

Submission by the Working Group on Preventing Workplace Sexual Harassment to the Working Group on the Universal Periodic Review

On the occasion of the 4th UPR cycle in the People's Republic of China at the 45th session

Submitted on 18 July 2023

I. Introduction

1. The Working Group on Preventing Workplace Sexual Harassment (WGPWSH) is an independent women's civil group focusing on women's rights and gender equality and advocating eliminating discrimination in Chinese society. A shadow report on China's implementation of CEDAW was presented to the Committee on the Elimination of Discrimination against Women at the 85th session. (Email: WGPWSH@proton.me)
2. The following submission was prepared based on information and research collected by the WGPWSH. It covers the situation of women's rights in China between 2018 and 2023. This submission is a response to the replies from the People's Republic of China ("the State") concerning recommendations put forward by countries in the third circle of the UPR procedure. It focuses on the issue of sexual harassment in the workplace, especially the employer liability for sexual harassment and the corresponding judicial remedies for victims, which has a bearing on whether women can enjoy just and favorable working conditions.

II. The Presence of Sexual Harassment and the Lack of Mechanisms Preventing Discrimination at Work (28.82, 28.84, 28.86 and 28.89)

3. As part of the third circle of the UPR, Portugal (28.82), Uruguay (28.84), Mexico (28.86), and Argentina (28.89) recommended that the State adopt

measures that make it impossible for any individual to be discriminated against. As a response, the State stated, "accepted and already implemented." (A/HRC/40/6/Add.1) However, there is currently no specific anti-discrimination law in China. In the workplace, sexual harassment is still prevalent.

4. The Survey Report on Sexual Harassment in the Workplace of Female Journalists in China, published in 2018, collected 416 valid samples, of which 83.7% of female journalists had experienced sexual harassment of varying degrees and forms, 42.4% had experienced sexual harassment more than once and more than once, 22 journalists said it had seriously affected their careers (such as resigning or giving up their transfer), 29 journalists had persistent mental depression, and 10 had self-harm or suicidal tendencies.¹ Recent data shows that 93% of the 212 female journalists² and 65% of the 141 female legal service providers (including multi-gender) have experienced one or more of the 16 types of sexual harassment and sexual coercion.³ Training on sexual harassment and systematic support for women journalists who have been harassed are still rare in the journalism profession.
5. Sexual harassment in the civil service can be more subtle and less reported. Many female civil servants have posted online about their frustration in reporting sexual harassment to their superiors or the relevant authorities.⁴ In addition, in the 2019 National Civil Service Examination Job List recently released by the Chinese government, 19 percent of positions are designated as preferential or restricted to men. This gender discrimination in civil service positions reflects gender inequality within the profession and may make it more difficult to protect women's rights.
6. A 2019 analysis of sexual harassment among nurses and nursing students in China reported that the overall incidence of sexual harassment among nurses and nursing students was 7.5% and 7.2% respectively. By the end of 2021, the nursing workforce had exceeded 5 million, which means that approximately 360,000 nursing staff may have experienced sexual harassment.⁵ The majority of sexual harassment experienced by nursing staff is buried under an iceberg

compared to the minority of reported sexual harassment. Many nursing operations have direct contact with patients' bodies, and they are much more likely to experience sexual harassment than other professions.

7. A study of 266 employees in 16 hotels in Shandong province published in 2019 showed that 14% of respondents stated that they suffered sexual harassment. Studies have shown that sexual harassment in the workplace is associated with employees' depressive states.⁶ However, there is usually no anti-sexual harassment training for employees working in reception positions.
8. Sexual harassment in the entertainment industry is often regarded as celebrity gossip. Women wishing to enter the entertainment industry are not only at risk of sexual harassment but also of being “slut-shaming”. In the case of W, public opinion once considered 'sleeping with fans' to be 'fan welfare' and used it as an entertainment talking point. In November 2022, the Chaoyang District People's Court in Beijing publicly sentenced W to 13 years imprisonment and found that W forcibly had sexual intercourse with three women at his residence while they were drunk and did not know how to resist or were unable to resist.⁷ This finding also indicates that Wu's previous sexual assaults were not addressed promptly and that multiple partners were involved in the crime, indicating a lack of restraint within their industry.
9. Many companies have not established mechanisms to prevent sexual harassment. In the sexual assault case of a female employee in Alibaba, a giant technology company in China, 6000 Alibaba employees issued a joint initiative on the incident, which required the employer to investigate the sexual crimes in the workplace and policy changes “to promote better work environment”.⁸ This also shows that sexual harassment in the name of work and team building is common within Alibaba and that the company is insensitive to incidents of sexual harassment. Alibaba has not established anti-sexual harassment mechanisms and is unable to protect the rights of female employees.

