

**A CRITICAL ANALYSIS OF THE LAW ON SEXUAL HARASSMENT IN UGANDA; A
CASE OF UGANDA PRISONS**

**BY
NABWIRE RITAH
1153 – 01024 - 00215**

**A RESEARCH DISSERTATION SUBMITTED TO THE SCHOOL OF LAW IN
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DECLARATION

I NABWIRE RITAH do hereby declare to the best of my knowledge and belief that this is my original piece of work and that it has never been submitted for the award of any degree to any university or college or published as a whole or part thereof.

I further declare that all materials cited in this proposal which are not my own have been fully acknowledged.

SIGNATURE: *Nabwire Ritah*.....

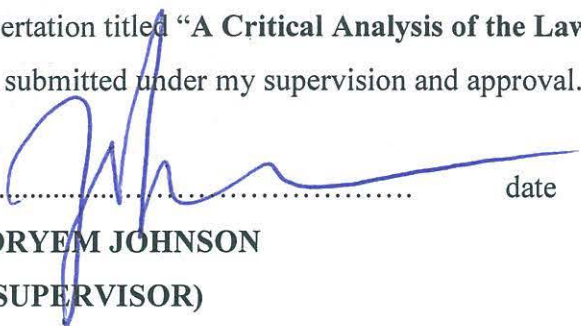
Date: *18th June 2019*.....

NABWIRE RITAH

APPROVAL

This dissertation titled "A Critical Analysis of the Law on Sexual Harassment in Uganda,"
has been submitted under my supervision and approval.

Signed.....



date

18th June 2019

ORYEM JOHNSON

(SUPERVISOR)

DEDICATION

I dedicate this research to my parents and my family at large. Thank you for all the support rendered to me throughout the entire course. May the Almighty God bless you all.

ACKNOWLEDGEMENT

First and foremost, I would like to thank my Creator for breathing life into me and for entrusting me with the will, strength and wisdom to work on this research.

I'm eternally indebted to my supervisor, Mr. Oryem Johnson for his supervision and timely observations and comments on the draft chapters, which assisted me in producing this work.

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I would not have done justice to this research without recognizing the support both financially and spiritually i got from my Mother Mrs. Florence Namufuta for the support they gave me during my study period.

Above all, i express my heartfelt gratitude to all friends and relatives who cannot be mentioned individually by name due to limited space. I acknowledge and appreciate all of you.

ACRONYMS AND ABBREVIATIONS

ACFODE	Action for Development
CEDAW	Committee on the Elimination of Discrimination against Women
ECCC	East Central Community College
FIDA	Uganda Association of Women Lawyers
GBV	Gender-based violence
ICC	International Criminal Court
ICD	International Classification of Diseases
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
ILO	International Labour Organization
NGP	The National Gender Policy
NRM	National Resistance Movement
OECD	Organization for Economic Co-operation and Development
OTP	Office of the Prosecutor
PRDP	Peace, Recovery and Development Plan for Northern Uganda
SCSL	Special Court for Sierra Leone
SPSC	Sindh Public Service Commission
TFV	Trust Fund for Victims
UJCC	Uganda Joint Christian Council
UK	United Kingdom
UPE	Universal Primary Education
UPS	Uganda Prisons Service
USA	United States of America

LIST OF STATUTES

Employment (Sexual Harassment) Regulations 2012

Employment Act, 2006

The Constitution of the Republic of Uganda, 1995

The Penal Code Act Cap120 (amended 2007)

INTERNATIONAL LAW (TREATIES AND CONVENTIONS)

International Criminal Court

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ABSTRACT

The study critically analyzed the law of sexual harassment in Uganda taking a case study of Uganda prisons Luzila. A central feature of sexual harassment in the workplace is that it essentially involves two sides of a coin, that is to say, an impairment of dignity, self-esteem, self-worth, respect, individual autonomy, and equality from a positive aspect and freedom from insult, degrading treatment, disrespect, abuse of trust and unfair discrimination from a negative aspect. The overlap between equality and dignity as founding values of the Constitution, constitutionally entrenched rights, and values underpinning the limitation clause in the Constitution is explored with a view to illustrating why sexual harassment is unacceptable in an open and democratic Uganda. A central focus of the research is that the harm of sexual harassment gives rise to various remedies, which are not mutually exclusive. A wide range of data collection methods were used including reference to Ugandan judicial precedent; legislation; selected foreign case law; the Constitution; textbooks; journal articles; feminist theories; and international conventions. The aim is to underscore the impairment suffered by women through sexual harassment, which includes economic harm, psychological harm, unfair discrimination, work sabotage, unequal access to employment opportunities and abuse of organizational power by supervisors. The judicial tests, which determine whose perception of the nature of sexual harassment is decisive, are described. The focal point of the thesis advocates a judicial test for identifying sexual harassment, which is gender neutral, objective, and promotes the objects, purport, and spirit of the Bill of Rights by offering equal protection before the law. A critique of the current law on sexual harassment in Uganda is conducted in the light of the *common-law* principles of vicarious liability. An evaluation is made of how and to what extent the Ugandan case law is compatible with English authorities. This was done by broadening the scope of employment test to include approaches compatible with an abuse of power and trust; frolic of one's own; enterprise risk; mismanagement of duties; and abuse of supervisory authority and the sufficiently close nexus between the wrongful conduct and the employment. *Statuton*; vicarious liability in terms of labour law is underscored because it is distinct from the *common-law* principles of vicarious liability in creating an element of deemed personal liability on the part of the employer for failure to take steps and ensure the eradication of gender discrimination. It is observed that women cannot be liberated as a class (gender equality) if they are not liberated as autonomous individuals (dignity). It is concluded that Ugandan law is in harmony with the English authorities on sexual harassment in the workplace and has the potential to deal adequately with sexual harassment cases in the workplace but only if attention is paid to the proposed emphasis and suggestions made in the dissertation.

CHAPTER ONE

1.1 Introduction

Sexual harassment at workplace is prohibited by law. Sexual Harassment at workplace is a direct or implicit request to a worker for any form of sexual favor to get preferential treatment at workplace; or threaten the worker of detrimental treatment on present or future employment status of the worker. It also includes use of filthy language (unwelcome verbal advances, sexual oriented comments, request for sexual favours, jokes of a sexual nature, offensive flirtation or obscene expressions of sexual interest that are addressed directly to the person), visual material of sexual nature (sexually suggestive pictures, objects or written materials or sexually suggestive gestures) and showing physical behavior of sexual nature (unwanted and unwelcome touching, patting, pinching or any other unsolicited physical contact). All these have a detrimental effect on worker's employment, job performance and job satisfaction¹.

In an establishment with more than 25 workers, employer may issue a policy statement on sexual harassment, which clearly defines sexual harassment and states that the workplace is free of sexual harassment. An Employer must take measure to ensure that workers are not subjected to sexual harassment and take appropriate disciplinary measures against the person involved in sexual harassment.

The policy statement must also describe the procedure through which worker may bring the complaints of sexual harassment to the attention of the Labour officer in Luzira prison. The officer must keep confidential all the information related to the complainant except where disclosure is necessary for the purpose of investigation or taking disciplinary measures. Each worker should be well aware of the provisions of the policy statement.

In accordance with the Penal Code², it stipulates that any person who intends to insult the modesty of any woman or girl, utters any word, makes any sound or gesture or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen by such woman or girl, or intrudes upon the privacy of such woman or girl, commits a misdemeanour and is liable to imprisonment for one year.

¹ Section 7 of the Employment Act 2006

² Section 128(3) of the Penal Code Act

Employment (Sexual Harassment) Regulations 2012³ prescribes that those who contravene the sexual harassment related provisions commit an offence and are liable, on conviction, to a fine not exceeding six currency points or imprisonment not exceeding three months or both.

1.2 Background of the Study

Sexual harassment can be defined as unwelcome and unwanted sexual advances, requests for sexual favours, and other verbal or physical contact of a sexual nature that creates a hostile or offensive environment. It can also be seen as a form of violence against women (and men, who can also be sexually harassed) and as discriminatory treatment. A key part of the definition is the word “unwelcome”.

Sexual harassment can take a variety of forms. It includes both physical violence and more subtle forms of violence such as coercion – forcing somebody to do something they don’t want to. It can take a long-term form – repeated sexual “jokes”, constant (unwanted) invitations to go on a date, or unwelcome flirting of a sexual nature. And it can be a one-off incident – touching or fondling somebody inappropriately, or even sexual abuse or rape.

Sexual harassment is a behaviour which relates directly to the sex of the person who is being harassed. This is why it can be seen as discriminatory.

According to a study conducted by the International Labour Organisation (ILO), “Sexual harassment is inextricably linked with power and often takes place in societies which treat women as sex objects and second-class citizens.” A common example of this is when women are asked for sexual favours in return for being given a job, or a promotion, or a raise. Another example is street harassment, which can range from cat-calls and whistling through unwelcome and offensive language and also sexual abuse and rape.

Most importantly, sexual harassment is not the same as a mutually-agreed flirtation or relationship. It is an action which is unwelcome, causes offense and distress, and can, in some situations, be physically and emotionally dangerous. The victim can feel intimidated, uncomfortable, embarrassed, or threatened.

³ Section 19 of the Employment (Sexual Harassment) Regulations 2012

There are different legal definitions of sexual harassment in different countries and jurisdictions, but the most common forms of sexual harassment include: Telling sexual or dirty jokes, Displaying or distributing sexually explicit drawings or pictures, Letters, notes, emails, telephone calls, or material of a sexual nature, “Rating” people on their physical attributes, Sexual comments about a person's clothing, anatomy, or looks, Whistling or cat-calling, Sexually suggestive sounds or gestures such as sucking noises, winks, or pelvic thrusts, Direct or indirect threats or bribes for unwanted sexual activity, Repeatedly asking a person out for dates, or to have sex, Name-calling, such as bitch, whore, or slut, Staring in an offensive way (staring at a woman's breasts, or a man's buttocks), Unwanted questions about one's sex life, Unwanted touching, hugging, kissing, fondling, brushing up against somebody, Stalking a person, Touching oneself sexually for others to view, Sexual assault, Molestation, Rape.

Sexual harassment can take place anywhere – at work, at university, on the street, in a shop, at a club, while using public transport, at an airport, even in the home. Basically, it is unwelcome sexual attention that can take place in any public place, and also in private spaces.

1.3 Statement of the Problem

Violence against women is on the increase in Uganda despite the presence of laws and policies to protect victims and survivors.

All over the world, sexual harassment has been known to exist in various government institutions, and Uganda's case has been well documented in this regard. Awareness about its detrimental effects on society and organizations has also risen. A number of women organizations in the world have risen to the challenge and have drawn attention to the issue. In this endeavor, Uganda has not been left out. It is now common knowledge worldwide that sexual harassment is an unwelcome and an abhorrent behavior that needs to be addressed along with its detrimental effects.

Despite this growing knowledge and the fact that cases and reports of sexual harassment are on the increase in Uganda and in the Uganda Prisons Service (UPS) Luzira in particular, no action has been known to have been taken against its perpetrators. This study therefore seeks to analyze

the law on sexual harassment the prevalence and management of sexual harassment in Luzira Prison Women Wing and to lay out strategies of dealing with the problem.

1.3 General Objective of the Study

The general objective of the study is to critically analyze the law on sexual harassment in Uganda

1.4 Specific Objectives of the Study

- i. To examine the laws on sexual harassment in Uganda,
- ii. To establish whether these laws are being implemented by the stakeholders and policies put in place by government to combat sexual harassment
- iii. To analyze the doctrine of vicarious liability in relation to sexual harassment
- iv. To come up with recommendations that can help Uganda government to combat sexual harassment

1.6 Research Questions

The questions that this research hopes to answer are:

- i. What are the laws of sexual harassment in Uganda?
- ii. Are the laws put in place being implemented by stakeholders?
- iii. What is the doctrine of vicarious liability in relation to sexual harassment?
- iv. What are the recommendations that can help Uganda government to combat sexual harassment

1.8 Scope of the Study

The study will be conducted in women wing purposively selected from Luzira prison. The selection will target mainly four aspects:, those units where only female staff are employed and those with a mix of both female and male staff, those that employ more male staff than is the norm in other units, and Prisons Headquarters where there is a high concentration of senior officers and with a heavy non-uniformed staff presence.

