



FOURTH SESSION OF THE ELEVENTH PARLIAMENT (2018/2019)

THIRTEENTH REPORT OF THE

JOINT SELECT COMMITTEE ON

HUMAN RIGHTS, EQUALITY AND DIVERSITY

on

Sexual Harassment in the Workplace



Committee Mandate

The Joint Select Committee on Human Rights, Equality and Diversity was established under House of Representatives Standing Order 106 and Senate Standing Order 96 and shall have the duty of considering, from time to time, and reporting whenever necessary, on all matters related to:

- (a) compatibility of Acts of Parliament with human rights, and any matters relating to human rights in Trinidad and Tobago (but excluding consideration of individual cases);
- (b) Government compliance with national and international human rights instruments to which Trinidad and Tobago is a party;
- (c) the promotion of measures designed to enhance the equalization of opportunities and improvement in the quality of life and status of all peoples including marginalized groups on the basis of gender, age (elderly, youth, children) disability and the creation of an inclusive and more equitable society through greater social justice and sustainable human development within Trinidad and Tobago.”

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¹ Mr. Ashvani Mahabir was appointed to the Committee in lieu of Mr. Saddam Hosein with effect from May 21, 2019. The Senate appointment of Mr. Ashvani Mahabir was revoked with effect from June 12, 2019 and to date a new Committee Member was not appointed.

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LIST OF ABBREVIATIONS

BEC	Business Email Compromise
CARICOM	Caribbean Community
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
CPC	Chief Parliamentary Counsel
CAAD	Conciliation, Advisory and Advocacy Division
EAP	Employee Assistance Programme
EOA	Equal Opportunity Act
EOC	Equal Opportunity Commission
EOT	Equal Opportunity Tribunal
ECA	Employers' Consultative Association
ILO	International Labour Organisation
MLSED	Ministry of Labour and Small Enterprise Development
MAGLA	Ministry of Attorney General and Legal Affairs
NUDE	National Union of Domestic Employees
NGO	Non-Governmental Organisation
OSHA	Occupational Safety and Health Act
OPM	Office of the Prime Minister
TTPS	Trinidad and Tobago Police Service
TTWIL	Trinidad and Tobago Institute for Women in Leadership
UN	United Nations
UNICEF	United Nations Children's Fund
UWI	University of the West Indies
WASA	Water and Sewage Authority

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1. EXECUTIVE SUMMARY

1.1. At its Twenty-Third Meeting held on January 18, 2019, the Committee resolved to inquire into sexual harassment in the workplace and agreed that the following three (3) objectives would guide the inquiry:

- i. To understand the challenges related to sexual harassment in the workplace.**
- ii. To examine the prevalence of allegations and instances of sexual harassment in the workplace.**
- iii. To examine and make recommendations on:**
 - a. current management procedures and mechanisms to seek redress as a victim of sexual harassment in the workplace.**
 - b. current legislation and policies (local, regional and international) to treat with victims of sexual harassment in workplaces in Trinidad and Tobago.**

1.2. The Committee agreed that inquiry would constitute two (2) hearings which would be conducted on March 15, 2019 and on April 12, 2019 and officials from the public sector, the private sector and NGOs related to the inquiry would to be invited (See **APPENDIX I**)

1.3. The Committee obtained both oral and written evidence based on the objectives listed above. Evidence was also collected via an online survey related to the topic. The Committee would like to express its gratitude to the seven hundred and twenty-six (726) persons who completed the survey.

1.4. The Committee submits its findings and recommendations with respect to sexual harassment in the workplace in Chapter 4.

1.5. The Committee's key findings and recommendations are as follows:

- I.** The Committee found that at the level of the EOT or the Industrial Court the employee would require the services of an attorney. Consequently,

employees have been stymied in their efforts to pursue a legal action because they are unable to afford the services of a legal representative.

- a. **The Committee recommends that the Conciliation, Advisory and Advocacy Division, MLSED collaborate with LAAA in the provision of services to persons who are unable to afford legal representation for matters.**

II. The Committee noted the concerns of NGOs on the lack of protection for persons reporting incidents of sexual harassment, as such, protection in the form of a whistle blower policy, would ensure the anonymity of the complainant and potentially increase the reporting of incidents of sexual harassment. WINAD proposal in Appendix V, outlined the need for bystander training to empower onlookers to recognize and act when they witness sexual harassment.

- a. **Given that one of the challenges related to reporting of incidents of sexual harassment is the unwillingness of witnesses to provide evidence, the Committee recommends that the MLSED conducts a bystander training workshop on sexual harassment for employees at organisations.**
- b. **The Committee recommends that the MLSED incorporate in the sexual harassment policy a procedural mechanism for anonymous reports to protect the identity persons who have reported cases of sexual harassment.**

III. Due to the under-reporting of incidents of sexual harassment in the workplace and the lack of specific legislation to seek redress for the offence, the Committee was unable to compile accurate statistics on incidences of sexual harassment in the workplace.

- a. **Given the magnitude of the under-reporting of cases of sexual harassment in Trinidad and Tobago, the Committee recommends that the MLSED conduct a study to determine the prevalence of sexual harassment in the workplace in fiscal 2020.**

IV. The Committee found that the National Workplace Policy on Sexual Harassment outlines:

- ✓ that a separate complaints procedure and policy on sexual harassment be established in each organisation;
 - ✓ similar to the UWI Sexual Harassment Policy, the National Workplace Policy on Sexual Harassment also recommends that a designated person be assigned to accept complaints to ensure procedural fairness, confidentiality and consistency;
 - ✓ the reporting of incidents occurring at a work-related event which are outside of the usual work environment; and
 - ✓ the protection of domestic workers by allowing for complaints to be made at the Ministry by individuals instead of via an attorney or a trade union.
- a. **Given that the respondents from the Committee's survey highlighted the need for a sexual harassment policy in organisations, the Committee recommends that the MLSED implement the requirement for each organisation to establish sexual harassment policy by January 2020.**
- b. **The Committee recommends that training and sensitisation be provided to employers on the National Policy for Sexual Harassment in the Workplace, with specific focus on the complaint procedures and the forms of remedies related to sexual harassment in the workplace. The Committee further recommends that the MLSED consider courseware in order to reach a wide audience.**

V. The Committee noted that National Workplace Policy on Sexual Harassment states that each organisation should have a sexual harassment policy. However, there are no punitive measure for employers or persons who are not implementing the guidelines of the Policy.

- a. **Given that there are no punitive measure for employers or persons who are not implementing the guidelines of the Policy, the Committee recommends that draft sexual harassment legislation be finalized during fiscal 2020.**

VI. Whilst the Policy does contain provisions for domestic worker and migrant workers, the Committee concurred with the Network that there is a need for the definition of “worker” to be widened to capture a volunteer who provides a service without hire or reward and to include a definition for ‘visitor” who receives a service and may not be identified as a worker in the organisation.

- a. **With regard to the National Policy on Sexual Harassment in Trinidad and Tobago, the Committee recommends:**
 - the inclusion of the definitive roles and responsibilities of the trade union;
 - the definition of “worker” should be widened to capture volunteer workers who provide a service without hire or reward;
 - to include a definition for ‘visitor”;
- b. **The Committee recommends that the MLSED partner with NGOs to conduct public awareness campaigns and sensitisation sessions on sexual harassment in the workplace. The Committee further recommends that the MLSED collaborate with vulnerable groups/NGOs that interact/represent migrants and domestic workers in the implementation of sensitisation sessions.**

2. INTRODUCTION

Sexual Harassment

2.1. Sexual harassment is well recognised as a form of sex-based discrimination faced by both men and women.

2.2. Sexual harassment has varying definitions. According to the National Policy on Sexual Harassment in Trinidad and Tobago sexual harassment is *“any physical, verbal or non-verbal conduct of a sexual nature and other conduct affecting the dignity of women and men, which is unwelcome, unreasonable, and offensive to the recipient; and a person’s rejection of, or submission to, such conduct is used to explicitly or implicitly as a basis for a decision which affects that person’s job; or (hostile work environment) conduct that creates an intimidating, hostile or humiliating working environment for the recipient”*.ⁱ

2.3. On an international sphere, the UNICEF defines **sexual harassment** as *“sexual harassment is any unwelcome conduct of a sexual nature that might reasonably be expected or be perceived to cause offense or humiliation, when such conduct interferes with work, is made a condition of employment or creates an intimidating, hostile or offensive work environment. Sexual harassment may occur in the workplace or in connection with work. While typically involving a pattern of conduct, sexual harassment may take the form of a single incident. In assessing the reasonableness of expectations or perceptions, the perspective of the person who is the target of the conduct shall be considered.”*ⁱⁱ

2.4. Regionally, this is also mirrored in section 7 of the CARICOM Model Protection Against Sexual Harassment Billⁱⁱⁱ where sexual harassment is defined as, *“unwanted conduct of a sexual nature in the workplace or in connection with the performance of work which is threatened or imposed as a condition of employment on the employee or which creates a hostile working environment for the employee....”* These definitions and other definitions contain the similar thread of unwanted conduct and hostile/ offensive work environment.

Types of Sexual Harassment

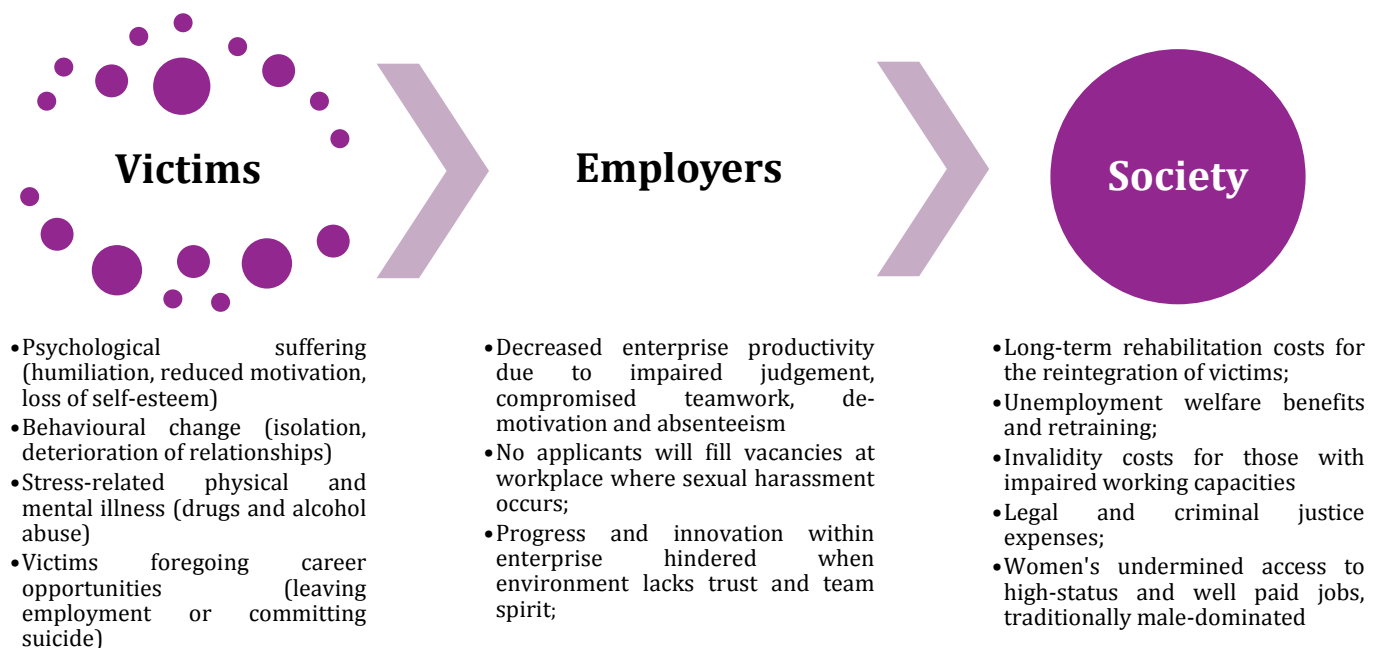
2.5. There are two general types of sexual harassment:

- **Quid pro quo** (meaning “this for that”) **sexual harassment** which occurs when it is stated or implied that an academic or employment decision about a student or employee depends upon whether the student or employee submits to conduct of a sexual nature.
- **Hostile environment sexual harassment** occurs when unwelcome conduct of a sexual nature creates an intimidating, threatening or abusive working or learning environment or is so severe, persistent or pervasive that it affects a person’s ability to participate in or benefit from a program or activity. While a person engaging in harassing behaviour most often has some form of power or authority over the person being harassed, the harasser can also be a peer of the person being harassed or harassing a person who has power over them.

The Cost of Sexual Harassment

2.6. **Figure 1** highlights the cost of sexual harassment as decided by an International Labour Organisation (ILO) Fact Sheet entitled, “Sexual Harassment at Work^{iv}.”

Figure 1
Cost of Sexual Harassment as decided by the ILO



International Statistics

2.7. A report entitled, “Ending violence and harassment against women and men in the world of work,^v” which was submitted to the International Labour Conference in 2018 highlighted the following global information related to sexual harassment in the workplace:

- i. 77% of female respondents experienced sexual harassment at some point during their working life (a study in South Africa by the International Trade Union Confederation (ITUC))
- ii. The respondents reported sexual comments about other women (35%), unwelcome jokes and comments of a sexual nature (32% and 28%, respectively), unwanted touching (nearly 25%), unwanted sexual advances (20%), and serious sexual assault or rape at work (1%). Just under 10% of women reported seeing displays of pornographic material in the workplace (a study by the Trade Union Congress of the United Kingdom)
- iii. Sexual harassment happens more often among those on contracts with “little job security or stability” (e.g. casual labour on a no-contract basis, paid or unpaid interns, and fixed-term contracts²)

International Instruments

2.8. Table 1 highlights the various International Instruments related to the Sexual Harassment.

Table 1
International Instruments related to Sexual Harassment

International Instrument	Details related to Sexual Harassment
Article 5 (a) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979	<i>“5. States Parties shall take all appropriate measures: (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women....vi”</i>
Article 11(1)(f) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979	<i>“1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:... (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.vii”</i>
Articles 7 and 8 of the Universal Declaration of Human Rights 1948	<i>7. All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination</i>

² A study in Portugal by Torres et al for International Congress of Gender Studies, May 25-27, 2016 at the Institute of Social and Political Sciences, University of Lisbon)

	8. Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law...viii"
Article 2 (b) of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women	2. Violence against women shall be understood to include physical, sexual and psychological violence: ...b. that occurs in the community and is perpetrated by any person, including, among others, rape, sexual abuse, torture, trafficking in persons, forced prostitution, kidnapping and sexual harassment in the workplace, as well as in educational institutions, health facilities or any other place; and c. that is perpetrated or condoned by the state or its agents regardless of where it occurs...ix"
Article 7 of the Convention on International Covenant on Economic, Social and Cultural Rights 1966	"...The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:... (b) Safe and healthy working conditionsx...."
Article 26 of the International Covenant on Civil and Political Rights 1966	"...All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other statusxi..."
Article 2 of the ILO Convention (No. 111 on Discrimination in Respect of Employment and Occupation 1958	"Each Member for which this Convention is in force undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereofxii."

Regional Legislation

2.9. Table 2 shows the legislation from countries within the region related to sexual harassment.

Table 2
Regional Legislation related to Sexual Harassment

Regional Legislation	Details related to Sexual Harassment
Belize Protection Against Sexual Harassment Act (1996) Revised 2000^{xiii}, section 3 (1) and section 4	<u>Forms of Sexual Harassment</u> Section 3 (1): "No employer or supervisor of an employee shall harass sexually an employee so as to make it appear to the employee that the prospects or working conditions of that employee are contingent upon the employee's acceptance of sexual advances or toleration of sexual advances from the employer or supervisor" <u>Liability of the Employer</u> Section 4"An employer shall take immediate and appropriate action to correct any act of sexual harassment towards employees in the workplace, where the employer, his agents or his supervisors know or are informed of such conduct, and if the employer fails to take immediate action and appropriate action to correct the situation, he shall be held responsible therefor, and the aggrieved person may lodge a complaint against him under section 10 (the Court)." <u>Relevant Sections of the Act</u> • Liability of the employer where opportunities granted for sexual favours • Prohibition of acts adversely affecting employment • Sexual harassment protection for students, inmates and wards of institutions

	• Prohibition of sexual harassment in circumstances of accommodation • Hearing of complaints • Offences and penalties
St Lucia Criminal Code Chapter 3.01, section 139^{xiv} Sexual Harassment protection is provided in the section: Soliciting Sexual Favours in the workplace	<u>Forms of Sexual Harassment</u> <u>Section 139</u> (1) "It is an offence for an employer or a supervisor of an employee to make it reasonably appear to the employee that the prospects or working conditions of the employee are dependent upon the acceptance or tolerance by the employee of sexual advances or persistent sexual suggestions from the employer or supervisor. (2) It is an offence for a prospective employer to make it reasonably appear to a person that– (a) an offer of employment to that person; (b) the terms on which employment is so offered, is or are dependent on that person's acceptance or tolerance of sexual advances or tolerance of persistent sexual suggestions from the prospective employer. (3) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to imprisonment for one year."
St Lucia Equality of Opportunity and Treatment in Employment and Occupation Act Chapter 16.14 (Revised 2001)^{xv}, section 8 Sexual Harassment protection is provided in Part II, Protection Against Unlawful Discrimination, of the Act	<u>Sexual Harassment as a form of Discrimination</u> Section (8) "Any act of sexual harassment against an employee committed by an employer, managerial employee or co-employee shall constitute unlawful discrimination based on sex within the meaning of section 3 and constitutes an offence."
Barbados Employment Sexual Harassment (Prevention) Act 2017 ^{xvi}, section 3(1) and sections 6 (1) -(2)	<u>Forms of Sexual Harassment</u> Section 3(1) "For the purposes of this Act, sexual harassment includes: • the use of sexually suggestive words, comments, jokes, gestures or actions that annoy, alarm or abuse a person; • the initiation of uninvited physical contact with a person; • the initiation of unwelcome sexual advances or the requests of sexual favours from a person; • asking a person intrusive questions that are of a sexual nature that pertain to that person's private life; • transmitting sexually offensive writing or material of any kind; • making sexually offensive telephone calls to a person; or • any other sexually suggestive conduct of an offensive nature." <u>Liability of the Employer</u> Section 6 (1) " Where an employer grants employment opportunities or benefits as a result of: (a) an employee's agreement to grant sexual favours to the employer; or (b) an employee's agreement to grant sexual favours to a client or an employee's supervisor, an aggrieved employee who was denied an employment opportunity or benefit may lodge a complaint with the Chief Labour Officer and the Chief Labour Officer may take such action as he thinks necessary under section 12 to resolve the matter."

	Section 6 (2) “An employer shall only be liable under subsection (1) for the actions of a client or an employee’s supervisor where the arrangement was brought to the attention of the employer and the employer failed to take appropriate action.” Relevant Sections of the Act • Employer not to allow unfair opportunities to be granted • Liability of employer where unfair opportunities granted • Lodging of sexual harassment complaint with the employer • Procedure to be followed by the employer where sexual harassment is alleged • Lodging of a complaint with the Chief Labour Officer • The procedure where complaints are heard.
CARICOM Model Protection Against Sexual Harassment Bill	Sexual Harassment in Employment Clause 13 would prohibit an employer and employee, a commission agent, a partner in a partnership or any workplace participant from committing an act of sexual harassment. Clause 14 would require an employer to take appropriate action on becoming aware, reasonably suspicious or informed of an act of sexual harassment which – (a) is directed to an employee or any person with whom the employer has contracted to facilitate the operations of the place of employment; and (b) occurs during the course of employment. Clause 15 would make an employer liable for an act of sexual harassment committed by his or her agent, supervisor and employee, if it is proven that – (a) the conduct occurred during the course of employment; and (b) the employer knew, ought reasonably to have known or was informed of the commission of such conduct and on becoming aware, suspicious or informed, failed to take reasonable steps to prevent the continuation of the conduct.

National Legislation

2.10. Sexual harassment spans a gamut of unlawful behaviour, which can be either criminal or civil in nature. In the context of sexual harassment at the workplace there is no stand-alone national legislation to combat sexual harassment. In this regard, reliance is placed on pieces of legislation in **Table 3**.

Table 3
National Legislation related to Sexual Harassment

National Legislation	Details related to Sexual Harassment
Section 4 (b) of the Constitution of the Republic of Trinidad and Tobago, Chap. 1:01	“It is hereby recognised and declared that in Trinidad and Tobago there have existed and shall continue to exist, without discrimination by reason of race, origin, colour, religion or sex, the following fundamental human rights and freedoms, namely... (b) the right of the individual to equality before the law and the protection of the law ;...”
Sections 7 and 9 of the Equal Opportunities Act, Chap. 22:03	Offensive Behaviour “7. (1) A person shall not otherwise than in private, do any act which – (a) is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group of persons; (b) is done because of the gender, race, ethnicity, origin or religion of the other person or of some or all of the persons in the group; and (c) which is done with the intention of inciting gender, racial or religious hatred.

	(2) For the purposes of subsection (1), an act is taken not to be done in private if it – (a) causes words, sounds, images or writing to be communicated to the public; (b) is done in a public place; (c) is done in the sight and hearing of persons who are in a public place. (3) This section does not apply to acts committed in a place of public worship. (4) In this section – “public place” includes any place to which the public have access as of right or by invitation, whether express or implied and whether or not a charge is made for admission to the place.^{xviii}” <u>Discrimination against employees</u> (9) An employer shall not discriminate against a person employed by him – (a) in the terms or conditions of employment that the employer affords the person; (b) <u>in the way the employer affords the person access to opportunities for promotion, transfer or training or to any other benefit, facility or service associated with employment</u>, or by refusing or deliberately omitting to afford the person access to them; or (c) by dismissing the person or subjecting the person to any other detriment
Sections 30A and 30B of the Offences against the Person Act, Chap	<u>Harassment and Penalty for Harassment</u> 30A. “(1) For the purpose of this section – (a) “harassment” of a person includes alarming the person or causing the person distress by engaging in a course of conduct such as – (i) following, making visual recordings of, stopping or accosting the person; (ii) watching, loitering near or hindering or preventing access to or from the person’s place of residence, workplace or any other place frequented by the person; (iii) entering property or interfering with property in the possession of the person; (iv) making contact with the person, whether by gesture, directly, verbally, by telephone, computer, post or in any other way; (v) giving offensive material to the person, or leaving it where it will be found by, given to, or brought to the attention of the person; (vi) acting in any manner described in subparagraphs (i) to (v) towards someone with a familial or close personal relationship to the person; or (vii) acting in any other way that could reasonably be expected to alarm or cause the person distress; and (b) a “course of conduct” involves conduct of the kind referred to in paragraph (a) carried out on at least two occasions. (2) A person who pursues a course of conduct which amounts to harassment of another and which he knows or ought reasonably to know amounts to harassment of the other is guilty of an offence and is liable on summary conviction to a fine of two thousand dollars and to imprisonment for six months. 30B. (1) A person who is accused of conduct which would constitute an offence under section 30A and which causes the other person to fear that violence will be used against him, and the person whose course of conduct is in question knows or ought to know that his conduct will cause the other person so to fear, commits an offence and is liable on conviction on indictment to a fine of ten thousand dollars and to imprisonment for five years or, on summary conviction, to a fine of five thousand dollars and to imprisonment for six months. (2) For the purpose of this section, the person whose course of conduct is in question is deemed to know that it will cause another person to fear that violence will be used against him if a reasonable person in possession of the same information would think the course of conduct would cause the other person so to fear..”
Sections 15, 16 and 18 of the Sexual Offences Act, Chap. 11:28	<u>Indecent Assault</u> “15. (1) A person who indecently assaults another is guilty of an offence and is liable on conviction to imprisonment for five years for a first offence and to imprisonment for ten years for a subsequent offence. (2) A person under the age of sixteen years cannot in law give any consent which would prevent an act being an assault for purposes of this section.

	(3) In this section, “ indecent assault ” means an assault accompanied by words or circumstances indicating an indecent intention. “
	Serious Indecency “16. (1) A person who commits an act of serious indecency on or towards another is liable on conviction to imprisonment for five years. (2) Subsection (1) does not apply to an act of serious indecency committed in private between – (a) a husband and his wife; (b) a male person and a female person each of whom is sixteen years of age or more, both of whom consent to the commission of the act; or (c) persons to whom section 20(1) and (2) and (3) of the Children Act apply. (3) An act of “serious indecency” is an act, other than sexual intercourse (whether natural or unnatural), by a person involving the use of the genital organ for the purpose of arousing or gratifying sexual desire....”
	Procuration “18. A person who – (a) by threats or intimidation procures another to have sexual intercourse with any person either in Trinidad and Tobago or elsewhere; or (b) by deception procures another to have sexual intercourse with any person either in Trinidad and Tobago or elsewhere; or (c) applies, administers to or causes to be taken by any person any drug, matter or thing with intent to stupefy or overpower that person so as thereby to enable any other person to have sexual intercourse with that person, is guilty of an offence and is liable on conviction to imprisonment for fifteen years...^{xviii}”
Section 6 of the Occupational Safety and Health Act, Chap. 88:08	Failure to provide a safe and healthy work environment “6. (1) It shall be the duty of every employer to ensure, so far as is reasonably practicable, the safety, health and welfare at work of all his employees^{xix}.”

Inquiry Stakeholders - Sexual Harassment Policies and Guidelines

2.11. In recent times the Ministry of Labour and Small Enterprise and Development, Office of the Prime Minister and Equal Opportunity Commission created policies and guidelines to provide guidance to employers and internal redress to victims thereby shifting the focus away from litigation.

National Workplace Policy on Sexual Harassment, Ministry of Labour and Small Enterprise Development (MLSED)

2.12. On March 08, 2019, the MLSED published the National Workplace Policy on Sexual Harassment in Trinidad and Tobago ^{xx} and outlined the following strategies to address sexual harassment:

- The enactment of specific legislation to address Sexual Harassment in the Workplace;
- Amendment of the name of the Conciliation Unit to the Conciliation, Advisory and Advocacy Division (CAAD) which will enable the CAAD with specifically trained staff to assist entities with the development/review of

individual workplace policies on sexual harassment, where necessary, and provide advisory and outreach services to the citizenry;

- Establishment of workplace policies by each organisation to address Sexual Harassment issues showing a clear framework and guidelines for resolution;
- Training for employers and workers on sexual harassment in the workplace;
- The provision of psychosocial support (in collaboration with specified NGO's) to persons who feel sexually harassed so they can find appropriate solutions;
- The provision of solutions for those persons who may be accused of sexually harassing others in the workplace. (in collaboration with specified NGO's); and
- The provision of psychosocial support to persons who may be falsely accused of sexual harassment.

2.13. In addition, the Policy includes Guidelines on the Grievance/Complaints Procedure, Sexual Harassment Complaint Form/Incident Form and Guidelines on Handling Complaints.

Green Paper on the National Policy on Gender and Development, Office of the Prime Minister

2.14. The National Policy on Gender and Development 2018 contains the intended national policy framework to eliminate gender-based discrimination.

❖ Policy Objectives Relating To Sexual Harassment in the Workplace

- *To foster the equitable participation of men and women in income generation and sustainable livelihood strategies, through the removal of obstacles and the implementation of measures for their effective involvement, while recognizing the contribution of unwaged and reproductive work to national development.*^{xxi}
- *To develop and implement integrated measures to prevent, treat and alleviate the incidence of gender-based violence, increasing women's and men's understanding of their legal rights and responsibilities, and improving remedies for redress.*^{xxii}

❖ Policy Measures to Be Instituted With Regard To Sexual Harassment in the Workplace

- *Revise and create labour laws in Trinidad and Tobago to promote gender equality and equity, remove barriers to the equitable participation of women and men in labour and employment, promote the decent work agenda, adhere to labour standards and*

provide adequate social protection, this may include, inter alia ... sexual harassment in the work place, and its prevention and punishment.^{xxiii}

- *Establish policy guidelines to address sexual harassment including remedies available to victims, and public education and training to promote behaviour change and reduce the incidence of sexual harassment in the workplace.*^{xxiv}
- *Conduct public education to improve understanding of gender-based violence including domestic violence, incest, child sexual abuse, rape, buggery, sexual harassment, forced prostitution and human trafficking, including legal rights, access to redress and support services.*^{xxv}
- *Create legislation, policies and awareness raising programmes on sexual harassment that seek to prevent its incidence, and provide effective redress for victims.*^{xxvi}

Equal Opportunity Commission and Guidelines on Sexual Harassment in the Workplace

2.15. The EOC is empowered to receive, investigate and conciliate complaints of discrimination. Although the Equal Opportunity Act, Chap. 22:03 does not explicitly provide for sexual harassment, complaints concerning sexual harassment at the workplace can be brought on the ground of unlawful sex discrimination.

2.16. The EOC Guidelines proposes measures to prevent the occurrence of sexual harassment in the workplace such as:

- (i) **Communication:** *socialise and foster awareness of the Guidelines; for example using various print and electronic media;*
- (ii) **Education:** *organise orientation and staff induction programmes;*
- (iii) **Training:** *provide specialised training for supervisors and managers to identify problems in the workplace and to develop strategies for prevention; train a Harassment Response Team³;*
- (iv) **Commitment:** *an organisation should demonstrate its commitment to the prevention of harassment in the workplace, including taking disciplinary action in the form of:*

³ A Bias Response Team or Harassment Response Team serves as a safe and confidential resource for members of the organisation or community to raise immediate concerns regarding specific incidents of bias or acts of harassment and discrimination. It would consist of a core team which performs case management and administrative oversight and an expanded team which serve as liaisons, advocates and consultants. Adapted from University of the Pacific. <https://www.pacific.edu/campus-life/safety-and-conduct/bias-and-discriminatory-harassment-policies-and-protocols/bias-response-team.html>

- (a) *Company Policy;*
 - (b) *Working Agreement / Company Regulations/ Collective Labour Agreement;*
- (v) **Dissemination:** *circulate to all employees and supervisors' policies and mechanisms for the prevention of sexual harassment.*

2.17. The Guidelines propose that the two (2) main actions which employers must take to facilitate complaints of sexual harassment in the workplace are the establishment of a sexual harassment policy and remedial actions which address complaints of sexual harassment.

Equal Opportunity Tribunal (EOT)

2.18. The EOT adjudicates complaints of discrimination referred by the EOC.

Employers Consultative Association (ECA)

2.19. The Employers' Consultative Association of Trinidad and Tobago (ECA) is a non-profit organisation comprised of twenty-one (21) firms and approximately 525 active members. ECA primarily seeks to assist and support employers in industrial relations matters and provides a channel for voicing concerns/ addressing matters of members as it relates to labour and social policy both on a national and international level. ^{xxvii}

Sexual Harassment in the Workplace: A Handbook, Human Rights Clinic, Hugh Wooding Law School

2.20. The Clinic is a ten (10) week programme designed to provide law students practical training on public education and advocacy for fundamental human rights and freedoms and work for social justice. Students of the Hugh Wooding Law School published a handbook entitled '*Sexual Harassment in the Workplace: A Handbook*,' on December 10, 2018 on Human Rights Day at the Hugh Wooding Law School, Human Rights Clinic as part of the Human Rights Clinic project. The handbook simplifies the guidelines and policies that exist in Trinidad and Tobago concerning sexual harassment.

2.21. In addition, the handbook advises victims of the sources of evidence which can be used to support a complaint. This includes keeping detailed journal of the

harassment which could be used as evidence for an investigation and keeping copies of any offensive materials received, including text messages, pictures or notes.

Conduct of the Inquiry

2.22. The Committee conducted two (2) public hearings held on March 15, 2019 and April 12, 2019. During this time, the Committee questioned the officials on matters based on the objectives of the inquiry.

2.23. Prior to the public hearing, the Committee conducted an online survey that was published via the Parliament's website and social media during the period February 11, 2019 to March 12, 2019. The Committee received 726 total responses with 517 completed responses (See **APPENDIX IV**).

2.24. Additionally, the Committee sought responses from various stakeholders, written submissions were received from the following stakeholders:

- | | |
|--|---|
| • Employers Consultative Association; | • WOMANTRA; |
| • Office of the Prime Minister (Gender and Child Affairs); | • CEDAW Committee of Trinidad and Tobago; |
| • Equal Opportunity Commission; | • International Labour Organisation; |
| • Ministry of Labour and Small Enterprise Development; | • United Nations; |
| • Equal Opportunity Tribunal; | • UNICEF; |
| • Network of NGOs for the Advancement of Women; | • Faculty of Law, UWI; |
| • Women's Institute for Alternative Development; | • Industrial Court; and |
| • Trinidad and Tobago Police Service; and | • Office of the Ombudsman of Trinidad and Tobago. |

2.25. The **Minutes and Verbatim Notes** are attached as **APPENDIX II** and **APPENDIX III** respectively.

2.26. The Thirteenth Report was approved on September 27, 2019.

3. EVIDENCE

Objective 1: To understand the challenges related to sexual harassment in the workplace.

Challenges related to sexual harassment in the workplace.

3.1. Figure 2 highlights the challenges related to sexual harassment as identified by the WINAD, EOC, MLSED and the TTPS.

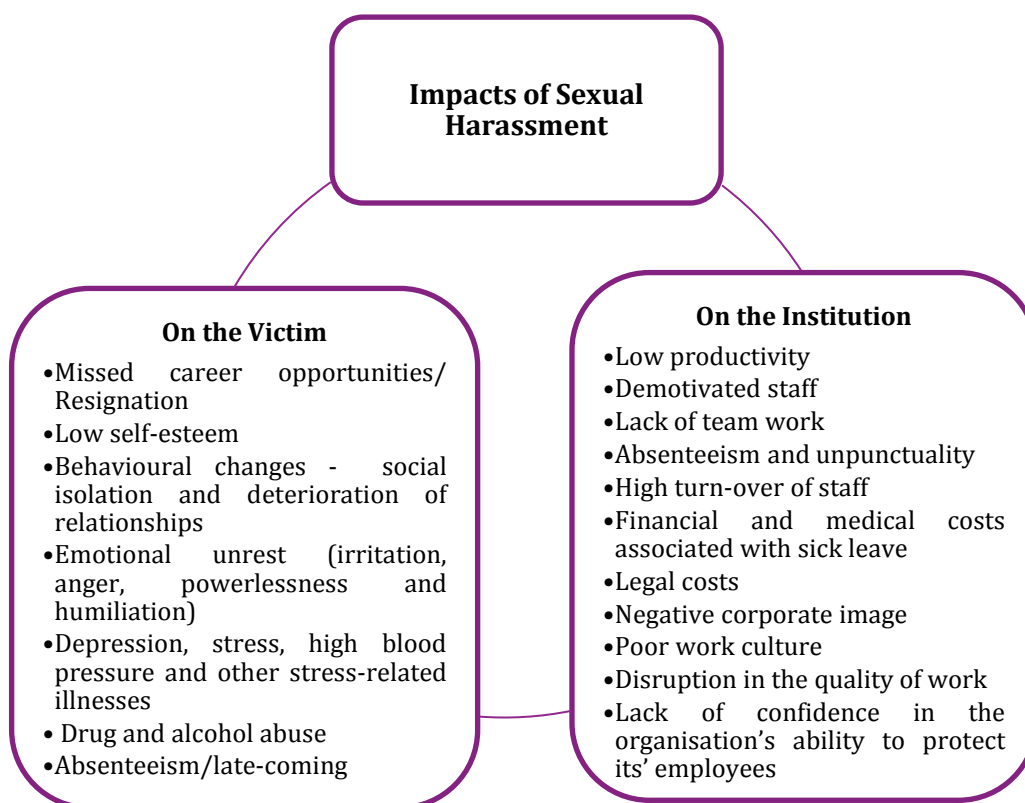
Figure 2
Challenges related to Sexual Harassment

EMPLOYER/ EMPLOYEE	DATA COLLECTION	WITNESS	LEGISLATIVE	VICTIMS
•Employers and employees are unclear of what constitutes sexual harassment •Lack of evidence of sexual harassment •Difficulty to protect illegal migrant workers seeking asylum or refugee status •Sexual Harassment is viewed as a part of culture •Employer protects perpetrator and views victim as dispensable •Complaint may be deemed frivolous and malicious in the absence of documentary evidence or witness support •Lack of sexual harassment policies in the workplace	•Absence of a central agency to collect data •Under-reporting of cases of sexual harassment •Data recorded on the sexual harassment cases is not comprehensive and limited depending on the nature of the case •Data reported to the MLSED only captures limited demographics •No specific agency to which complaints may be lodged or guidance sought •Delay of investigation process due to employer's difficulty to obtain evidence from perpetrator	•Unwillingness of victims to be identified •Witness fears covert intimidation or open hostility from employer •Lack of witnesses willing to provide evidence •Fear of victimisation at the workplace e.g. loss of job, unwillingness to provide a written statement •Potential witness suddenly and/or unable to remember incident	•Lack of legislation for sexual harassment •Most sexual harassment behaviours are not criminal in nature and have to be pursued privately •Sexual harassment matters are disguised under other work related issues such as suspensions, demotions, failure to promote, termination of service and failure to employ •No specific agency to which complaints may be lodged or guidance sought	•Fear of job loss due to perpetrator being of a higher rank than victim. •Shame/ Embarrassment •Peer pressure especially for male victims •Guilt and Self-Blame •Unfair employment practices :termination or denial of benefits for victim •Fear of victimisation or reprisals from perpetrator •Denial/ Disbelief •Attorney costs, financial difficulties and location of victim may result in a lack of willingness in the victim to continue to pursue matter

Impact of Sexual Harassment on the Workplace

3.2. The submissions from MLSED and the OPM identified the negative impacts of sexual harassment on the victim and the workplace in **Figure 3**. The primary negative impact for the victim was loss of job satisfaction that may result in number of negative spill-over effects outlined in **Figure 3**.

