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Legal Analysis

Sexual Harassment in Cambodia



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ABBREVIATIONS

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

EXECUTIVE SUMMARY

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

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

Drawing from two definitions of sexual harassment: General recommendation 19 of the United Nations (UN) Committee on the Elimination of Discrimination Against Women and International Labor Organization (ILO), the study focuses on four main research questions: 1) What is the current legal (laws, policies) framework to respond to sexual harassment in and around the workplace in Cambodia?; 2) What is the current complaint mechanism (Legal) for victims seeking redress for sexual harassment?; 3) What are the gaps in laws, policies related to sexual harassment based on international good practice?; and 4) What recommendations for improvements to the legal framework and response system?

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

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

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

- The **Constitution** of the Kingdom of Cambodia does not explicitly address sexual harassment, but it has several articles which are relevant to the protection of women against sexual harassment (*Article 31, 38, 45, and 46*).
- The 2009 **Penal Code** has a separate definition and penalty of sexual harassment in Article 250. Sexual harassment is regarded as an act that a person abuses the power which was vested to him/her in his/her functions in order to put pressure again and again on other persons in exchange for sexual favour. The same article states that sexual harassment is punishable by an imprisonment of between 6 (six) days to 3 (three) months and a fine of

between 100,000 (one hundred thousand) Riels and 500,000 (five hundred thousand) Riels. However, it is not clear whether the definition is applied to sexual harassment in the workplaces and it is hard for implementation due to the fact that there is no explicit example of sexual harassment behaviors.

- The **Law on the Prevention of Domestic Violence and Protection of Victims** 2005 (DV Law) does not cover the term sexual harassment at all. Some types of sexual violence, such as violent rape, indecent acts or indecent assault, and indecent exposures are regarded as a form of violence. Furthermore, this law is applied when violence perpetrated between people in the same household.
- The 1997 **Labour Law** is supposed to have a clear definition of sexual harassment in the workplaces, but, it does not do so. There is only one article 172 related to sexual violence stating that “all forms of sexual abuse is strictly prohibited.”
- The **Law on Suppression of Human Trafficking and Sexual Exploitation addresses sexual harassment** (2008) only through article 15 on sexual aggression. Again penalty of sexual harassment is tied to the penal code which is no specific example of sexual harassment behaviors.
- **Ministry of Labour and Vocational Training Prakas on Working Conditions, Occupational Safety and Health Rules of Entertainment Service Enterprises, Establishment of Companies** refers only to entertainment service enterprises, establishment and companies. Its Article 8 prohibits violence or indecent act against entertainment worker by any person, but the term violence and indecent act are not specified and sexual harassment is not covered.

Prosecution for sexual harassment occurs under the Penal Code and the legal procedures for this crime are based on the Code of Criminal Procedures. The procedures included: 1) ***Making a complaint to the Judicial Police*** (Commune/Sangkat Chief, Commune/Sangkat/district/ provincial/ national Police, district/provincial/national Military Proce), and Ministry of Women’s Affairs (MoWA)- Judicial Police Agents (JPA); 2) ***Judicial Police files a complaint with the Prosecutor***; 3) ***Prosecutor assigns to investigating judge***; 4) ***Investigation by Investigating Judge***; and 4) ***Court Hearing***.

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

Ministry of Labour and Vocational Training’s (MoLVT) gender technical working group has provided awareness raising to workers and employees via the Inspection team on violence against women and trafficking. But, sexual harassment in the workplaces has not been included in MoLVT’s Inspection Checklist yet.

Focusing only on hospitality and entertainment settings, Ministry of Tourisms (MoT) efforts to protect and eliminate SH and all forms of human trafficking and exploitation include: establish women association in various entertainment places in order to be easily receive and disseminate information. Other activities of MoT include: Require that “sexual abuses are prohibited” to be included in the agreement when providing license to entertainment settings; conduct monitoring in

entertainment places, cooperates with tourism police in order to monitor other abuses; disseminate MoT policies to hotels, guesthouses, Karaoke Television (KTV), massage parlors (in collaboration with partner organizations); set up hotline telephone number at provincial departments for reporting on sexual abuse, and post sex related prohibitions in the hospitality and entertainment settings.

