



Mapping Legal Protections Against Workplace Sexual Harassment in Africa

November 2024



CYRUS R. VANCE CENTER
FOR INTERNATIONAL JUSTICE



Pan African
Lawyers Union

Table of Contents

Introduction	1
Executive Summary	5
Speed Reads	8
Algeria.....	9
Angola.....	12
Botswana.....	14
Cameroon.....	17
Egypt.....	19
Equatorial Guinea.....	21
Ethiopia.....	23
Gambia.....	26
Ghana.....	28
Ivory Coast.....	30
Kenya.....	32
Malawi.....	35
Mozambique.....	38
Namibia.....	40
Nigeria.....	43
Rwanda.....	46
Senegal.....	49
Sierra Leone.....	51
South Africa.....	53
Tanzania.....	57
Uganda.....	60
Zimbabwe.....	63
General Recommendations	67

Introduction

Sexual harassment continues to raise serious concerns about workplace safety, equality, and equity across the globe.¹ A recent World Bank report noted the pervasiveness of sexual harassment in multiple sectors and spaces, including “employment, education, cyber-space, and public places such as public transport, marketplaces.”² The report reflected an urgent need to develop, strengthen, and implement legal frameworks addressing sexual harassment in employment. Similar World Bank reports examining 190 economies around the world confirm that “women’s economic opportunity is restricted due to a lack of laws that prevent and redress sexual harassment in employment.”³ It has also been noted that, while “gaps in legal prohibitions of sexual harassment at work persist even among countries that have international or regional commitments to ensuring workplaces are free from sexual harassment,” countries that have ratified progressively gender-focused conventions, such as CEDAW, “are making legal progress toward realizing their international and regional commitments.”⁴ In a similar comparison, an analysis of the impact of the Protocol to the African Charter on the Rights of Women in Africa (the “Maputo Protocol”) found improved sexual harassment legislation amongst Maputo ratifiers, even when nine of the 42 countries that had ratified the Protocol had not legally prohibited sexual harassment at work.⁵ ILO Convention 190 on Violence and Harassment in the World of Work offers another example of an international convention that protects workers within the context of sexual harassment.⁶ However, as of September 2024, only eight African nations have ratified this transformative international treaty, which provides “a roadmap on how to reform laws and policies at the national level, from ratification to multi-sector coordination to ensuring meaningful implementation, monitoring, and reporting.”⁷

This intersection between employment inequality and sexual harassment, a form of gender-based violence that has a disproportionate impact on women, was highlighted by the Committee on the Elimination of Discrimination against Women as far back as 1992 under General Recommendation 19.⁸ The Committee recognized sexual harassment as “gender-specific violence” which “seriously impaired” equality in the workplace.⁹ At a time when it appeared that South Africa was the only African country to have reported successful litigation of sexual harassment,¹⁰ the Committee

¹ EVERFI Content Team, How Does Sexual Harassment Affect the Workplace? <https://everfi.com/blog/workplace-training/the-effects-of-sexual-harassment-in-the-workplace/>

² World Bank, Global Indicators Briefs No. 24, *Laws and Policies to Address Violence against Women in Countries Affected by Fragility and Conflict*, Isabel Santagostino Recavarren *et al.* December 18, 2023.

³ World Bank Blogs, *Sexual Harassment is Serious Business*, Nisha Arekapudi and Isabel Santagostino Recavarren, February 5, 2020. <https://blogs.worldbank.org/en/developmenttalk/sexual-harassment-serious-business>

⁴ Jody Heymann *et al.*, *Progress Towards Ending Sexual Harassment at Work? A Comparison of Sexual Harassment Policy in 192 Countries*, *Journal of Comparative Policy Analysis: Research and Practice*, 25:2,172-193.

⁵ *Ibid.*, Jody Heymann *et al.*, p 187.

⁶ Convention concerning the elimination of violence and harassment in the world of work (Entry into force: 25 Jun 2021) Adoption: Geneva, 108th ILC session (21 Jun 2019)

⁷ ICRW Policy Brief. Ending Gender-Based Violence and Harassment in the World of Work: The Critical Importance of Implementing ILO Convention 190. https://www.icrw.org/wp-content/uploads/2021/06/ICRW_ImplementingILO190_05.21.pdf

⁸ CEDAW General Recommendation No. 19: Violence against Women Adopted at the Eleventh Session of the Committee on the Elimination of Discrimination against Women, in 1992 (A/47/38).

⁹ *Ibid.* Article 11 (17).

¹⁰ The case of *J v M Ltd* (1989) 10 ILJ 755 (IC) is often referred to as the first ever reported case on sexual harassment in South Africa.

through General Recommendation 19 requested that States Parties “include in their reports information on sexual harassment, and on measures to protect women from sexual harassment and other forms of violence of coercion in the workplace.”¹¹ As of 2024, almost half of African countries have some form of law prohibiting sexual harassment, yet significant challenges persist in terms of framing, implementation, and cultural perception. This is attributable not only to structural and systemic weakness in driving the gender agenda but notably, an “erosion of legal and policy frameworks to eliminate gender-based discrimination or violence, often justified in the name of tradition, culture, religion or fundamentalist ideologies, and significant reductions in public spending, often as part of ‘austerity measures’ following economic and financial crises, further weaken the state responses.”¹²

As Africa continues to grapple with a widespread culture of misogyny, it fuels the scourge of sexual harassment in the workplace alongside a complex set of socio-economic realities rooted in poverty. This pattern of socio-economic exclusion often leaves poor, marginalized, and unemployed individuals most vulnerable to sexually exploitative acts in the form of sexual harassment. A notable example involves the case of “female food vendors in Tanzania who interacted predominantly with men in public spaces who had to tolerate sexual harassment to maintain an income.”¹³ The intersection between poverty, low-income work, and sexual harassment was also observed in Ethiopia amongst women working in the hospitality industry who “identified organizational risk factors including a revealing dress code for female employees contributing to their objectification, lack of a financial security, lack of sexual harassment-related guidelines, and unequal power relations between female employees and men in authority positions.”¹⁴

While some may argue that sexual harassment laws and policies are not enough to eradicate sexual harassment, it is clear that the absence of such laws and policies severely diminishes any chance to ensure the right to remedies and access to justice in the face of sexual harassment.

The current status quo of African countries vis-à-vis their sexual harassment laws continues to evolve; yet, what remains static to date is that none can boast of having a comprehensive law on sexual harassment.

A model law or regional protocol that lays the foundation for how a national law on sexual harassment should look could increase the likelihood of a comprehensive and integrated approach. Current procedural and substantive approaches to sexual harassment differ from one jurisdiction to the next. Whereas one country adopts a civil approach to sexual harassment, another adopts a criminal approach, or sometimes a hybrid approach. In some countries, specific acts of sexual harassment, such as sexual assault or defamation, have been defined as a form of prohibited and unlawful conduct, without direct reference to the term “sexual harassment.” Other countries make explicit reference to sexual harassment and recognize it as a distinct form of a broader type of prohibited behavior, usually in the context of sex discrimination, and therefore prohibited under equality or anti-discrimination laws. Yet others have enacted legislation or amended existing

¹¹ CEDAW General Recommendation No. 19, Article 16 (24) (J)

¹² CEDAW General Recommendation No. 35 on Gender-Based Violence against Women, updating General Recommendation No. 19, Para 7, CEDAW/C/GC/35.

¹³ Hardt, S., Stöckl, H., Wamoyi, J., & Ranganathan, M. (2023). Sexual Harassment in Low- and Middle-Income Countries: A Qualitative Systematic Review. *Trauma, Violence, & Abuse*, 24(5), 3346-3362.

¹⁴ *Ibid.*

provisions to expressly prohibit sexual harassment in the workplace. The effect is a fragmented approach in an area of law where coherence, consistency, and clarity are critical to ensuring broad-based workplace protections in both formal and informal sectors against the scourge of sexual harassment.

The three coordinating organizations for this project have significant experience working to address disparities and inequalities in the workplace, particularly in the legal profession. Over the past two decades, the **Cyrus R. Vance Center for International Justice**, a nonprofit program of the New York City Bar Association, has worked to support pro bono practice and promote a more diverse and inclusive legal profession in sub-Saharan Africa through various initiatives. Through mentoring initiatives and programming to support women’s leadership in the legal profession, and in-depth analysis through surveys and other reports, the Vance Center has made uplifting and advocating for women in the legal profession a priority.

For over 20 years, the **Pan African Lawyers Union (PALU)** and its members have worked to promote and defend the shared interests, aspirations, and concerns of people across Africa. It has a broad mandate of advancing the rule of law, good governance, human and peoples’ rights, as well as the socio-economic development of the African continent. As a continental membership forum of and for individual African lawyers and lawyers’ associations, PALU, through its Women Lawyers Forum, is fundamentally concerned with pervasive issues of sexual harassment in the workplace, which impacts its members’ safety, well-being, and ability to do their jobs.

The **Africa End Sexual Harassment Initiative (AESHI)** brings to this analysis its extensive experience advocating for legal reform, creating regional and national dialogue around the issue of sexual harassment across the continent of Africa, and finding regional and national solutions to the problem. AESHI’s connections across the field of civil society, government, policymakers, and academics, and its efforts to advocate for a regional model law on sexual harassment for Africa help frame the practical objectives and next steps for this research.

The Vance Center, in partnership with AESHI, PALU, and with legal support from A&O Shearman and multiple national law firms in the relevant countries, analyzed existing legislative protections addressing sexual harassment in 22 selected jurisdictions across Africa. The project seeks to provide a foundational framework that will foster a culture of equal opportunity, free from sexual harassment, for all in the working world.

This legal review, drawing on the combined legal expertise, grassroots connections, and global network of the three organizations, underscores the direct correlation between the absence of legislation protecting women from sexual harassment and persistent gender inequality and discrimination in the labor market. In a world in which, according to UN Women, more than one in five people have experienced violence and harassment in the workplace, with disproportionate impacts on women and vulnerable groups like informal workers, this is not just a “women’s problem” – it is a pervasive societal problem. Sexual harassment is, first and foremost, unacceptable behavior that hurts the morale of the workforce, whether formal or informal, and therefore hurts the economy.

Whilst we acknowledge that legal frameworks alone are not a solution to multi-faceted, complex societal issues such as sexual harassment, they do, however, play a significant role in expanding women's economic participation, enhancing women's access to justice and establishing baseline norms for safety in the workplace. With instruments like ILO Convention No. 190, the tools and language already exist to codify and define sexual harassment and to provide remedial measures for prevention, protection, punishment and compensation where necessary. This, therefore, provides the language and the path forward to move from rhetoric to action.

The coordinating organizations plan to build on these findings to (i) develop a set of good practice benchmarks and advocate for a regional law on sexual harassment in Africa; (ii) work with civil society groups and the legal sector to develop workplace model policies on sexual harassment that legal organizations can incorporate into their internal structures.; (iii) improve awareness across the legal profession of gaps in their sexual harassment policies and (iv) develop and strengthen accountability mechanisms for perpetrators of sexual harassment.

About this Report

This analysis provides an assessment of workplace sexual harassment in 22 jurisdictions in Africa. It offers both a comprehensive regional view and country-specific analysis of laws and policies relating to workplace sexual harassment, compiling findings from research memoranda on laws relating to sexual harassment (including workplace sexual harassment); legal requirements for institutions to implement sexual harassment policies; reporting and investigation mechanisms; arbitration and litigation of sexual harassment cases; and penalties and legal ramifications for perpetrators of sexual harassment.

Each country chapter includes a “speed read” summarizing the findings for that country, noting the status of key international conventions. These assessments offer a starting point for advocates, policymakers, legal professionals, and others to assess where each jurisdiction stands, take note of what instruments other neighboring countries have adopted, and identify next steps and opportunities for action.

The study provides recommendations for comprehensive sexual harassment legislative frameworks, including internal policies to investigate and address claims of sexual harassment, safer reporting mechanisms, ending the use of practices like non-disclosure agreements (NDAs) and defamation lawsuits to intimidate or silence victims, preventing retaliation and ensuring equal protection under the law for all workers; and incorporating additional considerations for vulnerable groups of workers often excluded under employment laws, such as domestic workers and other workers in the informal sector. These recommendations are informed by the input of national law firms on the status of sexual harassment laws in their respective countries; the expert analysis of members of the Vance Center, AESHI, and PALU; and data-based research drawn from policy documents developed by UN Women, World Bank (Women Business and the Law) as well as the International Monetary Fund.

The current state of fragmented approaches to what constitutes sexual harassment in the workplace, its scope, impact, and available remedies, contribute to a general environment of uncertainty for individuals and institutions alike. Where laws are uncertain and the prospects of accessing justice precarious, the likelihood of victims of sexual harassment speaking out and seeking remedies is largely decreased. What increases is impunity, unprofessionalism, and a culture of fear, silence, and retribution, while confidence in the rule of law erodes. An African

regional law or legal framework for sexual harassment would address this problem in multiple ways, including establishing a harmonized position across states, facilitating sharing of best practices, strengthening regional cooperation, and enhancing ethical African leadership. This analysis guides us toward the next steps and helps to crystallize a set of goals to create a safe working environment where all individuals, regardless of gender, can succeed and thrive without the risk and threat of sexual harassment.

Executive Summary

Purpose of this research report

Despite the adoption of international conventions such as ILO Convention No. 190, which recognizes the universal right to a world of work free from violence and harassment,¹⁵ the United Nations Convention on the Elimination of All Forms of Discrimination against Women, and the Maputo Protocol on the Rights of Women in Africa, sexual harassment in the workplace remains pervasive. Globally, 43 countries still do not have laws on sexual harassment in the workplace, and eight of the 147 jurisdictions that do have such laws fail to provide for criminal or civil remedies.¹⁶ Moreover, many jurisdictions take fragmented approaches to such legislative frameworks, with little clarity on what constitutes sexual harassment and a lack of adequate enforcement mechanisms.

This report presents an analysis of the legal framework surrounding workplace sexual harassment in 22 jurisdictions in Africa (the target countries, as defined below).

The coordinating organizations are grateful to A&O Shearman and the various national law firms that contributed their research and expertise to make this report possible.

Scope of this research report

The scope of this report includes the following countries: Algeria, Angola, Botswana, Cameroon, Egypt, Equatorial Guinea, Ethiopia, The Gambia, Ghana, Ivory Coast, Kenya, Malawi, Mozambique, Namibia, Nigeria, Rwanda, Senegal, Sierra Leone, South Africa, Tanzania, Uganda, and Zimbabwe (collectively, the **target countries**).

This report aims to identify the laws and policies relating to workplace sexual harassment in the Target Countries. It compiles findings from research memoranda produced by national counsel in the Target Countries on laws relating to:

- sexual harassment (including workplace sexual harassment);
- legal requirements for institutions to implement sexual harassment policies;

¹⁵ https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C190.

¹⁶ <https://openknowledge.worldbank.org/server/api/core/bitstreams/b60c615b-09e7-46e4-84c1-bd5f4ab88903/content>.

- reporting and investigative mechanisms;
- arbitration and litigation of sexual harassment cases; and
- penalties and legal ramifications for perpetrators of sexual harassment.

This report includes a “speed read” (**speed read**). Each Speed Read sets out the overall findings in each country in a tabular format to assist the reader in navigating the findings and analysis and to compare the findings across different Target Countries.

Each Speed Read includes a section on the first page which notes the status of key international conventions in the relevant Target Country. Each Speed Read indicates whether that target country has ratified the Maputo Protocol, Convention on the Elimination of All Forms of Discrimination against Women (**CEDAW**), and/or International Labour Organisation (**ILO**) Convention No. 190. In this regard, green indicates that the convention has been adopted and red indicates that the convention has not been adopted.

Furthermore, each Speed Read notes the level of protection that the relevant legislative instrument provides in the relevant Target Country in accordance with the following legend:

Color	Level of protection
●	High level of protection
●	Medium level of protection
●	Low level of protection

Focus of this research report

As part of the research undertaken in relation to this report, the following areas were covered in the memorandum for each Target Country:

Legislative Framework – a list of laws and regulations addressing sexual harassment (including sexual harassment in the workplace). This includes draft laws and laws pending adoption.¹⁷ In respect of each law or regulation, it was specified:

1. to whom the instrument applies;
2. whether the instrument is gender-neutral;
3. if applicable, how “employer” was defined;

¹⁷ It is noted for completeness that while the list of laws and regulations for each Target Country includes draft laws and laws pending adoption, these draft laws may never be enacted into the laws of that Target Country.

4. whether it is subject to a civil or criminal enforcement regime; and
5. which regulatory authorities can enforce it.

The research also covers whether national legislation provides for collective bargaining agreements for trade unions.

Sexual Harassment Policies – a summary of:

1. whether institutions have a legal obligation to have sexual harassment policies;
2. whether such policies must cover online sexual harassment as well as in-person harassment;
3. penalties for failing to establish sexual harassment policies;
4. whether institutions are required by law to conduct sexual harassment training; and
5. whether there are specific requirements for institutions, such as universities, law societies/bar associations, and judicial associations.

Reporting and Investigation – a summary of:

1. the scope of the Target Country's sexual harassment laws regarding potential/actual victims;
2. who should be the recipient of a complaint of sexual harassment;
3. whether there are any government agencies or departments with investigative authority over sexual harassment;
4. legislative gaps which cause difficulties in reporting sexual harassment; and
5. specific measures to protect witnesses/victims of sexual harassment (e.g. against retaliation).

Arbitration and Litigation – a summary of:

1. court or tribunal decisions on sexual harassment;
2. whether any other regulatory authorities are empowered to adjudicate (in a broad sense) sexual harassment cases; and
3. any risks faced by complainants of sexual harassment.

Enforcement and Legal Ramifications – a description of any criminal and/or civil penalties for sexual harassment in respect of each instrument set out in the relevant research memorandum.

Speed Reads

Algeria - Speed Read

Overview

In Algeria, the legal frameworks relating to workplace sexual harassment are rudimentary and include the Labour Law, the Civil Code and Law 06-03 (each as defined below). The Algerian Constitution has also been used to protect rights in this area. The legislation relating to sexual harassment is limited to a number of provisions found in the Criminal Code (as defined below).

As there is no systematic publication of case law in Algeria, there is no substantive case law on the topic of sexual harassment.



Status of Key International Conventions:

Maputo Protocol: ●

CEDAW: ●

ILO Convention No. 190: ●

Legislative Overview – Sexual Harassment

Legislation	Colour	Description	Sanctions
Law No. 90-11 dated 21 April 1990 on Labour Relations (Labour Law)	●	The Labour Law applies to employers. Under the Labour Law, an “employer” is any natural or legal entity, in the public sector or private sector for whom salaried workers provide manual or intellectual work in return for remuneration within the framework of the organisation and on their behalf. ¹ Article 6 provides specific protections in the context of employment relationship: <i>“within the framework of the employment relationship, workers also have the right...to the respect of their physical and moral integrity and their dignity...”</i> ²	Civil ³
Ordinance No. 75-58 dated 26 September 1975 on the Civil Code (Civil Code)	●	This general piece of legislation does not specifically address harassment in the workplace but rather any moral loss (which may include harassment) wherever such loss occurs. ⁴ Under Article 182 <i>bis</i> of the Civil Code, moral loss includes any infringement of freedom, honour or notoriety. ⁵ The relevant provision of the Civil Code is Article 124 which states that <i>“any act whatsoever of a person who causes damage to another person obliges the person by whose fault it occurred to repair it”</i> . ⁶	Civil ⁷
Ordinance No. 06-03 dated 15 July 2006 on the general status of the civil service (Law 06-03)	●	This is a general piece of legislation on the status of the civil service. Article 37 provides that <i>“the public employee must benefit from working conditions that preserve his/her dignity, health and physical and moral integrity”</i> . ⁸	Civil ⁹
Ordinance No. 66-156 dated 8 June 1966 on the Penal Code (Criminal Code)	●	This general piece of legislation has numerous provisions which may be used to provide protection in relation to sexual harassment. In particular, Article 341 <i>bis</i> provides for imprisonment of up to three years and a fine of up to DZD 300,000 (approx. EUR 2,000) for any person who has committed the offence of sexual harassment or any person who abuses the authority conferred by his/her position or profession, by giving orders to others,	Criminal and/or Civil (noting that although sexual harassment is addressed under the Criminal Code,

¹ See section A, para. 3(c) of the Memorandum.

² See section A, para. 1 of the Memorandum.

³ See section A, para. 4 of the Memorandum.

⁴ See section A, para. 1 of the Memorandum.

⁵ As above.

⁶ See section A, para. 1 of the Memorandum.

⁷ See section A, para. 4 of the Memorandum.

⁸ See section A, para. 1 of the Memorandum.

⁹ See section A, para. 4 of the Memorandum.

	<p>by making threats, by imposing constraints or by exerting pressure in order to obtain favours of a sexual nature.¹⁰ Any person who harasses another person by any act, comment of a sexual nature or insinuation shall also be guilty of the offence referred to in the preceding paragraph and punished by the same penalty.¹¹</p> <p>Article 333 <i>bis</i> 2 provides for an imprisonment of up to six months and/or a fine of up to DZD 100,000 (approx. EUR 650) for any person who harasses a woman in a public place by any act, gesture or word which violates her decency.¹²</p> <p>Article 333 <i>bis</i> 3 provides for an imprisonment of up to three years and/or a fine of up to DZD 500,000 (approx. EUR 3,400) for any assault committed by surprise, violence, coercion or threat to the sexual integrity of the victim.¹³</p>	a civil remedy may also be requested) ¹⁴
--	--	---

Sexual Harassment Policies

Source	Comments
Universities	Universities are not specifically required to have sexual harassment policies for students or staff employees. ¹⁵
Bar Association	The Bar Association does not have any formal policy on sexual harassment. ¹⁶

Practical Difficulties

There are no specific laws and/or regulations which require certain institutions to have policies in place relating to sexual harassment.¹⁷

As Algeria is a Muslim country where the subject of sexual harassment is taboo, victims of harassment sometimes keep silent out of feelings of shame and stigma from society and their relatives.¹⁸ This makes it difficult to get a clear picture of the extent of the problem.¹⁹

Further, there are no specific legal protections against retaliation in Algeria's laws surrounding sexual harassment.²⁰ There are also no specific measures to protect witnesses or victims of sexual harassment (only in cases of organised crime, terrorism or corruption can witnesses benefit from special protection measures).²¹ The lack of such measures may therefore act as a further deterrent to victims seeking justice.

