

**A CRITICAL ANALYSIS OF WHY FEMALE EMPLOYEES THAT ARE SUBJECTED TO
SEXUAL HARASSMENT DO NOT COME OUT TO REPORT SUCH CASES**

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**UGANDA CHRISTIAN
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DECLARATION

I, Nazziwa Resty, declare that this dissertation is my original work. It has not been submitted to any other university or higher institution for any award and where it is indebted to the work of others, due acknowledgement has been made.

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ABSTRACT.

The workplace is meant to be conducive without vices like sexual harassment. Even when employees are sexually harassed, they are expected to come out and make complaints against their employers as different laws, that is to say, Criminal, Civil, International, and regional Instruments all provide for a remedy to the aggrieved employees. However, in reality, despite the existence of laws that protect them against sexual harassment, female employees end up remaining silent and not coming out to make complaints against such employers. This research is hence to be beneficial in a way that it is going to identify different reasons as to why female employees remain silent even when they are sexually harassed and as well come up with recommendations on how to make them speak out.

Among the reasons why female employees do not report sexual harassment cases are delays in awarding remedies to the victims that come out to report, the fear of consequences that come with reporting, and the high burden placed on the victim in proving the sexual harassment among others. To overcome this problem, therefore, there is a need for the government through the parliament to amend the Penal Code Act to criminalize sexual harassment. Because Criminal law comes up to punish the convict, with many of them being punished, many female employees will get the guts to come out to report with a view that the convicts will be punished. Female employees who are subjected to sexual harassment should accept that the act is evil and they should in case they have some evidence keep it thoroughly. This will enable them to easily prove such cases and as a result, the employers found guilty will be penalized. This will give guts to many employees to come up and complain in case they are sexually harassed at their places of work as they will have a belief that remedying them will be possible.

DEDICATION

I dedicate this research to all female employee victims facing sexual harassment at their places of work all over the world. It must be a challenging situation living to witness oneself being harassed at their workplace though with a feeling that nothing can be done about it. I argue you all to come out and speak against sexual harassment. It is evil. I argue you all the non-victims come up and help the victims fight against this vice. Our bodies shouldn't be devalued by acts like sexual harassment as they are temples of the Holy Spirit (1Corinthians 6:19-20)

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ABBREVIATIONS

UDHR- Universal Declaration of Human Rights

ICESCR- International Covenant on Economic Social and Cultural Rights

MAPUTO PROTOCOL- Protocol on the African Charter on Human and People's Rights.

CHAPTER ONE

1.0 INTRODUCTION

A CRITICAL ANALYSIS OF WHY FEMALE EMPLOYEES THAT ARE SUBJECTED TO SEXUAL HARASSMENT DO NOT COME OUT TO REPORT SUCH CASES.

The term sexual harassment spread through academic circles in the 1970s and began to gain force as a legal concept in 1997 when Catherine Mackinnon, a feminist legal scholar put forward an argument that workplace harassment constituted sex discrimination which as well was also against the Civil Rights Act of 1964. Federal judges had previously rebuffed this idea but by 1978, three courts had agreed with Mackinnon and in 1986, the Supreme Court concurred. More complaints were made as in 1991, Anita Hill who had been an assistant at the Equal Opportunity Commission accused Thomas of having sexually harassed her. By 1997, 75% of American Companies had developed mandatory Training Programs for all employees to explain what behavior the law forbids and how to file a complaint and 95% had also come up with procedures for reporting sexual harassment¹. Catherine Mackinnon was the first in-depth legal scholar on the topic of sexual harassment. She defined sexual harassment to be the unwanted imposition of sexual requirements in the context of a relationship of unequal power. She explained that sexual harassment was classified into two types that is to say quid pro quo harassment which often occurs when the perpetrator explicitly expresses the forfeit of employment or benefits. She argued that both women and men who didn't comply with it experienced negative impacts. Mackinnon has well established the condition of work harassment, where she stated that in that kind, a hostile and offensive environment was created in case the employee tried to object to being sexually harassed.² Based on the findings and efforts of Catherine Mackinnon, The U.S. Supreme Court came up with a unanimous decision in 1993 in the case of *Harris v Forklift Systems*³ where it clarified some aspects of the law. In this case, a lower court ruling was overturned that would have restricted the chances of persons being restricted in bringing sexual harassment suits. It was provided and explained by Justice Day O'Connor that the district board had been wrong to focus on whether or not the harassment had caused concrete psychological harm. The Court should have focused on

¹ Frank D,(2020), 'Why Sexual Harassment Programmes Backfire' 98(3) 45-52.

² Haley,M.(2019) Champion for Women's Sexual Rights and Safety in Workplace" 19 New Views on Gender 37-3

³ *Harris v Forklift Systems,Inc.*(1993) 17 US 510

whether the conduct was hostile or abusive. The court went ahead to hold that so long as the environment would be perceived as hostile or abusive, there would be no need for the harassment to be psychologically injurious. All those provided principles were applied by the Supreme Court in concluding this case.⁴ According to Catherine Mackinnon, sexual harassment is a result of judge-made law. In the early years before the development of laws against sexual harassment in the workplace, women were always tormented by their employers and at times expelled from work in case they failed to give in to being sexually harassed. However, as judges heard such cases, they came up with the idea of coming up with laws that would protect women from being sexually harassed and the District of Columbia's judges were the first to come up with such judge-made laws. Sexual harassment was at first handled as a civil matter whereby a cause of action would be brought against the employer under sexual discrimination as it was the only area that could be used to cover such a vice. Because this law covered non-discrimination and as sexual harassment was perceived to be a result of discrimination based on gender, in the absence of specific laws against sexual harassment, claimants proceeded to claim against it under discrimination⁵ Sexual harassment in European states Britain inclusive was recognized as a form of discrimination against women on grounds of sex and as a breach of the principle of equal treatment between men and women. In the United Kingdom, the Sex Discrimination Act of 1975 made it unlawful to treat women differently from men though it didn't mention sexual harassment. Being aware of developments in the US, there came a need to amend the Sexual Discrimination Act of the UK and the Equal Pay Act of 1970 to provide for discrimination. In 1986, Jean Percelli was given a first ruling as per the complaint lodged hence laying down a foundation for the law and prosecution of sexual harassment cases in the UK⁶. Sexual harassment in Britain today is recognized as a type of sexual violence that encompasses any sexual activity that takes place without the consent of the victim. It is provided to include such acts as rape and sexual assault. The Equality Act of 2010 classifies sexual harassment as a form of unlawful discrimination and section 26 of the same goes ahead to define sexual harassment to be an unwanted conduct of a sexual nature that has the

⁴ Robert D, (2015) the Legal Evolution of Sexual Harassment 241-254

⁵ Catherine A. Mackinnon "The Logic of Experience: Reflections on the Development of Sexual Harassment law" *Geo LJ* 90,813

⁶ Louise Jackson, 'Making Sexual Harassment History'[2021]

purpose of creating a hostile, degrading offensive, and humiliating environment for the victim⁷. The Black's Law Dictionary defines sexual harassment to be a type of employment discrimination consisting of verbal or physical abuse of a sexual nature, including lewd remarks, salacious looks, and unwelcoming touching⁸. In Uganda, sexual harassment as a principle of labor law was introduced through the Employment Bill of 2005⁹ which was later assented to by the president to become the Employment Act¹⁰. This bill was chaired by the Minister of Labour and Social Development then, Hon. Minister Bakako Bakoru Zoe to repeal the Employment Act Cap 219 which lacked different provisions that were assembled in the bill among which was the principle against sexual harassment. Among the objectives of the bill were to consolidate and revise the law relating to sexual harassment, to revise and modernize the law relating to individual employment and introduce protection against unjustified dismissal, to give effect to the articles of the constitution relating to freedom of association, prohibiting child labor and advancing equal opportunity and to as well repeal the Employment Act cap 219. The bill was passed on 25th May, 2006 making it the current law governing sexual harassment in Uganda today. An employee at the workplace is considered to be sexually harassed when their employer or a supervisor directly or indirectly asks for sex, for a promise of preferential treatment, detriment from work, or for a threat of the future position of the employee at the workplace according to section 7¹¹. It also includes the use of language, visual material, and physical behavior which directly or indirectly subjects an employee to an unwelcome behavior. Regulation 1¹² of the Employment (Sexual Harassment) Regulations defines sexual harassment to be verbal or physical abuse that interferes with work or creates an intimidating hostile and offensive working environment. Sexual harassment takes different forms which include unnecessary touching, inappropriate medical examinations, suggestive compliments, winking, visual messages of a sexual nature, use of vulgar language, display of objects of a sexual nature, and an outright demand for sex. All these mainly affect workers in subordinate positions and result in hostile working conditions and result into

⁷ Maria Malyk, "UK Sexual harassment laws of the workplace" available at <https://landaulaw.co.uk>sexual-harrassment-at-work> accessed on 30th April, 2024

⁸ Bryan A. Gurner, "The Black's law dictionary" Oxford University Press 11th edition at page 1165

⁹ The Employment Bill of 2005, the 7th Parliament of Uganda (session 7).

¹⁰ The Employment Act 2006

¹¹ *ibid*, section 7

¹² The Employment (Sexual Harassment) Regulations 2012, Regulation 1

hostile working environments. Consensual behavior that is mutually desired and agreed upon with both parties willingly participating is not considered to constitute sexual harassment. Wanted, welcome, advance flirtation, and attempts at guarantee are also not considered sexual harassment¹³.

Kiwalabye¹⁴ highlights the various manifestations of sexual harassment in the workplace that are either subtle enough to be ignored or direct enough to be left unnoticed. He states that these take forms of but are not limited to unwanted sexual attention, any unwelcome physical touch, sexual remarks on one's body or clothing, sexual questions or jokes, sexual assault and rape at the workplace, receiving career threats upon refusing sexual favors, verbal sexual harassment among others. These all cause victims short-term and long-term negative effects. Individuals also feel humiliated, lose self-esteem, develop the habit of absenteeism from work and there exists decreased work performance.

1.1 BACKGROUND OF THE STUDY

In 1908, Haper's Bazaar printed a lot of letters in which working women wrote about their experiences of city life. A typical experience was reported by G.E.D, a New York Stenographer who gave out her experience where she stated that she purchased several papers and plodded faithfully through their multitude of ads and took the address of some she intended to call upon. Among the ads she answered, was that of a doctor who desired a stenographer. She hoped she would meet a gentleman only to be asked for the company to treasury trips as this doctor claimed that his wife wasn't at home¹⁵. She states that after that period, she was ill for two weeks for discouragement. This establishes the presence of sexual harassment that is subjected to female employees in New York, America. One out of three people in Australia was found to have experienced sexual harassment while at their workplace within the past five years which marked an increase in the preference rate recorded by the previous surveys. The survey also revealed that reporting of workplace sexual harassment continued to be so low and only 17% of the victims that had been subjected to sexual harassment had made a formal report or a complaint about it. Bystanders also reported that they knew cases of victims that had been subjected to sexual

¹³ The Ministry of Health. (2018) 'Guidelines to implement the policy on prevention and response to sexual harassment available at <https://health.go.ug> Accessed on 17th February, 2024.

¹⁴ Norah Gift Amala, "Sexual Harassment in the workplace" May 11th 2023 available at <https://www.femmeforteug.org> accessed on 2nd May 2024

¹⁵ Mark B. "Sexual harassment historical notes 117

harassment at the workplace but they took no action in response¹⁶. Women's participation in the economic sector in Asia was also reported to be faced with a challenge of sexual harassment which discouraged most of them from continuing working. It was also reported that a large scale of the entry of women into paid labor had increased hence as well increasing the rate of sexual harassment. The 1996 figure showed that 51% of the women were engaged in the labor force. 63% of the women were in agriculture, 27% in the service sector, and 10% in industries. It was also stated that these women were vulnerable to physical, psychological, and sexual abuse in the workplace though a few of these reported their sexual harassment experiences¹⁷. A survey of the European Union Agency for Fundamental Rights on violence against women showed that sexual harassment remained a pervasive experience for many women in the European Union. Depending on the type of incidence recorded, an estimated 83 to 102 million women (45%-55%) of women in the 28 European Union Member States had experienced at least one form of sexual harassment since the age of 15. It however became apparent that many women didn't talk with anyone about their experience and very few reported to their hierarchy at work or to a responsible authority¹⁸. In a study about sexual harassment at clinical workplaces in sub-Saharan Africa, the study put it out that 9.6% of the participants in this research had been subjected to sexual harassment while at the workplace, 10.5% of the female nurses and students had as well been subjected to sexual violence and 7.8% of the males had been subjected to the vice as well. 36% of them also reported that they knew a friend who had been subjected to sexual harassment while at their place of work. The victims admitted that having been subjected to it, they did not report these cases and in the meantime, they found difficulty in going back to their places of work and felt ashamed and angry¹⁹. All these findings from different continents confirm the existence of sexual harassment in the workplace and also show that even when these female employees are subjected to sexual harassment, most of them end up keeping it to themselves hence bringing about a problem of

¹⁶ Australian Human Rights Commission, (2018) "Fourth national survey on sexual harassment in Australian Workplaces. Anrows.intersearch.com.au

¹⁷ Sapana, P. (2005) Violence against women, Good practices in combbaing and eliminating violence against women Un.org Accessed on 6th February, 2024.

¹⁸ Rossalina, L." A persuasive but still hidden form of gender based violence" 32 (12) Journal of Interpersonal Violence 1852, 2017

¹⁹ Tollstern L. and others (2020) Sexual harassment in clinical practice 6, A cross sectional study among nurses and nursing students in Sub Saharan Africa. Available at Journals.sagepub.com

female victims of sexual harassment at workplace not coming out to complain against cases of sexual harassment.

In Uganda, sexual harassment is as well at a high rate and therefore it needs to be addressed. This was revealed in research conducted by the Ministry of Health in 2003 where it conducted a study on health workers' retention of sexual harassment cases which revealed that 1 in 4 workers (24%) (The majority of whom were female nurses) stated that they had been subjected to harassment by a supervisor. Approximately 1 in 5 (21%) reported abuse by patients and (16%) reported abuse by their peers²⁰. This also shows how serious sexual harassment is in the workplace as female nurses reported how they had been faced with it. Another manifestation of sexual harassment in Uganda was evidenced in September 2018 when a Ugandan Lawyer, Samantha Mwesigye filed a sexual harassment complaint against her boss at the Ministry of Justice. She claimed that she hoped the complaint would end a cycle of unwanted sexual advances at the workplace²¹. This all shows the existence of sexual harassment at different workplaces in Uganda. However, Hilda Nakagga, a labor officer from the Ministry of Gender, Labor and Social Development noted that the biggest challenge they faced was that victims of especially gender-based violence at workplaces did not report cases due to fear and intimidation of loss of jobs hence saving perpetrators from any form of reprimand²². Therefore, because sexual harassment against female employees in Uganda exists today, most of the female employees that are subjected to it do not go ahead to report such incidences. Most of the scholars that have talked about reasons as to why different employees do not report such experiences do so in a few paragraphs. Because it is a critical area that needs to be addressed, this justifies my research as it is to address this same issue.

1.2 STATEMENT OF THE PROBLEM

In case an employee is sexually harassed, they are expected to complain to a labor officer who shall have such powers as those he has in unjustifiable dismissals as provided for under section

²⁰ Ibid note 13.

