

**A Memorandum On
STOP SEXUAL HARASSMENT
by the Joint Action Group (JAG) Against Violence against Women
30 June 2000, Kuala Lumpur**



INTRODUCTION

In 1999 the then Minister of Human Resources launched the Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace. The message of the Code is clear - sexual harassment violates a person's dignity and safety. It must be prevented and eradicated.

The Code is comprehensive in its definition of sexual harassment. It also recognises the need for employers to establish an in-house mechanism to prevent and handle sexual harassment, although it stops short of outlining procedural guidelines. As the first official definitive document by the Government to address the problem of sexual harassment, the Code has been successful in creating awareness on the issue of sexual harassment in the workplace.

Whilst the Code has given courage to women to seek redress, their complaints have not necessarily been properly and adequately handled by employers. Again and again we see reports of women having to resort to external agencies like the police, the labour department and service bureaus in the hope of stopping the harassment or being forced to resign when the situation became intolerable. In an extreme case, women who complained of sexual harassment have been dismissed for having complained of such harassment and not exhausting internal company procedures.

The Joint Action Group Against Violence Against Women (JAG), a coalition of women's groups consisting of the Women's Crisis Centre, Women's Development Collective, Women's Aid Organisation, Women's Candidacy Initiative, All Women's Action Society, Sisters In Islam and Persatuan Sahabat Wanita Selangor views that it is timely to consider the inevitable next step in our goal to create a harassment-free workplace, that is, legislation of anti-sexual harassment laws.

THE CODE OF PRACTICE

While the Code has been influential in drawing up guidelines for employers, we feel that there are areas that still needs serious attention. The Code places the onus on the employers to act equally and fairly in the face of sexual harassment complaints. Unfortunately, as mentioned above, many a time, this does not happen.

We wish to highlight our concerns on sexual harassment cases reported and/or handled by women' groups:

Detailed grievance procedure on sexual harassment is not specified in the Code;

Employers tend not to believe the complainants due to prejudice and the perception that sexual harassment complaints are easy to make and difficult to disprove;

Sometimes instead of investigating the complaints, the women who complained become the object of investigations;

Although sexual harassment unlike some other violent acts against women leaves no physical injury, its effects on victims can be no less traumatic and impacts on their work performance;

Inordinate delays by management in dealing with the complaints have compelled women to resign or seek alternative means for redress;

Employers view women publicising their complaints as damaging the company/agency's reputation;

Employers resort to retaliatory tactics by taking disciplinary action against the women complainants.

The Code has not been implemented by majority of the employers. Since its adoption is voluntary, the response of the employers have not been encouraging. Employers some times are not willing to acknowledge that sexual harassment is a problem or view it as unimportant or a "small matter". Victims are therefore unable to obtain redress.

THE NEED FOR LEGISLATION

Legislation would take the Code to another level where a person's basic right can be safeguarded and better guaranteed. In addition, legislation would underline that:

*Eradication of Sexual Harassment is a Matter of Public Interest
Sexual Harassment is a form of violence.*

Violence, no matter where it occurs, whether it is in the home (as with domestic violence) or in the workplace is a matter of public interest and must be eradicated.

Effective legislation against sexual harassment will send an uncompromising message that sexual harassment is unacceptable and at the same time increase productivity through the creation of a sexual harassment-free environment.

*Standard of acceptable behaviour and conduct
Women do not asked to be sexually harassed as women do not asked to be raped.*

Unfortunately there are still many in society who accept the myth that women invite sexual harassment by their manner of dressing or behaviour. Such perceptions may influence not only the harasser but also persons in management who are charged with handling the complaint. It is important to dispel such myths.

Secondly due to the hierarchical nature of the employment relationship, sometimes superiors abuse their power by sexually harassing subordinates. It therefore becomes incumbent upon legislators to ensure that everyone views this abuse of power as unacceptable just as it is unacceptable in any worker-worker relationship.

Legislation would set a standard and establish the boundaries for what is acceptable behaviour and what is unacceptable conduct.

A certainty in procedure for women and men to access their rights

Sexual harassment, unlike other conduct in the workplace which normally constitutes misconduct, involves more than one party, namely the harasser and the harassed. Experience has shown that sexual harassment can be caused by a superior repeatedly abusing his position by sexually harassing his subordinate, by a group of workers in order to create a hostile environment to compel an unwanted female employee to leave or by an employee seeking sexual gratification for discharging his duties.

Normal grievance procedure does not take into account the complexities of sexual harassment especially when it involves complaints by or against people in the Management and hence is unable to adequately address the problems.

A preferable approach would be to develop specific guidelines for domestic inquiries that are sensitive to the problem of sexual harassment. For example, there should be an equal representation of both men and women sitting on panels that determine sexual complaints. The principles of a fair hearing and natural justice already established in case laws, should be codified into legislation.

Removal of Tensions

Many employers in Malaysia have little experience in dealing with sexual harassment complaints and require specific mechanism and processes to be set up to provide certainty and uniformity. For these employers, arbitrary discretion in setting up their own procedures would introduce unnecessary tensions and may lead to dissatisfaction by the parties involved.

Legislation would ensure that employers have an authoritative method for investigating complaints, and would minimise the time and effort spent adapting the pre-existing grievance mechanism to the specific case of sexual harassment.

Transparency

The essence of legislation is its ability to compel employers to abide by a standard process in handling sexual harassment complaints. It allows complaints to be handled in-house by management but at the same time, ensures that the procedures are transparent, fair and just and that all parties are held accountable for their behaviour.

LEADING THE REGION TOWARDS SOCIAL REFORM

The Ministry has taken the first step by initiating the Code of Practice. Lawmakers must now state clearly their stand in no uncertain terms and acknowledge the need to stop a menace that continues to plague society in general and the workplace in particular.

Laws prohibiting sexual harassment in the workplace have been introduced in many industrialised countries. In Asia alone, Hong Kong and the Philippines have developed specific legislation to combat sexual harassment. If we in Malaysia were to develop a national anti-harassment policy which is supported by a strong legislative framework we would be at the very forefront of contemporary and progressive workplace practices.

A number of international organisations including the United Nations, International Monetary Fund and the World Bank have also drawn up recommendations regarding gender specific violence which include sexual harassment in the workplace.

In this regard, we reiterate the international standard of women's rights in the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) endorsed by the 1995 Beijing Women's Conference in its Platform of Action. CEDAW and the Beijing Platform of Action recognise that women's right to gender equality includes protection from sexual harassment. Malaysia is party to both the documents in 1995 and is therefore bound to uphold that right through an effective national measure. We call upon the government to take this effective measure in legislating against sexual harassment.

So far Malaysia has been regarded as a frontrunner in the campaign on violence against women. The passing of the Domestic Violence Act in 1994 sent a strong statement to others in the region that Malaysia is committed to the goal of equality for all citizens in all walks of life.

It is timely for us in Malaysia to keep up with the rest of the region and the international community in eradicating sexual harassment by passing effective laws.