General Requirements and Weak Guidelines

10. Following article 1010 of the Civil Code, taking into effect in 2021, employers shall take measures to prevent and stop sexual harassment.¹ However, only one article with a general requirement cannot provide clear guidelines on how employers should do to combat sexual harassment at work and protect women victims. In addition, the requirement for the employer is limited to sexual harassment “conducted by a person through taking advantage of his position and power” and not applicable to hostile environment sexual harassment.
11. Moreover, no specific liabilities for employers are clear stated in the Civil Code if they fail to meet their obligations to prevent sexual harassment. That is to say, the company will not be punished if it does not have a mechanism for preventing sexual harassment or if it fails to address it in a timely manner. At the time of writing, no one court has ruled that employers are legally responsible for their fault in preventing or dealing with sexual harassment.

Recommendations:

12. We recommend the State sign and ratify the Violence and Harassment Convention, the No. 190 convention of the International Labor Organization (ILO). Meanwhile, the State should actively integrate the Convention into the domestic legal system.
13. We urge the State to clarify and strengthen the provisions on employer liability for sexual harassment, including defining the scope of employer liability and the types of measures that employers must take to prevent and address sexual harassment as well as the kinds of liabilities the employers should afford.
14. We urge the State to establish clear reporting procedures for sexual harassment incidents, including the requirement that employers must promptly

¹ Civil Code [中华人民共和国民法典] Article 1010: "A person who has been sexually harassed against his 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."

investigate any complaints and take appropriate action. When companies fail to establish rules against sexual harassment or fail to deal with sexual harassment incidents in a timely manner, administrative penalties should be imposed.

15. We recommend the State establish channels for public accountability to hold authorities accountable for their inaction or misbehavior in addressing sexual harassment. If such channels already exist, we request that the government provide specific information and data on their implementation, including statistical analysis of the number of complaints and their outcomes.
16. We require the State to provide specific data and reports on the implementation of laws against sexual harassment. This should include data on the number of complaints and litigation cases, and their respective handling, as well as data on the implementation of specific legal policies.
17. We recommend the State take adequate measures to promote public awareness about gender equality and anti-sexual harassment in society. Several specific measures can be taken, such as placing television advertisements for sexual harassment prevention, urging industry associations to conduct regular training on sexual harassment prevention, and ensuring that a sexual harassment prevention curriculum is included in every nine-year compulsory education program.

III. Sexual Harassment Victims have Difficulty Getting Justice in the Legal System (28.56, 28.214, 28.217, and 28.219)

18. During the third circle of the UPR, Nigeria (28.56), Democratic Republic of the Congo (28.214), Gabon (28.217), and Greece (28.219) urged the State to advance judicial reforms to ensure fairness for individuals. The State responded, "accepted" (A/HRC/40/6/Add.1) However, sexual harassment victims still have difficulty obtaining justice in the legal system today.

19. Because of the lack of an independent judicial system, victims of sexual harassment have difficulty getting an impartial judgment, especially in politically sensitive cases. During an internship with CCTV in 2014, X was sexually harassed by Z, a host with state broadcaster CCTV and one of the country's biggest celebrities.⁹ Posting an essay on social media, she tells her story of sexual harassment. Following three court hearings in two levels of courts, X ultimately lost the case.¹⁰ X has difficulty fulfilling her litigious rights in court. The judge repeatedly interrupted her when she tried to assert her facts and state her argument in court during the first hearing.¹¹ Her request to change the case type from "violation of personality rights" to "sexual harassment damage" was denied unreasonably by the judge.¹² The court refused to retrieve the surveillance video of the crucial evidence obtained by the police in the year that event happened.¹³ The judge also declined to investigate the false evidence submitted by Z.¹⁴ Moreover, the court denied X's application for a psychologist as the expert to appear in court to explain the situation without any reasonable grounds.¹⁵ The court handed down its verdict immediately on their official Weibo account online without further analysis of the new evidence submitted and arguments conducted in the hearing. It is evident that X's right to litigation was violated contrary to the law and the usual process for adjudicating cases.
20. Outside the court, the government has exerted pressure on the case. It violated X's freedom of speech to remove her articles expressing her claims. For the duration of the case, X's WeChat public account and Weibo account were banned. There was a ban on reporting news about X in domestic media. A cordon was set up in front of the court building, requiring anyone passing by to show their ID, because the government was fearful that others were gathering to support her. Chinese police also dragged away foreign reporters covering #MeToo supporters outside the court at the first hearing.¹⁶
21. Victims also face difficulties in civil court because their burden of proof is unreasonable. In November 2021, the Beijing Dongcheng District Yuanzhong Family and Community Development Service Center released the "Prevention and Control of Sexual Harassment Law and Judicial Trial Case Study Report

