

Action against Sexual Harassment at Work in Asia and the Pacific



Nelien Haspels, Zaitun Mohamed Kasim,
Constance Thomas and Deirdre McCann



INTERNATIONAL LABOUR OFFICE
Bangkok Area Office and
East Asia Multidisciplinary Advisory Team

Action against Sexual Harassment at Work in Asia and the Pacific

**Nelien Haspels, Zaitun Mohamed Kasim,
Constance Thomas and Deirdre McCann**

**International Labour Office
ILO Bangkok Area Office and
East Asia Multidisciplinary Advisory Team**

Copyright © International Labour Organization 2001
First published, December 2001

Publications of the International Labour Office enjoy copyright under Protocol 2 of the Universal Copyright Convention. Nevertheless, short excerpts from them may be reproduced without authorization, on condition that the source is indicated. For rights of reproduction or translation, application should be made to the publications Bureau (Rights and Permissions), International Labour Office, CH-1211 Geneva 22, Switzerland. The International Labour Office welcomes such applications.

Libraries, institutions and other users registered in the United Kingdom with the Copyright Licensing Agency, 90 Tottenham Court Road, London W1P 0LP (Fax: +44 20 7631 5500), in the United States with the Copyright Clearance Centre, 222 Rosewood Drive, Danvers, MA 01923 (Fax: +1 978 750 4470), or in other countries with associated Reproduction Rights Organizations, may make photocopies in accordance with the licences issued to them for this purpose.

Nelien Haspels, Zaitun Mohamed Kasim, Constance Thomas and Deirdre Mc Cann
Action against Sexual Harassment at Work in Asia and the Pacific
Bangkok, International Labour Office, 2001

ISBN 92-2-112824-5

The designations employed in ILO publications, which are in conformity with United Nations practice, and the presentation of material therein do not imply the expression of any opinion whatsoever on the part of the International Labour Office concerning the legal status of any country, area or territory or of its authorities, or concerning the delimitation of its frontiers.

The responsibility for opinions expressed in signed articles, studies and other contributions rests solely with their authors, and publication does not constitute an endorsement by the International Labour Office of the opinions expressed in them.

Reference to names of firms and commercial products and processes does not imply their endorsement by the International Labour Office, and any failure to mention a particular firm, commercial product or process is not a sign of disapproval.

For information on how to obtain this publication, write to the Regional Office for Asia and the Pacific, 11th Floor, United Nations Building, Rajdamnern Avenue, Bangkok 10200; fax: +66 2 288 3062; e-mail: bangkok@ilo.org. Catalogues and lists of recent and forthcoming ILO books are available free of charge from the same address. Visit our website: www.ilo.org/public/english/region/asro/bangkok/

Acknowledgements for permission of reproduction go to:

- Chan Bora, Phnom Penh, Cambodia for artwork on the title page.
- DAWN-TUCP, Quezon City, Philippines for 'Sexual harassment is a trade union issue: A workers' handbook'.
- DOLE, Quezon City, Philippines for 'A model company policy and procedure on sexual harassment'.
- NCRFW, Manila, Philippines for cartoons from 'Sexual harassment'.
- New Straits Times Press (M) Bhd. Kuala Lumpur, Malaysia for a cartoon, originally published in the New Straits Times on 16 July 1998.

Printed in *Thailand*

CONTENTS

PREFACE	xii
ACKNOWLEDGEMENTS	xv
SUMMARY	xvii
Introduction	xvii
Understanding the problem: Key points	xvii
Highlights of action	xx
1. INTRODUCTION	1
2. UNDERSTANDING SEXUAL HARASSMENT AT WORK IN ASIA AND THE PACIFIC	7
2.1 Introduction	8
Gender relations and sexual harassment	9
2.2 Attitudes and perceptions towards sexual harassment	12
Differences in definitions between groups of people	12
Commonly held beliefs about male and female sexuality	14
Use of culture to justify or deny sexual harassment	19
2.3 What is sexual harassment at work?	21
Definition of sexual harassment	21
Types of sexual harassment	24
What is 'at work'?	25
Working relations with whom?	28
When is it 'sexual assault' and when is it 'sexual harassment'?	30
Other forms of violence and gender discrimination at work	32
2.4 Effects of sexual harassment	33
Effects on the individual	34
Implications for the enterprise	37

	Implications for society	39
2.5	Start of action against sexual harassment .	39
	The shroud of silence: Why few women report sexual harassment	40
	Informal measures	43
	Action by women workers' groups and organizations	47
3.	INCIDENCE AND SCOPE OF SEXUAL HARASSMENT AT WORK.	
	55	
3.1	Profile of women at work	56
	Feminization of poverty	56
	Feminization of employment	58
	Occupational segregation by sex	63
3.2	Incidence of sexual harassment at work	65
3.3	High-risk sectors and occupations	67
	Education and training institutions	67
	Domestic workers	68
	Women migrant workers	69
	Occupations or institutions with a preponderance of either sex	72
	Jobs and/or living conditions with low security	72
4.	LEGAL ACTION AGAINST SEXUAL HARASSMENT	77
4.1	Action at the international and regional levels	77
4.2	Developments in legislation at the national level	82
	Recent trends	82
	General Definitions, Scope, Duties and Liability	86
	Legal basis for sexual harassment protection	94
4.3	Fair treatment: Responsive procedures and due process	105
	Initiation of complaints	106
	Due process	107
	Establishing confidence in the procedures	108

	Proving the case	109
	Protection against victimization	110
	Remedies and sanctions	113
4.4	Implementing mechanisms	114
	Employer-based mechanisms	115
	National administrative bodies	116
4.5	Key elements in legislation	117
5.	WORKPLACE POLICIES AND PRACTICAL MEASURES	121
5.1	Prevention is better than cure	122
5.2	Development and promotion of policies and codes of conduct	125
	Action by governments	125
	Action by employers and their organizations	125
	Action by workers and their organizations	127
	Tripartite cooperation	132
	Application of policies	134
5.3	The content of sexual harassment policies	135
	Definition of sexual harassment	137
	Third-party harassment	138
	Sexual harassment of men and same-sex harassment	139
	Definition of workplace	140
	Delineation of actors and responsibilities	140
5.4	Grievance handling: Redress mechanisms and procedures	142
	Complaints procedures	143
	Informal procedures	144
	Formal procedures	145
	Sanctions and disciplinary measures	149
	Monitoring and evaluation	151
5.5	Information dissemination at workplaces	152

	Actions on awareness-raising in the workplace	153
	Content of awareness-raising material	155
5.6	Training at workplaces	156
	Extent of training programmes in the workplace	156
	Training content and duration	158
	Training expertise	160
	Training methodology	161
	Do's of training	162
	Don'ts of training	163
5.7	Counselling and support	163
	The extent of counselling services and procedures in place	164
	Counselling and investigation procedures	165
6.	FINDINGS AND CONCLUSIONS	169
6.1	Understanding sexual harassment	170
	Definitions: sexual harassment, work and working relations	172
	Effects	176
	Taking action	178
6.2	Incidence and scope of sexual harassment at work	179
6.3	Legal action against sexual harassment	183
	Definitions, scope, duties and liability	185
	Coverage of sexual harassment in other laws	187
6.4	Workplace policies and practical measures	192
	Development and promotion of policies and codes of conduct	195
	Grievance handling: Redress mechanisms and procedures	198
	Good practice in work place policies and practical measures	200
	BIBLIOGRAPHY	205

TABLES

1	Women's share of the labour force in percentages	59
2	Economic activity rates of men and women in percentages in selected countries in Asia and the Pacific	60
3	Percentage distribution of the labour force, by sex, 1990/1997 in East, Southeast and South Asia	61
4	Female Employment in Export Processing Zones	62
5	Percentage women and men employers among female and male labour force in selected countries in Asia	64
6	AMC findings on extent of sexual harassment among migrant women workers in domestic service in the Hong Kong SAR, 2000	71

BOXES

1	The Supreme Court of India on sexual harassment: Guidelines and norms	85
2	Sri Lanka: Penal Code uses 'unwelcome' standard	87
3	The Philippines Anti-Sexual Harassment Act of 1995	88
4	The Philippines: Dealing with acts done 'in jest' or 'by accident'	90
5	Bangladesh: Suppression of Violence Against Women and Children Act, 2000	102
6	Republic of Korea: A 'slight matter'	103
7	Role of workplace policies	121
8	Counterproductive preventive action	126
9	Highlights of the ICFTU-APRO Resolution on Action against Work-related Sexual Harassment	131
10	Example sexual harassment clause in collective agreement	133
11	Definition of sexual harassment by Komag USA (M) Sdn. Bhd., Malaysia	139
12	Example sexual harassment clause in an employment contract	141
13	Complaint/Grievance Procedure in the Malaysian Code of Practice	142
14	Tailor-made training for staff at Intel Technology Sdn.	

	Bhd., Malaysia	158
15	Case management: An example of company interview guidelines	166

ANNEXES

1	List of International and regional instruments on sexual harassment	219
2	Sample enterprise questionnaire on sexual harassment	223
3	Model Company Policy and Procedure on Sexual Harassment	225
4	Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace, Ministry of Human Resources, Malaysia	243
5	Information Booklet of Sexual Harassment	253

PREFACE

Attitudes towards sexual harassment are sometimes complex and controversial and make us feel uncomfortable because it touches on societies' fundamental values in terms of personal inter-relations, culture, religion, economic survival and politics. In essence, sexual harassment is not tolerated or condoned by any culture or religion in our societies, because it violates the respect and dignity of the victim – usually, a young woman working in the lower ranks of the job hierarchy.

Those who have experienced sexual harassment know what a deeply humiliating and demeaning thing it is – so humiliating, in fact, that the victim often avoids taking action against the harasser, not only for fear of reprisal but also so as not to have to remember and relive the incident or incidents again and again.

The negative effects of harassment are, however, by no means confined to the individual. Research has shown very clearly that workplaces in which harassment is allowed to occur tend to have sharply falling productivity. Workers who are bullied and victimized, who feel afraid and resentful are most unlikely to be highly productive. Sexual harassment generates distractions and antagonisms which undermine the pursuit of legitimate business objectives of growth and profitability and can have a highly detrimental impact on the corporate image with the public at large. Sexual harassment is bad for business, as well as being ethically and socially unacceptable.

The reasons for eliminating sexual harassment in the workplace are thus both human and economic. The present volume is intended to help in this regard, showing how attitudinal changes in society at large, legislation and appropriate workplace training, information, and management can all contribute to overcoming the incidence of sexual harassment. It represents the distilled considerations and outcomes of an ILO Regional Seminar on Action against Sexual Harassment at Work in Asia and the Pacific, held in October 2001, in Malaysia.

While, as this volume reflects, there can be a great diversity of opinion and approach to the issues involved with sexual harassment, it is all the more striking that such unequivocal and committed agreement is

emerging worldwide on the basic points:

- no woman or man of any age should have to tolerate such conduct
- every employer and worker should take appropriate measures aimed at preventing and eliminating sexual harassment
- it is in both the social and economic interests of society as a whole to suppress such behaviour.

The cover page depicts a woman from the rural areas in Cambodia. She is young, full of hope and pride. She may continue work in agriculture, or go off to the city and find a job in manufacturing, in domestic service or in the entertainment sector. According to statistics and experience, by the time she is 25, that hope and pride will already have been tarnished by some kind of sexual harassment. Most women know exactly what constitutes a sexual harassment offense, no matter where they come from. Men also understand if they think in terms of respecting the dignity of their wives, daughters, grand daughters, and nieces. Let us all work together so that the pride and hope of the younger generations of women and men can remain intact. It is our sincere wish that the present publication will provide ILO constituents, the judiciary, researchers and activists with an improved set of tools to achieve this important objective.

Bangkok, December 2001

Ian Chambers
Director
Bangkok Area Office and East Asia
Multidisciplinary Advisory Team
(BAO/EASMAT)

ACKNOWLEDGEMENTS

This publication is the result of a major collaborative effort by constituents, researchers and activists from the region and within the ILO. Women and men authors and their research teams who carried out studies and prepared reports on sexual harassment from Australia, Bangladesh, mainland China and Hong Kong SAR, India, Japan, the Republic of Korea, Malaysia, Nepal, the Philippines, Sri Lanka and Thailand are sincerely thanked for their valuable technical inputs which made it possible to give a voice to workers in the Asia and Pacific region. Special thanks go to the Committee of Asian Women (CAW), an association of women's and workers' organizations, for their cooperation in carrying out the studies in Hong Kong SAR, the Republic of Korea, Malaysia and Thailand.

Valuable technical inputs were provided by colleagues from the Equality and Employment Branch of the International Labour Standards Department and the Conditions of Work Branch of the Social Protection Sector as well as the Bangkok Area Office and East Asia Multidisciplinary Advisory Team (BAO/EASMAT) of the ILO in Bangkok. Acknowledgements also go to the ILO Regional Directors for Asia and the Pacific, and Ms. Lin Lean Lim who initiated and supported this work. Sincere thanks are addressed to the many other colleagues at ILO headquarters and in the field structure, as well as representatives of the ILO constituents, governments, employers' and workers' organizations, the judiciary, civil society organizations, women's groups and, last but not least, the women and men workers who contributed their time, effort and input to this report, thereby furthering progress towards the common goal of preventing and eliminating sexual harassment and violence against women and men at work.

The timely, quality contributions of ILO colleagues in charge of programming, administrative, financial and secretarial services are also gratefully acknowledged. Without their support this publication and the Regional Tripartite Seminar that preceded it, would not have been possible. We would like to especially thank Suradee Bhadrasiri, Sugunya Voradilokkul, Jindavan Kiatkamolkul, Thanyarak Sirirattanasomboon, Thatree Techapakdivongse, Mathana

Mathanasutr, and Phinthip Rattanawila, as well as the team's captain.

The authors are responsible for the content of this volume. The valuable contributions of researchers and colleagues are acknowledged. Any omissions or mistakes, however, are the responsibility of the authors. This publication was produced under the auspices of the ILO Bangkok Area Office and the East Asia Multidisciplinary Advisory Team (BAO/EASMAT). Comments on this publication are welcome. These may be addressed to *Haspels@ilo.org* or *Sugunya@ilo.org*.

Nelien Haspels, Zaitun Mohamed Kasim,
Constance Thomas and Deirdre Mc Cann

SUMMARY

Introduction

Sexual harassment at work is a new term to describe the age-old problem of unwelcome conduct of a sexual nature at workplaces. It happens to workers in the public service, in large and small enterprises, in services and shops. It happens to workers on plantations and farms, to entrepreneurs and traders in markets places and to students and trainees at schools, in vocational training institutes and in universities. It happens to uneducated and educated workers at all levels of the job hierarchy.

Concern with sexual harassment is relatively recent in Asia and the Pacific but increasingly it is being recognized as a violation of human rights and an affront to the dignity of persons, which seriously undermines equality of opportunity and treatment between men and women, young and older workers. Over the past 10 years, many initiatives against sexual harassment have been initiated in the Asia and Pacific region: women's organizations have advocated change, governments have adopted new legislation or taken other measures, and workers and employers have taken steps against it.

This book explores the different perceptions as well as attitudes on sexual harassment and provides a definition of sexual harassment, as well as what constitutes the workplace and working relations. The publication outlines the effects of sexual harassment on victims, enterprises and organizations and society as a whole and looks at the legal measures, workplace policies and practical actions that have been taken at the international, national and enterprise levels. It also provides practical tips on sexual harassment policies, training for prevention and grievance handling. This book draws from 12 recent studies in the Asia and Pacific region and is an updated and expanded version of an ILO technical report prepared to stimulate exchange of experience at an ILO/Japan Regional Tripartite Seminar on Action against Sexual Harassment at Work in Asia and the Pacific, held in Penang, Malaysia in October 2001. Further examples, data and models for workplace action by ILO constituents and civil society organizations have been included to provide practical guidance and illustrate that effective action

can be undertaken even if budgets are tight and irrespective of the level of socio-economic development of countries, if commitment to stop sexual harassment exists.

In the long term, changes in societal attitudes towards women will eventually have the greatest impact on eradicating sexual harassment. Therefore, workplace action against sexual harassment at work is part of the larger campaign against violence against women, young and older persons, and other groups in society that may be discriminated against because of their sex, age, race, ethnicity, class or caste.

Understanding the problem: Key points

Sexual harassment has been a fact of life since humans first inhabited the earth. Prior to being identified and named, these various unwanted and unsolicited acts of a sexual nature went by different names and euphemisms. For example, in France reference is made to 'droit de cuissage' (right to the thigh), in India the term 'eve-teasing' has been used, in the Netherlands it is referred to as 'unsolicited or undesired intimacies', while in Malaysia, words like 'gatal' or 'miang' (literally means 'itchy') are often used to describe it.

These behaviours are often explained away as resulting from 'men's natural sex drive' or that women provoke sexual harassment through their appearance or dress. Perceived differences in cultural values are sometimes offered as justifications for why it happens. However, as the various country studies note, these 'justifications' and shifting of blame do not explain why some men harass and others do not, nor why women who are suitably covered in accordance with local norms are also harassed. Sexual harassment is often described as harmless 'flirting' and an 'expression of men's appreciation for women', which clearly ignores the fact that flirting is mutually consensual behaviour between two people, while sexual harassment is behaviour that is unwelcome and unwanted by one of the involved parties. These justifications mask the key issue, that sexual harassment is not about sexual pleasure but is an abuse of power that violates the dignity of women and men at work.

The book notes that it is now widely agreed that sexual harassment is a clear form of gender discrimination which relates not so much to the actual biological differences between men and women, but to the gender or social roles which are attributed to men and women in social and economic life, as well as perceptions and expectations about male and female sexuality in society. Women are expected to be compliant and sexually passive and men are socialized to believe that they are the ones to initiate sexual relationships and that it is reasonable, tolerated or even expected of them to be sexually aggressive.

While men may be subjected to sexual harassment, existing literature and the findings of the country studies affirm that the majority of victims are women. The country studies concur with existing literature that certain categories of workers tend to be at greater risk, notably migrant women and those working in domestic service or jobs in which workers of either sex greatly predominate. In many societies and situations, men are more likely to harass than women as men are often placed in more senior or better paid positions. However, the results of the study show that harassers can also be co-workers, subordinates and clients, as well as contract workers and other service providers. This reaffirms the assertion that sexual harassment is a manifestation of women's subordinate position in society.

Sexual harassment affects employees, employers and the society as a whole. For employees, the consequences of sexual harassment can be devastating, both while the harassment is occurring and when the employee decides to take action against the perpetrator. Many sexually harassed individuals put up with the damaging physical and psychological effects of sexual harassment because taking action can be daunting, especially in environments that do not provide moral and practical support. In many societies, victims are ashamed and embarrassed, and worry that they will be labelled as loose women and therefore prefer to keep quiet about it. For some women, taking action may mean losing one's 'rice-bowl' and plunging the whole family into poverty. Threats of further harm and violence, either to their person or to the family add to the pressure for silence while long drawn out legal battles further take an economic and mental toll on the aggrieved. Sexual harassment that involves sexual assault can also result in mental trauma due to the incident and the physical effects of sexual

assault include unwanted pregnancy and infection through sexually-transmitted diseases (STDs) including HIV/AIDS.

For the establishments involved, sexual harassment leads to increased absenteeism, high turnover of staff and workplace tensions which in turn impede work performance and productivity. Allowing a climate of tolerance of sexual harassment to prevail can result in the loss of valuable employees, and can give the enterprise a poor image. In a growing number of countries where court action may successfully result in payment of damages and fines, financial risks are on the increase. For the society at large, it is increasingly recognized that sexual harassment impedes the achievement of equality between men and women, it condones sexual violence and has detrimental effects on the development of the country as a whole and the well-being of people.

Highlights of action

In response to the growing awareness about the adverse impacts of sexual harassment, there have been increasing efforts around the world not only to break the silence on sexual harassment, but also to take pro-active steps in addressing it. The great majority of research findings, whether conducted by trade unions, employers' organizations, women's organizations, academe or governments in the region shows not only that work-related sexual harassment exists but that it is a problem.

In addition to understanding the nature and dynamics of sexual harassment, arriving at definitions of sexual harassment and the 'workplace' has been important in designing actions against work-related sexual harassment. While it is not always easy to define what is offensive to whom, the determination of whether particular conduct is wanted or not rarely poses a problem in a specific context. The reliance on whether the recipient considers an act welcome or unwelcome makes the definition universal and applicable across sectors and cultures. Generally speaking, definitions used in laws, codes, policies, court decisions and collective bargaining agreements throughout the world may differ in the details, but contain the following key elements:

- conduct of a sexual nature and other conduct based on sex affecting the dignity of women and men, which is unwelcome, unreasonable, and offensive to the recipient
- a person's rejection of, or submission to, such conduct is used explicitly or implicitly as a basis for a decision which affects that person's job (access to vocational training, access to employment, continued employment, promotion, salary or any other employment decisions)
- conduct that creates an intimidating, hostile or humiliating working environment for the recipient.

The book also notes the need for the definition of 'workplace' to embrace fully situations faced by increasing numbers of women working at home, on the land or on the streets. For many women workers, the workplace extends beyond the fields or factory, and includes work-related travel and gatherings, while for women in domestic service for example, the notion of the workplace is challenged even more. Phones and portable computers for example have extended the physical workplace beyond its traditional boundaries. Therefore, the 'access' that a perpetrator has to the harassment victim by virtue of a job situation or link deserves careful consideration in the formulation of legislation and workplace policies.

There have been various efforts internationally and nationally, through international instruments, legislation and policies, to afford workers protection and redress against sexual harassment. Internationally, the UN Convention on the Elimination of all Forms of Discrimination Against Women addresses the issue, and while sexual harassment is not the explicit subject of any specific binding international labour instrument, the right to be free from sexual harassment is considered to be covered by the general right to freedom from discrimination in employment and occupation.

At the national level, a majority of countries have adopted some form of legislation either through specific legal provisions on sexual harassment or by addressing it under another broader statute such as human rights or equal opportunity and treatment, for example in non-discrimination, labour law, contract law, tort or personal injury law, or criminal law, or by way of judicial interpretation or referring to constitutional provisions.

In an ever-growing number of industrialized and developing countries, specific legislation or provisions are being adopted to address the issue explicitly, not only providing direct remedies for complainants but also placing legal liabilities on employers to take action in the workplace. In addition to this, numerous trade unions and several employers' organizations as well as individual employers have adopted policy statements against sexual harassment, or developed workplace policies that address the issue in tandem with national legislation.

The report provides recommendations for key components of legislation, workplace policies and practical measures. When drafting legislation, it is recommended to address the following elements:

- Develop and adopt a nationally accepted explicit definition of sexual harassment that includes:
 - the unwelcome nature of the prohibited conduct i.e. physical, verbal and non-verbal or other action.
 - 'quid pro quo' (sexual blackmail) and hostile working environment
 - broad scope of protection to cover as many persons as possible
- Delineate clearly the liability of the employer and the alleged harasser
- Provide for affirmative obligations to act for the prevention of sexual harassment
- Ensure fair, clear and suitable procedures of due process for both accused and claimant covering filing and hearing of complaints, investigations evidence, burden of proof, protection of confidentiality and privacy
- Protect against victimization
- Provide for a wide range of damages, remedies and sanctions that both punish and deter harassing conduct
- Supplement legislation with guidelines
- Establish an administrative body or mechanism with resources and competence to handle complaints and promote application of the law.

Key components of workplace policies include:

- A strong statement on the organization's attitude to sexual harassment, indicating that sexual harassment is prohibited and

giving an outline of the organization's objectives for the elimination of sexual harassment

- A clearly worded definition of sexual harassment, including examples of what is and what is not sexual harassment
- Clear delineation of responsibilities of management and workers
- Detailed procedures for grievance handling, which maintain confidentiality, protect against retaliation and provide for clear consequences if the policy is breached through progressive disciplinary rules
- A communication campaign so that individuals can get information, help and advice.
- A systematic training strategy
- Adequate counselling and referral services.

Practical measures to prevent sexual harassment at work are:

- Improve the safety of the working environment such as well lit work areas and changes in the organization of the work allowing for more equal numbers of men and women among staff at all levels of the company or organization during all working hours at all workstations
- Make a panel rather than an individual responsible for interviewing and selecting candidates for job vacancies or promotions. The panel should preferably consist of both men and women of similar rank. This simple, practical measure will protect (new) staff from discrimination and protect managers and workers against false complaints of sexual harassment
- Develop a written sexual harassment policy, in consultation with staff and concerned trade unions and periodically review it
- Provide the policy to new employees and regularly distribute and promote the policy at all levels of the organization
- Translate the policy into relevant community languages
- Remove inappropriate materials such as nude posters from the workplace
- Conduct awareness raising sessions on sexual harassment issue to all workers
- Display anti-sexual harassment posters on notice boards and distribute relevant brochures

- Train all line managers in their role in preventing sexual harassment and monitor their behaviour in setting appropriate standards
- Ensure that selection criteria for management positions make reference to the ability to deal with sexual harassment issues, include accountability mechanisms in job descriptions and monitor behaviour at management performance reviews
- Committees, handling sexual harassment cases, should include an equal representation of men and women to ensure that both women's and men's perspectives can shed light on the best solution to a case. They should also include representatives of management and workers. Victims should be represented or accompanied by a representative of their choice.

The publication also provides guidelines on conducting training, grievance handling and counselling, as well as samples of awareness raising material, policies and model codes. It stresses the importance of on-going information and training programmes to ensure a high level of awareness among employers and workers, and underscores the importance of developing mechanisms and providing trained personnel that are responsive to the sensitive nature of sexual harassment.

1. INTRODUCTION

Many different views and perceptions exist on what constitutes sexual harassment but definitions of the problem worldwide are surprisingly similar. Sexual harassment consists of unwelcome and unwanted sexual conduct. It encompasses physical, verbal or non-verbal acts of a sexual nature which are offensive to the person being harassed. In the workplace, individuals who face sexual harassment can find themselves under pressure to grant sexual favours in return for keeping their job or advancing their career. This is usually referred to as 'quid pro quo' harassment. In other cases the result is a hostile working environment. The ILO considers sexual harassment as a violation of fundamental rights of workers, declaring that it constitutes a problem of safety and health, a problem of discrimination, an unacceptable working condition and a form of violence, primarily against women.

Sexual harassment is believed to be widespread in workplaces in the formal and informal sector, although hard data are difficult to come by. Both men and women can be subjected to sexual harassment, but women are much more likely to be affected by it, due to the unequal gender relations prevalent in many societies. Certain groups of women workers tend to be at greater risk of being subjected to sexual harassment, notably girls and young women, domestic workers, women with little job security, migrant women and women in male-dominated occupations or training institutions, and, more generally, in situations where large numbers of women are supervised by a small number of men.

Action against sexual abuse at work by women workers, women's and workers' organizations dates back to the fourties in countries in the region, such as Malaysia, and has gained momentum in Asia since the mid-eighties. Nevertheless, sexual harassment is a relatively new area of action for many countries in Asia and the Pacific, due to traditional attitudes and perceptions on the roles of women and men, perceived cultural constraints and persistent or emerging poverty among larger parts of the population, especially women. There have been many new initiatives since the Tripartite Regional Seminar on Combating Sexual Harassment at Work, organized by the ILO in collaboration with the

Department of Labour and Employment of the Republic of the Philippines in November 1993 which brought together participants from government, employers' and workers' organizations, and NGOs in India, the Republic of Korea, Malaysia, the Philippines, Singapore and Sri Lanka.

Increasingly, sexual harassment in the workplace is being recognized as an occupational hazard, a violation of human rights which seriously undermines equality of opportunity and treatment between women and men in Asia and the Pacific. Many more women's organizations have started to advocate for change, several governments have adopted new legislation, and an increasing number of workers and employers and their organizations have taken measures against it. Building upon this momentum in the region the ILO Regional Office for Asia and the Pacific organized a Regional Tripartite Seminar on Action against Sexual Harassment at Work in Asia and the Pacific in October 2001 in Malaysia, co-financed by the Government of Japan and in-kind assistance by the Government of Malaysia.

This book, *Action against Sexual Harassment at Work in Asia and the Pacific*, provides an international perspective on sexual harassment, with a focus on action in Asia and the Pacific. It aims to increase understanding on the phenomenon of sexual harassment at work in the formal and informal sectors and to give an overview of good practice and effective means for its prevention and elimination as taken by governments, employers', workers' and women's organizations. The publication draws from 12 recent studies in the Asia and Pacific region which were conducted for the ILO and is an updated and expanded version of a technical report prepared for discussion at the above-mentioned seminar.

The next chapter deals with understanding sexual harassment at the workplace. Different views on gender relations and the role of women at work and in society lead to a wide array of attitudes and perceptions on sexual harassment, which makes it sometimes difficult to come to grips with the phenomenon. A series of gender stereotypes are discussed followed by an overview of the main characteristics of definitions and types of sexual harassment. While forms of sexual harassment are context-specific, there is a universal consensus on what constitutes

sexual harassment. The chapter continues with a discussion on the concept of 'workplace' – which goes beyond the boundaries of an eight-hour workday in a factory or an office for many workers. The effects of sexual harassment are highlighted, followed by an overview, firstly, of why many women workers choose not to report incidents of sexual harassment and, secondly, how women workers, and women's and workers' organizations, have started to take action against the practice.

The third chapter is concerned with the incidence and scope of sexual harassment at work. Many more women are in the labour force today as compared with 20 years ago in Asia and the Pacific, because they need to earn a living for their family. A review is given of three major well-documented trends: the increase in the feminization of poverty and low quality employment which accompany globalization processes, and occupational segregation by sex, all of which contribute to a large extent to the risks many women workers face in being subjected to sexual harassment. The chapter continues with an overview of statistics that have become available in recent years on the magnitude of the problem. It then reviews a series of high-risk sectors, occupations and, more generally, conditions of work, which have been shown to increase the chances of sexual harassment occurring, such as going to school, training institutions or universities, and working in domestic service, as a migrant, or in institutions which are dominated by a majority of either men or women, as well as in jobs with low security.

The fourth chapter of the report reviews contemporary legislation, explaining trends in national laws and international labour and human rights instruments. A process of evolution is underway from purely penal provisions, which address only the most harsh forms of sexual harassment such as sexual assault and rape, and from purely protective laws aimed at defending the modesty of women, to legislation which focuses on providing equal opportunities, chances and treatment to men and women in employment. Increasingly, laws set out guidelines not only to prohibit but also to prevent this type of workplace abuse. Sexual harassment now features prominently on the legislative agenda of many countries in the region, either through the enactment of specific acts on sexual harassment or through inclusion of specific references against the practice in legislation on, for example, non-discrimination and equal rights, or labour. An overview of the pro's and con's of these

legislative developments is given, in terms of definitions, scope, duties, liabilities, procedures, remedies, sanctions and implementing mechanisms. The chapter concludes with an outline of best practice for the development of legislation.

Chapter 5 explains workplace policies and practical measures. These are crucial for the effective prevention of sexual harassment, which is the most cost-effective option for both individuals, enterprises and society as a whole. An overview is given of the extent and range of workplace policies, guidelines and codes adopted by countries, organizations and enterprises including action by employers' and workers' organizations. An outline of key components and good practice to facilitate the effective implementation of policies follows. Redress mechanisms for effective grievance handling are discussed, including formal and informal complaint procedures, sanctions and monitoring and evaluation. The chapter concludes with an outline of effective ways, means and practical tips for awareness raising, training and counselling, all of which are essential for adequate and cost-efficient preventive and remedial action.

Chapter 6 provides the main findings, capturing the rich and vast experiences from the region, the diversity in attitudes and the common, universal understanding of sexual harassment as a workplace practice that needs to be abolished as it is an affront to the dignity of workers. It proceeds with a summary overview of trends and good practice in legislation, work place policies and practical measures. This chapter contains a comprehensive summary of the book. It can be used as a stand-alone, suitable for translation and adaptation in other languages.

Annexes are provided for practical use, starting with a list of references to international and regional instruments on sexual harassment. Samples of a questionnaire for use in workplaces, a model company policy, a code of practice and an information booklet on sexual harassment are provided. Finally, the bibliography starts with a list of the country studies prepared for this report, followed by full references.

2. UNDERSTANDING SEXUAL HARASSMENT AT WORK IN ASIA AND THE PACIFIC

I am a secretary at a small firm. In the office there are only me and the president. Under the pretext of helping me learn my job, he keeps on harassing me by touching my breasts and rubbing his sexual organs against me. I cannot stand it any more. Because there are just the two of us in the office, I can't avoid him. Is there no way out of this except for resignation? (Counselling case of Equaline, Incheon Women Workers Association, Korea 1998 in Zaitun, 2001).

. . . the production manager, who usually inspected the workers' performances everyday, took many good looking young women workers into the office. He proposed them administrative jobs in the office in exchange for his sexual desire . . . many good looking workers had to resign from their work due to his harassment and moved to other factories. But he still searched for them and when he knew where they stayed he would go to their rooms. (Interview with woman leader of the Par Garment Factory Labour Union on sexual harassment at the Par Garment Factory, Thailand 1985, in Zaitun, 2001).

The Kangani (supervisor) has been continuously doing all kinds of things before this incident happened. He would make me work in a lonely block away from the rest of the workers, would carry my basket at the end of the day, or put an extra amount in my daily plucking load. The Kangani would keep telling me, 'Ever since I saw your breasts while you were picking the fallen tea leaves, I wanted to have you. Sinna Dorai said that you have a nice body. But I will be the one who will first get you' (Mahaleswary, 19 year old tea-plucker, Sri Lanka, in Wijayatilake and Zackariya 2000).

Several years after the plaintiff (woman employee) was hired and began working as an editor in a small publishing company, the company's male chief editor sought to concentrate on sales activities and his role as an editor declined. In the presence of other employees or business customers, the chief editor made comments about the plaintiff's private life, including her alleged promiscuity, unfitness as a role model for working women and so forth. He also informed the company's managing director that the plaintiff's relationship with men disrupted the company's business. As their relationship began to affect the operation of the enterprise, the managing director decided that one

of the two should leave the company. After consulting with the plaintiff about the possibility of reconciliation with the chief editor, and the plaintiff's refusal and demand for an apology, the managing director told her that she should resign, which she did (case of sexual harassment in Fukuoka, Japan, 1992, in Yamakawa, 2001).

2.1 Introduction

Asian women have been going to work outside the home in ever greater numbers over the past 20 years, to earn income for meeting family needs. Many women, however, have to cope with extra strains at work, where they are vulnerable to unwanted kinds of attention – because they are women. Today, seminars and conferences worldwide are addressing the issue of sexual harassment. This, in and of itself, is progress to be marked, because twenty-five years ago sexual harassment was a phenomenon that had no legally cognizable name. As Catherine Mac Kinnon said: “It is not surprising . . . that women would not complain of an experience for which there has been no name. Until 1976, lacking a term to express it, sexual harassment was literally unspeakable, which made generalized, shared and social definitions of it inaccessible”. But as she went on to explain, “the unnamed should not be taken for the nonexistent” (Mac Kinnon, 1979).

The behaviour of sexual harassment has been a fact of life since humans first inhabited the earth, and it has been called many different names. For example, in India the term ‘eve-teasing’ has been used. In France the term ‘droit de cuissage’ (right to the thigh) was employed for generations to describe this conduct. In Japan, the term ‘seku-hara’ has been adopted. In the Netherlands, sexual harassment is referred to as ‘unsolicited or undesired intimacies’, while in Malay, words like ‘gatal’ or ‘miang’ (literally meaning ‘itchy’) are often used to describe it. Over the years reports on women’s working conditions worldwide have referred regularly to ‘lie down or lay off’ practices in certain workplaces.



The term 'sexual harassment' was first used in the 1970s. Since then the issue of sexual harassment has gradually emerged to be a recognized phenomenon throughout the world in all cultural and occupational contexts. The ILO's experience indicates that even when the phenomenon of sexual harassment in a particular society is denied by some, its existence is simultaneously asserted by those who suffer from it. This indicates that lack of awareness of the existence of sexual harassment by some members of society does not necessarily mean that it is not present.

Gender relations and sexual harassment

Sexual harassment is a clear form of gender discrimination based on sex, from both a legal and conceptual perspective. The problem of sexual harassment relates not so much to the actual biological differences between men and women, but to the gender or social roles which are attributed to men and women in social and economic life, and perceptions about male and female sexuality in society. Gender refers to the social differences and relations between men and women which are learned, change over time, and vary widely both within and between cultures. Gender roles vary in societies, by age, class, race, ethnicity, culture, religion or ideology, and by the geographical, economical and political environment. Changes in the roles of men and women often occur in response to changing economic, natural or political

circumstances. These gender roles often tend to change faster than social norms, values and stereotypes on how men and women 'should' behave. For example, the norm might be that women should work only at home, while in practice, many women actually work in other places.

For meaningful discussions on sexual harassment, it is important to keep in mind that gender relations are a social construct. Women, through the centuries have been perceived to be, and therefore are socially conditioned from an early age to be, subordinate to men. One woman worker from Sri Lanka summed this up by stating, "they have the ladle and we have the bowl", to illustrate the unequal power relations (Wijayatilake and Zackariya, 2000).

Women are also expected to be compliant and sexually passive while men are socialized to believe that they are the ones to initiate sexual relationships. In most societies and situations, men are more likely to start sexual harassment than women, as societies tolerate or even encourage sexually aggressive behaviour by men. A researcher in Malaysia notes that cultural values condition and dictate that men should not despair if their initial advances are rejected, therefore giving rise to repeated unwanted sexual advances (Dr Abd Hadi bin Zakaria, 1999, in Zaitun, 2001).

These norms and values related to men's and women's sexuality are extrapolated to the wider social and economic spheres in many cultures and interpretations of religion. Thus, in many societies it is felt that women are more suited for the supportive rather than the primary role while men are considered to be the main heads of household and economic income earners, despite evidence to the contrary in everyday practice in many instances.

Inequalities in the position of men and women exist in nearly all societies and sexual harassment at work is a manifestation of unequal power relations. Men are often placed in more senior and better paid positions than women and as such, women are much more likely to be victims of sexual harassment precisely because they lack power, are in more vulnerable and insecure positions, lack self confidence, or have been socialized to suffer in silence. Very few women protest due to customary social and family pressure that point to women automatically

as the guilty party. Women can also become recipients of such conduct when they are seen to be competing for power. The study from the Philippines confirms analyses on sexual harassment from around the world that sexual harassment is not about gaining sexual pleasure out of the act, but about asserting power.

The garments factory supervisor who undoes assemblyline workers' brassieres during inspection; the canning factory supervisor who kisses workers falling asleep on the night shift; the manager who lifts a female union leader's skirt to embarrass her in front of fellow-workers; the management goons who molest female strikers as they break up a picketline – these derive a satisfaction that has less to do with sex than with a sense of power over others (quoted in Ursua, 2000).

The Sri Lankan study also observes that sexual harassment is not about deriving sexual pleasure. Abusive and demeaning language aimed at women takes on different dimensions compared to men, often amounting to veiled sexual threats.

They don't call us by our name, but 'hey' and 'aey'. When we say that we have a name and to use that he would say, 'don't get me excited and then you know what (will happen)!

They keep calling us to do this and that and when we say wait or refuse, he starts to scold us in bad language . . . when they scold us, they always say “..only three to four women have been untouched by me. (plantation women workers, in Wijayatilake and Zackariya, 2000).

2.2 Attitudes and perceptions towards sexual harassment

Attitudes and perceptions of sexual harassment vary greatly between cultures and societies, but more importantly, *within* cultures and societies. In addition, there are many commonly held beliefs, or gender stereotypes about the roles of men and women, and male and female sexuality, as well as culture-based views that are sometimes used to either justify or deny the existence of sexual harassment.

Differences in definitions between groups of people

There is often a difference in how sexual harassment is perceived by the different levels in the work hierarchy, between men and women, and as some of the studies highlight, perceptions can also vary with age.

Between higher and lower-ranking levels

A senior estate manager interviewed in the course of the Sri Lanka study viewed sexual harassment as limited to forced sexual intercourse, rape and assault. In the same study, however, a creche attendant indicated that an estate superintendent in her estate requested sexual favours of her and penalized her by not providing her creche with necessary amenities when she rebuked him. In her view, this action of the superintendent amounted to sexual harassment (Wijayatilake and Zackariya, 2000).

Between men and women

In Nepal, out of the 26 women lawyers interviewed by an NGO, the Forum for Protection of Public Interest, half of them felt that judges addressed them differently compared to their male colleagues. Three out of every four stated that they had faced physical or verbal harassment as women advocates while two thirds of the respondents said that they have been, whether in courts firms or in chambers, subjected to remarks or jokes that are demeaning to them personally as well as to women in general (Pradhan-Malla, 2001).

Women respondents in the study from India perceived sexual harassment as a violation that required action. All of them made the difference between unwelcome sexual behaviour and socially acceptable familiarity. They also voiced concern that efforts to address sexual harassment should not result in them being denied challenging and interesting jobs (The Lawyers Collective, 2001). The main concern of the men respondents in the India country study was that a majority of women would make 'false' or 'motivated' complaints. The Indian study attributed this perception to the prejudice and bias against women. The researchers in fact point out that the problem of false reporting is not peculiar to sexual harassment and that this risk is no greater than in the reporting on any other crime. Men respondents also pointed out that their behaviour may be misconstrued and that men are often not aware that some conduct, such as opening a belt after a meal, might be considered offensive to women. They also articulated commonly held

perceptions of sexuality, i.e. that 'women have a need to display their assets' and that it is the 'natural urge of men to flirt' (The Lawyers Collective, 2001).

This difference of perception was also evident in the Nepal country study. While some of the male respondents to the Nepal study held the view that sexual harassment should not be taken seriously, as it was felt to be 'expression of men's appreciation for women'. None of the women in the sample group shared this sentiment (Pradhan-Malla, 2001). In Malaysia, a study jointly conducted by the All Women Action Society (AWAM) and the Women's Development Collective (WDC) also found that men and women perceived sexual harassment differently. Women tended to rate a wider variety of sexual behaviours at work as sexual harassment while men tended to identify only the more extreme actions as sexual harassment. One male informant felt that, 'touching from the shoulders up is alright' (Ng and Zanariah, 2001).

Between younger and older women

In India, women's perceptions of sexual harassment varied with age. Older respondents found physical touch unacceptable, while the younger women were less formal in their social interactions with male colleagues. Concerns voiced by women in China included younger women being coerced or 'encouraged' to 'subtly exploit their looks', for example, to clinch a deal or enable hotel guests to have a good time (The Lawyers Collective, 2001 and Tang, 2000). The country study from Sri Lanka indicated that while older women tend to put up with sexual harassment, younger generations of women started to show resistance to sexual harassment practices because of increased awareness and the need to assert a sense of self-dignity (Wijayatilake and Zackariya, 2000).

Commonly held beliefs about male and female sexuality

As discussed above, the gender or social roles which are attributed to men and women in social and economic life, interact with perceptions about male and female sexuality to form commonly held beliefs, or myths, about sexual harassment. The problem with these beliefs is that they tend to mask the root cause of sexual harassment and make it difficult to address the issue. These include the following:

Women 'provoke' and 'ask for it'.

'Men's natural sex drives' and women's dress and appearance are often cited as the 'reason' why women are sexually harassed. However, this does not explain why women who work in factories in regulation work-clothes get harassed, nor why women who are considered 'suitably covered' by community norms and standards, are also targeted. Moreover, it does not clarify why some men harass and others do not. Shifting the burden and responsibility for the problem confuses the issue in the mind of the public and reveals a deep-rooted problem that exists in understanding what sexual harassment is really all about.

Many women are aware that they will be automatically blamed for having 'provoked' sexual harassment and the stigma that is placed on women who report harassment is therefore a major deterrent for many victims. Lack of support from family, colleagues or peers also inhibits a victim from seeking redress. The Sri Lankan paper cites an example of a young tea-plucker who was 'accosted' by the supervisor. When she refused to go back to work the next day, her parents berated her saying that it must be her fault for having brought it upon herself (Wijayatilake and Zackariya 2000). Sometimes, those who have been harassed begin to doubt themselves and either downplay the incident in their minds or run through the possibilities of what they may have done to 'cause' the perpetrator to harass.

Even if the woman has done nothing wrong, if she speaks about this thing (sexual harassment), society thinks it's the woman's fault. It is not easy for the victim to talk about it. (An interview case from Equaline, Korea, in Zaitun 2001)

Even when the perpetrator is penalized, the public perception that the woman was either the cause of the incident, or that her 'morals' are questionable continue to plague the victim. As reported in the China study, a woman worker in Tianjin who reported a case of sexual harassment eventually left her position even though the perpetrator had been dealt with. The public pressure she faced was cited as the major reason (Tang, 2000).

The view that women 'ask for it' is so deeply entrenched in some cultural contexts and communities that victims of sexual harassment are

blamed and 'tainted' for the rest of their lives, especially if the harassment involves assault and rape. A woman's 'chastity' will be questioned once she is involved in something related to sex, even if she was the victim (Tang, 2001). Her character is brought into question, and with it, the sanctity of her chastity and her eligibility for marriage or to stay in a marriage. Clearly, as several of the country studies show, some are driven to the edge, enough to want to take their own lives. One example of this can be found in the Sri Lanka study, where in one instance, gossip at work and at home isolated the victim, because the family and the community felt that it was the woman's fault. The victim attempted to commit suicide by burning herself (in Wijayatilake and Zackariya, 2000).

In Bangladesh, there is a preconceived notion that sexual harassment against garment workers is justified as such workers are 'bad women' since they have violated norms of 'purdah' (literally the 'curtain', also meaning 'the harem' or 'the veil') and ventured out of their homes. Sexual harassment is considered to be the price which women must pay for having stepped out of the closed spaces segregated for them. The fact that young, mostly unmarried women migrate, and live and work on their own, away from their families makes people instinctively suspicious as regards their lifestyles. Such stigmatization or 'social harassment', as some of the respondents in the Bangladesh study asserted, further exacerbates the situation (Shahnaz, 2001).

Stigmatization and blame-shifting on the grounds of 'provocation' locates responsibility away from the harasser. One example of burden-shifting and blurring of lines can be seen in a cartoon which appeared in a local Malaysian daily. The cartoon features a woman saying "I don't feel comfortable with the way you look at me! This is sexual harassment. I'll lodge a complaint!" The man in the strip justifies his conduct by saying, "Me too! I don't feel comfortable with the way you harass me with the way you dress up! I'll lodge a complaint!" (in Zaitun, 2001). However, as with perpetrators of any inappropriate behaviour, harassers are responsible for the impact of their actions. Even if women were thought to be 'provoking' with their clothing or appearance and if this were deemed to be a problem, there are other ways in which this can be managed. Sexual harassment which is essentially abuse of power, would still be an inappropriate 'response' to the situation.



