

LEGAL ANALYSIS

Sexual Harassment in Cambodia

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2015



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ABBREVIATIONS

ADHOC	Cambodian Human Rights and Development Association
BSIC	Beer Selling Industry of Cambodia
CCWC	Commune Committee for Women and Children
CEDAW	Convention on the Elimination of Discrimination Against Women
CWCC	Cambodia Women's Crisis Center
CARAM	Cambodia Action Research on AIDS and Mobility
C/S	Commune Sangkat
DV Law	The Law on the Prevention of Domestic Violence and Protection of Victims
FGD	Focus Group Discussion
GF	Garment Factories
GBV	Gender-based violence
HT	Hospitality and Tourism
ILO	International Labor Organization
JP	Judicial Police
KII	Key Informant Interviews
KTV	Karaoke Television
MoI	Ministry of Interior
MoJ	Ministry of Justice
MoLVT	Ministry of Labor and Vocational Training
MoT	Ministry of Tourism
MoWA	Ministry of Women's Affairs
MoWA-JPAA	Ministry of Women's Affairs Judicial Police Agent
NGO	Non-government organisation
RHAC	Reproductive Health Association of Cambodia
SABC	Solidarity Association of Beer Promoters in Cambodia
SH	Sexual harassment
UN	United Nations
VAW	Violence Against Women
WCCC	Women's and Children's Consultative Committees

EXECUTIVE SUMMARY

The study aims to conduct a detailed analysis of Sexual Harassment (SH) Gender Based Violence (GBV) measures through Cambodia's labour, domestic violence, criminal legal and policy frameworks. Its objectives are to:

- Analyse the legal and policy frameworks around SH/GBV in the workplace and at community level, clarifying intent, challenges and leverage points for strengthening workplace and community protections, particularly targeting vulnerable women such as those working in factory, hospitality and tourism establishments
- Develop recommendations to inform the development of practical workplace policies and other mechanisms to provide protections for women workers
- Develop recommendations to strengthen actions of key duty bearers at community level
- Develop recommendations to inform future legal reform and policy development processes.

Drawing from two definitions of sexual harassment: General recommendation 19 of the United Nations (UN) Committee on the Elimination of Discrimination Against Women and International Labor Organization (ILO), the study focuses on four main research questions:

- 1) What is the current legal framework (laws, policies) to respond to sexual harassment in and around the workplace in Cambodia?
- 2) What is the current complaint mechanism (legal) for victims seeking redress for sexual harassment?
- 3) What are the gaps in laws and policies related to sexual harassment based on international good practice?
- 4) What improvements to the legal framework and response system should be made?

Between 26 November 2014 and 26 January 2015, a desk review, a series of key informant interviews (KIIs), and focus group discussions (FGD) were conducted. The key respondents for KIIs and FGD included women working in garment factories and in hospitality and tourism settings and key duty bearers at the national and subnational levels including government line ministries, civil society organisations, UN agencies, and as well as human resource people from garment factories.

The study finds that at the international level, although it is not yet the explicit subject of any binding international convention, the issue of sexual harassment in the workplace has been addressed both as a manifestation of sex discrimination and as a form of violence against women (VAW) within the United Nations. Similar to neighbouring countries in the region, Cambodia is a signatory to: The **Convention on the Elimination of Discrimination Against Women (CEDAW)**, **The United Nations Fourth World Conference on Women**, held in Beijing in 1995, and the **Discrimination (Employment and Occupation) Convention**, 1958 (No. 111).

At the national level, regulatory frameworks related to prevention of and response to violence and sexual harassment against women are specifically mentioned in the Law on Domestic Violence, Law on Suppression of Human Trafficking and Sexual Exploitation, Labor Law and in the Criminal Code. However,

- The **Constitution of the Kingdom of Cambodia** does not explicitly address sexual harassment, but it has several articles which are relevant to the protection of women against sexual harassment (Article 31, 38, 45, and 46).
- The 2009 **Criminal Code** has a separate definition and penalty for sexual harassment in Article 250. Sexual harassment is regarded as an act that a person abuses the power which was vested to him/her in his/her functions in order to put pressure again and again on other persons in exchange for sexual favour. The same article states that sexual harassment is punishable by an imprisonment of between 6 (six) days to 3 (three) months and a fine of between 100,000 (one hundred thousand) Riels and 500,000 (five hundred thousand) Riels. However, it is not clear whether the definition applies to sexual harassment in workplaces and it is hard to implement due to the fact that there is no explicit example of sexual harassment behaviours.

- The **Law on the Prevention of Domestic Violence and Protection of Victims** 2005 (DV Law) does not cover the term sexual harassment at all. Some types of sexual violence, such as violent rape, indecent acts or indecent assault, and indecent exposures are regarded as forms of violence. Furthermore, this law is applied when violence is perpetrated between people in the same household.
- The 1997 **Labor Law** is supposed to have a clear definition of sexual harassment in the workplace but it does not. There is only one article (Article 172) related to sexual violence which states that “all forms of sexual abuse is strictly prohibited.”
- The **Law on Suppression of Human Trafficking and Sexual Exploitation** 2008 addresses sexual harassment only through Article 15 on sexual aggression. Again, the penalty for sexual harassment is tied to the Criminal code which does not include specific examples of sexual harassment behaviours.
- **Ministry of Labor and Vocational Training Prakas on Working Conditions, Occupational Safety and Health Rules of Entertainment Service Enterprises, Establishment of Companies** refers only to entertainment service enterprises, establishments and companies. Its Article 8 prohibits violence or indecent acts against entertainment workers by any person, but the terms “violence” and “indecent act” are not specified and sexual harassment is not covered.

Prosecution for sexual harassment occurs under the Criminal Code and the legal procedures are based on the Code of Criminal Procedures. The procedures include:

- 1) Making a complaint to the Judicial Police (Commune/Sangkat Chief, Commune/Sangkat/district/provincial/national Police, district/provincial/national Military Police), and Ministry of Women’s Affairs (MoWA)-Judicial Police Agents (JPA)
- 2) Judicial Police files a complaint with the Prosecutor
- 3) Prosecutor assigns to Investigating Judge
- 4) Investigation by Investigating Judge
- 5) Court Hearing.

MoWA has developed a key strategy document - National Action Plan to Prevent Violence Against Women - which includes key actions to address sexual harassment in the workplace and community through improvements to laws and policies and improved protections and responses. MoWA has two offices related to sexual harassment. The **Legal Protection Office** - which receives complaints from victims and provides legal assistant through the judicial system (from Ministry to District level, but there is only one staff member at each district). The **Sex Education Office** – which provides awareness-raising and training (only at Ministry level). This Ministry has a project to address sexual harassment in some works settings in cooperation with CARE. Staring from 2015, MoWA plans to increase MoWA-JPAs (national and provincial level officers) and as well as redefine the MoWA-JPA role and responsibilities. The involvement of MoWA-JPA in prevention and protection of SH in the workplaces is a question to be discussed.

The Ministry of Labor and Vocational Training’s (MoLVT) gender technical working group has provided awareness-raising to workers and employees through the Inspection Team on violence against women and trafficking. However, sexual harassment in the workplaces has not been included in MoLVT’s Inspection Checklist yet.

Focusing only on hospitality and entertainment settings, the Ministry of Tourism’s (MoT) efforts to protect and eliminate sexual harassment and all forms of human trafficking and exploitation include establishing women’s association in various entertainment places in order to easily receive and disseminate information. Other activities of MoT include: Requiring the phrase “sexual abuses are prohibited” is included in the license agreement for entertainment settings; conducting monitoring in entertainment places; cooperating with tourism police in order to monitor other abuses; disseminating MoT policies to hotels, guesthouses, Karaoke Television (KTV), massage parlors (in collaboration with partner organisations); setting up a telephone hotline at provincial departments for reporting sexual abuse; and posting sex related prohibitions in the hospitality and entertainment settings.

PRIMARY OBSTACLES AMONG THE PUBLIC

- Lack of general awareness people on SH and its impacts
- Regarding SH as a joke or blaming the victim
- Lack of trust in legal and judicial systems
- Fear of further hurt or that the perpetrator will seek revenge or that they may themselves get in trouble

sent supervisors and team leaders to attend meetings and training with non-government organisations (NGOs) such as the Garment Manufacturers Association Cambodia (GMAC), CARE, and the MoLVT. They stated that their factory policies also partly address SH (including complaint procedures) and that they are willing to update their policies if there is information or guidelines to make them clearer. In addition, their factories raise awareness to employees on SH through dissemination of information by posting the SH policy and announcement in staff meetings, and providing training to supervisors/team leaders on SH.

Similar findings were made among women working in Garment Factories (GF) who are CARE-Partners. They reported that they have heard about SH in the workplace from different sources, such as: NGOs providing education about AIDS; radio and TV programs (on human trafficking, Commune/Village safety policy, and DV law); announcements/information sharing at the GF during parties; and friends who attended education sessions with CARE, ILO and CARE education programs. They were more knowledgeable on SH compared to women working in GF who are non-CARE partners, who seemed to find it difficult to state examples of SH. The respondents from non-CARE GFs reported that they had never heard or seen any law or policy related to sexual harassment in the workplace and none of them said there is a sexual harassment policy or regulation in their workplace.

Through a FGD with female employees working in a picnic style restaurant where customers come and drink and eat by the riverside, the study finds that all the respondents have witnessed or experienced SH in their work. The women said that they feel worried and afraid in their work and want to quit their job when someone sexually harasses them. However, none of them reported that they had asked for help from the police because they believed that the police would just charge them money, and not help them.

The study finds certain gaps and challenges must be addressed in order to improve the prevention and response to sexual harassment in workplaces. On the duty bearer side, all types of respondents reported: a lack of awareness of SH by the duty bearers (whether SH is an issue and it is against the law); no clear definition of SH in the workplace; negative attitudes of certain duty bearers toward SH and victims (i.e. delaying the response, not taking it seriously, blaming victim); not all work settings have SH policies and complaint procedures; no meaningful cooperation from employers of entertainment settings; lack of collaboration and coordination among duty bearers (i.e. MoLVT-GF, MoT-Entertainment settings); and no budget to address the issue thoroughly. On the public/victim side, there are four main obstacles: lack of general awareness people on SH and its impacts; regarding SH as a joke or blaming the victim; lack of trust in legal and judicial systems (stemming from a lack of response or forced meditation outside the judicial process); fear of further hurt or that the perpetrator will seek revenge or that they may themselves get in trouble.

At Khan and Sangat level, police respondents reported that they have raised awareness to villagers, restaurant owners in the village/commune, and representatives of garment factories, and schools through the Commune/Village Safety Policy. This awareness-raising related to drugs and sex crimes, and human trafficking. However, they have not addressed SH in the workplace.

In their efforts to prevent violence against women and SH in the workplace, three Administrative staff of three CARE partner factories reported that their factories have

GAPS AND CHALLENGES IDENTIFIED

- Lack of awareness of SH by duty bearers
- No clear definition of SH in the workplace
- Negative attitudes of certain duty bearers toward SH and victims
- Not all work settings have SH policies and complaint procedures
- No meaningful cooperation from employers of entertainment settings
- Lack of collaboration and coordination among duty bearers
- No budget for duty bearers to address the issue thoroughly

The four main recommendations are imperative to improve prevention and protection related to SH in the workplace:

A: LEGAL REFORM RELATING TO SEXUAL HARASSMENT IN THE WORKPLACE

- Article 172 of the Labor Law and Article 250 of the Criminal Code should be revised to give an explicit definition of SH in the workplace.
- As SH in the workplaces requires the involvement of many ministries and their sub national structures, inevitably, a sub-decree on SH should be developed by the government in the long run in order to ensure consistency in implementation and collaboration among relevant duty bearers.

B: IMPLEMENTATION OF CURRENT LAWS AND REGULATIONS

- It is essential that CARE continue its current initiatives to raise awareness and build capacity with workers, enterprise owners, Unions, NGO partners, and relevant State duty bearers using the current existing legal frameworks, especially Article 172 of the Labor Law 1997, Article 250 of the Criminal Code 2009 and other provisions related sex crimes.
- Greater awareness-raising about SH should be undertaken for the public and in workplaces by training, group discussions, seminars, and distributing information.. It is recommended that education methodologies include interactions and role-play where the participants learn to differentiate between what is SH behaviour and what is not.
- Training should be given to relevant State agencies (especially local authorities and JP) on SH in the workplace and there should be further advocacy so that the government allocates appropriate resources for fieldwork.
- Appropriate technical support should be provided to certain duty bearers and as well as monitoring and penalties for those duty bearers who do ill practice.