²¹ Caroline Kimeu(11th July,2022) Uganda struggles with me too, Women's Rights and Gender Equality Available at <https://www.theguardian.com> [Accessed on 29th February, 2024]

²² Haditha Isa (6th July, 2023) Unreliable Reporting Avenues Affecting The fight against sexual harassment at workplaces Available at <https://ugandaradionetwork.net>story>unreliable-rep> [accessed on 28th February,2024]

7(2)²³. Employees who are subjected to sexual harassment in the workplace in the labor sector are hence entitled to report to labor officers in case of such complaints as the law provides for these to be bodies with authority to remedy such aggrieved parties. There also ought to be equal treatment in the workplace between men and women and therefore all acts of discrimination based on different grounds like sex, and political affiliation among others ought to be eliminated. This is provided for in Article 21²⁴ of the Constitution which provides that all individuals are equal. This provision also depicts that equal treatment at the workplace between employers and employees ought to be observed and therefore such acts like sexual harassment that are based on discrimination should all be avoided by both the employer and their supervisors. Women therefore who are discriminated against based on sex are expected to come out and make complaints as provided for in Article 50²⁵. All state agencies and individuals are under a duty to ensure that women are provided with equal treatment in the political, social, and economic spheres of life where the economic one includes equal opportunities at workplaces as enshrined in the constitution in Article 33(4)²⁶. Women therefore who are promised equal opportunities with men based on first subjecting them to sexual harassment are expected to come out and make complaints about the same as per Article 50 of the Constitution as their right to equal treatment shall have been infringed onto. All individuals in Uganda have a right to work under satisfactory and favorable conditions among which is working in a sexual harassment-free workplace as provided for in Article 40 of the constitution. This article gives an obligation to employers to do away with all acts that would make the workplace an unfavorable one among which is ensuring that the workplace is sexual harassment-free. In case workers are subjected to unfair working conditions like being sexually harassed at the workplace, they are under a duty to petition for violation of their rights to a court having competent jurisdiction to try their human rights abuse matter. Female employees whose modesty is insulted through uttering words and making gestures with the intention that such gestures are heard by them are expected to bring criminal proceedings against that individual that makes such gestures an employee in case they do so they are penalized as provided for in Section 128(3)²⁷. Section 123 of the Penal Code Act provides that rape is the unlawful carnal knowledge

²³ Ibid note 10, Section 7(2)

²⁴ The Constitution of the Republic of Uganda 1995, Article 21

²⁵ Ibid, article 50

²⁶ Ibid note 23, article 33(4)

²⁷ The Penal Code Act cap 120, section 128(3)

of a woman or a girl without her consent or where her consent is obtained it is obtained as a result of a threat of bodily harm or a false representation and one who does it commits a felony and is liable to suffer death as per section 124²⁸. Women that are raped from anywhere including at the workplace are expected to bring criminal proceedings against the suspects as the law protects them.

Norah Gift Amala asserts:

The workplace is ideally meant to foster productivity, growth, and individual fulfillment of employees as they, in turn, contribute to the realization of the overall desired goal of an entity. The ideal workplace should be respectful inclusive and with an aura secure enough to keep a worker excited and motivated enough to report to work to give their best²⁹

The workplace is therefore expected to be a conducive one that makes workers desire to always go to their workplace without them being worried about anything sexual harassment being one of the worries. This is expected to be the ideal situation at the workplace.

However, in reality, though the workplace is supposed to be a favorable one and employees are required to come up and complain in case they are faced with sexual harassment, many of them are not doing so. Different workplaces today are also not favorable to the workers as many of them have made the workers subjects of sexual harassment which is the automatic reverse situation of the ideal or what is supposed to be evident at workplaces as provided for in different laws that address the vice of sexual harassment in Uganda today. In a research conducted by the Ministry of Health in 2003, it was found out 1 one in 4 workers (24%) who were majorly nurses stated that they had been subjected to harassment by a supervisor³⁰. This happens to be the reality in the field though the workplace is expected to be a favorable one free from claims of sexual harassment. This hence revealed that sexual harassment was a reality that happened at workplaces despite the provisions that emphasized a favorable workplace free of such vices. According to research conducted in Mukono, Kampala, and Wakiso, it was found that two-thirds of 1437 women were below the age of 35, and half of them were low-ranking employees. Out of these, about 3 in five

²⁸ Ibid, section 123

²⁹ Ibid note 14

³⁰ Ibid note 13

women (58%) had experienced some form of sexual harassment by their employers.³¹ This also reveals that though the workplace is required to be a favorable one free from sexual harassment, the reality is that it is not as workplaces are characterized by vices among which is sexual harassment. While addressing the Uganda Women's Movement concerning the petition they had filed concerning the harassment of Samantha by her boss Gashirabake, the Rt. Hon. Speaker Aritwala Rebecca Kadaaga noted:

*There is widespread sexual harassment at workplaces in Uganda which goes unnoticed, and much of it is swept under the carpet because of the fear of losing jobs and as well the fear of being victimized.*³²

This confirms what the reality is as many women in the workplace are subjected to sexual harassment and do not come out to make complaints concerning the same.

In case the problem of women remaining silent when they are sexually harassed is not addressed, the workplace is to be made and will continue being an unfavorable one as victims will continue to be psychologically tortured. Health issues are also to be experienced further by the victims in case they do not report sexual harassment experiences. Guilty employers if not punished will continue to harass the employees and since some of these are infected with sexually transmitted diseases like HIV, such diseases will continue being spread hence affecting the health of employees negatively. The reputation of different workplaces, employers, and their employees will as well continue to be affected negatively in case sexual harassment is not addressed as a result of women not coming out to complain about such incidences. When the public gets to know that a certain employer sexually harasses the employees, most of them will end up not attaching respect to such employers, employees, and the workplaces themselves. As a result, many people will end up shunning away from such workplaces and hence the value of such places will continue to be tampered with.

³¹ Frank Kiwalabye, "Effects of sexual harassment at workplace" (2011) available at <https://www.svri.org> accessed on 21st February, 2024.

³² Timothy Chemonges, The Ugly face of sexual harassment in workplace available at <https://parliamentwatch.ug> [Accessed on 28th February, 2024.]

1.3 GENERAL OBJECTIVE

The general objective of the study is to find out why female employees who are subjected to sexual harassment in the workplace do not come out to report such cases despite the existence of different laws that protect them from vice.

1.4 SPECIFIC OBJECTIVES

1. To establish how the existence of different theories surrounding sexual harassment prevents female employees from reporting these cases.
2. To find out how the nature of workplaces prevents female employees from making complaints against sexual harassment
3. To establish how post-reporting consequences prevent female employees from reporting sexual harassment cases.
4. To find out how the litigation process of sexual harassment claims prevents female employees from reporting such cases.
5. To establish how the nature and rate of remedies granted by bodies reported to prevent female victim employees from making more claims against their employers.
6. To come up with recommendations on how to make female employees who are subjected to sexual harassment speak up and make complaints in case they are faced with sexual harassment at workplaces.

1.5 RESEARCH QUESTIONS

1. What is the effect of different theories that surround sexual harassment in preventing female employees from reporting such cases?
2. How does the nature of different workplaces prevent female employees from reporting sexual harassment cases?
3. What is the influence of post-reporting consequences on hindering the making of complaints by female employees against sexual harassment at the workplace?
4. How does the litigation process in sexual harassment claims prevent female employee victims of sexual harassment from making complaints?
5. What is the impact of the rate and nature of remedies granted in sexual harassment complaints on the rate of sexual harassment complaints by female employees?

6. What recommendations are available to enable female employees to speak up when they are faced with sexual harassment in the workplace?

1.6 JUSTIFICATION OF THE STUDY

This study is going to be helpful to us because it establishes and brings out different theories that different people attribute to sexual harassment and the reasons they attach to such theories. The research aims to come up with different provisions of the law that address such theories and as a result, this will give a lesson to different persons who have subscribed to such theories within their mindsets to give up on them and be able to report cases of sexual harassment after having given up on the theories that keep them in the bondage of not subscribing to the prohibition of sexual harassment at workplaces. Having given up on different theories like the sex spillover one, many female employees will find sexual harassment to be offensive and be able to report such cases hence being able to address the problem at hand of reasons as to why female employees do not report sexual harassment cases.

This research is as well to be important to us because it addresses different situations at different workplaces that influence sexual harassment, for example, working under harsh working conditions. Through addressing such issues, many female employees will be able to come up and report cases of sexual harassment, and as a result, the workplace will be made a better place hence fulfilling the constitutional mandate of enabling workers to work under favorable working conditions.

The research is as well to be relevant to us as it is to address the problems that female employees face after having reported cases of sexual harassment which in due course prevent many of them from going ahead to address cases of sexual harassment. By addressing such problems faced by them, different responsible parties will be able to come up and follow up the process after such claims have been heard to ensure that different employees do not face as many consequences as they do. By coming up with a solution to these consequences, different employees will be able to come up and complain when they are sexually harassed hence making the research so relevant as it would have addressed one of the reasons why many female employees remain silent about sexual harassment even when they are subjected to it.

This research is aimed at finding out what exactly happens during the litigation process and how it hinders female employees from reporting sexual harassment cases. Through addressing such issues like handling such cases on camera which tends to interfere with the privacy of the victims, many of them will be able to report their sexual harassment experiences hence this research being relevant as it would have addressed the problem at hand of female employees not reporting their sexual harassment experiences.

The research is as well to be relevant to us as it is going to bring about an analysis of the rate at which remedies are granted by the different parties to whom sexual harassment cases are reported. Through addressing issues of complaints from the female victims like failure to provide remedies for example the failure by the court to provide a remedy to Samantha in the Gashirabake incident, such bodies like Courts will be able to address to the public the reasons for failure to provide remedy and will as well be able to provide remedies to the new cases that emerge. With the prosecution of these new cases and the provision of remedies to different victims, many of them will be able to regain trust in the justice system and be able to report their sexual harassment experiences hence addressing the problem of female employees not reporting their sexual harassment experiences. This as well depicts how relevant this research is going to be.

The research is also to come up with recommendations to different bodies like the government on how to enable victims of sexual harassment to speak out about their experiences. For example, recommending that parliament comes up with a law that prescribes sexual harassment and as well provides for a penalty, in case this is done, different employees will get to know how serious this offense is and get to know that it is not just about asking for sex but an offense. Lots of employees will therefore be able to come out and report their sexual harassment experiences with the hopes that in case the employer is convicted, they will be punished through imprisonment as mostly in such cases that affect the mental health of the victim, the only remedy most of them would desire is to imprison the convict and not compensation as it is in civil law. Having enabled more employees therefore to come out and report these cases, the problem of female individuals not reporting sexual harassment cases will have been addressed hence showing the relevance of this research.

1.7 SIGNIFICANCE OF THE STUDY

The research is to be beneficial to the Government of Uganda as it is going to let them know how ignorance of the law against sexual harassment in Uganda is preventing many female victims from reporting their sexual harassment experiences as they neither know how to make a complaint. This is to enable the government to come up with recommendations on how to enable them to get to know these different laws hence helping the government achieve its goal of eliminating sexual harassment from workplaces.

The research is also to benefit the different government entities like the Equal Opportunities Commission in getting to know that the issue of non-discrimination in the workplace of minority groups has not been fully addressed as male employers even up to today go ahead to sexually harass their employees. Having understood that this problem still exists, such government entities will be able to devise more means to ensure that women who are considered a vulnerable gender are protected from discrimination in the workplace hence this research benefitting such entities and the female employees themselves in case they are put on the same footing with men.

This research is as well to be relevant to Courts as it is to reveal to them that despite the constitutional provisions of ensuring that only cultural practices that are consistent with the constitution are to be preserved, many that aren't continue to exist through the different theories that are attributed to sexual harassment as the cultural theory where men are still in many societies groomed to be leaders and speakers whereas women submissive to their husbands and being an obedient gender. Courts having identified this will also be able to come up with different rulings concerning such inconsistent practices hence fulfilling their role of ensuring the provisions of the constitution are fulfilled through interpreting the same and as well coming up with precedents to different matters at hand.

The research is to be beneficial to labor officers that are provided for in the Employment Act to get to know that despite the existence of their offices, many of the workers aren't aware of the same and others aren't able to reach out to such offices. As a result, many labor officers will come and reach out to different workplaces to inspect the conditions of work therein and as well teaching about the principle of sexual harassment. With this, the labor officers will have fulfilled their mandate as provided for in the Employment Act of 2006 hence the research being important to them.

The research is to be beneficial to the parliament as it is to identify an area of amendment where it is to propose that parliament amends the Penal Code Act to provide for sexual harassment as a distinct offense for easy prosecution of it in the criminal sector just like say other sexual abuse offenses like rape. This is to help parliament identify such a required area of amendment and be able to fulfill its duty enshrined in the Constitution of making laws for the betterment of the situations of the citizens of Uganda hence it being beneficial to parliament.

The research is as well to be beneficial to different religious dominations as it addresses the issue of the fear of family breakups that is attributed to why some women do not speak out even when they are sexually harassed today. Love and affection have reduced in many families today which as well has made a lot of men lose trust in their partners to an extent that even when they are forcefully harassed at workplaces, a lot of men end up not believing their ladies and most of them end up concluding that their wives consented thereafter making them opt for divorce. Since the Almighty God called different religious leaders and commanded them to ensure that families are strong and built on the foundation of love, this research is to help such church leaders fulfill their mandate as provided for in the bible.

Female victims are also to benefit from this research as it is to address different reasons as to why many of the victims have not been reporting sexual harassment experiences and as well come up with recommendations on how to enable them to come out and complain. Through borrowing knowledge from the findings in this research, many female employees are to get to know where and what procedure to take in case they are faced with the vice of sexual harassment hence this research being beneficial to the female employees.

The research is as well to be beneficial to the police force as it is to establish how the absence of gender desks at different police stations prevents female employees from reporting their sexual harassment experiences. As a result, the police force will be able to come up and ensure the presence of gender desks at different stations, and as a result, many female employees will be able to file their complaints at different stations of the police hence fulfilling their duty of maintaining law and order in the society through arresting suspects of sexual abuse cases.

1.8 SCOPE OF THE STUDY

SUBJECT OF THE STUDY

This study is aimed at finding out reasons why female employees in different employment patterns in Uganda do not make complaints to the responsible authorities when they are subjected to sexual harassment in the workplace.

GEOGRAPHICAL SCOPE

The study is to be carried out considering female employees in different employment opportunities in the whole of Uganda at large.

TIME SCOPE

The research is to be conducted for a period of four months that is to say from February to May 2024 concerning the area of study.

1.9 METHODOLOGY

The study is to be made based on a desk-based approach to research considering both qualitative and quantitative data. Desk-based research is a secondary type of research based on already existing data among which is data published on different websites, reports, surveys, and books among other data publishing platforms. I chose this kind of research because it is cheaper compared to primary research as it involves the analysis of already existing data. Expenses that would therefore be incurred in going to the field to collect data are hence not incurred making it cheap. Desk-based research is also time-saving as time that would be taken in going out to the field to conduct research is spared to analyze the already existing data hence making it advantageous through time saving. I also chose desk-based research because it improves data validity as one can compare and contrast various perspectives and opinions on the same topic which enhances the validity and credibility of this data.

1.10 LIMITATIONS IN CONDUCTING THE RESEARCH

Since this is a desk-based research that deals with already existent and published information, I encountered a challenge in accessing data from different platforms that had relevant information relevant to my area of study as most of them were blocked due to copyright and commercial reasons. I was able to overcome this challenge through the help of my supervisor who recommended I use different free platforms and as a result, I was able to get relevant information from such platforms.

