Action against Sexual Harassment at Work in Asia and the Pacific

Technical Report for discussion at the ILO/Japan Regional Tripartite Seminar on Action against Sexual Harassment at Work in Asia and the Pacific

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FINDINGS AND CONCLUSIONS: A SUMMARY

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 has 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. The aims of the meeting are:

• 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

• to strengthen local and national initiatives against this practice.

The aims of this technical report, prepared for the ILO Regional Tripartite Seminar, are to familiarize participants with 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.

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 are 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 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, 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 focussed 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 perhaps not so much 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 loose 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 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 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.

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 Vietnam 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 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. 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.

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, 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, 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 company president or a client, they cannot 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 Panel 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 addition, as is the case in the Republic of Korea, the law is to be read together with the criminal law but the combined provisions are not consistent, making application problematic.

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 of 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 is 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, which wish 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:

?? The inclusion 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 other action
- Quid pro quo (sexual blackmail) and the 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 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.

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 can be a first step 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 and 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 from North America 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. Similarly, recent research in northern Europe 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.

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; and 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.

Range and extent of workplace measures
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 Kumbo Business Group in 1995. Other countries also report progress, such as in Malaysia where around 100 companies 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. 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 Draft 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 in August 2001. 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.

Indications are, 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. 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.

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.
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 alternative 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 principle is of course to ensure confidentiality and 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

?? addressing harassment at the workplace including any employment-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 and provide protection against retaliation and provides 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 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 harassers to ensure that the conduct does not recur.

**Practical measures for preventing sexual harassment problems are:**

?? 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.

?? Conduct awareness raising sessions on sexual harassment issues.

?? Display anti-sexual harassment posters on notice boards and distribute relevant brochures.

?? Remove inappropriate materials such as nude posters from the workplace.
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.

Other important preventive measures can include:

- Improvement of the safety of the working environment (e.g. well-lighted work areas).
- 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 organizations during all working hours.
- Managers and workers 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.
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1. INTRODUCTION

This report, Action against Sexual Harassment at Work in Asia and the Pacific, is intended to serve as a technical report for discussion at the ILO Regional Tripartite Seminar on Action against Sexual Harassment at Work, to be held in Penang, Malaysia from 2 to 4 October, 2001. The aims of the technical report, prepared for the ILO Regional Tripartite Seminar, are to familiarize participants with 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 given with a focus on action in Asia and the Pacific.

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 date back to the fifties in countries in the region, such as Malaysia, and have 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 other NGOs in India, the Republic of Korea, Malaysia, the Philippines, Singapore and Sri Lanka.

Increasingly, sexual harassment in workplaces it 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 will organize a Regional Tripartite Seminar on Action against Sexual Harassment at Work in Asia and the Pacific in October 2001 in Malaysia. The aims of the seminar are:
to enable the exchange of experience and increase awareness among ILO constituents and other concerned parties on effective means of combating sexual harassment in workplaces in the formal and informal sectors,

to strengthen local and national initiatives against this practice.

Chapter 2 deals with understanding sexual harassment in workplaces. 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 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 incidences 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 increases 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.

An annex is provided with a list of references to international and regional instruments on sexual harassment. 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, Inchon 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 'lay 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 and sexual harassment: Views on differences and relations between men and women

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 every day 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).

**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 garment factories 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 make 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 the 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 resented such harassment (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 labor 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
- 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 ‘problematised’ 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.

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). 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 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 keep or obtain 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 woman 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 in 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 in 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. These affect work performance and increase 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. 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’.

- **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 women 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. 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, Inchon Women Workers Association, Korea, 1999, in Zaitun, 2001)

Long drawn out legal battles further take a toll on the aggrieved, economically and mentally.
“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 pay-out 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. In spite of the devastating effects of sexual
harassment on the individual, however, few women come forward to even speak about it, let alone lodge formal complaints. The country studies also note that in spite of the relatively slow development and adoption of 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.

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. The country papers also note the catalytic role that women’s and workers’ organizations have played in exposing and addressing 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 or 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 on 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 *bidhi* 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 woman
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 revised 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 and highlighting findings**

The helplines that are run by various women’s groups in the region provide vital anecdotal and empirical information on sexual harassment and the experiences of women workers. In addition, some 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).
The 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: Percentage of labour force who are women.