At Khan and Sangat level, the police respondents reported that they have raised awareness to villagers, restaurant owners on village/commune and representative of garment factory, and schools via Commune/Village Safety Policy related to drug and sex crimes, and human trafficking, but nothing about SH in the workplaces.

In their effort to prevent violence against women and that SH in the workplaces, three Administrative staff of three CARE partner factories reported that their factories have sent supervisors and team leaders to attend meeting/training with non-government organisations (NGOs) such as Garment Manufacturers Association Cambodia (GMAC), CARE, and MoLVT. They stated that their factory policies also describe partly on SH (including complaint procedures) and that they are willing to update their policies if there are information/guidelines to make them clearer on SH in the workplaces. Furthermore, their factories raise awareness to employees on SH, i.e. dissemination of information by posting the SH policy and announcement in the staff meetings, providing training to supervisors/team leaders on SH. Similar finding were found among *women working in Garment Factories (GF) who are CARE-Partners*. They reported that they have heard about SH in the work places from different sources, such as via NGOs providing education about AIDS, radio and TV programs (on human trafficking, Commune/village safety policy, and DV law), announcement/information sharing at the GF during party, friends who attended education sessions with CARE, ILO and CARE education programs. They were more knowledgeable on SH comparing to women working in GF who are non-CARE partners who seemed finding it difficult to find examples of SH. The responding from Non-CARE GF reported that they have never heard/seen of any law or policy relating to sexual harassment in the workplaces and none of them said there is a sexual harassment policy/regulation in their workplaces.

Via a FGD with female employees working in a picnic style restaurant where customers come and drink and eat by the riverside, the study finds that all the respondents have witnessed/experienced SH in their work. The women said that feels are worried and afraid in their work and want to quit their job when someone tried to sexually harass them. However, none of them reported they had asked help from the police believing that the police would just charge them money, but cannot help them.

The study finds certain gaps and challenges to be addressed in order to improve the prevention and response to sexual harassment in the workplaces. On the duty bearer side, all type of respondents reported that lack of awareness of SH by the duty bearers (whether SH is an issue and it is against the law); no clear definition of SH in the workplaces, negative attitudes of certain duty bearers toward SH and victims (i.e. delaying the response, taking it not seriously, blaming victim); not all work settings has SH policy & Complaint procedure; no good cooperation from employers of entertainment settings; lack of collaboration & coordination among duty bearers (i.e. MoLVT-GF, MoT-Entertainment settings), and no budget to work thoroughly. On the public/victim side, three main obstacles include lack of general awareness people on SH and its impacts, regarding SH as a sense of humor/blaming the victim, lack of trust on legal/judicial system (not respond or mediate outside of the judicial process), afraid of being further hurt or the perpetrator will seek revenge/afraid of making themselves in trouble.

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

- A- Legal reform relating to sexual harassment in the workplace
- Art. 172 of the Labor Law and Art. 250 of the Penal Code should be revised to make explicit definition of SH in the workplace.
 - As SH in the workplaces requires involvement of many ministries and their sub-national structures, inevitably, a sub-degree on SH should be developed by the government in the long run in order to ensure consistency in implementation and collaboration among relevant duty bearers.
- B- Implementation of Current Laws and Regulations
- It is essential that CARE continue its current initiatives to raise awareness and build capacity with workers, enterprise owners, Unions, NGO partners, and relevant State duty bearers via the current existing legal frameworks, especially Art. 172 of the Labor Law 1997 and the Penal Code 2009 on article 250 and other provisions related sex crimes.
 - A greater awareness-raising on SH should be made among the public and in the workplaces via training, group discussion, seminars, and distributing informative materials. It is recommended that the education methodologies include interactions/role-play where the participants can clearly differentiate between what is SH behavior and what is not.
 - Training to relevant State agencies (especially local authorities and JP) on SH in the workplaces and advocate for the government to allocate appropriate resources for their fieldworks.
 - Provide appropriate technical support certain duty bearers and as well as monitoring and penalty for those duty bearers who do ill practice.
- C- Develop a guideline on prevention and response to sexual harassment in the workplaces
- For the medium term, CARE should support MoLVT, MoT, and MoWA to develop a guideline on prevention and response to sexual harassment in the workplaces and gradually persuade partners in garment factories, hospitality and entertainment settings to integrate it into their code of conduct. Then, this work initiative should be documented as a lesson learned to be incorporated into the development of the suggested sub-degree on SH.
 - While some CARE enterprise partners have already developed internal response team for sexual harassment in their workplaces, it is recommended there are more female team members and they are properly trained with appropriate skills and ethics.
 - The current checklist of MoLVT inspection team on occupational health and safety should be revised to include information on section on SH in the workplaces. And at the same time the MoLVT inspection team should receive appropriate training and support on how to assess this issue in the workplaces.
 - The MoWA-JPA Guidelines should include role and responsibilities of MoWA-JPA on SH in the workplaces and the MoWA-JPA should be involved in monitoring and evaluation of sexual harassment in the workplaces and if possible be a part of the MoLVT Inspection Team.
- D- Involvement of Unions
- While some Unions have been involved in providing awareness raising and response to SH to its members, in the future, they should work together to bargain with the employers to incorporate the sexual harassment issues into the collective agreement. But, this action needs to be done carefully as it runs the risk of being rejected by employers due to the sensitivity of Union role in Cambodia.