Domestic literature also proved to be limited as per my area of study as most of the work I was able to access was in articles published in newspapers like New Vision and Daily Monitor and not by experts in the labor field and it was also not scholarly work. I couldn't therefore depend on such information as gospel truth as the level of its truthfulness was not justified. As a result, I ended up using scholarly writings from other jurisdictions like America and not Uganda due to limited literature and this is how I was able to overcome the problem of limited literature.

A lot of information was provided to me on the internet most of which was irrelevant concerning my area of study which also proved to be a challenge while conducting this study. This challenge was due to technical challenges I had in making the most relevant searches on the internet. My supervisor helped me to overcome this challenge as she addressed me to different search engines with the most relevant information like Google Scholar hence overcoming the problem of having technical challenges in making my searches.

Bias in the domestic information I was able to access was another challenge faced in my research. Most of the scholars took most of their efforts criticizing the government for having not taken enough steps to address the issue of sexual harassment and ended up providing little information yet it was the most important one of what happened in the field hence affecting the rate at which I conducted my research as most of the publishers were biased in their articles. I was able to overcome this challenge by remaining focused on my area of study and picking out the most relevant information out of the lots that had been published.

1.11 SUMMARY OF THE THESIS

This thesis aims to establish why female employees at workplaces who are faced with sexual harassment do not come out to report such cases to the required authorities. The thesis is divided into four chapters and their contents are summarily provided below.

Chapter 1 gives a general introduction to sexual harassment and its definitions as per different acts and different scholarly works. It also gives a background of the study, its significance, justification, scope, thesis, theoretical framework, the objectives of the study, and different research questions.

Chapter 2 brings about different literature of different scholars concerning the topic of study. It covers literature from different countries like the United States of America, England, and Kenya

among other countries. It also covers literature from different publications like journals and articles from Uganda.

Chapter 3 comes in with the legal framework concerning sexual harassment that is to say it brings about different laws that address the issue of sexual harassment in Uganda today. Different laws that are to say national, regional, and international instruments that Uganda has ratified and that address the issue of sexual harassment in the workplace are analyzed within this chapter.

Chapter 4 will address my findings as per the research conducted and this will analyze different existent data from different sources like articles, and government reports among others. Having gotten data from such sources, I will go ahead and use the data to explain my findings as per the topic of study.

The research will end with chapter 5 which will bring about my recommendations as per the research conducted that is to say what I recommend to different bodies concerning what I found out in conducting my research tackling the reasons why many female victims do not come out to report sexual harassment cases. This chapter is also to bring out the general conclusion of all chapters from chapters 1 to 5.

CHAPTER TWO

LITERATURE REVIEW

2.1 INTRODUCTION

Literature as to sexual harassment against female employees in the workplace exists as different scholars have gone ahead to address this problem in the Ugandan context. Issues that have dominated most of the scholarly work are whether sexual harassment in the workplace exists, the laws that protect women from being sexually harassed, and the rate at which female employees are subjected to sexual harassment among others. Most of the scholars in Uganda briefly in like a paragraph talk about reasons why female employees do not report these cases. My review of the literature mainly covers reasons why female employees do not report sexual harassment cases among which are due to different theories different parties possess about sexual harassment, the consequences faced by victims after reporting, the nature of their places of work, and how this makes them silent, the procedure victims undergo in litigating sexual harassment cases and remedies granted to victims. It is also to cover recommendations on how to enable female employees to report these cases. The literature review is to cover literature from both Uganda and other outside jurisdictions.

2.2 EXISTENT THEORIES ABOUT SEXUAL HARASSMENT

According to Stella Sheema, there seems to exist no single theory that fully justifies sexual harassment or upon which people attribute sexual harassment. Different scholars have hence identified different theories that can be attributed to sexual harassment among which are the natural/biological theory, the sex role spillover theory, the cultural theory, and the power theory among other theories³³. According to Pallavi Kapila³⁴ and Stella Sheema³⁵, the natural/biological theory is defined by those that belong to the natural school of thought to be a natural sex attraction between men and women. Kapilla explains that under this theory, it is perceived that men have a

³³ Stella Sheema and others (May 2021) Uganda's response to sexual harassment in the public health sector; from dying silently to gender transformational HRH Policy, available at <https://www.researchgate.net> [Accessed on 29th February, 2024].

³⁴ Kapila, P. (2017) "Theoretical perspectives to sexual harassment of women at workplace." *International Journal of Humanities and Social Science Invention*

³⁵ Ibid note 32

higher sexual derive compared to women hence leading to the sexual behavior. He also states that men as well biologically have a higher physiological urge for sex which behavior is suggested not to be an offensive one but rather one created by biological urges and therefore due to this, men may end up extending such power towards women. Julie A. Seaman states that though biological explanations and feminist conceptions appear to conflict with one another, the causes and harms of workplace sexual harassment in these two look similar.³⁶ In a research conducted by my wage Organization, it was found out that women in Uganda within their mindsets have a fear of being blamed as many people believe that harassment at the workplace happens because of natural forces and it is just attraction between men and women³⁷. Due to such views held by different people about the natural theory of female employees inclusive, a lot of them end up not reporting as they believe that it is a natural attraction that should not be blamed on the harassers as they have no control over nature hence as a result, many female employees end up not reporting sexual harassment cases.

The sex role spillover theory according to Dr. Barbara A and others is another theory attributed to sexual harassment. It is defined to be a carryover of gender-based expectations into the workplace which leads to inappropriate behavior there. It was found in their study that women who were in male-dominated work experiences were treated differently from other male workers due to the sex spillover that was carried by men to workplaces. Having identified the differential treatment exerted on them, female employees perceived this to have occurred because they were females and not female workers. As a result, many of them, with mindsets full of gender-based expectations among which is submission in case they were asked for sex by men, ended up giving in and keeping quiet about it hence not reporting these cases. Pallavi Kapila³⁸ also asserts that this theory is based on gender-based role expectations brought at the workplace where men at workplace treat women in a way they treat them based on role perceptions which are based on cultural traditional roles among which is submission to males hence leading to sexual harassment. The sex role spillover

³⁶ Seaman, J.A (2005) "Form and function in sexual harassment law: biology, culture, and the spandrels of Title VII." *Ariz. St. LJ* 37 321

³⁷ Mywage.org Uganda (21st May 2023) what is the economic cost of Sexual Harassment at workplace? Available at <https://mywage.org/labourlaw/fairtreatment> [Accessed on 27th February, 2024]

³⁸ Pallavi, K.(2017) "Theoretical perspectives to sexual harassment at workplace" , *International Journal of Humanities and Social Science Invention* 32-35

theory was developed by Gutek and Morasch in 1982 according to Susan Sheffey and R. Scott³⁹. In their attempt to find out about assumptions people had as per sexual harassment using the sex spillover theory, 114 male and 120 female undergraduates were asked to read about different behaviors towards women in three different job settings that is to say one that is female-dominated, mixed, and a male-dominated one. As per the results they presented, it was found that women were more sexually harassed in male-dominated workplaces, followed by mixed workplaces but not harassed sexually in workplaces that were female-dominated. Researchers attributed these results to have been due to the sex spillover theory that either gender carried to workplaces dominated by the opposite gender. Therefore, as women carry over the sexual role even to their workplaces and men as well carry their sex expectations at workplaces, many of them perceive it to be a normal practice and they assume that these are their roles therefore making many female victims of sexual harassment silent about the practice.

According to Catherine Mackinnon,⁴⁰ men are perceived to be having power over everything that exists in society. This brings about the power theory as another theory attributed to sexual harassment. According to her, they have the power to decide what is valuable in society and what is not. They therefore use this power to shape and define social beings hence making themselves superior and women inferior and submissive to them. She also goes ahead to assert that women have been had and will always be controlled by men unless they understand men's tricks and acquire the power to control themselves and hence get rid of being made an inferior sex and men a superior one. According to Paula M Popovich and another⁴¹, it stated that men derived power from societies, organizations, and within themselves. Due to this power, many of them ended up exploiting females who were perceived to be powerless and hence an inferior gender. This was also attributed to be one of the reasons for the presence of sexual harassment at workplaces According to Stella Sheema, when it comes to economics, it is believed that men are a powerful gender capable of doing some jobs and are therefore entitled to do them. Sexual harassment is about power according to Ariana Maama WA Afirika who gives us a detailed study of the Ugandan

³⁹ Sheffey, and others. (1992) "Perceptions of sexual harassment in the workplace." *Journal of Applied Social Psychology* 1502-1520

⁴⁰ Bartlett, and another (1987). "MacKinnon's feminism: power on whose terms." *Calif. L. Rev.* 75 1559.

⁴¹ Popovich, and others. (2010) "The role of power in sexual harassment as a counterproductive behavior in organizations." *Human Resource Management Review* 45-53.

context. She asserts that there is a belief that sexual harassment occurs when there is a power imbalance. She also states that women are much more likely to be victims of sexual harassment because, unlike men, they lack power and are in more vulnerable and insecure positions. They also lack confidence and have been silenced as victims of sexual harassment⁴². Due to a lack of power, they may consent to certain conduct and actively participate in it even though it is offensive and unwelcome. Due to the power theory therefore, men who are perceived to be a powerful gender which is held to be exploiting women end up sexually exploiting them, and because women think they are a weak gender that can't outcompete men even in courts of law, many of them end up being silent victims of sexual harassment. Madhu Kosuri⁴³ reports that women do not report due to shame brought about by the power theory. That men are perceived to be a powerful gender and any wrong deeds ought to be blamed on women as a weak gender. Due to this, female employees feel guilty and end up blaming themselves, they feel isolated and humiliated and they also receive criticism from different members of society for example concerning the way they dress, and the treatment they give to harassers among others. They hence end up attributing the blame to themselves and therefore keep quiet concerning the harassment as they feel like it is their fault as a weak gender as there is a certain way they should have acted and behaved to avoid the harassment that they were harassed.

According to Pallavi Kapila⁴⁴, the social-cultural theory is also attributed to sexual harassment. This theory provides that women's lower status in society is attributed to culture and the workplace structure and therefore male dominance continues to be the rule. Historically, men were groomed to be leaders and persevere in all situations whereas women were prepared to be housewives ready to submit to their husbands. Because different genders are still brought up differently, this difference continues to illustrate itself even at work whereby women continue being submissive to men inclusive of their employers and as a result, many of them end up remaining silent even concerning sexual harassment as they are taught to be submissive to men from when they are young in their cultures. According to Gee M.V. and Norton S.M.⁴⁵, culture is defined to be a

⁴² Akina Maama Wa Afirika,(September 2023)Understanding Sexual Harassment in the World of work Available at <https://www.makeway.org/uploads> [accessed on 17th February, 2024]

⁴³ Ibid note 22

⁴⁴ Ibid note 33

⁴⁵ Gee, and others. (1999) "The confluence of gender and culture: Sexual harassment in the international arena." *Management Decision* 417-423.

complex set of beliefs, customs, laws, languages, and morals among others that exist among different members of a given society. They state that with the presence of culture, there also exists cultural relativism which is simply the belief possessed by different people that cultures, beliefs, and morals of their society are culturally bound therefore making such a group of people view life from a different angle. Because different cultures model women as being a submissive gender, many of them end up keeping quiet even when they are subjected to sexual harassment given being submissive. According to Victoria Namugala and others, the notion of backwardness was blamed on different victims by the people they tried to report the harassment. They blamed them due to the culture that had been inserted into them as village girls and women, they were backward and handled their issues in a village manner based on culture and hence couldn't cope with the day-to-day life which subscribes to modernity where women can solve their problems by themselves. They perceived the reporting of sexual harassment to be done by village girls and women who were still backward due to the culture that still existed within them.⁴⁶ Therefore, since culture grooms women as a submissive gender mostly in Uganda, many female employees end up being submissive to their employers by offering sex when it is asked of them therefore they find no reason to report such cases as most of the time they consent to the harassment.

2.3 NATURE OF WORKPLACES WHERE FEMALE EMPLOYEES ARE SEXUALLY HARASSED

Scholars from My Wage Organization in Uganda also attribute working conditions at different workplaces to leaving workers in desperation and hence many end up giving sex to their employers. This is based on their study conducted in different industries in Kawempe- Kampala where they found that most of the female employees were working as cleaners, and cashiers among other occupations. Most of the high-profile jobs were being occupied by men and the working conditions in these places were as well not easy as most of the ladies were working in 12-hour shifts and they were only given a break of 15 minutes. They had to seek permission from their supervisors to go and use toilets, and have breaks among other unfavorable conditions at work⁴⁷. Even when asked for sex, the employees took it as a privilege and couldn't report their employers because they considered having affairs with their supervisors as a privilege and hence couldn't

⁴⁶ Victoria Namugala and others(February 2023) Workplace sexual harassment as a feature of precarious work in Uganda's Agro processing Factories available at <https://onlinelibrary.wiley.com> [accessed on 29th February,2024]

⁴⁷ Ibid note 36

report. This as well illustrates the reasons for being quiet by female employees even when they are sexually harassed

Isolated workplaces have been attributed to limiting chances and avenues of women reporting in case they are faced with sexual harassment in Uganda as per Victoria Namugala⁴⁸. It was established in this research that some female employees are placed in far away or distant places of work for example up country where access to labor officers or anybody to whom a complaint would be made about the sexual harassment would be difficult due to transport issues brought about by long distances. As a result, many female employee victims end up being silent about the harassment when faced with it as accessing reporting centers is at times hard.

According to Mywage Organization, it was found that the absence of employment contracts between employers and employees also made employees silent about sexual harassment. In a research conducted in a factory in Kawempe, it was found that when some female employees reported the harassment, employers claimed not to have any employer-employee relationship with them as they had only entered into verbal contracts. As a result, they ended up being dismissed from work and as well not being paid any amounts due by their employers.⁴⁹ Because of the lack of evidence by employees about the existence of an employer-employee relationship between them and the employers, many female employees end up silent even when faced with sexual harassment as they tend to have no hopes of being successful in the claim as such a claim needs one to prove that they are under an employer-employee relationship which many of them cannot prove due to absence of contracts between them and their employers.

According to Prudence Nyamishana, high unemployment levels that are evident in Uganda also prevent many women from reporting harassment. In Uganda getting jobs is not that easy and a lot of people are unemployed even with qualifications in certain fields of employment, employees who get jobs end up keeping quiet even when faced with sexual harassment because they wouldn't want to lose their jobs.⁵⁰ Therefore, with a desire to keep their jobs, very many female employees end up remaining silent about sexual harassment even when faced with it as they fear the

⁴⁸ Ibid note 41

⁴⁹ Ibid note 36

⁵⁰ Prudence Nyamishana (July 2018) Breaking the silence to end workplace sexual harassment in Uganda Available at <https://africanfeminism.com> [Accessed on 29th February, 2024].

consequence of losing their jobs after reporting as getting jobs is not that easy therefore those that get jobs tend to do everything possible to keep their jobs among which is remaining silent even after being sexually harassed. This also justifies why female employees in Uganda do not report sexual harassment cases.