<table>
<thead>
<tr>
<th>Region</th>
<th>1980</th>
<th>1997</th>
</tr>
</thead>
<tbody>
<tr>
<td>Africa</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Northern Africa</td>
<td>20</td>
<td>26</td>
</tr>
<tr>
<td>Sub-Saharan Africa</td>
<td>42</td>
<td>43</td>
</tr>
<tr>
<td>Southern Africa</td>
<td>40</td>
<td>40</td>
</tr>
<tr>
<td>Rest of sub-Saharan Africa</td>
<td>43</td>
<td>43</td>
</tr>
<tr>
<td>Latin America and the Caribbean</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Caribbean</td>
<td>38</td>
<td>43</td>
</tr>
<tr>
<td>Central America</td>
<td>27</td>
<td>33</td>
</tr>
<tr>
<td>South America</td>
<td>27</td>
<td>38</td>
</tr>
<tr>
<td>Asia</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Eastern Asia</td>
<td>40</td>
<td>43</td>
</tr>
<tr>
<td>South-eastern Asia</td>
<td>41</td>
<td>43</td>
</tr>
<tr>
<td>Southern Asia</td>
<td>31</td>
<td>33</td>
</tr>
<tr>
<td>Central Asia</td>
<td>47</td>
<td>46</td>
</tr>
<tr>
<td>Western Asia</td>
<td>23</td>
<td>27</td>
</tr>
<tr>
<td>Oceania*</td>
<td>35</td>
<td>38</td>
</tr>
<tr>
<td>Developed regions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Eastern Europe</td>
<td>45</td>
<td>45</td>
</tr>
<tr>
<td>Western Europe</td>
<td>36</td>
<td>42</td>
</tr>
<tr>
<td>Other developed regions</td>
<td>39</td>
<td>44</td>
</tr>
</tbody>
</table>


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

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

<table>
<thead>
<tr>
<th>Country or area</th>
<th>Adult (15+) economic activity rate (%) 1995/1997</th>
<th>% women in the adult labour force, 1995/1997</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>W</td>
<td>M</td>
</tr>
<tr>
<td>Bangladesh</td>
<td>56</td>
<td>89</td>
</tr>
<tr>
<td>Cambodia</td>
<td>76</td>
<td>82</td>
</tr>
<tr>
<td>China</td>
<td>74</td>
<td>86</td>
</tr>
<tr>
<td>Hong Kong SAR</td>
<td>48</td>
<td>76</td>
</tr>
<tr>
<td>Macao SAR</td>
<td>55</td>
<td>79</td>
</tr>
<tr>
<td>India</td>
<td>41</td>
<td>86</td>
</tr>
<tr>
<td>Indonesia</td>
<td>53</td>
<td>82</td>
</tr>
<tr>
<td>Lao People's Dem.Rep.</td>
<td>75</td>
<td>89</td>
</tr>
<tr>
<td>Malaysia¹</td>
<td>47</td>
<td>81</td>
</tr>
<tr>
<td>Mongolia</td>
<td>73</td>
<td>84</td>
</tr>
<tr>
<td>Nepal</td>
<td>57</td>
<td>86</td>
</tr>
<tr>
<td>Pakistan</td>
<td>13</td>
<td>82</td>
</tr>
<tr>
<td>Philippines</td>
<td>49</td>
<td>82</td>
</tr>
<tr>
<td>Republic of Korea²</td>
<td>50</td>
<td>76</td>
</tr>
<tr>
<td>Singapore</td>
<td>51</td>
<td>78</td>
</tr>
<tr>
<td>Sri Lanka</td>
<td>41</td>
<td>78</td>
</tr>
<tr>
<td>Thailand²</td>
<td>67</td>
<td>82</td>
</tr>
<tr>
<td>Turkey</td>
<td>28</td>
<td>74</td>
</tr>
<tr>
<td>Viet Nam</td>
<td>75</td>
<td>84</td>
</tr>
<tr>
<td>Fiji</td>
<td>32</td>
<td>82</td>
</tr>
<tr>
<td>Papua New Guinea</td>
<td>67</td>
<td>87</td>
</tr>
<tr>
<td>Solomon Islands</td>
<td>82</td>
<td>89</td>
</tr>
<tr>
<td>Tonga</td>
<td>45</td>
<td>74</td>
</tr>
</tbody>
</table>


¹ For persons aged 15 to 64
² Data are estimated to correspond to standard age groups
Table 3: Percentage distribution of the labour force, by sex, 1990/1997 in East, Southeast and South Asia

<table>
<thead>
<tr>
<th></th>
<th>Female labour force</th>
<th>Male labour force</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Agriculture</td>
<td>Industry</td>
</tr>
<tr>
<td>East Asia</td>
<td>14</td>
<td>23</td>
</tr>
<tr>
<td>South-east Asia</td>
<td>46</td>
<td>13</td>
</tr>
<tr>
<td>South Asia</td>
<td>66</td>
<td>18</td>
</tr>
</tbody>
</table>