1. BACKGROUND

1.1 Situation in Cambodia

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

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

High numbers of women are also migrating from rural areas to work as hospitality and tourism workers. Studies have shown alarmingly high rates of harassment in the work place for women working as beer promoters, including unwanted sexual touching (80 percent) and coerced sex (38 percent).⁶ In CARE's 2010 baseline survey⁷ 67 percent of beer promoters interviewed reported experiencing unwanted sexual touching.⁸ The Beer Selling Industry Cambodia (BSIC)⁹ conducted a study in 2012 comparing the experience of abuse and sexual harassment for women working in beer companies that are members of the BSIC and found that 61 percent of beer promotion workers interviewed experienced some form of sexual harassment in the last 12 months, compared to 79 percent of workers in non-BSIC brands.¹⁰ This implies that sexual harassment is still high, but was less in companies that participate in the professional association.

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

¹ (ILO, 2012)

² (Taylor 2011)

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

⁴ (ILO 2012)

⁵ (Taylor 2011)

⁶ (CARE Cambodia 2005)

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

⁸ (CARE 2010)

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

¹⁰ (Racz and Grumiau 2012)

¹¹ (MoEYS 2012)

1.2 CARE Program Description

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

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

1.3 Study Purpose and Objectives

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

Specifically the objectives are:

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

2. METHODOLOGY

2.1 Research Questions

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

2.2 International Sexual Harassment Definitions

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

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

Behavior that qualifies for sexual harassment includes:

- 1) Physical: Physical violence, touching, unnecessary close proximity
- 2) Verbal: Comments and questions about appearance, life-style, sexual orientation, offensive phone calls (or texts, emails, etc.)
- 3) Non-Verbal: Whistling, sexually suggestive gestures, display of sexual materials¹²

2.3 Methodology

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

2.4 Ethical Considerations

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

The following safeguards were put in place:

¹² http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_decl_fs_96_en.pdf

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

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

Referral for Service: In addition, if any women discloses violence a referral for service with contact information of organizations working on GBV will be provided.

3. FINDINGS

3.1 Current Legal Frameworks

3.1.1 International

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

Convention on the Elimination of Discrimination Against Women (CEDAW) was adopted at a time when awareness of sexual harassment was only beginning to emerge and therefore did not contain a specific prohibition. However the Committee on the Elimination of Discrimination against Women, set up under CEDAW, has since explicitly addressed the problem. Its' General Recommendation of 1989 specifically recognized sexual harassment as a form of violence against women. And in 1992 General Recommendation 19 noted that *"equality in employment can seriously be impaired when women are subjected to gender-specific violence, such as sexual harassment in the workplace"* and called on parties to the Treaty to take all legal and other measures necessary to provide effective protection for women against gender based violence, including sexual harassment in the workplace. Sexual harassment has also been addressed in the human rights context. The **World Conference on Human Rights**, held in Vienna in 1993, identified it as a human rights violation, while the Commission on Human Rights treats it as a form of violence against women.

