



SEXUAL HARASSMENT

IN THE CONTEXT OF ZIMBABWEAN LABOUR LAW AND THE UNIVERSITY OF ZIMBABWE CODE OF CONDUCT

BY

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Introduction

- ▶ Poverty, high level of unemployment, lack of mechanisms to identify or detect sexual harassment and mechanisms to help victims of sexual harassment are some of the factors that are breeding sexual harassment in Zimbabwe. Perpetrators are taking advantage of these factors to pounce on women mainly.
- ▶ Women, married and unmarried, students, graduates and non graduates, house maids and gardeners all are all potential victims of sexual harassment.
- ▶ The major problem in Zimbabwe is that the labour laws are inadequate in two ways:
 - a. it terms of the content of the law.
 - b. lack of clear policy and special procedure for detecting and resolving sexual harassment cases.

The Constitution of Zimbabwe

- ▶ The Constitution of Zimbabwe in section 14 makes it an obligation for Zimbabwe to:

Promote full gender balance in Zimbabwean society, and in particular—

- (a) the State must promote the full participation of women in all spheres of Zimbabwean society on the basis of equality with men;
- (b) the State must take all measures, including legislative measures, needed to ensure that—
 - (i) both genders are equally represented in all institutions and agencies of government at every level; and

Constitution of Zimbabwe continued.....

- (ii) women constitute at least half the membership of all Commissions and other elective and appointed governmental bodies established by or under this Constitution or any Act of Parliament; and
 - (c) the State and all institutions and agencies of government at every level must take practical measures to ensure that women have access to resources, including land, on the basis of equality with men.
- (2) The State must take positive measures to rectify gender discrimination and imbalances resulting from past practices and policies.

Constitution Of Zimbabwe.....

▶ In section 24 it is provided that:

(1) The State and all institutions and agencies of government at every level must adopt reasonable policies and measures, within the limits of the resources available to them, to provide everyone with an opportunity to work in a freely chosen activity, in order to secure a decent living for themselves and their families.

(2) The State and all institutions and agencies of government at every level must endeavour to secure—

Constitution Continued

- (a) full employment;
- (b) the removal of restrictions that unnecessarily inhibit or prevent people from working and otherwise engaging in gainful economic activities;
- (c) vocational guidance and the development of vocational and training programmes, including those for persons with disabilities; and
- (d) the implementation of measures such as family care that enable women to enjoy a real opportunity to work.

Constitution Continued.....

- ▶ In section 56, the Constitution of Zimbabwe provides for Equality and non-discrimination.

(1) All persons are equal before the law and have the right to equal protection and benefit of the law.

(2) Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.

Constitution Continued...

6) The State must take reasonable legislative and other measures to promote the achievement of equality and to protect or advance people or classes of people who have been disadvantaged by unfair discrimination, and—

(a) such measures must be taken to redress circumstances of genuine need;

(b) no such measure is to be regarded as unfair for the purposes of subsection (3).

Constitution Continued...

▶ The Constitution of Zimbabwe under section 65 that provides for labour rights it is stated as follows:

(1) Every person has the right to fair and safe labour practices and standards and to be paid a fair and reasonable wage.

What is clear under the Zimbabwean labour law is that sexual harassment is regarded as unfair labour practice and therefore is included under s65(1) of the Constitution of Zimbabwe.

Hence if one commits sexual harassment amounts that will amount to violation of a constitutional right-the to right to fair labour standards.

Constitution continued..

▶ 80 Rights of women

(1) Every woman has full and equal dignity of the person with men and this includes equal opportunities in political, economic and social activities.

(2) Women have the same rights as men regarding the custody and guardianship of children, but an Act of Parliament may regulate how those rights are to be exercised.

(3) All laws, customs, traditions and cultural practices that infringe the rights of women conferred by this Constitution are void to the extent of the infringement.

What the Labour Act provides?