Figure 3
Impacts of Sexual Harassment

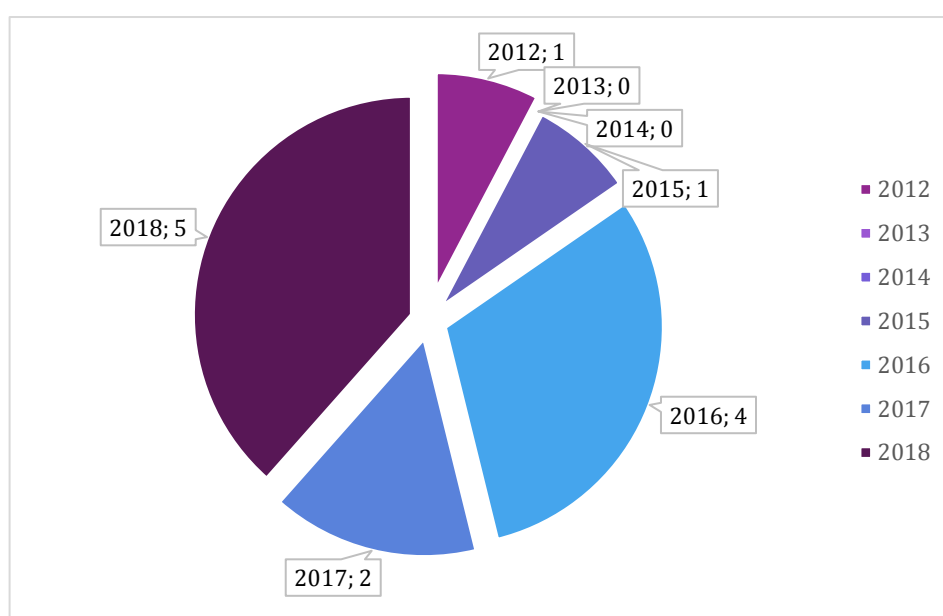


Objective 2: To examine the prevalence of allegations and instances of sexual harassment in the workplace.

Statistical Evidence

3.3. **Chart 1** below shows the number of trade disputes involving sexual harassment as reported to the MLSED for the period 2012 to 2018. Out of the 13 known cases of sexual harassment, two (2) of the disputes involved men as the victims [one (1) male to male harassment and one (1) female to male harassment].

Chart 1
Trade Disputes involving Sexual Harassment



3.4. During the period 2013 to 2018, seven (7) persons sought mediation services from the ECA. The outcomes of the sessions are provided in **Table 4**.

Table 4
Outcome of Mediation Services

Outcomes	No. of Cases
Successful mediation	4
Ongoing case (as at February 22, 2019)	2
Disciplinary hearing held, outcome unknown	1

3.5. Table 5 provides a breakdown of the nineteen (19) complaints of sexual harassment received by the EOC during the period 2013 to January 2019.

Table 5
EOC Complaints of Sexual Harassment from 2013 to January 2019

Year	Number of Complaints received	Sex	Number of cases referred for reconciliation	Number of Cases referred to EOT ⁴
Jan 2019	-	-	-	1
2018	3	Female (1) Male (2)	1 (female)	0
2017	4	Female (3) Male (1)	0	2 (one male, one female)
2016	2	Female (2) Male (0)	0	0
2015	2	Female (1) Male (1)	0	1 (female)
2014	6	Female (5) Male (1)	1	0
2013	2	Female (2)	0	0

Studies and Surveys

3.6. The Committee conducted an online survey with questions compiled based on the objectives of the inquiry during the period February 11, 2019 to April 30, 2019. The survey received responses from 726 persons, 79% of the respondents were female while 21% were male. The statistical report generated from the survey indicated the following (See APPENDIX IV):

Table 6
Questionnaire Statistical Summary

Issue	Data
Experienced Sexual Harassment	➤ 261 respondents indicated that they experienced sexual harassment in the workplace, out of that 234 indicated that that they experienced it more than two times; ➤ 185 persons indicated that they experienced sexual harassment in the public sector while 113 experienced it in the private sector and 14 persons in other organisations; ➤ 27% of respondents indicated that they were not sexual harassed by the same person while 20% indicated that they were;
Observed Sexual Harassment	➤ 222 persons observed sexual harassment in the public sector while 141 observed it in the private sector and 12 in other organisations;

⁴ During the public hearing of the Committee on March 15, 2019, the EOC indicated that there are currently four (4) cases before the EOT.

	➤ The most common types of sexual harassment experienced and observed in the workplace are “<i>unwanted comments</i>”, “<i>Innuendos</i>”, “<i>Physical (unwanted advances or touches)</i>”;
Reporting of Sexual Harassment Incidents	➤ 194 persons who experienced sexual harassment and 215 persons who observed sexual harassment indicated that they did not report the issues verbally to their supervisor/manager/employer; ➤ 45% of the respondents who experienced and 51% of the respondents who observed sexual harassment did not submit a written complaint to their supervisor/manager/employer;
Victim Redress	➤ In cases where sexual harassment was experienced or observed/ reported to the supervisor/manager/employer, 12% of respondents indicated that “<i>no action was taken by employer</i>” while 11% (experienced) and 17%(observed) were “<i>uncertain</i>” if the incident was investigated; ➤ 181 persons indicated that they did not receive any type of redress from the employer after experiencing sexual harassment; ➤ 15 persons indicated they received redress in the form of “<i>counselling</i>” [4], “<i>financial compensation</i>” [2], “<i>employment re-instated</i>” [3], “<i>transferred/reassigned</i>” [6] after being accused of alleged sexual harassment;
Procedure/Policy in Workplace for Sexual Harassment	➤ The respondents indicated that the most common provisions to address sexual harassment by their employers are through the use of a “<i>sexual harassment policy</i>” [205], “<i>employee guidelines/manual</i>” [144] and “<i>counselling</i>” [106]. However 169 respondents indicated that their employer does not have provisions to address sexual harassment in the workplace; ➤ 43% of respondents believed that their employers’ procedure or policy to treat with incidents of sexual harassment are inadequate;
Adequacy of Sexual Harassment Procedures	➤ 113 persons indicated that the current national legislation to treat with sexual harassment in the workplace is “<i>insufficient</i>” and 477 persons indicated that legislation should be enacted to deal exclusively with sexual harassment; ➤ Respondents indicated that “<i>education campaigns</i>” [348], “<i>employee guidelines on behaviour</i>” [340] and “<i>reporting mechanisms</i>” [324], are required to improve the employers’ sexual harassment policy; ➤ 379 persons indicated that “<i>public education campaigns</i>” were required to improve national legislation used to treat with sexual harassment in the workplace while 364 persons and 314 persons believed that “<i>regulation for employers</i>” and “<i>fines</i>” were needed. ➤ 93% of respondents indicated that they do not think sexual harassment is taken seriously in Trinidad and Tobago;

3.7. The *National Women’s Health Survey for Trinidad and Tobago Final Report 2018*, which was commissioned by the Inter-American Development Bank and Caribbean DEVTrends was compiled based on the data from the *2017 Trinidad and Tobago Women’s Health Survey (WHS)* (a national, quantitative, cross-sectional survey of 1,079 women between the ages 15–64). The Final Report of the survey highlighted the following key issues related to sexual harassment : xxviii

- i. Sexual harassment (at work, on the job, public transport, and virtual spaces) was experienced by 13% of women, with the highest prevalence being in the

form of electronic messages with sexual content (8%) and being groped in a public space (7%);

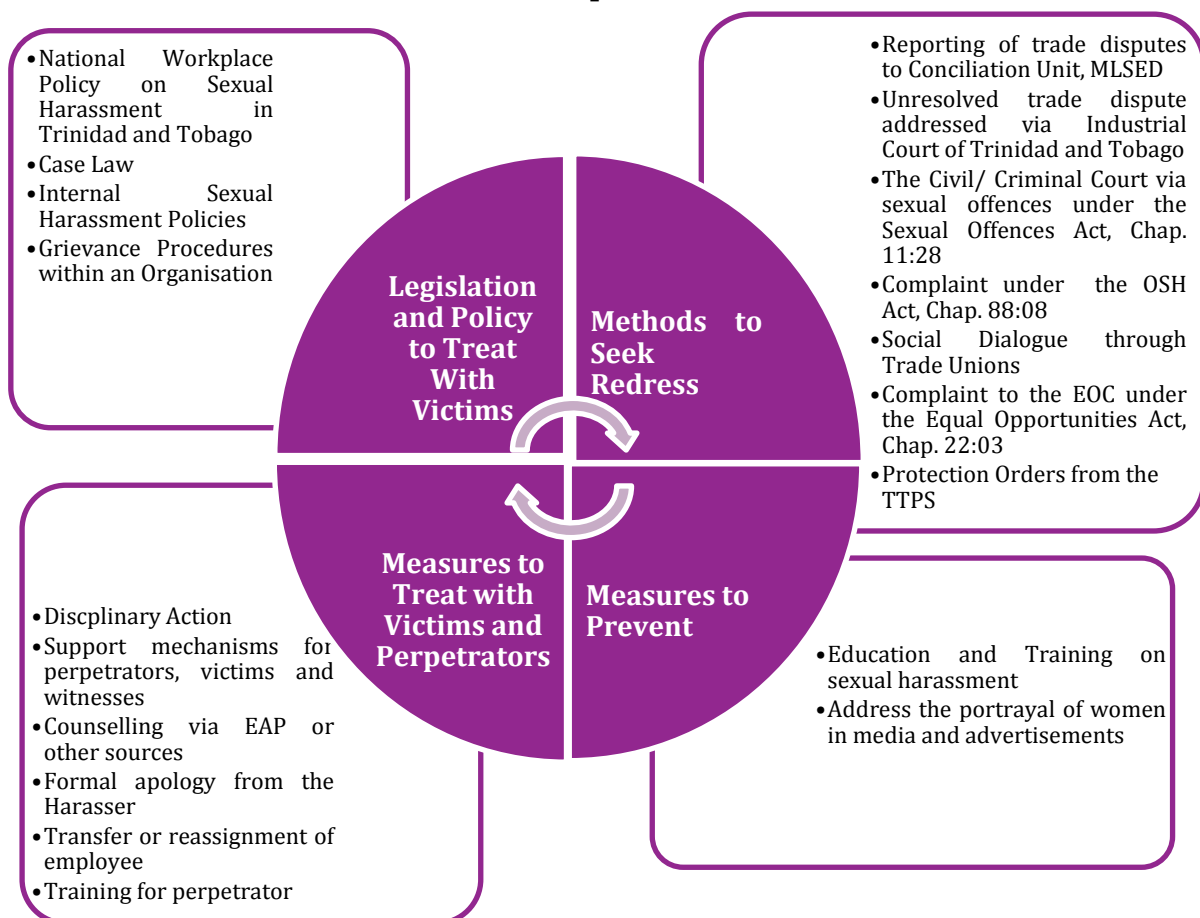
- ii. Younger women were more likely to have experienced non-partner sexual harassment. There was an increasing trend of sexual harassment from women between 15 years and 29 years, with prevalence rates ranging from 17 percent to 21%. Lower prevalence rates are observed among women aged 40 years and over (3.3%) and among women aged 55 years and over (6%); and
- iii. As many as 84% of sexual harassment experiences were unreported.

Objective 3: To examine and make recommendations on current management procedures and mechanisms to seek redress as a victim of sexual harassment in the workplace and current legislation and policies (local, regional and international) to treat with victims of sexual harassment in workplaces in Trinidad and Tobago

Overview

3.8. **Figure 4** underlines the measures available to victims, perpetrators and employers to prevent, treat and seek redress for issues of sexual harassment in the workplace as identified by the various Government and Non-Government stakeholders.

Figure 4
Measures available to prevent, treat and seek redress for issues of Sexual Harassment in the Workplace



Training Procedures

3.9. TTPS officers at the Police Academy, receive training on sexual harassment, specifically the Sexual Offences Act, Chap. 11:28, the Offences Against the Person Act, Chap. 11:08 and the Behaviour Sciences component under the 'Gender Role Socialization'.

3.10. The ECA conducted five (5) workshops/ sensitisation sessions for the general public and ECA members and four (4) workshops / sensitisation sessions within organisations on the following topics related to sexual harassment:

- "Defining, Identifying and Understanding Workplace Harassment" (2011);
- "Harassment in the Workplace" (2018);
- "Redefining the Business Case for Diversity and Inclusion" (2018);
- "How to correctly investigate claims of Sexual Harassment" (2018);
- "Sexual Harassment and your HR Response" (2017); and
- "Complexities when investigating sexual harassment claims" (2013).

3.11. The MLSED conducted and plans to conduct various sensitisation campaigns to educate the general public on sexual harassment via:

- Labourville Television Campaign (May 2017 to 2018) - related to the right and responsibilities of employers and employees.
- Consultations in Trinidad and Tobago;
- Television/Radio Interviews;
- Dissemination of policy document/ brochures;
- Introduction of a 5K Walkathon;
- Model Policy online for Small and Micro Enterprises;
- Mall tours July – August 2019;
- Promenade Pop-up – Trinidad and Tobago;
- Video competition;
- World of Work Tertiary level sessions; and
- Collaboration with Public Service Academy – Workshops for Directors of HR, Senior HR Officers

3.12. The Network of NGOs for the Advancement of Women indicated that in August 2018 and January 2019 they were involved in raising awareness through the hosting of lectures on the topic of sexual harassment.

Sexual Harassment Policies (prior to National Policy)

3.13. According to the MLSED, there are aware of twenty (20) organisations (See APPENDIX VI) in Trinidad and Tobago that are either in possession of a sexual harassment policy or have a sexual harassment policy contained in registered collective agreements.

3.14. The Faculty of Law, UWI St Augustine highlighted that 2015 revisions to the UWI Sexual Harassment Policy and Procedures included:

- the establishment of sexual harassment advisors to educate persons on the phenomena, help prevent sexual harassment and facilitate complaints;
- UWI Counselling services to prevent and address sexual harassment;
- due process requirements for a person accused of sexual harassment; and
- the availability of conciliation as an additional remedy.

National Workplace Policy on Sexual Harassment in T&T

3.15. The objective of the National Workplace Policy on Sexual Harassment is “to define and prevent sexual harassment in the workplace, identify and address relevant issues and provide guidance on actions that may be taken by main stakeholders, namely; victims, observers, employers, workers and the government”.

3.16. The National Workplace Policy on Sexual Harassment highlighted seven (7) strategies which are designed to address the issue of sexual harassment in the workplace including^{xxix}:

- I. “The enactment of specific legislation to address Sexual Harassment in the Workplace which would allow:
 - a. Widening the jurisdiction of the Ministry of Labour and Small Enterprise Development and the Industrial Court to allow individual access for complainants who seek redress or resolution akin to provisions in the Retrenchment and Severance Benefit Act Chapter, 88:13 (Section 12), and the Maternity Protection Act Chapter 45:57 as amended (Section 12 (1).
 - b. The imposition of sanctions for breaches of the enabling legislation.
 - c. Extension of the power of the Minister of Labour/ Secretary with responsibility for Labour, Tobago House of Assembly (THA), to intervene as Conciliator, akin to the provisions in the Industrial Relations Act Chapter 88:01 (Section 56), where the complainant prefers a non-adversarial approach and is keen on confidentiality.

- II. *Amendment of the name of the Conciliation Unit to the Conciliation, Advisory and Advocacy Division (CAAD) which will enable the CAAD with specifically trained staff to assist entities with the development/review of individual workplace policies on sexual harassment, where necessary, and provide advisory and outreach services to the citizenry.*
- III. *Establishment of workplace policies by each organisation to address Sexual Harassment issues showing a clear framework and guidelines for resolution.*
- IV. *Training for employers and workers on sexual harassment in the workplace (for example, what act or situation may constitute sexual harassment, how victims may deal with such an incident, how observers should act, etc.)*
- V. *The provision of psychosocial support (in collaboration with specified NGO's) to persons who feel sexually harassed so they can find appropriate solutions.*
- VI. *The provision of solutions for those persons who may be accused of sexually harassing others in the workplace. (in collaboration with specified NGOs).*
- VII. *The provision of psychosocial support to persons who may be falsely accused of sexual harassment."*

3.17. The MLSED planned to implement the Policy via public awareness and education campaigns on radio, TV and other social media platforms.

3.18. The National Policy on Gender and Development referenced the establishment of a sexual harassment policy as an important area within labour and employment as sexual harassment and other gender based discrimination that impact on the effective participation of women and men in the workplace, are in need of remedy.

EOA Legislation

3.19. In order to lodge a complaint, the EOC Complaint Form must be filled out and submitted online or in person. The EOC complaints process is a two-fold process comprising the actual investigation process which is conducted by the Legal Unit within six (6) to nine (9) months. Secondly, the matter is referred to the Conciliation

Unit and conciliation may extend to over one (1) year due to a number of reasons related to scheduling of meetings and the process of negotiation.

3.20. The EOC recommended amendments to the Equal Opportunity Act, Chap. 22:03 in **APPENDIX VII**:

- to express the removal of doubt that sexual harassment is a form of sex-based discrimination;
- to provide a statutory definition of sexual harassment; and
- to place an obligation on employers in Trinidad and Tobago to promulgate a sexual harassment policy.

3.21. As at April 4, 2019, there were at least two cases before the EOT which may necessitate the pronouncement on the scope and interpretation of the Equal Opportunity Act, Chap 22:03. EOT posited that, *“In this jurisdiction, a purposive interpretation of the Act, that construes “sex” discrimination, as encompassing sexual harassment, not only has its intrinsic semantic challenges, but may implicitly discriminate against those groups of persons who are victims of sexual harassment because of their sexual preference or orientation. In contemporary jurisprudence, this may be an objectionable result, as it may be unconstitutional to proffer an implicit interpretation of the Act that may arguably be discriminatory.”*

3.22. According to the EOT the shortcomings of the Act can be rectified by enacting legislation to treat specifically with sexual harassment as is seen in other jurisdictions such as Australia, the United Kingdom and Malaysia. The 2018 Australian Human Rights Commission recommended the following suggestions to take into consideration when creating a framework for sexual harassment:

- Definition of Sexual Harassment
- Technology and Social Media
- Drivers of Work-related Sexual Harassment
- Failure of Employers to take Preventative Action and a Failure of organisational complaint mechanisms
- Vulnerable Groups
- Positive Mechanisms
- Explicit inclusion of sexual harassment and gender-based violence in worker health and safety provisions

- Visibility
- Grievance Procedure and Protection
- Non-Disclosure Agreements
- Digital Harassment

3.23. The EOC highlighted that upon comparing the provisions of the CARICOM Model Protection Against Sexual Harassment Bill to the Equal Opportunity Act, Chap. 22:03, the Equal Opportunity Act, Chap. 22:03 (See **APPENDIX VIII**) meets and in some cases may exceed the recommendations of the CARICOM Model Protection Against Sexual Harassment Bill and as such there is no need for separate legislation to widen the grounds of sexual harassment in Trinidad and Tobago.

Specific Legislation on Sexual Harassment

3.24. The Faculty of Law, UWI St. Augustine reiterated the need for specific legislation in stating that the EOA is an inappropriate route to address the parameters of sexual harassment based on the inadequacy of its remedies, procedural mechanisms and safeguards as contained in the Act. In other words, there is a need for a specific reference to sexual harassment, detailed definitions and procedural requirements to be incorporated under the EOA legislation or as a separate statute.

3.25. The Faculty of Law, UWI St Augustine proposed the legal principles which should be included in a sexual harassment law and the procedural mechanisms that acknowledge the sensitive nature of the offence in Table 7.

Table 7
Proposed Legal Principles and Procedural Mechanisms

Mechanisms	Legal Principles and Proposed Procedural Mechanisms
<i>Proposed Legal Principles</i>	• Provisions which place a proactive duty on an employer to take reasonable steps to prohibit sexual harassment and to address complaints when they are brought; • Provisions that impose vicarious liability on employers who do not reasonably address sexual harassment complaints, as consistent with modern case law; • A provision that reverses the burden of proof to enable victims of sexual harassment to come forward and support a reasonable case; • A definition of sexual harassment that speaks to a 'hostile working environment' based on sex or gender; • A recognition that sexual harassment can include conduct corresponding to same-sex actions;

	• A recognition that sexual harassment victims are vulnerable targets and that acquiescence in sexual conduct does not necessarily amount to consent; • Provision of due process safeguards such as the right to a response, or hearing for persons accused of sexual harassment offences; • A provision securing a broad jurisdictional scope for the law applying to all workers, not just 'employees', which is a legally restricted term and it should also include the public sector in its purview; • The law should have a broad enough scope to address situations outside of the workplace and also attempt to address persons who are not workers, but who harass others in the work-environment;
<i>Procedural mechanisms</i>	• Measures to provide for confidential complaints; • Provisions for mediation where appropriate and particularly in large enterprises; • Identification of appropriate persons or authorities for the harnessing of the complaints; • Provision of structured mechanisms where a complaint is received, such as a requirement to make a report in writing, inform the accused etc.; • Consideration for the framing of sexual harassment within a disciplinary procedure, or code of misconduct that attracts harsh penalties, including dismissal, as opposed to a criminal procedure; • The need to consider to what extent the law should recognise that the victims of sexual harassment may be unable mentally to bring an action and may need assistance in this regard; and • Consideration of the procedure should the complainant withdraw.

3.26. The ILO highlighted the structure used to assist Vietnam to develop codes of practice on sexual harassment in the workplace. These codes of practice were developed by a tripartite Industrial Relations Committee. The codes cover all companies in both the public and private sector:

- Definitions
 - Definition of sexual harassment
 - Identification of what is not sexual harassment
 - Forms of sexual harassment
- Roles and responsibilities
 - Employers
 - Workers
 - Trade Unions
 - Employers' organisation
 - Labour Inspectors
- Suggested contents of a company policy
- Recommended actions to communicate and implement a company policy
- Annex on grievance procedures at the workplace level
- Annex on sample company policy
- Annex on frequently asked questions on sexual harassment in the workplace.

4. FINDINGS AND RECOMMENDATIONS

Objective 1: To understand the challenges related to sexual harassment in the workplace.

Challenges related to Sexual Harassment in the Workplace

4.1. The Committee noted the various challenges related to sexual harassment as highlighted by stakeholders in **Figure 2** and acknowledged the strategies proposed by MLSED in the National Workplace Policy on Sexual Harassment to address the issues and impacts of sexual harassment in the workplace in the following areas:

- ✓ The enactment of specific legislation to address Sexual Harassment in the Workplace;
- ✓ Amendment of the name of the Conciliation Unit to the Conciliation, Advisory and Advocacy Division (CAAD) which will enable the CAAD with specifically trained staff to assist entities with the development/review of individual workplace policies on sexual harassment, where necessary, and provide advisory and outreach services to the citizenry;
- ✓ Establishment of workplace policies by each organisation to address Sexual Harassment issues showing a clear framework and guidelines for resolution;
- ✓ Training for employers and workers on sexual harassment in the workplace;
- ✓ The provision of psychosocial support to persons who feel sexually harassed so they can find appropriate solutions;
- ✓ The provision of solutions for those persons who may be accused of sexually harassing others in the workplace; and
- ✓ The provision of psychosocial support to persons who may be falsely accused of sexual harassment.

4.2. The Committee noted the views of the EOC that while sexual harassment may not be widespread within an organisation it does have far-reaching consequences (See **Figure 3**).

4.3. The Committee was informed that in smaller or medium-sized businesses employees are ignorant of the options available and their rights as employees if they are sexually harassed by their employer or fellow employees.

4.4. One of the primary challenges of sexual harassment in the workplace is under-reporting of incidents. The Committee noted some of the factors that contribute to under-reporting of sexual harassment in the workplace such as:

- issues arising out of sexual harassment (such as demotion or constructive dismissal) submitted to MLSED as a trade dispute rather than the incident of sexual harassment;
- employers may decide to settle disputes of sexual harassment internally in an attempt to protect the reputation of their company;
- the inertia of the organisation to terminate an employee (perpetrator) who is viewed as a key contributor to the organisation; and
- fear of victimisation, retaliation, stigmatisation and gender stereotyping.

4.5. The Committee found that at the level of the EOT or the Industrial Court the employee would require the services of an attorney. Consequently, employees have been stymied in their efforts to pursue a legal action because they are unable to afford the services of a legal representative.

Protection for Victims or Witnesses

4.6. The Committee noted the concerns of NGOs on the lack of protection for persons reporting incidents of sexual harassment, as such, protection in the form of a whistle blower policy, would ensure the anonymity of the complainant and potentially increase the reporting of incidents of sexual harassment. WINAD proposal in Appendix V, outlined the need for bystander training to empower onlookers to recognize and act when they witness sexual harassment.

Recommendations

4.7. Given that one of the challenges related to reporting of incidents of sexual harassment is the unwillingness of witnesses to provide evidence, the Committee recommends that the MLSED conducts a bystander training workshop on sexual harassment for employees at organisations.

4.8. The Committee recommends that the Conciliation, Advisory and Advocacy Division, MLSED collaborate with LAAA in the provision of services to persons who are unable to afford legal representation for matters.

4.9. The Committee recommends that the MLSED incorporate in the sexual harassment policy a procedural mechanism for anonymous reports to protect the identity persons who have reported cases of sexual harassment.

Objective 2: To examine the prevalence of allegations and instances of sexual harassment in the workplace.

Classification/ Definition of Sexual Harassment

4.10. The Committee noted that due to the lack of specific legislation that defines sexual harassment as a category of crime and offence, the TTPS does not categorise crimes and offences (under the Sexual Offences Act, Chap. 11:28 and the Offences Against the Persons Act, Chap. 11:08) as sexual harassment and does not have statistics on cases of sexual harassment.

4.11. The Committee found that it was difficult to compile the number for the cases of reported incidents of sexual harassment since the disputes may not come as a complaint of 'sexual harassment' but are classified differently such as a constructive dismissal.

Statistical Evidence

4.12. Due to the under-reporting of incidents of sexual harassment in the workplace and the lack of specific legislation to seek redress for the offence, the Committee was unable to compile accurate statistics on incidences of sexual harassment in the workplace.

4.13. The Committee noted that sexual harassment can occur between male to male, female to male, male to female or female to female. The statistics from **Chart 1, Table 4** and **Table 5** indicated that the most prevalent known cases of sexual harassment in the workplace are male to female with one reported case each of male to male sexual harassment and female to male sexual harassment.

4.14. The Committee noted that:

- the thirteen (13) cases of sexual harassment shown in **Chart 1** would deal specifically with sexual harassment cases which were brought to the MLSED as trade disputes during the period 2012 to 2018;

- twenty percent (20%) of the EOC complaints in 2017 were in the area of sex discrimination and of those four (4) are included or specifically complained of sexual harassment; and
- the EOC received more complaints of sexual harassment in the workplace from females (fourteen cases) rather than from males (five cases) during the period 2013 to January 2019 (see **Table 5**).

Studies

4.15. The Committee was found that while a survey was conducted by the Committee on sexual harassment in the workplace, there is no actual baseline position or data on the extent of sexual harassment in the workplace in Trinidad and Tobago and no agency has undertaken to obtain statistics.

4.16. The Committee found that the most common profile of a perpetrator of sexual harassment was *"of the opposite sex"* (58.71%), *"a senior in the organisation"* (47.40%) or a person *"at the same level in the organisation"* (21.01%) (See **APPENDIX IV**).

4.17. The Committee further noted that the undermentioned respondent responses highlighted that the problem of under-reporting of incidents of sexual harassment and the difficulty to determine the prevalence of sexual harassment in the workplace in Trinidad and Tobago.

- ✓ the most common reason for not reporting incidents of sexual harassment experienced and observed in the workplace are *"fear that it may cause conflict in the organisation"* (26.57%), *"fear of stigmatisation"* (26.70%), *"fear of retribution"* (21.54%), *"fear of not being believed"* (20.47%), and *"fear of embarrassment"* (17.95%) (See **APPENDIX IV**).
- ✓ 194 persons who experienced sexual harassment and 215 persons who observed sexual harassment indicated that they did not report the issues verbally to their supervisor/manager/employer while 45% of the respondents who experienced and 51% of the respondents who observed sexual harassment did not submit a written complaint to their supervisor/manager/employer (See **APPENDIX IV**).

4.18. The Committee found that there were fifteen (15) instances of false reporting of sexual harassment and the alleged perpetrator received redress in the form of

“counselling” [4], *“financial compensation”* [2], *“employment re-instatement”* [3], *“transfer/reassignment”* [6] (See APPENDIX IV).

4.19. The Committee noted that respondents working in the public sector observed or experienced sexual harassment higher than respondents working in the private sector. That is 185 respondents experienced, 222 observed more instances of sexual harassment in the public sector as opposed to the private sector 113 experienced, 141 observed sexual harassment in the private sector. (See APPENDIX IV).

4.20. The Committee noted that respondents from the survey indicated that *“education campaigns”*(67.31%), *“employee guidelines on behaviour”*(65.76%) and *“reporting mechanisms”*(62.67%) are required to improve the employers’ sexual harassment policy (See APPENDIX IV).

4.21. The Committee found that according to the survey 379 respondents indicated that *“public education campaigns”*(73.31%) were required to improve national legislation used to treat with sexual harassment in the workplace while 364 persons and 314 persons believed that *“regulation for employers”* (70.41%) and *“fines”* (60.74%) were needed (See APPENDIX IV).

Recommendation

4.22. Given the magnitude of the under-reporting of cases of sexual harassment in Trinidad and Tobago, the Committee recommends that the MLSED conduct a study to determine the prevalence of sexual harassment in the workplace in fiscal 2020.

Objective 3: To examine and make recommendations on current management procedures and mechanisms to seek redress as a victim of sexual harassment in the workplace and current legislation and policies (local, regional and international) to treat with victims of sexual harassment in workplaces in Trinidad and Tobago

Overview

4.23. The Committee noted the options highlighted in **Figure 4** for victims of sexual harassment to redress.

4.24. The Committee noted that in the cases of seeking redress via trade unions there are instances where both the victim and perpetrator are a part of the union, the trade union may choose to represent one individual over the other which can leave either the victim/ alleged perpetrator without representation.

4.25. The Committee was informed that the employer of a small business can utilise the following options in the event they were sexually harassed by an employee:

- Inappropriate behaviour should be documented in writing;
- Use human resource guidelines;
- Disciplinary action against the employee;
- Seek MLSED advice; and
- Invite an external organisation to investigate the incident.

4.26. The Committee found that the ECA can be invited by an organisation as an external organisation to investigate complaints of sexual harassment.

National Workplace Policy on Sexual Harassment

4.27. The Committee acknowledges that prior to the National Workplace Policy on Sexual Harassment there were twenty (20) organisations in Trinidad and Tobago which are in possession of a sexual harassment policy or have a sexual harassment policy

contained in registered Collective Agreements (**APPENDIX VI**). In addition, there were limited sexual harassment procedures in the employee handbooks for organisations in the public and private sectors.

4.28. The Committee found that the National Workplace Policy on Sexual Harassment outlines:

- ✓ that a separate complaints procedure and policy on sexual harassment be established in each organisation;
- ✓ similar to the UWI Sexual Harassment Policy, the National Workplace Policy on Sexual Harassment also recommends that a designated person be assigned to accept complaints to ensure procedural fairness, confidentiality and consistency;
- ✓ the reporting of incidents occurring at a work-related event which are outside of the usual work environment; and
- ✓ the protection of domestic workers by allowing for complaints to be made at the Ministry by individuals instead of via an attorney or a trade union.

4.29. The Committee noted the efforts of MLSED, such as:

- ✓ the Conciliation Advisory and Advocacy Division (CAAD) of the MLSED, once established, will undertake advocacy and public awareness campaigns and conduct sensitisation sessions to the general public and to schools, workplaces or organisation as well as partner with other stakeholders and employers to implement the National Workplace Policy on Sexual Harassment.
- ✓ the creation of a targeted implementation plan and awareness programme for the vulnerable categories of workers such as the domestic workers and migrants in order to effectively implement the National Workplace Policy on Sexual Harassment;
- ✓ the establishment of a hotline to specifically address concerns and complaints of sexual harassment.

4.30. The Committee noted that National Workplace Policy on Sexual Harassment states that each organisation should have a sexual harassment policy. However, there are no punitive measure for employers or persons who are not implementing the guidelines of the Policy.

4.31. In light of the absence of the role and responsibilities of trade unions in the National Workplace Policy on Sexual Harassment, the Committee concurred with

TTIWL that there is a need for the inclusive of the definitive roles and responsibilities of the same as it relates to sexual harassment.

4.32. Whilst the Policy does contain provisions for domestic worker and migrant workers, the Committee concurred with the Network that there is a need for the definition of “worker” to be widened to capture a volunteer who provides a service without hire or reward and to include a definition for ‘visitor” who receives a service and may not be identified as a worker in the organisation.

4.33. The Committee noted the primary concerns of the stakeholders to the National Policy in **Table 8**.

Table 8
Key Stakeholder Concerns

Stakeholder	Concerns
WINAD	The Policy’s definition of sexual harassment should include “unwanted” and that the word “unreasonable” should be explained as it can potentially cause blame to fall on the complainant if an individual finds that the behaviour towards the complainant was “reasonable”.
WOMANTRA	The Policy should include the following provisions: • A whistleblowing procedure; • A procedure for anonymous reporting; • A robust grievance procedure; and • Implementation of an Employee Assistance Programme to both the private and public sectors;
ECA	• The various levels of literacy amongst employers and employees, in particular within small businesses to understand the Policy; and • The need to educate employers on the procedures to manage a claim of sexual harassment.
Network of NGOs	The policy provide the following: • Public awareness campaigns; • Appropriate mechanisms to deal with the issues of sexual harassment; • Appropriate sanctions for those employers who are not willing to adhere to the Policy; and • The introduction of legislation to specifically deal with Sexual Harassment and not included as parts of other legislations.
EOT and the ECA	A proper connection and synergy needs to be created between the various Ministries and stakeholders for the efficient implementation of the Policy.

4.34. The Committee was informed that since the Policy may affect men and women differently, the OPM and the MLSED will collaborate to monitor the Policy to determine and assess the impact of the Policy in an effort to ensure the Policy is gender inclusive.

Legislation

4.35. The Committee noted the requirements for legislation related to sexual harassment as stated in the “Handbook for Legislation on Violence Against Women” by the United Nations’ Department of Economic and Social Affairs ^{xxx}:

- legislation should criminalize sexual harassment;
- recognize sexual harassment as a form of discrimination and a violation of women’s human rights with health and safety consequences;
- define sexual harassment as unwelcome sexually determined behaviour in both horizontal and vertical relationships, including in employment (including the informal employment sector), education, receipt of goods and services, sporting activities, and property transactions; and
- provide that unwelcome sexually determined behaviour includes (whether directly or by implication) physical conduct and advances; a demand or request for sexual favours; sexually coloured remarks; displaying sexually explicit pictures, posters or graffiti; and any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.

4.36. The Committee further noted however, that sexual harassment is judicially recognised as a category of sex discrimination in case law across the Commonwealth and in other international documents such as the Beijing Platform for Action and the UN Declaration on the Elimination of Violence against Women was adopted in 1993.

4.37. The Committee noted that following employer tenets in the Policy require enforcement via legislation:

- *“Every employer must therefore take steps to develop, implement and promote a sexual harassment policy that is suitable to the structure of their particular workplace.”*
- *“All Employers...will be required to submit an Annual Report to the Minister of Labour specifying the sexual harassment complaints received during that period, as well as the manner of resolution in each instance.”*
- *All employers – “...shall...notify the Minister of Labour and/or the Secretary with responsibility for Labour of all cases of sexual harassment within one (1) month of the date of the report...”*

4.38. The Committee found that while a person can seek redress via the Equal Opportunity Act, Chap. 22:03 based on discrimination in employment under the ground of sex, sexual harassment is not expressly stated as a ground of complaint and the complaint of victimisation can only be lodged at the EOC after the incident and as such, the person may be out of a job for the duration of a year or two years.

4.39. The Committee acknowledged that while the EOC supports opinion that specific legislation is needed to deal with doubts person may have with regard to sexual harassment in the workplace, the EOC is collaborating with the CPC to amend the Equal Opportunity Act, Chap. 22:03 to provide clarity and definitions. (See **APPENDIX VII**).

