

# THE FUTURE OF WOMEN IN CHINA; #ME TOO, CENSORSHIP, AND GENDER INEQUALITY

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## HEARING BEFORE THE CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA ONE HUNDRED SEVENTEENTH CONGRESS SECOND SESSION

MARCH 1, 2022

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## **THE FUTURE OF WOMEN IN CHINA: #ME TOO, CENSORSHIP, AND GENDER INEQUALITY**

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**TUESDAY, MARCH 1, 2022**

CONGRESSIONAL-EXECUTIVE  
COMMISSION ON CHINA,  
*Washington, DC.*

The hearing was convened, pursuant to notice, at 10:30 a.m. in Room 562, Dirksen Senate Office Building, Senator Jeff Merkley, Chair, presiding.

Also present: Representative James P. McGovern, Co-chair, Senator Ossoff, and Representatives Smith, Steel, and Wexton.

### **OPENING STATEMENT OF HON. JEFF MERKLEY, U.S. SENATOR FROM OREGON; CHAIR, CONGRESSIONAL-EXECUTIVE COM- MISSION ON CHINA**

Chair MERKLEY. The Congressional-Executive Commission on China's hearing entitled "The Future of Women in China: #MeToo, Censorship, and Gender Inequality" will come to order.

One week from today the world will mark International Women's Day. This is an occasion not only to celebrate the critical role women and girls play in families, communities, and societies across the globe but to also reflect on how those societies can better protect the fundamental human rights of women and girls. Governments that fail to treat women equally prevent their countries from reaching their full potential. Those that empower women in political, social, and economic life are more prosperous and peaceful. Over 70 years ago, Mao Zedong acknowledged the importance of women in Chinese society with his famous statement that women hold up half the sky. Yet, as this Commission fulfills its mandate to monitor human rights in China, we continue to find a mixed picture when it comes to the status of women. While the Chinese government implements laws and regulations intended to address persistent issues related to gender-based violence, discrimination, and harassment, women face significant challenges in all of these areas.

In recent months, several high-profile cases shined a bright spotlight on the vulnerability of women to violence. In November, tennis star Peng Shuai accused a senior Chinese Communist Party official of sexual assault. In January, a video appeared showing a rural woman—reportedly the mother of eight—chained by her neck in an outdoor shed, sparking serious concerns about human trafficking, the impact of policies of population control, and the treatment of persons with mental disorders. These stories come on the heels of other cases of domestic violence and workplace harassment that reinvigorated the #MeToo movement, as well as horrifying re-

ports of rape committed against Uyghur women in intrusive homestay programs and mass internment camps. A brave survivor of these camps will tell her story to us today.

While many of these reports generated intense interest within China, the Chinese Communist Party worked to suppress them and stifle expression related to women's rights, just as it constricts freedom of expression and civil society more broadly. It's been seven years since China jailed five female activists for publicizing sexual harassment on public transportation, and feminists—that is, advocates for improving the condition of women in China—continue to be denied the space to speak up and to organize, as demonstrated by the coordination of online attacks and the shutdown of feminist social media accounts last spring.

In political life, women are excluded from positions of power, with not a single woman serving on the Politburo Standing Committee and only one woman serving on the 25-member Politburo and few women serving at senior levels of county, municipal, and provincial governments.

Many of the most egregious abuses deny the fundamental freedom of families to decide if, when, and how to have children. Forced sterilizations and forced abortions, such as those prompted for years by the one-child policy and those reported in recent years by the Uyghurs and other Turkic Muslims, are atrocities. The move to a three-child policy raises the specter of new coercive tools and tactics denying freedom. This all adds up to a complex landscape for women's rights in China, deserving close scrutiny through today's hearing. This is the first time the Congressional-Executive Commission on China has held a hearing dedicated to this set of issues and it shouldn't be the last. I look forward to our witnesses helping us understand ways we can better stand up for women in China.

Now I recognize Congressman McGovern for his opening remarks.

[The prepared statement of Senator Merkley appears in the Appendix.]

**STATEMENT OF HON. JAMES P. MCGOVERN, A U.S. REPRESENTATIVE FROM MASSACHUSETTS; CO-CHAIR, CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA**

Co-chair MCGOVERN. Thank you. And thank you, Mr. Chairman, for holding this hearing on "The Future of Women in China: #MeToo, Censorship and Gender Inequality." I am proud that this is the Commission's first-ever hearing specifically on the status of women. It is timely, given the spotlight on the Peng Shuai case of sexual assault and coverup and changes in the Party's policy on gender. Since 2005, the Commission has included a stand-alone section on the status of women in its annual report. That initial section on the status of women found that while the Chinese constitution and laws provide for equal rights for women, in reality women have fewer employment opportunities than men, and their educational levels fall below those of men. Today we find this dynamic much the same. The Chinese government continues to implement laws and regulations aimed at equality. For example, in January of 2021, a specific definition of sexual harassment was codi-

fied in the civil code, creating liability for employers and detailing the kinds of conduct that would fall under the definition of sexual harassment. But in their everyday experience, women continue to face discrimination in employment, education, wages, and legal redress. Last September, authorities detained Sophie Huang Xueqin and Wang Jianbing, advocates of the Chinese #MeToo movement, under the charge of “incitement of subversion of state power.” Why in the world would advocating for women’s rights be considered a crime against the state? Repression of women has also been documented in the Commission’s annual report’s population control section, on the Chinese government’s heavy-handed policies to limit births, including the human rights abuses of forced abortion and forced sterilization. We have monitored these horrific practices that are part of the government’s campaign against Uyghurs and other Turkic Muslim women, and we will hear testimony from a survivor today.

For others in the People’s Republic of China, however, these population policies are evolving, as authorities respond to the social and economic consequences of demographic change. We would like to know where these policies are headed and whether Chinese authorities’ heavy-handed approach will manifest itself in a different way.

I welcome the witnesses and I look forward to your testimony. Again, I want to thank Chairman Merkley for coordinating this hearing. I think it is long overdue.

With that, I yield back my time.

[The prepared statement of Representative McGovern appears in the Appendix.]

Chair MERKLEY. Congressman Smith now wishes to deliver some opening comments. Congressman?

**STATEMENT OF HON. CHRIS SMITH,  
A U.S. REPRESENTATIVE FROM NEW JERSEY**

Representative SMITH. Thank you, Mr. Chairman, and thank you for convening today’s important hearing.

I’d like to concentrate my remarks on the most coercive, horrific, and systematic abuse of women’s rights by the Chinese Communist Party. For decades, the women in China were subjected to the brutal one-child-per-couple policy under which countless numbers of women were forcibly aborted and sterilized against their will. I chaired dozens of hearings, including as chairman of this Commission and my Subcommittee on Human Rights on the Foreign Affairs Committee, on this egregious abuse and heard directly from many women who were forcibly aborted. I would note parenthetically, I led the successful effort to reverse a Clinton administration policy that denied asylum to those fleeing forced abortion and also offered an amendment back in 1985, that is still the law, that we will not contribute to any organization that supports or co-manages a coercive population control program. That was back in ’85.

The trauma of being abducted and forcibly brought to an abortionist by police and family-planning cadres has few parallels in the world. At one of my congressional hearings I chaired in 2009, for example, a Chinese college student named Wujian said that she was brought to a hospital against her will and she testified that,

and I quote her in part: “As soon as I was taken out of the van I saw hundreds of pregnant moms there, all of them just like pigs in the slaughterhouse. The room was full of moms who had just gone through a forced abortion. Some moms were crying. Some moms were screaming and one mom was rolling on the floor in unbearable pain. Then it was my turn. It was the end of the world for me,” she said. “When the surgery was finished, the nurse showed me part of my baby’s bloody foot with her tweezers.”

As I think those who will be testifying today and members of our Commission know, the girl child particularly was targeted in the womb, given the cultural preference for boys. If only one child or two or even three was allowed, there was a girl who was exterminated, something we all called and call “gendercide.” This has led to the world’s most significant gender imbalance anywhere in history. According to the Congressional Research Service, as of 2021, there was a reported 689 females for every 723 males in China, leading to “the world’s most skewed sex ratio at birth with 111 males for every 100 females,” per the 2020 data. This has only been partially ameliorated by the CCP’s belated recognition that they have created a demographic time bomb and the change to a two-child policy in 2015 and now a three-child policy as of last year. The coercive hand of the state is nonetheless still present. Indeed, this Commission conducted a series of hearings following the adoption of the two child per couple policy. The conclusion drawn from those hearings was that the two-child policy should not be lauded because it did not change the basic structure of coercive population control in China, and it appears the same is true with the three child per couple policy. The policy still violates international human rights norms. Women in China still endure coercive pregnancy monitoring, fines, and the immense psychological burden of enforced birth limits. At least as of 2017, China was the only country in the world where the female suicide rate is higher than the male. Experts differ on the exact number, but estimates indicated that between 25 and 40 percent more women killed themselves each year through suicide than men. That doesn’t happen anywhere else in the world. A contributing factor has been the coercive power to destroy their children while in utero.

Let’s not forget the bureaucracy that has been created, mobilized, and invested in population control. The new policy does not dismantle the brutal machinery of enforcement, nor does it remove the pernicious incentives given to local officials to pressure mothers to abort a child if the birth hasn’t been approved by the state. And even if the situation has ameliorated somewhat for women from the ethnic Han Chinese majority, the CCP’s ruthless anti-natalism is still played out with a vengeance, as we all know, Mr. Chairman, in genocidal policies aimed at reducing Central Asian populations, including the Uyghur minority, and others—the Kazakhs and the Kyrgyz.

Last year, in an independent tribunal in the United Kingdom chaired by Geoffrey Nice—who led the prosecution of former Serbian President Slobodan Milosevic—to determine whether the CCP’s policies amounted to genocide, one of the witnesses, named Razi, presented testimony regarding how she was forcibly aborted and told a similar story that I have heard since 1983, when I first



started my effort to combat this heinous abuse of women's rights. A female OB-GYN named Dr. Gafur told how if a household had more births than allowed, they would raze the home; they would flatten the house and destroy it.

I also had at one of my hearings a woman who we were able to get out of the country who ran a family planning program in Fujian Province. Her self-description was: "By day I was a monster, by night a wife and mother of only one," and that she would have women in their eighth and ninth pregnancy pleading with her to allow them to carry their baby to term, but she said, with resoluteness, "We would abort each and every one of them."

Let me just conclude by pointing out that at one of our hearings—and you know this, Mr. Chairman; it was our Commission—we heard from Mihrigul Tursun who recounted her ordeal of torture, abuse, and detention in the Chinese camps. We've heard from many others over time. As we all know, Xi Jinping is continuing his genocide.

And let me just say, I asked repeatedly—during the Obama administration and even the Bush administration, as the author of the Trafficking Victims Protection Act and four other laws that combat human trafficking—what the linkage is between forced abortion, the gendercide of the girl child, and trafficking. And finally the Trafficking in Persons Report recognized that not only is there a linkage, one of the reasons so many women are being trafficked into China is the dearth, the lack, of women and the extermination of the girl child as a result of this horrible policy.

So thank you again for calling this hearing. I think we have to be very clear that this is not over, despite what Xi Jinping and others might have said. The machinery of the forced-abortion policy remains intact and that is cause for great, great concern.

I yield back, and thank you, Mr. Chairman.

[The prepared statement of Representative Smith appears in the Appendix.]

Chair MERKLEY. Thank you, Congressman.

Now I'd like to introduce our panel of witnesses, starting with Dr. Leta Hong Fincher. She is a journalist and author of "Betraying Big Brother: The Feminist Awakening in China," as well as "Leftover Women: The Resurgence of Gender Inequality in China." She is an adjunct professor at Columbia University's Department of East Asian Languages and Cultures. She won the Society of Professional Journalists' Sigma Delta Chi Award for her China reporting.

Aaron Halegua is a lawyer and research fellow at New York University Law School's Center for Labor and Employment Law, and the U.S.-Asia Law Institute. In 2021 he authored the report "Workplace Gender-Based Harassment and Violence in China: Harmonizing Domestic Law and Practice with International Standards." He has worked on labor rights issues for nearly 20 years, including consulting on labor issues in China, Thailand, Burma, Malaysia, and Mexico.

Mei Fong is chief communications officer at Human Rights Watch and a former Pulitzer Prize-winning Wall Street Journal China correspondent. Her book, "One Child: The Story of China's Most Radical Experiment," won a nonfiction award from the Amer-

ican Society of Journalists and Authors. Foreign Policy magazine named her to its top 50 list of U.S.-China influencers. She was previously director of communications and strategy at the Center for Public Integrity.

Tursunay Ziyawudun is a survivor of the Chinese government's mass internment camps in the Xinjiang Uyghur Autonomous Region. As one of the very few survivors of these camps who has reached safety in another country, she has provided testimony to human rights groups and to researchers and journalists investigating the genocide against Uyghurs and other Turkic Muslims. Her brave voice exposed to the world the sheer depravity of the mass internment camps and their horrific treatment of women.

We will now hear directly from our witnesses, starting with Dr. Hong Fincher.

