

Sexual harassment

COSATU's Code of Conduct

After more than seven years of debate, COSATU has adopted a Sexual Harassment Code of Conduct and Procedure.

The document commits the Federation to eliminating sexual harassment in the labour movement. It seeks to outlaw — or at least provide strong sanction against — practices which have been all too common in the labour movement in the past. The Code explicitly recognises the rights of both grievants and accused, and lays down procedures for settling complaints or grievances relating to allegations of sexual harassment.

The Code also recognises that sexual harassment is a workplace issue and that unions should negotiate a sexual harassment code and procedure with employers. The document commits COSATU to take action to ensure that current legislation, including the Labour Relations Act (LRA) prohibits violence against women and that sexual harassment is codified as an offence.

The main points of the Code of Conduct are:

- COSATU recognises the discriminatory treatment of women inherent in sexual harassment.
- COSATU and affiliates commit themselves to the elimination of

sexual harassment in the labour movement by taking active preventative measures.

- Union officials and members are barred from demanding sexual favours in exchange for representation, employment, employment retention, promotion or salary increases.
- Union members and union officials must not victimise or jeopardise the job security of any grievant in a sexual harassment case.
- Union officials, union members and employers must create a working environment that is free from sexual harassment.
- Sexual harassment cases must be handled sensitively, honestly, quickly and confidentially.

Procedures

The Code of Conduct recognises physical, verbal and non-verbal forms of sexual harassment. Formal and informal procedures are laid down for settling sexual harassment cases. The informal route entails direct contact between the grievant, the accused and

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a third party to allow the harasser a chance to cease the unwelcome behaviour.

The formal route entails a disciplinary enquiry. Clear procedures and time frames for handling such cases are set out. The rights of both the grievant and the accused are identified.

It proposes that union disciplinary committees be as gender balanced as possible: ideally, with 50% female representation. Where there is a gender co-ordinator, that person should sit on the disciplinary committee.

The Code allows for additional sick

leave where the victim or the accused has suffered emotional or physical stress. Unions must maintain lists of service organisations to which grievants or accused can go to receive counselling.

Education

COSATU and its affiliates have committed themselves to running education and awareness raising programmes to encourage gender sensitive practices and behaviour within the union movement. These will be included in education programmes for all officials and members.

Confronting sexual harassment

The COSATU Code is an important step forward in the fight against sexual harassment. The commitment to fight harassment at the workplace is particularly important. Unions are now explicitly recognising their responsibility to defend their members against sexual abuse, just as they defend them against other unsafe situations

The Sexual Harassment Education Project (SHEP), which is working with COSATU to address the problem of sexual harassment, has put forward the following principles on which workplace procedures should be based:

- The job security of the grievant should be ensured. She should be given a temporary exemption from discipline while the case is in process. It should be recognised that sexual harassment and the process of case handling may in itself result in reduced productivity and concentration.
- The grievant should be entitled to paid leave, over and above her normal sick

Miriam Altman and Patricia Kumalo point the way towards legislative changes needed to tackle the issue.

- leave, to allow for physical or psychological treatment required as a result of sexual harassment.
- Workers should have the right to refuse work under dangerous circumstances. In cases of sexual harassment this may entail the right to refuse work in the vicinity of the accused if the grievant's safety may be threatened. Such a clause would usefully be negotiated within a health and safety clause of an agreement.
- Sexual Harassment Complaints Committees should be established and trained to counsel, mediate and make referrals. Unions should negotiate that

employers provide facilities for these Committees. Education and training would be provided for management and the committee to change the workplace climate and norms.

- Where outside mediation or arbitration is required, unions should negotiate the referral of sexual harassment cases to a specialised panel of sexual harassment arbitrators and mediators, to be based at the Independent Mediation Service of South Africa (IMSSA). SHEP is in the process of developing this independent and sensitised panel with IMSSA. Eventually, the panel should be incorporated or expanded into the Mediation and Arbitration Commission established in terms of the Labour Relations Act (LRA). The panel is encouraged as a more sensitive route to case handling, allowing confidentiality, sensitivity and speed. This avoids the current experience in the Industrial Court, which often treats grievants as perpetrators.

Legislative change

SHEP has made submissions on the draft Labour Relations Bill and is also developing proposals around the Constituent Assembly, the Occupational Health and Safety Act and the Compensation for Occupational Injury and Diseases Act.

