

COSATU GENDER CONFERENCE MARCH 2012



DISCUSSION DOCUMENT

A REFLECTION ON SEXUAL HARASSMENT IN THE WORKPLACE

A Reflection on Sexual Harassment in the Workplace

Introduction

Trade unions have the obligation to sensitise and educate members on sexual harassment including raising awareness on the nature and scope of the problems involved, handling and taking preventative measures and to establish grievance procedures to deal with it. Policies should be drawn in consultations between the employers and relevant trade unions and should form part of the collective bargaining agreements. As such, the issue of sexual harassment in the workplace has been always at the core of debates and discussions amongst COSATU and its affiliates. Indeed, the federation and its affiliates have committed themselves to preventing and addressing sexual harassment in the unions¹

Sexual Harassment and Sexual conduct has been a very sensitive issue in COSATU, its surfaced formally in 1989 during a women's national seminar on Sexual Harassment. The 1989 COSATU congress viewed the sexual harassment resolution submitted by the Transport & General Workers Union (T&GWU) now known as SATAWU as controversial and rejected it. In 1994 COSATU congress, there was a serious allegations of sexual harassment by delegates; the Congress therefore took a decision to develop a code of conduct on sexual harassment that will guide unions. The Sexual **Harassment Education Project (SHEP)** was therefore established by the Federation in 1994 to address the problem of sexual harassment in the workplace.

Its **Core objective (s)**: Promote the prevention of sexual harassment in the workplace; Conduct research to combat the scourge of sexual harassment; Awareness, education and training workshops; advocate and lobby access to justice for victims of sexual harassment in the workplace; influence policy and promote effective implementation of relevant programmes; input to legislative review and/or reform. However, SHEP focus has evolved overtime to cover all sectors of the economy; and to 'nip the problem in the bud'

Like anywhere else in the world, South Africa's labour force has been highly feminized, with more young women workers, who are more vulnerable to sexual harassment entering the labour market. What this simply means is that there is a need for transformation in terms of the laws and working conditions of the historically masculine workplace so as to suit the needs of the current workforce comprising predominantly of women.

¹ Refer to COSATU Sexual Harassment Code of Conduct (Adopted at EXCO May 1995)

For instance, both the South African Labour Relations Act (LRA) 66 of 1995 and Employment Equity Act 55 of 1998 Code of Good Practice have been amended to accommodate working women with regard to sexual harassment problems that they are prone to in the workplace. Likewise, in May 1995, COSATU and its affiliates adopted the Sexual Harassment Code of Conduct and Procedures to encourage the development of workplace policies by its affiliate members.

The aim of this paper is to reflect on the extent to which affiliates have taken forward or developed sexual harassment policies to ensure a safe working environment for women workers, and also to reflect on the project itself. First, the paper shall outline the basic tenets of sexual harassment in the workplace as a reminder to what has been discussed before and to also seek updates on current information pertaining to the subject. Second, the paper shall make an audit of affiliates in terms of development of Sexual Harassment policies.

The paper shall also present some statistics if any of cases that have been reported so far since the adoption of a Code of Good conduct on Sexual Harassment. Clearly, there is little or no data at all about cases and disciplinary hearings on Sexual Harassment in the workplace recorded so far. This paper seeks to address that gap. Finally, recommendations will be provided that are meant to contribute towards the adoption of a resolution on sexual harassment in the forthcoming gender conference.

What is Sexual Harassment?

The question of what constitutes sexual harassment (SH) has always been a contested terrain as the phenomenon is so complex and fraught with a lot of biases and myths. Whilst perpetrators have their own views of Sexual Harassment on the one hand, victims on the other hand have a different perspective. Simply defined, sexual harassment is any repeated unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature. It is an abuse of power, privilege, and control that make the victim feel intimidated or degraded and is a barrier to equal rights and a form of sex discrimination. It could be manifested in the form of unwelcome attention or outright violent behavior. This could be either one or a combination of the following:

- Degrading comments, jokes or questions about appearance and deliberate verbal abuse
- Unwanted physical contact, touching or patting
- Unwanted persistent sexual advances
- Use of pornographic pictures at the workplace
- Sexual assault, fondling and its worst form; rape
- Transactional sex for a job or favourable working conditions

Types of Sexual Harassment

1. Same sex harassment

It is important to note that not only people of the opposite sex perpetrate SH but also people of the same sex could be culprits too!

2. Non-employee Harassment

This is Sexual harassment by a non-employee, e.g. customers or visitors to the workplace and is common amongst those working in retail, restaurants, domestic or entertainment industries. However, this is not justifiable or explicable behavior

3. Third-Party Harassment

This is the type of behavior found offensive by some employees whereas others appreciate it; for example workers discussing about their sex lives in a group in the presence of others who feel uncomfortable.