Harassment is 'flirting' and 'just a bit of workplace fun'.

The 'workplace' is not just a place of work. There are both professional and social dynamics that occur in the workplace. Human beings are social beings and workplaces present a meeting place where men and women interact, joke, form friendships or sometimes negative relations. Some interactions are acceptable, some not and it is the unacceptable forms of interaction that need to be addressed. However, there is a tendency to confuse sexual harassment with 'flirting', 'wooing' and 'teasing'. Sexual harassment becomes especially difficult to deal with in cultures and societies where it is considered normal for men to harass women sexually as part and parcel of everyday work life. For example, common thinking in the Republic of Korea is that sexual harassment is a 'source of energy for working life' (in Zaitun, 2001) and in Nepal, approximately one in ten of the male respondents, comprising policymakers and members of civil society, felt that sexual harassment 'is a simple harmless flirt that brightens the atmosphere in the workplace' (Pradhan-Malla, 2001).

This perception is also reflected in the Sri Lanka study. A trade union official who was interviewed acknowledged that 'even a friendly pat could amount to sexual harassment', but felt that sexual jokes should be taken as part of the system and would not actually amount to sexual harassment. However, contrary to the common view that women 'enjoy' and 'like' sexual jokes and lewd remarks, the plantation workers

interviewed in the same study – considered these harassment and resented them (Wijayatilake and Zackariya, 2000).

Attempts to address gender stereotyping and sexual harassment in the workplace are not necessarily welcome to everyone and may be seen as stifling the workplace environment. It is also sometimes seen as something that should not be taken too seriously. The Malaysian country study quoted a newspaper article which read, "Cheeky men need to be wary" (Eksklusif, Monday 6-12 September 1999) while another article, referring to the launch of the Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace, stated that,

. . . while some girls may welcome it, some of them may well regret it as their male counterparts will be scared to make the first move. With the existence of the Code, the guys may have to act in a proper manner and in fact interaction between the sexes may be a bit cool and officious. . . it looks like the days of the office Romeo are numbered (The Star, 27 August 1999, Malaysia, in Zaitun, 2001).

These perceptions of sexual harassment fail to note that the key difference between sexual harassment and 'flirting' or 'wooing' is that sexual harassment is *unwelcome and unreciprocated* behaviour. As stated in the Nepal Country study: "Sexual harassment is not consensual sexual behaviour between two people who are attracted to each other. It has nothing to do with mutual attraction or friendship" (Pradhan-Malla, 2001).

Social perceptions that sexual harassment is a small problem.

Sexual harassment is often viewed as a small matter by the social environment. The China study highlighted a case where authorities concerned refused to take down the complaint from a women worker, who had been harassed by her boss, and instead told her: "We have more important things to do. You take care of yourself!" (Tang, 2001). This sentiment is echoed in the Sri Lankan and Philippine studies. One Sri Lankan union official indicated: "they have more 'pressing matters' regarding labour relations that require their attention" (in Wijayatilake and Zackariya, 2000). A contact person from a labour centre in the Philippines stated that the education of union members on sexual harassment is not a priority. He felt that gender modules were not

necessary in the workers' education programme because the membership of the federations was almost 100 per cent male. Gender sensitivity programmes would also be met with resistance by union members and donors because gender education is not a perceived need (Ursua, 2001).

Many women say and do nothing about the harassment because they are only too aware of how sexual harassment is popularly perceived and trivialized. They also feel that they may be laughed at or accused as having exaggerated the incident. They either sincerely believe, like the respondent below, or are pressured into believing, that if they ignore the 'typical male' behaviour, it will go away.

I hesitated for a long time. I thought, maybe I should just wait and see. After all, I have known him for quite some time. He is not all bad. Maybe I should endure it . . . (Counselling case, Equaline, Korea, in Zaitun, 2001).

The harassment in this case, however, only got worse and it was then that she decided to contact the women's hotline for help.

Use of culture to justify or deny sexual harassment

Women's groups in Asian countries that conduct training and advocacy have found that there are several 'culture-based' views about sexual harassment that are popularly held. These 'reasonings' seem to either justify sexual harassment or dismiss it altogether. These views include:

- Sexual harassment is something that happens only in Western communities where men and women mix freely
- Western television programmes are bad influence on the local population because it not only portrays that it is fine for women and men to interact in overt ways, but images from Western television programmes can potentially titillate men into going out and harassing local women
- Modern young Western women are game for a bit of fun, unlike traditional Asian women who are more reserved about joking and teasing

- Some cultures, classes, castes and religions are more backward and therefore the men are 'less educated' and more oppressive while women are highly unlikely to take action.
- Teasing and cajoling women are really just part of the local culture and there was nothing wrong with this until Western feminist ideology came along and 'problematized' cultural norms, turning them into a human rights issue
- 'Foreigners' (regardless of whether they are Easterners or Westerners) do not understand local contexts and local norms, and take advantage of local women because the culture of 'our' local women is that they are too polite to stand up to harassers
- Some of the above arguments interact also with social control – that women 'ask and deserve to be sexually harassed because they have transgressed local norms'.

The above views held by men and women once again mask the underlying reasons for sexual harassment. 'Cultural apologists' dismiss it as a case of misunderstanding due to a clash of cultural values, while the cultural defensive stance tries to justify that sexual harassment is acceptable and even permissible in some contexts. None of these justifications, however, stands up to scrutiny. Even where there might be an issue of misunderstood 'social signals', for example a friendly overture being misconstrued as a sexual one, the 'cultural' argument rings hollow as an explanation, especially if the offender repeats the behaviour after being told off (Zaitun, 2001).

2.3 What is sexual harassment at work?

Definition of sexual harassment

While perceptions on what constitutes sexual harassment vary among and within societies, depending on whether individuals are born and socialized as men or women in a specific socio-economic class in a society and on their position in the work hierarchy, universal consensus exists on the key characteristics of definitions on sexual harassment.

Generally speaking, definitions used in laws, codes, policies, court decisions and collective agreements throughout the world may differ in

details, but contain the following key elements:

- conduct of a sexual nature and other conduct based on sex affecting the dignity of women and men, which is unwelcome, unreasonable, and offensive to the recipient
- a person's rejection of, or submission to, such conduct is used explicitly or implicitly as a basis for a decision which affects that person's job
- conduct that creates an intimidating, hostile or humiliating working environment for the recipient.

The definition most commonly cited comes from the European Commission's Council Resolution on the protection of the dignity of men and women at work, 1990: 'Sexual harassment means unwanted conduct of a sexual nature, or other conduct based on sex, affecting the dignity of women and men at work. This can include unwelcome physical, verbal or non-verbal conduct' (CEC, 1993).

The Malaysian Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace developed by the Ministry of Human Resources defines sexual harassment in the workplace as any unwanted conduct of a sexual nature having the effect of verbal, non-verbal, visual, psychological or physical harassment:

- that might, on reasonable grounds, be perceived by the recipient as placing a condition of a sexual nature on her/his employment; or
- that might, on reasonable grounds, be perceived by the recipient as an offence or humiliation, or a threat to his/her well-being, but has no direct link to her/his employment (Ministry of Human Resources, Malaysia, 1999).

The essential characteristic of sexual harassment is that it is unwanted and unwelcome by the recipient. An ILO survey of company policies on sexual harassment (Reinhart, 1999) revealed this to be the centerpiece of the policies. This is what distinguishes it from friendly behaviour which is welcome and mutual. The intent of the harasser is not determinative. It is the recipient who determines whether the conduct, of a sexual nature, is welcome or not. Most courts infer in this determination an element of reasonableness. In recent times, some

courts have opted for the '*reasonable woman's*' viewpoint as to whether the behaviour was welcome or not.

Most definitions rely on criteria on whether the recipient considers the behaviour as 'welcome' or 'offensive', because it is difficult to compile an exhaustive list of harassing conduct that should be prohibited. Some acts are readily identifiable as 'sexual' harassment, for example, kissing, fondling of breasts, and physical contact with the genital areas, but many kinds of verbal, non-verbal, physical conduct or display of objects or pictures can also be considered as sexual harassment. This can vary according to cultural and social practices and according to the context in which it occurs. In some cultures, physical touching upon greeting will be normal behaviour, whereas in other cultures it might be interpreted as insulting or a sexual advance. In some workplaces, sexually suggestive posters might be seen as offensive, whereas they would be tolerated in other places. Behaviour acceptable between friends at work may be offensive if displayed by newcomers or outsiders.



Thus, there is a whole range of acts which are not necessarily always of a 'sexual' nature, for example, placing an arm around another's shoulders, stroking a person's hair, touching their clothes or earrings, comments about a person's looks or body. Such acts may still constitute sexual harassment if the acts are unwelcome and unwanted. What is considered 'sexual', therefore is not contingent upon what part of the body is involved but more importantly, the context within which an

act is perpetrated and the character of the conduct.

Sexual harassment conduct is when the sex or sexuality of the person and everything culturally related to it – from her/his body, to her/his manner of dress, to her/his intimate relations – is made the object or target of the conduct, as something desired to be obtained, or appropriated, or trivialized with, whether through physical, verbal or other forms of conduct (Ursua, 2001).

While it is not always easy to define in a general or abstract sense what is offensive and to whom, the determination of whether particular conduct is wanted or not rarely poses a problem in a specific context. Thus, the reliance on whether the recipients considers an act welcome or unwelcome makes the definition universal and applicable across sectors and cultures.

Types of sexual harassment

The two principal types of sexual harassment in the workplace included in the definition of the European Communities are '**quid pro quo**' **harassment** and **the creation of a hostile working environment**, both of which need to be included in any definition to provide adequate coverage.

Quid pro quo (meaning 'this for that') harassment refers to a demand by a person in authority, such as a supervisor, for sexual favours in order to obtain or maintain certain job benefits, be it a wage increase, a promotion, training opportunity, a transfer, or the job itself. It forces an employee to choose between giving in to sexual demands or losing job benefits. Because quid pro quo harassment can only be committed by someone with the power to give or take away an employment benefit, this form of sexual harassment constitutes an abuse of authority by the employer or by the employer's agent to whom authority over terms and conditions is delegated. This type of sexual harassment is also referred to as 'sexual blackmail'. Sexual blackmail is widely regarded as particularly reprehensible, since it represents a breach of trust and an abuse of power. Legally, the establishment of economic loss does not have to be shown – it must however bear some effect on the job or be intended to do so. It may also be the abuse of a position that makes the

conduct actionable as this form is usually restricted to the conduct of a superior over a worker.

Sexual assault and rape, and sexual blackmail at work are the most severe forms of sexual harassment. However, other types of sexual harassment can also poison the work atmosphere and limit the adequate performance of workers. Therefore, the creation of a hostile working environment is usually included in definitions of sexual harassment in laws and policies against the practice around the world. A hostile working environment refers to unwelcome sexual advances, requests for sexual favours or other verbal, non-verbal or physical conduct of a sexual nature which interferes with an individual's work performance or creates an intimidating, hostile, abusive, offensive or poisoned work environment.

Definitions of sexual harassment are usually accompanied by a list of forms or examples of sexual harassment. These broadly cover the following forms:

- sexual assault and rape at work
- physical harassment: including kissing, patting, pinching or touching in a sexual manner
- verbal harassment: such as unwelcome comments about a person's appearance, private life or body, insult and put-downs based on a person's sex
- gestural harassment: sexually suggestive gestures such as winks, nods, gestures with hands, legs or fingers, licking of lips
- written or graphic harassment: display of pornographic material, harassment via letters, email and other modes of communication
- emotional harassment: behavior which isolates, is discriminatory towards or excludes a person on the ground of his or her sex (adapted from Reinhart, 1999).

What is 'at work'?

Sexual harassment is not restricted to workplaces in the sense of one physical space in which paid work takes place for eight hours per day. However, most efforts at combating sexual harassment have focussed

on harassment in factories and institutions, such as schools and universities, because it directly affects a worker's 'rice bowl', or education, training or employment prospects.

In recent years, the workspace has extended beyond the traditional concept of a place outside the workers' home. Thus, traditional and current legal definitions of the workplace often do not adequately cover the situation faced by the increasing numbers of women working at home, on the land or on the streets. For example, in Sri Lanka, the concept 'workplace' was difficult to understand for plantation workers. Their life shuttled between the field, the creche, the school, the clinic and the home, which are all found on the plantation. Their work environment does not begin and end on the fields or factory alone. To them, the entire estate, including their dwelling place, as well as the footpaths on their way to plucking tea or tapping rubber, taking or fetching children to and from the crèche, or delivering coffee or tobacco to the drying room, also constitute their working environment. This made them vulnerable to sexual harassment during all waking hours, as indicated by the findings of the field survey (Wijayatilake and Zackariya, 2000). Similar situations are found in factories, often in export processing zones where the enterprise arranges for accommodation. Dormitories or women workers' hostels where only managers have access put women in an employer-employee relationship 24 hours a day.

Many workers also face sexual harassment problems on their way to and from work, especially where there is lack of access to safe transportation facilities. A female leader in the trade union and women's movement in Bangladesh said that, "even people unconnected with the workplace behave differently when they know we are garment workers. Even the bus drivers and helpers on the bus treat us condescendingly and harass us sexually" (Shahnaz, 2001).

The problem is particularly acute for workers who work late during the evening or at night – on overtime, second or third shifts. Women coming home from work late at night are particularly fearful since, in addition to the 'normal' quota of harassment, they can also be picked up by the police on suspicion of prostitution. Men frequently make abusive catcalls; lewd and obscene comments to the women workers,

sometimes following them to make threatening sexual advances. According to a woman leader of a trade union, when the men in the factory cannot harass the women in the factory, they harass them outside the factory.

We are forced to wear a veil and even then we are teased and the boys outside torment us by asking us why are you wearing a veil (interview with woman worker in Shahnaz, 2001).

In the case of domestic workers, the workplace is not confined to the employer's home. Every trip made with or for the employer family to the market or to the school is a trip made on the job. In the Hong Kong SAR, the employment contract of foreign domestic workers states that the core workplace is the residence of the employer. In practice, however, a domestic worker's duties often entail work outside the house of the employer. In an interview done by the Asian Migrant Centre (AMC), an officer of the information centre of the Immigration Department explained that there was no clear policy on what type of duties can be approved as domestic duties. Assessment was done on a case by case basis. Therefore, according to the officer, it was difficult to ascertain exactly what defines the workplace. (Zaitun, 2001). It can be convincingly argued that any outing related to the domestic duties of these workers takes place on the job. Thus, whether a domestic worker is sexually harassed by her employer at home or during a shopping trip, the gravity of the offence remains the same.

Office parties, work-related social functions, phone calls or other contacts outside office hours are work-related interactions that are often not considered as the 'workplace'. For example, in Korea, a survey by Womenlink, a women's NGO, found that out of the 401 women (of a total of 458 respondents) who reported to have experienced sexual harassment, 38 per cent reported having been harassed at dinner parties after work and on the way home from such parties:

Looking at a naked woman's body on the screen of a singing and drinking bar where there was a gathering after work, the president and male employees made fun of the female employee, saying, "Hey, Oo! Why are you in there? Are you feeling bored? Is your salary not enough for you? Why are you working there?" Even though it was a joke, it caused enormous stress to the woman worker. She felt as if all

the men at the office were looking at her differently and when her superiors told her to do a job, it seemed that they considered her to be cheap. She wants to quit her job. (A counselling case of Equaline, Korea, 2000 in Zaitun, 2001).

Economic and technological developments have made the 'workplace' more fluid today than ever before. Telephones and computers for example have extended the physical workplace beyond its traditional boundaries. Being rung up at home by a work colleague on a Sunday afternoon or receiving harassing e-mails sent across the department on a Monday morning once again challenges the notion of the 'workplace'. Similarly, sexual harassment during hiring and recruiting is known to be very common if the supply of young women is abundant and there are only a few job opportunities, such as in garment or other factories. However, in many jurisdictions, this does not come under the ambit of the legal definition of the workplace as the employer-employee relationship has not been officially established (in Zaitun, 2001).

The country studies clearly indicate it is perhaps not the physical workplace that requires consideration but the 'access' that a perpetrator has to the persons being harassed by virtue of a job situation or relation. In the present report sexual harassment 'at work' reflects these broader concerns.

Working relations with whom?

Sexual harassment within enterprises and institutions is increasingly being recognized and addressed when it concerns relations between supervisors and staff or between colleagues. However relations at work cover a broader spectrum, including clients, such as hotel or restaurant guests, customers, patients and contract workers, such as maintenance and repair staff, suppliers, cleaning agencies and other service providers.

The China study, for example, reports a high rate of sexual harassment in the service sector. In a discussion with seven women in the service sector, three reported sexual harassment by customers and one by her employer. In a seminar, women employees from service businesses in Tianjin also complained about sexual harassment from guests. The

study adds that an employer would usually turn his/her back to sexual harassment from the guests to his/her employees unless 'things go too far'. Some employers may even ask the waitresses to 'seduce' the guests without 'causing a big trouble' (Tang, 2001).

The airline industry also brings clients into contact with service providers, in particular ground staff and flight attendants. One flight attendant interviewed during the course of the Nepal study said that air stewardesses often get harassed in the course of their work, with clients unnecessarily calling for them and asking personal questions such as, "Are you married?" or "If you are not busy, why don't we spend some time together?". Some air travelers apparently also ask for specific employees and make 'requests' like, "Send the pretty one". Apart from the harassment itself, the employee also often ends up being ridiculed by her colleagues (Pradhan-Malla, 2001).

The medical institution is another example where the range of people involved in day-to-day interactions is very wide. The India country study highlighted a few cases, for example, the director of a hospital who, on the pretext of doing ward rounds went to the nurses' duty room, closed the door, and proceeded to pull the hand of the staff nurse towards him and sexually harassed her. When she resisted, the director left with a threat of disciplinary action against her (The Lawyers Collective, 2001). One of the doctors interviewed also reported that sometimes nurses were forced to examine nude male patients. Some of the women interviewees also considered 'unprofessional' medical examinations to be a form of harassment against patients (The Lawyers Collective, 2001). The Nepal study also reported that medical personnel, while attending to women in labour, make comments like "You were not ashamed while sleeping with your husband and now you shout and disturb us" (Pradhan-Malla, 2001).

These examples illustrate that action against sexual harassment should not only cover the workers employed by an enterprise, but need to take into account other parties present in the day-to-day working environment in specific sectors and occupations.

When is it 'sexual assault' and when is it 'sexual harassment'?

One issue that surfaces in the discourse on sexual harassment is the demarcation between what constitutes sexual 'harassment' as opposed to 'assault'. The country studies highlight two levels of discussion.

Firstly, harassment in itself can constitute sexual assault depending on the gravity of the physical or coercive act, and depending on how sexual assault is defined and legislated upon in a country. For example, whether the employer in Korea, mentioned at the start of this chapter had already committed sexual assault by rubbing his groin against the employee depends, to a large extent, on the laws on sexual assault and harassment in his country. Some respondents interviewed in the course of the country studies limit their understanding of sexual harassment to the more overt and physical forms of sexual violation, for example, rape and sexual assault, while others see sexual harassment in broader terms.

The line between sexual harassment and sexual assault is often not clear and is constantly being challenged and negotiated. A manager who persistently asks his assistant to have sex with him is deemed to be sexually harassing her. If he coerces her into actually having sex with him, or uses force, he has in fact committed both sexual harassment and rape, or a serious sexual assault.

Secondly, violence against women can start with sexual harassment and deteriorate from bad to worse, especially if the conduct is condoned by the victim and the environment. Several country studies highlight how sexual harassment preceded other forms of sexual and physical violence. The Australian study gives an example of a teenage girl who had been unemployed for a year and got a job in a cake shop through a government training and employment scheme. After her first week at work, one of the partners in the business began to kiss her on the neck, touch her on the buttocks and request sex. Under pressure, she consented to have intercourse with him on a number of occasions. When the case was brought to court, the Commissioners recognized that the young woman was in an extremely vulnerable position and had only endured the situation because she was afraid and evidently

thought that this was the 'tariff' she had to pay to keep her job. In these circumstances, the conduct was still found to be unwelcome and the complainant was awarded AU\$7,000 (US\$3,553) in compensation (Ruskin and Sutherland, 2001).

The Nepal study highlights a similar example. Radha, a 15-year old domestic worker recognized that she was being harassed and tried to get help from her relatives and the management, only to be told that she should not 'mind such simple flirting'. The touching and leering increased and she felt powerless in fighting back. She was coerced into having sex with the perpetrator and became pregnant as a result. She was alone when she gave birth to a still-born baby and tried to dispose of the body. The employers got to know of this and lodged a report against Radha saying that she had killed the baby. Radha was given a 12-year sentence, but was released when the judgement was overturned in the Appellate Court under public pressure (Pradhan-Malla, 2001).

These examples show that if the work environment is not supportive and does not empower individuals to take action against the milder forms of harassment, it exposes them to other more severe and extreme forms of violations.

Other forms of violence and gender discrimination at work

There are other conducts and acts that do not fall within the ambit of sexual harassment but are nonetheless acts of aggression and violence against women *because* they are women. Some of these acts are overt physical acts of aggression. Others are recognized by the women respondents in the country studies as forms of non-physical yet coercive gender discrimination.

Overt gender-based physical aggression and violence

One of the most important and significant new sources of international information on gender-based workplace violence is the 1996 International Crime (Victim) Survey or the IC(V)S (Chappell and Di Martino, 1998). According to the survey which covered more than 30 countries worldwide, including India, Indonesia and the Philippines in Asia, the highest percentages of victimization at the workplace were

observed for sexual incidents against women (rape, attempted rape, indecent assault or offensive behaviour). The Bangladesh country study concurs with this and reports not only sexual harassment but also physical abuse and beatings in many garment factories as punishment for insubordination, lack of discipline, theft, or failure to do the work properly or on time. Another study on the conditions of garment workers in Bangladesh found that 6 per cent of female workers experienced physical abuse, while the figure for male workers was 3 per cent. The chair of a trade union quoted an incident that took place several years ago where a woman worker was accused of stealing a spool of thread. Her hair was shorn and she was forced to walk around with a placard that read 'I am a thief'. Although such treatment is apparently now rare, hitting, slapping and beatings are still very common (in Shahnaz, 2001).

Apart from physical abuse and violence, verbal abuse was also identified as another form of aggression that is perpetrated against women. A woman leader in the trade union and women's movement in Bangladesh felt that women are often talked down to or scolded with words and in ways that men are not (Shahnaz, 2001).

Indirect acts of aggression and gender discrimination

Respondents to some of the country studies also recognized and identified other types of harassment perpetrated against them on the basis of their sex. The women in the Bangladesh focus group discussions for example reported being given more work than a person can possibly complete, while a government servant in the India country reported that she was being given far more work than her male colleagues.

The Bangladesh study found that there were indications that more women than men were kept after hours to do overtime work. Several respondents in the Bangladesh and India country studies identified 'being asked to stay back late unnecessarily' as being sex-based harassment, even if it did not take the form of sexual advances (Shahnaz, 2001). There appear to be two types of concerns, firstly, that staying back late made them feel vulnerable and unsafe and secondly, even when there was no threat of sexual harassment per se, women felt that their bosses asked them to stay back late unnecessarily, merely

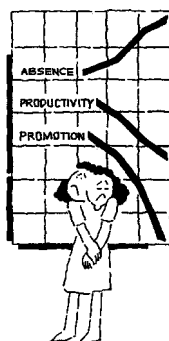
as a way of inconveniencing them (The Lawyers Collective, 2001).

2.4 Effects of sexual harassment

Statistics indicate that many women workers find themselves confronted with sexual harassment on the job. However, few actually report their cases, and fewer still if the risk of losing their jobs is high. This section looks at the effects of sexual harassment on the individual, enterprises and society as a whole.

Effects on the individual

Sexual harassment has negative consequences for employees, employers and the society as a whole. (ILO-ROAP 1994.) For employees, the consequences of sexual harassment can be devastating, both while the harassment is occurring and, in some instances, when the employee decides to take action against the perpetrator.



During the course of the harassment

A harassed person commonly suffers a range of emotional and physical effects while facing sexual harassment, which include the following:

- *Physical symptoms.* Common physiological symptoms which accompany the stress and trauma caused by sexual harassment include nausea, loss of appetite, anger, fear, headaches, fatigue and anxiety. One of the respondents to the AWAM-WDC study reported

that she was afraid to be left alone with the alleged harasser, a man much older than herself but in a more junior position, and went to great lengths to avoid him. She was scared to work late and would try to schedule meetings in such a way so as not to meet him (Ng and Zanariah, 2001). Sexual harassment not only affects work performance but also increases the number of sick leave days.

- *Emotional and physiological effects.* Harassed persons also commonly suffer from emotional stress including feelings of humiliation, anxiety, anger, powerlessness, depression and loss of motivation. The AWAM-WDC study in Malaysia noted that 40 per cent of the victims reported feeling stressed at work, while a quarter of them reported being less productive and effective in their work (Ng and Zanariah, 2001). Compliance with sexual demands brings with it a sense of loss of self-worth and a loss of confidence in their own abilities. Sexual harassment leads to frustration, loss of self-esteem, absenteeism and a decrease in productivity. Compliance with sexual demands brings with it a sense of loss of self-worth and a loss of confidence in their own abilities. Sexual harassment leads to frustration, loss of self-esteem, absenteeism and a decrease in productivity. According to Equaline, the hotline of a women's organization in Korea, many women who seek counselling for sexual harassment feel that 'for a while, they were afraid to meet people and had lost all self-confidence', that 'their mental stress is going to end in mental depression', that 'they still think about that (the sexual harassment from five years ago), or that 'they cannot go outside when it is dark.' They also talk about 'loss of interest in work' and 'feeling ashamed and at a loss of what other people might think'. It is 'too hard for them to stay at the job, or they 'just don't feel like working,' and have no interest at all anymore in going to work' (in Zaitun, 2001).
- *Suicide.* As stated earlier, an extremely serious consequence of sexual harassment is found in the country studies from Bangladesh, Nepal and Sri Lanka, where women are reported to have either committed suicide or attempted suicide due to intolerable conditions and lack of support suffered by the victim. Cultural norms that brand women who are sexually harassed as having brought it upon themselves, label the women victims as 'loose' or 'tainted'. The

shame of having to live with the stigma is cause enough for some women to want to take their own lives.

- *Trauma of sexual assault, unplanned pregnancies, STDs and HIV transmission.* Another serious consequence of the most severe forms of sexual harassment is the well-documented effects of forced sexual intercourse or rape. In addition to the mental trauma due to the incident, rape can also result in physical injuries and unwanted pregnancies. The unplanned pregnancy not only violates a woman's human and reproductive rights, but also generates social hatred and stigma. In countries where abortion is criminalized, for example in Nepal and Thailand, an unwanted pregnancy can result in a woman either having to live with the consequences of an unplanned pregnancy or facing severe legal actions for abortion. The transmission of sexually-transmitted diseases including the HIV virus that causes AIDS and eventual death, especially among low-income groups can be another consequence. This is especially the case in those parts of the world where infection levels are high and thus any submission to sexual demands at work runs a high risk of the HIV virus being transmitted.

Consequences of taking action

The country papers also highlight adverse consequences that are experienced as a result of taking action against sexual harassment.

- Some have found that taking action against the harasser results in further harassment or violence, or threats of further harm and violence, either to their person or to the family. The Nepal study found that in dance restaurants, clients who harass dancers often resort to grabbing, hugging, using abusive language and stalking the dancers when rejected. In the same study, a respondent stated that male teachers would often offer unmarried teachers a lift home, and if they said no, the men would still try to force them to accept. If the teachers would keep refusing, the harassers would sometimes take revenge by putting in a bad word against them with the principal (Pradhan-Malla, 2001).
- The harassed person may lose the job or job-related experiences such as training or feels the only solution is to resign from the job. Some are subjected to unfavourable conditions of work and

dismissals as a result of protesting against the harassment. The AWAM-WDC study reported that one of the victims who assertively told off her boss who kept asking her for a date, was subsequently criticised and condemned in public as well as during meetings, and after a few months she was transferred to another unit (Ng and Zanariah, 2001).

As mentioned above, the hotline service in Korea reported that some of their clients felt that they were not able to go to work because of the fear of having to face the harasser. After an extended period of being absent from work, they end up being discharged. Of the 149 sexual harassment counselling cases received between January and October 2000 by the Equaline hotline in Korea, 40 per cent reported leaving their jobs after sexual harassment. In extreme cases, they were 'too scared to work again' and were looking for other ways to live their lives (in Zaitun, 2001). Others face sustained pressure to leave the job, and eventually leave either due to fear or frustration.

The factory manager and I were riding in a car together to take care of a duty when suddenly, he said he was sick and had to rest in a motel. As soon as we were in the motel room, he turned on me and made sexual demands. When I cried and vehemently refused, we came out of the motel, but since then, he has been pressuring me to resign. (Equaline, Incheon Women Workers Association, Korea, 1999, in Zaitun, 2001)

- Long drawn out legal battles further take an economic and mental toll on the aggrieved:

I have been going to court several times . . . I have to pay Rs 300 (US\$3.30) every time I visit the court and don't remember for what. I have also forgotten the name of the lawyer appearing for me. . . . At present there are some persons who are trying to mediate a settlement of Rs 5,000 (US\$55) so that I withdraw the case. And I am wondering whether to agree as the case has been dragging on now for more than year. . . (19-year old woman worker, in Wijayatilake and Zackariya, 2000).

Implications for the enterprise

For enterprises, sexual harassment leads to workplace tensions, which in turn may impede teamwork, collaboration and work performance. Increased absenteeism and lower productivity result. The US Merit Systems Protection Board's survey in 1981 found that decreased morale, absenteeism, and loss of concentration as a result of sexual harassment was said to be costing the government USD90 million a year (O'Donohue, Downs and Yeater, 1998 in Zaitun, 2001). Sexual harassment can also result in the loss of valuable employees with otherwise good work performance. Allowing a climate of tolerance of sexual harassment leaves the enterprise with a poor image, assuming victims complain and make their situations public. Further, in a growing number of countries where court action may successfully result in payment of damages and fines, financial risks are on the increase. For example, the Director Equity, University of New South Wales in Australia, estimates that a formal harassment complaint to an Anti-Discrimination Board may cost up to five times the damages payout in legal and administration costs (in Ruskin and Sutherland, 2001).

In Japan, large companies – with 1000 or more employees – took immediate steps to implement measures to prevent sexual harassment upon the amendment of the Equal Employment Opportunity Law in 1997. According to a survey conducted in 1999 by the Japan Institute of Workers' Evolution, 71 per cent of the respondent companies implemented the three main elements of the preventive measures recommended in the Ministry of Labour Guidelines including the development and dissemination of an employer's policy, the establishment of grievance systems, and measures to deal with incidents of sexual harassment. This was a remarkable step forward. Two years earlier, prior to the amendment, a large-scale survey in Japan conducted by the Study Group on Sexual Harassment in the Workplace (established by the Ministry of Labour) in 1997 found that although 90 percent of the employers recognized the need for measures to prevent sexual harassment in the workplace, only 5.5 percent replied that they actually implemented measures to prevent sexual harassment (Yamakawa, 2001).

Implications for society

It is increasingly being recognized that sexual harassment impedes the achievement of equality between men and women, it condones sexual violence and has detrimental effects on the efficiency of enterprises and well-being of people, thereby hindering productivity and development. It is also widely acknowledged that it is wasteful from economic, social and human resource development points of view to invest only in selected parts of the population through discrimination, based on sex, race, ethnicity, age or otherwise.

2.5 Start of action against sexual harassment.

The previous section outlines the serious negative consequences that sexual harassment has for employees, employers and societies. However, in spite of the devastating effects of sexual harassment on the individual, few women come forward to even speak about it, let alone lodge formal complaints. This section examines the reasons why few women take action and then looks at the types of actions that have been taken informally to address the issues at the individual and workplace level.

Despite the relatively slow development and adoption of legislation and workplace measures to address sexual harassment, there has been considerable progress in many countries due to positive initiatives that have been taken by individuals, employers, workers' and women's organizations in an effort to address and eliminate sexual harassment at work. The country studies provide many illustrations of the catalytic role that women's and workers' organizations have played in exposing and addressing sexual harassment, and the on-going work done by these organizations in lobbying, advocating and monitoring actions against sexual harassment.

The shroud of silence: Why few women report sexual harassment

As discussed earlier, the commonly held beliefs that women provoke sexual harassment with their clothing and appearance, that they are to be blamed for bringing it upon themselves, deter women from coming forward. In societies or social groups where women are seen as the inferior sex or are regarded as sex objects rather than subjects, both

women and men often consider that sexual harassment is part and parcel of life and work, and that nothing can be done about it unless it involves rape or other types of physical assault. Sexual harassment is common under such circumstances, but remains hidden behind a wall of silence and ridicule. Victims are ashamed or embarrassed about what happened to them and prefer to keep quiet about it, often also because they are afraid of being labelled as either 'loose' women or 'frigid' women who cannot take a joke.

Apart from the perceptions that surround sexual harassment, there are other reasons borne out of economic necessity, lack of information or lack of trust in redress mechanisms that explain why women remain silent on the matter. The first two types of reasons are discussed below, while women's views and experience with legislative recourse are given in the fourth chapter.

Lack of power vis-à-vis the harasser

Statistics from the various country studies confirm that the majority of perpetrators are in more senior positions compared to the victim. Data from the women's hotline Equaline in Korea show that almost 90 per cent of women who reported stated that they had been sexually harassed by their superior, 7 per cent by fellow workers and 3 per cent by subordinates and others, all of whom were men. These results confirm existing research that sexual harassment at work often occurs when there is an unequal authority or status situation. This is compounded if the perpetrator has a prominent social standing. One of the journalists interviewed in the India study indicated that young women journalists like her were often viewed as easy targets, particularly when interviewing 'celebrities' who were aware of their status in society (The Lawyers Collective, 2001). Nevertheless, the fact that women workers are also harassed by fellow workers and subordinates highlights that it is not just power in the workplace that is at play. Gender subordination of women in society also means that even women in positions of power can be seen and treated as 'second' by equal or lower ranking workers. Dormitories or women workers' hostels to which only managers have access, or work-dependent residence, as in the case of plantation workers, create a further dependency of workers towards management.

Fear of losing their incomes

Women from low-income groups often accept sexual harassment as they cannot afford to lose the income needed for survival of their families. Saying 'No' would mean plunging the whole family into poverty or losing the only source of economic or personal freedom that they have. The situation is particularly acute for those who secured their jobs at high personal and economic costs, for example, migrant workers in domestic service.

Fear of losing personal and economic freedom

Cultural norms put women in a further bind. For women in Bangladesh, sexual harassment is considered to be 'the price which women must pay for having stepped out of the closed spaces segregated for them' and therefore 'accept' this cost. The acute need to earn in order to subsist has forced women into working away from their homes and to deal with and ignore societal disapproval and the problems that come with 'stepping outside the home'. Women are compelled to go out to seek work in order to survive. As a group of women put it, 'purdah does not feed us' (Shahnaz, 2001).

In addition, for some women who have entered into the paid workforce, the capacity to become earning members of the family and move away from the concept of daughters and wives who are only a burden has effectively meant a re-evaluation of the status of women. Garments workers in Bangladesh revealed that their value in the marriage market has increased because potential grooms expressed a preference for brides with income earning capabilities. Participation in wage earning activities has a variety of positive repercussions for women and this is clearly not something that women will give up lightly. Therefore, in seeking out a livelihood and exercising the desire to enter into paid employment, women put up with sexual harassment because they fear that their families may prevent them from working if they hear about the harassment thereby losing their income, autonomy and freedom to work (Shahnaz, 2001).

Lack of awareness about sexual harassment

Many women and officials alike are unaware as to what sexual harassment really is. Those who are harassed may recognize it when the acts are spelt out, without necessarily being able to name it as

sexual harassment. In Bangladesh and Sri Lanka, for example, the term continues to be applied only to extreme forms of sexual violence, rape or acid throwing.

In a survey of 61 men and 41 women in two government departments in Malaysia, 83 per cent and 88 per cent, respectively, of the women experienced some form of sexual harassment, but only 5 per cent of the men and 30 per cent of the women actually labelled a certain incident as sexual harassment. (in Zaitun 2001). This shows a serious gap in the level of awareness or capacity to recognize it. While companies and organizations can acknowledge the problem of sexual harassment at work, individuals have to be able to identify when they are being sexually harassed before any action or form of redress can be utilized. The Equaline hotline in Korea noted that this explains why half of all the counselling cases received are of physical harassment. Women are more readily able to describe physical harassment as clear instances of sexual harassment, while the other forms are harder to identify. They hesitate to define 'leering' and 'light sexual joking' as sexual harassment (in Zaitun, 2001).

Lack of awareness about what to do about sexual harassment

Many do not report sexual harassment simply because they do not know how to and whom to seek assistance from. This obstacle is magnified for overseas migrant workers, or rural migrants whose primary language may be different from the one spoken at their workplace in the host country. Illiteracy and lack of understanding of information spread through popular communication channels also pose difficulties for workers with little education.

Even in countries where legal provisions exist, for example in Australia and the Hong Kong SAR, awareness that sexual harassment is an offence may still be low. For example, when a migrant-counselling NGO in the Hong Kong SAR receives calls from migrants stating that they are sexually harassed by their employers, most migrants do not know that their employers' acts are unlawful in the region. They typically report to the police only when the conduct either escalates or constitutes sexual assault. Similarly, the Australian study identifies migrant workers, particularly those from non-English-speaking backgrounds as being particularly vulnerable as they may not know about or be able to access

the available support mechanisms (Zaitun, 2001 and Ruskin and Sutherland, 2001).

Informal measures

Ideally, recourse for sexual harassment should take the form of enforceable legislation and policies at the enterprise, state and federal levels, with formal mechanisms that are accessible to all participants in the workforce, irrespective of the size of the establishment and whether the workers are organized or not.

However, in situations where there are no formal mechanisms, frustration at the lack of recourse has sometimes resulted in either the family or community of the complainant getting involved to 'settle the score'. One respondent to the Bangladesh study reported that she had complained to her parents regarding the harassment she was facing at work, and noted that the harassment stopped soon after. Some actions, however, have been more strident and involving the use of force.

. . . the field supervisor touched her breasts and the woman stopped going to work for 3 days . . . her husband confronted the supervisor and stabbed the man. . . (interview with tea plantation worker, in Wijayatilake and Zackariya, 2000)

One trade union leader interviewed by the Indian researchers recommended that the cases of sexual harassment not be taken to court, but instead the offender be beaten up and socially boycotted (The Lawyers Collective, 2001).

These examples highlight that in the absence of workplace recourse, victims rely on the family or community support to some extent. However, some of these interventions clearly have negative repercussions and may even discourage some women from telling their families for fear that the issue may escalate and cause further difficulties.

Community policing

The women *bidi* workers in Bangladesh reported that they felt secure within their village and work-area due to the close kinship ties within the

community. The role of the community, although patriarchal and often confining in nature, forms a 'community policing' system which has bearing on how a worker perceives her safety. The protection, which the *samaj* (the village society) provides, may also prevent sexual harassment by others living in the same area (Shahnaz, 2001) as most people in the community know each other and know that they would come under community scrutiny and castigation should they be hauled up for harassment.

Informal organizing

In some instances, women have come together to form their own support and network in the absence of formal mechanisms. For example, the Sri Lanka study highlights an example of a group of women who initiated a support and lobby mechanism amongst them. They selected one woman, who they felt was one of the more articulate members in the group, to be their leader and representative. The 'periyamma' (literally means 'big mother') would represent the group and take up women workers' issues, which included sexual harassment, with the management (Wijayatilake and Zackariya, 2000). A similar example can be found in the India study where a group of women piece-rate workers organized to haul up and beat a harasser in public, after which the harassment reduced considerably (The Lawyers Collective, 2001).

The Sri Lanka study also found that women-to-women solidarity action, though rare, is an emerging trend in some estates due to increased awareness because of NGO activism (Wijayatilake and Zackariya, 2000). The experiences highlighted within the various country studies concur that organizing increases the bargaining power of women, not only with regards to security of work tenure, but also with regards to addressing sexual harassment. The Bangladesh study found that although sexual harassment is rampant in the garment sector, there seems to be unanimous agreement amongst the respondents that harassment *within* the factory space has decreased. This has, in part, been attributed to the fact that workers are more organized than they used to be and that potential harassers are deterred by the thought that they might be terminated in the event that a complaint is brought against them (Shahnaz, 2001).

Informal workplace redress by employers

In the absence of formal workplace redress, some employers have taken ad hoc action in order to deal with cases of sexual harassment. Some measures have had visible and immediate positive impact, for example, a manager at a housekeeping department in Nepal who noted that offensive graphics and language had been sketched onto toilet walls and lockers, sent a notice around to all employees indicating that if the sketches appeared again, the management would conduct a 'handwriting check'. The graffiti stopped immediately. (Pradhan-Malla, 2001).

Sometimes measures against incidences of sexual harassment consist of transferring either the complainant or the offender to another job and workplace. Transfer of the complainant, to either other sections within the same department or to other branches or areas may work in favour of complainants, *if* the action is taken in consultation with them. While some cases may warrant the temporary transfer of complainants to conduct an investigation, this solution may not be just or sustainable in the longer term, especially if it amounts to other forms of discrimination, for example, a transfer to a job that is not commensurate with their skills or a curtailment of work hours in order to 'protect' them. Unless the transfer is done with the free and full consent of the complainant, it is likely to cause more anger and distrust, as it would seem to punish the complainant rather than the offender.

Transferring the offender may provide an immediate solution to the matter but may not be sustainable in the longer term. Transferring the offender often results in shifting the 'problem' to a new area. Unless the offender is made aware of the severity of the offence and receives a clear message from management that sexual harassment at the workplace is not tolerated, sexual harassment may not be taken seriously by the offender or by other employees.

Similarly, other 'solutions', such as segregation of men and women workers, ensuring a particular harasser only works with certain people or at certain times, or 'protecting' women by delegating them only to certain types of jobs to minimize the possibility of sexual harassment, may only work in the immediate term, and do not seem viable in the long run. Such solutions need to be assessed for their sustainability and

whether they are fair to the complainant in the longer term, because many of them only treat the symptoms without addressing the root of the problem.

Action by trade unions

In organizations and companies where policies have not been introduced, trade unions have sometimes taken *ad hoc* action on receiving a complaint, and managed to achieve recognition of the problem and redress for the victim, especially in countries where sexual harassment policies are not widespread. There are reports from Bangladesh, for example, of a manager being suspended after a trade union complained of harassment (Shahnaz, 2001) while in Sri Lanka, trade unions have pursued harassment complaints which are reported to their district or head offices, although they have proved less likely to take up cases reported at field level (Wijayatilake and Zackariya, 2001). In Nepal, in some cases where complaints have been made to trade unions, the latter have managed to secure compensation for the victims (Pradhan-Malla, 2001).

Action by women workers' groups and organizations

Many of the country studies note the vital role that women workers' groups have played in spearheading campaigns and advocacy that have called for changes in laws and policies that discriminate against women, and for the enactment of legal systems to protect women workers. The groups have not only played crucial advocacy, lobbying roles and provided vital services to women in crisis, but have formed alliances and networks with other social movement groups, employers, trade unions, academia and legal bodies to strengthen the support for women workers.

Provision of services and monitoring of cases

Observation and monitoring of cases, legal systems and redress processes give important evidence and indication as to the nature of improvements that need to be made to support systems and legal mechanisms. Women's groups in Malaysia, the Republic of Korea, Hong Kong SAR, the Philippines and Thailand drew on the nature of cases received by their counselling lines in order to highlight the shortcomings of the redress mechanisms in their respective countries.

For example, in Malaysia, although awareness-raising activities to highlight the issue of sexual harassment had been carried out by various women's groups, the campaign to call on the Government to enact specific laws on sexual harassment was essentially initiated out of a sense of frustration that there was not much that could be done to assist six female management employees of an international hotel who lodged police reports against their general manager for alleged sexual harassment, verbal abuse and intimidation (Malaysian daily, The Star, 4 February 2000).

They were helpless. We were helpless as we too stood by and watched as one by one they were dismissed. It was this sense of helplessness that made us pick up the issue of legislation for sexual harassment. (Zarizana Abdul Aziz, President of WCC Penang, in Zaitun, 2001)

The study from the Republic of Korea notes a similar impetus, where a female assistant, who had been sexually harassed by her male professor, lost her position after turning down his repeated propositions for dates. The lack of specific laws to deal with the case led women's groups to demand that not only should work-related sexual harassment be made a punishable offence under the Act on the Punishment of Sexual Crimes and Protection of Victims Thereof (which was passed by the Assembly in 1993), but that the discriminatory nature of sexual harassment be recognized within the purview of the Equal Employment Act (EEL). The campaigning and advocacy that grew around this case contributed in a major way to the enactment and reforms of the laws related to sexual harassment.

In India, a number of women's groups came together and filed the Vishaka petition following the gang-rape of a female village worker who was appointed under the Women's Development Programme by the Government of Rajasthan. The incident, which happened in the line of the worker's duty, raised the issue of whether the State had a responsibility to protect its workers. In the Supreme Court Judgement that followed, sexual harassment was recognized as a violation of several fundamental rights guaranteed by the Constitution of India. In the absence of statutory law, the Supreme Court laid down the definition and guidelines for employers governing sexual harassment at the workplace, and provided a mechanism for the redressal of

complaints of sexual harassment. These guidelines have come to be called the Vishaka Guidelines (The Lawyers Collective, 2001).

Solidarity actions with trade unions and other NGOs

There are many good examples of successful solidarity actions between women's NGOs and workers' organizations. The Joint Action Group on Sexual Harassment in Malaysia illustrates how women's groups and unions have come together to campaign and advocate on the issue (Zaitun, 2001). The most recent case of sexual harassment at a prominent hotel in the Republic of Korea is another example of cooperation between a trade union and women's groups. As a part of a sit-in strike programme, workers were asked by the labour union to indicate unfair labour practices they had experienced at the workplace. Although the union had not specifically been testing for it, sexual harassment emerged as the number one problem for women workers. In response to this, the union consulted five women's groups and began educating the members on responses against sexual harassment. The women's organizations and labour union also took up a case against the management of the hotel. The Ministry of Labour subsequently ordered the management to punish the 30 persons identified as the offenders and also imposed a fine of 3 million won (US\$2,340) on the hotel for failure to educate their employees on sexual harassment. In addition, with the help of women's organizations and the labour union, the 270 women workers who had been harassed brought a historic collective lawsuit on sexual harassment against the hotel (in Zaitun, 2001).

