

SEXUAL HARASSMENT IN THE WORKPLACE: SOUTH AFRICA

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Country-specific context

What is the current situation in South Africa regarding general sexual harassment/violence against women?

South Africa has one of the highest rates of violence against women, including rape and sexual harassment, in the world. This violence against women takes many forms - physical, sexual, economic, psychological - but all of these represent a violation of human dignity and human rights and have lasting consequences both for women and for their communities.

As of February 2016, it has been noted that around 150 women report being raped daily in South Africa. And this may only represent a fraction of actual cases, as police and social workers have noted that usually only one in nine cases of rape are reported. Rape has reached epidemic proportions. It occurs in all spheres of society and all women are potential victims. Women's fear of rape has begun to affect their basic day to day decisions and reduce their quality of life.

South Africa also has one of the highest rates of rape of children and infants. According to the Medical Research Council, more than one third of girls have experienced sexual violence before the age of 18.

In addition, every eight hours a woman in South Africa is killed by her intimate partner.

What are societal attitudes in South Africa regarding sexual harassment/violence against women?

South African society has a strong patriarchal element, and violence against women, including rape, is often seen as “necessary” (to discipline a woman, or in the case of “corrective rape”, to try and “convert” a lesbian into being heterosexual). Gang rape, also known as “jack-rolling”, is not seen as a crime by many young men, who see it instead as a form of “sport”. Recently, in a survey of young South African men, more than 25% of a sample of 1,738 admitted to raping someone when anonymously questioned. In terms of domestic violence, organisations estimate that one out of every six woman in South Africa is regularly assaulted by her partner.

Many women do not report sexual harassment or violence for fear of retribution by the perpetrators, or because they believe that nothing will be done whether they report or not.

What do the statistics say?

Latest figures which reflect the period 2014/2015 include 53, 617 sexual offences. Taken that one in nine rape cases are actually reported, this could actually be as high as 500, 000 offences in one year.

What does the law say?

Protection from Harassment Act

The **Employment Equity Act 55 of 1998 (EEA)** deals with harassment or sexual harassment in the workplace. A single incident of unwelcome sexual conduct may constitute sexual harassment and must be brought to the attention of the employer immediately. If an employer fails to take immediate and appropriate action to prevent harassment in the workplace, the employer may become liable for damages due to unfair discrimination, and its failure to assist could lead to a claim for constructive dismissal.

In terms of the **Labour Relations Act 66 of 1995**, sexual harassment is a form of misconduct, and the employer may take disciplinary steps against the respondent who may be fairly dismissed.

The **Code of Good Practice on the Handling of Sexual Harassment Cases (the Code)** is to assist in eliminating sexual harassment in the workplace. It provides appropriate procedures to deal with the problem and prevent its recurrence.

Employers are encouraged to develop and implement policies and procedures that will lead to the creation of workplaces that are free of sexual harassment, where employers and workers respect one another’s integrity and dignity, their privacy, and their right to equity in the workplace.

Although this code is intended to guide employers and workers, the perpetrators and victims of sexual harassment may include: Owners, employers, managers, supervisors, employees, job applicants, clients, suppliers, contractors and others having dealings with a business. A non-employee who is a victim of sexual harassment may lodge a grievance with the employer of the

harasser where the harassment has taken place in the workplace or in the course of the harasser's employment.

Other related laws include **The Domestic Violence Act 116 of 1998**, **The Children's Act 38 of 2005**, **The Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007**; also referred to as the Sexual Offences Act, and **The Prevention and Combating of Trafficking of Persons Act 7 of 2013**.

How effective is the law - what are prosecution rates?

If a victim of violence against women does not know her rights or the legislation, then the legislation will have no use at all. Many women in rural areas and underprivileged areas in South Africa are not aware of the legislation which protects them. They therefore seldom report cases of violence as they are not aware of the due process.

In other cases, even women who are aware of their rights and the legislation do not report cases of violence for a variety of reasons, chief amongst them being the extremely low rate of convictions, especially for rape – at an average of 4 to 8%.