C: DEVELOP A GUIDELINE ON PREVENTION AND RESPONSES TO SEXUAL HARASSMENT IN THE WORKPLACE

- For the medium term, CARE should support MoLVT, MoT, and MoWA to develop a guideline on prevention and responses to sexual harassment in the workplace and gradually persuade partners in garment factories and hospitality and entertainment settings to integrate it into their codes of conduct. This initiative should be documented and lessons learned should be incorporated into the development of the suggested sub decree on SH.
- While some CARE enterprise partners have already developed internal response teams for sexual harassment in their workplaces, it is recommended there are more female team members and they are properly trained in appropriate skills and ethics.
- The current checklist of the MoLVT Inspection Team on occupational health and safety should be revised to include a section on SH in the workplace. And at the same time, the MoLVT Inspection Team should receive appropriate training and support on how to assess this issue in workplaces.
- The MoWA-JPA Guidelines should include the roles and responsibilities of MoWA-JPA on SH in the workplace and the MoWA-JPA should be involved in monitoring and evaluation of SH in the workplace and, if possible, be a part of the MoLVT Inspection Team.

D: INVOLVEMENT OF UNIONS

- While some Unions have been involved in providing awareness-raising and responses to SH to their members, in the future, they should work together to bargain with employers to incorporate sexual harassment provisions into collective agreements. But, this needs to be done carefully as it runs the risk of being rejected by employers due to the sensitivity of Unions' roles in Cambodia.

1. BACKGROUND

1.1 SITUATION IN CAMBODIA

In Cambodia, women and girls continue to be subjected to physical, emotional, sexual and economic violence, cutting across all divisions of income, culture and class in their daily public and private spheres. Women represent 51.4 per cent of the formal labor force in Cambodia, predominantly in the garment industry and the tourism and hospitality sectors.¹ Recent studies indicate that while women workers in Cambodia face significant risk of sexual harassment and other forms of gender based violence in their workplaces, protections through the Labor Law are ambiguous, poorly understood and rarely accessed.

The majority of women (90 per cent) working in garment factories are between 18 and 25 years old and have migrated from rural areas.² In a recent study by the International Labour Organization (ILO) one in five women garment factory workers³ reported sexual harassment, or harassment with sexual undertones, which led to a threatening working environment. These episodes usually involve co workers but some involve supervisors or others in higher positions.⁴ Another recent study, *Women in the City*, examined the risks that female garment factory workers faced beyond the factory. Women garment factory workers were found to be at increased risk of rape, verbal abuse and sexual harassment from men who hang around the factories due to unsafe housing situations, such as poor lighting infrastructure and not enough policing. Women garment factory workers who work night shifts also face heightened risks as electricity is shut off before they leave work so there is no lighting, making it easy for gangsters and other perpetrators to rape, harass, or rob workers, especially when they work over-time.⁵

High numbers of women are also migrating from rural areas to work as hospitality and tourism workers. Studies have shown alarmingly high rates of harassment in the work place for women working as beer promoters, including unwanted sexual touching (80 per cent) and coerced sex (38 per cent).⁶ In CARE's 2010 baseline survey,⁷ 67 per cent of beer promoters interviewed reported experiencing unwanted sexual touching.⁸ The Beer Selling Industry Cambodia (BSIC)⁹ conducted a study in 2012 comparing the experience of abuse and sexual harassment for women working in beer companies that are members of the BSIC and found that 61 per cent of beer promotion workers interviewed experienced some form of sexual harassment in the last 12 months, compared to 79 per cent of workers in non-BSIC brands.¹⁰ This implies that sexual harassment is still high, but was less in companies that participate in the professional association.

A 2012 study examining life experiences and HIV risk of young entertainment workers in four Cambodian cities led by the Ministry of Education, Youth and Sport (MoEYS) found that female entertainment workers commonly experience violence and harassment in the context of their work.¹¹

¹ ILO 2012

² Taylor 2011

³ In a recent study by ILO of 240 garment factory workers (208 women and 32 men) were interviewed

⁴ ILO 2012

⁵ Taylor 2011

⁶ CARE Cambodia 2005

⁷ CARE conducted a baseline survey interviewing 252 beer promoters in 2010.

⁸ CARE 2010

⁹ In October 2006, major businesses in the Cambodian beer market came together to found a professional industry organisation called the "Beer Selling Industry Cambodia" (BSIC).

¹⁰ Racz and Grumiau 2012

¹¹ MoEYS 2012

1.2 CARE PROGRAM DESCRIPTION

A key thematic priority for CARE Cambodia's Socially Marginalised Women program is addressing gender-based violence by improving workplace and community protections for socially marginalised women in urban settings. This is through improved laws and policies, engagement with key duty bearers and strengthening access to health and legal services. This work is currently being funded by the UN Trust Fund to End Violence Against Women and the Australian Government's ANCP program.

Working in collaboration with government and other partners, CARE is developing a range of interventions to support effective SH workplace policies and other protections. CARE is also working to improve community level protections, including through strengthening duty bearer actions. CARE's work targets factory, hospitality and tourism workplace settings and includes complementary work at the commune level. CARE is also contributing to work involving a number of organisations to strengthen SH/GBV protections for marginalised women. It is essential that interventions, dialog and future priorities are informed by robust analysis, including analysis of the legal context around SH/GBV in Cambodia.

1.3 STUDY PURPOSE AND OBJECTIVES

The purpose of this study is to conduct a detailed analysis of Sexual Harassment (SH) Gender Based Violence (GBV) measures through Cambodia's Labor, domestic violence, criminal legal and policy frameworks.

Specifically the objectives are:

- To analyse the legal and policy frameworks around SH/GBV in the workplace and at community level, clarifying intent, challenges and leverage points for strengthening workplace and community protections, particularly targeting vulnerable women such as those working in factory, hospitality and tourism establishments
- To develop recommendations to inform the development of practical workplace policies and other mechanisms to provide protections for women workers
- To develop recommendations to strengthen actions of key duty bearers at community level
- To develop recommendations to inform future legal reform and policy development processes.

2. METHODOLOGY

2.1 RESEARCH QUESTIONS

1. What is the current legal framework (laws, policies) to respond to sexual harassment in and around the workplace in Cambodia?
2. What is the current complaint mechanism (legal) for victims seeking redress for sexual harassment?
3. What are the gaps in laws and policies related to sexual harassment, based on international good practice?
4. What recommendations are there for improvements to the legal framework and response system?

2.2 INTERNATIONAL SEXUAL HARASSMENT DEFINITIONS

This report draws on two definitions of sexual harassment. These are as follows:

1. The Committee on the Elimination of Discrimination Against Women, through General Recommendation 19, defines sexual harassment as “including such unwelcome sexually determined behaviour as physical contact and advances, sexually coloured remarks, showing pornography and sexual demands, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile working environment.
2. The ILO defines sexual harassment as sex based behaviour that is unwelcome and offensive to its recipient. There are two forms of sexual harassment by the ILO’s definition:
 - Quid Pro Quo: when a job benefit - such as a pay raise, a promotion, or even continued employment – is made conditional on the victim acceding to demands to engage in some form of sexual behaviour; or
 - Hostile working environment in which the conduct creates conditions that are intimidating or humiliating for the victim.

Behaviour that qualifies for sexual harassment includes:

- 1) Physical: Physical violence, touching, unnecessary close proximity
- 2) Verbal: Comments and questions about appearance, life-style, sexual orientation, offensive phone calls, texts or emails, etc.
- 3) Non-Verbal: Whistling, sexually suggestive gestures, display of sexual materials.¹²

2.3 METHODOLOGY

This study used a standard research methodology including a desk review, key informant interviews (KIIs), focus group discussions (FGD), and data analysis and reporting. The desk review included international and Cambodian laws, policies and research studies on sexual harassment. Key informant interviews were conducted with key duty bearers at the national and subnational levels including government line ministries, civil society organisations, UN agencies and others identified as relevant to answer the research questions. Focus group discussions were held with women working in garment factories and in hospitality and tourism settings.

2.4 ETHICAL CONSIDERATIONS

As part of this study, FGDs were held with women that have likely experienced GBV. This direct communication requires a review of the ethical considerations. The International Research Network on Violence Against Women and World Health Organisation stipulate the prime importance of confidentiality and safety; the need to ensure the research does not cause the participant to undergo further harm (including not causing further traumatising); the importance of ensuring that the participant is informed of available sources of help; and the need for interviewers to respect the interviewee’s decisions and choices.

¹² ILO 2007

The following safeguards were put in place:

Individual Consent: At the start of the FGDs, participants were informed orally of the purpose of the study and nature of the study. Because of low levels of literacy in Cambodia, and the fear people might have of recording their names, the interviewer requested verbal consent of the participants to conduct the FGD. As part of the consent procedure, the participants were informed that the individual information collected would be held in strict confidence individually but that what they said would be summarised with other people's comments. The participants were told they were free to terminate participation at any time.

Confidentiality: Participants in the FGDs or KIIs were not asked their full names. Participants were told that no identifying information will be shared about them specifically. Participants were also asked not to share any information they learned about each other outside the group. All gave verbal consent. Each signed for the small gift received, but names were not recorded by the researcher with the notes of the FGDs.

Referral for Service: In addition, if any women disclosed violence, a referral for service with contact information of organisations working on GBV was provided.

3. FINDINGS

3.1 CURRENT LEGAL FRAMEWORKS

3.1.1 INTERNATIONAL

At the international level, sexual harassment is not yet the explicit subject of any binding international convention.¹³ However, within the United Nations the issue of sexual harassment in the workplace has been addressed both as a manifestation of sex discrimination and as a form of violence against women (VAW). Cambodia is a signatory to these related conventions.

Convention on the Elimination of Discrimination Against Women (CEDAW) was adopted at a time when awareness of sexual harassment was only beginning to emerge and therefore did not contain a specific prohibition. However the Committee on the Elimination of Discrimination against Women, set up under CEDAW, has since explicitly addressed the problem. Its General Recommendation of 1989 specifically recognised sexual harassment as a form of violence against women. In 1992 General Recommendation 19 noted that *“equality in employment can seriously be impaired when women are subjected to gender-specific violence, such as sexual harassment in the workplace”* and called on parties to CEDAW to take all legal and other measures necessary to provide effective protection for women against gender based violence, including sexual harassment in the workplace.

Sexual harassment has also been addressed in the human rights context. The **World Conference on Human Rights**, held in Vienna in 1993, identified it as a human rights violation, while the Commission on Human Rights treats it as a form of violence against women.

The United Nations Fourth World Conference on Women, held in Beijing in 1995, adopted a **Platform for Action**, which outlines strategic objectives and actions to be taken by a range of actors. The Platform includes provisions on sexual harassment in the workplace. It defines the problem as a form of both violence against women and a barrier to their equality, stating *“the experience of sexual harassment is an affront to a worker’s dignity and prevents women from making a contribution commensurate with their abilities.”* The Platform further calls on governments, trade unions, employers, community and youth organisations, and NGOs to eliminate sexual harassment.

“Within the United Nations the issue of sexual harassment in the workplace has been addressed both as a manifestation of sex discrimination and as a form of violence against women. Cambodia is a signatory to these related conventions.”

The International Labour Organization (ILO) has addressed sexual harassment in a range of instruments and during discussions at a tripartite meeting. The **Discrimination (Employment and Occupation) Convention**, 1958 (No. 111), addresses discrimination in employment on a number of grounds, including sex, and requires that ILO member States declare and pursue a national policy designed to promote equality of opportunity and treatment with a view to eliminating discrimination. Like CEDAW, it predates widespread awareness of the issue of sexual harassment. As a consequence, it has been necessary for the Committee of Experts on the Application of Conventions and Recommendations to take the lead.

In its 1996 **Special Survey on Convention No. 111**, the Committee confirmed that it views sexual harassment as a form of sex discrimination against women in employment which undermines equality, damages working relationships and impairs productivity. The Committee defined sexual harassment as *“Any insult or inappropriate remark, joke, insinuation and comment on a person’s dress, physique, age, family situation, etc. a condescending or paternalistic attitude with sexual implications undermining dignity; any unwelcome invitation or request, implicit or explicit, whether or not accompanied by threats; any lascivious look or other gesture associated with sexuality; and any unnecessary physical contact such as touching, caresses, pinching or assaults”*.¹⁴

¹³ Haspels, et al. 2001

¹⁴ ILO, 2001

3.1.2 REGIONAL CONTEXT

3.1.2.1 Indonesia

In 2011, the government of Indonesia developed the “*Guidelines on Sexual Harassment Prevention at the Workplace*,” due to the lack of clarity in its 2003 Labor Law and Criminal Code. The Guidelines aim to provide guidance and reference to employers, workers and institutions responsible for employment issues on preventing and effectively responding to sexual harassment. They can be used by employers of all forms of enterprises in the public and private sectors, including ministries, central and local government departments, government agencies, state enterprises, NGOs, non-profit organisations, voluntary bodies, trade unions, employers’ organisations, academic institutions, public and private employment agencies and professional training institutions.