Women's groups in the Republic of Korea have also found that their awareness-raising material and information have been constructively used by labour unions and companies to publish their own manuals and booklets. For example, the booklet issued by the Korea Standard Association named 'No Sexual Harassment, Safe Workplace' was based on the material obtained from Womenlink, a women's organization.

Solidarity and organizing with workers

Women's and workers' groups have also collaborated with women workers to bring about change both in terms of formulating strategies to deal with workplace problems and to assist with networking and

administrative procedures.

The Thai case study from 1985, ten years before the amendment to include sexual violations by superiors in the Labour Code, highlights an example of this. The production manager at a garment factory would use sexual blackmail against many women workers, offering them administrative jobs in exchange for sexual favours. While some gave in for lack of options, many resigned. The workers were aware of the problem, but were unsure as to how to deal with it. They discussed their concerns with an NGO worker who used to meet them around the factory compound. In the course of the discussion, they formulated their strategies, including producing and distributing leaflets and posters around the area. This attracted the attention of the community and workers from the other factories.

Stung by the bad publicity, the employer moved into action and dismissed the production manager. The awareness generated also served as a reminder to existing and new managers that unwelcome conduct would result in disciplinary measures including the loss of their jobs. New cases were dealt with swiftly by the employer in recognition of the fact that the labour union took the matter seriously. Extensive training was given to the women workers, most of whom had only received very basic formal education. The activities eventually united the women workers into what later became a labour union. The women workers and women leaders of this union also contributed to the national labour movement, for example to the campaign for the Social Security Act in 1990 and the Maternity Leave Act in 1993.

In Hong Kong SAR, foreign domestic helpers, although in principle protected by a standardized employment contract that spells out labour and employers' responsibilities, in practice commonly experience problems of underpayment, abuse, sexual assault, harassment on the job and exorbitant agency fees, amongst others. One of the strategies that have helped to reduce their vulnerability to exploitation and abuse is the formation of unions whose members are foreign domestic helpers only. The Asian Migrant Centre's (AMC) grassroots organizing efforts resulted in the formation of three domestic worker-only unions in Hong Kong SAR – the Asian Domestic Workers Union (ADWU), Filipino Domestic Workers Union (FDWU) and Indonesian Domestic Workers

Union (IDWU).

Initially, the AMC assisted migrants to organize themselves into grassroots saving groups called Reintegration Saving Groups which are all formally registered associations. In 1998, these groups decided to form a union, while maintaining their own associations. AMC has actively conducted training, assisted with administrative matters such as registration of the groups, helping them network with other groups both in the Hong Kong SAR and abroad, providing information and advice to these and other domestic worker-only unions.

Awareness-building and campaigns

Awareness and public education form the foundation of any campaign. Women's and workers' organizations have actively and creatively used various means to increase public knowledge of issues that affect women. This has ranged from organizing forums and seminars, producing and distributing leaflets and other material, and forging close rapport with the media in order to highlight the issues. Pickets, gatherings and demonstrations, though not always popular with the authorities, have proven to be an effective way of not only garnering support but also to create visibility on the issues.

The highly-publicized case in Thailand, of an ambassador allegedly having sexually harassed his employees, demonstrates the way in which women's groups and their networks campaigned to get the case heard, from the time the report was first lodged in July 1999 until September 1999 when the last report was withdrawn. The groups initiated various actions including open letters to both the Government of the ambassador and to the Prime Minister of Thailand, demanding a public investigation from both governments and demanding that diplomatic immunity be waived in the case of human rights violations. There were also signature campaigns and the organizing of a discussion which brought together experts from universities, women's and human rights groups to look at the issue of diplomatic immunity and human rights. This spurred other sections of the community into action as well, for example, the *Jor Sor 100* community radio, which decided to run a campaign on their own in view of increasing awareness on sexual harassment.

Conducting research, advocacy and lobbying

The helplines that are run by various women's groups in the region provide vital, empirical information on the experiences of women workers with sexual harassment. In the Republic of Korea, for example, the on-going monitoring by women's organizations and trade unions shows that in spite of the law, many employers are not fulfilling their obligations. They note that some forms of sexual harassment, for example the use of gender-based insults and demeaning language is not included in the definition of sexual harassment in the law. As a result, these organizations have been calling for a broadening of the definition of sexual harassment and for closer enforcement by the Government to ensure compliance by the employers.

Women's NGOs also conduct surveys and studies. In India, for example, a survey conducted by an NGO called Saheli, amongst others, concluded that job security, strong unions, strict enforcement of rules and transferable jobs were the main reasons for the non-occurrence of sexual harassment in some sectors. Another survey conducted by the Gender Studies Group at Delhi University reported problems, such as a high level of peer group harassment, poor infrastructure for redress and police inaction (The Lawyers Collective, 2001).

AMC in Hong Kong conducted a study on the working conditions of 100 Indonesian domestic workers. The study exposed some deficiencies within the system and in response to joint pressure from local migrant support groups, the Indonesian Consulate stated its unprecedented recognition of the plight of Indonesian workers involved in domestic service in Hong Kong SAR (in Zaitun, 2001). An article posted on the AMC's website on 4 November 2000 reported that the Indonesian Government had issued two important memoranda which introduced policy reforms aimed at curbing exploitation by recruitment agencies. This is considered a major step forward in improving the conditions of Indonesian domestic workers abroad.

3. INCIDENCE AND SCOPE OF SEXUAL HARASSMENT AT WORK.

Sexual harassment happens to workers in the public service, in large and small enterprises, in services and shops, it happens to workers on plantations and farms, to entrepreneurs and traders in markets and to students, trainees and teachers at schools, in vocational training institutes and in universities. It happens to uneducated and educated workers at all levels of the job hierarchy. While men may be subjected to sexual harassment, the majority of victims are women.

A recent study of the Human Rights Commission (HRC) in New Zealand reviewed 284 sexual harassment complaints filed with the Commission from 1995-2000. Nine out of every 10 complaints originated in the workplace. Despite the common assertion that 'women also sexually harass men', 90 per cent of complaints involved men sexually harassing women. 'Male to male' harassment was the next most common complaint (6 per cent), while 'female to female' harassment accounted for 2 per cent of the complaints. Fewer than 2 per cent of the cases involved women sexually harassing men (HRC, 2000).

As was mentioned in the previous chapter, the 1996 IC(V)S survey among more than 30 countries worldwide found that the highest percentages of victimization at the workplace were observed for sexual incidents against women (inclusive of rape, attempted rape, indecent assault or offensive behaviour. Sexual incidents at the workplace accounted for nearly 8 per cent of cases of rape and around 10 per cent of attempted rapes and indecent assaults.

Age was found to be another important determinant in the IC(V)S survey. Victims of sexual incidents often belonged to the youngest age categories: nearly half were younger than 29, and nearly a third were between 30 and 39 years of age (Chappell and Di Martino, 1998). More than half of the women victims of sexual incidents and non-sexual assault and threats were between 16 and 34 years old.

Differences in age and seniority were also found in the above-mentioned study in New Zealand. Most complaints (72 per cent) were against persons who were higher in rank. In almost every case, the complainant was considerably younger than the harasser. The average age of perpetrators was 42, and of complainants 25 – an average age difference of 17 years. A third of those harassed were 18 years or younger and most were under 20 years (HRC, 2000).

3.1 Profile of women at work

There are many more women in employment than 20 to 30 years ago. Thus, the scale of sexual harassment in workplaces has increased considerably during the last two decades due to persistent, if not increasing, poverty and the changing patterns in employment due to shifts in the demand for men and women workers respectively as will be illustrated below. The majority of these women are found in jobs with low security, low pay, low conditions of work, low status and low bargaining power in a narrow range of occupations, all characteristics which enhance the risk of becoming subjected to sexual harassment. A brief description of these trends, i.e. the feminization of poverty and employment, and occupational segregation by sex is given below.

Feminization of poverty

Despite the economic developments in the 90's, the developing world still had around one-third of households in income poverty – commonly defined as the proportion of households earning or spending less than US\$1 per day – by the mid 90's. (Data in this section are derived from UNDP, 1999 and UN, 1999). In Asia, between 1989 and 1994 income poverty was most pronounced in South Asia (45 per cent), while it amounted to 29 per cent in East Asia including China and 14 per cent in South East Asia and the Pacific. Updated figures are hard to come by but the recent slow-down of economic growth rates in most countries and the effects of the 1997 crisis in South East Asia do not bode well for decreases in income poverty in most countries.

Gender inequality is difficult to measure in income poverty as it is usually measured at the household level, thereby ignoring disparities

within the household. However, indications are that, compared to men:

- Women have a higher incidence of poverty
- Women's poverty is more severe,
- The incidence of poverty among women is increasing.

Evidence from studies on human poverty indicators, often measured in terms of basic standards in health and education, confirm this trend. Of the 900 million illiterate adults in the world, two-thirds are women. Worldwide in 1995, the female illiteracy rate amounted to 38 per cent in the developing world (63 per cent in South Asia, 26 per cent in East Asia and 17 per cent in South East Asia and the Pacific).

The incidence of poverty in the developing world is directly related to the proportions of people working in agriculture. The higher the sectoral share of agriculture in total employment, the more pronounced is poverty. In most countries in the region the agricultural sector continues to dominate employment. In East Asia and the Pacific 69 per cent of the labour force is in agriculture and in South Asia 64 per cent is in agriculture. Women in Asia are over-represented in agriculture and related off-farm activities. In South and Southeast Asia women supply a significant amount of labour on plantations where sexual harassment is part and parcel of daily life. In China, South and Western Asia, men are leaving agriculture faster than women, which leads to an increasing concentration of women on land. For instance in the mid-nineties, in India, 86 per cent of rural women workers were in agriculture, compared with 74 per cent of rural men workers, and this gender gap is growing.

Another trend has been a rural exodus of younger women migrating to urban centres within as well as beyond national boundaries in the newly industrialized economies of East and South East Asia where they start working in manufacturing or in services such as domestic work or the entertainment industry.

Feminization of employment

The world of work is changing, often drastically, due to the move towards a global economy characterized by greater openness or liberalization of markets, free or greater mobility of financial capital and

people, and rapid distribution of products, technology, information and consumption patterns. Typical of this process of globalization is the increased flexibility, casualization and informalization of employment and an expansion of atypical and precarious jobs. World-wide regular full-time wage employment has given way to a broad range of irregular forms of labour that are not covered by standard labour legislation, such as outsourcing, contract labour, home work, part-time work and self-employment in the informal sector. The rise of these jobs has been part of the business response to the changing market conditions and increased competition with a view to respond quickly to volatile demand and supply of capital. Labour costs are cut by reducing the number of 'core workers' and relying on irregular forms of employment in order to avoid labour surplus during economic downturns and paying for fringe benefits associated with decent work.

While providing new opportunities for economic growth, these changes have generated major challenges and rekindled concerns about the unfavourable global employment situation. For example, the Asian crisis in mid 1997 and the retrenchment of workers from state-owned enterprises in economies in transition are leading to high levels of unemployment, exacerbated by a growing labour force. Among the groups most affected are the young, the old and the less skilled, and, there is a 'bias against women in all these categories' (ILO, 1998).

Women now comprise an increasing share of the world's labour force – at least one-third in all regions except in Northern Africa and Western Asia. The percentage of women registered as part of the labour force in 1995-97 amounts to well over 40 per cent in East, South-east and Central Asia and around one-third in South Asia. See tables 1 and 2 for a global and regional overview respectively.

Table 1: Women's share of the labour force in percentages

	1980	1997
Africa		
Northern Africa	20	26
Sub-Saharan Africa	42	43
Southern Africa	40	40

Rest of sub-Saharan Africa	43	43
Latin America and the Caribbean		
Caribbean	38	43
Central America	27	33
South America	27	38
Asia		
Eastern Asia	40	43
South-eastern Asia	41	43
Southern Asia	31	33
Central Asia	47	46
Western Asia	23	27
Oceania ^a	35	38
Developed regions		
Eastern Europe	45	45
Western Europe	36	42
Other developed regions	39	44

Note:

^a Sparse data for this sub-region; average should be interpreted with caution.

Source: UN, 2000: Prepared by the Statistics Division of the United Nations Secretariat from ILO, 1999. *Key indicators of the Labour Market*, (table 1.), Geneva.

Table 2: Economic activity rates of men and women in percentages in selected countries in Asia and the Pacific

Country or area	Adult (15+) economic activity rate (%) 1995/1997		% women in the adult labour force, 1995/1997
	W	M	
Bangladesh	56	89	38
Cambodia	76	82	53
China	74	86	45
Hong Kong SAR	48	76	39

Macao SAR	55	79	44
India	41	86	31
Indonesia	53	82	40
Lao People's Dem.Rep.	75	89	47
Malaysia ¹	47	81	37
Mongolia	73	84	47
Nepal	57	86	40
Pakistan	13	82	13
Philippines	49	82	38
Republic of Korea ²	50	76	41
Singapore	51	78	41
Sri Lanka	41	78	36
Thailand ²	67	82	45
Turkey	28	74	28
Viet Nam	75	84	49
Fiji	32	82	27
Papua New Guinea	67	87	42
Solomon Islands	82	89	46
Tonga	45	74	39

Notes

¹ For persons aged 15 to 64

² Data are estimated to correspond to standard age groups

Source: UN 2000 from ILO, 1999. *Key indicators of the labour market* (table 5d: selection of countries), Geneva.

The increase of women's share of employment since the mid-seventies resulted from a shift of women's labour from the unpaid household work and subsistence agricultural sector to the paid economy mostly in manufacturing and services in developing countries (See table 3). Women workers have been in increased demand globally, because they can be hired for lower pay and under lower quality working conditions in comparison to men. The majority of women are still in irregular jobs with little training or promotion prospects and no or very limited job or social security.

Table 3: Percentage distribution of the labour force, by sex, 1990/1997 in East, Southeast and South Asia

	Female labour force			Male labour force		
	Agriculture	Industry	Services	Agriculture	Industry	Services
East Asia	14	23	63	11	33	56
South-east Asia	46	13	41	45	20	35
South Asia	66	18	15	54	13	32

Source: UN, 2000: Prepared by the Statistics Division of the United Nations Secretariat from ILO, 1999. *Key indicators of the Labour Market* (table 4.), Geneva.

In some countries women found employment outside the house for the first time. For instance, in 1978, Bangladesh had only four garment factories. By 1995, it had 2,400 employing 1.2 million workers. Ninety per cent of them were women under the age of 25 years and the sector employed 70 per cent of all women in wage employment (UN, 1999). Labour-intensive industries such as textiles and clothing, engineering and electronics have predominantly women in the labour force. This trend is even stronger in export production. Table 4 below shows that women workers predominated in export processing zones (EPZs) in four major exporting countries in Asia. However, it also illustrates a decline in the share of women in the EPZ labour forces in middle income countries as export production becomes more skill and capital intensive. It appears that, as jobs and wages improve in quality, women tend to be excluded from them. Men take over the more skilled jobs in the same countries or labour intensive production shifts to other countries.

Table 4: Female Employment in Export Processing Zones

Share of women in employment in EPZs and in non-EPZ manufacturing, selected Asian countries.

All Economy	EPZ	Non-EPZ- Manufacturing
-------------	-----	---------------------------

Malaysia	1980	33.4	75.0	35.6
	1990	35.5	53.5	47.2
Philippines	1980	37.1	74.0	N/A
	1994	36.5	73.9	45.2
Korea, Republic of	1987	40.4	77.0	41.7
	1990	40.8	70.1	42.1
Sri Lanka	1981	36.0	86.3	29.8
	1992	46.4	84.8	46.0

Source: Kusago and Tzannatos, 1998, in UN 1999.

Occupational segregation by sex

Despite worldwide increases in women's paid employment in recent years, occupational segregation by sex continues to exist. Higher levels of occupational segregation are associated with poorer labour market conditions for women such as lower pay, lower status and more limited career opportunities, including higher chances of being subjected to sexual harassment.

Occupational segregation by sex can be measured:

- horizontally, comparing jobs of the same level, such as women maids and household managers versus men gardeners and security guards or women nurses versus taxi and truck drivers
- vertically, comparing women's and men's position in the job hierarchy, such as women workers on the assembly line versus men as supervisors of the assembly line.

Women are more likely to be working in 'men's jobs' than the opposite and this again increases chances of sexual harassment of women. As a rule, women are employed in a narrower range of occupations than men. There are around seven times as many 'male' as 'female' non-agricultural occupations (ILO in UN 2000). In occupations where women

are concentrated, such as teaching, they are usually in lower hierarchical positions. They dominate in clerical and secretarial jobs and in low-end occupations such as shop assistants, waitresses, maids, hair dressers, dress makers, teachers and nurses.

World wide, the phenomenon of horizontal segregation is lowest in the Asia-Pacific region with the exception of China and the Hong Kong SAR, where there have been increases. Vertical segregation, however, is higher in Asia and the Pacific than in other parts of the world. Export industries have opened industrial occupations to women, but without decreasing gender inequalities within occupations in terms of status and authority, pay and career advancements (UN 1999). Women's share of management positions does not exceed 20 per cent. The more senior the position, the more glaring is the gender gap. In the largest and most powerful companies worldwide, women's share in top positions is limited to 2-3 per cent (Wirth, 2001).

Vertical segregation between men and women can also be illustrated when looking at statistics on status of occupation. For example, proportionately more men than women are employers. At the regional level, in Central and South America, Western Europe and the developed regions outside Europe, about 3 per cent of women and between 6 to 8 per cent of men are employers. In the Caribbean, Eastern Europe and South-eastern Asia, about 2 per cent of women and 4 to 6 per cent of men are employers (UN 2000). See table 5.

Table 5: Percentage women and men employers among female and male labour force in selected countries in Asia

Selected countries in Asia	Percentage employers in female labour force, 1990/1997	Percentage employers in male labour force, 1990/1997
Australia	3	6
Bangladesh	<1	<1
Japan	1	4
New Zealand	4	10
Pakistan	<1	1
Singapore	2	8

Sri Lanka	1	3
Thailand	1	4

Source: UN, 2000 from ILO, 1999. *Key Indicators of the Labour Market* (table 3.), Geneva.

3.2 Incidence of sexual harassment at work

The quality of official, empirical and anecdotal evidence and statistics on sexual harassment varies from country to country, depending on the levels of awareness and the type and quality of data collection. In some countries, statistics for sexual harassment in the workplace are sometimes compiled together with statistics of other kinds of violations such as breach of modesty, sexual assault and threats, so a true picture of workplace sexual harassment is difficult to garner.

The research findings also vary according to the groups sampled, their size, level of awareness of the problem, and especially the precise questions asked. For example, a question that asks whether or not the respondent has experienced particular forms of unwelcome behaviour is more likely to elicit a positive answer than a question as to whether the person has been sexually harassed, because those questioned may differ in their understanding of what constitutes sexual harassment. For this reason, in countries where there have been a number of surveys on the incidence of sexual harassment, results can differ. Nevertheless, the overall majority of research findings shows not only that sexual harassment at work exists but that it is a problem.

In the Netherlands, a government study published in 1986 indicated that 58 per cent of the women interviewed had experienced sexual harassment, while a 1987 study in the United Kingdom put this figure at 73 per cent (ILO, 1992 in Chappell and Di Martino, 1998). A 1991 study in Germany found that 93 per cent of women respondents had been sexually harassed at the workplace during the course of their occupational life (Beermann and Meschkutat, 1995 in Chappell and Di Martino, 1998).

In Japan, a large-scale survey of 6762 (one woman, one man and one from a supervisory position from 2254 companies), conducted by the Study Group on Sexual Harassment in the Workplace, established by the Ministry of Labour, in 1997, found that out of the 2254 women respondents, almost two thirds of the respondents replied that they had been sexually harassed at least once. Out of this number, about 11 percent of these respondents replied that they had experienced a quid pro quo type of harassment, while 45 per cent answered that they had been subject to a hostile working environment. Out of those who had experienced sexual harassment, two out of three reported that their supervisors had sexually harassed them, while 15 percent replied that their harassers were their co-workers. A small number of respondents also reported that customers or company presidents harassed them (Yamakawa, 2001).

Similar figures are found elsewhere in the region. In the Republic of Korea, a study conducted by an Assembly Member of the Democratic Party and the Law Consumer Union of 567 public officers (345 men, 222 women) in Seoul in October 2000 found that almost 70 per cent of women stated that they had experienced sexual harassment. A survey conducted by the Korean Institute of Criminology in 1999 found that 64 per cent of the women interviewed said they had experienced verbal harassment, with 35 per cent having been physically harassed, 34 per cent having experienced visual harassment, and 25 per cent forced to attend to men at dinner parties (Korean Institute of Criminology, 1999 in Zaitun, 2001).

In the Philippines, a survey conducted in 1999 by an organization of women workers reported that out of a total of 43 unionized and 291 non-unionized establishments interviewed, 17 per cent have records of sexual harassment cases. Of this number, 46 were non-unionized firms and 11 unionized establishments (Ursua, 2001).

A survey of two government departments in Penang and Perlis, two Northern states of Malaysia found that 83 per cent and 88 per cent of the women respondents respectively experienced some form of sexual harassment (Sabitha Marican, 2000 in Zaitun, 2001).

3.3 High-risk sectors and occupations

Besides sex and age, lack of labour and social protection is another important factor which increases the chance of being subjected to sexual harassment: Young women and men at work or preparing for work in education and training institutions, domestic workers, migrant workers and workers with little job security, women in male-dominated occupations, or in situations where large numbers of women are supervised by a small numbers of men, are high risk groups.

Education and training institutions

The incidence of sexual harassment is also found to be high in universities and other training and education institutions. Figures released by the Government of Japan, for example, stated that 115 public school teachers had been disciplined in the fiscal year of 1999 for sexual indecency. About half of the teachers had reportedly fondled or harassed students while the rest had molested graduates or colleagues (The Bangkok Post, 28 December 2000).

Several studies carried out on university campuses have also revealed very significant results. For example, in Malaysia, a survey that was carried out between 1986 and 1988 on a university campus revealed that about 80 per cent of women interviewed had been harassed in some way or other (Badriyah, 1988 in Zaitun 2001). Similarly, a study conducted by the Gender Study Group of Delhi University in India found that almost half of the women respondents had been harassed by someone in authority, i.e either teaching or non-teaching staff. It also noted that 92 per cent of women hostellers in the university faced sexual harassment on an almost daily basis including high levels of peer harassment, on buses, in the streets and also within the campuses. In the absence of institutional responses to the rampant sexual harassment on campus, the student groups of Delhi University formed a Forum Against Sexual Harassment, which not only conducted a study on the campus but used the findings to lobby successfully for a formal policy on sexual harassment and a sexual harassment committee in the university (The Lawyers Collective, 2001).

The impetus to lobby for changes to laws in the Republic of Korea came from a campus-based incident where a female assistant, lost her position after turning down her male professor's repeated propositions for dates. A committee, which comprised of women's organizations, lawyers and academics, helped to take the issue to court and the awareness generated subsequently led to the reform of laws in the Republic in 1999. Similarly, in Hong Kong SAR, the 1997 landmark case of a male student who was found guilty of sending pornographic pictures via email to female students raised public awareness on the seriousness of sexual harassment. The case also sparked the university concerned, and all other universities, government offices and big companies to appoint an Equal Opportunity Officer within their establishments.

Domestic workers

Domestic and entertainment workers are often very vulnerable to sexual harassment because of the high degree of subordination between the worker and the employer. Domestic services also tend to be excluded from protective labour legislation. Where regulations exist for foreign domestic workers, they tend to restrict rather than protect them. The Nepal study confirms that domestic workers are highly vulnerable to violence, both sexual and otherwise, and adds that few take action due to disabling circumstances, such as isolated working conditions, long hours of work and lack of social contacts. The case of a 13-year old Nepalese domestic helper who migrated to Kathmandu to find work is one example of someone who was not only subjected to sexual harassment and assault, but also had boiling oil poured over her hand when she tried to say something about the incident.

The case in Thailand involving an ambassador who was accused of having sexually harassed and assaulted three domestic helpers and a personal secretary, mentioned earlier, generated publicity and sparked a public debate, but the complainants did not have legal access, owing to diplomatic relations and immunities. A deputy Minister of Labour and Social Welfare was reported to have said that the matter was a 'private matter' which had occurred within the embassy. The women eventually withdrew their reports. The principle complainant said she withdrew because "it would be a waste of time as the case is not going to get

anywhere. Besides I am concerned about the welfare of Thai workers in Kuwait". She maintained, however, that she had been sexually violated by the ambassador (Thairath, 25 July 1999 and Bangkok Post, 30 August 1999 in Bangprapha, 2000, quoted in Zaitun, 2001).

Women migrant workers

Migrant workers tend to be concentrated in 'SALEP' jobs, i.e. Shunned by All, Except the very Poorest (Bohning in ILO-ROAP 1999). Women migrant workers are concentrated in the most vulnerable of these jobs, domestic service, the entertainment industry, and to a lesser extent in nursing and teaching. Foreign workers engaged in domestic service generally work in isolation, even more than local domestic workers who may have greater access to support from the local community or foreign workers engaged in jobs with greater autonomy or freedom. Unless given a day off when they can meet with others outside of the house, they have little chance of coming into contact with other people and information. Besides being vulnerable 'targets' for sexual harassment, migrant workers are also less likely to take action because finding alternative work may be very difficult if they are dismissed. For workers who are undocumented, the situation is even more critical.

High initial investments related to migration also play a role. For example, the study in Hong Kong SAR found that compared to other nationalities involved in domestic service, Indonesian workers were reported to be more afraid of filing a case or reporting to the police because, until early 2001, they had to pay very high agency fees and did not want to lose their jobs. However, a news article in a Malaysian paper (The Star, 8 January 2001) quoted the South China Morning Post as reporting that Indonesian domestic workers have gained the Indonesian Consulate's support in their battle to scrap extortionate agency fees when renewing employment contracts (in Zaitun 2001). This positive development may in fact encourage more domestic workers to come forward to lodge complaints in the event that they face harassment or assault in the workplace.

Despite the problems faced by migrant women workers, the export of women workers is being encouraged by many governments. For example: In the mid 90's the total numbers of migrant workers in Asia

came to around 6 million, of whom three quarters where in the five main receiving countries, Japan, the Republic of Korea, Malaysia, Singapore and Thailand. It is estimated that 1.5 million of these workers were women. They dominate the authorized outflows from sending countries such as Indonesia, the Philippines and Sri Lanka. For example, while in 1983/84 the Indonesian Ministry of Manpower processed three men for every two women for overseas employment, the ratio was reversed to five women for every man in 1998/99. In migrant-receiving countries, the growing importance of women is illustrated by, for example, Singaporean data where in 1984 only one in ten working households employed a foreigner; some ten years later one in eight of the 745,000 households enjoyed the services of a live-in, foreign domestic worker. Restrictions on admissions of migrant workers in receiving countries and excessive and expensive – in the form of fees or bribes – paper work in both sending and receiving countries have stimulated a marked increase in the number of undocumented or irregular migrant women, who are particularly prone to abuse and violence, as they are unprotected and often persecuted in the host country (ILO ROAP 1999).

A baseline study was conducted by the Asian Migrant Centre (AMC) in the Hong Kong SAR in late 2000 to estimate the extent of sexual violations faced by foreign domestic workers, using random sampling methods to interview more than 1150 migrant domestic workers proportionately allocated among the Filipino (712), Indonesian (401) and Thai workers (29). The study entitled 'Baseline Study on Racial and Gender Discrimination towards Filipino, Indonesian and Thai Domestic Helpers in Hong Kong' was made available by the Asian Migrant Centre in December 2000 (at the time of writing this technical report, the final report of the baseline study was due to be published in February 2001). The preliminary findings of this extensive baseline survey are presented in the table below.

Table 6: AMC findings on extent of sexual harassment among migrant women workers in domestic service in the Hong Kong SAR, 2000

Type of sexual harassment/assault	Sample group	Extrapolation over
-----------------------------------	--------------	--------------------

experienced (per cent)	response rate domestic workers	the 220,000 foreign
Raped	0.2	440
Coerced to have sex or perform sexual acts	0.3	660
Employers asking them to do sexy things e.g dance, wear sexy dress	0.7	1,540
Employers watching them in a malicious manner or peeping at them in a toilet room	0.9	1,980
Employers showing them or asking them to touch their bodies; walking naked or in underwear	1.1	2,420
Physical harassment (employers touching their body parts, making other sexual advances, kissing them)	1.3	2,860
Employers talking to them in explicit sexual language, showing them pornographic materials (books, videos, photos)	1.5	3,300

Source: In Zaitun, 2001.

Occupations or institutions with a preponderance of either sex

The high incidence of sexual harassment in occupations where many women are supervised by a few men is illustrated by the situation of workers on tea plantations in Sri Lanka. Women make up approximately 65 per cent of the total labour force on the tea estates. However, almost 90 per cent of the tea-pluckers are women while 99.9 per cent of the

Kangani who supervise them are men (Wijayatilake and Zackariya, 2000).

Women respondents to the Indian study cited the lack of women in high positions, for example in the legal, government and public service professions where almost all respondents reported male supervision, and the absence of a 'critical mass' of women in organizations to be an important factor as to why sexual harassment happened. Women's hostels are another case in point.

There is resistance to women entering into what is traditionally recognized as male-dominated occupations, and some of this resistance manifests itself in the form of harassment against women. Goodman observes that sexual harassment is particularly prevalent in occupations traditionally closed to women (in Shahnaz, 2001). In addition, women in non-traditional vocational skills training or jobs experience are also found to experience more sexual and other types of harassment than women in traditionally female skill areas (DSD, MOLSW, Thailand, 1998).

Jobs and/or living conditions with low security

Risk of dismissal

Workers employed in either temporary, casual, part-time work, or any combination thereof are particularly vulnerable. For example, in the Thai Par Garment Factory the workers found it difficult to apply for sick leave as it could result in dismissal, let alone expose the manager who was sexually harassing them.

The workers hated this manager so much but they did not know how to get him out of his job. They also had other problems. If they were sick and asked for permission for leave they would be fired. . . . (Interview with the former president of the Par Garment Factory Labour Union in Zaitun 2001)

Another example is the Lotte Hotel in Korea where 60 per cent of the temporary workers are women. More than one-quarter of them stated that they had been sexually harassed. Most of them did not protest against the advances of the supervisor because the supervisors'

evaluation was critical for renegotiating the contract and/or the amount of salary. New Zealand teenagers in poorly paid, often part-time work were most likely to have been sexually harassed, especially those in the service or hospitality industry. This industry accounted for nearly 20 per cent of the cases, while hospitality workers form only 4.5 per cent of the workforce (HRC, 2000).

Lack of income security

In a 1993 study on the working conditions of women garment workers in Bangladesh, it was found that one in five women interviewed spoke of being physically assaulted, while almost two out of every three women stated that the use of 'sexual comments was all too common'. The study noted that the lack of employment security among the garment workers meant that not only were they more prone to being harassed but also less likely to take action about the harassment (Shahnaz, 2001). The country study from Bangladesh included interviews with 100 women workers in the garment industries and bidi (cigarette) production centres and small factories, and in the construction industry. Shahnaz (2001) reports that 43 of 50 garment workers interviewed in 2000-01 stated that they had been sexually harassed, as compared to only two of 25 construction workers, who reported sexual harassment at work and two of 25 bidi workers, who reported sexual harassment on their way to and from work. Still, the greatest concerns of the garment workers were low wages, non-payment of wages, and lack of assurance to the payment of minimum wages. As a respondent reflected: "if there was security of income (in the garment sector), more women would complain of sexual harassment". The garment workers in Bangladesh reported that sometimes even minimum wages are not met, and in many instance there were no proper appointment letters. These insecurities result in women suffering various forms of sexual harassment without complaining.

In the case of the bidi and the construction workers, although the pay is low for a great deal of hard work, there is security of wages. All of the women workers employed in the bidi and construction work who were interviewed said they were paid immediately upon production of the work done or the next day.

Lack of social networks and a safe place to work and live

The country study from Bangladesh indicates that a lack of social networks among garment workers also seems to lead to increased risks of encountering sexual harassment. Garment workers, the majority of whom are urban migrants from rural areas, live mostly in slums in the cities and lack the security afforded by the proximity of family and well-known neighbours. Landlords were reported to be reluctant to rent out accommodation to single women and in particular, garment workers. Construction workers and bidi workers on the other hand, even if they had migrated from elsewhere, tended to work and live within the same compound close to their families and neighbours.

None of the interviewed bidi workers spoke about sexual harassment at work. They felt that 'these things do not happen where we work' as the owner was strict and vigilant. Their complaints were more about health or discrimination regarding workload. All but one of these workers said that they had obtained employment through a relative, husband or father or in-laws or fictitious kin relations from the village. Fictitious kin relations are the creation of imaginary familial relationships based on age and sex. In the bidi factory context, the notion of fictive kin relations plays an important role in defining acceptable forms of relationships between women and men who are by and large strangers to each other, but who spend a significant proportion of the day in close proximity' (Kabeer, 1994 in Shahnaz, 2001)

Security of transportation and travel

As indicated earlier, garment workers, who either walk or catch public transportation, face a high level of harassment on the way to and from work. Law enforcing agencies themselves apparently harass the women, and at times bus drivers even refuse to take on garment workers. In case of the bidi and construction workers, however, they either work in close proximity to their homes or walk through familiar village routes where they have lived most of their lives. In fact, the very lack of anonymity within these familiar environments may in fact be a deterrent to the potential harasser as they would want to avoid being easily identified and reprimanded.

4. LEGAL ACTION AGAINST SEXUAL HARASSMENT

4.1 Action at the international and regional levels

At the international level, sexual harassment is not yet the explicit subject of any binding international Convention. The only international Convention that explicitly prohibits this behaviour is the ILO's Indigenous and Tribal Peoples Convention, 1989 (No. 169). Article 20 specifically prohibits sexual harassment of indigenous and tribal women and men¹. However, this lack of explicit focus in international treaties does not mean that sexual harassment is not addressed at the international level. International forums and supervisory bodies of the ILO and the United Nations have highlighted and condemned sexual harassment and considered it to be covered by existing international instruments on human rights, sex-based discrimination, violence against women, and occupational safety and health. A list of relevant general international and regional instruments is attached as Annex 1 to this report.

The UN Committee on the Elimination of all Forms of Discrimination against Women has dealt with the issue under the application of the UN Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW). To clarify the scope and application of the Convention and to provide guidance to States Parties, the CEDAW Committee adopts non-binding general recommendations. It adopted General Recommendation No.19 in 1992 on violence against women and called on States to take measures to protect women from sexual harassment, which was recognized as a form of violence. In the General Recommendation, it defined sexual harassment as 'such unwelcome sexually determined behaviour as physical contact and advances, sexually coloured remarks, showing pornography and sexual demands, whether by words or actions. Such conduct can be

¹ Article 20: 'Governments shall do everything possible to prevent any discrimination between workers belonging to the peoples concerned and other workers . . . the measures taken shall include measures to ensure . . . (d) that workers belonging to these peoples enjoy equal opportunities and equal treatment in employment for men and women, and protection from sexual harassment.'

humiliating and may constitute a health and safety problem'. In reviewing compliance with CEDAW, the CEDAW Committee has emphasized the need to take action to combat sexual harassment and may pose questions to the Government representatives presenting their national reports on the action undertaken to effectively combat sexual harassment in the country and the results achieved.

The UN Declaration on Violence Against Women, 1993, acknowledges, 'Violence against women shall be understood to encompass, but is not limited to physical, sexual and psychological violence . . . including . . . sexual harassment and intimidation at work' (Article 2).

The ILO Committee of Experts on the Application of International Labour Conventions and Recommendations has been addressing sexual harassment under Convention No. 111 concerning Discrimination in Employment and Occupation for some time now. In its 1988 General Survey on Equality in Employment and Occupation, the Committee of Experts identified sexual harassment as a form of discrimination based on sex, listed a number of examples of sexual harassment in employment applying to both men and women and pointed to several different approaches taken by countries to prohibit sexual harassment in law. Recognizing that this phenomenon was already the subject of study, it highlighted surveys conducted in Canada and in Peru in 1983, which revealed that many persons had been subject to unwanted sexual attention at the workplace. It also noted the conclusions of a seminar on Women and Employment in Malaysia, 1983, which encouraged surveys and other action on sexual harassment based on the rationale that recognition of this phenomenon played an important role in its elimination.

Expert meetings convened in the ILO to look at equality issues also raised the issue of sexual harassment within the equality and safety and health contexts. The ILO Tripartite Meeting of Experts on Special Protective Measures for Women and Equality of Opportunity and Treatment (1989) and the ILO Tripartite Symposium on Equality of Opportunity and Treatment for Men and Women in Employment in Industrialized Countries (1990), referred in their conclusions to the need to combat sexual harassment and emphasized the adoption of

preventive action as well as measures to prohibit and sanction it.

By 1996, the ILO Committee of Experts, in its Special Survey on the Application of Convention No. 111 on Discrimination in Employment and Occupation, stated that 'Sexual harassment undermines equality at the workplace by calling into question individual integrity and the well-being of workers; it damages an enterprise by weakening the bases upon which work relationships are built and impairing productivity. In view of the gravity and serious repercussions of the practice, some countries are now adopting legislation prohibiting it and making it subject to civil and/or criminal penalties.' (at p. 16). The Committee of Experts left no doubt that they considered sexual harassment to fall within the scope of the Convention.

In its examination of the application of Convention No. 111 to specific countries that have ratified the Convention, the Committee of Experts in its comments has drawn attention to the importance of taking measures to prohibit sexual harassment. For example in comments directed to India in 1997 and 1998, the Committee noted the Supreme Court's ruling in *Vishaka and Ors. V. the State of Rajasthan and Ors.*, 1997, and continued to follow up on the developments of the implementation of that ruling including inquiries into whether the guidelines issued by the Court have been incorporated into any laws or regulations.

These decisions and comments of the supervisory bodies of international conventions do not have the same legal authority as international treaty law, but they have persuasive authority on policy makers, administrators, advocates and judges. In the *Vishaka* case, the Court relied on these decisions and comments as guidance, in a manner similar to what has been seen in courts in Eastern and Southern Africa and in the Americas.

In the 1985 and 1991 International Labour Conferences, ILO member States adopted resolutions – non-binding policy documents – that proclaimed: 'sexual harassment at the workplace is detrimental to employee's working conditions and to employment and promotion prospects. Policies for the advancement of equality should therefore include measures to combat and prevent sexual harassment' (ILO

Resolutions 1985, 1991).

The recognition of sexual harassment at the international level has not been limited to organizations and treaty-bodies. The International Labour Organization's Administrative Tribunal has made findings on cases in which international civil servants have made complaints of sexual harassment. In one such case, *In re Mussnig*, the Tribunal concluded that, 'the upshot is that her career is in ruins and, at least on the evidence before the Tribunal, the official who is the cause of her troubles has been left unscathed. Any organisation that is serious about deterring sexual harassment and consequential abuse of authority by a superior officer must be seen to take proper action. In particular, victims of such behaviour must feel confident that it will take their allegations seriously and not let them be victimised on that account.' The tribunal awarded reinstatement and damages. Here again, the rulings of this Tribunal are considered to be influential in national level forums such as labour courts and tribunals.

At the regional level, the European Union is probably the organization that has been the most active in this field. Its Council of Ministers, Parliament and Commission have taken a number of initiatives, culminating in the adoption by the Commission of a recommendation to which is appended a code of practice on How to Combat Sexual Harassment. In the measures taken at the level of the European Union, emphasis was placed on the discriminatory aspects of sexual harassment and on its affront to the dignity of persons. Recently, the European Commission adopted a proposal for a directive modifying Council Directive 76/207/EEC concerning equal treatment between men and women. The draft directive is intended to formulate a definition of sexual harassment as an illicit form of gender discrimination. (COM, 2001) A list of the relevant instruments adopted by the European Union is attached in the Appendix to this Report.

The Organisation of American States (OAS) adopted a Convention on Violence against Women, which contains measures similar to those in the General Recommendation 19 adopted by the CEDAW Committee. In the Caribbean Sub-Region, the Caribbean Economic Community (CARICOM) developed a Model Law on Sexual Harassment. The scope of the law was limited to quid pro quo sexual harassment. In 1997,

CARICOM adopted a Model Law on Equality of Opportunity and Treatment in Employment and Occupation, expanding the scope of the definition of sexual harassment to address hostile environment sexual harassment as well as quid pro quo.

In the Asia and the Pacific region the most recent development is the adoption of a Resolution on Action against Work-related Sexual Harassment by the International Confederation of Free Trade Unions Asia Pacific Regional Office (ICFTU-APRO) in 2001. Among others, the Resolution calls on the ILO member States to adopt a binding international labour instrument to explicitly prohibit sexual harassment. Highlights of this Resolution are given in chapter 5.

The guidance provided by these initiatives at the international and regional levels reflects recognition of the issue of sexual harassment and the multiple avenues available by which it may be addressed. From any of the vantage points, human rights, human dignity, or human resources, sexual harassment is considered to be unacceptable conduct that should be prevented, prohibited and sanctioned. The subject of sexual harassment has been placed on the agenda of the Governing Body for possible standard setting. At present there has not been a consensus from the tripartite constituents in favour of selecting the topic of sexual harassment for this purpose.

4.2 Developments in legislation at the national level

Recent trends

A majority of countries worldwide have adopted some form of legislation at national level that covers sexual harassment. In a growing number of countries specific legislation has been adopted to address sexual harassment. Specific legislation exists for example in Belize, Costa Rica, France, Israel, Luxembourg, and the Philippines. In most countries sexual harassment has been addressed by implication as an activity which is a violation of a statute covering a subject other than sexual harassment, such as human rights, non-discrimination, equal opportunity and treatment, unfair dismissal, contract law, tort law, or criminal law. Slowly but clearly, implicit protection of sexual harassment is giving way to explicit recognition and protection against acts of sexual

harassment in many of these laws. This trend is occurring in countries in Asia and the Pacific as well as in other regions of the world.

Recent developments show many countries attempting to strengthen their protection against sexual harassment through legislative means. Since 1995 legislative action to protect against sexual harassment has been adopted in the Asia and Pacific region in Australia, Bangladesh, Hong Kong SAR, Japan, Philippines, and Sri Lanka. Some of these initiatives established statutory obligations where none previously existed. For example, in Japan, the 1997 amendment to the Equal Employment Opportunity Law created a new provision for sexual harassment, which imposed an obligation on employers to prevent both quid pro quo and hostile environment sexual harassment.

In some areas, the scope of sexual harassment laws is expanding. In Australia, New South Wales has amended the Anti-Discrimination Act, so as to prohibit sexual harassment and to ensure that Ministers and other Members of Parliament are liable for their own acts of sexual harassment. Further, in 1997 South Australia also adopted the Equal Opportunity (Sexual Harassment) Amendment Act, which prohibits acts of sexual harassment by judicial officers and members of Parliament. In the Philippines, administrative regulations were supplemented by the adoption of an Act on Sexual Harassment. Moreover, several bills are currently pending to amend the Act to expand the definition of sexual harassment, the coverage of the law and to increase the penalty for the offence. In Bangladesh, the Violence against Women Act was adopted, and in Sri Lanka the Penal Code was amended, to cover sexual harassment.

This pattern of strengthening protection against sexual harassment is also observed in other parts of the world. For example, following the adoption in *Costa Rica* of a law against sexual harassment in employment and education in 1998 it amended its Penal Code to provide that sexual harassment and propositioning will be public offences liable to private prosecution and punishable with a prison sentence. In Uruguay, an implementing Decree (No. 37/9, February 1997) for the 1989 Act on Equal Opportunity and Treatment for Both Sexes, specified that sexual harassment in the workplace is a serious offence of discrimination prohibited under the Act. In Belize a fully

comprehensive Act on Sexual Harassment was adopted in 1997, and in South Africa, the newly adopted equality legislation specifically covers sexual harassment in employment.

In many other countries draft laws and Bills on Sexual Harassment are under discussion, such as in Argentina, Barbados, Bolivia, Bulgaria, Jamaica, Malaysia, Peru, Saint Kitts and Nevis, Uruguay and Zimbabwe. In still other places, where no specific legislative action has been adopted or proposed, calls for such action are increasing. In the 1997 Report of the Commission on Inquiry for Women in Pakistan, there is recognition that sexual harassment in the workplace and elsewhere is widespread in the country and it recommends the enactment of legislation making it mandatory for all employers to respond and monitor incidents of violence and harassment at work. The Indian study, suggested that it would be necessary not only to amend existing laws but also to develop both a new law to deal specifically with sexual harassment and another to outlaw discrimination on the basis of sex. The new law on sexual harassment was needed to provide further clarity to the Supreme Court decision on sexual harassment and to ensure procedural safeguards and rights rooted in legislation (The Lawyers Collective, 2001).

There is reluctance in some countries to move too quickly on the adoption of legislation. In some circles there is belief that legal protection will cause workplace relations to sour while for others voluntary initiatives are considered sufficient and the preferred approach. For instance, In Malaysia, the Labour Department is making great efforts to promote voluntary initiatives, in lieu of legislative action, through the use of the national Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace. In China, some members of the law circles feel that legislating against sexual harassment is still not a priority in view of the fact that more 'brutal' crimes such as rape, trafficking in women and family violence have not been effectively eradicated (Tang, 2000). Nevertheless, even in these situations it is usually felt that some form of prevention of sexual harassment should be undertaken at the enterprise and institutional level.

In some countries, legal protection against sexual harassment has been recognized and defined by judicial decision by way of judicial interpretation of the prohibition of sex discrimination or equal rights requirements or even criminal and Constitutional provisions, for example in Denmark, Greece, Hong Kong SAR, India, Japan, United Kingdom and the United States. In some instances the advocates and courts should be commended for their creativity. In Sri Lanka, prior to the amendment of the Penal Code in 1995 to recognize 'unwelcome sexual advances', a case filed by an employee against a superior officer who allegedly demanded sexual favours in exchange for a promotion was recognized by the court as an act of soliciting 'bribery' (Wijayatilake and Zackariya, 2000).

The judiciary has taken the lead in dealing with sexual harassment in some places. In Japan, courts evolved sexual harassment liability of employers as well as individual employees prior to enactment of legislation. In India, the Supreme Court of India issued a decision containing guidelines and norms prohibiting sexual harassment of women in the workplace (see box below). The ruling has been followed and further elaborated in other cases. In the United States, it was the courts in a number of cases that established the scope and foundation of quid pro quo and hostile environment causes of action under sex discrimination legislation. Similar to the Supreme Court in India, a Labour Court in Zimbabwe, just ruled, in the absence of national legislation, in support of a claim of sexual harassment, basing its reasoning on CEDAW and the CEDAW Committee's General Recommendation No. 19.