4.40. The Committee noted that as at April 12, 2019 the MLSED was preparing drafting instructions for the Office of the Chief Parliamentary Counsel, MAGLA and that there is no definitive timeline for the introduction of draft legislation in Parliament.

4.41. The Committee noted that while the CARICOM Model Protection Against Sexual Harassment Bill can be utilised to form a part of the legislation to be drafted on sexual harassment to be submitted to the Chief Parliamentary Counsel (CPC), it does not provide for non-verbal and social media sexual harassment and therefore the legislation needs to be tailored to the technological advancements of society.

Recommendations

4.42. Given that the respondents from the Committee's survey highlighted the need for a sexual harassment policy in organisations, the Committee recommends that the MLSED implement the requirement for each organisation to establish sexual harassment policy by January 2020.

4.43. With regard to the National Policy on Sexual Harassment in Trinidad and Tobago, the Committee recommends:

- the inclusion of the definitive roles and responsibilities of the trade union;
- the definition of “worker” should be widened to capture volunteer workers who provide a service without hire or reward;
- to include a definition for ‘visitor’;

4.44. The Committee recommends that the MLSED partner with NGOs to conduct public awareness campaigns and sensitisation sessions on sexual harassment in the workplace. The Committee further recommends that the MLSED collaborate with vulnerable groups/NGOs that interact/represent migrants and domestic workers in the implementation of sensitisation sessions.

4.45. The Committee recommends that the MLSED review the recommendations for national legislation on sexual harassment from the “Handbook for Legislation on Violence against Women^{xxxi}” by the United Nations’ Department of Economic and Social Affairs. The review should take into account that sexual harassment is not only a violation of women’s human rights but also an infringement of men’s human rights as it can occur between male to male, female to male, male to female or female to female.

4.46. Given that there are no punitive measure for employers or persons who are not implementing the guidelines of the Policy, the Committee recommends that draft sexual harassment legislation be finalized during fiscal 2020.

4.47. The Committee recommends that the MAGLA and MLSED note the recommended amendments to the Equal opportunity Act, Chap. 22:03 as proposed by the EOC in APPENDIX VII.

4.48. The Committee recommends that the MLSED note:

- the legal principles and procedural mechanisms proposed by the Faculty of Law, UWI, St. Augustine (see Table 7) for a sexual harassment law; and
- the suggestions of the Australian High Commission at 3.22 and include provisions on digital harassment and sexual harassment via technology and social media in the National Workplace Policy on Sexual Harassment.

4.49. The Committee recommends that training and sensitisation be provided to employers on the National Policy for Sexual Harassment in the Workplace, with specific focus on the complaint procedures and the forms of remedies related to sexual harassment in the workplace. The Committee further recommends that the MLSED consider courseware in order to reach a wide audience.

4.50. The Committee recommends that the MLSED review the concerns of the various NGOS in Table 8.

4.51. The Committee recommends that MLSED note the recommendations of WINAD in APPENDIX V.

Your Committee respectfully submits this Report for the consideration of Parliament.

Sgd.

Dr. Nyan Gadsby Dolly, MP
Chairman

Sgd.

Mrs. Glenda Jennings-Smith, MP
Vice – Chairman

Sgd.

Mr. Esmond Forde, MP
Member

Sgd.

Mr. Kazim Hosein
Member

Sgd.

Mr. Rushton Paray, MP
Member

Sgd.

Mr. Dennis Moses
Member

Sgd.

Mrs. Hazel Thompson-Ahye
Member

September 27, 2019

APPENDIX I

OFFICIALS

ATTENDANCE

LIST

NAME	POSITION	MINISTRY/ORGANISATION
Public Hearing March 15, 2019		
Ms. Jacqueline Johnson	Permanent Secretary	Office of the Prime Minister
Ms. Natalie Willis	Permanent Secretary (Ag.)	Ministry of Labour and Small Enterprise Development (MLSED)
Ms. Kavar Williams	Deputy Permanent Secretary (Ag.)	Ministry of Labour and Small Enterprise Development (MLSED)
Ms. Sabina Gomez	Chief Labour Relations Officer (Ag.)	Ministry of Labour and Small Enterprise Development (MLSED)
Ms. Sangeeta Boondoo	Senior Legal Officer	Ministry of Labour and Small Enterprise Development (MLSED)
Mrs. Devanty Maraj-Ramdeen	Chief Executive Officer	Equal Opportunity Commission (EOC)
Mr. Haran Ramkaransingh	Director, Legal Services	Equal Opportunity Commission (EOC)
Ms. Stephanie Fingal	Chief Executive Officer (Interim)	Employers Consultative Association (ECA)
Mr. Keston Nancoo	Chairman	Employers Consultative Association (ECA)
Mr. Jason Nathu	Tutor/ Attorney-at-Law	Human Rights Clinic, Hugh Wooding Law School
Public Hearing April 12, 2019		
Ms. Jacqueline Johnson	Permanent Secretary	Office of the Prime Minister
Ms. Sabina Gomez	Chief Labour Relations Officer (Ag.)	Ministry of Labour and Small Enterprise Development (MLSED)
Ms. Sangeeta Boondoo	Senior Legal Officer	Ministry of Labour and Small Enterprise Development (MLSED)
Ms. Stephanie Fingal	Chief Executive Officer (Interim)	Employers Consultative Association (ECA)
Mrs. Lynette Seebaran-Suite	Chairman	Equal Opportunity Commission (EOC)
Mr. Narendra Lalbeharry	Registrar	Equal Opportunity Tribunal
Ms. Hazel Brown	Director	Trinidad and Tobago Institute for Women in Leadership
Mrs. Jacqueline Burgess	Network Coordinator	Network of NGOs of Trinidad and Tobago for the Advancement of Women & Working Women for Social Progress
Ms. Folade Mutota	Executive Director	Women's Institute for Alternative Development
Ms. Stephanie Leitch	Director	WOMANTRA

APPENDIX II

MINUTES

**MINUTES OF THE 25th MEETING OF THE
JOINT SELECT COMMITTEE ON HUMAN RIGHTS, EQUALITY AND DIVERSITY,
HELD IN THE ARNOLD THOMASOS ROOM (EAST), LEVEL 6 AND THE A.N.R. ROBINSON
MEETING ROOM (EAST), LEVEL 9, TOWER D, INTERNATIONAL WATERFRONT CENTRE,
1A WRIGHTSON ROAD, PORT OF SPAIN
ON FRIDAY MARCH 15, 2019**

Present

Dr. Nyan Gadsby-Dolly, MP	Chairman
Mrs. Glenda Jennings-Smith, MP	Vice – Chairman
Mr. Kazim Hosein	Member
Mr. Saddam Hosein	Member
Mrs. Hazel Thompson-Ahye	Member

Absent/Excused

Mr. Dennis Moses	Member (Excused)
Mr. Rushton Paray, MP	Member (Excused)
Mr. Esmond Forde, MP	Member (Excused)

Secretariat

Ms. Candice Skerrette	Secretary
Ms. Vanna Jankiepersad	Assistant Secretary
Ms. Aaneesa Baksh	Graduate Research Assistant

Ministry of Labour and Small Enterprise Development (MLSED)

Ms. Natalie Willis	Permanent Secretary (Ag.)
Ms. Kavar Williams	Deputy Permanent Secretary (Ag.)
Ms. Sabina Gomez	Chief Labour Relations Officer (Ag.)
Sangeeta Boondoo	Senior Legal Officer

Office of the Prime Minister

Ms. Jacqueline Johnson	Permanent Secretary
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Equal Opportunity Commission (EOC)

Mrs. Devanty Maraj- Ramdeen	Chief Executive Officer
Mr. Haran Ramkaransingh	Director, Legal Services

Employers Consultative Association (ECA)

Ms. Stephanie Fingal	Chief Executive Officer (Interim)
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Mr. Keston Nancoo

Chairman

Human Rights Clinic

Mr. Jason Nathu

Tutor/Attorney-at-Law

Public Hearing

- 8.1 The meeting reconvened at 10:35 a.m. in the A.N.R. Robinson Meeting Room (East) Level 9.
- 8.2 The Chairman welcomed and thanked the officials for attending. Introductions were made.
- 8.3 The Chairman invited opening and closing statements from:
- Ms. Natalie Willis, Permanent Secretary (Ag.), Ministry of Labour and Small Enterprise Development;
 - Ms. Jacqueline Johnson, Permanent Secretary, Office of the Prime Minister;
 - Mr. Haran Ramkaransingh, Director, Legal Services, Equal Opportunity Commission;
 - Ms. Stephanie Fingal, Chief Executive Officer (Interim), Employers Consultative Association; and
 - Mr. Jason Nathu, Tutor, Human Rights Clinic of the Hugh Wooding Law School.

Summary of Discussions

- 9.1 The following issues arose during discussions with the officials (*for further details, please see the Verbatim Notes*):
- The definition of sexual harassment and what constitutes sexual harassment in the workplace;
 - The difference between a compliment and sexual harassment at the workplace is the element of ‘unwelcomed behaviour’;
 - The all-encompassing nature of sexual harassment. Sexual harassment is not gender specific as it can be male to male, female to male, male to female and female to female;
 - The challenges or barriers to receiving complaints from victims of sexual harassment:
 - Fear of loss of job especially in small and medium sized organisations;
 - Embarrassment of the victim to report the incident;
 - The significance of sexual harassment as an issue for the employer;
 - Lack of public awareness of the human rights of citizens; and

- Need for a change in the culture to encourage sensitisation of the public on sexual harassment and their rights as citizens;
- The procedure for the submission of complaints to the EOC and the MLSED;
- The absence of survey data of entities which highlight the magnitude of underreporting of sexual harassment in the workplace;
- The recommendation for the inclusion of the topic of sexual harassment in Employee Handbooks throughout the public and private sector;
- The mechanisms which afford protection to victims and witnesses from victimisation after reporting an incident of sexual harassment. For example, the individual can submit an EOC complaint of victimisation against the employer;
- The provision contained in the National Workplace Policy on Sexual Harassment in Trinidad and Tobago for psycho-social support services for both the victims and perpetrators of the incident of sexual harassment;
- The duty of the employer to provide a safe working environment free from sexual harassment and to enact appropriate steps to deter the reoccurrence of sexual harassment in the workplace;
- The jurisdiction and powers of the EOC as it relates to determining a matter of sexual harassment;
- MLSED's guidelines and procedures for employers who have experienced sexual harassment by an employee;
- MLSED procedure for employees who have experienced sexual harassment while being employed in a small or medium sized organisations;
- The ECA can be requested to conduct an external investigation for incidents of sexual harassment from the employee to the employer;
- The efforts which can be made by entities to encourage reporting of cases of sexual harassment which include:
 - MLSED conducting workshops on complaints procedure for sexual harassment and guidelines for sexual harassment; and
 - Unions include in their collective agreements guidelines for sexual harassment and submit the guidelines;
- The current role of the Conciliation Unit of the MLSED;
- The meaning ascribed to 'mediation services' as contained in the National Workplace Policy on Sexual Harassment in Trinidad and Tobago;

- The submission of individual claims of sexual harassment without the need for an Attorney-at-Law or a trade union in the National Workplace Policy on Sexual Harassment in Trinidad and Tobago; and
- The lack of clarity in the procedure for reporting and investigating sexual harassment complaints in organisations despite the existence of an internal sexual harassment policy.

Request for Written Submissions

10.1 During the public hearing, written submissions were requested from the Equal Opportunity Commission on the following case law related to sexual harassment:

- a. *Meritor Savings Bank v Vinson*;
- b. *Janzen v Platy Enterprises Limited*; and
- c. *Porcelli v Strathclyde Regional Council*.

Adjournment

11.1 The meeting adjourned at 12:04 p.m.

I certify that the Minutes are true and correct.

Chairman

Secretary

March 15, 2019

**MINUTES OF THE 26th MEETING OF THE
JOINT SELECT COMMITTEE ON HUMAN RIGHTS, EQUALITY AND DIVERSITY,
HELD IN THE ARNOLD THOMASOS ROOM (WEST), LEVEL 6 AND THE J. HAMILTON
MAURICE ROOM, MEZZANINE FLOOR, TOWER D, INTERNATIONAL WATERFRONT
CENTRE, 1A WRIGHTSON ROAD, PORT OF SPAIN
ON FRIDAY APRIL 12, 2019**

Present

Dr. Nyan Gadsby-Dolly, MP	Chairman
Mr. Kazim Hosein	Member
Mr. Rushton Paray, MP	Member
Mr. Esmond Forde, MP	Member
Mrs. Hazel Thompson-Ahye	Member

Absent/Excused

Mrs. Glenda Jennings-Smith, MP	Vice – Chairman (Excused)
Mr. Saddam Hosein	Member (Excused)
Mr. Dennis Moses	Member (Excused)

Secretariat

Ms. Candice Skerrette	Secretary
Ms. Vanna Jankiepersad	Assistant Secretary
Ms. Aaneesa Baksh	Graduate Research Assistant
Ms. Ria Rampersad	Parliamentary Intern

Ministry of Labour and Small Enterprise Development (MLSED)

Ms. Sangeeta Boondoo	Senior Legal Officer
Ms. Sabina Gomez	Chief Labour Relations Officer (Ag.)

Office of the Prime Minister

Ms. Jacqueline Johnson	Permanent Secretary
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Equal Opportunity Commission (EOC)

Mrs. Lynette Seebaran-Suite	Chairman
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Equal Opportunity Tribunal (EOT)

Mr. Narendra Lalbeharry	Registrar
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Employers Consultative Association (ECA)

Ms. Stephanie Fingal	Chief Executive Officer (Interim)
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Trinidad and Tobago Institute for Women in Leadership

Ms. Hazel Brown

Director

Network of NGOs of Trinidad and Tobago for the Advancement of Women & Working Women for Social Progress

Mrs. Jacqueline Burgess

Network Coordinator

Women's Institute for Alternative Development

Ms. Folade Mutota

Executive Director

WOMANTRA

Ms. Stephanie Leitch

Director

Public Hearing

8.4 The meeting reconvened at 10:33 a.m. in the J Hamilton Maurice Room, Mezzanine Floor.

8.5 The Chairman welcomed and thanked the officials for attending. Introductions were made.

8.6 The Chairman invited opening and closing statements from:

- Ms. Sangeeta Boondoo, Senior Legal Officer, Ministry of Labour and Small Enterprise Development;
- Ms. Jacqueline Johnson, Permanent Secretary, Office of the Prime Minister;
- Mrs. Lynette Seebaran-Suite, Chairman, Equal Opportunity Commission;
- Mr. Narendra Lalbeharry, Registrar, Equal Opportunity Commission;
- Ms. Hazel Brown, Director, Trinidad and Tobago Institute for Women in Leadership;
- Mrs. Jacqueline Burgess, Network Coordinator, Network of NGOs of Trinidad and Tobago for the Advancement of Women & Working Women for Social Progress;
- Ms. Folade Mutota, Executive Director, Women's Institute for Alternative Development;
- Ms. Stephanie Leitch, Director, WOMANTRA; and
- Ms. Stephanie Fingal, Chief Executive Officer (Interim), Employers Consultative Association.

Summary of Discussions

8.1 The following issues arose during discussions with the officials (*for further details, please see the Verbatim Notes*):

- The power of the Equal Opportunity Commission to receive, investigate, conciliate or refer complaints of sexual harassment to the Equal Opportunity Tribunal;
- The rationale for standalone legislation on sexual harassment and the status of draft legislation on sexual harassment;
- The basis upon which a claim for sexual harassment can be made by a non-unionized worker;
- The need for the definition of a ‘worker’ in the National Workplace Policy on Sexual Harassment in Trinidad and Tobago to be broadened to capture domestic workers, migrant workers and volunteers;
- The roles and responsibilities of a trade union needs to be addressed in the National Workplace Policy on Sexual Harassment in Trinidad and Tobago;
- The need to provide whistle-blower protection, anonymous reporting and psycho-social support to workers via Employee Assistance Programmes (EAP) in the National Workplace Policy on Sexual Harassment in Trinidad and Tobago;
- The significance of public education, sensitisation and awareness in the implementation of the National Workplace Policy on Sexual Harassment in Trinidad and Tobago in order for both employers and employees to understand, assimilate and effect the tenets of the Policy;
- The absence of penalties for employers who fail to have a sexual harassment policy and enforcement measures to be attained with enactment of legislation;
- The collaborative efforts between the MOLSED and the Office of the Prime Minister to sensitise children through various outreach initiatives; and
- Additional comments and feedback on the National Workplace Policy on Sexual Harassment in Trinidad and Tobago can be submitted to the MOLSED via email at conciliation.mol@gov.tt and via the Ministry’s Facebook page.

Adjournment

9.1 The meeting adjourned at 12:39 p.m.

I certify that the Minutes are true and correct.

Chairman

Secretary

April 12, 2019

APPENDIX III

VERBATIM

VERBATIM NOTES OF THE TWENTY-FIFTH MEETING OF THE JOINT SELECT COMMITTEE ON HUMAN RIGHTS, EQUALITY AND DIVERSITY HELD IN THE A.N.R ROBINSON MEETING ROOM (EAST), LEVEL 9, (IN PUBLIC), OFFICE OF THE PARLIAMENT, TOWER D, PORT OF SPAIN INTERNATIONAL WATERFRONT CENTRE, #1A WRIGHTSON ROAD, PORT OF SPAIN, ON FRIDAY, MARCH 15, 2019 AT 10.35 A.M.

PRESENT

Dr. Nyan Gadsby-Dolly	Chairman
Mr. Saddam Hosein	Member
Mr. Kazim Hosein	Member
Mrs. Hazel Thompson-Ahye	Member
Ms. Candice Skerrette	Secretary
Ms. Vanna Jankiepersad	Assistant Secretary
Ms. Aaneesa Baksh	Parliamentary Intern
Ms. Ria Rampersad	Parliamentary Intern

ABSENT

Mrs. Glenda Jennings-Smith	Member
Mr. Dennis Moses	Member
Mr. Rushton Paray	Member
Mr. Esmond Forde	Member

EQUAL OPPORTUNITY COMMISSION

Mrs. Devanty Maraj-Ramdeen	Chief Executive Officer
Mr. Haran Ramkaransingh	Director, Legal Services

OFFICE OF THE PRIME MINISTER -

GENDER & CHILD AFFAIRS

Ms. Jacqueline Johnson	Permanent Secretary
Ms. Gaietry Pargass	Senior Legal Advisor

EMPLOYERS CONSULTATIVE ASSOCIATION

Ms. Stephanie Fingal	Chief Executive Officer (Interim)
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Mr. Keston Nancoo

Chairman

HUMAN RIGHTS CLINIC – HUGH WOODING LAW SCHOOL

Mr. Jason Nathu

Tutor/Attorney-at-Law

MINISTRY OF LABOUR AND SMALL ENTERPRISE DEVELOPMENT

Ms. Natalie Willis

Permanent Secretary

Ms. Kevan Williams

Deputy Permanent Secretary (Ag.)

Ms. Sabina Gomez

Chief Labour Relations Officer (Ag.)

Ms. Sangeeta Boondoo

Senior Legal Officer

Madam Chairman: Good morning and welcome, as we reconvene the Twenty-Fifth Meeting of the Joint Select Committee on Human Rights, Equality and Diversity. This public hearing will be broadcast on Parliament Channel 11, Parliament radio 105.5 FM and the Parliament’s YouTube channel, *ParlView*. I would like to welcome the officials from the Office of the Prime Minister, the Ministry of Labour and Small Enterprise Development, Equality Opportunity Commission, the Human Rights Clinic of the Hugh Wooding Law School, and the Employers Consultative Association, this morning here with us. My name is Dr. Nyan Gadsby-Dolly and I am the Chairman of this Committee on Human Rights, Equality and Diversity, and I would now introduce the members—I would allow them to introduce themselves, of the Committee—who are present with us, starting from my right.

[Introductions made]

Madam Chairman: And I would like to now invite the officials who are present with us to introduce themselves, and we will start from my left, with the Permanent Secretary of the Office of the Prime Minister, Gender Development.

[Introductions made]

Madam Chairman: Good morning again to you all, and you are welcome. This morning we are here to discuss sexual harassment in the workplace. In 2018 the International Labour Organization highlighted the issue of violence and harassment in the workplace during the 107th session of the International Labour Conference.

“It is the right of every individual to work in an environment free from harassment and in this regard sexual harassment in the workplace can no longer be classified as a ‘personal’/‘interpersonal’ issue.”

The above quote may be very familiar to some people, as it came from the National Workplace

Policy on Sexual Harassment laid in the Parliament, by the hon. Minister of Labour and Small Enterprise Development, Sen. The Hon. Jennifer Baptiste-Primus, on March 08, 2019.

Due to increased dialogue and media articles locally and internationally, acknowledgment of which would have precipitated development of Trinidad and Tobago's first policy—National Policy on Sexual Harassment as previously referenced, this Committee undertook to understand the challenges related to sexual harassment in the workplace, to examine the prevalence of allegations and instances of sexual harassment in the workplace, and to examine and make recommendations on current management procedures and mechanisms to seek redress as a victim of sexual harassment in the workplace, and current legislation on policies, local, regional and international, to treat with victims of sexual harassment in workplaces in Trinidad and Tobago.

We would have received written submissions, quite a number of them from the Ministry of Labour and Small Enterprise Development, inclusive of the recently made National Workplace Policy, the Equal Opportunity Commission, the Employers Consultative Association, the Office of the Prime Minister, the Trinidad and Tobago Police Service, the Industrial Court of Trinidad and Tobago, the International Labour Organization, United Nations UNICEF, the Faculty of Law at UWI, the Office of the Ombudsman of Trinidad and Tobago, and the CDOR Committee of Trinidad and Tobago. And let me express sincere gratitude, mine as well as all members of the Committee and the Secretariat, to all the agencies that assisted with the circulation of the online link for the Committee's online survey conducted from Friday, February—sorry, from February 13th to March 11, 2019, to which we had 571 responses.

I would now like to invite brief opening remarks from Mrs. Natalie Willis, Ms. Jacqueline Johnson, Mrs. Devanty Diane Maraj-Ramdeen, I think we are having Mr. Haran Ramkaransingh instead? Yes? Ms. Stephanie Fingal and Mr. Jason Nathu. So we start with Ms. Willis, and continue that way.

Ms. Willis: Thank you, Madam Chairman and members of the Committee. We at the Ministry of Labour and Small Enterprise Development are grateful for the opportunity to meet with the Joint Select Committee on Human Rights, Equality and Diversity for this enquiry into sexual harassment in the workplace. Madam Chairman, the Ministry's core function focuses on the improvement on the quality of life of the citizens of Trinidad and Tobago through, inter alia, setting the standards for working conditions and assisting in the employment of employers and employees.

Madam Chair, the work of the Ministry has been given even greater prominence in national development with the adoption of the United Nations' sustainable development goals, the STG's in 2015, and specifically Goal 8 which speaks to promoting inclusive and sustainable economic growth, employment and decent work for all. Decent work in this regard refers to the work that is safe, productive, delivers a fair

income and upholds the rights of workers. Additionally, the Government of the Republic of Trinidad and Tobago as a member state of the International Labour Organization upholds the edict that labour rights are human rights, and is ever committed to respecting all human and labour rights, including fair employment practices, a safe and healthy workplace, and a workplace free from bullying and harassment, including sexual harassments.

Sexual harassment is a violation of fundamental human rights, and adversely affects the working environment, undermines general equality at work, creates unfair practices in employment and negatively impacts the dignity and well-being of workers. Moreover, it has significant damaging effects on the victim, alleged perpetrators, their homes, organizations and communities. The right to work in an environment free from harassment is breached when anyone is subjected to sexual violence/harassment in the workplace.

In closing, Madam Chair, I wish to emphasize that the Ministry of Labour and Small Enterprise Development is committed to the implementation of the National Workplace Policy on Sexual Harassment in Trinidad and Tobago, which is designed to prevent, prohibit and address sexual harassment at all levels in the workplace. The long-term goal of the policy is to eliminate any and all incidents of sexual harassment in the workplace. The Ministry therefore is committed to achieving this goal, and is grateful for the opportunity to contribute in any way to this enquiry into sexual harassment in the workplace. We at the Ministry look forward to fruitful deliberations and any suggestions as we seek to implement this policy. I thank you.

Madam Chairman: Thank you. Ms. Johnson.

Ms. Johnson: Good morning, Madam Chair. The National Workplace Policy on Sexual Harassment is one of the major measures we have identified in the national gender policy for development. So, we are happy to be part of this process which will finalize a document that will support our achievement of gender equality by 2030. Thank you.

Madam Chairman: Thank you. Mr. Ramkaransingh.

Mr. Ramkaransingh: Madam Chair, members of the Committee, on behalf of our Chairman, Mrs. Lynette Seebaran-Suite, I thank you for including us in this deliberation, and I apologize for her inability to be here this morning.

Madam Chair, and members of the Committee, sexual harassment is an expression of sexual violence. It is a form of discrimination based on sex, and it is a violation of human rights. It has been acknowledged as a serious problem in the workplace. Based on complaints that have been lodged with the Equal Opportunity Commission, and our investigation into these complaints, we have seen where incidents

of sexual harassment have undermined working relationships and have contributed to sickness, absenteeism and stress generally.

When employers do not adequately address the allegations that employees have made, and the employee is now forced to lodge a complaint with the Commission, and we are forced to intervene and investigate, the employer now has to address and devote a lot of time, a lot of resources, into treating with the complaint, and they face the risk of incurring significant legal costs should the matter be referred to the Equal Opportunity Tribunal, which is a court for hearing an adjudication. The Commission's core mandate is to work towards elimination of discrimination and promote equality of opportunity among persons generally in Trinidad and Tobago. Sexual harassment is a barrier to achieving this goal. At the same time sexual harassment is a form of discrimination based on sex, and it is therefore one of the areas which the Equal Opportunity Commission is empowered under the Equal Opportunity Act to treat with.

Our function under the Equal Opportunity Act is to receive, investigate complaints and where possible conciliate the matter. So our function is not just limited to conciliation, but we have the power to compel a respondent to provide information in response to an investigation. We can compel them to come to us, to provide documents, transcripts, videotapes, any form of evidence that we can get. And if a respondent does not do so, we have the power to prosecute them in the Magistrates' Court for noncompliance.

Based on the investigation we can refer the matter to conciliation. If the matter is not resolved at conciliation, the Act creates a second institution, the Equal Opportunity Tribunal, which is a superior court, and the matter can go there for hearing and adjudication by a judge, who enjoys the same status as a judge of the High Court. And it is to be mentioned, Ma'am, that under the Equal Opportunity Act complaints can be made by any form of employees. So that we are not limited to questions as to whether this person is worker or not, whether they are domestic workers, whether they are senior management, academic staff. Any form of employee including independent contractors can make a complaint to the Commission of sexual harassment.

In our responses to your written question—sorry, in our written responses to the questions asked, we had said there were three matters before the tribunal. In actuality there are four matters.

Madam Chairman: We would go a little more into depth as we ask the question.

Mr. Ramkaransingh: I just wanted to mention an interesting fact, it may be interesting to note, out of the four matters, two of the four were complaints lodged by men saying that they were sexually harassed by women who were senior to them in management. So that it is an interesting dynamic. We tend to think sexual harassment only being a man harassing a woman.

Madam Chairman: Certainly, and I am sure as we go into discussions today we would have a little more interesting revelations to come in there. So, thanks a lot Mr. Ramkaransingh. Could I invite Ms. Fingal now?

Ms. Fingal: Good morning, Madam Chairman. The Employers Consultative Association is pleased to be invited to participate in this enquiry today as in contributing to the formulization of national policy and legislation on sexual harassment in Trinidad and Tobago. The ECA, Employers Consultative Association, is a non-profit organization. At current we have approximate 525 active members throughout all industry sectors in Trinidad and Tobago. Our objective is to promote a productive economy by providing employers with guidance and services for the proper management of employee related issues, promoting adherence to legislation, good industrial relations practices, and the principles of natural justice.

We provide these services at the national level, and that—membership engagements through in-house and external programmes. All employers in Trinidad and Tobago are invited to participate in our national programmes. The treatment of sexual harassment matters is given due regard in this process, and we do this through sensitization sessions, free at times, consultancies with independent employers, training programmes, assisting management with disciplinary matters, and giving general support to any initiatives of the EUC, the Ministry of Labour and Small Enterprise Development, et cetera in our advocacy role. Thank you very much.

Madam Chairman: Thank you, and Mr. Nathu.

Mr. Nathu: Good morning again, Madam Chairman, and members of the Committee. And thank you for inviting the Hugh Wooding Law School Human Rights Law Clinic to participate in this exercise, and also for recognizing the work of the students of the clinic. From the onset I must apologize that we were not able to answer the questions that you have asked of us this morning. And I wanted to explain how the clinic functions so that you would get a sense as to what our difficulties were in answering those questions.

The Human Rights Law Clinic is a programme that is designed to afford our students practical experience through public education and advocacy. It runs for 10 weeks in every academic year. So, from early October to early December our students, among other things, have to choose a project in which they plan to break down complex areas of the law, and one group of our four students—well, we had 16 students this year, four of them chose the issue of sexual harassment in the workplace being a topical issue as it is, and getting the—deserving of the recognition that it does, to break down any existing law and policy in Trinidad and Tobago at present. Certainly our students are not subject matter experts, so they sought the assistance of an NGO, Women Working for Social Progress, and they would have used their research tools as attorneys to break down and distill what is in our existing policy; the equal opportunity guidelines and

the draft policy from the Ministry of Labour and Small Enterprise Development.

So, it is for that reason we were not able to specifically identify the questions that you would have asked. However, I am here to provide any assistance that I can to the Committee this morning.

Madam Chairman: Certainly, and we appreciate the explanation, and we thank you all for being here with us as we approach this most important topic. So, we will commence the questioning section at this time. I want to remind everyone to root your questions through the Chair as we begin.

I want to start us off by defining sexual harassment, and let me just indicate that we would have had all the submissions coming in and in today's hearing I want us to be able to, for the benefit of the public who will listen and see this, I want to be able to elucidate some of the things that we would have gotten in the written submissions for the benefit of the public. So I may ask some questions that you would have submitted information on, but it is simply for the benefit of those who are looking in, because there is a lot of misinformation and a lot of very strange points of view on some of the issues that we tend to consider straightforward based on our immersion in the subject, and therefore I will ask some questions to just open up some of these things.

So, my first question, I am going to ask it directly to the Ministry of Labour and Small Enterprise Development, the Permanent Secretary, for her to define for the benefit of the public "sexual harassment", and then I will ask a question further to that.

Ms. Willis: Thank you, Madam Chair. According with the National Workplace Policy on Sexual Harassment in Trinidad and Tobago, sexual harassment is defined as:

"...any physical, verbal or non-verbal conduct of a sexual nature and other conduct affecting the dignity of women and men, which is unwelcome, unreasonable and offensive to the recipient, and a person's rejection of, or submission to such conduct is used to explicitly or implicitly as a basis for a decision which affects that person's job; or (*hostile work environment*) conduct that creates and intimidating, hostile or humiliating working environment for the recipient".

So it mirrors two aspects.

Madam Chairman: Now, in our culture there are—how can I say it?—we tend to be complimentary, well, just use it that way. Right? Is any kind of compliment a sexual harassment case? How do you distinguish between a compliment and something that is sexual harassment?

Ms. Willis: Firstly, for it to be defined as sexual harassment it must be unwelcomed by the recipient. If it is, and the policy speaks to the awareness of our social construct in Trinidad and Tobago, and that we in

some instances, is may be throwing picong, but if it is that the conduct or behavior makes that person uncomfortable, or that person deems it is unreasonable, or unwelcome, then it is defined as sexual harassment. If I may, I may ask my Chief Labour Relations Officer to go further?

Madam Chairman: Certainly.

Ms. Gomez: What makes it sexual harassment would be the sexual content or the innuendo in it. Because sometimes if you give somebody a compliment, that is not sexual harassment. If you tell them, “You know, you are looking really nice today”, and you accept the compliment, that is not sexual harassment. Or, you know, normally we would throw picong at one another. But once the joke is of a sexual nature and the person finds it, or the person becomes uncomfortable with it, and what we advise is that there are different, how should I say, levels of seriousness, so if you find it uncomfortable, the direct approach. You just approach the person and say, “I didn’t like what you said, it make me uncomfortable”, and if the person apologizes then we suggest that, you know, things could be left at the level of an apology. Not everything has to go towards litigation based on the seriousness of the comment or whatever it is. Some could be slight, some could be simple, that an apology, you directly approach the person and indicate to them that you found what they said offensive and not conducive to working environment, or it was objectionable, or you did not really receive it in terms of how they were putting it across.

Madam Chairman: And the last question I would ask on this kind of definitions issue is: Is sexual harassment always directed from male to female?

Ms. Willis: No, sexual harassment can be via male to male, male to female, female to male, or female to female. And the Conciliation Unit which Ms. Gomez is attached would have received instances, or persons would have approached them for advice, and in two instances one was male to male and one was female to male.

Madam Chairman: So the public should now be clear on what sexual harassment, what constitutes sexual harassment, the fact that sexual harassment can be either way, anyway regarding the sexes, whether it is male to female, female to female, female to male, male to male, anyone can then undergo sexual harassment, any worker in the workplace.

Ms. Willis: Yes.

Madam Chairman: So having defined that, one of our issues is to understand the challenges related to sexual harassments in the workplace. Based on the submissions we would have received from all of the groups represented here, we saw different issues coming up. There is the issue of under-reporting, because in every submission I do not think we crossed in any one year maybe four, or as much as eight

reports of sexual harassment coming out; there is the issue of lack of legislation, there is the issue of the difficulty of investigating allegations, there is the issue of lack of awareness of what constitutes sexual harassments, some people—perpetrators—may not understand, and victims similarly, may not understand exactly what is happening. They may feel the discomfort, but not understanding that there is a name for this type of behavior.

And then there is the issue of the paucity of sexual harassment policies in the workplace where there is not uniform, or I should say there was, at the time of conceptualization of this enquiry, that national policy had not yet been laid. And so different issues would have come to the fore for the different written submissions representing challenges related to sexual harassment in the workplace, and everyone would have identified, based on the questioning, the results of sexual harassment, and what—the results on the victim, the results on the workplace itself, and the impact it has on productivity in the workplace and the work environment. So, what I wanted to ask, and the question to be thrown out to Ms. Fingal from the Employers Consultative Association, the Ministry of Labour and Small Enterprise Development, the legal services, Mr. Ramkaransingh from the Equal Opportunity Commission, as well as, I do not know if the Human Rights Clinic would want to weigh in on it. What is the main challenge, or are they all conflated into one huge challenge, or if we had to identify one or two. What are the main challenges based on all that we have spoken about that would constitute that barrier to reducing sexual harassment in the workplace? And anyone can start first. What is the most pressing challenge? Ms. Fingal.

Ms. Fingal: What we have discovered is the fear of losing a job by the victim, and particularly when you have persons working in owner managed businesses, and in other companies, in larger companies there might be some process or some recourse, but you find particularly with the smaller businesses, medium sized and so, employees are one thing, they are ignorant, as you just mentioned, Madam Chairman, that they might be unaware that it is in fact sexual harassment, and, of course, they feel intimidated, perhaps sometimes threatened and embarrassed. Still there is this very strong feeling of being ashamed to have to report such a thing. And then where employment is the key issue, retaining that employment, we will find a reluctance as well.

Just recently I handled giving some advice to someone, and the victim felt very sorry for the perpetrator. She was actually crying after making the report and wanted to discontinue the report. So, you find there are several reasons, and depends as well whether the employer and the organization really treat those things as Trinidadians and Tobagonians as significant issues of a grievance or, you know, to be addressed through disciplinary processes and so. So there are a myriad number of reasons why we might have under-reporting and also having matters not addressed. Putting a policy in place then beholds that company to adhere to that policy, and you find it is a very sensitive topic, and how they go about introducing

it when there might be perpetrators known to different persons, and rolling it out, and insisting on its adherence. So, many different issues play at this point in time. Thank you.

Madam Chairman: Anyone else wants to weigh in on this?

Mr. Nathu: Hi, morning, Madam Chair. Just to bring it back. Again, I wanted to come back to the mandate of the clinic, and I think that one of the major problems in this country is a lack of awareness of rights generally, and it is for this reason the law school has used the students to do that sort of public awareness. I believe that this is not an issue that only touches on sexual harassment, but people generally do not know what their rights are, so I am happy that now that there is a policy laid in Parliament that there would be some sort of public education campaign to the average person, because one of the difficulties that I think is generally faced is that people see parliamentarians speaking, people see documents, voluminous documents, but it is not laid out in an understandable and digestible format for the average person, and I think there is much more work to be done in terms of that, regardless of the fact that there have been agencies such as the Ministry of Labour and Small Enterprise Development, and Equal Opportunity Commission, that have already done a lot of work in this area.

Madam Chairman: Thank you. Anybody else wants to give a perspective?