**STATEMENT OF LETA HONG FINCHER, AUTHOR, "BETRAYING BIG BROTHER: THE FEMINIST AWAKENING IN CHINA"**

Ms. HONG FINCHER. Chairman Merkley, Chairman McGovern, and distinguished members of the Commission, thank you for holding this important and timely hearing and for inviting me to testify.

While the entire world watches Russia's horrifying invasion of Ukraine, the Chinese government refuses to call Russia's actions an invasion. President Xi Jinping appears to be aligning himself with Vladimir Putin, further undermining the rules-based international order. There are many reasons that China's Communist regime has survived for over 70 years in spite of the collapse of communism in the Soviet Union and Eastern Europe, but it is impossible to understand the longevity of China's Communist Party without recognizing the patriarchal underpinnings of its authoritarianism. In short, Xi Jinping views patriarchal authoritarianism and the subjugation of women as critical for the survival of the Communist Party. China's economy has entered a protracted slowdown just as the country is beginning to face the demographic crisis of an aging population, falling birth rates, and a shrinking workforce. In response, the government has revived sexist elements of Confucianism, upholding the male-dominated family as the basic foundation of a strong nation. State propaganda praises Xi Jinping's traditional "family values" and presents him as the father of the Chinese nation in a "family-state under heaven," in which obedient wives and mothers in the home are key to solving China's most pressing social problems. China's propaganda apparatus began a crass campaign in 2007 to stigmatize single, educated Han Chinese women in their late 20s, mocking them as "left-over" women to push them into marrying and having babies for the good of the nation. This pro-marriage, pro-natalist propaganda has only become more intense with the adoption of the two-child policy in 2016 and the three-child policy last summer. China's population-planning policies also have a strong undertone of eugenics. Even as officials urge Han Chinese women to marry and get pregnant in order to "upgrade population quality," they are slashing birth rates among ethnic minority women, in particular Uyghur women and other Turkic women in Xinjiang, with forced sterilizations and

abortions, as witness Tursunay Ziyawudun will describe in her testimony.

The government is carrying out a sweeping crackdown on feminist activists, who pose a unique challenge to China's all-male rulers. As a result, the #MeToo movement against sexual violence has been the target of aggressive censorship. Take the heavy-handed reaction to Chinese tennis star Peng Shuai's Weibo post last November 2nd, accusing China's former vice premier Zhang Gaoli of sexual assault. Peng Shuai's post was deleted within half an hour and she herself disappeared for weeks, only to reemerge in a series of undoubtedly coerced appearances coinciding with Beijing's Winter Olympics.

We are about to mark the seventh anniversary of the Chinese government's jailing of five women's rights activists in March 2015, for planning to commemorate International Women's Day by handing out stickers against sexual harassment on subways and buses. Since then, feminist activists have tapped into the broad discontent felt by Chinese women and developed a level of influence that is highly unusual for any social movement in China since 1989. Even though the government persecutes activists, shuts down women's rights and LGBTQ rights centers, and censors feminist social media content, China's feminist networks have actually grown in recent years instead of being wiped out.

The shrinking space for civil society in China makes it even more extraordinary that a feminist movement is able to survive at all. While prominent male human rights activists have emerged over the years, very few Chinese citizens knew about them or could relate to their abstract goals. By contrast, feminist activists today take up causes that have broad resonance with young women and LGBTQ people across China—issues such as sexual violence, intimate partner violence, and gender discrimination.

China is an autocracy with no press freedom, no internet freedom or freedom of assembly, and effectively no rule of law. Yet when feminist activists organize around issues that affect the personal lives of millions of ordinary women, even the all-powerful, male-dominated Chinese Communist Party struggles to quash the movement.

Thank you again for inviting me to testify.

[The prepared statement of Leta Hong Fincher appears in the Appendix.]

Chair MERKLEY. Thank you.

And we'll now turn to Mr. Halegua.

**STATEMENT OF AARON HALEGUA, RESEARCH FELLOW, CENTER FOR LABOR AND EMPLOYMENT LAW, U.S.-ASIA LAW INSTITUTE, NYU SCHOOL OF LAW**

Mr. HALEGUA. 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. I was asked to address the subject of sexual harassment in China. My testimony draws upon my nearly 20 years of studying Chinese labor issues. Last summer, I published a report on workplace gender-based violence and harassment in China, which describes the current state of Chinese law and practice and also makes recommendations to

the Chinese government, Chinese employers, and global brands on how to better comply with international standards. The full report has been submitted to be part of the record. Today, I will share a few high-level findings from my research, and I will start with my basic conclusion. It is my view that in recent years China has, in fact, made important rhetorical commitments and taken some positive legislative steps towards eliminating sexual harassment. However, 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. In terms of prevalence, like in many countries, sexual harassment remains a serious problem in China. While survey results vary, one study by the Chinese Academy of Social Sciences in the 1990s found that 84 percent of female workers reported being harassed.

So what has been China's response? At the international level, China recently supported the adoption of ILO Convention 190 on the Elimination of Violence and Harassment in the World of Work, which seeks to create a zero-tolerance environment for sexual harassment. China even agreed that adopting a convention was preferable to a non-binding resolution. However, since Convention 190 was adopted in 2019, it has not yet been ratified by China. Domestically, China continues to improve its legislation. In 2020, like Congressman McGovern mentioned, China adopted a new civil code that included a provision specifically on sexual harassment. However, while the provision establishes clear liability for individual harassers and requires employers to take measures to prevent sexual harassment, it still does not create any legal liability for employers when they fail to do so.

Turning to the implementation of these laws, there is evidence that some Chinese employers are taking sexual harassment more seriously. More employers are adopting sexual harassment policies and there is a considerable number of court cases involving employees who have been fired after the company found that they engaged in sexual harassment. Far more troubling, though, is the very small number of sexual harassment victims that ever bring a case in court. Only 6 of the 83 sexual harassment court cases decided between 2018 and 2020 involved victims bringing lawsuits against their harassers. Moreover, victims who do sue rarely win, and if they do, the remedies are paltry, sometimes just a few hundred dollars or maybe just an apology. What's worse, sexual harassment victims who complain often face retaliation. It is also common for them to be sued for defamation by the alleged harasser. Indeed, far more cases are brought against sexual harassment victims than by these victims. One female worker who published an online account of being forcibly kissed, groped, and undressed by her supervisor was later ordered to pay the equivalent of \$1,800 for hurting the supervisor's feelings. Already in this culture of silence, very few victims are willing to 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 come forward.

So what can be done? In closing, I will just mention a few recommendations from the more comprehensive list in my report. First, the Chinese government should explicitly make employers

liable for failing to prevent or address sexual harassment, should modify evidentiary rules that make it difficult for victims to prevail in court, and should protect victims from retaliation and defamation claims. Chinese employers should establish procedures to investigate and resolve complaints, and global brands should ensure that Chinese partners have such mechanisms in place. And the U.S. Government should commend China for the steps it has taken thus far, but encourage it to do more to harmonize its domestic law and practice with the most recent international standards.

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

[The prepared statement of Aaron Halegua appears in the Appendix.]

Chair MERKLEY. Thank you, Mr. Halegua.

And now we turn to Ms. Fong.

**STATEMENT OF MEI FONG, CHIEF COMMUNICATIONS OFFICER, HUMAN RIGHTS WATCH, AND AUTHOR, "ONE CHILD: THE STORY OF CHINA'S MOST RADICAL EXPERIMENT"**

Ms. FONG. Thank you very much, Chairman McGovern, Chairman Merkley, and members of the Commission. I appreciate this opportunity to testify on the impact of China's population planning policies and the effect it has had on women, in China and beyond.

Now, the one-child policy began in 1980; it has shaped China's population-planning policies for well over 30-plus years, and then it was replaced in rapid succession with the two-child policy in 2016 and then the three-child policy in 2021. Now, this sudden about-face that went from limiting births to boosting births was the result of the ruinous consequences of this inhumane policy. In short, it created a population in China that was very imbalanced: too male, too old, too few. When I say "too male," what do I mean? There are 30 million more men than women in China, and that's about the population of Australia. When I say "too old," that means you have a shrinking workforce and you have more retirees in China than you have in the population of Western Europe.

And so what does all this mean for women in China? Well, Mao may have said that women bear up half the sky, but as far as the one-child policy and the consequences of this, women have borne far more than their share of the burden of this. We'll start with the one-child policy.

As a journalist at The Wall Street Journal, my years reporting in China, and while researching for the book, I spoke to many women who recounted tales of being forced to have abortions, some as late as seven months. I spoke to officials who described how they cornered and chased women like prey, pregnant women, and I spoke to many, many mothers who had very heartbreaking stories to tell about being forced into acts of abandonment and infanticide, killing their own children, all to conform with the one-child policy. Now, of course, there's been a switch to the two- and three-child policy, but even so, these have inflicted new wounds on women.

Now, for example, this whole move to boost births in China is done to ask women of China to shore up the shrinking workplace, but they themselves are now being forced to contend with problems in the workplace. Since the introduction of the two-child policy,

Human Rights Watch has documented a rise in pregnancy-related discrimination against women in the workplace. Employers now fear that women might take two or three slots of maternity leave, instead of only one during the one-child era, and so some companies have sought to avoid this through job ads or interviews or workplace treatment that discriminate against women with no children, women with just one child, or simply women in general. Women have been fired for getting pregnant, they've had their pay docked, they've been asked to sign agreements pledging not to have children, and while such practices are illegal under Chinese law, the enforcement is lax, and redress and compensation so rare that these practices largely remain unchecked.

Elsewhere, as well, while of course it is much easier to use force to prevent women from having children, it does not mean that the Chinese government isn't taking that same approach, stick versus carrot, to try and boost births, and how this is shaping up is in the form of growing curbs on divorce and abortion. These are both human rights abuses. Last month, authorities said they would reduce unplanned pregnancies and abortions among adolescents and single women. Now, this follows tightened overall restrictions on abortion in general that began in 2018, and also there have been reports of a clampdown on male vasectomies.

Now authorities say these moves are motivated by welfare concerns, but such explanations have been met with both suspicion and, in some cases, derision from the Chinese public, given the state's long history of coercive birth practices. And it is also, of course, important to note at this point that there still continue to be coercive practices for many Uyghurs in China, with forced sterilization, and women held in camps, of which we will hear more on in a bit.

Last but not least, it is not only the women of China who have borne the brunt of Beijing's population-planning policies. The one-child policy has created a huge shortage of women and, hence, a surge in bride trafficking in China as well as from countries across the region, including Myanmar, North Korea, Cambodia, and Pakistan. Human Rights Watch has documented how hundreds of women and girls in Myanmar have been sold to Chinese families for anywhere between \$3,000 and \$13,000, and once purchased, they are pressured to produce babies as quickly as possible. Now, you have heard the case of the woman in chains who was held and forced to bear something like eight children. This went viral in the weeks before the Beijing Olympics and threatened to derail the feel-good stories of the Olympics. This is a signal or a representation of some of the ongoing concerns with human trafficking.

Now there is a whole host of recommendations that I have submitted in my prepared statement. I won't go into it in detail at this point. I think suffice it to say that it is almost unimaginable to think that any government should be in the business of regulating, making, or forcing women to choose how many children they should have. It needs to stop. Thank you.

[The prepared statement of Mei Fong appears in the Appendix.]

Chair MERKLEY. Thank you very much for your work and for your testimony.

And now we turn to Ms. Tursunay. Delighted to have you and appreciate your willingness to share your knowledge and your experience.

[Note: Ms. Tursunay's remarks are made through an interpreter.]

**STATEMENT OF TURSUNAY ZIYAWUDUN,  
FORMER XINJIANG CAMP DETAINEE**

Ms. TURSUNAY. I am very thankful that you have given me this opportunity to talk about what I have been through and what has happened to my people. I am very grateful for the opportunity to speak today.

Ms. TURSUNAY. Thank you, Chair Merkley, and thank you, Co-chair McGovern. I am very grateful for the opportunity to testify and to tell the world about my experience and the experience of Uyghur women. It is painful to speak about my experiences, but I see it as my duty to be the voice for those who are still in the camps and in prison and those who died in front of my own eyes.

I was locked up in camps two different times. The mental and physical torture I have experienced have left deep scars on my heart. I was taken into a camp for the second time in March 2018 and stayed for nearly one year. We always lived in fear. We feared beatings if we could not memorize the propaganda lessons correctly. Every day we heard screaming and crying voices. Then it happened to me. Several times the guards took me out of the cell and into an interrogation room, and they beat me. Once, they took me out in the middle of the night, along with a young woman in her 20s. In addition to police officers, there was a man in a suit wearing a mask. I don't know where he came from. These men raped the young woman. Three police officers raped me as well. They were always taking girls. Sometimes they brought a woman back near the point of death. Some of the women disappeared. I saw some bleed to death with my own eyes. Some lost their minds in the camp. Every time I think about these things, my heart feels like it's been sliced with a dagger. My nightmares make me relive that fear every day.

I thank the CECC commissioners for speaking out for Uyghur women. We are grateful to Congresswoman Wexton for advocating for Ms. Gulmira Imin. We are very grateful for the resolution condemning the genocide and the forced labor bill that passed in December.

