

# Sexual harassment: Prevention versus power relations

*Uncalled-for remarks or sexist jokes, vulgar or embarrassing comments, unwanted invitations, pornographic images, groping, advances accompanied by promises or threats of reprisal, sexual aggression ... Sexual harassment within a working relationship can manifest itself in many different ways, often repetitively. The way in which the behaviour is received is the essential criterion for what does or does not constitute sexual harassment – in other words, whether the person at whom it is aimed responds favourably or, on the contrary, does not want it.*

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All this behaviour has nothing to do with chatting up or with consensual amorous relationships. Rather, we are dealing here with conduct which, through sexually suggestive words, deeds or gestures, goes against people's wishes and could harm their dignity, or physical or psychological integrity, or might prejudice their employment.

The whole difference between this and acceptable conduct resides not in the intentions of the person responsible for the sexually suggestive behaviour but in the reaction of the person to whom it is addressed.

The concept of sexual harassment, which appeared in the United States during the 1970s, has gradually become recognized worldwide as a serious matter, closely linked to the notion of power relations. It is a human rights issue, a labour relations issue and a human resource management issue going way beyond the simplistic notion that it is "just a women's problem". But precisely because they have less power, because they are often in more vulnerable situations, or even because they have been conditioned to suffer the abuse of power in silence, the great majority of sexual harassment victims are women.

Men can also be affected, however, particularly homosexuals targeted as such. The majority of the perpetrators, meanwhile, are men.

## Gender discrimination

From both the conceptual and the legal point of view, sexual harassment is a form of gender discrimination, in the sense that it is closely linked to the roles assigned to women and men in social and economic life, and to the inevitable effects of these roles on women's position in the labour market.

If women are harassed, it is because "they were asking for it" or "they enjoy it." Such comments are a classic way of deflecting responsibility on to the victim, who is then doubly penalized. Not recognized as a victim, she is also accused of provoking the behaviour in question – in short, of being responsible for it.

Yet, for the victim, the consequences of sexual harassment are potentially very serious, both physically and mentally (loss of self-confidence, anxiety, psychosomatic pains, eating disorders, depression etc.). The social and family consequences (isolation, broken relationships) are sometimes

just as dramatic. In certain situations, sexual harassment can turn into psychological harassment (mobbing). After a rejection, the angry harasser may be tempted to take revenge by making the “victim’s” life impossible – to the point of breakdown.

Within enterprises, sexual harassment also has negative effects on the quality of work, productivity, motivation, absenteeism and staff turnover. And in a growing number of countries, the financial consequences of court cases brought by employees on the grounds of sexual harassment can be very heavy.

For society as a whole, sexual harassment is an obstacle to any real equality. It also paves the way for sexual violence and, through its negative impact on firms’ productivity, it hampers economic development.

Whether industrialized or developing, no part of the world is spared. Big or small firms, public or private services, commerce and markets, farms and plantations ... no sector and no type of enterprise are immune.

But because power relations lie at the heart of the sexual harassment phenomenon, the groups most at risk are in the least protected sectors where job insecurity is highest – as in the case of temporary, casual or part-time workers. Migrant workers, particularly if illegal or undocumented, are particularly vulnerable. Women working in domestic service or entertainment tend to be isolated and strongly subordinated, and are often without any social protection. So they are also easy targets. Migrant women are doubly at risk. The international media are full of sensational stories about young domestics who are sexually harassed and then sometimes horribly mutilated when they dare to complain in public. For example, a 13-year-old domestic in Kathmandu had boiling oil poured over her hand for attempting to report the sexual assaults of which she was the victim.

Export processing zones, where the workforce is mainly female, particularly in unskilled and repetitive tasks, are also zones of endemic sexual harassment. For these women, often young, single and

childless, sexual harassment fits logically into the whole pattern of discrimination to which they are subject in these frequently “non-union” zones. The international campaigns against the sweatshops in Central America and South-East Asia have included widespread denunciations of this problem of sexual harassment and, from Disney to Nike, many multinationals have found themselves under the spotlight in recent years on account of the sexual harassment experienced by women workers employed by their subcontractors, from Vietnam to Haiti and from Indonesia to Mexico. In the agricultural sector, the same power dynamic gives rise to systematic sexual harassment of women toiling in the banana plantations and the cotton fields, or among the sugar cane. Such treatment has, for instance, been denounced by the international campaign for workers’ rights in the banana plantations of Ecuador.

Another group at risk is women employed in predominantly male working environments, or in situations where large numbers of women are under the authority of a small number of men. An example is the fire brigades in the United Kingdom, where in 1999 an official report denounced a macho, sexist culture under which all the brigades concerned had seen acts of sexual harassment ranging from men urinating on the floor of the women’s toilets to the circulation of pornographic videos, but also serious cases of sexual assault with “catastrophic effects” for the women concerned.

In the education sector, young women and men studying or working as teaching assistants are also particular targets.

## Legal arsenal

At the international level, sexual harassment is not the subject of any specific binding Convention, but the ILO and the United Nations do regard it as a form of sexual discrimination. Thus, sexual harassment is covered by the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111). Considering sexual

harassment to be a problem of health and safety, discrimination and unacceptable working conditions, and a form of violence directed mainly against women, the ILO regards it as a violation of workers' basic rights and therefore as a major issue for the ILO's Decent Work Agenda.