Ms. Gomez: Madam Chairman, I agree with Ms. Fingal and the gentleman from the Human Rights Clinic. Both of what they say lend some credence. That is why with the policy in terms of rolling out the policy public education and sensitization to the general public, and even to the schools, it is really critical.

11.05 a.m.

Because even with the normal right issues, like, you know, do I know my rights if I am dismissed, if I am—what do I do? Even with information that will go out through the normal media you find persons are still unaware that they have rights and know what they are. So we have to go through other methods than the normal methods in terms of reaching the general citizenry and our culture change has to come about in terms of how, you know, being knowledgeable of your rights.

So we are looking at different avenues in terms of social media initiatives to bring—to change the conversation or to bring, especially the millennials, because we looked at the CSO report where they said the majority of working women fall between the ages of 30 to 39 and even around the 18 to the 20 something year old in the workplace. We have had a situation where the person came in and what they said to us is that they discussed it with their peers and they told them to keep quiet, do not say anything about it. And it is an older person who brought them to the Ministry for them to say, well okay, this is what is taking place with me on the workplace. So you find that general fear and even among younger people saying to themselves, keep quiet about it, just do not say anything. If you value your job just do not say anything.

So we are looking to capture or to bring that information to persons within a particular age groups so that they would feel empowered in the workplace and to also speak up when they see something is not going right. And even if the person is not empowered to speak up what about the other persons in the organization who will be silently observing what is taking place?

So we touch on all of that, how would a third party observing what is taking place, how could that person intervene to really bring that to the fore? Because if you are not empowered and you are afraid to speak up and you confide in somebody, or somebody actually sees it taking place, then the onus is on that person, you know, to either approach the person directly and tell them, well look, what you are doing is not right, or if that does not work then encourage, speak to a senior person in the organization so that could be addressed.

Madam Chairman: Now, with regard to the very lowly level of reporting of sexual harassment incidents, with regard to our culture of throwing picong, being complimentary, that kind of thing, are we creating a problem that does not exist?

There may be a view that we do not have a sexual harassment problem. How many cases have come forward? Very few over the years. I think if we go from 2013 to '18 I do not think we crossed 30. How do we know, or why do we think that we have a sexual harassment problem in Trinidad and Tobago?

Ms. Gomez: Chair, we could only speak from our perspective in terms of the cases we have had. Now, sometimes when the—now we only started recording, like we went back as far as 2008, but even the figures that we put in the document we know it is not accurate because the disputes do not come as a sexual harassment case. They may come as a constructive dismissal. The first case that went to the court was the Republic Bank, that judgment was—we spoke about it in the document. So we would not pick it up as a sexual harassment matter because they come disguised as other things. Sometimes both parties would appear and not speak about it. Probably in separate talks they may tell you, well, what would have transpired so you would know that it is a sexual harassment matter. But that is where the under-reporting comes in and us not being able to pick it up over the years.

Madam Chairman: What has indicated to us that there is under-reporting?

Mr. Nancoo: If I may, Madam Chair, to answer your first question. What we find happening is when you look at the demographics in organizations you will find the majority of the employee population comprising females, women comprising. And the other thing that we ought to keep in mind is where we have come from, you know, the master/servant kind of relationship; and it continues. So we believe that it is okay when it is not okay. I mean, in the homes where you have that lack of respect and discipline for the females in the homes and that translates into the kind of behaviours. So from my perspective we do have a serious problem

but, again, it is now beginning to emerge because of the demographic of having more females comprising the world of work.

Madam Chairman: I guess what I am asking, and Mr. Ramkaransingh I will come to you, I guess what I am asking is: Are we just discussing anecdotal evidence? Are there some studies that would have indicated? So, for example, when we put this proposal out, we would have put out the survey, an online survey and the response to that would have indicated that there were a lot of people who felt that they had been sexually harassed, did not report it for certain reasons. But that is just what we did here in preparation for today.

So I guess what I am asking is, if there is under-reporting, what has convinced us that there is a high level of sexual harassment which may be taking place but being under-reported? Where is the wealth of information residing? Have there been some studies, some surveys, that kind of thing that would have indicated the problem is real and needs to be addressed but it is not reported and that putting a national policy into the landscape will allow persons to now come to the fore as there is something that they can hold on too which describes what they have been going through. Are there any studies, any information? How have we been able to at least know, informally, that there is a problem? That is basically what I am asking.

Mr. Ramkaransingh: Well, Ma'am, in 2017 the IDB published a National Women's Health Survey. According to the statistics from that survey they reported that the prevalence of non-partner sexual harassment was 13 per cent. I do not know how they arrived at their data but this is the data that they published. They said that, the highest prevalence of this type of harassment was in the form of electronic messages with sexual content which they said occurred at 8 per cent—I mean groped in a public space which occurred at 7 per cent. So those are the statistics from the Women's Health Survey.

What I can also say anecdotally from the commission's investigations, we are not seeing it as being a widespread and prevalent issue, but we have seen that when it does it occur it has been a very problematic issue. So it may not be that the entire organization is mired sexual harassment but when it does happen it has the potential to—it has very far-reaching consequences.

One example that came to mind and one of the cases that is before the Tribunal occurred where a lady claims to—a female employee at a casino claimed that she was sexually harassed by her manager. And when she reported it to HR, they did not seem to have an idea as to how to treat with the matter. So they treated it very chaotically where they actually called the lady and the manager into a joint meeting and told the manager, well, look this lady said so and so about you, what do you have to say?

So it seems to me that they had no clue how to investigate this sort of matter. Because it is one thing to say we have a policy where we do not condone sexual harassment but if you do not have the

nitty-gritty to say, when a complaint is lodged how is it to be treated with. Because ideally when a complaint is lodged with management, because management is your first line of recourse, you should not really have to go to an external agency, like the Equal Opportunity Commission, you should be able to—should be dealt with internally within the company first and foremost. But if the company does not have a proper mechanism or procedure to deal with it then that is where it can spiral out of control. And that is where—I think it is one thing to say we have a policy that condemns sexual harassment. All employers will say that openly that we condemn sexual harassment but they do not really know how to treat with it, how is a person to lodge their complaint? What support mechanisms exist when a person lodges their complaint?

Madam Chairman: Fully understood. So is anybody aware or has any of the agencies done any type of studies, surveys that would indicate the magnitude of the under-reporting? No, okay. So maybe that is an area that should be looked into because it is important to understand the depth of the problem and there may be interesting things coming out in terms of the public versus the private sector.

Ms. Fingal, you mentioned small companies versus large organizations where the procedures might be more clearly elucidated, might be, sometimes they may not have been. So that kind of data I think would be very important as we look at the width and the depth of the problem and also as the policy gets rolled out and we will ask a bit more about that as we come down. I am sure members of the—waiting to ask about that, how we measure the success of the implementation of the policy. So I will take Ms. Johnson and then members.

Ms. Johnson: Chair, I do not think we are underestimating the extent of this problem. As Deputy Permanent Secretary and Permanent Secretary over the past seven years I have dealt with six cases of sexual harassment. In my view, one is too much and one violates someone's rights to decent employment. So while I agree that there is under-reporting and the public sector is quite different to the private sector, the issue of victimization and our cultural nuances and the absence of a policy and people not understanding their rights are critical reasons why things go un-reported. We have plenty employee handbooks, for example, and the issue of sexual harassment is not written into those books, clearly because of the absence of policy and supporting legislation.

Mr. S. Hosein: Thank you very much, Madam Chair. Now, I have been listening to the conversation so far and a few issues jumped out of my mind and one will be looking at it from a realistic perspective that currently we have a downturn in the economy, persons are struggling to get a job or even keep a job and you have persons who are being harassed sexually at the workplace, and a person may actually feel that if I report my boss to the EOC, for example, how am I going to be protected from being victimized? If my friend saw that I was being harassed, how is this person who is my witness, who is going to provide the evidence to ensure that I have some justice be protected? So the question centers in terms of what can we

include in our recommendations to protect these victims of sexual harassment from victimization and also witnesses who will serve to give very good evidence for those sexual predators to be brought to justice?

Mr. Ramkaransingh: Well, speaking only from the point of view of the Equal Opportunity Commission, the Equal Opportunity Act also protects against victimization so that if you lodge a complaint, and the definition is fairly wide, if you lodge a complaint and based on that you are victimized, you can lodge the second complaint and additionally witnesses can lodge a complaint. But the reality is that that you will be lodging a complaint after the fact. Let us say somebody lodges a complaint of sexual harassment and they are then terminated, while they can lodge a second complaint of victimization, that reality is that that would be a complaint after the fact. And to take your point, they would be out of a job and maybe a year or two down the road, because we are fairly quick about it, a year or two down the road they might get justice in the Equal Opportunity Tribunal, but for that year or two they would have been out of a job.

Mr. S. Hosein: And let me ask because you would be out of that job for that two-year period, is there some sort of compensation this person would be entitled to?

Mr. Ramkaransingh: Yes, yes, because the Tribunal is empowered to give damages just as the High Court or the Industrial Court. So that they can get damages and compensation, pecuniary losses, all of these sort of things.

Mr. S. Hosein: You see, the issue I am having also is that there would be situations especially, it may be more prevalent in the private sector where you will have matters like these coming before tribunals and commissions and persons may want to settle, because they are able to settle because, one, I get to keep my job and, two, I may be entitled to some sums of the money. But at the end of day you still have these sexual predators in the workplace continuing to harass males or females. And that is one of the root issues I think we have to determine, how are we going to treat with that problem?

Mr. Ramkaransingh: I understand what you are saying but from a theoretical point of view, because while the tribunal of any court can say, well we will compensate the victim, no court can order an employer to say, well we are going to fire Mr. X., whether it is Mr. Bill O'Reilly or whoever it is. So in the case of *Fox News* or all those big cases we saw in the United States a lot of these persons whom—the guy from *Miramax*, I forgot his name, Mr. Weinstein, they continued and continued and continued, because they were protected by their organizations and no court can order *Fox* to say, we order *Fox News* to fire Bill O'Reilly, we order *Miramax* to fire Mr. Weinstein. It was really public pressure that led to their dismissals. When all of these things came to the public front we saw that with Matt Lauer and all of these famous people in the United States who were dismissed or fired because of sexual perpetrator. It only happened when their public pressure placed on them by the widespread public, so that the share prices, it really came

down to, at the end of the day it is really capitalism. The share prices or the worth of the company would have been threatened by keeping on these persons and therefore the employers were focused to terminate them. But beyond that there is—no court can order that you fire the person.

Mr. S. Hosein: You see the thing is, because I asked the question, because most employers will want to settle simply because of protecting the reputation of their company and while somebody writes, I am being violated, and that is one of the difficult things about this entire subject matter.

Madam Chairman: I think Ms. Fingal wants to come in on the discussion.

Ms. Fingal: I would like to suggest that some mandatory referral to counselling or some type of treatment be included in whatever we are doing, either through the legislation or the policy. Because Mr. Nancoo mentioned the master/servant history and we also have a lot of persons who have psychiatric or some sort of medical—something might be wrong with that person and it is not necessarily just a bad individual. And we do have to treat sexual harassment, we talked about it, as violence in the workplace, we have to treat it with some medical psychiatric, psychological treatment as well.

So it is not just a person decides to harass this person. What is really causing that? Is there a problem with this person? Because if somebody, or a bully in the workplace simply just being rough and gruff we would send them to the EAP. We will say you need anger management. So likewise, we do probably have to do some further, some more in-depth analysis as to why is this person sexually harassing this individual. Some people do not fire or terminate the services of the harasser because he might be a key contributor the organization. But the employer still has the responsibility to maintain a safe and harassment free environment. So if that case were to come up he would have to dismiss this person. If not, he will continue to have an environment that is not the proper environment for all his employees and he will continue to have other employees feeling uncomfortable which is not allowed under industrial relations.

So there is that imperative that the employer must make a decision, but it means that person goes to another job. And depending on if he resigns and a call comes you have nothing to say. So there is no transfer of information that, “hey, you are hiring a sexual harasser.” And we actually have dealt with a case like that. The person went to another job and went to another job and returned to an old job. And therefore you find that those sort of cases those things happen. It might not be every day, but what is happening to that individual? Is he naturally wicked or is there something wrong with that person? His history. And now we do industrial relations and human resources looking at the psychological aspect of behaviours and really trying to find out whether this person should be referred for some sort of medical or psychological assistance in some way.

Ms. Willis: Just to let members and Chair know, and the persons here, that the policy does speak to treating

with that psycho-social aspect of it. So in the case that the employer should provide that psycho-social support not only to persons who are victims but also to the alleged perpetrator as well.

Mr. S. Hosein: I just have two short questions, just for the benefit of the public, because these are things that actually encourage reporting for those persons who may have been victims. One is with respect to the jurisdiction of the EOC. Most people may think that I might go to EOC simply because I am discriminated, discriminated because I am a man or a woman or because of where I come from, my nationality. What gives the EOC the jurisdiction to determine matters of sexual harassment?

Mr. Ramkaransingh: Sex is one of the forms of discrimination that the Equal Opportunity Act prohibits. It prohibits seven forms, sex, race, ethnicity, what have you, and there is international precedent and international case law for saying that sexual harassment is a form of sex-based discrimination in the same way, discrimination against a pregnant woman is also a form of sex-based discrimination. And the rationale in both cases is that once sex is an instrumental factor in the discrimination of one has received. So that using pregnancy, for example, only a women can suffer discrimination based on pregnancy. A man cannot suffer that. So therefore by virtue of being a woman, only a woman can suffer discrimination based on pregnancy.

Similarly, sexual harassment, once sex is a motivating factor to the treatment that one has received—so that if a man is sexually harassing a woman because she is a woman she is receiving this treatment that that man would not inflict on another man. Because as one of the speakers said earlier, one of the elements of sexual harassment is the sexual elements to it. So that the sexual attention is being placed on this person, in part, because she is a woman. There might be other factors as well but the fact is her sex is one of the factors that led to this treatment. [Crosstalk]

Madam Chairman: I want to just interject. Did we not already say and you yourself—you said about man to woman, woman to man. But did we not say that sexual harassment extends between the same sexes in any organization? So is that really discrimination on the basis of her sex?

Mr. Ramkaransingh: Oh yes, because in the case of a same-sex harassment the person who is receiving the harassment is receiving it because they are a man and a woman would not have received that harassment because the person making the harassment is interested in the receiver because, among other things, because he is a man. And that harasser would not harass a woman the same way because the harasser does not have a sexual interest in a woman.

So in other words, it is one of the factors that you look at. To go back to you to some cases, there was a case from the US Supreme Court, *Meritor Savings Bank v Vinson*, a 1986 case; there is also a case from the Supreme Court of Canada, 1989, *Janzen v Platy Enterprises Limited*, I can provide it in writing;

and there is a case from the House of Lords in England, **Porcelli v. Strathclyde Regional Council**. I can provide you with the citations.

Mr. S. Hosein: Thank you.

Madam Chairman: Senator, you have one more question? I want to bring in Sen. Thompson-Ahye to just ask a question quickly and then come back.

Mrs. Thompson-Ahye: Thank you, Madam Chair. When you look at the *National Workplace Policy on Sexual Harassment in Trinidad and Tobago*, at page 14, the definition, if I may go back there:

“Sexual harassment can be directed at men or women, employers, workers or third parties, can occur in any industry, and has occurred/occurs in the private, public and state sectors. It can occur on a single occasion or be a series of actions.”

But when you look at the trend of our discussions here and elsewhere in the media and when you look elsewhere at the policy one wonders if at all we take into consideration that an employer can be harassed. When you look at who may be the perpetrators of a sexual harassment offence in the workplace, in this same policy of the Ministry of Labour and Small Enterprise Development, you see that it says that:

“Sexual harassment can occur at all levels within the organisational hierarchy structure, such as, between a worker and a higher official in the organisation or between workers or by a third party external to the organisation but who has official contact with the organisation’s personnel.”

So when you look also at how you should proceed you are told in this same document that the employer will receive the complaint and then he takes it elsewhere. So it seems to me that in the literature, in our discourse, we are not looking in that direction at all. And I looked at the law as it then was in the Bahamas, Sexual Offences and Domestic Violence Act and it spoke about in terms of the definition and I would just like to share it.

If a person importune or solicits from a person in a position of authority in any place of employment or in any institution any favour, benefit or advantage or the forbearance from the exercise of any right, power or duty relating to that authority under any holding out or promise of sexual favours that is also committing an offence.

And I am wondering if there is any way to treat with that or if we do not imagine that there are in fact members of my sex and the other sex who actually set out to entice an employer in a number of ways that he would act in her favour or a male employer that he would act in her favour and get benefit, and in doing so it creates an unfair advantage and it poisons the environment for the rest of the organization.

Because we cannot always be looking at women as victims. It is true that in the majority of the cases they are, but in fact there are instances when it works the other way. And if it does, if you agree with me, what is there in the policy to say how one is to treat with that? Is the employer to report to himself? How do you see in the policy that that should be treated, or is it something that I missed?

Madam Chairman: I just want to clarify, just to be sure that we are on the same page. What you are referring to is an employee that sets out or entices an employer—

Mrs. Thompson-Ahye: So she is sexually harassing him, you know, in a number of ways. I mean we can imagine, but I do not want to condescend to particulars at this point. We can imagine.

Madam Chairman: Certainly.

Mrs. Thompson-Ahye: We can imagine. My friend does immediately, maybe he has suffered that.

Madam Chairman: So she is in, I am saying she and he. I am not using that example, it may be any other combination. So she is enticing the employer and encouraging—

Mrs. Thompson-Ahye: So she is seeking promotion maybe, you know, other benefits and acting in a particular way. She is holding out promise of sexual favours to him.

Madam Chairman: And it is unwanted.

Mrs. Thompson-Ahye: It is unwanted. It is, some men really reject women who come behind them in that way.

Madam Chairman: So she is enticing, it is unwanted and you are asking in that circumstance who does he—

Mrs. Thompson-Ahye: How does he deal with it?

Madam Chairman:—deal with that. And maybe as we ask that I can widen that a little bit to include in a small business an employee who is being sexual harassed from the boss, the other way as well, who does she or he report that to? Because I think that scene made clear and I think Ministry of Labour and Small Enterprise Development may come in there to explain exactly how. So in case of the employer, who does he report to? In the case of an employee who is being harassed by her employer who is the sole person in the organization, how do they get redress?

Mr. Nancoo: Chair, if I may, I think we need to step back a bit in responding to the Senator. One aspect of it has to do with your recruitment process.

11.35 a.m.

Madam Chairman: I do not want to go—I want an answer specifically on that. If you want to take that after, okay, but I want the answer specifically on this because it is to whom does an employer turn; to whom does an employee who is directly impacted by that employer—cannot complain to the person who is allegedly doing it. How do they get redress?

Ms. Gomez: All right. Madam Chair, now, the employer as the employer, he has rights as manager to discipline as he sees fit, because that is a disciplinary matter and I did not hear the Senator whether she alluded to if there was a false accusation that was made against the employer, or if the incident just happened.

Madam Chairman: She did not say that, but I want to clarify and to be very clear, because if what you are saying in this circumstance is that they discipline the employee, I want us to think about what the outcome of that could be, and it could very well lead to what you are saying.

Ms. Gomez: Exactly.

Madam Chairman: So if you are implying then, that in a case of sexual harassment of the employer by the employee, they should discipline the employee, how do we deal with that in a circumstance where it is not the terminal employer then? Suppose it was a manager and you discipline, would a manager not report it to somebody?

Ms. Gomez: Yes. Well, we are talking about a hypothetical situation and as the employer, being the top person that you would go to, the final resort, so to speak, but if we are talking about a manager and the manager had someone to report to, then the manager would—you know, we would recommend that the manager put whatever the claim made against her or him, in writing, to the person above that person, so there is documentary evidence that, look, this incident happened—

Madam Chairman: If it is the person of last resort, is that employer not putting himself at risk by disciplining the employee?

Ms. Gomez: Well, if it is the employer, there is also—the employer is the top person. By not putting himself at risk, there should be an HR. If there is an HR department, then the HR department should deal with guidelines to follow any disciplinary—because I see Ms. Fingal shaking her head and as the employer maybe she will want to have an input. But in terms of looking at it, if something happens with a person at a junior level towards a senior person, and this person is being affected, then by all means there has to be some guidelines or some measures that the person would take, whether you want to write this person and point out the actions of the person that occurred, and whether it is not conducive to the working relationship.

So something has to be documented with respect to the actions of the individual towards senior

management. Because you would have, in terms of any organization—you should have lines of communication on how you ought to communicate. So if there is some impropriety in terms of how the communication is taking place, he still has to follow a procedure in terms of documenting, “On such and such a day, this occurred and this behaviour is not appropriate for the business environment” or “It is not conducive”. So you lay the groundwork and you tell the employer, go through some sort of disciplinary measures, because the employer should not be afraid to do what is necessary in the workplace.

Madam Chairman: Well, I think they should be very afraid, because what can transpire from all of that is a counterclaim from an employee. And I am wondering, what is the role of the Ministry of Labour and Small Enterprise Development in both cases? If you have a five-member staff and your employer is harassing you, where do you turn? To whom should that employee turn? And in a similar case, if it is an employer. You are the person of last resort, somebody is harassing you and you discipline them, you open yourself up to them saying that you harassed them. What is the external agency? What is the role of the Ministry of Labour and Small Enterprise Development in assisting both of these cases?

Ms. Gomez: All right. Now, in the latter case where it is a small organization and it happened, I will tell you what transpires now. The worker would come into us seeking advice. They would either call. If we find the situation is serious, we will tell them to come in. They will come in and say, “Okay, this is the situation that occurred”. We would ensure that they write, “On this day, such and such occurred”. You write your employer. If they have not done so before, we do not automatically pick up the phone and contact the employer, “Have you written your employer?” “Have you spoken to your HR department?” So we tell them, “Look, write your employer and let them know what transpired on this day, date, event, time and place”, and let them pick it up first, and we would monitor the situation to see if HR really investigates the matter or what sort of redress they have internally. Because most organizations, they will have some sort of guidelines with disciplinary procedure.

Madam Chairman: So if you are an employee, you are being harassed, you have a small organization, you are afraid but you need to report, the Ministry of Labour and Small Enterprise Development, that is the conciliation unit—?

Ms. Gomez: Yes.

Madam Chairman:—is the place you would go to make that kind of report?

Ms. Gomez: Yes.

Madam Chairman: And in the case of an employer?

Ms. Gomez: Well, in the case of the employer, if the employer needs advice, some of them, they do call us

if they need advice. If they have an employee and things are going awry, they will call us and explain the situation to us and what we will advise them to do, if the worker is acting inappropriately, we will advise them, write to your employee and let your employee know this type of behaviour is not acceptable in the workplace. Document everything. Vice versa, the same. It works both ways, because if you do not document that this thing happened, it could escalate and go further and then it will be—

Madam Chairman: But do you think it very important, especially in the case of the employer, that they register with an outside party—

Ms. Gomez: Yes.

Madam Chairman:—that this is happening so that in the case of a counterclaim—because you know how things go—there is some record that somebody else was informed of what is happening.

Ms. Gomez: Yes. And what we recommend in the policy is that, you know, if in the case of it is higher management, then bring in an external investigator, somebody external to the organization who has a strong reputation that both the employee and all concerned would consider. So you bring in a thirty party to the organization and let that person conduct an independent investigation.

Madam Chairman: And that can be the Ministry of Labour and Small Enterprise Development?

Ms. Gomez: No, we do not do investigations. The ECA—

Madam Chairman: Can that be the ECA? Can it be the Equal Opportunity Commission as well?

Mr. Ramkaransingh: Not particularly. We only investigate complaints.

Madam Chairman: So if there is an issue, the ECA is probably something we can say to employers, the ECA is available to assist in some of these kinds of cases?

Ms. Gomez: Right.

Madam Chairman: Ms. Fingal, you wanted to weigh in on this?

Ms. Fingal: I just wanted to say, yes, we will assist and we will guide the employer, exactly as Ms. Gomez advised. You must document and, of course, go to the Ministry of Labour and Small Enterprise Development and make the complaint the same way as the employee will, so that there is a record and if the employee—sometimes an employee might refuse to accept the letter that you might write, so you have to mail it; register it. Do whatever you need to do to make sure a record is in place and continue to pursue the matter in a very formal manner. Perhaps it will lead to separation, but, of course, as you said, Madam Chairman, that could be detrimental for the employer. So a lot of guidance will be required and a third

party, definitely, in treating with such a matter.

Mrs. Thompson-Ahye: I am looking again at the National Workplace Policy and on page 22 where there is mention of the Conciliation Unit Advisory Services, the policy says:

“...an informal avenue where a Conciliator provides informal advice and mediation services to walk-in clients (workers and employers) for the resolution of such matters...”

What do you mean when you speak about providing mediation services? What exactly is meant? Sometimes defining your terms brings clarity. Because if you are talking about civil mediation, as we have in Trinidad and Tobago, and you are talking about a situation where a worker claims to be harassed and you are proposing to conduct civil mediation as opposed to what in Europe is called Victim Offender Mediation, which has elements of restorative justice, then I really think that—I really want to know how do you view this act of sexual harassment that has occurred? Because mediation is used if there is a dispute between parties, where each person feels himself, or herself, entitled to a particular remedy, but when you are thinking in terms of sexual harassment, where a victim is talking about being wronged, then mediation is really not acceptable. And I just hope—and maybe you can provide some clarification if that is the route that the Ministry is taking. Because all of the literature will tell you that when you go the route of mediation in situations like this, then you are really taking a wrong path.

So what is really happening at the level of the Ministry? Do they understand the difference between mediation and restorative justice processes? What are they doing? Is it a question, they are re-victimizing the victim, where you have, most likely, an unequal situation where the victim is coming to meet, as happens in a mediation situation where you have to decide who is going to speak first, who is, you know—and you come to an agreement? Because the processes, when you are dealing with restorative justice, it is totally different. You must have the wrongdoer admitting that, “I have done something wrong”, before you proceed. So I really would like to know what is happening.

Madam Chairman: Okay. I think that is directed to the Ministry of Labour and Small Enterprise Development with respect to clearing up what the mediation involves.

Ms. Gomez: Right. Now, when anybody comes in to us, it is an alleged claim, because in our experience a worker could come in and say anything, and sometimes when the worker comes in, we take detailed notes in terms of what claims they are making. And sometimes when you call the employer on the phone to hear their side of it, they give you a totally different scenario. You go back to the worker because there are gaps, and then you hear the worker starts giving more information based on what the employer is saying. Now this is generally, we are not talking about sexual harassment. And when a worker comes in and makes a claim, it is an allegation that the worker is making, so we do not want to jump and say that the person is a

perpetrator. It is an allegation until an investigation has taken place and it is proven.

Now, you spoke about the advisory service that we offer and, I mean, this has been going on with the Ministry of Labour and Small Enterprise Development, and persons who, their grandparents may have told them about the Labour Board, where if there is an issue in terms of a rights issue, and workers come in every day; employers call us seeking advice on issues, and we reach so far as to have both parties—if both parties are in agreement. It reached as far as drawing up a settlement that becomes legally—well, not legally binding. It is not legally binding, but parties uphold whatever settlement is derived. I am just talking generally about the advisory services. I have not reached to the sexual harassment as yet. But in cases where a worker comes in and makes a claim that, “Look this is going on in the workplace”, according to the seriousness of the matter, it is not something that you could mediate—and I will speak recently about a matter, a person came in—

Madam Chairman: Sorry, Ms. Gomez, but I want to focus you because—

Ms. Gomez: Yes, I know. I am coming into that.

Madam Chairman: So I want to just focus specifically, when the policy mentions on page 22 that the Conciliation Unit Advisory Services offers mediation services to walk-in clients, does that refer specifically to sexual harassment?

Ms. Gomez: No.

Madam Chairman: Okay, so it is not applicable here.

Ms. Gomez: No, no. That is just the service that we provide to any rights issue.

Madam Chairman: So this seems to have been a general statement then, about what is offered by the unit—

Ms. Gomez: Yes.

Madam Chairman: And mediation is not specific to sexual harassment.

Ms. Gomez: No, we do not do mediation in sexual harassment matters.

Mrs. Thompson-Ahye: Greatly relieved.

Madam Chairman: Great.

Mrs. Thompson-Ahye: Thank you for the clarity.

Madam Chairman: I know Minister Hosein wants to weigh in on the discussion at this time.

Mr. K. Hosein: Thank you very much, Madam Chairman. Madam Chairman, I am looking at some statistics provided here over a seven-year period, from 2012—2018. These are the reports of sexual harassment: 2012, 1; 2013, 0; 2014, 0; 2015, 1; 2016, 4; 2017, 2 and 2018, 5. Madam Chairman, in your opening statement you said one is too many, of sexual harassment. Out of these 13 cases, two disputes involved men, one is male to male and the other is female to female. Madam Chairman, I came from local government and a lot of complaints came to me while I was the Mayor of San Fernando. I want to know what could be done to encourage more reporting at the workplace. Because it is alleged that for people to get work they must take part in certain activities before they get the work, especially in local government, and it happens throughout the 14 corporations. So I would like to know from you all, what policy you could put in place for more reporting to be done so the persons are acting in that way, some fear should be instilled in them so they would not act like that in the future? And it should set an example throughout the country. That is my advice and question to the—

Madam Chairman: Who wants to take this question of how do we encourage reporting?

Ms. Gomez: Madam, I know within the local government you have daily-rated workers and they fall under the National Union of Government and Federated Workers. So probably what could be envisioned is that all collective agreements—and that is with the office of the CPO as well—that they include a sexual harassment policy and guidelines in terms of what could be done, and maybe we can do some outreach with the local government agencies. But the union should be able to take a proactive role in that, in including that in all collective agreements or any agreements coming out of the local government. And we have met with NUGFW recently, or we have dialogued with them, or most of the unions, because when you look at a lot of the unions like banking and OWTU, they have coming into their own, in terms of having a sexual harassment policy within the organizations where they have recognized majority status. So probably the union could be encouraged to incorporate that into their collective agreement, and that will become law once it is registered at the Industrial Court, and thereby provide some sort of weight so that the unions could actually report disputes because it is in their collective agreement, registered at the Industrial Court and it will become law.

Mr. K. Hosein: Madam Chairman, that is the advice that the Ministry will give to the unions and to the corporations and so on—local government on the whole.

Ms. Gomez: Yes, local government, specifically. And maybe we can meet with the local government agencies and do a workshop with them in terms of guidance, in terms of what they can do and sort of empower the workers. Because it has to start from the top and with all the CEOs in the local government and the agencies in the local government regions. Right?

Mr. K. Hosein: Madam Chairman, the Ministry will have my full support and the Ministry of Rural Development and Local Government's full support. Thank you very much.

Madam Chairman: Thank you so much. Sen. Hosein?

Sen. S. Hosein: Thank you very much, Madam Chair. This is a question for Mr. Nathu. But before I ask the question, I just want to commend the Hugh Wooding Law School, Human Rights Clinic and the four students, Sara, Ansar, Casiana and Rachel on the excellent work that they have done with respect to the compilation of this book on Sexual Harassment. However, when I perused the book, there was one issue that the students raised which was the protection of those domestic workers, for example, those who are maids, housekeepers, gardeners, how are those persons going to be protected? What can we put into policy to protect those persons who work in those types of environments?

Mr. Nathu: Well, I have seen that there has been some mention of the domestic workers in the National Policy. I have not perused it in great detail but I think we have spoken about those types of remedies already today during the course of the deliberations this morning. Certainly, the Ministry of Labour and Small Enterprise Development does have a great role to play and also there is, of course, the avenue of litigation. Now, litigation is a last resort. You do not want to jump to go to court. But I think with the empowerment of rights, the empowerment of the average person in understanding their rights; attorneys are becoming more trained in dealing with matters like these; being familiar with the Equal Opportunity Commission and the tribunal, I know that some of the matters that would have been reported at the commission earlier on will now reach the tribunal, so we are seeing developments in the litigation and in the jurisprudence and I am hoping that that will also play a part as a deterrent, particularly for domestic workers.

Ms. Willis: Madam Chair, if I may, the policy at page 12 of the policy where we speak of the scope, it covers household assistants as well as apprentices and trainees. So we ensure that everybody is covered in this document.

Sen. S. Hosein: And I think one thing is public education.

Ms. Willis: Yes. Having had this policy approved, the Ministry is soon to embark on a comprehensive and intensive public awareness campaign that will ensure that we bring the message to everyone. Actually we have started this week in terms of being on the radio and on different media initiatives, where we bring the message to everyone.

Sen. S. Hosein: While I have your ear, Ms. Willis, through you, Madam Chair, of course, for public education, persons may consider a workplace as just your place of work. Now, while you are at work you may have a little social gathering, a little Christmas lime, or you may be required to go on a business trip

with some associates, can those instances—if someone is harassed in those environments, can they file a complaint based on they have been sexually harassed?

Ms. Willis: Yes. The policy does cover those areas where it could be a social event organized by the enterprise as well as on transit to your work. Yes, it covers those instances.

Ms. Gomez: Madam Chair, in addition, the Industrial Court ruled on a judgment that happened on a Friday night lime outside of the work environment. So they look at, it is a work-related event so it could be any work-related event.

Madam Chairman: I would like to ask Ms. Sangeeta Boondoo who wants to make a contribution.

Ms. Boondoo: Thank you very much, Madam Chair. With respect to the issue of domestic workers, in considering this policy we do recognize the particular context within which domestic employees and workers may find themselves, and one of the things that we aim to do when we prepare the legislation is allow for the laying of individual complaints. Currently, if you are to have a trade dispute brought, it must be brought either through a recognized majority union or a union of which the worker is a member in good standing. So akin to the provisions that are currently in the Maternity Protection Act and the Retrenchment and Severance Benefits Act that allow for individual complaints, we want to do that here so that we can empower as many persons as possible to activate their rights.

Madam Chairman: So let me clarify. What you are saying then is that the policy provides for an individual person to make a claim of sexual harassment?

Ms. Boondoo: Yes.

Madam Chairman: Through which procedures?

Ms. Boondoo: So they would not have to go to a union to lay a complaint before the Ministry. They can lay a complaint—

Madam Chairman: So they come to the Ministry?

Ms. Boondoo: Yes. And they would not need to get an attorney either. They can come themselves so they are saved costs in that regard also.

Madam Chairman: Members and officials, we have simply scratched the surface of what I think we want to elaborate on. Our first objective dealt with challenges of sexual harassment in the workplace and we identified challenges, such as fear of losing a job as one of the main challenges, and embarrassment. Some victims have turned around to feel sorry even for the perpetrators.

We identified, as well, that the lack of awareness of your rights as a worker is also one of the pressing problems and some workers do not know or understand that what they are going through is not a right thing and, therefore—and maybe some of the perpetrators as well are unaware that they should not be doing this. And so, awareness on different levels is very important.

We also spoke about the fact that companies do not have proper mechanisms, many of them. Even with a sexual harassment policy in place, the mechanism of dealing with the complaint is not clear and therefore it can frustrate somebody who comes to complain, and when they do not know exactly what is happening and their complaint is not viewed as serious. So the policy is there. So you will say we have a policy, but in terms of the roll-down, there is nothing there.

We also spoke about the fact that though we are all clear in our minds that there is a problem, there is not enough data to actually suggest the width, depth, of the problem because there is a severe case—and I think all of us are saying—of under-reporting. But the extent of the under-reporting is not fully clear and if there were some data that could inform that, it would make the problem even clearer to us.

We spoke about the fact that persons accused of sexual harassment, even if they are proven to have committed the act, one of the things—no employer can be mandated to fire and therefore they may be transferred to another department, they may resign from that job, go to another job without any treatment of the root cause of the problem. And we heard from the Ministry of Labour and Small Enterprise Development that the National Policy does mention that aspect of treating with the perpetrator who is maybe a repeat perpetrator; what is happening with that person; how that person is treated so that they stop the behaviours that they are exhibiting.

We spoke about the fact that in many cases it is important to involve a third party in the discussion with respect to what has happened with the incident so that there are clear records of the behaviour, the incident, from another party that may prove very useful in certain cases. If you have an employer, for example, as the one who is being harassed, that may give you some level of outside influence that can look at the problem from a different perspective and assist in ensuring that the process is followed properly within the organization.

So we have looked at a lot of issues but one thing that we have not been able to look at today is our third objective where we look at the policy and legislation around the region, and what the introduction of the policy can do. We scratched the surface there when we mentioned now that an individual can make a complaint to the Ministry of Labour and Small Enterprise Development, not have an attorney, so it makes it easier now for someone to exercise their right. But there is a lot more I think we need to

discuss with respect to the policy: what the policy does, steps that we are taking for the awareness, policy as opposed to legislation and where we have to go and need to go if we want certain outcomes, what can we expect and how we go forward.