Enforcement

The investigating judge, the judicial police and the national gendarmerie are the competent authorities with investigative authority over sexual harassment.²² The regulatory authority which can enforce (or otherwise implement) the laws and regulations is the relevant Algerian judge.²³

The Memorandum does not cite any cases as there is no systematic publication of case law in Algeria.²⁴ As a result, it is difficult to draw any conclusions as to the enforcement of the relevant laws mentioned other than as is stated in such laws.

¹⁰ See section A, para. 2 of the Memorandum.
¹¹ See section A, para. 2 of the Memorandum.
¹² See section A, para. 2 of the Memorandum.
¹³ As above.
¹⁴ See section A, para. 4 of the Memorandum.
¹⁵ See section B, para. 6 of the Memorandum.
¹⁶ See section B, para. 7 of the Memorandum.
¹⁷ See section B, para. 1 page 4 of the Memorandum.
¹⁸ See section C, para. 4 of the Memorandum.
¹⁹ As above.
²⁰ See section C, para. 5 of the Memorandum.
²¹ See section C, para. 6 of the Memorandum.
²² See section C, para. 3 of the Memorandum.
²³ See section A, para. 5 of the Memorandum.
²⁴ See section D, para. 1 of the Memorandum.

Regarding harassment in the workplace:

General rules of the Civil Code apply. In this regard, Article 124 Civil Code provides that: “*any act whatsoever of a person who causes damage to another person obliges the person by whose fault it occurred to repair it.*”²⁵ Therefore, in order to establish civil liability under the Civil Code, the claimant would need to demonstrate the existence of a fault (e.g., harassment) and the damage (which can also be a moral damage). Furthermore, there should be a sufficient and direct causal link between the fault and the damage. No specific criminal enforcement has been identified with respect to harassment in the workplace.²⁶

Regarding sexual harassment:

General rules of the Civil Code (as discussed above in the context of harassment in the workplace) may apply.²⁷ In addition, the Criminal Code provides for imprisonment of up to three years and a fine of up to DZD 300,000 (approx. EUR 2,000).²⁸

²⁵ See section E, para. 1 of the Memorandum.

²⁶ As above.

²⁷ As above.

²⁸ As above.

Angola - Speed Read

Overview

In Angola, the legal frameworks relating to sexual harassment are rudimentary and include Law 38/20 – Penal Code and Law 26/22 – Basis Public Sector Law.

There is no substantive case law that is publicly available.



Status of Key International Conventions:

Maputo Protocol: ●

CEDAW: ●

ILO Convention No. 190: ●

Legislative Overview – Sexual Harassment

Legislation	Colour	Description	Sanctions
Law 26/22 – Basis Public Sector Law	●	The Basis Public Sector Law governs the principles and norms by which civil servants and the state as an employer must be guided. The duties of employees, amongst others, are outlined in Article 7 and include the duty not to pressure, threaten or morally or sexually harass other employees, as well as subordinates and users. Punishment includes the dismissal of the worker who commits sexual harassment and the possible filing of a criminal complaint by the victim. ¹	Criminal and Civil
Law 38/20 – Penal Code	●	Article 186 recognises sexual harassment resulting from a relationship of dominion, hierarchical dependency or work. Where such person seeks to constrain another person to suffer or to practise a sexual act, with the agent or with another, by means of an order, threat, coercion or fraud, this is punishable with a prison sentence of up to three years or a fine. If the victim is a minor (below 18 years of age), the penalty is one to four years in prison. ²	Criminal

Sexual Harassment Policies

Source	Comments
Universities	Universities are not specifically required to have sexual harassment policies for students or staff employees. ³
Bar Association	The Bar Association does not have any formal policy on sexual harassment. ⁴

Practical Difficulties

Angola does not require institutions to have sexual harassment policies.⁵ There is also no legal provision protecting victims against retaliation in the case of sexual harassment, nor are there any specific measures to protect witnesses or victims of sexual harassment.⁶

¹ See section E of the Memorandum.
² See section A of the Memorandum.
³ See section B6 of the Memorandum.
⁴ See section B7 of the Memorandum.
⁵ See section B1 of the Memorandum.
⁶ See section C5 of the Memorandum.

The biggest obstacle in cases of sexual harassment is the difficulties around reporting a case. In the Basis Public Sector Law, the recipient of the complaint must be a hierarchical superior or the human resources department. Neither the Basis Public Sector Law nor the Penal Code provide for protection of the victim, specifying only what constitutes a labour infraction or a crime respectively. In the Penal Code, the complaint must be made to the Criminal Investigation Service for the investigation and processing of the criminal process. A complaint can be made on the website of the Criminal Investigation Service Denúncias - SIC - Serviço de Investigação Criminal Angola (gov.ao).⁷

Enforcement

There are no specific government agencies or departments with investigative authority over allegations of sexual harassment. There is a need for legislation on how to proceed in cases of sexual harassment, as well as internal regulations for this issue and greater clarification on how to proceed in cases of criminal complaints.⁸

The Memorandum does not cite any cases.⁹ This is because there is no public record of cases relating to sexual harassment possibly due to a desire to ensure the privacy of the parties involved.¹⁰

⁷ See section C2 of the Memorandum.

⁸ See section C4 of the Memorandum.

⁹ See section D1 of the Memorandum.

¹⁰ See section D2 of the Memorandum.

Botswana - *Speed Read*

Overview

The legislation relating to sexual harassment is specifically found in the Public Service Act, Botswana Defence Force Act and Trade Disputes Act, as well as more generally in the Domestic Violence Act and Cybercrime and Computer Related Crimes Act.

There is not a lot of substantive case law, with cases brought under various pieces of legislation. From the case law, it seems complainants of sexual harassment face the legal risk of being unable to provide sufficient evidence to support their complaint.



Status of Key International Conventions:

Maputo Protocol: ●

CEDAW: ●

ILO Convention No. 190: ●

Legislative Overview – Sexual Harassment

Legislation	Colour	Description	Sanctions
Public Service Act (Cap 26:01)	●	Applies to all government employers and employees except the Botswana Defence Force, Botswana Police Service, the Local Police Service and the Prison Service. Section 38(1) of the Act states that ' <i>sexual harassment of one employee by another or by a person in authority over another in the public service shall constitute misconduct</i> '. ¹ If found guilty of misconduct in disciplinary proceedings, the individual may be liable to a reprimand, stoppage/deferment of increment, reduction of salary, demotion, suspension or dismissal as determined by the individual's supervising officer. ² The disciplinary action procedure shall be agreed by collective bargaining. ³ The Act does not prescribe who should be a recipient of a complaint of sexual harassment. ⁴	Civil
Botswana Defence Force Act (Cap 21:05)	●	Applies to any officer or soldier of the Botswana Defence Force irrespective of gender. ⁵ Section 136 of the Act states that sexual harassment of a member of the defence force by any person constitutes an offence, and on conviction by court martial or by the High Court, the perpetrator may be liable to a term of imprisonment of up to two years. ⁶ The victim should report the allegation to the accused person's commanding officer, who then may refer the matter onto the Military Police or another authority. ⁷	Criminal
Trade Disputes Act (Cap 48:02)	●	The Code of Good Practice: Sexual Harassment in the Workplace (the Workplace Sexual Harassment Code), published under the Trade Disputes Act, aims to eliminate sexual harassment in the workplace (see Harassment Policy Overview below for details). ⁸ Under the Code, an employee who is harassed may resign and claim compensation, sue for damages from breach of contract or interdict the harasser. ⁹ After a disciplinary enquiry proceeding, an employer may also dismiss or discipline an employee who has been found guilty of sexual harassment. ¹⁰ The victim may file criminal charges or institute civil legal	Criminal and civil

¹ See section B, para. 3.1 of the Memorandum.

² See section B, para. 3.1.5 of the Memorandum.

³ See section B, para. 3.1.6 of the Memorandum.

⁴ See section D, para. 20 of the Memorandum.

⁵ See section B, para. 3.2.3 of the Memorandum.

⁶ See section B, paras. 3.2.2 – 3.2.4 of the Memorandum.

⁷ See section B, para. 3.2.5 of the Memorandum.

⁸ See section B, para. 3.3.1 of the Memorandum.

⁹ See section B, para. 3.3.5 of the Memorandum.

¹⁰ See section B, para. 3.3.6 and section E, para. 36 of the Memorandum.

		proceedings and report the harassment according to the procedure set out in the Code. ¹¹	
Cybercrime and Computer Related Crimes Act (Cap 8:06)	●	The Act prohibits a person from committing cyber harassment, which includes making requests which are obscene, lewd or indecent, and threatening to inflict injury or physical harm. ¹² A person found guilty may be liable to a fine not exceeding BWP 10,000 and/or a term of imprisonment not exceeding six months. ¹³ This is not specific to sexual harassment but can be a stepping stone to addressing harassment.	Criminal

Sexual Harassment Policies

Source	Comments
Workplace Sexual Harassment Code	<p>Scope: governs institutions in the private sector.¹⁴</p> <p>Protects: an employee and also extends to cover job applicants, clients, suppliers, contractors and other people dealing with any organisation that the Workplace Sexual Harassment Code applies to.¹⁵</p> <p>Comments: The Rules recognise physical and verbal harassment and can cover both digital and in-person harassment.¹⁶</p> <p>The Code requires every employer to devise a policy statement that incorporates and reflects the objects of the code, which must be available to all employees and non-employees visiting the workplace.¹⁷ However, there are no penalties for a workplace failing to have one and given the lack of monitoring mechanisms for non-compliance there is little encouragement for employers to comply with the code.¹⁸</p> <p>The Workplace Sexual Harassment Code does recommend that organisations include the issue of sexual harassment in their education and training programmes.¹⁹</p>
Universities	There is currently no legislation in Botswana that specifically requires tertiary institutions to have sexual harassment policies. ²⁰
Law Societies/Judicial Service	The Law Society of Botswana does not have (and is not required to have) a sexual harassment policy in place. The Botswana Judicial Service does not have a sexual harassment policy. ²¹

Practical Difficulties

The Botswana legislation does not provide clear guidelines on the reporting procedure that a complainant must follow when reporting an incident of sexual harassment.²² Further, there is limited protection for complainants against victimisation and retaliation, which may potentially deter victims from reporting incidents.²³ However, the Workplace Sexual Harassment Code does promote having legitimate channels or procedures in the workplace that allow victims of harassment to lodge grievances without being subjected to victimisation.²⁴

Another issue with the Workplace Sexual Harassment Code is that it does not clearly outline what workplaces should include in their sexual harassment policies, nor are there any enforcement mechanisms to ensure that workplaces have such a policy.²⁵ Other than the authorities listed in the legislation overview, there do not appear to be any governmental agencies or departments with investigative authority over sexual harassment.²⁶

¹¹ See section B, paras. 3.3.5-8 of the Memorandum.

¹² See section B, para. 4.2.1 of the Memorandum.

¹³ See section B, para. 4.2.2 of the Memorandum.

¹⁴ See section C, para. 8 of the Memorandum.

¹⁵ See section C, paras. 8-9 and section D, para. 19 of the Memorandum.

¹⁶ See section B, para. 3.3.2 and section C, para. 11 of the Memorandum.

¹⁷ See section B, para. 9 of the Memorandum.

¹⁸ See section B, para. 10 of the Memorandum.

¹⁹ See section B, para. 11 of the Memorandum.

²⁰ See section C, para. 13 of the Memorandum.

²¹ See section C, paras. 14-16 of the Memorandum.

²² See section D, para. 24 of the Memorandum.

²³ See section D, paras. 25, 27, 28 of the Memorandum.

²⁴ See section D, para. 28 of the Memorandum.

²⁵ See section D, para. 26 of the Memorandum.

²⁶ See section D, para. 23 of the Memorandum.

Enforcement

The Memorandum cites two cases, one in the industrial court and another in the Court of Appeal.

The civil proceedings in the industrial court, *Balathlegi Kelathlehegile v Mupane Gold Mine* 2020 All Bots 214 (IC), involved a complaint of wrongful dismissal as the applicant was dismissed for serious misconduct relating to sexual harassment.²⁷ The Court found that the victim of sexual harassment was unreliable because her complaint was not immediate and her evidence was not sufficient to prove the charge.²⁸ The company was ordered to pay three times the applicant's monthly salary as compensation.²⁹

In *Motlhala v Attorney General* 2006 (1) BLR 282 (CA), the applicant filed a suit against the Attorney General for unfair treatment, sexual harassment and favouritism.³⁰ The trial judge had found that sexual harassment had not been proved, and the Court of Appeal held that procedurally, it could not set aside the factual findings of the trial court where no irregularity or misdirection had taken place.³¹

It appears from these cases that complainants of sexual harassment face the legal risk of being unable to provide sufficient evidence to support their complaint and, due to the inherently private nature of sexual harassment, it is difficult to prove they have been sexually harassed, which deters complainants from bringing forward their claim.³²

²⁷ See section E, para. 29 of the Memorandum.

²⁸ See section E, para. 29 of the Memorandum.

²⁹ See section E, para. 29 of the Memorandum.

³⁰ See section E, para. 30 of the Memorandum.

³¹ See section E, para. 30 of the Memorandum.

³² See section E, para. 33 of the Memorandum.

Cameroon - Speed Read

Overview

In Cameroon, the legal frameworks relating to workplace sexual harassment are rudimentary and the Penal Code of the Republic of Cameroon is the only substantive legislation used to protect rights in this area.

There is no substantive case law on this area due to the lack of publication of any decided cases.



Status of Key International Conventions:

Maputo Protocol: ●

CEDAW: ●

ILO Convention No. 190: ●

Legislative Overview – Sexual Harassment

Legislation	Colour	Description	Sanctions
Preliminary Draft Uniform Act relating to Labour Law of 2nd October 2010	●	Article 8 prohibits violence against a worker, where the violence is a result of persecution, threat, moral or physical assault that arises in the course of them performing their employment contract. It also prohibits psychological or sexual harassment of a repeated and abusive nature, at the workplace. ¹	Unclear, legislation in draft format
Law No 2016/007 of 12th July 2016 relating to the Penal Code of the Republic of Cameroon (the Penal Code)	●	Section 302-1 provides that a person who takes advantage of their position of authority to harass another with orders, threats, constraints or pressure in order to obtain sexual favours can be punished with imprisonment of six months to one year and with a fine of FCFA 100,000 to FCFA 1,000,000. ²	Criminal and Civil
Law No 2005 of 27 July 2005 on the Criminal Procedure Code	●	There are legal/ministerial bodies that the victims of sexual harassment can complain to, including the National Human Rights Commission, the Ministry of Social Affairs, the Ministry for the Empowerment of Women and the Family, and the Labour Inspectorate where the harassment concerns employee-employer relationships. ³ Sections 135(2) and 135(3) also allow for any person or administrative authority with knowledge of an offence classified as a felony or misdemeanour to directly inform the State Counsel, any judicial police officer or an administrative authority of the locality. ⁴	Criminal

Sexual Harassment Policies

Source	Comments
Universities	Universities are not specifically required to have sexual harassment policies for students or staff employees. ⁵

¹ Memorandum, A.3, Page 6.

² Memorandum, A.3, Page 5.

³ Memorandum, B.1, Page 8.

⁴ Memorandum, B.1, Pages 8 – 9.

⁵ Memorandum, B.6, Page 9.

Bar Association

The Bar Association does not have any formal policy on sexual harassment.⁶ Note that, in practice, the Cameroonian Bar President and/or Bar Council resolves litigations between third parties and advocates or between advocates. This is done in the advisory and conciliatory capacities. These powers are vested in them by virtue of the internal regulations of the Cameroon Bar Association.⁷

Practical Difficulties

There are no specific laws or regulations that require institutions to have policies in place relating to sexual harassment.⁸

The Preliminary Draft Uniform Act relating to the Labour Law of 2nd October 2010, despite having been drafted in 2010, has still not entered into force and there seems to be little political will to enact it. This is exacerbated by the issues raised around the sovereignty of member states and the development gap between member states.⁹

The Protocol to the African Charter on Human & People's Rights and CEDAW are both international law instruments that do not specify regimes but only give recommendations that State parties should implement into their local laws. Seeing as there are no specific Cameroonian legal instruments incorporating these provisions into Cameroonian Law, there are practical difficulties for victims being able to bring complaints under these instruments.¹⁰

Other practical difficulties include the difficulty of proving sexual harassment arising from the Penal Code not having a clear distinction on the elements that would constitute sexual harassment and the lack of serious follow-up by official authorities at the investigative stage.¹¹

Enforcement

The Judicial Police is the investigative authority responsible for conducting investigations into complaints lodged by the victim.¹² The Legal Department is in charge of prosecuting all offences under the Penal Code.¹³ The examining magistrate in charge of preliminary inquiries has the authority to conduct investigations into the file at the level of the court to ensure there is sufficient evidence against the suspect to sustain prosecution.¹⁴

There are few court decisions on sexual harassment in Cameroon and the decisions are not publicised and therefore not easily accessible.¹⁵ Some reasons for the few court decisions include corruption where decisions are suppressed if the presiding judge is partial (particularly where the alleged perpetrator is a high-profile personality), victims being afraid to pursue proceedings to conclusion in fear of retaliation, and public figures being afraid of their reputation being tarnished if decisions are publicised.¹⁶

⁶ Memorandum, B.7, Page 9.
⁷ Memorandum, B.11, Page 10.
⁸ Memorandum, B.1, Page 8.
⁹ Memorandum, A.1, Page 2.
¹⁰ Memorandum, A.1, Pages 2-3.
¹¹ Memorandum, C.4, Page 13.
¹² Memorandum, A.5, Page 7.
¹³ Memorandum, A.5, Page 7.
¹⁴ Memorandum, B.5, Page 8.
¹⁵ Memorandum, D.1, Page 13.
¹⁶ Memorandum, D.2, Page 14.

Egypt - Speed Read

Overview

In Egypt, the legal frameworks relating to sexual harassment are rudimentary and include the Penal Code 58/1837 and several industry-specific administrative decisions. The Egyptian Constitution (2014) has also been used to protect rights in this area.

There is a reasonable amount of substantive case law, with cases brought under various pieces of legislation.



Status of Key International Conventions:

Maputo Protocol: ●

CEDAW: ●

ILO Convention No. 190: ●

Legislation – Sexual Harassment

Legislation	Colour	Description	Sanctions
The Penal Code no. 58/1937, as amended by the law 141/2021 (Penal Code)	●	<p>The Penal Code addresses sexual harassment which is defined as “the exposure of sexual or pornographic matters, suggestions, or implications by one person to another in a public, private, or accessible place. The person exposing that content should aim for obtaining sexual benefits from the person to which the content is exposed. This includes harassment committed via electronic means or via any other medium.”</p> <p>If harassment is committed with the intent of obtaining sexual benefit from the victim, the perpetrator should be punished by imprisonment of not less than five years. The imprisonment is increased to seven years if the perpetrator of harassment enjoys a positional, family or educational authority over the victim; holds a weapon; or is accompanied by accomplices.¹</p> <p>Additionally, some sectors and institutions – in particular regulatory bodies and private institutions in the tourism sector - are required by law to develop a code of ethics that includes anti-harassment policies.</p>	Criminal and Civil

Sexual Harassment Policies

Source	Comments
FRA decision 39 for 2022	<p>Scope: The Financial Regulatory Authority (FRA).²</p> <p>Protects: Employees.</p> <p>Comments: The decision generally lays down FRA’s code of work ethics that counters harassment, but it does not provide further details on how harassment cases should be treated. There are no penalties for non-compliance.</p> <p>Note that this policy does not specifically address sexual harassment, but it appears likely that this would still be covered by the harassment policy more widely.</p>
NFSA decision 5 for 2020	<p>Scope: The National Food Safety Authority (NFSA).³</p> <p>Protects: Employees.</p>

¹ See section E.1 of the Memorandum.

² See section B2 of the Memorandum.

³ See section B2 of the Memorandum.

