

A HANDBOOK FOR PRACTITIONERS | CHINA

# Civil Liability for Human Rights Violations



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# CHINA



China's legal system is largely a civil law system. The first Civil Code in the history of Communist China was enacted in 2020. It distinguishes the so-called personality rights of individuals and provides that their violation can give rise to civil liability claims. At the same time there is a gap between the law on paper and the law in action. The liability of the State and its agents is largely a matter of administrative law and is governed by the State Compensation Law. In recent years, Chinese scholars have relied on the UN business and human rights framework, calling for legislative initiatives to regulate corporate human rights obligations. However, there are currently no explicit provisions regarding a parent company's liability for human rights violations resulting from the operations of its subsidiaries and suppliers.

## INDICES

**148/167**

Democracy Index  
2021 Ranking

**9/100**

Freedom House  
2022 Score

**66/180**

Transparency International  
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The focus jurisdictions within the scope of the project have been selected to maximise diversity and representativeness. They reflect both common law and civil law traditions, a wide geographic distribution, different political systems, and varying levels of socio-economic development. The latter factors may impact the overall efficacy of the law on civil remedies and respect for the rule of law as a value. To provide useful context about the jurisdiction, each report indicates the relevant ranking or score of that jurisdiction in three leading global indices on democracy and the rule of law: [Democracy Index](#) by the Economist Intelligence Unit (measures the state of democracy in 167 states and territories); [Freedom House](#) (rates people's access to political rights and civil liberties with 100 being an optimal score); and [Transparency International Corruption Index](#) (ranks 180 countries by their perceived levels of public sector corruption).



## Introduction<sup>1</sup>

1. Article 33, Paragraph 3 of the **Constitution of the People's Republic of China**<sup>2</sup> stipulates that the State shall respect and protect human rights. This is regarded as a domestic law implementation of the obligations to protect human rights contained in the International Bill of Rights (comprising of the [Universal Declaration of Human Rights](#), the [International Covenant on Economic Social and Cultural Rights](#) and the [International Covenant on Civil and Political Rights](#)). The Constitution clarifies that the State not only has the negative obligation not to interfere with citizens' lawful exercise of their rights, but also has the positive obligation to prevent the violation of human rights, and to promote the realisation of human rights by legislative, judicial, and other measures,<sup>3</sup> including ensuring access to effective remedies for victims of human rights violations.
2. Based on the Constitution's provisions on basic human rights, China has adopted a series of laws and regulations, including the **Civil Code**,<sup>4</sup> the **State Compensation Law**,<sup>5</sup> the **Labour Law**,<sup>6</sup> and the **Environmental Protection Law**<sup>7</sup> among other laws and regulations. These laws and regulations govern different types of human rights violations and their related liabilities, such as in cases of assault or unlawful arrest and detention of persons, environmental harm, and harmful or unfair labour conditions.
3. In cases of **assault or unlawful arrest and detention of persons**, the victim may seek relief mainly on the basis of the Civil Code and the State Compensation Law.<sup>8</sup> If the victim is tortured or illegally detained by a person who is not a functionary of the State, the victim may claim relief in accordance with the Civil Code. If the victim is tortured or illegally detained by a state agency or a designated official while exercising assigned powers, the victim may claim relief in accordance with the State Compensation Law.
4. The Civil Code regulates the personal relationship and property relationship between equal persons (ie individuals and corporations). It was adopted in 2020 and entered into force on 1 January 2021. If public bodies participate in civil activities, the Civil Code can also be applied to the public bodies. Book 4 of Personality Rights and Book 7 of Tort Liability in the Civil Code are the basis for the protection

<sup>1</sup> The authors recommend the following websites for searching English translations of Chinese laws and regulations: <http://english.www.gov.cn/archive/lawsregulations/>, <http://en.pkulaw.cn/>, <https://www.chinalawtranslate.com/en/>. Not all documents cited in this report are available on free sites. For these it is recommended that the reader access subscription sites. Some citations are also only available in Chinese.

<sup>2</sup> Constitution of the People's Republic of China (2018 Amendment).

<sup>3</sup> Shi Jiayou, *Civil Code and Social Transformation* (Renmin University Press 2018) 151.

<sup>4</sup> [Civil Code of the People's Republic of China 2020](#).

<sup>5</sup> State Compensation Law of the People's Republic of China (2012 Amendment).

<sup>6</sup> [Labor Law of the People's Republic of China \(2018 Amendment\)](#).

<sup>7</sup> [Environmental Protection Law of the People's Republic of China \(2014 Amendment\)](#).

<sup>8</sup> [State Compensation Law of the People's Republic of China \(2012 Amendment\)](#).

of human rights by the law of civil remedies in China. The Civil Code distinguishes personality rights in a separate book, which not only directly declares that personality rights are protected by law, but also clarifies that the violation of personality rights can give rise to civil liability. It takes the protection of these rights a step further than the previous Tort Law<sup>9</sup> and the General Principles of the Civil Law.<sup>10</sup>

5. The State Compensation Law mainly regulates the infringement of the legitimate rights and interests of a citizen, a legal person or any other organisation by a **state organ or state functionary** when performing their functions.<sup>11</sup> The specific organs with compensation obligations include state administrative organs, judicial organs, procuratorial organs and prison management organs.<sup>12</sup> The scope of State compensation governed by the State Compensation Law includes administrative compensation and judicial compensation, but excludes legislative compensation and military compensation.
6. In cases of **environmental harm**, the environmental authorities monitor environmental harm. But procuratorial organs can also make procuratorial suggestions or file administrative public-interest lawsuits against administrative bodies that perform their duties incorrectly or fail to act.
7. In the field of **labour protection**, if a worker suffers damage due to harmful or unfair labour conditions provided by the employer, the worker is protected by the Labour Law, the Regulation on Work-Related Injury Insurance,<sup>13</sup> the Civil Servant Law,<sup>14</sup> and other labour laws and regulations. The main avenues for resolving labour disputes are negotiation, reconciliation, mediation, arbitration, and litigation.
8. The above-mentioned methods of relief do not use judicial means only; some rely more on administrative mechanisms to resolve the problems.
9. In China, upholding the leadership of the party is a foundational principle that must be adhered to in building a socialist legal system with particularly Chinese characteristics. This can lead to complex legal and political issues which may affect the availability of remedies for violations of rights.

9 [Tort Law of the People's Republic of China 2009](#) (Expired).

10 [General Principles of the Civil Law of the People's Republic of China](#) (2009 Amendment) (Expired).

11 State Compensation Law (2012 Amendment), art 1.

12 *ibid*, art 21.

13 [Regulation on Work-Related Injury Insurance](#) (2010 Amendment).