Constitutional Assembly

SHEP has submitted proposals to the Constituent Assembly Theme Four Committee which deals with gender issues. These proposals explicitly identify violence against women as a criminal offence and a violation of human rights. This means that victims of sexual violence are entitled to protection from the state. Legislation will have to be formulated to give effect to these principles. Should a grievant have exhausted all normal legislative avenues, and where the law is implemented in a way that is not consistent

with the above principles, it should be possible to take such cases to the constitutional court.

Labour Relations Bill

SHEP submitted detailed proposals to the LRA drafting committee. These recommendations emphasise the arbitrary and insensitive treatment which cases of sexual harassment currently receive. SHEP has proposed that a legal definition of sexual harassment be included in the LRA. It is also proposed that:

- the Act should make provision for the confidential treatment of sexual harassment cases;
- the Commission for Conciliation, Mediation and Arbitration should have members who are specially trained to handle sexual harassment cases effectively and sensitively.

A number of recommendations were also made to strengthen provisions around Unfair Dismissal, the Code of Good Practice and the Unfair Labour Practice to explicitly recognise the problem of sexual harassment.

Occupational Health and Safety Act

The Occupational Health and Safety Act should recognise sexual harassment as an infringement of a worker's health and safety. Currently, the Act emphasizes the relationship between workers and the machines they work on. It does not allow for other kinds of endangerment. SHEP proposes that it should be the duty of the employer to create and maintain an environment that is free of sexual harassment.

There are a number of concrete examples that might be put forward to show what this provision might mean. Employers might ensure that night-shift workers have safe transport home and panic buttons in the women's toilets. Where complaints have been lodged concerning the behaviour of a supervisor, it should not be possible to place this supervisor in a position where he could repeat the behaviour. If a serious complaint is

laid, such as sexual assault, the company would be responsible for ensuring that the accused was suspended during an investigation in order to ensure the safety of other female employees

Compensation for Occupational Injury and Diseases Act (COIDA)
COIDA (formerly the Workmen's

Compensation Act) should recognise sexual harassment as an injury at work. Sexual harassment can directly result in serious physical and psychological injury to the victim. Hence, a worker sustaining such injury should be able to claim compensation. ★

Miriam Altman and Patricia Kumalo work at the Sexual Harassment Education Project (SHEP).

What is sexual harassment?

Sexual harassment is defined as any unwanted or uninvited conduct of a sexual nature that is reasonably known to be offensive to the victim. This can include unwelcome physical, verbal or non-verbal conduct.

Sexual harassment can range between subtle unwelcome attention of a sexual nature to outright violent behaviour such as rape.

Non-verbal forms of sexual harassment may include leering (looking at someone in an unwelcome and unpleasantly suggestive manner) or public display of sexually suggestive objects or pornography.

Verbal forms of sexual harassment may include unwelcome sexual advances, comments with sexual overtones, sex-related jokes or insults, inquiries about a person's sex life, whistling, comments about a person's body, persistent requests for dates or threats of sexual assault.

Physical forms of sexual harassment may include patting, pinching, fondling, kissing, strip-search, assault, molestation or rape.

The severity of sexual harassment varies. In some cases, one case may constitute an extremely serious infringement of the victim's rights, as in the case of an attempted or threatened assault, or rape. In other circumstances, a case may become serious when behaviour occurs over a period of time, resulting in severe psychological trauma.

In cases where sexual harassment occurs one time in visual or verbal forms, it may be possible to handle the case informally. However, when the behaviour persists over time, a hostile environment

results. This means that one or more workers feel uncomfortable or threatened by another co-worker or supervisor. The persistence of a sexually hostile environment can result in serious psychological or physical damage for the person who is harassed.

The victim of sexual harassment faces a dilemma. If she reports the case, she may face secondary victimisation. If she does not report the case, the sexual harassment may intensify resulting in physical or psychological damage and possible job loss. Most victims of sexual harassment keep quiet and seek other employment.

Both worker and employer are the losers. The worker may lose job benefits and security. The employer incurs costs of recruitment and re-training. Moreover, sexual harassers often pick on more than one worker. This means that the persistence of sexual harassment may draw down on a company's performance with excessive absenteeism and sick leave. ★

