

SEXUAL HARASSMENT
AT WORKPLACE
LEGAL AND POLICY CHALLENGES
IN THE REPUBLIC OF KAZAKHSTAN



JULY 2017

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Report on legal and policy challenges of sexual harassment in the workplace and recommendations for improved legislation and practice in the Republic of Kazakhstan.

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The views expressed in this publication are those of the author(s) and do not necessarily represent the views of UN Women, the United Nations or any of its affiliated organizations.

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1.

SCOPE OF THE REPORT

This report is based on the accessible of open source research and information on sexual harassment in the workplace in Kazakhstan and includes reflection on causes and forms; societal perceptions and attitudes to the problems of sexual harassment; review of existing national laws and available statistics.

The legal gaps analysis includes review of laws and implementation mechanisms on prevention and protection from sexual harassment in the workplace, provision of examples of international practices in this area. Considering earlier reports that cover a number of international examples primary examples are provided from Council of Europe (CoE) and European Union (EU) members states, and Australia with its good practices and guides for employers.

Definition of sexual harassment is offered and its core elements identified, against which the laws of the Republic of Kazakhstan are compared.

Adapting the UN Guidelines on Business and Human Rights approach of protect, respect, remedy – considerable part of the report focuses on the responsibilities and opportunities for action for enterprises and employers.

Recommendations are offered to reflect the state and business community action opportunities.

2.

WHAT IS SEXUAL HARASSMENT

The United Nations (UN) and regional treaty systems recognise sexual harassment as a form of discrimination and violence against women (UNW, 2012). Therefore, for the understanding of the approaches to tackle sexual harassment at workplace, this section will provide overview of sexual harassment in the context of gender equality, gender based violence and the application of non-discrimination approach in dealing with prevention and consequences of sexual harassment.

2.1.

Definitions and approaches

The term “sexual harassment” entered legal discussions in USA with the publication of Lin Farley’s *Sexual Shakedown: The Sexual Harassment of Women on the Job* (1978) and Catharine MacKinnon’s *Sexual Harassment of Working Women* (1979). MacKinnon, the well-known feminist law professor, was largely responsible for convincing the legal community and social theorists that sexual harassment is a form of sex discrimination (FEE, 1996). Sex discrimination is directly linked with the issues of equality between men and women and respectively, gender-based violence (GBV). To understand sexual harassment and better design the protection from sexual harassment mechanisms, the report offers insight into links of sexual harassment with gender equality and GBV.

2.1.1.

Gender-based violence

Violence against women exists in every society, and encompasses different forms of physical, sexual and psychological abuse. However, despite its scale and social impact, it remains largely under-reported. Women can perpetrate violence, and men and boys can be victims of violence at the hands of both sexes, but the results of European wide survey (28 member states, 42 000 interviewed women), together with other data collection, show that violence against women is predominantly perpetrated by men. This is overwhelmingly the case when it comes to sexual violence and sexual harassment. With this in mind, the majority of violence against women can be understood as gender-based violence (EC, 2015).

Gender-based violence includes forms of violence, such as violence in close relationships, sexual violence (including rape, sexual assault and harassment), psy-

chological and economic violence, trafficking in women, forced prostitution, slavery, and different forms of harmful practices, such as child and/or forced marriages, female genital mutilation, crimes committed in the name of so-called honour, forced abortion, forced pregnancy and forced sterilisation (CE, 2011).

GBV is violence that is directed against a person because of that person’s gender, gender identity or gender expression, or which affects persons of a particular gender disproportionately. It may result in physical, sexual, emotional or psychological harm to the victim, or cause her or him economic loss (CE, 2011). Sexual harassment is among the expressions of violence directed proportionally more towards women.

Gender-based violence’ and ‘violence against women are terms that are often used interchangeably as most gender-based violence is inflicted by men on women and girls. It is important to retain the ‘gender-based’ aspect of the concept as this highlights the fact that GBV is an expression of power inequalities between women and men. The terms are used interchangeably as it is always understood that gender-based violence means violence against women and vice versa. GBV is based on hierarchical and unequal structural power relations rooted in culture-related gender norms or gender stereotypes. It also reveals domination in the symbolic and cultural order, and often manifests itself in direct violence. The cultural norms are also often used as an excuse to justify different treatment of women or men, including in justifying sexual

The 2012 report on sexual harassment in Kazakhstan (UNW, 2012), identifies that 80% of interviewed women have been subjected to sexual harassment, and at the same time only 8% of women (compared to 52% of men) thought that existing legal protections is sufficient.

2013 survey in Kazakhstan identified prevailing gender stereotypes demonstrated by women themselves that are presumed to influence the prevalence of gender based violence and sexual harassment. Among the gender inequality characteristics of most concern to respondents were fair distribution of domestic and family duties, equal participation of parents in childcare, fair family budget distribution and property rights.

harassment. GBV definition aims at making the historical power imbalance between women and men more visible, and tries to capture the oppressive pattern of coercive control which deprives women of fundamental freedoms (CE, 2011).

Power relations play particularly important role in the employment conditions, where the owners and managers within the company have possibility to impact the promotion, working conditions and the general employment climate for the person. It is required by employers to take into account both the gender stereotypes and cultural context and implied power relations, as well as internal power structures when designing the internal procedures and norms of behaviour, including prevention of sexual harassment (CE, 2011).

2.1.2. Gender equality and sustainable business practice

Equality between women and men is seen both as a human rights issue and as a precondition for, and indicator of, sustainable people-centred development and requires involvement of men and women. The promotion of Gender equality could help reduce any forms of GBV. Gender equality means equal rights, responsibilities and opportunities of women and men and girls and boys. Gender equality implies that the interests, needs and priorities of both women and men are taken into consideration, thereby recognising the diversity of different groups of women and men. Equality does not mean that women and men will become the same but that women's and men's rights, responsibilities and opportunities will not depend on whether they are born female or male (CE, 2011).

Sustainable development includes gender equality as part of its social impact understanding. *"Sustainable development seeks to meet the needs and aspirations of the present without compromising the ability to meet those of the future"* (WCED, 2014). As the Brundtland

Commission explains, there is need to see the world as united system, linking individual to the other parts of the system, be aware of the social, economic and environmental impact of actions, intergenerational solidarity and mutual dependency for progress.

To illustrate the sustainable business action and mutual interdependence and balance

that need to be achieved, I borrow the fractal triangle as used by the Cradle to Cradle' product design framework, also called Triple Top Line. To secure 100% sustainability that activity has to ensure 100% environmental, social and economic positive impact while at the same time maintaining equilibrium among the three areas of concern. In absolute terms "each fractal peace has to be a 100% good in order to be a good designed and have balance in the equation"². *"This new design perspective creates triple top line growth: products that enhance the well being of nature and culture while generating economic value. Design for the triple top line follows the laws of nature to give industry the tools to develop systems that safely generate industry forever. Value and quality are embodied in products, processes, and facilities which are so ecologically intelligently designed that they leave footprints to delight in, rather than to lament."*³

The Equity, or social impact, includes equality as a value and core element. Therefore 100% sustainability can only be achieved, when equality, including gender equality, is put into equation, and as a fraction satisfies 100% standard.

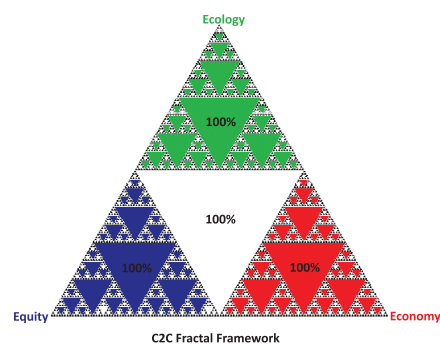


Figure 1: Sustainability Fractal Framework

1 More on Cradle to Cradle framework, see
 2 Figure 1 borrowed from: DP4 Cradle to Cradle: Sustainable development through fractal geometry; blog of the Escuela de Organización Industrial, available at: <http://www.eoi.es/blogs/aitanaleret/2012/01/01/dp4-cradle-to-cradle-sustainable-development-through-fractal-geometry/> (last seen 16/01/2015)
 3 See Cradle to Cradle Value description at: <http://www.braungart.com/en/content/vision> (last seen 16/01/2015)

2.2. Core characteristics of Sexual harassment

Sexual harassment is a form of gender-based violence encompassing acts of unwanted physical, verbal or non-verbal conduct of a sexual nature, which have a purpose or effect of violating the victim's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment. Acts of sexual harassment are, typically, carried out in the context of abuse of power, promise of reward or threat of reprisal (EC, 2015).