**Box 1. The Supreme Court of India on sexual harassment:
Guidelines and norms**

In *Vishaka vs. State of Rajasthan* (1997) 6 SCC 247, the Supreme Court of India used a class action brought as a result of a gang rape of a social worker in Rajasthan to firmly establish sexual harassment as a 'social problem of considerable magnitude' and a violation of fundamental rights of women workers. The court laid down guidelines 'for the protection of these rights to fill the legislative vacuum'. The guidelines were a collaborative effort, drafted by the representative of the State, women's NGO lawyers and a panel of Supreme Court judges who heard the case.

The definition of sexual harassment given in the guidelines includes, 'unwelcome sexually determined behaviour (whether directly or by implication)' and which is considered, 'discriminatory for instance when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruitment or promotion or when it creates a hostile work environment'.

The guidelines impose a duty on employers to prevent (for example, by creating awareness of the guidelines in the workplace) or deter (for example, by initiating criminal proceedings) the commission of acts of sexual harassment. Employers also have a duty to provide the procedures for the resolution, settlement (for example, by establishing a complaint mechanism) or prosecution of such acts by taking all steps required. Importantly, the guidelines are binding and enforceable in law until suitable legislation is enacted to occupy the field. In the case of third party harassment, the employer must support the affected person and take preventive action.

In European Union countries, case law has in recent years dealt with legal questions concerning dismissal of the offender, constructive dismissal of victims, obligations of employers, compensation and redress for the victim and victimization of the complainants. In these cases, judicial interpretation and decision-making has added to the elaboration of what constitutes sexual harassment and how it should be dealt with.

General Definitions, Scope, Duties and Liability

In Chapter 2, the definitions of sexual harassment, including the description of both types of sexual harassment, have been set out in detail. The majority of countries that have addressed sexual harassment in their legislation or by judicial decision-making have endorsed both forms of quid pro quo and hostile environment sexual harassment. While it would appear that within the Asia and Pacific region the quid pro quo theory has greater legal protection, especially through heavy reliance on criminal law protection, both forms of sexual harassment are generally recognized.

The laws of Australia, Hong Kong SAR, Japan, the Republic of Korea, Philippines and New Zealand cover the hostile environment. However, even those laws that extend protection to the hostile environment may have limitations in the acts which they cover. For example, the law in

the Philippines, the Anti-Sexual Harassment Act (1995), declares unlawful all forms of sexual harassment in an employment, education or training environment including hostile environment, but it only prohibits sexual harassment by persons in a position of authority, influence or moral ascendancy of authority. Under the Equal Employment Law in the Republic of Korea, it appears that in the event that the harasser is the president or the client, there is no way to punish them under the current law. This is a serious limitation, where many women work in small businesses where 'the president' is constantly present or in service industries dealing with the public.

There are fundamental problems in restricting prohibition of sexual harassment to quid pro quo situations or, in other words, to sexual blackmail by the employer or his or her agent. The first is that even if the concept of 'the employer' for this purpose is widely defined so as to include managers and supervisors, it excludes conduct between peers. Yet harassment by a colleague can have physical, emotional and psychological consequences that are as damaging as those of harassment by a supervisor, through the creation of a hostile working environment. Secondly, where the law limits its definition of sexual harassment to sexual blackmail, the effect is that it is not the harassment *per se* that is regarded as unlawful, but rather that the victim has lost a promotion or pay raise, or was dismissed, because of her (or his) reaction to the harassment. Such a situation effectively permits a worker to be sexually harassed with impunity, provided that no tangible action was taken against him or her as a result of their resistance (Husbands, 1992).

Box 2. Sri Lanka: Penal Code uses 'unwelcome' standard

'Whoever, by assault or use of criminal force, sexually harasses another person, or by the use of words or actions, causes sexual annoyance or harassment to such other person commits the offence of sexual harassment.' (Sec.345 of the Penal Code (Amendment Act, 1995). In explaining it further, the Act states that 'Unwelcome sexual advances by words or action used by a person in authority, in a working place or any other place, shall constitute the offence of sexual harassment'.

It is as true today as it was in 1992 when Husbands undertook a review of national law, that in virtually all countries that have defined sexual

harassment by statute or court decision, the essential element of a complaint of sexual harassment is that the conduct was unwelcome. The question that follows is how to determine whether the particular conduct in question was unwelcome. The reliance on criteria such as whether the behaviour is 'welcome or offensive' to particular individuals, which figure prominently in the definitions, means that it is not necessary or even desirable in legislation to compile an exhaustive list of harassing behaviours that should be prohibited. Most statutes have avoided doing so and instead adopt a more general approach. In this way the legal protection is not limited by the assumption that any unlisted conduct does not fall within this scope of the law but offers more opportunity for taking into account relevant particular circumstances.

The most commonly used test to determine sexual harassment refers to actions that an individual knew or should reasonably have known are unwelcome. The manner by which an individual knows whether the conduct is unwelcome is through common sense or communication. Thus, the response of the recipient and the manner in which the complainant communicated the undesirability of the conduct is important.

A related issue is whether the actions must occur more than once. In other words, do they need to be repetitive to be considered unwelcome, and thus harassment, or is a single incident a sufficient basis to make a complaint? Clearly some forms of conduct are unwelcome by their nature, for example, physical behaviour that constitutes rape or battery, fondling, or a demand for sexual favours in exchange for a job benefit. Conduct that falls within the scope of criminal violations does not have to be repeated to be addressed under the law. As recognition of sexual harassment increases among workers and employers, the type of behaviour considered to be unwelcome should become wider to include derogatory comments, sexist remarks and the like. In Australian legislation, the statutory language clearly refers to *an* offensive act, thus negating any possible requirement of repetition.

Box 3. The Philippines Anti-Sexual Harassment Act of 1995

Section 3. Work, Education or Training – related Sexual Harassment Defined.

Work, education or training-related sexual harassment is committed by an employer, employee, manager, supervisor, agent of the employer, teacher, instructor, professor, coach, trainer, or any person who, having authority, influence or moral ascendancy over another in a work or training or education

environment, demands, requests or otherwise requires any sexual favor from the other, regardless of whether the demand, request or requirement for submission is accepted by the object of said Act.

(a) *In a work-related or employment environment, sexual harassment is committed when:*

- (1) The *sexual favour* is made as a condition in the hiring or in the employment, re-employment or continued employment of said individual, or in granting said individual favourable compensation, terms, conditions, promotions or privileges; or the refusal to grant the sexual favour results in limiting, segregating or classifying the employee which in any way would discriminate, deprive or diminish employment opportunities or otherwise adversely affect said employee;
- (2) The *above acts* would impair the employee's rights or privileges under existing labor laws; or
- (3) The above acts would result in an intimidating, hostile, or offensive environment for the employee.

Source: Government of the Philippines. 1995. Republic Act No. 7872: An act declaring sexual harassment unlawful in the employment, education or training environment, and for other purposes, Manila.

Similar language is used in the Philippines Anti-Discrimination Act, which also clarifies that the offensive act may be actionable regardless of whether recipients have indicated their disagreement to the offender or not. However, some conduct that is not inherently offensive may require a rejection or other negative communication by the recipient to the offender to be actionable. In some instances, courts require a clear rejection to be established. Once the clear rejection has been made, any repetition of that same or similar conduct could be deemed unwelcome².

² Sweden offers a unique case opposite to that of Australia wherein the law states that a worker shall not be harassed because she or he has refused sexual advances. Thus

In some cases the application of the law has proved to be a source of frustration where persons responsible for applying it impose unnecessary or unrealistically narrow interpretations on statutory language such as how to interpret 'conduct of a sexual nature'. Although questions on application of statutory language can never be completely avoided, many laws overcome this issue by clarifying that the term conduct refers to any action (verbal, physical or non-physical), or by replacing it with the term 'words or action'.

A review of existing legal safeguards makes it clear that the intent of the harasser is not determinant in the majority of cases, except in some criminal actions.³ Typically, the focus of an inquiry is on the recipient's feelings and not on the intent or motive of the accused. It is the recipient who determines whether the conduct, of a sexual nature, is welcome or offensive or not. Most courts imply in this determination an element of reasonableness. The question then becomes from whose perspective is reasonableness to be assessed. This has led some courts to indicate that it is a reasonable women's appreciation of the behaviour that should be used as the standard. Several courts have held the standard to be a reasonable victim's appreciation that would be most appropriate. Others have held that an objective approach is inappropriate for such cases and only a subjective standard should be used to determine reasonableness. In these cases the reaction of the victim is completely determinant and should not be substituted by that of a third person.

Box 4. The Philippines: Dealing with acts done 'in jest' or 'by accident'

In several administrative cases decided by the Civil Service Commission, the respondents admitted commission of the acts charged or some modification of it but claimed that they were done 'in jest' or 'without malice' or without 'malicious intent' (meaning without lascivious intent) or were 'accidental'. These defences were ignored by the Commission. The defence of 'accidental touching' was not given credence in one case because of the detailed and

the consequence of refusal is what is actionable rather than the act of the harassment. This approach has not been widely followed.

³ In this regard, an interesting question arises under the Philippines legislation on sexual harassment surrounding the uncertainty that exists over the intent that will be required to prevail in a cause of action pursuing the criminal enforcement mechanism, which is available under a non-penal statute.

straightforward testimony of the complainant. The defence was considered 'self-serving.

Source: Ursua, 2001.

The issue of consensual sexual favouritism has been addressed in a few countries. The Belize Protection Against Sexual Harassment Act of 1996 provides that where an employer grants benefits or opportunities to someone who accepts sexual advances, the employer is liable to any person who was denied the opportunity or benefit because of their refusal to submit to the harassment. In the United States this type of conduct has also become actionable as a result of judicial decision. The significance of addressing this in the Asia and Pacific region is demonstrated in the national studies.

The superintendent keeps harassing me all the time asking me to agree to his demands. I have continuously refused, but he does not give up. He has been doing this to other women too and some of them have succumbed. They are given better facilities in their creche and he supports its development. He is a man who wants to have his own way with women and will do anything for no-cost sexual satisfaction. I work very hard but I don't even get the basic facilities to do my work better. Instead he has transferred me to a lonely division and given me housing quarters in a lonely area. (Widow with two children, in Wijayatilake and Zackariya, 2000).

While some laws focus on the prohibition of sexual harassment, others provide for an **affirmative duty** to act to **prevent** sexual harassment. For example, in Canada, Belgium and Sweden employers are required to issue a policy statement on sexual harassment or to take certain affirmative steps to prevent its occurrence. In Switzerland, the Federal Act respecting equality between men and women covers the employers' responsibility regarding protection against sexual harassment. In Belize, the person in charge of an institution (school, prison) has a duty to keep it free from sexual harassment and intimidation and to express a clear policy against sexual harassment to staff, students, inmates and wards of that institution. Interestingly, it does not place this same affirmative duty on employers.

The affirmative duty to prevent sexual harassment is also appearing in countries in Asia and the Pacific. The Equal Employment Act in the Republic of Korea as amended in 1999 and August 2001 places on the employer, the obligation of prevention, education and disciplinary measures against an employee who commits sexual harassment. The Act penalizes employers if they are found to not have carried out their duty in preventing and taking action against an alleged perpetrator. The Vishaka Guidelines (1997) in India impose a duty on employers to prevent and/or deter the commission of acts of sexual harassment. Employers also have a duty to provide the procedures for the resolution, settlement or prosecution of such acts by taking all steps required, including setting up a Sexual Harassment Committee at the workplace level to investigate all complaints. In Australia, legislation holds employers vicariously liable for harassment by their employees and agents unless they can establish that they took all reasonable steps to prevent the incident. This provides employers with a significant incentive to take preventative measures against sexual harassment.

The question of who is liable, or in other words, who bears the legal responsibility and who can be sanctioned, for violations of sexual harassment law is not always clear if it is not spelled out by statute. In work-related sexual harassment cases the issue is whether the employer alone, the harasser alone or both could be held liable. Liability may either be direct (that is, automatic) or vicarious, which is when conduct of one person is considered to be the legal responsibility of another. It is not automatic but must be shown based on the existence of certain factors. Typically, employers may be held vicariously liable for actions of their employees, or even others, if they knew or should of known of the action, and they failed to take action to stop or correct it. Optimally, claimants should have the option of pursuing any of these possibilities depending on the nature of the conduct and other circumstances. The availability of redress depends on the type of law under which the action is brought. The available avenues for each type will be discussed below under each type of law.

The benefits of holding the employer liable are foremost that the employer may be the best placed to ensure that the harassment stops. In addition, employers may be more financially solvent and thus the complainant would have a better chance of collecting monetary

damages. They may also be the only ones able to remove the harasser from the complainants' working environment or to remedy the harm caused by the harassment such as loss of salary, promotion, training, or other opportunities.

Interestingly, employers who are committed to preventing and dealing with sexual harassment may be able to use their efforts to shield liability and thus benefit from provisions in laws that place an affirmative duty on employers to prevent sexual harassment. Recent U.S. Supreme Court decisions held that an employer may assert an affirmative defence based on its exercise of reasonable care to prevent sexual harassment in supervisor's working environment harassment cases.

The benefits of holding the harasser liable may be as simple as to win a moral victory. However winning monetary damages from the person may also be an effective means of discouraging the harasser from engaging in the conduct in the future. This may be particularly true if the employer is not required or does not take some disciplinary action against the harasser for engaging in the prohibited conduct.

In this respect lawmakers are paying increasing attention to the procedural aspects of the handling of sexual harassment cases. For example, a number of countries have laws such as the Labour Code in Panama which require employers to establish an equitable, reliable and practical procedure to investigate complaints of sexual harassment, and include provision for appropriate penalties.

Legal basis for sexual harassment protection

In addition to the specific laws on sexual harassment, in most countries, sexual harassment law can be classified according to whether protection is provided under equal opportunity law, labour law, civil law, tort law or criminal law. Within each area of law, issues of scope, liability, procedural protections and process, sanctions and remedies may vary. Most countries have overlapping coverage, with protection afforded by two or more different categories of laws. For example in Turkey, while no specific act exists, guarantees against sexual harassment have been identified under constitutional, criminal, civil, and labour law. While the adoption of legislation specifically addressing

sexual harassment is considered to be most effective, other measures can also be utilized. As was recommended in a seminar on Women and Employment in Malaysia, 1983, until adequate provisions are adopted, cases of sexual harassment should be pursued in the courts under terms that already exist such as 'assault', 'affront to one's honour' and 'rape' within the meaning of the Penal Code. This general course of action appears to continue to be used throughout the world. Thus we see sexual harassment being dealt with in whatever possible way the law allows.

Non-Discrimination and Equal Rights Laws

Most countries have adopted some form of legal protection against discrimination based on sex in employment and employment-related areas such as education and training. These are often considered to offer the most substantive source of legal protection against sexual harassment. In a number of countries, where sexual harassment is not mentioned in the law, courts have interpreted the general provisions on non-discrimination and equality to cover cases of sexual harassment using the same analysis as at the international level. From time to time a court will be reluctant to do so. However, given the number of courts and bodies, including the international treaty bodies, that have pronounced on this, judiciaries world wide increasingly seem to agree that sexual harassment is a form of discrimination based on sex.

In a number of cases in the Asia and Pacific regions, equality laws explicitly apply to sexual harassment. The Equal Employment Act in the Republic of Korea was amended in 1999 to recognise sexual harassment as an impediment towards equal opportunity between men and women. In Australia the Federal Sex Discrimination Amendment Act (1995) renders it unlawful to sexually harass an employee, a fellow employee, a person who is seeking employment, a contract worker or a workplace participant. At the state level, non-discrimination and equality acts specifically refer to sexual harassment. In Hong Kong, SAR, the Sex Discrimination Ordinance (1995) provides for the elimination of discrimination and sexual harassment by employers and other institutions in the employment field (such as partnerships, trade unions, and government). The Ordinance covers not only employees but also job applicants, contract workers, trainees and people using employment services. In Japan, the equality legislation explicitly prohibits sexual

harassment, but it only provides protection for women.

In other parts of the world similar developments are occurring. In Uruguay, the implementing Decree (No. 37/9, February 1997) of the Act No. 16.045 of June 1989 on equal treatment and opportunity for both sexes in any sector or branch of the economy, stipulated that sexual harassment in the workplace is a serious form of discrimination and is prohibited. In Switzerland, the Federal Act respecting equality between men and women includes provisions on sexual harassment.

Liability under equal rights acts is determined by whether the sex discrimination is prohibited 'by an employer' or 'by any person', which could include both the employer and the harasser. An employer is ordinarily liable for quid pro quo sexual harassment by supervisors, because the supervisor exercises authority delegated by the employer to make employment decisions. In the case of hostile environment sexual harassment, liability of the employer is usually not automatic, but must be established. Employers may also be held vicariously liable for actions of co-workers and clients or customers if the test of 'knew or should have known and no action taken' is established. However, in New Zealand, the employer is directly responsible by statute for both quid pro quo and hostile environment sexual harassment by supervisors, but for others the vicarious liability must be established based on the facts.

Equal rights laws are usually applicable to both men and women and therefore under these laws both men and women would be protected against acts of sexual harassment. Whether sexual harassment applies in cases involving persons of the same sex used to be in doubt but now is considered by some courts in the affirmative. The drawbacks are that many of these laws may also suffer from the same limitations of other labour laws if they are restricted to the formal employment relationship or if they offer insufficient remedies and sanctions. They may also not provide sufficient guidance on the subject by not providing full definition or outline of the procedures, duties and sanctions. For this reason much of the protection against sexual harassment under equal rights and non-discrimination laws has been judicially developed by courts.

Labour Law

Labour law broadly defined to include employment related acts including termination of employment, occupational safety and health, industrial relations and workers' compensation acts, offers substantial protection against sexual harassment, but in practice its impact is mostly limited to quid pro quo cases where the complainant has been terminated from employment, unless prohibition of sexual harassment is specifically covered in the law.

As in non-discrimination laws, in an increasing number of labour codes, sexual harassment provisions are expressly included, for example in Belgium, Canada, France, New Zealand, and Spain. Canada's federal Labour Code states that all employees are 'entitled to employment free of sexual harassment'. New Zealand's labour law describes sexual harassment as a personal grievance that can be taken up with the employer. In the case of New Zealand, the labour law extensively covers sexual harassment including a definition, legal protection afforded, employer liability, remedies and personal grievance procedures.

Labour laws are drafted to place responsibility on the employer for violations – thus it is the employers who are liable. Persons are not usually individually liable for violations of the labour law. Thus complaints under labour laws can only be brought against the employer. As there is no direct employer liability for actions of colleagues or third parties it is difficult to hold employers liable for conduct of clients or customers or even colleagues unless there is a specific duty placed on the employer to stop any such harassing conduct that he/she knew or reasonably should have known about. In Malaysia, Section 14(3) of the Employment Act does not define nor actually deal with the harassment itself, but it absolves an employee of fault if they leave the job 'where he or his dependents are immediately threatened by danger to the person by violence or disease'. The Act, however, only applies to those earning less than RM1500 (US\$395), which excludes many women from the provision.

Unfair dismissal legislation has been or could be used in cases of termination or constructive discharge to protect against dismissal based on objection to or refusal to submit to sexual harassment. In Paraguay, for example, Section 84 of the Labour Code incorporates sexual

harassment to be a justified reason to terminate a contract of employment unilaterally by the employee – damages can then be sought.

In some countries, for example India, Australia and Malaysia, remedies can also be sought through the industrial courts in the event that an employee is wrongfully dismissed as a result of taking action against sexual harassment or forced to resign because working conditions became intolerable. The Industrial Disputes Act 1947 in India, and the Industrial Relations Act 1967 in Malaysia provide for redress under 'unfair dismissal' or 'constructive dismissal'. Similarly, the Workplace Relations Act 1996 in Australia prohibits dismissal from employment on the grounds of having brought a complaint of sexual harassment.

The use of constructive dismissal has the drawback of requiring the complainant to quit the job and pursue a course of action during which time he or she may not be employed or receiving any earnings. It in effect places the complainant at a double disadvantage, and may act as a deterrent for pursuing the case. Many of the country studies note that an overwhelming majority of employees do not want to leave the job, they want the harassment to stop.

Sexual harassment coverage may also be found in the specific legal provisions relating to contracts of employment wherein the duties and obligations of employers and workers are set out. For example, in various countries, employers are to adjust the working environment to protect employees from sexual harassment (Japan); or to show respect for 'propriety and decency' during the employment relationship (Belgium); or are responsible for an employee's physical and moral integrity (Italy); or have to ensure good working conditions 'both physically and individually' (Portugal).

Some labour laws seek to 'protect' women from dangerous or hazardous conditions, including sexual harassment. However these may, in fact end up curtailing their right to work under certain conditions. In Nepal, for example, the Foreign Employment Act, 1985, restricts women from going abroad for employment without the approval of the Government and guardians. The reason given for this is that it protects women from possible sexual harassment and exploitation. Similarly, the

Labour Act provides that only under certain circumstances can a woman be employed outside the home from 6 p.m. to 6 a.m. The Nepal researcher proposes that the approach of the law needs to be reoriented towards creating a safe environment rather than restricting the freedom and movement of women (Pradhan-Malla, 2001).

Occupational safety and health laws often provide general provisions of protection for safe and healthy work environments. For example, in Malaysia, the Occupational Safety and Health Act 1994 establishes the duties of employers to secure the safety, health and welfare of persons at work, and could be read to include safety from sexual harassment. However, in many countries, enforcement provisions or sanctions do not normally accompany these general provisions.

In many countries, however, labour laws are only valid for those involved in formal work relations, and as such do not address harassment for those outside their scope such as workers in the informal sector. They may also exclude those in the recruitment process or in training – but a number of statutes on sexual harassment actually provide for inclusion of potential employees. In addition, the administrative mechanism provided by the laws, such as the one in the Philippines Act, is oriented towards a formal work setting, which would be difficult, if not impossible, in informal work settings.

There also appear to be other shortcomings, some of which are exemplified below. In Thailand, the Labour Protection Act, 1998, forbids employers, persons in a position of authority or inspectors to sexually harass female employees, but the offence of sexual harassment at work is not defined and its scope does not extend to harassment by co-workers or harassment of male workers. As there is no definition, the law is to be read with the Criminal Law, where the penalties for various sexual offences are stipulated. However, there is no provision for sexual harassment in the Criminal Law. In addition, Article 16 applies only to workers in the private sector and not to those in government agencies and in other state enterprises, and affords protection only to women and child employees.

Similar problems of legislative combinations and limitations beleaguer the Gender Discrimination Prevention & Relief Act (GDPR) 1999 in the

Republic of Korea. The GDPRA does not in itself provide for the punishment for harassers and is read with the Punishment of Sexual Violence and Protection of the Victim Act (PSVPVA) 1993. However, the PSVPVA only provides for the punishment of 'rape by force or forced harassment by person in authority', which cannot cover the whole range of sexual harassment at the workplace, and by definition does not apply to sexual harassment by a fellow worker, a subordinate or third party harassment. In addition, the GDPRA does not prescribe penalties for the perpetrator nor compensate the victim but provides a penalty for employers who interfere with an investigation, refuse to be investigated or submit false data. Establishments easily meet the fines that are prescribed for the offence.

Public service regulations

In many countries sexual harassment is explicitly prohibited in the public service, for example in Argentina, India, Panama. Papua New Guinea, Philippines. In Papua New Guinea, the General Orders 16 under the Public Service Act clearly defines sexual harassment as an offence. However, at present no clear confidential procedures for reporting or investigation of complaints are provided by the Orders. Following the Vishaka case, on 13 February 1998, the Government of India amended the Central Civil Service (Conduct) Rules of 1964 to expressly prohibit the sexual harassment of women at their workplace. The Public Officers (Conduct and Discipline) Regulations 1993 in Malaysia stipulate that public servants can be charged for sexual harassment if their actions bring the public service into disrepute or discredit. The Board however has no power to demote or dismiss an officer. Since 1993, there has been one case where disciplinary action was taken on the grounds of sexual harassment (Zaitun, 2001).

In the Philippines, the Department of Labour and Employment (DOLE) issued administrative orders (Administrative Order No. 80, Series of 1991, as amended by Administrative Order No. 68, Series of 1992) applying only to DOLE officials and employees who commit sexual harassment against fellow DOLE officials or employees, applicants for employment, or DOLE clients. It defined the acts constituting sexual harassment and directed its administrative prosecution as a disgraceful and immoral act, classified as a grave offence. It also created a Special Fact-Finding Committee to receive and investigate sexual harassment

complaints and submit recommendations for action to the DOLE Secretary. Subsequently, the Civil Service Commission (CSC) issued a circular (Memorandum Circular No. 19, Series of 1994), entitled 'Policy on Sexual Harassment in the Workplace', which encouraged all heads of departments, bureaus and agencies of the national and local government to adopt and implement the Policy on Sexual Harassment adopted by the CSC on 31 May 1994.

Criminal Law

Criminal law is a category of law increasingly being used to address cases of sexual harassment. In some countries specific provisions on sexual harassment are included as criminal provisions. Some criminal provisions are appropriate to some cases of sexual harassment involving severe physical abuse such as crimes of rape, battery or assaults. Other criminal provisions may also be appropriate such as indecent or immoral conduct law. Some criminal statutes make it a crime to take advantage of someone in a situation of economic dependency.

Many countries, for example, India, Singapore, Malaysia, Pakistan, Bangladesh and Sri Lanka have provisions in place for the crime of 'offending women's modesty or dignity'. Acts of sexual harassment are also criminalized through other offences, for example 'hooliganism' (China), 'obscenity' and 'criminal intimidation' (India). The legal provision specifically referring to sexual harassment in Sri Lanka is contained in the Penal Code.

The use of penal law on sexual harassment has taken a different turn in France where a specific penal law on sexual harassment was adopted. Similar types of laws are being proposed in other, particularly Latin American, countries. The French law was designed to cover abuse of authority involving requests for sexual favours in the employment relationship as well as teacher-student and landlord-tenant relationships. However, given its penal nature, the law does not provide protection against hostile work environment forms of sexual harassment.

Other interesting developments in criminal law have occurred in the Asia and Pacific region. A special law in the Philippines on Sexual

Harassment provides an interesting hybrid of criminal and administrative types of actions through provision of optional means of enforcement. In 2000, a new piece of legislation addressing violence against women and children was enacted in Bangladesh, in which statutory recognition was given to the offence of sexual harassment for the first time.

Criminal laws deal with the more overt and physical forms of sexual assault and violence. They are not well equipped to tackle the more subtle (but not less discriminatory) instances of work-related sexual harassment. Many, if not most, of the relevant criminal law provisions apply to women only and do not extend protection to male complainants. In addition, these laws tend to be 'power blind' in the sense that they do not distinguish between a stranger harassing a person in the street and a superior harassing an employee within the workplace.

Box 5. Bangladesh: Suppression of Violence Against Women and Children Act, 2000

Section 10 of the Act deals with the concept of sexual harassment although the definition contained in the act falls short of encompassing the various modes that harassment may take place

Article 10(2) of the Law states:

'If any male, trying to illegally satisfy his carnal desires, abuses modesty of any woman or makes any indecent gesture, his act shall be deemed to be sexual harassment and for such act he shall be punished with rigorous imprisonment which may extend up to seven years but shall not be less than two years and shall also be liable to fine'.

Source: The Nari o Shishu Nirjaton Daman Act, 2000.

In pursuing criminal actions, complainants may be hesitant to report to the police for fear of not being taken seriously or ridiculed (unless in cases of serious physical injury). Once the complaint has been made, the responsibility for handling the action normally rests with a prosecutor except in cases where private criminal actions are permitted. The prosecutors may be unfamiliar or insensitive to issues surrounding

sexual harassment and the criminal procedures may not be very accommodating – both factors may operate to hinder or block the pursuit of such cases. For instance, the openness and lack of confidentiality in investigation and court processes might prove difficult for the complainant to handle.

Box 6. Republic of Korea: A 'slight matter'

In the Republic of Korea, one interviewee had been sexually harassed by the president of the firm, and could not take legal action against him. At law firms and police stations, she was told her case had been defined as a 'slight matter', because she had not incurred any physical injury. The psychological damages were completely dismissed. This is not a stand-alone incident. In cases of criminal or civil suit, when the incident is defined as a 'slight matter', it often does not reach the court, and even when taken to court, satisfactory results cannot be expected

Source: In Zaitun, 2001.

With respect to liability under criminal law, the harasser alone would normally be liable for criminal conduct covering sexual harassment. The employer would not be vicariously liable. Moreover, the burden of proof is usually beyond a reasonable doubt in criminal actions, which is harder to establish, especially if there are no witnesses.

Most of the countries in the Asia Pacific region that legislate against sexual harassment within their criminal laws report difficulty in proving both these elements of 'assault or criminal force' and 'intent'. In Bangladesh, for example, it may be difficult to prove that he was trying to 'satisfy his carnal desires' (Shahnaz, 2001). However, in India, although Section 354 of the Indian Penal Code explicitly requires both 'assault or criminal force' and 'intent to outrage the modesty of a woman' the Supreme Court, in passing its judgement, on a case of sexual harassment, held that the mere knowledge that modesty is likely to be outraged is sufficient. Following the decision in that case, this section often has been invoked by women facing sexual harassment in the workplace (Lawyers Collective, 2001).

Moreover, criminal actions necessarily involve court cases. Court cases take time, which is something many workers can ill-afford, especially those under precarious contracts such as many domestic workers, migrant workers, contract and piece-rate workers. The multiple burdens that women carry are also an added problem which increase the likelihood of the complainant not reporting or withdrawing her case. Women who have gone directly to the police with complaints on rape and molestation have found that the process involved has been slow unless pressure is brought upon the police to expedite the matter or the victim involved (or her family) has sufficient clout (Wijayatilake and Zackariya, 2000).

In many cases, those who are being sexually harassed want the issue to be handled discreetly and swiftly so that the behaviour stops, not necessarily to criminalize the perpetrator. In some countries, such as *France*, criminal sanctions on conduct may be imposed, even for violations of discrimination law, but in practice these are rarely imposed on employers.

Tort Law or Civil Code Law

A tort is a legal wrong, other than a breach of contract, usually some form of personal injury, for which a court can grant a remedy, most commonly in the form of damages. In a number of common law countries, tort law is a matter of judicial decision-making. In other countries similar actions are covered in civil codes as general responsibilities to exercise due care to others and to pay damages for injuries caused to them. Tort law has been found to compensate acts of sexual harassment in a number of countries (Japan, Switzerland, United Kingdom and the United States), and like non-discrimination laws, could offer a potential cause of action in most countries.

Some countries in the Asia and Pacific region have tort laws that allow for monetary compensation to be claimed for injury and loss suffered as a result of sexual harassment. For example, in Japan, courts found under tort law that employers or supervisors in charge of personal management have a duty to adjust the working environment, and that this duty is breached when they did not take action to deal with sexual harassment in the workplace of which they were aware. The tort law in India allows for suing for assault, emotional distress and failure of the

employer to provide a safe system to work. The harasser and the employer can be held jointly liable, the former directly and the latter vicariously, in the event of a commission of a tort of assault. In addition, the employer can be held liable for failing to provide a safe work environment.

In some countries, Civil Codes provide protection for certain types of conduct that could cover sexual harassment, such as violations of 'public order and morals' under section 90 of the Civil Code in Japan. For this to be a basis for action it must involve a legal act such as a dismissal. (Yamakawa, 1999)

The use of tort or civil code law – the 'personal rights' approach as some refer to it – does offer the advantage in certain circumstances of wider applicability in cases where courts cannot find that working conditions were adversely altered by sexual harassment or that the harassing conduct was based on the sex of the person.

4.3 Fair treatment: Responsive procedures and due process

Initiation of complaints

Once it has been determined that a legal complaint may be brought, a host of other procedural, economic and personal obstacles may interfere or dissuade a person from invoking the law or bringing a case to a successful conclusion. The mere existence of a right, does not mean that the individual can exercise that right in a particular case. With regard to sexual harassment some of these deterrents are the trivialisation of the claim of sexual harassment, the shame and blame attached to bringing a claim, lack of knowledge and understanding of the subject, choice of forum (i.e. where to file the complaint), lack of sensitive procedures, difficulty of proof, and fear of reprisal.

In the Philippines, women trade union leaders had long identified the major problems in addressing sexual harassment: it is not recognized as a problem; many do not know what sexual harassment really means; it is considered by most union leaders as very hard to prove; complaints by women are not taken seriously The trivialization of sexual

harassment is directly rooted in the lack of understanding of the problem itself, particularly its nature, magnitude and impact on its victims. The various other problems can be said to be the direct consequences of this – from the failure to disseminate information about the legislation criminalizing sexual harassment, to the failure to comply with its mandate to promulgate rules and regulations and create administrative mechanisms to address cases within agencies and businesses, to the almost deliberate refusal to apply it even in clear cases falling within the scope of the legislation or its implementing rules (Ursua, 2001).

Other obstacles may face certain workers, For example, in Hong Kong, SAR under the existing immigration policy, a foreign worker cannot work while a case is pending which makes it difficult for workers to pursue a long-term case, and they may even drop a case owing to economic reasons.

With regard to choice of forum, many complainants appear to prefer administrative mechanisms to the courts because the rules of evidence and proof are less onerous and cases are usually resolved faster than court cases.

Due process

With respect to procedures to handle complaints of sexual harassment, court decisions have stressed the need for due process of the complainant and the accused to be honoured. Many claims of sexual harassment have failed or been overturned due to inadequate handling of the complaints. Issues of proof must be handled sensitively and fairly and often creative solutions are required in such cases. Instead of having the complaints investigated, some women have found that they end up being the object of further threats, investigation or ridicule.

To one woman who raised a problem about sexual harassment by a superior, the president of the company asked, "Isn't there a problem with you?", "Aren't you even ashamed of yourself?" and went as far as asking a fellow worker of the woman, "Didn't Miss 'S' seduce the man first? (counselling case received by Equaline, Korea, in Zaitun 2001).

Fair treatment of complainants is a problem for many women, especially in countries where gender stereotypes, such as 'she asked for it' are common. Severe under reporting of sexual harassment is the result in such situations. Fair treatment is, of course, also important for alleged perpetrators. While experience shows that most sexual harassment complaints are grounded in fact, it should be recognized that procedures against sexual harassment could be abused by alleged victims in order to gain job benefits, such as a promotion. When establishing rules and procedures, it is important to apply the fundamental 'presumption of innocence' towards both parties, i.e. the alleged perpetrator and the victim.

Thus, it is also essential for the accused to be accorded full procedural protections and safeguards of natural justice. They should not be considered culpable prior to a full and objective investigation and finding of fact. They also should be entitled to fully present their version of the facts and be protected through confidentiality. Procedures considered to be fair and unbiased are those which ultimately offer the best protection to victims as well as to the accused.

Establishing confidence in the procedures

Most persons, and women in particular, are more likely to take up complaints if they are confident that the system they are appealing to will handle the complaint well. When the signals they receive from employers or their environment are not encouraging, or when legal systems place an inordinate amount of burden of proof on women, they are unlikely to come forward because they doubt that anything will be done or they feel that seeking legal recourse is too onerous a task.

A study conducted by the All Women's Action Society (AWAM) and the Women's Development Collective (WDC) in six pilot companies which had initially adopted the Code of Practice in Malaysia found that while two-thirds of the respondents who were aware of the company policy against sexual harassment were satisfied with the grievance procedure, only about 40 per cent of them indicated that they would use these formal channels. This figure is even lower for victims of sexual harassment where only 22-25 per cent indicated that they would report to their supervisors or Human Resource, indicating a lack of confidence

in the grievance procedure (Ng and Zanariah, 2001).

A respondent in the Nepal study spoke of a manager of a hotel who, although aware that a regular customer of the hotel habitually wore transparent 'dhoti' (cloth worn from the waist down) and exposed his private parts to the cleaners took no action because the satisfaction of the customer was top priority, as far as the hotel was concerned, especially because the customer was a regular (Pradhan-Malla, 2001). The China study cites a similar situation, where 'employers would usually turn their back to sexual harassment from the guests to employees unless things went too far' – (Tang, 2000).

Several country studies (Australia, the Philippines, India) mention the difficulties trade unions might face in curbing or bringing sexual harassment actions against their members. The Sri Lankan study also found that at times union representatives may be the perpetrators while in some other cases, the trade union leader is someone who has been appointed by the management. The latter also occurred in Thailand.

Proving the case

Similar to the issue of liability, the burden the complainant must bear in order to successfully prove his or her case depends on the type of legal basis upon which the action is pursued. Normally the burden of proof rests on the complainant in civil actions to establish the case by a preponderance of the evidence or balance of the probabilities – which means more likely than not the alleged harassment occurred. Under labour law, the standard is usually easier as the worker is to be given the benefit of the protection afforded by the law if there is doubt on employer responsibility. In many instances also, the burden of establishing that a certain action, such as termination, was justified is on the employer. Under equal rights laws, many statutes provide for the shifting or the reversal of the burden of proving discrimination to the employer to show that the alleged conduct does not constitute illegal discrimination. Under criminal law the standard of proof is normally higher than in civil actions and is 'beyond a reasonable doubt'.

The greatest difficulty complainants face in sexual harassment cases is that the harassment does not usually take place in front of witnesses.

Therefore, it is a 'he said – she said' situation. In many cases this comes down to the credibility of the parties. In the *Vishaka* case the court, refusing to dismiss for lack of corroborating witnesses, inquired into whether there was any reason why the complainant would fabricate the allegations and found none. They noted that the complainant should be believed unless there was reason not to.

There are also concerns in bringing cases of casting blame and shame on the complainant by inquiring into their sexual history. The New Zealand employment contracts law explicitly provides that a complainant's sexual experience or reputation cannot be taken into account in a personal grievance alleging sexual harassment.

Protection against victimization

An important element of protection against sexual harassment and pursuit of claims is the protection against both acts of reprisal or victimization. Unfortunately these too, are often lacking. For example, the sexual harassment law in the Philippines does not provide any such protection. In many cases, protection against reprisal extends only to protection against dismissal. However protection against reprisal dismissal may not be enough. Victimization for having complained or for even thinking of complaining may not always take the form of dismissal, but instead might be more insidious in nature. These subtle reprisals, just as other subtle conduct, are more difficult to address. A very effective way to address this problem is to allow class or representative actions, because groups or organizations such as trade unions are less likely to suffer reprisals than an individual (Thomas and Taylor, 1994).

Many victims are prevented from exercising their rights to complain about sexual harassment in **fear of retaliation on the job** from their supervisors for refusing advances or filing complaints. Such retaliatory treatment may take the form of reduced earnings, especially for piece-rate workers to termination of employment.

If the women showed anger or resentment at the passes the Kangani (supervisor) would make, or not acquiesce with his demands, he would reduce the weight of the leaf plucked and increase it for those who he favoured or those women who give in. When we protest about the

short weight, he throws our card away and abuses us. (Interview with Sri Lankan woman tea plucker, in Wijayatilake and Zackariya, 2000).

For some women the concern over victimisation goes beyond losing their job or experiencing adverse working conditions. They fear further violence, retaliation and/or ridicule. Some women who decide to take action have been physically attacked and assaulted for daring to stand up to the harasser. The Nepal study reported that in some cases, victims were called upon in the middle of the night and threatened with harm. Respondents said that after being threatened, they did not dare to take the risk of complaining again (Pradhan-Malla, 2001). One of the women interviewed in the Bangladesh study said that she had heard of a woman garment worker being knifed on the streets because she protested against harassment she faced in the streets from one of her co-workers. Yet another said she had heard of acid being thrown on a worker who had turned down the offer of marriage made by a co-worker (Shahnaz, 2001).

In some cases, women who have raised complaints have found themselves being **taken to court for libel and defamation**. The case of Sushila from Nepal, who sought professional legal help in wanting to escape an abusive domestic situation, highlights the situation that confronts women in trying to access the legal system. A Legal Aid office sent her to a lawyer for a free consultation. The lawyer showed great sympathy and promised to help. After sending the rest of his staff out for a tea break, he sat down next to her and suddenly inserted his hand down her 'kurta' (knee length tunic worn with loose pants). When Sushila reacted, the lawyer ridiculed her and told her that if she was going 'to mind such small things, it would be difficult for her to achieve what she wanted'. In attempting to get her files back from the lawyer, she lodged a complaint against him. On the basis of that complaint, the lawyer has filed a defamation suit against the victim (Interview with Sushila, 25 January 2001, Shahnaz 2001).

Sushila, a 13-year old Nepalese domestic helper who worked for an elderly couple, had been physically grabbed and groped by the male employer on numerous occasions. When she decided to tell the female employer about the incident, she was badly beaten by the couple, and had boiling oil poured over her hand as punishment for 'falsely accusing' the husband of sexual harassment and molestation.

In addition, she was thrown out of the house without any salary, not even for the bus fare back to her village (in Pradhan-Malla, 2001).

When other women hear about these 'consequences' or when they see other women leave their jobs when situations become unbearable, it becomes difficult to summon enough courage to speak out, let alone take action. It is perhaps not so surprising then that in a survey of 600 people in Shenzhen (China), although 87 per cent of the respondents agreed that sexual harassment was a problem, 70 per cent of them said that they would choose to 'keep silent for self protection' (Tang, 2001).

The absence of a specific law against sexual harassment is a major barrier to why women are reluctant to take up complaints, since there is no recourse to begin with. In addition, the limitations of existing legislation in the various countries, which have been discussed above, form another deterrent to women taking up cases. Further the lack of protection against victimisation and the low priority given to enforcement of the law operate to allow sexual harassment to be perpetuated. The result is that either women are forced to seek redress through inadequate laws and systems, or seek other help from family members or friends. Sometimes, communities take the matters into their own hands recognizing that the law would fall short of delivering:

He was always in the habit of using abusive and sexist language on women workers and asking for sexual favours . . . one day the youth of the estate attacked him when he attempted to rape a female worker. The workers then launched a strike, which lasted 35 days. Thereafter he was transferred to another division within the same estate. (Trade union action in Sri Lanka in 1985, reported by an NGO, in Wijayatilake and Zackariya, 2000).

Remedies and sanctions

The issue of remedies and sanctions is also a subject of concern in these cases. There is a range of potential remedies for sexual harassment under civil, criminal, and worker compensation law (see, for example, Aeberhard Hodges, 1996). However it should be kept in mind that the main aim of most victims of sexual harassment is not to sue their employer for damages, but to ensure that the offensive behaviour should stop, that it should not recur and that they should be protected

against retaliation for having brought a complaint. The most common form of damages is monetary relief, which may be too low to be a deterrent. In contrast, monetary damages in the United States have become very large in some cases.

In Australia the legislation allows for a range of remedies, including private causes of action for taking action against the alleged harasser and/or the employer, varying the employment conditions of the harasser or award monetary compensation. It also encourages employer-initiated actions to stop the harassing behavior without having to rely on individual complaints. A more restricted scope of relief is found in the Equal Employment Opportunity Law of Japan where it is, however, doubtful whether the provision on sexual harassment can be a basis of a private cause of action. Rather the main measure of enforcement and sole remedy is administrative guidance in the form of recommendations to the employer – no sanctions are provided (Yamakawa, 1999).

It is important to note that in the Philippines, Republic Act No. 7877 provides for three kinds of remedies for every case of sexual harassment. These are: (1) filing a criminal complaint for sexual harassment, following the criminal procedure; (2) filing an administrative complaint for sexual harassment within the workplace, school or training institution, specifically with the committee on decorum and investigation; and (3) filing a civil case for damages to enforce the solidary liability of the employer or head of office or institution, where it applies. At the same time, the law does not preclude the victim of sexual harassment from 'instituting a separate and independent action for damages and other affirmative relief.'

The most common form of sanction is disciplinary action by the employer, and in many cases, such action is too often limited to dismissal. Other forms of sanction can include warnings, transfer, and suspension. In many cases the rule of proportionality prevails and the sanctions are graduated according to the severity of the offence.

Whatever their potential value in specific factual circumstances, most individual remedies and sanctions have serious defects as a primary legal remedy for sexual harassment at work. A combination of money damages, cease and desist orders or null and void orders, affirmative

duties to provide sexual harassment free work environments and other equitable remedies for the victim, along with sanctions against the harasser is probably the most effective approach. Penal sanctions, while increasingly being adopted, have a number of disadvantages if relied upon solely. They are usually dependent on enforcement by a government official, such as a labour inspector or prosecutor. A stricter standard of proof and stricter rules of evidence than in civil proceedings may apply. Employers are unlikely to be vicariously liable for the acts of their employees. And, finally, the sanction will normally consist of a fine against the perpetrator rather than damages for the victim or nullification of retaliation.

4.4 Implementing mechanisms

The implementing agencies for the various law and policies vary depending on the nature of the law. As mentioned above, criminal laws and labour laws are essentially implemented by the state, namely the police and the courts. In many cases, complainants want the behaviour to stop, rather than to criminalise the perpetrator. Involving the police and the courts, unless in cases of physical injury and sexual assault, may actually be a deterrent to women taking up complaints.

Employer-based mechanisms

In some countries the law provides for mechanisms at the workplace-level to apply the policies and handle the complaints of sexual harassment. For example, in *Korea*, the Equal Employment Act requires that the employer set up a grievance settlement committee to handle complaints. If this fails only then is the matter referred to the head of the local labour administrative agency (Labour Ministry). If this too proves unsatisfactory, the local labour administrative agency then must establish an Employment Equality Committee (Labour Ministry) to undertake mediation.

Similarly the *Vishaka* Guidelines in India casts the responsibility of investigating on the employer who is required to set up a Sexual Harassment Committee (SHC), which then provides a report to the employer. Also, the employer is neither obliged to accept the findings of the report nor act upon it. The report of the SHC does not actually have

a legal or persuasive value (Lawyers Collective, 2001).

A major concern with both examples above seems to be with the setting up and the functioning of these internal mechanisms. The complainant has very little, if any, input into the selection of the panels, and in the case of the SHC even the trade unions are not consulted. The transparent process of forming internal mechanisms is crucial in ensuring a fair investigation. If this process is not open to scrutiny and consultation, there is a serious danger of it being biased and the likelihood of justice not being served is very high. In fact, the situation may even deteriorate for the victim. The Indian study found that in many cases, complainants have suffered adverse job conditions after filing their complaint. For example, complaints of 'poor work performance', being forced to resign or withdraw the complaint, being chastised for causing trouble are among some of the situations complainants find themselves in.

