

AMENDMENTS PIECEMEAL, 18 NOV 2011

THE Joint Action Group for Gender Equality (JAG) is deeply concerned over amendments to the Employment Act (EA) recently tabled in parliament, not just in terms of how it affects workers' rights but also the sections pertaining to sexual harassment (SH). JAG has always highlighted the need for proper legislation on SH and is appalled to see this piecemeal effort despite the submission of a memorandum on the proposed SH Bill in 2001.

We have in the past, engaged the relevant ministries in discussion about the proposed SH legislation via submission of a signature petition, follow-up letters, participation in dialogues, working groups and countless press statements, all of which seem to have mostly gone unheeded. We had specifically highlighted why SH requires a specific act and is unsuitable for incorporation in the EA. Despite these longstanding efforts, we are disappointed at the blatant disregard of the rights of victims of SH in the superficial approach to legislating on it in the EA.

We highlight some major shortcomings of the SH provisions in the EA relating specifically to the mechanism of redress:

- The amendments state that the employer (or any class of employers) must hold an inquiry upon receiving a complaint of SH. They do not take into account the tripartite relationship between the complainant, the harasser and the management. The impartiality of the inquiry is questionable especially if the employer is the harasser.

- The amendments allow the employer to decide whether or not to hold an inquiry. Should the employer decide against an inquiry, the complainant can refer the matter to the director-general (DG) who may agree with the employer or instruct the employer to hold an inquiry. However, the objectivity of any inquiry would be at risk, given that the employer was not willing to hold one in the first place.

- The amendments do not detail the mechanism by which an impartial inquiry can be held. Instead, it details when an employer can refuse to conduct an inquiry. What are the chances of fair redress should the employer be biased towards the perpetrator, not be sensitised to or well-versed with the issue of SH? The same argument can also apply to the DG who receives a complaint. The need for an impartial tribunal to ensure reasonable standards of inquiry cannot be overstated.

- The amendments are silent about the right to appeal to an independent third party in respect the outcome of an inquiry held by either the employer or DG.

In the event an inquiry proves SH has taken place, disciplinary action will be taken against the perpetrator. However, the only supposed remedy available to the victim is that he/she can resign without notice and get termination benefits!

It has been 12 years since the government launched the Code of Practice for the Prevention and Eradication of Sexual Harassment at the Workplace. The amendments pertaining to SH in the EA show a lack of understanding of the issue of SH and the complexities involved in investigating and resolving complaints. Worse, they make a mockery of the mechanisms of redress.

We therefore urge the relevant ministry to reconsider JAG's comprehensive draft bill and set aside the amendments to the EA. It is the right of every person to work in an environment free of sexual and other forms of harassment and be guaranteed proper redress mechanisms. This government is duty bound to ensure that workers' rights are protected.

The Joint Action Group for Gender Equality (JAG) comprises:

Women's Centre for Change, (WCC) Penang

All Women's Action Society (AWAM)

Persatuan Kesedaran Komuniti Selangor (EMPOWER)

Women's Aid Organisation (WAO)

Perak Women for Women Society (PWW)

Sabah Women's Action Resource Group (SAWO)

Sisters in Islam (SIS)