Although the legal definition varies from country to country, sexual harassment is unwelcome sex-related conduct. It is through physical forms, verbal acts and nonverbal forms such as cyber harassment. Different forms of sexual harassment (FRA, 2014):

- Physical forms of harassment: unwelcome touching, hugging or kissing.

- Verbal forms of harassment: sexually suggestive, offensive, comments or jokes; inappropriate invitations to go out on dates; intrusive, offensive questions about private life; intrusive, offensive comments about a woman's physical appearance.
- Other non-verbal forms of harassment: inappropriate, intimidating staring or leering; receiving or being shown offensive, sexually explicit pictures, photos or gifts; somebody indecently exposing themselves; being made to watch or look at pornographic material against one's wishes.
- Cyber harassment: receiving unwanted, offensive, sexually explicit emails or SMS messages; inappropriate, offensive advances on social networking websites or in internet chat rooms.

Furthermore, criminal law regulates sexual violence and depending on national laws, the incidents of sexual crime can be reviewed also as acts of discrimination thus creating consequences not only for the perpetrator, but also for the employer.

Characteristics of sexual harassment	Description
Conduct of sexual nature	Physical, verbal, non-verbal and cyber harassment
Unwanted / unwelcome	This is a subjective test – the recipient of the conduct defines whether the conduct was unwelcome, not the intention behind it. It is a conduct not solicited or invited by the employee
Offensive, humiliating, intimidating behaviour	An objective test – whether a reasonable person would have anticipated that the behaviour would have such effect. What is reasonable will be defined by the specific context of the situation.
Purpose or effect	Intention /act of sexual nature, or acts that create hostile work environment. In deciding whether the action has effect of sexual harassment one has to consider the perception of the victim, other circumstances of the case, whether it is reasonable for the conduct to have such effect.
In work related circumstances	Sexual harassment can take place at work, at work-related events, between people sharing the same workplace, between colleagues outside of work. Third party sexual harassment is often included as liability of the employer.
Repetition/single occasion	The conduct does not have to be repetitive or systematic, but can be a single act. At the same time, when effect of sexual harassment is hostile work environment it may often be a series of events that individually may not be perceived as sexual harassment but action as a whole creates effect of sexual nature.
Direct or indirect	The conduct may be directed at the person, or a person complaining on behalf of someone else experiences adverse effect on its work.
Responsibility	The person harassing someone is liable for the behaviour and employers can be held liable for acts of sexual harassment by their employees or agents.
Burden of proof	Approaching sexual harassment as gender-based discrimination, the reverse burden of proof principle can be applied. It is essential to secure the effective protection, considering the power relations in sexual harassment cases and the ability of the victims to gather evidence.
Complaints put forward	Often, complaints are put forward not the by the person experiencing sexual harassment but someone else.

3.

SEXUAL HARASSMENT AT WORKPLACE - INTERNATIONAL PRACTICE

As indicated earlier, sexual harassment is seen as gender-based violence from the Human rights and particularly women's rights perspective. CEDAW general recommendation No 19 refers to sexual harassment (UN, 2017) in article 11:

*„17. Equality in employment can be seriously impaired when women are subjected to gender-specific violence, **such as sexual harassment** in the workplace.*

18. Sexual harassment includes such unwelcome sexually determined behaviour as physical contact and advances, sexually coloured remarks, showing pornography and sexual demand, 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.

However, in terms of instrumental implementation of the protection of human rights, we will refer to the UN Guiding Principles on Human Rights and Business, these include three core elements that need to be followed in protecting from human rights violations, including sexual harassment at workplace – **protect, respect and remedy violations** (OHCHR, 2011). These Guiding Principles apply to all States and to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure. The Principles are grounded in recognition of:

- a) States' existing obligations to respect, **protect and fulfil human rights** and fundamental freedoms;
- b) The role of **business** enterprises as specialized organs of society performing specialized functions, required **to comply** with all applicable laws and **to respect** human rights;
- c) The need for rights and obligations to be matched to appropriate and effective remedies when breached.

3.1.

State duty to protect from sexual harassment

State duty to protect individual from violation of human rights from third parties and it requires taking appropriate steps to prevent, investigate, punish and redress such abuse through **effective policies, legislation, regulations and adjudication**. That means, states set clear expectations to the business enterprises throughout their operations by means of laws, policies, and other normative and guiding instruments; monitor the situation, provide support to businesses to understand their obligations and human rights implications on their operations and ensure there is effective adjudication.

Applying this approach to sexual harassment, state is expected to:

- Set clear laws where sexual harassment is defined.
- Define the scope of the law and responsibility of the enterprise and its representatives: to what degree it affects;
- Set expectations to enterprises on clear internal governance processes - impact on manager-employee, employee-employee relations;
- Define how the company responsibility reaches to cover employee-client (third party) relations at workplace;
- To what extent company is responsible for the sexual harassment practice in the partner companies through the supply chain.

More than 75 countries have legislation prohibiting sexual harassment in the workplace, nevertheless no single and uniform definition of sexual harassment at workplace exists, we keep in mind the essential characteristics of it - acts of unwanted physical, verbal or non-verbal conduct of a sexual nature, which have a purpose or effect of violating the victim's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment. Acts of sexual harassment are, typically, carried out in the context of abuse of power, promise of reward or threat of reprisal (EC, 2015).

In **Malta** Sexual harassment is defined and prohibited under Employment and Industrial Relations Act and Equality for Men and Women Act. Both harassment and sexual harassment is prohibited under the law. Sexual harassment is considered a form of sex discrimination.

It is unlawful for an employer or an employee to sexually harass another employee or the employer (the victim) by subjecting the victim to an act of physical intimacy; or requesting sexual favours from the victim; or subjecting the victim to any act or conduct with sexual connotations, including spoken words, gestures or the production, display or circulation of written words, pictures or other material where the act, request or conduct is unwelcome to the victim and could reasonably be regarded as offensive, humiliating or intimidating to the victim; the victim is treated differently, or it could reasonably be anticipated that the victim could be so treated, by reason of the victim's rejection of or submission to the act, request or conduct.

A person who contravenes the provisions relating to sexual harassment in the law is guilty of an offence and is liable on conviction to a fine not exceeding €2329.37 or to imprisonment for a period not exceeding six months, or to both such fine and imprisonment.

Employer is deemed to have discriminated against a person by neglecting the obligation to suppress sexual harassment. A person who alleges that an employer is in breach of provisions relating to harassment, sexual harassment and non-discrimination provisions, he/she may lodge a complaint to the Industrial Tribunal. The Tribunal may order cancellation of an employment contract and order payment of compensation for loss and damage sustained by the aggrieved party as a consequence of the breach.

It is the duty of the employer to take effective measures to prevent all forms of discrimination on grounds of sex, in particular harassment and sexual harassment in the workplace, in access to employment, vocational training and promotion.

Information compiled from the resources of MyWage available at: <http://www.mywage.org/malta/home/labour-law/fair-treatment/sexual-harassment> and National Commission for the Promotion of Equality resources available at http://ncpe.gov.mt/en/Documents/Our_Publications_and_Resources/Resourses_and_Tools/Handbooks_and_Manuals/sexual_harassment_code_of_practice.pdf

Most countries have implemented the rules through specific anti-discrimination legislation of some kind. In many cases this is done through sex equality acts, covering working life and related areas and/or goods and services (like Belgium, Denmark, Cyprus, Estonia, Finland, Greece, Iceland, Liechtenstein, Malta, Norway and Spain).

Sexual harassment is also included in general non-discrimination laws, grounds other than sex and other areas than employment are included, including working life and provision of goods and services (Bulgaria, Czech Republic, France, Germany, Poland, Slovakia, Slovenia, Sweden and the UK).

The Equality Act (UK) makes employers responsible for protecting staff from **harassment by third parties** such as customers. The Equality Act 2010 uses a single definition of harassment to cover the relevant protected characteristics. Employees can complain of behaviour that they find offensive even if it is not directed at them.