Why is Sexual Harassment an issue in the workplace?

Women are the most targeted and victims because of the inequalities and power relations in the labour market. Despite laws on discrimination, women remain confined in poorly paid, low-skilled or low-status jobs, while men predominate in better-paid, authoritative positions and supervisory jobs. Where women are in higher positions of authority, harassment can be used as a weapon to undermine authority of women supervisors and managers.

Sexual Harassment affects all women regardless of age, marital status, physical appearance, background or professional status. It also cuts across racial and class lines. According to International Confederation of Trade Free Trade Unions (ICFTU), young women under 30, and unmarried, widowed, divorced or separated especially with dependents are high-risk groups. However, SH does not affect women only as some men also feel they are victims. Sexual Harassment threatens the health and safety of women workers in the workplace.

The division of labour in the workplace could be one of the major reasons why men see women as not equal partners in the workplace. Most positions of authority or so-called 'hard' tasks like finance or economics in the workplace are occupied by men and women are usually allocated what is regarded as the "soft" issues like personal assistants, cleaning or catering.

It is even worse for those working in male dominated sectors like mines, engineering or transport. Some men would even offer to undertake some so –called ‘masculine’ obligations or assignments in exchange for sexual favours. Those in authority always manipulate women and restrain their access to workplace rights such as job promotions or salary increments, job security unless they gain sexual favours.

The big question is whether women are being given enough support when they report or have they really been empowered to address and report cases of Sexual Harassment especially when they are made to believe that they are benefiting from their bosses’ favours.

Why sexual harassment is not reported in the workplace

Despite efforts made by unions and protective role played by national legislation in curbing SH it is still worrying that this problem still persists in the workplace and goes unreported. Below are some of the reasons cited for failure to report:

- Lack of faith in chain of command
- Labeled as a non-team player
- Perpetrator rather than victim
- Peer pressure
- Not worth the risk (promotions, awards, career)
- Fear of reprisal

Considering the above, it would be useful for affiliates to reflect on how much effort they have invested in SH empowerment programmes to break the silence. Again, it is fundamental to assess the input and resource committed by union leadership towards this issue.

How to deal with Sexual Harassment in the workplace

COSATU has worked closely with the Sexual Harassment Education project to seek for solutions to the sexual harassment that occur in the workplace and trade unions. Below are some of the suggestions that have been provided to educate women workers on how to deal with such a problem and are outlined below:

- Make use of existing legislation and policies
- Express your disapproval
- Confront the harasser
- Use an intermediary to confront the harasser

- Write a letter to the harasser
- Maintain a log or diary of incidents
- Request sexual harassment training for the unit
- Report the incident eg. rape is a criminal offense

Sexual Harassment Education Project

Vision

SHEP seeks to contribute towards the improvement of the quality of lives of all South Africans through the promotion of a 'hostile-free' workplace and a conducive, 'safe and caring' environment in the country; prevent the indignity, impairment and violation of one's inalienable human rights to work and/or learn; realize gradual gender equality and socio-economic empowerment; and ensure eventual sustainable eradication of abject poverty for all in the country.

Track record [among others]

The following are the programmes and campaigns which SHEP engaged on:-

- **Project (s) and Programme (s) which the project engaged on**
 1. The SHEP-Boy Child Project (2006-2009)²
 2. The 'After School and Holiday Programme' (2006-on-going)
 3. Sexual harassment awareness, education and training workshops³
 4. Book on Case Studies: "*Out of the Dense Forest and Seeing the Future*": Impact and effects of sexual harassment in the workplace and in schools in South Africa; prevention and empowerment strategies; and the way-forward (2009-on-going)
- **Policy development/review:** Sexual Harassment Policy in the workplace, schools and educational institutions of higher learning]; NEDLAC Code of Good Practice on the Handling of Sexual Harassment Cases in the Workplace; South African Council of Professional Ethics; and recommendations; The Draft' Bill (s) to prevent sexual harassment in the workplace and in schools, vocational training centres and tertiary institutions throughout the country
- **Action Plan (s):** Proposal for the re-engineering and re-conceptualization of the education system; and the adoption of a comprehensive and innovative National Action Plan: 'Safe Caring and Child Friendly Schools Programme'

²The SHEP: Boy-Child Project is an important, unique and timely pilot Project at this time; targeting the boy child and assisting in his early developmental stages.