What is the current situation in South Africa regarding sexual harassment/violence against women in the workplace?

Sexual harassment and violence against women in the workplace occur frequently in South Africa, but are under-reported because many women fear losing their jobs if they “blow the whistle”. Sexual harassment can range from women being offered jobs in exchange for sexual favours, to violent rape.

Are there laws in place to protect workers/employees?

Yes. As above - laws against sexual harassment in the workplace are set out in the Labour Relations Act, the Employment Equity Act and in a set of guidelines issued by the Department of Labour called the Code of Good Practice on the Handling of Sexual Harassment Cases (the Code). Both the Labour Relations Act and the Employment Equity Act prohibit sexual harassment in the workplace and set out the steps that an employee can take to deal with sexual harassment. The Code sets out the definition of sexual harassment and describes the procedures that employers can adopt to deal with sexual harassment in the workplace. The Code is a guide for employers on how to deal with sexual harassment in the workplace. It is not a binding law but employers are encouraged to develop and implement policies on sexual harassment based on the Code.

Are there extra measures put in place via CBAs or other means?

Yes, different workplaces have developed their own sexual harassment codes and policies. For example, the City of Tshwane Metropolitan Municipality has a collective agreement that includes a clear definition of sexual harassment, and how to report incidents of sexual harassment.

How effective is the law - what are prosecution rates?

Once again, despite legislation being put in place, many employees do not report sexual harassment for fear of losing their job, or fear of stigma in the workplace (being labelled a “bitch” or a “slut”), or

losing access to job promotions etc. Unfortunately, this means that despite there being laws in place, they are not utilised that frequently.

Challenges facing workers/employees

Are some workplaces and /or sectors more “dangerous” or “supportive” then others?

In South Africa, where violence against women has been called “an epidemic”, all women live under one threat or another. But some jobs are more dangerous, notably previously male-dominated sectors (such as mining) where men feel threatened by women entering “their” job market. Jobs that require women to work late shifts, thus involving late commuting, are also more dangerous. Jobs that involve one-on-one work situations, such as being a PA to a male boss, can also provide their own set of challenges.

Workplaces where there is a strong union, with a strong gender desk, provide more support for women employees. Workplaces that develop – and enforce – their own sexual harassment policies obviously provide a more supportive environment for women employees.

Why do some women not report sexual harassment/violence in the workplace?

As noted above, fear of being fired, fear of stigma, and fear of being denied career opportunities are some of the biggest reasons why women do not report sexual harassment in the workplace. Lack of knowledge of the law and its processes is another factor.

Why are some managements less sympathetic than others?

Lack of knowledge of the law, a patriarchal and hierarchical staff structure, and a refusal to take sexual harassment issues seriously would be some reasons why some managements are less sympathetic than others.

Why are laws not always adhered to?

Lack of knowledge, and/or a refusal to take sexual harassment issues seriously.

What has WageIndicator/ LRS done to address this situation?

Mywage, four South African trade union federations (Cosatu, Fedusa, Consawu and Nactu) and the LRS (Labour Research Service) have for the past several years organised both online and offline awareness strategies. Our activities have featured information on what sexual harassment is, how to deal with sexual harassment, and also counselling and sharing sessions. These have been held nationwide, in Cape Town, Durban, Johannesburg and Polokwane.

Online: The Mywage South Africa website includes a comprehensive section on the labour laws and code of good practice regarding sexual harassment in the workplace. In addition, we have a question and answer section on the topic.

Offline: A number of workshops and mini-conferences have been organised in various cities in South Africa on the theme of sexual harassment. These have raised awareness, and have also provided a secure space for women who have been victims of sexual harassment to come forward and tell their

stories. We have also made use of professional and specialised partners, from the labour, law, HR and counselling sectors, to provide information and answer questions.

Materials: We have produced a 14-page booklet on sexual harassment which can be used by both employers and employees. It contains all the relevant labour laws, as well as information on how to report sexual harassment, and examples of real-life cases.

Advice (eg email feedback): The Mywage website provides the space for visitors to ask labour-related questions. Some of those emails deal with sexual harassment, often on a very personal level. In most cases, we are able to refer victims to the appropriate services that are available, providing website addresses, telephone contact details and street addresses.