Equality directives in the EU have impacted specific regulation on non-discrimination in employment and

with respect to provision of goods and services and drive the **Discrimination approach in cases of sexual harassment**. Member state Equality acts or provisions cover various grounds and areas, in addition to specific regulation of discrimination on the grounds **of sex** in working life and the access to and supply of goods and services (Austria, Bulgaria, the Czech Republic, France, FYROM, Germany,

In Sweden, the Equality Law includes sexual harassment as definition of discrimination: sexual harassment is an action of sexual character that violates someone's dignity (Art. 1.4.5). Furthermore, the Law defines the direct and indirect discrimination.

Swedish Equality Law stands very strong on the clear requirements of the Employer to investigate the sexual harassment cases (Art. 2.3.) even if there has been no complaint but the situation has been observed by someone (see also on informer's role) and take action to prevent situations from repeating.

UK Equality Act 2010 defines sexual harassment in Section 26 as unwanted conduct of sexual nature. The conduct has the purpose or effect in violating persons' dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the person. In deciding whether conduct has the mentioned effect three issues are to be considered:

- the perception of person harassed,
- the other circumstances of the case; and
- whether it is reasonable for the conduct to have that effect.

Mechanisms of enforcement: Labour tribunal

Hungary, Ireland, Latvia, the Netherlands, Poland, Romania, Slovakia, Slovenia, Sweden and the UK). For example, **Poland** also has double regulation –it bans discriminatory harassment and sexual harassment in the Labour Code, and it acts as specialised law where working-life discrimination is concerned.

Iceland has complemented implementing anti-discrimination acts with additional regulations. In Iceland, this is Regulation No. 1000/2004 on measures against harassment in the workplace, covering not only discriminatory harassment and sexual harassment but also bullying generally.

The Dignity Harm Approach focuses on general harassment and bullying, mobbing at work, not highlighting gender equality aspects as in countries choosing Gender Equality perspective. For example, **Belgium** with the 1996 Welfare at Work Act covers all types of harassment, sexual harassment and 'violence at work' whether or not they include any dimension of discrimination. An employee who falls under this Act must rely exclusively on this provision in the area of employment despite the conduct also being covered by the 2007 Gender Act.

In **Australia** for example in May 2011 the Sex and Age Discrimination Legislation Amendment Act 2011 was passed expanding the protections against sexual harassment. The amendments provide important protections and are an encouraging step forward to ensuring gender equality in Australia:

- redefined sexual harassment to cover what a reasonable person would anticipate the possibility that the person harassed would be offended, humiliated or intimidated by the conduct;
- strengthened protections against sexual harassment in workplaces and schools to protect students from sexual harassment regardless of their age and whether they are harassed by someone from their own educational institution or another educational institution;
- prohibited sexual harassment conducted through new technologies (e.g. over the internet, or through social media or texting).

While the framework agreement on harassment and violence at work by the European social partners from 2007 highlights the need for repeated conduct for the definition of harassment, the repetition of conduct is not the core criteria in cases of sexual harassment. It can be a single occurrence, or a repeated conduct, but it will depend on the circumstances of the case and the type of the abuse as indicated in the legal test criteria applied by the courts or adjudicating institution.

Also, The International Labour Organisation (ILO) states that behaviour that can be characterised as violence at work can take a variety of forms, including non-physical or psychological violence: Violence may also consist of repeated actions which, by themselves may be relatively minor, but which can cumulatively come to constitute serious forms of violence such as sexual harassment, bullying or mobbing (OSHA, 2010).

4.

SEXUAL HARASSMENT AND BUSINESS

4.1. Duty to respect

The second aspect is the **responsibility of business to respect human rights**, in this case – to prevent SX in its operations and address the identified risks. Duty of the corporation is to ensure that it has identified potential and existing violations, has taken steps to prevent SX or have mechanisms in place to address violations happening, and assess when and how corporation can be held responsible by association for violations committed by its business partners.

One of the key elements of this duty is the **principles of due diligence**. Disregarding the state action, it is relevant for the business to scan the environment, be aware of the specific industry risks and assess their operations impact. Businesses internally and externally identify key risks associated with discrimination, including sexual harassment, and should be aware of the industry specific risks.

There are **general human rights compliance checklists**, that businesses can use for due diligence and state institutions can use them for inspiration to identify relevant indicators for policy development. For example, the Danish Institute for Human Rights has been updating its Human Rights Checklist (HRIB, 2015) for enterprises, that includes review of companies' sexual harassment policies. It includes sexual harassment definition under Equal and Fair Treatment provisions.

Along the general checklists, there are also **industry specific due diligence instruments** that can be used to identify potential human rights, including sexual harassment, violations. OECD provides specific guidance notes for financial sector, agriculture supply chain, extractive industries, textile industry, and there are other organizations focusing on industry monitoring and tools. For example, BetterWork.org works specifically on identifying workplace related issues in textile industry (garment factories), or Global Code of Ethics for Tourism Industry sets basic 10 principles for sustainable tourism industry, that companies can elaborate for implementation

according to their needs and circumstances. Due diligence is particularly relevant for the companies working in high risk zones, like conflict areas, high migration flow territories.

Industry supervising organizations, where applicable, may issue specific guidelines with regard to sexual harassment or establish rules for the industry enterprises for minimum conduct.

4.2. State owned enterprises

There is particular expectation from the state to regulate **State owned or controlled** enterprises, and enterprises that receive substantial support from the state (e.g. export credit agencies, investment agencies, or businesses receiving specific support due to policy directions of the state). State can require specific due diligence procedures from these companies. In the EU, this aspect is in 2016 covered through the “Non-financial reporting directive” (EU, 2017), requiring companies of certain size and turnover to report on social, economic, environmental and human rights impact they create. Sexual harassment should be part of the understanding from the non-discrimination perspective and the tools mentioned for the human rights impact check can be utilised.

OSHA reports in the EU

„A specific feature of third-party violence is that the risk is substantially higher in some occupational sectors such as healthcare and social work, education, commerce, transport, public administration, defence, and hotels and restaurants. Women meet with violence most often in healthcare, education and shops, whereas men encounter it most in police and security work, and transport. In these sectors, many of the features of work and the work environment shown to be risks for violence by third parties are present”.

Aviation industry

Aviation industry is among the service sector industries where employees suffer from sexual harassment from third parties (e.g. clients) and between employees.

Globally: Internatioanl Air Transport Association (IATA) guidelines on Unruly passengers provides explanations on what are the types of unruly behaviour, including sexual harassment, and guidelines for the aviation industry businesses on policy development and proceeedures to tackle the offences. IATA had identified legal gaps where due to different regulation nationally, sexual offences onboard the aircraft are left without prosecution. IATA urged states to ratify 'Protocol to amend the Convention on Offences and Certain Other Acts Committed on board Aircraft' (Montreal Protocol 2014) to ensure that offenders do not escape justice.

Regionally/Nationally: Civial Aviation Agencies, foe example Federal Aviation Aagency (FAA) in USA adopt their minium standards for company policies and training requirements.

At business level: In turn, airlines adopt internal codes and proceeedures in dealing with sexual harassment. For example, *SouthWestAirlines* has adopted Policy concerning harassment, sexual harasament, discrimination and retaliation providing examples of sexual harassment, poutlining complaint proceeedures and prihibiting retaliation against those reporting the offences.

4.3. Remedy by business

The business responsibility involves not only identification and prevention of risks, but effective action when violations are identified. In cases of sexual harassment, it would mean:

Setting up specific complaint procedures: aligning internal organizational practices and policies with regard to addressing violations

Setting up, if relevant, neutral complaint revision bodies. E.g. ombudsoffices, special teams or assigning special functions within the company to individuals who are the contact points for the individuals

Ensuring that the internal policies on sexual harassment are developed, available and known to the employees, with clear complaint mechanisms. Like in Sweden, the Equality Law requires employers to actively investigate a situation and take appropriate action to prevent further violations.

RECOMMENDATIONS

Kazakhstan has opportunity to approach sexual harassment prevention and review to address fully the core characteristics by amending relevant laws and policies, and creating a conducive environment for sustainable and ethical business practices.

- Set clear definition of sexual harassment in the laws and define business responsibility in dealing with complaints.
- Define harassers and organizations and its agents legal responsibility in cases of sexual harassment at workplace.
- Ensure the business sector is aware of the consequences of sexual harassment and provide information and tools for due diligence.
- Support sustainable and ethical businesses.

5.