14 [Civil Servant Law of the People's Republic of China](#) (2018 Amendment).



# General Questions



**Q1**

## Can a claim under the law of civil remedies in your jurisdiction be brought against public bodies, corporations and/or individuals when one of the three defined harms results in human rights violations?

China recently adopted a comprehensive Civil Code which regulates general tort principles, including rights and interests, elements of liability, scope of damages, as well as specific torts, including liability for environmental pollution.

10. According to several laws and regulations, including the Civil Code, the Labour Law, the Environmental Protection Law and the State Compensation Law, if a citizen's personal freedom is violated, the ecological environment is destroyed, or labour conditions are harmful or unfair, the victim may file a claim against the relevant natural persons, legal persons, or unincorporated organisations. The avenues for the victim to seek relief vary according to the circumstances.

### **Assault or unlawful arrest and detention**

#### *a) Claims against a private body*

11. According to Articles 990, 991 and 995 of the Civil Code, the right to health and personal freedom are among personality rights which are protected by law and may not be infringed by any organisation or individual. A person whose personality rights are infringed has the right to request the perpetrator of the infringement to bear civil liability.<sup>15</sup> Liable actors here include natural persons, legal persons and unincorporated organisations.

#### *b) Claims against a public body*

In 1994, China enacted a comprehensive State Compensation Law which allows individuals and legal entities to claim compensation in appropriate circumstances for the harm caused by the wrongful acts of public bodies.

12. If it is a state agency or its functionary illegally violates a victim's personal rights when exercising their powers, such as when seeking to extract a confession through torture that causes the victim's injury or death, the victim may claim state compensation in accordance with the State Compensation Law.

#### *c) Joint torts by private and public bodies*

13. With regard to joint torts committed by state agencies and non-state agencies, Article 98 of the Interpretation of the Supreme People's Court on Application of the Administrative Litigation Law stipulates that if an administrative agency fails to perform, or delays the performance of its statutory duties, resulting in damage to the legitimate rights and interests of citizens, legal persons, or other organisations, the People's Court shall rule that the administrative agency shall bear the responsibility for administrative compensation. When determining the

<sup>15</sup> Civil Code 2020, arts 990, 991 and 995.



amount of compensation, consideration should be given to factors such as the role played by the non-performance or the delay in performance of statutory duties in the process and results of the damage.<sup>16</sup> In the case of a third party's infringement, if the state agency is remiss in performing its statutory duties, it shall bear the corresponding responsibility according to the effect of its actions on the damage.

*d) Criminal remedy*

14. If the acts of the infringing party constitute the crime of illegal detention or the crime of intentional injury, victims can request criminal responsibility for the infringing party through criminal charges. Victims can also bring an incidental **civil claim as part of criminal proceedings**.

## **Environmental harm**

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*a) Private body*

15. In the Civil Code, Book 7 ('Tort Liability') Chapter VII ('Liability for Environmental Pollution and Ecological Damage') provides for tort liability for environmental harm. According to Article 1229 of the Code, a tortfeasor who has polluted the environment or harmed the ecological system and thus caused damage to others shall bear tort liability.<sup>17</sup> The tortfeasor here includes natural persons, legal persons, and unincorporated organisations.

*b) Public body*

16. Article 25 of the Administrative Litigation Law stipulates that the People's Procuratorate must act if it finds violations by an administrative authority with supervisory and administrative functions in the field of the protection of the ecological environment and resources. The procuratorate must consider whether the administrative authority has performed its functions in violation of any law, or has conducted nonfeasance which infringes national interest or public interest. In such instances, the procuratorate must offer procuratorial recommendations to the administrative authority, and urge it to perform its functions lawfully. If the authority then fails to perform functions in accordance with the law, the People's Procuratorate shall file a lawsuit with the People's Court.<sup>18</sup>

*c) Civil public interest litigation*

17. According to Article 58 of the Civil Procedure Law, where there is conduct that pollutes the environment, or that damages the public interest, an authority or relevant organisation prescribed by law may institute an action in a People's Court. If the relevant authority or organisation does not file a lawsuit, the People's Procuratorate may file a lawsuit in the People's Court. If the relevant authority or organisation does file such a lawsuit, the People's Procuratorate may support the filing of this lawsuit.<sup>19</sup> Article 58 of the Environmental Protection Law specifies the organisations that are eligible to file an environmental public interest lawsuit.<sup>20</sup> According to Article 29 of the Interpretation of the Supreme People's Court on Several Issues concerning the Application of Law in the Conduct of Environmental

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<sup>16</sup> [Interpretation of the Supreme People's Court on Application of the Administrative Litigation Law of the People's Republic of China 2018](#), art 98.

<sup>17</sup> Civil Code 2020, art 1229.

<sup>18</sup> [The Administrative Litigation Law of the People's Republic of China](#) (2017 Amendment), art 25.

<sup>19</sup> [Civil Procedure Law \(2021 Amendment\)](#), art 58.

<sup>20</sup> Environmental Protection Law (2014 Amendment), art 58.

Civil Public Interest Litigations, even if an authority or relevant organisation specified by law has already filed an environmental public interest lawsuit, citizens, legal persons and other organisations that have suffered personal or property damage due to the same act of polluting the environment or destroying the ecological environment may also file lawsuits.<sup>21</sup>

### *d) Administrative remedy*

18. Environmental usage is regulated by environmental or resource authorities who are responsible for overseeing the implementation of environmental laws. Relevant administrative agencies can handle some disputes over infringements of environmental regulations directly, or mediate those disputes as a third party. The Water Pollution Prevention and Control Law,<sup>22</sup> the Law on Prevention and Control of Pollution from Environmental Noise,<sup>23</sup> the Atmospheric Pollution Prevention and Control Law,<sup>24</sup> and the Law on the Prevention and Control of Environment Pollution Caused by Solid Wastes<sup>25</sup> stipulate that disputes relating to liability for compensation and amounts of compensation can be mediated by the environmental authorities at the request of the parties to the dispute. If mediation fails, the parties may file a civil lawsuit.