But, unfortunately, we need a little more time to discuss that aspect, which I think is critical, because having the policy there is one thing, knowing what to expect, how to use it to our advantage and the difference between policy and legislation, I think those are issues that we need to delve deeper into. And, therefore, I would want to ask our officials who are here with us to hold their closing comments, because I think that kind of discussion is very important and we would want to ask you to come back to meet with us at our next meeting where we also have some other NGOs coming in to weigh in on this very important topic. I think we will be short-changing ourselves and the country, especially, at this pivotal time, where we have a National Policy, if we do not clearly elucidate some more of the issues that will come to bear as we delve into the policy and the legislation and so, on the issue.

So the members of the Committee have concurred, and we agree that we will all want to see you back with us, and so the Secretariat will be in touch as we meet again to really strengthen what will come out of this enquiry which will be the report that we will disseminate to the different ministries, and so on, involved, so that when we discuss this it will be a full discussion and a full report as we go forward.

So I want to just thank you so much for being here and I want to tell you that we look forward to seeing you at next month's discussion—April 12th I think is our date. So the Secretariat will be in contact and we look forward to further fleshing these issues out for the benefit of our country. So thank you so much, members of the Committee, the officials who are here with us and I want to, as this time, adjourn today's proceedings.

12.05 p.m.: *Meeting adjourned.*

VERBATIM NOTES OF THE TWENTY-SIXTH MEETING OF THE JOINT SELECT COMMITTEE ON HUMAN RIGHTS, EQUALITY AND DIVERSITY HELD IN THE J. HAMILTON MAURICE ROOM, MEZZANINE FLOOR, (IN PUBLIC), OFFICE OF THE PARLIAMENT, TOWER D, PORT OF SPAIN INTERNATIONAL WATERFRONT CENTRE, #1A WRIGHTSON ROAD, PORT OF SPAIN, ON FRIDAY, APRIL 12, 2019 AT 10.33 A.M.

PRESENT

Dr. Nyan Gadsby-Dolly	Chairman
Mr. Esmond Forde	Member
Mr. Kazim Hosein	Member
Mr. Rushton Paray	Member
Mrs. Hazel Thompson-Ahye	Member
Ms. Candice Skerrette	Secretary
Ms. Vanna Jankiepersad	Assistant Secretary
Ms. Aaneesa Baksh	Parliamentary Intern
Ms. Ria Rampersad	Parliamentary Intern

ABSENT

Mrs. Glenda Jennings-Smith	Member
Mr. Dennis Moses	Member
Mr. Saddam Hosein	Member

MINISTRY OF LABOUR AND SMALL ENTERPRISE DEVELOPMENT

Ms. Sangeeta Boondoo	Senior Legal Officer
Ms. Sabina Gomez	Chief Labour Relations Officer (Ag.)

**OFFICE OF THE PRIME MINISTER –
GENDER & CHILD AFFAIRS**

Ms. Jacqueline Johnson	Permanent Secretary
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EMPLOYERS CONSULTATIVE ASSOCIATION

Ms. Stephanie Fingal	Chief Executive Officer (Interim)
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EQUAL OPPORTUNITY COMMISSION

Mrs. Lynette Seebaran-Suite	Chairman
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EQUAL OPPORTUNITY TRIBUNAL

Mr. Narendra Lalbeharry	Registrar
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WOMANTRA

Ms. Stephanie Leitch

Director

**WOMEN'S INSTITUTE FOR ALTERNATIVE
(WINAD)**

Ms. Folade Mutota

Executive Director

**NETWORK OF NGOS OF TRINIDAD AND TOBAGO FOR THE ADVANCEMENT OF
WOMEN & WORKING WOMEN FOR SOCIAL PROGRESS (WORKING WOMEN)**

Mrs. Jacqueline Burgess

Network Coordinator

TRINIDAD AND TOBAGO INSTITUTE FOR WOMEN IN LEADERSHIP (TTIWL)

Ms. Hazel Brown

Director

Madam Chairman: Good morning everyone. It is my pleasure to reconvene the 26th Meeting of The Joint Select Committee on Human Rights, Equality and Diversity. This public hearing is being broadcast on Parliament Channel 11, Parliament Radio 105.5 FM and the Parliament's YouTube Channel, *ParlView*.

I would like to welcome the officials present with us today from the Ministry of Labour and Small Enterprise Development; the Office of the Prime Minister; the Equal Opportunity Commission; the Equal Opportunity Tribunal; the Employer's Consultative Association; Working Women for Social Progress; the Network of NGOs of Trinidad and Tobago for the Advancement of Women; and the Trinidad and Tobago Institute for Women in Leadership.

My name is Dr. Nyan Gadsby-Dolly. I am the Chairman of this Joint Select Committee and at this point I would like to invite the members of the Committee who are here with us to introduce themselves, starting on my right.

[Introductions made]

Madam Chairman: Thank you so much. I would like to now invite the officials who are present with us to introduce themselves, and we can start from my left with the Permanent Secretary of the Office of the Prime Minister.

[Introductions made]

Madam Chairman: Okay. Thank you so much to all the officials who are here. The purpose of today's meeting is to continue discussions on sexual harassment in the workplace.

Approximately one month ago, the Joint Select Committee on Human Rights, Equality and Diversity met to examine sexual harassment in the workplace. We explored many issues, including the underreporting of sexual harassment and possible reasons for same, as well as the definition and forms of sexual harassment. Today, we continue this discussion with a civil society-enhanced panel of officials joining the Ministries and agencies which were present during the first leg of this enquiry.

Our purpose today is to add to the body of information gleaned on the last occasion, specifically referencing the third objective of the enquiry, which reads:

To examine and make recommendations on:

- (a) Current management procedures and mechanisms to seek redress as a victim of sexual

harassment in the workplace; and

- (b) Current legislation and policies, local regional and international, to treat with victims of sexual harassment in the workplaces of Trinidad and Tobago.

I would like to acknowledge that we did receive written submissions from 16 entities: WINAD, with eight NGOs contributing to this submission; the Network of NGOs of Trinidad and Tobago for the Advancement of Women; the CEDAW Committee of Trinidad and Tobago; the Equal Opportunity Tribunal; the Ministry of Labour and Small Enterprise Development, inclusive of the National Workplace Policy; the Office of the Prime Minister; the Equal Opportunity Commission; the Employers Consultative Association; the International Labour Organization; the Industrial Court of Trinidad and Tobago; the Trinidad and Tobago Police Service; the United Nations; UNICEF; the Human Rights Clinic of the Hugh Wooding Law School; the Faculty of Law, UWI; and the Office of the Ombudsman of Trinidad and Tobago.

At this point, our listeners and viewers can send questions related to today's topic via email at parl101@ttParliament.org, or on [facebook.com/ttparliament](https://www.facebook.com/ttparliament), or on Twitter @ttparliament.

At this time, I would like to invite brief opening remarks from the entities that did not appear at our first public hearing. And so those would be the Equal Opportunity Tribunal, the Working Women for Social Progress and the Network of NGOs of Trinidad and Tobago for the Advancement of Women. I think we have WINAD joining us and Ms. Hazel Brown, Director of the Trinidad and Tobago Institute for Women in Leadership. So, I will call the names that we have here as we invite comments from you. So let us start with the Equal Opportunity Tribunal.

Mr. Lalbeharry: Thank you, Madam Chair. The Equal Opportunity Tribunal essentially is the superior court of record that operates under the Equal Opportunity Act. We are mandated to hear matters of discrimination that have been sent to us by the Equal Opportunity Commission.

As indicated in our submission, we do have certain matters that have come before the court relating to sexual harassment. And these are matters that we would need to make a pronouncement on in the near future.

We are really here to provide any assistance we can in relation to the interpretation of our current legislation, and any assistance in terms of how that relates to sexual harassment.

Our submission included other international agencies and legislation at an international level pertaining to sexual harassment, and essentially outlining some of the deficiencies in Trinidad and Tobago as it relates to sexual harassment and maybe where we can be in terms of legislation for sexual harassment. Thank you.

Madam Chairman: Thank you so much. I would like to invite now Mrs. Burgess.

Mrs. Burgess: Okay, the Network of NGOs, just last year held a symposium, a dialogue really, where the topic was sexual harassment. Working Women as well has been involved in raising awareness on sexual

harassment. And in January of this year, we had our anniversary lecture dedicated to sexual harassment. We have always advocated for special legislation for sexual harassment. We are now leading towards supporting the EOC amendments. Essentially, what we see our role as, is really raising awareness on the issue and how people can treat with it.

Madam Chairman: Thank you. Ms. Folade Mutota of WINAD.

Ms. Mutota: Thank you very much, Madam Chair. WINAD exists to advance the rights of women and girls through thought leadership, mentoring, quality service delivery and stakeholder engagement. A core value for us is collaboration, and our internal policy on stakeholder engagement informs our agenda for expanding visibility and participation of NGOs in key decision-making processes within the state sector.

Naturally, when WINAD was invited to make a submission to this Committee on the issue of sexual harassment, we extended the invitation to other civil society partners, in an effort to have their voices and the voices of others also recorded in the work of this Committee. Some of the organizations we invited to collaborate on the written statement we submitted were also invited to make submissions to this Committee, but some were not. And for the benefit of the listening and viewing public, I want to list the names of the organizations that contributed to the statement and they are: AFETT; the Banking Insurance and General Workers Union; CAISO; the CEDAW Committee of Trinidad and Tobago; the Family Planning Association of Trinidad and Tobago; Fire Circle; and WOMANTRA. I also wish to recognize Mr. Sean Morris, who is WINAD's other representative here this morning.

Whilst acknowledging the definition of “sexual harassment” advanced by the Committee, for us sexual harassment is not solely a workplace issue. It spans multiple settings, not all of them workplaces, and does not always occur between workers. It also occurs in cyberspace. It occurs also between beneficiaries or service providers and institutional stakeholders, for example, between educators and students, health care workers and patients, police officers and victims of crime, religious leaders and their members, et cetera.

Sexual harassment includes conduct that creates a hostile or humiliating environment through offensive or taunting references to sex and to gender. This is the most prevalent form of sexual harassment reported by the LGBT-plus community. For us, all sexual harassment must be prohibited, whether it takes place within the organization's premises or outside, including at social events, business trips, training sessions or conferences sponsored by the company or the organization.

We understand the challenges which underreporting causes for policy development and legislation, and wish to suggest that underreporting is largely a consequence of the nature of sexual harassment characterized by fear of victimization, retaliation, stigmatization and gender stereotyping, which ascribe roles and levels of power to men and women.

And finally, we are of the view that bystander training to empower onlookers to recognize and act

when they witness sexual harassment, along with whistleblowing policy that ensures anonymity can potentially increase reporting. Thank you, Madam Chair.

Madam Chairman: Thank you so much. Ms. Hazel Brown.

Ms. Brown: Thank you very much, Madam Chairman. We just want to add that in considering issues of public policy, is important for us to be clear about the context in which these discussions and decision-making take place. And the context in which we want to suggest that sexual harassment should take place is a human rights context in which sexual harassment, which is considered to be a question of power relations, is addressed in the context of democratic rights and freedoms of the people who are affected. Hence the reason we have pursued this matter as a human rights issue in the context of how public policy is developed. Thank you.

Madam Chairman: Thank you so much. At this time, we are going to begin the questioning. I want to remind both our officials, as well as the Committee members to direct your questions and concerns to the Chair as we begin.

So, let me start with the Ministry of Labour and Small Enterprise Development, as we set the context. We have recently developed and given to the public the National Policy on Sexual Harassment. Has this been laid in Parliament?

Ms. Boondoo: Madam Chairman, yes, the policy would have been laid in Parliament by the hon. Minister in the month of March, on International Women's Day. It would have been laid in Parliament.

Madam Chairman: All right. I just want to suggest that maybe we have to check the records to ensure that the document was actually laid.

Ms. Boondoo: Madam Chairman, as far as—the Minister made a statement in Parliament, so we will have to double check and ensure that the document itself was laid in Parliament. Thank you for the guidance.

Madam Chairman: Yes. Okay. So that document is now public. It is on the website, and so it is available for the country to look at. What I want to ask is: What exactly is expected from employers, business places, from the public? What exactly is the expected outcome of having this National Policy on Sexual Harassment? Is it just a piece of—a document that is there for you to look at and to see? What goes behind this?

Ms. Boondoo: Thank you for the opportunity, Madam Chairman. The policy is, you are correct, on the Ministry's website, www.molsed.gov.tt, for the benefit of the listening public, under the resources tab. The first thing we would like everyone to do is to download a copy of the policy from the website and read it, because it not only speaks to employers and employer organizations but it also speaks to workers.

The policy was developed on the premise of a rights and responsibilities framework within the workplace. So it spells out both for all the parties at the workplace. Some key elements of the policy are that we have included in the policy tools for use. For instance, we have prepared a draft complaints

procedure and guidelines; a draft complaints form. So for organizations that do not already have a sexual harassment policy at the workplace and for workers who are not familiar with one, they can not only use the policy, but those guidelines at the workplace in order to implement.

Now, with respect to—those are the immediate aims. The Ministry proposes that the policy would not only be subject to implementation, through public awareness campaigns and through education at various levels, we would have done a media blitz with radio and TV appearances to draw attention to the policy over the last couple of weeks. What we also aim to have implemented in the long-term is legislation. We are aware that currently the legislative framework will allow for redress of sexual harassment complaints through different fora, but we want to create specific legislation to bring implementation to this policy to the fore.

Madam Chairman: So for the benefit of the public who is listening, they can visit the website, they can download the policy itself and read that. Now, having read it, they may be more aware of what their rights are, what exactly is sexual harassment. They may be able to define behaviours that have been advanced towards them and so, that maybe fall into the category of sexual harassment.

Is there any impetus at this point for employers to take on board the guidelines that are outlined in the policy, to implement sexual harassment policies within their—and procedures—workplaces, because we understand very clearly that though there may be some policies existing, in some cases the procedures are not clearly outlined and therefore, when people make the complaint they end up hitting a brick wall because there is no actual structure for their complaint to be taken, investigated and dealt with, and so on. So is there any impetus? What would prevent or what would—is there any punitive clause for someone not implementing the guidelines in the policy?

Ms. Boondoo: At this time there is no punitive clause within the policy itself. But what I would like employers to be aware of—and employees, is that there are specific pieces of legislation that redress can be found under currently, notwithstanding that this policy does not have that. And I would like my colleague, Ms. Gomez, the Chief Labour Relations Officer, she can go into a little further detail as to the specifics of the Ministry's Conciliation Unit under the Trade Dispute Procedure.

Ms. Gomez: Good morning, Madam Chair, members and the listening public. Currently, what exists now, we have had so far coming in for the year, I think we have had about five cases of where workers would have gone to trade unions to seek representation in terms of issues arising out of sexual harassment claims. So they will come through the dispute procedure.

It could be because the worker would have made claims and the worker would have been treated in a manner not according to good industrial relations principles and practice. So the worker would then seek redress through a trade union and have the trade union bring the matter to the Ministry. So that is how—so it would not come under a direct case of sexual harassment. It would be issues arising out of

sexual harassment. It could be a demotion. It could be constructive dismissal. So that is how the matter is brought to the Ministry under the Industrial Relations Act.

Madam Chairman: So I just want to interrupt you to be very clear, to make sure that the viewers understand. You are in a workplace, you believe you are being sexually harassed. You, the worker, do you have to go through a trade union? Suppose you are not a unionized worker, how are you to seek redress under the policy that has now been advanced by the Ministry of Labour and Small Enterprise Development? Because I am hearing you speaking about going through the union.

Ms. Gomez: Yes.

Madam Chairman: What happens to the worker who is not unionized?

Ms. Gomez: Well, that is for the worker who is not unionized. Currently, we have employers or companies where there are unions or what we call recognized majority unions which is that the union has majority bargaining status within the organization. Those companies—and we went through a list in terms of how many organizations are unionized and they have sexual harassment policies. So there are sexual harassment policies that exist within unionized organizations and it could be found in the collective agreement, the collective agreement that is negotiated between the employers and the trade unions. So there is coverage right now. It may need to be updated, but workers who belong to a unionized environment would have had some level of protection, whether it be under a health—some collective agreements have it under health and safety Articles, some have it under basic harassment clauses, where sexual harassment is included. And we have examined some of those and they need to be updated. So there are avenues for redress for unionized workers—

Madam Chairman: Through the union.

Ms. Gomez: Right. But an ordinary worker on the street who suffers sexual harassment in the workplace, as it is right now, there is a policy and there is awareness. But in terms of legislative avenues for redress as it exists right now, it has to be through the Industrial Relations Act under section 51(1).

Madam Chairman: So, if I remember correctly, when we met last month, just as you were leaving we were looking at this point of a non-unionized worker being able to go into the Ministry of Labour and Small Enterprise Development Conciliation Unit to make a complaint and get guidance? Yes?

Ms. Gomez: Yes.

Madam Chairman: Could I get a little more on that? For the benefit of the members of the public who are listening, I want them to fully understand what this policy advances for them.

Ms. Gomez: All right, in terms of if an incident happens on the workplace and the worker does not know what to do, the worker is free to come in to us and explain the situation. We will take detailed notes and probably advise them. If they have not done so, to write their employer, put it in documentation form so that it is properly documented with dates and times, rather than just it being word of mouth. So that will

initiate any process of investigation. So we advise them to go back, write what happened, whether there is an HR person in the organization that can take up the issue and have it properly investigated. If we find that in some instances where—there was an instance that came to me recently where the worker would have made the claim and she started to be harassed by her female coworkers, male coworkers.

They started to harass her and attack her for making the offence. Even when the investigation was being—this is the claim that she made to us—carried out, it was a unionized environment but the union represented the male person and she felt she was left alone without representation in the conduct. So you find that even within organizations right now, there is a bit of uncertainty. And with sensitization and with the policy being implemented and having workshops, it will bring some level of, I do not know, clarity in terms of how an investigation is to be conducted and what is to happen. Because this was an actual case that came in to us.

Madam Chairman: Ms. Boondoo, you want to get into it?

Ms. Boondoo: Yes, in addition, Madam Chairman, at page 22 of the policy we would have outlined current avenues for redress under legislation. So I just want to draw some attention to, for instance, sexual harassment in the workplace or otherwise, could also constitute a criminal sexual offence and there is provision for that under the Sexual Offences Act. A complaint can also be filed under the Occupational Safety and Health Authority Act, where at section 6 an employer has a general duty to employees to maintain and provide a safe working environment that is so far as is reasonably practicable without risks to health and safety. And there is also provision where it is the grounds of discrimination under the Equal Opportunity Act for a claim to be made there. So notwithstanding, there is no specific policy, there are other legislative avenues that could be used in addition.

Madam Chairman: Mr. Lalbeharry.

11.00 a.m.

Mr. Lalbeharry: Thank you, Madam Chair. I am having sight of this, and I would just like to make some comments on it. We have to really be careful in terms of saying that at this point the Equal Opportunity Act seems to cover sexual harassment. I do not want to prejudge or have my words taken that we are prejudging any of the matters before the Tribunal, because we do have matters relating to sexual harassment before the Tribunal. But a perusal of the Equal Opportunity Act would show that essentially there is really no mention of the words “sexual harassment” and we have to be careful in saying or seeking to interpret that the Equal Opportunity Act, at this time, in its present way can deal with issues of sexual harassment.

Sexual harassment, it is a form of harassment. If you look at other legislation around the world, let us say we take, for instance, the UK. Their heading as it relates to harassment starts with section 26 as it relates to harassment and under that you then have certain forms or types of harassment set out. So, for example, you have where one person harasses another in what is meant to violate their dignity, et cetera.

And then you have where a person is harassed because of a protected characteristic. You can have those characteristics as, they are harassed because to their age, their disability, their gender reassignment, race, religion, belief, sex or sexual orientation.

My interruption in terms of—that we are using the words “sexual harassment”, it is really the activity in saying that this person is being harassed in a sexual way. So seeking sexual favours, you know, these quid pro quo kind of thing, where you want certain things from the person of a sexual nature. But we have to be careful at this time because the Tribunal has yet to make a pronouncement on any issue as it relates to sexual harassment.

So that we do not want a situation where it is being said that the Equal Opportunity Tribunal or the Equal Opportunity Act deals with sexual harassment and you have persons coming forward. And then when, or if a matter is dismissed on the basis that the Equal Opportunity Act, as far as, you know, if it happens, that it does not deal with sexual harassment you can then have persons wanting to complain and say well we were told that the Equal Opportunity Act and the Equal Opportunity Commission and the Equal Opportunity Tribunal, we were told that you all deal with sexual harassment and then you all are coming to say that you do not.

So I am just saying, I am not saying that we have made a decision as yet, but I just want us to be careful in terms of how the interpretation comes about. Because this really is a policy document and it is really meant as a document to build on. So, you know, I just want us to be careful in that respect. Thank you.

Madam Chairman: That is a very interesting point to note.

Mrs. Seebaran-Suite: It might be appropriate for me as we are on that point and as it were we are sister organizations both created under the Equal Opportunity Act, with your permission, it might be appropriate for me to make some remarks on Mr. Lalbeharry’s submission.

Madam Chairman: Certainly.

Mrs. Seebaran-Suite: Yes. The Equal Opportunity Commission itself is an independent body which is tasked with the responsibility of advocating for equality and nondiscrimination in Trinidad and Tobago through advocacy, research, and we also have a core mission of receiving complaints of discrimination on certain bases, on the basis of sex, religion, disability, marital status, origin, and so on. And we operate in four areas; in the area of employment, in the area of the provision of goods and services, in the provision of housing and training.

And there is no doubt in my mind and in the international jurisprudence and in the international conventions to which Trinidad has signed on that sexual harassment is a well judicially recognized category of sex discrimination, both in the case law across the Commonwealth in the United Kingdom. I cite the Porcelli case which is a Scottish judgment where there is a very, very clear cut and persuasive

pronouncement which is of highly persuasive authority in our courts including the court of which Mr. Lalbeharry is the Registrar that defines sexual harassment as a category of sex discrimination.

Beyond that we have all of the international conventions that we have signed. You have the UN Declaration on Women, 1993, I believe it is, which clearly defines sexual harassment as a category of sex discrimination. We have the Beijing platform for action. We have the sustainable development goals. I mean there is a plethora of international documents and instruments which have already recognized that sexual harassment is a category of sex discrimination.

Indeed, in the Equal Opportunity Commission we received—our latest report is our report for the year 2017. Across the six categories of discrimination that we receive complaints in, we received about 20 per cent of complaints in the area of sex discrimination, and five of those have included complaints of sexual harassment and we are currently dealing with those.

Now, the split in the work between the Equal Opportunity Tribunal and the Equal Opportunity Commission is that the Commission is tasked with the responsibility of receiving the complaint, investigating the complaint and conciliating the complaint, and we have been doing that. If it is that the complainants and the respondent do not reach an agreement in a confidential conciliation, we at the Commission have the responsibility of initiating a case with the consent of the complainant in the Tribunal. The Tribunal is headed by Madam Justice Donna Prowell-Raphael, and she has the status of a Superior Court of Record. So that it is in that agency if we do not conciliate a person can get damages, injunctions, re-instatement, whatever remedy there is.

I am not quite sure what is the appropriateness of a court entering into this discussion as to policy, which is—the court is to implement policy and I believe that there is a danger here of telegraphing perhaps an unfortunate position. I do not think that it is the position of a court to be entering into this policy discussion. And in any event I am convinced as an attorney that there is no doubt that there are two clear cut jurisdictions in Trinidad and Tobago which can entertain complaints of sexual harassment. One of them as has been explained by Ms. Boondoo and Ms. Gomez is in the Industrial Court and that is well established jurisdiction. There are important pronouncements coming out of the Industrial Court. We remember the Republic Bank case in the 1980s where sexual harassment in the workplace has been clearly defined and dealt with judicially.

So the process in the Industrial Court, as I am sure labour has already said and will confirm is that they are confined to the workplace, they are confined to workers, perhaps managers may have a difficulty in litigating sexual harassment in that forum. But the basis of the jurisdiction in the Industrial Court setting in the labour setting is that the employer has a responsibility to provide a safe system of work, and if they do not provide a safe system of work in not attending appropriately to a complaint of sexual harassment, they are in breach of that and the worker can create a grievance. They have to find a union, create a

grievance, go through the procedure in the Industrial Court, the conciliation, the grievance mechanism and then take it to the Industrial Court.

In the Equal Opportunity Commission what we do is, we receive the complaint, we investigate it, if we do not conciliate we send it up to the Tribunal. Now our organization mirrors exactly the Caricom model legislation in that the architecture is the same. You have a commission, you have a tribunal, you can spread your receipt of complaints across four areas, not just employment, we can deal with the provision of goods and services, housing, education, training. These are other areas as WINAD mentioned where you need relief as well.

So, I want, in concluding as it were, to endorse the need for specific legislation in Trinidad and Tobago to deal with sexual harassment, to deal with any lingering doubts that any agencies or persons may have as to the existence of this remedy, the well-established existence of this remedy. And what I want to lay in this Committee is that there are options. The Equal Opportunity Commission is already deep into work with the Attorney General with an ad hoc committee where we have drafted amendments to our Act which would not introduce any new law, but which would just bring clarity. It would declare that the remedy already exists for the avoidance of doubt and it would provide some definitions. It would mandate that workplaces should promulgate a code. We would not put the code in a hard document, maybe perhaps an appendix and what we say is that the remedy should be available in a workplace that has five or more employees.

So that is one model of legislation which is already in train, it is just one model. Another equally appropriate model would be for there to be a stand-alone legislation which would confirm and declare that there already exist these jurisdictions, both in the Ministry of Labour and Small Enterprise Development and in the Equal Opportunity Commission and go through with the definitions and so on.

So there are options. It is desirable for there to be legislation and what I say is that the—it would lay to rest any lingering doubts as to whether—now in terms of—

Madam Chairman: Mrs. Seebaran-Suite, I want to move off this point.

Mrs. Seebaran-Suite: Yes. All right, very well, Madam.

Madam Chairman: And I think your point has been well established. I want to indicate though that the remit of this Committee is to examine legislation, policies that relate to sexual harassment, both regional—at the local level we do not have legislation, stand-alone legislation. But I also want to say that the role of the Tribunal as opposed to the Commission, I would imagine that those are expressed by the Act, and I am not—if I heard correctly, and if I understood you correctly, I do not know if it is the role of the Tribunal to simply act on a recommendation from the Commission. I would imagine that they would do their own submission of evidence and so on and make a determination.

But whether that is so or not, the issue that I want to take away from what you would have raised,

is that there is doubt. Some may be convinced of the applicability of that Act to the sexual harassment and that may have been played out in other jurisdictions. But in our own jurisdiction it would be the role of the court to decide that. And therefore, it begs the question, it really emphasizes the point then that we may need, as we are thinking in our country to move towards specific legislation so that the matter is not open to interpretation as it clearly is right now. Because obviously there are some for and there may be some views against as was expressed by the Tribunal. So that discussed and I want to thank you for that submission.

I want to bring the issue of the “worker”, the whole definition of “worker” and I want to bring the NGOs who are present with us into this discussion to speak about the issue of the worker. And we spoke about the unionized worker, we spoke about the un-unionized worker. What about those people who work and are not captured in the definition of a worker and what would be their position with respect to sexual harassment? Could I invite maybe WINAD to begin this discussion on what happens with those persons who are not captured by the definition of worker, what happens to them and what is their role?

Ms. Mutota: Thank you very much, Madam Chair. It is a matter that we address to some extent in the joint statement that was submitted to the Committee. And our argument there was that, and again it has to do with the fact that we have broadened the definition of sexual harassment outside of the workplace and allowing persons who may not be identified as workers in that particular setting to be covered as well. Which is why we talk about people who experience sexual harassment, who may come to a workplace, or an organization, a company to provide service or to get service and they are harassed.

And so for us workers and particularly—and this was a contribution from NUDE, the National Union of Domestic Employees. The business about domestic employees not being considered workers is very problematic and we would like to see that category of worker covered as well in the legislation and I think that the national policy has attempted to do that. There is also the current situation of migrant workers particularly from countries that are near to us, and we feel that there needs to be coverage of those persons as well, who may find themselves in domestic situations or commercial situations and their rights are being eroded.

So for us we want to expand the definition. We want to capture any and all workers who are not currently covered under legislation and I want to flag particularly domestic workers and migrant workers.

And if I may take the opportunity please, Madam Chair, through you to find out really if there is a space for comments from the public on the policy that the Ministry of Labour and Small Enterprise Development has presented to the Parliament in which the Minister made a statement and I guess it is not laid as yet, and therefore, there may be space for discussion still. I ask that because and I am speaking here now as WINAD and not as the collective that submitted the statement to your Committee.

Internally WINAD has done a review of the policy that the Minister presented in Parliament in

March 2019 and we have some comments. First of all we want to thank the Ministry for that work. It is really advancing the work that we have been doing for a long time. But we have comments from the definition that the Ministry has selected to use in the policy right through to the role and the responsibilities of the employers, the mandatory implementation of the policy, et cetera, and we would be very happy to make submissions to the Ministry if there is space for that to be done still. Thank you.

Madam Chairman: I want to invite some of the other NGOs to weigh in on this. But before I do that, I just want to ask a quick straight question to the Ministry of Labour and Small Enterprise Development. Is there still room for comment?

Ms. Boondoo: Madam Chairman, definitely as we seek to implement the policy we welcome further suggestions and recommendations.

Madam Chairman: Okay, good. So with that being said, could I ask some of the other NGOs to weigh in on the issue of the coverage of other workers with respect to sexual harassment? Ms. Brown?

Ms. Brown: Yes, the role of the trade unions. If you look at the policy under 9 where it talks, “of action by stakeholders”, there is a lot of discussion about the role of the employees. There is nothing there that speaks specifically on the role of the trade unions. Now, we know that some trade unions have in fact in their agreements included provisions of sexual harassment that cover what happens in that specific organization. But I think there is a need to expand in 9 where this—where we talk on the action of stakeholders for a more definitive role and responsibility for trade unions. It is significant that among the people who are here, we do not have trade unions.

Madam Chairman: I think one other wants to comment. Mr. Burgess?

Ms. Burgess: I want to add in the case of say NGOs, where we have volunteers, they too would not be recognized as workers, but they could be harassed and how do we treat with those people.

Madam Chairman: And I think we have—just state your name, WOMANTRA?

Ms. Leitch: Yes, Stephanie Leitch, WOMANTRA. I would like to apologize for arriving late this morning, and I did not have the opportunity to give my oral statement, and I am wondering if I can do so now?

Madam Chairman: You will have an opportunity to give a closing. So, I want to ask you to just combine it in there where we are going to close. So that we would not lose the trend of the discussion as it is now.

Ms. Leitch: No problem.

Mr. Forde: Thank you, Madam Chair. Now in terms of all the various groups, Ministry of Labour and Small Enterprise Development and all represented here, in terms of a definitive definition of sexual harassment, right, I have read in one of the documents here as:

“...a sex based behaviour that is unwelcome and offensive to its recipient”.

Is that the general definition held by all groups, basically?

[Officials indicate agreement]

Mr. Forde: All right, in going forward you know we have been hearing a lot about sexual harassment, you know, most times in the workplace, but I just heard Mrs. Seebaran-Suite mention and from reading and so on it can be in many other different categories. But I think from where I sit, you know, there is the notion that it is mainly based on this sexual interference in the workplace and most times with boss and subordinate, for want of a better word. Where it is that, and all that has been said and done, why it is today in 2019 that there is no one definite legislation? I think, you know, we are hearing the Ministry but no time line has been mentioned.

Yes, a presentation was made to Cabinet in February 2019. Yes, the Minister made a statement and you mentioned also in your presentation that the National Workplace Policy on Sexual Harassment is being currently finalized for implementation and it still has to be submitted to Cabinet. What is your timeline in going forward? What is your mandate? What is your focus in terms of when can we say legislation would be forthcoming?

Ms. Boondoo: The policy would have been approved by Cabinet. At this point in time with respect—so I am going to answer the—try to put into prospective of the stages to getting to legislation. So we are actually—there are four stages to getting to legislation; policy, legislative drafting, parliamentary stage and then the implementation stage. That is with respect to legislation.

We are at the stage of having had the policy approved. So what we are doing now is we are preparing drafting instructions which we would utilize in accordance with the Chief Parliamentary Counsel's Department of the Minister of the Attorney General to finalize the draft legislation for laying in Parliament to get to the parliamentary stage.

At this point in time and given the value of the work of this Committee that we are currently here before today, and some of the comments that we have heard from the first hearing of this Committee, we thought it wise to wait for today's session, and to hear all of the comments so that we would be in a better position to respond and draft appropriately effective legislation to lay in Parliament. So I cannot give you a definitive timeline. It is one of our priority matters.

Going back historically this issue of sexual harassment in the workplace would have been a subset of basic terms and conditions of work legislation that has been in the drafting for almost 19 years. And because of the magnitude of that piece of legislation and the way that things have been happening in terms of the complaints we have been receiving, a decision was made last year to pull sexual harassment out of that piece of legislation so that we can deal with this more effectively as a stand-alone issue. And as I said we do not have a specific date and time, but it is a priority and as we take the comments and the recommendations from this Committee we will have to go back at the Ministry and determine in the implementation of this policy what timeline we would aim for, for legislation.

Mrs. Thompson-Ahye: Ms. Boondoo, in your opening statement you mentioned the phrase “long-term”

and that had me quite disturbed. You also said that remedies are currently available and the union could assist. Are you aware that most of the cases including the celebrated Republic Bank case the union represented the harasser? And if you look at a lot of the judgments that are coming out of the court it is really some harasser, who has been fired and the union has come to say he should not have been fired. So, I do not know what comfort one can give a worker when that is the way it is really being playing out in the courts.

Now, since around 1991 you had the Caricom model legislation, a series of legislation. Some people are here who sat at Normandie Hotel for a number of days and we trashed it out. So we got the Domestic Violence Act. So is it not fair to assume that there is no sense of urgency, because Belize came on board in 2000 and you have other people. But is it not a fact that it is not really a high priority, because all you need to do is to take the Caricom legislation, the model legislation that was trashed out by a number of us and bring it on board that is what happening in, you know, the other parts of the Caribbean.

So there is no hard math in that, this is a draft that can be brought to Parliament in short order if it is that we feel as a country that this is important, and that many people are suffering in this country because of sexual harassment, the lack of having these laws.

Madam Chairman: Yes, please.

Ms. Boondoo: Thank you. First of all, let me apologize for causing any fear by the use of the words “long-term”. It was not meant to say that preparing legislation is a long-term goal. Legislation being implemented is the long-term goal. We want to make sure that we have legislation to address the issues that are currently not addressed.

With respect to the harassers being the ones represented by unions in cases, recently, within the last couple of months the High Court would have actually upheld the decision to terminate an employee because—under a breach of contract because the employee would have been harassing someone. So we are seeing a change where it is no longer because a harasser has suffered discrimination, but where persons who have been actually sexually harassed and suffered are finding more of a voice. And what we want to do with this policy is to start raising awareness that you do have a voice and we are putting things in place, in addition to what is already in place. Because we have found that to be one of the biggest issues that we have had in terms of persons not feeling empowered enough when they have been victims of sexual harassment.

With respect to implementing the Caricom model legislation, we would have reviewed the Caricom model legislation as part of our process and we utilize all of the relevant Caricom model labour legislation, the drafts that they would have done in the entire labour legislation reform project. One of the issues that we found, for instance, within this piece of legislation and perhaps because of the age of the legislation, the draft legislation, is that it does not speak to sexual harassment happening via WhatsApp messages, or

non-verbal. And we need to review it to make sure that notwithstanding it is good as it is, we have to make sure that it is something that is effective, that is relevant to the society in which we live in, because we have sexual harassment can happen with a video message or text message. And we need to make sure that the legislation covers the various ways that sexual harassment happens.

Mrs. Thompson-Ahye: It sounds like five minutes' work.

11.30 a.m.

Ms. Boondoo: I cannot answer for anyone else in terms of those who may have come before us, but at the Ministry currently, labour legislation reform is high priority. We have gone through—there are only two existing pieces of labour legislation that we have not consulted on as yet. Sexual harassment is a priority amongst that. I agree we have a system that needs serious review, and we are doing it to the best of our abilities, and this project is the priority project at the Ministry, so we are doing the best that we can with the constraints that we do have.

Madam Chairman: Taking a comment from WINAD.

Ms. Mutota: Yes. Thank you very much, Madam Chair. And I really wanted to respond to the question from the member in terms of a definition of “sexual harassment”. As I said, our internal review, we have comments around the definition, for example, in addition to the use of the word “unwelcome” in the Ministry’s definition, we would also want to see in there “unwanted”, and we are happy for the opportunity to be able to forward our comments to the Ministry. But we also looked at the definition presented by the Ministry and we have some strong comments around the business of “unreasonable”, because we think that there is a potential inside there for us to blame the person who is making the complaint and we would like to see that tidied up.

In terms of our collective statement that was submitted to your Committee, we advanced several recommendations for consideration as definitions or, perhaps, to pull several elements of these various definitions so that Trinidad and Tobago has a relevant definition according to the Ministry for our times, and so we presented to you the definition used by CEDAW, the University of the West Indies, the definition that it uses as well, and we also looked at the Australian Human Rights organization to get some guidance from. So that we would like to point the Committee members to our written submission for examples.