I ask you to do more. Please do more to accept Uyghur refugees. I came to the U.S. with the help of the U.S. Government and the Uyghur Human Rights Project. There are more people like me who managed to escape China, but they are still afraid to speak. Living in neighboring countries, they are still living in fear of being deported to China at any time.

Please also investigate what can be done to help Uyghur asylum seekers. I know many Uyghurs who have been in the U.S. since before the crackdown in 2017, which is already five years ago, and they still have not received their asylum interview. The U.S. is doing so much because of your great sympathy for the Uyghurs. Can you also investigate why so many Uyghurs are waiting for years for a decision on asylum? I also hope Congress can do more to help Uyghur torture survivors get medical care and counseling.

My nightmares and the mental anguish are constant. Camp survivors like me need help for extreme trauma. Other Uyghur Americans are also suffering terrible mental trauma.

Finally, I want to ask for more support for human rights groups and Radio Free Asia to do more programs to help women who are victims of the Chinese government's atrocities. For example, I listen to Radio Free Asia Uyghur service every day. I hope there can be more news stories about women in the genocide and information about how Uyghur women can survive our mental torment. More stories about achievements of strong Uyghur and Kazakh women can help give us inspiration and hope for the future. Thank you again for inviting me.

[The prepared statement of Tursunay Ziyawudun appears in the Appendix.]

Chair MERKLEY. Thank you so much for your testimony about these conditions. Thank you to all of our witnesses. We're going to turn to a period of questions now. Ms. Tursunay, let me begin with you. Could you clarify for those who are seeking to understand your experience whether the camp you were put into was a strategy by the Chinese government to separate women and prevent them from having children? Was it a strategy for forced labor? Were you forced to work? And at what point, and why, did the government release you from the camp?

Ms. TURSUNAY. I don't know what kind of strategy the Chinese government wishes to implement, but one thing that I know—and it's clear—is the Chinese government wants Uyghur women to not have children. They imposed sterilization on every woman. It's just amazing that they want to destroy Uyghur women in different ways.

In different ways, the Chinese government tries to separate the families—family members. For example, this picture that I am showing you, this woman was separated from her children. The only thing is that they just try to destroy the Uyghur families and Uyghur women.

Chair MERKLEY. And if you could, at what point were you released from the camp and—I know you were admitted or put into a camp a second time—what was the strategy of the Chinese government? Why were you released?

Ms. TURSUNAY. I don't know what purpose the Chinese government has in its mind, but the only thing that I know is that my husband was living in Kazakhstan, and he advocated for me. I have seen that the Chinese authorities have shown me that my husband was campaigning for my release from the camp, and he was holding my Chinese ID card, and talking about me, saying that I am innocent and I should be released from the camp. And my understanding is that because of my husband, and he campaigned for me from Kazakhstan, that that's why the Chinese government had to release me.

Chair MERKLEY. Thank you. No one should ever have to go through what you endured and what other Uyghur and Turkic Muslim women are experiencing. You are a voice for so many, and you are doing a great service by helping shine a light on this inhumanity in this strategy of genocide being conducted by the Chinese government. So thank you. Thank you very much.



Ms. TURSUNAY. Thank you for giving me this opportunity, and our people back home—many people are very hopeful that the American Government will help us. They are really looking forward and are really hopeful that you will support Uyghur people. Thank you.

Chair MERKLEY. Thank you. I'm going to now turn to Dr. Fincher.

Dr. Fincher, I was very struck by your description of the patriarchal authoritarian views of Xi Jinping and that the subjugation of women is critical for the survival of the Communist Party, which is an interesting way to characterize Xi Jinping's views—that subjugation is critical for the survival of the Party.

I do certainly understand your followup in which you talk about the elements of Confucianism and the strategy of a male-dominated family and this belief that China will thrive with obedient wives, but why is the subjugation of women critical to the survival of the Party? Why do you put it that way?

Ms. FINCHER. Thank you for your question, Senator Merkley.

It is multifaceted. The Chinese government faces all of these economic problems: the shrinking of the workforce, aging of the population, the sex ratio imbalance which is related to a lot of—tens of millions more men who are considered to be a grave threat to political stability because they are not able to find wives, domestic violence.

The Chinese government passed an anti-domestic violence law in 2016, I believe largely to make itself look like a more responsible global power, but that law has basically not been enforced. And after many years of doing research on women in China—more than a decade—I've come to the conclusion that basically the Chinese government wants the violence against women to continue as long as it is happening within the home.

According to this old Confucian ideology, which is now being resuscitated in Chinese state media today, there is such an emphasis on everybody playing their proper role within the family that is very hierarchical. There is this aggressive propaganda about how women need to be wives and mothers, very docile and obedient within the home. So women then take over the harmony within the home. The Communist Party continues to emphasize in its propaganda how a harmonious family is the basic cell of society; that as long as the violence is contained within the home, then that violence is not likely to be directed at the state. So that's one of the ways in which I believe that the subjugation of women is very important.

I mean, if you compare China with surrounding countries like Japan, for example, Japan is also highly patriarchal and yet they've adopted this Abenomics policy of trying to encourage more women's participation in the workforce, and they've actually succeeded in raising female labor force participation rates.

But in China we see the absolute opposite where female labor force participation is falling. There is no effort on the part of the government to decrease or reverse that trend in any way. China is the only major economy, I believe, in the entire world where female labor force participation was falling before the pandemic and the gender income gap was increasing. And why is it that there is so

little female political representation? Not only is it abysmally low, it's actually falling within the Central Committee.

There are so many different signs—and the severe crackdown on this extraordinary feminist movement ever since 2015. Why is it that China's leaders are so threatened by feminism? It's in large part because marriage rates are falling, birth rates are falling. Young women today—particularly college-educated young women—do not want to marry or even have one child, let alone two. And so they are—in advocating for the emancipation of women, these feminists are actually posing a real threat to the whole agenda of the Communist Party, and there are many ways in which this basically threatens the ability of China's leaders to control the entire population.

Chair MERKLEY. I am now way over my time, which I'm shocked about. How did seven minutes go by so quickly? I apologize to my colleagues, and we'll turn to Representative McGovern.

Co-chair MCGOVERN. Thank you very much.

Ms. FONG, you testified that “the Chinese state switch to purportedly pro-natal policies has inflicted new wounds on women.” You recommend that the Chinese government fully respect reproductive rights, stop regulating women's bodies, and provide free access to safe and legal abortion and contraception.

You know, we're all against China's human rights abuses, against its heavy-handed intrusion into the lives and bodies of women. I think it's important that when we are talking about opposing China's denial of basic reproductive rights that we're talking about whether they are coercive anti-natal policies or pro-natal policies.

You know, the abuse of women, the taking away of women's rights, is the heavy-handed role that the Chinese government is playing in saying you can do this, and you can't do that, or you can do this.

Can you expand on your recommendation?

Ms. FONG. I'm sorry. Could you clarify that question?

Co-chair MCGOVERN. I guess what I'm trying to say is kind of re-emphasizing the importance that—when we talk about opposing China's heavy-handed approach in dealing with women that it is important that we are talking about not only their coercive anti-natal policies but also their pro-natal policies, and if you could just maybe comment on that.

Ms. FONG. Yes, I think China is unusual among many countries. I mean, China is not the only country that is facing falling birth rates. This is a reality in most modern societies where women are educated and in the workforce and having smaller families, and delaying when they start reproducing as they go on and go to college.

China, however, is unusual in that it is adopting very different tactics from the rest of the world in terms of trying to increase family size. It isn't spending a lot of money on ancillary services like childcare, schooling—all the things that are necessary when you are in the business of promoting equality for women and promoting equal parental rights in the workplace. It is unusual in that respect, and I think this goes towards Dr. Hong Fincher's point. It isn't so much about births; it is about control. Thank you.

Co-chair MCGOVERN. I appreciate that. I just think it's important that that point be emphasized because it is about control, and women should decide whether they want to marry, whether they want to have children, whether they want to have one child or five children—whatever.

Ms. FONG. Or no children.

Co-chair MCGOVERN. Yes, or no children. That is up to the woman; not up to the government to decide how a woman deals with her life.

Mr. Halegua, women or men who suffer sexual harassment or abuse are often burdened with mental trauma from the experience. Does the Chinese system—whether legal or social—provide psycho-social or other support for those who suffer trauma? Is mental health covered under the Chinese health system or readily available?

Mr. HALEGUA. It's not a subject that I'm particularly expert on. I will say in the legal system, in looking at sexual harassment cases—and part of our study was to analyze every court case we could find that mentions the words sexual harassment—what did become clear in trying to figure out when courts would actually award damages to sexual harassment victims is that courts often required that victims have some kind of psychological evaluation and that there be actual documented psychological trauma before they would be willing to award some kind of damages to that victim.

In terms of the adequacy of services, the things I've read suggest that certainly they are falling short in terms of providing these services. I think a big piece of it is that many people never really want to come out and complain and talk about what happened to them. There's obviously a certain stigma attached to being a victim of sexual harassment, and oftentimes it leads to problems at work—you have become the problem if you complain about sexual harassment; and this could lead to problems in one's own family or social groups, the stigma that comes with being someone who complains about sexual harassment. So a lot of people aren't really coming forward and seeking out the help for the trauma that they might have suffered.

Co-chair MCGOVERN. Thank you.

Dr. Fincher, you testified that China's feminist networks have grown in recent years despite the overall trend in restrictions on civil society. To what do you attribute this dynamic? Is there a way that those of us outside China can support the movement, and is there a way that we can hurt it? Because one of the struggles we always have when it comes to supporting human rights defenders and those struggling for their human rights is how, despite our best intentions, we do something that makes it more difficult for them.

Ms. FINCHER. Thank you for your question, Chairman McGovern.

There are many reasons why the feminist movement is so transformative today. One, at its core, there's a very radical political feminist movement. Those political activists at the very core are extremely savvy organizers. They're very imaginative. They're located in many different places. It's a rather large community. It has increased significantly since the jailing of the so-called Feminist Five

in 2015. And so this core radical base of Chinese feminists is actually part of a global diaspora of Chinese feminists as well, who keep the momentum of the movement going.

It is very different from these isolated—in the past—male heroes who were very well known, but then the Chinese government may kick them out of the country and then they lose all relevance. The movement does not rely on a single heroic leader and it has become the mainstream ideas about just speaking out against widespread sexism and misogyny in Chinese society. It has become so mainstream. These are very popular ideas now. They've caught on among millions and millions of not just young women but LGBTQ people, young men. There are many allies.

So these are ideas that, really, hundreds of millions of people in China can endorse. And so it's popular. There's a radical core. The activists themselves, the most active feminists, are themselves persecuted. Sometimes they're jailed. Some of them are in jail right now.

What can we do to help? Well, certainly, I would agree as well with Tursunay Ziyawudun in that the U.S. should do much more to provide a refuge for those fleeing persecution in China, and I know that those who manage to make it to the U.S. still have a lot of difficulty.

In fact, I've helped a lot of these people with their visas. They have problems with visas, problems staying here. We can open our doors and welcome more of these people fleeing persecution and help give them the resources they need to make a new life in the U.S. when it is really impossible for them to live back in China.

And the thing is that there's a lot of this communication because of the internet. Of course, there's no internet freedom in China, but the global diaspora of Chinese feminists and Uyghurs, I might add, has become so large. There's a lot of communication among these people. And so we can provide more resources for those who have fled China who have come to the U.S.

Co-chair MCGOVERN. Thank you.  
Congressman Smith.

Representative SMITH. Thank you very much, Mr. Chairman.

Thank you to our panelists, and Tursunay, all of our hearts and prayers are for you, as you have suffered so much, and this Commission and all of us on this panel are absolutely committed to trying to end this genocide and to provide some relief, especially, as you pointed out, from the mental trauma that you suffer because of the terrible abuse that you suffered at the hands of the Chinese Communist Party. So thank you for having the courage to come and testify and, again, to keep the focus on what Xi Jinping is doing in Xinjiang so that we're all focused on it. Thank you.

Mei Fong, I appreciate the comments you made about the fact that some 30 million men are single. I remember I chaired hearings at which the predictions were being made 15 years ago that by 2020, 20 million men would not be able to find wives because of the extermination of the girl child through sex-selection abortion as a direct consequence of the one child per couple policy. So thank you for reminding us of that ongoing, terrible debacle that has occurred, and also your point about how the officials chased pregnant women like prey.

Again, I have chaired 75 congressional hearings on human rights abuses in China, offered a countless number of resolutions and amendments and bills on the issue of forced abortion, always with an idea that there are two victims involved—the mother, who is being horribly mistreated, and the baby, who is being dismembered or killed.

I would disagree with you when you talked about abortion protecting unborn children as a human rights abuse on page two of your testimony. I believe that the abuse is when a child is, literally, dismembered—killed by dismemberment or chemical poisoning.

You know, we know more about the magnificent life of an unborn child now than ever before. Ultrasound has shattered the myth that somehow an unborn child is not human and alive. We know that the baby has a wake cycle, grows, and develops, and birth is merely an event, just an event. An important one, but an event that happens in the life of a child.