The study will also seek the opinion of some retired women officers in the country as well as prominent academicians conversant with the subject of sexual harassment.

The study will cover the period from 1986 to to-date. This is the period when a lot of women issues came into prominence. With the coming to power of the NRM government in 1986, a women's ministry was created in 1988. This saw many women organizations coming to the fore, such as FIDA, ACFODE⁴ etc, who came in to lobby and advocate for women representation and participation at all levels of decision making as well as the reform of laws affecting women and working for the introduction of gender issues at all levels. This period should help to highlight how those trends have affected the management of women issues in the Luzira prison.

1.6 Theoretical Framework

Sexual harassment in the workplace can be linked to many theories, but for this study, I shall site the gender, feminist and organizational theory. Gender theory is “widely used to refer to social constructions of sex and decision based on differences of sex, however indirectly”⁵, so much so that sexuality of men, their gender and the male sex can be conflated and be explained by just male sex. Sexuality and gender are linked through and explained by two categories, biological and naturalized or normalized. Gender theory therefore arises from the pro-women analysis that asserts that the women have for a long time been a minor factor in the global male dominated system. The theory has been in existence for a long time and has kept changing. It has been affected by different interests exposed by social groups, human sub-cultures and different practices over the ages.

This gender theory points to the sexual differences between human beings and the struggle between the male and female for the domination of the other. While the winner of this struggle dominates, the weaker has to adopt means of survival by devolving. The result is that over the years, the men have become stronger and have subordinated the women ever since. So, gender is a power-relating issue.

⁴ Nagaddya Sarah (1993); Gender Differences in Management of Medium Scale Industries in Uganda, Makerere University, Kampala (Unpublished).

⁵ Houghton James Hazel (1995); Sexual Harassment; Cavendish Publishing, London.

1.9 Significance of the Study

The study is intended to examine the nature and prevalence of sexual harassment in Uganda. Sexual harassment, where it exists in society, takes many forms and it is important to ascertain how it manifests itself in Uganda.

It is also meant to be an eye opener to the fact that sexual harassment exists in Uganda and is something that needs to be dealt with owing to its many negative aspects to the victims as well as to the organizations.

Upon providing evidence of its existence, the study will also mean to suggest solutions to the problem of sexual harassment in Uganda.

This study is also expected to add value to the existing body of knowledge from students, academicians and researchers who may appreciate the problem of sexual harassment in the organizations in Uganda and enhance their understanding of its consequences to society.

It is hoped that the study will enable policy makers both within organizations and from government to appreciate the problem and come up with appropriate remedies to address the problems associated with sexual harassment.

1.11 Methodology

The methodology will be qualitative research methods where by the researcher will conduct oral interviews with the prison wardens where the workers are both male and female wings section. To establish whether sexual harassment exists between the female workers or not. The researcher will conduct focus group discussions, library research in addition to internet search.

1.12 Literature Review

The absence of laws or their inadequate implementation in most regions, particularly in Africa, has also led to the persistence of sexual harassment at the workplaces. Semambo⁶ points out that sexual harassment in Britain came to the fore only when government policies were put in place

⁶ Semambo Claire (2001); Law and Sexual Harassment in Uganda's Formal Sector: The case of Makerere University; (Unpublished).

to hold employers liable for failure to incorporate sexual harassment policies in rules governing their employees. In Uganda, the 1995 constitution provides for affirmative action and the right to work. As a result very few formal complaints are made and victims rarely seek professional advice.

Generally therefore the extent and nature of sexual harassment in the third world and particularly Uganda is still a grey area that needs further investigation so that it's put on the agenda of the public.

Jeff Hearn⁷ postulate that sexual harassment is all about sexual differences between males and females so that sexuality becomes instinctive sexual drives and libidos. That because of biological circumstances, men as well as women have sexual desires or urges, which are natural and normal.

Nyende⁸ agree with Jeff Hearn *et al*, that to understand gender issues one has to look at the "constructions and reconstructions" of gender relations, and how these influence the way things are done. That these constructions are contingent upon gender roles that society has prescribed. That in their interaction gender roles open up considerable room for detailed forms of sexuality i.e. as in the many ways men might flirt with women in the workplace.

In politics, organizations have become a series of sites where the danger of sexuality can be both repressed and exploited. Historically therefore, sexuality acknowledges sexual interests. Sexual communities and sexual identities can be open to change even in rigid bureaucratic system.

Marylyn⁹ however have insisted that sexual harassment is not only an individual problem but also part of an organized expression of male power. It is one way that women are kept out of non-traditional occupations and re-enforce their secondary status in the workplace. This perception is further re-enforced by the bureaucratic set-up of most organizations. Bureaucracy that was thought to be ideal and progressive has instead created patriarchal structures and

⁷ Jeff Hearn, Deborah L. Sheppard, Peta Tancred-Sheriff, Gibson Burrell (1992); *The Sexuality of Organisations*; Sage Publications Ltd, London.

⁸ Nyende Paul (2002); *Sexual Harassment; The case of Women in the Workplace and Female Students in Tertiary Institutions in Uganda*; Makerere University, Kampala (Unpublished).

⁹ Marylyn J. Davidson and Ronald J. Burke (1994); *Women in Management*; Cultural Research Issues; Paul Chapman Publishing Ltd, London.

reinforced arbitrary power held by fathers and masters in traditional society. In bureaucracy, male domination of organizations and sexuality are emphasized.

According to Mackinon¹⁰, sexual harassment is a result of competition between the sexes for domination. The men who have traditionally held the dominant role have reacted to the challenge from women through hostility expressed in issues of sexual harassment. In the Uganda context, Semambo¹¹ asserts that in Africa context, sexual harassment is viewed as western concept and therefore non-existent in a typical African setting. But, this study recognized that culture and traditional beliefs were other factors responsible for sexual harassment in the workplace.

Reese & Karen¹² have agreed that because of the pressure, the women have to do better at the workplace to keep their jobs, their career paths have become much more fragmented due to managing work, child-rearing and domestic responsibilities. Because of the pressure of “having to work twice as hard to get the same level”, some women have had to opt to either remain childless or solicit the aid of maids to take care of the children while they concentrate on their careers thus creating another problem of harassment at home.

Catherine¹³ assert sexuality has become part of the workplace negotiation so much that sexual favours have become a currency by which women trade for easier jobs, promotions and job security. Even if the woman shows genuine interest, the man will see it as another opportunity to exercise his dominance over the woman, and will use the opportunity to exploit it. There is also a general feeling now by men that they are being feminized, creating unnecessary hostility between the sexes and a breakdown of the social structuring of occupations as there is a move towards individualization of occupations.

¹⁰ Mackinon C. (1979); *Sexual Harassment of Working Women*; New Haren, Yate University Press.

¹¹ Semambo Claire (2001); *Law and Sexual Harassment in Uganda's Formal Sector: The case of Makerere University*; (Unpublished).

¹² Laura A. Reese & Karen E. Lindenberg (1999); *Implementing Sexual Horror Policy; Challenge for the Public Sector Workplace*; age Publisher Ltd, London.

¹³ Catherine Itzin & Janet Newman (1995); *Gender, Culture and Organization change; Putting theory into practice*; Routledge, London.

Dr. Zoya¹⁴ alludes to the costs involved both to the victim and the organization in three areas of Somatic health, psychological health and work outcome. Gender harassment and overt and serious sexual harassment is linked to post-traumatic stress disorders, mainly victims quit their jobs, complainants are subsequently fired, and others do not later find employment owing to poor references. Others withdraw from work in form of absenteeism and low productivity, change career intention, experience low job satisfaction and deteriorated interpersonal relationships with co-workers and other negative attitudinal and emotional changes.

Mackinon¹⁵, Houghton¹⁶ all have highlighted the positive changes that have taken place in the USA and UK respectively towards achieving equality and fair treatment of employees at the workplace. Legislations have been put in place like the Employment Law 1970, the Equal Pay Act and the Sex Discrimination Act of 1975 in Britain which have continued to undergo major transformations.

Research in Uganda also points to attempts on policy in sexual harassment areas. Nyende¹⁷, Semambo¹⁸, all lament that while there are general law books supposed to address problem of discrimination, there are none to specifically address individual issues of gender discrimination. That challenges such as sexual harassment, denial of maternity leave, lack of child care facilities, lack of equal pay for work of equal value have not yet taken centre stage and few complaints are made and victims rarely seek professional advice.

This lack of uniformity in application of policies across nations and organizations shows the need for identifying areas for policy improvements, finding out rates of reporting of sexual harassment, perceived incidents, respondent definitions of sexual harassment and factors connected to successful policy implementation.

¹⁴ Dr. Zoya Khotkina (1997); *Sexual Harassment in Russia Workplaces*; Moscow Centre for Gender Studies, Russian academy of sciences.

¹⁵ Mackinon C. (1979); *Sexual Harassment of Working Women*; New Haren, Yate University Press.

¹⁶ Houghton James Hazel (1995); *Sexual Harassment*; Cavendish Publishing, London.

¹⁷ Nyende Paul (2002); *Sexual Harassment; The case of Women in the Workplace and Female Students in Tertiary Institutions in Uganda*; Makerere University, Kampala (Unpublished).

¹⁸ Semambo Claire (2001); *Law and Sexual Harassment in Uganda's Formal Sector: The case of Makerere University*; (Unpublished).

1.12 Chapterisation

This research comprises of five chapters. This chapter has provided the context for the research by considering a brief historical background of the study, statement of the problem, purpose of the study, research objectives, research question, scope, significance, methodology, literature review and the organizational lay out.

Chapter two will examine the existing law on sexual harassment in the workplace, the shortcomings, and efficacies, making suggestions for the way ahead.

Chapter three will define sexual harassment in an effort to outline the parameters within which sexual harassment must occur

Chapter four will evaluate the employer's liability and remedies available

Chapter five proposes the findings of the entire study. The chapter allows for realistic recommendations on how to fill the gaps in the legislation in an effort to improve the control of sexual harassment in Uganda.

CHAPTER TWO

THE LAWS ON SEXUAL HARASSMENT IN UGANDA

2.1 Introduction

Although there are no specific laws on sexual harassment in Uganda, there are some provisions that can be applied to address the injustices arising out of sexual harassment. There are also provisions for redress for the affected party.

Sexual harassment can be defined as unwelcome and unwanted sexual advances, requests for sexual favours, and other verbal or physical contact of a sexual nature that creates a hostile or offensive environment. It can also be seen as a form of violence against women (and men, who can also be sexually harassed) and as discriminatory treatment. A key part of the definition is the word “unwelcome”.¹⁹ Sexual harassment is inextricably linked with power and often takes place in societies which treat women as sex objects and second-class citizens.” A common example of this is when women are asked for sexual favours in return for being given a job, or a promotion, or a raise. Although there are different legal definitions of sexual harassment in different countries and jurisdictions, but the most common forms of sexual harassment include telling sexual or dirty jokes, displaying or distributing sexually explicit drawings or pictures, letters, notes, emails, telephone calls, or material of a sexual nature. The place where the above actions happen does not matter. Sexual harassment can take place anywhere – at work, at university, on the street, in a shop, at a club, while using public transport, at an airport, even in the home. Basically, it is unwelcome sexual attention that can take place in any public place, and also in private spaces.

2.2 Domestic Legal Framework

2.2.1 The 1995 Constitution of the Republic of Uganda

In Uganda the constitution is the supreme law. Under Article 20²⁰, fundamental rights and freedoms of the individual are inherent and not granted by the State or any one. It is incumbent on every one in Uganda to respect, uphold and promote all the freedoms and rights of every

¹⁹ <https://www.humanrights.gov.au/publications/sexual-harassment-workplace-legal-definition-sexualharassment>

²⁰ The 1995 Constitution of the Republic of Uganda

person. The privacy and bodily autonomy of every one in Uganda is protected and no person whatsoever has the right to unlawfully violate their fundamental right.

The 1995 Constitution of the Republic of Uganda stipulates that any person who claims that a fundamental or other right or freedom guaranteed under the Constitution has been infringed or threatened is entitled to apply to a competent court for redress which may include compensation.²¹ The Government of Uganda has also enacted a number of laws that offer protections against the varying aspects of Sexual Harassment.

