

SEXUAL HARASSMENT IN UNIVERSITIES AND WORKPLACES IN MALAWI

BY

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INTRODUCTION

Objective:

To provide a broad overview of the legal provisions and the situation on sexual harassment in Universities and workplaces in Malawi

Key issues covered:

- Legal and regulatory framework
- Evidence from research
- Emerging policies on sexual harassment
- Judicial decisions
- Conclusion

Legal framework : Malawi Constitution

Section 20:Equality

(1) Discrimination of persons in any form is prohibited and all persons are, under any law, guaranteed equal and effective protection against discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, disability, property, birth or other status or condition.

(2) Legislation may be passed addressing inequalities in society and prohibiting discriminatory practices and the propagation of such practices and may render such practices criminally punishable by the courts.

Similar provision as in section 20(1) in Employment Act

Legal framework: Malawi Constitution

Section 24 Rights of women:

Any law that discriminates against women on the basis of gender or marital status shall be invalid and legislation shall be passed to eliminate customs and practices that discriminate against women, particularly practices such as—

(a) sexual abuse, harassment and violence;

(b) discrimination in work, business and public affairs; and

Employment Act recognises sexual harassment as an act of misconduct but does not define it

Gender Equality Act: Definition

6.-(1) A person commits an act of sexual harassment if he or she engages in any form of unwanted verbal, non-verbal or physical conduct of a sexual nature in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated.

(2) A person who sexually harasses another in terms of subsection (1) commits an offence and is liable to a fine of one million Kwacha (K 1,000,000) and to a term of imprisonment for five (5) years.

Gender Equality Act : Obligation

Section 7: The Government shall take active measures to ensure that employers have developed and are implementing appropriate policy and procedures aimed at eliminating sexual harassment in the Workplace

Focuses on:

- Both employees and non employees dealing with employees
- Grievance and complaints procedures
- Protection of complainants from victimization
- workplace based oversight over implementation of workplace policies

Legal framework: Penal Code

Sexual harassment as a crime:

- Not specific to sexual harassment but: Section 137 of the Penal Code
- Indecent assault
- Insulting the modesty of women
- Prosecution by police based on reporting and lodging a complaint

Situation- Evidence from research

Unima – Chancellor College Studies

1994: Phiri, Isabel – students – gender based violence context

2009: Kayuni, H – staff and students – challenges of researching sexual harassment

2013: Kanyongolo, N , Chiziwa and Chikuni ; Staff – Safe work and study environment

2015: WILSA- Students – Student perspectives

2016: Gender Policy situational analysis report – Broad overview as a gender issue

Key findings / emerging issues

Methodology and sensitivity of studies on sexual harassment

Pre 2013 : Lack of local definition of sexual harassment in law and policies

Prevalence of sexual harassment especially against female students (by lecturers and peers) and staff

High levels of non reporting

Lack of grievance / complaints procedures

Inadequate protection of complainants

Ineffective disciplinary committees

Lack of policies / or effective guidelines on sexual harassment except for mention in student rules and regulations and staff conditions of service

Draft University Gender Policies

-Driven by the Malawi Government on the basis of the National Gender Policy and with funding from UNDP – all public universities

UNIMA Case study

Facilitated by the office of the Vice Chancellor via a taskforce of male and female academics from all colleges of the University

- Evidence based and participatory by both staff and students
- Building on existing provisions in Student regulations and Staff Conditions of service

Draft policy: Zero tolerance, punishment and rehabilitation in cases of sexual harassment and gender based violence

Focus: Awareness / expeditious handling of cases /punish and rehabilitate perpetrators/ provide support and related services to complainants

Judicial decisions

Most cases employment based

All involving female employees

Progressively recognising of sexual harassment

Examples:

- Kamkosi vs Office of the Ombudsman 2008 – unwanted advances by boss amounted to sexual harassment and created a hostile working environment
- Phiri vs Smallholder Coffee Farmers Trust 2008 – sexual harassment as unfair labour practice
- Ntaba vs Continental Discount House Ltd 2008 – unwanted sexual advances – termination for insubordination – no sexual harassment but normal interaction at workplace

Conclusion

Broad and solid foundation: constitutional provision on non discrimination and obligation to eliminate sexual harassment

Translation of constitutional obligation: Gender Equality Act has provided a definition and guidance in general and specifically for workplaces

Sexual harassment policies being developed driven by the Ministry of Gender and supported by the UN for both public Universities and workplaces

Critical: concerted and sustained efforts to implement and monitor the policies