### *e) Criminal remedy*

19. According to Section 6 of Chapter VI of the Criminal Law, if the discharge of pollutants into the environment causes serious danger or harm to people's lives, health, or property safety, criminal responsibility for undermining protection of environmental resources should be pursued in terms of the Criminal Law.<sup>26</sup> Further, according to Article 101 of the Criminal Procedure Law, a victim engaged in criminal litigation can bring a civil claim as part of the same criminal proceedings. The procuratorate, or a qualified civil society organisation, can also bring an incidental civil public interest lawsuit as part of the criminal proceedings.<sup>27</sup>

## **Harmful or unfair labour conditions**

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### *a) Work-related injury insurance*

20. According to Articles 2, 30 and 62 of the Regulation on Work-Related Injury Insurance, if an employee is injured in an accident due to harmful labour conditions, or is identified as having an occupational disease, the employee shall be awarded economic compensation through the relevant **work-related injury insurance fund**. An employer is required to pay such insurance premiums for all its employees. If the employer fails to pay this fee for the injured employee in accordance with the law, the employer will be liable to pay the expenses in accordance with the insurance benefits stipulated in the Regulation.<sup>28</sup> If the worker has obtained social insurance compensation or compensation from the employer,

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21 Interpretation of the Supreme People's Court on Several Issues concerning the Application of Law in the Conduct of Environmental Civil Public Interest Litigations (2020 Amendment), art 29 (available only in Chinese).

22 [Water Pollution Prevention and Control Law of the People's Republic of China](#) (2017 Amendment).

23 [Law of the People's Republic of China on Prevention and Control of Pollution from Environmental Noise](#) (2018 Amendment).

24 [Atmospheric Pollution Prevention and Control Law of the People's Republic of China](#) (2018 Amendment).

25 [Law of the People's Republic of China on the Prevention and Control of Environment Pollution Caused by Solid Wastes](#) (2020 Revision).

26 [Criminal Law of the People's Republic of China](#) (2020 Amendment) s 6.

27 [Criminal Procedure Law of the People's Republic of China](#) (2018 Amendment), art 101.

28 Regulation on Work-Related Injury Insurance (2010 Amendment), arts 2, 30, and 62.

they may not file a civil lawsuit.<sup>29</sup> If the relationship of the worker and the employer does not constitute a labour relationship, but is rather a contractual relationship established to provide a service, the worker must claim relief in accordance with laws related to tort liability for the damages.

**b) Personal injury compensation**

21. If a worker suffers damage due to harmful or unfair labour conditions, but the damage is not recognised as a work-related injury, the worker can claim compensation for personal injury according to laws related to tort liability. It is worth noting that the judicial practice of the courts in Guangdong District of China recognises that work-related injury insurance benefits and personal injury compensation can be both applied to workplace harm.<sup>30</sup>

**c) Situation of a government employee**

22. If a government employee suffers human rights violations due to events or circumstances arising in their work, the government employee may make appeals and complaints in accordance with the Civil Servant Law and related regulations.

**d) Arbitration and litigation**

23. When an employee suffers damage due to harmful or unfair labour conditions, and a labour dispute is initiated between the employer and the employee, this will be arbitrated by labour arbitration. Only those who are dissatisfied with the arbitration results may resort to civil litigation.<sup>31</sup>



**What are the elements of the civil remedies that you have identified above that have to be established by a claimant seeking the remedy?**

The elements to be established in general torts can be categorised as objective or subjective. The objective elements include wrongful acts or omissions, damage, and causation; the subjective elements are the actor's fault, including intention and negligence. In some circumstances, however, not all elements of liability will need to be established, or liability can be reduced.<sup>32</sup>

**Assault or unlawful arrest and detention**

24. When a citizen is assaulted or unlawfully detained by **non-state agencies**, the victim seeking relief needs to provide evidence to prove all the elements itemised above.
25. When it is a **state agency and/or its functionary** who violates the personal rights of the victim while exercising their powers, the State Compensation Law stipulates that the claimant and the state agency responsible for compensation shall provide evidence for their claims.<sup>33</sup> The victim must prove the illegal behaviour

<sup>29</sup> [Interpretation of the Supreme People's Court of Some Issues concerning the Application of Law for the Trial of Cases on Compensation for Personal Injury](#) (2020 Amendment), art 12.

<sup>30</sup> [Answers to Difficult Issues in the Trial of Labour Dispute Cases by the Guangdong Higher People's Court 2017](#) (Only in Chinese).

<sup>31</sup> Labour Law (2018 Amendment), art 79.

<sup>32</sup> Cheng Xiao, *Tort Law* (3rd edn, Law Press 2021) 215.

<sup>33</sup> State Compensation Law (2012 Amendment), art 15.

of the actors, and must prove the specific damage the victim suffered due to the illegal behaviour. If the victim died or was incapacitated during the detention, the compensatory agency must give evidence to prove that it did not cause the death or injury of the victim.<sup>34</sup>

## **Environmental harm**

26. In cases of environmental harm involving environmental pollution and ecological damage, Articles 1229 and 1230 of the Civil Code specify that a presumption of causation and no-fault liability shall be applied. The victim claiming tort liability for environmental pollution or ecological damage needs only to prove that the defendant has been polluting the environment and damaging the ecology, and to provide preliminary or probabilistic evidence that establishes a preliminary connection between the defendant's polluting behaviour and the damage the victim has suffered. There is no need for the victim to prove that there is causation between the defendant's act and the damage, or to prove that the defendant is at fault. The defendant shall bear the burden to prove that he should not be liable, or that his liability could be mitigated as provided by the law, and that there is no causation between his act and the damage.<sup>35</sup>

## **Harmful or unfair labour conditions**

27. According to Articles 17 and 18 of the Regulation on Work-Related Injury Insurance, if the employee is injured as a result of harmful or unfair labour conditions, the employer must file an application to the administrative department of the relevant social insurance for assessment of the work-related injury. If the employer fails to file this application, the worker who suffered the injury, or his close relatives, or the relevant trade union organisation may directly file the application to the administrative department.<sup>36</sup> The application must demonstrate that a labour relationship between the employee and the employer exists; that the injury occurred within working hours and workplaces; that the injury was caused by work; and a certificate of medical diagnosis or a certificate of diagnosis of an occupational disease must be furnished.<sup>37</sup>



**Does the law of your jurisdiction recognise civil liability for complicit or accessory conduct (or a similar concept) in relation to the three defined harms?**

The Civil Code regulates the **joint liability of multiple parties** and the **vicarious liability of the employer**. The victim can claim that the joint tortfeasors bear the joint tort liability.

<sup>34</sup> *ibid.*

<sup>35</sup> Civil Code 2020, arts 1229 and 1230.

<sup>36</sup> Regulation on Work-Related Injury Insurance (2010 Amendment), art 17.

<sup>37</sup> *ibid.*, art 18.

## **Multiple-party tort**

28. Multiple-party tort mainly involves two categories:

- joint harmful acts; joint dangerous acts; and abetting and aiding such acts;
- multiple-party tort without intentional contact, including tort by unintentional contact between several persons who bear joint and several liability; and tort by unintentional contact between several persons who bear proportionate liability.