	<p>Comments: The decision generally lays down NFSA’s code of work ethics that counters harassment, but it does not provide further details on how harassment cases should be treated.⁴ There are no penalties for non-compliance.</p> <p>Note that this policy does not specifically address sexual harassment, but it appears likely that this would still be covered by the harassment policy more widely.</p>
Minister of Transportation Decision 237 for 2021	<p>Scope: Utilities and means of transportation that are affiliated with the Ministry of Transportation, public & private institutions.⁵</p> <p>Protects: Anyone.</p> <p>Comments: The decision obliges the means of transportation and the transportation utilities to develop policies that counter harassment. It also requires that these officers join workshops that educate against harassment. There are no penalties for non-compliance.</p> <p>Note that this policy does not specifically address sexual harassment, but it appears likely that this would still be covered by the harassment policy more widely.</p>
Minister of Tourism Decision 291 for 2021	<p>Scope: Diving and maritime activity centres, and tourism yachts and boats, private institutions managers.⁶</p> <p>Protects: Employees</p> <p>Comments: The decision imposes penalties on the managers in case a harassment incident occurs in the workplace. There are no penalties for non-compliance.</p> <p>Note that this policy does not specifically address sexual harassment, but it appears likely that this would still be covered by the harassment policy more widely.</p>
Minister of Tourism Decision 398 for 2013	<p>Scope: Health clubs.⁷</p> <p>Protects: Female employees, customers and tourists</p> <p>Comments: The decision imposes penalties on the female health clubs that recruit male employees or if a harassment incident occurs therein. There are no penalties for non-compliance.</p>
Universities	<p>Universities are not specifically required to have sexual harassment policies for students or staff employees.⁸</p>
Bar Association	<p>The Bar Association does not have any formal policy on sexual harassment.⁹</p>

Practical Difficulties

Notably there are several practical difficulties in bringing sexual harassment claims in Egypt. While generally the courts will in principle convict a person guilty of harassment, in practice, individuals are often acquitted on the basis of a lack of concrete evidence or for procedural reasons.¹⁰

There is no distinct procedural framework that addresses the filing of a harassment lawsuit, and the procedural complexities (such as temporal and evidential hurdles) make bringing a claim difficult.¹¹ For example, harassment complaints must be filed within three months of the occurrence along with testimonies to support the claim.¹² There are no specific regulations addressing the protection of victims of sexual harassment; however, article 113 bis of the Criminal Procedural Code no. 150/1950, as amended by law no. 177/2020, ensures the confidentiality of the personal data of the harassment victim.

Enforcement

The public prosecution is the competent investigative authority over sexual harassment cases. The Memorandum cites 20 cases that address harassment. However, it is important to note that Egypt is a civil code system and there is no binding doctrine of precedent, although judgments of higher courts can be persuasive. The threshold required to convict a defendant in a harassment dispute is lower in a civil claim than a criminal one, and a defendant may be involved in concurrent criminal, civil and administrative (if the suspect is a public employee) claims.

⁴ See section B2 of the Memorandum.
⁵ See section B2 of the Memorandum.
⁶ See section B2 of the Memorandum.
⁷ See section B2 of the Memorandum.
⁸ See section B6 of the Memorandum.
⁹ See section B7 of the Memorandum.
¹⁰ See section D1 of the Memorandum.
¹¹ See section D4 of the Memorandum.
¹² See section D4 of the Memorandum.

Equatorial Guinea - *Speed* *Read*

Overview

In Equatorial Guinea, the legal frameworks relating to workplace sexual harassment are rudimentary and include the General Labor Law (defined below). The Criminal Code of Equatorial Guinea has also been used to protect rights in this area.

There is no substantive case law that has been cited in the Memorandum.



Status of Key International Conventions:

Maputo Protocol: ●

CEDAW: ●

ILO Convention No. 190: ●

Legislative Overview – Sexual Harassment

Legislation	Colour	Description	Sanctions
Law No. 4/2021, dated 3 December 2021 (General Labor Law)	●	<p>The General Labor Law recognises the employer, third parties or co-workers as potential perpetrators of sexual harassment.¹ There is no definition of “employer” in the act; however, it is applicable to all companies (public or private), associations, foundations, autonomous entities, and public companies that have employees at their charge.²</p> <p>Under Article 50(m), employers are prohibited from carrying out any activity which may be deemed as sexual harassment. As per Article 51.7, employees are entitled to their privacy and due consideration for their dignity. Article 55.2 of the Law establishes that employees are entitled to effective protection against sexual harassment, thus imposing an obligation on the employer to provide a safe work environment.³</p> <p>A penalty will be applicable, ranging from XAF 250,001 up to XAF 500,000 per each offence under Article 50(m).⁴ A victim may initiate labour proceedings by filing a claim with the Labor Delegate.⁵</p>	Criminal and Civil
Criminal Code	●	<p>The Criminal Code establishes that the crime of sexual harassment is committed whenever someone requests the services of a sexual favour for himself / herself or for a third party, over whom he/she has any kind of administrative, labour or other authority.⁶</p> <p>It establishes that individuals who are guilty of sexual harassment will be condemned to a fine or incarceration for a period ranging between three years and one day up to ten years.⁷ It is applicable to any victim regardless of employment status.⁸</p>	Criminal and Civil

¹ Memorandum, A (1), page 2.
² Memorandum, A (3)(c), page 2.
³ Memorandum, C (1), page 5.
⁴ Memorandum, E (1), page 7.
⁵ Memorandum, A (4), page 2.
⁶ Memorandum, A (1), page 1-2.
⁷ Memorandum, E (1), page 7.
⁸ Memorandum, C (1), page 5.

A victim of sexual harassment must file a complaint with the corresponding Instruction Court.⁹

Sexual Harassment Policies

Source	Comments
Universities	Universities are not specifically required to have sexual harassment policies for students or staff employees. ¹⁰
Bar Association	The Bar Association does not have any formal policy on sexual harassment. ¹¹

Practical Difficulties¹²

There are no specific laws and/or regulations which require certain institutions to have policies in place relating to sexual harassment.¹³

The current framework of the General Labor Law and Criminal Code does not protect or safeguard the victim's identity. Additionally, the lack of a designated office exclusively assigned to sexual harassment cases is another practical difficulty. Currently, the regulatory authority empowered to adjudicate sexual harassment cases in the workplace is the Ministry of Labor, Job Promotion and Social Security.¹⁴

There are no specific provisions protecting victims or witnesses of sexual harassment from retaliation under the Criminal Code. Additionally, practically speaking, the existing measures under the General Labor Law are insufficient to protect someone from retaliation.¹⁵ Protection orders are only given at the request of the victim and only in circumstances where there is a crime against the victim's sexual freedom.¹⁶ This is not relevant to the questioning and processing of victims of sexual violence.

Enforcement

The Memorandum does not cite any cases.

⁹ Memorandum, A (4), page 2.

¹⁰ Memorandum, B (6), page 4.

¹¹ Memorandum, B (7), page 4.

¹² Based on the information in Memorandum, A (1) and (2). It appears that there are no sexual harassment policies in place for the public. Most of the sexual harassment policies specifically address workplace sexual harassment. In addition to that, there are no safeguards for the victim's identity, nor is there any designated office to handle such claims. Lastly, employees are effectively not protected from retaliation under the criminal code.

¹³ Memorandum, B (1), page 3.

¹⁴ Memorandum, D (1), page 6.

¹⁵ Memorandum, C (5), page 6.

¹⁶ Memorandum, C (6), page 6.

Ethiopia - Speed Read

Overview

In Ethiopia, the legal frameworks relating to sexual harassment are in development and include the Criminal Code of the Federal Democratic Republic of Ethiopia No. 414/200, the Criminal Procedure Code of Ethiopia No. 185/1961, the Civil Code of Empire of Ethiopia No. 165/1960 as well as two pieces of legislation specifically related to workplace sexual harassment. The Constitution of Ethiopia also outlines general rights and protections against harassment.

There is no substantive case law that is publicly available, and along with non-comprehensive sexual harassment legislation, this makes it difficult to develop a robust system of protection for victims of sexual harassment.



Status of Key International Conventions:

Maputo Protocol: ●

CEDAW: ●

ILO Convention No. 190: ●

Legislative Overview – Sexual Harassment

Legislation	Colour	Description	Sanctions
The Labor Proclamation No. 1156/2019	●	This legislation directly addresses workplace sexual harassment. Sexual harassment and sexual violence are defined in Articles 2(11) and 2(12) respectively. Articles 14(1)(h) and 14(2)(h) prohibit sexual harassment and sexual assault at the workplace by employers, managerial employees, and other workers. An employer is strictly prohibited from any retaliatory measure against an employee who tries to enforce his/her right. It further provides that commission of sexual harassment and sexual assault in the workplace is a ground for termination of contract of employment by the employer without prior notice. ¹	Civil
The Federal Civil Servants Proclamation No. 1064/2017	●	This legislation directly addresses workplace sexual harassment. Sexual harassment is defined in article 2(13). Committing sexual harassment or abuse at the workplace is an offence entailing fines of up to three months' salary, downgrading for a period of up to two years, and dismissal. In the case of government employees, the Civil Servants Proclamation provides that administrative decisions may be made by the head of the government institution, after which cases may be referred to the civil servants' administrative tribunal. The decision of the administrative tribunal on questions of fact is final. However, any party which claims that the decision of the administrative tribunal is a result of an error of law may appeal to the Federal Supreme Court. ²	Civil
The Criminal Code of the Federal Democratic Republic of Ethiopia No. 414/2004	●	Article 625 provides that whoever procures from a woman sexual intercourse or any other indecent act by taking advantage of her material or mental distress or the authority he exercises over her by virtue of his position, function or capacity as protector, teacher, master, or employer, or by virtue of any other similar relationship is punishable, upon complaint, with simple imprisonment. This provision appears to only envisage men as potential perpetrators.	Criminal and Civil

¹ Memorandum, page 2, sections 2.4, 3.2 – 3.3 & 7.8.

² Memorandum, page 3, sections 2.5, 3.4 – 3.5 & 5.4.

		Punishment for public servants who misuse their official position with intent to obtain or procure an undue advantage or injure the right or interest of another is punishable with simple imprisonment not exceeding ten years and a fine. This provision appears to specifically target sexual harassment in the public sector. ³	
The Criminal Procedure Code of Ethiopia No. 185/1961	●	The Criminal Procedure Code can also be used to provide protections in relation to sexual harassment. Articles 47 and 150 provide that in criminal cases, complaints over sexual harassment should be brought to the police. The Criminal Code makes sexual harassment a crime punishable upon complaint; the victim should complain before the relevant organ for the case to be initiated. ⁴	Criminal
The Civil Code of Empire of Ethiopia No. 165/1960	●	The Civil Code also provides protections in relation to sexual harassment. A person commits an offence where he intentionally makes contact with the other person against the latter's will. An offence shall be committed regardless of whether bodily harm is caused by personal contact or by use of an object, animate or inanimate. Material damage is compensated by awarding the victim an equivalent amount in damages. In cases of moral injury, the compensation awarded may in no case exceed one thousand Ethiopian Dollars (ETB 1000). ⁵	Civil

Sexual Harassment Policies

Source	Comments
Universities	The Memorandum provides that the Directive to Prevent Sexual Harassment in Educational Institutions in December 2010, issued by the Ministry of Education, inspired universities to adopt and develop their own policies or directives. Addis Ababa University, Bahir Dar University, Hawassa University and Wolayita Sodo University are among public higher learning institutions known to have a sexual harassment policy. ⁶
Bar Associations	The Memorandum does not identify any requirement on bar associations to have sexual harassment policies.

Practical Difficulties

The law does not require institutions to have policies in place relating to sexual harassment. Victims of sexual harassment often petition through their trade union or HR department for the development of such a policy.⁷

In relation to criminal offences, the police, public prosecutors, and the courts are the public authorities responsible for the implementation and enforcement of the law. Civil cases are referred to the relevant civil courts by the application of the parties. In labour disputes, administrative measures can be sought from a body constituted by a collective agreement, if there is any. Cases may then be taken to the competent labour relations board and pass through the regular court procedures by way of an appeal. There are no other regulatory authorities that enforce matters relating to sexual harassment.⁸

On 5 January 2023, the former President of the Federal Supreme Court of Ethiopia announced the launch of the Federal Court's Sexual Harassment Policy and an accountability procedure for the first time. It is yet to be implemented. The Ministry of Education has also launched a sexual harassment policy because sexual harassment seriously interferes with learning, and learning institutions are obligated to, above all, safeguard female students, who are usually the victims. Following this, a directive was also issued by the Ministry entitled "A Directive issued to Prevent Sexual Harassment in Educational Institutions" in December 2010 which was communicated to higher education institutions. However, it is still not clear whether this directive is obligatory for higher education institutions.⁹

³ Memorandum, page 2, sections 2.2, 3.6, 3.9 & 7.4.

⁴ Memorandum, page 3, section 2.6.

⁵ Memorandum, page 2, sections 2.3, 3.7 & 7.6.

⁶ Memorandum, page 6, section 4.4.

⁷ Memorandum, page 5, sections 4.1 – 4.2.

⁸ Memorandum, page 6, section 4.3.

⁹ Memorandum, page 5, section 4.3.

Enforcement

The Memorandum does not cite any cases. Given that court decisions (except for decisions of the Cassation Bench of the Federal Supreme Court) are not available to the public, it is difficult to get examples. A distinct jurisprudence has not been developed in Ethiopia so far in respect of sexual harassment.

Further, complainants of sexual harassment encounter the difficulty of producing sufficient evidence. Such offences are usually conducted in unofficial areas where only the victim and the offenders meet, and the offenders will argue that it was consensual and that there was no coercion.¹⁰

¹⁰ Memorandum, page 8, section 6.1.

Gambia – Speed Read

Overview

In Gambia, the legal frameworks relating to workplace sexual harassment are rudimentary. They include the broader policies of the Women’s Act 2013 and Criminal Code Cap 10:01. However, none of these explicitly deal with sexual harassment in the workplace. There is also a very limited and industry-specific piece of legislation, the Tourism Offences Act 2003; however, this does not offer protection to employees.

There is no substantive case law dealing with offences of harassment, meaning that the limited legislation that exists has not been tested by the courts.



Status of Key International Conventions:

Maputo Protocol: ●

CEDAW: ●

ILO Convention No. 190: ●

Legislative Overview – Sexual Harassment

Legislation	Colour	Description	Sanctions
Tourism Offences Act 2003	●	<p>Specific to those working in the tourism industry and makes it an offence for any person who harasses or threatens a tourist.</p> <p>Section 4 makes it an offence for those employed in a place that provides services to tourists to stalk, insult, intimidate, harass or hassle a tourist. It does not protect those who work in the tourism industry; the only other group of people protected by this Act other than tourists are children.</p> <p>It makes specific reference to Unwanted Sexual Advances (section 5), Sex abuse of a child (section 6), Procurement of a child for sex (section 7), Child pornography (section 8), Sexual exploitation of a child (section 9), and Indecent acts by tourists (section 12).¹</p>	Criminal
Women’s Act 2010	●	<p>The Act provides a general statement that appropriate measures should be taken to promote and protect women’s rights and their legal status. Section 6(1) provides for the protection of all women’s rights, including from physical, sexual, psychological or economic harm or violence, whether occurring in their public or private life.</p> <p>Section 26(2)(c) calls on the Government to take appropriate measures to protect women from all forms of abuse, including sexual harassment in schools and other educational institutions, and provide for sanctions against the perpetrators of such practices.²</p> <p>While this can be interpreted as a requirement for employers to adopt policies prohibiting sexual harassment, the use of the words “appropriate measures” gives employers some discretion on how this is to be implemented in practice.</p>	Civil
Criminal Code Cap 10:01	●	<p>The protection of victims of sexual harassment only applies to women and girls. For the offence of rape, the protection extends from women to all minors, and those who are mentally incapacitated.³</p> <p>Prohibits and criminalises sexual harassment. Section 126 provides that “a person who, intending to insult the modesty of a woman, utters any noise, makes any sound or gesture, or exhibits any object, intending that the word or</p>	Criminal

¹ See paragraph A2(i) of the Memorandum.
² See paragraph A1(ii) of the Memorandum.
³ See paragraph C1(iv) of the Memorandum.

sound shall be heard, or that the gesture or object shall be seen, by the woman, or intrudes upon the privacy of the woman commits a misdemeanour, and is liable on conviction to imprisonment for a term of one year".⁴

Sexual Harassment Policies

Source	Comments
Universities	Universities are not specifically required to have sexual harassment policies for students or staff employees. The Memorandum does not identify any policies on sexual harassment for the University of the Gambia, Medical School or the Law School. ⁵
Bar Association	The Bar Association does not have any formal policy on sexual harassment. ⁶

Practical Difficulties

There is no specific law relating to workplace sexual harassment, meaning that it has to be enforced through the Criminal Code, under which the maximum punishment is a misdemeanour. This also makes enforcement more difficult, as the burden of proof is higher under these pieces of legislation. Sexual harassment in the Criminal Code is not gender-neutral, but restricted to women and girls, preventing men or boys from bringing claims for sexual assault or harassment. The Labour Act 2007 makes no provision for sexual harassment and, even in the case that it did, the Act excludes domestic workers, who would not be protected.⁷ The only definition of sexual harassment in Gambian law is limited to name-calling, loitering and creating a hostile environment – it does not accommodate *quid pro quo* types of workplace sexual harassment, or those in a position of authority asking for sexual favours in exchange for career-based rewards.

There is no specific law that requires employers to adopt sexual harassment policies in The Gambia.⁸ There are no sexual harassment policies for the Bar Association or Law Society, nor were any sexual harassment policies located for the University of the Gambia Medical School or Law School.⁹

The Gambia Police Force (**GPF**) is the investigative body for criminal offences under the Tourism Offences Act or the Criminal Code Cap 10:10. For claims under the Women's Act 2010, they must be made to the High Court of the Gambia. Other than the GPF, there are no other regulatory authorities that enforce matters to deal with sexual harassment.¹⁰

The Memorandum notes that cultural standards and religion impact public perception and attitudes towards sexual harassment, including discouraging victims from making complaints due to fear of retaliation and/or reputational impact. However, these standards are gradually changing due to the involvement of some non-governmental organisations and the Government. An example of this is the Advisory Note on Sexual Harassment, published by the National Human Rights Commission in 2020, which attempts to review the current laws and policies relevant to women and children's rights, and analyse the extent to which they address the issue of sexual harassment in the Gambia, including their enforcement and implementation.¹¹

Enforcement

The Memorandum does not cite any known cases of enforcement, again noting the cultural standards that could discourage victims from coming forward.¹²

⁴ See paragraph A2(ii) of the Memorandum.

⁵ See paragraph B6 of the Memorandum.

⁶ See paragraph B7 of the Memorandum.

⁷ See paragraph C4 of the Memorandum.

⁸ See paragraph B1 of the Memorandum.

⁹ See paragraph B6 of the Memorandum.

¹⁰ See paragraph C2 of the Memorandum.

¹¹ See paragraph B2 of the Memorandum.

¹² See paragraph B2 of the Memorandum.

Ghana - Speed Read

Overview

In Ghana, the legal frameworks relating to workplace harassment and sexual harassment are in development. Examples of key legislation in this area include the Labour Act 2003 and the Labour Regulations, with the Constitution of Ghana also providing a level of protection.

There is currently no legislative requirement for employers to introduce sexual harassment policies at the workplace. However, increasingly, institutions and companies are recognising the importance of such policies and are adopting them voluntarily.



Status of Key International Conventions:

Maputo Protocol: ●

CEDAW: ●

ILO Convention No. 190: ●

Legislative Overview – Sexual Harassment

Legislation	Colour	Description	Sanctions
Labour Act, 2003 (Act 651)	●	The Labour Act governs employment relations in Ghana and entitles an employee to terminate their contract of employment on the grounds of sexual harassment. ¹ The Labour Act mandates employers to take steps to address complaints of sexual harassment at the workplace. Where an employee terminates their employment contract because their employer failed to take action against sexual harassment at the workplace, their employment is deemed to have been unfairly terminated under the law. In such scenarios, the employee is entitled to file a complaint at the National Labour Commission (Sections 63(3B) and 64(1)). ²	Civil
Criminal Offences Act, 1960 (Act 29)	●	The Act does not expressly reference sexual harassment. However, it criminalises rape under section 97 and indecent assault under section 103. ³	Criminal
Labour (Domestic Workers) Regulations, 2020 (LI 2408)	●	Regulation 17 stipulates that employers must ensure that domestic workers are not subjected to any form of sexual harassment and violence at the workplace. It also prohibits domestic workers from perpetrating sexual harassment against their employer or anyone in their employer's household. ⁴	Civil
Labour Regulations, 2007 (L.I. 1833)	●	Regulation 18(1) stipulates that an employer must ensure that employees work under safe conditions. ⁵ The Labour Regulations also prohibit discrimination against an employee for making a complaint or giving evidence in respect of a complaint. ⁶	Civil

Sexual Harassment Policies

Source	Comments
Ghana Tertiary Education Commission's Guidelines	Scope: All tertiary institutions in Ghana are required to have sexual harassment policies in place.

¹ Memorandum, Section A1, p. 1.
² Memorandum, Section A1, p. 1.
³ Memorandum, Section A1, p. 2.
⁴ Memorandum, Section A1 p. 3.
⁵ Memorandum, Section A1 p. 3.
⁶ Memorandum, Section A1 p. 3.

for the Development of Anti Sexual Harassment Policy in Tertiary Education Institutions ⁷	<p>Comments: The Ghana Tertiary Education Commission’s Guidelines for the Development of Anti Sexual Harassment Policy in Tertiary Education Institutions in Ghana set out the framework to be complied with by universities when preparing sexual harassment policies.</p> <p>The Memorandum provides links to the policies of the University of Ghana, Kwame Nkrumah University of Science and Technology, University of Cape Coast, Ghana Institute of Journalism and others.</p>
Ghana Bar Association (GBA) Code of Conduct ⁸	<p>Scope: All lawyers in Ghana.</p> <p>Comments: The GBA, of which all lawyers in Ghana are members, is governed by a Code of Conduct. Members and non-members who wish to make a complaint against a GBA-member may engage with the Ghana Legal Aid Office, an agency set up by the Government of Ghana to ensure equality of access to justice and treatment before the law.</p> <p>Recommendations/Gaps: The GBA does not have an independent party in place to take inquiries and offer guidance to anyone (members and non-members) seeking to make a complaint against a GBA member.</p>
Code of Conduct for Employees of the Judicial Service of Ghana ⁹	<p>Scope: All employees of the Judicial Service of Ghana.</p> <p>Comments: The Code of Conduct does not expressly include a sexual harassment policy. However, it promotes ethical conduct and requires that improper conduct be reported to the appropriate authorities, such as the Judicial Council.</p>

Practical Difficulties

There is no legislation that specifically defines and addresses sexual harassment, nor is there legislation that makes the implementation of sexual harassment policies mandatory in all institutions, whether public or private.¹⁰ Although the law promotes safe working conditions and prohibits sexual harassment in the workplace, it does not impose a legal obligation on employers to have a sexual harassment policy. Many organisations have voluntarily adopted sexual harassment policies, but this has primarily occurred in private institutions.¹¹ Many labour groups and employers in Ghana are actively promoting the introduction of sexual harassment policies in the workplace.¹²

Enforcement

The Memorandum cites two key sexual harassment cases, both of which are civil claims involving dismissal from employment.