In the Philippines, Republic Act No. 7877 also sets out the obligations of employers and heads of office of educational institutions in addressing sexual harassment. It provides that every employer or head of office must undertake steps to prevent sexual harassment and promulgate rules and regulations defining the procedure for the investigation, prosecution and resolution of sexual harassment cases and the administrative sanctions therefore. In addition, every employer or head of office must create a committee on decorum and investigation (CDI) that will investigate and resolve sexual harassment cases as well as conduct initiatives to increase understanding and prevent incidents of sexual harassment. In the workplace, the CDI shall be composed of at least one representative each from the management, the union (if any), the employees of supervisory rank, and the rank and file employees.

National administrative bodies

In some countries a government body is set up to specifically handle sexual violations, among others. For example, the Gender Discrimination Prevention & Relief Act in Korea is implemented by the Presidential Commission on Women's Affairs (PCWA) who conducts the investigation. Although the law provides for both oral and written reports, in practice complainants have had to download the application

form from the web site. The complainant then waits until the PCWA reviews the applications and calls with an appointment date, upon which the complainant has to physically visit the PCWA building. The Commission may then transfer a gender discrimination case to another institution if it deems it appropriate, or discontinue the investigation.

In Thailand, the Woman and Child Labour Protection Section of the Labour Ministry in the first instance investigates the case before it is forwarded to the police, where the case is reinvestigated so that the perpetrator can be charged under the state criminal laws. The case then proceeds as any other criminal case in court. The main drawback of this is the double investigation and the need for the case to become a police case before it can even be referred to the courts.

In Hong Kong, SAR, the Equal Opportunity Commission (EOC) has jurisdiction for complaints. The Hong Kong SAR system allows for the complainant to either lodge a complaint with the EOC or file the case directly in the court. Whether the act will be considered a criminal offence or a civil offence depends on the nature and the level of the act. This allows for greater flexibility and discretion as to how the case will be handled. The EOC also actively promotes equal opportunity policies and Codes of Practice. However, the EOC does not have authority to review the policies of the Immigration and Taxation Departments and thus cannot intervene in matters relating to migrant workers work status pending a case (Zaitun, 2001).

In Australia, enforcement of anti-discrimination legislation, whether at the state or federal level, is done in two stages. The complaint is first lodged with the relevant commission or tribunal (in the case of a federal case, it is first referred to the Human Rights and Equal Opportunity Commission). In the event that the complaint is unresolved, the matter is then referred to the Courts (Ruskin and Sutherland, 2001).

The main concern with any of the above is the accessibility of these bodies, both physically and in terms of using the process and under-resourcing. In other words, there must be sufficient representative offices or hotlines to take complaints and sufficient monetary resources allocated to provide trained, gender-sensitive personnel. In addition, the system must be cognisant of and sensitive to the needs and realities of

the women workers in order to best serve their needs.

4.5 Key elements in legislation

It would appear that countries that have recognized sexual harassment as a distinct legal wrong, either by statute or court decision, have tended to provide more effective protection to victims of sexual harassment. The difficulties encountered in the application of relevant laws on sexual harassment would not appear to outweigh their importance and usefulness in combating sexual harassment. The extent of their usefulness however is contingent on a number of factors including the content of the legal provisions themselves. ILO experience (see for example ILO, 1994) reveals benefits to the introduction of specific and comprehensive provisions dealing with sexual harassment in national legislation such as:

- A nationally accepted clear definition of sexual harassment provides a common baseline so that a common understanding of the prohibited behavior is promoted.
- The existence of legislative obligations stimulates action by employers, who would have to comply and by trade unions, which would wish to ensure that employers and workers would observe the law.
- An explicit legal prohibition and affirmative duties on employers facilitates 'no tolerance' and prevention of sexual harassment.
- Legal protection helps to ensure due process and fair treatment of both complainants and accused persons.

The above comparative overview shows that most countries are opting for explicit legal protection against sexual harassment. When drafting legislation, the following elements should be addressed:

- Development and adoption of a nationally accepted explicit definition of sexual harassment that includes:
 - the unwelcome nature of the prohibited conduct i.e. physical, verbal and non-verbal or other action
 - quid pro quo (sexual blackmail) and hostile working harassment
 - broad scope of protection to cover as many persons as possible

- Delineate clearly the liability of the employer and the alleged harasser
- Provide affirmative duties to act towards the prevention of sexual harassment
- Ensure fair, clear and suitable procedures of due process for both accused and claimant covering filing and hearing of complaints, investigations evidence, burden of proof, protection of confidentiality and privacy
- Protect against victimization
- Provide for a wide range of damages, remedies and sanctions that both punish and deter harassing conduct
- Supplement legislation with guidelines
- Establish an administrative body or mechanism with resources and competence to handle complaints and promote application of the law.

5. WORKPLACE POLICIES AND PRACTICAL MEASURES

Throughout Asia and around the world, governments, employers' and workers' organizations and NGOs are increasingly advocating that sexual harassment be addressed through workplace policies and complaints procedures. This trend reflects the recognition that workplace policies can be a most effective tool for preventing sexual harassment. It has become increasingly apparent over recent decades that legislative measures for combating sexual harassment need to be accompanied by preventive mechanisms introduced at the workplace level. The increase in sexual harassment policies during the 1990s allows some preliminary conclusions to be drawn on the effectiveness of workplace measures, and reveals an emerging consensus on the provisions that they should include.

This chapter discusses the preventive and remedial role of workplace policies and practical measures, the extent to which they are being introduced and encouraged, and the different ways of introducing them. Their content is then examined in more detail, particularly the procedures developed to respond to complaints, the sanctions applied under them, and the role of monitoring and evaluation. The chapter concludes with key points and practical tips on awareness raising through information dissemination, training and counseling for workers who have fallen victim to sexual harassment practices.

Box 7 Role of workplace policies

Effective legal remedies are necessary. However, the main aim of most victims of sexual harassment is not to sue their employer for damages, but that the offensive behaviour should stop, that it should not recur and that they should be protected against retaliation for having brought a complaint. Therefore, the most effective way to deal with sexual harassment is to develop and implement a preventive policy at enterprise level.

Michael Rubinstein, 'Dealing with sexual harassment at work: The experience of industrialized countries' in ILO. 1992. *Conditions of Work Digest: Combating Sexual Harassment at Work*, Geneva.

5.1 Prevention is better than cure

The role of workplace mechanisms is primarily preventive. Rather than being confined to responding to sexual harassment, their main role is to ensure that it does not take place. Effective workplace policies protect employees by dissuading potential harassers and allowing employers to identify and respond to harassing behaviour in its early stages.

As mentioned in chapter 2, victims from sexual harassment, workplace managers, women's and workers' organizations have tried to deal with sexual harassment problems in workplaces, even if there are no policies or other workplace measures in place. While necessary, and sometimes the only recourse available to victims, these kinds of action are unlikely to provide the adequate protection for complainants that is available under a sexual harassment policy. As indicated in previous chapters there is often a reluctance among victims of sexual harassment to complain due to the fear that they will lose their jobs, fail to see their concerns taken seriously, or be the subject of retaliation. Nor can *ad hoc* measures contribute to the same degree as enterprise-level policies to creating an environment in which sexual harassment is discouraged.

Workplace policies and their accompanying procedures reinforce and build on existing legal prohibitions. Even in jurisdictions which have comprehensive and well-functioning legal systems, workplace procedures function as an effective preventive mechanism in protecting the person being harassed and the enterprise from expensive, time-consuming and stressful legal actions. In some legal systems that explicitly prohibit sexual harassment, for example Australia, Japan and the Republic of Korea, employers are subject to a positive duty to prevent it. Legislation on sexual harassment in countries such as India and the Philippines defines in detail the actions employers must take, including the procedures they must introduce to eliminate sexual harassment. In jurisdictions where laws have not so far been enacted, workplace policies are the only channel available to those seeking redress.

Effectively communicated and implemented policies have been found to encourage victims of harassment to report their experiences to their employers. Research from North America demonstrates that only a very small number of victims of workplace sexual harassment take any formal action, for reasons which include lack of information about the forms of action they can take and a belief that their employers will not respond satisfactorily to their complaints. Studies from the United States and Canada, for example, show that only around 10 to 20 per cent of victims report sexual harassment to someone in authority in their organization. Instead, they tend to ignore the harassment, deflect it by treating it as a joke or by going along with it, or attempt to avoid the harasser (Welsh, 1999). Similarly, a review of recent research conducted in eleven northern European countries found that most employees responded by ignoring the behaviour or asking the perpetrator to stop. They either feared the negative consequences of responding in other ways, believed their complaints would not be taken seriously, or were too surprised to take any other action. As a result, very few filed complaints (Commission of the European Communities, 1999).

The resulting low rates of reporting may have implications for the attitude of employers towards sexual harassment at work, since they may conclude from the lack of complaints that sexual harassment does not take place within their organizations.

Although the effects of different kinds of sexual harassment policies have yet to be examined in depth, the available evidence suggests that having a policy in place significantly decreases the incidence of sexual harassment at work and increases the likelihood that those facing harassment will complain about their treatment. One male respondent to the AWAM-WDC study, a Human Resource Manager of one of the pilot companies, felt that: "the staff nowadays think twice before they start to talk". A female manager from the same company echoed this:

Now I think people are a bit more cautious. Ladies know they are protected. . . . Those who like to touch don't touch anymore. . . The men, the things that they used to do, now they know that it is wrong and they do feel embarrassed about it. . . . I have a few bosses who like to touch. Now they don't. The women staff whom they used to touch now say, 'Don't touch. It may be sexual harassment!' so these

guys refrain. (Ng and Zanariah, 2001)

It has been suggested that the most effective way to encourage reporting of incidents of sexual harassment is to introduce a range of different measures, since this approach has been shown to result in aggrieved individuals being more confident that their employer will respond to their plight (Rowe, in Stockdale, 1996 and Du Bois, 1999). One effective way of assessing the existence and extent of sexual harassment for employers is to carry out a survey among their workers. If employers ensure anonymity and confidentiality, and provide the assurance that they take sexual harassment seriously, employees may be more willing to disclose their working conditions. Results from the survey may be useful in uncovering incidents of sexual harassment in the workplace and in helping to identify measures that need to be taken. An example of a questionnaire can be found in Annex 2 for use and adaptation to specific workplaces.

In addition to the benefits which policies on sexual harassment provide for its victims, they appear also to have a number of advantages for the employers who introduce them. For instance, since sexual harassment is a form of gender discrimination, implementing a policy on it, allows employers to highlight their commitment to equal opportunities for their workforce. Moreover, it appears that the prevention of sexual harassment contributes to productivity. As highlighted in Chapter 2, the effects of sexual harassment are well-documented, and include lack of concentration, reduced morale and low levels of motivation and, for some workers, health problems, particularly stress. For the enterprise, this then results in absenteeism, high staff turnover, rising sick pay and medical insurance expenditure and reductions in efficiency and productivity. Sexual harassment can also severely damage an enterprise's reputation. In addition, by introducing sexual harassment policies, employers can ensure that they are in compliance with any relevant legal provisions, thereby avoiding defence costs and compensation awards.

5.2 Development and promotion of policies and codes of conduct

Workplace measures on sexual harassment can be introduced in a number of different ways. They can, for example, be designed as a policy exclusively concerned with sexual harassment. Alternatively, they can be a component of an organization's policies on equality, or on the whole range of forms of harassment, violence and bullying at work. Workplace-level policies increasingly include detailed guidance on how to design and implement these kinds of measures.

Action by governments

Some countries are supplementing or combining legislative action with the issuance of guidance material or a code of practice on sexual harassment. For example in South Africa, a Code of Good Practice on the handling of sexual harassment cases is appended to the Employment Equity Act. In Australia, the Human Rights and Equal Opportunity Commission provides a code of practice that contains a model sexual harassment policy to provide employers and employees with guidance in this area of law. In Hong Kong SAR, the Sex Discrimination Ordinance (1995) provides for the Equal Opportunities Commission (EOC) to help employees, employers and other concerned parties understand their responsibilities under the Ordinance, and to provide guidance on the procedures and systems that can help prevent discrimination and deal with unlawful acts in employment. The EOC issued a 'Code of Practice on Employment under the Sex Discrimination Ordinance' (Zaitun, 2001). In Japan, a Code of Practice was issued concurrently with the legislation against sexual harassment. In India, the Supreme Court set out clear guidelines for employers. The Department of Labor and Employment (DOLE) in the Philippines through the Bureau of Women and Young Workers and other DOLE agencies undertook several initiatives towards raising awareness about sexual harassment in the workplace, including developing a model company policy and procedure on sexual harassment for the private sector. The model company policy is attached as annex 3.

Box 8. Counterproductive preventive action

It is sometimes considered that the best way to prevent sexual harassment is to restrict women and to appeal to cultural and religious injunctions for women

to refrain from working outside of the house. In such cases 'preventive action' would comprise minimizing contact between men and women, for example segregated workspaces, transportation, or different entries and exits for men and women, or requiring that women 'cover up' so as to minimize temptation to men. As mentioned earlier, blaming women's appearance or clothing for sexual harassment does not explain why some men harass and others do not, nor does it explain why women who are suitably covered in accordance with local norms are also harassed. 'Preventive actions' such as these greatly restrict women's economic and personal freedom. Neither do they address the root of the problem. Such actions must be assessed for its sustainability and fairness to workers, as they may restrict the options and choices available to women.

Women-only buses, for example, and or segregated sections on buses have been proposed by some to address harassment on public transportation. However, unless introduced in addition to and in tandem with regular services, these segregated modes of transportation may make public transport even less accessible to women. They also tend to reinforce the idea that women travelling alone are fair game for attack and harassment (Zaitun and Barter, 2001). Examples from the region suggest that such 'solutions' can further marginalize women. One example is the case of Dhaka:

During the International Decade for Women reserved seats for women (10 seats or so at the front) were established on the buses in Dhaka. But if these seats were filled then more women would usually be denied entry. Buses now have no reserved seats on the grounds of equality. However, at present women are often not admitted to buses at all during peak times. Conductors and drivers were said to think that a woman takes three "man's" places. Levels of harassment of women on the buses are said to be extreme. The alternatives, such as rickshaws, scooters are expensive. As a result our centre has found that many low-income women are walking long distances (in Zaitun and Barter, 2001).

Others, as in the case of Malaysia where there is no specific law, have opted for a Code of Practice that provides detailed practical guidance to employers on introducing and implementing policies. A copy of this Code can be found in Annex 4. The Deputy Minister of Human Resources, in his opening address at the National Seminar on Action Against Sexual Harassment at Work, 26-28 June in Kuala Lumpur, reported that since the launch of the Code in 1999, the Ministry has conducted awareness programmes and workshops on setting up internal mechanisms to handle sexual harassment at work.

Action by employers and their organizations

Codes of Conduct and other forms of guidance can also be issued by other organizations that work towards preventing sexual harassment. These have included model policies and procedures designed to be used for the development of mechanisms tailored to the needs of particular workplaces. Employers' organizations, for instance, have issued model policies for their members and affiliates and provided advice on how to introduce policies and procedures. For example, in Japan the Equal Employment Opportunity Law (1986) was revised in 1999 to include among others a new provision requesting employers to explicitly address sexual harassment. As a result, the Japanese Federation of Employers Associations (Nikkeiren) produced several explanatory manuals prior to the coming into force of the revisions to the national legislation, advising companies and its municipal offices on how to comply with the new provisions on sexual harassment. These included a 'Sexual harassment prevention guidebook' (1999) and a manual for Personnel managers on the prevention of sexual harassment (1999). In response to requests from member associations and national and local government agencies, Nikkeiren sends speakers to provide information on sexual harassment, and also cooperates with the national and county government agencies in conducting awareness campaigns (Nikkeiren, 2001, letter to ILO Bangkok).

Drawing on the limited information available, the number of employers which have introduced policies on sexual harassment appears to have increased in both industrialized and developing countries over the last ten years. A survey conducted in 1999 by the Japan Institute of Workers' Evolution found that since the amendment of the laws in Japan to cover sexual harassment, 71 per cent of respondent companies with 1,000 or more employees had implemented sexual harassment measures (Yamakawa, 2001).

Even in countries where policies have traditionally been few, there are signs that increasing numbers of employers are developing them. In Korea, for instance, the Kumho Business Group introduced landmark in-house regulations in 1995 (Dietz, 1996). In Nepal, the Hyatt Regency Hotel has included sexual harassment as a ground for action in its disciplinary policy (Pradhan-Malla, 2001). Some of the recent policies

have been introduced in response to Codes of Practice issued by governments, unions and employers' associations. Since the Code of Practice on the Prevention and Eradication of Sexual Harassment was issued by the Government of Malaysia in May 1999, around 100 companies had established complaint mechanisms in line with its guidance by August 2000, as indicated by the Minister of Human Resources (*Bernama* – Malaysian National News Agency, 15 August 2000).

Increasingly, multinational corporations introduce policies and codes of conduct in the countries in which they operate, even in countries where this is not required by law. In Bangladesh many multinational companies which contract Bangladeshi garment companies to supply them with ready-made garments have codes of conduct in place. Local factories wishing to work for prospective buyers are provided with manuals outlining the overseas buyers' standards and conditions and are audited first by the local representatives of the buyers. One company mentions in their regulations applicable in Bangladesh that physical and mental abuse is unacceptable and that 'exploitation of any vulnerable individual or group is not tolerated under any circumstances' (in Shahnaz, 2001). However, generally, these codes do not address sexual harassment explicitly. Women Working Worldwide (WWW), an NGO established in the UK in 1984, engaged in coordinating consumer campaigns with a view to encourage companies to adopt codes of conduct on labour standards and to raise awareness of workers on these standards, confirms that sexual harassment is hardly mentioned in company codes. WWW advocates for addressing sexual harassment in workplaces and for applying codes to all workers in the supply chain of a company whatever their geographical location may be.

The China study reviewed the constitutions of more than 10 multinational corporations. Several of these multi-national companies were found to include specific provisions against sexual harassment in the countries where it is explicitly prohibited by law. However, these articles were skipped from their regulations in China, where sexual harassment is not dealt with explicitly in the law. One multi-national company in China mentions in its regulations that 'individual dignity is affirmed'. This company also states that it will 'hear and settle accusations and complaints by the staff' and 'settle different kinds of disputes and cope

with unexpected events.’ Only one multi-national, the sportswear manufacturer Reebok, explicitly forbids sexual harassment in its Standard for Humanized Production as follows: ‘Physical punishments, threats or arousal of workers by management are not allowed, nor are harassment and insults in terms of sex, psychology or speech. Sexual harassment is prohibited. Procedures should be elaborated to enable the staff to make confidential complaints. Victims should report directly to the person in charge rather than to his/her superior.’ Detailed explanations of conduct that could constitute sexual harassment follow (Tang, 2000).

Action by workers and their organizations

Some of the earliest actions against sexual harassment in the region date back to 1941 in Malaysia. Workers from eight plantations led by a trade unionist went on strike, demanding “an end to the molesting of labourer womenfolk”, (Stenson, 1977). As indicated earlier, strikes sometimes continue to be necessary up to this day to combat sexual harassment. Other trade union action includes raising awareness among members. Many trade unions have also produced model policies to guide their representatives and members on tackling sexual harassment, and to use these in negotiating policies with employers.

At national level, for example, the Congress of South African Trade Unions (COSATU) has produced a Code of Conduct on Sexual Harassment which outlines preventive measures and provides guidance on bringing complaints (COSATU, 1997). In Japan, with the amendment of the Equal Employment Opportunity Law to address sexual harassment in 1999, the Japanese Trade Union Confederation (JTUC-RENGO) revised and adopted a set of policies and measures to address sexual harassment which it had originally drafted in 1996. Since then, JTUC-RENGO has carried out several measures to combat sexual harassment including lobbying the Government for strict enforcement of the law, as well as providing information, training and examples of good practice among its affiliates. JTUC-RENGO also actively encourages its affiliates to issue statements to express their commitment towards addressing sexual harassment, recommends that they actively promote and negotiate for the inclusion of sexual harassment in collective bargaining agreements and conducts surveys

to ascertain the extent of sexual harassment. In 1999, at its Biennial Convention, JTUC-RENGO adopted a 'Special Resolution to Prevent Sexual Harassment and Promote Equal Participation by Women and Men'.

At the international level, the International Confederation of Free Trade Unions (ICFTU) has posted a Programme of Action on Sexual Harassment on its website. The most recent development is the development and adoption of a Resolution against sexual harassment by members of national trade union federations in Asia and the Pacific during a workshop organized by ICFTU's Asia Pacific Regional Office (APRO) in August 2001. Forty male and female trade union leaders from 20 affiliates examined the nature, extent and effects of sexual harassment in the workplace in selected countries and stressed the gravity of the problem throughout the region. The findings of a recent ICFTU-APRO survey on sexual harassment and the role of trade unions in the region were presented to the workshop. This survey, among others, noted that there is a general lack of critical mass of women in decision making, both within trade unions and within national decision-making bodies. The Resolution on Action against Work-Related Sexual Harassment was subsequently approved by the ICFTU-APRO Board at its 74th meeting.

**Box 9. Highlights of the ICFTU-APRO Resolution on Action
against Work-related Sexual Harassment**

- The scope of application of sexual harassment has been expanded to 'work-related' from 'in the workplace' or 'at work'.
- The definition of sexual harassment is work-related, unwanted and offensive behavior of a sexual nature, which includes the elements of:
 - quid pro quo
 - hostile work environment
 - abuse of power and authority.
- ILO and other international agencies to adopt a binding international labor instrument explicitly prohibiting sexual harassment and inclusion of this in bilateral and multilateral trade agreements

- Governments to enact legislation to prevent sexual harassment, including employer liability and to set up a tripartite mechanism for regular consultations and monitoring, incl. an annual report

- Employers to develop clear policies, establish complaints committees and initiate awareness training for all employees
- Trade unions to sensitize union leaders and officials on sexual harassment through education and information
- APRO and the affiliates to adopt the 'Traffic Light' campaign proposed by the workshop
- Trade unions to develop a unified action plan with employers
- Trade unions to include sexual harassment prevention clauses in collective agreements
- Civil society organizations to cooperate with unions and employers to monitor work-related sexual harassment and act as watchdogs.

Source: <http://www.icftu-apro.org>, last accessed 31/10/2001.

However, several country studies indicated that trade unions in some countries treat sexual harassment as an issue of low priority – for example, in the Philippines, where only a few trade unions have conducted awareness-raising programmes or taken other measures (Ursua, 2001); and in Nepal and Sri Lanka where women workers indicate that complaints of sexual harassment are not taken seriously by unions (Pradhan-Malla, 2001 and Wijayatilake and Zackariya, 2000). The country studies indicate that many union leaders consider economic issues as a greater priority. In addition, the lack of a critical mass of women in trade unions plus the lack of women in the leadership of unions have been cited as reasons why sexual harassment is not high on the union agenda in some countries. In addition, trade unions are sometimes put in the invidious position of addressing sexual harassment cases within their organization or defending and acting both for a complainant and an alleged harasser with respect to the same incident (Ruskin and Sutherland, 2001).

Tripartite cooperation

Many measures against sexual harassment have been developed and introduced unilaterally by employers. Others, however, have been designed in consultation with trade unions and employee representatives. In some countries, the involvement of workers or their representatives is required by legislation. Their participation may not always be realised in practice, however. In the Philippines, where the Anti-Sexual Harassment Act provides for union involvement in developing and administering policies, research has revealed that in more than 60 per cent of organizations with a policy, only the employer was involved in drafting it (Ursua, 2001).

Sexual harassment policies may be included in collective agreements, at industry or enterprise level. In Australia, unions are widely involved in negotiating sexual harassment clauses to be included in enterprise agreements and the number of anti-discrimination and sexual harassment clauses included in certified agreements has increased significantly in recent years (Ruskin and Sutherland, 2001). At the industry level, the maritime workers' and employers' organizations jointly designed a sexual harassment policy for the maritime industry which was introduced in 1996 after being endorsed by the shipping companies and maritime unions (Ruskin and Sutherland, 2001). The union and management of the Daiei, one of the largest supermarket chains in Japan, have signed an agreement articulating in detail the employers' responsibility for the prevention of sexual harassment (Japan Labour Bulletin 2, 1999).

Box 10. Example sexual harassment clause in collective agreement

- The parties to this agreement recognize that failing to prevent sexual harassment occurring in the workplace is a discriminatory workplace practice.
- Sexual harassment is defined as unwelcome activity of a sexual nature. Such activity includes sexual propositions, touching, sexual innuendo, sexually explicit conversations, rude jokes, nude pin-ups and posters.
- The Company will ensure that all employees are provided with an environment which is free from sexual harassment and shall establish and publicize among all employees a policy and procedures, including grievance

procedures, for handling complaints of sexual harassment. Such policy and practice shall be developed by the Company in consultation with the Union/employees.

Enterprise Agreement October 1997 (Clause 25) between E A Rocke Container Services Mayne Nickless Logistics (Victoria) and the Transport Workers Union of Australia, cited in Ruskin and Sutherland, 2001.

Workers' organizations have also encouraged bargaining on sexual harassment by producing model clauses which can be adapted for inclusion in collective agreements. In Japan, the industry-level union federation, Zensen Dome, has drafted a model collective agreement which it encourages its members to include as an item for negotiation in collective bargaining (Yamakawa, 2001). Even in firms and sectors in which policies are sparse, unions may be able to play a role in combating harassment. In India, for example, they have acted as a complaints' mechanism by negotiating with employers in small private sector firms and in the unorganized sector in which formal policies for tackling sexual harassment are virtually non-existent (The Lawyers Collective, 2001).

Application of policies

There are also indications, however, that while a significant number of employers are making efforts to develop policies and procedures, many are neglecting to introduce them or failing to implement them effectively. In India, very few employers in the private and unorganized sectors have workplace mechanisms (The Lawyers Collective, 2001). A recent survey in Japan has found that many small companies have failed to introduce the sexual harassment policies required by law (Yamakawa, 2001). There are also low levels of compliance with the Anti-Sexual Harassment Act in the Philippines, where only half of private sector employers have introduced a policy.

In Malaysia, while the Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace provides detailed guidelines on the setting up of a workplace policy, the fact that the code is voluntary has meant that companies "choose the level of compliance to the code, or not at all." (New Straits Times, 23 August 1999, in Zaitun

2001). Loh Cheng Kooi, the executive director of the Women's Crisis Centre in Penang also felt that, "employers consider that it is merely a guideline to either ignore or show a token interest in" (Life, 12 May 2000, in Zaitun, 2001). In addition, individual employers are not accountable to any authority if they fail to adhere to the requirements as set out in the Code. The number of companies that have adopted a policy against sexual harassment, stands at around 1 per cent. The Joint Action Group against Violence against Women (JAG), an association of women's and workers' organizations in Malaysia are therefore advocating for legislative action on sexual harassment to ensure more effective compliance with the Code and presented a Proposed Sexual Harassment Bill to the Government in early 2001 (JAG, 2001).

It is also evident from the country studies that even in organizations in which policies have been introduced, many are not being effectively implemented. In many countries, further research is needed to determine the impact of sexual harassment policies, whether their grievance procedures are tailored to the distinctive nature of these complaints and whether the policies are being implemented and enforced in an effective way. Available evidence from New Zealand indicates that although 80 per cent of study respondents had introduced a policy on sexual harassment, only two-thirds of them had set up complaints procedures, and less than one-fifth provided training on the content of the policy (New Zealand Manufacturer 6, 1998). In Malaysia the AWAM-WDC study among the six pilot companies that have implemented the Code of Practice found that not all of these companies have proper and well-established in-house mechanisms (Ng and Zanariah, 2001).

5.3 The content of sexual harassment policies

Workplace sexual harassment policies aim both to respond to incidents of sexual harassment and prevent their recurrence. During the last two decades numerous trade unions, employers' organizations and companies have adopted policy statements against sexual harassment. Analysis of these statements show that there is 'no one size fits all' solution. Details vary depending on the nature, location, and size of the enterprises and organizations, and there are no universally accepted

procedures for implementing them. However, many similarities are emerging, and a number of key characteristics can be identified.

All policies state that sexual harassment in the workplace is prohibited. Usually, they contain a statement of intention that sexual harassment should be eradicated, and that the policy will be strictly enforced. In Australia, the federal Human Rights and Equal Opportunity Commission (HREOC) Code of Practice recommends that policies contain a strong statement on the attitude of the employer towards sexual harassment, an indication of the organization's objectives and a reminder that it is illegal (Ruskin and Sutherland, 2001). This recommendation is reflected in many policies of larger, but also smaller companies and organizations such as the Paraplegic and Quadriplegic Association of Australia, which makes clear the Association's commitment to ensuring their workplaces are free of sexual harassment (Ruskin and Sutherland, 2001).

No matter how strongly worded, however, a policy which is limited to a statement prohibiting sexual harassment in the workplace has been found to be unlikely to be highly effective. Research reviewed by the Commission of the European Union concludes that the most effective policies include more detailed provisions (European Commission, 1999). The first requirement is a comprehensive definition of the types of conduct that constitute sexual harassment. This approach allows both targets and potential harassers to know precisely what is prohibited, what is and what is not acceptable practice. Although the definitions of harassment which are used vary in details, it is common for policies to state that sexual harassment is conduct that is unwelcome to the recipient, and to cover both sexual blackmail and sexual harassment which leads to a hostile working environment.

Definition of sexual harassment

The policy of Flinders University in Australia, for example, defines sexual harassment as 'any unwanted, unwelcome or uninvited behaviour of a sexual nature' and makes reference both to behaviour which creates a hostile working environment, and to the making of promises or threats to elicit sexual favours (in Ruskin and Sutherland, 2001). Many workplace policies provide illustrations to clarify their

definitions by mentioning various examples of the kinds of behaviour covered by the policy. The Civil Service Conduct Rules in India follow this model by incorporating a list of behaviour including physical contact and advances, demands or requests for sexual favours, 'sexually coloured' remarks, and 'any other unwelcome physical, verbal or non-verbal conduct of a sexual nature' (in The Lawyers Collective, 2001). These policies tend to warn that what can be taken to constitute sexual harassment is not limited to the examples provided.

Some of the most reprehensible forms of conduct, particularly physical and verbal violence and touching of intimate parts of the body tend to be prohibited outright in many policies and are subject to the most stringent disciplinary measures. In addition, it is common for sexual harassment policies to prohibit the display of sexually explicit or suggestive materials on the employers' premises. The equal opportunity policy of the Toyota Motor Corporation in Australia, for instance, defines non-verbal harassment to include 'displays of obscene or pornographic photographs, pictures, posters, electronic mail, reading matter, objects, or displaying material on VDU screens (Ruskin and Sutherland, 2001). Similarly, in India the Civil Service Conduct Rules prohibit the display of pornography (in The Lawyers Collective, 2001). The growing awareness of the role of the Internet and email in sexual harassment over recent years has led employers to either include prohibitions on harassment carried out by using these tools in their sexual harassment policies, or by banning it in policies dedicated to computer or Internet use.

Many sexual harassment policies recognize harassment that occurs within the establishment, either between employer and employee or between co-workers. Many policies emphasize that sexual harassers will face disciplinary measures in line with the seriousness of the conduct, irrespective of their position in the job hierarchy. The policy designed by the University of South Australia explicitly notes that sexual harassment is generally associated with the exercise of power and usually occurs within relationships of unequal power or authority, including between superiors and subordinates. Research shows that a victim whose occupational status is lower than that of the perpetrator is less likely to perceive the organizational response to her predicament as favourable (Du Bois et al, 1999). Therefore the inclusion of

statements that recognize the power dimension of sexual harassment may have a significant effect on complaint levels.

Third-party harassment

Although many policies are confined to harassment that occurs among employers and employees of a specific establishment, increasingly policies are beginning to acknowledge harassment that is perpetrated by contractors, customers, clients and other third parties and harassment of non-employees is explicitly covered in some policies. Many employers extend their coverage by permitting third parties to bring a complaint about behaviour to which they were subjected at the hands of one of the employers' workers. These kinds of policies have the potential to allow firms to become aware of workers engaging in sexually harassing behaviour on their premises or during working hours which is not directed at other employees. This outcome can be achieved implicitly through the use of inclusive language, but is also explicit in some policies.

Harassment by third parties can be difficult to tackle since the perpetrator does not work for the victim's employer and therefore the range of responses which can be used may be limited. Nonetheless, some workplaces, for example the Japanese National Personnel Authority have attempted to address this form of harassment by adopting rules prohibiting sexual harassment against civil servants which apply to both contract workers and visitors to government offices (Yamakawa, 2001). In Australia, the Toyota policy covers 'all contractors, consultants, suppliers and dealers while they are at a Toyota work site, or utilizing Toyota electronic communication facilities' (Ruskin and Sutherland, 2001).

Sexual harassment of men and same-sex harassment

Many employers recognize the possibility of harassment of male workers by women and between members of the same sex in identifying which workers can be considered a victim of sexual harassment under their policies. Many policies apply to both men and women by using sex-neutral language, such as 'all employees' or 'all persons'. Others adopt the alternative approach of explicitly

emphasizing that sexual harassment can be perpetrated against members of both sexes. The Japanese National Personnel Authority's rules on the prevention of sexual harassment, for example, extend beyond the national legislation's coverage of women employees only, to explicitly protect men (Yamakawa, 2001). Similarly, the University of South Australia's policy against sexual harassment, while emphasizing that it is much more likely to be directed at women than men, states that it is possible for men to be sexually harassed by women and by other men and for women to be sexually harassed by other women.

**Box 11. Definition of sexual harassment by Komag
USA (M) Sdn. Bhd., Malaysia**

Sexual harassment is any unwanted sexual conduct from one gender to another or the same gender in the following forms:

- Verbal
- Non-Verbal
- Visual
- Psychological
- Physical

Definition of workplace

As stated in Chapter 2, the definition of workplace should not be confined to the physical environment of the workplace. It must take into account the 'access' that a perpetrator has to the harassed by virtue of a job situation or work relation. Since workplace sexual harassment may occur outside the premises of the employer, at conferences, on business trips, at company-sponsored social events or via the telephone or electronic mail, many policies attempt to address this by broadening the definition of the workplace. The policy of Flinders University in South Australia covers staff and students engaged in activities 'reasonably connected with their role at the University'. These include field trips, field work and social activities, even if they take place beyond the university campus (in Ruskin and Sutherland, 2001). Similarly, the Code of Practice in Malaysia recommends that sexual harassment in the workplace include 'any employment-related sexual

harassment occurring outside the workplace as a result of employment responsibilities or employment relationships' (in Zaitun, 2001).

Delineation of actors and responsibilities

It is apparent that having a policy on sexual harassment and even ensuring that all employees know of its existence, are insufficient if policies are not routinely applied and complaints swiftly and effectively addressed. It is unsurprising that employee perceptions of their organizations' tolerance of harassment have been found to have more influence on their attitudes and behaviours than the existence of formal rules and regulations (Hulin, et al, in Stockdale, 1996 and Pryor in Gruber 1998). Consequently, measures must be taken to ensure that policy statements are put into practice. One way of doing so is to clearly delineate the role of specific workplace actors.

Often policies detail the responsibilities of managers and supervisors, as recommended by the HREOC Code of Practice in Australia. In fact, there appears to be a trend towards developing policies that hold all members of management responsible for maintaining a harassment-free working environment. Many require that all staff ensure an environment free from sexual harassment, while imposing a specific obligation on managers and supervisors to uphold the policy, rather than confining this role to human resource officers or senior executives. In India, the Central Civil Service Conduct Rules include a provision that every government servant in charge of a workplace should take appropriate steps to prevent sexual harassment (in The Lawyers Collective, 2001).

Box 12. Example sexual harassment clause in an employment contract

The employer is an equal employment opportunity employer. The employer will not under any circumstances tolerate sexual harassment or discrimination in the workplace. The employer is entitled to terminate your employment if you are guilty of sexual harassment or discrimination in the workplace. Sexual harassment includes unwelcome, offensive behaviour of a sexual nature that has or could have a detrimental effect on the conditions of an individual's employment, job performance or opportunities.

Source: Ruskin and Sutherland, 2001.

There are also signs of a trend towards involving all employees in ensuring that the policy is implemented, by allowing third parties to complain about conduct they have witnessed. In addition, some policies give practical guidance by listing the individuals to whom complaints can be made, including their contact details, and an assurance that they can be reached at any time.

Finally, it is common for policy statements to outline the range of sanctions which can be applied, making potential harassers aware of the penalties, and allowing victims a realistic expectation of the outcome of their complaint. The more comprehensive policy statements also include a detailed description of the complaints procedure and the manner in which an investigation will be conducted.

5.4 Grievance handling: Redress mechanisms and procedures

Box 13. Complaint/Grievance Procedure in the Malaysian Code of Practice

Due to the sensitive and personal nature of sexual harassment complaints, employers should develop a separate complaint procedure to deal specifically with such complaints. The normal complaint procedure is often unsuitable for sexual harassment complaints.

Source: Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace, Malaysia, 1999, article 16.

Until fairly recently, it was common practice to deal with complaints of sexual harassment through ordinary workplace grievance mechanisms. This remains the approach in many organizations and countries. Experience suggests, however, that addressing sexual harassment claims through regular complaints mechanisms is not the most appropriate way to deal with them. A number of enterprises have introduced procedures devised specifically to respond to sexual harassment claims, and the difficulties encountered in investigating them.

In practice, grievance handling is one of the most complex aspects of sexual harassment management. In many ways, it is straight forward to prepare a sexual harassment policy or to adopt a model policy provided by the government or an employer organisation. The next step, training, may be more difficult as cultural norms and assumptions are uncovered and changes in attitudes and behaviour are necessary. Grievance handling is more difficult still. Whereas training involves discussion of hypothetical situations, the handling of an actual complaint uncovers conflicts which must be directly addressed.

While experience shows that most sexual harassment complaints are grounded in fact, it should be recognized that procedures against sexual harassment could be abused by alleged victims in order to gain job benefits, such as a promotion. When establishing rules and procedures, it is important to apply the fundamental 'presumption of innocence' towards both parties, i.e. the alleged perpetrator and the victim. In addition, persons can protect themselves against false claims of sexual harassment, by taking simple, practical and effective measures in the workplace, such as making a panel rather than an individual responsible for interviewing and selecting candidates for job vacancies or promotions. It is also recommended that committees, handling sexual harassment cases, include an equal representation of men and women to ensure that both women's and men's perspectives can shed light on the best solution to a case.

Complaints procedures

Conventional grievance procedures, for example, tend to identify only one person to whom complaints can be made, who is often the line manager of the complainant. But in sexual harassment allegations this 'one channel' approach is often inappropriate. Complainants may not wish to discuss an incident that could be distressing or embarrassing with their immediate supervisor. They may prefer to discuss the complaint with someone of the same sex, which may not be possible when there is only one option. More importantly, the designated staff member may be the harasser. As a result, many sexual harassment procedures offer an alternative individual to whom the harassment can be reported. The policy of the sports-wear manufacturer Reebok in China, for example, allows victims to report directly to the person in

charge, rather than to their direct superior (Tang, 2001). Other policies offer a choice of individuals to whom the harassment can be reported, sometimes including the supervisor, but including additional options such as other managers, representatives of the health and safety or personnel departments, and, where made available, counsellors, harassment advisers or equality officers. In a number of countries, union representatives and members of work councils may be contacted about harassment. Many enterprises also attempt to guarantee that the complainant will be able to talk to someone of the same sex by ensuring that the list of designated complaint officers includes a number of women.

Sexual harassment policies often provide the complainant with the alternative of using either an informal or formal complaints mechanism. Formal processes generally involve a full investigation of the claim, culminating in an adjudication of its merits. Informal mechanisms tend to adopt a more conciliatory approach to dealing with incidents of harassment, often by conducting a discussion between the target, the harasser, and a facilitator.

Informal procedures

Informal mechanisms can be swifter and less stressful for the victim. Where a complainant does not relish the prospect of a formal enquiry, and is merely seeking assurance that the offensive conduct will not be repeated, an informal approach may be preferable. The Australian HREOC code suggests it is appropriate where the allegations are less serious, and where the complainant wishes to use the informal option in order to maintain an ongoing relationship with the alleged harasser (Ruskin and Sutherland, 2001). The HREOC code also suggests that an informal procedure include the following:

- Complainants may seek advice from a supervisor or another officer in order to deal with the situation themselves
- Complainants may ask their supervisor or another officer to speak to the alleged harasser on their behalf on a private basis without assessing the merits of the case
- If a complaint is made, it may be resolved through conciliation or counselling if the alleged harasser admits the behaviour

- Supervisors or managers may take independent action in the absence of a complaint if they observe unacceptable conduct.

Informal procedures have been criticized as potentially inappropriate in the context of unequal power relations between the parties. Many policies demonstrate awareness of their potential for abuse by allowing individuals to pursue a formal complaint if they are dissatisfied with the outcome of the informal process. At the Kumho Business Group in Korea, for example, a mediator is appointed to handle complaints in the first instance. If a resolution cannot be reached, the complaint is then referred to a committee (Dietz, 1996).

Formal procedures

Formal procedures often require the written consent of the employee before the formal process will be initiated. This requirement reflects the widespread view that the choice of which complaint mechanism should be adopted – including not only formal and informal internal mechanisms, but references to arbitration, to human rights or equality commissions, and civil actions – should be that of the victim. However, it is also clear that in some situations it may be in the interests of the company to pursue an allegation, irrespective of whether the victim wishes to initiate a complaint. The World Food Programme (WFP) policy addresses this concern by providing that where a staff member decides not to proceed with a complaint, his or her wishes will be respected. However, if the situation is serious, for example if the conduct could be considered a crime, the human resource department will be informed in order to ‘protect the overall interests of WFP and of staff members in general’ (WFP, 1999). In these circumstances, action may be taken, but without reference to the fact that an informal complaint was made.

Investigation

Formal procedures usually require that management undertake a full investigation. The most common format is for interviews to be conducted with the complainant, the alleged harasser, and any witnesses; a determination made as to whether the complaint has been substantiated; and a report compiled. The process culminates in a decision as to which disciplinary measures, if any, will be taken. The

harasser and complainant are then informed of the outcome of the complaint, at which stage it may be possible to appeal against the decision. The investigator can be one of a range of candidates, depending on the policy, including representatives of the human resources department, affirmative action officers, and confidential counsellors.

Establishment of a sexual harassment committee

In some countries, it is common to establish a grievance or complaints committee to investigate complaints, issue advice on appropriate disciplinary measures, and, in some instances, enforce sanctions. In the Philippines, the sexual harassment legislation provides that a 'committee on decorum and investigation' should be set up to investigate complaints (MAKALAYA in Ursua, 2001), while in India, the Supreme Court has required that 'Sexual Harassment Committees' be established in each workplace (The Lawyers Collective, 2001). Almost all government departments in India have set up this kind of committee, as have most major public sector organizations. Very few firms in the private and unorganized sectors, however, have introduced policies, let alone set up committees. In addition, the Supreme Court's Guidelines do not specify the precise status and role of these committees and this appears to have hampered their work. The Court did not, for example, explicitly state that their recommendations are binding on employers, and omitted to mention whether they can determine the penalty for offences (The Lawyers Collective, 2001).

It has been observed that sexual harassment committees in India are very often composed primarily of employer personnel and therefore inadequately represent the perspectives of employees (The Lawyers Collective, 2001). Therefore, some organizations indicate that grievance commissions, which hear sexual harassment complaints, should include worker representatives. At Jawaharlal Nehru University in India, for example, it was felt that the sexual harassment committee should include employee representatives and union members in addition to students and teachers (The Lawyers Collective, 2001). The country study from the Philippines highlights a similar concern: although the legislation requires that committees include at least one union representative and a representative of both supervisory and rank and file employees, a recent survey found that this level of worker

representation is not being realised (Ursua, 2001).

A further concern, given the nature of most incidents of sexual harassment, is that investigating bodies should include women. The Supreme Court of India took this into account and stated within its guidelines for workplace policies that the chairperson and at least half of the members of sexual harassment complaints committees should be women. In addition, the committees are also required to include one NGO participant. However, neither this, nor the gender-balance requirement is always fulfilled in practice (The Lawyers Collective, 2001).

Sunset clauses: Specified timelines

A number of procedural protections are widely identified as essential to the investigation of a sexual harassment complaint, and one of these is the setting of clear time-lines for action to be undertaken. For example, it is in the interests of both complainants and alleged harassers that investigations are being carried out and cases are being resolved promptly. In Australia, the HREOC Code of Practice recommends that timelines be guaranteed (Ruskin and Sutherland, 2001). Many policies designate a period within which the complaints process should be initiated or completed. In Malaysia, some companies have specified a time-frame within which the management must respond to complaints. In one company, a period of three days has been specified, in contrast to the 7-14 day limit which it extends to other kinds of complaints (in Zaitun, 2001).

Fairness and transparency

Another vital procedural protection that needs to be ascertained is the fundamental 'presumption of innocence' towards both parties, the alleged victim and the perpetrator. The policy of Flinders University in Australia contains a list of principles for the conduct of informal and formal complaints as follows:

- The tenets of procedural fairness will apply at all stages of the complaint resolution process
- Conciliators and others responsible for investigating and resolving the matter will act fairly and impartially

- All parties will be informed of the case being made against them (Ruskin and Sutherland, 2001).

Proceedings also need to be conducted in languages which all participants, particularly the complainant and alleged harasser, can understand. In Australia, for example, the HREOC Code of Practice suggests that the policy should be translated into appropriate community languages (Ruskin and Sutherland, 2001).

Confidentiality

Confidentiality is another vital component of a sexual harassment complaints procedure, given the nature of many complaints and the effect publicity may have on both victims and in the event the alleged harasser is wrongfully accused. In China, the Reebok policy states that procedures must be introduced to ensure that staff can make confidential complaints (Tang, 2001). Many organizations require that separate locked files be kept for investigation records, and that all individuals involved in the complaint process refrain from divulging the details of complaints. They warn that violations of the confidentiality policy will be taken seriously and addressed under the employers' disciplinary policy.

Protection against retaliation

Finally, it is often considered necessary to take measures to prevent retaliation against victims. Even members of investigative bodies can be victimized, particularly where they do not receive wholehearted employer support (The Lawyers Collective, 2001). In the Philippines, where the law is silent on protection from victimization, it has been found that fear of reprisal, particularly of the loss of employment, is a primary factor in the decision to withhold or withdraw a sexual harassment complaint (MAKALAYA in Ursua, 2001). In order to counter all forms of retaliation, many policies state that the organization will not tolerate the victimization of the complainant, the alleged harasser, or anyone else involved in the complaint process. The University of South Australia policy, for example, affirms that protection and support will be offered to complainants and to all those involved in the administration of the policy, including contact officers, conciliators, union/association representatives, witnesses and other staff (Ruskin and Sutherland,

2001).