So our protection needs to extend prior to birth to ensure that these children are not, as I said, dismembered or chemically poisoned. We know that children before birth feel pain at least at 20 weeks, and now the evidence is strongly suggesting that as they're being dismembered at 15 weeks they feel that, too, and until they are dead they feel that pain in a most excruciating way. Now, some could just dismiss that or trivialize it or ignore it, but that's a terrible reality.

Bernard Nathanson, the founder of NARAL and one of the leading pro-abortionists in the 1970s, said, "I've come to the agonizing conclusion I presided over 60,000 deaths." He was the head of the biggest abortion clinic in New York City. And what caused him to change? Dealing with unborn children as patients in need of a blood transfusion and some other kind of benign intervention to enhance their lives, including those with spina bifida.

So I disagree with you on that. But I would like to ask you on the issue of sex-selection abortion whether or not you support sex-selection abortion, and I say that because the terrifying impact on China and on Asia continues to be felt to this day.

I had a hearing in 2016. I had several hearings. One of them was with Mara Hvistendahl, who said in 2013 that there were over 160 million missing girls in Asia—160 million as a direct result of sex-selection abortion. Almost none of them were killed at birth. They were killed after an ultrasound revealed at the fifth month that that child happened to be a girl and because she is a girl she is exterminated. A hundred and sixty million.

And then she went on to say that that equates with the total number of all the women and girl children living in the United States of America. So every woman you ever see—my dear wife, my daughters—every woman in this country, add them all up. That's how many are missing as a result of sex-selection abortion in Asia. And, of course, that's not just China, but it's Asia. But China is missing tens of millions as a direct result.

So my first question to you is about sex-selection abortion. Do you support it—I mean, the devastating impact on the girl child. I believe that not only violence against women but also discrimination against women starts in the womb. If you have a country where the girl child is construed to be less than human and should

not continue living simply because she's a girl child, that is a terrible human rights abuse.

But I would appreciate your thoughts on that.

Ms. FONG. Thank you very much for that. And something that you may not know about my personal history is that if there was sex-selective abortion available at the time when I was born, I probably would not have been born. I am one of five daughters in a very traditional Chinese household. My father was one of 16 out of 18 sons. They, clearly, cared a lot about sons.

So on that position, at least, I certainly see the value of girls and I certainly see why it is a problem not just in China but in many parts of Asia and beyond where there has been a long patriarchal system valuing boys and how that has created all sorts of evils and problems, particularly, as we see in China and elsewhere with sex-selective abortions and gender imbalances.

However, I think also as part of this culture and need to value women, we need to value women's choices, and I will say, in short, that while it takes a village to raise a child, it does not take a village to determine a woman's choices on how many children she has, if she has children at all. So those are my thoughts on that perspective. Thank you very much.

Representative SMITH. I appreciate that. If I could ask you further, one of the things that I brought out—and again, I go back to 1983 when I first heard about this issue, and I've worked with a number of NGOs—a lot of the NGOs wouldn't do a thing. I remember arguing with Amnesty International for years about why were they silent on forced abortion in China.

There were people in 1985—there was a hearing held right here in the Capitol in which the argument was, it's all over. The high tides are over. And I said, absolutely not. Then Michael Weisskopf did a three-part series for the Washington Post in which he documented the horrific abuse of the one child per couple policy. And then amendments were offered by me and others that said any group that supports or co-manages it, including the U.N. Population Fund, should be disqualified from getting funds. We want no complicity whatsoever in this abuse of women and children.

But one of the mainstays throughout all of this besides, again, women being forcibly aborted, was that all single women—any unmarried woman would be also forcibly aborted, and I've met with several myself, both in China and others here, part of the diaspora, some of those lucky ones who got refugee status. And I'm just wondering, you know, what is the status of that now? Can an unwed mother continue her pregnancy to term?

Ms. FONG. Thank you for that question. Insofar as the status of unwed mothers in China and their difficulties obtaining all sorts of reproductive services, and it can be in both directions—in the past, abortions have been quite easily obtained in China and we both, of course, know many people who have used it, actually, as a form of contraception.

Now that appears to be reversing now because of the Chinese government's stance to encourage births, at least among the Han population, like I said. Last month, there were new regulations unfolded that appeared to be winding that back insofar as giving abortion services for unmarried women and adolescent women.

Now in either of these cases, what it amounts to is coercion and limitation on women's choices, and that is never a good thing. And as to your question on human rights groups and what they have said, I think, in principle, human rights groups are all about the opposition of force, the opposition forcing a woman to have the child, the opposition to forcing a woman to have sex, the opposition to forcing women in general. Thank you.

Representative SMITH. Yes, I appreciate that so much. And, again, we do have a fundamental disagreement on the unborn child. I think they are worthy of protection and, you know, I've—

Co-chair MCGOVERN. Thank you, Congressman. We are—

Representative SMITH. I'll just finish up real quick, if you don't mind, Mr. Chairman. A number of women who are post-abortive and wish that someone had said, you know, that much agony often follows those who've had an abortion; it's all about reconciliation and hoping that they can get on with their lives. But it is a tragic loss of life.

So thank you, and I yield back.

Co-chair MCGOVERN. Thank you.

Congresswoman Steel.

Representative STEEL. Thank you, Mr. Chairman, and thank you to all the witnesses for coming out today, and I'm just so grateful. I think it's appalling that the CCP refuses to call Russia's recent actions an invasion and it is also appalling that Chairman Xi Jinping is standing with Putin. Add this to a long list of actions by the CCP to cheat and abuse the global rules-based system and another example of their human rights atrocities.

As we speak, the CCP still limits women's access to leadership positions and is virtually run and controlled by men. The CCP steals large volumes of information and censors its own people and information. The recent video of a chained mother of eight and the censorship of those who posted about it in China and sought additional information is a perfect example of the CCP's ongoing abuse of its citizens.

A study by Johns Hopkins Bloomberg School of Public Health and the Kachin Women's Association Thailand estimated that about 21,000 women and girls from northern Myanmar were forced into marriage in just one province in China from 2013 to 2017.

The United States must stand and fight for the women and girls of China who are being oppressed and prosecuted by the CCP. Women should not be prosecuted for speaking out against human rights abuses.

Having said that, to all the witnesses, anybody who wants to answer, please help me to answer this. My first question is: China's labor force is declining; decades-long birth policies that we've been talking about today and its aging population will weigh on its economy. The CCP allows for gender inequality in education and health. What can the United States and major companies do to give these women voices and equality? And any witnesses—

Ms. FINCHER. I'll take a first stab at that. One of my great frustrations in just observing the international response to abuses by the Chinese government is that all of these multinational corporations seem to only be thinking about their bottom line.

And so I don't know what the U.S. Government can do to affect the stance of these kinds of corporations or international organizations like the International Olympic Committee, for example. Perhaps go through the United Nations. But, of course, you know, the U.S. Government can come up with certain policies, perhaps sanctions, but I see those as having somewhat limited impact when you have so many American corporations that simply don't care about doing the right thing. So this is a very tricky question. I don't know who else wants to jump in.

Representative STEEL. Actually, I sent a letter out with 17 other Congressmembers right before the Olympics to all these corporations. They are spending billions of dollars on advertising and I asked them to spend just a little bit for—you know, let the whole world know that human rights violations in China—that's what's happening and I didn't get any responses from these 17 corporations. I was very, very disappointed.

So if anybody wants to answer, that's good, but I can go into—

Ms. FONG. I can jump into one here, very briefly.

Representative STEEL. Sure.

Ms. FONG. I think there is one possibility—a sort of very simple request that's possibly doable. U.S. companies do a lot of business in China, as we know. U.S. companies partner with Chinese companies. I think one good ask is to ask them to stop participating in these discriminatory workplace practices against women in China, who make up quite a significant amount of their workforce and employees either by contract or through their partnerships. That is something that we can ask and we can push for that, I think, that that would make sense for U.S. companies. Ask that.

Representative STEEL. Thank you for that answer. And my second question is, after the events of tennis star Peng Shuai's wavering, Chinese women must be more fearful than ever about speaking out against abuses. What is morale and day-to-day life like in the long-term for women in China?

Ms. TURSUNAY. I would like to answer your previous question. I'm sorry. I was a bit late.

Representative STEEL. Go ahead. Thank you.

Ms. TURSUNAY. I just would like to answer the previous question. The forced labor issue—the forced labor in the Uyghur region is still continuing. Many detainees from the concentration camps now are moved to factories to work as cheap labor. So it is still continuing. I really wish that the U.S. Government could do something to stop it. Implement the End Forced Labor Policy Act and just take practical action.

I believe in the power of America because we, the Uyghurs, really believe in what America can do. We deeply believe because previously the U.S. Government was able to save Ms. Rebiya Kadeer from jail and brought her to America and later, myself. I was saved by America as well and I was able to leave the concentration camps, and through Kazakhstan I came to the United States as well. All of the Uyghur people deeply believe that if the American Government wants to do something, they are able to. So that's our hope. I mean, sometimes I really think—like, it's been six years that we've been talking about genocide happening in the Uyghur region and we keep talking about it—it's already there. And my



personal hope, my personal wish, is that America should take action and stop the genocide and stop the forced labor in the Uyghur region.

Representative STEEL. Thank you very much.

Mr. Chairman, my time is up. Or do you think I can hear her on the second question?

Chair MERKLEY. Thank you very much, Congresswoman. We do have two more Members of Congress waiting and so I think we should proceed and then come back to you if you're able to stay with us for a second round.

Representative STEEL. Thank you.

Chair MERKLEY. I'll now recognize Senator Ossoff.

Senator OSSOFF. Thank you, Mr. Chairman. Thank you to our panel for your powerful testimony today. Ms. Ziyawudun, thank you for your courage and your testimony and for sharing your experiences.

I'd like to ask you, what about the systematic mistreatment of women in detention camps in Xinjiang does the U.S. Congress need to know that you've not yet had the opportunity to share today?

Ms. TURSUNAY. The mistreatment that women face at the concentration internment camps is extreme and sometimes I don't really wish to think about it. It's just really scary. I am one of the witnesses to the mistreatment. I personally have witnessed that a 21-year-old girl was raped and also some unmarried girls who were sterilized and some women died from bleeding.

I have witnessed all this. The mistreatment toward Uyghur women is very systematic. It's very widespread and it's always there. So it's just horrifying to think about it. One unmarried girl was pleading, saying that, Look, I have not even gotten married yet; why would you do violence to my uterus?

Senator OSSOFF. Ms. Ziyawudun, thank you for your courageous testimony and for establishing for the historical record and for the information of the U.S. Congress your testimony with respect to these ongoing atrocities.

With my brief remaining time, I would humbly invite you to make any comments that you believe should be heard by the broader American public—by the American people.

Ms. TURSUNAY. I am begging the American Government to take action. Please, do more. Human rights violations are common in China, and the Chinese Communist Party is doing whatever they want to do, despite rules, pressure, and just by the world watching it. But I really wish that if the American Government wished to take action, just to take action, do more, because we believe that you can do more.

To me, you know, while I was in the camp, the camp officials told us that within five years the world would be controlled by China. I mean, I don't know whether America is scared by China, as nothing practical or no action is happening right now. However, people really believe that America is very strong.

I am really sorry if I am saying something wrong, because I'm not really a well-educated person. I don't know how politics works. But just as an ordinary woman, I am just speaking out what comes to my mind from what I have witnessed and what I have been through.

Yes, the world is doing something, but the Chinese Communist Party and the Chinese government is still able to do whatever they want to do. Like, for example, we tried to stop the Olympics, but it happened, and we tried to stop many things from happening and stop China's violation of the Uyghur people, but it's still happening.

So my question—sometimes I wonder whether the world or America is fearful of China, and just as the Chinese Communist Party said: the world will follow and obey us whatever we do. So I really wish to see action by the American Government and by the people.

There are millions of people still in detention. I don't know why the world is still watching what's happening there. Look, those kinds of people, they are just among the millions who've been separated from their family members and—I'm really sorry if I'm saying something wrong. Sometimes I think that we have just disappeared from the Earth.

Sometimes I lose my hope for the world. I don't know what's happening. I just wish to see some action. I don't want my people to disappear.

Senator OSSOFF. Ms. Ziyawudun, your testimony today steels the resolve of the United States and the world to confront these crimes against humanity, and please know that your testimony has been full of courage and that Congress, the American people, and the world are grateful to you and full of respect and admiration for you for speaking out, even at personal risk and risk to your family and for sharing your experiences and the experiences of your people with us.

I thank you for your testimony. I ask, humbly, that the interpreter relay this message to the witness prior to returning the microphone to the Chair. Thank you, Mr. Chairman.

Ms. TURSUNAY. Thank you. Thank you very much for giving me the opportunity. I'm really sorry I got really emotional.

Chair MERKLEY. Thank you so much for your passionate testimony, and it makes a difference to have your voice heard, which is exactly why we invited you to join us in this hearing today. Many of us here on this Commission, all of us on this Commission, are fighting to draw attention to human rights issues in China and certainly today to focus on the treatment of women, and you've added a great deal to that conversation and the challenges that face us in trying to change the situation.