Whereas the laws are fairly comprehensive in addressing sexual and gender based violence, they may not be applicable to Sexual harassment that occurs in conflict because of the following shortcomings among others:- (a) lack of a safe and supportive environment to report the crime(s); (b) institutional breakdown during conflict resulting in the absence of justice institutions; (c) absence of equipment and trained staff to respond to survivors of Sexual harassment in conflict through investigations medical and psycho socio support and; (d) absence of mechanisms to protect victims and witnesses; and (e) stigma, shame, humiliation and trauma experienced by victims and their families.

All persons in Uganda are equal by law according to Article 21²². They are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law and no one is supposed to be treated differently because of their sex or disability. Article 24 of the constitution protects the dignity of every one in Uganda. No person shall be subjected to any form of torture or cruel, inhuman or degrading treatment. This includes respect of a person to their psychological or mental wellbeing. This right is non-derogable according to Article 44 of the constitution. All duty bearers including employers and individuals have a legal obligation to accorded full and equal dignity of the person to women as men²³. The State is specifically mandated to provide the facilities and opportunities necessary to enhance the welfare of women to enable them to realise their full potential and advancement including laws, policies, strategies and actions platforms to

²¹ Article 50 of the 1995 Constitution of the Republic of Uganda

²² The 1995 Constitution of the Republic of Uganda

²³ Article 33 of the 1995 Constitution of the Republic of Uganda

prevent and response to sexual harassment. The State's legal responsibility is further stretched to protection of women and their rights, taking into account their unique status and natural maternal functions in society²⁴.

2.2.2 Employment (Sexual Harassment) Regulations 2012

In Uganda there are laws against sexual harassment; one just has to refer to the Employment (Sexual Harassment) Regulations, 2012.

The Employment Sexual Harassment Regulations ordered by the Government of Uganda states that an employer with more than twenty-five employees shall adopt a written policy against sexual harassment which includes a notice to employees that sexual harassment is unlawful, a statement of consequences for employees who are found to have committed sexual harassment, and education and training programs on sexual harassment for all employees on a regular basis. The employer is to also create a sexual harassment committee in which the committee receives and registers complaints of sexual harassment. Reported cases are investigated by the labour officer²⁵.

Under the Employment Act, the Employment (Sexual Harassment) Regulations, 2012 were made pursuant to sections 7 and 97(1) of the parent Act. Under the regulations, "harassment" means verbal or physical abuse or behaviour that unreasonably interferes with work or creates an intimidating, hostile, or offensive work environment including intimidation; and "intimidation" means physical or verbal abuse, or behaviour directed at isolating or humiliating an individual or a group or at preventing them from engaging in normal activities and includes degrading public tirades by a supervisor or colleague; deliberate insults related to a person's personal or professional competence; threatening or insulting comments, whether oral or written including by e-mail; and deliberate desecration of religious or national symbols or both. Every employer with more than twenty five employees shall adopt a written policy against sexual harassment. A sexual Harassment Committee is provided for under part III. Every employer shall establish a sexual harassment committee composed of representatives of management and employees or

²⁴ Article 33(3) of the 1995 Constitution of the republic of Uganda.

²⁵ The Government of Uganda, National Review on Beijing +20, 2014, para. 92

labour union representatives selected annually by each party to interalia receive and register complaints of sexual harassment in a form prescribed in the First schedule; The regulations also detail the sexual Harassment Complaints Procedure. An employee who is sexually harassed in any way described in these Regulations, by the employer or employers' representative, shall lodge a complaint to the labour officer. Where the commissioner has failed to dispose of a complaint referred to him or her under regulation 13(f) he or she shall refer the matter to the Industrial Court for hearing and the people involved are protected by law. Under the regulations, an employee shall not knowingly raise a false or frivolous sexual harassment claim and where an employee raises a false or frivolous sexual harassment claim, the employer may take appropriate disciplinary action against that employee; and every person who contravenes these Regulations, commits an offence and is liable on conviction to a fine not exceeding six currency points or imprisonment not exceeding three months or both.

2.2.3 Employment Act, 2006

Employment Act, 2006 restricts punitive action in sexual harassment cases at work to an employer or his representative, saying nothing of physical, sexual and verbal abuse by coworkers.

The Employment Act 2006, section 7 defines sexual harassment in employment and requires employers to put in place measures to prevent sexual harassment.

The section that deals with sexual harassment section 7 of the Employment Act is among the most underemployed legislative provisions in Ugandan labour law.

The law regulating relationship at work places is the employment Act²⁶. It is provided in the Act²⁷ that discrimination in employment shall be unlawful. Sexual harassment is specifically prohibited in the act²⁸. The Act provides that an employee shall be sexually harassed in that employee's employment if that employee's employer, or representative of that employer- (a)

²⁶ THE EMPLOYMENT ACT, 2006. An Act to revise and consolidate the laws governing individual employment relationships and to provide for other connected matters.

²⁷ Section 6 of the Employment Act 2006

²⁸ Section 7 of the Employment Act 2006

directly or indirectly makes a request of that employee for sexual intercourse, sexual contact or any other form of sexual activity that contains- (i) an implied or express promise of preferential treatment in employment; (ii) an implied or express threat of detrimental treatment in employment; (iii) an implied or express threat about the present or future employment status of the employee; (b) uses language whether written or spoken of a sexual nature; (c) uses visual material of sexual nature; or (d) show physical behaviour of a sexual nature, which directly or indirectly subjects the employee to behaviour that is unwelcome or offensive to that employee and that, either by its nature or through repetition, has a detrimental effect on that employee's employment, job performance, or job satisfaction. It is against the employment law if the employer does not have guidelines or manuals for sexual harassment. Section 7 provides that every employer who employs more than twenty five employees is required to have in place measures to prevent sexual harassment occurring at their work place.

According to the Employment Act, the responsibility for preventing sexual harassment rests with the employer. An organisation that fails to put in place adequate measures to protect its employees thus exposes itself to serious legal liability for failure to take reasonable steps to preclude the existence of a hostile work environment. This liability is in addition to the vicarious liability for sexual harassment perpetrated by a supervisor or person in a position of authority within the organisation, particularly in a quid pro quo context. The first step in discharging this responsibility is the establishment of a written policy safeguarding employees from sexual harassment and putting in place remedial measures for handling sexual harassment if it occurs. Under the law, every employer with more than 25 employees must put in place measures to prevent sexual harassment; this includes developing an organisation-specific antisexual-harassment policy and establishing a committee to handle reports of sexual harassment incidents. The policy should be the result of a consultative and participatory process that ensures that the written policy serves as a vehicle for articulating an organisation-wide understanding of the parameters. Another step is sensitivity training for all employees to establish a new culture in the workplace. This training would be aimed at informing and educating them about the employer's unequivocal stance against all forms of sexual harassment in the workplace. In this manner, confidence is established in the workforce that sexual harassment is a serious matter that will not be taken lightly and this will have a deterrent effect. But the employer must show that the policy

is not merely words on a piece of paper, but has actual real world application. Lastly, complaints of sexual harassment must be investigated promptly and with the utmost confidentiality and sensitivity. In minor incidents, the identity of the victim must be kept secret and the perpetrator warned verbally and informally to avoid the complained of behaviour. In more serious cases the identity of the victim cannot be kept hidden and special care should be taken to protect complainant from reprisals on account of the disciplinary action taken against the harasser. The investigator of the complaint, who interviews the victim, alleged harasser, and all other potential witnesses, must be someone with credibility with the rest of the workers. The investigation must be seen to result in decisive corrective action.

Although section 7 of the Employment Act is couched in gender neutral language, one could be pardoned for presuming sexual harassment to be primarily a concern of the female employee.

The Penal Code Amendment Act 2009

The penal code amendment Act 2009 includes clauses that are aimed at protecting women from sexual related offences with strict penalties.

The gaps in the domestic law create challenges in intervening in matters of Sexual harassment in Conflict. It is necessary therefore for the study to seek legislative interventions that will support the prosecution of sexual crimes committed during conflict in Uganda.

2.3 International Legal and Policy Framework

Elsewhere in the world progress has been made towards accountability and justice for survivors of Sexual harassment.²⁹ The evolution of crimes against humanity and the enumeration of the crime rape was organic.³⁰ Parallel to the post World War II developments of International Humanitarian Law, rape also incrementally gained recognition as an international crime, including as a crime against humanity. Rape was accepted as an express form of crimes against humanity via the incorporation of International crimes into National military codes and National

²⁹ Extra Ordinary Chambers in the courts of Cambodia, Special Courts in Serialeon, International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda.

³⁰ Patricia Viseur Sellers: The Prosecution of Sexual harassment In Conflict: The Importance of Human Rights a s a means of Interpretation, pg 10

legislation. More recently the recognition of rape as an international crime was anchored by its listing in the Statutes of International Courts and Tribunals and their modern judicial interpretation.

The statute of the ICTY Article 5(g) lists rape as a crime;

The statute of the ICTR article 3(g) lists rape as a crime against humanity and article 4 lists rape enforced prostitution and indecent assault of any kind as a serious violation of article 3 common to the Geneva Conventions⁷⁸ and of Additional Protocol II⁷⁹; (c) The SPSC section 6(1)(b)(xxii) and 6(1)(e)(vi) lists rape ,sexual slavery, enforced prostitution, forced pregnancy ,enforced sterilization, or any other form of Sexual harassment as constituting a grave breach of the Geneva Conventions and serious violations of Article 3 common to the four Geneva Conventions. (d) The statute of the SCSL: Article 2(g) lists rape sexual slavery enforced prostitution ,forced pregnancy and any other form of Sexual harassment as a crime against humanity, and Article 3(e) lists outrages upon personal dignity in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault as serious violations of Article 3 common to the Geneva Conventions⁸⁰ and of Additional Protocol II; (e) The Statute of the ECCC: Article 9 lists crimes against humanity as defined in the 1988 Rome Statute. (f) The Rome Statute of the ICC: Article 7(1)(g) lists rape ,sexual slavery, enforced prostitution ,forced pregnancy ,enforced sterilization or any other form of Sexual harassment of comparable gravity as a crime against humanity; Article 8(2)(b)(xxii) lists rape ,sexual slavery, enforced prostitution ,forced pregnancy ,enforced sterilization or any other form of Sexual harassment as serious violations of the laws and customs applicable in international armed conflict and Article 8(e)(vi) rape ,sexual slavery, enforced prostitution ,forced pregnancy ,enforced sterilization or any other form of Sexual harassment as serious violations of Article 3 common to the four Geneva Conventions on armed conflict not of an international character. Additionally the judicial interpretations of the ICTY and the ICTR, the SPCC, SPSC as well as explanatory paragraphs of the ICC Statute further provide that provisions other than explicit sexual assault crimes can also be the basis for adjudication of Sexual harassment. For example the Jurisprudence of the ICTY and the ICTR attest that the legal breadth of several provisions including those of Genocide³¹ direct and public incitement to commit genocide,³² torture,³³

³¹ Prosecution Vs Muhimana, judgment case no. ICTR-95-1B-T, 25TH April 2005

persecution, enslavement³⁴, inhumane acts³⁵ as crimes against humanity or cruel treatment³⁶, inhuman treatment, outrages against personal dignity and slavery as war crimes ,proscribe acts of Sexual harassment. In June 2014, the International Protocol on the Documentation and Investigation of Sexual harassment in Conflict was drafted to promote accountability for crimes of Sexual harassment under international law.

The Protocol is not binding on states but can serve as a tool to support efforts by national and international justice and human rights practitioners to effectively and protectively document Sexual harassment as a crime under international law- as a war crime, crime against humanity or act of genocide⁹¹. The Protocol is focused on the specific subject matter of documentation and investigation of crimes of Sexual harassment under international criminal law and sets out the basic principles of documenting Sexual harassment as a crime under international law gleaned from best practice in the field⁹². Whether accountability mechanisms are in place in a conflict or post conflict context or a long way off, the information gathered by practitioners with immediate and facilitated access to survivors and witnesses can become critical evidence for future accountability efforts. In particular, the manner in which the information is accessed and collected and the methodology employed in the documentation process are key to ensuring the integrity of the evidence.