The first case, Commission On Human Rights And Administrative Justice (**CHRAJ**) vs. Frank Awuku Norvor [2001-2002] 1 GLR 78 was brought before the CHRAJ, which ruled in favour of the claimant. This case affirmed the CHRAJ’s jurisdiction to investigate and adjudicate workplace sexual harassment complaints, and that sexual harassment amounts to a human rights violation.¹³

In the second case, Faustina Tetteh vs. T. Chandiram &co., Decorplast Limited, Mr. Indru Mahbubani And Arun Malkani [Suit No. INDL 75/12] the claimant commenced an action against three defendants, alleging that the termination of her employment was void. Initially, she did not raise any allegations of sexual harassment. Later, she brought allegations of sexual harassment against the third defendant. The court held that sexual harassment could not be proven because “*the complaint ought to be made at the first or earliest reasonable opportunity that offers itself to speak of the event*”. This is an important case as it establishes standards and time limits for bringing complaints of workplace sexual harassment that are not stipulated in the relevant legislation (the Labour Act and the Labour Regulations).¹⁴

The Memorandum also noted that, although uncommon, complainants face the risk of defamation suits. In such instances, an employer who has been sued for unfair termination by reason of sexual harassment may countersue the employee for defamation, seeking compensation for reputational damage caused by the allegations.¹⁵

⁷ Memorandum, Section B6, p. 16.

⁸ Memorandum, Section B7, p. 18.

⁹ See the Code of Conduct linked at Memorandum, Section B8, p. 19.

¹⁰ Memorandum, Section C4, p. 22.

¹¹ Memorandum, Section B2, p. 14.

¹² Memorandum, Section B2, p. 14.

¹³ Memorandum, Section D1, p. 25.

¹⁴ Memorandum, Section D1, p. 26.

¹⁵ Memorandum, Section D4, p. 27.

Côte D'Ivoire - *Speed Read*

Overview

In Côte d'Ivoire, the legal frameworks relating to sexual harassment are in development and include the Labour Code and the Penal Code. There is no legislative requirement to have a sexual harassment policy.

There is one substantive case, brought under the Penal Code. The Memorandum notes that cases are difficult to access in Côte d'Ivoire so this list may not be exhaustive. The case referenced suggest that penalties for sexual harassment may be given once they go to court.



Status of Key International Conventions:

Maputo Protocol: ●

CEDAW: ●

ILO Convention No. 190: ●

Legislative Overview – Sexual Harassment

Legislation	Colour	Description	Sanctions
Labour Code No. 2015-532 of 2015	●	Recognises the employer, employer's representative or any person abusing the authority conferred by their position as a potential perpetrator of sexual harassment. ¹ Employer is defined in Article 2. ² Penalties include damages, termination of employment or withdrawal of a license to practice if applicable. ³ Under Article 5, employees must display inside or at the entrance to the workplace provisions relating to sexual harassment. ⁴	Civil
Penal Code No. 2019-574 of 2019	●	Recognises a natural person as a potential perpetrator of sexual harassment. ⁵ Upon conviction the penalty is imprisonment of one to three years and a fine ranging from XOF 360,000 to XOF 1,000,000 (approximately US\$ 605 to US\$ 1,681). ⁶ Damages can also be claimed by adding a civil recourse to the criminal recourse.	Criminal

Sexual Harassment Policies

Source	Comments
Universities	There is no requirement for universities to have sexual harassment policies in place. ⁷
Ivorian bar association and licensed legal counsel association	There are no requirements for the Ivorian bar association or the licensed legal counsel association to have sexual harassment policies in place. ⁸

¹ Memorandum, A.1, p 1-2.

² Memorandum, A.3, p 3.

³ Memorandum, A.4, p 3.

⁴ Memorandum, B.1, p 4-5.

⁵ Memorandum, A.3(a), p. 2-3.

⁶ Memorandum, A.4, p 3.

⁷ Memorandum, B.6, p. 5.

⁸ Memorandum, B.7, p. 6.

Practical Difficulties

The Labour Code imposes a relatively high threshold for conduct to qualify as sexual harassment. Conduct (e.g. words, attitudes, threats, attacks) is only considered sexual harassment if the behaviour is intended to obtain sexual favours.⁹ Such behaviour is otherwise classified as moral harassment provided the purpose or effect is to degrade the working environment of the employee, compromise their rights or dignity, affect their mental health or compromise their employment.¹⁰ Under the Penal Code, sanctions or withholding benefits (e.g. employment, promotion or reward) or the performance of a service within the scope of employment to obtain a sexual benefit are needed to qualify as sexual harassment.¹¹ This may preclude conduct which is of an unwanted sexual nature from qualifying.

Under the Labour Code, the alleged victim must report the conduct to the Labour Inspector and undergo a mandatory conciliation procedure before any action is brought before the Labour Court.¹² Under the Penal Code, the alleged victim must report the conduct to a judicial officer (e.g. judicial police officers, the police commissioner, judges or the public prosecutor).¹³

There is no legislative requirement for universities, the bar, law societies or other institutions to have a sexual harassment policy in place.¹⁴ However, some universities have reportedly adopted sexual harassment policies despite this.¹⁵ Under the Labour Code employees must display inside or at the entrance to the workplace provisions relating to sexual harassment.¹⁶

Under the Labour Code there are some provisions against retaliation (no employee/trainee can be sanctioned or dismissed for refusing to accept sexual harassment or for witnessing, testifying or reporting acts of sexual harassment).¹⁷ However, under the Penal Code, the alleged victim can face a slander or defamation claim with a prison sentence of up to five years and a fine of up to XOF 1,000,000 (approximately US\$ 1681) if it is proven that the sexual harassment complaint was intended to discredit the defendant or lead to prejudice against them.¹⁸

Enforcement

The Memorandum references one criminal case, Mrs CM v Mr BH (Décision 19 PEN/13) brought under the Penal Code, noting that court decisions are difficult to access.¹⁹ Therefore, there is no indication of the number of cases relating to sexual harassment in Côte d'Ivoire.²⁰ In Mrs CM v Mr BH, the alleged perpetrator, Mr BH was sentenced to one year of imprisonment and a fine of XOF 360,000 (approximately US\$ 605). This penalty is at the lowest end of the range under the Penal Code.²¹

⁹ Memorandum, A.1, p. 2.

¹⁰ Memorandum, A.1, p. 2.

¹¹ Memorandum, A.2, p. 2.

¹² Memorandum, C.2, p. 7.

¹³ Memorandum, A.5, p. 4.

¹⁴ Memorandum, C.4, p. 8.

¹⁵ Memorandum, B.6, p. 5.

¹⁶ Memorandum, B.1, p 4-5.

¹⁷ Memorandum, B.1, p. 4-5; C.5, p. 8.

¹⁸ Memorandum, D.4, p. 9.

¹⁹ Memorandum, D.1, p. 9.

²⁰ Memorandum, D.1, p. 9.

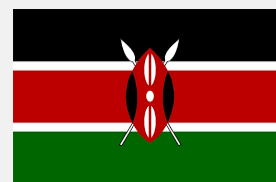
²¹ Memorandum, A.4, p 3.

Kenya – Speed Read

Overview

In Kenya, the primary legal frameworks relating to sexual harassment are rudimentary and include the Employment Act, No. 11 of 2007 (the **Employment Act**), Sexual Offences Act No. 3 of 2006, and the Employment (General) Rules 2014, as well as many industry-specific pieces of legislation. The Constitution of Kenya has also been used to protect rights in this area.

There is a reasonable amount of substantive case law (brought under various pieces of legislation) which collectively suggest that the court is favourable to hearing cases on sexual harassment in the workplace.



Status of Key International Conventions:

Maputo Protocol: ●

CEDAW: ●

ILO Convention No. 190: ●

Legislative Overview – Sexual Harassment

Legislation	Colour	Description	Sanctions
Employment Act No. 11 of 2007	●	The Employment Act declares and defines the fundamental rights of employees and provides for the basic conditions of employment for employees, including protection against sexual harassment. ¹ It recognises the employer, employer's representative, or co-worker as a potential perpetrator of sexual harassment. 'Employer' is defined at Section 2. ² Section 6 requires an employer with 20 or more employees to have a sexual harassment policy (see <i>Sexual Harassment Policies</i> below for details). A relevant employer who fails to have a sexual harassment policy shall be liable on conviction to imprisonment for not more than three months or to a fine not exceeding KES 50,000 or both (under Section 88). ³ In the instance of an employer-employee relationship, a victim of sexual harassment may lodge a civil complaint with the Employment and Labour Relations Court. ⁴ This act is not industry-specific and provides for how employers in every industry should treat their employees in a workplace.	Criminal and Civil
Sexual Offences Act No. 3 of 2006	●	This Act includes provisions about sexual offences, their definition, prevention, and the protection of all persons from harm from unlawful sexual acts, including sexual harassment. ⁵ Section 23 recognises sexual harassment of any person by a person in a position of authority or holding a public office as a criminal offence. Upon conviction the penalty is imprisonment for not less than three years or a fine of not less than KES 100,000 or both. ⁶ Provision is made under Section 32 for witness protection for 'vulnerable witnesses'. ⁷	Criminal
Public Officer Ethics Act No. 4 of 2003	●	This Act makes provision for a code of conduct for public officers, regulating their interaction with colleagues and members of the public, including provisions about the prohibition of sexual harassment against members of public or a fellow public officer. ⁸ It applies to officers, employees or members, including those unpaid, part-time or temporary, working for the government, a state corporation, a cooperative society or any local authority. ⁹ This is for employees	Civil

¹ See a link to the Employment Act No. 11 of 2007 [here](#); page 2 of the Memorandum.
² See a link to the Employment Act No. 11 of 2007 [here](#), section 2; pages 2-3 of the Memorandum.
³ See a link to the Employment Act No. 11 of 2007 [here](#), sections 6 and 88; page 6 of the Memorandum.
⁴ See page 3 of the Memorandum.
⁵ See page 2 of the Memorandum.
⁶ See a link to the Sexual Offences Act No. 3 of 2006 [here](#), section 23; page 20 of the Memorandum.
⁷ See a link to the Sexual Offences Act No. 3 of 2006 [here](#), section 23; page 12 of the Memorandum.
⁸ See a link to the Public Officer Ethics Act No. 4 of 2003 [here](#); page 2 of the Memorandum.
⁹ See a link to the Public Officer Ethics Act No. 4 of 2003 [here](#), section 2; page 3 of the Memorandum.

that are part of public bodies specifically and does not apply generally to employees and the workplace.

Sexual Harassment Policies

Source	Comments
The Employment (General) Rules 2014 (implementing Section 6 of Employment Act)	<p>Scope: An employer, employer's representative, or a co-worker.¹⁰</p> <p>Protects: An employee.¹¹</p> <p>Comments: The Regulations recognise physical, verbal, and non-verbal sexual harassment and therefore can be assumed to cover both digital and in-person sexual harassment.¹² An employer will often include in their policy a definition and examples of conduct that would amount to sexual harassment.¹³ A policy should also include a statement against retaliation, although retaliatory actions are not prohibited in law.¹⁴ Training is not required but employers must inform employees of the policy and the consequences of non-adherence.¹⁵ There is no mandatory requirement for mediation or arbitration but, where these are specified in the employment agreement as a means of resolving disputes in the first instance, alternative remedies should be exhausted before going to court.¹⁶</p>
Universities	<p>Scope: Universities fall under Section 6 of the Employment Act with respect to university staff. Universities also have internal policies which prohibit sexual harassment of students, staff, and others.¹⁷</p> <p>Protects: Staff, students, and others.¹⁸</p> <p>Comments: The Memorandum provides links to the policies of University of Nairobi, Kenyatta University and Moi University.</p>
Law Society of Kenya Sexual Harassment and Bullying Policy 2019	<p>Scope: Partners, employees, pupils, and students of individual law firms and of the Law Society of Kenya.¹⁹</p> <p>Protects: Anyone.</p> <p>Comments: The policy sets out an internal resolution mechanism. A complaint under the internal resolution mechanism must be determined within 30 days and must be in writing. There are both informal (conciliation process) and formal procedures. A victim may also seek alternative relief through the courts. Confidentiality and non-disclosure are considered key guiding principles. Complaints relating to sexual harassment are made to the Advocates Complaints Commission, which may be referred to the Advocates Disciplinary Committee for action.²⁰</p> <p>The Code of Standards of Professional Practice and Ethical Conduct (SOPPEC) additionally provides that sexual harassment amounts to professional misconduct and a perpetrator will face disciplinary action. The policy encourages individual law firms to have a sexual harassment policy and to conduct workplace training.²¹</p>
Judicial Service (Code of Conduct and Ethics) Regulations 2020	<p>Scope: Members of the bench and other judicial officials.²²</p> <p>Protects: Anyone.</p> <p>Comments: The Regulations prohibit sexual harassment; Regulation 78 provides that a breach of any of the regulations amounts to misconduct which would lead to disciplinary proceedings conducted by the Judicial Service Commission.²³</p>

Practical Difficulties

The Employment Act imposes a relatively high threshold for conduct to qualify as sexual harassment (promise of preferential treatment, threat of detrimental treatment or threat about present or future employment) which may preclude conduct which is of an unwanted sexual nature from qualifying.²⁴

¹⁰ See a link to the Employment Act No. 11 of 2007 [here](#), section 6; page 2 of the Memorandum.

¹¹ See a link to the Employment Act No. 11 of 2007 [here](#), section 2; page 2 of the Memorandum.

¹² See a link to the Employment Act No. 11 of 2007 [here](#), section 6; page 5 of the Memorandum.

¹³ See a link to the Employment Act No. 11 of 2007 [here](#), section 6.2. Please see a link to the Employment (General) Rules 2014 (implementing Section 6 of Employment Act) [here](#), section 6; page 5 of the Memorandum.

¹⁴ See a link to the Employment (General) Rules 2014 (implementing Section 6 of Employment Act) [here](#), paragraph 7 of the First Schedule; page 12 of the Memorandum.

¹⁵ See a link to the Employment Act No. 11 of 2007 [here](#), section 6; page 6 of the Memorandum.

¹⁶ See page 19 of the Memorandum.

¹⁷ See pages 6-7 of Memorandum.

¹⁸ See a link to the Employment Act No. 11 of 2007 [here](#), section 6; page 6 of the Memorandum.

¹⁹ See a link to Law Society of Kenya Sexual Harassment and Bullying Policy 2019 [here](#), section 1.6.1, section 6; pages 7-8 of the Memorandum.

²⁰ See page 9 of the Memorandum.

²¹ See a link to the Code of Standards of Professional Practice and Ethical Conduct [here](#); page 8 of the Memorandum.

²² See page 9 of the Memorandum.

²³ See pages 9-10 of the Memorandum.

²⁴ See a link to the Employment Act No. 11 of 2007 [here](#), section 6; pages 11-12 of the Memorandum.

The police are the investigative body for criminal offences under the Employment Act and the Sexual Offences Act. There are no other regulatory authorities that enforce matters to deal with sexual harassment. In most organisations, the Human Resources department is in charge of receiving complaints.²⁵

The Sexual Offences Act requires the alleged victim to prove or disprove the allegations of sexual harassment.²⁶

Enforcement

The Memorandum cites 12 cases, all civil claims for damages save for Republic v Abdulahi Noor Mohamed (alias Arab) [2016] eKLR.²⁷ These cases were brought under the Employment Act, the Constitution and the Occupational Safety and Health Act. In most instances, the employee had been dismissed or left employment. The cases clearly show the courts considering various aspects of sexual harassment, including physical violence, humiliation, and psychological suffering.

There is also a case cited in which an employee dismissed for sexual harassment sued for wrongful dismissal. The court held he had been guilty of sexual harassment and that his dismissal was fair.²⁸

On the basis of the cases summarised, the courts seem routinely to find wrongful or malicious termination or constructive dismissal in cases of sexual discrimination, suggesting that the cases are taken seriously once they come to court.²⁹ It also appears the courts try to use cases as a warning to employers who do not have, or who have inadequate, sexual harassment policies. The damages awarded ranged between KES 50,000 and KES 5,928,000.³⁰

²⁵ See page 10 of the Memorandum.

²⁶ See a link to the Sexual Offences Act [here](#), section 23; page 10 of the Memorandum.

²⁷ See the following cases: P O v Board of Trustees, A F & 2 others [2014] eKLR; NR v FITM & another (Respondent) (Cause E204 of 2021) [2022] KEELRC 82 (KLR) (26 April 2022) (Judgment); NML v Peter Petrausch [2015] eKLR; CAS v CS Limited [2016] eKLR; MWM v MFS [2014] eKLR; SRM v GSS (K) [2017] eKLR; SOS v CWRL & 4 others [2021] eKLR; SWM v Hardware Trading Store Limited and another [2021] eKLR; JWN v Securex Agencies (k) Limited [2018] eKLR; Elvis K. Likobelev Kenya Airports Authority [2015] eKLR. Ooko & another v SRM & 2 others (Civil Appeal 195 & 197 of 2019 (Consolidated)) [2022] KECA 44 (KLR) (4 February 2022) (Judgment); and Republic v Abdulahi Noor Mohamed (alias Arab) [2016] eKLR.

²⁸ Elvis K. Likobelev Kenya Airports Authority [2015] eKLR; page 17 of the Memorandum.

²⁹ See the following cases: P O v Board of Trustees, A F & 2 others [2014] eKLR; NR v FITM & another (Respondent) (Cause E204 of 2021) [2022] KEELRC 82 (KLR) (26 April 2022) (Judgment); NML v Peter Petrausch [2015] eKLR; CAS v CS Limited [2016] eKLR; MWM v MFS [2014] eKLR; SRM v GSS (K) [2017] eKLR; SOS v CWRL & 4 others [2021] eKLR; SWM v Hardware Trading Store Limited and another [2021] eKLR; JWN v Securex Agencies (k) Limited [2018] eKLR; and Elvis K. Likobelev Kenya Airports Authority [2015] eKLR; pages 13-17 of the memorandum.

³⁰ Ibid.

Malawi - Speed Read

Overview

In Malawi, the legal frameworks relating to workplace sexual harassment are in development and include the Gender Equality Act, as well as several industry-specific pieces of legislation. The Constitution of Malawi has also been used to protect rights in this area.

There is a reasonable amount of substantive case law, with cases brought under various pieces of legislation, including the Occupational Safety, Health and Welfare Act and the Constitution of Malawi.



Status of Key International Conventions:

Maputo Protocol: ●

CEDAW: ●

ILO Convention No. 190: ●

Legislative Overview – Sexual Harassment

Legislation	Colour	Description	Sanctions
Parliamentary Service Act (1998) (Cap 2:08 of the Laws of Malawi)	●	An Act that establishes a Parliamentary Service and a Parliamentary Service Commission and provides in section 5 (1)(c) that every employee of the Parliamentary Service shall, in the course of his employment, treat everyone with respect and courtesy, and without harassment. ¹ Any person who contravenes, among other things, section 5 (1)(c) shall be liable to termination of employment, demotion, re-assignment of duties, reduction in salary or deductions from salary, by way of fines. ²	Civil
Gender Equality Act (2013) (Cap 25:06 of the Laws of Malawi)	●	An Act to promote, amongst other things, gender equality and to prohibit and provide redress for sexual harassment. ³ Relevant sections include section 6 which provides that 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, and is liable to imprisonment and a fine, ⁴ and section 7 which requires employers to develop and implement appropriate policy and procedures aimed at eliminating sexual harassment in the workplace. ⁵	Civil and Criminal
Public Accountants and Auditors Act (2014) (Cap 53:06 of the Laws of Malawi) and the Professional Accountancy	●	The Professional Accountancy Bodies Regulations made under the Public Accountants and Auditors Act provide for training contracts for diplomate and chartered accountants. ⁶ The Regulations require diplomate and chartered accountants to undergo on the job training which is administered by the Institute of Chartered Accountants. Regulation 25(2) provides that a trainee accountant may terminate the training contract where the trainee accountant is subjected to sexual harassment or discrimination and Regulation 25(4)(f) provides that a mentor shall terminate the contract where there are issues of sexual harassment. ⁷	N/A

¹ Please see a link to the Parliamentary Service Act [here](#); see paragraph A1.1 of the Memorandum.

² Please see a link to the Parliamentary Service Act [here](#); see paragraph A4.2 of the Memorandum.

³ Please see a link to the Gender Equality Act [here](#); see paragraph A1.2 of the Memorandum.

⁴ Please see a link to the Gender Equality Act [here](#); see paragraph A2.2 of the Memorandum.

⁵ Please see a link to the Gender Equality Act [here](#); see paragraph A1.2 of the Memorandum.

⁶ Please see the Public Accountants and Auditors Act and the Professional Accountancy Bodies Regulations [here](#) and [here](#), respectively; see paragraph A2.3 of the Memorandum.

⁷ Please see the Professional Accountancy Bodies Regulations [here](#); see paragraph A2.3 of the Memorandum.