- **Strategies:** Simple, practical, innovative and unique; and mindful of the 'local context': Re: target the cause (source): The SHEP: Boy-Child (pilot) Project and the innovative and comprehensive intervention: The 'After School and Holiday Programme' as noted above
- **Publications:** Study: Report on the State of Sexual Harassment in the Workplace – South Africa (2003). Booklet: Stop Sexual Harassment at School; Sexual Harassment in the workplace (1997); Looking for a Job (2004).
- **Material:** Sexual Harassment Video, Training Modules and posters
- **Domestic Workers:** training on sexual harassment
- **Labour Brokers:** made submission on challenges posed by labour brokers

Challenges

- Since 2004 to-date, SHEP has had its fair share of pertinent challenges, mainly experienced in the NGO sector. However Currently, SHEP is allocated an office in a comradely spirit by the Leadership of SACCAWU at its Head Office in Braamfontein.
- Available office space is inadequate to accommodate SHEP services users, there is no privacy to calm victims and prepare them for cases.
- The project that is supposed to run by six people as per its organogram when it was formed is now operated by one person an Acting Director with no Board of Directors as most of them resigned.
- Exacerbated by lack of funding

Recommendations

- COSATU and its affiliates need to resuscitate the Sexual Harassment Education Programme to cater for new entrants in the labour market especially targeting young women.
- Constant updates and training of shop stewards to empower them to undertake such obligations should be done continuously acknowledging the fact that society is dynamic.
- A toolkit should be developed as the first empowerment tool for new entrants into the labour market to raise awareness on Sexual Harassment to potential victims and perpetrators.
- Enough human (Sexual Harassment Trainers & Sexual Harassment Education officers) and financial resources should be committed towards the SHEP project for it to remain functional and relevant to women workers.
- There is need for a comprehensive research to gather current information in terms of existing or amended laws and identify major areas for policy advocacy. The research should also assess the extent to which affiliates have handled and dealt with Sexual Harassment matters and seek ways for interventions.

- The issue of the 50% women component in the disciplinary committees of companies or unions needs to be revisited.
- COSATU and its Affiliates to initiate and facilitate a Strategic Planning Meeting to coordinate and streamline the activities of SHEP and provide with clear guidelines.
- Facilitate funding to promote and support educational and training workshops.
- Facilitate monitoring and evaluation of projects and programmes on the ground.
- Provide adequate human capacity and support.
- Broaden and strengthen the constitution of SHEP Board of Directors (diversity, capacity and pertinent skills and/or experience among other traits) and increase capacity effectiveness through strategic organizational structure, management and leadership skills, and shared interest.
- Identify core business and expertise; and differentiate organizational behavior challenges and highlight best practice and find resolve.

Conclusion

Against the above mentioned background, it is the hope of this paper to assess and map the progress undertaken by COSATU and its affiliates so far to address the problem of Sexual Harassment in the workplace including supporting of women victims. Of importance is the need to have empirical evidence through statistics recorded by unions for any Sexual Harassment cases that have been perpetrated on employees or union members in the workplace. It is also important to take note of any disciplinary measures or disciplinary hearings that have occurred so far.

There seemed to have been a great silence with regard to Sexual Harassment issue and it would be helpful to establish the reasons for such. Could it be because of the amended laws that have criminalized Sexual Harassment or is it because of progressive policies and code of good practice set up by unions or women workplace empowerment programmes or intimidation by perpetrators or those in authority?

All these questions can only be answered through soliciting empirical data and views from affiliates through shop steward committees. To also simply respond to some of the aforementioned questions, an audit of the affiliates in terms of possession of a Sexual Harassment policy is ideal.

In line with the COSATU Sexual Harassment Code of Conduct of 1995, the federation is mandated to “ensure that affiliates negotiate a sexual harassment code and procedure with employers to show its commitment to fighting the problem in the workplace”. Against this background, it is important to assess the progress in terms of policy development by affiliates in relation to their trades/ sectors.

The problem of sexual harassment in the workplace and unions is a daily reality that should not be awarded a break as perpetrators always devise new strategies to evade the course of the law and legislations that have been established to deal with the issue. With more young women entering the labour market and for unions to be able to attract them, their protection against sexual harassment would be one of the key strategies.

The lull period taken by COSATU and its affiliates in terms of implementing Sexual Harassment programmes in the recent years, seems as if it is not a matter of concern and could create opportunities for perpetrators satisfy their ego.

This absence of advocacy and education empowerment programmes on Sexual Harassment means several women are suffering silently and that many cases have gone unreported. It is a plausible move that South Africa's legislation has been amended and adjusted to criminalise sexual harassment. But, it is the obligation of trade unions and other civil society organisations to monitor implementation of such laws and rights in the workplace.

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