

EXAMINING SEXUAL HARASSMENT DRAFT LAWS IN LEBANON: WOMEN'S EQUAL RIGHT TO PUBLIC SPACE

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Summary

In light of recent proposals for legislation against sexual harassment (SH) in Lebanon, this policy brief explores the subject of SH in public, institutional and workplace settings. The paper dissects the two draft laws presented by MP Ghassan Moukheiber and Minister of State for Women's Affairs, Jean Ogasapian, and provides policy suggestions and recommendations. The overview reveals that while representing a notable step forward in addressing SH and amending legal provisions to tackle this social issue, proposed legislations still fall short of protecting marginalized and vulnerable groups (e.g., domestic workers), and of presenting a comprehensive understanding of SH as a form of gender-based violence and discrimination.

KEY RECOMMENDATIONS

- ▶ Legislators are urged to tackle the subject of SH as a systemic form of gender-based violence and discrimination that disproportionately and severely affects women's daily life in public spaces, educational institutions and workplace settings.
- ▶ Legislators are advised to work closely with internal security forces and legal authorities on advancing knowledge and understanding of SH and future legal provisions, towards increasing citizen's trust in law enforcement entities.
- ▶ Legislators are advised to work seriously on addressing systemic disadvantages that exclude marginalized and vulnerable groups from legal protection against SH, such as addressing exclusions within the labor law.
- ▶ Legislations on the organizational level are advised to advance intermediary (yet decentralized) problem-solving and preventative mechanisms rather than resort directly to the emotionally and financially costly adversarial forms of legal redress.
- ▶ Legislation against racial discrimination is of utmost importance in its intersection with gender discrimination and must be given further attention within SH policies.
- ▶ Legislators and ministers are advised to work closely with civil society activists and groups on better shaping policy interventions.
- ▶ Civil society actors are advised to work on raising awareness towards breaking the silence and normality surrounding SH within society.

INTRODUCTION & PROBLEM STATEMENT

Women's increased assertive presence as players and actors in public life has contributed in subverting the public/private divide that once relegated women to the private realm. Yet, despite their assertive claim on the public sphere, women often experience discriminatory and exclusionary practices in public spaces, within educational institutions and within their workplace. Gender often intersects with other factors, such as age, class, race, ethnicity, sexual orientation and disability, in shaping women's daily experiences of public space (Bondi, 2005, p.13). When in public, women's personal space is frequently invaded by whistles, comments and even physical assault from male strangers (Valentine, 1989, p.386). As a result, women's use of space has been profoundly affected by their association of certain public spaces and times with incidences of SH and violence. Educational institutions as well as workplaces are particular sites where women face discrimination and harassment. These practices serve to delimit women's equal right to public space free from discrimination, violence and threat, and to obstruct women's productivity, job satisfaction and psychological well-being.

SH POLICY BACKGROUND IN LEBANON

In 2012, civil society activists, lawyers, judges, researchers and feminist activists drafted a comprehensive law¹ on SH within and outside the workforce as part of a project called ‘moughamarat salwa’ (‘The Adventures of Salwa’) organized by ‘al-majmou’a al-nasawiya’ (‘The Feminist Collective’) (Namour, 2017). In 2014, MP Ghassan Moukheiber submitted an urgent law proposal criminalizing SH and racial abuse². However, due to protracted political deadlock, it was not until recently, in January 2017, that Moukheiber was able to present the ‘urgent law proposal’ in parliament. Parliamentarians first expressed approval of the law, but then detracted following suspicions raised by several MPs on, for instance, the law’s potential misuse against employers (Namour, 2017).

