

Expert Workshop on Action against Sexual Harassment at Work:  
Ethical, Legal and Social Issues

Key note presentation  
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To the organisers, and in particular Mr. Qiu Rezong, I would like to extend my congratulations for selecting this topic and for inviting me to address you this morning. Personally, I have been involved in taking action against sexual harassment for over 25 years – first as a lawyer in the United States, and later as an official in the International Labour Organisation. I firmly believe that women do not have, in any real sense, equal opportunities, treatment or status in the workplace wherever sexual harassment goes unchecked. I also believe that no worker, man or women, should have to worry about or tolerate sexual harassment. In the world today there are so many pressures on workers to produce more better – this should not and need not add to those pressures.

Once given a name in the 1970's in the United States as a concept and legal wrong actionable under discrimination law, the issue of sexual harassment has gradually emerged to be a recognized phenomena throughout the world in various cultural and occupational contexts. ILO Member States, all over the world, now perceive sexual harassment as a problem of real magnitude.

Already in 1985, the International Labour Conference recognized that sexual harassment at the workplace is detrimental to employees' working conditions and to their employment and promotion prospects, and called for policies for the advancement of equality to include measures to combat and prevent sexual harassment. Since then in policy documents and studies the ILO has pointed to sexual harassment as a violation of fundamental human rights of workers, declaring that: it constitutes a problem of safety and health, a problem of discrimination, an unacceptable working condition and a form of violence (against women).

Through extensive international research and discussion we now know that sexual harassment exists in all countries, in all occupations and sectors of economy activity. The studies we have already undertaken in China confirm this is equally true for China, and I imagine many of you today in this room have experienced know firsthand of this very unfortunate manifestation of social and work interaction. I should tell you that we are continuing to support further factual inquire into the types and ways in which sexual harassment occurs in China.

## **So to what do we refer when we speak of sexual harassment?**

Generally speaking, definitions used in laws, codes, policies, court decisions and collective agreements throughout the world may differ in some details, but most definitions of sexual harassment contain the following key elements:

- i) conduct of a sexual nature and other conduct based on sex affecting the dignity of women and men, which is unwelcome, unreasonable, and offensive to the recipient;
- ii) a person's rejection of, or submission to, such conduct is used explicitly or implicitly as a basis for a decision which affects that person's job (access to vocational training, access to employment, continued employment, promotion, salary or any other employment decisions); or
- iii) conduct that creates an intimidating, unhealthy, hostile or humiliating working environment for the recipient.

The reliance on criteria such as whether the behaviour is “welcome” or “offensive” to particular individuals, which figure prominently in the definitions, means that it is not possible, nor is it desirable, to compile an exhaustive list of harassing conduct. It is precisely the adaptability of this definition that underlies its universality and general applicability across sectors and cultures. In other words, whether a particular conduct is “unacceptable” or “offensive” is not a question of definition but one of application of the definition in a particular case.

What is clear is that the conduct has to be unwelcome or unwanted by the recipient. This is what distinguishes it from friendly behaviour, which is welcome and mutual. The intent of the harasser is not determinative. It is the recipient who determines whether the conduct, of a sexual nature, is welcome or not.

## **What are some of the consequences of sexual harassment?**

ILO, and other, studies have shown that there are negative consequences for employees, employers and the society as a whole. Sexual harassment leads to frustration, loss of self-esteem, absenteeism and a decrease in productivity. It can create health problems and social tensions. Through studies and surveys we have identified a number of health related consequences for victims, ranging from gastrointestinal problems to depression. Clearly sexual harassment is a source of tension and stress, which workers should not have to deal with. This even more so in times when many workers are under increasing pressure at the workplace to improve productivity, meet deadlines or adapt to new working methods.

## What measures are being taken to combat sexual harassment?

At the national level, over half the countries in the world have adopted some form of legislation that covers sexual harassment. In a growing number, sexual harassment is prohibited in labour codes or labour law and this is the preferred approach. In many countries, sexual harassment has been included in a law covering another subject, such as human rights, unfair dismissal, contract law, tort law, or criminal behaviour. In some countries, the term has been recognized and defined by judicial decision. But in an ever-growing number of industrialised and developing countries, specific legislation or provisions are being adopted to directly address the issue and to punish and prevent it. I suppose the newest legislative development is right here in China. Although general in its provision, and limited to only women, the newest amendment at least is a first step forward in recognizing the wrongness of sexual harassment.

It may be of particular interest in the China context that in addition to legislation, many governments and organisations are emphasising the importance of developing codes of conduct, guidance material, policy statements, and public awareness programmes addressing the issue of sexual harassment. Training programmes on sexual harassment have been organized by government agencies, employers' organizations, non-governmental organizations and independent consultancy firms. Some employers' organizations have advised their affiliates of current laws and have provided assistance to help their members formulate policies, train staff, and establish complaints procedures. Trade unions in a number of countries have launched awareness-raising campaigns, and included the prohibition against sexual harassment in collective bargaining agreements.

The ILO continues to undertake research, provide technical assistance on legislative and policy drafting and is supporting technical cooperation activities to assist countries in raising awareness, preventing and addressing sexual harassment.

I must say that it would appear that countries that have recognized sexual harassment as a distinct legal wrong, either by statute or court decision, have tended to provide more effective protection to victims of sexual harassment.

Although legislation is essential, a workplace free of sexual harassment cannot be achieved by legislation alone. **Prevention is the best approach** to the problem and that involves the taking of affirmative steps at the national, organisational and enterprise level and within the trade union at all levels. What you want to do is to stop sexual harassment before it occurs – make something think they should not undertake such action. Empower women to feel they can say no without jeopardizing their career or job. Legal action is really the choice of last resort.

Preventing and combatting sexual harassment involves tackling sensitive issues associated with well-worn patterns of human relationships. It involves changing attitudes with respect to the role of women at work, and how they are treated and valued as workers. It involves sensitising men and women to their behaviour, and learning of new behaviour. It involves everyone taking some responsibility. It also involves educating managers on the costs and consequences of not preventing or stopping sexual harassment in the workplace. The challenge is for us all to be able to create workplace atmospheres that discourage sexual intimidation and unwelcome sexual conduct but promote relaxed, collegial and productive working environments and relationships where the dignity of all workers is respected by all.

This is not something that can be achieved overnight – it is a process that must be taken step by step. In this regard I would like to recall that the Chinese Government has just recently announced the ratification of ILO Convention No. 111 on Discrimination in Employment and Occupation. Although not explicitly mentioned in the language of the Convention, the international supervisory committee that oversees compliance with this Convention has issued a General Observation declaring that the prohibition of sex – based discrimination covers sexual harassment against men and women. The Committee further called on all countries that have ratified the Convention to take action to prevent and prohibit sexual harassment at work.

I hope this seminar will provide one step further in that process by promoting discussion, exchange of and views on how to better understand and treat this issue in the Chinese context, and how to move forward.