Sanctions and disciplinary measures

Sexual harassment policies can ensure that suitable deterrent sanctions are in place, to ensure that incidents of harassment are not treated as a trivial offence or dismissed as the exercise of 'poor judgement' by the perpetrator (Rubinstein, 1992). Workplace policies tend to provide penalties that range from verbal and written warnings and adverse performance evaluations, to suspension, transfer or demotion, and ultimately to dismissal. They will usually state that the sanction applied will depend on the nature and degree of the harassment and many policies contain a warning that the most extreme forms of harassment, including physical violence, will automatically result in dismissal. Where the harasser is not an employee, the power to apply disciplinary measures is obviously limited, but techniques such as sending letters of objection, a discussion of the behaviour and a request that it stop and a refusal to continue to conduct business with the offending party can be used.

Unfortunately, in practice, the disciplinary measures being taken in many countries appear to be limited to transferring offenders to other work sites. This usually does not solve but only transfers the problem to another workplace as sexual harassment may continue to occur, directed to other persons. In some cases, employers have been found to transfer the complainant following a report of sexual harassment (The Lawyers Collective, 2001). As indicated in chapter 2, this response penalizes the victim while potentially dissuading others from reporting harassment. There have also been instances where the penalties are arbitrarily applied and incommensurate with the harassment complained of. In addition, the India country study noted that disciplinary measures are often restricted to minor reprimand.

Few cases incur severe warnings or stronger penalty. The Sri Lanka study noted that employers feel compelled to ensure stronger penalties are applied only when workers take collective action (Wijayatilake and Zackariya, 2000). Even where more severe action is taken, it appears they are often against non-executive employees rather than harassers employed at higher levels. Moreover, instead of having the penalties

meted out by the sexual harassment committees which may include women, the sanctions are in fact applied by management, which is usually dominated by men (The Lawyers Collective, 2001).

It is important to note that the availability of sanctions, however wide-ranging and appropriate to sexual harassment complaints, does not imply that they will always be effectively applied. A European Union study, for example, has revealed that where a choice of sanctions is available, it is common for the least stringent to be selected (European Commission, 1999).

In some organizations, traditional workplace disciplinary measures are thought to be unwieldy. In some cases existing disciplinary provisions have been amended in their application to sexual harassment complaints while in some other cases, innovative approaches have been developed to ensure that sanctions are appropriate to the nature of sexual harassment offences. At the Kumho Business Group in Korea, for example, the highly visible sanction of public apology is one of the available disciplinary measures (Dietz, 1996). This option is also preferred by a young woman victim in Sri Lanka, who states:

The lawyer insists that I should not give in and the perpetrator must be given a punishment. I feel that if he makes a public apology for his doings in the presence of all the officers then he would be ashamed of himself, and that is the best form of punishment, which could prevent such things happening in the future (interview with 19-year old plantation worker in Wijayatilake and Zackariya, 2000)

Many policies also include provisions aimed at ensuring that victims of sexual harassment will not suffer any employment detriments. For example, the Code of Practice of the Government of Malaysia includes the following provisions for the protective and remedial measures for the victim:

- In a case where the victim of sexual harassment has suffered a loss, such as a demotion or a denial of a promotion, it is appropriate to restore such person to his or her proper position on the job.
- The victim should also be compensated for any monetary loss arising out of a denial of employment-related benefits which were rightfully

due to him or her.

Monitoring and evaluation

Monitoring and evaluation mechanisms are an important element of effective enterprise-level policies on sexual harassment. Through systematic reviews, assessments can be made on whether the policy is being implemented effectively, and whether procedures are in line with legal developments. The policies and procedures can then be adapted in light of the findings. In practice, it appears that the effectiveness of many policies is not monitored if it is not obligatory. In India, for example, sexual harassment committees conclude their work by issuing a report of their findings, and do not have the power to follow up on whether their recommendations are being implemented (The Lawyers Collective, 2001).

Much of the available guidance on developing a sexual harassment policy and procedures, including the HREOC Code of Conduct, suggests that policies should be periodically reviewed (Ruskin and Sutherland, 2001). In some jurisdictions, a specified review process is a statutory requirement, while in others, some employers have developed their own processes of monitoring and evaluation. These may include analyzing questionnaires completed by employees and conducting discussions with victims and individuals who administer the complaints procedure.

The University of South Australia has developed a monitoring mechanism which balances respect for confidentiality with the need to monitor the effectiveness of its anti-harassment measures. The policy allows records to be used to identify multiple complaints and areas within the workplace which are of particular concern. In order to ensure privacy, however, the periodic confidential reports omit any information which could be used to identify individuals. The reports include:

- information on the number of enquiries received by sex of complainant and respondent
- the nature of the allegation
- the action taken

- the final outcome of the complaint.

5.5 Information dissemination at workplaces

Policy statements by themselves appear to be most useful in preventing forms of sexual harassment which involve behaviour that is not aimed at specific individuals such as offensive comments about women in general, or the display of sexually suggestive or explicit material. However, the issuance of a policy statement does not deter more personalized forms of sexual harassment, directed at individuals.

All women and men workers require information about fundamental human and workers' rights, including the right to a workplace free of sexual harassment. Therefore, large scale awareness-raising is needed in society and in workplaces. Combating sexual harassment involves tackling sensitive issues associated with well-worn patterns of human relationships. It involves changing attitudes with respect to the role of women at work, and how they are treated and valued as workers. It involves sensitizing men and women to their behaviour, and learning of new behaviour. To effectively prevent all forms of harassment, it has been suggested that organizations must make visible efforts by taking steps to ensure that workers are aware of the policies and procedures in place (Gruber, 1998).

This concern is evident in India, where sexual harassment committees have been criticised for being insufficiently proactive in raising awareness about their role, or providing information on the prevention of sexual harassment. Most have not held meetings with the staff in their organizations or produced information material. In fact, there are signs that many have viewed their role as confined to acting as a complaints committee, rather than helping to create an environment in which sexual harassment does not take place.

Actions on awareness-raising in the workplace

In countries where there is little information on sexual harassment, concerned organizations started with conducting research on its forms and extent and publicized their findings. For example, in the Philippines, MAKALAYA, an organization representing women workers in the formal

and informal sectors, conducted a research project on harassment, producing a book describing its findings, a primer on sexual harassment and a poster demanding that sexual harassment stop (Ursua, 2001). Similarly, the Financial Services Union of Australia conducted a survey of its members on the extent of harassment in 1996 (in Ruskin and Sutherland, 2001).

Many employers, too, have taken measures to make their employees aware of their sexual harassment policies, attempting to ensure that every member of their organization is aware of its contents and of how to initiate a complaint. There is a wide range of methods through which sexual harassment policies can be brought to the attention of employees. Organizations have incorporated them into their internal rules as is common in Japan. They can also be reproduced and reviewed in enterprise newsletters or personnel magazines. Newly introduced policies can be set out in circulars or memoranda from members of senior management addressed to line managers or individual employees.

The Australian HREOC Code of Practice also recommends that a copy of the sexual harassment policy be provided to all new employees (in Ruskin and Sutherland, 2001). These kinds of early intervention allow organizations and companies to stress the significance of the policy and ensure that new employees become aware of it as soon as possible. It can then be reinforced through discussions in work meetings and training sessions or being posted in a conspicuous place. These kinds of regular communication of the policy are useful in ensuring that awareness is high and that the provisions are not forgotten. In some countries, for example in Australia, widely distributing information on sexual harassment works in favour of the employer as employers may avoid vicarious liability if they can establish that they took all reasonable steps, including widely disseminating information on sexual harassment, to prevent the employee's or agent's unlawful act. Courts and tribunals judgements, for example in the decisions of the Anti-Discrimination Tribunal in *McKenna v State of Victoria* (1998) and in *Gray v State of Victoria* (1999) in Australia, have in fact prevented employers from escaping liability on the grounds that although they had issued policies, they had not in fact ensured widespread awareness of

the provisions (Ruskin and Sutherland, 2001).

Many companies reproduce their sexual harassment policies in leaflets or brochures which are then distributed to all employees. The National Personnel Authority in Japan has published its policy in a pamphlet distributed to civil servants in all government ministries and agencies. Another widely adopted mechanism to encourage workers to read the policies, is to ask them to sign a statement indicating that they have read and understood it. Increasingly also, sexual harassment policies are disseminated by email and posted on web sites. The policy of the Paraplegic and Quadriplegic Association of Australia, for example, is displayed online. The Japanese Trade Union Confederation (JTUC-RENGO) also uses handbills, stickers and radio commercials for awareness-raising. Public relations materials can also contain messages against sexual harassment. For example, Mitsubishi Electric Malaysia publicizes its campaign 'Respect for one another' on buttons and its year calendar advertises its sexual harassment and quality policies.

Content of awareness-raising material

It is useful to devise clear, and accessible material in the various relevant community languages, for ease of understanding of all workers and other concerned parties. This approach is especially appropriate where there is a high chance that some members of the workforce may have difficulty in reading and understanding materials geared at well educated audiences, including detailed company policies.

Ideally, the material should contain information on:

- what constitutes sexual harassment
- the effects of sexual harassment
- what one can do about it in the immediate and/or longer term
- what the provisions for protection are in the law or at the workplace
- what support systems are in place, including who the relevant contact persons are
- how to file a complaint.

Graphics, case studies and examples presented in a reader-friendly format are also good ways to illustrate how one identifies and deals with sexual harassment. There are many good examples of awareness raising material, such as the 'Primer on Anti-Sexual Harassment' by MAKALAYA, the 'Primer on Sexual Harassment' by the University of Philippines Center for Women's Studies and the worker's handbook 'Sexual Harassment is a Trade Union Issue' developed by the Development Action for Women in the Trade Union Congress of the Philippines (DAWN-TUCP). The latter is reproduced in Annex 5 to inspire development of similar materials in other countries.

5.6 Training at workplaces

Training is one of the most important proactive measures that can be taken to ensure that a sexual harassment policy is effectively implemented in workplaces. It is generally recommended to train and inform all workers on sexual harassment and action against it and to provide more specialized training to managers and officers in charge of handling complaints.

Extent of training programmes in the workplace

Many governments, workers' and employers' organizations, and other bodies have conducted training on sexual harassment and distributed training materials over the years. In the Philippines, the Department of Labor and Employment (DOLE) has developed training modules and conducted workshops together with the ILO which were attended by chief executive officers, personnel managers, union leaders and workers. At these sessions, the provisions of the Anti-Sexual Harassment Act were explained and assistance provided on developing workplace policies. The DOLE has also published training modules on gender sensitivity, counselling and law enforcement, and has provided training to company trainers for use within their organizations.

Unions and employers' organizations have also taken responsibility for training their members. In Sri Lanka, some trade unions conduct gender sensitisation programmes for top- and middle-level unionists which include training on sexual harassment (Wijayatilake and Zackariya, 2000). In India, employers' organizations, including the Federation of

Indian Chambers of Commerce and Industry, have conducted gender training programmes for their staff (The Lawyers Collective, 2001) while the Employers' Confederation of the Philippines has integrated sexual harassment into its seminars on gender and development (Ursua, 2001). Some employers have been prepared to send their employees to seminars organized by NGOs. In India, for example, the National Institute of Public Co-operation and Child Development organized a work-shop on gender sensitisation which included a half-day session on sexual harassment and was attended by staff from government departments (The Lawyers Collective, 2001).

Much remains to be done, however, in all countries, where studies were undertaken for this report. For example, in India, many organizations have been found to have provided very little training on their complaints procedures (The Lawyers Collective, 2001). Few initiatives have been introduced outside the public sector and larger private firms, however, and even in these, training is often confined to managerial staff. Although training on sexual harassment is rare in China, in some hotels in Tianjin pre-post training has been offered to women workers. Although useful, this training focuses on improving the ability of women to protect themselves from harassment, rather than on methods of preventing it (Tang, 2001).

Training tends to be provided in two stages: first on the content of the policy, and then to ensure it is effectively enforced and used. Training sessions may then be conducted at regular intervals to raise awareness among the workforce and managers of what constitutes sexual harassment, their responsibilities, and the details of the grievance procedures; and to update them on any changes which have been made to it. These sessions may be directed at the entire workforce, or designed for the specific needs of employers, managers, or individuals with specialized roles such as counsellors. Ultimately, individuals in the organization can be trained to conduct future sessions and workshops. Employers across a range of countries are currently making use of some or all of these training options. In India, several public sector organizations have held gender sensitization and training programmes which include a component on sexual harassment (The Lawyers Collective, 2001). In Thailand, the Department of Skills Development (DSD) of the Ministry of Labour and Social Welfare conducted specific

sessions on sexual harassment within the gender training programmes for directors and instructors of vocational training institutions (DSD, 1998).

Box 14. Tailor-made training for staff at Intel Technology Sdn. Bhd., Malaysia

At Intel, sexual harassment training covers all workplace actors as follows:

- training materials have been developed for managers, supervisors and employees
- 'harassment avoidance training' is provided to all employees (including teleconferencing for employees who are not on-site)
- sexual harassment training is provided to all new managers
- specific training is given for specialized investigators

Many organizations have recognized the need to educate workers about sexual harassment as soon as possible and have introduced training at an early stage, during the recruitment process or in the first few weeks of employment. Some policies require training to be incorporated into induction programmes. In addition, some organizations have targeted training at groups in their workforces who are at a particular risk of being sexually harassed.

Training content and duration

The content and form of training varies depending on the stage at which it is introduced and the groups to whom it is addressed. Below are some practical tips for providing effective training against sexual harassment in workplaces.

It is important to remember that sexual harassment is a manifestation of unequal power relationships in society and a form of violence against women due to their subordinate status in society and at work. Experience from Asia and at the international level indicates clearly that training and awareness programmes, therefore, have to deal with this unequal position of women in society and in the workplace when addressing sexual harassment.

Set clear aims for the training. Usually such aims will be one or more of the following:

- to enable workers to understand what sexual harassment is and make those concerned more sensitive and aware of sexual harassment as a problem
- to enable managers and workers to distinguish between appropriate and inappropriate behaviour
- to prevent sexual harassment from occurring and to stop unacceptable forms of behaviour
- to provide all staff with a clear understanding of their rights and responsibilities.
- to communicate effectively the company's policy and procedures to clarify what will not be tolerated and convey the message that unacceptable forms of behaviour will lead to disciplinary sanctions.

The duration of training aimed at awareness raising can range between anything from half a day to a whole day, depending on the aims of the training. Training for counsellors, contact persons, staff and committee members in charge of grievance handling require longer training and refresher courses. The longer the duration, the more comprehensive and participatory the discussions, and the higher the effectiveness of the training will be. Every training module should aim to address the three key result areas of training: attitudes, skills and knowledge. Basic training on sexual harassment should:

- affirm that sexual harassment is wrong and should be eliminated
- share information and increase knowledge on the myths and actual workplace practices on sexual harassment
- provide a clear understanding of practical actions that can be taken.

Gender stereotypes are common among both men and women participants. Training should therefore start with eliciting from the participants their understanding of and feelings about sexual harassment, and then build upon their responses to arrive at the definition of sexual harassment. Participatory techniques as well as creative and interesting activities, for example, story telling or debates, can be included to deal with the myths and stereotypes about sexual harassment while group discussions can be used to brainstorm and to

identify actions to be taken. Role plays or other case study exercises, for example on 'quid pro quo' harassment in job interviews or contract extensions, or on hostile working environments such as verbal harassment, physical contact at a party, or office gossip with sexual overtones, will draw out clearly what is and what is not sexual harassment.

Audio-visual material is another highly effective medium for awareness raising or training sessions. In the Asia and Pacific region, a recent video 'Prevention of Sexual Harassment at Work' by the Korea Employers' Federation (KEF) shows examples of sexual harassment and illustrates how employers can take appropriate action against it. Another example is the training video 'Sexual Harassment in the Workplace' by the All Women's Action Society (AWAM) in Malaysia, which explores the definition of sexual harassment, the myths surrounding it and actions that can be taken. This video is used for public awareness as well as workplace training.

Training expertise

Training should be conducted by trainers experienced in dealing with 'sensitive' psycho-social issues, such as gender and unequal power relations. There are several factors that need to be considered during training sessions, and appropriate responses and strategies need to be developed. These can include the following:

- Given that sexual harassment is often wide spread, some of the participants may in fact have already had traumatic experiences. Some of these trauma may surface during the session and may therefore require post-training counseling or referrals.
- Both women and men may have internalized societal norms and values that sexual harassment is a 'fact of life' for workers who have low status because of their sex, age, socio-economic class, ethnic group, caste or religious background. There is a tendency to consider that sexual harassment is done by 'others' to 'others' and does not occur within the social groups to which the participants belong. Trainers therefore should be able to handle not only gender

stereotyping, but also racial, ethnic, religious, age-, class- or caste-based stereotyping as justifications for sexual harassment.

- Resistance or hostility can be expected from those who have been engaged and involved or have condoned sexual harassment in their work environment and wish to justify the behaviour of harassers. Emotions, thus, may run high. It is important that trainers (i) allow for the expression of the diversity of views on the subject (ii) explain and emphasize the need for respecting the non-negotiable fundamental human and workers' rights which are the same for men and women and (iii) aim at reaching a consensus on what is 'acceptable' and 'not acceptable' behaviour.

Training methodology

- Organize training in smaller groups. (ideally a maximum of 15 to 20 persons) to ensure active participation of everybody.
- Use case studies, role plays and problem solving to ensure active participation and to uncover inappropriate practices and assumptions in the workplace.
- Provide practical examples of effective behaviour for dealing with sexual harassment.
- Outline the costs for organizations and individuals found guilty of sexual harassment including the bad image of the enterprise and its products, examples of damages awards, the financial and time costs of defending a claim, internal sanctions for inappropriate conduct and the likelihood of media reporting of any claim in the relevant tribunals.

Do's of training

- Everybody in a company or organization has a responsibility to combat sexual harassment. Ensure all managers, supervisors and ideally, all workers attend training:
- Provide basic training in definitions and key concepts of sexual harassment: ensure participants understand what is and what is not sexual harassment. Emphasize the organization's commitment and policy, if any, to prevent sexual harassment.
- Provide such basic training in concepts of sexual harassment (and the organization's sexual harassment policy, if any) to all employees

and ensure all new employees receive training on sexual harassment as part of their induction.

- Management and counsellors need to develop skills to enable them to act professionally when dealing with sexual harassment. They need to be able to recognize the signals indicating that sexual harassment has occurred. Provide specific training in complaints procedures for managers and contact officers who will be required to implement those procedures.
- When implementing a company policy on sexual harassment, it is best to organize training from the top down, starting with upper management, counsellors and investigators and reaching the shop floor through all intermediary levels so that managers and other staff are familiar and prepared to assume their responsibilities. This is necessary because training raises awareness. Thus, initial training on sexual harassment is likely to lead to complaints of sexual harassment from recipients, who now understand that they no longer have to put up with unacceptable conduct.
- Follow up the training with regular reminders and refresher courses, particularly for contact officers.
- Ensure all participants are aware of the contents of the organization's sexual harassment policy (if any), the disciplinary sanctions for unacceptable behaviour and the appropriate people to contact about sexual harassment.
- Outline serious consequences for perpetrators of sexual harassment.
- Keep a record of who has attended training.

Don'ts of training

- Display pornographic material or repeat offensive jokes in order to explain the nature of sexual harassment and be careful with the use of humour to make a point about sexual harassment conduct as it may be misunderstood.
- Divulge confidential information or use real life examples from which the parties could be identified.
- Rely on a one-off launch of a sexual harassment policy as fulfilment of the obligation to train employees.
- Provide training outside business hours or at a one time slot only. This makes it difficult for part-timers and workers with family

responsibilities to attend.

5.7 Counselling and support

Confidential counselling services are important as they provide a safe space to victims to speak about the incident and how it has affected them. Proper counselling can prevent a lot of human suffering and serve to de-escalate the problem. A person who has been sexually harassed may be frightened, angry, confused and hurt. Being able to talk with someone who understands the dynamics of sexual harassment and is able to provide practical and emotional support, can be crucial. For some, a hotline may be a lifeline. Enterprises and organizations can assist their employees by either providing a counsellor within the company, or by providing contact details for organizations that provide counselling.

Counsellors can also help to put the incident into perspective. Sometimes, it takes time before a person who has been sexually harassed is actually able to summon enough courage to seek help. It is important therefore that the first point of contact be a source of support and strength, especially if colleagues at work are unsupportive or even compound the matter. Workplace procedures need to be followed strictly, but mechanical application of procedures is liable to intimidate clients. It is imperative, therefore, that the counsellor is gender-sensitized and trained to handle such cases.

The extent of counselling services and procedures in place

Many workplace policies on sexual harassment appoint or designate a member of staff to act as a counsellor. Their titles and precise roles vary, but generally these counsellors are available to advise victims of harassment, guide them through the process of making a complaint, and assist them in resolving the complaint informally. In Japan, for example, the National Guidelines issued under its equal opportunities legislation require the establishment of grievance and counselling centres at enterprise level. Companies have responded by creating counselling centres within their personnel divisions, extending the role of their existing grievance committees, or contracting with outside bodies to offer professional counselling (in Japan Labour Bulletin 2,

1999).

Similarly, in Malaysia, a few of the companies which endorsed the Government's Code of Practice have modified existing complaints procedures to ensure that counsellors are available to victims of sexual harassment (Zaitun, 2001). Fuji Xerox in Japan has employed outside counsellors, recognizing that it may be difficult for victims to report to the employee relations department (Yamakawa, 2001). Fuji Xerox has also distributed a 'Sexual Harassment Prevention Hot-Line Card,' which contains the phone numbers of its counselling office and provides examples of sexually harassing behaviour. The role of the counsellor can allow employee representatives to play a part in combating sexual harassment at work. In Japan, Zensen Domei, a federation of trade unions in the garment, food, services and retail sectors, reached an agreement with employers to establish counselling offices jointly run by union members and management (Yamakawa, 2001).

Policies may also include provisions on gender-balance, which ensure that victims are able to speak with a counsellor of the same sex. Some organizations have, in addition, attempted to ensure that their counsellors reflect the make-up of the workforce in other ways. At Flinders University in Australia, for example, the Equal Opportunity Unit has the responsibility of ensuring that Contact Officers who provide advice and support on sexual harassment issues and assist complainants and respondents are drawn from a broad range of occupations and fields of study.

Counselling and investigation procedures

In case, i.e. formal or informal procedures, there are certain basic principles of counseling and investigation that need to be observed during the course of case management. The purpose of carrying out the procedure is to gather information, but because it also involves going over what was perhaps a traumatic situation, emotional support may also need to be provided to the person concerned. In order to conduct an effective session, care must be given to the physical environment within which the interview is conducted and also to the way in which the interview is carried out. The primary principle is of course to ensure confidentiality and support, without blaming or moralizing the

interviewee.

Guidelines for effective counselling and investigation are:

- Assure and ensure confidentiality.
- Ensure that the physical environment is conducive to a discussion (not next to heavy machinery, in a noisy or busy section of the establishment, or within earshot or view of managers, supervisors or other workers).
- Minimize distractions during the session (turn off mobile phone, hold all calls).
- Do not ask or make accusatory questions or statements as these will send the message that the interviewee has already been judged by the interviewer. Instead ask open-ended questions (i.e. questions that require more than a 'yes' or 'no' answer) that allow the interviewee to articulate and clarify what he/she thinks.
- Affirm and validate the feelings of the interviewee. Offer empathy and support, not sympathy and solutions.
- Do not minimize or trivialize the incident, or stress the interviewee by asking a particular question repeatedly. If a particular statement needs to be clarified, rephrase the question into a clarifying question, for example "Correct me if I am wrong, but did you say before that. . . ." However, be careful not to interrupt unnecessarily.
- Work through options with the person involved, and discuss the strengths and weaknesses of all options without pushing the person to make a particular choice. The option made by the interviewee must be one that he/she is comfortable with.
- Do not make promises that cannot be met by either the interviewer or the establishment. This raises false hope and results in distrust and a sense of betrayal when the promise is broken.
- End the session with a clear idea of what the next step will be and when he/she will be informed and contacted.

Counselling services for perpetrators are still relatively rare in the region, but seem to be a good idea, because awareness raising on gender relations and stereotypes, sexual harassment and respect for fundamental human and workers' rights can prevent further relapses.

Box 15. Case management: An example of company interview guidelines

Questions for first contact with the alleged victim

Thank you for coming
When did it happen?
How often?
For how long has this been going on?
Can you give an example of what happened?
What did you do?
Did you talk to him or her?
What did she or he say?
Is there anything else?

Basic information for alleged victims and harassers

Our company has committed itself to ensuring that the workplace is a safe and productive working environment. As part of this commitment we have promised to investigate all allegations of harassment or bullying.
In order to be fair and to protect all the people involved in an investigation, we have drawn up the following guidelines:

- Interviews are confidential. They should not be discussed with others in the workplace.
- While an investigation is taking place, even after its completion and no matter what the outcome, it is important that the person(s) making the complaint is/are not penalized in any way because they made the complaint.
- During this interview we hope to establish some 'next steps'. These should be agreed on and a signed copy of the agreement kept by both people present at this interview.

Summary: An example of steps which could be taken in the investigation procedure

- Take a comprehensive written statement from the complainant.
- Ensure confidentiality.
- Follow office procedures as stated in company policies and handbooks.
- Give the alleged harasser full details of the complaint made, and the opportunity and time to seek advice before being required to respond to the complaint in a meeting with the employer.
- Carefully consider the responses of all concerned parties, paying attention to the consistency and truthfulness of competing statements.
- Statements should be taken from everyone who can supply meaningful evidence about the complaint.

- Keep notes of all meetings.

Source: Adapted from Reinhart, 1999.

6. FINDINGS AND CONCLUSIONS

Asian women have been going out to work outside the home in ever greater numbers over the past 20 years, to earn income. Many women, however, have to cope with extra strains at work, where they are vulnerable to unwanted kinds of attention – because they are women. The concept of sexual harassment was coined in the seventies to describe the age-old problem of unwelcome and unwanted conduct of a sexual nature. Both men and women can be subjected to sexual harassment, but quantitative and qualitative research shows that in this day and age women are much more likely to be victims and men perpetrators in societies worldwide. Sexual harassment is not confined to the world of work but workers are especially vulnerable because their families' livelihood is at stake.

Over the last two decades, sexual harassment has been recognized as a common problem throughout the world in all cultural and occupational contexts. In 1985, the International Labour Conference recognized that sexual harassment at the workplace is detrimental. Since then the International Labour Office has pointed to sexual harassment as a violation of fundamental rights of workers, declaring it constitutes a safety and health hazard, a problem of discrimination, an unacceptable working condition and a form of violence, usually against women workers.

While the first actions against sexual violence at workplaces in the region date back from the fifties, sexual harassment is a relatively new concern for most countries in Asia and the Pacific. Increasingly, however, sexual harassment in workplaces is being recognized as an occupational hazard and a violation of human rights which undermines equality of opportunity and treatment between women and men. Building upon this momentum in the region the ILO Regional Office for Asia and the Pacific organized a Regional Tripartite Seminar on Action against Sexual Harassment at Work in Asia and the Pacific in October 2001 in Malaysia, co-financed by the Government of Japan and in-kind assistance by the Government of Malaysia with a view to enable the exchange of experience among ILO constituents and other concerned parties on effective means of combating sexual harassment in

workplaces in the formal and informal sectors; and to strengthen local and national initiatives against this practice.

This publication is an updated and expanded version of the technical report, prepared for the above-mentioned seminar. The book aims to increase understanding on the phenomenon of sexual harassment at work and to give an overview of initiatives and good practice for its prevention and elimination as taken by governments, employers', workers' and women's organizations. An international perspective is provided with a focus on action in Asia and the Pacific.

6.1 Understanding sexual harassment

Sexual harassment is a clear form of gender discrimination, based on sex. The problem of sexual harassment relates not so much to the actual biological differences between men and women, but to the gender or social roles which are attributed to men and women in social and economic life, and perceptions about male and female sexuality in society. For meaningful discussions on sexual harassment, it is important to keep in mind that gender relations are a social construct. Women, through the centuries in many parts of the world, have been perceived to be, and therefore are socially conditioned from an early age to be, subordinate to men. Women are expected to be compliant and sexually passive and men are socialized to believe that they are the ones to initiate sexual relationships and that it is reasonable, tolerated or even expected of them to be sexually aggressive.

Inequalities in the position of men and women exist in nearly all societies and sexual harassment at work is a clear manifestation of unequal power relations – women are much more likely to be victims of sexual harassment precisely because they lack power, are in more vulnerable and insecure positions, lack self confidence, and/or have been socialized that they are to suffer in silence. Women can also become targets of sexual harassment when they are seen to be competing for power or take on new roles. In many societies and situations, men are more likely to harass than women, as men are often placed in more senior or better paid positions.

The ILO's experience indicates that even when the phenomenon of sexual harassment in a particular society is denied by some, its existence is simultaneously asserted by those who suffer from it. This indicates that lack of awareness of the existence of sexual harassment by some does not necessarily mean that it is not present. Attitudes and perceptions on sexual harassment vary widely, both between but more importantly, *within* cultures and societies. There is often a difference in how sexual harassment is perceived by different levels in the work hierarchy, by men and women, and by age. While the term sexual harassment may be new to many women workers with little education, they all distinguish clearly between unwelcome sexual behaviour and socially accepted familiarity. Many women consider that sexual and other types of harassment are an integral part of their work, life and daily routine. However, contrary to the common view that they 'enjoy' and 'like' sexual jokes and lewd remarks, women recognize, resent and perceive sexual harassment as a violation.

Most of the country studies showed lower levels of awareness on sexual harassment as a problem among men. Lack of awareness that certain types of conduct may be offensive to women, indications that sexual harassment is 'just a bit of workplace fun' and a fear that women would make 'false' or 'motivated' complaints were concerns of male respondents. In addition, expressions of gender stereotypes or myths, such as 'women provoke' and 'ask for it' and 'it is natural for men to flirt' were more common although not limited to men. Such myths tend to mask the root cause of the problem and make it difficult to address the issue. Two of the most common popular misconceptions are:

- Main reasons for sexual harassment are 'men's natural sex drive' and 'provocation by women' through their appearance or dress. This shifting of the responsibility for the occurrence of sexual harassment from the perpetrator to the victim is not valid as it does not explain why some men harass and others not, nor why women who are fully covered up are also subjected to sexual harassment.
- Sexual harassment is harmless 'flirting' and an 'expression of men's appreciation for women'. The difference between flirting and sexual harassment is that sexual harassment is not consensual behaviour between two people who like one another, but behaviour that is

unwelcome and unwanted by one of the involved parties.

In addition, perceived differences in culture between 'them' and 'us', or between foreign and indigenous values, are sometimes brought forward either to brand sexual harassment abuses as a foreign import that is not traditionally practiced or to dismiss action against sexual harassment for the same reason. These reasonings do not ring true and make it more difficult to come to grips with sexual harassment problems, because they do not touch upon the key issue: sexual harassment is not about sexual pleasure but is an abuse of power that violates the dignity of women and men at work.

Definitions: sexual harassment, work and working relations

The definition most commonly cited comes from the European Commission's Council Resolution on the protection of the dignity of women and men at work, 1990: 'Sexual harassment means unwanted conduct of a sexual nature, or other conduct based on sex, affecting the dignity of women and men at work. This can include unwelcome physical, verbal or non-verbal conduct'.

Definitions used in laws, codes, policies, court decisions and collective agreements throughout the world may differ in details, but, generally contain the following key elements:

- conduct of a sexual nature and other conduct based on sex affecting the dignity of women and men, which is unwelcome, unreasonable, and offensive to the recipient
- a person's rejection of, or submission to, such conduct is used explicitly or implicitly as a basis for a decision which affects that person's work or prospects for work
- conduct that creates an intimidating, hostile or humiliating working environment for the recipient.

The most important principle applied worldwide is that sexual harassment is conduct which is **unwelcome** and **unwanted** by the recipient. The intent of the harasser is not determinant. It is the recipient who determines whether the conduct is welcome or not. Most courts infer in this determination an element of reasonableness. This has led

some courts to clarify that it is a 'reasonable woman's' appreciation of the behaviour that should be used as the standard.

Some acts are readily identifiable as 'sexual' harassment, for example, kissing, fondling of breasts, and physical contact with the genital areas, but many kinds of other physical, verbal or non verbal conduct or display of objects or pictures can also be considered as sexual harassment. This varies according to cultural and social practices and the context in which it occurs. For example, in some cultures, physical touching upon greeting will be normal behaviour, whereas in other cultures it might be interpreted as insulting or a sexual advance. Behaviour which is acceptable between friends at work may be offensive if displayed by newcomers or outsiders.

In addition, a whole range of acts which are not necessarily always of a 'sexual' nature, for example, placing an arm around another person's shoulders, stroking a person's hair, or comments about a person's look or body, may still constitute sexual harassment if the acts are unwelcome and unwanted. What is 'sexual' is not contingent upon what part of the body is involved. What is more crucial is the context within which an act is perpetrated and the character of the conduct. Sexually harassing conduct occurs when the sex or sexuality of the person and everything culturally related to it – from her/his body, to her/his manner of dress, to her/his intimate relations – is made the object or target of the conduct, as something desired to be obtained, or appropriated, or trivialized, whether through physical, verbal or other forms of conduct.

While it is not always easy to define in a general or abstract sense what is offensive to whom, the determination of whether particular conduct is wanted or not rarely poses a problem in a specific context. The reliance on whether the recipient considers an act welcome or unwelcome makes the definition universal and applicable across sectors and cultures.

The most serious types of sexual violence that may take place at work are sexual assault and rape, and these are outlawed everywhere. The two other principal types of sexual harassment in the workplace are sexual blackmail or **'quid pro quo' harassment** and the **creation of a hostile working environment**, both of which need to be included in

any definition to provide adequate coverage.

- Quid pro quo (meaning 'this for that') harassment (sometimes called 'sexual blackmail') forces a worker to choose between giving in to sexual demands or losing a job or job benefits. Because quid pro quo harassment can only be committed by someone with the power to give or take away an employment benefit, this form of sexual harassment constitutes an abuse of power.
- Unwelcome sexual advances, requests for sexual favours or other verbal, non-verbal or physical conduct of a sexual nature can also poison the work atmosphere and limit the adequate performance of workers. Therefore, the creation of a hostile working environment is usually included in definitions of sexual harassment.

Definitions of sexual harassment are usually accompanied by a list of forms or examples of sexual harassment. These broadly cover the following forms:

- sexual assault and rape
- physical harassment: including kissing, patting, pinching or touching in a sexual manner
- verbal harassment: such as unwelcome comments about a person's appearance, private life or body, insults and put-downs based on a person's sex
- gestural harassment: sexually suggestive gestures such as winks, nods, gestures with hands, legs or fingers, licking of lips
- written or graphic harassment: display of pornographic material, harassment via letters, e-mail and other modes of communication
- emotional harassment: behavior which isolates, is discriminatory towards or excludes a person on the ground of his or her sex.

Sexual harassment is not restricted to workplaces. However, most efforts at combating sexual harassment have focused on harassment in workplaces and institutions, such as schools and universities, because it directly affects a worker's 'rice bowl', or education, training or employment prospects. Traditionally, the workplace is understood as the physical space within which paid work is performed. However, especially in recent years, the workspace has extended beyond the

traditional concept of a place outside the workers' home. Thus, traditional and current legal definitions of the workplace often do not adequately cover the situation of the increasing numbers of women, who are confronted with sexual harassment, working at home, on the land, on the streets, in factories and offices:

- On plantations the working and living environment are often one and the same place.
- In the case of domestic workers, the workplace is not confined to the employer's home. Every trip made with or for the employer family is a trip made on the job. Live-in domestic workers face an employer-employee relationship for 24 hours a day.
- In export processing zones where the enterprise arranges for accommodation, and only managers have access to women's dormitories or hostels, workers face a similar situation.
- Telephones and portable computers extend the physical workplace beyond its traditional boundaries.
- Office parties, work-related social functions and other contacts outside office hours often give rise to incidences of sexual harassment problems.
- Many workers face sexual harassment on their way to and from work. This problem is especially acute for workers who work late during the evening or at night without access to safe transportation facilities.
- Finally, sexual harassment during hiring and recruiting is known to be very common if the supply of (often young) women is abundant and there are only a few job opportunities.

Thus, there is a need to rethink the concept of 'workplace'. It is not only the physical workplace that requires consideration but the 'access' that a perpetrator has to the harassment victim by virtue of a job situation or economic relationship.

Similarly, sexual harassment within enterprises and institutions concerns relations not only between supervisors and staff or between colleagues, but usually covers a broader spectrum of working relations – with clients, such as hotel or restaurant guests, customers, and patients, as well as contract workers, such as maintenance and repair staff, suppliers, cleaning agencies and other service providers. In many

instances, therefore, measures against sexual harassment should not only include the workers employed by an enterprise, but need to cover third parties present in the day-to-day working environment.

Effects

Sexual harassment has negative consequences for employees, employers and societies as a whole:

- For employees, the consequences of sexual harassment can be devastating, both while the harassment is occurring and when the employee decides to take action. A harassed person commonly suffers from emotional stress resulting in feelings of humiliation, anxiety, anger, powerlessness and depression, physical illness, fatigue, and loss of job motivation. Sexual harassment leads to frustration, loss of self-esteem, absenteeism and a decrease in productivity. Victims may lose their job or job related experiences such as training or feel the only solution is to resign. Women from low-income groups often accept sexual harassment as they cannot afford to lose the income needed for family survival. Saying no would mean plunging the whole family into poverty. Compliance with unwanted sexual demands is accompanied by a sense of loss of self-worth and a loss of confidence in their own abilities. It also takes courage to act against sexual harassment, especially in societies where this behaviour is widely condoned. It is not uncommon for victims to experience that taking action results in further harassment or violence. Long drawn out legal battles further take an economic and mental toll on the aggrieved.
- For enterprises, sexual harassment leads to workplace tensions which in turn, may impede team work, collaboration and work performance. Increased absenteeism and lower productivity result. It can also be the cause behind valuable employees quitting or losing their jobs when they had otherwise good work performance. Allowing a climate of tolerance of sexual harassment leaves the enterprise with a poor image, assuming victims complain and make their situations public. Further, in a growing number of countries where court action may successfully result in payment of damages and fines, financial risks are on the increase.

- In societies or social groups where women are seen as the inferior sex or are regarded as sex objects rather than subjects, both women and men often consider that sexual harassment is part and parcel of life and work, and that nothing can be done about it. Sexual harassment is common under such circumstances, but remains hidden behind a wall of silence. However, societal perceptions are changing. It is increasingly recognized that sexual harassment impedes the achievement of equality between men and women, it condones sexual violence and has detrimental effects on the efficiency of enterprises and well-being of people, thereby hindering productivity and development.

Taking action

The number of reported cases of sexual harassment is only the tip of the iceberg, because very few women take action, unless it concerns physical assault and rape. Reasons for not reporting include:

- shame and fear of being blamed for the incidence and labeled as a 'bad woman'
- lack of power in relation to the perpetrator
- fear of losing income, or newly gained personal and economic freedom resulting from earning income
- lack of awareness that sexual harassment at work is a violation of workers' and women's human rights
- lack of information on what to do about it and where to seek assistance
- fear of further violence, retaliation or ridicule
- fear of deteriorating conditions of work or legal action by the perpetrator
- absence of law and policies or lack of confidence in authorities and the application of the rules.

Nevertheless, women victims and their families, employers and managers, co-workers and communities have started to act, often through informal means in cases where there is no legal recourse or official acknowledgment of this abuse. Informal measures range from beating up the perpetrator, and organizing in communities or at work

often through women networks. Employers and managers sometimes also take innovative practical action, such as the woman manager in Nepal who brought an immediate stop to sexual graffiti at work by threatening a handwriting check among employees. Transfer of the perpetrator or the victim is also a common measure, which, however, usually does not solve the problem and can make the situation worse for the complainant.

In the overall majority of countries, women workers' groups and organizations have spearheaded action through advocacy campaigns, calling for changes in laws and policies that discriminate against women. Fact-finding, lobbying, provision of services to women in crisis through counselling, information and legal aid services, training for the prevention of sexual harassment and taking up cases are among the measures which have successfully led to curtailing sexual harassment problems. The landmark Supreme Court judgement in India in 1997 which laid down norms and guidelines against sexual harassment was the result of persistence of women workers' groups. Mention also needs to be made of the various hotlines established by women workers' solidarity groups in the Republic of Korea, which have proven to be a 'life-line', i.e. a vital means of recourse and source of information.

Workers' organizations too, have played their role in pursuing individual complaints, taking class action and raising awareness among their members. In several countries throughout the region, women's and workers' organizations have collaborated in taking action against it. In several instances this resulted not only in successful advocacy against sexual harassment, but also led to workers organizing to improve their working and employment conditions with the help of workers' and women's organizations. The assistance of the Asian Migrant Centre in establishing three migrant domestic workers unions in Hong Kong SAR, is the most outstanding example of such initiatives, but there are others in several countries in the region.

6.2 Incidence and scope of sexual harassment at work

Women now comprise an increasing share of the labour force in the Asia and Pacific region and beyond. Between 1995 and 1997 the percentage of women registered as working amounted to well over 40

per cent in East, Southeast and Central Asia and to around one-third in South Asia with percentages as high as 53 per cent in Cambodia, 49 per cent in Viet Nam and 45 per cent in China. Countries in the region where the percentage is lower than 30 are limited to Fiji (27 per cent) and Pakistan (13 per cent). The sheer increase in numbers of women in the labour market is reason enough for making action against sexual harassment at work a priority, but there are other, even more compelling reasons.

Why have so many women entered the labour market? Indications are that it is not so much because of the recognition and acceptance of the fundamental workers' right of women to work of adequate quality. More often women work because they have to, due to economic needs of the family or to enable the meeting of other family priorities. The processes of feminization of poverty and employment which accompany globalization seem to be continuing in the region. The majority of women in the Asia and Pacific region are found in unskilled jobs with low security, low pay, low conditions of work, low status and low bargaining power in a narrow range of occupations – all characteristics which enhance the risk of becoming subjected to sexual harassment.

The increase of women's share of employment since the mid 70s resulted from a shift of female labour from the unpaid household work and subsistence agricultural sector to the paid economy, mostly in manufacturing and services in developing countries. In South Asia, the majority of the female labour force is still found in agriculture (66 per cent), a sector associated with a high incidence of poverty, and sexual harassment in the case of work on plantations where many women are supervised by a small number of men. In East Asia, 23 and 63 per cent of the female labour force are found in industries and services respectively, while in South-east Asia 13 and 41 per cent of women in the labour force work in these respective sectors. Many of the women who find jobs in manufacturing and services are young, for example 90 per cent of garment workers in Bangladesh in 1995 were under 25 years of age, and many of them are migrants from rural areas.

The phenomenon of occupational segregation – concentration of men and women in 'men's and women's jobs' respectively continues to exist worldwide. Horizontal segregation is lowest in Asia and the Pacific

compared to other regions with the exception of China and Hongkong SAR, where it is increasing, but vertical segregation – more men in senior positions as compared to women, is higher in Asia and the Pacific than in other parts of the world. Both types of segregation are known to lead to a higher incidence of sexual harassment.

In the past the quality and reliability of statistical data on sexual harassment varied widely. However, it seems that under-reporting is decreasing somewhat due to the realization that questions on the occurrence of sexual harassment have to be asked with care. Many workers, especially with little education will not recognize the term 'sexual harassment'. However, when asked whether they have experienced specific forms of behaviour and whether these were welcome or unwelcome, the outcome will be more in line with reality. Reliable figures that have become available in recent years speak for themselves:

- The 1996 International Crime Victim Survey IC(V)S survey among more than 30 countries worldwide, including India, Indonesia and the Philippines in Asia found that the highest percentages of victimization at the workplace were observed for sexual incidents against women – inclusive of rape, attempted rape, indecent assault or offensive behaviour. Sexual incidents at the workplace accounted for nearly 8 per cent of cases of rape and around 10 per cent of attempted rapes and indecent assaults.
- In Japan, a large-scale survey of 6762 workers and supervisors conducted under the auspices of the Ministry of Labour in 1997, found that almost two-thirds of the 2254 women respondents had been sexually harassed at least once. Of those who had experienced sexual harassment, around 11 and 45 per cent indicated that they had been subjected to sexual blackmail and hostile working environment sexual harassment respectively. Two out of three reported that their supervisors had sexually harassed them, while 15 percent replied that their harassers were their co-workers. A small number of respondents also reported that customers or company presidents harassed them.
- In the Republic of Korea, a study conducted by an Assembly Member of the Democratic Party and the Law Consumer Union among 567

public officers (345 men, 222 women) in Seoul in October 2000 found that almost 70 per cent of women stated that they had experienced sexual harassment. Another survey conducted by the Korean Institute of Criminology in 1999 found that 64 per cent of the women respondents said they had been subjected to verbal harassment, 35 per cent reported physical harassment, 34 per cent had experienced visual harassment, and 25 per cent had been forced to attend to men at dinner parties.

- In the Philippines, a survey conducted in 1999 by an organization of women workers reported that out of a total of 43 unionized and 291 non-unionized establishments, 17 per cent had records of sexual harassment cases. Of this number, 11 were unionized establishments and 46 were non-unionized firms.
- A survey of two government departments in Penang and Perlis, two Northern states of Malaysia found that 83 per cent and 88 per cent of the women respondents respectively had experienced some form of sexual harassment.
- In a study of the Human Rights Commission in New Zealand that reviewed 284 sexual harassment complaints filed with the Commission between 1995-2000, it was found that despite the common assertion that 'women also sexually harass men', 90 per cent of complaints involved men sexually harassing women. 'Male to male' harassment was the next most common complaint (6 per cent), while 'female to female' harassment accounted for 2 per cent of the complaints. Fewer than 2 per cent of the cases involved women sexually harassing men.
- Age is another important determinant. In the IC(V)S survey, victims of sexual incidents often belonged to the youngest age categories: nearly half were younger than 29, and nearly a third were between 30 and 39 years of age. More than half of the women victims of sexual incidents and non-sexual assault and threats were between 16 and 34 years old.
- Differences in age and seniority were also found in the above-mentioned study in New Zealand. Nine out of 10 complaints originated in the workplace. Most complaints (72 per cent) were against persons who were higher in rank. In almost every case, the complainant was considerably younger than the harasser. The average age of perpetrators was 42, and of complainants 25 – an

average age difference of 17 years. A third of those harassed were 18 years or younger and most were under 20 years.