Within the framework of the UN Convention on the elimination of all forms of discrimination against women, the United Nations adopted Recommendation No. 19 on violence against women. This clearly defines sexual harassment and calls upon States to take measures to protect women against this phenomenon. The Organization of American States has adopted a Convention on violence against women which contains similar measures. In 1991, the European Commission adopted a recommendation, accompanied by a code of practice, on the protection of the dignity of women and men at work. This was aimed at combating sexual harassment. Finally, the Indigenous and Tribal Peoples Convention, 1989 (No. 169), is the only international standard which specifically prohibits this practice.

At the national level, about forty countries have legislated on this issue, often within laws that do not specifically cover sexual harassment, but which deal with other human rights issues, employment contracts, unjust dismissal or criminal behaviour.

"The most effective action addresses all forms of sexual harassment. Restricting a prohibition on sexual harassment only to sexual blackmail by employers or their agents is not enough", the ILO notes.<sup>1</sup> Firstly, because such an approach does not include sexual harassment between colleagues, which is just as unacceptable and physically, emotionally and psychologically damaging for the victims. Secondly, because this restrictive approach does not consider sexual harassment to be reprehensible in itself, but instead tackles the problem purely from the perspective of a possible loss of promotion, loss of pay rise or dismissal attributable to the victim's reaction to harassment. This amounts to allowing a worker to be sexually harassed

with impunity, provided that she/he is not subjected to a tangible act of revenge for her/his resistance.

In the civil, criminal and labour courts, provided that cases are correctly put, the range of damages that may be obtained is wide. Stimulated by the media frenzy around the case brought in 1991 by Anita Hill against Judge Clarence Thomas, sexual harassment cases before the United States courts rose from 6,127 in 1990 to 15,836 in 2000, an increase of 159 per cent. And the astronomical sums awarded in highly publicized United States trials such as those concerning Mitsubishi, Ford and Astra-USA have hit the headlines.

"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 stops, that it should not recur and that they should be protected against retaliation for having brought a complaint."<sup>1</sup>

### Prevention through information

Parallel to the legislative measures, many codes of conduct, guides, policy statements, public information programmes and training courses for those concerned have been developed on this issue. Firms are strongly encouraged to adopt rules against any act of sexual harassment, with provisions for a follow-up procedure in case of problems. Such rules are in themselves an effective prevention mechanism, as well as being a useful tool for the resolution of conflicts.

Some employers' organizations have issued guidance to their members concerning current legislation, recommending that employers draw up a policy on this issue, provide management training, set up complaints procedures and circulate information to the workforce as a whole. An example was set by the Japanese federation of employers' associations Nikkeiren, which published a manual to assist employers in applying the new legislation on sexual harassment. By 1999, more than 70 per cent of major enterprises in Japan

had already taken measures against sexual harassment, a phenomenon which more than two-thirds of Japanese women say they have experienced at least once in the course of their working lives.

Taking their cue from the ICFTU's trade union guide on this issue, unions in many countries have issued booklets explaining what sexual harassment is and what can be done about it. Some unions have launched public awareness campaigns, calling on their members to report acts of harassment to their works committees or shop stewards.

But although the unions have been in the forefront of the struggle against sexual harassment at work, have brought the issue within the scope of collective bargaining, have achieved the introduction of complaints procedures and have pressed their governments to bring in new legislation, nonetheless, as the ICFTU notes, sexual harassment has not yet been banished from the trade union movement itself. For that reason, the ICFTU has published a programme to tackle sexual harassment within the unions, with a complaints and enquiry procedure and training programmes for regional and national trade union organizations.

From a union-management agreement in one of Japan's biggest supermarket chains to negotiations in India between unions and small firms, the scale of voluntary initiatives by social partners on the sexual harassment issue varies greatly within and between countries. But when such initiatives are taken, the problem is treated as "an issue for industrial relations cooperation rather than conflict", the ILO notes.<sup>1</sup> Similarly, there is a large degree of consensus on the policies and procedures to be adopted at the enterprise level.

## Daring to say no

Keeping quiet and burying one's head in the sand is no solution. Instead, the person who pays unwelcome attentions must be made to understand that he or she must stop. The person on the receiving end should confide in trustworthy colleagues, note the various incidents, find out if the firm has any rules on this issue, inform management and ask them to intervene in order to end the harassment, and perhaps get the labour inspectors involved ... The message is clear: the victims of sexual harassment must know that they have a right to speak out and be defended.

In the ILO's view, while legislation is essential, it cannot in itself ensure a working environment free of sexual harassment. Prevention is the best approach to the problem and it entails taking affirmative measures at the national, workplace and trade union levels. Defining a policy, setting up a confidential complaints procedure and ensuring protection against any reprisals, putting progressive disciplinary rules in place and developing a strategy on training and information – according to the ILO, these are the four key weapons in the fight against sexual harassment at work. At the heart of that struggle is a great challenge for the social partners – to create a workplace atmosphere which discourages sexual intimidation while promoting a friendly and productive working environment and working relations in which the dignity of every working woman and man is respected by all.

### Note

<sup>1</sup> *Gender! A Partnership of Equals*, Bureau for Gender Equality, ILO.