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

The International Labour Organization (ILO) has addressed sexual harassment in a range of instruments and during discussions at tripartite meeting. The **Discrimination (Employment and**

¹³ (Haspels, et al. 2001)

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

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

3.1.2 Regional context

3.1.2.1 Indonesia

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

Furthermore, this Guideline can be used as a tool to raise awareness and education in preventing sexual harassment in the workplace. The Guidelines provides a definition of sexual harassment in the workplaces with examples of different forms of SH and what behaviors are regarded as SH and what are not, regards SH in the work places as a crime, requires employers to have complaint procedure in place and as well as procedure to resolve complaints. The Guidelines provides examples of grievance procedure and response mechanisms both formal and non-formal¹⁵. Built on this Guideline, the *“Guidelines for the Prevention of Workplace Harassment,”* was developed by Better Work Indonesia in 2012 to provide guidance for employers, workers, and enterprises who attempt to prevent and respond to harassment in the workplaces¹⁶. The later Guidelines cover general harassment, bullying, and sexual harassment in the workplaces. In addition to definitions and forms of these terms, it also raises examples of possible consequences of the workplace harassment for employees and the enterprise as a whole. Furthermore, it provides directions and examples of mechanisms for prevention and response to harassment.

¹⁴ http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_bk_pb_159_en.pdf

¹⁵ Indonesian’s Circular No. SE.03/MEN/IV/2011, issued by the Ministry of Manpower and Transportation

¹⁶

http://www.google.com.kh/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CB4QFjAA&url=http%3A%2F%2Fbetterwork.org%2Findonesia%2Fwp-content%2Fuploads%2FGuidelines-on-the-Prevention-of-Workplace-Harassment_ENG-3.pdf&ei=V0zDVLW2HMWvU4iQhMgl&usq=AFQjCNFGLRhs825zr2vwyGcMUmlsrcAhw&sig2=GCAaY7nR5kTjI3a4_1MpWQ

3.1.2.2 Philippines

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

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

Section 4 of the bill defines the duty of the employer or the head of the work-related, educational or training environment or institution to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment, including development of rule/regulation on SH in the workplace.

Section 7 of the bill provides that any person who violates the provisions of this Act shall be penalized by imprisonment and fine.

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

3.1.2.3 Vietnam

The most prominent law related to SH is the 2012 *Labor Code*. It has four articles mentioning “sexual harassment”: Article 8. Maltreating a worker, committing sexual harassment at the workplace is prohibited; Article 37. The employee who is maltreated, sexually harassed or is subjected to forced labor has the right to unilaterally terminate the employment contract; Article 182. A domestic worker shall have an obligation to “report to the authoritative agency if his/her employer has acts of sexual Harassment”; and Article 183. The employer is strictly prohibited from mistreating, sexually harassing his/her domestic workers. However, the Labor Code is seen as not effective in prohibiting SH and protecting the victims in the workplace because it does not provide clear definitions of sexual harassment¹⁷.

3.1.3 National Legal Framework

At the national level a range of laws and policies identify women’s right to live free of violence, make sexual violence against the law and sexual harassment specifically mentioned in the Law on Domestic Violence, Law on Suppression of Human Trafficking and Sexual Exploitation, Labor Law and in the Penal Code. A detailed summary of all laws reviewed is in Annex B. Following is a summary of laws that are relevant to sexual harassment.

3.1.3.1 The Constitution of the Kingdom of Cambodia

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

¹⁷ (MoLISA & ILO, 2013)

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

Article 38:

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

Article 45:

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

Article 46:

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

3.1.3.2 Penal Code 2009

The Penal Code Chapter 3 classified acts of indecent assault, indecent exposure, and sexual harassment as main sub-categories of the term "sexual assault" which is regarded as sexual violence. Sexual Assaults can include many behaviors including physical, visual, verbal, or coercive behaviors. Among, the four types of sexual assault (see the following articles), sexual harassment and indecent exposure is regarded the less serious crime (misdemeanor) with penalty of between 6 days to 3 month imprisonment. Furthermore, although sexual harassment is defined in Art. 250, it is not clear whether it is applied to workplace and there is no explicit examples of behavior. This makes it hard or vague for the duty bearers to implement the law and even harder for victim to seek help.