Working with gender desks at trade unions: Mywage and the LRS have worked very closely with gender desk representatives from all four major trade union confederations in South Africa, as well as representatives from individual/partner unions.

What has worked, and what has not worked?

In brief: email correspondence and the use of the Mywage website is a very effective way of spreading information. However, when it comes to raising consciousness in workplaces, there needs to be more support from the union leadership – which is more often than not male-dominated. This means that unions need to look at increasing the presence of women in union leadership roles, in order to pursue issues, disseminate information and pass policies that relate to women workers.

Partnerships – have they been formed, and how do they work?

Yes, they have been formed. As an example, the LRS works in partnership with Mywage and the four trade union federations to focus on specific issues. Sexual harassment has been one of them. Because all of these organisations are national, it means that national visibility and the ability to tackle issues around the country becomes more viable.

We also partner with “outside” organisations on a temporary basis, usually to draw on specialised expertise. This could be the CCMA (Commission for Conciliation, Mediation and Arbitration), the Department of Labour, the Womens’ Legal Centre, employers’ organisations, media centres and more

Challenges:

- Getting the right information to women workers (definition of sexual harassment etc)
- Making sure that workplaces have the correct sexual harassment policies and procedures in place
- Making sure that reporting structures and follow-up procedures are supported
- Removing the threat of job loss and stigma when reporting on sexual harassment
- Making sure that gender-related issues are included in CBAs – which means making sure that more women are represented in trade union leadership structures

What can be done further to address this situation?

A blueprint could be created for other countries to use. The blueprint could be uploaded in all WageIndicator websites and also be available offline. The blueprint could include the following topics:

How to hold workshops and debates on the topic

Workers/managers often don't have a clear understanding of what constitutes sexual harassment. Victims of sexual harassment at workplace often tolerate it and believe that treatment is just part of the job. The offenders are being ignorant and say that it's a common thing.

Therefore socialization/workshop is indeed needed. In the workshop, we need to define each type of sexual harassment, in order to raise awareness and encourage a zero-tolerance climate. Sometimes the definition of harassment changes whether it comes from employers/buyers, government, Trade Unions, because there are no Law that regulate it. Interactive workshop can be achieved by having a quiz/case study on how to determine what falls under sexual harassment/violence against women at workplace and how to react on it.

Workshop has to be attended by both side, employers (management) and workers.

How to use the internet/website to spread relevant information

WageIndicator website has provided information regarding violence against women at workplace/sexual harassment which are accessible for everyone and free. To spread this information widely across Indonesia, media exposure is also needed. By doing regular press releases either by WageIndicator or by the TU on these topics, we could have more exposure like we did with Gender Pay Gap information and CBA database.

Though WageIndicator have our own FAQ structure, however we can add some FAQs that are more relevant and adapted to each countries context. It could be better if we add sexual harassment quiz (like we did with GPG quiz) and it could be one of the materials for training.

How to set up an advisory desk/helpline for victims of violence/harassment in the workplace

Harassment at the workplace is quite difficult to handle when no grievance mechanism related to harassment has been established and understood by workers and employers and when the victims are hesitant to discuss their case because there are no helpdesk/counselling available.

Tripartite coordination between government institutions, trade unions and NGOs are needed to set up helpdesk/counselling for victims of violence/harassment in the workplace.

Wageindicator also could develop online grievance system where they can link the worker compliance directly to the helpdesk.

If there is no legislation in place, the blueprint should also explain how to lobby for legislation, as well as improving CBAs regarding sexual harassment/violence in the workplace

In regards to steps to lobby for legislation, networks and partnerships are needed. To improve CBA regarding sexual harassment/violence at the workplace, first it's needed to have women representative in TU leadership structure or as a CBA negotiators. Including gender material in every CBA training could also improve awareness of CBA negotiators (regardless the gender) on women

worker's rights (including sexual harassment). WageIndicator also can provide a model of gender responsive CBA for CBA negotiators to work with.

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