- ▶ There is no definition of sexual harassment in the Labour Act (28:01).
- ▶ Sexual harassment is narrowly defined under section 8-unfair labour practices as an unfair labour practice.
- ▶ It is defined in 58 (h) of the Labour Act (28:01) as,
*“Any employer or for the purpose of paragraphs (g) and (h), an employee or any other person, commits an unfair labour practice if, by act or omission, he –
(h) engages in unwelcome sexually-determined behaviour towards any employee, whether verbal or otherwise, such as making physical contact or advances, sexually coloured remarks, or displaying pornographic materials in the workplace.”*

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- ▶ The definition does not explicitly provide for sexual harassment definition, but the conduct it defines as unfair labour practice is actually sexual harassment.
- ▶ The penalties for unfair labour practices in terms of section 6(1)(2) as read together with section 89 of the Labour Act are:
 - a. Cessation of the unfair labour practice.
 - b. Compensation.
 - c. criminal sanction.
- The question that begs an answer is why despite those remedies being available in our jurisdiction the cases of victims seeking compensation or criminal sanction recorded are very low.

The Public Service Act (16:04)

- ▶ The Public Service Act does not have a provision on sexual harassment.
- ▶ The Public Service Act is yet to be aligned with the Zimbabwean Constitution Amendment No 20 of 2013.
- ▶ The Public Service Regulations, SI 1 of 2000 does not provide again a specific procedure for sexual harassment.
- ▶ However the regulations includes sexual harassment as a misconduct. See section 4 that provides:

Improper, threatening, insubordinate or discourteous behaviour, including sexual harassment, during the course of duty towards any member of the Public Service or any member of the public.

Sexual Harassment under the University of Zimbabwe code of conduct

- ▶ The University of Zimbabwe Code of Conduct defines sexual harassment as unwarranted conduct of a sexual nature that affects the dignity of men and women at work. It includes physical, verbal and non-verbal conduct that is sexually coloured, offensive, intrusive, degrading or intimidating.
- ▶ The definition just like the one under the Labour Act is inadequate in two ways:
 - a. the content of the definition itself is inadequate
 - b. the lack of mechanisms to detect and resolve the cases of sexual harassment i.e boards of inquiry, counselling services, post harassment support centre.

The penalty that is available to the perpetrators is dismissal from employment.

Absence of specific remedies that help the victim of sexual harassment.

- ▶ The Labour Act provides for compensation to the victim but it does not state how the compensation is computed viz the act perpetrated.
- ▶ The other remedy available is cessation but that does not address the injury caused or trauma the victim maybe experiencing.
- ▶ The Labour Act also fails to put mechanisms that ensure that in future there are no retributive actions by the perpetrator and his/her sympathizers who may be still in authority.
- ▶ The Labour Act totally fails to provide any counselling, protection mechanisms to the victim of sexual harassment.

Absence of remedies to the victim of sexual harassment

- ▶ The University of Zimbabwe code of conduct does not provide for any compensation, and specific counselling services to sexual harassment victims.
- ▶ There is no clear cut protection mechanisms to sexual harassment victims.
- ▶ There is no clear inclusion of students in the code of conduct as potential victims of sexual harassment at the University of Zimbabwe (as a workplace). Lecturers and other employees can easily predate on the vulnerable innocent students.
- ▶ Clearly that is a very critical provision that is absent in the code and requires urgent .

Recommendations

- ▶ The way forward for Zimbabwe will be to push for the following:
 - a. Amendment of the Labour Act to provide for a wider definition and mechanisms to prevent, detect and resolve sexual harassment cases efficiently and promptly.
 - b. A clear government policy on combating sexual harassment at workplaces, universities and colleges as workplaces.
- .The way forward for the University of Zimbabwe is to:
 - a. amend its code of conduct and expressly provide for a wider definition.



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- b. Put in place a policy and procedures for handling and compensating the victims of sexual harassment.

There is the University of Zimbabwe students charter which in clauses 1.14 to 1.14.5 set the definition, the various undertakings to put in place mechanisms to detect, resolve and combat sexual harassment.

The mechanisms so stated above are not yet in place.

What is clear is that Zimbabwe as a company needs to revamp its labour laws with regard to sexual harassment as a disempowering tool to all gains made by women in Zimbabwe.

Thank You.