Under Resolution 1325, Government is obliged to; adopt measures to support local women's peace initiatives and involve women in all stages of peace processes; Support to strengthen the creation of non-governmental organizations, including women's groups that will empower and articulate the interests of women and their key needs and; establish measures to investigate, monitor and report violations of women's human rights, including gender- based violence and

³² Prosecutor Vs Fadinard Nahimana, Jean- Bosco Barayagwiza & Hussan Ngenze, Judgment case no. ICTR-99-52-T, 3RD December 2003

³³ Prosecutor Vs Kvočka & others et al., judgment, case no. IT-98-30, & T 2nd November 2001; Prosecutor Vs. Delić et al, Judgment, Case no. IT-96-21-T, 16th November 1998. Commonly called the Celebici case, this judgment held rape to be an act of torture

³⁴ Prosecutor vs. Dragoljub Kunarac, Kovac and Zoran Vukovic, Case No. IT-96-23-T and IT- 96-23/1- T, 22nd February 2000, convicted Kunarac and Kovac for enslavement under crimes against humanity.

³⁵ Prosecutor Vs. Alex Tamba Brima, Bazy Kamera, Santigie Borbor Kanu, SCSL-04-16-A, 22nd February 2008, para 202.(AFRC case).

³⁶ The Yugoslav tribunal's first case. The Prosecutor vs. Tadić, Judgment case no. IT-94-1-T, 7TH May 1997 held that acts of male sexual assault including mutilation, fellatio, and indecent assault, constituted inhuman treatment, cruel treatment as war crimes and inhuman acts a crimes against humanity.

sexual abuse⁹⁵. In fighting impunity for sexual and gender based violence, it is important to promote participation and also address the underlying factors that contributed to the victimization of women in the first place⁹⁶. In June 2008 the United Nations Security Council unanimously adopted resolution 1820 to address weak areas concerning Sexual harassment prevention and response in SCR 1325 (2000). SCR 1820 recognizes that Sexual harassment can impede international peace and security, and therefore requires a security response to protect girls and women from Sexual harassment during armed conflict. The resolution covers the following key elements:

(a) recognizes Sexual harassment as a tactic of war, allowing the intervention of the Security Council, and excluding Sexual harassment crimes from amnesty provisions; (b) recognizes that Sexual harassment may be categorized as a war crime, crime against humanity, and act of genocide; (c) demands protection and prevention measures from parties of armed conflict; (d) demands appropriate mechanisms to provide protection from violence in refugee and displaced person camps; (e) reaffirms the need for women's full and equal participation in peace-building processes and; (f) reaffirms commitment to SCR 1325.

UN Resolutions 1888 and 1889 were passed to reaffirm the spirit of resolution 1325 and address the gaps therein. In 2009, the UN passed resolutions 1888 and 1889. These resolutions affirm that there cannot be impunity for those who command, condone or commit sexual and gender based crimes. The resolutions pledged the international community to prevent and respond to Sexual harassment perpetrated during and after conflict. As a result of these resolutions, Governments are required to investigate and prosecute all perpetrators who commit sexual and gender based crimes in the context of conflict.

The Nairobi Declaration on Women and Girls Right to a remedy and reparation recognizes that reparations are an integral part of processes that assist societies to recover from armed conflict. It emphasizes that TJ processes require full participation of women and girls especially those victimized in design, implementation, evaluation and decision making. It stresses the importance of women's empowerment by taking into consideration their autonomy and participation. It further highlights the fact that reparations must drive post-conflict transformation of socio-cultural injustices and political and structural inequalities. The Goma Declaration was passed in

June 2008 as a measure to eradicate all forms of gender based violence, in particular Sexual harassment, by calling upon member states to take appropriate measures for empowerment and equal representation of women and girls. The declaration was passed by member states of the International Conference of the Great Lakes Region together with civil society Organizations, religious and cultural leaders and UN agencies. Other commitments to which Uganda is a signatory that have a bearing on addressing Sexual harassment include the CEDAW97, 1979; the Beijing Declaration and Platform of Action, 1995; the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa and; the Solemn Declaration of the African Union on equality between Men and Women in Africa³⁷; Uganda has ratified and even domesticated some of the foregoing commitments and is thereby obligated to reflect them in national laws, policies and other frameworks to ensure observation of the standards therein. To date, there is no comprehensive law and policy to that effect, rendering a gap in the available interventions for victims and allowing for impunity for the perpetrators.

2.4 Domestic Policy Framework

The Uganda Action Plan on UN security resolution 1325, 1820 and the Goma declaration was passed in 2008. The action plan defines a systematic framework for national actions and monitoring systems to assess progress and impact of interventions at all levels. The purpose of the action plan is to: ensure the protection of women and girls from gender –based violence and promote human dignity and equality; increase women's participation in prevention and resolution of conflict and maintenance of peace and security in post conflict peace building; increase awareness of the public on UN resolutions 1325 and 1820 and the Goma declaration. Improve linkages and long term engagement between governments and international donors in ending crimes of rape and other forms of Sexual harassment; develop the capacities of key actors responsible for implementing the plan and; improvement of coordination of data collection, analysis and quality reporting. The action plan targets the enactment and reform of legislation addressing sexual and gender based violence to conform to the UN resolutions and the Goma declaration and ensure equality and inclusion of women. The Implementation of the action plan is limited by resource and capacity gaps.

³⁷ which condemns rape and other forms of Sexual harassment.

In July 2012, the Government of Uganda revised and launched the three-year PRDP³⁸ II that will run till June 2015³⁹. The PRDP II recognizes SGBV as a contributing factor to conflict, as well as the need to train the police and the Justice Law and Order Sector institutions in skills and knowledge to strengthen GBV response. PRDP II also provides for strengthening community-based mechanisms for GBV response and the provision of psychosocial support for male and female formerly abducted and internally displaced persons⁴⁰. At the grassroots level women's organizations and women's groups have mobilized women to engage in various conflicts transformation activities. The National Gender Policy (NGP) seeks to have Government policies and programs that are consistent with the long-term goal of eliminating gender inequalities in all areas and at all levels. The policy mandates the Ministry of Gender, Labour and Social Development and other Line Ministries to mainstream gender in all sectors and sets priority areas of action at the National, Sectoral, District and Community levels. The policy also requires Government actors to ensure that planning, resource allocation and implementation of development programs redresses gender imbalances.

2.4.1 Domestic Institutional Framework

The Government of Uganda engages a multi-sectoral approach towards providing support to sexual and gender based violence victims and survivors. The Institutional framework for redress of victims of Sexual harassment is constituted by Ministries,⁴¹ Agencies⁴² and Departments⁴³ at the central level which are further decentralized at the Local Government level.⁴⁴ The Uganda Human Rights Commission was established in 1997 to respond to human rights violations through monitoring, handling complaints and carrying out awareness –rising on civil and political rights. Under the Judiciary, Magistrates courts, the High court, court of Appeal,

³⁸ Peace, Recovery and Development Plan

³⁹ The PRDP is the Government of Uganda's response to address post conflict peace and security challenges in northern and north eastern Uganda. It provides the institutional framework for strategic development for any future peace building, recovery and development interventions.

⁴⁰ Women Count 2012. Civil Society Monitoring of UNSCR 1325. A project of the Global Network of Women Peace builders. Centre for Women in Governance (CEWIGO)

⁴¹ Ministry of Gender Labor and Social Development, Ministry of Health, Ministry of Justice and Constitutional Affairs, Ministry of Local Government, Ministry of Internal Affairs

⁴² Directorate of Public Prosecutions (DPP), Justice Law and Order Sector (JLOS), National Planning Authority, Amnesty Commission.

⁴³ Child and Family Protection Department., Criminal Investigation Department of the Uganda Police Force

⁴⁴ District Gender Office, Community Service Department, Planning Office, Community Development Office and Probation Office.

Supreme Court these have the jurisdiction to hear matters relating to Sexual and Gender Based Violence. The International Crimes Division of the High court¹⁰⁸ was established to try matters of genocide, crimes against humanity and war crimes as well as terrorism, human trafficking, piracy and any other international crime under the International Criminal Court Act, Geneva Conventions Act, and Penal Code Act or any other criminal law. The Local Council structure was created to make justice more accessible to the grass root communities. They too play a role in addressing some aspects of domestic violence under the Domestic Violence Act. The Government and private hospitals do play an important role in matters of addressing Sexual harassment, providing medical evidence and treatment to the victims.

The Uganda Police facilitates access to justice for the victims of Sexual harassment through recording the statements, gathering evidence and proffering charges and arresting perpetrators. The Child and Family Protection units at all police stations are required to support victims specifically those facing domestic violence. Despite having a sound institutional framework, the institutions within most of the regions affected by conflict are faced with peculiar challenges and the social – cultural fabric of the communities has been destroyed. Whereas efforts have been made to restore the justice systems the impact has not been significant as the implementing institutions which include the Courts, Police, Prisons, and LC courts exist but function with a lot of challenges.⁴⁵ Access to justice is inhibited by lack of resources and insecurity for both justice seekers and providers. The majority of the population in Northern Uganda is vulnerable and without the means capacity or confidence to seek legal redress. Distances to the courts are too long and the victims have to travel long distances to access medical personnel for evidence. Victims are expected to facilitate investigations and arrest of perpetrators and also to pay for photocopying materials and documents necessary for the case. Out of court settlements are the norm and there is a general perception that justice is for the rich. Significantly the biggest problem is the erosion of confidence in the administration of justice. The Local Council are reputed to be corrupt and to have no knowledge of the laws and human rights principles. Corruption and a poorly resourced judiciary have impaired peoples' confidence in the legal system. Pursuing the court cases are expensive for the ordinary person in terms of resources.

⁴⁵ Vahida Nainar: In the Multiple systems of Justice in Uganda .Whither Justice for Women? FIDA Uganda ,2011.pg 28.

Magistrates' courts are plagued by allegations of corruption both the High court's and Magistrates courts are few, far and not adequately staffed. Also cases take long to be concluded. Most districts do not have Residential Judges and must wait for their cases to be heard. Such sessions may take place twice a year creating a lot of backlog.⁴⁶ Whereas the International Criminal Court (ICC) has greatly increases the international community's ability to prosecute sexual and gender based violence and national courts remain the principal site for rendering individuals accountable. However where it is demonstrated that the national courts are unwilling or unable to prosecute international crimes, the mandate of the International Criminal Court can be exercised for this purpose. In this regard it is important for the foregoing challenges within Uganda's institutional framework to be addressed to allow for prosecution of Sexual harassment in conflict to be tried within the jurisdiction of Uganda.

International Institutional Framework

The creation of the International Criminal Court (ICC) has greatly increased the international community's ability to prosecute sexual and gender based violence although national courts remain the principal site for rendering individuals accountable. The prosecution of Sexual harassment as a crime under international law is based on provisions within the Rome Statute and customary international law as developed by the ad hoc Tribunals the extraordinary chambers in the courts of Cambodia and the special courts of Sierra Leone. Uganda is required to prosecute all crimes related to Sexual harassment in conflict and under the doctrine of international jurisdiction where Uganda is unable or unwilling to prosecute the perpetrators of these crimes can be prosecuted elsewhere including the International Criminal Court. The ICC is only intended to complement existing national judicial systems, and may only exercise its jurisdiction when national courts are unwilling or unable to investigate or prosecute such crimes¹¹⁶. A trust fund for victims is established under the Rome Statute. The fund is a mechanism to collect and redistribute funds deriving from the enforcement of fines and forfeiture and also as an intermediary for the financing of reparations. Article 75.1 of the Rome Statute mandates the Court to "...establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. Article 79.1 provides that; "A trust fund

⁴⁶ Agency for Corporation and Research in Development (A.C.O.R.D) Protection and Restitution for survivors of Sexual and Gender Based Violence In Uganda. June 2011,PG 32

shall be established by a decision of the assembly of the States Parties for the benefit of victims of crimes within the jurisdiction of the court, and of the families of such victims...”

While Article 75.2 indicates that; “The court may make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation...” The Trust Fund for Victims has a mandate to give humanitarian support to people who suffer from crimes within the ICC’s jurisdiction and which are being investigated by the office of the Prosecutor (OTP). Under the Rome Statute, the TFV can provide 2 types of support to victims-the payment of reparations to individuals following the conviction of an individual who perpetrated crimes against them; and humanitarian projects to provide physical or psychological rehabilitation and broader engagement to help victims recover from the effect of crimes. The TFV has been providing support to victims of the war in northern Uganda and the Eastern Democratic Republic of Congo since 2007 through strengthening the capacity of the implementing partners to impact in the lives of victims and their communities by: promoting well-being, increase of self-esteem, better reintegration, sustainable livelihood activities, reconciliation and social cohesion. The supported interventions are done at individual and community levels. The current number of direct beneficiaries is approximately 83,400 victims reached through the rehabilitation mandate. The TFV supports victims of crimes under the International Criminal Court jurisdiction.