### ***a) Joint harmful acts***

29. Joint harmful acts refer to two or more persons who carry out infringements based on joint intention and cause damages to others. The joint tortfeasors need to bear joint and several liability.<sup>38</sup> The tortfeasor in joint harmful acts also includes the corporate legal person.

## **SPOTLIGHT: CASE STUDY**

In the case of *Sichuan Hydropower Group Jiangyuan Electric Power Corporation, Yuan Yuan, Hengjie Construction Company v Yi Youliang*,<sup>39</sup> Yuan Yuan affiliated with Hengjie Construction Company to contract the project and hired Yi Youliang who was injured by electric shock during the construction process. The court found that both Yuan Yuan and the construction company knew that their affiliation violated mandatory provisions of the law, and nevertheless reached an agreement of affiliation. This indicated that the two parties had an intentional contact, the faults were joint intentions, and that they should be jointly and severally liable for the injury of Yi Youliang.

### ***a) Joint dangerous acts***

30. Joint dangerous acts are when two or more persons endanger the personal and property safety of others. While the behaviour of one or more of them actually causes the damage, it is not certain who has caused the damage. In this instance, all of them bear joint and several liability, unless the actor can prove that there is no causal relationship between his behaviour and the damage.<sup>40</sup>

### ***b) Abetting and aiding***

31. In acts considered to be abetting and aiding, the abettor or the aider does not directly participate in the infringement. To eliminate the difficulty of the victim to prove the causation, the law equates the abettor and the aider as joint tortfeasors who shall jointly bear tort liability.<sup>41</sup> For example, in the case of *Shu Shunping v Ding Hai and Ding Zhongxiang*,<sup>42</sup> the plaintiff and the defendant Ding Hai had a dispute. Ding Hai then asked two of his friends to beat the plaintiff. Ding Hai himself did not beat the plaintiff. The court decided that Ding Hai and his friends who beat the plaintiff jointly bear the tort liability.

<sup>38</sup> Civil Code 2020, art 1168.

<sup>39</sup> *Sichuan Hydropower Group Jiangyuan Electric Power Corporation, Yuan Yuan, Hengjie Construction Company v Yi Youliang* [2019] Intermediate People's Court of Chengdu City 16607.

<sup>40</sup> Civil Code 2020, art 1170.

<sup>41</sup> *ibid*, art 1169.

<sup>42</sup> *Shu Shunping v Ding Hai and Ding Zhongxiang* [2017] People's Court of Wuhua District 9807.



*c) Multiple-party tort without intention contact*

32. The multiple-party tort without intentional contact refers to a situation where several persons, without joint intentions, respectively carry out infringements and cause the same damage to others. If each tort behaviour is sufficient to cause all the damage, the tortfeasors shall be jointly and severally liable; if the specific amount of liability of tortfeasors can be determined, the tortfeasors shall bear proportionate liability.<sup>43</sup>

### **Vicarious liability of the employer**

33. Chinese law also stipulates the vicarious liability of the employer. Employer liability defined narrowly includes not only the employer's liability in civil law, but also the employer's liability in public law and in state compensation liability. Articles 1191 and 1192 of the Civil Code stipulate that where an employee causes damage to another person in the course of acts connected to the performance of the employee's work, or the party providing labour services causes damage to another person in acts connected to the labour services, the employer or the party receiving labour services shall assume tort liability. The employer or the service-receiving party may, after assuming the tort liability, claim indemnification against an employee or service-providing party who acts intentionally or with gross negligence.<sup>44</sup> Articles 7 and 16 of the State Compensation Law stipulate that state agency shall bear state compensation liability for related tortious damages caused by their functionaries in the exercise of their powers. After compensating the damages, the state agency can also order the functionary who has acted with intention or gross negligence, or the entrusted organisation or individual, to bear part or all the compensation expenditure.<sup>45</sup>
34. Employer liability more broadly also includes instances where someone suffers damage from a third party due to the performance of the work task or the provision of service. In such circumstances, the employer or the party receiving the service shall be liable in accordance with the law. An employee who suffers damage from a third party due to the performance of the work task is considered to have suffered a work-related injury, and the employee can receive work-related injury insurance compensation.<sup>46</sup> If the service provider in the contractual relationship suffers damage from a third party when providing the service, the service provider has the right to request the third party to bear tort liability, and they also have the right to request compensation from the party receiving the service.<sup>47</sup>

### **Vicarious liability in environmental torts**

35. According to Article 1233 of the Civil Code, where environmental pollution or ecological damage is caused due to the fault of a third person, the person who has suffered harm may claim compensation against either the tortfeasor or the third person. After making compensation, the tortfeasor has the right to indemnification against the third person.<sup>48</sup>

<sup>43</sup> Civil Code 2020, arts 1171 and 1172.

<sup>44</sup> *ibid*, arts 1191 and 1192.

<sup>45</sup> State Compensation Law (2012 Amendment), arts 7 and 16.

<sup>46</sup> Regulation on Work-Related Injury Insurance (2010 Amendment), art 14.

<sup>47</sup> Civil Code 2020, art 1192.

<sup>48</sup> *ibid*, art 1233.

Q4

## When can a parent company be held liable under the law of civil remedies for the wrongful acts and/or omissions of a subsidiary or independent contractor in a supply chain?

36. China does not directly regulate a parent company's liability for infringement by its subsidiary or supplier. The Company Law<sup>49</sup> provides general provisions for how a parent company should assume the debts of its subsidiary. Article 14 of the Company Law provides that a company may set up branches or subsidiaries. A branch does not have legal personality and its civil liabilities shall be borne by its parent company. Subsidiaries, however, have **separate legal personality** and are independently responsible for their own civil liabilities.<sup>50</sup> Article 3 of the Company Law stipulates that a company shall bear liability for its debts with all its property; and for a joint-stock limited company, a shareholder shall be liable for the debts of company to the extent of the shares it has subscribed to.<sup>51</sup>
37. Thus, in the Chinese legal framework, there are two main avenues to require a parent company to bear liability for infringement by its subsidiary:
- by identifying the parent company itself as the tortfeasor according to laws related to tort liability;
  - by identifying the subsidiary as the tortfeasor, but requiring the parent company and the subsidiary to bear joint and several liability through piercing the corporate veil.

### Parent company as the tortfeasor

38. The general provisions of laws related to tort liability are the primary vehicle to determine whether a company bears tort liability. It is worth noting that in environmental torts, in addition to its provisions on responsibility for environmental pollution and ecological damage, the Civil Code also specifically provides for liability for ultra-hazardous activities such as nuclear accident damage liability and aircraft damage liability. The tort liability subjects of ultra-hazardous activities covers inter alia the possessors, users, owners or managers of ultra-hazardous materials, and the operators of civilian nuclear facilities and so on.<sup>52</sup> In other words, under the conditions of liability for ultra-hazardous activities, a parent company may bear tort liability as the possessor or owner of ultra-hazardous materials, but the scope of application of this liability is extremely limited.