Furthermore, these Guidelines can be used as a tool to raise awareness and educate people on preventing sexual harassment in the workplace. The Guidelines provide a definition of sexual harassment in the workplace with examples of different forms of SH and explain what behaviours are regarded as SH and what are not. They also state that SH is regarded as a crime, and require employers to have complaint resolution procedures. The Guidelines provide examples of both formal and informal grievance procedures and response mechanisms.¹⁵ Built on these Guidelines, are the “*Guidelines for the Prevention of Workplace Harassment*,” which were developed by Better Work Indonesia in 2012 to provide guidance for employers, workers, and enterprises who attempt to prevent and respond to harassment in the workplace.¹⁶ The later Guidelines cover general harassment, bullying, and sexual harassment in the workplace. In addition to definitions of these terms, they also give examples of possible consequences of workplace harassment for employees and the enterprise as a whole. They also provide directions and examples of mechanisms for prevention and response to harassment.

3.1.2.2 Philippines

The purpose of the “*Anti-Sexual Harassment Act of 1995*” bill is to value the dignity of every individual, enhance the development of human resources, guarantee full respect for human rights, uphold the dignity of workers, employees, applicants for employment, students or those undergoing training, instruction or education and declare that all forms of sexual harassment in employment, education or training are unlawful.

According to Section 3 of the 1995 bill, “*Work, Education or Training-related Sexual Harassment Defined- Work, Education or Training-related Sexual Harassment is committed by an employee, manager, supervisor, agent of the employer, teacher, instructor, professor, coach, train or, or any other person who, having authority, influence or moral ascendancy over another in a work or training or education environment, demands, requests or otherwise requires any sexual favor from the other, regardless of whether the demand, request or requirement for submission is accepted by the object of said Act*”. The criteria for deciding whether behaviour is SH is also contained in this section.

Section 4 of the bill states that it is the duty of the employer or the head of the work-related, educational or training environment or institution to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment, including development of rule/regulation on SH in the workplace. Section 7 of the bill provides that any person who violates the provisions of this Act shall be penalised by imprisonment and fine.

Later on, the policy brief no.10 dated 2013 was issued to expand the coverage of the 1995 bill because the bill’s definition of sexual harassment does not specifically address the issue of “hostile environment” resulting from sexual harassment between peers or co-employees.

3.1.2.3 Vietnam

The most prominent law related to SH is the 2012 Labor Code. It has four articles mentioning “sexual harassment”: Article 8. Maltreating a worker, committing sexual harassment at the workplace is prohibited; Article 37. The employee who is maltreated, sexually harassed or is subjected to forced labored has the right to unilaterally terminate the employment contract; Article 182. A domestic worker shall have an obligation to “report to the authoritative agency if his/her employer has acts of sexual Harassment; and Article 183. The employer is strictly prohibited from mistreating, sexually harassing his/her domestic workers. However, the Labor Code is seen as ineffective in prohibiting SH and protecting victims because it does not provide clear definitions of SH.¹⁷

¹⁵ Indonesian Ministry of Manpower and Transmigration and ILO, 2011

¹⁷ MoLISA & ILO, 2013

¹⁶ Better Work Indonesia, 2012

3.1.3 NATIONAL LEGAL FRAMEWORK

At the national level, a range of laws and policies identify women's right to live free of violence and make sexual violence against the law. These are the Law on Domestic Violence, Law on Suppression of Human Trafficking and Sexual Exploitation, Labor Law and the Criminal Code. Following is a summary of laws that are relevant to sexual harassment.

3.1.3.1 *The Constitution of the Kingdom of Cambodia*

While the constitution does not explicitly address sexual harassment, several articles are relevant to the protection of women against sexual harassment. These articles are as follows:

Article 31: The Kingdom of Cambodia shall recognise and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human rights, the covenants and conventions related to human rights, women's and children's rights.

Article 38:

- The law forbids any physical abuse against any individual.
- The law protects the life, the honour and the dignity of the citizens.

Article 45:

- All forms of discrimination against women shall be abolished.
- The exploitation of women's labour shall be prohibited.

Article 46:

- Human trafficking, exploitation of prostitution and obscenities which affect the dignity of women shall be prohibited.

3.1.3.2 *Criminal Code 2009*

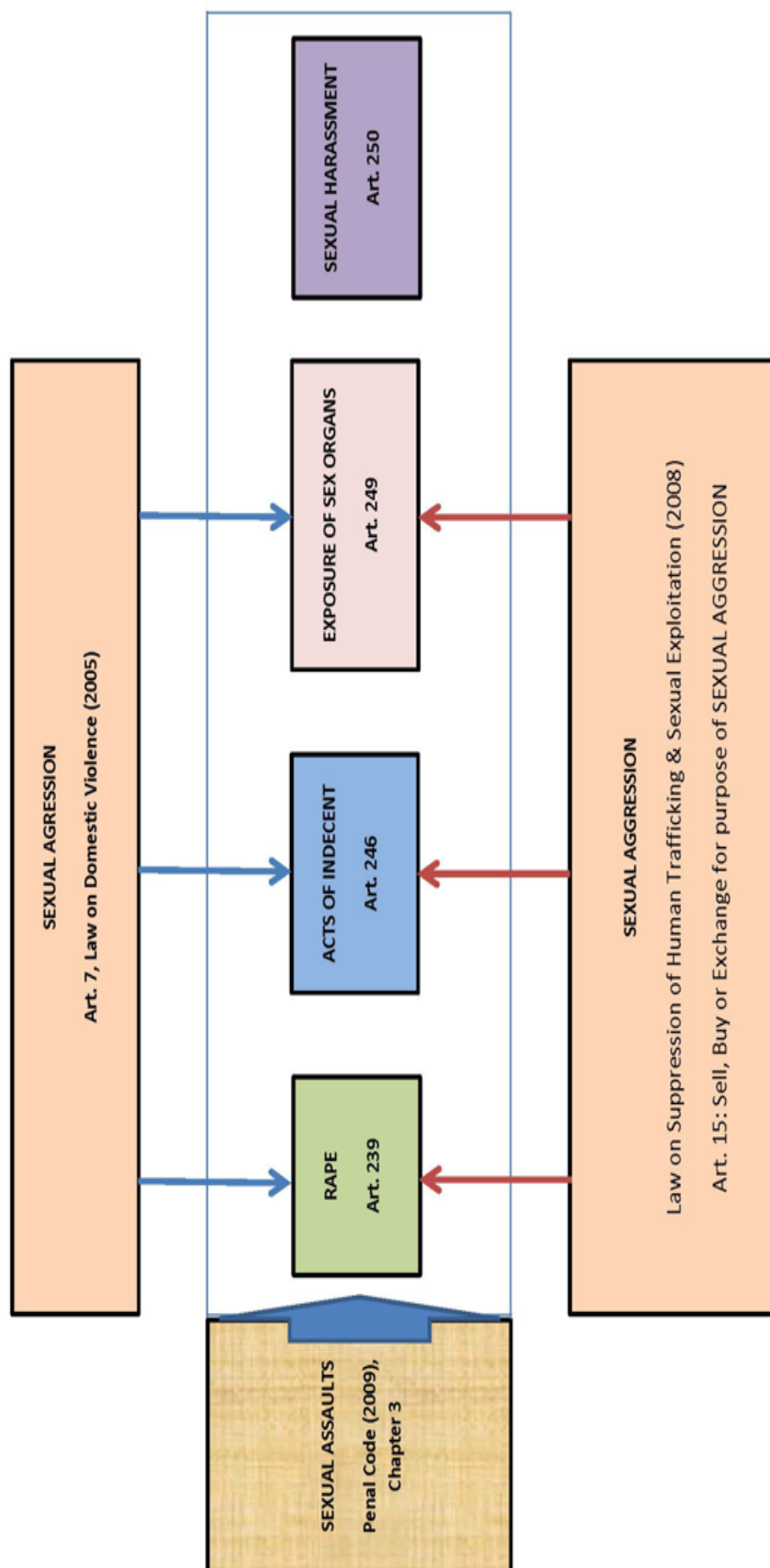
The Criminal Code Chapter 3 classifies acts of indecent assault, indecent exposure, and sexual harassment as main sub-categories of the term "sexual assault" which is regarded as sexual violence. Sexual Assaults can include many behaviours including physical, visual, verbal, or coercive behaviours. Among, the four types of sexual assault (see the following articles), sexual harassment and indecent exposure are regarded as less serious crimes (misdemeanors) with penalties of between 6 days and 3 month imprisonment. Furthermore, although sexual harassment is defined in Article 250, it is not clear whether it applies to workplaces and there are no explicit examples of behaviour. This vagueness makes it hard for duty bearers to implement the law and even harder for victims to seek help.

Article 239 Rape: All acts of sexual penetration, of any kind whatsoever, or an act of penetrating any object into sexual organs of a person of either the same sex or different sexes by violence, coercion, threat or surprise constitutes a rape. Rape shall be punishable by imprisonment from 5 (five) to 10 (ten) years. The age for sexual majority shall be fifteen years of age.

Article 246 Indecent Acts or indecent assault: Touching, fondling or caressing the sexual organs or other parts of a person without that person's consent or coercing another person to perform such acts on the perpetrator himself or herself or a third person for the purpose of arousing the perpetrator or providing sexual pleasure to the perpetrator constitute indecent assault. The indecent assault shall be punishable by an imprisonment of between 1 (one) and 3 (three) years and a fine of between 2,000,000 (two million) Riels and 6,000,000 (six million) Riels.

Article 249 Exposure of sex organs/indecent exposures: All sex organs exposed within the sight of another person in a place which is accessible to the public eyes is punishable by an imprisonment of between 6 (six) days to 3 (three) months and a fine of between 100,000 (one hundred thousand) Riels and 500,000 (five hundred thousand) Riels.

Figure 1: LEGAL TERMS ON SEXUAL VIOLENCE AGAINST WOMEN



Article 250 Sexual harassment: Sexual harassment is an act that a person abuses the power which was vested to him/her in his/her functions in order to put pressure again and again on other persons in exchange for sexual favour. The sexual harassment is punishable by an imprisonment of between 6 (six) days to 3 (three) months and a fine of between 100,000 (one hundred thousand) Riels and 500,000 (five hundred thousand) Riels.

3.1.3.3 The Law on the Prevention of Domestic Violence and Protection of Victims 2005 (DV Law)

The DV law is limited in its coverage,¹⁸ however it does address some types of sexual violence. Under Article 3 of this law, sexual aggression (sexual assault or sexual violence) is included as a form of violence while Article 7 further states that “sexual aggression includes: violence rape, indecent acts or indecent assault, and indecent exposures. The term sexual harassment is not covered in the DV law. The following articles are relevant:

Article 3. ...Domestic Violence includes sexual aggression

Article 7. Sexual aggression includes:

- Violent rape
- Indecent acts or indecent assault
- Indecent exposures

3.1.3.4 Labor Law 1997

The Labor Law contains only one article on sexual violence which states “all forms of sexual abuse is strictly prohibited (see detail below). The term sexual harassment could fall under this article, and is not addressed in any other article of this law.

Article 172: All employers and managers of establishments in which child labourers or apprentices less than eighteen years of age or women work, must watch over their good behaviour and maintain their decency before the public. All forms of sexual abuse is strictly forbidden.

3.1.3.5 Law on Suppression of Human Trafficking and Sexual Exploitation 2008

The Law on Suppression of Human Trafficking and Sexual Exploitation addresses sexual harassment only through article 15 on sexual aggression.

Article. 15: A person who sells, buys or exchanges another person for the purpose of profit making, sexual aggression,¹⁹ production of pornography, marriage against will of the victim, adoption or any form of exploitation shall be punished with imprisonment for 7 years to 15 years.

In explanatory notes of this law, the term “sexual aggression”, means that the offender has carried out the act of selling, buying or exchanging a human being with the purpose of committing a sexual crime against the victim, such as rape or other sexual assault (see definitions of these crimes according to the Criminal Code). As mentioned above under the Criminal Code, sexual harassment is a form of sexual assault and there is no specific example of behaviours to be regarded as sexual harassment.