Bodies Regulations (Government Notice 3 of 2017)			
Occupational Safety, Health and Welfare Act (1997) (Cap 55:07 of the Laws of Malawi)	●	The Act regulates conditions of employment in workplaces with regard to the safety, health and welfare of employees and imposes certain duties on employers. Section 13(1) provides that it is the duty of every employer to ensure the safety, health and welfare at work of all his or her employees. ⁸ While Section 13(1) does not expressly refer to workplace harassment or sexual harassment, it has been accepted by the High Court of Malawi to extend to employers protecting employees from sexual harassment at work, including by having an effective working system for sexual abuse complaint handling. ⁹ It is our view that section 13 can also be extended to other forms of abuse/harassment in the workplace.	Civil and Criminal

Sexual Harassment Policies

Source	Comments
National Council for Higher Education - Model Gender and Anti-Sexual Harassment Policy	There are no provisions under Malawi law which specifically require universities to have sexual harassment policies in place for students and employees/staff. However, the National Council for Higher Education, responsible for the regulation of higher education institutions, launched the Model Gender and Anti-Sexual Harassment Policy in 2021. ¹⁰ It must be noted that this policy is not prescribed by law and is not publicly available.
Universities	Universities are not specifically required to have sexual harassment policies for students or staff employees. ¹¹ However, the National Council for Higher Education (NCHE), responsible for the regulation of higher education institutions, launched the Model Gender and Anti-Sexual Harassment Policy in 2021. It must be noted that this policy is not prescribed by law and is not publicly available. ¹²
Bar Association	The Malawi Law Society does not have a sexual harassment policy. ¹³

Practical Difficulties

There are various practical difficulties that should be considered. First, the legislation targeting sexual harassment appears to be scattered. Victims of sexual abuse can bring claims under various pieces of legislation, which, while providing a variety of avenues for recourse, also creates uncertainty as there is no clear course of action. The sanctions for sexual harassment and abuse under the various pieces of legislation also vary in severity, and some are wholly unclear on whether there are legal ramifications for perpetrators. For example, under Regulation 25(4)(f) of the Professional Accountancy Bodies Regulations, a mentor shall terminate the contract where there are issues of sexual harassment, but there is no mention of any action to be taken against the perpetrator of the sexual harassment.¹⁴ This regulation appears to create negative outcomes for victims of sexual harassment who bring the matter to the attention of their mentor, with no consequences for the actual perpetrator. Further, while the courts appear willing to seriously condemn sexual abuse and harassment in adjudicating such claims, the cases suggest that victims experience a lot of difficulty in attempting to have these matters taken seriously outside the court room as employers and police often don't take immediate action to investigate and bring an end to complaints of such a nature.¹⁵

⁸ Please see a link to the Occupational Safety, Health and Welfare Act [here](#); see paragraph A1.3 of the Memorandum.

⁹ Please see the decision in T K v Mota Engil Engenharia Construção Africa, SA (Personal Injury Cause No. 576 of 2017) [2021] MWHC 26 [here](#); see paragraph D1.1 of the Memorandum.

¹⁰ Please see paragraph 6.2 of the Memorandum.

¹¹ Please see paragraph B.6 of the Memorandum.

¹² Please see paragraph B.6 of the Memorandum.

¹³ Please see paragraph B.7 of the Memorandum.

¹⁴ Please see the Professional Accountancy Bodies Regulations [here](#); see paragraph A2.3 of the Memorandum.

¹⁵ Please see the decision in T K v Mota Engil Engenharia Construção Africa, SA (Personal Injury Cause No. 576 of 2017) [2021] MWHC 26 [here](#) and the decision in S v IG of Police, Clerk of National Assembly & Ors. (Judicial Review 7 of 2020) [2021] MWHC 25 [here](#); see paragraphs D1.1 and D1.2 of the Memorandum.

The Police Case also raises the social dilemmas associated with speaking out against sexual abuse and harassment as the majority of applicants experienced ridicule, embarrassment and public shaming as a result. Many of the applicants were also consequently abandoned by their spouses, family, friends and community despite being the victims of such acts, which can strongly deter victims from coming forward out of fear of being isolated.¹⁶

Enforcement

The Memorandum cites two cases. These cases were brought under the Constitution and the Occupational Safety, Health and Welfare Act, amongst other things. T K v Mota Engil Engenharia Construc ao Africa, SA (Personal Injury Cause No. 576 of 2017) [2021] MWHC 26 especially highlights some of the challenges involved in taking action against perpetrators of sexual abuse in the workplace where there is no effective system for handling such complaints by victims.¹⁷

On the basis of the cases summarised, the courts appear to liberally and broadly interpret the law to afford protection and recourse to victims of sexual harassment and abuse. In both cases cited in the Memorandum, neither the Constitution nor the Occupational Safety, Health and Welfare Act explicitly mention or set out the consequences of sexual harassment and abuse, however the protections afforded under these pieces of legislation have been interpreted so broadly as to apply to such circumstances. The cases also clearly show the courts considering various aspects of sexual harassment including physical violence, humiliation, and psychological suffering.

It also appears from T K v Mota Engil Engenharia Construc ao Africa, SA that the High Court included in its decision a warning to employers who do not have an effective system for handling and preventing sexual harassment and abuse in the workplace, and who fail to take action to investigate and prevent their occurrence. In T K v Mota Engil Engenharia Construc ao Africa, SA against the employer, the court awarded K 30,000,000.00 in aggravated damages,¹⁸ whereas in the Police Case, the damages awarded ranged between K 4,500,000 and K 10,000,000.¹⁹

¹⁶ Please see the decision in S v IG of Police, Clerk of National Assembly & Ors. (Judicial Review 7 of 2020) [2021] MWHC 25 [here](#); see paragraph D1.2 of the Memorandum.

¹⁷ Please see the decision in T K v Mota Engil Engenharia Construc ao Africa, SA (Personal Injury Cause No. 576 of 2017) [2021] MWHC 26 [here](#); see paragraph D1.1 of the Memorandum.

¹⁸ Please see the decision in T K v Mota Engil Engenharia Construc ao Africa, SA (Personal Injury Cause No. 576 of 2017) [2021] MWHC 26 [here](#); see paragraph D1.1 of the Memorandum.

¹⁹ Please see the decision in S v IG of Police, Clerk of National Assembly & Ors. (Judicial Review 7 of 2020) [2021] MWHC 25 [here](#); see paragraph D1.2 of the Memorandum.

Mozambique – *Speed Read*

Overview

In Mozambique, the legal frameworks relating to workplace sexual harassment are in development and include the Labour Law, as well as a number of industry-specific pieces of legislation, such as the General Statute of State Employees and Agents of the State (EGFAE). The Penal Code of Mozambique has also been used to protect rights in this area.

There is no substantive case law, with cases brought under various pieces of legislation.



Status of Key International Conventions:

Maputo Protocol: ●

CEDAW: ●

ILO Convention No. 190: ●

Legislative Overview – Sexual Harassment

Legislation	Colour	Description	Sanctions
Law no. 23/2007, of 1 August (Labour Law)	●	The Labour Law establishes a set of general principles and means of remuneration/salary for others, as well as defining the general principles of subordinate Labour relations. Sexual harassment is a disciplinary issue that is subject to indemnification under Article 66 of this law. The Labour Law applies to both sexual harassment that interferes with the stability of the employment and sexual harassment that impacts the career progress of the offended employee. ¹	Criminal and Civil
The General Statute of State Employees and Agents of the State (EGFAE)	●	This law defines how the state establishes employment relationships with its employees and agents. State employees and agents have a special duty not to harass their co-workers materially, morally or sexually at work (Article 62(2)(h)). ²	Criminal and Civil
Law no. 24/2019, of 24 December 2019, amended by Law no. 17/2020, of 23 December 2020 (Penal Code)	●	This law sets out all those situations that are considered crimes in the Republic of Mozambique and provide corresponding sanctions, including imprisonment. Under Article 205 of this law, sexual harassment is prohibited at work. ³	Criminal
Ministerial Decree no. 36/2019, of 17 April (Anti-corruption and Sexual Harassment Regulation)	●	The measures introduced by this legal diploma include the creation of a Commission Against Sexual Abuse, Harassment and Corruption (CASAC). This Commission is responsible for: (i) evaluating and monitoring the occurrence of sexual harassment within the institutions of technical-professional education established in the Republic of Mozambique; (ii) conducting investigations, when it is necessary, to establish the occurrence of sexual harassment, determining its perpetrators and their liability, discovering and gathering evidence for the initiation of disciplinary proceedings, if deemed necessary; (iii) elaborating monthly and annual reports with statistical information, trend analysis and proposals for further measures to prevent and combat sexual harassment; and (iv) examining complaints submitted to each institution's complaints box regarding sexual harassment, against corruption, sexual harassment, and any type of sexual abuse, occurring in technical-professional educational institutions, as well as establishing mechanisms for preventing and reporting. ⁴	Criminal and Civil
Law no. 3/2014, of 5 February (Law for the Promotion and Protection of the Rights of the	●	The purpose of these laws is to regulate the promotion and protection of the rights of elderly persons, punishing those who fail to assist them when it is	Criminal

¹ See section A1 of the Memorandum

² See section A1 of the Memorandum

³ See section A1 of the Memorandum

⁴ See section A2 of the Memorandum

Elderly Person) and its Regulation approved by Decree no. 79/2014, of 19 December		possible to do so in a situation of imminent danger, as in the cases of sexual harassment and other sexual crimes. ⁵	
---	--	---	--

Sexual Harassment Policies

Source	Comments
Ministerial Decree no. 36/2019, of 17 April (Anti-corruption and Sexual Harassment Regulation)	<p>Scope: Institutions of technical-professional education, both private and public.</p> <p>Protects: Students/children.</p> <p>Comments: The Decree foresees that institutions of technical-professional education (both private and public) must establish a Commission Against Sexual Abuse, Harassment and Corruption (CASAC) against sexual harassment, sexual abuse, and corruption. Any individual who has knowledge that someone has suffered sexual harassment must present a complaint. Complaints must be made in writing to the Director of the educational institution, Head Teacher, Gender Focal Point, or CASAC.⁶</p> <p>Recommendations/Gaps: The Decree is silent on what sorts of harassment are covered and there is no legal requirement to conduct training. The Decree is also silent on sexual harassment in online or digital form. There is no legal penalty for failing to have a sexual harassment policy, which enables various institutions to get away with non-compliance and perpetrators to go unpunished.⁷</p>
Universities	See above Ministerial Decree. Major universities in Mozambique that have adopted sexual harassment policies include: A Politécnica University, Catholic University of Mozambique, Eduardo Mondlane University (UEM), and Púnguè University (UniPúnguè).
Bar Association	The Mozambican Bar Association (OAM) does not have a sexual harassment. However, it does have a Gender Policy and Implementation Strategy. ⁸

Practical Difficulties

In Mozambique, statistics, studies, or legal proceedings on the phenomenon of violence and harassment at work are almost non-existent. Moreover, a complex issue in harassment cases is the gathering of evidence. For instance, a judge is required, at the civil level, to decide on the facts of the case according to his subjective conviction, which is based on the evidence presented by the various parties. The means of evidence, subject to the free appraisal of the judges, are: (i) expert evidence – aims to perceive facts by means of experts, when special knowledge is required that the judges lack, or when the facts relating to persons ought not to be subject to judicial scrutiny; (ii) proof by inspection – aims at the perception of facts by the court; and (iii) testimonial evidence. The judge may not be able to freely evaluate evidence where it has a fixed evidential value, such as authentic or private documents and written confessions.

Lastly, girls in schools are particularly victims of violence, resulting in hostile relationships, discrimination and gender inequality. Therefore, the Ministry of Education should especially pay attention to the levels of violence against girls at school, which have been consistently denounced without taking firm and dissuasive measures.⁹

Enforcement

There is no record of public cases relating to sexual harassment, to the best of our knowledge.¹⁰

⁵ See section A2 of the Memorandum

⁶ See sections B1 to B3 of the Memorandum.

⁷ See sections B4 to B6 of the Memorandum

⁸ See section B7 of the Memorandum.

⁹ See section C3 of the Memorandum.

¹⁰ See section D1 of the Memorandum.

Namibia - Speed Read

Overview

In Namibia, the legal framework relating to workplace sexual harassment is rudimentary and consists of only the Labour Act of 2007 (excluding international law and soft law / policy and recourse to criminal sanction). The Constitution of Namibia offers residual protection of rights in this area. It is noteworthy that bills (as detailed below) may effect a dramatic change in the regulatory landscape.

Although there is a lack of substantive case law, the currently available cases recognise the seriousness of sexual harassment in the workplace and note the legislature's intention to have harassment more stringently regulated.



Status of Key International Conventions:

Maputo Protocol: ●

CEDAW: ●

ILO Convention No. 190: ●

Legislative Overview – Sexual Harassment

Legislation	Colour	Description	Sanctions
Labour Act No. 11 of 2007	●	<p>The Labour Act is the only primary legislation in Namibia enacted for the protection and prevention of violence against men and women in the workplace, particularly in terms of Section 5 (<i>Prohibition of Discrimination and Sexual Harassment in Employment</i>). Section 5(7)(b) states that harassment “means any unwarranted conduct of a sexual nature towards an employee which constitutes a barrier to equality in employment where: (i) the victim has made it known to the perpetrator that he or she finds the conduct offensive; or (ii) the perpetrator should have reasonably realised that the conduct is regarded as unacceptable, taking into account the respective positions of the parties in the place of employment, the nature of their employment relationships and the nature of the place of employment.”¹ [emphasis added]</p> <p>The Act applies to all employees and across all industries, excluding independent contractors. Moreover, anyone (i.e., employers, employees and others who engage with the business) may be a perpetrator of sexual harassment.²</p> <p>A complainant who alleges that a right under Chapter 5 (<i>Unfair Labour Practices</i>) has been infringed or is threatened must first refer the matter to the Labour Commissioner³ for conciliation and arbitration. A party wishing to appeal an arbitral determination may approach the Labour Court.⁴</p>	Civil

¹ Section A2 of the Memorandum.

² Section 5(8) of the Labour Act No. 11 of 2007. “Employer” means any person, including the State and a user enterprise who (a) employs or provides work for an individual and who remunerates or expressly or tacitly undertakes to remunerate that individual; or (b) permits an individual to assist that person in any manner in carrying or conducting that person’s business.

³ Read more on the Office of the Labour Commissioner, a body belonging to the Ministry of Labour, Industrial relations and employment creation, [available here](#).

⁴ Section A5 of the Memorandum.

Combating of Sexual Exploitation Bill	N/A	Not yet promulgated. No draft available to the public. The bill will be of general application, that is, not confined to the workplace only. ⁵	Unknown
Combating of Harassment Bill	N/A	Not yet promulgated. No draft available to the public. The bill will be of general application, that is, not confined to the workplace only. ⁶	Unknown
Combating of Unfair Discrimination, Discriminatory Harassment and Hate Speech Bill	N/A	Not yet promulgated. No draft available to the public. The bill will be of general application, that is, not confined to the workplace only. ⁷	Unknown

Sexual Harassment Policies

Source	Comments
General comment	Namibia has no laws that indicate that companies should have policies in place relating to sexual harassment. The Labour Act is the only source that deals with issues of sexual harassment in the workplace and it's a guideline on the employer and employee relationship. ⁸ Most workplaces are yet to include harassment of any kind in their company policies.
Universities	Scope: There is no specific requirement for universities to have sexual harassment policies. However, due to the evident need and the number of people involved some universities have opted to have sexual harassment policies. ⁹ Two major Universities in Namibia, namely: the University of Namibia and Namibia University of Science and Technology have implemented sexual harassment policies for students and the lecturers. ¹⁰ Protects: Students. ¹¹
Law society or bar association	Neither the law society nor the bar association have a sexual harassment policy. ¹²
Judges and magistrates	There is no sexual harassment policy regulating the conduct of judges and magistrates or their members, employees or contractors. ¹³

Practical Difficulties

The Namibian Labour Act can generally be critiqued for being unclear and inefficient, having a lack of reporting structures and procedures, and a lack of workplace harassment policies. There appears to be a general attitude of victim-blaming in Namibia, and victims may experience a misplaced sense of shame. Victims fear losing their jobs if they report violence or harassment. Moreover, victims fear not being believed and being unable to prove cases of harassment in Namibian courts. Laws and policies in general offer limited protection for whistle-blowers and witnesses.¹⁴

There is no framework for victim post-incident psycho-social support, logistical assistance or witness/prosecutorial protections for victims. The harassment SMS reporting line maintained by the Labour Inspectorate is not well known and is under-utilised.

The Legal Assistance Center (LAC) in Namibia has been instrumental in pushing the agenda for laws on harassment. LAC continues to conduct public interest litigation and has expanded its mandate to incorporate public human rights education research, law reform and *pro bono* legal advice. In 2021, and as part of the LAC's Gender Review and Advocacy Programme, the LAC proposed the bills (discussed

⁵ Section A2 of the Memorandum.

⁶ Section A1 of the Memorandum.

⁷ Section A1 of the Memorandum.

⁸ Section B1 of the Memorandum.

⁹ Section B5 of the Memorandum.

¹⁰ Section B6 of the Memorandum.

¹¹ Annexure 7, University of Namibia Sexual Harassment Policy and Annexure 8, Namibia University of Science and Technology Sexual Harassment Policy.

¹² Section B7 of the Memorandum.

¹³ Section B12 of the Memorandum.

¹⁴ Section F1 of the Memorandum.

above) to Parliament for stakeholder comment.¹⁵ It is hoped that this will steer Namibian workplace attitudes towards achieving inclusion and eradication of workplace violence and harassment.

Enforcement

Despite the ratification of ILO Convention No. 190, harassment in Namibia remains largely unreported, unresolved, and unpunished.¹⁶ The Labour Act does not provide for punitive measures, enforcement, prosecution, compensation, or measures to protect complainants, victims, witnesses and whistle-blowers against stigmatisation, victimisation, and retaliation.¹⁷

The case of *Life Office of Namibia Ltd (Namlife) v Amakali & Another* 2014 (4) NR 1119 (LC) was brought under the auspices of Chapter 2 of the Labour Act before the Namibian Labour Court. The case firstly highlights that the regulation of sexual harassment in the Labour Act is indicative of the legislature's stance towards eradicating such behaviour, and secondly shows the impact of sexual harassment on equality and the constitutional rights of victims.¹⁸

¹⁵ Section A1 of the Memorandum.

¹⁶ Jemima Beukes. *Spotlight on Harassment*, 2020, published in the Sun Newspaper and [available here](#).

¹⁷ Section F1 of the Memorandum.

¹⁸ Section D1 of the Memorandum.

Nigeria - Speed Read

Overview

In Nigeria, the legal frameworks relating to sexual harassment are developing and include the general protections provided by the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the National Industrial Court Civil Procedure Rules and the Criminal Laws and Penal Codes of the various States. The Violence Against Persons (Prohibition) Act 2015 (VAPP) may also be used to protect rights in this area.

There is not a lot of substantive case law. The positive outcome of the few cases, however, suggests that Nigerian courts (particularly the National Industrial Court before which workplace sexual harassment suits are brought) are willing to prosecute wrongdoers and grant redress to victims of sexual harassment whenever these cases are brought before them.



Status of Key International Conventions:

Maputo Protocol: ●

CEDAW: ●

ILO Convention No. 190: ●

Legislative Overview – Sexual Harassment

Legislation	Colour	Description	Sanctions
National Industrial Court (NIC) Civil Procedure Rules, 2017	●	Order 14 of the Rules provides for sexual harassment and states different kinds of acts and circumstances that can constitute sexual harassment in the workplace. The Rules generally provide for procedures for instituting actions which relate to labour, employment, trade unions, industrial relations and matters arising from the workplace including sexual harassment at the workplace. ¹	Civil and Criminal
Criminal Laws of Lagos State 2015 ²	●	It makes sexual harassment a felony which is punishable by three years' imprisonment upon conviction. There is no special procedure for instituting an action for sexual harassment under the Lagos State Law. ³ It does not specifically target workplace sexual harassment.	Criminal
The Violence Against Persons Prohibition (VAPP) Act of 2015	●	It recognises sexual harassment, but there is no specific provision targeted at addressing sexual harassment in the workplace. Currently, 34 of the 36 States of the Nigerian Federation have domesticated the VAPP in the Laws of their States. ⁴	Criminal
Ekiti State Gender-Based Violence (Prohibition) Law 2019	●	The Act under section 2(4)(h) provides that violence against women includes sexually harassing a woman or girl. ⁵ It does not specifically target workplace sexual harassment.	Criminal

¹ See section A(1)(ii), page 2 of the Memorandum.

² The Criminal Law of Lagos State is used as an example herein as every state and the Federal Capital Territory each have their applicable Criminal Laws.

³ See section A(1)(iii), page 2 of the Memorandum.

⁴ See section A(2)(i), page 3 of the Memorandum.

⁵ See section A(2)(iv), page 4 of the Memorandum.