(2019-2021)", a big data analysis of all public adjudication documents with sexual harassment as the main fact of litigation since January 1, 2019, found that 25.23% of the courts found the fact of sexual harassment to be established, but zero case support the victim's claim that all facts of sexual harassment were established.. In more than half (52.25%) of the cases, the court decided that sexual harassment was not established in fact. In one case, a woman who was touched on the thigh by a man and reported sexual harassment to the police unsuccessfully was found to have insufficient evidence: as the thigh is not a sex sensitive area, the root of the thigh should have been touched to prove sexual harassment.¹⁷

22. Judges' lack of gender awareness and understanding of sexual violence is another challenge. Sexual harassment is misunderstood by some judges. Despite the fact that the victim recorded the audio when she was sexually harassed and reported it immediately to the police, the judge insists that he can't conclude that the man's behavior was against the victim's wishes.¹⁸ The lack of gender awareness among many judges makes it harder for victims to obtain a legally just verdict.

23. It is impossible for a victim to obtain justice even if she is awarded a victory due to the torture of prolonged participation in the proceedings and the refusal of the perpetrator to apologize. On 27 July 2018, L publicly reported that M, the director of One Day Public Service Centre, had sexually harassed her in 2015. In July 2020, the second trial upheld the verdict of the first trial and the court found that M had committed sexual harassment and ordered him to make an oral or written apology within 15 days of the verdict. L refused to apologize, and the court could only enforce the judgment by publishing the main content of the judgment in the media.¹⁹ In addition, L's request to order M to bear moral damages and to find the unit liable was rejected in the first instance and upheld in the second instance. Since then, M has remained active and in a leadership role in social work organizations.

Recommendations

24. We require the State to provide data on the number of judicial and administrative proceedings, as well as complaints relating to sexual harassment cases, and their respective outcomes, over the past five years.
25. We recommend the State conduct gender awareness training regularly for judges and other legal professionals. We urge the State increase the representation of women in the judiciary, particularly in decision-making roles, which would help to ensure that the perspectives and experiences of victims are better represented in court.
26. We require the State to provide improved access to legal aid for victims of sexual harassment and related supportive services, which would help to level the playing field and ensure that victims have access to justice.
27. We recommend the State reform the evidence rules for sexual harassment cases with consideration of the different abilities between two parties and the specific context for the cases. Judges should be encouraged to consider victim impact statements during sentencing, which would help to ensure that the voices and experiences of victims are heard.
28. We recommend the State establish a national human rights mechanism in accordance with the Paris Principles, ensure the independence of the judiciary and improve sexual harassment prevention measures.

IV. Repression on Women's Movements and Organizations (28.294, 28.207 and 28.208)

29. In the third circle of the UPR, the State accepted India's suggestion (28.294) to improve women's development, including the participation of women in public affairs. Italy (28.207) and Luxembourg (28.208) suggested guaranteeing freedom of opinion and expression, and the State said it had "accepted and already implemented." (A/HRC/40/6/Add.1). The facts, however, contradict the State's claims.

30. Over the past two decades, many feminist organizations and individual activists in China have called on responsible parties such as universities, enterprises, and institutions to establish mechanisms against sexual harassment through joint signatures, street actions, and collective movements. However, the government's response to these actions has been suppression, censorship, and harassment. In the #metoo movement in 2018, students, NGO workers, and feminist activists were punished to varying degrees with interrogations, harassment, and forced evictions for advocating anti-sexual harassment mechanisms.

Recommendations:

31. We urge the State to cease suppressing and punishing women's NGOs, activists, defenders, and victims, including but not limited to silencing, deleting social media accounts, harassment, confinement, interrogation, and even criminal detention.
32. We recommend the State increase funding for women's organizations and cooperation with international organizations and civil society organizations, in particular the United Nations and its specialized agencies, exert their respective strengths in fighting sexual harassment. We also recommend the State increase resources for sexual harassment victims, such as shelters, hotlines, and other services.
33. We require the State to support female workers to establish independent unions and women's affairs departments in factories to address the issues arising from unequal status between labor and management, lack of an adequate judicial system, and inadequate relief measures for sexual harassment complaints. It is recommended that trade unions at all levels in China join in ensuring measures and negotiation guidelines against sexual harassment.

V. Lack of Attention on Sexual Harassment Related to LGBTQ+ (28.87, 28.88, 28.89, and 28.90)

34. According to the State's response to suggestions raised by Chile (28.87), France (28.88), Argentina (28.89), and the Netherlands (28.90) regarding LGBTQ+ issues in the third circle, it has already taken the necessary measures to ensure adequate and effective protection against all forms of discrimination based on sexual orientation. The LGBTQ+ community still faces widespread discrimination and neglect in today's society.
35. LGBTQ+ group may hide their harassed experience because of the fear of revealing their sexuality. In addition, LGBTQ+ issues are typically regarded as a forbidden and opaque topic in China, and such cases are rarely seen in mainstream media coverage. LGBTQ+ relevant information has easily been removed, which may cause more difficulties in defending the rights of LGBTQ+ victims.
36. According to a report released in 2018, 2.1% of sexual minorities have experienced sexual harassment in the workplace.²⁰ Considering the low number of people who are open about their sexual orientation in China, this percentage could be even higher. Only 4.2% of sexual minority respondents said that their current workplace provided awareness training on sexual minority issues.