### Piercing the corporate veil

39. According to Article 20 of the Company Law, where any of the shareholders of a company evades the payment of its debts by abusing the independent status of legal person or abusing the shareholder's limited liabilities, and where this action seriously injures the interests of any creditor, the shareholder shall bear several

<sup>49</sup> [Company Law of the People's Republic of China](#) (2018 Amendment).

<sup>50</sup> *ibid*, art 14.

<sup>51</sup> *ibid*, art 3.

<sup>52</sup> Civil Code 2020, ch VIII.

and joint liability for the debts of the company.<sup>53</sup> Company creditors here refers to all types of creditors in civil relations, including but not limited to creditors of contractual debts, creditors of tort debts, creditors of *negotiorum gestorum*,<sup>54</sup> and creditors of unjust enrichment. Therefore, the victims of infringements by the company or its staff are also creditors.<sup>55</sup> Chinese scholars and legal practitioners tend view that if the parent company is the shareholder of its subsidiary and meets the conditions for piercing the corporate veil, then the parent company shall take responsibility for the environmental infringement behaviour of its subsidiary.<sup>56</sup>

40. It is worth mentioning that in recent years, many scholars in China have been using the United Nations framework for business and human rights (and, in particular, the [UN Guiding Principles on Business and Human Rights](#)) as a blueprint, calling on the Chinese government to legislate in this field to create legal incentives for companies to assume social responsibilities, including to require companies to bear responsibility for human rights violations by contractors in a supply chain, and requiring companies to conduct human rights due diligence during mergers and acquisitions.<sup>57</sup>

Q5

### What remedies are available under the law of civil remedies to victims of the three defined harms in your jurisdiction?

41. Article 179 of the Civil Code stipulates 11 forms of civil liability, of which eight are the forms of tort liability, including: cessation of the infringement; removal of the nuisance; elimination of dangers; restitution; restoration; compensation for losses; extension of apologies; elimination of adverse effects; and rehabilitation of reputation. These forms of tort liability may be applied separately or concurrently. There are provisions for punitive damages for specific infringements.<sup>58</sup>

## Assault or unlawful arrest and detention

### a) Private body

42. If an infringement endangers the personal safety of others, the victim has the right to request the tortfeasor to cease the infringement, remove the nuisance, eliminate the dangers, or bear other liabilities.<sup>59</sup> If the tortfeasor causes damage to others due to assault or illegal arrest or detention, the tortfeasor shall compensate medical expenses, nursing expenses, transportation expenses, nutrition expenses, food allowances for hospitalisation and other reasonable expenses for treatment and rehabilitation, as well as lost earnings due to missed work. In the event of tort resulting in disability, further compensation shall be made in the form of expenses for assistive devices and disability compensation. Where tort results in death,

<sup>53</sup> Company Law (2018 Amendment), art 20.

<sup>54</sup> *Negotiorum gestorum* refers to the act of voluntarily managing the affairs of others or providing services for others in order to avoid the loss of the interests of others without legal or agreed obligations.

<sup>55</sup> Liu Junhai, *Modern Corporation Law* (Law Press 2008) 476.

<sup>56</sup> Feng Ru, 'Piercing the Parent-Subsidiary Corporate Veil in Environmental Tort Cases' (2014) 2 *Hebei Law Science* 158.

<sup>57</sup> Radu Mares and Zhang Wanhong, 'Critical Issues in Business and Human Rights and Its Significance in a New Era: Focusing on the UN Guiding Principles on Business and Human Rights' (2018) *Journal of Southwest University of Political Science and Law* 2.

<sup>58</sup> Civil Code 2020, art 179.

<sup>59</sup> *ibid*, art 1167.

further compensation shall be made in the form of funeral expenses and death compensation.<sup>60</sup> If the infringement of the personal rights causes serious mental damage, the victim has the right to request compensation for mental damage.<sup>61</sup>

**b) Public body**

43. The State Compensation Law stipulates similar liability if state agencies or their functionaries infringe upon the personal rights of citizens when exercising their powers. In addition to general liability for compensation, in cases of violation of a citizen's personal freedom, the daily compensation shall be calculated according to the national average daily wages of the employee in the previous year.<sup>62</sup>

## **Environmental harm**

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44. In environmental torts, if the tortfeasor deliberately pollutes the environment and damages the ecosystem in violation of the law, causing serious consequences such as death, disability, mass injuries, or significant property damage to the victim, the victim has the right to request corresponding punitive damages.<sup>63</sup> For environmental damage that can be restored, state agencies or organisations specified by law have the right to request the tortfeasor to bear the responsibility for restoration within a reasonable period.<sup>64</sup>
45. In addition, the tortfeasor can be required to compensate for the following: losses caused by the suspension of service functions during the period from damage to the environment to the completion of restoration; losses caused by permanent damage to environmental functions; costs for investigating and evaluating the environmental damage; costs for cleaning up pollution and restoring the environment; reasonable costs for preventing the occurrence and expansion of damage.<sup>65</sup>

## **Harmful or unfair labour conditions**

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46. A victim who suffers damage due to harmful or unfair labour conditions enjoys work-related injury insurance benefits which can be claimed through administrative procedures. The work-related injury insurance fund can pay for medical expenses, nursing expenses, wages and benefits during the period of suspension of pay, and expenses for assistive devices.<sup>66</sup>
47. If a victim becomes disabled as a consequence of an injury suffered due to their work, the victim can also receive a one-time disability subsidy allocated according to the level of disability. If the labour relationship is terminated as a result of disability, the victim can also receive a one-time work-related-injury medical subsidy and a one-time disability-employment subsidy.<sup>67</sup> If a victim dies due to a work-related injury, close relatives of the victim can receive funeral subsidies, dependent relatives' pensions, and a once-off work death subsidy from the insurance fund.<sup>68</sup>

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60 *ibid*, art 1179.

61 *ibid*, art 1183.

62 State Compensation Law (2012 Amendment), art 33.

63 Civil Code 2020, art 1232.

64 *ibid*, art 1234.

65 *ibid*, art 1234.

66 Regulation on Work-Related Injury Insurance (2010 Amendment), arts 30, 32 and 33.

67 *ibid*, art 35.

68 *ibid*, art 39.

Q6

## What are the advantages and disadvantages of using civil claims as a means of human rights protection in your jurisdiction?