Nevertheless, parliamentarians voted on considering the law of ‘urgent’ character. Jean Ogasapian, the Minister of State for Women’s Affairs, expressed his interest in collaborating on the subject given his similar efforts in drafting a law on SH. Moukheiber worked on partially amending the law in an attempt to combine it with Ogasapian’s draft law³. Ogasapian’s draft law was approved by the cabinet on the 8th of March 2017, coinciding with International Women’s Day, and is currently in the hands of the parliament. In parallel to recent legislative discussions, the American University of Beirut (AUB)’s ‘KIP Project on Gender and Sexuality,’ in coordination with the Ministry of State for Women’s Affairs, led a six-week campaign using the hashtag ‘mesh_basita’ to raise public awareness on SH. The KIP Project also organized a two-day conference and workshop on the subject, examining possible interventions. Despite a number of challenges and gaps that this policy brief will address in what follows, the two draft laws represent an important step towards protecting and asserting women’s right to public, organizational and institutional space free from threat of harassment, violence and discrimination.

DEFINING SEXUAL HARASSMENT IN LEGAL TEXTS

- ▶ The two draft laws advance the below definitions for SH:
 - Moukheiber’s law proposal calls for incorporating SH policies at the level of the penal law (article 521). The proposed law defines SH as an act that is “shocking, insistent or repetitive in any speech, action or insinuation of a sexual or racist nature, directed to a person without consent, leading to aggression on dignity because of the nature, context, profession, pressure, or embarrassment caused.”
 - Ogasapian’s draft law proposes incorporating SH policies at the levels of the labor law (first section) and the penal law (second chapter, seventh section). The law defines SH at the level of the labor law as follows: “Any person, whether an employer or a wage earner,

¹ The civil society draft law (2012): <http://legal-agenda.com/article.php?id=3407>

² Moukheiber’s draft law (2014): <http://legal-agenda.com/uploads/اقتراح%20القانون%20المقدم%20من%20مخيبير.pdf>

³ Ogasapian’s draft law (2017): http://womenaffairs.gov.lb/sites/default/files/law1_0.pdf

is prohibited from resorting to harassment, whether by means of a written confirmation or by any means of communication, pressure, or intimidation or issue orders aiming at receiving services of a sexual nature both for his own benefit or for the benefit of others.” The draft law provides a second definition of SH in article 535 of the penal law under ‘public morals and ethics.’ The article defines SH as follows: “To speak or to write, by any means of communication, by using anything that has a sexual connotation that compromises the honor and dignity of the victim, or if overlooked creates hostile or degrading situations.”

IMPORTANT CONSIDERATIONS & LEGISLATIVE SHORTCOMINGS

Drafting policies that tackle SH in public spaces and within organizations represents a challenge to policy-makers and requires particular sensitivity to societal and gendered norms and expectations as well as to organizational power dynamics. Below are a number of important considerations and legislative shortcomings to be taken into account when drafting SH policies:

▶ Legal Neutrality: A Rational Concern?

As the above definitions reveal, SH policies are often written using ‘neutral’ ‘legalistic’ language that gives an impression of complete ‘rationality’ (Ranney, 2000; Dougherty and Hode, 2016, p.1730). Yet, policy meanings are often constructed and shaped by discursive practices rooted in society and gendered norms. In their implementation, SH policy texts are also often subject to interpretations that often discursively reproduce male privilege. Yet, SH policies continue to be framed with what Ranney (2000) calls “a false neutrality that gives the impression that sexual harassment policies lie outside of the discursive and interpretive stream.” The appearance of ‘neutrality’ and mythical ‘rationality’ often obscures the power-laden assumptions that underlie policy discourse and overlooks the emotionally-laden experiences of women facing SH.

▶ Sexual Harassment: A Moral Concern?

The choice of the ‘public morals and ethics’ section of the penal code reflects legislators’ understanding of SH as a ‘moral’ concern. Indeed, a growing body of policy perceive SH in moral terms of respectability, civility and dignity (Yuille, 2015, p.362). Yet, the dignity approach detaches SH against women from its systemic nature, framing it, instead, as individual, moral harm. The public morality approach, additionally, displaces redress from harm away from the victim towards public ethics and morals that may be subject to different and changing social interpretations.

▶ SH & Racial Discrimination: Multiple Vulnerabilities?