I will now defer to Congresswoman Wexton, who, I believe, is waiting to join us.

Representative WEXTON. Mr. Chairman, thank you so much. I also want to applaud the brave women of China who are speaking out against harassment, violence, and discrimination. Ms. Tursunay, especially you. I know that it's extremely difficult to have to relive all of the horror that you went through in the camps and every time you come and testify here on the Hill, but it makes a huge difference and I just want to say thank you so much for everything that you do.

We all know the story of Peng Shuai. I was honored to lead the resolution in support of Peng, which passed the House unanimously. Her story, rightly, got a lot of attention but that's because she's a famous athlete with very famous friends who worried about

her, and for every Peng Shuai there are thousands of others who have been disappeared, charged with crimes, and trolled online for speaking out.

I want to use some of my time to talk about a woman who is currently serving a life sentence in China, Gulmira Imin. Gulmira and her story were brought to my attention by the Tom Lantos Human Rights Commission. Gulmira is a Uyghur Muslim who served as a government employee. She was arrested in 2009 after authorities alleged she had organized a protest and leaked state secrets to her husband in Norway. Her family was never notified of her arrest and didn't even know where she was being held until they saw her in a Chinese documentary dressed in prison garb.

In 2010, Gulmira was sentenced to life in prison after being tortured and forced to sign a confession. She was not allowed to meet with her lawyer until her actual trial date, and her appeal was rejected. She's being held in Xinjiang Women's Prison and is allowed one family visit every three months. And as shocking and heartbreaking as Gulmira's story is, it is far from unique. I've heard dozens of similar accounts from people in the Uyghur diaspora just outside of Washington, D.C., in northern Virginia, which I represent.

Ms. Tursunay, as-salaam aleikum. It's wonderful to see you again.

Ms. TURSUNAY. As-salaam aleikum. Aleikum salaam.

Representative WEXTON. I do want to thank you again for sharing your heartbreaking story. I'm so glad that you feel safe enough now to actually come out and tell your story and share it because it's so compelling and it's so important.

Now, you talked a little bit in your testimony about the need for the U.S. to accept more Uyghur refugees because even if they make it out of China, they occasionally are at risk of being sent back to China to face charges if they're in a neighboring country. Can you speak a little bit more about that, please?

Ms. TURSUNAY. Regarding the refugees or asylum seekers, personally I have come to the United States—it's been about a year now—and also I have witnessed other Uyghur people in the community who have problems in getting proper status in America. For example, many Uyghurs don't have proper status in America, and are unable to have their children study in the higher education system, and also many families are unable to reunite because they don't have enough status so they are unable to sponsor or bring back other family members that live in other countries.

And, for example, there is one person, my friend Amirah Guterson, who is another camp survivor, and she's unable to reunite with her husband because of her status. And although I don't believe that the U.S. Government will deport any Uyghurs back to China, still some people fear this.

Representative WEXTON. And I know that that's something that's happening in other countries. So that's very concerning to me and that's why I have a bipartisan bill with Vice Chairman Chris Smith and also with Representative Deutch that would grant Uyghurs P-2 refugee status here in the U.S., which would, essentially, expedite their ability to apply for asylum here in the U.S.

Now, I have people on my caseload here who have been in the process of trying to clarify their status and get asylum here in the U.S. for over 8 to 10 years. And so it's really, really sad that it's taking them so long to get their status and to have that kind of safe feeling.

Now, it's very important that this legislation pass. It was rolled into the America COMPETES Act. But, you know, I'm hoping that the Senate will make sure that it stays in there in the final version of this legislation.

Chairman Merkley, I'm asking you, please, to make it a priority of yours to make sure that this legislation ends up in the final version of whatever bill comes out through the conference process and that we have P-2 refugee status for Uyghur folks who have fled China.

And that's all. With that, I will yield back, Mr. Chairman.

Chair MERKLEY. Thank you. And I certainly support that effort completely, and thank you for being such an advocate for it in the House.

We have no other members of Congress who are waiting, but I'm going to ask a couple of final questions and I wanted to address, specifically, Mr. Halegua.

You described the law on the protection of women's rights and interests, and then noted that very few people—very few women actually filed cases involving harassment or abuse—I think you cited 6 out of 83 cases, if I got the number right—and then if they do file they are subject to retaliation and countersuits regarding defamation. And so the system is completely rigged against them and, certainly, the message that has been sent by the treatment of Peng Shuai seems to reinforce that, that the Chinese government is saying, You will be silent when you are abused and if you speak out you will suffer for doing so.

Is that the message the Chinese government is sending?

Mr. HALEGUA. Thank you for the question, Senator.

Yes, I believe that they're certainly, at least in these high-profile cases—a mixed message at best. You know, on the one hand, the Chinese government is passing laws encouraging women to come forward and complain about sexual harassment. But then we see these other acts.

There was one case involving an intern from CCTV that received a lot of attention—she goes by the name Xianzi—and years after she had completed her internship she posted something online about a TV news anchor who had sexually harassed her during that time. And one of the interesting parts of her account was that after she did so, eventually her parents were contacted. And according to her, the police or the other authorities had sort of intimidated her and tried to suggest that if she went forward and continued with her complaint, or went forward with her court case, there would be some repercussions for her parents.

So this type of behavior, obviously, is just one more reason that makes it quite the uphill battle for women who have been victims of sexual harassment making that decision of whether to complain or whether to come forward, and I think that is the problem. The calculus—you know, in a system that largely relies upon victims being willing to come forward, being willing to talk about what

happened, and talk about who they've been harassed by, there's already a lot of reasons to not take those steps, and if we keep piling on the reasons and making it less attractive, it's hard to see a path towards really getting at improving the situation around sexual harassment.

Chair MERKLEY. Thank you.

I now want to turn to the question that has been mentioned a few times, which is the potential role of U.S. companies operating in China. One can imagine that these U.S. companies would say, Hey, there's very capable and talented women who can strengthen our operations here and perhaps they're being ignored by Chinese companies; we will want to, certainly, give them an opportunity to come and strengthen our efforts. But do we see U.S. businesses that are operating in China really reaching out to promote the hiring of Chinese women and giving them opportunities, opportunities of leadership and management that they might be denied in many Chinese companies?

I don't know, Ms. Fong, if you want to start with that conversation, or Dr. Hong Fincher.

Ms. FONG. Thank you for the question.

I believe U.S. companies want to hire the best people but they also want to work with the Chinese companies and they want to have an easy time and they also want to work with the Chinese authorities. So it's a question of which one is balanced out and which one is—I think the U.S. Government has a role in incentivizing U.S. companies to do the right thing with regard to their workforce and gender equality for women. Thank you.

Mr. HALEGUA. Thank you, Senator.

I would just echo—American companies in China really are in two roles. Many of them are employers, have their own operations there and so, I think, to the extent that they can be sort of ahead of the curve in complying not only with Chinese law but implementing practices, for instance, around sexual harassment, even though the Chinese law is quite weak in terms of any consequences if you don't live up to what the regulations demand, there's no reason that American companies can't be instituting the same types of anti-sexual harassment programs in terms of policies, training, complaint mechanisms, investigations, that we would expect them to implement here in the United States.

The other role that they play is as purchasers of goods and services—and we've already seen in a lot of instances where, at least through codes of conduct and auditing—I'm not suggesting that those have always been particularly effective—but the mechanisms are there for U.S. companies doing business to place requirements on their Chinese suppliers or, in a more positive light, work with their Chinese suppliers to make sure that they are doing the types of training and have the right types of policies and mechanisms even to live up to the Chinese law.

So even if the Chinese government won't be active in enforcing its own regulations, there's no reason that U.S. companies can't insist that the people that they buy goods and services from are living up to the letter of Chinese law.

Chair MERKLEY. Well, Mr. Halegua, there's no reason not to expect U.S. companies to abide by the same standards they might op-

erate under in the U.S. But the question is, are they? Are there examples of U.S. companies that have instituted very strong programs, that fire individuals who harass others within their companies, that really make a point of putting talented women into positions of responsibility?

Or are we finding that the U.S. companies feel that this is disruptive to the cultural dominance of men or disturbing to their Chinese partners? Where are they coming out in this balance? Are U.S. companies leading the way, or are they holding back?

Mr. HALEGUA. I think my knowledge of it is somewhat anecdotal and mostly from – you know, we’ve definitely seen cases of—I know McDonald’s had a pretty well-publicized case of taking action against someone who engaged in sexual harassment.

You know, lawyers whom I talk to that work with U.S. companies operating in China seem to say that they are doing better than most of their Chinese counterparts because of the experience that they have in the United States, and I think that they actually find it difficult. You know, if you are going to have global policies for a company, it would be hard to sort of carve out China and make a different set of rules. And so I think that while it’s hard to generalize, you do see a lot of companies that are performing better in these areas.

Chair MERKLEY. Dr. Fincher.

Ms. FINCHER. Well, this isn’t really something that I pay close attention to. But just based on my experience in China, I would say that a lot of American companies just want to play by Chinese rules. And so you have the Foreign Corrupt Practices Act. Even that may not be followed, in many cases.

But this is a real problem because there is, for example, this widespread culture of business drinking where it is quite routine to bring young women and to ply them with alcohol, and there have been many cases where these young women are then raped and the rapists just get away with it, and I believe that the cases that we know about are Chinese companies or maybe lower level Chinese government officials, or in the case of Peng Shuai, she actually accused one of the most powerful men in China of sexually assaulting her.

But I would believe, based on all of the other research that I’ve done, that this kind of thing happens a lot more than we hear about, and I know that there are some American companies that do not do as much as they should to protect the rights of women even within their own companies because they’re protecting their own reputation, their own brand.

Chair MERKLEY. Thank you. I think it’s just important for us to keep raising this issue of what U.S. companies can do in a proactive way.

And, finally, I want to turn, Dr. Fincher, to your testimony and just put a spotlight on it, that the Chinese government is encouraging births among the Han Chinese at the same time that it is engaging in policies that are seeking to stop Uyghur and other minorities from having children—through sterilization, through re-education camps, through forced labor camps, and so forth.

Is there any other way to describe this than as racist eugenics?

Ms. FINCHER. Well, thank you for your question, Chairman Merkley.

This is, certainly, the practice of eugenics and genocide if you define genocide, in part, as a deliberate attempt to reduce births of a certain ethnic minority and to separate the children of that ethnic minority, because that is also happening. The children of Uyghur and other Turkic Muslims are being separated from their parents.

Something that hasn't come up in this hearing is also this strong coercive element of inter-ethnic marriages where Uyghur women are pushed to marry Han Chinese men. There are a lot of benefits offered to inter-ethnic couples and that, in my view, is also a deliberate attempt to kind of also dilute the Uyghur population.

And on the flip side, it's all part of the Chinese government's attempt to engineer a particular "high-quality population." So it's not just about falling birth rates overall because the Chinese government wants birth rates to fall and it is making them fall among the Uyghur, Kazakh, and other Turkic Muslim populations.

There's so much evidence proving the mass campaigns of forced sterilization among these populations, and it is just a stark turnaround in population-planning policy that the Chinese government went from this draconian one-child policy to now a three-child policy.

So far, we don't see extremely coercive elements of this three-child policy. But I am concerned, as Ms. Fong mentioned, that it is much more difficult for men to obtain vasectomies. I am concerned about, perhaps, a nationwide effort to restrict abortion access for women—Han Chinese women—to try to force them or coerce them into having more children when they don't want those children, and it is all related to the government's view that women are reproductive tools of the Chinese state; they are agents of the Chinese government's development goals.

And so in the past, the goal was to limit births and so there were forced sterilizations, forced abortions, among millions and millions of Han Chinese women, and now those very coercive practices are limited primarily to Uyghur and Turkic populations and it's the opposite—very pro-natalist for the Han Chinese population.

And by the way, the Chinese feminist activists are almost all from this cohort of Han Chinese very educated women. And if I may add, this is another reason that the Chinese government perceives the feminist movement to be such a threat—how do they get rid of this movement. It would be very difficult for them to just jail all of the feminist activists because at the same time, the government is trying to cajole Han Chinese college-educated women into getting married and having more children. And so this is one of the key reasons that the feminist movement is so very complicated for the Chinese government to deal with.

Chair MERKLEY. Thank you. And you did raise a point that I had not heard before about incentives for Uyghur women to marry Han men. What kind of incentives are you talking about?

Ms. FINCHER. Well, there are bonuses—for example, housing benefits, even cash bonuses offered to couples that are marrying where one member of the marriage is Han Chinese and the other is ethnic Uyghur, and it's a longstanding effort. It's been going on for several

years. And then the children in that marriage would be raised according to Han Chinese customs.

Chair MERKLEY. Thank you very much, and thank you to each and every one of you for your testimony today shining a light on these incredibly important issues regarding the treatment of women in China and, more broadly, practices that need to be illuminated and understood by the world. Hopefully, in drawing attention to them we create a process where more is done to counter these policies and end these practices. So your voices are very important in moving members of Congress and the world to address these issues.