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

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

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

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

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

The DV law is limited in its coverage¹⁸, however it does address some types of sexual violence. Under Art. 3 of this law, sexual aggression (sexual assault or sexual violence) is included as a form of violence while Art. 7 further states that “sexual aggression includes: violence rape, indecent acts or indecent assault, and indecent exposures. The term sexual harassment is not covered in the DV law. The following articles are relevant:

Article 3. ...Domestic Violence includes sexual aggression

Article 7. Sexual aggression includes:

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

3.1.3.4 Labour Law 1997

The Labour Law addresses only one article on sexual violence stating that “all forms of sexual abuse is strictly prohibited (see detail below). The term sexual harassment could be under this article, but it is not addressed in any other separated article of this law.

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

3.1.3.5 Law on Suppression of Human Trafficking and Sexual Exploitation 2008

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

Article. 15: A person who sells, buys or exchanges another person for the purpose of profit making, sexual aggression¹⁹, production of pornography, marriage against will of the victim, adoption or any form of exploitation shall be punished with imprisonment for 7 years to 15 years.

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

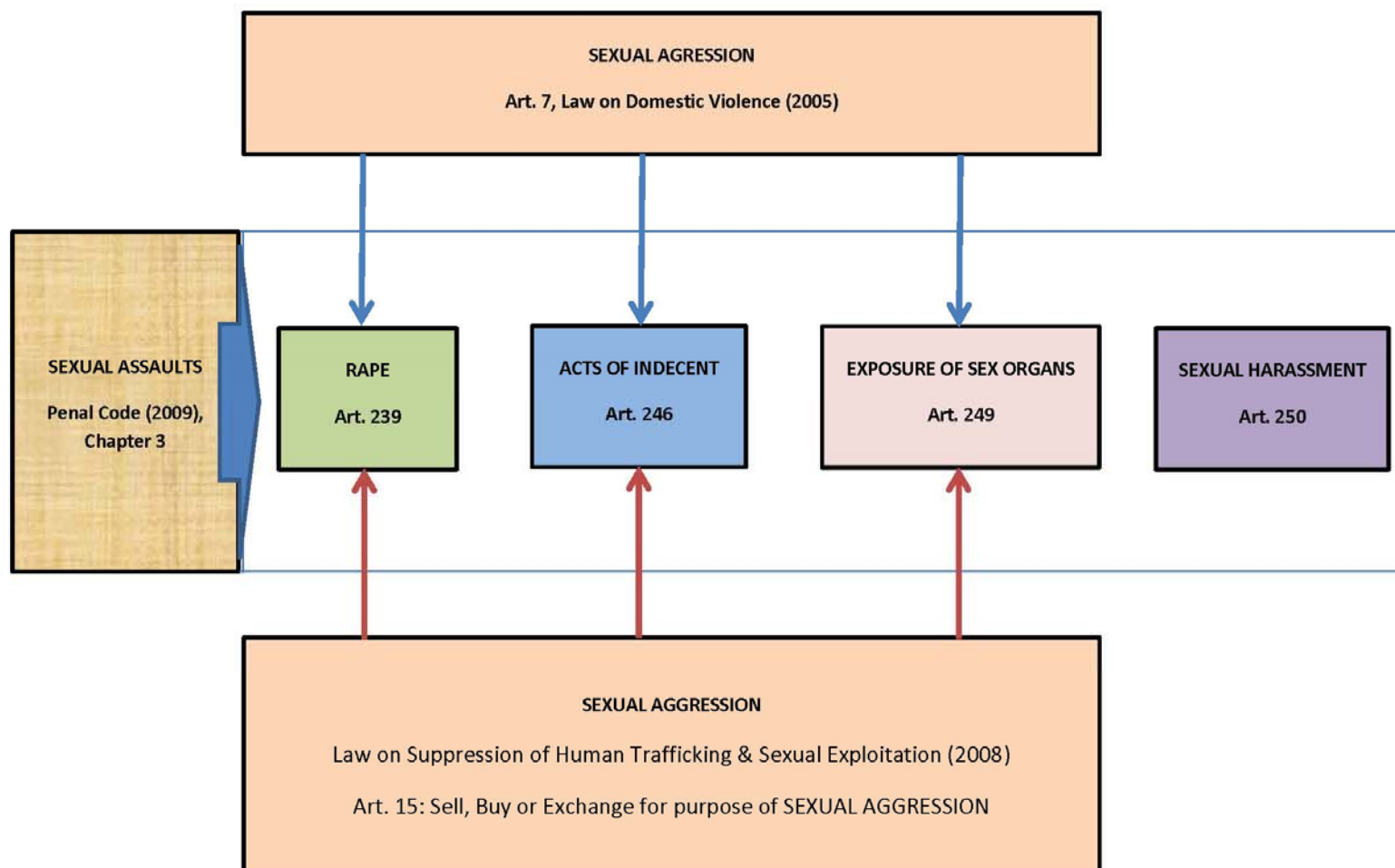
¹⁸ Domestic violence as defined by the DV LAW is husband or wife; dependent children or persons living under the roof of the house and who are dependents of the households so could leave out significant populations.