Sexual Harassment Bill, 2020	N/A	Not yet promulgated as it is yet to receive presidential assent. The Sexual Harassment Bill seeks to prevent, prohibit, and redress the sexual harassment of students in tertiary educational institutions. It proposes a jail term of up to 14 years for individuals found guilty of an offence under it. ⁶	Criminal
------------------------------	-----	---	----------

Sexual Harassment Policies

Source	Comments
The Nigerian Bar Association	<p>Scope: All companies, enterprises/businesses, in both the public and private sector, irrespective of size.⁷</p> <p>Protects: women and men.</p> <p>Comments: Policy created in 2021. Adopts the International Labour Organization’s (ILO) definition of sexual harassment. The ILO defines sexual harassment as “any behaviour of a sexual nature that affects the dignity of women and men, which is considered as unwanted, unacceptable, inappropriate and offensive to the recipient, and that creates an intimidating, hostile, unstable or offensive work environment.”⁸ The policy provides for two complaint mechanisms, one informal and one formal.⁹</p> <p>The policy mandates law firms to have a code of conduct or policy on sexual harassment in the workplace or adopt the NBA Policy as theirs. It provides that employees must be trained on the content of the policy as part of their induction/onboarding. It also states that employers’ organisations should ensure that information on sexual harassment is included in staff orientation, education, and training programmes.¹⁰</p> <p>Anyone who has been found to have sexually harassed another person under the terms of this policy is to be reported to the Legal Practitioners’ Disciplinary Committee (“LPDC”) where the harasser is a legal practitioner. The nature of the sanctions will depend on the gravity and extent of the harassment.¹¹</p> <p>Recommendations/Gaps: There are no penalties for failing to keep in line with the need to have a policy. The policy is also silent on mandatory training for contractors.¹² The policy does not have provisions for non-disclosure agreements in respect of sexual harassment claims.¹³ The Nigerian Bar Association also does not have special advisors/ombudspersons in place to take inquiries or offer support before a formal report is made.¹⁴</p>

Practical Difficulties

There are currently no penalties for failing to have a sexual harassment policy.¹⁵ There are no specific requirements mandatorily required to be covered under the sexual harassment policy.¹⁶ There are no laws or regulations in Nigeria that require institutions to conduct sexual harassment training.¹⁷

The NBA Policy is silent on mandatory training for contractors.¹⁸ The NBA Policy does not have provisions for non-disclosure agreements in respect of sexual harassment claims.¹⁹ The lack of a clear provision for identity privacy and anonymity can dissuade victims from reporting. However, it states that HR Managers must not discourage employees from reporting sexual harassment.²⁰ The NBA does not have special advisors/ombudspersons.²¹

From the provisions of the laws, there are no administrative agencies apart from the court which are responsible for receiving complaints which inadvertently overwhelm the courts which are already saddled with thousands of cases annually. There is an absence of a penalty for retaliation and stigmatisation of victims.²²

⁶ See section F, page 19 of the Memorandum.
⁷ See section B(7), page 10 of the Memorandum.
⁸ See section B(7), page 10 of the Memorandum.
⁹ See section B(8), page 10 of the Memorandum.
¹⁰ See section B(9), page 11 of the Memorandum.
¹¹ See section B(9), page 12 of the Memorandum.
¹² See section B(9), page 12 of the Memorandum.
¹³ See section B(10), page 12 of the Memorandum.
¹⁴ See section B(11), page 12 of the Memorandum.
¹⁵ See section B(4), page 9 of the Memorandum.
¹⁶ See section B(3), page 9 of the Memorandum.
¹⁷ See section B(5), page 9 of the Memorandum.
¹⁸ See section B(9), page 12 of the Memorandum.
¹⁹ See section B(10), page 12 of the Memorandum.
²⁰ See section C(5), page 16 of the Memorandum.
²¹ See section B(11), page 12 of the Memorandum.
²² See section C(5), page 16 of the Memorandum.

Enforcement

The Memorandum cites three civil claims all for damages: *Ejike Maduka vs Microsoft Nigeria Limited – NICN/LA/492/2012*, *Stella Ayam Odey V. Ferdinand Daapah Anor & Cuso International Overseas Staff Hand Book - NICN/ /CA/03/2016*, and *Pastor (Mrs.) Abimbola Patricia Yakubu V Financial Reporting Council of Nigeria & Anor - NICN/LA/673/2013*.²³ These cases were brought under the NIC Civil Procedure Rules, Recommendation No. 19 of CEDAW, The Constitution and the ILO Convention No 111, as well as various case law. In all instances the employee’s employment had been terminated. The cases clearly show the courts considering various aspects of sexual harassment including creation of a hostile working environment, physical contact and advances, discrimination and psychological suffering. In each of the cases, the claimant was awarded a monetary sum for damages for the emotional and psychological suffering of the claimants, and another sum as compensation for lost wages or other emoluments. In one of the cases, the respondents were also asked to immediately implement the sexual harassment policy to prevent a recurrence of the issue in question, and in one case, the Court ordered reinstatement.

In *Ejike Maduka vs Microsoft Nigeria Limited – NICN/LA/492/2012*, it was held that the employer must implement a policy as the one it had in place was defective. However, the court stopped short of holding that this is of general application. The case provides for provisions which prevent sexual harassment in the workplace and the penalty for a failure to abide.²⁴ An employer can be held vicariously liable for sexual harassment committed by its employees. This is because there is a duty on employers to have a policy on sexual harassment and to investigate cases in line with the policy when they are reported.²⁵

²³ See Annexure 1, pages 20-21 of the Memorandum.

²⁴ See section B(3), page 9 of the Memorandum.

²⁵ See section A(3)(c), page 5 of the Memorandum.

Rwanda - Speed Read

Overview

In Rwanda, the legal frameworks relating to workplace sexual harassment are in development and include the Law Regulating Labour in Rwanda and the Law on the Prevention and Punishment of Gender-based Violence as well as general legislation which addresses the appropriate punishment for acts of sexual harassment. The Constitution of the Republic of Rwanda has the capacity to be used to protect rights in this area.

There is no substantive case law due to sexual harassment cases being heard in Rwanda 'in camera' to protect victims' privacy and dignity and ensure that victims feel safe and supported throughout the legal process. Rwanda also has a National Gender Policy to promote gender equality and specifically address the issue of sexual harassment in the workplace.



Status of Key International Conventions:

Maputo Protocol: ●

CEDAW: ●

ILO Convention No. 190: ●

Legislative Overview – Sexual Harassment

Legislation	Colour	Description	Sanctions
The Law Regulating Labour in Rwanda	●	Article 8 prohibits any form of sexual harassment against a supervisee/ subordinate in the workplace. ¹ The law applies to any employment relations where an employee-employer relationship can be established, even where there is no formal contract. ² The Law defines an employer as “an individual, a public or private entity that employs one or more employees on a permanent or temporary basis”. ³	Civil and Criminal
Law on Prevention and Punishment of Gender-based Violence	●	Article 24 emphasises this Law’s application to employers. ⁴ Where an employer or other person is guilty of sexual harassment against a person that they lead, Article 24 makes the employer liable to imprisonment for between two and five years and a fine of between one hundred thousand Rwandan francs (100,000 Rwf) and two hundred thousand Rwandan francs (200,000 Rwf). ⁵ This Law is a special law applied strictly to cases of sexual harassment in the workplace. ⁶ This Law includes laws relating to sexual harassment in Rwanda and also cases of sexual harassment in the workplace. ⁷	Criminal
Law Determining Offences and Penalties in General			

¹ See page 1 of the Memorandum.
² See page 2 of the Memorandum.
³ See page 3 of the Memorandum.
⁴ See page 3 of the Memorandum.
⁵ See pages 2 and 3 of the Memorandum.
⁶ See page 2 of the Memorandum.
⁷ See page 2 of the Memorandum.

	●	This Law determines the penalties for general offences by any individuals. ⁸ Article 149 states that where an employer or any other person exploits their position of responsibility to practice acts of sexual harassment on a subordinate through instructions, or threatens or intimidates with an intention to achieve sexual pleasure, they are liable to imprisonment for a term of more than one year and not more than two years and a fine of not less than two hundred thousand Rwandan francs (200,000 Rwf) and not more than three hundred thousand Rwandan francs (300,000 Rwf). ⁹	Criminal
Ministerial Order Establishing the List of Gross Misconduct	●	This Ministerial Order applies to employees in general and categorises the act of sexual harassment by employees as gross misconduct. ¹⁰ If sexual harassment occurs, the perpetrator's employment will be terminated without notice.	Civil and Criminal

A victim may also be entitled to damages under each of the above pieces of legislation, although this is to be determined by the court.¹¹ Whilst the victim may bring an action in either a criminal or civil court, the court may, on its own accord or at the request of one of the parties, separate the actions for want of prejudicial effect or delay.¹²

Sexual Harassment Policies

Source	Comments
Violence and Harassment Convention (No. 190)	The Rwandan Parliament has ratified the Violence and Harassment Convention (No. 190) (the Convention). ¹³ This Convention requires member states to adopt appropriate laws and regulations to prevent violence and harassment in the workplace. Therefore, Rwandan institutions are always encouraged to put in place policies with regards to occupational health, welfare and safety. Following this, the International Labour Organisation's Labour Inspector may recommend Rwandan institutions to put in place sexual harassment policies and prescribe the key contents of these policies. ¹⁴ If an institution fails to execute the Labour Inspector's recommendation within the given period, the Labour Inspector may impose an administrative fine of five hundred thousand Rwandan Francs (RWF 500,000). If the Labour Inspector intends to impose a fine higher than the mentioned amount, a request for approval must first be sought from the Minister in charge of labour. ¹⁵
National Equality and Diversity Policy for Higher Education	Whilst there is no specific publicly available sexual harassment policy that has been implemented by universities, the Higher Education Council in Rwanda has put in place the National Equality and Diversity Policy for Higher Education (the NEDP). The NEDP gives responsibility to the Vice-Rector Administration to ensure its implementation as well as the implementation of specific related policies. It is assumed that a sexual harassment policy is equally included, despite not being explicitly stated under the NEDP.
National Gender Policy	The National Gender Policy (the NGP) aims to promote gender equality and eliminate discrimination against women in all aspects of life. The NGP provides for the creation of gender focal points in government institutions and the establishment of gender desks in police stations to address cases of gender-based violence.
Universities	Universities, just like any other institution in general, are encouraged to put in place policies that create a conducive study and work environment. The memo, however, did not identify any publicly available sexual harassment policy that has been implemented by a university.
Bar Association	Whilst no explicit policy concerning sexual harassment exists at the Rwanda Bar Association, the President of the Rwanda Bar Association and the Council of the Bar Association can receive inquiries and offer guidance, support and information before a formal sexual harassment report is made to an enforcement body. ¹⁶

⁸ See page 2 of the Memorandum.

⁹ See page 2 of the Memorandum.

¹⁰ See pages 2 and 3 of the Memorandum.

¹¹ See page 13 of the Memorandum.

¹² See page 13 of the Memorandum.

¹³ See page 5 of the Memorandum.

¹⁴ See page 6 of the Memorandum.

¹⁵ See page 6 of the Memorandum.

¹⁶ See pages 7 and 8 of the Memorandum.

Practical Difficulties

Whilst substantial legislation exists to protect people in cases of sexual harassment, the Memorandum cites no cases and raises the issue of cultural context as a barrier to victims reporting their experience of sexual harassment publicly.¹⁷ This reluctance to engage as a community in reducing instances of sexual harassment is reflected in the lack of collective agreements regulating working relations with regard to sexual harassment, despite the Constitution of the Republic of Rwanda and the Law Regulating Labour in Rwanda providing for collective bargaining for trade unions and employers' associations.¹⁸ Further, complainants of sexual harassment may be accused of making false accusations.¹⁹ This leads to a long, costly and emotionally difficult process for victims.²⁰

However, it is important to note the significant steps Rwanda has taken to alleviate the social stigma towards sexual harassment. There are three primary bodies responsible for enforcing laws, regulations and provisions relating to matters of sexual harassment: the Rwanda National Police (**RNP**), Rwanda Investigation Bureau and the Gender Monitoring Office.²¹ In 2009, the RNP launched an initiative called the "Lange One Shop Centre", to provide free support to victims of gender-based violence and child abuse.²² The Gender Monitoring Office is mandated to monitor the respect of gender equality principles, promote gender accountability at all levels of the workplace, and fight against gender based violence and related injustices.²³ Additionally, Rwanda has established a specialised court and Legal Aid Clinics to handle matters of gender-based violence, including sexual harassment.²⁴

Enforcement

No examples of enforcement were noted in the Memorandum.

¹⁷ See page 11 of the Memorandum.

¹⁸ See pages 4 and 5 of the Memorandum.

¹⁹ See page 12 of the Memorandum.

²⁰ See page 12 of the Memorandum.

²¹ See page 4 of the Memorandum.

²² See page 4 of the Memorandum.

²³ See page 4 of the Memorandum.

²⁴ See page 4 and 14 of the Memorandum.

Senegal – Speed Read

Overview

In Senegal, the legal frameworks relating to sexual harassment are basic and include the Penal Code of Senegal and a general statement in the National Interprofessional Collective Bargaining Agreement.

There is limited substantive case law, with prosecutions under other sections of the Penal Code for related offences. Cases of sexual harassment are not commonly reported in local courts.



Status of Key International Conventions:

Maputo Protocol: ●

CEDAW: ●

ILO Convention No. 190: ●

Legislative Overview – Sexual Harassment

Legislation	Colour	Description	Sanctions
The Senegal Penal Code	●	<p>The Senegal Penal Code is general criminal legislation under which sexual harassment committed by a person in authority can be prosecuted. It does not specifically target harassment in the workplace and is not industry specific.</p> <p>Article 319 of the Penal Code recognises harassment with the aim of obtaining sexual favours by a person abusing the authority of their position as a criminal offence.¹</p> <p>Upon conviction, the penalty is imprisonment for between two to five years and a fine of XOF 1,000,000 to 3,000,000. The penalty is maximised when the victim of the offence is under 16 years old.²</p> <p>The Penal Code only criminalises abuse by a person in a position of authority and does not provide for prosecution of unwanted acts of a sexual nature that may be committed by equals or subordinates.³</p> <p>The code does not provide any protections of anonymity or against retaliation for victims of sexual harassment.⁴</p> <p>The memo does not include any case law resulting from this legislation.</p>	Criminal

Sexual Harassment Policies

Source	Comments
National Interprofessional Collective Bargaining Agreement	<p>There are no laws requiring companies or other organisations in Senegal to have sexual harassment policies in place. The closest thing to doing so is the National Interprofessional Collective Bargaining Agreement.</p> <p>Scope: All parties to the collective bargaining agreement.</p> <p>Protects: Employees and others in the workplace.</p>

¹ Section A.1 – Page 2 of the Memorandum.

² Section A.1 – Page 2 of the Memorandum.

³ Section A.3 – Page 2 of the Memorandum.

⁴ Section C.5-6 – Page 5 of the Memorandum.

	Comments: Provides a general statement voicing a commitment to prevent sexual harassment. The parties are “committed to promote and realize the right of all persons to a work world free of violence and harassment”, ⁵ but there are no specific requirements to have a harassment or complaints policy in place, or to provide any training or other protective measures. ⁶
Universities	Universities are not specifically required to have sexual harassment policies for students or staff employees. ⁷
Bar Association	The Bar Association does not have any policy on sexual harassment. ⁸

Practical Difficulties

The law as set out by the Penal Code of Senegal only criminalises sexual harassment by those in a position of power where they are abusing that power to pursue sexual favours.⁹ This may preclude conduct of an unwanted sexual nature from qualifying as criminal where the perpetrator is an equal or subordinate of the victim¹⁰ or where the sexual harassment does not occur in the exercise of their functions.¹¹

The Police and Gendarmerie are the investigative body for criminal offences in Senegal.¹² There are no regulatory authorities (other than the courts) that enforce matters related to sexual harassment.¹³

There are no provisions for anonymity of victims, and no specific protections to prevent possible retaliation against victims of sexual harassment when they make allegations.¹⁴

There is apparent political appetite for change in Senegal due to initiatives by the ILO to change the local law.¹⁵

Enforcement

The Memorandum cites one relevant case, an instance of alleged sexual abuse by a Senegalese politician. This was a criminal matter brought under the Penal Code of Senegal. This case does not directly involve the law of sexual harassment, as it was instead a case of ‘rape and death threats’.¹⁶

It is unclear what the likely outcome and penalties in this case could be because the case is still pending trial.¹⁷

There is no clear indication whether cases of sexual harassment are taken seriously at trial. Cases of a sexual nature are not commonly reported in the local courts in Senegal.¹⁸

⁵ Section B.1 – Page 3 of the Memorandum.
⁶ Section B.1-5 – Pages 3-4 of the Memorandum.
⁷ Section B.6 – Page 4 of the Memorandum.
⁸ Section B.7 – Page 4 of the Memorandum.
⁹ Section A.1 – Page 2 of the Memorandum.
¹⁰ Section A.3 – Page 2 of the Memorandum.
¹¹ Section C.4 – Page 5 of the Memorandum.
¹² Section A.5 – Page 3 of the Memorandum.
¹³ Section D.3 – Page 6 of the Memorandum.
¹⁴ Section C.5-6 – Page 5 of the Memorandum.
¹⁵ Section E – Page 7 of the Memorandum.
¹⁶ Section D.1 – Page 6 of the Memorandum.
¹⁷ Section D.1 – Page 6 of the Memorandum.
¹⁸ Section D.2 – Page 6 of the Memorandum.

Sierra Leone - *Speed Read*

Overview

In Sierra Leone, the legal frameworks relating to sexual harassment are rudimentary and include the Employment Act No.15 of 2023 and the Sexual Offences Act No 12. of 2012 (as amended).

There is no substantive case law and limited political appetite for change. The Memorandum notes victims are often disincentivised to bring claims due to retaliation from those in positions of authority.



Status of Key International Conventions:

Maputo Protocol: ●

CEDAW: ●

ILO Convention No. 190: ●

Legislative Overview – Sexual Harassment

Legislation	Colour	Description	Sanctions
Employment Act No.15 of 2023	●	The Act was enacted to eliminate discrimination at the workplace and to provide a safe working environment for employees. ¹ The Act applies to all individuals, employers and organisations and provides for freedom of association and the right of employees to belong to trade unions. Leave entitlements and rest breaks are also catered for in the Act. ² To bring a claim, the dispute resolution procedures at the workplace must first be utilised before complaints can be made to the Commissioner of Labour and Employment. After investigation and consultation with the Minister of Labour, the Commissioner of Labour and Employment can refer the complaint to the High Court. ³	Civil and Criminal
Sexual Offences Act No 12. Of 2012	●	The Act is the principal legislation on sexual offences in Sierra Leone and applies to all individuals, employers and organisations and prohibits harassment and various other sexual offences including rape, incest and indecent exposure. ⁴ The legislation provides various punishments for the different offences ranging from two years to life imprisonment. ⁵ The Attorney General is responsible for enforcing the provisions of this Act, as well as the amendment below. ⁶	Criminal
Sexual Offences Act (Amendment) No 8. Of 2019	●	The amendment to the Sexual Offences Act No 12. Of 2012 introduces the offence of aggravated sexual assault and enables the Rules of Court Committee to make rules, further regulate the practice and procedure under the Act and provides for other related matters. ⁷ The Act applies to persons of authority, such as employers, teachers, doctors, clergymen, lecturers and instructors. ⁸ The Act also recognises persons in positions of authority as potential perpetrators of sexual harassment. ⁹	Criminal

Sexual Harassment Policies

Source	Comments
Universities	Universities are not specifically required to have sexual harassment policies for students or staff employees. ¹⁰

¹ Section A1(iii), page 2 of the Memorandum.
² Section A1(iii), page 2 of the Memorandum.
³ Section A4, page 4 of the Memorandum.
⁴ Section A1(ii), page 2 of the Memorandum.
⁵ Section A1(ii) and (iii), page 2 of the Memorandum.
⁶ Section A5, page 5 of the Memorandum.
⁷ Section A1(iii), page 2 of the Memorandum.
⁸ Section A3(ii), page 2 of the Memorandum.
⁹ Section A3(ii), page 2 of the Memorandum.
¹⁰ Section B6, page 6 of the Memorandum.

Bar Association

The Sierra Leone Bar Association does not have a sexual harassment policy.¹¹

Practical Difficulties

The majority of sexual harassment victims are unaware of their rights to take legal action and face difficulties speaking out against persons in positions of power and authority.¹² For example, complainants face threats of legal action being instituted against them for defamation and often lack sufficient evidence to corroborate their complaints.¹³ Furthermore, there are no regulatory authorities empowered to adjudicate sexual harassment cases.¹⁴ However, despite this, it is counsel's view that there are no legislative gaps which create difficulties in reporting sexual harassment and/or enforcing any of the instruments, perhaps illustrating there is no political appetite for change.¹⁵

Enforcement

The Memorandum does not cite any cases.

¹¹ Section B7, page 6 of the Memorandum.

¹² Section D, page 9 of the Memorandum.

¹³ Section D, page 10 of the Memorandum.

¹⁴ Section D, page 9 of the Memorandum.

¹⁵ Section C4, page 9 of the Memorandum.

South Africa – *Speed Read*

Overview

In South Africa, the legal frameworks relating to sexual harassment and workplace sexual harassment are in development. Of significance is the Code of Good Practice on the Prevention and Elimination of Harassment in the Workplace 2022. The South African Constitution also offers protection in respect of sexual harassment in certain circumstances.

There is a reasonable amount of substantive case law. The cases seem to collectively suggest that sexual harassment is taken very seriously by the Courts, if it gets that far.