3.1.3.6 MOLVT Prakas on Working Conditions, Occupational Safety and Health Rules of Entertainment Service Enterprises, Establishment of Companies

The Prakas refers only to entertainment service enterprises, establishments and companies. Article 8 states that “Any individual person cannot commit violence or indecent act against entertainment worker,” the term violence and indecent act are not specified and sexual harassment is not overtly covered.

¹⁸ Domestic violence as defined by the DV LAW is husband or wife; dependent children or persons living under the roof of the house and who are dependents of the households so could leave out significant populations.

¹⁹ According to the explanatory notes for the Law on suppression of human trafficking and sexual exploitation (2013), “the term sexual aggression, as used in this article, means that the offender has carried out the act of selling, buying or exchanging a human being with the purpose of committing a sexual crime against the victim, such as rape or other sexual assault (see definitions of these crimes according to the applicable criminal law); or, in the case of a minor under 15 years, an indecent act as defined in Chapter 6 of this law. If the offender commits the act of selling, buying or exchanging a human being for this purpose, then he should be punished under this article.

3.2 COMPLAINT PROCEDURES

Prosecution for sexual harassment occurs under the Criminal Code. The legal procedures are based on the Code of Criminal Procedures. The specific procedures are outlined in detail in Figure 2. In short, the procedures are as follows:

Step 1- Making a complaint to the Judicial Police: According to Article 6, when a woman is a victim of sexual harassment in the workplace or community, the first step is to make a complaint to a Judicial Police (JP) Officer. In general, the JP include the Commune/Sangkat Chief, Commune/Sangkat/district/provincial/national Police, and district/provincial/national Military Police (Article 60). However, according to Article 10 of the DV Law (2005), certain officials of the Ministry of Women's Affairs shall obtain the legal qualification necessary to be judiciary police officers and can act as the complaining party instead of the victim if the sexual harassment falls under the DV Law (in the home). In 2007, an inter-ministerial Prakas No. 64 BrKKYKKN/07 was developed by MoWA and Ministry of Justice (MOJ) appointing the following MoWA officials who have legal qualifications as Judicial Police Officials of MoWA:

- One Director General of the General Department of Social Development
- Two deputies Director general of the general Department of Social Development
- One Director of the Department of Legal Protection
- Two Deputies Director of the Department of Legal Protection
- Two Chief of Offices of the Department of Legal Protection
- Four Deputy Chief of Offices of the Department of Legal Protection
- Three Officials of the Legal Office of the Department of Legal Protection
- All Twenty Four Director of the Provincial/Capital Departments of Women's Affairs
- All Twenty Four Deputy Director of the Provincial/Capital Departments of Women's Affairs
- Twenty Four Chief of the Provincial/Capital Offices of Women's Affairs
- Twenty Four Deputy Chief of the Provincial/Capital Offices of Women's Affairs.

The role and authority of MoWA-JPA is defined by MoWA's Prakas No. 072 KKN/BS in 2007 as the following:

1. Representing as a plaintiff for the victim
2. Making reports and records
3. Monitoring and following up with investigations
4. Following up the Court's procedures (decisions and convictions).

However, in its 2014 Guidelines on Legal protection of Women and Children Rights in Cambodia, with regard to the role of MoWA-JPA, the MoWA draws attention to the fact that *MoWA-JPA do not fall under the JP stated in the CPC and most police authorities and tasks mentioned in the CPC (such as police investigations, searches, confiscation of items, interrogations, taking suspects into custody) are only awarded directly to JP, not to JPO-MoWA. The roles of MoWA-JPA shall be clarified clearly by MoWA.*

Step 2 – Judicial Police files a complaint with the Prosecutor: Based on the CPC, the JP have the duty to: receive complaints and to record them (Article 71-75); conduct preliminary investigations into the crimes; identify and arrest offenders; and, collect evidence with support from prosecutors (Article 56, 87, 88, & 89) or on their own discretion (Article 111). Furthermore, JP can summon and interrogate any suspect or person who may have relevant information in relation to the offence (Article 114) before recording the preliminary inquiry (Article 115). *If the preliminary inquiry related to a felony or misdemeanor, the JP will arrest the suspect (Article 116). Finally, after the inquiry, the judicial police officer shall send all written records and all exhibits and the arrested person (if any) to the Prosecutor (Article 107).*

Step 3 – Prosecutor assigns to investigating judge: Only the prosecutor has the duty to file criminal suits, including sexual harassment complaints (Article 131 of Cambodian Constitution), bring the charges of criminal offences against any charged person to the Court and present the evidence in Court hearings. Upon receiving the completed written record from JP, the prosecutor can make a decision to either hold a file without processing it or to conduct proceedings against the offender (Article 40) based on grounds of law and fact.

To hold a file, the Prosecutor shall inform the plaintiff about that decision within the shortest possible period. The plaintiff can appeal that decision to the General Prosecutor attached to the Court of Appeal if s/he is not satisfied with the Prosecutor's decision to hold her/his file without processing (Article 41).

The criminal proceedings can be conducted through the opening of a **judicial investigation**, a **citation**, or the **procedure of immediate appearance** (Article 43).

- **Citation (Article 46):** The prosecutor shall issue an order to the accused person to appear before the Court of First Instance. The order shall include the identity of the accused, a summary of the facts, a legal qualification of the facts, and an indication of relevant provisions of the criminal law and sanctions for the offence. In addition, it will include the name of the court and its location, and the date and time of the trial shall be specified, in addition to informing the accused that s/he has the right to be defended by a lawyer.
- **Immediate appearance (Article 47):** Prosecutor shall order the accused to appear before the Court of First Instance immediately if all of the following requirements are satisfied:
 - The offence is flagrant in accordance with Articles 86 (Definition of Flagrant Felony or Misdemeanor) and 88 (Flagrant Felony or Misdemeanor)
 - The offence carries a sentence of imprisonment for not less one year and not greater than five years
 - The accused has reached legal age
 - There are substantial facts to be tried.
- **Opening of Judicial Investigation:** In the case of a felony, the Prosecutor shall open a judicial investigation by submitting an initial submission (including a summary of the facts, a legal qualification of the facts, an indication of relevant provisions of the criminal law and sanctions for offence, and the name(s) of the suspect, if known) to the investigating judge (Article 44). Based on the initial submission, the judicial investigation shall conduct a jurisdiction investigation (Article 124). An investigating judge has the obligation to collect inculpatory as well as exculpatory evidence and s/he shall perform all investigations that he deems useful to ascertaining the truth (Article 127).

Step 4 – Investigation by Investigating Judge: A judicial investigation is mandatory for a felony, but it is optional for a misdemeanor (Article 122). During the investigation period, the investigating judge can conduct interrogation of the charged person (Article 145), set up a confrontation session (Article 147), interview the civil party, interview witnesses (Article 153), search and seize exhibits (Article 159-161), issue an order to ask for an expert report (when in need of technical questions) either on his own motion or at the request of the Royal Prosecutor, the charged person or a civil party (Article 162-171), issue an order authorising the listening to and recording of telephone conversations and all other telecommunications, such as by facsimile or emails (if necessary) (Article 172), place a charged person under judicial supervision if the charged person is under investigation for an offence punishable by imprisonment (Article 223-230), and order a provisional detention of the charged person in case of a felony or of misdemeanor involving a punishment of imprisonment of at least one year (Article 204-222).

When an investigating judge considers that the judicial investigation is terminated, he shall notify the Royal Prosecutor, the charged person, the civil parties and the lawyers (Art.246). An investigating judge terminates the judicial investigation by a closing order. This order may be an indictment or a non-suit order. If the investigating judge considers that the facts constitute a felony, a misdemeanor or a petty offence, s/he shall decide to indict the charged person before the trial court. The order shall state the facts being charged and their legal qualification (Art 247). Without delay, the investigating judge shall inform the Royal Prosecutor, the charged person and the civil parties.

Provided that the closing order by the investigating judge is a no-suit order, an appeal can be made by the civil party (Article 268) and or by the prosecutor (Article 276) against the order of the investigating judge.

Step 5 – Hearing: After issuing an order of indictment, the investigating judge shall send the case file immediately to the trial court president who shall fix a date for trial (Article 250) and process other administrative procedures to inform relevant parties, such as the accused person, the civil party, civil defendants, lawyers, and witnesses (Article 300-315).

Figure 2: COMPLAINT PROCEDURES FOR SEXUAL VIOLENCE AGAINST WOMEN

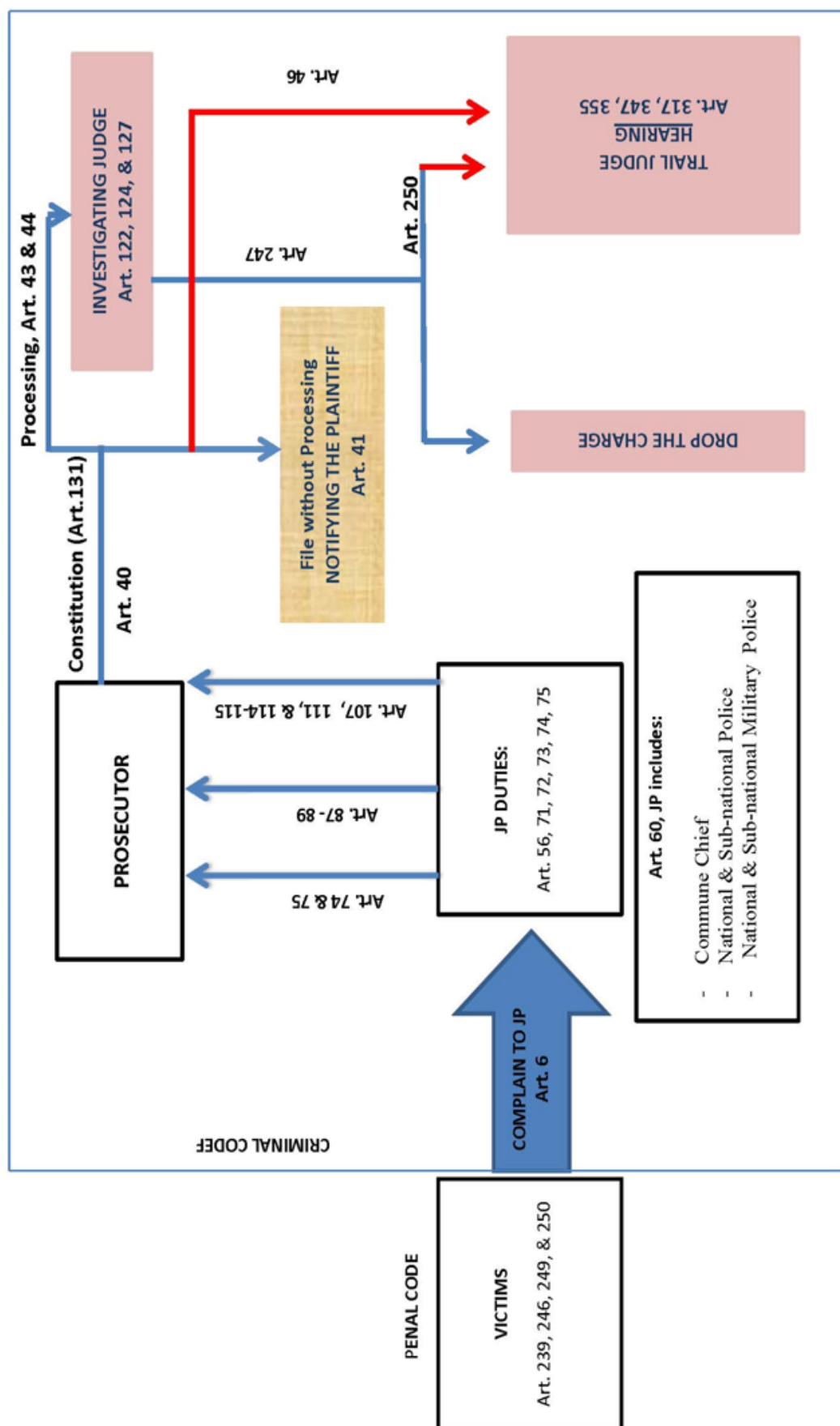
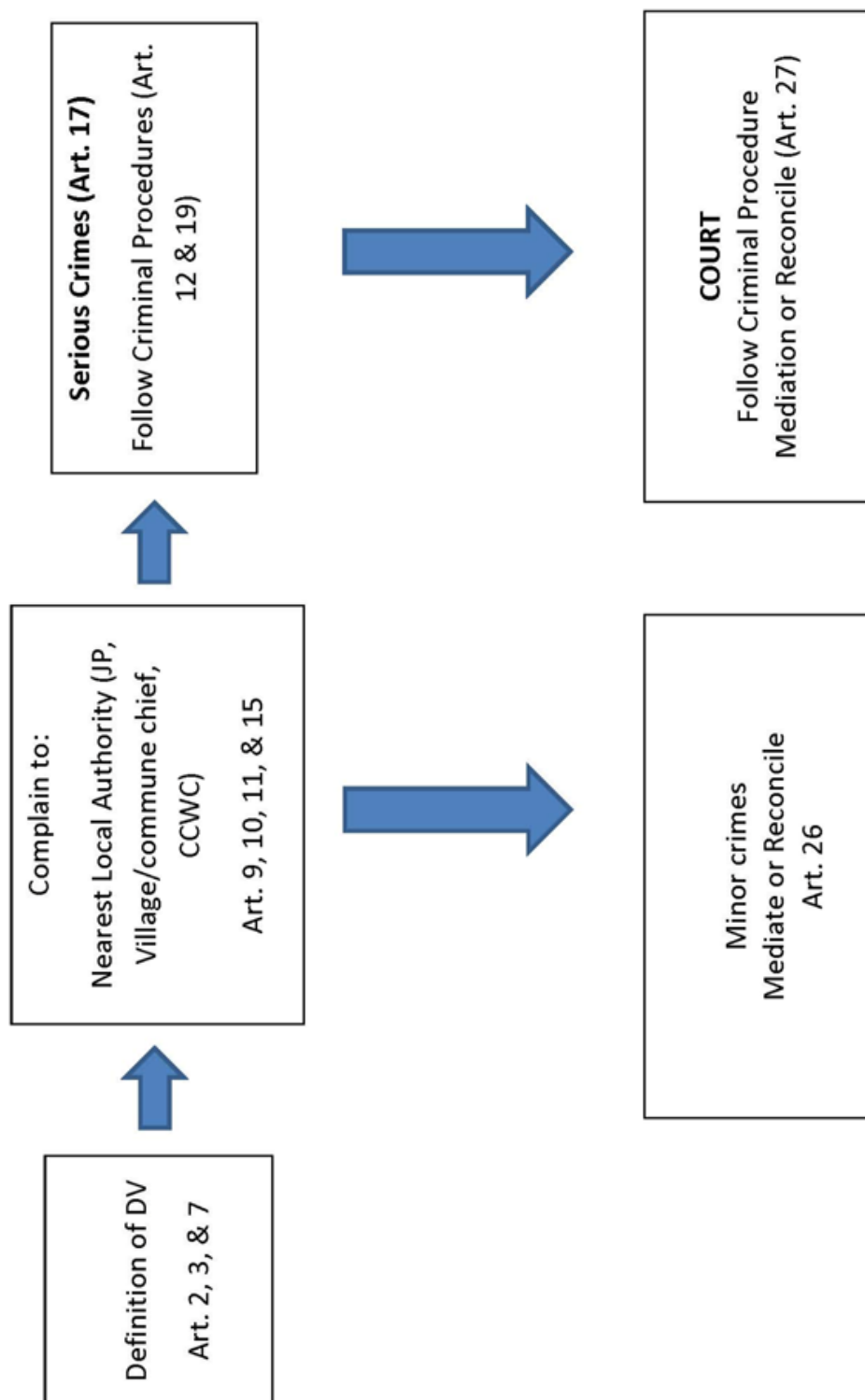