### The advantages of using civil claims

48. The **advantages** of using civil claims as a means of human rights protection are as follows:
- a) This approach is conducive to safeguarding the economic interests of the victim as the victim can receive substantial material compensation after his personal rights are violated.
  - b) A victim can obtain better relief through civil claims than through administrative and criminal channels. For example, after suffering personal injury, the victim can claim substantial compensation for mental damage.
  - c) The procedures of civil claims are more open and they are fairer. The judicial processes can be relatively neutral, and there is greater protection of the procedural rights of victims.

### The disadvantages of using civil claims

49. The **disadvantages** of protecting human rights through civil claims are as follows:
- a) For the victim, the time and economic cost (such as litigation and legal fees) of civil litigation are both high, and it may be difficult to obtain effective relief sufficiently quickly.
  - b) Compared with an approach through administrative channels and criminal incidental civil litigation, the plaintiff bears a far greater burden of proof in civil litigation, especially in the face of serious torts, and it may be difficult to provide evidence.

Q7

## Can civil claims be brought against a foreign defendant and if so, what are the rules for that?

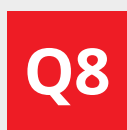
50. According to the Civil Procedure Law and its judicial interpretation, civil lawsuits can be brought against foreigners, foreign enterprises or foreign organisations in China. According to Article 5 of the Civil Procedure Law, foreign nationals, stateless persons and foreign enterprises and organisations which institute or respond to actions in the People's Courts shall have equal procedural rights and obligations as Chinese citizens, legal persons and other organisations.<sup>69</sup> Part 4 of the Civil Procedure Law provides detailed provisions for foreign-related civil procedures, involving jurisdiction, service of process, periods, arbitration and international judicial assistance.<sup>70</sup>

<sup>69</sup> Civil Procedure Law (2021 Amendment), art 5.

<sup>70</sup> *ibid*, part 4.



51. In determining jurisdiction, Articles 22 and 27 of the Civil Procedure Law provide that if the place of the infringement, the domicile of the defendant, the place of habitual residence, the place of the representative office, etc, are in China, the corresponding court can have jurisdiction.<sup>71</sup> According to Article 283 of the Civil Procedure Law, judicial assistance can be provided in the service of documents, investigation and evidence collection and other litigation acts in foreign-related civil litigation in accordance with the international treaties concluded or acceded to by China.<sup>72</sup>
52. The Law on Choice of Law for Foreign-related Civil Relationships<sup>73</sup> clarifies the scope of the choice of law in foreign-related civil disputes. In relation to tort liability, Article 44 of the Law stipulates that tort liability shall be governed by the law of the place of the tortious act, but if the parties have a common habitual place of residence, the law of the place of common habitual residence shall apply. After the infringement occurs, if the parties agree to choose the applicable law, the agreement shall be followed.<sup>74</sup> In particular, in the event of a labourer being injured due to harmful or unfair labour conditions, the law of the labourer's place of work, or the employer's main business place, or the place where labour services are dispatched can be applied in accordance with Article 43 of the Law on Choice of Law for Foreign-related Civil Relationships.<sup>75</sup>



### Do you have any recommendations for further research on civil liability for human rights violations in your jurisdiction?

53. The following resources are useful to further explain China's laws, precedents and academic views on civil remedies for human rights violations.

#### Publicly available legal resources

54. Some useful publicly available legal resources are:
- The Chinese People's Government website (<http://www.gov.cn/index.htm>), where legal information can be obtained through the information disclosure link.
  - The official website of the Supreme People's Court of China (<http://www.court.gov.cn/>), where judicial interpretations, judicial data and judicial cases issued by the Supreme People's Court can be obtained.
  - The official website of the Supreme People's Procuratorate of China (<https://www.spp.gov.cn/>), where public interest litigation cases can be obtained.
  - The Judgment Document Website (<https://wenshu.court.gov.cn/>), where the legally effective judgments, rulings, and decisions of the People's Courts at all levels are published.

<sup>71</sup> *ibid*, arts 22 and 27.

<sup>72</sup> *ibid*, art 283.

<sup>73</sup> [Law of the People's Republic of China on Choice of Law for Foreign-Related Civil Relationships](#) 2010.

<sup>74</sup> *ibid*, art 44.

<sup>75</sup> Law on Choice of Law for Foreign-related Civil Relationships 2010, art 43.

- e) The China Law Information Database (<http://www.pkulaw.cn/>), which has four retrieval systems, where Chinese law, Chinese judicial cases, Chinese law journals, and English versions of Chinese law can be obtained.
- f) The CNKI website (<https://www.cnki.net/>), for academic literature.

### Other resources

55. Some other useful resources are as follows:

- a) For information on laws and regulations: For legal standards, please refer to the Bulletin of the Standing Committee of the National People's Congress; for administrative regulations, please refer to the Bulletin of the State Council; for judicial interpretations, please refer to the Bulletin of the Supreme People's Court and the Supreme People's Procuratorate.
- b) For information on cases: *China Case Guidance*, edited by the Supreme People's Court and the Supreme People's Procuratorate; *Selected Cases of the People's Court*, edited by the China Institute of Applied Jurisprudence of the Supreme People's Court, etc.
- c) Newspapers: *Legal Daily*, *People's Court Daily*, *Procuratorate Daily*, and local legal daily newspapers.

### Books

56. Several books are recommended, including:

- Cheng Xiao, *Tort Law (Third Edition)*, Law Press, 2021.
- Wang Liming, *Tort Law (Second Edition)*, China Renming University Press, 2021.
- Yang Lixin, *Tort Liability Law*, Law Press, 2020.
- Shen Kui, *State Compensation Law: Principles and Cases (Second Edition)*, Peking University Press, 2017.
- Wang Jing, *Environmental Law (Fourth Edition)*, Peking University Press, 2018.
- Lv Zhongmei, *New Vision of Environmental Law (Third Edition)*, China University of Political Science and Law Press, 2019.



# Case Scenarios

## 1 Case Scenario

A wave of peaceful anti-government protests in the capital city of X Country denounced controversial legislation reforming electoral law. X Country's police responded to the peaceful protests with violence and brutality. The protesters were beaten and tear gassed. Some were detained for several days without charge or access to the lawyers. Human rights activists reported alleged torture and other ill-treatment in detention.

The protesters gathered in the market square where many shops and office buildings are located. Security Co is a private company providing security to the premises and personnel of the shops and offices. There is no evidence that personnel of the Security Co were involved in the violence that injured protesters. There is, however, evidence that on several occasions personnel of Security Co provided X Country's police with vehicles, equipment, and water. [READ MORE](#)

## 2 Case Scenario

X Group is a group of extractive companies. Parent Co is the parent company of X Group which is responsible for the overall management of X Group's business. X Group's extractive operations are carried out by its subsidiaries. Every subsidiary is incorporated as a separate legal entity and is responsible for an individual project. Subsidiary Co is a licence holder and operator of a major extractive project. Parent Co is the sole shareholder of Subsidiary Co.