Mr. Paray: Thank you very much, Madam Chair. Madam Chairman, I have three questions: one to the Ministry of Labour and Small Enterprise Development and two to the NGOs, with your permission? Ms. Boondoo, good morning. First, let me thank everyone for their submissions, it made quite a bit of interesting reading. As an employer myself, I sat with some of my own staff and we discussed the National Workplace Policy in some detail as well. I want to just identify three short paragraphs in the policy document; page 24, page 27, and if I could just quickly read it:

“Every employer must therefore take steps to develop, implement and promote a sexual harassment

policy that is suitable to the structure of their particular workplace.”

The other one:

“All Employers...will be required to submit an Annual Report to the Minister of Labour specifying the sexual harassment complaints received during that period, as well as the manner of resolution in each instance.”

And lastly:

All employers—“...shall...notify the Minister of Labour and/or the Secretary with responsibility for Labour of all cases of sexual harassment within one (1) month of the date of the report...”

What I did not find in the policy document was how will those areas be enforced by your organization? I did not get any enforcement to make sure that that will happen. Is that something that is going to be coming in the legislation coming forward?

Ms. Boondoo: Yes. Yes, member. The enforcement aspects and specifically how it will be enforced will come within the legislation, and we would have to be guided by the Chief Parliamentary Counsel’s Office as to what exactly would be most appropriate in the circumstances. But this is just to remind that this is not dissimilar from other provisions within labour legislation where there is an obligation in statute to report certain things to the Minister, and this is very important because we would have recognized that there is an under-reporting of sexual harassment. So by putting in this requirement to report, decisions can be done with as much data as possible before us at the Ministry.

Mr. Paray: Do you think in terms of the employer, in terms of punitive actions against the employer, is that something that exists in legislation in other jurisdictions?

Ms. Boondoo: Punitive with respect to—?

Mr. Paray: So you have two parties engaged in this dispute with regard to the harassment and the employer is in the middle of it. The employer ought to take some action or to take some action preventing it, or something in their policy that should speak to employees against those types of actions. The question I want to get at is: Will the employer be held in terms of having a punitive action taken against the employer by the State? That is what I want to get. If in other jurisdictions, are employers held, punitively—whether it be a cost to the parties, whether it be some sort of action against the employers themselves? Is that in legislation in other jurisdictions?

Ms. Boondoo: It is not only within other jurisdictions, but within our current labour legislation construct, when the employer has certain legislative responsibilities and it is mandated to take certain action, and they fail to, the requisite fines would apply. So one of the most up-to-date pieces of legislation with that style of drafting would be the Occupational Safety and Health Act.

Mr. Paray: So, in that case, just finally on that one, the requirement for employers to have very strong policy documents in their workplace and ensure that employees read and sign on and understand, the

message to employers really is that, look, get on board with this document, this policy document, start rephrasing, relooking at your own internal policies. Would there be a requirement in terms of the size of your companies or your business will determine whether you are going to enforce having these policy documents? Or is that something currently being looked at?

Mrs. Seebaran-Suite: Certainly, in the draft amendment to the Equal Opportunity Act that is currently before an ad hoc committee of the Attorney General, what we have proposed is that the obligation would be created in a workplace of five persons or more. But the interesting dynamic with respect to the question of how the policy relates punitively to the employer, is that it is not so much the question of the content of the policy or how well-articulated the policy is, really the issue and the problem is the commitment to management to eradicate and to deal with sexual harassment, because usually the power dynamic is that, perhaps, it is a superior officer who is preying upon a junior, and no matter how well-articulated the protocol is, if it is that the workplace values the manager more than the employee, what usually happens—and that is the experience certainly in Trinidad and Tobago, we have a number of cases right now—is that the employee complaints are managed out because the employee is of less value to the organization. And certainly abroad, what has been found is that what really assists in solving the problem is where the employer is in danger of suffering reputational damage, and sometimes they have gone even overboard where what is happening is even without due process, managers are being forced out merely because of the allegation of a threat to stop buying the product.

So what we have to try to get at—I mean, we have the protocols, they are beautiful, they are well written, they are all over the place, but the question is: How do they work and what is the protection? How do you walk through? How dare a person who is suffering from sexual harassment take it into their hands to make a complaint when they are the ones that are going to be on the line? So one of the things that we have to look at is: How do we walk, how do we design a process, whereby we walk the complainant with companions and champions, through the process? And there is also the big issue of non-disclosure agreements, so that what happens is employers, large employers have pools of money which they have there to pay off women who have been harassed, and then the women are forced to keep silent and the harasser continues to harass and the woman goes away silently and disappears. So it is not so much—we have wonderful policies all over the place—big corporations—massive policies, well-articulated policies, but it is the question of how do you get the employer to commit to eradicating this mischief?

Mr. Paray: And I am glad you said that, because the second question that I have to the NGOs—and any one of the ladies there can respond—is having heard all the responses so far from both the Ministry and the EOC and EOT and having read—I am sure you all would have read the document itself, are you satisfied that this document is adequately addressing the challenges that are being faced by complainants in these matters? Are you satisfied?

Madam Chairman: Let us take WOMANTRA first and then we will take Ms. Mutota.

Ms. Leitch: Okay. So to respond to your question and also to Ms. Suite, what WOMANTRA's position is, is that there should be a proper development of a whistleblowing procedure which is currently not included in the policy, which we feel is a critical elaboration for the safe and adequate internal grievance procedure. We recommend that any sexual harassment policy contain a robust grievance procedure, including a provision for anonymous reporting.

While we acknowledge that this channel provides certain limitations, since the victim is not identified and the details of the incident cannot be verified, it provides an opportunity for the organization to renew its commitment to training employees and management staff and ensuring the proper dissemination of the workplace policy and the organization's commitment to preventing sexual harassment.

While we also acknowledge the provisions of the policy for informal reporting, and the role of the Conciliation Unit Advisory Services, we would also recommend that the policy encourage the implementation of an Employee Assistance Programme to both private and public sectors, whereby mediation between parties is not the only remedy to resolve incidents of sexual harassment, but that victims may be able to access a therapeutic environment and independently decide on the method of their own healing.

The current policy provides recommendations for victim's response to harassment, including that victims should directly communicate their discomfort with perpetrators, and while we acknowledge this approach may be feasible in some instances, it is also important to acknowledge that differential power dynamics in the workplace make this kind of interaction very difficult for many individuals who are experiencing harassment, particularly, those who are in a subordinate position, as Mrs. Lynette Seebaran-Suite pointed out.

Further, it is important for a policy that seeks to highlight the particular vulnerabilities of women to sexual harassment, that we acknowledge that subordinated positions in the workplace are not only a result of the individual's position in the organization, but also a result of the designation of their sex itself.

So, WOMANTRA is of the view that further attention should be paid to these dynamics which will help to inform the development of victim focused remedies, including the provision of various channels for reporting, at least one of which anonymously receives complaints as well as allows for the psycho-support of victims without the perpetrator or the accused perpetrator being apprised of a complaint, or their direct involvement in the remedy determined by the victim. Thank you.

Madam Chairman: I want to just—before you move on, Mr. Paray, I want to indicate, again, that the Ministry of Labour and Small Enterprise Development has indicated that there is still room for these recommendations to be forwarded to them and taken into consideration. So I want to encourage all of the NGOs, again, to ensure that their recommendations are sent and I am sure you will speak with Ms. Boondoo

after to find the correct mechanism of sending. And I also want to ask, Ms. Boondoo, in her closing, when we reach to that point, if you can indicate how members of the public who may have been looking on and listening and would want to give comments, how they can be accommodated as well. So in the closing maybe you could accommodate that when you give your remarks.

Mr. Paray: Madam Chair, before I just issue my last question, I know the other NGOs present, I do not know if they want to just wade in on my last question in terms of satisfaction on the document.

Ms. Burgess: I just wanted to say that as this is, it is really a framework but it is incumbent on the employers to really drill down into developing their policies, you know, along the lines.

Ms. Fingal: Madam Chair, on behalf of employers—the Employers Consultative Association, we represent employers, and what we are experiencing right now is that employers are attempting to address complaints of sexual harassment. We have the policy, a draft policy, and we are speaking today about employers implementing, circulating, having employees read, et cetera, and sign, but the challenge we are seeing now is really understanding, the level of understanding. Literacy in a number of cases will be a problem, because we talk about smaller businesses, we talk today about employers who have more than five workers, but even with employers who have more than five, there is a level of challenge with literacy in understanding these policies, both at the level of the employer and the worker.

Even in the presence of having a policy, what we are seeing is the difficulty in managing a claim of sexual harassment, not for a lack of willingness, but the sensitivity of the thing, the steps to it—how do you go about engaging the perpetrator versus the complainant and so. And you find employers are doing all sorts of things which we had to tell them, wrong procedure, wrong methodology, whatever it is. So, how do we go about really educating employers even if we have the policy and the legislation?

In dealing with such a sensitive issue as sexual harassment, making sure you do it right, making sure that you do not worsen the situation and, therefore, I see some need—I do not know what channel we will use—to really educate employers as to the practical step-by-step way in approaching issues. Remember, no two sexual harassment claims will be the same and as is general in even dealing with discipline in the workplace, employers have challenges dealing with normal disciplinary matters. This particular issue is going to be much more sensitive—it is already—and will require a lot more sensitization and training and education among employers. And the other level, as I said, the literacy issue is key in this particular issue.

Madam Chairman: Could I ask the Ministry of Labour and Small Enterprise Development—I will deal with it after, because I wanted to know in terms of what the “employer” has just raised, what is the Ministry of Labour and Small Enterprise Development doing to address that, but we will take the NGOs on this issue and then we will come to that. So, Ms. Brown.

Ms. Brown: I just want to go back to the issue of the role of the trade unions in this matter, because the

policy simply says to the trade union: trade unions are responsible for protection of their workers, so go and join a union and leave us alone. We think that there needs to be in the policy, just as there was attention paid to a curious set of people called third party observers—there is a group—and a lot of attention was paid to somebody, outside of the person who is affected and the employers, taking on the responsibility for what is happening in there, we think the policy would be better implemented if there were specific roles and responsibilities of the trade unions.

We know that some trade unions have done very good work with the agreement, including provisions for sexual harassment in their agreements, what happens to workers, employees who do not have those kinds of protection from their union? So we think that is a weakness of the policy as it is that the workers' responsibility—although later on there is a whole approach of what the worker should do, at the bottom of page 30—that they should report, that they should keep records—a lot of things that they are required to do. Now, you are already a victim and now a whole set of responsibilities are put on you as to what you should do to protect yourself if you do not have to go and join the union, and I think if we go back to the human rights approach to this thing, the first person who should be benefiting from this would be the person who is being harassed.

Mr. Paray: Madam Chair, just the last question. This Committee had a survey done, a public survey done, and we got a very good response in terms of the public sharing some of their views, and I took note that 80 per cent of the respondents were women out of the total; and out of that 80 per cent, about 60 to 65 per cent of them, when asked if they were ever subjected to sexual harassment, if they reported it, and 65 per cent of those respondents said no, for a list of reasons: victimization, fear of loss of job, fear of being able to be promoted, and if they lose their job the next employer they go to, there is the stigmatization that went along with it.

So my final question and, more so, to the NGOs here, do you think we, as a society—and as a father of three very smart young women—are we driving our young women to excellence—and it is recorded at the SEA, it is recorded at CXC and you are seeing it at the university level—that when they go into the workplace, that because of that drive for excellence from our young women, they are now afraid that if this stumbling block of a sexual harassment comes up it, it may impede them in their journey going forward. Just as a comment, do you think it is something that we are forcing our young women today that is causing that or may there be other factors that are stopping them from wanting to report these instances to deal with it?

Madam Chairman: This is open to anyone's comment. WINAD?

Ms. Mutota: Yes. Thank you very much, Madam Chair. And in response to the member, let me start off by saying, continue to provide the protection that you do to your daughters, and that is what the society has to do, and the policy that we are discussing this morning is a step in the right direction. We need to have

guidance, we need to have markers put down as a society to demonstrate our collective commitment really, to taking care of all.

So that I do not know that because women may be pursuing excellence that they may be reluctant to make complaints. What I do know is that we do not provide sufficient protection to women when they do make complaints, and it starts off from the victim blaming, the lack of policy, the lack of legislation, and just a culture that is not supportive really of women's rights. And so—that is where we have to start—this is a really good place to start by having a policy that we are discussing this morning.

And, like I said, we do have some comments around how that policy could be strengthened and we feel it is our responsibility to help in strengthening that policy so that we all benefit, but let us encourage the complaining. Let us ensure that when the complaints are made—and I want to go back to the policy, because in the policy there is reference to a Conciliation Advisory and Advocacy Division, and we are hoping that that would be a well-resourced and well-managed division to give really prompt responses and support to people who may come to the Ministry.

We also think in terms of the policy, that the Ministry needs to be a little bit—the language in the policy needs to be stronger around the mandatory implementation of training because we want to build awareness, we want to call on employers to have and to take on their responsibility, we want to equip them and support them to do that, and we want to ensure that complainants get prompt and just responses when they make a complaint.

Madam Chairman: Ms. Brown, you wanted to make a comment?

Ms. Brown: No.

Madam Chairman: Oh, sorry, your mike was just on. Okay. Well, take your mike off. *[Interruption]* Do you want to make a short intervention?

Mrs. Seebaran-Suite: Is it that we will be closing off?

Madam Chairman: There is going to be a closing.

Mrs. Seebaran-Suite: I will wait.

Madam Chairman: All right. But I wanted to ask, specifically then, the Ministry of Labour and Small Enterprise Development, with respect to the point made on employers and their difficulty in instituting the sexual harassment policies and so: What is the Ministry of Labour and Small Enterprise Development's approach to assisting the employers in getting that done?

Ms. Boondoo: One of the responsibilities of the Government and, in this respect, directly the Ministry under the policy, is to undertake advocacy and public awareness campaigns to address the issues at the workplace. Part of those campaigns would be going out to organizations, to workplaces and conducting sensitization sessions. It is something that we do currently with other policies that we have and legislation that we have. So we have no problem continuing to partner with either the ECA and other employers or

other organizations in order to bring clarity and assist persons in developing their policies and implementing their policies, and that is why we do have in the policy provision for the establishment of the Conciliation Advisory and Advocacy Division.

Mr. Forde: In terms of reporting, the Ministry of Labour and Small Enterprise Development in your document to us, you identified that there were 13 cases of sexual harassment cases between 2012—2018, but from the discussion and the discourse, does the Ministry of Labour and Small Enterprise Development record the cases based on the other categories as mentioned by the Equal Opportunity Commission? Is that factored in here with these 13?

Ms. Boondoo: No. The statistics from the Equal Opportunity Commission would be the cases that would have been reported to them and not the cases that would have been reported to us. So we would specifically deal with sexual harassment cases that come to us as trade disputes.

Mr. Forde: So, therefore, putting aside the Ministry of Labour and Small Enterprise Development statistics, we would have a higher figure?

Ms. Boondoo: Yes.

Mr. Forde: Anybody could share in terms of statistics, where we may be at exactly within, let us say the last five years?

Mrs. Seebaran-Suite: Well, let me speak to the statistic with respect to our last reporting period 2017, where 20 per cent of our complainants brought a complaint in the area of sex discrimination and, of those, five are included or specifically complained of sexual harassment.

Mr. Forde: And in terms of the other categories that were identified earlier, are we tracking those records?

Mrs. Seebaran-Suite: Oh, yes. We have in our annual reports we track and we have—by and large, the largest area of receipt by us of complaints is in the area of employment. We also deal with the areas of the provision of goods and services. We also deal with discrimination in the area of access to housing and access to education and training. So, in that sense, we already have a broader remit than just employment. In fact, the Caricom model includes even other areas. So, it is an area in which people think very carefully before they make a complaint, but there are complaints. It is a phenomenon of complaint.

Mr. Forde: One last question, Madam Chair. Is sexual harassment the proper term to use for what we are discussing?

Mrs. Seebaran-Suite: Well, absolutely. It is the term of art. It has been around now for 40 years. I mean, why change it? There are many different ways of coming at what exactly constitutes sexual harassment. You have many different models. You have the Australian model, you have models taken from—some people define it as their quid pro quo model where it is exchange of favours—you go on a date and I will promote you, or harassment in the environment, the creation of a hostile environment where unwelcomed comments, a sexualized environment, which makes the victim, we do not like so much to use the word

“victim”—with the recipient uncomfortable.

So there are many different ways at coming at a definition. There are many different models around the world and it is important for us to have a conversation in Trinidad and Tobago as to how we come at the definition, because there are cultural issues here as with everywhere. But I think the essence of it, the nub of it is that, as we are seeing in the United States of America with the former Vice-President, Mr. Joe Biden, it is that you must not make the other person uncomfortable.

12.00 noon

And even if it is that the person complies with your demand that does not mean that they are not being harassed. They may not have had a choice because they have children to feed; they have to keep their job. So it is not whether they participate in the activity but what is the power relationship as to whether they felt they had to participate in the activity, and if they do not participate in the activity then they stand the consequences. They start getting letters, “You came to work five minutes late”. In a month’s time they have a record and then the next month they are managed out.

Madam Chairman: So, I want to go back to the issue now of the workers and I want to ask specifically with regard to the policy how do workers who fall out of the definition, according to our national labour law, how does the policy meet—how does it reach them? Does it reach them? And if it does not then what do we have to do or what is the intended action to be able to reach those types of areas?

Ms. Boondoo: So, the intention is that the policy is to apply to all workers, and you would notice when you examine the definition of workers within the policy as opposed to any of the other legislative definitions of workers, this is a much more comprehensive definition. The intention is also for the policy to apply to situations of domestic work so that we do not have a limit of, “there must be more than five persons in the workplace for it to apply”. No, because then we would exclude a lot of the domestic workers from this protection under this policy. And they are an especially vulnerable group because of some of the issues in terms of awareness and communicating.

So one of the main ways that the Ministry intends to get out to the vulnerable groups, or the groups that would be more susceptible, we have a lot of experience based on implementing our other pieces of labour legislation, rights-based, especially in terms of maternity protection and your minimum wage orders. So based on our experiences we would use that and the information we have from those experiences to craft a targeted implementation plan and awareness programme for these sectors and these persons, because we want to ensure effective implementation. It is not just about implementing but implementing effectively.

Madam Chairman: So, for the benefit of those who are listening now, if you fall into that category, you are a domestic worker where you work in a very small company and you are experiencing sexual harassment, what are you to do? What does the policy provide for you to do?

Ms. Boondoo: So this question, I would ask my colleague, Ms. Gomez, to address because at the

conciliation unit they have addressed circumstances like this.

Ms. Gomez: There is a union in terms of the National Union of Domestic Employees. It is a very vibrant unit and that is one of the avenues in terms of collaboration to reach domestic workers, because they would be more than likely employed in the household, and that is why this policy, we made specific reference to the household would be the place of work of the domestic worker. So we have taken it into consideration, and in terms of reaching, we would do public awareness in terms of, you know, going out into the community.

But sometimes we cannot really reach them, so we would depend heavily on the contacts with NUDE especially and other NGOs who would have access to really having the—sometimes they are live-in persons because more than likely sometimes they would come in to us, you know, but not at the extent in which we want to reach them. So, we would have to do some collaborative work with the NGOs and also with NUDE, in particular, to reach them.

Madam Chairman: But they can also come into the—

Ms. Gomez: They can also come in and lodge the complaint, and that is one of the things we want to do is have a hotline specifically for issues of sexual harassment. So persons are dedicated line so persons can call into that line specifically, so we will be able to track and monitor, and we will be able to follow up in terms of numbers that have called, the number of persons that are calling, and even able to track in terms of how we address their issues, whether they are satisfied, whether they are pleased with the outcome of the service provided.

Mrs. Seebaran-Suite: Madam, just to address the concern, the clear concern that the Chair has on this issue, I want to just remind or say that it is possible right now for any person who is experiencing sexual harassment in the areas that I have spoken about, including in the area of employment, to walk off the streets and to come into the Equal Opportunity Commission without the need of the filter of a union or any other organization and make a direct complaint of sexual harassment, have that complaint investigated. Our law provides that the employer must provide the information that we request them to on pain of criminal prosecution in the Magistrates' Court, \$1,000 per day for every day where they do not provide the information. They must attend the conciliation. They need not conciliate, but they need not participate meaningfully, but they must attend. And if it is that the conciliation does not work then the matter is referred with their consent to the Tribunal where the Tribunal then acts as a judge and adjudicates on the case. So, there is that possibility right now. It happens all the time.

Madam Chairman: Okay. Thank you. I think that is very useful information as well. Ministry of Labour and Small Enterprise Development.

Ms. Gomez: Madam Chair, now, the reason why we mentioned collaboration, and that is in terms of our treating with domestic workers and also migrant workers, because they would not necessarily step out and

come in, so we have to go out to them or reach out to agencies that they would more than likely interact with and would be familiar with. For the domestic that is why I mentioned NUDE in that that is a union set up specifically to treat with household assistance, and they may be more comfortable in having someone speak for them and advocate for them, and they can come in to us by all means. We are open, you know, anybody can just walk off the street and come in to us. But in terms of having that person, that comfort in terms of somebody who understand the situation and really is a body to treat with that, that is why we would want to have this collaborative issue. And also with the migrant workers, they are mentioned. Now, something that we need to clarify, anybody who works in Trinidad and Tobago they are covered in terms of a worker.

So because the person is a migrant worker, whether they are illegal or not, once an employer hires you, you will become a worker and you are entitled to protection. But we have been collaborating, we have done it in the past with the Living Water Community, so what we do we go to them because they may not feel comfortable in terms of coming into us, so we go to them. So that is what we have done in the past and we will continue to do so. We have reached out to them so the policy could be shared with them in terms of what are their rights in terms of if they are sexually harassed, or any other work-related issues that we know that they would suffer in the workplace.

Madam Chairman: Comment, WOMANTRA.

Ms. Leitch: I wanted to speak to the issue of statistics and just to say that according to the policy that there were only 16 cases reported to the Ministry of Labour and Small Enterprise Development over the past 10 years, and I think Ms. Seebaran-Suite also gave some statistics. And I think the fact that these statistics are so low is what is actually speaking to the gravity of the problem, because we know for a fact that women and men, but largely women are being abused on a regular basis or sexually harassed on a regular basis, and the fact that the reporting is so low speaks to the urgency for the proper implementation of a policy.

The second thing I wanted to say is while I appreciate the existence and the strengthening of external third parties in order to mediate and adjudicate on issues around sexual harassment, I would also like to stress the importance of, as I said before, an Employee Assistance Programme so that there is an objective trained individual within organizations that victims can go to. Because how does a person who is maybe a low-level staff member even going to request time off to leave to go and access the Equal Opportunity Commission? So, I think that victims need to feel confident that there is somebody within their own organization that they can trust that is objective and properly trained who can offer both mediation and other types of psychosocial and therapeutic support.

Ms. Gomez: Madam Chair, that is one of the issues that I think we were concerned about, and in terms of providing solutions, that is why we included psychosocial support, like how employers have EAP on the workplace. There should be some sort of support for workers within the workplace, and we encourage

employers to have bodies or NGOs, you know, Families in Action, and other such NGOs like that to treat with supporting the victims. And, also, the persons who would be the perpetrators, they may need some sort of help as well on the job based on the severity or the type of issue that would occur.

Madam Chairman: And I think it is important to mention, at this stage, something we brought up in the last meeting where we spoke about the under-reporting and the need for some sort of documentation to understand the real position. We would have done a survey, the Committee would have done a survey and gotten certain responses, but the fact that we do not have actual data, and no agency has undertaken to actually get the statistics. We may understand, okay, there are more things happening than we know, but the actual baseline position, at least at this point, is not something that is available to anyone.

So we are doing the policy and moving towards legislation on the basis that we know this is a problem, but the extent of the problem is not known in Trinidad and Tobago, and there are different reasons for that. But it is something that we would have suggested on the last occasion is important to at least have a baseline figure to understand the magnitude of the problem we are dealing with.

At this time I would like to invite Sen. Thompson-Ahye to pose our last question of the day.

Mrs. Thompson-Ahye: Now, I have heard talk about CEDAW and, you know, CEDAW organizations, and I find that we go a lot to the convention which is worldwide and we do not mention at all our own convention in this part of the world which deals directly with violence. What is the Ministry doing in terms of educating people that we do have the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women? Because you spoke a lot about advocacy on public education, and before you go out there with your public education and your advocacy, you have to be sure that people are properly trained; that people are well resourced because they have the necessary information and people are taught that sexual harassment is on a continuum of violence against women. We have a television station, we have a number of radio stations; there are a number of women in these television stations and radio stations and we need to use the resources that we have. There are many resources that we have for free and we need to use them in public education campaigns, so I would like the Ministry to focus, you know, the Ministry and other organizations to focus on using what we have, because sometimes we think things are insurmountable and, really, there are lots of things that you can get for free. All right? So, use what we have.

I am sure you would want to say that you are encouraged to build people. Before we build the country we have to build the people who are going to be in the country, because we just cannot have the—you know—all the roads and all the infrastructure and our people are not being built, because what is going to happen later on? So I would urge all of you to concentrate on educating yourselves so that you could pass on the information to the people who you want to help, and be very, very careful about how you operate in terms of the conciliation because of the power differential. When we are talking ADR it is not just

mediation. Think carefully about using what has been tried and tested and it is being tried and tested all over the world; the restorative practices, it is working with domestic violence all over. So, see what is happening in Europe and the United States and the UK, and try to bring that in. So there is a lot we can do, and I am sure that the Minister will assist you, all the Ministers involved, including the Minister of Labour and Small Enterprise Development. She was very proud of her policy, you know. She came and she presented it, and so on, and we are happy for it. It is a start.

Madam Chairman: Just before I take WOMANTRA, I want to just bring, as we close, the Office of the Prime Minister into this discussion with respect to the sensitization and the awareness. PS Johnson, is the Office of the Prime Minister involved in this sensitization process with respect to sexual harassment? And so I mean, it cost cuts; yes, it is a labour issue but it is also a gender issue, and I am wondering if there is any collaboration happening or planned, or that you can see being projected so that you all can also put out the information and speak the channels, because, you know, sometimes to make something really sink in it has to come from all different directions. So I am just wondering, what is your role in terms of this area?

Ms. Johnson: Madam Chair, we have been in contact and we will continue to be in contact with the Ministry of Labour and Small Enterprise Development on this policy. This policy is an urgent and important policy measure to support the National Policy on Gender and Development. It has been identified as necessary since we started to craft the National Policy on Gender and Development. The policy measure is led by the Ministry of Labour and Small Enterprise Development and that is clearly outlined in the area on labour in the national gender policy. There are a lot of things that the Ministry has to do to treat with this and we are committed to meeting with them. I think we were the first Ministry to meet with them when we started to look at this national policy on sexual harassment. We know that there are some things that we need to do in terms of sensitization, so once we have a policy, it is clearly set up, we would do our part to ensure that we build that awareness in the same way that we are trying to ensure that the National Policy on Gender Development has brought the knowledge of all citizens of Trinidad and Tobago.

Yes, we will continue to collaborate with the Ministry of Labour and Small Enterprise Development. We know that the policy, just like any other policy, would affect men and women differently and so we need to start talking to them, not only about monitoring the policy to ensure that the gender lens is applied to determine how it impacts men and women and treat with the equity issues, identify those differences that will promote a more equal policy in terms of the status of both men and women. We know that there are some things we need to discuss with the Ministry of Labour and Small Enterprise Development in terms of collecting the data to see how the policy is being implemented, what are the impacts because we have to report on this measure, first, that we have a national policy, and then how it is impacting our men and women as it relates to employment. We have to report nationally, we have to report regionally and we have to report internationally on this measure.

Madam Chairman: And while we are discussing that, I know the Ministry of gender does interventions with children as well, because I feel strongly that this is a man and women issue, but it is more of a cultural issue. If we think about it very deeply it is how we treat each other, and I am wondering if in terms of that awareness programme if any thought is given to how we present this, not just to men and women, but to boys and girl, and I do not know if you have any thoughts on that.

Ms. Johnson: Yes, we do. In fact, we have been trying to incorporate it into, what we call our foundations programme that we are bringing—we hope to roll out this month, our children, boys and girls, between 12 and 25, and this is being done through several organizations. It is a UN-based programme which looks at all these issues relating to men—to those gender issues relating the men and women, and sexual harassment is in fact one of the things that we look at in that programme.

Madam Chairman: Okay. Last comment from WOMANTRA.

Ms. Leitch: Thank you, Madam Chair. I just wanted to respond to member Ahye's comment about regional mechanisms. In preparation of our coalition statement, it was quite interesting to note that the only specific mention of sexual harassment within the Montevideo consensus was around specifically women parliamentarians and women in public office. So I thought that that might interest you. And it is noted that sexual harassment of women in public office and parliamentarians is a significant barrier to their advancement, and I think it is particularly mentioned in this document is important because it obviously speaks to a regional problem. So it is something that the Ministry of Labour and Small Enterprise Development may consider for its inclusion.

I also wanted to comment on, Madam Chair, your language around this being a man and women issue, because I actually wanted to commend the Ministry of Labour and Small Enterprise Development for acknowledging that sexual harassment can happen between, you know, people of the same sex, men and men, women and women, as well as women to men. I think that the policy is very gender aware and has not taken the approach of being gender blind. So I just wanted to commend them for that.

Madam Chairman: No, I am sorry. When I said, man and women, I meant adult as opposed to child. Right.

Ms. Gomez: Okay.

Madam Chairman: Not that way. So I want to thank everyone for their contributions to today's session, and I would like to invite everyone to now make brief closing remarks. Again, we will start with the Permanent Secretary of the Office of the Prime Minister, Gender and Child Affairs, and come to my right, to your left.

Ms. Johnson: Madam Chair, I would not offer a closing. I think I just closed with what I have said. Thank you.

Mrs. Seebaran-Suite: Madam Chair, there is no doubt that this issue of sexual harassment is a workplace

issue, but equally, and perhaps even more so, it is a rights issue and a human rights issue and a gender issue, and it does not only occur in the workplace. On the question of the allocation of the resources of the nation, I just wanted to remind us that the Equal Opportunity Commission is an independent body that is paid for by the taxpayer and it already exactly mirrors the architecture of the model Caricom Bill in the sense of the creation of an establishment of trained investigators, attorneys, conciliators, and the whole apparatus of dealing with this kind of complaint, and so I just wanted the Government to bear that in mind in terms of how we move forward in terms of the legislation.

And, you know, I commend the Joint Select Committee for taking this issue on, and I am very happy that it is achieving the kind of priority that it has always deserved, and absolutely to commend the Ministry of Labour and Small Enterprise Development for picking this up and running with it. It was in 2017 that the Equal Opportunity Commission took the lead to create the first policy and guidelines that we published and it was very quickly taken up by Gender, and then absolutely embraced by Labour, and this is where we are today. So that those are very happy developments for Trinidad and Tobago.

Madam Chairman: Okay. Thank you.

Mr. Lalbeharry: From what I have gathered, we are already in the process of creating some kind of legislative instrument, and, I think, really there is a need. In fact, I think, we are a bit late. These instruments have existed throughout countries, Australia, the UK, Malaysia, other countries, and we are not really seeking to invent or reinvent the wheel. We can take a lot of from what applies now in terms of these legislative instruments. What we need to really ensure though is that we do not have a disconnect, because I am hearing the Commission submitted amendments to the Act that is before an ad hoc committee, and then I understand the Ministry of Labour and Small Enterprise Development is now piloting and pioneering legislative instruments in relation to that.

We need to ensure that we have a connect between these, because aside from the various legislative instruments we also need to look at enforcement bodies, who exactly is going to enforce the relevant legislation, who is going to ensure that these policies, that we are able to penalize, for example, employers who breach the relevant legislation, and these kind of things. So that I think we really need to have a proper connect between the various bodies to ensure that we are able to take these policies forward? Thank you.

Madam Chairman: Ms. Boondoo.

Ms. Boondoo: Thank you very much, Madam Chairman, and members of the Committee and colleagues on this side of the table. At the Ministry of Labour and Small Enterprise Development, we remain steadfast in the view that sexual harassment is a violation of fundamental human rights. Labour rights are human rights and we take our responsibility seriously, in this regard, in ensuring protection. What I would like to take this opportunity to do also is to advise on contact information for the Ministry so that any comments, suggestions or further recommendations can be submitted to the email, conciliation.mol@gov.tt. So I will

spell it out now, c-o-n-c-i-l-i-a-t-i-o-n.mol@gov.tt. In addition, the Ministry of Labour and Small Enterprise Development has as a very vibrant Facebook page and we are pretty responsive on that Facebook page, so you can also send a message via the Facebook page.

And I would like to highlight that the Ministry of Labour and Small Enterprise Development, in recognizing that labour rights are human rights, is not only guided by the relevant ILO Conventions, and there is one coming on violence and harassment on the workplace, but we are also guided by the relevant international human rights conventions, whether they be specifically with respect to gender or human rights and civil and political rights or economic, social and cultural rights. And, in addition, we do have campaigns where we speak to children because we recognize the need to build a culture change. We have currently the speaker campaign for boys and girls and we also have a child labour art competition that we use to sensitize our children. They are the ones who are the future workers and employers in terms of what are good labour practices and good practices overall at the workplace. So thank you again for this opportunity and we will look forward to further comments and suggestions.

Madam Chairman: Thank you so much. Ms. Fingal.

Ms. Fingal: Thank you, Madam Chair. I just wanted to continue from the Equal Opportunity Tribunal, the comment made. Hearing all the different bodies speak here today, clearly there is need for some synergies, and I really believe that we talk about opportunities through OSHA, through the Ministry of Labour and Small Enterprise Development, through the EOC, and even in the Office of the Prime Minister. There are initiatives being undertaken, different arms are doing different pieces of legislation, amending legislation, et cetera, and hearing all of this today, I think that there must be that synergy.

The employee, who is the complainant, needs to be very clear as to where is the best place to go to have the matter addressed. What we do know is that based on current legislation, through the Ministry of Labour and Small Enterprise Development, the employee must go through with a union. A lot of these employees will not be union members. Through the Equal Opportunity Tribunal there will be a need for an attorney, if I am correct, and therefore you would find it might be almost outside of the reach of some of the complainants. So these things must be addressed for the—

Madam Chairman: Are you saying, no, I just want to make sure?

Ms. Fingal: It is a yes, is it?

Mrs. Seebaran-Suite: No. The complaint does not relate to the Commission and you do not need an attorney for that. If it is not conciliated and you want to take it to the Tribunal, which is the court, you may or may not choose to have an attorney.

Madam Chairman: All right. I just want to make sure because your point is very important.

Ms. Fingal: Because matters do reach the stage where the employees will require both at the level of the Industrial Court sometimes even though there is a union or even at the tribunal. So these things must be

known because we are aware of employees who have been stymied in their efforts because of these legal requirements and were unable to have the sort of satisfaction that they wanted, or even to take the matter, in fact, some have been aborted because they have not been able to go the full course of arbitration. So all of these things, I believe, must be addressed, and it must be made as simply and as cost-effective and as easily available for those who are really in need of, you know, having their matter addressed.

Madam Chairman: Thank you so much, Ms. Fingal. Mrs. Burgess.

Mrs. Burgess: Thank you, Madam Chair, and I want to thank the Ministry of Labour and Small Enterprise Development and the other agencies that we have reached this far in our discussions. I look forward to the sensitization, and I think that would give a sense of relief, if done well, to member Paray, his concern of people who have reached a certain level and are not able to have their voices heard. So, I mean, in the days when we started to talk about rape and incest, there was not a word for it. We are now getting to hear about sexual harassment and people must be given the strength and the confidence that they can report it. I also look forward to your handling of volunteers for our sector. Yes, so that is it. Thank you.

Madam Chairman: Thank you. Ms. Brown.

12.30 p.m.

Ms. Brown: Thank you very much, Madam Chair. You know laws are good. They are mostly good for lawyers. If we could concentrate on a goal of creating an environment which is free of violence and abuse, and that would include sexual harassment, then we can clearly determine what the pathway is to that. So far as we are concerned there are three issues on that pathway. The first one, of course, is awareness, the second one is appropriate mechanisms for dealing with the issues that arise, and the last one is appropriate sanctions that people will know will come out of a certain level of behaviour. Those are the things we want to see coming out of this policy: awareness, appropriate mechanisms and sanctions for people who are encouraging or facilitating an environment of violence and abuse of people.

Madam Chairman: Thank you so much. The representative from WOMANTRA.

Ms. Leitch: Thank you, Madam Chair. I will just like to close by again commending the Ministry of Labour and Small Enterprise Development for what I consider to be a very progressive policy, particularly in relation to its inclusion around provisions for sexual orientation, including that questions around an individual's sexual orientation can be considered sexual harassment, as well as derogatory language, and we see that this is a very clear departure from other types of legislation that specifically excluded these groups who we know are particularly vulnerable. That is not to say that we did not take issue with some of the language used in the policy, as WINAD has already expressed, and WOMANTRA looks forward to the opportunity to providing comments around that specific language. Thank you.