A critical approach to SH argues for the need to move towards a more complex view of the ‘intersectionality’ of gender with other forms of social subordination and marginalization, such as race. Given their socio-economic vulnerability and marginalization, refugees and foreign domestic workers become easily subject to all forms of exploitation, harassment and violence. Legal provisions must, therefore, take into account the racial dimension of violence and harassment.

Moukheiber's draft law took racial violence into account, yet fell short of elaborating on it further and insuring provisions for foreign domestic workers who fall outside the protection of the labor law, yet endure multiple vulnerabilities, including high incidences of sexual harassment and abuse.

SHAPING ORGANIZATION-SPECIFIC LEGISLATION

▶ Organizational Laws in Action

Crafting anti-harassment policies can be a challenging task within workplace or educational organizations. Even when legal rights and entitlements are formally acknowledged, victims may rarely invoke them given a number of obstacles, drawbacks and inconveniences. Moreover, even if invoked, a considerable gap often remains between "what people are entitled to under law and what they actually received" (Zemans, 1983 in Marshall, 2005, p.84). Gaps in legislation and implementation, however, should not mean that SH policies must be forsaken. Instead, the sensitivity of the subject and interests of victims must be taken into account in better developing SH policies within organizational and institutional settings.

▶ Power Dynamics Within Organizational Settings

Given the hierarchical relationships characterizing organizational settings (workplaces, educational institutions), complaints against SH within these spaces might be subject to conflicting interests, power-dynamics and negative complications. Designing policy provisions should, therefore, take particular care of employees' / students' interests and possible obstacles facing redress. Women facing SH may be discouraged from reporting incidences to avoid suffering daily psychological and embarrassment costs, and possibly lose employment or benefits (e.g., scholarships), and therefore, only report extreme cases of SH or refrain from reporting superiors or supervisors (Marshall, 2005, p.86-7). By prohibiting SH by "any person, whether an employer or a wage earner," Ogasapian's draft law overlooks the inherent unequal power-relations that predicate workplace relationships (Namour, 2017). The law, however, is useful in that it excludes the need for a superior's permission to file an SH case. In turn, the draft law presented by Moukheiber takes into account unequal relations of subordination such that they constitute an annulment of the 'consent' conditionality in the definition of SH.

▶ Protecting SH Victims

While providing protection for the victims and witnesses who report incidences of SH, Ogasapian's draft law did not delineate clear mechanisms for complaint and for punishment of harassers. Nor did the law provide measures against superiors who commit SH or fail to take necessary measures against harassers, relegating this, instead, to criminal justice (Namour, Legal Agenda, 2017). Besides protecting victims who report SH, Moukheiber's draft law, on the other hand, specified strong measures against superiors who commit harassment, in addition to necessitating mechanisms (such as internal policies) that require directors to take measures against SH in the workplace.

▶ Organizational Limitations

SH costs organizations and institutions a considerable amount of money and potential harm on their reputation (Shanker et al., 2015). Organizations and institutions may be compelled to adopt SH legislation to enhance their reputation and image, yet fall short of designing proper implementation procedures and preventative provisions. Organizational procedures may, additionally, end up being more effective at protecting employers and organizations from liability than in protecting employees and victims of SH, given conflicting interests and considerations. Moreover, only having SH policies is not enough unless these policies are consistently reinforced and complemented with ongoing preventative and educational provisions and training. SH may, therefore, incur considerable costs and money on organizations (e.g., legal charges, productivity, turnover, grievance procedures, trainings) (Shanker et al., 2015).

RECOMMENDED POLICY CONSIDERATIONS

▶ Countering Legalized 'Neutrality'

SH is not a 'neutral' or 'exceptional' concern awaiting rational legal intervention and regulation. SH is rather a worldwide, lifelong and regular concern for women, entrenched within gender binaries and discrimination and male-privileged sociality. Hence, rather than obscuring power dynamics in 'neutral' terms, policy interventions must address the complex cultural understandings that underpin SH in order to develop more effective strategies to confront SH in public and within organizations. Moreover, SH policy must move away from strict legal rationality towards acknowledging the 'emotional landscape' of victims (e.g., fear, uncertainty, etc.) to contribute towards creating a transformative dialogue against SH (Dougherty and Hode, 2016, p.1752). Finally, although victims of SH can also be men, legislation must acknowledge the disproportionate, systemic and gender-based nature of SH and discrimination facing women in particular.