2.4 CONSEQUENCES FACED BY FEMALE EMPLOYEES BEFORE REPORTING SEXUAL HARASSMENT

According to Haditha Issa, there are several reasons why some female employees do not report sexual harassment in case they are experienced with it. These include the fears of losing their jobs, being stigmatized, not being supported by workplace supervisors and workplace colleagues, violent or abusive retaliation by the harasser, and having to undergo a formal investigation process held by unsympathetic employers. She asserts that due to these fears for example of not being supported by their fellow workers, a lot of female victims of sexual harassment end up remaining silent about it as they assume that the disclosure might expose them to more shame and hence end up not being helped due to lack of a collective voice from their fellow employees. As a result, many female employees end up remaining silent even when they are sexually harassed by their employers. It was confirmed by Timothy Chemonges⁵¹ that sexual harassment in Uganda is so rapid and widespread. However, a lot of these cases went unnoticed as the victim employees remained silent considering the post-reporting consequences among which was the fear of losing jobs and being stigmatized as was noted by the Rt. Hon. Rebecca Kadamu as she was then while addressing the Uganda Women's Movement as per the petition of Senior State Attorney Samantha's disclosure of being sexually harassed by her supervisor Christopher Gashabirike.

According to Carla Henry, family, and marital difficulties tend to arise in case husbands get to know that their wives were sexually harassed⁵². He hence attributes this to be one of the reasons why female employees who are sexually harassed end up keeping quiet concerning the harassment. When husbands get to know that their wives are victims of sexual harassment which is evident through their reporting or making a complaint, many of them tend to negatively react towards this and end up blaming their wives as a weak gender as they are considered, they are always expected

⁵¹ Ibid note 31

⁵² Carla Henry (May 2018) Spotlight on sexual violence and harassment in commercial agriculture Available at <https://www.ilo.org> [Accessed on 27th February, 2024]

to have attracted the harassment due to their dress code and through other ways. Some husbands also go on to break up with their partners in case they get to know that they had an affair with another man according to Carla. Therefore, with a need to avoid all these family breakups, many female employees who are victims of harassment end up remaining silent as they wouldn't want their families to break up due to their husbands getting to know they had an affair with another man who in this case happens to be their employer. According to research conducted concerning women's experiences in reporting sexual harassment cases, the fear of harsh and violent reactions from their families towards the employer who harassed them which would lead to Criminal charges against the employees as well was reported to have forced many female victims of sexual harassment to remain silent. For example, within this article, Mirembe, who had been once a victim of sexual harassment reported that when her family got to know about what had happened to her, they confronted and attacked the employer where as a result, he was able to open up a criminal offense against her from which she was arrested and detained during the lockdown. As a result, due to the desire to maintain peace by avoiding such attacks, many female employees end up being silent even when faced with sexual harassment as they wouldn't want to experience reactions from their families to the employer which would affect them later.

According to Affroditi Pina and another⁵³, In a survey conducted by USMSPB in 1995, it was found that (29%) of the victims of sexual harassment thought that reporting these cases would make the workplace unpleasant for them and (17%) of the victims still thought that reporting would affect their careers adversely. Scholars have also found that the fear of losing jobs also leaves a lot of women in fear of reporting sexual harassment experiences⁵⁴. Whenever employers get to know that employees with whom they provided employment reported or complained against them sexually harassing them, most of them end up reacting in a negative manner among which is the termination of the employee's employment opportunities. As a result, a lot of female employees end up being silent even when they are sexually harassed due to the fear of losing their jobs and the fear of creating an unpleasant workplace condition. According to Pinna and others, in a survey conducted in 1995, 50% of the sexual harassment victims thought their claims were not serious enough to support a claim and hence they believed their claims would not be taken seriously. The

⁵³ Pina, and others. (2012)"An overview of the literature on antecedents, perceptions and behavioral consequences of sexual harassment." *Journal of sexual aggression* 209-232

⁵⁴ Ibid note 43

fear of not being taken seriously or being blamed. According to Madhu Kosuri, sexual harassment is sometimes excused as a natural practice based on simple sex attractions, and therefore sometimes the victim is blamed for her so-called provocative dress or behavior and many conclude that she asked for it.⁵⁵ According to Janeth Lawil⁵⁶, because of shifting the blame onto female employees, they end up losing confidence as they start to blame themselves because of the harassment. Hence due to the fear of being blamed for having enticed the employer into tempting them, and for criticisms about the steps taken while being sexually harassed, a lot of female employees decide to keep it to themselves even when they are sexually harassed hence justifying their remaining silent

2.5 THE TRIAL PROCESS IN LITIGATING SEXUAL HARASSMENT CASES

According to Musa M.A and Mohammad⁵⁷, it was found that police stations had an insufficient number of police officers, gender desk officers were poorly selected, and the gender desk officers as well performed other police duties among other challenges Uganda, in research conducted about gender desks, different police stations were found to lack gender desks and as a result, the harassment and blame ended up being handled by any officer at the station of which some of them were not qualified in that sector⁵⁸. It was found that due to the absence of gender desks, handling such claims due to the lack of experts who were gender-neutral and could handle such cases became difficult. As a result, many female employees ended up being blamed as some officers who handled gender issues though not attached to the gender desk subscribed to different theories surrounding sexual harassment such as power, sex, and nature among others, and as a result, many women ended up being blamed to that effect hence limiting the numbers of those that would report the harassment as they ended up with a view that instead of being helped, they would end up being blamed and hence justifying them being silent victims of sexual harassment.

Ibid note 43

⁵⁶ Janeth Lawil(27th November,2019) Not afraid to say 'No' A Brave young woman story of not giving in to sexual harassment Available at [https://2017-2020.USAIID.govUS AGENCY FOR International development](https://2017-2020.USAIID.govUS%20AGENCY%20FOR%20International%20development) [accessed o 27th February, 2024]

⁵⁷ Mussa, and others. (2019) "Challenges Facing Police Gender and Children Desks in Reduction of Gender-Based Violence and Violence against Children: A Case of Kinondoni District, Dar es Salaam Region, Tanzania." *The International Journal of Humanities & Social Studies*

⁵⁸ Gender Desk (November,2023) Unsettling reality: State of Gender desks in police stations available at <https://nation.africa> [Accessed on 21st March,2024]

According to Carla Henry, female employees as well do not report because they neither know where to report nor how to make a complaint. A high level of illiteracy and ignorance of existent laws exists among very many Ugandan female employees in that despite the existent laws that are against sexual harassment, a lot of women do not know that they can make a claim against sexual harassment and where to make it⁵⁹. As per Nancy Chi Cantalupo⁶⁰, in an institution as to why victims did not report sexual harassment cases, it was found that there was a lack of awareness by most school officials about the violence and the obligations of the school in preventing the same. Due to that confusion therefore among many female employees in Uganda, a lot of them end up giving up and remaining silent even when faced with sexual harassment at the workplace.

Scholars also found victims of sexual harassment to be faced with challenges in accessing justice in case they were sexually harassed in that they had to pay for costs of police transportation, forensic examination fees, and other expenses required in the investigation. This left many of them without this money helpless as they could not access justice due to failure to meet those monetary requirements⁶¹. In civil cases of sexual harassment, the suing party must make various payments before the case is filed in court and have receipts produced in court as evidence of payment as per Section 2 of the Judicature (Court Fees, Fines, and Deposits) Rules for a case to proceed. Because some employees lack funds to open up such cases against their employers or supervisors, a lot of them hence end up being silent victims as there is no way they can commence actions against their employers without paying court fees.

Some cases even when reported are hard to prosecute due to lack of evidence as noted by Hilda Nakagga, a labor officer as then she was by the time this article was published. According to her, collection of evidence in sexual harassment cases is not that easy as victims most of the time come out to report these cases after some time has lapsed or when they have tampered with part of the evidence for example DNA sample fluids in their private parts.⁶² As a result, even when female employees report sexual harassment cases, they end up failing to prove them hence losing such

⁵⁹ Ibid note 43

⁶⁰ Cantalupo, N.C. (2011) "Burying our heads in the sand: Lack of knowledge, knowledge avoidance, and the persistent problem of campus peer sexual violence." *Loy. u. chi* 205

⁶¹ Relief web(7th April,2010) Victims of rape and sexual harassment denied justice in Uganda Available at Reliefweb.int [accessed on 29th February,2024]

⁶² Ibid note 51

cases in Court. Due to failure to prove these cases, most of the victims end up being blamed hence lowering their confidence the more in reporting such incidents if they ever happen to them. This also justifies why female employees subjected to sexual harassment remain silent.

Scholars like Tusiime Tutu and Louise F Fitzgerald⁶³ criticized legal proceedings for having limited the victims of sexual harassment from reporting these cases. According to Louise F Fitzgerald, they held the victim for the harassment faced and placed onto them the burden to prove non-consent to the intercourse. Tusiime Tutu who conducted his research in a Ugandan jurisdiction also points out that as per Ugandan legal proceedings, the victim must prove non-consent⁶⁴. According to Herbert and others in their research⁶⁵, the requirement as well that the victim proves that her reaction was unwelcome as well implies that women attract sexual reactions from men by their dress code and conduct and hence places a burden on them to prove the bit of the harassment being unwelcome. The fear therefore of losing cases due to failure to prove certain requirements like that they acted in an unwelcome manner makes many female victims silent concerning the vice.

The nature of proving sexual assault cases as per Tusiime Tutu needs different forms of specific evidence to prove the cases among which are the statement of the victim, the medical examiner's report, police statement on the evidence collected from probably the scene, crime scene evidence, injuries to the victim, identification of the victim among other kinds of evidence. Since sexual harassment is a civil case that is first reported in court, collecting such evidence is not easy as much of the evidence like DNA samples in private is tampered with in the process hence making it difficult to prove their case. Due to the critical nature of proving these cases, victims subjected to sexual harassment end up being silent about it due to the lack of specific evidence like evidence from eyewitnesses as this seems an enclosed act and hence as a result, many of them end up keeping it to themselves even when they are affected⁶⁶.

⁶³ Because, F and others. (1995) "Why didn't she just report him? The psychological and legal implications of women's responses to sexual harassment." *Journal of Social Issues* 117-138.

⁶⁴ Tusiime Tutu(16th June,2021) The Sexual Assault Crisis in Uganda; How cases are handled Available at <https://digitalhumanrightslab.org> [accessed on 29th February,2024]

⁶⁵ Hebert, L. C. (2007) "Why Don't Reasonable Women Complain about Sexual Harassment?" *Ind. LJ* 711

⁶⁶ O'Neill, and another. (1989)"Sexual Harassment Cases and the Law of Evidence: A Proposed Rule." *U. Chi. Legal F.* (1989): 219.

In a report published by The Judiciary Uganda, the nature of handling sexual harassment cases is that they are handled in open court⁶⁷. As a result, the victims of sexual harassment are neither shielded directly from the offender nor the public. As a result, due to exposure to the public, many of the victims end up concealing certain information due to shame and the fear of being laughed at and as a result, evidence that would have been key in proving the case ends up not being revealed hence making them lose the cases. Defense counsel also asks a lot of embarrassing questions in the cross-examination which most of the times need answers with vulgar language as a result, due to the fear of using such language in public, many female victims, are embarrassed about the way they were handled in Court moreover in public tend to swear not to give evidence in such cases. As a result, even when exposed to such cases again, many female employees will tend not to make complaints for fear of giving evidence in open Court which seems embarrassing to many of them. According to Catherine A. O'Neill⁶⁸, the federal rule of evidence is that the jury should not consider the victim's past sexual experiences as they would suggest a decision on an improper basis and such evidence harms the victim as it permits the public intrusion into the victim's private life However, in Ugandan courts such questions are always asked to ascertain the participation of the accused. As a result, female employees who weren't virgins at the time of being harassed end up being doubted if they are telling the truth as there is no evidence at times of penetration. As a result, with a desire to avoid such questions, many female employees end up being silent concerning sexual harassment.

The influence of social media today also prevents a lot of women from reporting even when they are sexually harassed as per Prudence Nyamishana.⁶⁹ The advancement in technology has brought about different advancements in the performance of work in different workplaces. Many police officers tend to use electronic devices to record evidence from victims. Such cases also tend to be prosecuted on camera so that it serves as an encouragement to different victims to be brave and report such cases⁷⁰. As a result, many female employees fear reporting as they would not love at one time to be exposed in the media showing how they are victims, adducing evidence, and being

⁶⁷ Judiciary Uganda(11th July,2016) DPP Calls for law to protect Sexual Offence Witnesses Available at <https://www.judiciary.go.ug> [Accessed on 29th February,2024]

⁶⁸ Ibid note 64

⁶⁹ Ibid note 36

⁷⁰ Ibid note 64

cross-examined among other trial procedures. As a result, many women end up keeping quiet which would have been a different case in my view if these cases were handled and determined privately.

2.6 REMEDIES AWARDED TO VICTIMS WHO REPORT SEXUAL HARASSMENT

As per Kats Meligner, it is so unfortunate that just because an employee reports sexual harassment, they are not guaranteed that the abuser will face its consequences. In research conducted about Reasons why Women did not report sexual harassment cases, it was found out that of the 80% of the employees that filed a sexual harassment complaint, when asked about the outcomes, they claimed that their situation had not changed. 16% of these reported that reporting the issue made the situation worse⁷¹. This hence limits many women who are sexually harassed at the workplace from coming out to claim as they feel they won't be remedied as most of the victims that report end up not being remedied. According to statistics from the Office of the Director of Public Prosecutions, out of 1954 new rape and 7618 defilement cases reported in 2015 and 2016, only 57% brought punishment to the perpetrator⁷². This hence reveals that not all cases reported are remedied. This is due to reasons like failure to prove such cases and, the withdrawal of victims from the cases due to fear among others. Therefore, because the rate of those that are remedied is still low, many victims end up concealing such claims as they believe that proving such cases and getting a remedy is not easy due to the low numbers reported to be remedied. As a result, many female employees who are victims end up keeping quiet even when they are sexually harassed.

In a research conducted by a Women's movement in Uganda, it was found out that some employers seem to be authoritative in a way that even when they are reported, they end up not facing the consequences, and as a result, it comes about that the employees that reported face the consequences of reporting⁷³. This article gives an example of Samantha Mwesigye, a senior state Attorney by then who in September 2018 filed a sexual harassment complaint against her boss at the Ministry of Justice. However, she claims that what she faced after the complaint was worse

⁷¹ Kats Meligner(July 2020) 4 Reasons why women do not report sexual harassment Available at <https://www.katsmeligner.com> [Accessed on 29th February,2024]

⁷² Stephen Ssenkaaba(July 2017) Uganda Violence Against women Unabated Despite laws and policies Available at <https://www.un.org> [Accessed on 29th February,2024]

⁷³ Women Movement in Uganda (20th May, 2019) No to Sexual Harassment in the Workplace! [Accessed on 27th February,2024]

than the harassment she had faced for the past 14 years. She had reported that she had sought remedy from the responsible bodies among which was the Solicitor General but all in vain.⁷⁴ She reported that she had reported the case in December 2018 and no committee was set up until February 2019 to handle her complaint. The Ministry of Justice only came out to defend itself in 2019 through a statement that it had taken every step to address the issue. However, none of the measures taken by them to address her issue was revealed. Later on, she was dismissed from her job and rendered unemployable in Legal circles while her boss Gashirabake was cleared by an internal review at the ministry promoting him twice to become a Judge of the Court of Appeal

According to Angel Mariana, it was also found out that despite the actions of the judges being more serious in sexual harassment cases, a few of them who had gotten involved in sexual harassment were prosecuted and a few of them were suspended from work. Therefore, because some employers seem authoritative, female employees who are sexually harassed by them end up keeping quiet as they tend to expect no remedy.