Recommendations:

37. We recommend the State to pay more attention to protecting marginalized and disadvantaged groups and provide dedicated channels for the LGBTQ+ community to safeguard their legal rights in the workplace and protect their privacy.
38. We urge the State to stop suppressing the LGBTQ+ community and LGBTQ+ rights activists, including the censorship of their social media accounts and communication channels. The government should disclose statistical data and

research reports on the number and living conditions of the LGBTQ+ community in China.

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- ¹ China digital times <<https://chinadigitaltimes.net/chinese/673038.html>> accessed 10 January 2023.
- ² International Women's Day report | gender violence is a serious threat to the occupational safety of female journalists, 2020.3.8, <https://posts.careerengine.us/p/5e64f2460a47dd42838a90f4>
- ³ Gender-friendly lawyers: investigation report on Occupational Safety in the legal Services Industry, released on December 10, 2020
- ⁴ Human rights watch <<https://www.hrw.org/zh-hans/news/2018/11/08/324065>> accessed 10 January 2023.
- ⁵ Prevalence of sexual harassment of nurses and nursing students in China: a meta-analysis of observational studies<<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6429024/>> accessed 10 January 2023.
- ⁶ Zhu, H., Lyu, Y., & Ye, Y. (2019). Workplace sexual harassment, workplace deviance, and family undermining. *International Journal of Contemporary Hospitality Management*, 31(2), 594-614. doi:10.1108/ijchm-11-2017-0776
- ⁷ Wayne Chang, Chinese-Canadian pop star Kris Wu sentenced to 13 years of prison for rape in China, <https://edition.cnn.com/2022/11/25/china/china-pop-star-sentenced-rape-intl/index.html>
- ⁸ Hong Yu Liu, “When nobody listens, go online”: The “807” labor movement against workplace sexism in China's tech industry, <http://wrap.warwick.ac.uk/174408/1/WRAP-When-nobody-listens-go-online-807-labor-against-workplace-23.pdf>
- ⁹ Zhaoyin Feng and Tessa Wong, ‘Xianzi: The #MeToo icon China is trying to silence’ BBC News (Washington and Singapore, 11 August 2022) < <https://www.bbc.com/news/world-asia-china-58629102>> accessed 10 January 2023.
- ¹⁰ Martin Quin Pollard,, ‘Chinese screenwriter vows to seek retrial after losing harassment case’ Reuterss (Beijing, 27 September 2021) < <https://www.reuters.com/world/china/chinese-court-rejects-tv-show-hosts-metoo-case-appeal-2022-08-10/>> accessed 10 January 2023.
- ¹¹ Xianzi, 'Before second trial: inside and outside the courtroom' Wechat public account: Private space of Xiaoxian (20 May 2021) < <https://mp.weixin.qq.com/s/MpZyD2tYOXcblHuLyMt1Rg> > accessed 10 January 2023.
- ¹² On January 1, 2019, the “dispute over the liability for damage caused by sexual harassment” [性骚扰损害责任纠纷] became a new independent civil case type.
- ¹³ X (n 8).
- ¹⁴ X (n 8).
- ¹⁵ Xianzi, ' Xianzi v. Zhu Jun Appeal Brief' Wechat public account: Private space of Xiaoxian (22 October 2021) < <https://www.bannedbook.org/bnews/baitai/20211023/1642708.html>> accessed 10 January 2023. The original article has been deleted on WeChat.

¹⁶ AFP News Agency (3 December 2020) <

https://twitter.com/AFP/status/1334405203424993280?ref_src=twsrc%5Etfw> accessed 10 January 2023.

¹⁷ <https://china.caixin.com/2021-11-30/101811624.html>

¹⁸ Sun Cuicui and Wang Kun Infringement of the Right to Personality Dispute Second Instance Civil Judgment [(2020)鲁01民终10307号] (Shandong Province Jinan City Intermediate People's Ct., 2020) (China) < <https://www.pkulaw.com/pfnl/a6bdb3332ec0> > accessed 10 January 2023.

¹⁹ <<https://www.bjnews.com.cn/detail/160896211915994.html>> accessed 10 January 2023.

²⁰ Sun Yaodong, The Workplace Experience of Sexual Minorities in China, published in November 2018.