We will keep the record open until the close of business on Friday, March 4th, for any items that members would like to submit for the record or if they have additional questions that they would like to ask our witnesses.

And with that, our hearing is adjourned.

[Whereupon, at 12:00 p.m., the hearing was concluded.]



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## **A P P E N D I X**

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## PREPARED STATEMENTS

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### PREPARED STATEMENT OF LETA HONG FINCHER

Chairman Merkley, Chairman McGovern and distinguished members of the Commission, thank you for holding this important hearing and inviting me to testify. My testimony draws from the research I conducted for my two books on women's rights in China.

While the entire world watches Russia's horrifying invasion of Ukraine, the Chinese government so far refuses to call Russia's actions an invasion.<sup>1</sup> President Xi Jinping appears to be aligning himself with the strongman Vladimir Putin, further undermining the rules-based international order.<sup>2</sup>

There are many reasons that China's Communist regime has survived for over seventy years, in spite of the collapse of communism in the Soviet Union and Eastern Europe. But it is impossible to understand the longevity of China's Communist Party without recognizing the patriarchal underpinnings of its authoritarianism. In short, Xi Jinping views *patriarchal* authoritarianism and the subjugation of women as critical for the survival of the Communist Party.<sup>3</sup>

China's economy has entered a protracted slowdown just as the country is beginning to face the demographic crisis of an aging population, falling birth rates and a shrinking workforce.<sup>4</sup> In response, the government has revived sexist elements of Confucianism, upholding the male-dominated family as the basic foundation of a strong nation.<sup>5</sup> State propaganda praises Mr. Xi's traditional "family values" (*jia feng*) and presents him as the father of the Chinese nation in a "family-state under heaven" (*jia guo tian xia*), in which obedient wives and mothers in the home are key to solving China's most pressing social problems.<sup>6</sup>

China's propaganda apparatus began a crash campaign in 2007 to stigmatize single, educated, Han Chinese women in their late twenties, mocking them as "left-over" women (*sheng nü*) to push them into marrying and having babies for the good of the nation.<sup>7</sup> This pro-marriage, pro-natalist propaganda has only become more intense with the adoption of a two-child policy in 2016, and the three-child policy last summer. China's population-planning policies also have a strong undertone of eugenics.<sup>8</sup>

Even as officials urge Han Chinese women to marry and get pregnant in order to "upgrade population quality" (*tigao renkou suzhi*—a goal highlighted again in the three-child policy announcement),<sup>9</sup> they are slashing birth rates among ethnic minority women, in particular Uyghur and other Turkic women in Xinjiang, with forced sterilizations and abortions.<sup>10</sup>

The government is carrying out a sweeping crackdown on feminist activists, who pose a unique challenge to China's all-male rulers. As a result, the #MeToo movement against sexual violence has been the target of aggressive censorship. Take the heavy-handed reaction to Chinese tennis star Peng Shuai's Weibo post last November 2, accusing China's former vice premier Zhang Gaoli of sexual assault. Peng Shuai's post was deleted within half an hour and she herself disappeared for weeks, only to reemerge in a series of undoubtedly coerced appearances coinciding with Beijing's Winter Olympics.<sup>11</sup>

We are about to mark the seventh anniversary of the Chinese government's jailing of five women's rights activists in March 2015, for planning to commemorate International Women's Day by handing out stickers against sexual harassment on subways and buses. Since then, feminist activists have tapped into the broad discontent felt by Chinese women and developed a level of influence that is highly unusual for any social movement in China since 1989.<sup>12</sup>

Even though the government persecutes activists, shuts down women's rights and LGBTQ rights centers,<sup>13</sup> and censors feminist social media content, China's feminist networks have actually grown in recent years instead of being wiped out.<sup>14</sup>

The shrinking space for civil society in China makes it even more extraordinary that a feminist movement is able to survive at all. While prominent male human-rights activists have emerged over the years, very few Chinese citizens knew about

them or could relate to their abstract goals. By contrast, feminist activists today take up causes that have broad resonance with young women and LGBTQ people across China: issues such as sexual violence, intimate partner violence, and gender discrimination.

China is an autocracy with no press freedom, no internet freedom or freedom of assembly, and effectively no rule of law. Yet when feminist activists organize around issues that affect the personal lives of millions of ordinary women, even the all-powerful, male-dominated Chinese Communist Party struggles to quash the movement.

## Endnotes:

<sup>1</sup> Edward Wong. "US officials repeatedly urged China to help avert war in Ukraine." New York Times, Feb. 25, 2022.

<sup>2</sup> Edward Wong. "Bond between China and Russia alarms US and Europe amid Ukraine crisis." New York Times, Feb. 20, 2022.

<sup>3</sup> More details in Chapter 7 "China's Patriarchal Authoritarianism" from my book *Betraying Big Brother: The Feminist Awakening in China* (Verso 2018). Some other authors who have written about China's patriarchal authoritarianism include Edward Friedman, *National Identity and Democratic Prospects in Socialist China* (Oxon, ME: Sharpe/Routledge, 1995) and Susan L. Glosser, *Chinese Visions of Family and State, 1915-1953* (Berkeley: University of California Press, 2003). See also Tani E. Barlow, "Theorizing Woman: Funü, Guojia, Jiating," *Genders 10* (Spring 1991): 132-60.

<sup>4</sup> Keith Bradsher. "China's economy is slowing, a worrying sign for the world." New York Times. January 16, 2022.

<sup>5</sup> See Fangqin Du and Susan Mann, "Competing Claims on Womanly Virtue in Late Imperial China", in *Women and Confucian Cultures in Premodern China, Korea and Japan* (eds) Dorothy Ko, JaHyun Kim Haboush, and Joan R. Piggott (Berkeley: University of California Press, 2003), 2. In chapter 7 "China's Patriarchal Authoritarianism" of my book *Betraying Big Brother*, I refer to Du and Mann's excerpt from the Qing Dynasty text, *Biographies of Exemplary Women (Lienü zhuan)*. They write that this text says a stable government is formed through the accretion of "harmonious" families – based on marriage between a man and a woman: "The daughter obeys her parents; the daughter-in-law reverently serves her parents-in-law; the wife assists her husband; the mother guides her sons and daughters; sisters and sisters-in-law fulfill their appropriate [duties]. When every member behaves this way, a family achieves harmony; when every family is harmonious, the state is well governed."

<sup>6</sup> Eg. *Ting Xi Jinping de jiafeng gushi*. "Listen to Xi Jinping's family values story." February 2, 2022. [www.cpcnews.cn](http://www.cpcnews.cn). Also see my Washington Post op-ed, Xi Jinping's authoritarian rise in China has been powered by sexism, March 1, 2018.

<sup>7</sup> Detailed examples from my book *Leftover Women: The Resurgence of Gender Inequality in China* (Zed 2014). Also my New York Times op-ed "China's Leftover Women", October 11, 2012 and my Ms. Magazine op-ed "China's 'Leftover' Women", November 22, 2011.

<sup>8</sup> More details from my two books, my New York Times op-ed "China dropped its one-child policy. So why aren't Chinese women having more babies?" February 20, 2018. My Washington Post op-ed "China's government wants families to have more children. China's women don't." June 7, 2021. My Ms. Magazine op-ed "China's 'Leftover' Women", November 22, 2011. On China's previously named "Draft Eugenics Law", now Law on Maternal and Infant Health Care, see Harriet Evans, "Past, Perfect or Imperfect: Changing Images of the Ideal Wife," in Susan Brownell and Jeffrey Wasserstrom (eds), *Chinese Femininities/Chinese Masculinities*. Berkeley: University of California Press, 2002, pp. 348, 358. Also see Susan Greenhalgh and Edwin W. Winckler, *Governing China's Population: From Leninist to Neoliberal Biopolitics*. Stanford CA: Stanford University Press, 2003: "The eugenics campaign – *yousheng youyu*, literally superior birth and child rearing – incorporated genetic engineering, but it was much more than that, reflecting the view that humans are shaped by a broad array of genetic, environmental and educational factors, most of which can be nurtured so that human potential can be molded to meet the nation's needs." p. 30.

<sup>9</sup> Xinhua, "为实施三孩生育政策及配套支持措施提供有力法治保障——全国人大常委会法工委有关部门负责人就修改人口计生法答记者问", August 21, 2021.

<sup>10</sup> Adrian Zenz. "Sterilizations, IUDs, and Mandatory Birth Control: The CCP's Campaign to Suppress Uyghur Birthrates in Xinjiang." *Jamestown Foundation*, June, 2020.

<sup>11</sup> Eg. See Lü Pin, "The Irrepressible Strength of Peng Shuai", *Dissent Magazine*, Feb. 2, 2022. And my New York Times op-ed, "Why Peng Shuai has China's Leaders Spooked," Dec. 2, 2021.

<sup>12</sup> In addition to my books, see my *Dissent Magazine* Fall 2016 article, China's Feminist Five.

<sup>13</sup> China team, "Red Vs are After China's Queer Community," *Protocol*, July 13, 2021.

## PREPARED STATEMENT OF AARON HALEGUA

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*. The study describes 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." The report also makes 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 Executive Summary of the report and Recommendations to Expedite Convention 190 in China, which appear under Submissions for the Record. Today, I will share a few observations from my research and developments since that time.

**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 combating 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 was 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 will be amended again soon.) 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 sexual harassment as an explicit "cause of action"—that is, a ground upon which a party could bring a lawsuit. 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?

**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 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.

**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 the lack of a 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.

**Sexual harassment victims who complain often face retaliation or defamation lawsuits.** 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. Another common fact pattern is that victims who complain then get sued for defamation by the alleged harasser, who claims that their reputation has been ruined: the aforementioned study that identified 83 sexual harassment cases found that 23 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.

Thank you all for your time. I look forward to answering any questions that you have.

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PREPARED STATEMENT OF MEI FONG

Chairman McGovern, Chairman Merkley, thanks to the Congressional-Executive Commission on China for this timely hearing ahead of International Women's Day. I appreciate this opportunity to testify on the impact of China's population planning policies, and the effect it has had on the women of China and beyond.

The one-child policy began in 1980 and shaped China's population for over three decades, before it was replaced in rapid succession with the two-child policy in 2016, and the three-child policy in 2021.

This sudden about-face from "Have Just One Child" to "Have One More Child" is an attempt to redress the consequences of a ruinous and inhumane policy that was also economically shortsighted. China's birth rate has now plunged to its lowest in 70 years, curbing future growth prospects and leading to a variety of social ills.

The one-child policy has also created a hugely imbalanced population. There are now about 30 million single men in China and more Chinese retirees than the population of Western Europe. With a shrinking workforce, China is already facing pension shortfalls—currently \$540 billion, according to China's Academy of Social Science.

While working as a *Wall Street Journal* correspondent, and researching my book, I heard many stories about the one-child policy's chilling effect. I spoke with women forced to have abortions as late as seven months into their pregnancy; officials describing how they cornered and chased pregnant women like prey, and mothers who recounted heartbreaking acts of abandonment and infanticide.

Now the Chinese state's switch to purportedly pro-natal policies has inflicted new wounds on women.

Since the introduction of the two-child policy, Human Rights Watch has documented a rise in pregnancy-related discrimination against women in the workplace. Employers now fear that women can potentially take two and now three maternity leaves, not just one as in the one-child era. Some companies have sought to avoid this through job ads, interviews and workplace treatment that discriminate against women with no children, or just one child—or simply discriminate against all women. Women have been fired for getting pregnant, or have been asked to sign agreements pledging not to have children. While such practices are illegal under Chinese law, enforcement is lax and the avenues for redress and compensation so few that such practices remain largely unchecked.

Elsewhere, Beijing's early approach to a demographic decline appears to be more stick than carrot, with growing curbs on divorce and abortion—both human rights abuses.

Last month, the government-backed China Family-Planning Association said it would reduce unplanned pregnancies and abortions among adolescents and single women. This follows tightened overall restrictions on abortions in 2018—with increased bureaucratic measures for those seeking these services. Several media reports have also reported on a clampdown on vasectomies.

Authorities have said these moves are motivated by welfare concerns but such explanations have been met with suspicion and in some cases derision on Chinese internet, given the state's long history of coercive practices on birth matters. It is important to note that these still continue for many Uyghurs in China, with forced sterilizations on women held in "political reeducation" camps. In 2017, a phrase began to crop up in government documents related to family planning in Xinjiang: "severely attack behaviors that violate family planning."

Last but certainly not least—it is not only the women of China who have borne the brunt of Beijing's coercive population planning practices. The one-child policy caused a shortage of women and hence, a surge in bride trafficking in China, as well as from so-called source countries across the region including Myanmar, North Korea, Cambodia, and Pakistan. Human Rights Watch has documented how hundreds of women and girls in Myanmar are sold to Chinese families as brides for US\$3,000–\$13,000 and held in sexual slavery for years, with some women trafficked more than once. Once purchased, they are held in sexual slavery and pressured to produce babies as quickly as possible.