According to Jana L. Pershing⁷⁵, it was mentioned that the perception that even when they reported, nothing would be done to the harassers was reported to have been one of the reasons why many female victims of sexual harassment remained silent about it. According to a study conducted in different industries in Kawempe Kampala, Nyamugara found out that whereas very many female workers reported having experienced harassment at their places of work, and whereas some reported the cases, none of the cases had been handled by the committees to which this harassment had been reported. The female workers as well that were on the boards that handled sexual harassment claims were not helpful as they were arrogant due to the places they held at work⁷⁶. As a result, due to a lack of remedy for those who reported, many female workers ended up keeping it to themselves. This also justifies the silence of different female employees even when they are sexually harassed.

Victims of sexual harassment when approached by different researchers revealed that even when they complained, their issues were never taken seriously. For example, having been harassed for

⁷⁴ Ibid note 71

⁷⁵ Pershing, and another. (2003) "Why women don't report sexual harassment: A case study of an elite military institution." *Gender issues* 3-30.

⁷⁶ Ibid note 36

some time, Martha who was a cleaner in a company was able to complain against her supervisor to the responsible body. However, the matter was not taken seriously as the supervisor was only denied access to parts of the company where Martha worked and hence he went ahead harassing some other workers and went on to the company. The supervisor was changed from his employment status and promoted to a Regional Manager which was a promotion instead of a demotion and penalty due to the charges that lay against him⁷⁷. This shows a lack of remedy even when the harassers are reported hence making many female victims not report as they feel that not reporting is better than reporting as even after reporting, the culprits are not subjected to any penalties or punishments and neither are the victims remedied.

According to Ariana Maama WA Africa⁷⁸, the nature of the Employment Act 2006 mandates employment opportunities where the employer employs more than 25 employees. As a result, the nature of the remedy provided to workplaces with fewer numbers of employees is complaining to a labor officer. As a result, many of them end up not reporting such cases as at times some of them are ignorant about their having a right to claim to a labor officer, and some of them live in distant places from labor officers among other reasons. As a result, many of the employees end up not reporting because they lack committees to handle these cases.

2.7 RECOMMENDATIONS ON HOW TO MAKE FEMALE VICTIMS OF SEXUAL HARASSMENT REPORT THESE CASES.

According to Musa Ali and Mohammed⁷⁹, the police should have funds for both genders and children's desks and as well have specific officers at these desks to handle such issues designated to them. According to Prudence Nyamishana, police officers, inclusive of those who are not part of the gender desk ought to be trained on what exactly to do and how to approach sexual violence victims. A lot of women who do not speak out claim that when they do, the police lecture them and make them feel like it is their fault. This should be a solution with immediate effect so that the public regains confidence in the Police and can report in case they are faced with sexual harassment in the workplace⁸⁰. Teaching about different theories that are attributed to sexual harassment like

⁷⁷ (25th November,2022)Focus on Labor exploitation, 16days of Activism against Gender based Violence, Women's stories of sexual harassment at work [Accessed on 27th February, 2024]

⁷⁸ Ibid note 33

⁷⁹ Ibid note 55

⁸⁰ Ibid note 36

teaching about the principle of equality as enshrined in the constitution would condemn such acts of police officers blaming female employees. As a result, in the case of being hospitable and considerate to such claims, a lot of women will end up opening up to them and reporting sexual harassment cases.

Mindset change is one of the ways proposed by Kamini W to overcome sexual harassment in the workplace. It is proposed that female employees should not assume inferiority while at the workplace. Both the male gender and females are equal. They should know the fact that those struggling to change their mindsets should ask for advice and counseling as counselors can help different female employees identify the behavior that holds them back so that they replace them with positive ones. With this, women will be able to shun such theories like sexuality, superiority, and power among others that they attribute to men and not women, and as a result, they will be able to open up when they are faced with sexual harassment hence bringing it to an end.

Ariana Maama WA Africa suggests that the traditional belief that boys will always be boys and girls be girls that has been instilled into them right from when they are young makes a lot of women silent as they do not want to hurt the harasser⁸¹. Traditionally, women have been brought up in a manner that accords a lot of respect to men in that women will consider the male gender to be superior and hence they end up obeying their decisions. Both boys and girls ought to be brought about in an equal and non-discriminatory manner by their parents so that even when they grow up and become employees one day, they will struggle to help female employees report sexual harassment cases as they will consider them unfair. Women as well as recognizing that they are equal to men will enable them to report once they are faced with inequalities among which is sexual harassment in the workplace.

According to Caroline Kimeru, there is a need to create an anonymous reporting platform where women can file complaints about harassers and reveal their names. This would stop perpetrators from the act for fear of being outed as going through the proper channels at times does not as such help the victims.⁸² The creation of an anonymous reporting platform as well will also give confidence to female employees to report as the fear of being ashamed won't exist as they will be

⁸¹ Ibid note 41

⁸² Ibid note 20

able to access this platform privately and individually hence increasing the rate at which female employees are subjected to sexual harassment at the workplace report it.

According to Madhu Kosuri, stigmatization is often by fellow employees who name-call victims of sexual harassment have come out against the violations⁸³. There is hence a need to intervene in helping the victims by teaching them all about the vice in that in case they reveal it to their workmates, the advice they will get from them will be of reporting and not concealing it. This is because most of the workmates when approached for advice about sexual harassment, end up creating fears about reporting by the victims and its consequences. As a result, due to this stigmatization, many female employees end up not reporting the sexual harassment experiences.

Employees in Workplaces without sexual harassment policies have been advised by different scholars to report to a labor officer who is provided for by law in case they are faced with sexual harassment. In case the labor officer fails to handle their matter, they could proceed and take the matter to the Industrial Court. This Court can provide an effective remedy to them.⁸⁴ The Government should also amend both the Employment Act and the Regulations so that they provide for sexual harassment policies even in employment opportunities where the number of employees is less than 25. Such workplaces are also faced with sexual harassment and hence being covered by the law will enable them to speak out against the harassment.

According to Dulini Fernando, approached individuals in case of harassment should reflect on how to respond to the victims⁸⁵. Encouraging colleagues to remain silent, does not help curb the vice but rather increases it the more. They should hence be mindful of the advice they give to the harassed groups. Employers as well should ensure that their employees are well versed with the principles of sexual harassment and as a result, when approached by victims, such employees since they will be speaking from a learned point of view will dully advise the victims who will be able to report the sexual harassment cases hence enabling women to speak against the harassment.

Most women in different workplaces have no power as men hold most of the big positions and hence they aren't able to raise their concerns as per day-to-day challenges among which is sexual

⁸³ Ibid note 22

⁸⁴ Ibid note 41

⁸⁵ Dulini Fenando (May 2019) Sexual Harassment at work available at <https://www.independent.co.ug> [Accessed on 29th February, 2024].

harassment according to Abdul Ssewanyana and others. In research conducted in market areas, it was found that women, who constitute 80% of the population in markets, are not allowed to be leaders as per the outdated Market Act introduced in 1942. It was also found that markets are dominated by illiterate employees who do not enter into contracts of employment with their employers and neither do they have sexual harassment policies. As a result, many of them couldn't claim better working conditions among which are sexual harassment-free workplaces⁸⁶. As a result, due to a lack of spokespersons, many women end up not bringing sexual harassment claims on a personal basis. Women were hence advised in this article to take leadership positions in case they got a chance to do so as it is through their leaders that such claims against sexual harassment can be raised.

In research conducted in the Kaleerwe market by The Institute for Social Transformation and Makerere School of Women and Gender in Partnership with the Institute for Developmental Studies, it was found that employers in markets had set up different rules that exposed young ladies to sexual harassment. Women working in restaurants were commanded by their bosses to put on miniskirts and welcome any touches from men as this was considered customer care. Due to their inferiority and desire to keep their jobs, many employees end up accepting such unfair practices and hence not coming out to complain which would enable them to be remedied.⁸⁷ Employees in such workplaces were advised in this article to report such exploitations so that their conditions of work can be improved by the concerned bodies.

According to Tusiime Tutu and Carla, there is a need for the president to ascent to the Sexual Offences Bill of 2019 to provide for sexual harassment as an offense in Uganda as a suggestion in research conducted by different scholars. As per Carla Henry, with the criminalization of it, the police will be able to collect all the necessary evidence easily at the scene of crime hence enabling victims to easily prove these cases in Court and as well be remedied⁸⁸. With ease to report sexual harassment as an offense and the ability to prove it due to evidence collected by police officers,

⁸⁶ Abdul Ssewanyana and others (27th March, 2021) How socialization re-enforces workplace sexual harassment in informal markets available at <https://www.ids.ac.uk> [Accessed on 29th February, 2024]

⁸⁷ ibid

⁸⁸ Ibid note 43

many female victims will be able to come out and speak in case of harassment with a view that their voices will easily be heard and a remedy provided to them.

Haditha Isa suggests that there is a need for parliament to pass a law that protects victims and witnesses of sexual harassment from the offenders. With this, a lot of cases will be reported and enough evidence collected to that effect hence reducing the rates of sexual harassment within the country. ⁸⁹Due to the ease of collecting such evidence from witnesses who are so brave that the law protects them and hence they will not be attacked for testifying, many women will open up and report these cases as they will be assured of a remedy in case they can call enough witnesses to testify and have enough evidence to prove their case

2.8 CONCLUSION

The above literature review study covers reasons as to why female employees, even when subjected to sexual harassment do not report these cases in the Ugandan context. Most of these reasons are attributed to different theories encroaching into people's mindsets, some reasons are attributed to consequences experienced by victims upon reporting the harassment, remedies granted to them as well as the procedure they undergo while these cases are being litigated. It also covers recommendations on what should be done to enable women to come up and report sexual harassment cases in case they are faced with them. The research covers the experiences of female employees in Uganda giving reasons why they do not report sexual harassment experiences. However, when it comes to the general study as to why most of the female employees in Uganda remain silent even when sexually harassed, there is no detailed study as most of the scholars cover different areas as per sexual harassment for example the rate at which it is rampant. However, when talking about why female employees do not report these cases, they mention this in a line or two paragraphs hence creating a gap in such literature. This therefore identifies a gap as per lack of such information which is to be covered by my research as it is based on that objective.

⁸⁹ Ibid note 63

CHAPTER THREE

AN ANALYSIS OF THE LEGAL FRAMEWORK OF SEXUAL HARASSMENT

3.1 INTRODUCTION

To eliminate sexual harassment in the workplace in Uganda today, Uganda has ensured that different laws that is to say national ones provide for provisions against sexual harassment and that regional and international instruments that address sexual harassment are ratified. When it comes to domestic laws, Uganda has enforced provisions against sexual harassment in the Constitution of Uganda 1995 as amended and in both the criminal and civil sectors among which are laws like the Employment Act 2006, the Sexual Harassment Employment Regulations 2012, and the Penal Code Act cap 120 among other laws. Whereas civil laws against sexual harassment provide for remedies such as compensation, Criminal provisions like in the Penal Code Act cap 120 make sexual harassment actions such as rape criminal offenses and a convict subjected to imprisonment. This chapter is hence to assess the different laws that address sexual harassment in the workplace in Uganda some of which mostly the International and regional instruments do not directly address sexual harassment but different principles upon which it is attributed. Regional and International instruments like The Universal Declaration of Human Rights, The International Covenant on Civil and Political Rights (1966), and The African Charter on Human And People's Rights (1986) among others go ahead and address factors that would contribute to sexual harassment among which is discrimination, equality, gender among others. The literature below therefore covers an assessment of different laws among which are national, regional, and International instruments that address the issue of sexual harassment in the workplace in the Ugandan context.

3.2 NATIONAL LAWS THAT PROTECT WOMEN AGAINST SEXUAL HARASSMENT IN WORKPLACE IN UGANDA

According to Racheal Ampaire⁹⁰, the Government of Uganda intended to advocate for the rights of employees to work under favorable conditions and as well ensure that they enjoyed their freedom of association through forming Trade unions among other labor law rights and privileges. This justifies the coming up with different labor laws by the Government to protect both male and female employees from sexual harassment in workplace and these include the Constitution of the Republic of Uganda (1995) as amended, The Employment Act (2006), The Employment Sexual harassment Regulations (2012), The Penal Code Act cap 120(as amended), The National Gender-Based Violence Policy 2017, The Uganda Gender Policy (2007) among others which all tend to protect an employee from being subjected to sexual harassment⁹¹.

THE CONSTITUTION OF THE REPUBLIC OF UGANDA (1995) AS AMENDED

On the 27th day of September 1995, the General Assembly which had been assigned the duty of coming up with the constitution adopted it. This constitution establishes three branches of the government that is to say the executive, judiciary, and parliament⁹². In its preamble, it is stated that the constitution was adopted recalling the history of constitutional instability in the country, recognizing struggles against irony and exploitation, and being committed to building a better future. Article 1⁹³ provides that power belongs to the people and that their sovereignty shall be observed as per the Constitution. This provides that people have the power to complain about such acts that exploit them like sexual harassment in the workplace and these have to be determined by Courts of law in a dignifying manner towards those individuals since power is held by the people as per the Constitution. The Constitution is as well the Supreme law of the land and any law that is inconsistent with it shall, to the extent of its inconsistency be declared null and void as provided for under Article 2⁹⁴. The constitution provides for different rights to different individuals and these rights are held to be fundamental and not granted by the state as provided for under Article 20⁹⁵. Among the rights enshrined in the Constitution is the right to work under satisfactory and

⁹⁰ Rachel A. *A critical analysis of the rights of workers in Uganda in the Context of labor laws.*(dissertation) Kampala International University,2016.Deserrtation

⁹¹ Ibid note 13

⁹²Constitutionalnet, "Constitutional history of Uganda" (International idea, 2016) available at <https://constitutionalnet.org> accessed on 24th April 2024.

⁹³ Ibid note 23

⁹⁴Ibid note 23, Article 2

⁹⁵Ibid note 23, Article 20

healthy conditions as per Article 40(1) (a)⁹⁶. When it comes to working under satisfactory conditions, it involves working in a sexual harassment-free environment. These provisions therefore prohibit employers from making the workplace an unfavorable one by subjecting their employees to sexual harassment hence being so important in eliminating the vice.

All individuals are equal and have the freedom not to be discriminated against on any basis as enshrined in Article 21 of the Constitution 1995 as amended. The article defines discrimination to be giving different treatment to different persons on grounds of sex, color, and political opinion among others, and goes ahead to prohibit such and all forms of discrimination. It is in this constitutional provision that discrimination based on different grounds like sex including being favored in a certain job market because someone is either male or female is prohibited hence acting as a relevant provision in eliminating sexual harassment as many scholars have attributed it to discrimination.

Women in Uganda have a right to equal treatment with men and that right shall include equal opportunities in political, economic, and social activities as provided for in Article 33 (4). This hence provides that both men and women regardless of the rank or post they hold at the workplace are equal in the economic sector that provides work and hence either of them can bring a claim against the other in case they feel like their rights are being violated at the workplace. However, according to Carol Bacchi and another in their journal⁹⁷, the question has always been whether women need equal or a different treatment from men and they state that this has always been a point of argument amongst different American feminists. In the Ugandan context as per that question paused, women need special treatment as they are considered a vulnerable group. Article 32 of the Constitution of Uganda recognizes that women are a vulnerable group that needs special care and provides that affirmative action ought to be taken to ensure that they are put on the same footing as men. This also includes providing the necessary services and remedies to ensure that they are not sexually harassed as a weaker gender in the workplace. The state is also mandated under Article 33⁹⁸ to provide the facilities and opportunities to enhance the welfare of women

⁹⁶Ibid note 23, Article 40

⁹⁷ Carol B. and another, "What's the problem represented to be?" (2010) *Mainstreaming Politics: Gendering Practices and Feminist Theory* 111.