Madam Chairman: Thank you, and last, WINAD.

Ms. Mutota: Thank you very much, Madam Chair. First of all, congratulations and thank you to you and

your Committee for taking this on. Our thanks to the Ministry of Labour and Small Enterprise Development for leading the country on a path to us really taking on frontally what is a women's human rights issue. So we welcome the opportunity to work with the Ministry to strengthen this policy for the benefit of all.

We hope that key to our work will be an acceptance that sexual harassment is really about the unwelcomed and unwanted sexual nature of the behaviour. Victims often do not know how to build a case because the victim does not know what evidence to collect, when or how, but also evidence may be considered unreliable by the investigator. An additional challenge is the willingness on the part of witnesses who may fear covert intimidation or open hostility by the employers, and therefore we want to suggest that the specific types of harassment directed at gay, effeminate, gender non-conforming men also attract some attention in this policy by the Ministry of Labour and Small Enterprise Development. And finally to say that it is important for us to support, by standards, in an efficient and practical way, so that we can address some of the concerns that you raised particularly around the issue of under-reporting.

Thank you very much for the opportunity.

Madam Chairman: Thank you so much. I would like to take this opportunity to quickly summarize some of the main points that would have been discussed by us today.

The policy on sexual harassment is available to the public, still to be laid in Parliament. The policy is available on the Ministry of Labour and Small Enterprise Development's website, and the public is advised to download and to read it. It contains guidelines for both employers and employees. It makes it mandatory for employers to implement sexual harassment policies and/or procedures, but there is no enforcement method inherent in the policy, and this must come through legislation.

Unionized workers can go through their unions to address sexual harassment. Workers who are not unionized can get advice from the Ministry of Labour and Small Enterprise Development on how to get redress, and also the Equal Opportunity Commission is available. Workers who fall out of the definition of "workers", including domestic workers, can also visit these areas to be able to get advice on how to proceed.

There has been a concern raised by the Equal Opportunity Tribunal regarding the use of the Equal Opportunity Act in addressing sexual harassment concerns, and it requires careful consideration and it also underscores the need for standalone sexual harassment legislation, which will be unambiguous in the way it addresses issues of sexual harassment, and provides redress.

NGOs who wish to make recommendations for improvement or adjustment to the National Workplace Policy on Sexual Harassment in Trinidad and Tobago still have that opportunity to do so, and in fact the general public does have that opportunity.

A number of issues have been raised regarding the fundamental definition of "sexual harassment"; psychological treatment for both the harassers and the victim, whistleblowing protection in the context of

sexual harassment, and the roles and responsibilities of trade unions, among other issues.

The stages of law development include policy approval, the legislation drafting, the parliamentary debate and passing and then implementation. At this point the Ministry of Labour and Small Enterprise Development is at the stage of legislation drafting, and so we look forward to the other stages rolling out as we go along on this road towards having sexual harassment legislation enacted in Trinidad and Tobago.

In drafting this legislation the Caricom model is being reviewed by the Ministry of Labour and Small Enterprise Development, so that it can be made more relevant to our current situation and the different permutations of sexual harassment that are present in our society.

There is also the issue we discussed about the employers who are making attempts to introduce sexual harassment policies, but facing challenges with respect to literacy, understanding of the different policies and the process. So education is a very key aspect to ensure that we have successful, widespread sexual harassment policies and procedures enacted around the country.

In that regard the Ministry of Labour and Small Enterprise Development is willing to partner with the ECA and other agencies and workplaces and employers to address the issue of capacity. So that we ensure that employers understand exactly how they institute these very important sexual harassment policies and procedures. And in terms of awareness, which is also a very important issue, the Ministry of Labour and Small Enterprise Development is in discussion and partnering with other agencies and Ministries. The Office of the Prime Minister, Gender and Child Affairs is also very willing to be involved in bringing this sexual harassment issue to all levels, including our children, so that we have a culture shift in terms of how we treat each other.

In terms of the domestic employees, the concern was raised by the NGOs in terms of widening that definition. It has been so in the policy, and so we look forward to that being covered in the legislation, so that all classes of labour, regardless of whether it is domestic labour or migrant labour, they can also have redress.

So in conclusion to the workers, people who are experiencing or may be experiencing sexual harassment, I just want to emphasize that advice is available from the Ministry of Labour and Small Enterprise Development Conciliation Unit, from the Equal Opportunity Commission, and also through the trade unions and through the NGOs. Some of them are represented here. You can get advice as to how to seek redress. However, just with the caveat that at this point to go further into legislative matters you may need an attorney, and that advice will also be given to you as you address the issue of sexual harassment.

So we are hoping that those who would have looked on would have listened, would now have a better understanding of where we are in terms of our sexual harassment policy, what we are looking forward to with respect to legislation, some of the challenges that are inherent in dealing with these issues, and most importantly that this would be followed by the systems put in place to make awareness more accessible to

the public so that they know what their rights are. So we empower our workers, empower our employers and look forward to the addressing of this most important issue of sexual harassment within our country of Trinidad and Tobago.

The viewers and listeners, I thank you. The officials who have come two times with us, those of you who came for the first time, we thank you on this issue. I thank the members of the Committee and the Secretariat, and now declare this meeting adjourned. Thank you.

12.39 p.m.: *Meeting adjourned*

APPENDIX IV

STATISTICAL

REPORT

Statistical Report: Sexual Harassment in the Workplace

Tuesday, April 30, 2019

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726

Total Responses

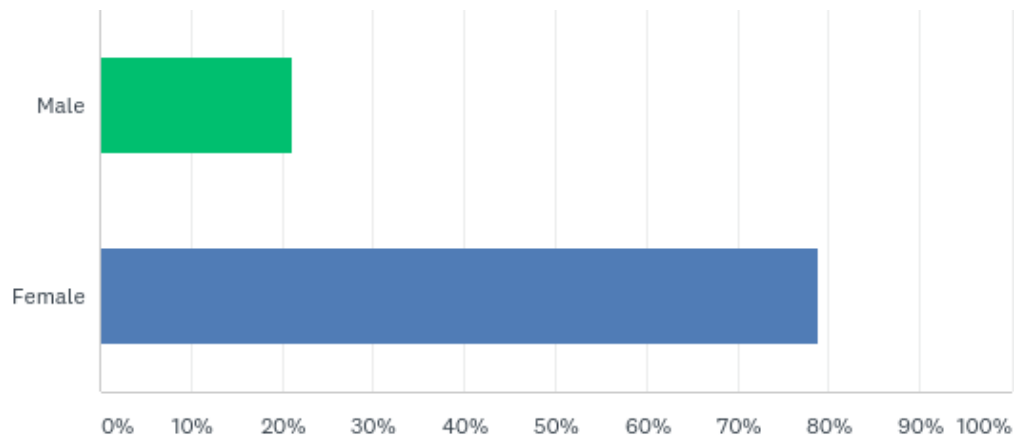
Date Created: Monday, February 11, 2019

Complete Responses: 517

Powered by  SurveyMonkey®

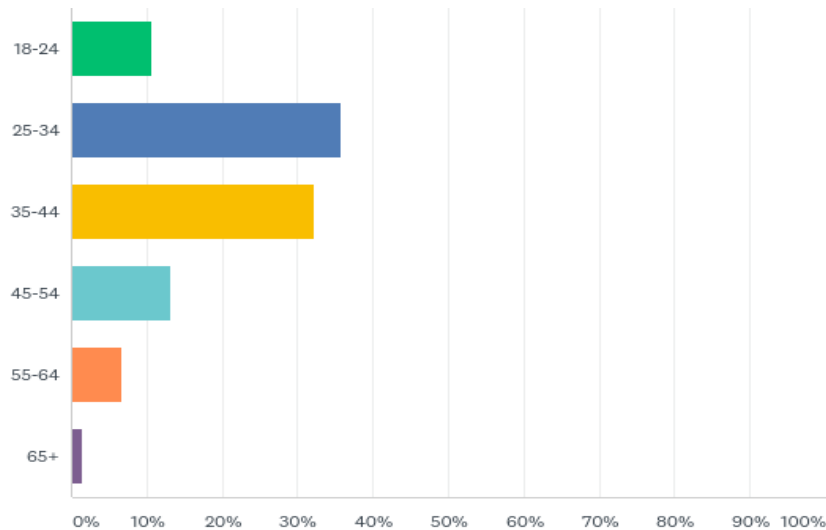
Q1: Are you

Answered: 725 Skipped: 1



Q2: How old are you?

Answered: 725 Skipped: 1

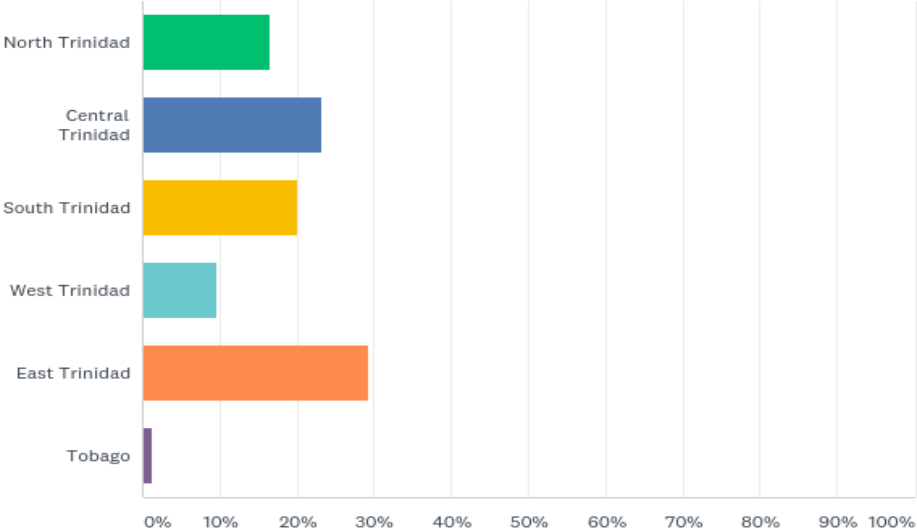


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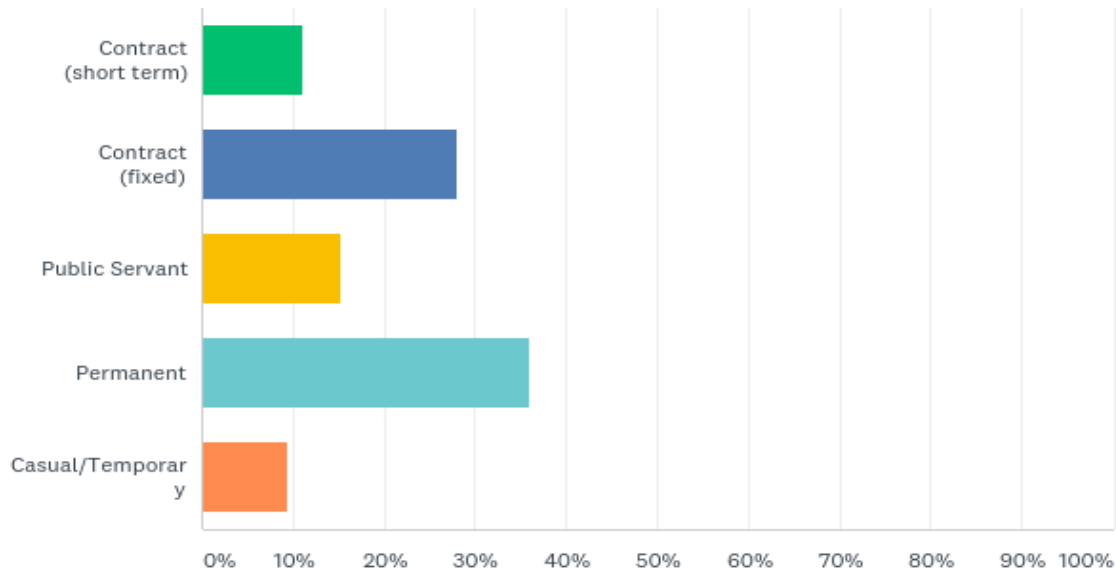
Q3: Where do you reside?

Answered: 725 Skipped: 1



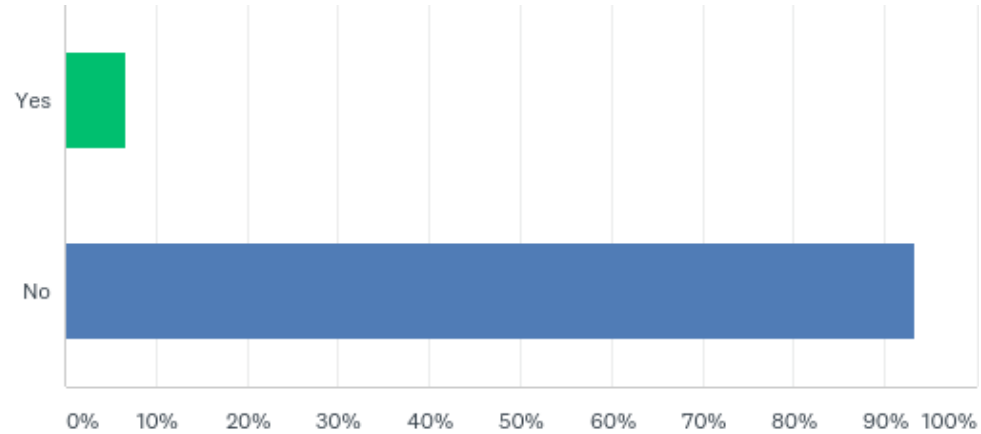
Q4: What is the status of your employment?

Answered: 725 Skipped: 1



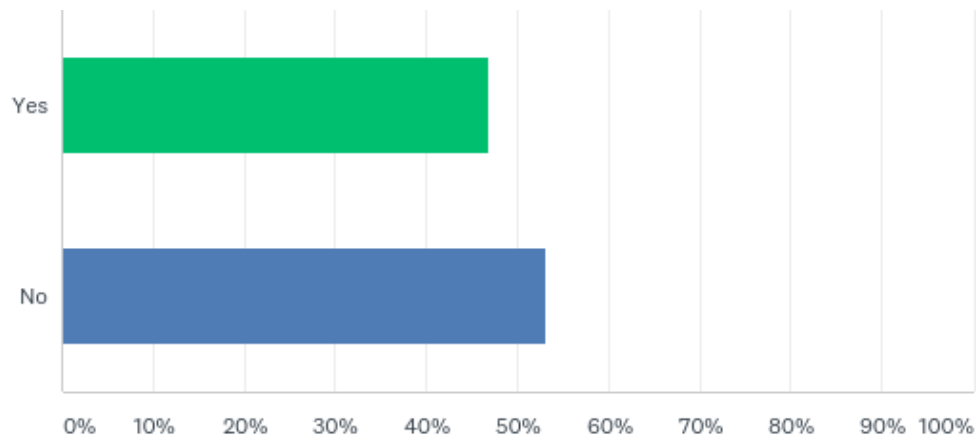
Q5: Do you think sexual harassment is taken seriously in Trinidad and Tobago?

Answered: 725 Skipped: 1



Q8: Have you experienced sexual harassment in the workplace?

Answered: 557 Skipped: 169



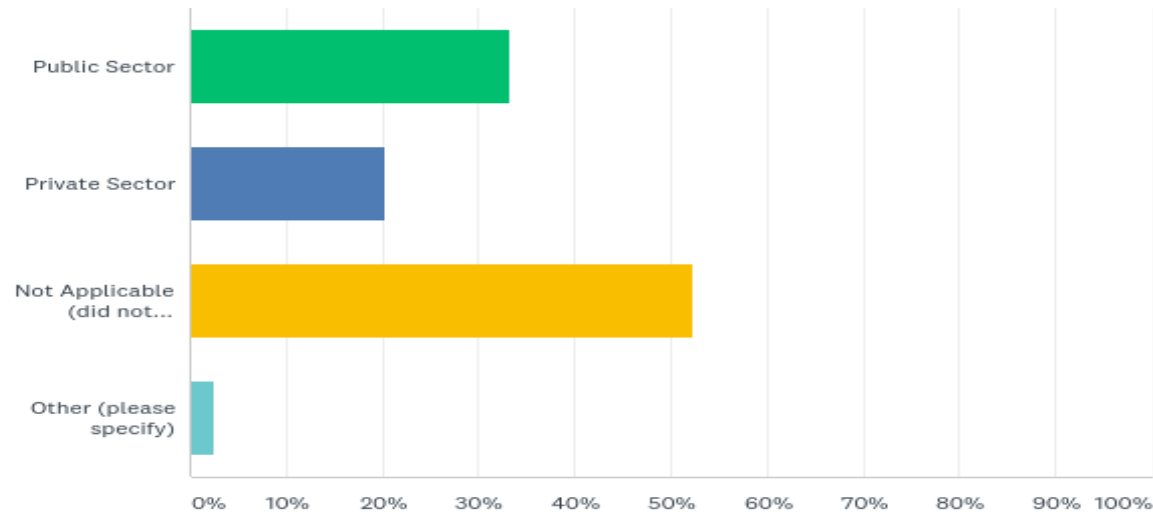
Q9: If you experienced sexual harassment in the workplace, indicate the number of times that you experienced incidents of sexual harassment in the workplace.

Answered: 557 Skipped: 169

ANSWER CHOICES	RESPONSES	
Once	4.67%	26
Twice	8.80%	49
Three times	3.59%	20
More than three times	29.62%	165
Not applicable (did not experience)	53.32%	297
TOTAL		557

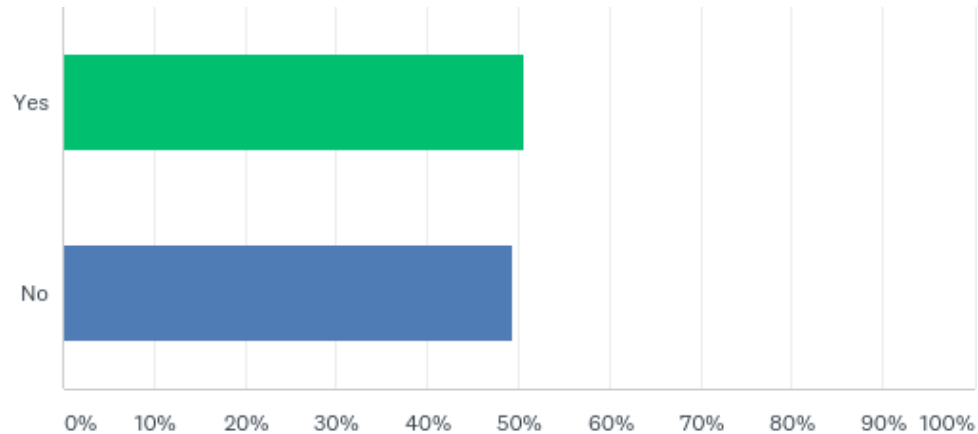
Q10: If you experienced sexual harassment in the workplace, please indicate the type of organisation in which you experienced this harassment.

Answered: 557 Skipped: 169



Q11: If you have not been a victim of sexual harassment, please indicate whether you have observed someone in your workplace being sexually harassed?

Answered: 557 Skipped: 169



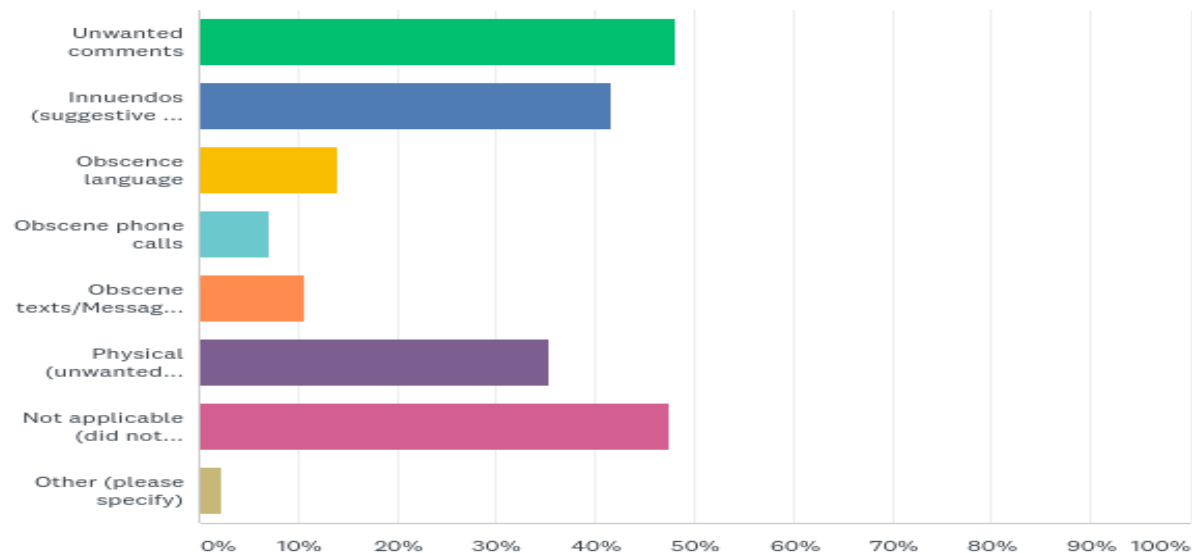
Q12: If you observed sexual harassment in the workplace, please indicate the type of organisation in which you observed this harassment.

Answered: 557 Skipped: 169

ANSWER CHOICES	RESPONSES	
Public Sector	39.86%	222
Private Sector	25.31%	141
Not Applicable (did not observe sexual harassment)	45.06%	251
Other (please specify)	2.15%	12
Total Respondents: 557		

Q13: If you experienced sexual harassment in the workplace, state the type(s) of sexual harassment that you experienced:

Answered: 557 Skipped: 169



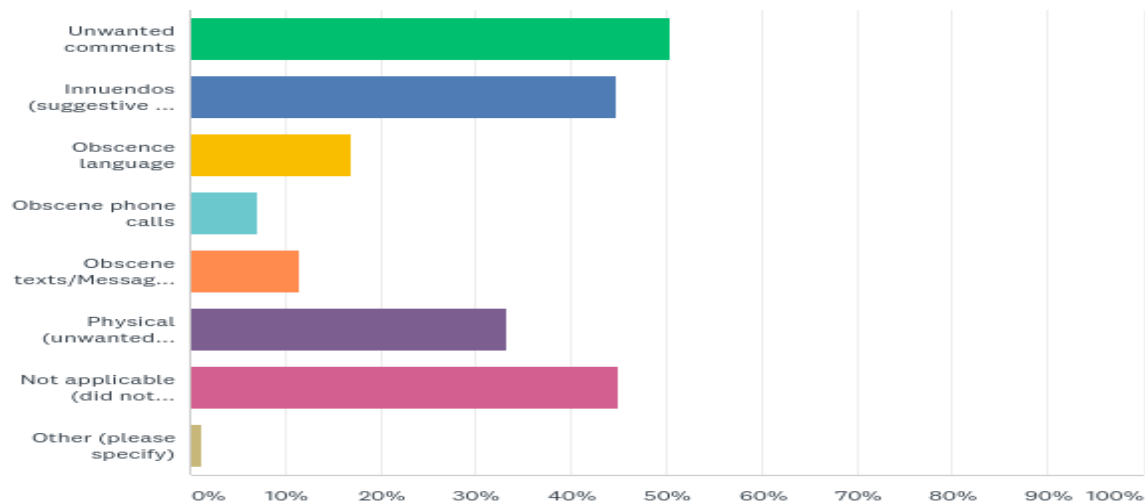
Q13: If you experienced sexual harassment in the workplace, state the type(s) of sexual harassment that you experienced:

Answered: 557 Skipped: 169

ANSWER CHOICES	RESPONSES	
Unwanted comments	48.11%	268
Innuendos (suggestive or demeaning hint or comment)	41.65%	232
Obscene language	14.00%	78
Obscene phone calls	7.18%	40
Obscene texts/Messages/e-mails	10.77%	60
Physical (unwanted advances/touches)	35.37%	197
Not applicable (did not experience)	47.40%	264
Other (please specify)	2.33%	13
Total Respondents: 557		

Q14: If you observed someone in your work place being sexually harassed, choose the type(s) of sexual harassment that you observed:

Answered: 557 Skipped: 169



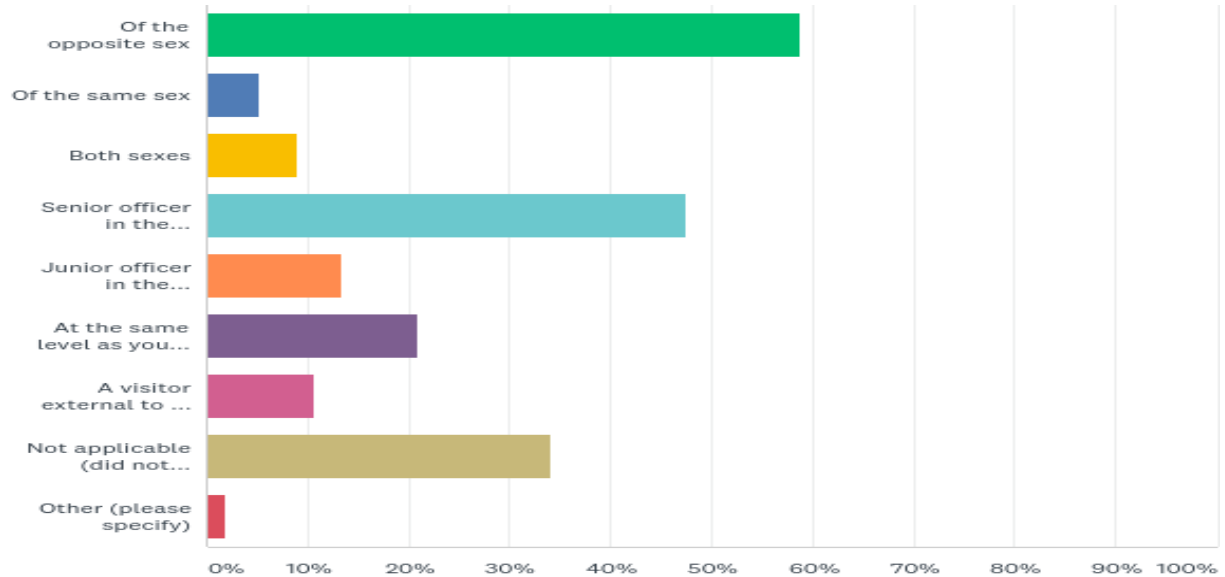
Q14: If you observed someone in your work place being sexually harassed, choose the type(s) of sexual harassment that you observed:

Answered: 557 Skipped: 169

ANSWER CHOICES	RESPONSES	
Unwanted comments	50.45%	281
Innuendos (suggestive or demeaning hint or comment)	44.70%	249
Obscene language	16.88%	94
Obscene phone calls	7.18%	40
Obscene texts/Messages/e-mails	11.49%	64
Physical (unwanted advances/touches)	33.21%	185
Not applicable (did not observe)	44.88%	250
Other (please specify)	1.26%	7
Total Respondents: 557		

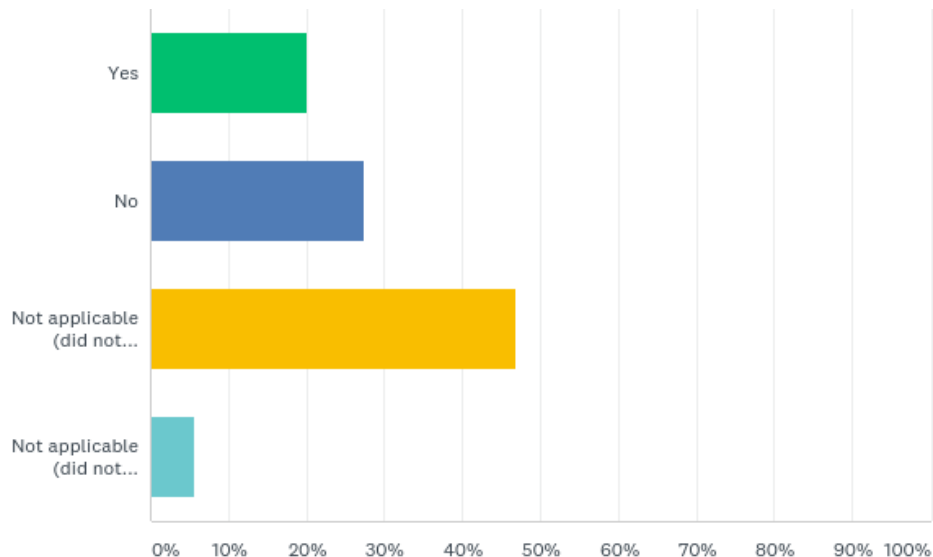
Q15: The profile of the sexual harassment offender was:

Answered: 557 Skipped: 169



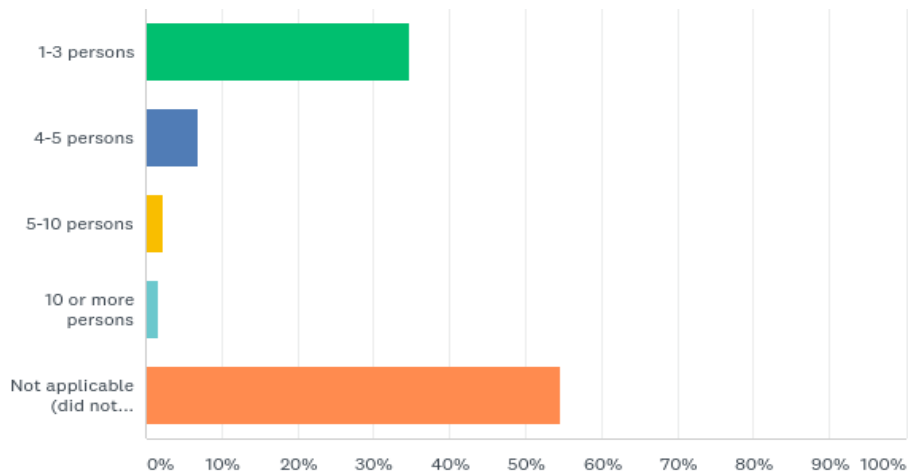
Q16: If you were sexually harassed on more than one occasion, was the sexual harassment done by the same person?

Answered: 557 Skipped: 169



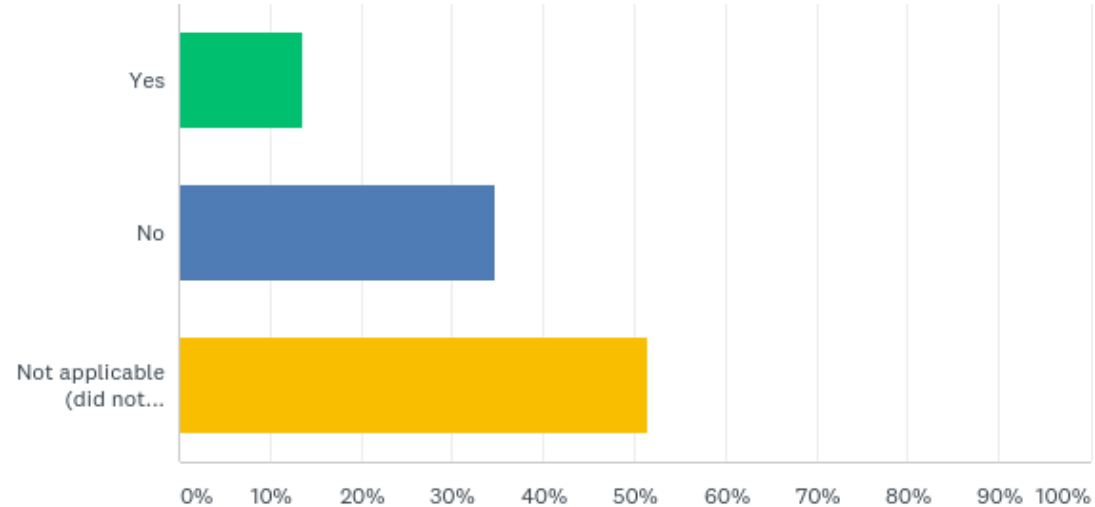
Q17: If you were sexually harassed on more than one occasion, what was the number of persons who performed these acts of sexual harassment?

Answered: 557 Skipped: 169



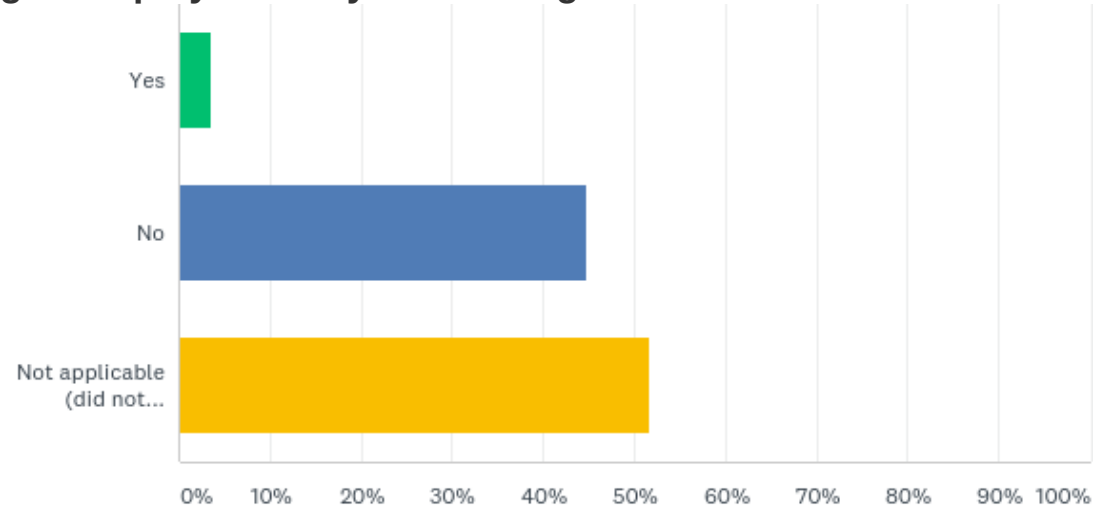
Q18: If you experienced sexual harassment in the workplace, did you verbally report the issue to your supervisor/ manager/ employer or any other designated officer?

Answered: 557 Skipped: 169



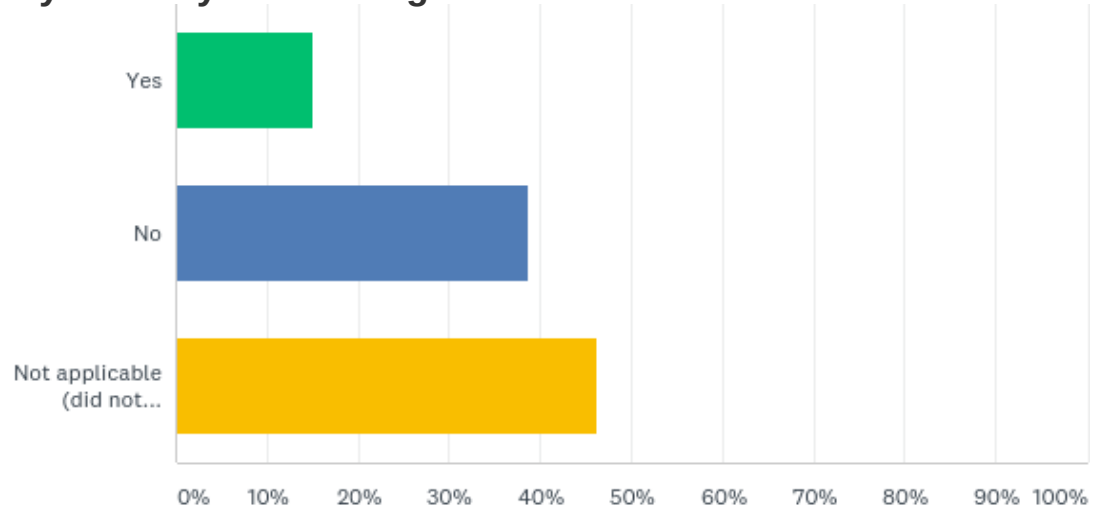
Q19: If you experienced sexual harassment in the workplace, did you submit a written complaint to your supervisor/ manager/ employer or any other designated officer?