SEXUAL HARASSMENT AT WORKPLACE: CAUSES, SOCIETAL PERCEPTIONS, ATTITUDES, CONSEQUENCES

Many countries also report a very low level of awareness – and even lack of acceptance – of the legal protection against discriminatory harassment related to sex and sexual harassment. In yet other countries, harassment is therefore not really perceived as discrimination, but rather as general harassment or mobbing (EC, 2015). As the statistical data show, the sexual harassment is worldwide phenomenon and usually surveys focus on work and education environment:

- Between 40% and 50% of women in European Union countries experience unwanted sexual advances, physical contact or other forms of sexual harassment at work.
- Across Asia, studies in Japan, Malaysia, the Philippines and South Korea show that 30-40% of women suffer workplace sexual harassment.
- In Nairobi, 20% of women have been sexually harassed at work or school.
- In the United States, 83% of girls aged 12-16 experienced some form of sexual harassment in public schools (UNIFEM, 2010).

According to the **EU-28 wide survey in 2014** (FRA, 2014), an estimated 83 million to 102 million women (45% to 55% of women) have experienced sexual harassment since the age of 15 and 32% of these women (320k) indicated somebody from the employment context – such as a colleague, a boss or a customer – as a perpetrator. The forms that SX is taking place

Only 6% of respondents (men and women) referred the case to the law enforcement institutions in Kazakhstan, and the data indicate also a scary tendency – 25% of the bystanders would do nothing if witnessing sexual harassment in a public place. Moreover, considering the gender perspective – 55% of men (compared to 10% women) would do nothing.

- Physical forms of harassment – 29% of women in the EU have experienced unwelcome touching, hugging or kissing since they were 15 years old;
- Verbal acts of harassment – 24% of women have been subjected to sexually suggestive comments or jokes that offended them since the age of 15;
- Non-verbal forms including cyber harassment – 11% of women have received unwanted, offensive sexually explicit emails or SMS messages, or offensive, inappropriate advances on social networking sites (referring to experiences since the age of 15).

Comparatively, in Kazakhstan the two available surveys (2012, 2013) indicate that overall people understand that sexual harassment at work is a form of violence against women and the most common forms are physical harassment - unwanted touching, verbal comments of sexual nature, invitation for sex, discriminating remarks and continuous steering.

General challenge in dealing with sexual harassment is the creation of the system where victims or informers feel confident and trust the system to report the conduct. The EU-28 wide survey also indicates a clear lack of systems and trust in the state protection systems: only 4% of women reported to the police, 4% talked to an employer or boss at their workplace and less than 1% consulted a lawyer, a victim support organisation or a trade union representative. While out of all women who described the most serious incident of sexual harassment that has happened to them, 35% kept the incident to themselves and **did not speak about it to anyone**, 28% talked to a friend, 24% spoke to a family member or a relative and 14% informed their partner.

This data is particularly relevant, when designing sexual harassment prevention actions, and considering who is to be targeted, what is their behaviour, what are the reasons for such behaviour and what actions can impact change.

Who can report sexual harassment? - this aspect that has to be considered, because of the inherent power inequality in sexual harassment cases or prevalent stereotypes. Data indicates that “much of the reporting of sexual harassment is not by the victim but rather by an informant” (ILO, 2014). For this purpose, the laws and internal procedures for enterprises should consider

the aspect of *who can report* a violation. It is assumed in civil or criminal cases that there has to be a victim or the person him/herself has to bring a claim against the perpetrator. Sexual harassment definition includes the part on *environment*, which leads to open possibilities of everyone experiencing such unwelcome conduct and impacting the work environment to bring a claim.

RECOMMENDATIONS

Sexual harassment data indicates that for the prevention and protection system to function it has to incorporate the following elements:

- **Awareness of sexual harassment:** action has to include work towards increased awareness about what is sexual harassment, how it can be identified, and information about the legal protection and referral mechanisms. It is equally important to pay attention to both potential victims being aware of what they experience is considered sexual harassment, but also general public/bystanders and perpetrators themselves should be the target of the awareness activities.
- **Cultural perceptions and gender stereotypes:** working with awareness may include actions towards elimination of gender prejudice
- The system of protection:
- Data indicate that very often victims and observers **are not aware** of the existing systems of protection and victim support provided by the state. Therefore, any intended action should focus also on the accessibility of the protection and victim support systems.
- Sexual harassment prevention system should include Employers and their responsibility for the sexual harassment conduct in their sphere of influence. This may mean clear legal regulation of perpetrators and Employers (as organizations) legal responsibility for the violation, and also Employers legal or voluntary (through participation in policy development and implementation) responsibility for preventive and regulatory actions within its enterprises through codes of conduct and other systems.
- **Trust in the system of protection:** this will be linked to the general public trust in the law enforcement and other state protection systems, however sexual harassment is a very gendered violation and crime and therefore the trust should be developed also through increased capacity of the relevant institutions in adequate gender sensitive dealing with the sexual harassment conduct victims.

5.1. Who are the victims?

According to the EU survey (FRA, 2014) sexual harassment is more commonly experienced by:

- Women in the highest occupational groups - 75% of women in the top management category and 74% of those in the professional occupational category have experienced sexual harassment in their lifetime.
- Women in service sector, especially those with irregular or precarious employment contracts. More than half (61%) of women employed in the services sector have been subjected to sexual harassment at least once in their lifetime.

At the same time the EU survey demonstrates that the lowest prevalence of sexual harassment is experienced by women in the agricultural sector (31% since the age of 15 and 12% in the last year) and women employed as skilled manual workers also show a lower prevalence, with 44% having experienced sexual harassment in their lifetime and 17% in the last 12 months.

Similar tendencies show Eurofound and European Agency for Safety and Health at Work (EU-OSHA, 2010) research:

- Here times as many women as men report sexual harassment.
- Service sector employees are more likely to

experience sexual harassment (third party violence) and data show structural inequalities - there is a concentration of women in these sectors.

- Employees on fixed-term contracts or temporary agency workers report higher levels than those on indefinite contracts and due to work – family duty balance women tend to hold temporary contracts more than men.
- Younger employees are more exposed than older ones.
- Women in male-dominated sectors are more likely to be harassed than vice versa.

Other research (Hersch, 2015) indicates that migrant workers and younger workers supervised by the opposite sex, and among male dominated occupations – military, law enforcement will be the areas where sexual harassment will prevail.

There is no specific industry survey of sexual harassment prevalence in Kazakhstan, however considering the trends in 28 EU countries and earlier reports (OSCE supported report package, 2012), the general tendencies should be taken into account for the policy, law and employer awareness and action development in Kazakhstan:

- women are most likely victims of sexual harassment,
- employees in service sectors will experience more sexual harassment from clients (third party),
- younger and subordinate employees will be more at risk from opposite sex supervisors.
- In addition, the two available surveys in Kazakhstan do indicate that overall women who are divorced or live in unregistered partnerships will experience more sexual advances at work compared to other women and prevailing gender stereotypes may play certain role in this specific aspect.

RECOMMENDATIONS

Policy makers and businesses should consider the following risks when defining their instruments for prevention of sexual harassment:

- sex and age of the potential victims,
- the role of supervisors, and
- the risks present in specific service sectors and sectors where part time contracts are used and migrant workforce are present.

5.2. Perpetrators of sexual harassment

The EU data on sexual violence indicate that the perpetrators was somebody from the employment context such as a colleague, supervisor or a client (32%) and intrusive and offensive questions about a woman's private life are most commonly posed by persons in the workplace (33% of the victims locate the perpetrator in the employment context). In 86% of cases perpetrators from the employment context are male and 33% indicate that the most serious incident involved unwelcome colleague, a supervisor or a customer (in 18% of cases).

Overall there is little research on who are the perpetrators. Policy makers need to understand whether the harassment prevalence reflects the individual behaviour or certain organizational characteristics are conducive to such behaviour (Hersch, 2015: 5). Consistent with the research of victims' perspective, some tendencies prevail:

- Majority of harassers are men.
- Harasser most likely will be at the same or higher employment level.
- Service industry had to be particularly aware and prepared to react to perpetrators from third parties towards their employees.

Furthermore, employers have to be aware of organizational characteristics that encourage sexual harassment:

- Tolerance towards sexual harassment in the organization and no mechanisms or consequences to address conduct.
- Gender composition in the workplace, including factors as sex of supervisor, gender dominance in the sector (women in male dominant sectors).
- Large power differences or vertical/hierarchical structures (Hersch, 2015: 5).