Besides sex and age, lack of labour and social protection is another factor at work which increases the chance of being subjected to sexual harassment. High risk groups are:

- young women and men at work or preparing for work in education and training institutions and on work assignments
- domestic workers
- migrant workers
- workers with little income and job security
- women in male-dominated occupations or sectors
- women working in situations, where large numbers of women are supervised by a small number of men.

6.3 Legal action against sexual harassment

At the **international** level, forums and supervisory bodies of the United Nations (UN) and the ILO have highlighted and condemned sexual harassment and covered it by existing international instruments on human rights, discrimination based on sex, violence against women, and occupational safety and health. The UN Committee on the Elimination of all Forms of Discrimination against Women has dealt with the issue under the application of the UN Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW). The ILO Committee of Experts on the Application of International Labour Conventions and Recommendations has been addressing sexual harassment under Convention No. 111 concerning Discrimination in Employment and Occupation since the eighties. A series of non-binding general recommendations, declarations and resolutions have also been adopted at the international level:

- The CEDAW Committee adopted General Recommendation No.19 in 1992 on violence against women and called on States to take measures to protect women from sexual harassment, which they recognized as a form of violence. The UN Declaration on Violence Against Women, 1993, acknowledges: 'Violence against women shall

be understood to encompass, but is not limited to . . . physical, sexual and psychological violence . . . including . . . sexual harassment and intimidation at work' (Article 2).

- In the 1985 and 1991 sessions of the International Labour Conference, ILO member States adopted resolutions that proclaimed: 'sexual harassment at the workplace is detrimental to employee's working conditions and to employment and promotion prospects. Policies for the advancement of equality should therefore include measures to combat and prevent sexual harassment' (ILO Resolutions 1985, 1991).

At the **regional** level the European Union has been the most active. A recommendation has been adopted by the European Commission which was accompanied by a code of practice on How to Combat Sexual Harassment. In the measures taken at the level of the European Union, emphasis is placed on the discriminatory aspects of sexual harassment and on its affront to the dignity of persons. The Organisation of American States (OAS) adopted a Convention on Violence against Women, which contains measures similar to the CEDAW General Recommendation. In 1997, CARICOM adopted a new Model Law on Equality of Opportunity and Treatment in Employment and Occupation, which expanded the scope of the earlier definition of sexual harassment to address both quid pro quo and hostile environment sexual harassment.

The trend at the international and regional levels is clear: From any of the vantage points – human rights, human dignity, or human resources – sexual harassment is considered to be unacceptable conduct that should be prevented, prohibited and sanctioned. However, to date sexual harassment has not yet been the explicit subject of any binding international Convention. Within the ILO the subject of sexual harassment has been placed on the agenda of the Governing Body for possible standard setting. So far, however, there has not been a consensus from the tripartite constituents in favour of selecting the topic of sexual harassment for this purpose.

At the **national** level, slowly, but clearly, implicit protection of sexual harassment is giving way to explicit recognition and protection against acts of sexual harassment in many laws. This trend is occurring in

countries in Asia and the Pacific as well as in other regions of the world. A majority of countries worldwide have adopted some form of legislation at national level that covers sexual harassment either through specific legislation, or by addressing it under another broader statute, such as human rights or equal opportunity and treatment, for example in non-discrimination, labour, contract, personal injury or tort, and criminal laws.

In several countries the judiciary has taken the lead in prohibiting sexual harassment, for example in Denmark, Greece, Hong Kong SAR, India, Japan, the United Kingdom and the United States. In India, in 1997 the Supreme Court issued a landmark judgement establishing sexual harassment as a 'social problem of considerable magnitude' and a violation of fundamental rights of women workers. The court laid down guidelines 'for the protection of these rights to fill the legislative vacuum'.

Since 1995 explicit legislative provisions to protect against sexual harassment have been adopted in the Asia and Pacific region in Australia, Bangladesh, Hong Kong SAR, Japan, the Philippines and Sri Lanka. In other countries draft laws and bills are under discussion. There is reluctance in some countries to move too quickly on the adoption of specific legislation. Some believe that legal protection will lead to workplace tensions while others consider voluntary initiatives to be sufficient and, indeed, the preferred approach.

Definitions, scope, duties and liability

The majority of countries have endorsed both forms of quid pro quo and hostile environment sexual harassment. In the Asia and Pacific region the laws of Australia, Hong Kong SAR, Japan, the Republic of Korea, Philippines and New Zealand explicitly include coverage of the hostile environment. However, some limitations continue to exist in several countries in terms of definitions and scope. For example, in the Republic of Korea, if the harasser is a client, they can not be punished under the current law. In the case of the Philippines, sexual harassment among persons of equal rank is not covered while in Japan only women are protected from sexual harassment.

A relatively new development is not only to prohibit sexual harassment in legislation but to provide for an **affirmative duty to prevent** it. In the Asia and Pacific region, this duty is included in the legislation in Australia, the Republic of Korea as well as in the Supreme Court decision in India. In Australia, legislation holds employers vicariously liable for harassment by their employees and agents unless they can establish that they took all reasonable steps to prevent the incident. This measure provides employers with a significant incentive to take preventative measures against sexual harassment.

The benefits of holding employers liable, in addition to the perpetrators, are foremost that employers may be the best placed to ensure that the harassment stops. They may also be the only ones able to remove the harasser from the complainant's working environment or to remedy the harm caused by the harassment such as loss of salary, promotion, training, or other opportunities. Employers may also be more financially solvent and thus the complainant would have a better chance of collecting monetary damages.

It is noteworthy that employers who are committed to preventing and dealing with sexual harassment may be able to use their efforts to shield liability and thus benefit from provisions in laws that place an affirmative duty on employers to prevent sexual harassment. Recent U.S. Supreme Court decisions held that an employer may assert an affirmative defense based on its exercise of reasonable care to prevent sexual harassment in supervisor's working environment harassment cases.

The benefits of holding the harasser liable are to send a clear message that sexual harassment is not tolerated at work. Winning monetary damages from the person may also be an effective means of discouraging the harasser from engaging in such conduct in the future. This is particularly true if the employer is not required or does not take disciplinary action against the harasser for engaging in the prohibited conduct.

Coverage of sexual harassment in other laws

Legal protection against sexual harassment is found in a variety of types of law and most countries have overlapping coverage. In addition,

until adequate provisions are adopted, cases of sexual harassment should be pursued in the courts or elsewhere under terms that already exist, such as 'assault', 'affront to one's honour' or 'rape'. Sometimes courts and advocates are creative, such as in Sri Lanka where, prior to the amendment of the Penal Code in 1995 to recognize 'unwelcome sexual advances', a sexual blackmail case was recognized as an act of 'bribery'.

In countries which provide legal protection against gender discrimination based on sex in employment and employment-related areas such as education and training, sexual harassment cases have been covered under these laws, even if they are not explicit about sexual harassment, as has been done at the international level. In Australia, Hong Kong SAR, Japan and the Republic of Korea in the Asia and Pacific region, **equality laws** explicitly apply to sexual harassment.

Labour law can offer substantial protection against sexual harassment. However, in practice, it is usually limited to sexual blackmail cases where the complainant has been terminated from employment, unless prohibition of sexual harassment is specifically covered in the law. Increasingly, labour codes make explicit reference to sexual harassment, for example in New Zealand, the labour law extensively covers sexual harassment including a definition, legal protection afforded, employer liability, remedies and personal grievance procedures. In some countries, for example Australia, India and Malaysia, remedies can be sought through the industrial courts in the event that an employee is wrongfully dismissed as a result of taking action against sexual harassment or forced to resign because working conditions became intolerable. The use of 'constructive dismissal' has the drawback of requiring complainants to quit the job and pursue a course of action during which time they may not receive any earnings. In effect, it places the complainant at a double disadvantage, and may act as a deterrent for pursuing the case. Many of the country studies note that an overwhelming majority of employees do not want to leave the job, they want the harassment to stop.

Some labour laws seek to 'protect' women from dangerous or hazardous conditions, including sexual harassment, as is the case in Nepal. However such provisions may, in fact end up curtailing their right

to work. Thus, it has been suggested that the approach of such laws may be reoriented towards creating a safe environment rather than restricting the freedom and movement of women. In Thailand, provisions for the protection of women and child employees from sexual harassment have been included in the labour law. However, a proper definition is not provided and the scope is somewhat limited. In the Republic of Korea, although the law prescribes penalties for employers who do not comply with their stipulated obligations, the law does not in itself prescribe penalties for the perpetrators. These are left completely up to the employers, or where the law is read together with the criminal law, are applicable only to cases of rape by those in authority, thereby limiting its coverage.

Occupational safety and health laws often provide general provisions of protection for safe and healthy work environments and could be read to include safety from sexual harassment. However, in many countries, enforcement provisions or sanctions do not normally accompany these general provisions. Finally, an overall limitation of most labour laws is that they only provide protection to formal sector workers, thereby excluding large parts of the working population, many of whom are women and men in sectors and occupations, not covered by any labour or social protection, let alone prevention and redress against sexual harassment.

Criminal law is increasingly being used to address cases of sexual harassment. In some countries specific criminal provisions are included on sexual harassment. Some criminal provisions are appropriate to sexual harassment cases involving severe physical abuse such as crimes of rape, battery or assaults. Other criminal provisions may also be appropriate such as indecent or immoral conduct law. Some criminal statutes make it a crime to take advantage of someone in a situation of economic dependency.

Many countries, for example, India, Singapore, Malaysia, Pakistan, Bangladesh and Sri Lanka have provisions in place for the crime of 'offending women's modesty or dignity'. Acts of sexual harassment are also criminalized through other offences, for example 'hooliganism' (China), 'obscenity' and 'criminal intimidation' (India). The legal provision specifically referring to sexual harassment in Sri Lanka is

contained in the Penal Code. In 2000, new legislation addressing violence against women and children was enacted in Bangladesh, in which sexual harassment has been recognized for the first time.

While penal codes offer the greatest protection for punishing sexual harassment, several drawbacks exist to rely exclusively on this type of law. They deal with the most serious forms of sexual assault and physical violence and do not adequately address work-related sexual harassment. In addition, complainants are hesitant to report to the police. The openness and lack of confidentiality of investigation and court processes are other hurdles. Witnesses are usually scarce in incidences of sexual harassment while the burden of proof is higher than in civil actions and thus harder to satisfy. In addition court cases cost time and money, which is something many workers can ill-afford, especially those under precarious contracts such as domestic workers, migrant workers, contract and piece-rate workers. Time is especially in short supply for women who are responsible for looking after the household and the family in addition to earning income. Finally, the majority of those who are being sexually harassed, want the issue to be handled discreetly and swiftly so that the behaviour stops, and are not necessarily intent on penalizing the perpetrator.

Responsive procedures and fair treatment

The drawbacks, listed above are not only valid for filing a complaint under a penal code. With regard to sexual harassment some of these deterrents are the trivialisation of the claim of sexual harassment, the shame and blame attached to bringing a claim, lack of knowledge and understanding of the subject, choice of forum (i.e. where to file the complaint), lack of sensitive procedures, difficulty of proof, and fear of reprisal.

Fair treatment of complainants is a problem for many women, especially in countries where gender stereotypes, such as 'she asked for it' are common. Severe under-reporting of sexual harassment is the result in such situations. Fair treatment is, of course, also important for alleged perpetrators. While experience shows that most sexual harassment complaints are grounded in fact, it should be recognized that procedures against sexual harassment could be abused by alleged victims in order to gain job benefits, such as a promotion. When

establishing rules and procedures, it is important to apply the fundamental 'presumption of innocence' towards both parties, i.e. the alleged perpetrator and the victim.

Another important issue is protection against victimization which is usually not adequately provided. Many women are in fear of retaliation on the job from their supervisors. Reduced earnings, dismissal, threats and physical abuse – or even being taken to court for libel and defamation – were reported in the country studies. Thus, silent suffering continues as the alternative is considered worse, as illustrated in a survey in Shenzhen, China. Although 87 per cent of the 600 respondents agreed that sexual harassment was a problem, 70 per cent of them said that they would choose to 'keep silent for self protection'.

Remedies and sanctions are another concern under the law. A most common form is disciplinary action and monetary compensation by the employer. The extent of penalties usually varies in accordance with the severity of the offence. Most individual remedies and sanctions have serious defects as primary legal redress for sexual harassment at work. A combination of monetary damages, cease and desist orders or null and void orders, affirmative duties to provide sexual-harassment-free work environments and other equitable remedies for the victim, along with sanctions against the harasser, is probably the most effective approach. Again, it is important to note that the main aim of most victims of sexual harassment is not to sue their employer for damages, but to ensure that the offensive behaviour should stop, that it should not recur and that they should be protected against retaliation for having brought a complaint.

However, it may be concluded that the difficulties encountered in the application of relevant laws on sexual harassment do not outweigh their importance and usefulness in combating sexual harassment. Countries that have recognized sexual harassment as a distinct legal wrong, either by statute or court decision have tended to provide more effective protection to victims of sexual harassment. ILO experience reveals benefits to the introduction of specific and comprehensive provisions dealing with sexual harassment in national legislation such as:

- A nationally accepted clear definition of sexual harassment provides a common baseline so that a common understanding of the prohibited behaviour is promoted.
- The existence of legislative obligations stimulates action by employers, who have to comply, and by trade unions wishing to ensure that employers and workers observe the law.
- Explicit legal prohibitions and affirmative obligations on employers facilitate 'zero tolerance' and prevention of sexual harassment.
- Legal protection helps to ensure due process and fair treatment of both complainants and accused persons.

This comparative overview of legal action shows that many countries are opting for explicit legal protection against sexual harassment. When drafting legislation, the following key elements should be addressed:

- Nationally accepted explicit definition of sexual harassment that includes:
 - the unwelcome nature of the prohibited conduct i.e. physical, verbal and non-verbal or other action
 - quid pro quo (sexual blackmail) and hostile working harassment
 - broad scope of protection to cover as many persons as possible
- Clear delineation of the liability of the employer and the alleged harasser
- Provide affirmative obligations to act for the prevention of sexual harassment
- Ensure fair, clear and suitable procedures of due process for both accused and claimant covering filing and hearing of complaints, investigations evidence, burden of proof, protection of confidentiality and privacy
- Protect against victimization
- Provide for a wide range of damages, remedies and sanctions that both punish and deter harassing conduct
- Supplement legislation with guidelines
- Establish an administrative body or mechanism with resources and competence to handle complaints and promote application of the law.

6.4 Workplace policies and practical measures

Governments, employers' and workers' organizations and NGOs, in Asia and the Pacific and around the world are increasingly acting against sexual harassment at work by adopting workplace policies and implementing them through practical action at the workplace. Legal protection is a necessity but adopting a law is by itself not sufficient to resolve sexual harassment abuses in workplaces. Even in countries with comprehensive and well-functioning legal systems, workplace procedures are necessary to protect workers from sexual harassment and enterprises from expensive measures for redress, as exemplified by the increasing number of guidelines and codes which are issued together with legislation, such as in Australia, Hong Kong SAR, Japan and in India where the Supreme Court has issued guidelines. In countries where laws have so far not been enacted, workplace policies are the only channel available to those seeking redress. This is the case in Malaysia where the Government has developed a Code of Practice with detailed practical guidance to employers on introducing and implementing workplace measures.

Prevention is key in action against sexual harassment. Workplace measures, therefore, increasingly provide for both remedial and preventive action. Rather than being confined to responding to sexual harassment, the main role of measures often is to ensure that sexual harassment does not take place. It seems that consensus is emerging on this issue among those responsible for dealing with the problem. The country studies are consistent in reporting that women workers' first priority is to put a stop to sexual harassment, rather than seeking redress after the harm is done. Therefore, large scale awareness-raising and training is needed in workplaces. Combating sexual harassment involves tackling sensitive issues associated with well-worn patterns of human relationships. It involves changing attitudes with respect to the role of women at work, and how they are treated and valued as workers. It involves sensitizing men and women to their behaviour, and learning new behaviour.

Research demonstrates that only a very small number of victims of workplace sexual harassment take any formal action. Studies from the United States and Canada, for example, show that only around 10 to 20 per cent of victims report sexual harassment to someone in authority in their organization. Instead, they tend to ignore the harassment, deflect it

by treating it as a joke or by going along with it, or attempt to avoid the harasser. Recent research in northern Europe also found that most employees responded by ignoring the behaviour or asking the perpetrator to stop. They either feared the negative consequences of responding in other ways, believed their complaints would not be taken seriously, or were too surprised to take any other action. As a result, very few filed complaints. Similar evidence is available from the Asia and Pacific region.

This seems to reconfirm that the relatively few cases that are reported are only the tip of the iceberg and that lack of complaints does not mean that sexual harassment does not take place. In fact, silence about sexual harassment in work situations where the risks for it occurring are high, should set alarm bells ringing among those interested in having workplaces in which respect and dignity of all workers are guaranteed, leading to a happier work force with higher productivity. More in-depth review of the effects of different kinds of policies is still needed, but the available evidence suggests that having a policy in place significantly decreases the incidence of sexual harassment at work and increases the likelihood that those facing harassment will complain about abuses. It has been suggested that the most effective way to encourage reporting of incidents of sexual harassment is to introduce a range of different measures against it, since this approach results in workers being more confident that their employer will take action on their complaint.

Increasingly, also, in Asia and in other regions, organizations are issuing guidance and conducting training on how to combat sexual harassment, including on specific procedures; they are monitoring and evaluating their policies to ensure they function effectively. Finally, many organizations are ensuring that workers who are subjected to sexual harassment are able to seek the counselling and support they need in order to alleviate some of its more damaging effects and to enable them to make a complaint with as little strain as possible.

Development and promotion of policies and codes of conduct

Workplace measures can be introduced as a specific policy on sexual harassment or provisions against sexual harassment can be included in an organization's policy for the promotion of equality or the elimination of all forms of violence at work. Model codes, guidelines, and policies have been adopted by governments, sometimes the judicial system and increasingly, employers' and workers' organizations. Individual enterprises and trade unions are following suit. For example, in the Asia and Pacific region, the Japanese Federation of Employers Associations (Nikkeiren) produced a manual prior to the coming into force of revisions to national legislation, advising companies and its municipal offices on how to comply with the new legal provisions on sexual harassment in Japan.

Although only limited information is available, the number of employers having introduced policies on sexual harassment appears to have increased in both industrialized and developing countries over the last ten years, especially in larger enterprises. For example, a survey conducted in 1999 found that since the amendment of the laws in Japan to cover sexual harassment, 71 per cent of respondent companies with 1,000 or more employees had implemented measures against sexual harassment. Landmark in-house regulations were adopted in the Republic of Korea by the Kumho Business Group in 1995. Other countries also report progress, such as in Malaysia where around 100 companies had adopted a workplace policy 15 months after the introduction of the Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace, and in Nepal where the Hyatt Regency Hotel is reported to have specific measures in place.

Multi-national companies in countries like Bangladesh and China were found to have general codes of conduct in place. Usually, these do not specifically mention sexual harassment. A few made reference to respect for dignity and no tolerance for exploitation, physical or mental abuse. The notable exception was Reebok in China which explicitly forbids sexual harassment in its Standard for Humanized Production as follows: 'Physical punishments, threats or arousal of workers by management are not allowed, nor are harassment and insults in terms of sex, psychology or speech. Sexual harassment is prohibited. Procedures should be elaborated to enable the staff to make confidential complaints. Victims should report directly to the person in

charge rather than to his/her superior'. Detailed explanations of conduct that could constitute sexual harassment follow.

Trade unions have also produced model policies to guide their representatives and members on tackling sexual harassment, and to use in negotiating agreements with employers. At national level, for example, the Congress of South African Trade Unions (COSATU) produced a Code of Conduct on Sexual Harassment in 1997, which outlines preventive measures and provides guidance on bringing complaints. In Japan, the Japanese Trade Union Confederation (JTUC-RENGO) carries out several initiatives to promote measures to combat sexual harassment including lobbying the government for strict enforcement of the law, as well as providing information, training and examples of good practice amongst its affiliates. In 1999, at its Biennial Convention, JTUC-RENGO adopted a 'Special Resolution to Prevent Sexual Harassment and Promote Equal Participation by Women and Men'.

The International Confederation of Free Trade Unions (ICFTU) has posted a Programme of Action on Sexual Harassment on its website. The most recent development is the adoption of a Resolution against sexual harassment by members of national trade union federations in Asia and the Pacific during a workshop organized by ICFTU's Asia Pacific Regional Office (APRO) in August 2001 which was subsequently adopted by the ICFTU-APRO Board at its 74th meeting. Such action is commendable, because with notable exceptions, trade unions which treat the issue as a priority are not so easy to find in some countries. Reasons cited are: other urgent subjects, the lack of a critical mass of organized women workers and the lack of women in the leadership of unions.

However, indications are that these trends can be reversed. For example, in various countries, trade unions have successfully negotiated the inclusion of sexual harassment policies in collective agreements, at industry or enterprise level. In Australia, unions are widely involved in negotiating sexual harassment clauses to be included in enterprise agreements and the number of anti-discrimination and sexual harassment clauses included in certified agreements has increased significantly in recent years. In Japan, the union and

management of the Daiei, one of the largest supermarket chains in Japan, have signed an agreement articulating the employers' responsibility for the prevention of sexual harassment, and the industry-level union federation Zensen Domei has drafted a model collective agreement which it encourages its members to include as an item for negotiation in collective bargaining. Even in firms and sectors in which policies are sparse, unions may be able to play a role in combating harassment. A noteworthy initiative was taken in India, where the unions have brought complaints and negotiated with employers in small private sector firms and in the unorganized sector, in which formal policies for tackling sexual harassment are virtually non-existent.

However, while a significant number of employers are making efforts to develop policies and procedures, many are neglecting to introduce them or failing to implement them effectively. In India, very few employers in the private and unorganized sectors have workplace mechanisms. A recent survey in Japan has found that many small companies have failed to introduce the sexual harassment policies required by law. There are also low levels of compliance with the Anti-Sexual Harassment Act in the Philippines, where only half of private sector employers have introduced a policy. In Malaysia, the Code of Practice against sexual harassment is voluntary and the number of companies that have adopted a workplace policy against sexual harassment is still very small.

It is evident from the country studies that even in organizations in which policies have been introduced, many are not being effectively implemented. Available evidence from New Zealand indicates that although 80 per cent of study respondents had introduced a policy on sexual harassment, only two-thirds of them had set up complaints procedures, and less than one-fifth provided training on the content of the policy. Similarly, in Malaysia, research on the six pilot companies that adopted a workplace policy indicated that the existing in-house mechanisms were not always adequate in addressing the sensitivities of sexual harassment cases and that the employees were not necessarily aware of what constitutes sexual harassment. While the segregation of men and women in workplaces is known to lead to higher chances of sexual harassment incidents, it is nevertheless sometimes thought that the best way of preventing sexual

harassment is to protect women by limiting their access to employment outside the house. It is clear from the country studies that women are not keen on restrictive, protective measures, because it limits their personal and economic freedom. Such measures are also not in line with both social justice and economic efficiency considerations.

Grievance handling: Redress mechanisms and procedures

Until fairly recently, it was common practice to deal with complaints of sexual harassment through ordinary workplace grievance mechanisms. This remains the approach in many organizations and countries. Experience suggests, however, that addressing sexual harassment claims through regular complaints mechanisms is not the most appropriate way to deal with them. A number of enterprises have therefore introduced procedures devised specifically to respond to sexual harassment claims.

Sexual harassment policies often provide the complainant with the choice of using either an **informal** or **formal complaints mechanisms**. Formal processes generally involve a full investigation of the claim, culminating in an assessment of its merits. Informal mechanisms tend to adopt a more conciliatory approach to dealing with incidents of harassment, often by conducting a discussion between the target, the alleged harasser, and a facilitator. Informal procedures can be a good solution when the allegations are less serious and the complainant wishes the behaviour to stop, rather than penalizing the perpetrator. However, informal procedures alone are not sufficient, especially if the offense is grave and when there are clearly unequal power relations between the parties.

Grievance or complaints committees have been set up in some countries. In the Philippines the law provides for the establishment of committees on decorum and investigation which should include at least one union representative and a representative of both supervisory and rank and file employees. In India the Supreme Court requires the establishment of sexual harassment committees, consisting of equal numbers of women and men as members and participation of one NGO representative. Where grievance commissions have been established to investigate and adjudicate complaints, it has become common that

they are required to operate in accordance with strict rules on time limits, confidentiality, and other procedural protections. There is also a growing awareness that the disciplinary measures taken against perpetrators of sexual harassment should be sufficiently punitive and that complainants should not be transferred unless upon their own request. However, in practice the functioning of these committees seems to be fraught with problems. Some further research on best practice is needed, because such committees could potentially play a vital 'watch-dog' role not only in taking remedial action, but foremost in preventing sexual harassment, especially in places where legal protection is limited or where there is little respect for legal processes.

In either case, i.e. formal or informal procedures, there are certain basic principles of investigation and counselling that need to be observed during the course of case management. The purpose of carrying out the procedure is to gather information, but because it also involves going over what was perhaps a traumatic situation, emotional support may also need to be provided to the person concerned. In order to conduct an effective session, care must be given to the physical environment within which the interview is conducted and also to the way in which the interview is carried out. The primary aim is of course to ensure confidentiality and provide support, without blaming or lecturing the interviewee.

Recommendations for the development of complaints procedures include that they:

- Are clearly documented and accessible to all employees
- Offer both informal and formal options
- Guarantee fair treatment, deadlines, confidentiality and objectivity
- Are based on principles of natural justice
- Are administered by trained personnel
- Provide clear guidance on investigation procedures and record keeping
- Include a statement that no employee will be victimized or disadvantaged for making a complaint
- Are regularly reviewed for their effectiveness.

In addition to the above, it is becoming clear that complaints procedures should also include the options of:

- Co-opting expertise or panelists from outside the company or organization in the event that the complainant wants to communicate with someone from outside of the company.
- 'Representative complaint' where the complaint is filed by a body, for example the trade union, on behalf of the complainant.

Good practice in work place policies and practical measures

It is increasingly accepted that introducing a sexual harassment policy at workplace level accompanied by adequate and efficient procedures and powerful sanctions are a most effective way to prevent sexual harassment. This awareness is reflected in the growing numbers of policies being introduced, and greater availability of guidance on their content and implementation. Although policies are introduced through different routes – as a separate policy, for example, as part of an anti-discrimination mechanism or in collective agreements – as their numbers increase, there appears to be an emerging consensus about the provisions which they should contain and the best ways to implement them. Key elements are:

- A strong statement on the organization's attitude to sexual harassment, indicating that sexual harassment is prohibited, with a clear outline of the organization's objectives for the elimination of sexual harassment
- A clearly worded definition of sexual harassment at work:
 - indicating that it refers to conduct which is unwelcome and including examples of what is and what is not sexual harassment
 - covering both sexual blackmail and hostile work environment sexual harassment
 - addressing harassment between men and women workers of different and the same hierarchical levels as well as third party harassment
 - covering harassment at the workplace including any work-related sexual harassment occurring outside the workplace as a result of employment responsibilities or employment relationships

- Clear delineation of responsibilities of management and workers
- Detailed procedures for grievance handling, which maintain confidentiality, protect against retaliation and provide for clear consequences if the policy is breached through progressive disciplinary rules
- A communication, training and counselling strategy, including provision for:
 - the dissemination of readily available and easy-to-understand information in relevant languages on where individuals can get help and advice, or lodge a complaint with a clear summary of the available options for dealing with sexual harassment
 - awareness-raising and training for all employees, in particular all managers who need to be made accountable for guaranteeing a sexual harassment free workplace
 - the provision of counselling services to aggrieved victims to assist them in taking action and for harassers to ensure that the conduct does not recur.

Practical measures for preventing sexual harassment problems are:

- Improve the safety of the working environment such as well lit work areas and changes in the organization of the work allowing for more equal numbers of men and women among staff at all levels of the company or organization during all working hours at all workstations
- Make a panel rather than an individual responsible for interviewing and selecting candidates for job vacancies or promotions. The panel should preferably consist of both men and women of equal rank. This simple, practical measure will protect (new) staff from discrimination and protect managers and workers against false complaints of sexual harassment
- Develop a written sexual harassment policy (where appropriate, in consultation with staff and concerned trade unions) and periodically review it
- Provide the policy to new employees and regularly distribute and promote the policy at all levels of the organization
- Translate the policy into relevant community languages
- Remove inappropriate materials such as nude posters from the workplace

- Conduct awareness raising sessions on sexual harassment issue to all workers
- Display anti-sexual harassment posters on notice boards and distribute relevant brochures
- Train all line managers in their role in preventing sexual harassment and monitor their behaviour in setting appropriate standards
- Ensure that selection criteria for management positions make reference to the ability to deal with sexual harassment issues, include accountability mechanisms in job descriptions and monitor behaviour at management performance reviews
- Committees, handling sexual harassment cases, should include an equal representation of men and women to ensure that both women's and men's perspectives can shed light on the best solution to a case. They should also include representatives of management and workers. Victims should be represented or accompanied by a representative of their choice.

BIBLIOGRAPHY

1. **Country Studies prepared for ILO report: Action against Sexual Harassment at work in Asia and the Pacific in preparation for ILO Regional Meeting on Action against Sexual Harassment at Work in Asia and the Pacific (2-4 October 2001, Malaysia) (unpublished)**

Australia: Ruskin, Nick and Sutherland, Carolyn. 2001. *Action against Sexual harassment in Australia*, working paper for the ILO (unpublished), Melbourne.

Bangladesh: Dr. Shahnaz, Huda. 2001. *Study on sexual harassment in Bangladesh*, working paper for the ILO (unpublished), Dhaka.

China: Tang, Can. 2000. *Report on sexual harassment in work places in China*, working paper for the ILO (unpublished), Beijing.

India: Lawyers' Collective. 2001. *Sexual harassment at the workplace: India Study Report*, working paper for the ILO (unpublished), New Delhi.

Japan: Prof. Yamakawa, Ryuichi. 2001. *Prevention and Remedies regarding sexual harassment in Japan*, working paper for the ILO (unpublished), Ibaraki Prefecture Tsukuba.

Hong Kong SAR, Republic of Korea, Malaysia and Thailand: Zaitun, Mohamed Kasim. 2001. *Action against sexual harassment in the workplace: Asian women's perspective*, working paper for the ILO and the Committee of Asian Women (CAW) (unpublished), Kuala Lumpur. Includes a synthesis of the following studies (unpublished):

- Harima, Reiko. 2000. *Sexual Harassment towards Foreign Domestic Workers in Hong Kong*, Asian Migrant Centre, Hong Kong China.
- Park, Jin-young. Kim, Kyung Hee. Kim, Myung Sook and Han, Seung Hee. 2000. *The Situation of Sexual Harassment at the Workplace and Some Suggested Solutions – Case Study of a Korea Hotline*, Seoul.

- Peterson, Tashia. 2000. *Action Against Sexual Harassment at Work – A Malaysian Report*, Kuala Lumpur.
- * Bangprapha, Wanee. 2000. *Sexual Harassment: The Case of Thailand*, Bangkok.

Nepal: Pradhan-Malla, Sapana. 2001. *Sexual harassment at the workplace in Nepal*, working paper for the ILO (unpublished), Kathmandu.

Ursua, Evalyn, G. 2001. *Addressing sexual harassment in the work place: The Philippine experience*, working paper for the ILO (unpublished), Manila.

Sri Lanka: Wijayatilake, Kamalini and Zackariya, Faizun. 2000. *Sexual harassment at work – Sri Lanka Study – with focus on the plantation sector*, working paper for the ILO (unpublished), Colombo.

2. Full references

Aeberhard – Hodges, Jane. 1996. Sexual harassment in employment: Recent judicial and arbitral trends, in *ILO International Labour Review*, Vol. 135 No. 5, ILO Geneva.

American Federation of State, County and Municipal Employees (AFSCME). *Stopping sexual harassment, an AFSCME guide*, at http://www.AFSCME.org/wrkplacesexh_10.htm

Chappell, Duncan and Di Martino, Vittorio. 1998. *Violence at work*, ILO, Geneva.

Commission of the European Communities, 2001. Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions, *Scoreboard on Implementing the Social Policy Agenda*, 22.02.2001, COM (2001) 104 final, Brussels.

Commission of the European Communities. 1999. *Sexual harassment at the workplace in the European Union*, Luxembourg, Office for Official

Publications of the European Communities.

Commission of the European Communities. 1993. *How to combat sexual harassment at work: A guide to implementing the European Commission Code of Practice*, Luxembourg, Office for Official Publications of the European Communities.

Congress of South African Trade Unions (COSATU), 1997. Sexual harassment code of conduct (adopted in 1995), Johannesburg, South Africa.

Department of Labor and Employment (DOLE), Bureau of Women and Young Workers and ILO. 1995. A company model sexual harassment policy and procedure, in *Elimination of sexual harassment in the workplace*, (unpublished), Manila.

Department of Skills Development (DSD), Ministry of Labour and Social Welfare (MOLSW), Thailand. 1998. *Gender equity: A manual for DSD trainers*, Thai Skills Development Project ADB-Thailand, Bangkok.

Development Action for Women, Trade Union Congress of the Philippines (DAWN-TUCP). 2001. *Sexual harassment is a trade union issue: A workers' handbook*, Quezon City.

Dietz, Robert. 1996. 'Fighting harassment in Korea', in *World Press Review*, 21, New York.

DuBois, Cathy L.Z.; Faley, Robert H.; Kustis, Gary. A.; and Erdos Knapp, Deborah. 1999. 'Perceptions of organizational responses to formal sexual harassment complaints' in *Journal of Managerial Issues* 11, Pittsburgh, USA.

'EEO Trust Index finds good news and bad for New Zealand employers' in *New Zealand Manufacturer No.6*, August 1998, Wellington.

Gray v State of Victoria & Anor. 1999. EOC 92-996. Website: <http://www.vcat.vic.gov.au/>.

Gruber, James E. 1998. 'The impact of male work environments and organizational policies on women's experiences of sexual harassment' in *Gender & Society* No. 12.

Human Rights Commission. 2000. Unwelcome and offensive: A study of sexual harassment complaints to the Human Rights Commission 1995-2000, Auckland, New Zealand.

Husbands, Robert. 1992. 'Sexual harassment law in employment: An international perspective' in *International Labour Review*, Vol. 131, No. 6, Geneva.

International Confederation of Free Trade Unions (ICFTU). *Action Programme on sexual harassment in the trade union movement*, Brussels.

Website: www.icftu.org/displaydocument.asp?Index=990916288&.

ICFTU Asia Pacific Regional Office (APRO). 2001. *Resolution on Action against Work-related Sexual Harassment*, Singapore. Website: www.icftu_apro.org

Joint Action Group against Violence against Women (JAG). 2001. *Executive summary: Proposed Sexual Harassment Bill*, Penang. Website: www.wccpenang.org

ILO. 2000. *Gender: A partnership of equals*, Geneva.

ILO. 1999. *How sexual harassment of employees is treated under Turkish law*, (unpublished), Geneva.

ILO. 1998. *World Employment Report 1998-99: Employability in the Global Economy: How training matters*, Geneva.

ILO. 1994. *Tripartite Regional Seminar on Combating Sexual Harassment at Work: Proceedings* (Manila, November 1993), Geneva.

ILO Administrative Tribunal. 13 July 1994. *In re Mussnig*, Judgement 1376, Geneva.

ILO. 1991. Resolution concerning ILO action for women workers, Geneva.

ILO. 1988. *General survey on equality in employment and occupation*, ILO Committee of Experts on the Application of International Labour Conventions and Recommendations, Geneva.

ILO. 1985. Resolution on Equal Opportunities and Equal Treatment for Men and Women in Employment, 71st session, ILC, 1985 at paragraph 6, Geneva.

ILO-ROAP. 1999. Towards gender equality in the world of work in Asia and the Pacific: Technical report for discussion at the Asian Regional Consultation on follow-up to the Fourth World Conference on Women, (Manila, 6-8 October, 1999), Bangkok.

ILO-ROAP, 1994. Promotion of equality of opportunity and treatment for women workers: An ILO manual for Asia and the Pacific, Bangkok.

'Indonesian migrants claim victory on policy reform' on *Asian Migrant Centre Website*: www.asian-migrants.org/news/ posted November 2000.

Kapur, Naina. 1999. Sexual harassment at the workplace: A guide to the sexual harassment law in India, in Kapur, Aanchal (ed), *Women workers' rights in India: Issues and strategies – A reference guide*, ILO New Delhi.

Lawyers' Collective. 2001. *Sexual harassment at the workplace: India Study Report*, working paper for the ILO (unpublished), New Delhi.

Lim, Lin Lean. 1996. More and better jobs for women: An action guide, ILO, Geneva.

Mac Kinnon, Catherine. 1979. *Sexual harassment in the workplace*, Yale University Press, Connecticut, USA.

Manggagawang Kababaihang Mithi ay Paglaya (MAKALAYA) and Friedrich Ebert Stiftung (FES) Philippine Office. 2000. *Primer on anti-*

sexual harassment, Quezon City.

McKenna v State of Victoria & Ors. 1998. Anti-Discrimination Tribunal of Victoria, Australia, website: <http://home.vicnet.net.au/>.

'Measures to Prevent Sexual Harassment in the Workplace' in *Japan Labour Bulletin No. 2*, August 1999, Tokyo.

Ministry of Human Resources. 1999. Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace, Department of Labour, Kuala Lumpur.

National Commission on the Role of Filipino Women (NCRFW). *Sexual harassment*, NCRFW-WFS Primer Series on Empowerment, Manila.

Ng, Cecilia and Zanariah Mohd Nor. 2001. *Sexual harassment and the Code of Practice in Malaysia (A study of pioneer companies implementing the Code)*, All Women's Action Society (AWAM) and Women's Development Collective (WDC), Selangor.

Pradhan-Malla, Sapana. 2001. *Sexual harassment at the workplace in Nepal*, working paper for the ILO (unpublished), Kathmandu.

Reinhart, Ariane. 1999. Sexual harassment: Addressing sexual harassment in the workplace – A management information booklet, ILO, Geneva.

Rubinstein, Michael. 1992. 'Dealing with sexual harassment at work: The experience of industrialized countries' in International Labour Organization, *Conditions of Work Digest: Combating Sexual Harassment at Work*, Geneva.

Ruskin, Nick and Sutherland, Carolyne. 2001. *Action against sexual harassment at work in Australia*, working paper for ILO (unpublished), Melbourne.

'Sexual harassment rampant – Japan', in *Bangkok Post*, 28 December 2000.

'Sexual harassment is every woman's problem: Survey on the legal provision for protection against sexual harassment at workplaces' in *Asian Women Workers Newsletter*, Vol. 19, No.2, April 2000, Bangkok.

Shahnaz, Huda. 2001. *Study on sexual harassment in Bangladesh*, working paper for the ILO (unpublished), Dhaka.

Stenson, M.R. 1977. *Industrial Conflict in Malaysia*, Oxford University Press, Kuala Lumpur.

Stockdale, M.S. ed. 1996. *Sexual Harassment in the Workplace*, Thousand Oaks, Sage, Publications, California.

Stockmann Bakeries Inc. v. Teamsters local 776 969 F. 2nd 1442. 1992. United States.

Tang, Can. 2000. *Report on sexual harassment in workplaces in China*, working paper for the ILO (unpublished), Beijing.

Thomas, Constance. 1999. *Introduction to international perspectives on sexual harassment*, ILO working paper for Caribbean Sub-regional seminar on Recent trends in employment equality issues for labour courts and tribunals (unpublished), Port of Spain.

Thomas, Constance and Taylor, Rachal. 1994. *Enforcement of equality provisions for women workers*, IDP Women/WP-20, Geneva.

UN. 2000. *The world's women 2000: Trends and statistics*, United Nations, New York.

UN, 1999. *World Survey on the Role of Women in Development: Globalization, Gender and Work*, United Nations, New York.

UNDP-ILO, 2000, *Policies for poverty reduction in China*, Beijing-Geneva.

UNDP. 1999. *Overcoming human poverty: UNDP Poverty Report 1998*, United Nations Development Programme, New York.

University of the Philippines (UP) Center for Women's Studies. 2000. *Primer on sexual harassment*, Quezon City.

Ursua, Evalyn, G. 2001. *Addressing sexual harassment in the workplace: The Philippine experience*, working paper for the ILO (unpublished), Manila.

Van Soest, Marjo and Van Hintum, Malou. April 2000. 'Seks als wapen: Valse beschuldigingen' (Sex as weapon: False Accusations), in *Vrij Nederland*, 13, Amsterdam, Netherlands.

Vishaka and Ors v. the State of Rajasthan and Ors., India Supreme Court's ruling of 13 August 1997.

Welsh, Sandy. 2000. 'The multidimensional nature of sexual harassment: An empirical analysis of women's sexual harassment complaints' in *Violence Against Women No.6*

Wijayatilake, Kamalini and Zackariya, Faizun. 2000. *Sexual harassment at work – Sri Lanka Study – with focus on the plantation sector*, working paper for the ILO (unpublished), Colombo.

Wirth, Linda. 2001. *Breaking through the glass ceiling: Women in management*, ILO, Geneva.

Wirth, Linda. 1997. 'Sexual harassment at work', in E.Date-Bah (ed), *Promoting gender equality at work*, London and New York, Zed Books Ltd. and ILO.

'*Women and Employment in Malaysia*', A report of the Federation of Women Lawyers to Seminar on Women and the Law, Kuala Lumpur, 1983.

Yamakawa, Ryuichi. 2001. *Prevention and Remedies regarding sexual harassment in Japan*, working paper for the ILO (unpublished), Tsukuba.

Yamakawa, Ryuichi. 1999. 'We've only just begun: The Law of sexual harassment in Japan', in *Hastings College of Law Comparative Law*

Review, Vol.22, No.3, University of California.

Zaitun, Mohamed Kasim and Barter, P.A. 2001. *Zero Visibility: A call for more attention to the neglected area of gender in transport planning in Malaysia*, paper presented at the National Seminar on Sustainable Transport Issues and Challenges in Malaysia, Pulau Pinang, Malaysia 7-11 September 2001.

Zaitun, Mohamed Kasim. 2001. *Action against sexual harassment in the workplace: Asian women's perspective*, working paper for the ILO and the Committee for Asian Women (CAW) (unpublished), Kuala Lumpur.

Annexes

Annex 1

List of International and regional instruments on sexual harassment

The following non-exhaustive list contains instruments and laws which either explicitly prohibit sexual harassment, or recognize fundamental principles which implicate sexual harassment (e.g., freedom from discrimination on the basis of sex, freedom from cruel, inhuman or degrading treatment, or the right to equality of men and women).

1. International Labour Organization

ILO Instruments

- ILO Declaration on Fundamental Principles and Rights at Work, 1998 (freedom from employment discrimination)
- Tripartite Declaration concerning Multinational Enterprises and Social Policy, 1977
- Article 20 (d) of the Indigenous and Tribal Peoples Convention, 1989 (No. 169) specifically aims to protect women and men belonging to indigenous and tribal peoples from sexual harassment)
- Sexual harassment is not expressly mentioned but in practice covered under the Discrimination (Employment and Occupation) Convention, 1958 (No.111)

Source: ILOLEX

ILO Resolutions

- Resolution on Equal Opportunities and Equal Treatment for Men and Women in Employment, 1985
- Resolution on ILO Action on Women Workers, 1991

Source: ILO BIBL – ILOLEX

2. United Nations

UN Instruments

- United Nations Charter, 1945 (freedom from distinctions as to sex – art. 1 and 55)
- Universal Declaration of Human Rights, 1948

- UN Covenant on Civil and Political Rights, 1966
- UN Covenant on Economic, Social and Cultural Rights, 1966
- UN Convention on the Political Rights of Women, 1952 (article III provides for right of women to hold public office without discrimination)
- UN Convention on the Elimination of all Forms of Discrimination Against Women, 1979 and the Committee on the Elimination of Discrimination Against Women's General Recommendation No. 19: Violence Against Women, 1992 (CEDAW/1992/ L.1/Add.15)
- Declaration on the Elimination of Violence Against Women adopted by the UN General Assembly, 1993 (A/RES/48/104)

Location: www.un.org/womenwatch/daw/cedaw/recomm.htm

UN Declarations

- Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights, 1993 (A/CONF/157/23).
- Copenhagen Declaration on Social Development and Programme of Action adopted by the World Summit on Social Development, 1995
- Beijing Declaration and Programme of Action adopted by the Fourth World Conference on Women: Action for Equality , Development and Peace, 1995.

3. Regional instruments

Americas

- American Declaration of the Rights and Duties of Man, 1948
- American Convention on Human Rights, 1969
- Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights "Protocol of San Salvador", 1988
- Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women "Convention of Belem Do Para", 1996

Location: www.cidh.oas.org/basic.htm

Caribbean

- CARICOM Model Legislation on Sexual Harassment adopted by the Ministers of Women's Affairs' Meeting, 1989

- CARICOM Model Harmonisation Act regarding Equality of Opportunity and Treatment in Employment and Occupation, adopted by the Ministers of Labour 's Meeting, 1996

Africa

- African (Banjul) Charter on Human and Peoples' Rights, 1968

Europe

- European Convention for the Protection of Human Rights and Fundamental Freedoms, 1952, and its Protocols Nos. 1 to 11
- European Social Charter, 1961
- Additional Protocol to the European Social Charter, 1961

Location: www.coe.fr/emg/legaltxt/e-dh.htm#conv.dh

- EC Directive on Application of Principle of Equal Treatment of Men and Women with Regard to Access to Work, Vocational Training and Promotion and Working Conditions, 1976 (76/207/EEC)
- European Council Resolution on the Protection of the Dignity of Women and Men At Work , 1990 (90/C157/02)
- European Council Declaration of 19 December 1991 on the implementation of the Commission Recommendation of the protection of the dignity of women and men at work, including the Code of practice on measures to be taken to combat sexual harassment (92/C 27/01)
- European Commission recommendation on protecting the dignity of women and men at work, 1991 (92/131/EEC) and the Code of practice on measures to be taken to combat sexual harassment (1991)
- European Parliament Resolution on Violence Against Women (1986)

Location:

<http://europe.eu.int>

Annex 2

Sample enterprise questionnaire on sexual harassment

SURVEY on SEXUAL HARASSMENT

Company **XYZ** is committed to providing a safe working environment for all its employees. In order to do this we need your assistance in filling out the questionnaire below. Company XYZ gives it guarantees the confidentiality of the information provided below.