Given this situation, Human Rights Watch offers the following recommendations:

- Chinese authorities should fully enforce legal prohibitions against gender and pregnancy-based discrimination in employment.
- The Chinese government should fully respect reproductive rights—and stop regulating the number of children families are allowed to have, stop pressuring women to have children, provide free access to safe and legal abortion and contraception, and ensure equitable caregiver leave policies.
- The Chinese government should make it a priority to halt both internal and transnational trafficking of women and girls for sale as brides in China, through prevention and enforcement efforts and providing services to survivors and those at risk, in collaboration with source countries in the region.
- The U.S. Government should call on the Chinese government to lift all restrictions on reproductive rights, urge allies and partners to do the same, and to do more to end human trafficking of women and girls.
- U.S. companies doing business in China should ensure they are not engaged in or partnering with companies that engage in discriminatory employment practices.
- The U.S. should assist countries that have become source countries for “bride trafficking” to China with technical assistance and resources to work to end this abuse.

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PREPARED STATEMENT OF TURSUNAY ZIYAWUDUN

Thank you, Chair Merkley, and thank you Co-chair McGovern, for holding this hearing. I am very grateful for the opportunity to testify before the U.S. Congress and to tell the world about my experience and the experience of Uyghur women.

My name is Tursunay Ziyawudun. I am from Kunes county, East Turkistan.

Although it is exceedingly painful and difficult for me to speak about my experiences, I see it as my duty to be the voice for those people who are in the camps built by the Chinese government, those who died in front of my own eyes, and those who are being held unjustly in prison.

I was locked up in camps two different times. The mental and physical torture I experienced in these camps have left indelible scars on my heart.

I was taken into a camp for the second time in March 2018 and stayed there for close to one year. There were many new buildings in the camp compared with the first time I was taken. They called it “education,” but in reality it was a high-security prison, with high walls, security cameras and armed guards everywhere.

What they called “education” was spending many hours watching propaganda films, memorizing Chinese law, and memorizing Chinese “red” songs praising the Chinese Communist Party. We were made to swear oaths of loyalty to the Chinese Communist Party, over and over again.

In the camp, we always lived in fear. We feared that we would be punished if we could not memorize the lessons correctly. Every day we heard screaming and crying voices from other cells, wondering whether what was happening to others would happen to us, too.

Then it happened to me. Several times, the guards took me out of the cell and into an interrogation room, and they beat me. They used whatever oppressive methods they wanted.

Once, they took me out in the middle of the night, along with a young woman in her 20s. Next to the camp police officers wearing uniforms, there was a man in a suit, wearing a mask over his mouth. I don’t know where he came from. These men raped the young woman. Three police officers raped me as well.

They were always taking girls out of the cells like this. They did whatever they wanted. Sometimes they brought some of the women back near the point of death. Some of the women disappeared. I saw some of them bleed to death with my own eyes. Some of them lost their minds in the camp.

Every time I think about these things, my heart feels as though it’s been sliced with a dagger. My nightmares make me feel as though I’m living in that fear once again. My physical body is free, and so is my voice, but I am suffering deeply. I am only beginning to overcome this suffering by telling my story.

I have to speak out, because the things I experienced in the camps are happening to Uyghur, Kazakh, and other Turkic women across our entire homeland. Millions of Uyghurs are suffering under this genocide for the past five years, since 2017. We appeal for help from you and from all of humanity.

I know that all of the CECC Commissioners are speaking out for Uyghur women. We are grateful to Congresswoman Wexton for advocating for Ms. Gulmira Imin, a young Uyghur woman serving a long prison sentence. We are very grateful for the Resolution condemning the genocide that was passed in December 2021. We are very grateful for the Uyghur forced labor bill that became law also in December.

I ask you to do more. I came to the United States with the help of the U.S. Government and the Uyghur Human Rights Project, and since arriving here I have finally had the chance to tell my whole story. It is only after coming to the United States, which has allowed me to feel real freedom, that I have been brave enough to tell my whole story, especially about the sexual assault suffered by me and many other women.

Please do more to accept Uyghur refugees to the United States. There are many more people like me who managed to escape China, but they are not able to tell their stories. They are living in neighboring countries, but they are still living in fear. They are afraid that the Chinese government can pressure the authorities there to deport them to China at any time. They receive threats, they are suffering great trauma as torture survivors and survivors of sexual assault.

Many families are still separated from their husband or wife, their children, their parents. I was rescued, but so many more people like me also need to be admitted to the U.S. where they are safe.

I also hope that the Congress can do more to make sure that Uyghur torture survivors can get medical care and counseling. I am still not free of my nightmares, the mental anguish of my experience, and my mind is constantly imagining the suffering of so many others who are still experiencing the same fate. Camp survivors like me need help for our extreme trauma, and other Uyghur Americans are also suffering terrible mental trauma because of the suffering of their daughters, sons, sisters, brothers, parents and grandparents. I hope the Congress will do more to help genocide victims, especially women, to get professional support to recover our health, and survive our past and present trauma.

Finally, I want to ask that the Congress support Radio Free Asia to do more programs on women, and for women. I listen to the Uyghur service every day, and I believe we need even more news reporting to expose the atrocities that women are suffering in the Uyghur Region. We also need more informational and educational programs on how Uyghur women can survive the mental torment that we suffer every day. More stories about the accomplishments and achievements of strong Uyghur and Kazakh women can help to give us inspiration and give us hope for the future.

Thank you again for the opportunity to testify.

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#### PREPARED STATEMENT OF SENATOR MERKLEY

Good morning. Today's hearing of the Congressional-Executive Commission on China on "The Future of Women in China: #MeToo, Censorship and Gender Inequality" will come to order.

One week from today, the world will mark International Women's Day. This is an occasion not only to celebrate the critical role women and girls play in families, communities, and societies across the globe but to also reflect on how those societies can better protect the fundamental human rights of women and girls. Governments that fail to treat women equally prevent their countries from reaching their full potential. Those that empower women in political, social, and economic life are more prosperous and peaceful. Over 70 years ago, Mao Zedong acknowledged the importance of women in Chinese society with his famous statement that "women hold up half the sky."

Yet, as this Commission fulfills its mandate to monitor human rights in China, we continue to find a mixed picture when it comes to the status of women. While the Chinese government implements laws and regulations intended to address persistent issues related to gender-based violence, discrimination, and harassment, women face significant challenges in all of these areas.

In recent months, several high-profile cases shined a bright spotlight on the vulnerability of women to violence. In November, tennis star Peng Shuai accused a senior Chinese Communist Party official of sexual assault. In January, a video appeared showing a rural woman—reportedly the mother of eight—chained by her neck in an outdoor shed, sparking serious concerns about human trafficking, the impact of policies of population control, and the treatment of persons with mental disorders. These stories come on the heels of other cases of domestic violence and workplace harassment that reinvigorated the #MeToo movement, as well as horrifying reports of rape committed against Uyghur women in intrusive homestay programs

and mass internment camps. A brave survivor of these camps will tell her story to us today.

While many of these reports generated intense interest within China, the Chinese Communist Party worked to suppress them and stifle expression related to women's rights, just as it

constricts freedom of expression and civil society more broadly. It's been seven years since China jailed five female activists for publicizing sexual harassment on public transportation, and feminists—that is, advocates for improving the condition of women in China—continue to be denied the space to speak up or to organize, as demonstrated by the coordination of online attacks and the shutdown of feminist social media accounts last spring.

In political life, women are excluded from positions of power, with not a single woman serving on the Politburo Standing Committee and only one woman serving on the 25-member Politburo and few women serving at senior levels of county, municipal, or provincial governments.

Many of the most egregious abuses deny the fundamental freedom for families to decide if, when, and how to have children. Forced sterilizations and forced abortions, such as those prompted for years by the one child policy and those reported in recent years by the Uyghurs and other Turkic Muslims, are atrocities. The move to a three child policy raises the specter of new coercive tools and tactics denying freedom.

This all adds up to a complex landscape for women's rights in China, deserving of close scrutiny through today's hearing. This is the first time the Congressional-Executive Commission on China has held a hearing dedicated to this set of issues and it shouldn't be the last. I look forward to our witnesses helping us understand ways we can better stand up for women in China.

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#### PREPARED STATEMENT OF REPRESENTATIVE MCGOVERN

Thank you, Mr. Chairman, for holding this hearing entitled the Future of Women in China, #MeToo, Censorship and Gender Inequality.

I am proud that this is the Commission's first-ever hearing specifically on the status of women. It is timely, given the spotlight on the Peng Shuai case of sexual assault and coverup, and changes in the Party's policy on gender.

Since 2005, the Commission has included a stand-alone section named Status of Women in its annual report. That initial section found that while the Chinese Constitution and laws provide for equal rights of women, in reality they have fewer employment opportunities than men, and their educational levels fall below those of men.

Today we find this dynamic much the same. The Chinese government continues to implement laws and regulations aimed at equality. For example, in January 2021, a specific definition of sexual harassment was codified in the Civil Code, creating liability for employers and detailing the kinds of conduct that would fall under the definition of sexual harassment.

But in their everyday experience, women continue to face discrimination in employment, education, wages, and legal redress. Last September, authorities detained Sophie Huang Xueqin and Wang Jianbing, advocates of China's #MeToo movement, under the charge of "incitement of subversion of state power." Why in the world would advocating for women's rights be considered a crime against the state?

Repression of women has also been documented in the Commission's Population Control section, on the Chinese government's heavy-handed policies to limit births, including the human rights abuses of forced abortion and forced sterilization. We have monitored these horrific practices as part of the government's campaign against Uyghurs and other Turkic Muslim women. We will hear testimony from a survivor today.

For others in the People's Republic of China, however, these population policies are evolving, as authorities respond to the social and economic consequences of demographic changes. We would like to know where these policies are headed and whether Chinese authorities' heavy-handed approach will manifest itself in a different way.

I welcome our witnesses and thank Chairman Merkley for organizing this hearing, which is long overdue. I look forward to your testimony.

## SUBMISSIONS FOR THE RECORD

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[Excerpt from the New York Times, December 2, 2021]

## WHY PENG SHUAI HAS CHINA'S LEADERS SPOOKED

(By Leta Hong Fincher)

Things have only worsened under President Xi Jinping, architect of a state-run masculinity campaign.

Women are severely underrepresented in national politics: There is one woman on the 25-member Politburo. Female representation on the 204-member Central Committee, the largest of the party's political bodies, has declined over the past decade, to 10 currently from 13 in 2012.

Broader gender inequality also has worsened. Women's labor-force participation has fallen to 60.5 percent in 2019 from 73 percent in 1990, according to the World Bank. China is in the bottom third of all countries evaluated for their gender disparities, according to the World Economic Forum.

The grim prospects for Chinese women are particularly jarring given the prominent role of feminism in China's revolutionary history. Women's emancipation was a central goal not just for activists in the May Fourth movement of 1919 but throughout the Communist revolution, culminating in the founding of the People's Republic of China in 1949.

China's ruler Mao Zedong famously proclaimed that "women hold up half the sky." Propaganda images in the 1950s and '60s showed smiling, muscular female welders and factory workers laboring to boost industrial production.

But today's Communist Party appears to want women to be obedient wives and mothers. In his International Women's Day address this year, Mr. Xi barely mentioned working women's contributions to economic development.

<https://www.nytimes.com/2021/12/02/opinion/peng-shuai-china-leaders.html>

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[Reprinted from Open Democracy.net, June 21, 2021]

ARE COUNTRIES FULFILLING THE PROMISE OF THE  
VIOLENCE AND HARASSMENT CONVENTION?

(By Aaron Halegua and Shikha Silliman Bhattacharjee)

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 Af-

rica 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 workplaces, 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.

<https://www.opendemocracy.net/en/beyond-trafficking-and-slavery/are-countries-fulfilling-promise-violence-and-harassment-convention/>

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#### ABOUT US

**Global Labor Justice–International Labor Rights Forum (GLJ–ILRF)** is a newly merged organization bringing strategic capacity to cross-sectoral work on global value chains and labor migration corridors. GLJ–ILRF holds global corporations accountable for labor rights violations in their supply chains; advances policies and laws that protect decent work and just migration; and strengthens freedom of association, new forms of bargaining, and worker organizations.

The **U.S.-Asia Law Institute (USALI)** of the NYU School of Law seeks to promote the rule of law and human rights in Asia. The Institute, which is funded by institutional and individual grants, serves as a resource and partner to various Asian countries as they develop their legal systems. USALI is especially known as one of America's preeminent research centers for the study of law in Mainland China and Taiwan and works to improve popular, professional and scholarly understanding at home and abroad through its publications and exchanges concerning comparative and international law. More information is available at: <http://usali.org>.