The target beneficiaries are victims defined according to the description of the Rome Statute in Articles 6, 7, and 8: They include Sexual harassment: victims of sexual and gender-based violence, including rape, forced pregnancy, sexual slavery; girls abducted and/or recruited into armed groups and forcefully impregnated; Widows/widowers : whose partners were killed; Former child soldiers/abducted youth : children and youth forced and/or recruited into armed groups under the age of 15 (regardless of their particular role(s) played during abduction or conscription); Orphans and vulnerable children : children whose parent(s) were killed or children otherwise made vulnerable by the violence; Physical and mental trauma : victims who suffered a physical injury and/or who were psychologically traumatized by violence; Family and other

victims : family members of victims (with the exception of widows and orphans) and others who do not fall in the above categories, but affected by violence⁴⁷.

The Agreement on Accountability and Reconciliation espouses the commitment of the Government to support and/or establish institutions that promote justice and reconciliation in respect of the conflict. The agreement takes cognizance of the fact that “modifications may be required within the national legal system to ensure a more effective and integrated justice and accountability response”. The principle of complementarity under the Rome Statute provides that States have the primacy of jurisdiction to try persons accused of committing crimes within the jurisdiction of the ICC, Uganda has established the ICD for this purpose. The ICD therefore has the capacity to make orders for reparations as part of the judicial process in line with the international standard for accountability and reconciliation. However, the ICD may not be able to solely remedy victim’s rights to reparations. This is because; the ICD is likely to try only a limited number of cases, making reparations inaccessible to those whose grievances do not qualify for a hearing. To overcome this, supplementary mechanisms like truth seeking mechanisms and traditional justice processes could be employed.

2.5 Conclusion

Sexual harassment is understood differently by different people. However ignorance non excusant must be the answer for the harassers, be women or men. The use of law may be a powerful tool in both prevention and response to sexual harassment in all context and equality between women and men must be seen as a struggle of humanity, a struggle for both men and women. In the face of sexual violence and discrimination, everyone is concerned and everyone needs to act.

⁴⁷ The Trust Fund for Victims; Empowering Victims and Communities towards Social Change: Programme Progress Report, summer 2012. www.TrustFundforVictims.org

CHAPTER THREE

IMPLEMENTATION OF THE LAWS ON SEXUAL HARASSMENT

3.0 Introduction

Across the past three decades, organizations have built up their anti–sexual harassment policies and reporting mechanisms as required by law and sexual harassment remains pervasive across many places of work. This raises doubt about the effectiveness of these legally mandated mechanisms in eradicating sexual harassment.

Even though laws have been in place to protect women from sexual harassment in academic settings for more than 30 years, the prevalence of sexual harassment has changed little in that time. This chapter describes the legal framework for addressing sexual harassment, the implementation of the legal requirements by academic institutions, suggestions for improving them based on research, and how federal funding agencies and professional societies have addressed sexual harassment.

3.1 Implementation of the Sexual Harassment Laws and Policies by Stakeholders in Uganda

As mentioned before, laws on sexual harassment differ from country to country, and even from culture to culture. However, several global labour and human rights organisations have developed Conventions, resolutions and policy statements concerning the vice.

The current national legal and policy regime promotes and protects sexual harassment as illustrated by provisions such as:

The Constitution of the Republic of Uganda 1995 which provides that “Women shall be accorded full and equal dignity of the person with men”⁴⁸. It provides for affirmative action which has contributed to the increase in the number of women in leadership positions.

To reinforce the Constitution of Uganda, laws enacted include among others; the Domestic Violence Act, the Prohibition of the Female Genital Mutilation Act⁴⁹.

⁴⁸ Art. 33[1] of the Constitution of the Republic of Uganda 1995

⁴⁹

To facilitate implementation, the Government of Uganda put in place policies including among others the Gender Policy in 1997 (that was revised in 2007) with the main aim “to guide all levels of planning, resource allocation and implementation”⁵⁰. In line with the National Gender policy (2007), sector ministries have developed gender mainstreaming guidelines and specific gender commitments in various sector investment plans aimed at achieving gender equality and women’s empowerment.

The Ministry of Public Service in 2011 also developed guidelines for mainstreaming gender in human resource management in the public service. In Ministries and at the district level, Government of Uganda has established desks/ gender focal persons to oversee the mainstreaming of gender.

The Equal Opportunities Commission was made functional and Uganda has been praised at international, regional and national levels for introducing positive policies and frameworks that promote education. Educational schemes such as the Functional Adult Literacy programmes, Early Childhood Development Policy, Free Universal Primary Education (UPE), and free secondary education have indeed registered some successes over the years—including an increase in school enrolment rates countrywide, with girls and children from poor families benefiting in particular.

Sexual harassment in government health workplaces appears to be normalized and following a pattern of male-on-female harassment. The assessment found evidence of the two major categories of sexual harassment defined in Uganda’s Sexual Harassment Regulations: “hostile environment” and quid pro quo sexual harassment. Examples of hostile environment in sexual harassment is noted by respondents included sexualized physical, verbal, written/visual, and gestural behavior, predominantly by men towards their female colleagues, such behavior clearly considered by targets or witnesses to be unwanted, intimidating, and/or humiliating.

Sexual harassment at workplace is prohibited by law. Sexual Harassment at workplace is a direct or implicit request to a worker for any form of sexual favor to get preferential treatment at

⁵⁰ National Gender policy 2007

workplace; or threaten the worker of detrimental treatment on present or future employment status of the worker. It also includes use of filthy language (unwelcome verbal advances, sexual oriented comments, request for sexual favours, jokes of a sexual nature, offensive flirtation or obscene expressions of sexual interest that are addressed directly to the person), visual material of sexual nature (sexually suggestive pictures, objects or written materials or sexually suggestive gestures) and showing physical behavior of sexual nature (unwanted and unwelcome touching, patting, pinching or any other unsolicited physical contact). All these have a detrimental effect on worker's employment, job performance, job satisfaction and promotion of workers.

In an establishment with more than 25 workers, employer may issue a policy statement on sexual harassment, which clearly defines sexual harassment and states that the workplace is free of sexual harassment. Employer must take measures to ensure that workers are not subjected to sexual harassment and take appropriate disciplinary measures against the person involved in sexual harassment.

The policy statement must also describe the procedure through which worker may bring the complaints of sexual harassment to the attention of the Labour officer. The officer must keep confidential all the information related to the complainant except where disclosure is necessary for the purpose of investigation or taking disciplinary measures. Each worker should be well aware of the provisions of the policy statement⁵¹.

The Employment Act 2007, section 7 defines sexual harassment in employment and requires employers to put in place measures to prevent sexual harassment.

There is currently no stand-alone legislation that addresses sexual harassment. Article 7 of the Employment Act 2007 addresses sexual harassment in the workplace but as noted by the Committee on the Elimination of Discrimination against Women in their 2010 Concluding Observations, the article is limited to an employer or an employer representative and only requires positive actions to be taken by an employer if there are more than 25 employees. The Employment Act also does not cover workers and employment in the informal sector which is

⁵¹ Section 7 of the Employment Act 2006;

predominantly made up of women⁵². Article 128 of the Penal Code (Cap 120) on indecent of assaults makes any unlawful and indecent assault on a woman or girl a felony, punishable for 14 years in prison, with or without corporal punishment⁵³. Sexual harassment continues to be widely reported in schools, workplaces, hospitals and other public places. There are groups of women in Uganda who are disproportionately impacted by sexual violence and harassment and they are older women, women who identify or who are perceived as lesbian, gay, bisexual, transgender and intersex; and women with disabilities.

The Act also limits sexual harassment to actions committed by an employer or his representative to an employee and fails to address a range of inappropriate conduct such as sexual harassment between employees of the same rank; an employee of a lower rank perpetuating sexual harassment towards a supervisor and sexual harassment experienced by and perpetuated by customers, clients and the public. There are several reporting and evaluation mechanisms in place to help ensure gender equality in workplaces such as the Equal Opportunities Commission which is legally mandated to assess and report on sector budget framework and gender and equity compliance requirements⁵⁴, Section 14 and 15 of the Equal Opportunities Commission Act, 2007 and Section 9 (6) (a) and (b) of the Public Finance Management Act, 2015). Articles 32 and 33 of the Constitution of 1995 allow for the state to adopt affirmative action programmes in favour of groups marginalized because of disability, gender, age “or any other reason created by history, tradition or custom, for the purpose of redressing imbalances which exist against them.” In accordance with the Penal Code⁵⁵, any person who intends to insult the modesty of any woman or girl, utters any word, makes any sound or gesture or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen by such woman or girl, or intrudes upon the privacy of such woman or girl, commits a misdemeanour and is liable to imprisonment for one year.

The Penal Code Amendment Act 2009 includes clauses that are aimed at protecting women from sexual related offences with strict penalties.

⁵² Committee on the Elimination of Discrimination against Women State Report, (2009)

⁵³ Section 128 of the Penal Code (Cap 120)

⁵⁴ Article 32(3) of the 1995 Constitution of the Republic of Uganda (as amended)

⁵⁵ Section 128(3) of the Penal Code Act

The Penal Code Amendment Act, Cap 120, article 124 makes rape a criminal offence and upon conviction, the offender may face the death penalty. Section 123 defines rape as the “unlawful carnal knowledge of woman or girl, without her consent, or with her consent, if the consent is obtained by force or by means of threats or intimidation of any kind or by fear of bodily harm, or by means of false representations as to the nature of the act, or in the case of a married woman, by personating her husband, commits the felony termed rape”⁵⁶. Though criminalized under the pending Marriage and Divorce Act and the draft Sexual Offences (Miscellaneous Amendments) bill of 2004, spousal rape is not a criminal offence. The Organization for Economic Co-operation and Development (OECD) indicates a shared opinion by many Ugandans that a wife is not justified in denying sex and sexual favours to her husband. Civil unrest, war and norms and practices that normalize sexual violence makes rape very common in Uganda with limited enforcement of the laws.

Employment (Sexual Harassment) Regulations 2012 prescribes that those who contravene the sexual harassment related provisions commit an offence and are liable, on conviction, to a fine not exceeding six currency points or imprisonment not exceeding three months or both⁵⁷.

The Employment Sexual Harassment Regulations ordered by the Government of Uganda states that an employer with more than twenty-five employees shall adopt a written policy against sexual harassment which includes a notice to employees that sexual harassment is unlawful, a statement of consequences for employees who are found to have committed sexual harassment, and education and training programs on sexual harassment for all employees on a regular basis. The employer is to also create a sexual harassment committee in which the committee receives and registers complaints of sexual harassment. Reported cases are investigated by the labour officer.⁵⁸

Sexual harassment is bullying or coercion of a sexual nature, or the unwelcome or inappropriate promise of rewards in exchange for sexual favors, which is illegal. In Uganda there are laws

⁵⁶ Penal Code, Cap 120

⁵⁷ Section 19 of the Employment (Sexual Harassment) Regulations 2012

⁵⁸ The Government of Uganda, National Review on Beijing +20, 2014, para. 92

against sexual harassment; one just has to refer to the Employment (Sexual Harassment) Regulations, 2012.

Sexual Abuse is the undesired sexual behavior by one person upon another, and this covers an adult engaging in sexual intercourse with a child (in Uganda they call it defilement). The Children Act Amendment 2016 has clauses which are supposed to protect children. Despite these existing legal frameworks, why does it appear that there is no justice for victims of sexual harassment and abuse?

There have been many reports of sexual harassment at the workplace, such as corporations, the music industry and the civil service. Many young women have been asked to sleep with their employers if they want to move up the social and economic ladder.

Those who are desperate, comply. Those who refuse to comply are jobless. There have been reports of lecturers failing students because they refused to engage in sex with them⁵⁹. Many victims have followed the law by reporting to the police or human resource managers, but it has been reported that the latter have refused to follow regulations and have accused the former of lying or blaming them for sexual harassment without investigating.

These inactions simply promote impunity of these sexual predators, which can lead to mob justice. With regard to sexual abuse of minors, one has to acknowledge that many sexual abusers have been punished, most of whom are not from the “corporate world.” But unfortunately, it has been reported that many sexual abusers, poor or rich, have bought their freedom by buying off judges and police⁶⁰.

