

NOT ALL ARE COVERED BY ACT, 15 SEP 2008

Once again the issue of sexual harassment has come to the fore with the announcement by the Human Resource Minister, Datuk Dr S. Subramaniam that the Employment Act 1955 will be amended early next year to make sexual harassment in the workplace a punishable offence. Similar announcements have been made since 2005.

The Joint Action Group for Gender Equality (JAG) reiterates our concern over piecemeal amendments to the Employment Act (EA) which will not give adequate protection to victims of sexual harassment. This includes the many categories of workers who are excluded from the EA as it generally applies to employees earning below RM1,500 and the EA covers only the strict employer-employee relationship whereas today, the workplace may often cover contract workers, consultants and trainees. Sexual harassment can happen to all categories and different levels of workers. Will the proposed amendments to the Employment Act incorporate the wide range of work activities and different scenarios to protect sexually harassed victims? That is why JAG has long campaigned for a specific law on sexual harassment in Malaysia and in 2001 submitted a proposed Sexual Harassment Bill to the government.

The Malaysian Employers Federation executive director has voiced objections to announcement of the Minister saying that the existing guideline i.e., the Code for Practice on the Prevention and Eradication of Sexual Harassment in the Workplace and the Penal Code laws are more than adequate to deal with sexual harassment in the workplace. The reality is that only a small minority of companies have adopted this Code as it is not mandatory.

In 2001, the Human Resource Ministry admitted that only 1.125% of the 400,000 employers under Socso had adopted the Code. Even if the Code were made compulsory, there is no external mechanism in place to handle sexual harassment cases should the victim feel that the in-house mechanism was not satisfactory. A 2001 survey on companies which had adopted the Code revealed that less than half the respondents were aware of their companies' sexual harassment policy while more than a third of the respondents reported that they had experienced some form of sexual harassment. Statistics from the Labour Department do not adequately reflect the reality on the ground.

As for the Penal Code, WCC's recent analysis of sexual crimes cases tried in the subordinate courts of Penang between 2000 and 2004 showed that the conviction rate for outrage of modesty cases which go to full trial is abysmally low (less than 3%). An example of the reality faced by women when they are brave enough to come forward and file sexual harassment complaints is the Copthorne Orchid Hotel case. The female complainants were only awarded damages for wrongful dismissal by the Industrial Court after a seven year battle. The General

Manager in question left the country in the midst of criminal proceedings for outrage of modesty, leaving the case effectively unresolved.

Currently there no effective and efficient redress for sexually harassed victims. Many do not know where to turn to while others continue to suffer in silence, their trauma affecting their work productivity and family lives. Women make up almost half the work force and have long contributed to the development of Malaysia. While sexual harassment has been internationally recognised as a serious violation of the rights of a worker, the government is still talking about piecemeal legislation.

JAG urges the government to heed the call for a separate, comprehensive sexual harassment laws. Such a law should have, amongst others, a broadening of the definition of employees, creation of in-house mechanism and also the setting of external mechanism to deal with such sexual harassment complaints. Malaysian women and men deserve a workplace free from violation and discrimination.