▶ Burden of Proof

Neither of the two draft laws decreases the burden of proof on the victim of SH, knowing that in most cases victims find it difficult to demonstrate the resultant psychological harm or provide evidence of such harm (Namour, Legal Agenda, 2017). Instead, both laws tackle harm that 'has been done' rather than harm that 'might happen' as a result of SH (ibid.). This nuance in defining SH is important to account for psychological and verbal forms of harassment.

▶ Protecting Racially Disadvantaged from SH

Both law proposals did not tackle SH facing subjects who fall outside the provisions of the labor law and who may be the most vulnerable to incidences of SH, such as domestic workers, and workers in agricultural unions and familial organizations. Although Moukheiber's law tackled the subject of racial discrimination, it fell short of addressing legal exception in the labor law. Given the mounting racist discourse and violence characterizing the Lebanese scene today, it is of utmost importance to address racial discrimination and harassment as unlawful and subject to legal measures.

▶ **SH Within Organizational Settings: Intermediary Grievance Procedures**

Given the sensitivity and vulnerability of subjects' interests within organizational settings such as education institutions and workplaces, internal or intermediary dispute resolution mechanisms, such as anti-harassment policies and grievance procedures, represent less resource-intensive and emotionally costly procedures than the formal legal system (Marshall, 2005, p.85). Preventative dispute resolution mechanisms may at times represent better channels for redress than the adversarial model of the formal legal system (ibid., p.109). Yet, previous experiences have revealed the limited capacity of grievance procedures to ensure proper redress given the structural inequalities, prejudices and power disparities and conflicting interests that exist within organizations (ibid.).

▶ **Decentralizing Grievance Procedures**

To remedy the above problem, internal resolution mechanisms can be decentralized and relegated to different 'complaint handlers,' such as bodies external to the organizational hierarchies (Marshall, 2005, p.118-9) (e.g., Arbitral Working Councils/ majales el-aamal al-tahkimiya). Trainings within institutions also serve to inform ordinary employees on how to handle cases of SH on a daily basis and within social networks, serving in advancing preventative 'informal' solutions and encouraging 'bystander intervention' in minor incidences (Dougherty and Hode, 2016; Marshall, 2005). Both proposed laws, however, fell short of including similar

Civil Society Actors and Policy-making

The increased role of civil society actors is a major recent phenomenon attributed to the advancement in communication as well as to the social, political and economic transformations. This program looks at a wide spectrum of civil society actors and their role in policy-making. We study how civil society actors organize themselves into advocacy coalitions and how policy networks are formed to influence policy processes and outcomes. We also look at policy research institutes and their contribution to the translation of knowledge to policies. The media's expanding role, which some claim to be a major player in catalyzing protests and revolutions in the Arab world, will also be explored.

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intermediary provisions, resorting, instead, directly to criminal justice and the penal law to punish SH (Namour, Legal Agenda, 2017). Turning to intermediary and external bodies for resolution of SH incidences places greater value on victims' lived experience, while decreasing the burden of proof, the material costs and emotional cost on victims within their working (or educational) spaces.

▶ **Breaking Societal Silence & Normativity**

Recent proposed legislation on sexual harassment represents an important step forward in filling the legal gaps in addressing different forms of systemic violence and discrimination against women. Legislative procedures play an important, albeit not exclusive, role in empowering women to claim equal rights to space free from discrimination and violence. Legal procedures must be complemented with larger societal awareness, security provisions, media sensitivity and organizational efforts to break the silence and normativity surrounding sexual violence and harassment and deal with SH against women as a serious social issue.

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