Figure 3: COMPLAIN PROCEDURES FOR DOMESTIC VIOLENCE



In all cases, the court shall announce the judgment during a public session (Article 317), but it is issued at the hearing date or in a subsequent session. In the latter case, the presiding judge shall inform the parties of the date of the announcement (Article 347).

Upon receiving announcement of the judgment, either the civil party or the convicted person can appeal. Based on Article 375, the appeal may be filed by:

- the Royal Prosecutor of the Court of First Instance and the General Prosecutor attached to a Court of Appeal
- the convicted person
- the civil party, regarding the civil matter of the case
- the civil defendant, regarding the civil matter of the case.

3.3 EXISTING RESOURCES IN PREVENTION AND RESPONSE TO SEXUAL HARASSMENT IN THE WORKPLACE

3.3.1 GOVERNMENT

3.3.1.1 Ministry of Women's Affairs

The Ministry of Women's Affairs (MoWA) has developed a key strategy document - National Action Plan to Prevent Violence Against Women. This National Action Plan includes key actions to address sexual harassment in the workplace and community through improvements to laws and policies and improved protections and responses.

There is no reliable data available yet within MoWA on the different types of GBV (including sexual harassment) as there is no clear reporting and data collection system in place. According to KIIs, MoWA has received only a few complaints of sexual harassment. According to the data for Phnom Penh, roughly there were only 10 reports of SH in 2013 and only 2 in 2014. Respondents reported that in 2015, MoWA is developing a case recording system so that there will be consistent data from the sub-national level to the national level.

While there is limited data, in KIIs MoWA staff report sexual harassment in the workplaces is happening in Cambodia both in the public and private sectors. An example of SH in the public sector was where a female staff member was dismissed from her job because she refused to have sex with her superior. The intervention provided was outside the court system, reportedly because there was no evidence. The woman was paid an 'out of court' settlement to start a business instead of returning to the workplace. Another case was also resolved outside the judicial system. A woman working in a restaurant was raped by the son of the owner and a complaint was made to the police, but she was given \$100 dollars stating that "don't make the law suit having a work like you".

MoWA has two offices related to sexual harassment. The Legal Protection Office which receives complaints from victims and provides legal assistant via the judicial system (from Ministry to District level, but there is only one staff member at each district). The Sex Education Office which provides awareness-raising and training (only at Ministry level). This ministry has a project to address sexual harassment in some works settings in cooperation with CARE.

Related to the 4 main roles and responsibilities of MoWA, the Judicial Police (JP), holds the most tasks including; making reports, filing complaints and monitoring and following up with investigation measures. MoWA report the JPs have made efforts to act as the plaintiff for victims (according to the law), but the complaints have not been accepted by the court. In the case of a victim being disabled or unable to file a complaint (i.e. a child victim), MoWA-JPA can act as a plaintiff for the victim, but these complaints have been rejected by the court on the grounds that there must be engagement and thumbprints of victims. Generally, not much work has been done in accordance with the fourth task of MoWA-JPA - following up courts' decisions and convictions - due to the limitations of staff's capacity in legal frameworks and lack of relationships with courts. However, the provincial MoWA JPA in Siem Reap province is an exception. She has performed this task well in collaboration with court and NGO partners. The provincial MoWA-JPA of Siem Reap and K-Thom have been receiving capacity building training from NGO partners under a project supported by GIZ and are participating in a Community of Practice Network. However, all these responsibilities are primarily for domestic violence.

From 2007 to 2014, in total there have been 147 MoWA-JPA (national and provincial level officers) who have attended JP training by MoI and MoJ. With financial support from GIZ, MoWA is now expanding the training to district and commune level staff from Siem Reap and K-Thom provinces. Due to the fact that MoWA Prakas No. 072 KKN/BS on the role and authority of MoWA-JPA was issued before the Criminal Code, MoWA is planning to redefine the MoWA-JPA's role and responsibilities.

MoWA reported they currently have two main programs related to SH: 1) capacity building for district level MoWA staff following assessment of their capacity and needs (supported by GIZ) and 2) awareness-raising and training on legal protections related to sexual violence by MoWA to women working as beer promotion workers and in hospitality and tourism settings in Phnom Penh (in collaboration with CARE). Posters and electrical signs have been posted at a certain number of restaurants who are partners of CARE in the city. The posters include relevant provisions on sexual violence against women, i.e. rape, sexual assault and telephone contacts where women can seek help. The posters provide information to men and also deter them from committing sex crimes. One interviewee thinks that there should be MoWA-JPAs based at garment factories to prevent and intervene in SH issues in the workplace and she has been contacted by an officer from MoLVT requesting that MoWA-JPA to do this. However, in order to have MoWA-JPA placed in each factory, first the MoWA staff at Khan levels of Phnom Penh should be included in the MoWA-JPA training.

Under collaboration with GIZ, MoWA is also in the process of finalising the “draft Minimum Standards of Counseling with Vulnerable People” aimed at all staff, volunteers and duty-bearers who provide support to vulnerable people. This requires basic skills in counseling, even for provision of other services such as legal advice, training, reintegration support or health care. MoWA will identify qualified agencies to conduct training and decide who should undertake the course. The Standards could be helpful for people involved in service provision to victims of SH.

A major challenge reported by MoWA is the lack of a clear definition of SH. Other challenges include:

Reported challenges and difficulties encountered related to sexual harassment:

- The current definition of SH is not practical
- Victims do not file complaints
- Lack of collaboration from restaurant owners. Usually, they do not encourage the victims to file complaints because they fear it could scare their clients
- Local authorities and JP do not apply the laws. No support from authorities and police, and victims are pressured not to make lawsuits. For example, the victim is scared “you may be taken to jail if you don’t win”
- Bribery and corruption in the system: Changing the accusation from “rape” to “touching arms and legs”
- Victims are poor (afraid of having trouble through the court system, i.e. having to spend money and time) and they do not trust the judicial system
- No budget is available for MoWA staff for their fieldwork.

Existing solutions to the challenges and difficulties:

- MoWA has been building the capacity of its staff (MoWA-JPA courses) and motivating them to do their tasks. According to a Sub-decree in 2015, there will be budget for MoWA staff to support them in their daily functioning starting from April 2015, but it is not clear yet how much budget will be available.

Suggestions and recommendations from MoWA to improve the prevention and protection against sexual harassment of garment and or hospitality and tourism workers:

- Relevant partners (NGOs) should collaborate and provide technical and financial support to the Ministry as the State is not able to carry out its tasks thoroughly yet
- NGOs should share research findings with Ministry, make a joint work-plan and evaluate it periodically
- Relevant duty bearers should continue to raise awareness to workers about SH
- A policy on sexual harassment at the workplace should be developed. It will help to make a safe working environment for public and private workplaces

- Sexual harassment should be included in the Government staff policy to protect women as the private sector has to follow the state legal frameworks. But, the government should have its policy first
- When the MoLVT makes amendments on some articles of the Labor Law related to domestic workers, any suggestions to include SH in the workplaces should also be included.

3.3.1.2 Ministry of Labor and Vocational Training

The Ministry of Labor and Vocational Training (MoLVT) has primary responsibility for enforcement of the labor law. According to KII, MoLVT focuses mainly on workers in garment factories and enterprises utilising the Labor Law. This law oversees all relationships established by contract between employees and employers, MoLVT staff reported.

One key informant stated, “there is SH in the workplaces in Cambodia, but I observe that there is more in entertainments settings such as SH to beer-girls, night club and karaoke waitresses. SH is regarded as a form of violence. It affects workers health both physically and mentally. In addition, when SH happens often in the workplaces, employees become hesitant to fulfill their work”.

“Honestly, regarding SH in the workplaces, there is no law with provisions on this issue,” she added. Although some provisions of the Labor Law focus on female employees and contribute to the prevention of SH, they are not purposefully stated for SH. For example: Article 15 is on forced work and provides that MoLVT has rights to help employees if they are forced to do any task that they don’t want to do even though it is their duty; Article 55 states that employers shall provide training to apprentices and s/he cannot be alone in the same room with an apprentice who is a female or child; Article 83 is about mistakes and penalties for employers regarding forcing, threatening, and cursing, and beating employees; Article 182 to 187 are about management of female workers, including rights to maternity leave, rights to wages, and other benefits during maternity leave, breast feeding and child care rooms if there are enough workers as required by law.

Even though MoLVT has no law, Prakas, or regulations related to SH, as a member of the National Committee on Women and a member of the National Committee for Promotion of Gender Equity, MoLVT participated in CEDAW. MoLVT’s gender technical working group has also provided awareness-raising to workers and employees via the Inspection Team on violence against women and trafficking. MoLVT works closely with MoI on investigation of crimes. There are education programs for team leaders of KTV settings and restaurants which are mostly conducted through MoWA and MoT. If MoLVT is able focus on SH in the workplaces and if there are supports from partners, MoLVT wants to do similar things with garment sectors and can invite all employers to attend training sessions.

The respondent mentioned that “although we can say in general that SH, violence, human trafficking are against the legal provisions of Cambodia, it seems that there are no support mechanisms for victims of SH in the workplaces yet as there is no government policy on SH in the workplace. We have focused on promotion of gender equity in both public and private workplaces in general”. The respondent said that MoLVT would report to Department of Anti-trafficking of MoI who is the specialised agency, and other agencies for interventions for any sexual abuse to women and children. Sexual harassment is not covered in the Inspection Checklist of MoLVT. Child labour issues are covered and MoLVT has the right to take a child and include him/her in a vocational training program or reintegrate him/her back to community. SH has not received as much focus.