⁹⁸Ibid note 23, Article 33

which is aimed at enabling them to realize their full potential and advancement including laws, policies, strategies, and action platforms to prevent, control, and respond to sexual harassment. The State's responsibility is also stretched to protect women and their rights taking into consideration their unique status and natural maternal functions in society⁹⁹. This also covers the protection of women as a vulnerable group from being sexually harassed by men in case they are under an employer-employee relationship. According to Catherine Macknorr,¹⁰⁰ men are perceived to be having power over everything that exists in society. They use this power to shape and define social beings hence making themselves superior and women inferior and submissive to them. She also goes ahead to assert that women have been had and will always be controlled by men unless they understand men's tricks and acquire the power to control themselves. This study proves that women are a vulnerable gender that needs unique treatment as they have been silenced by men therefore justifying the existence and importance of Article 32 that provides for affirmative action and 33 of the Constitution of Uganda 1995 as the state comes up with measures to ensure that women are no longer held and controlled by men.

Cultural and customary values that are consistent with human dignity, fundamental rights, freedoms, and democracy may be preserved and those that are inconsistent with the constitution when it comes to certain rights like the right to equality shall as far as their inconsistency be declared null and void as provided for in objective 24¹⁰¹. This hence implies that such cultural practices like those that make women subject to men and those that enforce the culture of being submissive to all men even in the workplace which results in sexual harassment therein are to be declared null and void as they are against the Constitutional provision of equality between men and women as they continue making women a weaker and submissive gender which creates a gap between either gender which is contrary to the principle of equality. This is also an important Constitutional provision as it eliminates such cultural practices like submissiveness that would influence and promote sexual harassment in the workplace.

⁹⁹ Nabwire Ritah, 'A critical analysis of the law against sexual harassment in Ugandan prisons'(2019) available at <https://ir.kiu.ac.ug>

¹⁰⁰ Ibid note 39.

¹⁰¹ The National Objectives and Directive Principles of State Policy, Objective 24

Any individual who feels like their freedoms or the freedom of other individuals has been abused has a right to apply to a competent court for redress which is compensation according to Article 50 of the Constitution. It also provides in clause 3 that one dissatisfied with the decision of a court can go ahead and lodge an appeal in a competent Court. This hence provides for remedy to workers who are sexually harassed at the workplace and feel like their right to work under a favorable workplace has been infringed to proceed and make claims against their employers hence enabling them to attain justice when it comes to sexual harassment claims hence the constitution being of great importance in addressing the vice of sexual harassment at workplace.

THE EMPLOYMENT ACT 2006

An employee at the workplace is considered to be sexually harassed when their employer directly or indirectly asks for sex, for a promise of preferential treatment, detriment from work, or for a threat of the future position through the use of a language, visual material, physical behavior which directly or indirectly subjects an employee to a behavior that is unwelcome at the workplace according to Section 7 of the Employment Act. This is in line with the definition adopted by Catherine Macknnon of sexual harassment as she¹⁰² classifies it into two types that are to say quid pro quo harassment which occurs when the perpetrator explicitly expresses the forfeit of employment or benefits or one where an employer promises to make the sexual behavior beneficial towards the employee and both women and men who don't comply with these sexual advances experience negative impacts. Macknnon also establishes another kind of sexual harassment which is the condition of work harassment where a hostile and offensive environment is created in case the employee tries to object to being sexually harassed. The definition of the Employment Act is in line with that of Catherine Macknnon as both bring out the element of asking for sex for preferential treatment or a threat of creating a hostile environment at the workplace. According to the case of Gashirabake Christopher v Samantha Mwesigye¹⁰³, sexual harassment was defined as per the definition adopted by Catherine Macknnon. According to the evidence in the pleadings at hand, it pointed out different forms of how the harasser communicated to the victim, for example, attachment of unwelcome sexual love notes, a request to dance at a work retreat in Munyonyo, a proposition of a job at KCCA and asking for sex to that effect, threats of disciplinary action and

¹⁰² Ibid note 2

¹⁰³ Gashirabake Christopher v Samantha Mwesigye Miscellaneous application no. 27 of 2022

disparaging her professionalism among others. The court held that all these were characteristics of sexual harassment and due to various reasons, it dismissed the application for striking out the suit for being barred by limitation and set dates for scheduling a memorandum towards the handling of this sexual harassment case. In establishing if sexual harassment existed in the workplace, what should be established is whether there was the creation of a hostile or abusive environment and not whether it caused psychological harm to the victim as per the holding in the case of *Harris v Forklift Systems*¹⁰⁴.

In case an employee is subjected to sexual harassment by the employer or their representative who is defined to be a person with authority over the employee at the workplace, the employee will have to complain to a labor officer who shall have powers as those on unjustified disciplinary penalties or unjustified dismissal as provided for under section 7 (2). This provides for a procedure to be taken in case an employee is faced with sexual harassment hence giving them a go-ahead in reporting these cases. The term sexual harassment spread through academic circles in the 1970s and began to gain traction as a legal concept in 1997. In that year, Catherine Mackinnon put forward an argument that workplace harassment constituted sex discrimination which as well was also against the Civil Rights Act of 1964. Federal judges had previously rebuffed this idea but by 1978, three courts had agreed with Mackinnon and in 1986, the Supreme Court agreed. By 1997, 75% of American Companies had developed mandatory Training Programs for all employees to explain what behavior the law forbids and how to file a complaint and 95% had come up with procedures for reporting sexual harassment¹⁰⁵. Due to her efforts to seek legal remedies to address sexual harassment as a problem through seeking redress from courts which later heard such cases and provided a remedy, different bodies were established to provide remedy hence justifying the existence of a labor officer in the Employment Act as a person to address sexual harassment complaints at workplace.

Employers that employ more than 25 employees are under an obligation to have a sexual harassment policy at the workplace to control all forms of sexual harassment according to section 7(4). This provides for a measure to prevent sexual harassment in workplaces that have a lot of employees hence helping in curbing it down as through the policy, workers get to know about its

¹⁰⁴ *Ibid* note 3

¹⁰⁵ *Ibid* note 1

disadvantages. This is in line with the findings of Ariana Maama WA Africa¹⁰⁶ though she critiques the Employment Act for only providing remedies to workplaces with 25 or more employees and hence those with a less numbers of employees end up not reporting such cases because they lack committees to handle them.

The position of creating a sexual harassment-free workplace by employers is seen in a Kenyan decision in the case of CNR; FITM & another where it was held that section 6 of their Employment Act gives a duty to employers to put in place measures to prevent sexual harassment at workplace and take measures against convicts complained of thereof. Having failed to put in place a sexual harassment policy by the employer in this case, contravened with Article 41(1) of the Constitution which provides for unfair labor practice. As a result, the claimant's right to inherent dignity was breached. It was however observed that the claimant should not have resigned from work and in case she did, she would be deemed to have been dismissed constructively. She was therefore entitled to recover damages for constructive dismissal and sexual harassment as well. This is in line with Section 7 (4) of the Employment Act which provides that every employer with 25 or more employees must come up with a sexual harassment policy and Section 7(2) of the Employment Act which gives the labor officers power to give such penalties like in unjustified dismissal.

THE EMPLOYMENT (SEXUAL HARASSMENT) REGULATIONS 2012

According to the powers granted to the Minister in Section 7 of the Employment Act and Section 97(1) of the Employment Act to make regulations for the better carrying on the provisions of the Employment Act 2006, the Minister responsible for Labor matters came up with these regulations to be more specific on provisions of sexual harassment at the workplace on the 28th day of April 2012 the day they were assented to as shown in the preamble of these Regulations. Regulation 1 of the Employment (Sexual Harassment) Regulations defines harassment to be verbal or physical abuse that interferes with work or creates an intimidating hostile and offensive working environment. This provision also throws more light on what exactly is considered to be sexual harassment hence making it known to every Ugandan most especially to employees as per our topic of study. Regulation 3 of the Sexual Harassment Regulations provides for a sexual

¹⁰⁶ Ibid note 41

harassment policy. It provides that an employer has to ensure that they give a notice to employees that sexual harassment is illegal, describe examples of the sexual harassment, provide a statement of consequences, describe the reporting procedure, educate and train employees not to be part of the harassment and as well give additional training to the committee against sexual harassment. This all is aimed at curbing the vice of sexual harassment in the workplace as it makes employees understand what exactly sexual harassment in the workplace is and how to overcome it.

An employer is under a duty to designate a person who is gender sensitive to be in charge of sexual harassment if they have more than 25 employees as provided for in Regulation 8¹⁰⁷ and such a person must receive complaints about sexual harassment. Being gender-sensitive, such persons can handle all complaints brought to them by either gender hence aiming at reducing the rate of sexual harassment in the workplace. In Uganda, in research conducted about gender desks, different police stations were found to lack gender desks and as a result, the harassment and complaints ended up being handled by any officer at the station and some of them were not qualified in that sector¹⁰⁸. It was found that due to the absence of gender desks, handling such cases became difficult. As a result, many female employees ended up being blamed as some officers who handled gender issues were not attached to the gender desks and subscribed to different theories surrounding sexual harassment such as power, sex, and nature among others as a result, many victims ended up being blamed to that effect hence limiting the numbers of those that would report the harassment as they ended up with a view that instead of being helped, they would end up being blamed and hence justifying them being silent victims of sexual harassment.

The employer as well is also under an obligation to choose a sexual harassment committee that has duties to receive and register complaints, carry out investigations as per the sexual harassment, keep records of the harassment, and measures are taken, organize and provide reports to a labor officer, review the provisions of the policy among others as provided for in Regulation 11. According to the case of *Magoba Editor V Tusker Mattresses U ltd*¹⁰⁹, on the issue of whether a disciplinary committee could handle and decide cases of sexual harassment, it was held that whereas the sexual harassment committee must handle complaints, keep records and report to the

¹⁰⁷ Ibid note 41

¹⁰⁸ Ibid note 56

¹⁰⁹ *Magoba Editor v Tusker Mattresses (U) ltd* Labor dispute reference No. 243 of 2015

commissioner issues of sexual harassment, there is no provision in the regulations that gives it sole mandate to entertain such complaints. There is also no provision stopping the disciplinary committee from handling the same. It was therefore held that in the absence of a sexual harassment committee, the disciplinary committee can handle such a complaint and therefore its decision as to the same shall not be considered illegal.

An employee who is sexually harassed is under an obligation to complain to a labor officer who also must take on further proceedings. The procedure for complaining and what happens thereafter are all provided for in Regulation 13¹¹⁰. The provision of a labor officer as one who handles labor disputes among different persons in an employment relationship provides a neutral body as these officers are not part of the workplace and therefore, this makes reporting of such cases easy. According to Catherine Macknonn, sexual harassment at first, was handled as a civil matter whereby a cause of action would be brought against the employer under sexual discrimination as it was the only area that could be used to cover such a vice as it covered non-discrimination and sexual harassment was perceived as well to be as a result of discrimination based on gender. In the absence of specific laws against sexual harassment, claimants proceeded to claim against it under discrimination¹¹¹. The Kenyan case of P.O V Board of Trustees¹¹² demonstrates different ways through which Kenyan law protects female employees from being sexually harassed. It provides for protection through the Equal Opportunities and Human Rights legislation, and criminal law, it provides for remedies in civil and labor legislation. Due to such protection accorded, the Civil Court was able to reward P with compensation of ksh.3, 240,000 which covered sexual harassment and as well unfair dismissal from employment. Sexual harassment is also handled in different sectors in Uganda the civil one where it is addressed in the Employment Act, and the Criminal one where it is addressed in the Penal Code Act among others.

THE PENAL CODE ACT CAP 120

The Constitution of the Republic of Uganda provides that no one shall be charged with an offense that did not constitute an offense at the time of its commission according to Article 28(2)¹¹³ of the

¹¹⁰ Ibid note 12 , Regulation 13

¹¹¹ Ibid note 5

¹¹² P.O V Board of Trustess,AF

¹¹³Ibid note 23 , Article 28(2)

Constitution. The Penal Code Act was passed on 1st June 1950 to establish the Code of Criminal Law in Uganda by addressing offenses and their punishments, as well provide for different defenses of such offenses. The Penal Code Act has since been amended that is to say it was amended in 2002 by the Anti-Terrorism Act, the Penal Code Amendment Act 2007, The Anti-Corruption Act 2009, and The Trademarks Act 2010 among others. When it comes to sexual harassment, the penal code covers such acts that involve forceful sexual intercourse by men who would as well be employers or their representatives at the workplace like rape and defilement and such actions that demean women.

Any person, who intends to insult the modesty of any woman or girl, goes ahead and utters any word, sound, or gesture or exhibits any object with the intention that such word or sound shall be heard or that it shall be seen by such a woman or girl or intrudes with the privacy of any girl commits a misdemeanor and is liable to a year of imprisonment according to section 128 (3) of the Penal Code Act. This criminalizes sexual abuse cases that would be performed by different parties, employers inclusive hence giving more protection to the employees. Since the definition of sexual harassment involves the use of language and sounds in a way that entices women to engage in sex with their employers, the protection provided under this section that criminalizes such languages is so important in addressing the vice of sexual harassment in the workplace.

Rape is another sexual act that can be attributed to sexual harassment in the workplace. It is defined as the unlawful carnal knowledge of a woman or girl without her consent or where the consent is provided when it is provided due to a threat of bodily harm or through false representation or impersonation of one's husband according to section 123¹¹⁴. Such a person who rapes commits a felony and is liable to suffer death as per section 124 of the same act. These also protect the employees from being sexually harassed by the employer as at any time they may decide to bring proceedings against the employer under this Act and as a result, such provisions force employers to keep in the lawful lane at the workplace and not sexually harass their employees as they always have a fear of criminal sanctions against them hence creating a sexual harassment-free environment at workplace.

¹¹⁴ Ibid note 26, section 123

3.3 INTERNATIONAL LAWS THAT PROTECT UGANDAN FEMALE EMPLOYEES FROM BEING SEXUALLY HARASSED AT WORKPLACE

According to Abdallah Ssekibembe, Uganda is party to various international instruments on gender equality and the empowerment of women most of which have been domesticated in national laws and policies. International Instruments include; The Convention on Elimination of All Forms of Discrimination against Women (1979), The Beijing Declaration and Platform for Action (1995) and its follow-up recommendations (2000, 2005, 2010), The Common Wealth Plan of Action for Gender Equality, The United Nations Declaration on Violence against Women (DEVAW, 1993), The Discrimination (Employment and Occupation) Convention 1958(No.111) the Equal Remuneration Convention of 1951 among others.¹¹⁵ Though some of such laws do not necessarily provide for the aspect of sexual harassment in the workplace, they put women and men on the same footing by emphasizing equality and as well providing for principles like non-discrimination based on different aspects like gender hence protecting women including employees from being subjected to sexual harassment due to such inequalities at the workplace.

UNIVERSAL DECLARATION OF HUMAN RIGHTS, 1948.

On 10th December 1948, the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights. It encouraged member states to publicize it, read and display it in all institutions and other places. This declaration has different rights that create equality between men and women and as per the subject of study and these are key in addressing the issue of sexual harassment at the workplace as they promote equality among all individuals in the workplace. Having become independent in 1962, Uganda automatically became a party to the Universal Declaration of Human Rights¹¹⁶. Article 1 of the UDHR¹¹⁷ provides that all human beings are born free and equal in dignity and rights. This hence provides that all people whether employers, employees, men or women are born and remain equal. This hence asserts that they should treat each other with dignity and shun away from vices like sexual harassment as employers

¹¹⁵ Ssekibembe A. *“Sexual harassment at workplace. Case study of Sexual harassment under employment in Uganda”* (Bachelors Dissertation). May 2019, Uganda Christian University.