Please tick the responses most appropriate for you.

- 1 Are you a) Male b) Female
- 2 Sexual harassment includes the following behaviours. Tick if you have ever experienced one or more of the following:
 - a) unwanted touching, fondling, grabbing
 - b) unwanted verbal sexual behaviour (whistling, cat calls)
 - c) sexual comments about your body and/or appearance,
 - d) demand for sexual favours
 - e) sexually suggestive displays (eg posters, pictures, etc)
 - f) sexually suggestive phone calls, emails or messages
 - g) others (please specify) _____
- 3 If you have experienced any of the above, please tick where the harassment occurred.
 - a) in the current department/branch of this company
 - b) in the previous department/branch of this company
 - c) at a past place of work (please specify if possible) _____
- 4 When did it happen?
 - a) I am currently experiencing a sexual harassment problem
 - b) It happened in the last 1 year/ 2 years
 - c) It happened more than 2 years ago.

- 5 Who was (were) the harassers?
- a) a supervisor
 - b) a higher management official
 - c) a union official
 - d) a co-worker
 - e) someone outside of this company (client, vendor or others _____)
- 6 Did you feel that if you did not give in to the harassment that your employment would be affected? a) yes b) no
- 7 If you have not taken any action, please state why.
- a) Don't know who to contact in the office
 - b) Not confident that Human Resources will handle it sensitively
 - c) Worried the harasser will make things worse
 - d) Feel that it is not too bad
 - e) Others (please specify) _____
- 8 Do you have any opinions on how the management can more effectively respond to problems of sexual harassment? _____
- _____

Thank you very much for your time. Please use this envelope and drop it in any one of the collection boxes specified for this questionnaire.

Adapted from *Stopping Sexual Harassment: An AFSCME Guide*,
American Federation Of State, County And Municipal Employees,
http://www.afscme.org/wrkplace/sexh_10.htm

Annex 3

Model Company Policy and Procedure on Sexual Harassment⁴

COMMITMENT AND RESPONSIBILITY

The (company/corporation) and the (union[s]/association[s]) representing its employees believe the working environment should at all times be supportive of the dignity and self-esteem of individuals.

Achieving this desired environment greatly depends upon the mutual respect, cooperation and understanding among fellow workers. Attitudes and behavior that undermine this goal are detrimental to all and should not be tolerated. High on the list of unacceptable behavior is sexual harassment which is deemed unlawful by Republic Act No. 7877, "An Act Declaring Sexual Harassment Unlawful in the Employment, Education or Training Environment and For Other Purposes."

The (company/corporation) is committed to maintaining a work environment that is free from sexual harassment and all forms of sexual intimidation and exploitation. In keeping with this commitment, we will not tolerate harassment of (name of company) employees by anyone, including any of its supervisor, co-worker, vendor, client or customer.

The (company/corporation) also considers as a violation of its sexual harassment policy retaliation/reprisal in any way against anyone who has articulated any concern about sexual harassment, whether that concern directly relates to sexual harassment or results to discrimination against the individual raising the concern or against

⁴ A joint International Labour Organization (ILO) – Department of Labor and Employment (DOLE) project through the Bureau of Women and Young Workers (BWYW) and Atty. Myrna S. Feliciano, University of the Philippines Law Center. This model was approved by the DOLE Technical Committee on Legislative Matters (TCLM), 1995.

another individual.

1. DEFINITION OF TERMS

1.1 **Work or Training Environment** – refers to the place or environment where work is being undertaken or training is going on or where an employment or training relationship exists between and among individuals.

1.2 **Assault** – refers to any attempt or threat to inflict injury upon the person of another, when coupled with an apparent present ability to do so and any intentional display of force such as would give the victim reason to fear or expect immediate bodily harm. It may be committed without actually touching, or striking, or doing bodily harm, to the person of another.

1.3 **Committee** – refers to the Committee on Decorum and Investigation mentioned in Sec. 4 of Republic Act No. 7877.

1.4 **Managerial Employee** – refers to one who is vested with powers or prerogatives to lay down and execute management policies and/or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees.

1.5 **Supervisory Employee** – refers to one who, in the interest of the employer, effectively recommends such managerial actions if the exercise of such authority is not merely routinary or clerical in nature but requires the use of independent judgement.

1.6 **Trainee** – refers to a person undergoing an organizational and instructional process undertaken by the company through which an individual acquires any knowledge and skill.

1.7 **Complainant** – refers to the party filing the complaint.

1.8 **Respondent** – refers to the individual charged or against whom the complaint is filed.

1.9 **Progressive Discipline** – refers to the penalty imposed from reprimand, warning, suspension to dismissal from service.

2. WHEN SEXUAL HARASSMENT IS COMMITTED

Any person who, having authority, influence or moral ascendancy over another in a work or training or education environment, demands, requests or otherwise requires any sexual favor from the other, regardless of whether the demand, request or requirement for submission is accepted by the object of said act. In a work-related or employment environment, sexual harassment is committed when:

2.1 a sexual favor is made as a condition in the hiring, or in the employment or re-employment or continued employment of said individual, or in granting said individual favorable compensation, terms, conditions, promotions or privileges; or

2.2 the refusal to grant the sexual favor results in limiting, segregating or classifying the employee which in any way would discriminate, deprive or diminish employment opportunities or otherwise adversely affect said employee;

2.3 the above acts would impair the employee's rights or privileges under existing labor laws;

2.4 the above acts would result in an intimidating, hostile or offensive environment for the employee.

3. WHERE SEXUAL HARASSMENT CAN BE COMMITTED

Sexual harassment may be committed in any work or training environment which includes but is not limited to the following:

3.1 in or outside the office building or training site;

3.2 at the office or training-related social functions;

- 3.3 in the course of work assignments outside the office;
- 3.4 at work-related conferences, studies or training sessions;
or
- 3.5 during work-related travel.

4. FORMS OF SEXUAL HARASSMENT

Sexual harassment may take many forms. It may be subtle and indirect or blatant or overt. It may be physical, verbal or visual in nature. Sexual harassment acts may include but are not limited to the following:

- 4.1 persistently telling smutty jokes to a co-employee who has indicated she/he finds them offensive;
- 4.2 taunting a co-employee with constant talk of sex or sexual innuendos;
- 4.3 displaying offensive pictures or publications in the workplace;
- 4.4 asking a co-employee intimate questions on his/her sexual activities;
- 4.5 making offensive hand or body gestures at a co-employee; staring or leering at a co-employee;
- 4.6 making obscene phone calls to a co-employee during and outside work hours;
- 4.7 pinching, unnecessarily brushing up against a co-employee's body;
- 4.8 requesting for dates or favors in exchange for a job, favorable working conditions or assignments; and

4.9 touching a co-employee in sensitive parts of his/her body, threats of a sexual nature and actual sexual assault.

Any person who directs or induces another to commit any act of sexual harassment as herein defined, or who cooperates in the commission thereof by another without which it would not have been committed, shall also be liable under this Rules.

5. RETALIATION FOR SEXUAL HARASSMENT COMPLAINTS

Any person against whom a complaint for sexual harassment is filed is deemed to commit retaliatory acts under Art. 248 (f) of the Labor Code when he carries out any of the following:

5.1 Disciplining, changing work assignments of, providing inaccurate work information to, or refusing to cooperate or discuss work-related matters with any employee because that employee has complained about or resisted harassment, discrimination or retaliation;

5.2 Intentionally pressuring, falsely denying, lying about or otherwise covering up or attempting to cover up acts of sexual harassment;

5.3 Threatening the promotional opportunities, job securities and other service-related benefits and privileges; or

5.4 Other acts similar to the foregoing.

6. RESPONSIBILITIES OF THE EMPLOYER OR HEAD OF OFFICE

It shall be the responsibility of the employer or head of office to prevent or deter the commission of acts of sexual harassment. It shall provide procedures for the resolution, settlement, or prosecution of acts of sexual harassment.

Towards this end, the employer or head of office shall promulgate the appropriate rules and regulations in consultation with

and jointly approved by the employees through their duly designated representatives. Such rules and regulations shall prescribe the procedures for the investigation of sexual harassment cases and administrative sanctions therefor.

7. FILING OF A COMPLAINT FOR SEXUAL HARASSMENT

A complaint for sexual harassment should be filed with the Committee on Decorum and Investigation.

Any complaint concerning sexual harassment must be put in writing, signed and sworn to by the complainant and filed with the Committee on Decorum and Investigation within three (3) years after the incident. (Company/Corporation) will provide its employees with convenient confidential and reliable mechanisms for reporting incidents of sexual harassment and retaliation.

8. COMMITTEE ON DECORUM AND INVESTIGATION

The Committee on Decorum and Investigation is composed of one (1) representative each from the management, the union, employees from the supervisory rank and from the rank-and-file employees who shall be elected by the members of the group of employees they represent. The Committee shall undergo gender sensitivity training.

9. FUNCTIONS OF THE COMMITTEE

The Committee shall have the following functions:

9.1 Receive complaints, investigate and hear sexual harassment cases, prepare and submit reports with the corresponding recommendations;

9.2 Conduct meetings with officers, employees, trainees and apprentices to increase understanding and prevent incidents of sexual

harassment.

9.3 Promulgate rules on proper decorum and behavior in the workplace. The names, responsibilities, work locations and phone numbers of each Committee member will be routinely and continuously posted so that an employee seeking such name can enjoy anonymity and remain inconspicuous to all of the employees in the place in which he or she works.

Any member of the Committee who complains or is complained of sexual harassment shall inhibit himself/herself from participating in the deliberations of the Committee.

10. PROCEDURE FOR MAKING, INVESTIGATING AND RESOLVING SEXUAL HARASSMENT AND RETALIATION COMPLAINTS

The procedure may be as follows:

10.1 Complaint.

10.1.1 No particular form is required but the complaint must be in writing, signed and sworn to by the complainant. However, it must contain the following:

- a. the full name and address of the complainant;
- b. the full name and address of the respondent;
- c. a specification of the charge or charges;
- d. a brief statement of the relevant and material

facts.

Where the complaint is not under oath, the complainant shall be summoned by the Committee to swear to the truth of the allegations in the complaint.

10.1.2 In support of the complaint, the complainant shall submit any evidence he/she has, including affidavits of witnesses, if any, together with the complaint.

10.1.3 Where the complaint is vague or too general, the Committee may require the complainant to specify the acts complained of as sexual harassment in writing within five (5) days from the receipt of the notice, otherwise the complaint shall be dismissed.

10.1.4 A withdrawal of the complaint made or filed at any stage of the proceedings shall not preclude the Committee from proceeding with the investigation of the case.

10.2 Answer.

10.2.1 Answers shall be filed within ten (10) days from the receipt of the complaint.

10.2.2 The answer shall be in writing, signed and sworn to by the respondent, and copy furnished the complainant. No particular form is required but it is sufficient if the answer contains a specific admission or denial of the charge or charges and a statement of the relevant facts constituting the respondent's defense.

10.2.3 The respondent shall indicate in his/her answer whether or not he/she elects a formal investigation.

10.2.4 In support of the answer, the respondent shall submit any evidence he/she has, including affidavits of witnesses, if any, together with the answer.

10.2.5 The answer may be filed through personal service or by registered mail. If it is filed by registered mail, the date of mailing shall be considered as the date of filing.

10.2.6 Unless otherwise directed by the Committee, failure of the respondent to file an answer or to appear in the investigation shall be construed as a waiver to present evidence in his/her behalf. On the basis of evidence and pleadings submitted and the

report/recommendation of the Committee referred to under Section 6 hereof, the Head of the Personnel Office shall then resolve the case.

10.3 **Reply.**— The complainant may file a reply within ten (10) days from the receipt of the answer.

10.4 Preventive Suspension.—

10.4.1 The Head of the Personnel Office may suspend any officer or employee for not more than thirty (30) days pending an investigation, if there are strong reasons to believe that the respondent is guilty of charges which would warrant his/her removal from the service.

10.4.2 When the case against the officer or employee under preventive suspension is not finally decided within a period of thirty (30) days after the date of suspension of the respondent, he/she shall be automatically reinstated in the service; Provided, that when the delay in the disposition of the case is due to the fault, negligence or petition of the respondent, the period of the delay shall not be counted in computing the period of suspension.

10.5 Hearing.—

10.5.1 After all the pleadings have been submitted, the Committee may conduct a hearing not earlier than five (5) days nor later than ten (10) days from the date of receipt of the respondent's answer or complainant's reply if any, and shall terminate such hearing within thirty (30) days from the filing of the charges. However, the Committee may extend the period of hearing if it deems necessary.

10.5.2 The parties and their respective witnesses shall be notified of the scheduled hearing at least five (5) days before the date thereof, specifying the time, date and place of hearing.

10.5.3 Either party may require the attendance of witnesses and the production of documentary evidence in his/her favor through the compulsory processes of subpoena or subpoena duces tecum.

10.5.4 Either party may avail himself/herself of the services of counsel.

10.5.5 No postponement shall be granted except in meritorious cases.

10.5.6 All documentary evidence shall be admitted for whatever value they may have and shall be attached to the record of the case.

10.5.7 The parties may be required to submit their respective memoranda within ten (10) days after the hearing of their case.

10.5.8 Report and Recommendation.— A report/recommendation shall be submitted by the Committee to the Head of Personnel Office within fifteen (15) days after conclusion of the investigation or hearing.

10.6 Decision.—

10.6.1 Within thirty (30) days from receipt of the Committee report and recommendation, the Head of the Personnel Office shall render his/her decision.

10.6.2 The decision of the Head of Personnel office shall be final and executory ten (10) days after receipt of the copy thereof by the parties unless a motion for reconsideration or appeal is filed with the Head of Personnel Office.

10.7 Motion for Reconsideration.—

10.7.1 The aggrieved party may file a motion for reconsideration with the Head of Personnel Office within ten (10) days from the receipt of the copy of the decision based on any of the following grounds:

a. New evidence has been discovered which materially affects the decision.

b. The decision is not supported by the evidence on record.

c. Errors of law or misappreciation of facts.

10.7.2 The motion for reconsideration shall be deemed filed on the date of receipt by the Head of Personnel Office, if filed personally, or on the date shown by the postmark on the envelope which shall be attached to the records of the case if by registered mail.

10.7.3 A motion for reconsideration suspends the running of the period for appeal.

10.8 Nothing in this Procedure shall preclude the victim of sexual harassment from instituting a separate action in the proper courts.

11. SCHEDULE OF PENALTIES

The following schedule of penalties may be adapted for all violations of the Sexual Harassment Policy.

Where progressive discipline is provided for in the Company's Statement of Prohibited Conduct, violation of this Policy moves the offending employee through the steps of disciplinary action. In other words, it is not necessary for an employee to repeat the same precise conduct in order to move up the scale of discipline.

A written record of each action taken pursuant to the Policy will be placed in the offending employee's personnel file. The record will reflect the conduct, or alleged conduct, and the warning given, or other discipline imposed.

11.1 Assault and Rape. – Any employee's first proven offense of assault or threat of assault, including assault of a sexual nature, attempted, frustrated and consummated rape will result in dismissal.

11.2 Other acts of harassment by co-workers. – An employee's commission of acts of sexual harassment other than assault

will result in written warning, suspension or discharge upon the first proven offense, depending upon the nature and severity of the misconduct, and suspension or discharge upon the second proven offense, depending on the nature and severity of the misconduct.

11.3 Retaliation. – Alleged retaliation against a sexual harassment complainant will result in non-disciplinary oral counseling. Any form of proven retaliation will result in suspension or discharge upon the first proven offense, depending upon the nature and severity of the retaliatory acts, and discharge upon the second proven offense.

0A supervisor's commission of acts of sexual harassment (other than assault) with respect to any other employee under the person's supervision will result in final warning or dismissal for the first offense, depending upon the nature and severity of the misconduct and discharge for any subsequent offense.

12. RULES ON EDUCATION AND TRAINING TO ENFORCE SEXUAL HARASSMENT POLICY

Education and training for employees at each level of the work force are critical to the success of (name of company) policy against sexual harassment. The following documents address such issues: the letter to be sent to all employees from company's Chief Executive Office r/President, the Sexual Harassment Policy, together with the Investigating and Resolving Sexual Harassment and Retaliation Complaints and schedule of penalties. These documents will be conspicuously posted throughout the workplace at each division of (name of company) on each company bulletin board, in all central gathering areas, and in every locker room. The statements must be clearly legible and displayed continuously. The letter will indicate that copies are available at no cost and how they can be obtained.

Educational posters using concise messages conveying (name of company's) opposition to workplace sexual harassment will reinforce the company's policy statement.

12.1 Education and training include the following components:

12.1.1 For all (name of company's) employees: As part of general orientation, each recently hired employee will be given a copy of the letter from (name of company's) Chief Executive Officer/President and requested to read and sign a receipt for the company's policy statement on sexual harassment so that they are on notice of the standards of behavior expected. In addition, supervisory employees who have attended a management training seminar on sexual harassment will explain orally at least once every six months at meetings attended by all employees the kinds of acts that constitute sexual harassment, the company's serious commitment to eliminating sexual harassment in the workplace, the penalties for engaging in harassment, and the procedures for reporting incidents of sexual harassment.

12.2 For all female employees: All women employed at (name of company) will participate on company time in annual seminars that teach strategies for resisting and preventing sexual harassment. At least a half-day in length, these seminars will be conducted by one or more experienced sexual harassment educators, including one instructor with work experience in the trades.

12.3 For all employees with supervisory authority over other employees, including superintendents and all employees working in a managerial capacity: All supervisory personnel will participate in an annual, half-day-long training session on sexual discrimination harassment. The president of (name of company) will introduce the seminar with remarks stressing the potential liability of (name of company) and individual supervisors for sexual harassment and the need to eliminate harassment. Each participant will be informed that they are responsible for knowing the contents of (name of company) sexual harassment policy and for giving similar presentations at meetings to employees.

12.4 For all Investigating Officers: The Investigating Officers and their designees, if any, will attend annual full-day training seminars conducted by experienced sexual harassment educators and/or investigators to educate them about the problems of sexual harassment in the workplace and techniques for investigating and stopping it.

13. RESPONSIBILITIES OF
SUPERVISORY/MANAGERIAL EMPLOYEES

An effective sexual harassment policy requires the support and model behavior of company personnel in positions of authority. (Name of company's) agents or employees who engage in sexual harassment or retaliation or who fail to cooperate with company – sponsored investigations of sexual harassment or retaliation may be severely sanctioned by suspension or dismissal. By the same token, officials who refuse to implement remedial measures, obstruct the remedial efforts of other (name of company's) employees, and/or retaliate against sexual harassment complainants or witnesses may be immediately sanctioned by suspension or dismissal.

14. SUPPORT SERVICES THAT THE COMPANY
CAN GIVE TO VICTIMS

15. EFFECTIVITY

This Rules and Regulations shall take effect upon approval by the majority of employees of the company.

The company shall post at least a copy of this Rule in conspicuous places in the workplace for information of all concerned.

President of the Company

WE CONCUR:

President or Representative
of the Company's Employees' Union

WITNESSES:
(Officers of the Union)

Done in the City of _____ , Philippines, this _____ day of _____, 1995.

Annex 4

Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace, Ministry of Human Resources, Malaysia

AIM

1. The aim of this Code of Practice is to provide guidelines to employers on the establishment of in-house mechanisms at the enterprise level to prevent and eradicate sexual harassment in the workplace.

RATIONALE

2. Sexual harassment problem arises out of general workplace relationships involving personal behaviour of people within the enterprise. Therefore, the most effective way of dealing with the problem is to tackle it at workplace itself so that it can be confronted on the spot and nipped in the bud.

3. The best approach to combat sexual harassment in the workplace is through the establishment of preventive and redress mechanism at the enterprise level. A decision has been made that this approach will form the basis of our national policy and practice in dealing with sexual harassment in the workplace.

MEANING OF SEXUAL HARASSMENT

4. For the purpose of this Code, sexual harassment means: Any unwanted conduct of a sexual nature having the effect of verbal, non-verbal, visual, psychological or physical harassment:

(i) that might, on reasonable grounds, be perceived by the recipient as placing a condition of a sexual nature on her/his employment; or

(ii) that might, on reasonable grounds, be perceived by the recipient as an offence or humiliation, or a threat to his/her well-being, but has no direct link to her/his employment.

5. Based on the definition in article 4 above, sexual harassment may be divided into two categories, namely sexual coercion and sexual annoyance.

(i) Sexual coercion is sexual harassment that results in some direct consequence to the victim's employment. An example of sexual harassment of this coercive kind is where a superior, who has the power over salary and promotion, attempts to coerce a subordinate to grant sexual favours. If the subordinate accedes to the superior's sexual solicitation, job benefits will follow. Conversely, if the subordinate refuses, job benefits are denied.

(ii) Sexual annoyance, the second type of sexual harassment, is sexually-related conduct that is offensive, hostile or intimidating to the recipient, but nonetheless has no direct link to any job benefit. However, the annoying conduct creates a bothersome working environment which the recipient has to tolerate in order to continue working. A sexual harassment by an employee against a co-employee falls into this category. Similarly, harassment by a company's client against an employee also falls into this category.

6. Within the context of this Code, sexual harassment in the workplace includes any employment-related sexual harassment occurring outside the workplace as a result of employment responsibilities or employment relationship. Situations under which such employment-related sexual harassment may take place includes, but is not limited to:

- (i) at work-related social functions;
- (ii) in the course of work assignments outside the workplace;
- (iii) at work-related conferences or training sessions;
- (iv) during work-related travel;
- (v) over the phone; and
- (vi) through electronic media.

7. It is essential to emphasize that sexual harassment refers to sexual conduct which is unwanted and unwelcome to the recipient. It is also a sexual conduct which is imposed on and unsolicited or unreciprocated by the recipient.

FORMS OF SEXUAL HARRASMENT

8. Sexual harassment encompasses various conducts of a sexual nature which can manifest themselves in five possible forms, namely:

- (i) verbal harassment: e.g. offensive or suggestive remarks, comments, jokes, jesting, kidding, sounds, questioning.
- (ii) non-verbal/gestural harassment: e.g. leering or ogling with suggestive overtones, licking lips or holding or eating food provocatively, hand signal or sign language denoting sexual activity, persistent flirting.
- (iii) visual harassment: e.g. showing pornographic materials, drawing sex-based sketches or writing sex-based letters, sexual exposure.
- (iv) psychological harassment: e.g. repeated unwanted social invitations, relentless proposals for dates or physical intimacy.
- (v) Physical harassment: e.g. inappropriate touching, patting, pinching, stroking, brushing up against the body, hugging, kissing, fondling, sexual assault.

OUTLINES OF IN-HOUSE MECHANISM TO COMBAT SEXUAL HARRASMENT IN THE WORKPLACE

9. A comprehensive in-house mechanism that employers are encouraged to establish at the enterprise level to prevent, handle and eradicate sexual harassment in the workplace should include at least the following elements:

- (i) a policy statement prohibiting sexual harassment in the organisation;
- (ii) a clear definition of sexual harassment;
- (iii) a complaint/grievance procedure;
- (iv) disciplinary rules and penalties against the harasser and against those who make false accusation;
- (v) protective and remedial measures for the victim; and
- (vi) promotional and educational programmes to explain the company's policy on sexual harassment and to raise awareness of sexual harassment and its adverse consequences among the company's employees, supervisors and managers.

POLICY STATEMENT PROHIBITING SEXUAL HARRASMENT

10. A policy statement on sexual harassment is a documented message from the management to the employees

expressing the company's policy, philosophy and commitment to prevent and eradicate sexual harassment in order to create a positive and conducive working environment in the organization.

11. The policy statement should come from the top management to ensure its acceptance and compliance by the shop-floor employees, supervisors and managers throughout the organization.

12. The policy statement should contain at least the following matters:

- (i) a declaration prohibiting sexual harassment in the organization;
- (ii) a caution stating that sexual harassment constitutes breach of the company's policy and will incur disciplinary actions up to and including dismissal;
- (iii) a directive stating that supervisors and managers have a positive duty to implement the policy and to demonstrate leadership by example.

A CLEAR DEFINITION OF SEXUAL HARASSMENT

13. A clear definition of sexual harassment constitutes a vital component of an in-house mechanism for dealing with the problem. A detailed definition is necessary to ensure that employees as well the management have a clear idea of conducts that constitute sexual harassment.

14. The main objective of the definition is to make individuals in the organization fully aware of certain conducts and attitudes that can be regarded as unwelcome and offensive to others, and therefore prohibit such conducts in the organization.

COMPLAINT/GRIEVANCE PROCEDURE

15. Although an effective preventive action and programme may be successful in deterring sexual harassment, but problems are bound to arise. Therefore, there is necessity for the establishment of a complaint or grievance procedure to deal with each problem as and when it arises.

16. Due to of the sensitive and personal nature of sexual harassment complaints, employers should develop a separate complaint procedure to deal specifically with such complaints. The normal complaint procedure is often unsuitable for sexual harassment complaints.

17. A complaint procedure should provide for measures to protect victims from further embarrassment in the course of reporting and investigation into the complaint.

18. A complaint procedure should contain at least the following elements:

- (i) a step-by-step procedure for reporting and processing of a complaint with a suitable time-limit for each step;
- (ii) an investigation procedure; and
- (iii) an appeal procedure to enable dissatisfied party to appeal against the outcome of an investigation to a higher authority.

DISCIPLINARY RULES AND PENALTIES

19. To ensure that a policy and a mechanism to prevent sexual harassment is effective, it is essential that offenders be disciplined.

20. The disciplinary rules should set out the penalties to which the harasser will be liable if the offence is committed. The nature and type of penalty should depend upon the severity of the offence.

21. Since sexual harassment is a form of misconduct, any disciplinary action against the accused employee should be preceded by a proper domestic inquiry.

22. To deter false and fabricated accusation against any person, the rule should also set out disciplinary penalties against those who make such accusations.

PROTECTIVE AND REMEDIAL MEASURES FOR THE VICTIM

23. To encourage victims to report sexual harassment, there should be adequate measures to ensure maximum confidentiality so as to minimise embarrassment to the victim especially at the time of

reporting and in the course of investigation into the complaint.

24. In a case where the victim of sexual harassment has suffered a loss, such as a demotion or a denial of a promotion, it is appropriate to restore such person to his or her proper position on the job.

25. The victim should also be compensated for any monetary loss arising out of a denial of employment-related benefits which were rightfully due to him or her.

26. Where the complaint is found to be unjustified and baseless, appropriate remedy should be granted to the accused person if there has been any loss suffered by such person.

PROMOTIONAL AND EDUCATIONAL PROGRAMMES

27. Prevention is the most effective tool employers can use to eradicate sexual harassment in the workplace. Preventive action includes:

- (i) communication,
- (ii) education; and
- (iii) training.

28. Merely developing a corporate policy and preventive mechanism on sexual harassment is not sufficient. It is the dissemination of the policy and mechanism among the employees in the organization that is of paramount importance.

29. In addition to the need for communication, the employer should provide a programme by which employees and supervisors could be educated in the area of sexual harassment.

30. The employer should also provide special training sessions for supervisory and managerial staff to train them to recognize potential problems and learn how to deal with them as and when they arise. The necessity to provide training is much greater for those who are assigned to function as investigators and counsellors.

THE INVOLVEMENT AND ROLE OF TRADE UNION

31. Sexual harassment can be prevented, handled and eradicated most effectively if there is a joint employer/trade union action.

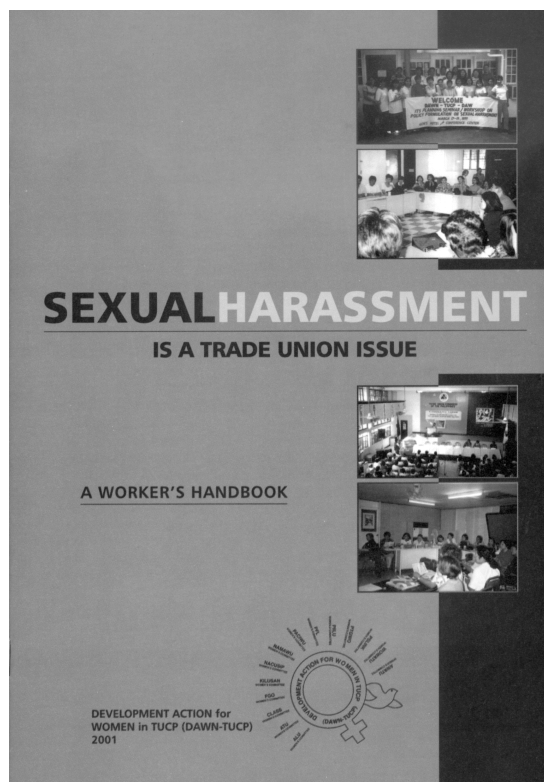
32. In the formulation and establishment of an in-house mechanism to prevent, handle and eradicate sexual harassment, the employer should adopt a consultative approach by involving the trade union. The involvement of trade union can pave the way for a stronger commitment by the employees to accept and comply with the in-house mechanism.

33. Trade unions have a clear role to play in helping to create a climate at work which is free from sexual harassment. Trade unions can contribute to the prevention of sexual harassment through an awareness and sensitivity towards the issues among the members and by ensuring that the standards of conduct of their members do not cause offence.

34. Trade unions should also co-operate with employers in carrying out promotional and educational programs towards creating a work culture that will ensure a safe and healthy working environment where individual employees, irrespective of status or position, are treated with dignity and free from any form of harassment, humiliation and intimidation of a sexual nature.

Annex 5

Information Booklet of Sexual Harassment



Foreword

Women have assumed diverse roles in the labor market in response to the demands of the fast changing economy and their desire for employment to contribute to the economic needs of the family. In women's continuing search for gainful employment, they face several obstacles, one of which is sexual harassment. It is a serious problem in the workplace. The practice is rising and often stays invisible. Sexual favors are still exacted in exchange for employment, promotion or job security.

The DEVELOPMENT ACTION FOR WOMEN in TUCP (DAWN-TUCP) is cognizant of the rising incidence of sexual harassment despite the passage of RA 7877 or the Sexual Harassment Act of 1995. It has been working on this issue since the passage of the law. A tangible result of the efforts is the adoption of the TUCP Sexual Harassment Policy on the occasion of the TUCP All-Officers Conference in December 14, 1999.

This is an achievement for TUCP and the women membership. For the DAWN-TUCP, a strategy after the policy's adoption is to reach out to all the workers, women workers in particular, the management and the media to carry on its advocacy. Through educational and campaign activities, more will be benefited to acquire information on the importance and implementation of the sexual harassment law.

Sexual Harassment is a trade union issue. It must not be ignored. Rather everyone must join in the efforts to eliminate violence and sexual harassment in the workplace. This handbook will show us how.

CARMEN M. SOLINAP
Chairperson
Development Action of Women
In TUCP (DAWN-TUCP)
2001

Sexual Harassment

What is it?

Sexual harassment is any repeated and unwanted verbal, physical or sexual advances, sexually explicit derogatory statements, or sexually discriminatory remarks made by someone in the workplace - which is offensive to the worker involved - and will cause the person to feel threatened, humiliated, patronized or harassed, or which interferes with the person's job performance, undermine job security or create a threatening or intimidating environment. (ICFTU Women's Bureau)

Work, education or training related sexual harassment is committed by an employer, employee, manager, supervisor, agent of the employer, teacher, instructor, professor, coach, trainer or any other person who, having authority influence or moral ascendancy over another in a work or training or education environment, demands, requests or otherwise requires any sexual favor from the other, regardless of whether the demand, request or requirement for submission is accepted by the object of the said act. (Republic Act No. 7877 of the Philippines)

Who are the frequent victims?

Both men and women are victims – regardless of their age, marital status, physical appearance background or professional status. However, women are more vulnerable due to their position in the labor market.



Who are the harassers?

Persons liable for sexual harassment are: employer, co-employee, manager, supervisor, agent of the employer, teacher, instructor, professor, coach, trainer, any other person who has authority, influence or moral ascendancy over another.

Forms of Sexual Harassment

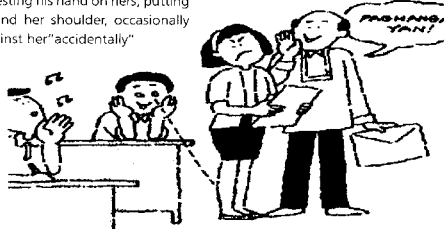
Sexual harassment manifests itself in different forms - verbal, physical, visual and psychological. Some examples:

Case 1 Two male co-workers are constantly teasing with dirty jokes, even when women are within hearing distance. Their jokes range from being mildly crude to downright vulgar. A female co-worker has tried to tell them to stop but they tell her, "It's just a joke. Can't you take a joke?"

It is not "just a joke". It is **verbal** harassment. Since she has clearly stated that she wants them to stop, they should at least have the courtesy of sharing their jokes in private.

Case 2 A male co-worker or boss sometimes gives lady clerk a pat on the shoulder as a way of saying she has done a good job. Lately however, the action has become more "physical" - resting his hand on hers, putting his arm around her shoulder, occasionally brushing against her "accidentally"

If the lady clerk feels that his interest is more than platonic, she is probably right in thinking that he is harassing her in a **physical** manner.

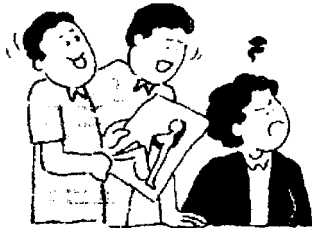




Case 3 A male co-worker or superior has calendars and pictures of scantily clad women in suggestive poses placed prominently in his work area. Women workers are embarrassed whenever they have to speak with him in his office and have mentioned their discomfort to him. He sees nothing wrong with these pictures however, arguing that "It is a free country" Not when the pictures are indecent and obscene. He is guilty of **visual** harassment.

Case 4 A male co-worker or superior has shown an interest in female co-worker, but she is not keen on accepting his dates and have openly and clearly made known her disinterest and disapproval.

Yet he persists, showering her with signs of his affection by leaving flowers on her table, dropping hints and finding ways to be alone with her, even making hidden threats. This is **psychological** harassment.



How does Sexual Harassment occur in the Workplace or Training Environment?

Sexual harassment at the workplace is usually committed when any of the following events arise:

- The sexual favor is made a condition for hiring, in the employment, re-employment or continued employment, or in a grant of favorable employment privileges.
- The refusal to grant the sexual favor results in limiting, segregating or classifying the employee which in any way would discriminate, deprive or diminish employment opportunities.
- The employee's rights or privileges under existing laws are diminished as a result of the refusal of the sexual favors.
- The sexual solicitation results in an intimidating, hostile or offensive environment for the employee.

It may also occur within an education or training environment when

- the sexual favor is made a condition to the giving of a passing grade, or the granting of honors and scholarships or the payment of stipend, allowance or other benefits, privileges or considerations.
- the sexual advances result in an intimidating, hostile or offensive environment for the student, trainee, apprentice or -
- the offended party is one who is under the care, custody or supervision of the offender or one whose education, training, apprenticeship or tutorship is entrusted to the offender.



What are the Effects of Sexual Harassment?

Employee's leaving a job rather than facing the harassment
Dismissal and loss of opportunity for training or promotion prospects and job security.
It can create a stressful and hostile working environment that can lead to mental and physical illness for the "potential" victim and an uncomfortable atmosphere for other workers.



Victims of sexual harassment suffer:

- tension
- anger
- anxiety
- depression
- insomnia
- stress-related medical problems, such as
 - headaches
 - skin disorders
 - digestive problems
 - cystitis, etc.
- Oftentimes, victims can also suffer loss of face and social rejection leading to family hardship and even break-up.
- The victim is forced to resign or is even fired.
- Worse is when the harasser (as the person who has authority, influence or moral ascendancy) jeopardizes the victim's future job opportunities by giving the victim a bad reference.

What will you do if you are sexually harassed?

- Do not think it is your fault
- Object. Speak to the harasser and be specific about what behavior you find objectionable.
- Talk to other employees. Ask if they are experiencing the same problem with the harasser.
- Keep records at home of what happened, exactly what was said, names of witnesses, date, time, locations of the incident. Save any letters, cards, notes in a secure place.
- Tell the harasser in writing that you object to such behavior. Be specific and keep a copy of the letter.
- Speak to your supervisor. If the harasser is your supervisor, speak to his or her supervisor. Bring your records and other documentation that you have.
- Speak to your union steward, personnel or labor relations officials. Your union steward should be able to assist you with the above steps.
- If these steps don't solve the problem, file a union grievance or a formal complaint with the Committee on Decorum and Investigation.
- Consult or ask your union to consult, an attorney experienced in sexual harassment cases. Sexual harassment is against the law.
- File criminal charges with the police if you were assaulted or raped.

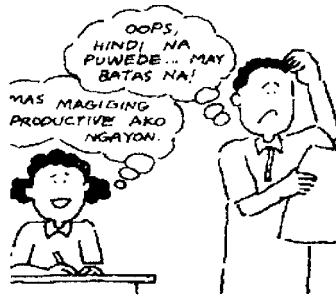
What is the Law on Sexual Harassment?

The title of the law is "An Act Declaring Sexual Harassment Unlawful in The Employment, Education or Training Environment, and for Other Purposes." The short title of the law is the "Anti-Sexual Harassment Act of 1995.

The law provides that the State shall value the dignity of every individual, enhance the development of its human resources, guarantee full respect for human rights, and uphold the dignity of workers, employees, applicants, for employment, students of those undergoing training, instruction or education. Towards this end, all forms of sexual harassment in the employment, education or training environments is hereby declared unlawful.

The law requires the employer or head of office in a work-related, education or training environment to:

- Promulgate appropriate rules and regulation in consultation with and jointly approved by the employees or students or trainees, through their duly designated representatives, prescribing the procedure for the investigation of sexual harassment cases and the administrative sanctions therefor.
- Create a committee on decorum and investigation of cases of sexual harassment. The committee shall conduct meetings, as the case may be, with officers and employers, teachers, instructors, professors, coaches, trainers and students of sexual harassment. It shall also conduct the investigation of alleged cases constituting sexual harassment.



The members of the Committee on Decorum and on Investigation (CODI) are:



- In the case of work-related environment, the committee shall be composed of at least one (1) representative each from management, the union, if any, the employees from the supervisory rank, and from the rank and file employees.
- In the case of educational or training institution, the committee shall be composed of at least one(1) representative from the administration, the trainers, teachers, instructors, professors or coaches and students or trainees, as the case may be.

The victim of sexual harassment may file a complaint:

ADMINISTRATIVE

- Before the Committee on Decorum and Investigation (CODI) in the workplace or educational or training institution, as the case maybe,
- With the Civil Service Commission or (CSC)
- With the union

CIVIL/CRIMINAL

- Before the court having jurisdiction
- Before the appropriate court in an independent civil action for damages.

Penalties arising from the violation of the provisions of the law:

- Imprisonment of not less one (1) month nor more than six (6) months
- A fine of not less than Pesos 10,000 nor more than Pesos 20,000
- Both fine and imprisonment at the discretion of the court.

The filing of a sexual harassment complaint shall be ...

Within three (3) years from the time it was committed.

What can Men do to Stop Harassment against Women?

MEN must

- Learn about sexual harassment, the law and the union policy.
- Discuss this subjects with co-workers, male and female.
- Take action to encourage union initiatives.
- Treat complaints against harassment seriously.
- Support women who are victims of sexual harassment



SEXUAL HARASSMENT IS A TRADE UNION ISSUE

Sexual harassment can affect the worker's employment and promotion prospects and job security. It can create a stressful and hostile working environment, which threatens the health and safety of the worker concerned. It undermines attempts to achieve equality for women workers within the workplace.

TRADE UNIONS SHOULD WORK TO

- take action to prevent sexual harassment,
- make members aware of the nature and scope of sexual harassment as a workplace problem,
- discuss openly sexual harassment issues with both male and female workers,
- develop a policy on sexual harassment which will define the problem and outline the procedures to deal with it.
- set up a committee for investigation and decorum in the workplace, jointly with company management,
- establish a women's committee or desk which will advocate and monitor anti-sexual harassment programs.





TUCP POLICY ON SEXUAL HARASSMENT

(Adopted during the All Officers Meeting and
TUCP 24th Anniversary – 14 December 1999)

The TRADE UNION CONGRESS OF THE PHILIPPINES (TUCP) believes that the trade union movement is supportive of the dignity and self-esteem of workers and individuals. It is committed to maintain a safe, secured and conducive environment for all workers.

To achieve this desired environment greatly depends upon the mutual respect, cooperation and understanding among male and female workers. Attitudes and behavior that undermine these goals are detrimental to all and must not be tolerated. Top of the list of unacceptable behavior is **SEXUAL HARASSMENT** deemed unlawful by Republic Act 7877 – “An Act Declaring Sexual Harassment unlawful in Employment, Education or Training Environment and for other purposes.”

TUCP aligns with the ICFTU Policy on Sexual Harassment and Program of Action, that defines –

Sexual Harassment as any repeated and unwanted verbal, physical or sexual advances, sexually explicit derogatory statements, or sexually discriminatory remarks made by someone in the workplace - which is offensive to the worker involved - and will cause the person to feel threatened, humiliated, patronized or harassed, or which interferes with the person's job performance, undermine job security or create a threatening or intimidating environment.

Sexual harassment is frequently, a display of power, which is intended to intimidate, coerce or degrade another worker. It is a form of victimization about which increasing concern is being expressed. Sexual harassment can be in the form of: unnecessary physical contact, like touching or patting; leering, suggestive and unwelcome remarks, jokes comments about appearance; use and displaying of pornographic pictures in the workplace; demands, request and require sexual favors; verbal abuse and physical assault.

TUCP fully believes that **SEXUAL HARASSMENT** is a trade union issue because it violates workers' rights to job security and equal opportunity.

With the unions taking the lead, a Joint Union-Management Policy on Sexual Harassment must be concluded with a corresponding clause included in the Collective Bargaining Agreement.

Joint management and workers action like educational training, will lead towards the creation of a Committee on Decorum and Investigation (CODI) within offices, workplaces, unions and workers' organizations.

ADOPTED this 14th day of December 1999 , Quezon City, Philippines.

A Working Woman's Checklist for Sexual Harassment

SOURCE : WORKING WOMEN'S INSTITUTE, CANADA

Common Forms of Sexual Harassment

- Constant invitations for drinks, dinner dates
- Close physical contact while you work
- Kisses at office parties or business events
- Stares at your breast
- Touches or grabs at your body
- Sexual invitations or remark
- Offensive graffiti or wall writing
- Threats of physical assault
- Receiving indecent cartoons, cards, gifts
- Obvious sexual gestures directed at you
- Indirect or forced pressure for sexual interactions
- Assault and rape

Early Signs of Trouble

- Constant invitations for drinks, dinner dates
- What is the attitude about women on your job? Are there jokes, comments that put women down?
- Are you taken seriously as a worker? Are you complimented more for your looks than your work? Are you told that a job is too dangerous or complicated for you? Are you accused of taking the job away from a man?
- Does your supervisor, co-worker or client hugs, pats on your back, put the arm around your shoulder to make a business-related point? Are sexually suggestive tones, descriptions or body language part of work related discussions, or in training or apprenticeship classes?
- Do you hear constant compliments about your clothing, look, and body? Are you given uniforms that are not designed to fit women but are too revealing?
- Are you asked questions about your social or personal life or told about theirs? Is there a supervisor, co-worker or client known for his "harmless flirtation" or "playboy reputation"? Is there a high rate of turnover among women working for the same man/woman or in the same crew?
- Do you experience uncooperative attitudes at the workplace? Is there no maternity leave or anti-discrimination clause in the company policy or in your contract? Do you notice other workers experiencing discrimination because of their background or sexual preference?

REFERENCES

- Sexual Harassment at Work : A Trade Union Guide ICFTU Women's Bureau
- Sexual Harassment NCRFW-WFS Primer Series
- When I Say No, I Mean No. (How to Stop Sexual Harassment : A Handbook for Unions); Women At Work : IUF Publication
- FEMALE Magazine : October 1992 Issue
- Elimination of Sexual Harassment in the Workplace (an information kit) Under a joint project of DOLE - BWYW and ILO

**Do not ignore
SEXUAL HARASSMENT.**

It will NOT GO AWAY.

**SILENCE is often
INTERPRETED
as COMPLIANCE.**

Brief Notes about DAWN-TUCP

Since its establishment in 1975, the Trade Union Congress of the Philippines, the largest confederation of labor unions in the country, has provided services to the 37% women membership. Through the women's department, it mandated the affiliates to integrate women in their structure and ensure that they are well represented in the decision-making bodies. A 1985 resolution called for the creation of the women's committees at the federation and local levels to monitor progress in the implementation of the center's policies and programs of action for women workers.

Five years later, in May 18, 1990, the **Development Action for Women in TUCP (DAWN-TUCP)**, the Women's Committee at the center level, was established. One of its immediate actions was an amendment of the TUCP constitution making the Chairperson, member of the TUCP Executive Board.

At the same time, the committee established its own structure, elected the officials and formed the Rules for Administration. Affiliated federations soon followed to organize their respective women's committees, likewise allocating reserved seats for women in the Executive Boards. DAWN-TUCP officers and regional leaders are full time staff or officials of their respective federations.

DAWN-TUCP recognizes women as a vital force in the labor market. It is fully aware of the changes taking place in the world of work, the increasing participation of women in the workforce, and the contributions made by women at home, at work, and in society.

Jointly, the TUCP and the DAWN-TUCP will carry on their efforts to create a just society, where men and women have equal rights to freely develop their full potential, to their benefit, their union and their community.

DAWN-TUCP Officers (2001-2004)

CHAIRPERSON	Carmen M. Solinap
GENERAL SECRETARY	Marita R. Macapagal
NATIONAL TREASURER	Rosalinda A. Manabat

Area Chairpersons

LUZON	Josefina Victoria
VISAYAS	Nanette Cuenca
MINDANAO	Dolores Alegarbes

Functional Committee Members

EDUCATION & RESEARCH	Zenaida Juan
ORGANIZATION AND MEMBERSHIP	Grace Cruz
WELFARE AND DEVELOPMENT	Milagros Ogalinda
SOCIO-ECONOMIC PROJECTS	Lena Al. Torres
SPECIAL GROUPS	Susanita Tesiorna



DEVELOPMENT ACTION FOR WOMEN IN TUCP (DAWN-TUCP) TRADE UNION CONGRESS OF THE PHILIPPINES

Maharlika corner Masaya Streets, Diliman, Quezon City, Philippines
Telephone Nos: 922-2185 / 921-5236 Fax No. 921-9758 E-mail : TUCP@easy.net.ph