The respondent said that, “defined in the Labor Law, role of Unions is not related to SH. But Unions can be encouraged to participate in this work similar to the gender technical working group of MoLVT. But Unions can be encouraged to participate in this work”.

Challenges and difficulties:

- No clear definition of SH in the workplace
- Verbal SH is regarded as making fun or normal teasing. There is not usually evidence that can be used to charge perpetrators if they do not confess.

Suggestions and Recommendations:

- It would be good if a policy on SH and sexual assault in the workplace was developed. MoLVT can then request relevant Ministries to cooperate
- Awareness about the SH policy should be targeted to employers and employees so that everyone can participate
- Relevant Ministries should commit to implementing the policies and raising awareness through TV and newspapers. There should be participations from workers.

3.3.1.3 Ministry of Tourism

According to the key informant, the Ministry of Tourism (MoT) focuses only on cultural and natural tourism. This includes efforts to protect and eliminate SH and all forms of human trafficking and exploitation in entertainment and services settings, but not the garment sector.

The key informant said that SH is a concern which requires attention, especially in tourism and entertainment settings. It affects the mental health and dignity of victims, especially women working as beer promoters whom are regularly sexually abused both verbally and physically. When there is SH, either owners or workers are affected.

MoT has tried to establish women association in various entertainment places in order to easily receive and disseminate information. Other activities of MoT include:

- MoT, through its technical department and inspector team, often conducts monitoring in entertainment places;
- MoT always cooperates with tourism police to monitor other abuses
- Disseminating MoT policies to hotels, guesthouses, KTV, and massage parlors through ongoing training to managers. These have been conducted through collaboration with partner organisations
- Collecting data of staff, both men and women, in those entertainment settings in order to easily to monitor sexual abuses
- MoT has required that “sexual abuses are prohibited” to be included in licensing agreements for entertainment settings.

When SH problems happen, victims can make legal complaints to the provincial tourist department, tourism police or tourism inspectors. Victims can make complaints to the nearest local authority or through the hotline of the MoT. If victims use the hotline, the MoT will assign inspectors to examine the claim and search for information. In the case of serious offences, the MoT will refer the matter to the court and can close down or suspend the business. Victims can also report to various NGOs.

As a member of the Anti-human Trafficking Committee, MoT cooperates with MoI and other Ministries. The MoT has set up a Hotline telephone number at provincial departments for reporting sexual abuse. The MoT Inspection Team has inspected entertainment places about general problems and sexual abuse and SH is covered. As MoT inspectors and tourism police have roles as JP, they can intervene on offences and send the accused to court in cases of serious illegal acts. The Department of tourism has worked with local police and tourism police when problems have occurred. After receiving complaints, they investigate in cooperation with JP, to file complaints to court, if serious. MoT has mostly used education measures, such as reminding or warning establishments to make improvements rather than punishing them with suspension or closing them down. However, in cases of flagrant offences, MoT will close down establishments.

MoT requires certain standards, i.e. massage parlour owners should have class-rooms and leave doors open when providing services to their clients. In addition, authorities are required to post related prohibitions in rooms. The MoT reported not knowing much about the Union’s role as there are more Unions in garment factories.

Challenges and difficulties:

- Before establishing the women’s associations and telephone hotline, MoT faced difficulties, but has improved now as the MoT receives more information.
- One difficulty is that when MoT established the women’s associations, not many women or staff of these establishments registered as members. Their participation is limited.

- MoT finds it difficult when MoT or Associations attempt to organise training with owners, and only staff and workers attend (not owners) and they do not disseminate information to lower level staff.
- Sometimes victims are silent. They dare not make a complaint or report because they had agreed to have sex with the accused first because they wanted money from their clients.
- Most entertainment settings are hidden therefore it is difficult to find out information if victims do not report.
- Although generally owners of entertainment places cooperate with MoT due to concern of being punished or closed down, they sometimes still hide information.

There should be a SH policy in the workplace in order for everyone to follow. Benefits include:

- Employees: service staff, service women and masseuses will not feel scared, will work well, and will not suffer negative consequences to their lives. It also has advantages to guests because they will dare not cause trouble with women working in the service sector.
- Owners can easily run their businesses with more income and safety.

Suggestions and Recommendations:

- Definitions of SH in the workplace should be clear with examples of specific behaviours and known penalties.
- To encourage owners of entertainment places, there should be letter of appreciation offered to those who cooperate to eliminate SH.
- Education programs such as workshops, training and distributing posters, and other video clips, and as well as putting footnotes in the video songs, should be increased and extended. Owners should receive training as well as staff and workers.
- For successful implementation, punishment must be implemented accordingly to law.
- Related departments and the private sector must cooperate with each other.

3.3.1.4 Ministry of Interior - Police

The Police were key informants in this study. In total, 7 judicial police (all men) of 4 Sangkats and 3 Khans were interviewed individually. These police respondents have been involved with CARE's work with garment factories and entertainment and hospitality settings (they have at least attended meetings or training on sexual harassment in the workplace). Many realise that there is a lot of SH in Cambodia. People living in rented-houses and workers working in guesthouses, beer-gardens, and restaurants and KTV were mentioned as being most at risk. Their examples of SH encountered through their work include: inappropriate touching (touching/fondling worker's sexual organs/arms/legs); showing sex videos; kissing; dirty sexual word; and sexual assaults by clients, owners/sons of owners or teachers. At least one of them stated that sexual harassment is okay for sex workers and that some SH behaviours stem from agreement from the female workers.

The police respondents said that SH is a crime and therefore police can intervene. The Criminal Code and Criminal Procedure are the guiding legal frameworks, just as for other types of crime. Severe cases are usually reported directly to Sangkat police and the Severe Crime Section of Khan Police.

The police respondents stated that their efforts related to SH in the workplace include raising awareness to villagers, restaurant owners in the village or commune and representatives of garment factories, and schools through the Commune/Village Safety Policy. During the education sessions, participants are required practice making a report to authorities for a drug and sex crime. However, this policy is about human trafficking, drug crimes, and general sexual abuse, not about SH in the workplace. However, they thought that this effort may prevent rape and sexual harassment.

All of the police respondents said that they don't know whether there is a SH policy at the workplaces in their coverage areas. But, one police officer assumed that each business enterprise should have an individual policy or regulation, though he had no idea what the policy or regulation would look like. They all thought that if there is a clear SH policy or regulation in the workplaces, it helps with prevention and response. In each setting, there should be a complaint mechanism developed. First, employees should make a complaint to their supervisors who may deal with clients. Then, if there is no solution, the case should be referred to JP.

The JP respondents said that a SH policy in the workplace should include relevant provisions, specific prohibited behaviours, response mechanisms and procedures and there should be a government policy and guideline on this issue first. The MoI, MoWA, Civil society, Ministry of Cult and Religions, MOWA, Legal experts and NGOs should be involved in the development of the SH policy and guideline.

Benefits of having a SH policy in the workplace identified the JP:

- Increased productivity leads to income gains for employers,
- Less crimes as men are afraid to contravene the policy,
- Women know how to seek help and help is available, which will mean they are less scared and feel safer traveling or working in quiet places.
- Prevention of SH and protection of workers. Employers earn more income and spend less time dealing with conflicts.

When asked about the JP process and response to sexual harassment in the workplace, the respondents reported that they follow the Code of Criminal Procedures. Normally, they would call the suspected person for a preliminary assessment. Then, they would provide disciplinary education to the accused for a minor issue or refer to the police for a severe crime.

Challenges and difficulties for women when seeking help:

- They are afraid of being further hurt or afraid that the perpetrator will seek revenge
- They are afraid of having to spend money during the judicial process
- They do not trust the legal system
- They are afraid of getting in trouble themselves
- There is no evidence
- There is not much help offered or there is no legal action taken by the police
- Law enforcement is not perfect. For example, a garment factory supervisor was invited for dinner and then raped. She was given \$400 as a solution and asked not to initiate a lawsuit. The Sangkat and Khan police have to listen to their superiors whether to take action or not.

Challenges and difficulties for JP in responding to SH in the workplace:

No clear definition SH in the workplaces. Article 250 of the Criminal Code on SH is not clear

- Not able to raise awareness in garment factories
- Workers are not knowledgeable about legal frameworks and they are afraid of revenge by the accused in addition to being worried about having to spend time and money on judicial processes
- Individuals do not dare make complaints and they do not report to police. Sometimes the suspect lives in another province, so neither the victim nor the police can identify him. In such cases the Sangkat police just report it to their top level. Sometimes when the police investigate, people hide information because the victim feels ashamed. Another challenge is when the victim and perpetrator are in a relationship, or the victim accepts money.

At least 3 prominent examples of SH raised by police respondents show the police sometimes feel powerless to perform their duties and resolve matters outside the judicial process: 1) A female worker was slapped in the face by bodyguards of a senior official because she did not comply with their SH acts. Then, the Sangkat police officer himself was threatened by the body guards when he came to intervene; 2) A waitress in a restaurant was raped by the owner's son, and the case was mediated with involvement of police because the victim needed money for her daily expenditures; and 3) No further judicial referral was made by Khan police for a rape case as a result of advice from their superior. In that case, the respondent described that "the perpetrator is untouchable".

Some of the respondents admitted that resolution of SH outside the judicial systems is inevitable due to the fact female victims are poor or are students and they need money for their families or school fees and others are materialistic girls and they want money to buy things.

Suggestions/recommendations:

- There should be a clear definition of SH: the existing legal frameworks on SH should be amended to make the definition clear and easy to implement.
- Have a clear policy on SH in the workplace that can be implemented effectively,
- Provide capacity building about SH to relevant duty bearers, including local authorities and police. NGOs can help because they have both technical and financial capacity.
- A SH policy should be widely disseminated including to State agencies and other establishments in cooperation with local authorities, people and communities.
- NGOs should help provide training and education to workers when the JP have no budget to do so and JPs cannot access garment factories. But NGOs should collaborate with Sangkat.
- The MoLVT should conduct awareness-raising in the garment factory. Khan cannot do so as many garment factories have shared investment from State senior officials and therefore they are protected. But, in order to raise broader awareness to people, there should be a well-trained focal point person who can interpret provisions and examples of behaviours, not only read them.
- There should be awareness-raising among workers. Examples include 1) Through radio/TV: MoLVT can ask GFs to allow workers to listen to specific programs at specific time. 2) Develop a CD/DVD of conversations and dialogue about SH in the workplace with detailed Q &A, and also display posters about SH.
- The State should provide a budget for expenditure for awareness-raising programs and law enforcement and investigations. So far, there is only a national budget, but the law enforcement workers have not received it.
- Monitor implementation and punish those who do ill practice or engage in corruption.

3.3.2 EMPLOYERS

Three Administrative staff of three CARE partner factories participated in the study, one with 2,500 employees and another one with 2,200 employees (of which 1,980 were female).

The three respondents reported that their factories have sent supervisors and team leaders to attend meetings and training with NGOs such as GMAC, CARE, and the MoLVT to prevent violence against women. SH in the workplace was covered in the training. An interviewee said that she has received a lot of Prakas and documents from MoLTV and there are some documents related to the legal provisions on sexual violence against women. All of them reported that they are willing to update their policies if there is information or guidelines which clearly explain SH in the workplace.

They said that all workplaces should include a SH policy. In their factories, staff are required to report to admin and human resource if there are problems. They believe that having SH policy would bring benefits for both employers and employees. For example, a SH policy would make the working environment friendly and respectful between staff and employers and men and women, it would prevent abuse between owners of the factory and employees, it would make the employees feel honored and safe when they work overtime at night, and as a result, production would increase in quantity and quality and the garment factory would have a good reputation.

There is no requirement from the government yet, but their factories have already established a policy. The Cambodian legal framework on sexual violence against women has been integrated into the policy and internal regulations of the factories, but only the main points, not in much detail. In addition, their factory policies also describe some SH. One factory has had the relevant documents since 2006 following the requirement of buyer groups including: Non-discrimination Policy, Non-SH Principle, Grievance Procedure, and No Revenge Principle. The Non-SH Principle was developed with participation by factory human resource personnel, worker representatives, and the Union. It includes verbal, non-verbal, and behavioural acts on SH and as well as steps for resolving issues. The representative from that factory said that the company does not want any issues related to the factory heard by outsiders. Accordingly, victims are not encouraged to seek outside support although they have the right to do so. The process of responding to SH in the workplace includes: 1) victim reports to his or her team leader for problem solving, and 2) if it is not solved, a written complaint is required to be submitted to the company's director who will work with HR and the manger for

further intervention, beginning with an assessment. The complaint form includes a description of the complaint and outcomes expected by the complainant. A disturbing message in that Principle is that “if the accused is not found guilty, the plaintiff will be appropriately punished”. This can be a significant barrier to victims. The interviewee said that all the factories that are members have the same complaint form.