**Aaron Halegua** is a practicing lawyer and consultant. He is also a research fellow at the NYU School of Law's U.S.-Asia Law Institute and its Center for Labor and Employment Law. His expertise includes labor and employment law, human trafficking and forced labor, litigation and dispute resolution, corporate social responsibility and supply chains, and legal aid in the United States, China, and elsewhere. In over fifteen years of working on Chinese labor issues, he has consulted for Apple, American Bar Association, Asia Foundation, Brown University, Ford Foundation, International Labor Rights Forum, International Labour Organization, PILNet, Solidarity Center, and SEIU. Mr. Halegua has spoken on Chinese labor issues throughout the United States, Europe, and Asia. He has published numerous book chapters, articles, op-eds, and reports on labor issues, including for the *Washington Post*, *South China Morning Post*, *Berkeley Journal of International Law*, *Hong Kong Law Journal*, *Anti-Discrimination Law Review*, (Chinese translation appears in original) *Chinese Journal of Comparative Law*, and *Harvard Law & Policy Review (Online)*, and he has been quoted in the *New York Times*, *Economist*, and *Wall Street Journal*. Aaron has an A.B. from Brown University and J.D. from Harvard Law School. More information about his work is available on his website: <http://www.aaronhalegua.com>.

#### ACKNOWLEDGEMENTS

The initial inspiration for this project on Chinese sexual harassment law was born from the U.S.-Asia Law Institute's program that brought a group of Chinese scholars and lawyers to New York City for a study tour about sexual harassment just as the #MeToo movement was gaining steam. The author learned a tremendous amount from the American and Chinese experts involved in that project and remains deeply indebted to them. While the complete list of institutions and individuals who provided support in the preparation of this report is too long to recite here, the author nonetheless wishes to thank at least the following people: Ira Belkin, Shikha Silliman Bhattacharjee, Cynthia Estlund, Kevin Lin, Darius Longarino, Chao Liu, Xiaonan Liu, and Katherine Wilhelm. The following individuals provided invaluable research assistance for this project: Yurui Chen, Nanami Hirata, Jacob Kessler, Qianfeng Lin, and Yifei Zhang.

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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.*<sup>1</sup>

- 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.<sup>2</sup> 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.<sup>3</sup> The second hearing, originally scheduled for May 21, 2021, was delayed without explanation.<sup>4</sup>
- 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.<sup>5</sup>

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.<sup>6</sup> Domestically, on 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.<sup>7</sup>

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
<b>Recommendations for the Chinese government</b>		
<b>1. Improve the legislative framework</b>		
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) Para. 16(a)-(e)
Create safeguards against retaliation and confidentiality protections.	Art. 4(2)(e) Art. 10(b)(iv), (c)	
<b>2. Strengthen government monitoring and enforcement</b>		
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)
<b>3. Expand legal and other victim services</b>		
Make legal and other services available to GBVH victims.	Art. 4(2)(e) Art. 10(b)(v) Art. 10(c)	Para. 16 Para. 17
<b>Recommendations for Chinese employers</b>		
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
<b>Recommendations for workers' organizations</b>		
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)
<b>Recommendations for global brands</b>		
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).<sup>8</sup> 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.<sup>9</sup>

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.<sup>10</sup>

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.<sup>11</sup> 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.”<sup>12</sup> 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.<sup>13</sup>

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.<sup>14</sup> 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.<sup>15</sup>

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.<sup>16</sup> 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*.<sup>17</sup> 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.<sup>18</sup> 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.”<sup>19</sup> 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.<sup>20</sup>

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."<sup>21</sup>

As a result of these trends, women's labor force participation rates dropped from 73 percent in 1990 to 61 percent in 2019.<sup>22</sup> 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.<sup>23</sup> One study, conducted by a leading recruitment service in China, concluded that women are paid 22 percent less than their male counterparts.<sup>24</sup> In 2018, over 30 percent of Chinese women reported feeling that they had fewer career opportunities than men.<sup>25</sup> In fact, gender has a larger impact on income inequality than whether one is from the countryside or a big city.<sup>26</sup>

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.<sup>27</sup> 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.<sup>28</sup> 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.<sup>29</sup> 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.<sup>30</sup> 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.<sup>31</sup> 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.<sup>32</sup> 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.<sup>33</sup>

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.<sup>34</sup> 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%).<sup>35</sup> Chinese court decisions show numerous other forms of GBVH. For instance, one manager required his employee to watch pornographic material with him.<sup>36</sup> Several managers invited their female employees to have sex or affairs with them.<sup>37</sup>

Like in other parts of the world, GBVH in China also affects blue-collar workers.<sup>38</sup> 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.<sup>39</sup> 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.’”<sup>40</sup> 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.”<sup>41</sup>

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.<sup>42</sup> A study by the China Family Planning Association found that over 30 percent of university students experienced sexual harassment or violence.<sup>43</sup> 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.<sup>44</sup> 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.<sup>45</sup>

### 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.<sup>46</sup> 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.*<sup>47</sup>

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.

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.”<sup>48</sup> 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.<sup>49</sup>

The author began by searching for all cases in the database issued prior to 2021 that mention the term "sexual harassment" (Chinese translation appears in the original), 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.<sup>50</sup> 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.<sup>51</sup> The author then searched for all decisions containing the words "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.<sup>52</sup> 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.<sup>53</sup> According to Huang Xueqin's survey of journalists, only three percent reported having received any information or training on sexual harassment.<sup>54</sup> 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.<sup>55</sup> Even after Article 1010 took effect, consultants report that Chinese employers are reluctant to adopt policies or pay for trainings.<sup>56</sup>

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.<sup>57</sup> 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.<sup>58</sup> 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.<sup>59</sup> 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.<sup>60</sup>

#### 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.<sup>61</sup>

#### 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.<sup>62</sup> 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.<sup>63</sup> 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.<sup>64</sup> 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."<sup>65</sup> 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.”<sup>66</sup> (Chinese translation appears in the original.) 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 forms of sexual harassment: (i) using one’s power, status, or advantages to make the person conduct sexual acts, or (ii) creating a hostile work environment.<sup>67</sup> 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.”<sup>68</sup> 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.<sup>69</sup>

### 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.<sup>70</sup> 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.<sup>71</sup> 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 court denied her claim because she had no physical evidence to corroborate her testimony.<sup>72</sup> 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.<sup>73</sup> 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.<sup>74</sup>

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.<sup>75</sup>

### 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 suf-



fering.<sup>76</sup> 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.<sup>77</sup>

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.<sup>78</sup> 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.<sup>79</sup>

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.<sup>80</sup> 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).<sup>81</sup> 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.<sup>82</sup> Victims have faced terminations, forced resignations, and retaliatory harassment.<sup>83</sup> Restaurant managers in Guangdong forcibly evicted a worker from the company dormitory after she complained about sexual harassment.<sup>84</sup> In one litigation, the defendant requested that the court order a psychological evaluation of the complainant.<sup>85</sup> 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.<sup>86</sup>

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.<sup>87</sup> 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.<sup>88</sup> 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.<sup>89</sup> 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 victims coming forward.<sup>90</sup>

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.<sup>91</sup> 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.<sup>92</sup> 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.<sup>93</sup>

#### IV. RECOMMENDATIONS

China has made notable progress in combating 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.<sup>94</sup> 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.<sup>95</sup> 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 regard 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.<sup>96</sup> 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.<sup>97</sup> 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.<sup>98</sup> 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.<sup>99</sup>

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.<sup>100</sup> 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.<sup>101</sup> This wider crackdown included labor NGOs in Shenzhen, journalists who operated social media platforms focused on labor rights, and leaders of community organizations.<sup>102</sup> 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 elimi-

nation 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 Framework<sup>103</sup>

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.”<sup>104</sup> 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.<sup>105</sup> 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.<sup>106</sup>

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.”<sup>107</sup>

##### *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 com-

plaint 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:
  - a. adopt and implement, in consultation with workers and their representatives, a workplace policy on violence and harassment;
  - b. take into account violence and harassment and associated psychosocial risks in the management of occupational safety and health;
  - 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; and
  - d. 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?”<sup>108</sup> 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.<sup>109</sup> 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.<sup>110</sup> A Sichuan Province regulation provides that an employer is liable for a victim’s injury due to sexual harassment if the employer committed wrongdoing.<sup>111</sup> (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.<sup>112</sup> 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.<sup>113</sup> 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.<sup>114</sup>

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.”<sup>115</sup>

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.<sup>116</sup> 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.<sup>117</sup> 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.<sup>118</sup> 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.<sup>119</sup> 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 in-

formation. 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 task 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. Salvadoran 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.<sup>120</sup> 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 counseling services.<sup>121</sup>

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 combating 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.<sup>122</sup>

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, among 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.<sup>123</sup>

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.<sup>124</sup> 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.<sup>125</sup> 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 whistleblowers 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.<sup>126</sup> 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.<sup>127</sup>

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; commit to confidentiality; promise to take corrective action whenever GBVH occurs; and prohibit retaliation against anyone who reports 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.<sup>128</sup> 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.<sup>129</sup> 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.

**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.

## 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.<sup>130</sup> 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.<sup>131</sup> In New York State and New York City, for instance, annual sexual harassment training for every employee is now a legal requirement.<sup>132</sup> 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).<sup>133</sup> 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.<sup>134</sup>

#### 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 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.<sup>135</sup> 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.<sup>136</sup> 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.<sup>137</sup> The trade union’s efforts also led to the adoption of a state law requiring janitorial employers to provide sexual harassment and violence trainings.<sup>138</sup> 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.<sup>139</sup> 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.<sup>140</sup>

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.<sup>141</sup> 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.<sup>142</sup> 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.

[Endnotes begin on the following page.]

## Endnotes

1. Jiayun Feng, *'I Am a Woman Worker at Foxconn, and I Demand a System That Opposes Sexual Harassment: A Translated Essay*, *STUPCHINA*, Jan. 26, 2018.
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12. *Id.* Art. 1.
13. *Id.* Art. 3.
14. *Id.* Art. 9.
15. *Id.* Art. 4.
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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.
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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).
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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. [赵曼丽诉强仕(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一审民事判决书] (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 Qinhua 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一审民事判决书] (Zhejiang Province Jiaxing 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一审民事判决书] (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、身体权纠纷一案一审民事判决书] (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、身体权纠纷一案一审民事判决书] (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*, SURCHINA, 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 Activists 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 *Faulstich 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 Retaliation*, 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.

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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行动月活动]*, *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 ILO'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.





**United States House of Representatives  
Congressional-Executive Commission on China**

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**Date**

*Witness Biographies***Leta Hong Fincher, Adjunct Assistant Professor, Columbia University, and author, “Betraying Big Brother: The Feminist Awakening in China”**

Leta Hong Fincher is a journalist and author of “Betraying Big Brother: The Feminist Awakening in China” (Verso 2018) and “Leftover Women: The Resurgence of Gender Inequality in China” (Zed 2014). She won the Society of Professional Journalists Sigma Delta Chi award for her China reporting. Dr. Hong Fincher is the first American to receive a Ph.D. from Tsinghua University’s Department of Sociology in Beijing and is currently an Adjunct Assistant Professor at Columbia University’s Department of East Asian Languages and Cultures. She has a master’s degree from Stanford University and a bachelor’s degree with high honors from Harvard University.

**Aaron Halegua, research fellow, Center for Labor and Employment Law, U.S.-Asia Law Institute, NYU School of Law**

Aaron Halegua is a practicing lawyer and research fellow at the U.S.-Asia Law Institute’s Center for Labor and Employment Law, NYU School of Law. He has worked on various labor rights issues in the U.S., China, and internationally for nearly 20 years. In 2021, Mr. Halegua authored the report “Workplace Gender-Based Harassment and Violence in China: Harmonizing Domestic Law and Practice with International Standards.” Mr. Halegua has consulted for Apple, Asia Society, the International Labor Organization (ILO), Ford Foundation, and other organizations on labor issues in China, Thailand, Myanmar, Malaysia, and Mexico. Mr. Halegua has an A.B. from Brown University and a J.D. from Harvard Law School.

**Mei Fong, Chief Communications Officer, Human Rights Watch and author, “One Child: The Story of China’s Most Radical Experiment”**

Mei Fong is Chief Communications Officer at Human Rights Watch and a former Pulitzer Prize-winning Wall Street Journal China correspondent. She is the author of “One Child: The Story of China’s Most Radical Experiment,” winner of a non-fiction award from the American Society of Journalists and Authors, and is on Foreign Policy magazine’s Top 50 list of U.S.-China influencers. She has written for and appeared in such media as the New York Times, the Washington Post, CBS, CNN, PBS, and the John Oliver show.

**Tursunay Ziyawudun, detention camp survivor and advocate for Uyghur human rights**

Tursunay Ziyawudun is a survivor of the Chinese government’s extra-legal arbitrary detention camps in the Uyghur region, and an outspoken advocate for Uyghur human rights. Ms. Tursunay returned to her hometown in November 2016 to renew her passport and was immediately swept up in the Chinese government’s “strike first” policies of harsh control and collective punishment of Uyghurs. She survived more than a year in two different concentration camps, suffering food deprivation, forcible injections of unknown medicines, harsh interrogation and beatings, forced political indoctrination, forced loyalty oaths, forced renunciation of faith, and rape. As one of very few survivors of the concentration camps who has reached safety in another country, she has provided testimony to human rights groups, researchers, and journalists investigating the Chinese government’s atrocity crimes against Uyghurs and other Turkic Muslim peoples.