Status of Key International Conventions:

Maputo Protocol: ●

CEDAW: ●

ILO Convention No. 190: ●

Legislative Overview – Sexual Harassment

Legislation	Colour	Description	Sanctions
Employment Equity Act 1998 (EEA)	●	Specifically targets workplaces and extends beyond employees and employers to include owners; managers; supervisors; job seekers and job applicants; persons in training, including interns, apprentices, and persons on learnerships; volunteers; clients and customers; suppliers; contractors; and any other persons having dealings with a business. Aims to promote equal opportunity and fair treatment in employment through the elimination of unfair discrimination and harassment based on any of the grounds listed in the Constitution or any other arbitrary ground. In terms of the Employment Equity Act, the “ <i>harassment of an employee is a form of unfair discrimination and is prohibited on any one, or a combination of grounds of unfair discrimination...</i> ”. ¹	Civil
Labour Relations Act 1995 (LRA)	●	Specifically targets workplaces and applies to all employers and employees except for the National Defence Force, National Intelligence Agency, and South African Secret Service. The purpose of the LRA is to protect the rights of everyone in the workplace and to promote and advance economic development, fair labour practices, peace, democracy, and social development. It regulates the relationship between employers and employees and provides for the prevention and resolution of labour disputes, collective bargaining, strikes and lockouts, unfair dismissals, and unfair labour practices. ²	Civil
Code of Good Practice on the Prevention and Elimination of Harassment in the Workplace 2022 (EEA Code)	●	As above. The EEA Code sets out certain guidelines of what should be included in employers’ policies and procedures related to harassment and what steps employers should take to ensure they meet the requirements set out in the EEA Code. ³	Civil
Protection from Harassment Act 2011 (Harassment Act)	●	General piece of law which can be used to provide workplace protections. Provides for the issuing of protection orders against any person who engages in harassment, which is defined as any conduct that, <i>inter alia</i> , causes harm or inspires the reasonable belief that harm may be caused to the complainant or a related person by unreasonably following, watching, pursuing, contacting, communicating or sending messages or objects to the complainant or a related	Criminal

¹ See section A1(c) of the Memorandum.

² See section A1(b) of the Memorandum.

³ See section A1(d) of the Memorandum.

		person, or loitering outside or near the building or place where the complainant or a related person resides, works, carries on business, studies or happens to be, or interfering with the property of the complainant or a related person. ⁴	
Promotion of Equality and Prevention of Unfair Discrimination Act 2000 (PEPUDA)	●	<p>General piece of law which can be used to provide workplace protections, however, only applies in cases where the EEA does not apply, so is limited.</p> <p>Gives effect to the right to equality and prohibits any unfair discrimination, hate speech or harassment based on any of the grounds listed in the Constitution (particularly on the grounds of race, gender and disability) or any other ground that causes or perpetuates systemic disadvantage, undermines human dignity or adversely affects the equal enjoyment of a person's rights and freedoms. The PEPUDA also imposes a duty on the state and all persons to promote equality and prevent unfair discrimination and harassment and establishes equality courts to adjudicate on matters relating to the PEPUDA.</p> <p>The PEPUDA has limited application in the workplace, given that it will <u>not</u> apply to any person to whom and to the extent that the EEA applies.⁵</p>	Not Specified in Memo
Criminal Law (Sexual Offences and Related Matters) Amendment Act 2007 (CLAA) and Regulations	●	<p>General piece of law which can be used to provide workplace protections. It protects any person who has experienced any of the following: rape, sexual assault, sexual grooming, incest, child pornography and/or child prostitution.</p> <p>The CLAA aims to comprehensively reform and modernise the legal framework for dealing with sexual offences and related matters in the country. The Act repeals and replaces various outdated and inconsistent provisions of the common law and statutory law on sexual offences, and introduces new offences, definitions, procedures, and protections for victims and survivors of sexual violence.⁶</p>	Criminal
Regulations Relating to the Promotion of Equality and Prevention of Unfair Discrimination Act 2000 (PEPUDA Regulations)	●	<p>As above.</p> <p>The PEPUDA Regulations deal primarily with the functioning of the equality courts, which hear complaints brought under the PEPUDA. The PEPUDA Regulations also provide further clarity on the equality obligations of the state and juristic persons.⁷</p>	Not Specified in Memo

Sexual Harassment Policies

Source	Comments
Legal Practice Counsel of South Africa Policy⁸	<p>Scope: All legal practitioners and all candidate practitioners.</p> <p>Protects: All legal practitioners and all candidate legal practitioners.</p> <p>Comments: "Sexual harassment" is defined by the Legal Practice Act, 2014 as unwanted conduct of a sexual nature, or other unwelcome conduct based on the gender or sexual orientation of a person, which has the purpose or effect of violating a person's rights, or creating an uncomfortable, degrading, humiliating or hostile environment or has the effect of violating a person's dignity.⁹</p> <p>The LPC Policy mandates that law firms are to adopt a sexual harassment policy in their practices which should be aligned with the LPC's policy. The LPC Policy indicates that all legal practitioners have a role to play in creating and maintaining a working environment within their practices in which sexual harassment is not accepted. The LPC Policy outlines both a formal and informal dispute resolution procedure.¹⁰</p> <p>Recommendations/Gaps: The LPC Policy does not prescribe mandatory training on sexual harassment. There is no express provision for non-disclosure agreements to be used. There are also no special advisors or ombudspersons in place to assist with complaints.¹¹</p>

⁴ See section A1(g) of the Memorandum.

⁵ See section A1(e) of the Memorandum.

⁶ See section A2(b) of the Memorandum.

⁷ See section A1(f) of the Memorandum.

⁸ See section B7 of the Memorandum.

⁹ See section B7 of the Memorandum.

¹⁰ See section B8 of the Memorandum.

¹¹ See sections B9-B11 of the Memorandum.

EEA Code	<p>Scope: The EEA and EEA Code extend beyond employees and employers to include owners; managers; supervisors; job seekers and job applicants; persons in training, including interns, apprentices and persons on learnerships; volunteers; clients and customers; suppliers; contractors; and any other persons having dealings with a business.¹²</p> <p>Protects: Anyone.</p> <p>Comments: South African law does not expressly oblige institutions to have policies addressing any form of harassment; however, this obligation can be inferred from the EEA Code read with the EEA. According to the EEA Code, “Employers should, subject to any existing collective agreements and applicable statutory provisions in respect of harassment, adopt a harassment policy which should take cognisance of and be guided by the provisions of this Code.”¹³</p> <p>The EEA Code requires any harassment policy to include specific statements (see Memo B.3), and it is expressly required that harassment policies should substantially comply with the EEA Code. In this regard, the EEA Code states certain types of sexual conduct which can constitute sexual harassment (“Unwanted Conduct”). Importantly, the Unwanted Conduct must be sexual and can include physical, verbal, or non-verbal conduct, whether expressed directly or indirectly. This indicates that the EEA Code prohibits both in-person and digital harassment.¹⁴</p>
Universities	<p>Scope: As above.</p> <p>Protects: As above.</p> <p>Comments: The primary legislation regulating universities in South Africa, Higher Education Act, 1997, is silent on this point. However, as employers, universities ought to follow the EEA Code’s provisions. Thus, the general requirement imposed on employers to have a sexual harassment policy equally applies to universities. Some of the major South African universities with sexual harassment policies include the University of the Free State, University of Cape Town, Wits University, University of Kwa-Zulu-Natal, among others.¹⁵</p>

Practical Difficulties

First, the current legislation does not adequately penalise employers for their failure to prevent harassment by any of its employees. At worst, employers may suffer vicarious liability should they not take adequate measures to eliminate harassment after receiving a complaint. Further, the alarming prevalence of sexual offences in South Africa suggests that there should be specialised courts dealing with sexual offences in general. A Columinate survey showed that almost a third of women (about 30%) and a fifth (about 18%) of men faced unwanted sexual advances at work. Moreover, Interpol recently labelled South Africa as the “Rape Capital of the World”. Lastly, the main limitation of the Code is its status as a form of ‘soft law’, which implies that it lacks legal force and is not necessarily binding. This is made worse by the frequent use of the word ‘should’ rather than ‘must’ in the EEA Code, signifying that it is only a recommendation. As a result, employers may have a discretion in applying the provisions of the Code, as there seems to be little pressure or penalty for non-compliance.¹⁶

The most common forms of retaliation towards victims in the workplace are dismissal of the victim from employment for reporting sexual harassment or intimidation of the victim from the alleged perpetrator. Victims of such retaliation do have recourse to the law as indicated by legal precedent from the *Potgieter v National Commissioner of the South African Police Services and Another*, and other cases outlined in Section D.4 of the Memo. However, if a victim of an alleged sexual assault elects to share their assault and the identity of their alleged assaulter in a publication, including a social media platform, they may face retaliation by the alleged assaulter in the form of a civil defamation of character suit. In order to succeed in such a suit, the alleged assaulter needs only establish the publication of a defamatory matter concerning them. Once this is established, it is presumed that the publication by the victim was both wrongful and intentional in the law of delict (tort law).¹⁷

¹² See section A3(b) of the Memorandum.

¹³ See section B1 of the Memorandum.

¹⁴ See section B3 of the Memorandum.

¹⁵ See section B6 of the Memorandum.

¹⁶ See section C4 of the Memorandum.

¹⁷ See section D4 of the Memorandum.

Enforcement

The Memorandum states that there are a multitude of civil and criminal cases. From the cases discussed in the Memorandum, it seems that the Courts take sexual harassment cases seriously when they are heard, and there is established precedent against unfair dismissals as retaliation by employers. However, victims that use social media to identify alleged assaulters may face civil defamation suits.

Cases noted to be seminal:

PE v Dr Beyers Naude Local Municipality and Another (828/2011) [2021] ZAECGHC 35: the court held that the Municipality's attempt to "wash its hands" of a sexual assault matter concerning one of its employees "fell woefully short of what was required of an employer in the circumstances". The court then ordered both the offender and the employer (the Municipality) to pay the Victim more than R3.9 million (approximately USD 2.1 million) in damages.¹⁸

Christian v Colliers Properties (C323/2004) [2005] ZALC 56: the employer dismissed an employee for not reciprocating sexual advances. The court found such a dismissal to be automatically unfair, thus the employee was granted an order for compensation. The employee was awarded maximum compensation despite having served only two days of her employment. The court stated that "*newly appointed and long-established employees are equally vulnerable in situations of sexual harassment, and therefore equally deserving of protection*".¹⁹

Mdlekeza v Gallie (15490/2020) [2021] ZAWCHC 167; 2021 (4) SA 531 (WCC) (20 April 2021): the victim, who was allegedly assaulted by their lecturer and exposed such alleged assault on twitter, was taken to court by the alleged sexual assaulter. The court ruled in favour of the alleged sexual assaulter.²⁰

¹⁸ See Section B1 of the Memorandum.

¹⁹ See section C1 and C5 of the Memorandum.

²⁰ See section D4 of the Memorandum.

Tanzania – Speed Read

Overview

In Tanzania, the legal framework relating to prevention of workplace sexual harassment is developing and principally includes the Employment and Labour Relations Act, [Cap 366 R.E. 2019] (**ELRA**) and the associated Employment and Labour Relations (Code of Good Practice) Rules, GN. No. 42 of 2007 (**Code of Good Practice**), as well as a few industry-specific laws.

There are several court decisions on sexual harassment; however, most are unreported because they are adjudicated in the subordinate courts.



Status of Key International Conventions:

Maputo Protocol: ●

CEDAW: ●

ILO Convention No. 190: ●

Legislative Overview – Sexual Harassment

Legislation	Colour	Description	Sanctions
ELRA	●	The ELRA establishes basic employment standards and stipulates that every employer must ensure they strive to “eliminate discrimination in any employment policy and practice”. ¹ The ELRA defines an employer as any person, including the government and an executive agency, who employs an employee. ² The ELRA is primarily subject to civil enforcement; however, in limited instances it may make an act a criminal offence. ³ There is no regulatory body that enforces the ELRA. ⁴ There is no penalty for failing to have a sexual harassment plan; however, it is an offence to discriminate against or harass an employee. ⁵	Criminal and Civil
Code of Good Practice	●	The Code of Good Practice is a set of guidelines under the ELRA with the aim of providing policy and best practice in employment. ⁶ It recognises employers as potential perpetrators. The Code impliedly acknowledges that persons within or connected to the workplace can be perpetrators. ⁷ The Code is subject to the same enforcement regime as the ELRA. ⁸	Civil
The Public Service Regulations, GN No. 168 of 2003 (the Public Service Regulations)	●	Public Service Regulations regulate appointments, promotions, appraisals of and disciplinary measures taken against public servants in specific service areas. Public servants are prohibited from discriminating against or harassing a member of the public or a fellow employee on the ground of <i>inter alia</i> sex. ⁹ Under these regulations, deemed sexual harassment would include sexual assault, rape and pressure for sexual activity or sexual favour with a fellow employee. ¹⁰ It is primarily subject to civil actions; however, in some instances criminal actions may be taken. ¹¹ Public Services Regulations codify sexual harassment in their Code of Ethics and Conduct. ¹²	Criminal and Civil
Cybercrimes Act 2015 (the CA)	●	The CA prohibits persons from initiating or sending any electronic communications using a computer system with the intent to coerce,	Criminal

¹ Section A(1), page 1 of the Memorandum.
² Section B2, page 5 of the Memorandum.
³ Section 4, page 4 of the Memorandum.
⁴ Section 5, page 4 of the Memorandum.
⁵ Section B(4), page 5 of the Memorandum.
⁶ Section A(1), page 2 of the Memorandum.
⁷ Section 3, page 3 of the Memorandum.
⁸ Section 4, page 4 of the Memorandum.
⁹ Section A1(2), page 2 of the Memorandum.
¹⁰ Section A(2), page 3 of the Memorandum.
¹¹ Section A(4), page 4 of the Memorandum.
¹² Section E(1), page 11 of the Memorandum.

		intimidate, harass or cause emotional distress. ¹³ Intention to harass is an important element under the CA. ¹⁴ A person found guilty of harassment is liable, on conviction, to a fine of no less than KES5,000,000 or to imprisonment for a term of not less than three years, or both. ¹⁵	
The Penal Code [CAP 16 R.E. 2022]	●	The PC is the penal law which sets out criminal offences and sanctions covering <i>inter alia</i> sexual harassment. ¹⁶ The PC is not a gender-neutral instrument, particularly when referring to sexual offences. ¹⁷ The definition of sexual harassment in the PC is ambiguous and at odds with the ILO definition of sexual harassment. ¹⁸ Sexual harassment is a criminal offence under the PC. ¹⁹ The PC is a general piece of law.	Criminal
The Prevention and Combating of Corruption Act [Cap 329 R.E. 2022]	●	The Act provides comprehensive provisions for the prevention, investigation and combating of corruption. The PCCA does not use the term sexual harassment explicitly; it does make it an offence for a person in a position of power or authority who, in the exercise of his authority, demands or imposes a sexual favour on any person as a condition for giving employment, a promotion, a right, a privilege or any preferential treatment. ²⁰ The PCCA being limited to crimes of corruption is not sufficient in providing a protectionary mechanism for victims of sexual harassment. ²¹ The PCCA is a general piece of law.	Criminal

Sexual Harassment Policies

Source	Comments
ELRA	<p>Scope: The ELRA applies to an employer as a potential perpetrator of sexual harassment, where an employer is defined as any person, including the government and an executive agency, who employs an employee. The ELRA is gender-neutral to the extent of a potential perpetrator harassment. An employer, whether a natural or legal person or a private or public institution, is required to have a plan in place which aims to eliminate sexual harassment.²²</p> <p>Protects: An employee.²³</p> <p>Comments: It establishes basic employment standards, and provides core labour rights and a framework for collective bargaining and for the prevention and settlement of labour disputes. Online and digital harassment could be covered by implication under the ELRA. The ELRA is primarily subject to a civil enforcement regime; however, in limited instances the ELRA makes an act a criminal offence.²⁴ There is no regulatory body that enforces the ELRA.²⁵ There is no penalty for failing to have a sexual harassment plan; however, it is an offence to discriminate against or harass an employee.²⁶ There is no law or regulation in the jurisdiction that requires institutions to conduct sexual harassment trainings.²⁷</p>
Universities	<p>Scope: Universities, as employers, would be subject to the ELRA, and thus would be required to have an anti-discrimination plan in place.²⁸ An employer is required to register a plan to eliminate harassment, whether sexual or otherwise, in the workplace with the Labour Commissioner.²⁹</p> <p>Protects: Staff, students and others.³⁰</p> <p>Comments: The Memorandum provides links to the policies of universities like Mzumbe University, University of Dar es Salaam, etc.³¹</p>
Law Societies and Associations for	It does not appear that Tanganyika Law Society has a sexual harassment policy. ³² There are two associations for judges and magistrates in Tanzania, namely the Judges' and Magistrates' Association of Tanzania and Tanzania

¹³ Section A(1), page 2 of the Memorandum.
¹⁴ Section C(1), page 8 of the Memorandum.
¹⁵ Section E(1), page 11 of the Memorandum.
¹⁶ Section A(1), page 2 of the Memorandum.
¹⁷ Section A(3), page 3 of the Memorandum.
¹⁸ Section C(4), page 9 of the Memorandum.
¹⁹ Section E(1), page 11 of the Memorandum.
²⁰ Section A(2), page 2 of the Memorandum.
²¹ Section C(4), page 9 of the Memorandum.
²² Section B(2), page 5 of the Memorandum.
²³ Section A(1), page 2 of the Memorandum.
²⁴ Section A(4), page 4 of the Memorandum.
²⁵ Section A(5), page 4 of the Memorandum.
²⁶ Section B(4), page 5 of the Memorandum.
²⁷ Section B(5), page 5 of the Memorandum.
²⁸ Section B(6), page 6 of the Memorandum.
²⁹ Section B(1), page 5 of the Memorandum.
³⁰ Section B(1), page 5 of the Memorandum.
³¹ Section B(6), page 6 of the Memorandum.
³² Section B(7), page 6 of the Memorandum.

judges and magistrates

Women Judges Association (TAWJA), and the local counsel was unable to locate sexual harassment policies for these associations.³³

Practical Difficulties

- Institutions in Tanzania are not mandated to have policies relating to the prevention of sexual harassment, nor to conduct training on prevention and redressal of sexual harassment. Thus, it may be unlikely for institutions to take proactive measures to prevent sexual harassment.
- Tanzanian legislation does not delineate the channels through which an alleged victim of sexual assault may report an assault, nor the recipient of such a complaint. Where channels are not explicit, this may exacerbate the willingness of an alleged victim to report harassment. Such reluctance is worsened by there being no comprehensive protection for victims of sexual harassment, nor specific government authorities to investigate instances of sexual harassment in the workplace.
- There is no clear and consistent definition of sexual harassment in the laws and regulations referred to in sections A1 and A2 of the Memorandum. The Code of Good Practice provides no comprehensive definition of sexual harassment.
- The definition of sexual harassment in the Penal Code is undesirable in that there must have been an intention to sexually harass. This is at odds with the ILO definition of sexual harassment which recognises that an unwelcome advance gives rise to sexual harassment and not necessarily the intent.
- Online and digital sexual harassment are not expressly dealt with under Tanzanian law.

Enforcement

The Memorandum cites two cases.³⁴

In *Ramadhani s/o Hamisi Mwenda Vs. Republic Criminal Appeal 116 of 2008 (2013) TZCA*, an appeal case alleging the criminal offence of rape was brought before the High Court, where the offender's sentence was reduced, which was subsequently appealed. The final appeal was granted along with an award of an alternative charge of sexual assault (harassment). There is no clear analysis showing how the Court reached this decision and the local counsel notes that the Court of Appeal missed an opportunity to clarify the definition of sexual assault under the PC.

In *Prisca Laban Mgendi vs Samson Musa Mhela (Civil Appeal 25 of 2022)*, the other civil appeal of malicious prosecution filed by a husband against his wife after he was prosecuted on a charge of sexual harassment against her was found in his favour, but the Court of Appeal found upon an appeal that elements of malicious prosecution had not been met.

³³ Section B(11), page 7 of the Memorandum.

³⁴ Section D(1), page 9 of the Memorandum.

Uganda – Speed Read

Overview

In Uganda, the legal frameworks relating to sexual harassment are reasonably comprehensive and include the Employment Act and the associated Employment (Sexual Harassment) Regulations, as well as a number of industry-specific pieces of legislation. The proposed Employment (Amendment) Act 2023, which is not yet law, also has promising provisions that could ensure more employers put in place sexual harassment policies. The Constitution of Uganda has also been used to protect rights in this area.

There is only some substantive case law, with it not being specified what legislation the cases were brought under.



Status of Key International Conventions:

Maputo Protocol: ●

CEDAW: ●

ILO Convention No. 190: ●

Legislative Overview – Sexual Harassment

Legislation	Colour	Description	Sanctions
The Employment Act 2006	●	This Act governs all matters regarding employment and workplace relationships. The Act prohibits discrimination in employment and provides that every employee has the right to work in an environment that is free from harassment and intimidation. It provides for remedies if an employee is sexually harassed. ¹	Civil
The Labour Union Act 2006	●	The Act regulates the establishment, registration, and management of labour unions in Uganda. It provides for the protection of workers' rights in a workplace, including the right to work in an environment that is free from harassment. ²	Civil
The Computer Misuse Act 2011	●	The Act makes provision for the safety and security of electronic transactions and information systems to prevent unlawful access, abuse, or misuse of information systems. It includes provisions to protect persons, including workers, from any form of cyber harassment. ³	Civil
The Uganda Human Rights Commission Act 1997	●	This Act establishes the Uganda Human Rights Commission, which is responsible for promoting and protecting human rights. ⁴	Civil
The Employment (Sexual Harassment) Regulations 2012	●	The Regulations prohibit sexual harassment in a workplace. Sexual harassment is defined in the same terms as under the Employment Act, 2006 above. The Regulations provide for reporting mechanisms, investigation, and reliefs available to an employee who has been sexually harassed. An employer with more than 25 employees is required to take proactive measures to prevent sexual harassment in the workplace. ⁵	Civil
The Code of Conduct and Ethics for	●	This applies to public servants in Uganda. The Code sets out standards of behaviour for Public Officers in the Uganda Public Service designed to ensure the impartiality, objectivity, transparency, integrity, efficiency, and effectiveness	Civil and Criminal

¹ Sections A1.2, page 2 and A4, page 4 of the Memorandum.

² Sections A1.3, page 2 and A4, page 4 of the Memorandum.