6.

COSTS OF SEXUAL HARASSMENT

Consequences and costs of sexual harassment are experienced at different levels – the individual (victim and perpetrator), the organizational and the state/national level.

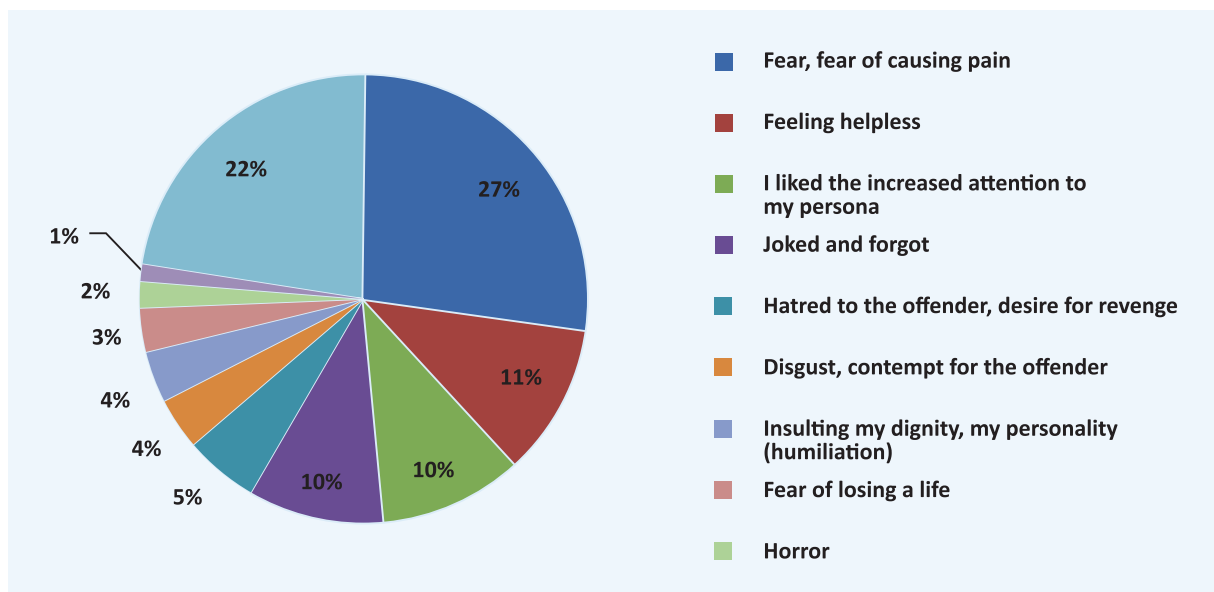
6.1.

Costs to the individual

People who are sexually harassed at workplace report various negative effects:

- Worse physiological and psychological health,
- Lower job satisfaction,
- Increased absenteeism,
- Less commitment to the organization,
- Waste of time avoiding the harassers.

Kazakhstan 2012 survey shows that persons who were sexually harassed experienced fear and fear of being hurt, sense of helplessness, fear for life. At the same time, some have seen sexual harassment as demonstration of attention.



6.2.

Costs to the organization

Same aspects that affect individuals will have consequences for the organization they work for. Productivity and pay for victims of sexual harassment and their co-workers are expected to be lower if sexual harassment induces turnover, increases absenteeism, and wastes work time as workers attempt to avoid interactions with harassers (Hersch, 2015). All of this in effect create a less effective work environment, costs associated with absenteeism and increased turnover,

loss of managerial time investigating complaints and potential legal expenses.

In legal systems where corporations are held liable along with harassers, the monetary damages also constitute a financial risk for the business. As *BetterWork* research on garment industry demonstrates, factories with no competition nearby experience higher sexual harassment cases, while

those located near competitors have lower sexual harassment rates. It is presumed that nearby work opportunities have a disciplining effect on the

businesses – with better internal mechanisms to address various issues, including sexual harassment, to avoid loss of workers to competitors.

RECOMMENDATIONS

Impact assessment tools:

- State and business associations can adapt specific non-financial reporting tools for the impact assessment of business activities;
- Monitoring organizations (Labour inspection, health inspection, Human rights commissioner and similar supervisory entities) can develop support functions for organizations with guidelines, consultations and educational activities.

6.3. Costs to the state

European Institute for Gender Equality (EIGE, 2014) report on estimating costs of domestic violence reviews various methods and indicators. Since sexual harassment is a form of violence against women, we can apply some of the methods in calculating the overall costs. The indicators used in various countries include (EIGE, 2014: 29-30):

- Economic losses of the victims: costs of physical injury, mental injury, death, lost output, paid work, unpaid work, child care, education losses;
- Employer losses: tardiness and distraction, absence at work, administration;
- Long term losses: lost lifetime output (a future calculation).

The specific issues the State has to consider in terms of calculating the impact of its laws and policies on sexual harassment and victim support are a combination of factors addressing individual and organizational impact and are linked to the gender equality policies

Area of Work: sexual harassment impacts the participation rates of women in workplace - absenteeism, lost productivity at work, quality of work, health and safety, the work-life balance, and promotion and education opportunities at work. If sexual harassment is not addressed, the victim most likely will resign and may lose livelihood.

Money: the losses encountered in work domain further being economic disadvantages to the victims in lost earnings, lost future earnings, including

promotion, and thereby lost income of longer term – pension inputs, social taxes; resulting in potential risk of poverty and unequal distribution of income. The system should be seen in conjunction with the criminal justice system and victim protection, the penal system that takes into account loss of economic output, civil law systems of victim protection, divorce, child care and spouse support estimates.

Time: cost of days of incapacity to carry out usual daily work, cost of other person carrying out the work. What is less measurable, but has social long term impact - the cost and impact of lost quality time and interaction with family members, especially children and impact on their development and future family relations.

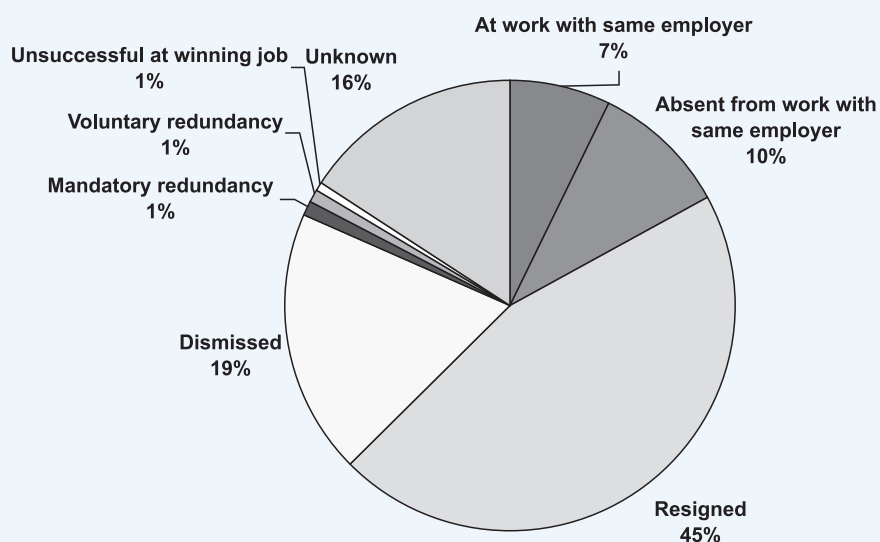
Knowledge: impact of loss of educational output (missed qualification studies and resulting inequalities) resulting in further professional / employment losses;

Power: violence caused absence will impact promotion and thus economic decision making opportunities, resulting in long term negative organizational and state economic output loss.

Kazakhstan: 2013 – 37% of victims experiencing sexual harassment resigned after the incident.

Australia: 3 out of 4 complainants were no longer actively working for the organisation where the alleged harassment occurred by the time they reported the harassment to the Human Rights and Equal Opportunity Commission (HREOC).

Employment status of complainant at time complaint made to HREOC



Health: health state outcomes of violence have direct effect on state, organizational and individual economic costs and outputs. The systems and cost of treating resulting physical and mental injuries and rehabilitation of perpetrators impact further total costs of judicial proceeding (time and costs) and other social policies. By creating the victim centred

system, the long-term costs of the injury should also be calculated to assess the true impact of violence – reoccurring mental and physical rehabilitation, impact on quality of life (fear, self-esteem, work opportunities), and the impact on family members, including children and their health.

