

If we don't name it, we can't deal with it

N.S. J M/S 20 09/3/09

There is no legal definition of sexual harassment in Malaysia. That is why a Sexual Harassment Act is needed to spell out the offence, set up a procedure to deal with it and enforce compliance, experts and activists tell **SANTHA OORJITHAM** and **ANNIE FREEDA CRUEZ**

ANN (not her real name) was thrilled to get a contract as a project assistant with a multi-lateral organisation in Kuala Lumpur.

On her first day at work, she found a birthday card and a gift from her boss, the project manager. Over the weeks and months that followed, he showered her with unwanted gifts, hugs and dirty emails.

He made her work late after everyone else had left, made physical passes at her and repeatedly asked her to go out for drinks. When she refused, he said: "If you want something really badly, you will find the time."

What happened to her when she followed the organisation's procedures for sexual harassment complaints shows the urgent need for legislation and enforcement.

Ann followed the organisation's online guidelines and the instructions of the ombudsman overseas, but was reprimanded by the head of the Kuala Lumpur office for making a complaint.

"The whole office knew about the case. All the bosses avoided me," she recalls.

"My contract was not renewed and I was not paid for the last month. A foreign panel came to interview me but left with all my evidence, including the gifts, and closed the case with the comment that they did not find the required proof."

But after she left the company, a letter of reprimand was sent to the project manager and office security was beefed up. And the following year, a course and test on sexual harassment was introduced for all employees.

Yet years later, Ann says, she still feels the stigma of being a victim of sexual harassment. There's a gap on her curriculum vitae that she can't explain to future employers and she couldn't get a referral letter from that first job.

"A Sexual Harassment Act is very much needed," she says, because "even if an organisation has sexual harassment guidelines and mechanisms in place, they might prefer to hush the matter up."

An external monitoring and



Noriah Kasnon has said that the government would introduce a Sexual Harassment Act



Harassment victims prefer to deal with the problem 'in-house', says Honey Tan



Associate Professor Dr Sabitha Marican says 30 per cent of victims of harassment are men

POLICE REPORTS ON SEXUAL HARASSMENT

	2004	2005	2006	2007	June 2008
By colleagues	49	50	56	111	48
By employers	70	52	45	84	35
Total	119	102	101	195	83

• Reported cases refer to rape and physical molestation

Source: Royal Malaysian Police

enforcement system has to be in place to provide justice for both victims and alleged harassers, she adds.

In February, Noriah Kasnon, deputy minister in the Women, Family and Community Development Ministry, said the government would introduce a Sexual Harassment Act, adding that her ministry was discussing it with the Human Resources Ministry.

"The most sensitive issue that needs to be sorted out is the definition of sexual harassment," says a spokesperson for the ministry.

Sexual harassment is not mentioned in the Penal Code (which deals with "outraging modesty", "dishonouring", "insulting modesty", rape, assault and battery), the Employment Act, the Industrial Relations Act and the Occupational Safety and Health Act, says Kamal Kenny, a Universiti Putra Malaysia graduate researching sexual harassment for his PhD.

The Human Resources Ministry introduced the Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace in 1999

but it is voluntary and by the end of last year, only 1,330 companies had adopted it.

Since it cannot be legally enforced, the Code is not effective, says Kamal. And with no legal definition of sexual harassment, no one knows the full extent of the problem, says lawyer Honey Tan, a member of Women's Centre for Change (WCC).

"Just as there were no statistics and little awareness of domestic violence before the Domestic Violence Act 1994, when you don't name it, you can't deal with it."

The Public Officers (Conduct and Discipline) Regulations do define and prohibit sexual harassment, spelling out action to be taken.

But according to research by Associate Professor Dr Sabitha Marican at Universiti Malaya's Faculty of Economics and Administration, victims often do not complain because they don't know how and are afraid of the consequences.

"A Sexual Harassment Act would increase awareness of all workers, regardless of whether they are in the public or private sector," she says.

"Sometimes, harassers don't know that what they are doing is harassment and sometimes the victims don't realise they are being harassed."

For example, she says, most Malaysians think sexual harassment is only physical and does not include verbal comments and sounds, gestures or "visuals" such as obscene pictures or the kind of emails which Ann's boss sent.

Many also do not realise that harassment does not only happen to younger women and subordinates.

From Sabitha's research with public administrators, she estimates that 30 per cent of the victims are men.

One public administrator in his 50s told her he was harassed by a 20-year-old female clerk.

"She called him 'sayang' when others were not present, would brush against him 'accidentally', showed him lipstick kisses on paper, etc."

His colleagues laughed it off and he didn't report it to his boss because he didn't want his career and family to be affected, the academic says.

But the effects of such harassment are very real, warns Sabitha. They can be emotional and psychological (depression, nightmares, phobia about coming to work), social (not wanting to go out and attend work-related functions) and physical (headaches and illness requiring medical leave).