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

<table>
<thead>
<tr>
<th></th>
<th>All Economy</th>
<th>EPZ</th>
<th>Non-EPZ-Manufacturing</th>
</tr>
</thead>
<tbody>
<tr>
<td>Malaysia</td>
<td>1980 33.4</td>
<td>75.0</td>
<td>35.6</td>
</tr>
<tr>
<td></td>
<td>1990 35.5</td>
<td>53.5</td>
<td>47.2</td>
</tr>
<tr>
<td>Philippines</td>
<td>1980 37.1</td>
<td>74.0</td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td>1994 365.</td>
<td>73.9</td>
<td>45.2</td>
</tr>
<tr>
<td>Korea, Republic of</td>
<td>1987 40.4</td>
<td>77.0</td>
<td>41.7</td>
</tr>
<tr>
<td></td>
<td>1990 40.8</td>
<td>70.1</td>
<td>42.1</td>
</tr>
<tr>
<td>Sri Lanka</td>
<td>1981 36.0</td>
<td>86.3</td>
<td>29.8</td>
</tr>
<tr>
<td></td>
<td>1992 46.4</td>
<td>84.8</td>
<td>46.0</td>
</tr>
</tbody>
</table>


**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).

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.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia</td>
<td>3</td>
<td>6</td>
</tr>
<tr>
<td>Bangladesh</td>
<td>&lt;1</td>
<td>&lt;1</td>
</tr>
<tr>
<td>Japan</td>
<td>1</td>
<td>4</td>
</tr>
<tr>
<td>New Zealand</td>
<td>4</td>
<td>10</td>
</tr>
<tr>
<td>Pakistan</td>
<td>&lt;1</td>
<td>1</td>
</tr>
<tr>
<td>Singapore</td>
<td>2</td>
<td>8</td>
</tr>
<tr>
<td>Sri Lanka</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>Thailand</td>
<td>1</td>
<td>4</td>
</tr>
</tbody>
</table>

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).

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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 (in Zaitun, 2001).

<table>
<thead>
<tr>
<th>Type of sexual harassment/assault experienced</th>
<th>Sample group response rate (per cent)</th>
<th>Extrapolation over the 220,000 foreign domestic workers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Raped</td>
<td>0.2</td>
<td>440</td>
</tr>
<tr>
<td>Coerced to have sex or perform sexual acts</td>
<td>0.3</td>
<td>660</td>
</tr>
<tr>
<td>Employers asking them to do sexy things e.g dance, wear sexy dress</td>
<td>0.7</td>
<td>1,540</td>
</tr>
<tr>
<td>Employers watching them in a malicious manner or peeping at them in a toilet room</td>
<td>0.9</td>
<td>1,980</td>
</tr>
<tr>
<td>Employers showing them or asking them to touch their bodies; walking naked or in underwear</td>
<td>1.1</td>
<td>2420</td>
</tr>
<tr>
<td>Physical harassment (employers touching their body parts, making other sexual advances, kissing them)</td>
<td>1.3</td>
<td>2,860</td>
</tr>
<tr>
<td>Employers talking to them in explicit sexual language, showing them pornographic materials (books, videos, photos)</td>
<td>1.5</td>
<td>3,300</td>
</tr>
</tbody>
</table>

**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 practice is the ILO's Indigenous and Tribal Peoples Convention, 1989 (No. 169). Article 20 specifically prohibits sexual harassment of indigenous and tribal women and men. However, this lack of explicit attention 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 instruments is attached as an annex 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 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

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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.’
a seminar on Women and Employment in Malaysia, 1983, which encouraged surveys and other action on sexual harassment based on the rational 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, expanded the scope of the definition of sexual harassment to address hostile environment sexual harassment as well as quid pro quo.

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 a duty of care 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 ‘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.

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.

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**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.
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 with male bosses 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).

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 conduct 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 have reasonably 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, need to be repetitive to be considered unwelcome, and thus harassment, or whether a single incident is 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.

### Philippines Anti- Sexual Harassment Act

§3 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 favour 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:

1. The sexual favor 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 favorable compensation, terms, conditions, promotions or privileges; or 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. 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.

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.

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.

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 straightforward testimony of the complainant. The defence was considered ‘self-serving.’ (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

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 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.
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 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 worldwide 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 brought under labour law must be against the employer only. 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 knew or reasonably should have known about.

