanation. This high-profile legal battle has generated considerable public interest, especially from a growing feminist movement and young Chinese women – some of whom demonstrated outside the courthouse on the day of Xianzi's hearing. Experts believe that this public attention has made the Chinese government very cautious in handling the case, explaining the long delays.

Two years after the adoption of Convention 190, what progress have member states made in complying with its mandates? Six countries, including Namibia, Argentina, and Somalia, have ratified the convention and given it legal effect in their domestic system. [Robust ratification](#) campaigns are ongoing in places like South Africa and Zambia, supported by diverse groups like the [International Trade Union Confederation](#) and [International Domestic Workers Federation](#), and more than ten countries have [signalled their intention to ratify](#). In other countries, Convention 190 has inspired national conversations about the gaps in existing laws and power-based barriers to access to justice. What's more, through powerful campaigns like the [Global Fight for 15 at McDonalds](#), [IUF's Global Campaign](#) against sexual harassment at Marriott, and [Justice for Jeyasre](#), women workers and their unions are not waiting for ratification, but directly engaging with brands and employers to eliminate GBVH from their workplaces.

The struggle to end GBVH at work in China

A [new report](#) by [Global Labor Justice - International Labor Rights Forum](#) (GLJ-ILRF) and [NYU's U.S.-Asia Law Institute](#) examines the case of China, evaluating how its domestic laws and practices stack up against the international standard. On the one hand, during the negotiations China endorsed the adoption of a binding legal instrument (rather than a non-binding resolution) and the convention's mission of promoting a 'zero tolerance' environment towards GBVH. While it has not yet ratified the convention, China did introduce a [new legal provision](#) in 2020 that explicitly created liability for perpetrators of sexual harassment and obligated employers to adopt measures to investigate, prevent, and stop sexual harassment in the workplace.

But as Xianzi's case demonstrates, sexual harassment persists in Chinese workplaces and victims face real challenges in asserting their rights. Chinese media coverage of sexual harassment complaints remains limited, and government authorities [clamped down](#) further on such reporting after the #MeToo movement began gaining some traction.

In order to better understand the types of GBVH occurring in the Chinese workplace and how those incidents are handled, the report reviews over 100 civil case judgments from a [database](#) of Chinese court decisions. The cases revealed a wide range of GBVH in Chinese workplace, including lewd comments and jokes, harassing messages, unwelcome touching, invitations to subordinates to have sex, and forcing viewing of pornography.

However, very few GBVH victims sought redress through the Chinese courts. Most cases involved alleged harassers suing their employer to challenge their termination – a positive indication that some employers take GBVH complaints seriously. Those few victims who did sue rarely prevailed because of the high burden of proof on plaintiffs and the requirement that the victim's oral testimony must be corroborated by physical evidence. Even those who 'won' were awarded either no damages or only a paltry sum. Instead, victims who complained often faced retaliation by the employer or, like Xianzi, a defamation lawsuit by the harasser.

Recognising some of these challenges, China – like [Uruguay](#), [Denmark](#), and others – keeps moving towards harmonising its domestic law and practice with Convention 190's mandates. Three months ago, the municipality of Shenzhen issued a [detailed guideline](#) that further defines sexual harassment, specifies the policies and procedures that employers should implement, prescribes penalties for harassers, and bans retaliation.

[The report](#) encourages China to continue down this path. Based on the empirical research performed, the report offers concrete recommendations to the Chinese government, employers, workers' organisations, and global brands to, for instance, make the legal definition of prohibited conduct coextensive with Convention 190; establish clear liability and penalties for employers; strengthen government monitoring and enforcement; and prohibit retaliation. Our intention is that this report serves as a resource to these actors in promoting compliance with the text and spirit of Convention 190.