

MEMORANDUM ON A PROPOSED SEXUAL HARASSMENT BILL
BY THE JOINT ACTION GROUP AGAINST VIOLENCE AGAINST
WOMEN (JAG)
PRESENTED TO THE MINISTRY OF HUMAN
RESOURCES, MALAYSIA
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[Introduction](#)

[Why a Separate Sexual Harassment Bill?](#)

[In-house Mechanisms](#)

[Redefining Work Relationships](#)

[Designated Official](#)

[Establishment of a Tribunal](#)

[Concluding Remarks](#)

INTRODUCTION

Sexual harassment is a problem that plagues the workplace. It has been publicly recognised as a serious offence that violates a person's dignity, creating an intimidating and hostile environment, not only to the affected parties, but potentially to others who may witness or be aware of the harassment.

Indeed the launching of the then Honourable Minister for Human Resources, YB Dato' Lim Ah Lek of the *Code of Practice for the Prevention and Eradication of Sexual Harassment at the Workplace* was the result of the joint efforts amongst the stakeholders, that is the government, the employers, the unions and women's groups.

Trade unions and women's groups have called for laws specifically to combat sexual harassment at the workplace since 1980s. In response to that call, the then Deputy Minister's Department (Women's Affairs), YB Dato' Siti Zaharah said that her Department would monitor the situation and gauge if there is a need for stricter laws. She also asked for the submission of proposals and recommendations for the government's consideration.

It has been two years since the launching of the *Code of Practice for the Prevention and Eradication of Sexual Harassment at the Workplace*. The hope that employers would voluntarily adopt and implement the code and take pro-active measures to create a sexual harassment-free workplace has dissipated. According to statistics issued by the Ministry of Human Resources this month (March 2001), despite the encouragement and workshops conducted on the Code, only 4,500 employers, mostly multi-national companies have voluntarily adopted the Code. This comprises approximately 1.125% of the 400,000 employers registered with Perkeso. Translated, the rate of adoption of the Code is 0.56% per annum.

It is time to re-assess the basis and rationale for providing for voluntary adoption of measures to prevent sexual harassment. A smarter partnership is needed. It is time to legislate now.

The Joint Action Group Against Violence Against Women (JAG) comprising of the Women's Crisis Centre, Women's Development Collective, All Women's Action Society, Women's Aid Organisation, Sisters In Islam, Malaysian Trade Union Congress (Women's Section), Persatuan Sahabat Wanita Selangor and Women's Candidacy Initiative believes that only with the implementation of a comprehensive sexual harassment law, can sexual harassment be prevented and eradicated.

WHY A SEPARATE SEXUAL HARASSMENT BILL?

Legislation on sexual harassment must address two fundamental points:

- Firstly, it must require employers to pro-actively prevent sexual harassment; and
- Secondly, it must provide victims of sexual harassment with meaningful access to redress.

In-house Mechanisms

1. With legislation, employers are compelled to implement in-house mechanisms to create a sexual harassment-free workplace. A proper policy would serve to raise awareness on this issue and its consequences. Prevention promises to be a more effective and economical strategy for sexual harassment than post-harassment legal redress. Once an incident of sexual harassment occurs, the damage is done, not only to the victim, but also to co-workers, supervisors, managers and the employer. When this happens, the integrity of the workplace is compromised and the morale and productivity of the workers are also harmed.
 - To this end, the Bill provides for the formulation of sexual harassment policies by employers.
2. Grievance mechanisms must be designed to encourage victims to come forward, protect the victim, bring out the facts and where appropriate, discipline the harasser. Normal grievance procedures do not take into account the complexity of sexual harassment and in particular the tri-partite relationship between the complainant, the harasser and the management. Hence, it 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.
 - To this end, the Bill provides for the establishment of a sexual harassment committee which comprises management and employees with equal gender representation, whose functions includes accepting, investigating and resolving sexual harassment complaints, where possible.

Redefining Work Relationships

The current laws pertaining to employment do not take into account that sexual harassment at the workplace may involve complaints by or against people not strictly in legal employment situations but are nevertheless in working relationships. This sector which includes contract and subcontract work and voluntary workers are increasingly becoming workplaces particularly for women. A comprehensive definition to cover as wide a range of workplaces will ensure that every working individual is protected from sexual harassment.

- To this end, the Bill broadens the concept of work and the notion of the workplace.

Designated Official

As a serious offence, sexual harassment must be constantly checked by officials with sufficient authority and power. These officials must be entrusted with not only duties in receiving complaints, but must also be able to propose proper guidelines and mechanisms in order that the law may be effectively implemented.

- To this end, the Bill provides for the appointment of a Director to promote, *inter alia*, the recognition and approval of the acceptable attitudes, acts and practices, to prepare guidelines for the avoidance thereof, to receive sexual harassment complaints and conciliate them, where possible.

Establishment of a Tribunal

The present laws are inadequate. While the Penal Code contains sections that cover certain aspects of sexual harassment, these are insufficient. The burden of proof is on the complainant and it is difficult to prove intent by the harasser. In addition, the complainants often merely want the harassment to stop rather than have the harasser criminalised. The alternative redress process is for the complainant to commence a civil suit against the harasser in the court of law. This process is expensive and may prove inaccessible to most complainants.

- To this end, the Bill provides for the establishment of a Tribunal comprising persons with legal and relevant expertise and experience which shall conduct the inquiry expeditiously and with as little formality as possible.

CONCLUDING REMARKS

Sexual harassment is a form of discrimination against women. As a signatory to the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Malaysian government is obliged to take all appropriate measures, including legislation, to eliminate as far as possible, discrimination involving sexual harassment.

To enable all citizens to participate fully in the workplace, the government has to take affirmative action to eradicate sexual harassment in the workplace. Every working woman and man is entitled to work in a safe and healthy environment free from sexual harassment.

Legislate now!

JAG therefore herewith submits our proposed Sexual Harassment Bill for your urgent attention and action. Thank you.

Women's Crisis Centre
Women's Development Collective
All Women's Action Society
Women's Aid Organisation
Women's Candidacy Initiative

Sisters In Islam
Malaysian Trade Union Congress
(Women's Section)
Persatuan Sahabat Wanita Selangor