Another respondent indicated that the first step of their process is for the victim to report to HR. Then HR will call meetings with both parties to ask for more information and solutions. If a resolution cannot be found, HR will refer the case to top management and then the Country Manager. He said that victims can also complain to their line team leaders and that the team leaders will report to HR. There are different departments in the factory, such as Accounting, HR, and Merchandise. These departments are overseen by the Country Manager. Under each department, there are supervisors and line team leaders. Victims can also drop a letter in the mailbox.

According to the three respondents, their factories raise awareness to employees on SH by: disseminating information by posting the SH policy; making announcements in staff meetings; and providing training to supervisors and team leaders on SH.

All the three respondents said that there is no data available on SH in their factories. There are few cases of SH per year, they said. For instance, one man showed pornography on his phone to a woman and she became very angry. Another case, involved an expatriate manager who upset women when he acted as if he was friendly with female workers by hugging them and holding their hands. When the behaviour is regarded serious, the accused can be warned or asked to apologise to victims. In most cases, the matter is addressed through education measures but if it is very serious, the accused can be suspended from work. Challenges for their factories in preventing and responding to SH in the workplaces include: difficulty finding evidence and lack of cooperation from victims, including fear of reporting sexual harassment.

On the other hand, they said that when an offence or act of SH happens, employees may be too scared to come to work, are often absent or refuse to work for OT at night time. Therefore, production and income decline. Furthermore, SH makes the working environment problematic for both employers and employees.

All three respondents reported that the MoLVT inspectors mostly focused on general issues based on their checklist such as ensuring employees are safe and not being abused. Mostly, MoLVT medical doctors and immigration police come to the factory for monitoring and sometimes meet with employees. If there are acts of SH, workers could inform those inspectors.

When asked if Unions are involved in prevention and response to SH in the workplace, all three respondents said that employees can report to either the Union or employee representatives. The Union has a key role in bringing issues and problems from employees to HR or the owners of the factory. Unions cannot solve problems without involving HR because it is not only a problem between employee and employee, but it also the factory's issue. They said that the Unions in their factories have also attended training on how to prevent and response to SH and help to raise awareness about this issue to workers.

In order to effectively prevent and respond to SH in the workplace, recommendations are:

- Training on SH in the workplace should be provided to all relevant duty bearers including public settings and private enterprises with ongoing monitoring and capacity building
- Factories should disseminate information on SH to staff repeatedly in staff meetings
- There should be education programs on TV at times that employees are available to watch
- Cooperation is made by seniors leaders of factories
- The authorities and police should not blame victims, but support victims. They should respond immediately including on the weekend
- There should be a penalty for anyone who commits a wrong act so that the behaviours are not repeated
- The perpetrators should be strictly penalised according to the laws and avoid paying the money and then the case is closed outside the court system.

3.3.3 WORKERS

3.3.3.1 Garment Factory Workers

FGD with Garment Workers of Factories Who are Non-CARE Partners

There were 9 women that participated in the FGD. They were from 6 different garment factories around Sangkat Steung Meanchey in Khan Meanchy. Most of these factories employ between 400 and 1,400 workers except one run by European employers with only 40 workers. The FGD participants reported that they have been employed at their workplaces between 4 and 5 years.

Due to the fact that the participants had limited time, the facilitators skipped some questions regarding types of sexual harassment and focused on policy and the procedure for complaints.

All of the nine participants reported that they had never heard or seen any law or policy relating to sexual harassment in the workplace and there is no sexual harassment policy or regulation in their workplace. They also said that their employers had never explained to them how to deal with this issue if it happens to them. However, they have been told by their Unions that they can make a complaint to them if their employers do anything unsatisfactory to them, including sexual harassment.

It was a surprise that the participants reported very few acts of sexual harassment in their workplaces. The FGD members said that monitoring by group leaders and requirements to produce outputs in a set time limit, meant workers don't have time for anything besides a lunch break. In addition, as a rule, workers are not allowed to talk much during working hours. The most common act is telling a dirty joke, which usually is regarded as making fun and mostly ignored by the women. They have heard about other acts of sexual harassment toward garment workers, but outside of the workplace, and they regarded these as personal issues. They didn't know whether the victims reported these matters to the local authorities or judicial police and they didn't know whether there were any laws or policies on sexual harassment.

In order to improve the prevention and response to sexual harassment in the workplace, the FGD participants proposed that each workplace should have a policy on sexual harassment and there should be at least one female Cambodian staff member who could be trusted to be reported to and that she should be capable of providing appropriate advice on actions.

All of the participants realised that having a policy on sexual harassment in the workplace brings benefits for both employers and employees. For employees, it helps to prevent sexual harassment acts by men toward women and there is a complaint procedure that women can use. In addition, they would feel safe and happy to work in the same environment. Nevertheless, the policy would also scare the Chinese team leaders who usually curse garment employees when there is a problem. A common curse is "Choymray" which is a very vulgar term for "having sex with your mother". This term is very negative and makes Cambodian workers angry. The participants said that benefits of sexual harassment policies in the workplace for employers include the retention of workers for a long time and increased productivity as a result of having a less troubled working environment.

It is observed that the participants found it hard to think of contents of the sexual harassment policy. However, they proposed that the policy should include the prohibition of acts of sexual harassment (with examples), possible measures for perpetrators and complaint procedures.

Individual interviews with workers working in GF who are CARE-Partners

Eight women were interviewed individually. They worked in 4 different factories in Phnom Penh along Vengsreng Street. The number of employees in each factory was between 700 and 4,500 people with female workers from 400 to over 4,000 people.

All of them reported that they have heard about SH in the work place from different sources. Those include: NGOs providing education about AIDS; radio and TV programs (on human trafficking, Commune/Village safety policy, and

DV law); announcements and information sharing at the GF during parties; friends who attended education sessions with CARE, ILO; and CARE education programs. The Reproductive Health Association of Cambodia (RHAC) was also mentioned as an agency that provides sex health education to garment workers.

SH includes cheek pinching, physical touches (i.e. touching or fondling sexual organs), and showing pornographic pictures. Although they were not asked about them, the women raised other issues of concern during the interviews. For example:, low wages, fighting amongst workers and with security personnel, workers not being allowed to rest, Chinese supervisors that do not care about staff concerns, not distributing masks and drinking water, forcing workers to work overtime and overloading their work (i.e. asked to produce 500 sets and it has to be done in one night).

In general, the interviewees mentioned police, GF administrators/group leaders/supervisors, Unions, friends, and relatives, NGOs as their available resources for help related to SH in the workplace. The names reported were CARE, RHAC, and CECADO. Some of them said that they have received telephone contact about assistance from CARE and the ILO.

The women were asked for specific examples of help. They reported that Unions provide disciplinary advice to perpetrators or help victims to file complaints. They said that garment factory administrators generally just call the perpetrators for disciplinary advice so that the SH behaviours are not repeated. The women said that some supervisors are helpful, but others are not.

However, when SH happens in their workplace, they said that generally the victims who are women remain silent at first. Women only make complaints if the behaviour keeps continuing. Complaints have been made to Union leaders, administrator or section supervisors so that the accused persons are given disciplinary advice to stop their harassment behaviours. In case of touching the sexual organs, the women said that they ask the Union to fine the perpetrators. They said that disciplinary actions involve both Union leaders and administrators. An example of a worker who was tricked for sex was raised by a respondent. The victim told her relatives that she has been sexually abused. In that case, a mediation session was conducted with the perpetrator. No judicial action was taken.

The women raised several challenges and difficulties for staff in seeking help when they face SH. These include: shyness (afraid of being laughed at); fear of losing their job (those who make a complaint are at risk of being fired); no knowledge about what services are available; not believing that appropriate help will be provided; and no permission to go out to seek help. Some of them raised that their administrators and Union leaders take the side of the employers or delay responding to complaints.

No respondents mentioned seeking help from local authorities and police. They said that those sources would regard SH as normal acts for fun and would not take any further judicial action.

The respondents thought that their employers' had made some efforts to prevent and respond to SH in the workplaces such as: providing or sharing educational information during staff meetings or parties, distribution of handouts, allowing team leaders to participate with ILO and CARE sessions/ NGOs session on HIV/AIDS, posting information on sex crimes in the workplaces, and making announcement on the occasion of party, and blaming the perpetrators for their SH acts. However, none of them confirmed that there is SH policy in their workplace.

The respondents identified benefits of having a SH policy in the workplace. Benefits for employers would be: gaining more income, as staff productivity is increased; no need to spend time resolving worker's conflicts; and gaining a good reputation because employees would feel safe and confident in their working environments. Benefits for employees would be: becoming aware of the crimes and being able to protect themselves; not wanting to quit their job; increasing their productivity; and being happy. In addition, they thought that the SH policy would protect workers from abuse by employers and therefore the employees would feel that they are being protected. The women stated that a SH policy should cover: that SH is prohibited (including sexually rude words); possible relevant penalties; how to seek help; and response mechanisms (including fines) for perpetrators.

When asked for their suggestion and recommendations on how to better prevent and respond to SH in the workplace, the respondents proposed that workers should be well informed about the SH policy (i.e. through a training course), the solution or response to SH should be carried out immediately, perpetrators should be responsible before the law, and there should be no corruption. A few women mentioned that NGOs are trustworthy for workers.

3.3.3.2 Hospitality and Tourism Workers

The followings finding is from a FGD with 14 female employees working in a picnic style restaurant where customers come to drink and eat by the riverside. These women migrated to Phnom Penh from various provinces to find work, but the majority of them were from Pey Veng, Kampot, Takeo, and Sihanoukville. Some come alone and some came with family members. Their length of time in Phnom Penh ranged from 3 days to 4 years. Most had worked in the restaurant for 1 year or less. Many had worked in other restaurants.

They reported that they learned about the job vacancy from their friends, relatives and neighbours. All of them live in nearby rental accommodation. Most are single but a few are married and live with their husbands.

When asked whether they know people that have experienced sexual harassment, the group seemed hesitant to talk, although after a few minutes they warmed up and spoke of their experiences. The women reported that sometimes SH occurs because the girl wants to be close to a man. The women know most of their clients well as they are regular customers and they come often. Most of the people who commit SH are male clients aged above 40 years old. However, sometimes customers the women do not know well commit harassment. When customers get drunk they talk a lot and sometimes say sexual things, the women reported. Most of the group reported that they had experienced customers trying to touch them. The women reported that some customers try to touch their bottoms and sometimes customers will try to “take them away” (i.e. to Karaoke to have sex with them). There are ways that those female workers try to refuse the client’s requests. For example, sometimes they give excuses: they say that they are busy; try to get someone else to go; or explain to the client that they have to work and if they leave the work there is no one to replace them. The women observed that some customers get angry and leave when their requests are rejected. The women stated that when they tried to find someone else to go with the customer, the customer might reject the person they found. Another alternative the women use to deter a client who is harassing them is to tell them a small lie. For example, they sometimes say that they are not feeling well or tell the customer to go first and then not show up at the destination. The women would explain later that their boss did not let them to go because the restaurant was busy.

When asked, the women reported that they never try to get help from other sources. They reported that they have experienced the same harassment at other places and heard about sexual harassment through TV messages. They have found that there is nothing they can do to stop harassment. Some restaurant owners also push the girls to go away with customers, they added.

The women report that the customers have low opinions of them. The customers think that the women have no value and would do anything for money, including having sex. The women have learned that their customers will say they love them, but that is not true and that those clients have wives.

The women said that sexual harassment at work made them feel worried, afraid and scared and made them want to quit their jobs. One woman reported an example of a bad experience: A customer invited a friend to karaoke just to sing. She told the man she agreed to sing and that was all. She did not want to go. The customer had a knife and a gun. When she went to the bathroom the driver tried to give her 200 dollars. The driver told her that if she would go to the man he would not hurt her. In that case, the women said that the police would not be helpful because the customers are powerful people and the police will do nothing.

No one in the FGD had ever asked for help from the police and they believed that the police would just charge them money. They believed neither the police nor the owners would help them.