X Group has been accused of severe environmental pollution arising from oil spills caused by Subsidiary Co's extractive project. Oil extracted by Subsidiary Co leaked and flowed into local rivers and farmland in the neighbourhood of the project site, destroying crops and killing fish. The result was that the food and water supplies of the local population were severely affected, and in addition members of the local community also experienced breathing problems and skin lesions. Journalists

and environmental activists publicised the harm done to the local environment and community. Parent Co has made no statements about the oil spills but, in a recent report to its shareholders, Parent Co repeated that the X Group was committed to its policy of operating in an environmentally sound manner and ensuring the health and safety of its workers and those affected by its business operations. [READ MORE](#)

## 3 Case Scenario

Factory Co owns a garment factory that supplies many large international clothing retailers. The working conditions in Factory Co's factory have generally been poor and exploitative and have included physical abuse for non-compliance with production targets, sexual harassment of female workers by male supervisors, and compulsory unpaid overtime. Local trade unions have regularly accused Factory Co of poor factory workplace safety, including a lack of emergency procedures, ineffective fire safety equipment and few emergencies medical supplies. Two months ago, during a fire at Factory Co's garment factory, seventy-six workers died and fifty-eight were injured, many seriously. Preliminary investigations suggest that employees suffocated or were burned alive because windows were barred, emergency exits closed, smoke alarms did not work, and supervisors did not implement safety protocols and fire evacuation procedures.

Brand Co is the major purchaser of clothes produced by Factory Co's garment workers. It has been an enthusiastic and very public advocate for human rights standards and expressed its commitment to responsible business practices. Several civil society organisations wrote an open letter to the CEO of Brand Co calling on Brand Co to demonstrate leadership in preventing, addressing, and remedying adverse human rights impacts in its supply chain. [READ MORE](#)



# CaseScenario 1

Q1

**Could injured or unlawfully arrested protesters bring civil claims against the police and/or Security Co (and/or its personnel) in your jurisdiction? Please also indicate the key elements of liability that would need to be shown by the claimants to hold the perpetrators liable.**

## **Claims against police**

57. According to Article 3 of the State Compensation Law, in Case Scenario 1, the police as staff members of the state agency, violated citizens' personal rights by beatings, torture, and illegal detention when exercising their powers, and in so doing caused damages. The victims have the right to claim state compensation through the administrative organ of the police in accordance with the State Compensation Law.<sup>76</sup> The victims need to prove the existence of the damage and provide preliminary proof that there is a causal relationship between the damage and the illegal behaviour of the administrative agency.

## **Claims against Security Co**

58. Article 3 of the State Compensation Law stipulates that if a state organ or its functionaries cause bodily injury or death to a citizen by battery or maltreatment, or by instigating or conniving at battery or maltreatment by another person, the victim shall have the right to compensation.<sup>77</sup> Article 7, paragraph 4 of the State Compensation Law also stipulates that where an organisation or an individual, in exercising the administrative powers entrusted to them by an administrative organ, infringes upon the lawful rights and interests of a citizen or a legal person or other organisations, thereby causing damage to them, the administrative organ that did the entrustment shall be the organ liable for compensation.<sup>78</sup> Therefore, if the personnel of the Security Co directly participated in illegal acts after accepting the entrustment of the police agency, the police agency shall bear the state compensation liability.

59. Existing evidence can only prove that the personnel of the Security Co provided vehicles, equipment, and water to the police, so the victims may not be able to directly file a civil litigation against them.

<sup>76</sup> State Compensation Law (2012 Amendment), art 3.

<sup>77</sup> *ibid.*

<sup>78</sup> State Compensation Law (2012 Amendment), art 7.

**Q2**

**If civil claims would not be the preferred route for holding perpetrators in Case Scenario 1 to account, please indicate any other legal avenues available to the protesters.**

60. The police in Case Scenario 1 are suspected of committing criminal offences such as illegal detention and intentional injury. Therefore, the victims can seek criminal responsibility for the police through criminal charges. It is also possible for victims to bring an incidental civil litigation during the criminal procedure. If the victims receive compensation through this approach, they shall no longer be entitled to claim state compensation.
61. If the personnel of the Security Co can be shown to have the joint intention of illegal detention and intentional injury with the police, they can also be criminally charged on suspicion of committing a joint crime.

**Q3**

**Are there any high-profile lawsuits in your jurisdiction that are relevant to Case Scenario 1?**

62. The State Compensation Law was applied in the case of *Zhang Ming v the Detention Centre of the Qinzhou Branch of the Tianshui City Public Security Bureau*.<sup>79</sup> On 11 March 2013, Zhang and the criminal suspect Xin were chasing each other as they were playing during their free time in the front yard of the prison area of the Qinzhou Detention Centre. After reaching Xin, Zhang crossed his legs and hugged Xin's legs from behind. Xin turned and pulled Zhang by the shoulder, causing Zhang to fall to the ground and fracture his right calf. The court determined that inadequate supervision of the prisoners by the detention centre played a role in the damage suffered by Zhang, and the detention centre should be liable for state compensation.



<sup>79</sup> *Zhang Ming v The Detention Centre of the Qinzhou Branch of the Tianshui City Public Security Bureau* [2019] Higher People's Court of Gansu Province 2.



# CaseScenario 2

Q1

**Could the local community, or its representatives, or someone acting on their behalf, bring civil claims against Parent Co and Subsidiary Co in your jurisdiction? Please also indicate the key elements of liability that would need to be shown by the claimants to hold the perpetrators liable.**

## **Claims against Parent Co**

63. The question of whether a parent company assumes defendant responsibility depends on whether it participates in joint torts or abuses its shareholder status. If the parent company and its subsidiary jointly carry out environmental torts, they shall bear joint and several liability. If the parent company and its subsidiary separately carry out environmental torts, they shall bear corresponding liability according to the degree of damage that their actions cause. In Case Scenario 2, Parent Co may not assume joint and several liability beyond the limit of its shares, but due to litigation strategy considerations, in addition to Subsidiary Co, Parent Co and other subsidiaries can also be listed as co-defendants.
64. In accordance with Articles 1229 and 1230 of the Civil Code, if the environmental pollution and ecological damage causes harm to others, the tortfeasor shall bear the tort liability regardless of whether the tortfeasor is at fault. In this case, the plaintiff shall provide evidence to prove the following facts: (i) The tortfeasor discharged pollutants or damaged or destroyed the ecology; (ii) The victim suffered damage; (iii) The tortfeasor's behaviour and the damage are related.<sup>80</sup> According to Article 61 of the Civil Procedure Law, the plaintiff's representative for such litigation may include a lawyer or basic legal service worker, a close relative or staff member of a party, a citizen recommended by the community of or the entity employing a party, or a citizen recommended by a relevant social group.<sup>81</sup>

## **Claims against Subsidiary Co**

65. In addition, if Subsidiary Co violates the regulations and causes ecological damage, the provincial, municipal and prefecture-level people's governments and their designated relevant departments and institutions, or the departments entrusted by the State Council to exercise the ownership of nationally owned natural resource assets, may act as plaintiffs to bring litigation for compensation for ecological environmental damage. In this kind of litigation, the plaintiff shall bear the burden of proof for the following facts: (i) The defendant has committed environmental

<sup>80</sup> Civil Code 2020, arts 1229 and 1230.