¹¹⁶ Voddianikov, 'The Universal Declaration of Human Rights and Post war Constitutional Democracy: Common origins into the 21st Century[2020]

¹¹⁷ The Universal Declaration of Human Rights, Article 1

tend to think they are superior due to the positions they hold. According to Peterson and others¹¹⁸, scholars who drafted this Declaration traced the roots of the source of this information in this article to be from different sources for example The French Declaration of Rights of Man 1789, and the American Declaration of Rights and Duties of Man 1791. A French delegate Renne Cassin who was one of the drafters of this law pointed out that there was a need to stress unity and equality of human beings to be able to promote human rights as Hitler had started by asserting how men were not equal before attacking their liberties.

Every individual has a right to work, free choice of employment, just and favorable working conditions of work and protection against unemployment as per Article 23¹¹⁹. When it comes to just and favorable conditions of work, it simply implies creating a favorable working condition for the workers. Since sexual harassment makes work a misery, this article protects employees including the female ones from sexual harassment at the workplace hence it being as relevant as per our topic of study. According to Trudy H¹²⁰, the UN Human Rights Council in 2011 came up with the UN Guiding Principles on Business and Human Rights which are aimed at preventing, addressing, and remedying Human Rights abuses committed in the workplace among which is sexual harassment hence these provisions are so relevant in addressing the issue of sexual harassment at workplace.

INTERNATIONAL COVENANT ON ECONOMIC SOCIAL AND CULTURAL RIGHTS, 1966

According to the Centre for Women, Peace, and Security, the ICESCR was adopted by the UN General Assembly on 16th December 1966¹²¹. Uganda ratified this Charter on 27th January 1987 hence being party to the present charter. It provides the legal framework to protect and preserve the most basic economic rights among which are working rights, and social and cultural rights. Article 2 of the present charter provides for a right to non-discrimination and the right to an effective remedy in case the discrimination takes place. This provides that employers and

¹¹⁸ Peterson, and another. "The Universal Declaration of Human Rights: An Archival Commentary." [2019] *International Council on Archives—Human Rights Working Group* (2018): 37-39.

¹¹⁹ Ibid note 16, Article 23

¹²⁰ Trudy H. "The Universal Declaration of Human Rights: An Archival Commentary." [2018] *International Council on Archives—Human Rights Working Group* 37-39.

¹²¹ Centre for Women, Peace and Security 'Violence against women' available at <https://blogs.lse.ac.uk>

employees are equal at the workplace hence incidences where employers use power to harass the employees should be avoided. The present charter is relevant in preventing sexual harassment at the workplace. Article 3¹²² provides that men and women shall enjoy economic, social, and cultural rights without any distinction as per their sex. When it comes to Economic rights, it includes the right to work where at workplace both men and women have to be treated equally hence female employees should not be subjected to sexual harassment by them being female and being discriminated against based on gender and hence have to be treated equally.

State parties to this present convention are under an obligation to ensure that they recognize the right to work and that everyone at the workplace is accorded safeguards for the protection of this right as per Article 6. It goes ahead and provides that among the steps that can be taken by state parties in the realization and observance of this right is through coming up with policies, training Programmes, techniques, and guidance to different persons. This provides that this present instrument protects workers and women from sexual harassment in the workplace as states are put under a duty to protect their members from the vice and as a result, through legislation and other measures taken by member states, many employees end up working under favorable working conditions.

Employees have a right to just and favorable working conditions at the workplace as provided for in Article 7. It provides that all workers shall have a right to safe and healthy working conditions and equal opportunities for employment to higher positions at the workplace. By providing for equal opportunities at work, it creates a sexual harassment-free workplace hence addressing this issue internationally. Due to the presence of these different provisions, Uganda has been able to enforce them into her laws hence making the workplace a better place for both employers and employees. General Comment No. 23 on the International Covenant on Economic Social and Cultural Rights provides that among the favorable conditions at the workplace is a sexual harassment-free workplace. It provides that workers, both male and female should work in a sexual harassment-free workplace, and member states to the present Convention should legislate to prevent discrimination through their penal codes and Labor legislations. It provides that they should in these laws define sexual harassment, prohibit certain acts that amount to sexual harassment, identify duties of employers and those of employees, provide access to justice to

¹²² The International Covenant on Economic Social and cultural Rights, Article 30

victims, protect victims by including focal points to help them, provide procedures for reporting and having a sexual harassment policy¹²³.

CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW) 1979

The term sexual harassment spread in the 1970s and began to gain traction as a legal concept in 1997 due to scholarly writings, for example, Catherine Mackinnon, a feminist legal scholar put forward an argument that workplace harassment constituted sex discrimination which as well as against the Civil Rights Act of 1964. Federal judges had previously rebuffed this idea but by 1978, three courts had agreed with Mackinnon and in 1986, the Supreme Court concurred. In 1991, Anita Hill accused Thomas of having sexually harassed her while she was his assistant at the Equal Opportunity Employment Commission. By 1997, 75% of American Companies had developed mandatory Training Programs for all employees to explain what behavior the law forbids and how to file a complaint and 95% had come up with procedures for reporting sexual harassment¹²⁴. These developments also sparked off in different parts of the world and different countries therefore based on the developments in America based on discrimination, laws that protected employees were developed.

The Convention on Elimination of all Forms of Discrimination against Women addresses the issue of discrimination and it defines in Article 1¹²⁵ discrimination against women to be an exclusion, restriction, or distinction, made based on sex which has the effect of impairing and nullifying the recognition of women irrespective of their marital status of human rights and fundamental freedoms. It was adopted by the UN in 1979 and ratified by Uganda on 22nd July 1985 and as well domesticated its provisions in the Constitution in 1995. By defining what amounts to discrimination as per sex, the article points out all favors or exclusions made based on sex that amount to sexual harassment. This Convention having identified discrimination goes ahead to prohibit it and as a result, this addresses the issue of sexual harassment in the workplace as it is based on discrimination. The Convention is also described as an international bill and is one of the

¹²³ Economic and Social Council , General Comment no.23 : Article 7 of the ICESCR (Right to just and favorable conditions at work), 54th session, adopted on 16th June, 2015 <https://www.ohchr.org/treaty/bodies>

¹²⁴ Ibid note 1

¹²⁵ Convention on the Elimination of All forms of Discrimination Against Women, Article 1

key international agreements that guide the work of UN Women in achieving equality. These principles, since they are recognized to be of an international standard are adopted to eliminate such practices based on discrimination like sexual harassment in the workplace¹²⁶. This General Recommendation No. 35 of the Committee on Elimination of Discrimination against Women provides that member states are required to adopt legislative measures prohibiting all forms of gender violence against women and girls. They are put under a duty to analyze women's situations of life in all spheres, explain the reason for using one type of measure and not the others, provide explanations for failure to adopt any special measures, include into their constitutions temporary step measures to ensure nondiscrimination against women among others. Since this is also aimed at eliminating all forms of discrimination which is considered the cause of sexual harassment, it is relevant in addressing the issue of sexual harassment in Uganda. By 2018, 189 states had ratified the CEDAW hence showing progress in addressing the issues affecting women globally among which is sexual harassment in the workplace.

THE ILO CONVENTION ON DISCRIMINATION (EMPLOYMENT AND OCCUPATION) ILO CONVENTION NO.111

Having decided upon the adoption of proposals regarding discrimination in employment and occupation and having considered that discrimination abuses the provisions of the Universal Declaration of Human Rights, the Conference of the International Labor Organization adopted this convention on the 25th of June, 1958. Uganda ratified this present convention on 2nd June 2005¹²⁷. Article 2 of the Convention provides that each of the members on which the convention applies undertakes to ensure a policy designed to promote equality of treatment in respect of employment and occupation to eliminate any form of discrimination. This provides for member states to legislate to provide for equality at the workplace hence reducing the rates of gender imbalance and inequality at the workplace therefore ensuring a reduction in the rates of sexual harassment amongst member states.

Each member to which this convention applies is under an obligation to seek the cooperation of the employers' and workers' organizations and other appropriate bodies in ensuring that they observe the policy of eliminating sexual harassment in the workplace according to Article 3. It

¹²⁶ UN women, available at <https://www.unwomen.org> published in 2016

¹²⁷ International Labor Organization, 'Ratification for Uganda' available at <https://www.ilo.org/dyn/normlex>

also provides that members are under an obligation to organize and promote educational programs as a way of observing the policy. Such Programmes adopted by different member states, reduce the rate of sexual harassment in the workplace as there seems to be a notion of equality that enables employers to observe the notion of dignifying one another amongst themselves. As this present covenant addresses the issue of discrimination which has been attributed mostly to sexual harassment, it addresses this issue hence being a relevant Instrument. In its comments to Uganda, the Committee of Experts on the Application of Conventions and Recommendations (CEACR)¹²⁸ observed that it had been aware that the Employment Acts of Uganda, Kenya, and Tanzania were in the process of being amended to conform to this labor standard against discrimination. It went ahead and asked these states to provide developments that led to the amendments and as well provide the amended copies to them. This ensures that different states keep their laws in appropriate standards by being accountable to the committee hence preventing such acts like discrimination which would lead to acts like sexual harassment.

THE EQUAL REMUNERATION CONVENTION 1951 (NO.100)

The General Conference on the International Labor Organization¹²⁹, having met at Geneva on 6th June 1951 came up with this convention to address the issue of remuneration of men and women in equal employment. Uganda ratified this convention on 2nd June 2005. Article 1 of the present convention defines equal remuneration for men and women of equal value to be the rate of remuneration established without discrimination that is based on sex. Article 2 provides that member states shall ensure the principle of equal remuneration is enforced in their jurisdictions through national laws, legally established machinery wage, and collective agreements between employers and employees among others ways. As this convention provides for equal treatment of both men and women which is through equally paying them and it does away with discrimination which Catherine Macknnonn attributed to be the cause of sexual harassment, it addresses the vice of sexual harassment in the workplace.

¹²⁸ Conventions on minimum wage (No.26) and protection of wages(95),Observation, “Comments adopted by the CEACR” adopted in 2021 available at <https://www.ilo.org>

¹²⁹ Ibid note 126

3.4 REGIONAL INSTRUMENTS THAT PROTECT EMPLOYEES FROM SEXUAL HARASSMENT.

As per research conducted by the Ministry of Health¹³⁰ at the regional level, Uganda is party to different instruments among which are; The Maputo Protocol of July 2003, The African Charter on Human and Peoples Rights, The East African Community Treaty (2000) AU Gender Policy (2009), Gender Policy and Strategy (2004) among others.¹³¹ According to Lee Swepston, although the International Labor Organization is the primary body in the field of labor-related rights, these rights are also provided for and observed by different regional organizations and the Development Bank.

THE AFRICAN CHARTER ON HUMAN AND PEOPLE’S RIGHTS 1986

This charter came into play on the 21st day of October, 1986 and Uganda ratified this Charter on 27th May, 1986¹³². In its preamble, it provides that it is established considering the Charter of the Organization of African Unity that stipulates that freedom, equality, justice, and dignity are essential objectives for the achievement of aspirations of the people of Africa. Article 15¹³³ of this charter provides that every individual shall have a right to work under favorable conditions and shall be entitled to pay upon working. What amounts to working in favorable conditions is being able to work in a sexual harassment-free workplace hence making work better therefore addressing the rate of sexual harassment at the workplace. Article 15 of the present charter provides that every individual shall have a right to work under satisfactory working conditions and be entitled to equal pay for equal work done. By providing working in a favorable environment, providing working under a sexual harassment-free workplace hence addressing the issue of sexual harassment at the workplace.

THE MAPUTO PROTOCOL OF 2003

¹³⁰ Constitutionalnet, “Constitutional history of Uganda” (International idea, 2016) available at <https://constitutionalnet.org> accessed on 24th April 2024.

¹³¹ Swepston, Lee. “The Development in International Law of Articles 23 and 24 of the Universal Declaration of Human Rights: The Labor Rights Articles.” [2014] *the Development in International Law of Articles 23 and 24 of the Universal Declaration of Human Rights: The Labor Rights Articles*.

¹³² Uganda National Treaty Organization, ‘When did Uganda ratify to the African Charter on Human and People’s Rights?’ available at <https://treaties.un.org>

¹³³ The African charter on Human and people’s rights, Article 15

This is a regional human rights instrument that came into play in 2003 providing for the rights of both girls and women and hence protecting them from sexual harassment cases as they seem to be a vulnerable gender. Uganda ratified this present covenant on 22nd July, 2010¹³⁴ hence becoming a member state to it. The Optional Protocol to the African Charter on Human and People's Rights of Women in Africa provides that considering that Article 2 of the African Charter on Human and People's Rights provides for the principle of non-discrimination and that Article 18 of the same Charter calls upon member states to do away with discrimination against women, it was affirmed in the preamble that any practice that endangers or hinders the development of women should be done away with. Article 2 of this present protocol provides that member states should ensure that there is no discrimination against women. Article 13 provides that member states shall ensure that they adopt legislative measures to ensure that women have equal opportunities in work and career among which is protecting them from exploitation by their employers.

According to Article 14(2) of the Maputo Protocol, member states are called upon to take appropriate measures to appropriate measures to protect the reproductive health of women through authorizing abortion in cases of rape and sexual assault where the fetus's presence is likely to affect the mental and physical health of the mother. General Comment No.2 on Article 14(a, b, c, f and Article 14(2)(a) and (c) of the Maputo Protocol ¹³⁵emphasizes and puts an obligation on member states to draft and present periodic reports on measures taken to promote and protect sexual and reproductive health of women. This provides the redress of abortion in case of being pregnant due to sexual harassment at work and the obligation put onto state parties to address reports on measures adopted makes member states accountable and work tirelessly in meeting the standards set by international standards hence being able to address the issue of sexual harassment at workplace.

3.5 CONCLUSION

In conclusion, the above study brings about the different laws in Uganda at the national, Regional, and International levels that address the issue of sexual harassment. Although some of the laws

¹³⁴ University of Minnesota, "Ratification of International Human Rights Treaties-Uganda" available at <http://hrlibrary.umu.edu/research/ratification-Uganda> accessed on 29th March,

¹³⁵ Maputo Protocol, General Comment No.2:Article 14(a, b, c, f and Article 14(2)(a) and (c) (Right to sexual and reproductive health) 55th session adopted on 28th November, 2014,available at <https://achpr.au.int/index.php/node>

like the Employment Act 2006 and case law address the issue of sexual harassment directly, most of the International and Regional instruments address issues that would lead to unequal treatment of different persons in the workplace and that would lead to sexual harassment due to lack of gender equality and the spirit of male dominancy. Among the issues addressed to bring about equality are equality itself among different persons, and non-discrimination among others. A few cases have however been reported to courts of law in Uganda as it has been found out that many women end up keeping quiet even when they are subjected to sexual harassment. There is therefore a need to enable them to freely speak out about sexual harassment experiences which will leave many cases prosecuted hence reducing the rate of cases of sexual harassment in the country.

