This study was commissioned by CARE in 2014 to provide a detailed analysis of sexual harassment and gender based violence measures in Cambodia’s labor and criminal legal and policy frameworks. The study was conducted through a desk review, interviews and focus groups.

The study examines the legal provisions and mechanisms that are currently in place to respond to sexual harassment and gender based violence as well as the roles of duty bearers responsible for enforcing these. This approach gives a more holistic picture of the laws and how they are working in practice.

The study finds that there are opportunities for improvement both on the level of legal reform and implementation. It also looks at how additional duty bearers, such as employers and NGOs, can work together with Ministries to address these issues.

Overall, this study demonstrates that neither law reform nor enhanced implementation alone will ensure the best protection. Both will be needed to work in tandem to provide protection from and redress for sexual harassment and gender based violence.

**KEY FINDINGS**

*At the international level, sexual harassment has been addressed as both a manifestation of sex discrimination and as a form of violence against women*

- The International Labour Organisation (ILO) has addressed sexual harassment in a range of instruments. The Discrimination (Employment and Occupation) Convention, 1958 (No. 111) addresses discrimination in employment on a number of grounds including sex.
- In 1989, the Committee on the Elimination of Discrimination Against Women recognised sexual harassment at the work place as a form of violence in everyday life.
- In 1992, the Committee stated “equality in employment can seriously be impaired when women are subjected to gender specific violence, such as sexual harassment in the workplace.”

*Cambodia’s Constitution is the basis of the national legal framework for protection against gender based violence and sexual harassment*

- Article 31 provides for recognition and respect for human rights contained in international covenants, specifically mentioning women’s rights, and Article 45 provides for the abolition of all forms of discrimination against women.
- Other national laws that address forms of violence against women are: the Law on Domestic Violence; the Law on Suppression of Human Trafficking and Sexual Exploitation; the Labor Law and the Criminal Code.

*Article 172 of the Labor Law 1997 forbids sexual abuse, however it is not clear how this applies to workplace sexual harassment*

- No penalties are provided for breaches of this Article in the Labor Law which means that this Article can only be enforced through protections in the Criminal Code.
- Prakas in line with this provision of the Labor Law, can not provide protection broader than the provision itself. For example, Prakas 194 on Working Conditions, Occupational Safety and Health Rules of Entertainment Service Enterprises, Establishment of Companies made by the Ministry of Labor and Vocational Training (MoLVT).
- Sexual harassment is not covered in the Inspection Checklist of the MoLVT, which is used to ensure organizations are complying with the Labor Law.

*Chapter 3 of the Criminal Code 2009 classifies acts of sexual assault and provides for fines and terms of imprisonment for these offences*

- Rape (Article 239) and Indecent Assault (Article 246) both require assaults to be physical.
- Indecent exposure (Article 249) and Sexual Harassment (Article 250) are misdemeanors.
- The definition of Sexual Harassment only covers an abuse of power: “Sexual harassment is an act that a person abuses the power which was vested in him/her in his/her functions in order to put pressure again and again on other persons in exchange for sexual favour.”
- A victim of one of these acts can make a complaint to the judicial police (police and military police) or court for criminal charges and civil settlement.
The articles in the Criminal Code do not cover the broad range of behaviours commonly considered sexual harassment

- Workplace sexual harassment will only be covered by the Criminal Code if it is either physical (rape or sexual assault), occurs within a relationship of power (sexual harassment) or is a display of a sex organ (indecent exposure).
- Other behaviours which are unwanted, of a sexual nature, and which cause offense or intimidation are not covered in the national laws and policies of Cambodia, for example verbal harassment such as comments about relationships and appearance, or non-verbal behavior such as sexually suggestive gestures or the display of sexual materials.
- These definitions do not cover workplace sexual harassment from one co-worker to another that creates a hostile work environment.

For acts that contravene the Criminal Code, a complaint and investigation procedure is provided, however few complaints are made and those that are made often do not progress

- Prosecution for sexual harassment occurs under the Criminal Code and the legal procedures are in the Code of Criminal Procedures. These include: making a complaint to Judicial Police; the Judicial Police filing a complaint with a Prosecutor; a Prosecutor assigning the matter to an Investigating Judge; an Investigation; a Court Hearing.
- Only the court can decide if the perpetrator is guilty and subject that person to criminal penalty, fines, and paying compensation to the victim.
- Victims are uncomfortable enforcing their rights through the courts because it is timely, expensive and they do not trust the judicial system.
- There are instances of duty bearers not enforcing the law, which discourages victims from making complaints.
- Disputes are settled “out of court”, sometimes with a payment made to a victim.

For acts of sexual harassment that do not contravene the Criminal Code, there is an opportunity for duty bearers such as employers, NGOs and Ministries to work on other solutions

- Sexual harassment policies in individual workplaces can provide a mechanism to prevent and protect against sexual harassment that is not covered by the Criminal Code.
- In order for a workplace sexual harassment policy to achieve its desired outcomes, it must be well understood by staff and management.

**POLICY RECOMMENDATIONS**

The study identifies opportunities for:

- Implementation of current law and regulations
- Legal reform relating to sexual harassment in the workplace
- Factories and establishments implementing other measures for addressing sexual harassment at the workplace

Legal Analysis: **Sexual Harassment in Cambodia** was authored by Mr. LEANG Lo and Mr. OP Vibol. To view the full report, with detailed findings and policy recommendations, please visit [www.care-cambodia.org/research](http://www.care-cambodia.org/research).