³ Sections A1.4, page 2 and A4, page 4 of the Memorandum.

⁴ Sections A1.5, page 2 and A4, page 4 of the Memorandum.

⁵ Section A2.2, page 3 of the Memorandum.

Uganda Public Service	<p>of Public Officers when performing their duties. It is intended to guide Public Officers in their behaviour and how they relate to each other and the public.</p> <p>The Code stipulates that Public Officers must avoid unethical and unbecoming behaviour such as use of rude and abusive language, indecent dressing, and sexual suggestive gestures constituting sexual harassment.⁶</p>
--------------------------	--

Sexual Harassment Policies

Source	Comments
The Employment (Sexual Harassment) Regulations 2012	<p>The Employment (Sexual Harassment) Regulations 2012 requires every employer who employs more than 25 employees to have a sexual harassment policy.⁷ The Employment (Amendment) Act 2023 proposes removal of the threshold of 25 employees to ensure small-scale workplaces are also covered.⁸</p> <p>The policy covers all forms of sexual harassment including digital and in person. The policy must state that sexual harassment is unlawful, must describe the examples of sexual harassment and must state the consequences of employees who are found to have committed sexual harassment.⁹</p> <p>Regulation 19 of the Employment (Sexual Harassment) Regulations provides that an employer who does not put in place a sexual harassment policy commits an offence and is liable on conviction to a fine not exceeding UGX 120,000 or imprisonment not exceeding three months or both.¹⁰</p>
Public Service Code of Conduct and Ethics	<p>Scope: Public Institutions. Protects: The entire Public Service. Comments: Public officials are expected to follow the Public Service of Conduct and Ethics based on ethical standards or guiding principles¹¹ and avoid sexual suggestive gestures which constitute sexual harassment.¹² The Code does not consider seniority of the abuser but rather conduct among colleagues that is normally considered as sexual harassment.¹³</p>
Universities	<p>There is no specific law requiring universities to have sexual harassment policies for students. However, universities must have sexual harassment policies if they employ more than 25 employees.¹⁴</p>
Bar Associations	<p>The Uganda Law Society (ULS) is drafting a sexual harassment policy that will apply to all ULS members, the Executive Council, all staff, all individuals that conduct business or participate in activities at the ULS, all Stakeholders, and all contractors.¹⁵</p> <p>The draft policy provides avenues for complaints of sexual harassment to be dealt with depending on whether the complaint is between ULS members or between ULS staff. The draft policy provides that complaints of sexual harassment “<i>shall be treated with confidentiality to a practical extent</i>”.¹⁶</p>

Practical Difficulties

The Employment Act and the Employment (Sexual Harassment) Regulations 2012 are confined to employees, meaning that sexual harassment only applies when there is an employer-employee relationship. Many victims of sexual harassment are therefore excluded from being protected by these Acts given they are not in employment relationships, for example, casual labourers or volunteers, among others.¹⁷

A person who contravenes the Employment (Sexual Harassment) Regulations 2012 commits an offence and is liable on conviction to a fine not exceeding USD 32 or imprisonment not exceeding three months. These figures do not act as a significant enough deterrent and

⁶ Sections A2.3, page 3 and A4, page 5 of the Memorandum.

⁷ Section B1, page 6 of the Memorandum.

⁸ Section B1, page 6 of the Memorandum.

⁹ Section B3, page 6 of the Memorandum.

¹⁰ Section B4, page 6 of the Memorandum.

¹¹ Section B2, page 6 of the Memorandum.

¹² Section A2.3, page 3 of the Memorandum.

¹³ Section C1.2, page 8 of the Memorandum.

¹⁴ Section B6, page 6 of the Memorandum.

¹⁵ Section B7, page 7 of the Memorandum.

¹⁶ Section B8, page 7 and B10, page 8 of the Memorandum.

¹⁷ Section C4.2, page 9 of the Memorandum.

need to be increased to provide greater protection against the relevant harassment.¹⁸ The relevant laws do not enable court proceedings involving sexual harassment complaints to be held *in camera*. Decisions of court involving sexual harassment become public documents and are easily accessible to everyone. Complainants who are sensitive to privacy issues may be deterred from making complaints.¹⁹ Additionally, there are no government agencies or departments that actually possess investigative authority over sexual harassment.²⁰

Enforcement

The Memorandum cites two cases, both civil claims for damages.²¹ One of the cases was brought under the Employment Act 2006, while the other was brought under an earlier legislation which was repealed and replaced by the Employment Act 2006. Both cases demonstrate circumstances where there was a wrongful dismissal of an employee for speaking out against sexual harassment.

Both cases demonstrate how the employees were able to successfully claim damages as compensation for the harassment they faced and wrongful dismissals. Nevertheless, the damages awarded seem somewhat disproportionate with regards to the circumstances that occurred. In one case the employee received damages and payment in lieu of notice, while the complainant in the second case received general damages only amounting to USD 2,682.

¹⁸ Section C4.5, page 9 of the Memorandum.

¹⁹ Section C4.1, page 9 of the Memorandum.

²⁰ Section C3, page 9 of the Memorandum.

²¹ Section D1, pages 10-11 of the Memorandum.

Zimbabwe – Speed Read

Overview

In Zimbabwe, the legal frameworks relating to workplace harassment are rudimentary, with no specific legislation addressing sexual harassment and no specific protection against retaliation. The Labour Act provides some protections along with a number of industry-specific bargaining agreements. The Constitution of Zimbabwe enshrines labour rights of fairness and safety.

There is minimal substantive case law, with one known successful case brought under the Labour Act. It suggests that victims of sexual harassment struggle to afford legal counsel and face complex, time-consuming procedures.



Status of Key International Conventions:

Maputo Protocol: ●

CEDAW: ●

ILO Convention No. 190: ●

Legislative Overview – Sexual Harassment

Legislation	Colour	Description	Sanctions
Labour Act [Chapter 28:01]	●	The Act does not specifically address sexual harassment in the workplace but establishes that the making of demands of a sexual nature towards an employee in return for favours constitutes unfair labour practices. ¹ 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) constitutes unfair labour practice. ² The sanction is cessation of such practice or compensation. ³ A party can refer the matter to a labour officer for conciliation or agree to arbitration, but this is not mandatory. ⁴ The Act applies to “employers”, “employees” or “any other person”. ⁵ An employer is any person who employs or provides work for another person and remunerates or expressly or tacitly undertakes to remunerate them. ⁶ The Act applies in the context of “any other matter related to employment” but does not mandate that organisation to establish sexual harassment policies. ⁷	Civil
Criminal law (Codification & Reform) Act	●	The Act provides for criminal enforcement of sexual harassment if it falls under sexual offences in Part 5 and applies to any individual regardless of position as employer/employee and to any harassment whether in or out of the workplace. ⁸ Upon conviction the penalty is imprisonment or the imposition of a fine. ⁹	Criminal
The Civil Service Regulations 2000	●	The Regulations establish sexual harassment as an act of misconduct and apply to public officers regulating interaction with members of the public and other members of the public service. ¹⁰	Unknown

¹ See sections A1 and A2 of the Memorandum.

² See section A1 of the Memorandum.

³ See section E of the Memorandum.

⁴ See section D5 of the Memorandum.

⁵ See section A1 of the Memorandum.

⁶ See section A3(c) of the Memorandum.

⁷ See section A1 of the Memorandum.

⁸ See sections A1, A4 and C1 of the Memorandum.

⁹ See section E1 of the Memorandum.

¹⁰ See section A1 of the Memorandum.

Sexual Harassment Policies

Source	Comments
The Collective Bargaining Agreement for the textile manufacturing Industry	<p>Scope: Employees, both management and workers.¹¹</p> <p>Protects: Employers and Employees.¹²</p> <p>Comments: Recognises harassment at the workplace as a serious offence warranting dismissal in the first instance.¹³</p>
The Collective Bargaining Agreement for the Transport Operating Industry	<p>Scope: Any person at workplaces.¹⁴</p> <p>Protects: Employees.¹⁵</p> <p>Comments: An employee is guilty of sexual harassment if he/she engages in any repeated unwanted verbal or physical gesture or sexually explicit derogatory statement, or sexually discriminatory remark made by someone in the workplace which is offensive to the worker involved and causes the person to feel threatened, humiliated, patronised, or harassed, or interferes with the person's job performance and undermines job security, or creates a threatening or intimidating environment.¹⁶</p>
The National Employment Council for the Agricultural Industry in Zimbabwe: Collective Bargaining Agreement	<p>Scope: Employers and employees in the agricultural industry.¹⁷</p> <p>Protects: Employers, employees and customers.¹⁸</p> <p>Comments: Defines sexual harassment as unwelcome sexual behaviour towards the employer, another employee, or customer of the employer, whether verbal or otherwise. Harassment is punished by dismissal.</p>
The Collective Bargaining Agreement: Brickmaking and Clay Products Manufacturing Industry	<p>Scope: Employers and employees in the relevant industries.¹⁹</p> <p>Protects: Employees²⁰</p> <p>Comments: Establishes sexual harassment as a very serious act of misconduct warranting dismissal at first breach.²¹</p>
Labour Act Collective Bargaining Agreement Banking Undertaking 2000	<p>Scope: Employers and employees.²²</p> <p>Protects: Employees.</p> <p>Comments: Sexual harassment is defined as "receiving or demanding sexual favours or unacceptable conduct of a sexual nature or other conduct based on sex, affecting the dignity of either males or females at work, and includes unwelcome physical, verbal or non-verbal conduct or conduct that denigrates or ridicules or is intimidatory or physically abusive of an employee by reason of his/her sex." It is listed as an instance of misconduct and the penalty for this offence is Dismissal.²³</p>
Universities	<p>Scope: Students, academic and non-teaching staff (Lupane State University)/students, faculty members, employees, members of the University Community involved in the outreach programmes (Africa University).²⁴</p> <p>Protects: Students, academic and non-teaching staff (Lupane State University)/Students, faculty members, employees (Africa University).²⁵</p> <p>Comments: Universities are not mandated to have sexual harassment policies. However, some, such as the University of Zimbabwe, Africa University and Lupane State University have implemented such policies.²⁶</p>
Law Society of Zimbabwe Sexual Harassment Policy	<p>Scope: Employees of the Society, clients, customers, casual workers, contractors or visitors.²⁷ Law firms and lawyers regulated by the Law Society are not expressly within the scope.</p> <p>Protects: Anyone.</p> <p>Comments: The policy defines sexual harassment as "unwelcome conduct of a sexual nature which makes a person feel offended, humiliated and/or intimidated." It includes requests for sexual activity in exchange for employment, as well as situations which create a hostile, intimidating or humiliating environment. The policy has a complaints procedure for sexual harassment which can be by way of formal or informal complaints. A victim should, if possible, inform the alleged harasser that the conduct is unwanted and</p>

¹¹ *Collective Bargaining Agreement for the textile manufacturing Industry (S.I 99 of 2022)*, Application, s 2(1).

¹² *Collective Bargaining Agreement for the textile manufacturing Industry (S.I 99 of 2022)*, Preamble, s 1(1).

¹³ See section A6 of the Memorandum.

¹⁴ See section A6 of the Memorandum.

¹⁵ See section A6 of the Memorandum.

¹⁶ See section A6 of the Memorandum.

¹⁷ *The National Employment Code for the Agricultural Industry in Zimbabwe: Collective Bargaining Agreement (Conditions of service & code of Conduct) (S.I 41 of 2022)* 4, Title, Scope and application of agreement, s 1(2).

¹⁸ See section A6 of the Memorandum.

¹⁹ *The Collective Bargaining Agreement: Brickmaking and Clay Products Manufacturing Industry (S.I 156 of 2020)*, Application, s 1(a)(b).

²⁰ *The Collective Bargaining Agreement: Brickmaking and Clay Products Manufacturing Industry (S.I 156 of 2020)*, Interpretation of terms, s 3.

²¹ See section A6 of the Memorandum.

²² *Labour Act Collective Bargaining Agreement Banking Undertaking 2000 (S.I 273 of 2000)*, s 1.

²³ See section A6 of the Memorandum.

²⁴ *Lupane State University Sexual Harassment Prevention Policy HR 02/17/LU*, s 9; *Africa University Sexual Harassment Policy 2006*, s 4.0.

²⁵ *Lupane State University Sexual Harassment Prevention Policy HR 02/17/LU*, s 9; *Africa University Sexual Harassment Policy 2006*, s 5.0.

²⁶ See section B6 of the Memorandum.

²⁷ See section B7 of the Memorandum.

	<p>unwelcome and, where this is impossible, approach designated staff members responsible for receiving complaints of sexual harassment.²⁸ Throughout the complaints procedure, a victim is entitled to be referred for help by a counsellor, where the need arises. The victim may also use relevant criminal or civil law frameworks.²⁹</p> <p>Recommendations/Gaps: The policy does not mandate law firms to have their own policies but requires that employees of practices be appraised of the Society’s policy.³⁰ The policy does not have provisions for non-disclosure agreements in respect of sexual harassment claims. However, designated staff members who are responsible for receiving complaints of sexual harassment are mandated to keep a confidential record of all discussions.³¹</p>
<p>Public Service Sexual Harassment Policy 2022³²</p>	<p>Scope: Employers, employees, applicants for employment, interns, secondees, members of staff associations in the public service, clients, members of public, students and lecturers at higher learning institutions.</p> <p>Protects: Employees and clients.³³</p> <p>Comments: Harassment is defined as any unwelcome and unwanted sexual advances, requests for sexual favours, and other verbal, written or physical contact of a sexual nature that creates a hostile or offensive environment, with a detailed list of examples. It specifies that a single incident is sexual harassment and qualifies retaliation as a distinct offence. The policy outlines the roles and responsibilities of the Public Service Commission, Ministers, managers of various levels and employees in promoting a harassment-free workplace, as well as the procedures for reporting, investigating, and resolving complaints.³⁴</p>

Practical Difficulties

There exists no legal instrument that specifically addresses sexual harassment and provides a uniform procedure to be followed.³⁵ The Criminal Code appears to impose a relatively high threshold for conduct to qualify as sexual harassment (i.e. rape, aggravated indecent assault, indecent assault) which may preclude conduct that is of an unwanted sexual nature from qualifying.³⁶

The police are the investigative body for criminal and civil offences. The Zimbabwe Gender Commission (ZGC) is also responsible for investigation of such matters. Outside of government regulatory authorities, the Zimbabwe Women Lawyers Association and Zimbabwe Lawyers for Human Rights often provide pro bono assistance.³⁷ In most organisations, the Labour Act provides for representation of employees via Workers’ committees. In the absence of such committees the Human Resources department handles the reception of complaints. However, the Memorandum suggests that the Human Resources departments of various companies are said to be reputed to protect the interests of the company, as opposed to employees, in cases involving allegations of sexual harassment.³⁸

While the Victim Friendly Court exists, where victims can testify without having to face their perpetrator, it is not the default option. Further, there exists no specific legal protections against retaliation for victims.³⁹ Victims may also face defamation proceedings or constructive dismissal, although the Labour Act prevents unfair dismissal.⁴⁰

Enforcement

The Memorandum cites one case, *Mbatha v. Zizhou & Another HH 675/214*, in which damages were provided for sexual harassment in the civil court. In this instance, the employee was fired from her position after raising sexual harassment charges against the CEO. The victim had to defend herself, as she was unable to afford legal representation. After an initial ruling in her favour, the company successfully overturned the ruling. After appeal to the Supreme Court, she was awarded damages of USD 180,000 for the loss of her job and sexual harassment.⁴¹

²⁸ See section B8 of the Memorandum.

²⁹ See section B8 of the Memorandum.

³⁰ See section B9 of the Memorandum.

³¹ See section B10 of the Memorandum.

³² See section F9 of the Memorandum.

³³ *Public Service Sexual Harassment Policy*, ss 1.7 and 3.

³⁴ *Public Service Sexual Harassment Policy*, ss 6, 8, 10 and 12.

³⁵ See section C4 of the Memorandum.

³⁶ See section A1 of the Memorandum.

³⁷ See section C3 of the Memorandum.

³⁸ See sections A5 and C2 of the Memorandum.

³⁹ See sections C5 - C7 of the Memorandum.

⁴⁰ See section D4 of the Memorandum.

⁴¹ See section D1 of the Memorandum.

In *Tendai Mutema v Chairperson of the Zimbabwe Media Commission N.O & others*, an employee had been dismissed after complaints of sexual harassment, but the courts dismissed the case and did not consider sexual harassment claims.⁴²

⁴²

See section D4 of the Memorandum.

General Recommendations

The general recommendations have been informed by the country specific responses of national law firms on the status of sexual harassment laws; the expert analysis of members of the Vance Center, AESHI, and PALU; and data-based research drawn from policy documents developed by UN Women, the World Bank (Women, Business and the Law) and the International Monetary Fund.

A fragmented approach of what constitutes sexual harassment, whom it impacts and in what circumstances creates uncertainty and limits access to justice for victims of sexual harassment as well as the potential of achieving workplace equality. We encourage law firms, bar associations, and regional institutions to use the recommended provisions identified in this research to develop and implement their own sexual harassment policies. Please note that these recommendations are not intended to be exhaustive but merely reflective of some of the more prevalent legislative gaps across the various countries forming part of the research.

1. *Comprehensive definition of sexual harassment*

- 1.1. Sexual harassment should be broadly defined to include key elements reflecting
 - 1.1.1. Unwelcome conduct of a sexual nature.
 - 1.1.2. From a person with or without authority over the victim.
 - 1.1.3. Pervasive or single incident suffices.
 - 1.1.4. The question of consent and perception of consent should be tested objectively.
 - 1.1.5. The scope of employee protection against sexual harassment should align with ILO C190, Article 2 (1) and (2).

2. *Reporting mechanisms*

- 2.1. The right to report sexual harassment must be clearly articulated with details on how, where, and to whom to report it.
- 2.2. Both internal and external reporting mechanisms should be made available to a complainant, particularly where internal reporting is not trusted.

3. *Mandatory response to a complaint*

- 3.1. A submitted complaint must be followed by action on the part of an employer
- 3.2. Inaction should be deemed as an aggravating factor in favor of the complainant in the course of seeking remedies and/or being awarded damages.

4. *Vicarious liability of the employer*

- 4.1 An employer should be vicariously liable for the acts of its employees when the employee is acting ‘within the scope of their employment.’
 - 4.1.1 ‘Within the scope of employment’ should apply in the case of sexual harassment claims due to employer and employee relationship.
 - 4.1.2 Vicarious liability of the employer should apply beyond the traditional concept of employment context to include the informal sector and workers traditionally excluded from the employment context.

5. *Investigations*

- 5.1. Investigating claims of sexual harassment should be part of workplace internal policies with clear guarantees of impartiality and reasonable timeframes of its completion.
- 5.2. Internal investigations ought to be conducted by persons trained in gender and sexual harassment.

6. *Non-Disclosure Agreements (NDAs)*

- 6.1. Laws should clearly prohibit the use of NDAs to silence victims and witnesses

7. *Retaliation*

- 7.1. Retaliation must be clearly defined and prohibited with clearly articulated consequences

8. *Defamation*

- 8.1. It must be clear that a defamation lawsuit can also amount to a form of retaliation.

9. *Equal protection for all workers*

- 9.1. There should be no exceptions as to who can seek protection under sexual harassment laws. This includes,
 - 9.1.1. Definitions of employees and employers and the workplace.
 - 9.1.2. Limitations on the number of employees employed in the workplace.

10. *Litigation costs*

- 10.1. An employee who brings forward a sexual harassment or discrimination case must be protected from paying their employers' costs if they are unsuccessful in court - except in exceptional and clearly defined circumstances.

11. *Mandatory trainings*

- 11.1. Sexual harassment trainings should be mandatory at regular intervals and for incoming staff.

12. *Domestic workers and the informal sector*

- 12.1. There should be specific recognition of vulnerable groups of workers often excluded under employment laws, specifically domestic workers and members of the informal sector.

13. *Proposition for a Regional Model Law on Sexual Harassment for Africa*

Across the region and even within relevant regional institutions, sexual harassment remains a widespread and pervasive problem. Furthermore, the patriarchal culture that prevails in the region nurtures this type of behavior and fosters a culture of impunity. A regional law on sexual harassment in Africa would, therefore, provide multiple advantages for the following reasons.

- 13.1. It would enable consistency across member states in terms of uniformity.
- 13.2. Countries can share best practices and resources, leading to more effective implementation and enforcement.
- 13.3. Regional cooperation would be strengthened.
- 13.4. Comprehensive coverage through broader definitions is more likely and easier to achieve.

Report Authors

The **Cyrus R. Vance Center for International Justice**, a non-profit program of the New York City Bar Association, promotes global justice by engaging legal professionals around the world to support the work of civil society and an ethically active legal profession. It brings together leading law firms and other partners around the world to promote international justice initiatives and provide pro bono legal representation to civil society organizations that fight for social justice.

The **Africa End Sexual Harassment Initiative (AESHI)** is a law reform and social movement project focused on creating regional and national dialogue around the issue of sexual harassment across the continent of Africa and finding regional and national solutions to the problem. AESHI not only seeks to amplify the voices of survivors but also advocates for the development of a regional model law on sexual harassment for Africa. The network's activities consist of research, lobbying and advocacy with the support of activists, civil society organizations and academia.

The **Pan African Lawyers Union (PALU)** is the premier continental membership forum of and for African lawyers and lawyers' associations in Africa. Along with its members, PALU works to advance the law and the legal profession, the rule of law, good governance, human and peoples' rights, and the socio-economic development of the African continent. It was founded in 2002 by African Bar leaders and eminent lawyers to reflect the aspirations and concerns of the African people and to promote and defend their shared interests.