Answered: 557 Skipped: 169



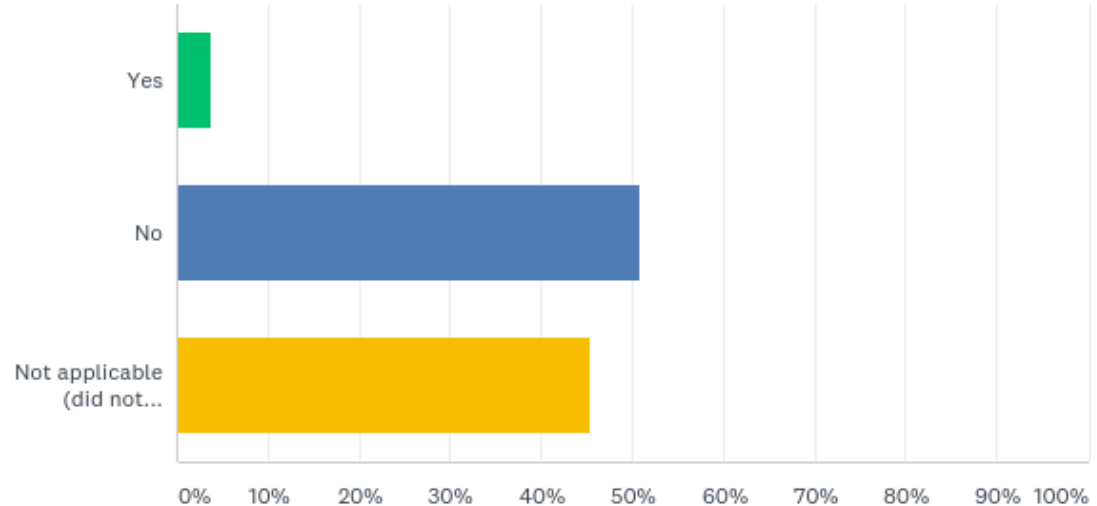
Q20: If you observed sexual harassment in the workplace, did you verbally report the issue to your supervisor/ manager/ employer or any other designated officer?

Answered: 557 Skipped: 169



Q21: If you observed sexual harassment in the workplace, did you submit a written complaint to your supervisor/ manager/ employer or any other designated officer?

Answered: 557 Skipped: 169



Q22: If you experienced sexual harassment in the workplace and did not report the incident to a supervisor/ manager/ employer or any other designated officer, what were the reasons you did not report the incident? (Tick all that apply)

Answered: 557 Skipped: 169

ANSWER CHOICES	RESPONSES	
Fear of stigmatisation	23.70%	132
Fear of not being believed	20.47%	114
Fear of retribution	21.54%	120
Fear of losing your job	17.24%	96
Fear that it may cause conflict within the organisation	26.57%	148
Fear of embarrassment	17.95%	100
Did not feel that the incident was worth reporting	13.11%	73
Not applicable (did not experience sexual harassment in the workplace)	49.01%	273
Other (please specify)	10.95%	61
Total Respondents: 557		

Q23: If you observed sexual harassment in the workplace and did not report the incident to a supervisor/ manager/ employer or any other designated officer, what were the reasons you did not report the incident? (Tick all that applies)

Answered: 557 Skipped: 169

ANSWER CHOICES	RESPONSES	
Fear of stigmatisation	20.83%	116
Fear of not being believed	22.80%	127
Fear of retribution	19.57%	109
Fear of losing your job	16.70%	93
Fear that it may cause conflict within the organisation	31.96%	178
Fear of embarrassment	13.82%	77
Did not feel that the incident was worth reporting	10.05%	56
Not applicable (did not observe sexual harassment in the workplace)	48.11%	268
Total Respondents: 557		

Q24: If you experienced sexual harassment in the workplace and reported the incident to a supervisor/ manager/ employer or any other designated officer, was the incident investigated?

Answered: 557 Skipped: 169

ANSWER CHOICES	RESPONSES	
Allegations were investigated	6.10%	34
No action was taken by the employer	11.67%	65
Uncertain (not sure if incident was investigated or not)	11.85%	66
Matter is still pending by employer	0.36%	2
Not applicable (did not experience incident of sexual harassment in the workplace)	70.02%	390
TOTAL	557	

Q25: If you observed sexual harassment in the workplace and reported the incident to a supervisor/ manager/ employer or any other designated officer, was the incident investigated?

Answered: 557 Skipped: 169

ANSWER CHOICES	RESPONSES	
Allegations were investigated	4.67%	26
No action was taken by the employer	12.39%	69
Uncertain (not sure if incident was investigated or not)	17.24%	96
Matter is still pending by employer	0.54%	3
Not applicable (did not observe incident of sexual harassment in the workplace)	65.17%	363
TOTAL		557

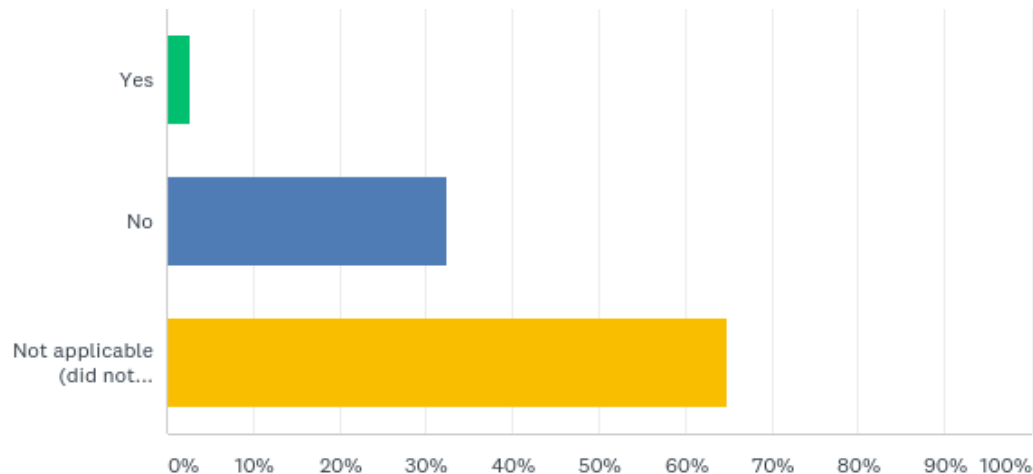
Q26: If you experienced and reported sexual harassment in the workplace, what was the outcome of the investigation by the supervisor/manager/employer or any other designated officer?

Answered: 557 Skipped: 169

ANSWER CHOICES	RESPONSES	
Perpetrator was suspended	0.90%	5
Perpetrator directed to attend counseling	0.90%	5
Perpetrator employment was terminated	1.08%	6
Perpetrator transferred/ reassigned to another area within the organisation	2.87%	16
Employer submitted matter to the Trinidad and Tobago Police Service	0.54%	3
I submitted matter to the Industrial Court	0.00%	0
No action was taken by the employer	16.52%	92
Not applicable (did not experience/ report incident of sexual harassment in the workplace)	71.63%	399
Other (please specify)	8.80%	49
Total Respondents: 557		

Q27: If you experienced sexual harassment in the workplace, did you receive any type of redress from the employer?

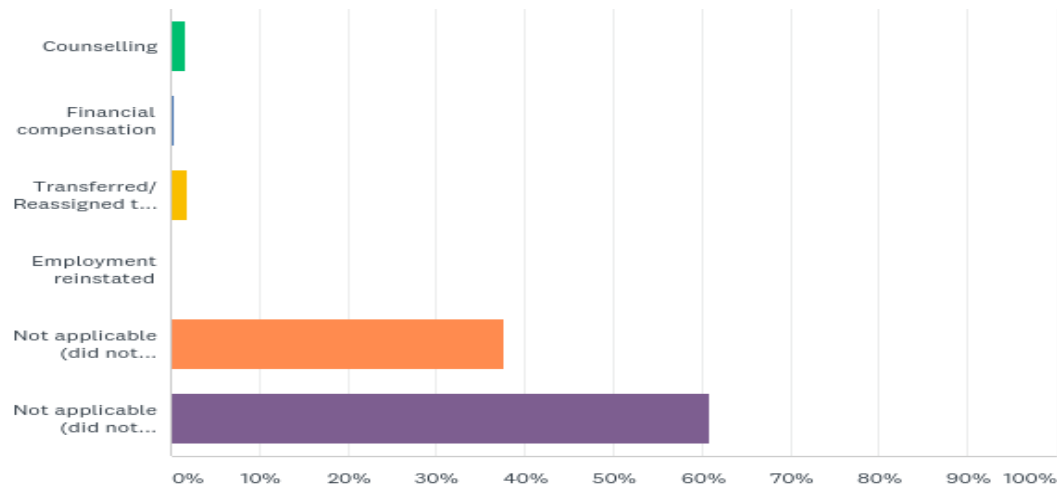
Answered: 557 Skipped: 169



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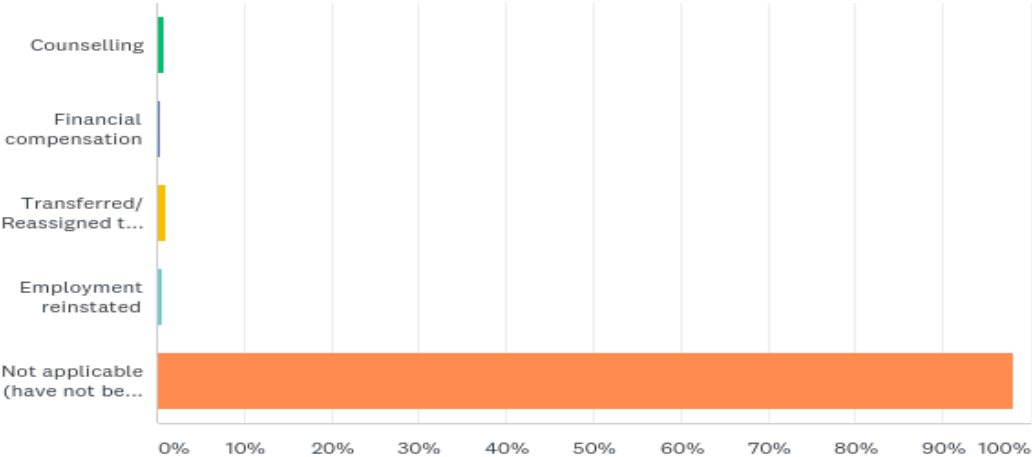
Q28: If you experienced sexual harassment in the workplace and received some form of redress from the employer, what was the type of redress?

Answered: 557 Skipped: 169



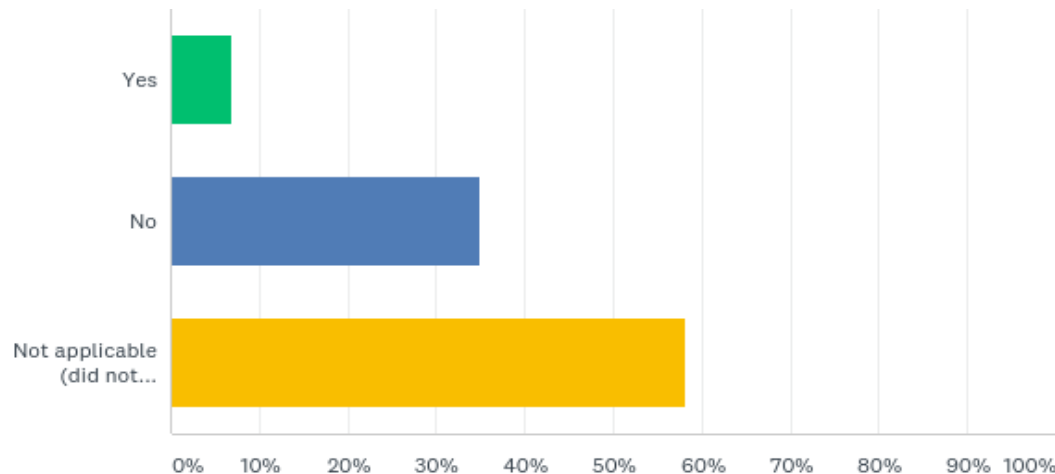
Q29: If you were accused of an alleged incident of sexual harassment in the workplace and the investigation disputed all of the alleged victim’s allegations, did you receive some form of redress from the employer?

Answered: 557 Skipped: 169



Q30: If you experienced sexual harassment in the workplace, did you resign from the organisation?

Answered: 557 Skipped: 169



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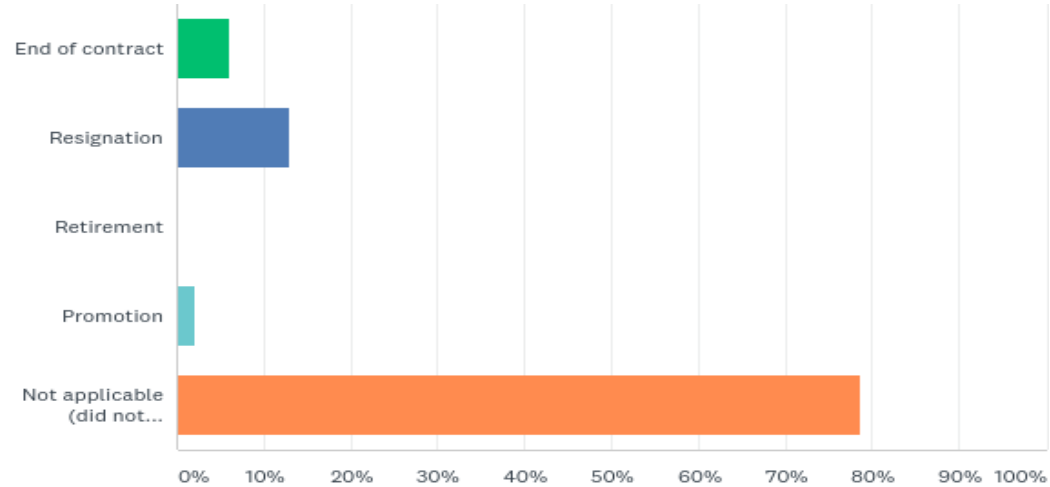
Q31: If you experienced sexual harassment in the workplace and exited the organisation, what were the personal reasons you exited the organization? (Tick all that apply)

Answered: 557 Skipped: 169

ANSWER CHOICES	RESPONSES	
You were asked to resign by management	1.08%	6
You no longer felt comfortable within the organisation	10.05%	56
Alleged perpetrator remained a member of staff	7.00%	39
You felt stigmatised by other employees	1.80%	10
You felt unsafe	5.39%	30
Not applicable (did not experience incident of sexual harassment in the workplace)	68.76%	383
Other (please specify)	18.31%	102
Total Respondents: 557		

Q32: If you experienced sexual harassment in the workplace and exited the organisation, what were the official reasons you exited the organization?

Answered: 532 Skipped: 194



Q33: What are your employer's current provisions to address sexual harassment in your workplace? Tick all that apply.

Answered: 517 Skipped: 209

ANSWER CHOICES	RESPONSES
Counselling	20.50% 106
Sexual harassment policy	39.65% 205
Training and/or sensitisation sessions conducted on sexual harassment	13.73% 71
Designated officer to submit reports	14.89% 77
Employee Guidelines/ Manual to mitigate/treat with sexual harassment	27.85% 144
Not applicable (employer does not have any provision to address sexual harassment in the workplace)	32.69% 169
Other (please specify)	12.19% 63
Total Respondents: 517	

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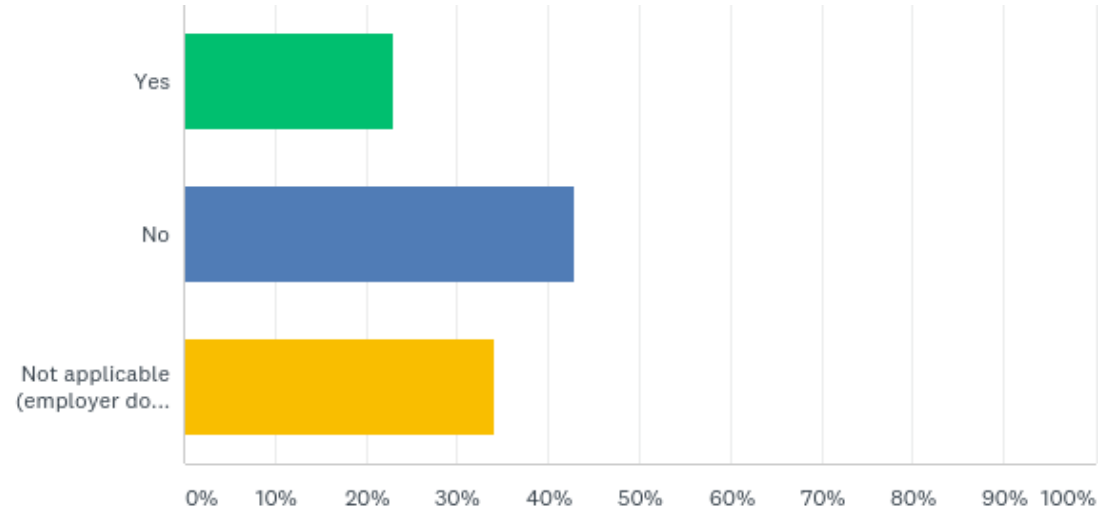
Q34: If your employer has a procedure or policy to treat with complaints of sexual harassment, what does the policy or procedure include?

Answered: 517 Skipped: 209

ANSWER CHOICES	RESPONSES	
Statements taken from both the victim and perpetrator	40.43%	209
Formal internal investigation	42.75%	221
Parties involved were kept apart	19.15%	99
Parties involved were regularly informed of the progress of the investigation	13.54%	70
Submitting matters to the Industrial Court	6.38%	33
Reporting matter to the Trinidad and Tobago Police Service	12.77%	66
Not applicable (employer does not have a procedure or policy)	37.52%	194
Other (please specify)	13.54%	70
Total Respondents: 517		

Q35: Do you think that the employer's procedure or policy to treat with incidents of sexual harassment is adequate?

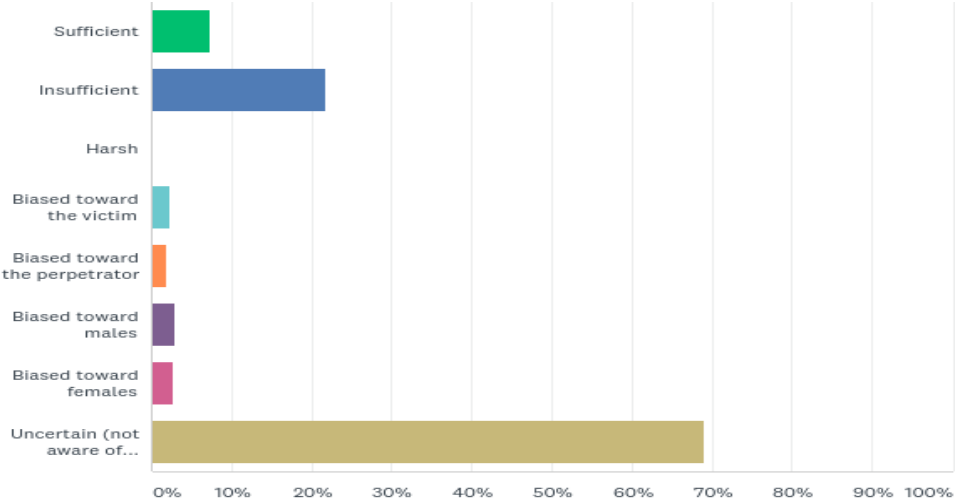
Answered: 517 Skipped: 209



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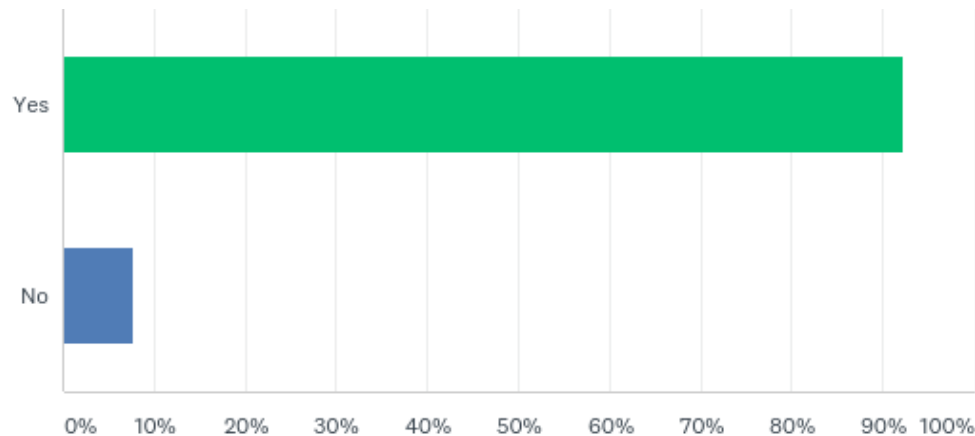
Q36: Current national legislation (Section 4 of the Constitution of the Republic of Trinidad and Tobago; Sections 7 and 9 of the Equal Opportunity Act, Chap. 22:03; Decisions of the Industrial Court; Sections 15, 16 and 18 of the Sexual Offences Act, Chap. 11:28 and Section 6 of the Occupational Safety and Health Act, Chap. 88:08) used to treat with sexual harassment in the workplace is:

Answered: 517 Skipped: 209



Q37: Do you think Trinidad and Tobago should enact legislation which deals exclusively with sexual harassment?

Answered: 517 Skipped: 209



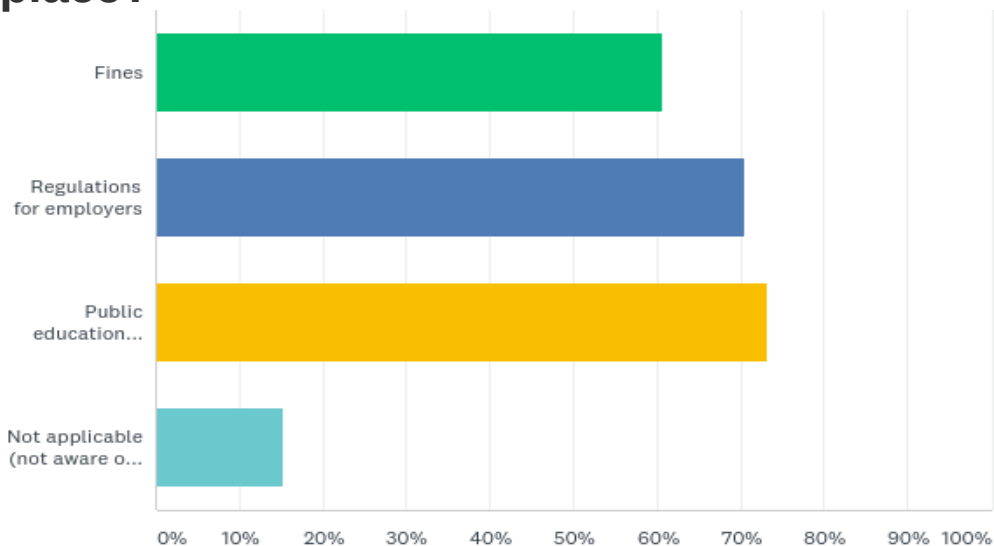
Q38: What is required to improve the employer's sexual harassment procedure or policy?

Answered: 517 Skipped: 209

ANSWER CHOICES	RESPONSES	
Legislation	61.90%	320
Fines	53.58%	277
Employee guidelines on behaviour	65.76%	340
Workplace culture	60.93%	315
Reporting mechanisms	62.67%	324
Education campaigns	67.31%	348
National policy	57.45%	297
Not applicable (employer does not have a procedure or policy)	11.80%	61
Total Respondents: 517		

Q39: What is required to improve national legislation used to treat with sexual harassment in the work place?

Answered: 517 Skipped: 209



APPENDIX V

RECOMMENDATIONS FROM STAKEHOLDERS

Area	WINAD Recommendations
Education and Training	• Informing employees of their rights by organizing programmes can create safe spaces for anyone who has or who is likely to be the target of sexual harassment • Creating mandatory training throughout all levels of the organization including (actually, in particular) executive management covering in particular: - how to recognize sexual harassment - redress available to employees within the organization - redress available externally - Bystander training to empower onlookers to recognize and act when they witness sexual harassment
Development of policies within the workplace	• Development of a sexual harassment policy will reduce the amount of unreported cases and potentially reduce the number of acts of sexual harassment through its clear directives for conduct and the consequences of misconduct • If policy exists, there should be an adequate grievance procedure inducted to ensure that the complaint made by the employee is taken seriously • An investigation procedure should be carried out by investigators who are external to the organization as a measure of securing objectivity in the outcome of the investigation • Companies should provide employees with information as to how complaints will be investigated and allow for employees to seek further redress should they experience any retaliation as a result of their complaint • Attempt to reduce any stigmatization a victim receives or potentially receives from co-workers etc. to their reputation. This can be done through encouraging awareness, producing regulated guidelines and policies in which the employees can air their grievances and have them respected as a worker who is the legitimate holder of rights
Whistle blowing Policy	• Contemporaneous with any sexual harassment policy in an organization needs to be a robust whistle blowing policy and an efficient and optionally anonymous reporting mechanism • The Whistle blowing Bill has been in the pipes for some time, however organizations need to create comprehensive policies that allow for persons to safely access reporting, and to do so anonymously (and with the assurance that it is anonymous) if they so choose
Disciplinary Action	• Should be undertaken where the allegations of sexual harassment have procured some truth to it or in certain cases where malicious or vexatious false accusations have been made • A person who knowingly makes a false sexual harassment complaint may be subject to disciplinary proceedings in accordance with the established human resource procedures for misconduct

APPENDIX VI

LIST OF ENTITIES WITH SEXUAL HARASSMENT POLICIES

MOLSED List of known entities with sexual harassment policies (as at February 25, 2019) contained in the Collective Agreements	
1.	TATECO Credit Union/ National Union of Government and Federal Workers
2.	Master Mix of Trinidad and Tobago/ National Union of Government and Federal Workers
3.	Massy gas Products Limited/ National Union of Government and Federal Workers
4.	Clarke and Battoo Limited/ National Union of Government and Federal Workers
5.	The University of the West Indies, St. Augustine / Oilfield Workers Trade Union (OWTU)
6.	Thawe Credit Union Co-operative Society Limited (Tobago)/ OWTU
7.	Crown Lithography Trinidad Limited/
8.	Cancer Society of Trinidad and Tobago / Banking Insurance and General Workers Union
9.	First Caribbean International Bank (Trinidad and Tobago) / Banking Insurance and General Workers Union
10.	Trinidad and Tobago Police Credit Union and Co-operative Society Limited/ Banking Insurance and General Workers Union
11.	AMGECU Credit Union Co-operative Society Limited/ Banking Insurance and General Workers Union
12.	Public Services Association and BIGWU
13.	Textel Credit union and BIGWU
14.	Eastern Commercial Lands Limited and BIGWU
15.	Tru Valu and BIGWU
16.	Trinidad and Tobago Police Credit Union and BIGWU
17.	Neil and Massy Credit Union Co-operative Society Limited and BIGWU
18.	Caribbean Industrial Research Institute and BIGWU
19.	Aero Services Credit Union Co-operative Society Limited and BIGWU
20.	Transcorp Credit Union Co-operative Society Limited and BIGWU

APPENDIX VII

**EOC DRAFT PROPOSED
AMENDMENTS TO THE
EQUAL OPPORTUNITY
ACT, CHAP. 22:03**

Section	EOC's Draft Proposed Amendments to the Equal Opportunity Act, Chap. 22:03
7A	(1) For the removal of doubt, any act of sexual harassment shall constitute unlawful discrimination based on sex, within the meaning of section 4 of this Act.
	(2) A person commits an act of sexual harassment against another person if, having regard to – (a) all the circumstances referred to in subsection (3); and (b) the effect upon the person against whom the conduct described in subsection (4) is alleged to have been committed, it is reasonable for the sexually harassed person to conclude that the conduct was directed towards him or her and was calculated to – (i) offend, humiliate, disrespect or degrade him or her; (ii) intimidate, threaten or compel him or her by putting him or her in fear of being placed at a disadvantage or prejudiced if he or she does not submit to the sexual harassment; or (iii) create a hostile environment for him or her, or violate his or her dignity.
	(3) For the purposes of subsection (2) (a), the circumstances to be taken into account include but are not limited to the following – (a) the sex, age, relationship status, sexual preference, religious belief, colour, race, national or ethnic origin of the person who has alleged sexual harassment; (b) the relationship between the person alleging sexual harassment and the person who is alleged to have made the advance or request or who engaged in the conduct; (c) any disability of the person alleging sexual harassment; or (d) any other relevant circumstance.
	(4) The conduct referred to in subsection (2)(b) includes conduct which involves – (a) making an unwelcome – (i) sexual comment to a person; (ii) sexual comment about a person within his or her hearing; (iii) sexual innuendos to a person; (iv) sexual gesture to a person; (v) sexual contact with a person; (vi) sexual advance towards a person; or (vii) request for sexual favours from a person; (b) providing a person with unwelcome – (i) sexual images or graphics; or (ii) audio of a sexual nature; (c) transmitting unwelcome electronic messages of a sexual nature to a person; (d) exposing a third party to any of the conduct described in paragraphs (a) to (c); (e) making it appear to a person who is seeking employment, or education, or the provision of goods and services, or the provision of accommodation, as provided for by this Act, that the offer of any of these areas and/or the terms on which an offer is made, is contingent on that person's acceptance of or submission to sexual advances or any conduct of a sexual nature; (f) making it appear to a person who is in employment, or is receiving education, or the provision of goods and services, or the provision of accommodation, as provided for by this Act, that: (i) their continued employment, or continued receipt of education, or the provision of goods and services, or the provision of accommodation, as the case might be, including their continued receipt of any benefit, facility or service thereto associated, is contingent upon their acceptance or tolerance of sexual advances or any conduct of a sexual nature; and/or

	(ii) preferential treatment or other benefit, service or facility, would only be provided to that person upon that person's acceptance or tolerance of sexual advances or any conduct of a sexual nature (g) engaging in conduct of a sexual nature knowing that there is a likelihood that the person whom that conduct is intended to affect will become aware of the conduct; or (h) directly or indirectly engaging in any other form of unwelcome conduct of a sexual nature. (5) In this section “conduct of a sexual nature” includes making a statement of a sexual nature to a person, or in the presence of a person, whether the statement is made orally or in writing.
7B	(1) The Commission shall create and publish in the Gazette, a model sexual harassment prevention guidance document and sexual harassment prevention policy that employers may use in their adoption of a sexual harassment prevention policy required by this section. (2) Every employer who has five or more persons in their employment: (a) shall adopt the model sexual harassment prevention policy promulgated pursuant to sub-section (1) or establish a policy that equals or exceeds the minimum standards provided by the model sexual harassment prevention policy; and (b) shall ensure that their sexual harassment prevention policy is provided to each employee on commencement of employment with the employer, and that their policy can be easily accessed by persons who are employed with the employer.

APPENDIX VIII

**COMPARISON OF THE
EOA AND THE CARICOM
MODEL PROTECTION
AGAINST SEXUAL
HARASSMENT BILL**

Appendix VIII Table 1
Comparison of the Equal Opportunity Act, Chap. 22:03 and the CARICOM Model Protection
Against Sexual Harassment Bill

CARICOM MODEL PROTECTION AGAINST SEXUAL HARASSMENT BILL	EQUAL OPPORTUNITY ACT
Makes SH in EMPLOYMENT unlawful	YES
Makes SH in EDUCATION unlawful	YES
Makes SH in ACCOMMODATION unlawful	YES
NO	Makes SH in the provision of GOODS & SERVICES unlawful
Has a mechanism for RECEIVING COMPLAINTS	YES
Makes it unlawful to VICTIMISE someone who has lodged a complaint	YES
Has a mechanism for INVESTIGATING COMPLAINTS	YES
Can COMPEL Respondent to PROVIDE INFORMATION	YES
Can PROSECUTE Respondent for a CRIMINAL OFFENCE if they do not provide information as requested	YES
Can CONCILIATE Complaints after Investigation	YES
Creates a TRIBUNAL to hear and adjudicate on UNRESOLVED COMPLAINTS	YES (Equal Opportunity Tribunal or 'EOT')
No Tribunal proposed by CARICOM is NOT a Superior Court, but it is given the power to punish for contempt	EOT is a SUPERIOR COURT OF RECORD
No Tribunal proposed by CARICOM is chaired by an Attorney with 10 years experience appointed for a term of 2 years	EOT is chaired by a JUDGE equal to a Judge of the High Court who has permanent tenure
No Tribunal is only given powers to compel the attendance of witnesses and the production of documents	EOT has the RANGE OF POWERS AS THE HIGH COURT and for e.g. can issue interim injunctions
Tribunal can make a WIDE RANGE OF ORDERS in determining a matter	YES

- ⁱ National Policy on Sexual Harassment in Trinidad and Tobago. p 14
https://www.molsed.gov.tt/images/National_Workplace_Policy_on_Sexual_Harassment_-_18-2-19_-_FINAL.pdf
- ⁱⁱ Strategy to Prevent and Respond to Sexual Exploitation and Abuse and Sexual Harassment. UNICEF. p 8.
<https://www.unicef.org/sites/default/files/2019-05/UNICEF-Strategy-Prevent-Respond-Sexual-Exploitation-Abuse-Sexual-Harassment-January-2019.pdf>
- ⁱⁱⁱ CARICOM Model Protection Against Sexual Harassment Bill: Regarding Equality of Opportunity and Treatment in Employment and Occupation. Accessed November 22, 2018. http://blue.lim.ilo.org/cariblex/cml_1.shtml#PART_III
- ^{iv} “Sexual Harassment at Work Fact Sheet”, International Labour Organisation. Accessed December 24th, 2018.
https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_decl_fs_96_en.pdf
- ^v ILO, “Ending violence and harassment against women and men in the world of work,”
https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_553577.pdf
- ^{vi} Convention On The Elimination Of All Forms Of Discrimination Against Women (CEDAW), United Nations, Accessed November 22, 2018. <https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx>
- ^{vii} Ibid.
- ^{viii} Universal Declaration of Human Rights, Accessed November 22, 2018. <http://www.un.org/en/universal-declaration-human-rights/>
- ^{ix} Inter- American Convention on the Prevention, Punishment and Eradication of Violence Against Women, Accessed January 18, 2019.
<https://www.oas.org/en/mesecvi/docs/belemdopara-english.pdf>
- ^x Convention on International Covenant on Economic, Social and Cultural Rights, Accessed November 22, 2018.
<https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>
- ^{xi} International Covenant on Civil and Political Rights, Accessed November 22, 2018.
<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>
- ^{xii} ILO Convention concerning Discrimination in Respect of Employment and Occupation, Accessed November 22, 2018.
https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0:NO::P12100_ILO_CODE:C111
- ^{xiii} Belize Protection Against Sexual Harassment Act Chapter 107 (Amended 2000) Accessed January 31, 2019.
https://oig.cepal.org/sites/default/files/2000_blz_protectionagainstharrassment.pdf
- ^{xiv} St. Lucia 3.01 Criminal Code (Revised Edition 2005) Accessed January 31, 2019.
<http://www.govt.lc/www/legislation/Criminal%20Code.pdf>
- ^{xv} St. Lucia Equality of Opportunity and Treatment in Employment and Occupation Act Chapter 16.14 Accessed January 31, 2019.
https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_127741.pdf
- ^{xvi} Barbados Sexual Harassment Prevention Act (Revised) 2017. Accessed January 31, 2019.
https://www.babadosparliament.com/uploads/bill_resolution/227468352381fe5b7e05172751b04e51.pdf
- ^{xvii} Equal Opportunities Act, Chap. 22:03, Accessed November 22, 2018.
http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/22.03.pdf
- ^{xviii} Sexual Offences Act, Chap. 11:28, Accessed November 22, 2018.
http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/11.28.pdf
- ^{xix} Occupational Safety and Health Act, Chap. 88:08, Accessed November 22, 2018.
http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/88.08.pdf
- ^{xx} Urgent Questions, Hansard. House of Representatives. April 08, 2018, Accessed November 22, 2018.
<http://www.tparliament.org/hansards/hh20180409.pdf>. p3.
- ^{xxi} National Policy on Gender and Development: A Green Paper, Office of the Prime Minister: Trinidad and Tobago, February, 2018, Accessed November 22, 2018. <http://www.opm-gca.gov.tt/portals/0/Documents/National%20Gender%20Policy/NATIONAL%20POLICY%20ON%20GENDER%20AND%20DEV ELOPMENT.pdf?ver=2018-03-08-134857-323> p44.
- ^{xxii} Ibid. p60
- ^{xxiii} Ibid.
- ^{xxiv} Ibid. p45
- ^{xxv} Ibid. p60
- ^{xxvi} Ibid. p61
- ^{xxvii} Employers’ Consultative Association Brochure. Accessed January 21, 2019. <https://www.ecatt.org/index.php/media-centre/publications/eca-brochures/32-eca-brochure-august-2015/file>
- ^{xxviii} Cecile Pemberton and Joel Joseph, National Women’s Health Survey for Trinidad and Tobago Final Report, 2018, IDB and Caribbean DEV Trends, pages 62- 63. <https://publications.iadb.org/en/national-womens-health-survey-trinidad-and-tobago-final-report>
- ^{xxix} Ministry of Labour and Small Enterprise Development, National Workplace Policy on Sexual Harassment, February 2019, page 12-13. https://www.molsed.gov.tt/images/National_Workplace_Policy_on_Sexual_Harassment_-_18-2-19_-_FINAL.pdf
- ^{xxx} United Nations’ Department of Economic and Social Affairs, “Model laws and strategies”, Handbook for Legislation on Violence against Women, Page 27
<https://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf>