

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

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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)

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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.

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