3.3.4 ASSOCIATIONS

In a KII, an officer of the Solidarity Association of Beer promoters in Cambodia (SABC) reported that SH in garment factories, restaurants and entertainment establishments is a serious issue because female workers are at risk of physical touching or fondling, and repeated requests for sex. In the garment factories, some team leaders often address female workers using inappropriate sexual words. These behaviours cause fear and shame for the victims.

SABC has organised training and awareness sessions on SH and indecent assaults for female entertainment workers, such as beer promoters, restaurant service women and waitresses and singers. SABC also organised training on relevant provisions in the criminal law, safe beer selling, and assaults and gender based violence. SABC has provided women with Easy Cards and other materials with information about the Criminal Code, Labor Law, and Human Anti- Trafficking Law.

One SABC key informant said that her agency uses the Criminal Code and she thinks that it has enough information relating to offences of rape, sexual assault and SH. But, she said that it depends on the wishes of the victim as to whether they want to file a lawsuit. She said that she is aware that several government agencies, including MoWA, MoT, and MoLVT, are involved in protection and prevention of SH. She reported that: MoWA has provided awareness-raising on violence against women through its campaign on non-violent acts at the workplaces and MoWA has also installed lighted posters with information about sex crimes; MoT has been raising awareness in some restaurants on the Labor Law (for instance, on contracts, maternity leave, and national holiday leave); MoLVT has been focusing mainly on garment workers and has never paid much attention to women working in the entertainment services. However, in 2014, Prakas 194 on work conditions and sanitation... (relating to entertainment service enterprises) was issued by the MoLVT at the request of NGOs.

If required to intervene in a matter of SH in the workplace, SABC normally refers cases to non government organisations such as Cambodia Action Research on AIDS and Mobility (CARAM), Cambodian Human Rights and Development Association (ADHOC), Cambodia Women's Crisis Center (CWCC), AFEDA and WMU. SABC may also call the Khan's police focal points (MoI) by calling 1288.

One difficulty encountered by SABC is the hesitation and lack of interest of KTV and restaurant owners in SABC programs as they do not want awareness-raising on sex related legal provisions to be provided to workers. They think that this would make their workers respond to their guests according to the law, then the owners or supervisors would lose their guests and income. Furthermore, when an appointment is made for awareness-raising, it is sometimes delayed or moved to another date when there are lots of clients coming to the restaurant.

Another difficulty is related to the attitude of police. Police officers often show negative attitudes towards victims when they arrive at the police station that discourage them from filing a complaint. For examples, the victim is referred from one officer to another, asked for money or a cell phone card, and given advice that "if the complaint is sent to higher authorities or court, it will take more time and you will face difficulties". Sometimes, the victims are directly advised by police that they would be better dealing with their situation via mediation. SABC has been working with police to solve this problem by raising this issue in meetings with police and reporting this to higher ranking officers at the MoI. SABC also provides support for transportation for victims who do not have money to travel to the police station to file their complaint.

She said that SABC is not involved with work of the Unions as SABC has its own mission and vision. On the other hand, any NGO who is involved with Unions is often not denied by owners of restaurants or private enterprises, she added.

According to her experience, there are not any SH policies or regulations in restaurants and KTV nor is there a complaint procedure. She said that it would be good if the State set up a policy or guideline on SH and required business enterprises to integrate it into their internal regulations. As the current definition of SH in the Criminal Code lacks clarity, she said that the government policy or guideline should clearly define SH in the workplace. She thought that female workers would feel honored and dignified if there was SH policy, but worried owners may see the policy as a threat to business.

Guesthouse Workers

An interview was conducted with a family-owned guesthouse (in Khan Sensok) with only 7 staff (2 women) who are mostly relatives or people from the same province as the owner. They are all employed without written contracts. A receptionist/administrator and two room cleaners participated in interviews separately.

The administrator and the two cleaners said that, to their knowledge, they have never received any information on laws or policy from the government. The administrator said that since he started working there about a year ago, he has been invited to attend two meetings with police Khan on drug education. During the meetings, the police just explained that if there is any suspicion of drug use/ or trade, the hotel and guesthouse owners should report to them for intervention, otherwise the business would be at risk of being closed down. Police had also come to the guesthouse for monitoring, but this was to check if there is a registration book and to make sure foreign guests are registered.

The administrator and cleaners reported that there has never been any SH in their workplace since they have worked there. They had never heard of any legal framework or definition of SH, besides sexual abuse, rape, and drugs. They said that usually there are clients who come with their partners (probably their girlfriends) to stay in the guesthouse either overnight or for a short period (two hours or so) for sex. The two cleaners said that if they were sexually harassed by others, they would report it to the administrator or the owner, but if the harassers were the administrator or the owner, they would just bear with it as they wouldn't know where else to seek help.

The three interviewees pointed out that there is poster in the rooms which might relate to a SH policy or regulation. However, on closer inspection, the poster lists 5 of the characteristics of the government Village/Commune Safety Policy. The 5 characteristics include: 1) No theft/robbery, 2) No illegal drug production/trading, 3) No child/women trafficking and domestic violence, 4) No gangsters, and 5) No gambling/illegal weapons.

According to the administrator, there have been times when clients have been suspected to be drug users, but instead of making reports to the police, he just has persuaded them leave the guesthouse.

The three interviewees stated that it's would be good if there was a State Policy on SH because it brings advantages for both employers and employees, i.e. staff know where to seek help, the wrongdoer is punished, the staff want to work for a longer period of time, and owner maintains a good reputation.

3.4 GAPS AND CHALLENGES

The Criminal Code includes 3 types of crimes that could be included in the international definitions of sexual harassment. These are: Indecent Acts (unwanted touching of genitals), Indecent Exposure, and Sexual Harassment. Indecent Acts and Indecent Exposure are clearly acts that could constitute sexual harassment. The Criminal Code contains the only definition of sexual harassment: "Sexual Harassment means an act that a person abuses the power which was vested to him/her in his/her functions in order to put pressure again and again on other persons in exchange for sexual favor". This definition does not describe the range of behaviour that can constitute sexual harassment and only categorises it as behaviour that occurs in a relationship of power. It likely means that harassment by a co-worker would not be included.

Under the current Criminal Code, there is no provision for prosecuting behaviour that is not a physical act. For example it would not cover verbal harassment such as comments and questions about appearance, life-style, sexual orientation, offensive phone calls, texts, emails, etc. or non verbal behaviour such as whistling, sexually suggestive gestures, or display of sexual materials.

The Labor Law only states that all forms of sexual violation are strictly prohibited. This implies that sexual harassment (as a form of sexual violence) is against the law. However, the law does not define sexual harassment. The only mechanism for prosecuting sexual harassment is through the Criminal Code which lacks a definition that describes behaviour that constitutes sexual harassment.

The MoLVT Prakas (No. 194) on Working Conditions, Occupational Safety and Health Rules of Entertainment Service Enterprises, Establishment and Companies does not clearly refer to sexual harassment but only refers to indecent acts. Furthermore, the Prakas only applies to entertainment service enterprises, establishments, and companies. Garment factories and other settings are not covered.

MoWA-JPA do not fall under the JP stated in the CPC and most police authorities and tasks mentioned in the CPC (such as police investigations, searches, confiscation of items, interrogations, taking suspects into custody) are only awarded directly to JP, not to JPO-MoWA. The roles of MoWA JPA shall be clarified clearly by MoWA.

4. RECOMMENDATIONS

4.1. LEGAL REFORM RELATING TO SEXUAL HARASSMENT IN THE WORKPLACE

It is recommended that Article 172 of the Labor Law and Article 250 of the Criminal Code are revised to include an explicit definition of SH in the workplace. While MoLVT plans to make amendments to some articles of the 1997 Labor Law related to house workers, it is strongly recommended that Article 172 is revised so that SH in the workplace is clearly stated and has a corresponding penalty.

In the long run, it is recommended that a sub-decree on SH is developed by the government with the following significant content:

General provision:

- Scope and beneficiaries
- Explanation of Terms, including: Harassment; Sexual Harassment (including detail on all forms of possible sexual harassment); what is not sexual harassment, Workplace.
- The rights of employees who are sexually harassed;
- Competent state authorities and agencies and their duties; and
- The obligations of employers to prevent and respond to sexual harassment in the workplace.

Methods of preventing and controlling sexual harassment in the workplace:

- Increasing education, communication, and awareness-raising on the prevention of sexual harassment in the workplace;
- Training on the prevention of sexual harassment at work, which can be integrated into business training courses for newly recruited workers and annual training for workers in OSH;
- Encouraging factory and entertainment establishment to adopt a policy and codes of conduct on sexual harassment; and
- Encouraging businesses to include content on the prevention of sexual harassment at the workplace into their collective labour agreements, or business rules and regulations.

Procedures for addressing sexual harassment in the workplace, including options for each workplace for internal procedures and response mechanisms

Remedies and sanctions for sexual harassment in the workplace

- Remedies for sexual harassment in the workplace
- Sanctions for sexual harassment in the workplace

4.2. IMPLEMENTATION OF CURRENT LAWS AND REGULATIONS

While waiting for the sub-decree to be established by the government, it is essential that CARE continue its current initiative to raise awareness about the current existing legal frameworks, especially Article 172 of the Labor Law 1997 and Article 250 of the Criminal Code 2009 and other provisions related sex crimes. Capacity building must be with workers, enterprise owners, Unions, NGO partners, and relevant State duty bearers.

There should be greater awareness-raising among the public and in workplaces about sexual abuse and sexual harassment as people need to learn about this issue so they can treat each other with respect. Awareness-raising can be done by organising training sessions, group discussions, seminars, and distributing informative materials. It is recommended that the education methodologies include interactions and role-play where the participants are asked to clearly differentiate what is appropriate behaviour and what is SH through question and answer. In addition, it is important that duty bearers who are providing further training and awareness-raising sessions be properly trained so that they are able elaborate on realistic examples and answer questions clearly rather than merely citing the legal provisions.

It is recommended that relevant state agencies, especially local authorities and JP be trained on SH in the workplace, as the study has found that they need additional knowledge and skills. Furthermore, they will fail to provide effective interventions if the government does not provide them resources for fieldwork.

It is hoped that providing capacity building courses and supportive resources would impact attitude change among certain duty bearers. However, a proper monitoring and penalty system should be in place for those duty bearers who do bad practice in responding to SH.

In the medium term, it is recommended that CARE support MoLVT, MoT, and MoWA to develop a guideline on prevention and responses to sexual harassment in the workplace. Partner garment factories, hospitality and entertainment settings could then be gradually encouraged to integrate it into their codes of conduct. It is important to document the progress of CARE work initiatives so that lesson learned are incorporated into the development of the suggested sub-decree.

While some CARE enterprise partners have already developed internal response teams for sexual harassment in their workplace, it is recommended that there are more female team members and that they are properly trained on appropriate skills and ethics. The MoWA draft Minimum Standard for working with victims of violence can be an important tool for them.

It is recommended that the current checklist of the MoLVT Inspection Team on occupational health and safety be revised to include information on SH in the workplace. In addition, it is also recommended that the MoLVT Inspection Team received appropriate training on how to assess this issue and how to properly record the findings of their inspections.

It is recommended that the MoWA-JPA Guidelines include the roles and responsibilities of MoWA JPA on SH in the workplace. While MoWA is planning to revise its Prakas on the role and responsibilities of the MoWA-JPA, it is recommended that the MoWA-JPA be involved in monitoring and evaluation of sexual harassment in the workplace and if possible be a part of the MoLVT Inspection Team.

The Union can be involved by bargaining with employers to incorporate the issue of sexual harassment into collective agreements. A Model Code of Conduct was developed by the World Federation of Sporting Goods Industry in 1997 stating that “every worker should be treated with respect and dignity and have the right to a workplace free from physical, sexual, psychological or verbal harassment or abuse”. However, this needs to be carried out carefully as it run the risk of being rejected by employers due to the sensitivity of Unions’ role in Cambodia.

4.3. FACTORIES' AND ESTABLISHMENTS' MEASURES FOR ADDRESSING SEXUAL HARASSMENT IN THE WORKPLACE

It is essential that each establishment includes SH in its code of conduct or internal regulations. While waiting for a Government legal document to provide guidelines for implementation, there should be active dissemination and education about workers’ rights to be respected, be treated with dignity and honor and to have a safe and clean environment free from sexual harassment.

The Admin/HR teams of enterprises need to be trained on their responsibility to ensure that their staff do not face sexual harassment. Training courses should provide them with the skills and sensitivity to address sexual harassment at the workplace.

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A list of Annexes including full legal frameworks in English can also be accessed online.



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