Ugandans have been told many times that human rights are enshrined in the law and everyone is equal under the law. But someone forgot to mention that in many occasions the law does not apply to rich or powerful individuals. What this means is sexual predators will get punished because they are poor, not for the sexual crimes they committed.

⁵⁹ The Sexual Harassment Regulations 2006 Makerere University Report

⁶⁰ Annual Human Rights Watch Report 2018

If you are a Ugandan woman, or girl, born into a corporate class or into a political, your chances of being protected against sexual harassment is higher than someone from the lower class. No one is there to represent these poor women and girls, so they suffer.

Many of these poor women desperate for the employment at home end up going to the Middle East to do domestic jobs only to be sexually exploited by their employers, and the Government of Uganda seems not to have done much help to such women in such a predicament. It is useless to have laws in place if they cannot protect vulnerable people and only promote impunity.

Despite the fact that there are number of laws and regulations on sexual harassment in Uganda, There are many companies in Uganda that either do not have specific policies in place to address sexual harassment in their work environment, or do not have the scope within other employment policies and procedures to deal with the problem should it arise⁶¹.

3.3 Stakeholders Involvement in the Fight Against Sexual Harassment in Uganda

The Uganda Joint Christian Council (UJCC), a faith based ecumenical organisation made a presentation to the Parliamentary Select Committee on inquiry into allegations of sexual violence in institutions of learning in Uganda. The nine member committee which was constituted by Parliament, chaired by Hon. Rwakoojo Monica meet key stakeholders on this issue in a bid to reach the core of the problem that is manifesting in many institutions of learning in the country.

Reverend Constantine Mbonabingyi told the committee that in 2014, Uganda Joint Christian Council (UJCC) launched a project entitled 'The Gender Justice Project' which focused on mitigating Gender Based Violence. The council worked with four universities namely Gulu University, Mbarara University of Science and Technology, Uganda Martyrs University and Uganda Christian University to ascertain the existence of sexual harassment in high institution of learn-

⁶¹ Crouch, M. A. Thinking about Sexual Harassment: A Guide for the Perplexed. New York: Oxford University Press, 2001.

ing. The council admitted that it was hard for students and teaching staff to open up about this issue⁶².

UJCC found out that all the four Universities did not have a Sexual Harassment Policies and this increased the vulnerability of both students and teachers. The Universities did not have clear referral pathways in case of sexual harassment. The council also observed that sexual harassment was a wide spread immoral activity across the Universities and that both males and females were affected but mostly the females. They further observed that sexual harassment is more common during the time of the academic year when students are tasked to undertake research because this is when they are closest to their supervisors.

The UJCC within their capacity was able to structure some interventions in these Universities, from helping students to form associations to fight sexual harassment to helping these Universities come up with gender policies. However, they advised the committee on some of the causes and extents of the vice, stressing that poverty, dressing codes that are provocative, poor lighting systems in schools, commercialised hostel services where boys and girls stay in the same residence are among many the immediate causes of the vice and why it perpetuates in schools.

On recommendations to the committee, the council appreciated the fact that government has come up with policies and laws to combat sexual violence but stressed that the implementation of these policies is still lacking. They urged the government to accord support services to victims of sexual violence citing that provision of psychological support and counselling services will do much in rehabilitating victims⁶³.

They further urged government to sensitize learners in institutions to open up about sexual violence when it happens to them, and also requested government to address the laws governing pornography and mass media. They also called out for institutions of learning to have sexual harassment policies and make deliberate efforts to popularize the policies and make them known to all intended beneficiaries.

⁶² Bergman, M. E., R. D. Langhout, P. A. Palmieri, L. M. Cortina, and L. F. Fitzgerald. "The (un)reasonableness of reporting: Antecedents and consequences of reporting sexual harassment." *Journal of Applied Psychology* 87:2 (2002): 230–242.

⁶³ McCann, D. *Sexual Harassment at Work: National and International Responses*. Geneva: International Labour Office, 2005.

The chairperson of the committee on behalf of Parliament thanked the UJCC for the presentation and the work they are doing to mitigate sexual violence in institutions of learning and communities. The chairperson further elaborated on the daunting task that is in front of them to fight this evil that is escalating and damaging many peoples future. The committee continues to do public hearing with key stakeholders and are expected to produce a report on their findings and way forward⁶⁴.

3.4 Conclusion

Workplace sexual harassment is internationally condemned as sex discrimination and a violation of human rights, and more than 75 countries have enacted legislation prohibiting it. Sexual harassment in the workplace increases absenteeism and turnover and lowers workplace productivity and job satisfaction. Yet it remains pervasive and underreported, and neither legislation nor market incentives have been able to eliminate it⁶⁵. Strong workplace policies prohibiting sexual harassment, workplace training, and a complaints process that protects workers from retaliation seem to offer the most promise in reducing sexual harassment.

Workplace sexual harassment is costly to workers and organizations and is legally prohibited in more than 75 countries. Workers who are sexually harassed have lower job satisfaction and suffer a range of negative psychological and physical health consequences. Sexual harassment reduces individual and group productivity. Yet survey evidence shows that workplace sexual harassment is quite common. It is also substantially underreported, in part because workers are justifiably concerned that reporting may lead to retaliation and an even worse work environment. Three approaches are available to reduce the incidence of workplace sexual harassment. First, because sexual harassment lowers workplace productivity, and because workers are paid a premium for exposure to the risk of sexual harassment, organizations should respond to these market incentives by striving to eliminate sexual harassment⁶⁶. However, because market incentives are apparently insufficient to eradicate sexual harassment, efforts to raise the costs to

⁶⁴ Fitzgerald, L. F., S. L. Shullman, N. Bailey, M. Richards, J. Swecker, Y. Gold, M. Ormerod, and L. Weitzman. "The incidence and dimensions of sexual harassment in academia and the workplace." *Journal of Vocational Behavior* 32:2 (1988): 152–175.

⁶⁵ Hersch, J. "Compensating differentials for sexual harassment." *American Economic Review Papers and Proceedings* 101:3 (2011): 630–634

⁶⁶ Antecol, H., and D. CobbClark. "Does sexual harassment training change attitudes? A view from the federal level." *Social Science Quarterly* 84:4 (2003): 826–842.

organizations of tolerating an adverse work environment may be effective. For example, firms that are publically identified as tolerant of a sexually harassing environment may need to raise the pay premium necessary to attract workers. Second, legislation prohibiting workplace sexual harassment is widespread, but that too has been inadequate to eliminate it.

Enforcement of laws relies on reporting, and therefore underreporting weakens the efficacy of laws. Policies directed at increasing reporting may help support law enforcement and could also reinforce the incentives provided by the market. Third, although empirical evidence is limited, widely accepted best practices involve the promulgation of a strong policy prohibiting sexual harassment, workplace training, and a complaints process that protects workers from retaliation⁶⁷

⁶⁷ Raver, J. L., and M. J. Gelfand. "Beyond the individual victim: Linking sexual harassment, team processes, and team performance." *Academy of Management Journal* 48:3 (2005): 387–400

CHAPTER FOUR

EMPLOYER'S LIABILITY AND REMEDIES AVAILABLE

4.0 Introduction

This chapter will discuss the remedy of *statutory* vicarious liability in terms of section 7 of the Employment Act, which is a focal point of this research, and is distinct from *common-law* vicarious liability. The labour law remedy of *statutory* vicarious liability in terms of section 60 of the Employment Act. It will be outlined that section 7 of the Employment Act creates a unique type of *statutory* vicarious liability and contains an element of deemed personal liability on the part of the employer for failure to take steps and ensure eradication of gender discrimination in the workplace.

Statutory vicarious liability in section 7(3) balances opposing considerations 'that the employer is not responsible for policing all the non work behaviour of its employees⁶⁸, but that the employer owns and controls the workplace⁶⁹. This chapter will highlight that in terms of section 7 of the Employment Act; fault on the part of the employer is not derivative but is independent of the fault-finding on the part of the perpetrator of sexual harassment. The affirmative defence in section 7(4) of the Employment Act which is available to the employer to exonerate itself from *statutory* vicarious liability will be discussed to highlight that vicarious liability is not an open-ended form of a liability even though it is a no fault liability.

The scope of the award of damages is explored to the extent to which the plaintiff can recover compensation in delict and under the Employment (sexual harassment) regulations, 2012. A case is made for regarding sexual harassment as a form of misconduct warranting dismissal of the perpetrator. Constructive dismissal is also discussed, since sexual harassment can be unbearable and lead to constructive dismissal if the employer fails to act after the plaintiff has complained about sexual harassment.

⁶⁸ Slabbert *Sexual Harassment in the Workplace* (1994) Unpublished LLM Dissertation, University of Cape Town at 70,

⁶⁹ AB Cochran *Sexual Harassment and the Law: The Mechelle Vinson Case* (2004) at 140.

4.2 Empowering Provisions in Awarding a Remedy for Sexual Harassment Under the Employment Act 2006

The plaintiff, who has framed her cause of action for sexual harassment on grounds of gender discrimination under the Employment Act, can claim compensation for pure economic loss and damages for intangible loss, which entails an impairment of dignity, *contumelia*, *iniuria*, sentimental loss, pain, and suffering, in terms of section 50 of the employment act. Section 7(2) of the employment act empowers the Labour Court to award:

- (a) Compensation,
- (b) Damages and
- (c) Order directing employer to take preventative measures.

Section 50 requires the court to make an appropriate order that is just and equitable in the circumstances. The factors to be taken into account were considered in *Christian v Colliers Properties* as enjoining the court to:

... consider various interests, including the need to redress the wrong caused by the infringement, the deterrence of future violations, the dispensation of justice which is fair to all those who might be affected, and the necessity of ensuring that the order can be complied with⁷⁰.

In *Christian v Colliers Properties*⁶⁶ the court awarded the plaintiff a total of R58000 (R48 000 in terms of Part VIII of the The Employment (sexual harassment) regulations, 2012 and R10 000 in terms of section 50 of the Employment Equity Act). In reaching this quantum, the court took into account the following:

It is emphasized that the plaintiff can claim under both the The Employment (sexual harassment) regulations, 2012 and Employment Act.

The plaintiff can plead unfair dismissal/ automatic unfair dismissal under the The Employment (sexual harassment) regulations, 2012 and claim maximum compensation permissible in terms of Part VIII of the The Employment (sexual harassment) regulations, 2012 ; and plead unfair discrimination and claim damages and compensation, which are not capped in

⁷⁰ Supra (n29) at 483G-H.

terms of section 50 of the Employment Equity Act. This is evident in *Nisabo* where the court awarded the plaintiff a total of R82 000 (R12, 000 in respect of unfair dismissal in terms of the The Employment (sexual harassment) regulations, 2012 , R20 000 for future medical costs and R50 000 for general damages including *contumelia*, pain and suffering, emotional or psychological trauma and the loss of amenities of life in terms of the Employment Equity Act). It is highlighted that the award of damages for *contumelia* (sentimental loss) is a matter to be heard by the Labour Court under the section 50 of the Employment Equity Act and not under the The Employment (sexual harassment) regulations, 2012 . In terms of section 46(9)(c) of the Labour Relations Act the plaintiff could claim sentimental loss as part of her case for unfair labour practice.

In *Intertech Systems (Pty) Ltd v Sowter*⁷⁰ the court awarded the plaintiff an amount equivalent to 12 months salary or R92, 088. This case was brought for an unfair labour practice ruling in terms of Part VIII of The Employment (sexual harassment) regulations, 2012 but is important in highlighting the considerations that the court takes into account when determining an award regarding compensation for sexual harassment. In awarding compensation, the court found that the company's conduct towards the employee had been 'reprehensible and insupportable, and its conduct of its case in the industrial court had been lamentably disingenuous'⁷¹ . The court thus felt that the plaintiff had to be compensated for the egregious invasion of her employment security and affront to her dignity, which the company perpetrated because of sexual harassment.⁷² The court therefore took into account non-patrimonial loss occasioned by sexual harassment, when awarding compensation.

The distinction between 'compensation' and 'damages' (including both patrimonial and sentimental loss) in section 7 of the Employment Equity Act, must be noted. In *Harmony Furnishers v Prinsloo*⁷³ Foxcroft J held that the word 'damages' is merely a synonym for 'compensation'. However, section 50 of the Employment Equity Act differentiates between 'payment of compensation'⁷⁴ and 'payment of damages' .⁷⁵ It is also interesting to note that in

⁷¹ Supra (n70) at 705G .