7.

MECHANISMS OF PROTECTION FROM SEXUAL HARASSMENT IN KAZAKHSTAN

There is no definition of sexual harassment in the laws of the Republic of Kazakhstan. The Constitution, the Law on Equality between men and women and the Labour Code, as well as other laws, provide protection from discrimination based on sex and other grounds. Providing only general non-discrimination clauses, Kazakhstan does not express clear political position towards tolerance of sexual harassment, does not define its content and therefore leaves it open for interpretation.

For example, many EU member states (UK, Sweden), USA, Australia define sexual harassment in Equality Laws as discrimination, others include definitions in the Labour Codes (Chile, Thailand) or Human Rights Laws, that way clearly defining the scope of sexual harassment at workplace, placing clear obligations on all parties in labour relations – employees, employers and employer duty to act in cases of sexual harassment from third parties at workplace.

Principle of non-discrimination is defined in a number of laws. Its application to the cases of sexual harassment at workplace may be problematic.

7.1. The Constitution

The Constitution defines core protected human rights in Kazakhstan. Principle of non-discrimination, based on sex, is defined in the Article 14 of the Constitution. It is an open list of grounds and allows for multiple discrimination identification.

Article 14, Constitution of the Republic of Kazakhstan

- Everyone shall be equal before the law and court.
- No one shall be subject to any discrimination for reasons of origin, social, property status, occupation, sex, race, nationality, language, attitude towards religion, convictions, place of residence or any other circumstances.

By the nature of Article 4 of the Constitution, defining the position of international treaties and their direct application nationally and the hierarchy of the laws, any other law in Kazakhstan has to ensure it does not include discriminatory norms.

7.2. International treaties

The International Bill of Human Rights, which consists of the Universal Declaration of Human Rights (UDHR), adopted by the United Nations General Assembly in 1948, and its implementing covenants, the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR) (both entered into force in 1976), does not explicitly mention sexual harassment, it does contain provisions that apply to sexually harassing conduct. Because sexual harassment is a form of discrimination and gender-based violence, it violates the equal protection or antidiscrimination provisions in these agreements. Sexual harassment also violates the right to “just and favourable conditions of work.” In addition, the failure to provide a remedy to victims of sexual harassment violates the right to an effective remedy for the violation of fundamental human rights.

The Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW) covers sexual harassment through:

- Prohibition of discrimination in employment
- Guarantees to the right to protection of health and safety at work.

- CEDAW General Recommendation No. 12 recommends that states report to the Committee “about legislation in force to protect women against the incidence of all kinds of violence in everyday life (including . . . sexual harassment at the workplace).”
- CEDAW General Recommendation No. 19 further defines prohibition of violence against women as a form of discrimination, recognises that equality in employment can suffer because of GBV and sexual harassment, recognizes that sexual harassment may constitute a health and safety problem, and recognises that it is both the public authorities can be the perpetrators, but also states may fail to exercise due diligence to prevent sexual harassment. The recommendation describes sexual harassment as:

“such unwelcome sexually determined behaviour as physical contact and advances, sexually coloured remarks, showing pornography and sexual demand, 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” (UNW, 2017).

7.3. Equality between men and women

General principles of equality between men and women in labour relations are set in the law “On State guarantees of Equal Rights and Opportunities of Men and women” of 19/02/2010 (RK, 2010). The law provides a general statement of the principles of equality between men and women in labour relations, but does not include further references on the scope of sexual harassment, complaint mechanisms or duties of the employer.

7.4. Labour Code of the Republic of Kazakhstan⁴

The Labour Code of the Republic of Kazakhstan Article 5 defines the freedom of work, including performing work without any coercion and Article 6 provides for non-discrimination in labour relations (RK, 2016). The freedom of work principle could be

⁴ Labour Code of the Republic of Kazakhstan (with changes as of 06.04.2016), available at: http://online.zakon.kz/Document/?doc_id=38910832

used in justifying discrimination however on its own it does not provide any clear support for prevention of sexual harassment at workplace. While the discrimination clause is a general clause and covers multiple grounds, in its current formulation it would be applied in combination with any other right mentioned in the Labour Code. For example, equality in contractual obligations (Article 25) brought in conjunction with Article 6 defining the grounds of discrimination. Technically, Article 5 in conjunction with Article 6 could be invoked in court in cases of sexual harassment, however there is not definition of reversed burden of proof, no responsibility of the employer is clearly defined, nor the guarantees on secondary victimization explicitly included in the non-discrimination provisions. Thus, in practice, since the Labour Code does not define sexual harassment specifically, current formulation in the Labour Code is not sufficient to provide effective protection mechanism for the victim.

Some countries include sexual harassment clause in the health and safety regulations, but the Labour Code does not refer to sexual harassment in Health and Safety regulations either.

Monitoring of the implementation of labour law, including non-discrimination clauses is delegated to the state and local government institutions in Articles 16, 17 and 18. Thus technically it could be possible to submit complaint to one of the institutions based on their mandate, however it would require establishing the consequences of sexual harassment within the scope of provisions of health and safety at work if sexual harassment was defined as one of the health and safety issues. These institutions are not delegated the responsibility to review discrimination claims. That way, on the one hand, the law provides non-discrimination provisions, on the other hand the only mechanism of redress set by law is the submission of complaint to courts against the individual perpetrator on discrimination.

Sexual violence that may overlap with sexual harassment cases is defined in the Criminal Code of the Republic of Kazakhstan. In cases of criminal acts happening at the workplace the crime is to be reported to law enforcement institutions for prosecution.

In assessing current formulations of the Labour Code vis a vis, the core characteristics of the sexual harassment (Table 1), there is opportunity to expand and specify the definition of sexual harassment, include clear provisions of responsibility (individual and organizational), expand the protection of victims

clauses and effective monitoring mechanisms. Like experience of Sweden, clear duties of Employer could be included, to specify the scope of actions for the employer, including defined limits of employers' responsibility against the sexual harassment from third parties, defining the victim and informant and their rights and protection from secondary victimisation.

7.5. Administrative Offences Code

Administrative Offences Code (AOC) provides punishment for discrimination in labour relations only for equal pay and employment (recruitment) cases, and the health and safety clause (article 93) applies only to specific medical provisions and health and safety instruction. 2016 regulation on disorderly conduct (article 434) may support companies and individuals in bringing claims against third parties for sexual harassment, for example, harassment by client of an employee on an airplane or public bus, however it does not cover other instances of harassment in labour relations (RK, 2017).

7.6. Criminal Code

As provided in the analysis of the Foundation "Development of civil society", application of Criminal Code is also problematic. Victims of sexual harassment in theory may refer to the "protection of honour" clauses and protection from abuse of power by the managers in the company. This allows bringing claim against the perpetrator (employee – employee/ manager), but does not put any legal obligation on the employer (the organization) to act. Application of these Criminal Code articles means:

- Employer has no legal obligations and consequences for the inaction or action in the cases of sexual harassment, since the qualifying criteria for the given crimes is personal complaint against another person.
- Present power relations in sexual harassment cases would most likely prevent victims from bringing individual claims against their supervisors for fear of reprisal.
- The principle of *reversed burden of proof* cannot be applied, since the presumption of innocence in criminal cases is of paramount importance.
- Criminal libel cases would be awarded only when "great damage" is caused, making the claim of sexual harassment almost impossible.

Finally, the Criminal Code covers sexual assault, includes aggravated, abusive and wrongful intentional sexual contact, characterized by use of force, threats, intimidation, abuse of authority or when the victim does not or cannot consent. Acts of verbal, physical or cyber harassment are not covered by the objective criteria of Criminal Law.

Enforcement of Criminal Law

Surveys of population in Kazakhstan on sexual harassment indicated that people do not know where to report the events of sexual harassment and do not trust law enforcement that it will be considered. This also reflects a lack of accessibility of the laws – prepared amendments should be precise and simple in defining the scope of the actions and including the specific grievance mechanisms.

7.7. Voluntary norms by enterprises

Role of business and voluntary norms is undefined in the laws, except in the section that relates to health and safety at workplace and specific requirements of internal documents by the law on these issues. Considering the presumption of the cost of sexual harassment to the employer, Commercial law or Labour law could specify minimum requirements for the non-financial impact reporting and identification to include sexual harassment.

7.8. Conclusions

Characteristics of sexual harassment	Description	LC	AOC	CC
Conduct of sexual nature	Physical, verbal, non-verbal and cyber harassment	NO	Partially	Partially, sexual assault only
Unwanted / unwelcome	This is a subjective test – the recipient of the conduct defines whether the conduct was unwelcome, not the intention behind it. It is a conduct not solicited or invited by the employee	NO	NO	NO
Offensive, humiliating, intimidating behaviour	An objective test – whether a reasonable person would have anticipated that the behaviour would have such effect. What is reasonable will be defined by the specific context of the situation.	Partially, in discrimination	Yes	YES, sexual assault only
Purpose or effect	Intention /act of sexual nature, or acts that create hostile work environment. In deciding whether the action has effect of sexual harassment one has to consider the perception of the victim, other circumstances of the case, whether it is reasonable for the conduct to have such effect.	Partially, in discrimination		YES, purpose in sexual assault only
In work related circumstances	Sexual harassment can take place at work, at work-related events, between people sharing the same workplace, between colleagues outside of work. Third party sexual harassment is often included as liability of the employer.	Partially, discrimination at work, no third-party harassment	Partially, can be applied to third party sexual harassment	Sexual assault if in work circumstances
Repetition/single occasion	The conduct does not have to be repetitive or systematic, but can be a single act. At the same time, when effect of sexual harassment is hostile work environment it may often be a series of events that individually may not be perceived as sexual harassment but action as a whole creates effect of sexual nature.	?	Can be single act	Single act; repetition carries heavier penalties
Direct or indirect	The conduct may be directed at the person, or a person complaining on behalf of someone else experiences adverse effect on its work.	Direct	Direct	Direct
Responsibility	The person harassing someone is liable for the behaviour and employers can be held liable for acts of sexual harassment by their employees or agents.	Perpetrator	Perpetrator	Perpetrator
Burden of proof	Approaching sexual harassment as gender based discrimination, the reverse burden of proof principle can be applied. It is essential to secure the effective protection, considering the power relations in sexual harassment cases and the ability of the victims to gather evidence.	Complainant	Complainant or prosecutor	Prosecution to prove
Complains put forward	Often, complaints are put forward not the by the person experiencing sexual harassment but someone else.	Victim	Victim	Victim or prosecutor

Note: **LC** - Labor Code
AOC - Administrative offences Code
CC - Criminal Code

8.

STAKEHOLDERS

The key stakeholders involved in implementing the protection mechanisms in cases of sexual harassment at workplace include three main groups: state institutions, enterprises and their representatives and NGOs standing for the workers' rights and victim protection.

8.1. State representatives

As described in the section on the role of the state in protecting victims from sexual harassment, some of the key actors are the lawmakers and policy makers at various levels:

- The Parliament: with the powers to initiate required changes in the law and adopting quality legal documents.
- National Commission on Women Affairs and Social Demographic Policy: key driving force in promoting gender equality and respective sexual harassment policies, including victim protection and with the powers to initiate preventive activities nationally for the workplace and general public and recommend relevant legal changes required.
- Ombudsman – Commissioner for Human Rights has the powers of the individual claims review on state institution decisions, but it has a broader mandate on the improvement of legislation covering human rights protection and education on human rights.
- Ministry of Health and Social Development responsible for the labour relations and policies and improvement of gender equality.
- Ministry of Internal affairs: securing effective protection under criminal law of the victims of crime.
- General Prosecutor office: prosecuting.
- Ministry of Justice – with relation to victim support and implementation of human rights, and securing justice sector efficiency, relevant for the adjudication of sexual harassment cases in courts.
- Ministry of Education and Science – education is one of the risk sectors, where most sexual

harassment at work happens from third parties, therefore they .

- Specific unit responsible for human resources management (civil service management) in the government.

8.2. Non-governmental organizations

It is essential to include some main employee representatives in designing the policies and laws with the view of preventing sexual harassment at workplace.

- Federation of Trade Unions of the Republic of Kazakhstan should have direct interest in the improvement of labour laws and environment
- Non-governmental organizations working with protection of human rights, women's rights and civil society umbrella organizations that ensure public participation.

8.3. Businesses and employer organizations

- Confederation of Employers of Kazakhstan as the social dialogue partner in labour law improvements.
- Chambers of commerce have relevant information and overview over the industry development and interests. Chambers of commerce globally have established practices on setting industry standards of ethics and developing other voluntary support instruments.
- E.g. "Atameken", Kazakh Chamber of Commerce.
- Kazakhstan Chamber of Commerce and Industry
- Other chambers of commerce: e.g. British, American.
- Association of human resources professionals.
- The Kazakhstan Association of Hotels and Restaurants as one of the main business representatives in the service sectors.

9.

RECOMMENDATIONS

Following global trends on prevalence of sexual harassment and specific sociological survey data and legal analysis in Kazakhstan, the recommendations are drawn with regard to improved legal and policy framework, possible prevention actions and victim support. Particular place is allocated to the role of enterprises (multinational and local) in effectively dealing with challenges in preventing sexual harassment at workplace.

It is essential to recognise the state duty to protect individuals from violation of their rights. By taking appropriate legal and policy measures and making sure they are implemented, enforced and communicated, the State sends a signal of what is and is not appropriate, it sets the minimum standards for expected appropriate behaviour. All state employees, particularly those involved in the handling of cases of sexual harassment, should have knowledge and ability to identify instances of sexual harassment and gender discrimination, and demonstrate respectful attitude towards victims, that way creating the necessary **trust** that the State considers protection of the rights of individuals as its core business.

- The legal definition and related laws shall ensure that various aspects of sexual harassment are covered:

9.1. Legal and policy framework

For the state

- Adopt relevant laws to include **the definition of sexual harassment**. As of November 2016, there is no sexual harassment definition in the laws of the Republic of Kazakhstan. Current non-discrimination regulation is not specific enough and clear, while criminal law addresses sexual assault crimes that can be the most extreme form of sexual harassment at workplace, but will not cover most common actions.
- Involve relevant stakeholders in defining approach towards sexual harassment in law and policy. Perspective of key stakeholders - employer organizations, employee representatives, NGOs dealing with victims of violence and women's rights NGOs due to the gendered nature of sexual harassment – will provide the diverse perspectives and prevent “group think”⁵ attitudes.

Characteristics of sexual harassment	Description
Conduct of sexual nature	Physical, verbal, non-verbal and cyber harassment.
Unwanted / unwelcome	This is a subjective test – the recipient of the conduct defines whether the conduct was unwelcome, not the intention behind it. It is a conduct not solicited or invited by the employee
Offensive, humiliating, intimidating behaviour	An objective test – whether a reasonable person would have anticipated that the behaviour would have such effect. What is reasonable will be defined by the specific context of the situation.
Purpose or effect	Intention /act of sexual nature, or acts that create hostile work environment. In deciding whether the action has effect of sexual harassment one has to consider the perception of the victim, other circumstances of the case, whether it is reasonable for the conduct to have such effect.
In work related circumstances	Sexual harassment can take place at work, at work-related events, between people sharing the same workplace, between colleagues outside of work. Third party sexual harassment is often included as liability of the employer.
Repetition/single occasion	The conduct does not have to be repetitive or systematic, but can be a single act. At the same time, when effect of sexual harassment is hostile work environment it may often be a series of events that individually may not be perceived as sexual harassment but action as a whole creates effect of sexual nature.
Direct or indirect	The conduct may be directed at the person, or a person complaining on behalf of someone else experiences adverse effect on its work.
Responsibility	The person harassing someone is liable for the behaviour and employers (legal entities) can be held liable for acts of sexual harassment by their employees or agents.
Burden of proof	Approaching sexual harassment as gender based discrimination, the reverse burden of proof principle can be applied. It is essential to secure the effective protection, considering the power relations in sexual harassment cases and the ability of the victims to gather evidence.

⁵ “Groupthink occurs when a group values harmony and coherence over accurate analysis and critical evaluation. It causes individual members of the group to unquestioningly follow the word of the leader and it strongly discourages any disagreement with the consensus.”, see at <https://www.psychologytoday.com/basics/groupthink>

- Define relevant laws/regulation **to include self-employed persons**, including domestic workers, in the scope of protection from sexual harassment.
- Include in the assessment of the impact of the law and prevention policy on sexual harassment the following risks: sex and age of the potential victims, the role of supervisors, and the risks present in specific service sectors and sectors where part time contracts are used and migrant workforce are present.
- Distinguish sexual assault crimes (criminal law) and sexual harassment.
- Define the scope of the sexual harassment laws to cover various types of relationships in employment.
- Define responsibilities of employers (legal entities) with regard to sexual harassment and define clear complaint mechanisms, including respectively adjusting Administrative Offences Code to ensure effective remedies for the victims.
- As part of the legal and policy framework, establish clear victim protection policies and support systems. State can choose to expand victim protection rights similar to that, as applied in cases of crime or domestic violence victims.

For the employers / enterprises

- Develop/adapt industry specific impact assessment instruments that include sexual harassment risks.
- Develop / adapt cost calculators to assess businesses costs associated with sexual harassment.
- Develop industry specific codes of conduct for ethical and sustainable action including prevention of sexual harassment.
- Audit core business practices to identify operational problems in harassment prevention.

9.2. Prevention of sexual harassment

For the state

Sexual harassment data indicates that for the prevention and protection system to functions it has to incorporate the following elements:

- **Awareness of sexual harassment:** action has to include work towards increased awareness about what is sexual harassment, how it can be identified, and information about the legal protection and referral mechanisms. It is equally important to pay attention to both potential

victims being aware of what they experience is considered sexual harassment, but also general public/bystanders and potential perpetrators should be the target of the awareness activities.

- **Cultural perceptions and gender stereotypes:** working with awareness will include actions towards elimination of gender prejudice. Include strong gender equality awareness programmes that include sexual harassment. The data indicates that gender stereotypes play some role in bystanders' ignorance of the sexual harassment.
- Design activities to address the high percent of bystander inaction in cases of observed sexual harassment.
- Jointly with risk industries **design information for the general public and industry employees** on specific risks of sexual harassment.
- Include social partners and relevant stakeholders (NGOs, enterprises and their associations) in the design of the relevant information materials on the complaint system, protection of victims, and victim support programmes.
- **Awareness and ability to act by state employees:** Include discrimination and sexual harassment in the basic and continuous education of state employees and increase their ability to identify cases of sexual harassment especially among the justice system employees (law enforcement, legal profession, court system employees, education sector, health sector).
- **Develop guidelines** in identifying discrimination, violence and sexual harassment at workplace for justice system employees.

For enterprises

- Policy makers and businesses should consider the following risks when defining their instruments for prevention of sexual harassment: sex and age of the potential victims, the role of supervisors, and the risks present in specific service sectors and sectors where part time contracts are used and migrant workforce are present.
- **Impact assessment tools:** State and business associations can adapt specific non-financial reporting tools for the impact assessment of business activities.
- **Business stakeholder dialogue platforms:** business associations are recommended to set up voluntary networks where businesses can discuss the impact issues, including sexual harassment, and jointly design best risk aversion strategies and prevention initiatives.

- **Design diversity management tools** for governance of the enterprises, to address the organizational risks, including sexual harassment.
- Service sector industries particularly should jointly assess and identify their impact and increased risks for third party violence against their employees, and develop general recommendations for the enterprises, e.g. model codes of conduct setting the principles of action and mechanisms of internal complaint handling.
- Ensure that industry employees are aware of the company procedures on sexual harassment prevention and reporting. In talks with trade unions and employee representatives develop necessary information and activities.
- Provide Self Esteem training for women in the companies, including on identifying sexual harassment and awareness on discrimination.
- **Trust in the system of protection:** this will be linked to the general public trust in the law enforcement and other state protection systems, however sexual harassment is a much-gendered violation and crime and therefore the trust should be developed also through increased capacity of the relevant institutions in adequate gender sensitive dealing with the sexual harassment conduct victims.

Complaint handling by enterprises

- Define clear complaint handling policies and mechanisms within the company.
- Ensure that the victim has a number of contact points to avoid hierarchical structures and risk of complaining to one's supervisor. Establish a system of trust persons, including in cooperation with the trade unions.
- Set up industry codes of ethics and respective complaint handling mechanisms outside corporation in question.

9.3. Remedy

Adjudication by the state

- Include in the relevant laws and effectively apply the principle of reversed burden of proof in sexual harassment cases.
- Define the case handling responsibilities within the court system and increase capacity of justice system employees to be aware of sexual harassment and gender equality.
- Provide relevant legal assistance.
- **Ensure effectiveness** of victim protection and support system: Data indicate that very often victims and observers **are not aware** of the existing systems of protection and victim support provided by the state. Therefore, any intended action should focus also on the accessibility of the protection and victim support systems.
- **Responsibility of the employers:** Sexual harassment prevention system should include Employers and their responsibility for the sexual harassment conduct in their sphere of influence. This may mean clear legal regulation of perpetrators and Employers (as organizations) legal responsibility for the violation, and Employers legal or voluntary (through participation in policy development and implementation) responsibility for preventive and regulatory actions within its enterprises through codes of conduct and other systems.

9.4. Victim support

- **Set up system of one stop agency providing victim support** – open ended and client needs centred support measures package, including psychological, legal, social and other assistance. Where possible, involve NGOs in providing social support as the first contacts points. The elements identified by the stakeholder meeting include:
 - ◊ Free legal aid through state assigned lawyers, NGO support, legal clinics or similar mechanisms for legal support;
 - ◊ State funded Helpline for victims of violence, including sexual harassment;
 - ◊ Psychological consultations;
 - ◊ Self-help groups.
- **Define and prohibit secondary victimization in the law**, and educate relevant first responders and case handling institutions in identifying and avoiding secondary victimization of persons submitting sexual harassment complaints.

10.

RESOURCES

United Kingdom

It is vital that employers make clear the standards of behaviour expected of everyone in the workplace, for example:

A guide for employees - how to recognize sexual harassment, reporting, legal actions etc. (see “A guide for employees “Bullying and harassment at work” www.acas.org.uk)

Victims support initiatives, see for example:

Victims support line in UK: www.victimssupport.org.uk

Discrimination case work: www.discriminationhelp.org.uk/

Sexual harassment - Citizens Advice: <https://www.citizensadvice.org.uk/>

Australia

Sexual harassment. Information for employers: <https://www.humanrights.gov.au/sexual-harassment-information-employers>

Sexual harassment. Information for employees: <https://www.humanrights.gov.au/sexual-harassment-information-employees>

Effectively preventing and responding to sexual harassment: A Code of Practice for Employers (2008): <https://www.humanrights.gov.au/our-work/sex-discrimination/publications/effectively-preventing-and-responding-sexual-harassment-o>

Know your rights: Sex discrimination and sexual harassment (2010) is an informative publication about the Sex Discrimination Act, what sex discrimination and sexual harassment are and how to prevent and report them: <https://www.humanrights.gov.au/our-work/sex-discrimination/publications/know-your-rights-sex-discrimination-and-sexual-harassment>

[gov.au/our-work/sex-discrimination/publications/know-your-rights-sex-discrimination-and-sexual-harassment](http://www.humanrights.gov.au/our-work/sex-discrimination/publications/know-your-rights-sex-discrimination-and-sexual-harassment)

Malta

Resources and tools (general page): http://ncpe.gov.mt/en/Pages/Our_Publications_and_Resources/Resources_and_Tools.aspx

NCPE Guidelines for drafting a **Sexual Harassment** Policy: http://ncpe.gov.mt/en/Documents/Our_Publications_and_Resources/Resources_and_Tools/Guidelines/sexual_harassment_guidelines.pdf

Sexual harassment code of practice: Handbook: http://ncpe.gov.mt/en/Documents/Our_Publications_and_Resources/Resources_and_Tools/Handbooks_and_Manuals/sexual_harassment_code_of_practice.pdf

Sweden

Swedish Secretariat for Gender Research, national resource for gender equality: <http://www.includegender.org/>

Swedish Discrimination Ombudsoffice www.do.se and on harassment at work: <http://www.do.se/other-languages/english-engelska/working-life/#3>

European Union

Harassment related to Sex and Sexual Harassment Law in 33 European Countries Discrimination versus Dignity; by Ann Numhauser-Henning and Sylvaine Laulom; ec.europa.eu/justice/gender-equality/files/your_rights/final_harassment_en.pdf

11.

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