<sup>81</sup> Civil Procedure Law (2021 Amendment), art 61.

pollution, ecological damage or other circumstances for which they should be liable in accordance with the law; (ii) The ecological environment has been damaged, and the specific amount of repair costs and damage compensation; (iii) There is a correlation between the defendant's behaviour and the damage to the ecological environment.

66. The authorities and relevant organisations stipulated by law can also file public interest litigation in cases where environmental pollution or ecological damage has harmed the public interest of society, or has a major risk of harm to the public interest of society. If no relevant organisation or authority initiates such litigation, the People's Procuratorate can initiate public interest litigation. If the relevant organisation has filed litigation, the People's Procuratorate can support the litigation. Detailed information can be found at [17] above.



**If civil claims would not be the preferred route for holding the perpetrators in Case Scenario 2 to account, please indicate any other legal avenues available to the local population.**

### **Criminal remedy**

67. Section 6 of Chapter VI of the Criminal Law has provisions relating to crimes of undermining the protection of environmental resources.<sup>82</sup> Therefore, criminal prosecution is a way to hold the perpetrators liable. In criminal litigation, a victim can bring a criminal incidental civil lawsuit. The procuratorate, or a qualified social organisation or institution can also bring a criminal incidental civil public interest lawsuit.<sup>83</sup>

### **Administrative remedy**

68. Administrative mediation by relevant administrative agencies on disputes relating to environmental infringements is also a way to solve an environmental dispute. Detailed information can be found at [18] above. Compared with civil litigation, the administrative process is simpler and procedurally easier, and environmental authorities have greater professional knowledge in the field of environmental protection than judges, so they are more professionally equipped to manage dispute resolution.

82 [Criminal Law of the People's Republic of China](#) (2020 Amendment) s 6.

83 [Criminal Procedure Law of the People's Republic of China](#) (2018 Amendment), art 101.

**Q3**

**Are there any high-profile lawsuits in your jurisdiction that are relevant to Case Scenario 2?**

69. A similar case to Case Scenario 2 is the case of the dam break that occurred at Xinyi Zijin Mining. On 21 September 2010, affected by the Typhoon Fanapi, a dam breach occurred in the mine of Xinyi Zijin Mining Company, causing 22 deaths and a large amount of property damage. After the disaster, the government and the affected villagers filed the lawsuit demanding compensation from the responsible parties. The plaintiff claimed that Xinyi Zijin's parent company Zijin Group was the sole shareholder with registered capital not fully paid and mixed personalities in terms of property, personnel, and business. Therefore, the plaintiff sought that Zijin Group should bear joint and several liability. This case was finally settled by mediation.<sup>84</sup>



# Case Scenario 3

**Q1**

**Would it be possible to bring a civil claim against Factory Co and/or Brand Co? Please also indicate the key elements of liability to be shown by the claimants to hold Factory Co and/or Brand Co liable.**

## **Claims against Brand Co**

70. First, if Brand Co did not directly participate in the joint tort, the victim could not claim civil liability against it.

## **Claims against Factory Co**

71. In relation to Factory Co, the victims can apply for work-related injury or death reparation and enjoy work-related injury insurance benefits. The elements for the victims to prove include: the employee and the employer have a labour relationship; the injury occurred during working hours and at the workplace; the injury occurred due to work; and the specific results of the damage.

<sup>84</sup> Ru (n 56) 159.

72. In addition, it is also possible to claim civil liability for the specific actor who caused the fire. The elements for the plaintiff to prove include: the actor's behaviour was an infringement; the victim has suffered losses; the victim's loss has a causal relationship with the actor's behaviour; and the actor is at fault.
73. Employees who have suffered physical abuse, sexual harassment, and compulsory unpaid overtime, can claim civil compensation from the relevant tortfeasor, and the employer can also be required to bear responsibility.

**Q2**

**If civil claims would not be the preferred route for holding the perpetrators in Case Scenario 3 to account, please indicate any other available legal avenues available to the victims and/or their families?**

74. In a labour relationship, if an employee claims compensation for work-related damage, the labour arbitration committee will arbitrate the dispute first. Only those who are dissatisfied with the arbitration results can resort to civil litigation.
75. In addition, the Labour Law and other regulations encourage that in labour and personnel disputes, precedence should be given to negotiation between employees and employers, as well as the mediation hosted by the administrative department. In Case Scenario 3, negotiation may be an efficient way of relief.
76. If the relevant responsible person of the employer is suspected of criminal acts such as fire crimes or major liability accident crimes, victims may also require that person to bear criminal responsibility through criminal charges.

**Q3**

**Are there any high-profile lawsuits in your jurisdiction relevant for Case Scenario 3?**

77. A similar case is the Shenzhen Zhili Toy Factory fire incident in 1993.<sup>85</sup> This incident had a significant impact and directly contributed to the formulation of the Labour Law. On 19 November 1993, a short-circuit in the electrical wiring of the warehouse of the Zhili Toy Factory caused molten beads to ignite, which in turn ignited combustibles that were stacked nearby, causing a big fire which resulted in 87 deaths and 51 injuries. The investigation team found the following: iron bars were welded to all the factory windows, and most were covered with barbed wire; there were few evacuation routes and these were not unobstructed. These factors meant that nearly 300 workers could not quickly escape. Moreover, the burning fibre emitted poisonous gas, and many workers suffocated at the entrance of the stairs. The relevant personnel of the factory were sentenced to fixed-term imprisonment for the crime of major liability accident; the responsible personnel of the administrative department were sentenced to fixed-term imprisonment for the crime of bribery and dereliction of duty.

<sup>85</sup> Chang Kai, 'The 20th Anniversary of Shenzhen Zhili Fire' (2013) *China Worker* 11.