⁷² Supra (n70) at 706D.

⁷³ (1993) 14 ILJ 1466 (LAC) at 1469.

⁷⁴ S 50(2)(a) Employment Equity Act.

*Sibiya v Num*⁷⁶ the Industrial Court referred to the word 'damages' in the context of 'non-monetary damages'. It is suggested that this means that 'damages' in the context of the employment Act signify intangible loss.

'Compensation' in Part VIII of The Employment (sexual harassment) regulations, 2012 is capped and restricted to no more than 12 months for unfair dismissal and a maximum of 24 months remuneration for automatically unfair dismissal. In the context of the The Employment (sexual harassment) regulations, 2012, it is emphasized that 'compensation' can be understood to mean pure economic loss and non-monetary loss, which is discretionary to the court since *iniuria* (often involved in sexual harassment), is not capable of mathematical precision. Similarly, in delict 'damages' encompass payment for patrimonial loss as well non-patrimonial loss, which would otherwise be separately dealt with under 'payment of compensation' and 'payment of damages' in section 7 of the Employment Act 2006.

The concept of 'damages' means the 'diminution, as a result of a damage causing event, in the utility or quality of a patrimonial or personality interest in satisfying the legally recognized needs of the person involved'⁷⁷ and implies a 'comprehensive concept with patrimonial and non-patrimonial loss as its two mutually exclusive components'. In delict, compensation is used to denote 'the process of reparation or restoration of any patrimonial or no patrimonial loss'.⁷⁸ This means that in delict, 'damages' and 'compensation' are used interchangeably whereby damages encompass the monetary recompense for any tangible and intangible loss. Under the Employment Equity Act, the plaintiff is paid either damages (intangible loss which encompasses impairment of dignity, *contumelia*, *iniuria*, sentimental loss, pain and suffering) or compensation (pure economic loss) - or awarded both under separate headings.

It is underscored that a claim for sentimental loss under section 7(2)(b) of the Employment Equity Act is not subject to the delictual rules governing the *actio iniuriarum* as defined in *De*

⁷⁵ S 50(2)(b) Employment Equity Act.

⁷⁶ [1996] 6 BLLR 794 (IC) at 804.

⁷⁷ PJ Visser and JM Potgieter *Visser and Potgieter's Law of Damages* 2ed (2003) at 24.

⁷⁸ Joubert *op cit* (n78) para 16.

*Lange v Costa*⁷⁹ - that is to say, an unlawful, impairment of dignity inflicted with *animus iniuriandi*. Factors affecting a delictual *assessment of damages* for sentimental loss come into play to the extent to which they will enable the court to make an appropriate order which is just and equitable as prescribed by section 7(2)(b) of the Employment Equity Act. It is stressed that the requirements for claiming damages under section 7(2)(b) of the Employment Equity Act are less demanding to establish than in the *actio iniuriarum* in that sentimental loss is assessed from the cumulative effect of the circumstances surrounding sexual harassment and the adverse effects of the sexual harassment experience on the plaintiff.

For instance in *Ntsabo*,⁸⁰ the indignity suffered by the applicant was inferred from the following:

- a) The fact that Dlomo simulated sexual intercourse on the applicant; the embarrassment she experienced in having to attend psychiatric clinics;
- b) The employer's failure to act when sexual harassment was reported by the applicant;
- c) The emotional and psychological trauma she suffered; and
- d) An unacceptable invasion of the applicant's privacy and her constitutional rights.

However, section 7(2)(b) of the Employment Act is compatible with the objective test to impairment of dignity in *De Lange* in that a finding of *contumelia* under section 7(2)(b) involves an objective factual enquiry.

4.2 Dismissal

It has been highlighted that sexual harassment is a specific form of gender discrimination which amounts to unfair discrimination; unfair labour practice; affront to right to dignity; violation of the right to equality; and inimical to the values underlying the Constitution. It is proposed that as part of the employer's corporate responsibility in the spirit of corporate governance, sexual harassment should constitute misconduct warranting dismissal of the perpetrator. A claim for constructive dismissal will also be discussed highlighting reasons why it is not a viable remedy for automatically unfair dismissal in terms of section 187(1)(f) of the Labour Relation Act read with section 186(1)(e).

⁷⁹ 1989 (2) SA 857 (A) at 681

⁸⁰ *Supra* (n12) .

4.4 Constructive Dismissal

Constructive dismissal is a form that dismissal may take, which may or may not be unfair (though it usually is) and may give rise to a claim of unfair dismissal. In the present context, it offers a statutory basis on which a victim of sexual harassment who has been driven from her job may seek a remedy for automatically /unfair dismissal. The purpose of exploring this remedy is to ensure that the plaintiff is not without recourse when she has suffered sexual harassment to a point where she has been left with no option but to resign. Furthermore, constructive dismissal is in breach of the employee's right not to be unfairly dismissed and subjected to unfair labour practice, which is entrenched in section 185 of the Labour Relations Act.

The remedy for automatically unfair dismissal on grounds of constructive dismissal may be sought in terms of section 187(1)(f) of the Labour Relations Act (read with section 186(1)(e) of the LRA) which states that dismissal is automatically unfair if:

' the employer unfairly discriminated against an employee, directly or indirectly, on any arbitrary ground, including, but not limited to race, gender, sex, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, political opinion, culture, language, marital status or family responsibility'.

Breach of Trust

Sexual harassment also constitutes a breach of the trust, which lies at the heart of an employment relationship and makes a continued relationship between the perpetrator, the victim, and other female colleagues intolerable.⁸¹ Sexual harassment is hazardous to a harmonious working environment and can lead to constructive dismissal if left unattended by the employer.

In *Pretoria Society for the Care of the Retarded v Loots*⁸² Nicholson JA stated that to ground constructive dismissal, the enquiry is whether the appellant, without reasonable and proper cause, conducted itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee. The court held that it is not necessary to show that the employer intended repudiation of the contract; the court's function is to look at the employer's conduct as a whole and determine whether its effect, judged reasonably

⁸¹ *G erbber v Algorax (Pty) Ltd* [2000] 1 BALR 41 (CCMA) at 52-3 .

⁸² [1997] 6 BLLR 721 (LAC) at 725 .

and sensibly, is such that the employee cannot be expected to put up with it⁸³. Intention on the part of the employer is thus not part of the constructive dismissal enquiry but the employer's conduct is assessed objectively on the facts.

Supervisor Harassment

Abuse of supervisory authority can lead to constructive dismissal. In *Ntsabo*⁸⁴ the supervisor had abused his organizational power and dominant position by harassing his subordinate. Ntsabo was a victim of her supervisor's abuse of power, which is an aggravating circumstance because Ntsabo was at her supervisor's mercy and he was in a position to discriminate and alter her terms of employment in the event of her refusing to co-operate or lodging a complaint. The court thus correctly held that she was compelled under the circumstances to terminate her contract of employment with the respondent and that the respondent, did or at best, ought to have foreseen the development of a hostile and intolerable working environment in the circumstances.

The position of supervisors as the alter ego of the employer and their dominant and influential position enhance the risk of sexual harassment because they 'generally have greater access to people still higher in the employment hierarchy'.⁸⁵ The subordinate is thus placed:

in a lose-lose situation if harassed by a supervisor: she can either accept the harassing behaviour which renders the workplace unpleasant (at the least), or she can protest and risk making the workplace even more unpleasant, if she does not lose her job.

Sexual harassment by the supervisor can lead to constructive dismissal in that the supervisor improperly exercises and abuses his dominant authority in implementing a tangible employment detriment and bullying his subordinates thereby threatening their continued employment. It is argued that the organizational power of the supervisor makes him the representative of the master who is often revered and thereby puts the subordinate under duress when subjected to sexual harassment, leaving the victim of sexual harassment with no option but to resign.

⁸³ *Loots supra* (n98) at 724.

⁸⁴ D Du Toit, D Bosch, D Woolfrey, S Godfrey, C Cooper, GS Giles, C Bosch and J Rossouw *Labour Relations Law: A Comprehensive Guide* Sed (2006) at 386.

⁸⁵ R Ehrenreich 'Dignity and Discrimination: Towards a Pluralistic Understanding of Workplace Harassment' (1999) 88 *Geo LJ* 1 at 46. See ch 7.4.3 on the discussion of supervisory harassment.

The employee must leave at once

The employee must leave at once in that her resignation must follow immediately after the conduct of the employer in failing to deal with sexual harassment after it was brought to its attention. This means that constructive dismissal is end-result behaviour of employer's conduct. If the employee does not resign pursuant to employer's failure to prevent or remedy sexual harassment, then she will lose her right to claim constructive dismissal and will be taken to have affirmed the contract despite the breach thereof by the employer.

Employer's omission to remedy sexual harassment

The employer must fail to deal with sexual harassment once it is brought to its attention. It is established that what leads to employee's resignation is not sexual harassment per se but it is the employer's failure to protect the harassed employee and remedy sexual harassment once a sexual harassment complaint has been lodged. In some sexual harassment cases, constructive dismissal is responses to retaliatory mechanisms adopted by the employer when it treats a complaint with neglect and thereafter colludes with the perpetrator in aggravating a discriminatory environment. This scenario will make it unlikely for the affirmative defence in section 7(4) of the Employment Act to be successfully raised by the employer.

4.4 Conclusion

It is emphasized that the violation of rights will be a factor taken by the courts when determining the payment of damages¹³⁸ in terms of section 7(2)(b) of the EEA thereby alleviating the need for the plaintiff to prove that her rights have been violated as a result of sexual harassment.

The rights violated in the context of sexual harassment are the right to equality; right to dignity⁸⁶; right to freedom and security of the person; right to bodily and psychological integrity; right not to be unfairly discriminated against based

It is emphasized that the violation of rights will be a factor taken by the courts when determining the payment of damages in terms of section 7(2)(b) of the Employment Act thereby alleviating the need for the plaintiff to prove that her rights have been violated as a result of sexual harassment.

⁸⁶ Article 21 of the constitution of Uganda

Workplace sexual harassment is costly to workers and organizations and is legally prohibited in Uganda. Workers who are sexually harassed have lower job satisfaction and suffer a range of negative psychological and physical health consequences. Sexual harassment reduces individual and group productivity. Yet survey evidence shows that workplace sexual harassment is quite common. It is also substantially underreported, in part because workers are justifiably concerned that reporting may lead to retaliation and an even worse work environment. Three approaches are available to reduce the incidence of workplace sexual harassment. First, because sexual harassment lowers workplace productivity, and because workers are paid a premium for exposure to the risk of sexual harassment, organizations should respond to these market incentives by striving to eliminate sexual harassment. However, because market incentives are apparently insufficient to eradicate sexual harassment, efforts to raise the costs to organizations of tolerating an adverse work environment may be effective. For example, firms that are publically identified as tolerant of a sexually harassing environment may need to raise the pay premium necessary to attract workers. Second, legislation prohibiting workplace sexual harassment is widespread, but that too has been inadequate to eliminate it. Enforcement of laws relies on reporting, and therefore underreporting weakens the efficacy of laws. Policies directed at increasing reporting may help support law enforcement and could also reinforce the incentives provided by the market. Third, although empirical evidence is limited, widely accepted best practices involve the promulgation of a strong policy prohibiting sexual harassment, workplace training, and a complaints process that protects workers from retaliation.

CHAPTER FIVE

FINDINGS, CONCLUSION, RECOMMENDATIONS

5.0 Introduction

This chapter highlights the conclusions, recommendations of the study

5.1 Findings

This research has clearly revealed that sexual harassment has been and still is a workplace problem in Uganda. The magnitude in each case may differ according to the nature of the organization but it cuts across all sectors, both public and private.

The reasons it has continued to flourish lies in the general lack of awareness of the concepts, vulnerability of women caused by their limited levels of education, the fact that women in most organizations continue to occupy the low cadre jobs, our societal cultural beliefs about a woman, and particularly our structures of organization (hostile environment), the dominance of men in most managerial positions, the inequalities in employment levels of men against women.

In Uganda the constitution is the supreme law. Under Article 20, fundamental rights and freedoms of the individual are inherent and not granted by the State or any one. It is incumbent on every one in Uganda to respect, uphold and promote all the freedoms and rights of every person. The privacy and bodily autonomy of every one in Uganda is protected and no person whatsoever has the right to unlawfully violate their fundamental right.