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 Malaysia, Section 14 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'. This is also common in other parts of the world. 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. In addition, in Malaysia, the Act only applies to those earning less than RM1500 (US$395), which excludes many women from the provision.

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, in seeking to 'protect' women from dangerous or hazardous conditions, include 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 Punishment of Sexual Violence and Protection of the Victim Act (PSVPVA) 1993, and the Gender Discrimination Prevention & Relief Act (GDPRA) 1999 in the Republic of Korea. The GDPRA does not in itself provide for the punishment for harassers and is read with the PSVPVA. 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, subordinates 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.

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### The Nari o Shishu Nirjaton Daman Act, 2000 (Suppression of Violence Against Women and Children Act), 2000, Bangladesh

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’.

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.

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.

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 (in Zaltun, 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 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).

Nirmala, 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).

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
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:

- 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 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.

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 (Rubinstein, 1992). 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. 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).

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 The extent and range of workplace measures

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.
Development of policies and codes of conduct

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. 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. 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. The Japanese Federation of Employers Associations (Nikkeirei) produced a manual prior to the coming into force of revisions to its national legislation, advising companies and its municipal offices on how to comply with the new provisions on sexual harassment.

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 (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).

These codes generally do not address sexual harassment explicitly. The China study reviewed the constitutions of more than 10 multi-national 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).

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.

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). 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 Draft 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 in August 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.

**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).

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.

It is 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 level of detail 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).

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.

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**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).

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**

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 straightforward 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 to 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)

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 and training

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.

Workplace measures, therefore need to be accompanied by large scale awareness-raising in society and action 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.

Dissemination of awareness-raising material

As stated earlier, women and men workers require information about fundamental workers’ rights, including the right to a workplace free of sexual harassment. 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. 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 advertizes its sexual harassment and quality policies.

It is useful to devise clear, simple and accessible material in various relevant community languages, in addition to the full policy, for ease of understanding of all workers and other relevant 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 the detailed policy. In these circumstances, training may also be an effective way of conveying information about the policy and the procedures through which it is effected.

**Training**

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. Training for managers and officers in charge of handling complaints is vital, but it is generally recommended to train all workers.

**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 specialised 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).

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 expertise

The content and form of training varies depending on the stage at which it is introduced and the groups to whom it is addressed. Generally all workers need to be trained, but managers, contact officers and others responsible for prevention and/or handling sexual harassment complaints need more specialized training. Below are some key issues to consider for providing effective training against sexual harassment in workplaces.

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 behaviour that is appropriate and behaviour that is inappropriate
- 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.

Training should be conducted by trainers experienced in dealing with ‘sensitive’ psycho-social issues, such as gender relations. Given that sexual harassment is often wide spread, some of the participants may in fact have already had traumatic experiences. Both women and men may have internalized societal norms and values that sexual harassment is a ‘fact of life’ of workers who have low status because of their sex and age. In addition, 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 allow for the expression of the diversity of views on the subject and aim at reaching a consensus on what is ‘acceptable’ and ‘not acceptable’ behaviour. A role play or other exercise which involves ‘role reversals’, i.e. having participants with high status experience sexually harassing behaviour as victims and vice versa can be very effective, because as stated earlier the determination of whether particular conduct is wanted or not in a specific context, rarely poses a problem.

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.

5.6 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

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). While Fuji Xerox in Japan has
employed outside counsellors, recognising 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 within 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.
ANNEX

International 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. Relevant international instruments, declarations and resolutions

a) 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
?? Although not expressly mentioned, sexual harassment is also considered to be covered under the Discrimination (Employment and Occupation) Convention, 1958 (No.111)
Source: ILOLEX

b) 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

c) 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)
?? 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

?? Copenhagen Declaration on Social Development and Programme of Action adopted by the World Summit on Social Development, 1995

d) Regional instruments

**Americas**
- American Declaration of the Rights and Duties of Man, 1948
- American Convention on Human Rights, 1969
  
  **Location:**  www.cidh.oas.org/basic.htm

**Caribbean**
- CARICOM Model Legislation on Sexual Harassment adopted by the Ministers of Women’s Affairs’ Meeting, 1989

**Africa**

**Europe**
- European Social Charter, 1961
- Additional Protocol to the European Social Charter, 1961
  
  **Location:**  www.coe.fr/eng/legaltxt/e-dh.htm#conv.dh

- European Council Declaration of 19 December 1991 on the implementation of the Commission Recommendation of the protection of 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)
  
  **Location:**  http://europe.eu.int
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