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

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

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

Figure 1: LEGAL TERMS ON SEXUAL VIOLENCE AGAINST WOMEN



3.2 Complaint Procedures

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

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

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

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

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

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

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

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

- To withhold a file, the Prosecutor shall inform the plaintiff about that decision within the shortest possible period. The plaintiff can appeal that decision to the General Prosecutor attached to the Court of Appeal if s/he does not satisfy with the Prosecutor's decision to hold her/his file without processing (Art. 41).
- The criminal proceedings can be conducted through the opening of **judicial investigation, a citation**, or the procedure of **immediate appearance** (Art. 43).
 - + **Citation (Art. 46):** The prosecutor shall issue an order to the accused person to appear before the Court of First Instance. The order shall include the identity of the accused, a summary of the facts, a legal qualification of the facts, and the indication of relevant provisions of the criminal law and sanction for the offense. In addition, name of the court and its location, and date and time of the trial shall be specified in the order in addition to informing the accused that s/he has the right to be defended by a lawyer.
 - + **Immediate appearance (Art. 47):** Prosecutor shall order the accused to appear before the Court of First Instance immediately if all of the following requirements are satisfied:
 - The offense is flagrant in accordance with Articles 86 (Definition of Flagrant Felony or Misdemeanor) and 88 (Flagrant Felony or Misdemeanor),
 - The offense carries a sentence of imprisonment for not less one year and not greater than five years,
 - The accused reaches a legal age, and
 - There are substantial facts to be tried.
 - + **Opening of Judicial Investigation:** In the case of a felony, the Prosecutor shall open a judicial investigation by submitting an initial submission (including a summary of the facts, a legal qualification of the facts, the indication of relevant provisions of the criminal law and sanction for offense, and the name (s) of the suspect, if known) to the investigating judge (Art. 44). Based on the initial submission, the judicial investigation shall conduct a jurisdiction investigation (Art. 124). An investigating judge has the obligation to collect inculpatory as well as exculpatory evidence and s/he shall perform all investigations that he deems useful to ascertaining the truth (Art. 127).

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

When an investigating judge considers that the judicial investigation is terminated, he shall notify the Royal Prosecutor, the charged person, the civil parties and the lawyers (Art. 246). An investigating judge terminates the judicial investigation by a closing order. This order may be an

indictment or a non-suit order. If the investigating judge considers that the facts constitute a felony, a misdemeanor or a petty offense, s/he shall decide to indict the charged person before the trial court. The order shall state the facts being charged and their legal qualification (Art 247). Without delay the investigating judge shall inform the Royal Prosecutor, the charged person and the civil parties.

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

Step 5 – Hearing: After issuing an order of indictment, the investigating judge shall send the case file immediately to the trial court president who shall fix a date for trial (Art. 250) and process other administrative procedures to inform relevant parties, such as accused person, civil party, civil defendants, lawyers, and witness (Art. 300-315). In all cases, the court shall announce the judgment during a public session (Art. 317), but it is issued at the hearing date or in a subsequent session. In the latter case, the presiding judge shall inform the parties of the date of the announcement (Art. 347).

Up on receiving announcement of the judgment, either the civil party or the convicted person can make an appeal. Based on Art. 375, the appeal may be filed by:

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

Figure 2: COMPLAINT PROCEDURES FOR SEXUAL VIOLENCE AGAINST WOMEN