All persons in Uganda are equal by law according to Article 21 of the constitution. They are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law and no one is supposed to be treated differently because of their sex or disability. Article 24 of the constitution protects the dignity of every one in Uganda. No person shall be subjected to any form of torture or cruel, inhuman or degrading treatment. This includes respect of a person to their psychological or mental wellbeing. This right is non-derogable according to Article 44 of the constitution.

All duty bearers including employers and individuals have a legal obligation to accord full and equal dignity of the person to women as men⁸⁷. The State is specifically mandated to provide the facilities and opportunities necessary to enhance the welfare of women to enable them to realise their full potential and advancement including laws, policies, strategies and actions platforms to prevent and response to sexual harassment. The State's legal responsibility is further stretched to protection of women and their rights, taking into account their unique status and natural maternal functions in society⁸⁸.

The law regulating relationship at work places is the employment Act⁸⁹. It is provided in the Act⁹⁰ that discrimination in employment shall be unlawful. Sexual harassment is specifically prohibited in the act⁹¹. The Act provides that an employee shall be sexually harassed in that employee's employment if that employee's employer, or representative of that employer- (a) directly or indirectly makes a request of that employee for sexual intercourse, sexual contact or any other form of sexual activity that contains- (i) an implied or express promise of preferential treatment in employment; (ii) an implied or express threat of detrimental treatment in employment; (iii) an implied or express threat about the present or future employment status of the employee; (b) uses language whether written or spoken of a sexual nature; (c) uses visual material of sexual nature; or (d) show physical behaviour of a sexual nature, which directly or indirectly subjects the employee to behaviour that is unwelcome or offensive to that employee and that, either by its nature or through repetition, has a detrimental effect on that employee's employment, job performance, or job satisfaction.

It is against the employment law if the employer does not have guidelines or manuals for sexual harassment. Section 7 provides that every employer who employs more than twenty five employees is required to have in place measures to prevent sexual harassment occurring at their work place.

⁸⁷ Article 33 of the Constitution of the Republic of Uganda

⁸⁸ Article 33(3) of the Constitution of the Republic of Uganda

⁸⁹ THE EMPLOYMENT ACT, 2006. An Act to revise and consolidate the laws governing individual employment relationships and to provide for other connected matters.

⁹⁰ Section 6 of the Employment Act

⁹¹ Section 7 of the Employment Act

Under the Employment Act, the Employment (Sexual Harassment) Regulations, 2012 were made pursuant to sections 7 and 97(1) of the parent Act. Under the regulations, “harassment” means verbal or physical abuse or behaviour that unreasonably interferes with work or creates an intimidating, hostile, or offensive work environment including intimidation; and “intimidation” means physical or verbal abuse, or behaviour directed at isolating or humiliating an individual or a group or at preventing them from engaging in normal activities and includes degrading public tirades by a supervisor or colleague; deliberate insults related to a person's personal or professional competence; threatening or insulting comments, whether oral or written including by e-mail; and deliberate desecration of religious or national symbols or both. Every employer with more than twenty five employees shall adopt a written policy against sexual harassment.

A sexual Harassment Committee is provided for under part III. Every employer shall establish a sexual harassment committee composed of representatives of management and employees or labour union representatives selected annually by each party to inter alia receive and register complaints of sexual harassment in a form prescribed in the First schedule; The regulations also detail the sexual Harassment Complaints Procedure. An employee who is sexually harassed in any way described in these Regulations, by the employer or employers' representative, shall lodge a complaint to the labour officer.

Where the commissioner has failed to dispose of a complaint referred to him or her under regulation 13(f) he or she shall refer the matter to the Industrial Court for hearing and the people involved are protected by law. Under the regulations, an employee shall not knowingly raise a false or frivolous sexual harassment claim and where an employee raises a false or frivolous sexual harassment claim, the employer may take appropriate disciplinary action against that employee; and every person who contravenes these Regulations, commits an offence and is liable on conviction to a fine not exceeding six currency points or imprisonment not exceeding three months or both.

The tragedy for Uganda and UPS in particular is that those at the level of management do not therefore feel liable for any acts of sexual harassment on some of their employees. They do not

feel concerned that sexual harassment is a discipline problem and a job hazard that needs to be tackled as any other job hazards in the organization.

5.3 Recommendations

In general the problem of sexual harassment has been fundamentally contributed by the extent of moral corruption in our society. Majority of people regardless of their age and status they possess in the society lack basic moral values which in principal stands as a beacon of self-conciseness and discipline. However there are measures that can be used to combat this phenomenon in Uganda which includes;

(a) Developing clear policies on sexual harassment

All policies concerning access to public servant services must give priority to the approach based on the merit of the individuals and equity of access. All stakeholder's must adopt all appropriate measures, especially in the field of education, to modify the social and cultural patterns of conduct of men and women and to eliminate prejudices, customary practices and all other practices and all other practice based on the idea of the inferiority or superiority of either of the sexes and on the stereotyped roles of men and women and all staff of the institutions must be sufficiently aware of the enacted policy.

(b) Establish firm laws and regulations

There must be grievance procedures to investigate and punish those found guilty of the offence of harassment. Members of the investigating panel need be those that are of impeccable character and well respected by the community.

Sexual harassment in the university and the workplace must be recognized and treated as an oppressive form of sex discrimination that undercuts women's potential for independence and equality. It disrupts women drive for autonomy outside of the home and family by sexualizing women's work role and by making sexuality a condition of economic survival. Women as a group suffer from two inequalities gender inequalities based on socially defined patterns of sexual initiative and acquiescence and economic inequality maintained by women separate and subordinate place at work. Sexual harassment links these, inequalities by expressing the unequal social power of women, sexualizing their subordination and deepening their powerlessness as women

(c) Removing gender stereotypes

Further efforts must be made to eliminate all gender stereotyping in higher education to consider gender aspects in different disciplines and to consolidate women's participation at all levels and in all disciplines, in which they are underrepresented and particular, to enhance their active involvement in decision making.

(d) Establish counseling unit

Efforts should be made to provide, fund and encourage counseling and rehabilitation programs for the perpetrators of Sexual Harassment and promote research for further efforts concealing and rehabilitation so as to prevent the recurrence of such Harassment.

(e) Promote research,

Promote research, collect data and compile statistics, especially concerning Sexual harassment in high learning Institutions relating to the prevalence of different forms of Sexual Harassment against workers, and encourage research into causes, nature, seriousness and consequences of sexual harassment against Faculty staffs.

(f) Changing primary socialization

The primary socialization of female and male should be changed the focus to produce learners with different learning environment, which appears to be more supportive to male, than of females have to be balanced so that it can support both male and female workers on equal bases.

(g)The mass media

The mass media has the greatest impact on young people and as such, has the ability to shape values, attitudes and perceptions of women and perceptions of women and girls in both negative and positive ways, It is therefore essential that education teach critical judgments and analytical skills. The mass media must promote non stereotyped images of women and men, as well as in eliminating patterns of media must promote non stereotype images of women and men, as well as in eliminating patterns of media presentation that generate violence, and encourage those responsible for media content to establish professional guidelines and codes of conduct. Also the

mass media must raise wakefulness by informing and educating the public about causes and effects of Sexual Harassment against workers and in stimulating public debate on the topic.

It is also a fact that the dominance of men in most organizations at the policy making level makes legislation targeting women problems fail. A case in point is the present domestic bill now in parliament. Therefore for this sexual harassment policy to work, the UPS through affirmative action needs to make a deliberate attempt to increase the number of female senior officers from its present low levels. This should help these women to influence policy on matters affecting their ilk.

The government of Uganda is signatory to many UN conventions including one on human rights etc. it is contingent upon her to put in guidelines on how to deal with the problem of sexual harassment.

At a key policy level, the law makers should re-design laws on sexual harassment as stand alone policies instead of being too „broad and generic“ where its impact and clarity is compromised. This would then stand as a basis on which other organizations would draw their inspiration to tighten their own strategies to eliminate the problem. At the same time, copies of such revised laws should be widely distributed to benefit the target groups.

5.4 Conclusion

Sexual harassment is understood differently by different people. However ignoratia non excusant must be the answer for the harassers, be women or men. The use of law may be a powerful tool in both prevention and response to sexual harassment in all context and equality between women and men must be seen as a struggle of humanity, a struggle for both men and women. In the face of sexual violence and discrimination, everyone is concerned and everyone needs to act.

The solution to eradicating sexual harassment in the workplace does not only lie in the remedies enunciated in this thesis - but in the role of education in transforming people's attitudes and enhancing respect for other employee's dignity and a comprehensive campaign by both the employees and employers to ensure a 'harassment free' environment. It is essential that every

company have a sexual harassment policy, which forms part of the conditions of employment, and breach thereof should constitute misconduct warranting dismissal.

A central theme of the study is that the future of the law on sexual harassment lies in the adoption of a multi-dimensional approach, which focuses on dignity. The essence of a multi-dimensional approach recognizes that the harm of sexual harassment gives rise to various remedies in delict, labour law, constitutional, and criminal law, which are not mutually exclusive, and the plaintiff can use one or more of the available remedies. At the heart of the proposed expansive approach, lies an emphasis on dignity in all the remedies because the harm of sexual harassment is first comprehended as being inimical to dignity, which is an essential pillar in the celebration of freedom, self-autonomy, and humanity in a democratic society

Bibliography

Bergmann T. J. and M. S. Taylor (1894); *College Recruitment; What attracts students to organizations.*

Catherine Itzin & Janet Newman (1995); *Gender, Culture and Organization change; Putting theory into practice;* Routledge, London.

Christine R. Marlow (2001); *Research Methods for Generalist Social Work;* Wadsoworth, Ontario.

Dorek Torrington, Laura Hall & Steven Taylor (2002); *Human Resource Management;* Pearson Education Limited, London.

Dr. Zoya Khotkina (1997); *Sexual Harassment in Russia Workplaces;* Moscow Centre for Gender Studies, Russian academy of sciences.

Gary N. Powell (Second Edition); *Women Men in Management;* Sage Publications Ltd, London.

George T. Milkovich & John W. Boudreau (1994); *Human Resource Management;* RR. Donnelly & Sons Company, U.S.A.

Houghton James Hazel (1995); *Sexual Harassment;* Cavendish Publishing, London.

Jeff Hearn, Deborah L. Sheppard, Peta Tancred-Sheriff, Gibson Burrell (1992); *The Sexuality of Organisations;* Sage Publications Ltd, London.

Jenny Fleming and Gearge Lafferty (2003); *Equity Confounded New Managerialism, Organisational Restructuring and Women in Austrian Police Services;* School of Industrial Relations, Griffith University (Unpublished).

Kate Miller (1977); *Sexual Politics;* Virago Press, London.

Laura A. Reese & Karen E. Lindenberg (1999); *Implementing Sexual Harassment Policy; Challenge for the Public Sector Workplace*; Sage Publisher Ltd, London.

Mackinnon C. (1979); *Sexual Harassment of Working Women*; New Haven, Yale University Press.

Marylyn J. Davidson and Ronald J. Burke (1994); *Women in Management; Cultural Research Issues*; Paul Chapman Publishing Ltd, London.

Mats Alvesson and Yvonne Due Billing (1997); *Understanding Gender and Organisation*; Sage Publications, London 1997.

Nagaddya Sarah (1993); *Gender Differences in Management of Medium Scale Industries in Uganda*, Makerere University, Kampala (Unpublished).

Nyende Paul (2002); *Sexual Harassment; The case of Women in the Workplace and Female Students in Tertiary Institutions in Uganda*; Makerere University, Kampala (Unpublished).

Nyemera B. Robinah (1999); *An Investigation into Rape and defilement in Mbarara Municipality*; Makerere University, Kampala (Unpublished).

Nyiragahima Elizabeth (1999); *The Effectiveness of Law Governing defilement in Uganda*; Makerere University, Kampala (Unpublished).

Raymond J. Store; *Human Resource Management, 3rd Edition*; New York, Brisbane.

Richard S. Lehman (1991); *Statistics and Research Design in Behavioral Sciences*; Wadworth Publications, London.

Semambo Claire (2001); Law and Sexual Harassment in Uganda's Formal Sector: The case of Makerere University; (Unpublished).