CHAPTER FOUR

FINDINGS

WHY FEMALE EMPLOYEES DO NOT REPORT THEIR SEXUAL HARASSMENT EXPERIENCES

4.1 INTRODUCTION

This chapter is aimed at coming up with my findings concerning why female employees do not come out to report sexual harassment cases. In the research I have carried out, I have been able to find out that despite the existence of different laws in Uganda addressing the issue of sexual harassment like the Employment Act of 2009, the Penal Code Act cap 120, and reporting mechanisms like the labor officers and courts among others, it is still evident in very many workplaces. It is so sad that even the men seen as powerful and influential in society are found victims. This was confirmed by Caroline Natukunda in her article¹³⁶ published in the Sunday Vision where she wrote and revealed that several powerful men in different careers found themselves in trouble over sexual harassment. She also revealed that some of these as well had sex in their offices which in turn affected their careers and relationships with different people at their places of work. In this same article, it is shown that sexual harassment is also evident in the Judiciary. Caroline Natukunda had this to report about sexual harassment in the judiciary:

The latest man to fall into a pit is senior grade 1 Magistrate Henry Haduli who has been dismissed for having sexual intercourse with a married woman and a staff of the judiciary in the Chambers of the Chief Justice of the High Court in Kampala while he was away.¹³⁷

According to research conducted by Clare Muhindo, it was held that sexual harassment is and remains a big challenge in the Ugandan journalism sector. She pointed out that as journalists, the nature of their work which requires them to work at night subjected them to sexual harassment. She said;

¹³⁶ Carol Natukunda, (April 2014) Power and sex. Is your wife safe at workplace? Available at <https://www.newvision.co.ug> Accessed on 3rd May 2024.

¹³⁷ ibid

The nature of our work has pushed out some would-be reporters and good editors. The late nights. If you are not lucky enough to be dropped off by an office van, you may take a lift from some guy from work, and that puts you at the mercy of that man.

She also noted that though this proved a big challenge, most of the affected victims in this sector remained silent. In a study conducted by WAN-IFRA Women, it was found that almost half of the women in the newsroom in Africa faced sexual harassment. However, out of these, only 30% came out to report their experiences.¹³⁸ This shows the existence of sexual harassment in different workplaces. In an article published by The New Vision by Esther Namugoji¹³⁹, random employees were asked if they had been subjected to sexual harassment. 16.2% of the asked population revealed that they had been subjected to sexual harassment whereas 82.8% of them said they had never been subjected to sexual harassment while at their places of work. Of the population that revealed they had been subjected to sexual harassment, 13.5% were males making female victims 86.5%. This shows how highly the ladies are subjected to sexual harassment at their places of work compared to men. I have also been able to find out that sexual harassment occurs in all workplaces including in the Police department. In 2009¹⁴⁰, Concerning being harassed while at the workplace, different police officers revealed to the Inspector General of Police that they had been asked for sexual favors to be given promotions, and those that had declined the requests had remained in the same rank for over 20 years. About sexual harassment in the police sector as well, one Samuel Kyamukama revealed what he saw when he entered the office of his employer, *“I pushed and entered only to find him making love with a policewoman on the floor. Shocked, I turned back and closed the door.”*¹⁴¹ This shows how serious the vice is in that employers are not even scared of being found harassing the employees as they even get the confidence to lay them down in their offices for sex. Though there is enough evidence showing the existence of the vice and a few individuals have come up to report these cases, many female employees still do not report these cases. There are different reasons why many female employees do not report these cases among

¹³⁸ Clare Muhindo, (February 2023) Sexual harassment driving women out of the newsroom available at <https://acme-ug.org> Accessed on 3rd May 2024

¹³⁹ Esther Namugoji, (January 2011) 16 percent of workers are sexually harassed available at <https://allafrica.com> Accessed on 3rd May 2024.

¹⁴⁰ *ibid*

¹⁴¹ *ibid* note 135

which are the fear of consequences that come with reporting, the shyness that exists amongst female employees, and the belief that they won't be taken seriously among others as shown below.

4.2 DELAY IN AWARDING REMEDIES TO VICTIMS AND A BELIEF THAT NOTHING WILL BE DONE ABOUT THE HARASSMENT.

Concerning the research I have conducted, I have been able to find out that the long period taken to award remedies to the victims has stopped many female victims of sexual harassment from making complaints. The few female employees who gain the courage to come out and report sexual harassment cases find it challenging that the bodies they report take long to remedy them. Due to the long period taken to remedy these victims, many of the would-be reporters end up with a mindset that even if they report, nothing will be done hence justifying the silence of female victims in sexual harassment claims. In a publication made in the Monitor, it was stated that the rates of sexual harassment had increased in the year 2020. To that same effect, the Monitor went ahead and noted:

The beginning of this year was characterized by rape claims. If you have been following events on social media, you should have been able to remember the hashtag #MeTooUg that trended for weeks, where many women shared their painful stories of how they had been raped. Many victims do not report the sexual harassment experiences to the police because these cases take forever to be prosecuted¹⁴²

In the same way, in a publication made in the Daily Monitor Newspaper, Ssemakadde, Who is a Human Rights lawyer made this comment as per the long procedure taken in the prosecution of sexual harassment cases.

If you have a smartphone and can afford data, why would you go through the drudgery of reporting a sexual offense to the police, dealing with lawyers, assembling evidence, searching for credible witnesses, traveling to court for cross-examination, and waiting endlessly for a verdict that may potentially take ages?¹⁴³

¹⁴² The Monitor, Why sexual harassment victims suffer in silence 19th July, 2020 available at <https://www.monitor.co.ug> Accessed on 2nd May 2024.

¹⁴³ ibid

The same point of cases taking too long to be prosecuted was also brought out in research conducted by Caroline Kimeu. She noted that Samantha, who had claimed being harassed by Gashirabake had this to say:

*This is nothing I am willing to let go of. I would already anticipate that, from start to finish, this could take at least ten years, but it is so upsetting that I have spent the first four without being heard.*¹⁴⁴

In the same way in the political field, female employees were reported not to have reported their experiences due to the long period taken to deliver remedies to the victims. In an article published by Ibrahim Ruhweza¹⁴⁵, it was pointed out that testimonies were shared during a launch and they indicated that most of those who were in the political field were able to join it due to the “*high power*” and were sexually harassed though the authorities took long to take action against the perpetrators. In an article written by Lindsey Kukunda¹⁴⁶, she also expressed that the long period taken to remedy the victims of sexual harassment prevented them from making complaints. She asserted; “*Is it enough? No, it is not. The time it takes to get justice – if you get justice at all – is long enough to frustrate women until they give up.*” Due to the claim that different authorities that are reported to among which are courts, labor officers, and sexual harassment committees take a long period to remedy the aggrieved party, many more victims get to observe the period it takes to remedy the aggrieved party and end up losing hopes in the process and therefore not reporting the sexual harassment cases

I have also been able to find out that due to long periods taken to deliver remedies to the victims, many of them end up losing hope of being remedied and with a belief that nothing will be done concerning the complaints made hence stopping many of them from reporting sexual harassment cases at workplaces. Very many female employees have lost hope in the justice system and many of them have gained a belief that even when they report such cases, nothing will be done to the harasser. This is as well illustrated in different reports and articles published among which are the following. In a research conducted by Akina Maama wa Africa, she pointed out that many women

¹⁴⁴ Ibrahim Ruhweza, (March 2023) Women join forces to battle sexual harassment in politics available at <https://www.newvision.co.ug> Accessed on 2nd May 2024

¹⁴⁵Lindsay Kukunda, (September 2019)Women take on the patriarchy <https://www.dandc.eu> Accessed on 3rd May 2024

¹⁴⁶ibid note 41

have a belief that the police will do nothing concerning harassment based on the cases handled¹⁴⁷. This hence justifies why female employees who are sexually harassed do not come up to report such cases. According to a publication made by the Monitor newspaper, it was stated:

*Police asked Nabatanzi to undergo tests by a physician as a procedure to process her statement. The next day she declined to proceed with the case after she had been told by her other friend that no one would believe her.*¹⁴⁸

Because within her mindset she believed that no one would believe her, she quickly judged that nothing would as well be done hence justifying why some female employees stay silent concerning the harassment. The same reason was also brought out in a publication in the Daily Monitor where Sandra Leticia, a business woman when asked if she could report the sexual harassment act answered, “*Why would I speak out when many women are frustrated by the police and the public?*” She continued and said “*What hurts most is that the authorities most of the time do not help that much. I would rather name and shame the oppressor and let go.*”¹⁴⁹ In the same way, Caroline Kimeu in her article made a statement which is “*Samantha Mwesigye’s case had hoped to be the catalyst for a change to the culture of toxic masculinity. But 4 years on, she is still waiting to be heard*”¹⁵⁰. This is a statement that shows a loss of hope in the justice system as it shows that they are slow in carrying out their work which also makes many female victims of sexual harassment to as well lose hope in the system and not report the cases of sexual harassment at the workplace. In an article published by Caroline Kimeu, Samantha revealed her experience when she informed her employer that she was to report him to the authorities. She said; “*One time I confronted him over sexual harassment and he taunted me to report him to public services saying that there was nothing much they would do to him.*”¹⁵¹ Due to the belief that some people are powerful and authoritative, many victims end up not reporting because they have a feeling that nothing will be done to the harassers. Namujuzi Flavia, 30 a shopkeeper also showed her lack of confidence in reporting to the police when she was asked how she would react in case she were faced with the

¹⁴⁷ Ibid note 41

¹⁴⁸ Ibid note 141

¹⁴⁹ Ibid note 141

¹⁵⁰ Ibid note 20

¹⁵¹ Ibid

harassment, she had this to note: “*Where would one go? To police? She added laughing.*”¹⁵² This also shows a loss of hope in different systems like the police. In confirmation of the same reason for fearing that nothing will be done after reporting, in a YouTube video posted by the Monitor¹⁵³, Dorcus who happened to be a student from Makerere University reported that right from the day they reported to the University, they were informed that it was one grounded on sexual harassment and that even if she reported to the authorities, nothing would be done to the harasser. She also reports that when she was sexually harassed by the lecturer, she reported to the senate which promised to make investigations as per her claim though she never got remedied. She was surprised to find that over 150 students had also complained about the same lecturer though they had as well not yet been remedied. This hence justifies the failure to report by the victims of sexual harassment due to a belief that nothing will be done considering the cases handled and how long they take to be prosecuted. According to research conducted by Katz Meligna¹⁵⁴, it was found out that 80% of the employees who filed a sexual harassment complaint claimed that their situation did not change. 16% of these reported that reporting the issue made the situation worse. This hence limits many women who are sexually harassed at the workplace from coming out to claim that they feel like there is nothing that would be done about it.

The absence of gender desks at different police stations is also attributed to being one of the reasons why some female employees do not come out to report sexual harassment cases as it makes them believe that nothing will be done by police officers not attached to gender desks. Because gender desks have personalities that have expertise in women and children matters, they end up handling female victims of sexual harassment in the best manner hence influencing more women to come up and report such cases due to the testimonies from the victims that reported and got remedied. However, in case there are no gender desks, female victims of sexual harassment tend to be handled improperly hence making more of them gain a feeling that nothing will be done as the officers that handle them in such stations have no expertise in that field. In her interview on how different employees would react in case they were faced with sexual harassment, Prudence Nyamishana revealed¹⁵⁵ that Sandra, a social worker revealed that if she was ever faced it, she would never

¹⁵² Ibid

¹⁵³ Ibid note 141

¹⁵⁴ Ibid note 69

¹⁵⁵ Ibid note 48

report it to the police station because they did not have a gender desk and she had heard that at times, the blame would be shifted onto the victims. Due to the belief therefore that such police officers won't do anything about the harassment, many female victims of sexual harassment end up remaining silent concerning the sexual harassment hence justifying their remaining silent.

4.3 THE FEAR OF CONSEQUENCES FACED AFTER REPORTING SEXUAL HARASSMENT CASES

I have also found out that the fear of consequences after reporting as well stops a lot of female employees at workplaces from reporting sexual harassment cases today. Upon reporting, during, and after the trial of these cases, female employees tend to get negative reactions which bar other employees from making complaints about their employer having experienced the side effects faced by their fellow employees. Among the consequences faced are losing their jobs, shame, blame for having contributed to the harassment, and their employers being hurt among others. The fear of experiencing these consequences therefore stops many female employees from reporting sexual harassment claims. According to Akina Maama wa Africa¹⁵⁶, the fear of losing jobs, being passed over for promotions, the fear of being looked at as troublemakers, and as well the fear of losing credibility stops many female employees from reporting sexual harassment experiences they face while at the workplace. Timothy Chemonges also confirms this to be a reason why female employees do not report sexual harassment cases. In his article, he noted that while addressing the Uganda Women's Movement concerning the petition raised claiming Samantha was sexually harassed by Gashirabake, the Rt. Hon. Speaker as she was Aritwala Rebecca Kadaaga noted that;

*There is widespread sexual harassment at workplaces in Uganda which goes unnoticed, and much of it is swept under the carpet because of the fear of losing jobs and as well the fear of being victimized.*¹⁵⁷

This also confirms that very many female employees are subjected to sexual harassment while at the workplace. However, very many of them do not come out to complain due to the fear of the consequences that would arise after they report the sexual harassment. In a research conducted by Caroline Kimeu, it was stated that having complained about the sexual harassment, what the victim

¹⁵⁶ Ibid note 41

¹⁵⁷ Ibid note 31

faced was worse than the harassment itself. It was stated that she was dismissed from work and rendered unemployable in legal circles. However, Gashirabake the accused was promoted to a rank of the rank of a judge of the Court of Appeal.¹⁵⁸ Being banned from practicing the law also tends to be a challenge among which are the ones that prevent more female employees from coming out to complain about sexual harassment. According to research conducted by Prudence Nyamishana, when she asked a sample of corporate women where they would report in case they were faced with sexual harassment, Eva, a 25-year-old Marketing executive had this to say,

*Reporting sexual harassment in this country and pointing out the committer leads to losing your job and sometimes no employer wants to work with you after that. In this economy, we do not have rich parents or a lot of money to fall back to, so most of us will prefer silence to talking about it.*¹⁵⁹

While meeting female parliament staff of parliament at Hotel Africana, Speaker Anita Among¹⁶⁰ stated that very many female employees in different sectors are subjected to sexual harassment. However, many of them take no steps against the vice for fear of losing their jobs. In a research conducted by Mywage Organization, it was also pointed out that the fear of consequences keeps women silent concerning sexual harassment in workplaces. They had this to say:

*There are several reasons why some women do not report sexual harassment if it happens to them. These include the fear of losing their job, fear of being stigmatized, fear of not being supported by workplace supervisors and /or colleagues, and the fear of violent or abusive retaliation by the harasser.*¹⁶¹

In her speech in Kampala about a campaign against sexual harassment, Sylvia Tamale¹⁶² a senior lecturer from Makerere noted that “*Many perpetrators go unpunished due to lack of evidence while the majority of victims fear to report in fear of losing jobs.*” This also shows that many women fear losing their jobs and end up not reporting sexual harassment. In a research conducted by Clare

¹⁵⁸ Ibid note 20

¹⁵⁹ Ibid note 48

¹⁶⁰ Ibid note 143

¹⁶¹ Ibid note 36

¹⁶² Jeff Andrew Lule, (February 2014) National wide drive against workplace sexual abuse available at <https://www.newvision.co.ug> Accessed on 4th May, 2024

Muhindo¹⁶³, she also noted that the fear of reprisals by different female employees prevented many of them from reporting their sexual harassment experiences.

Shame is another consequence faced by female victims of sexual harassment after reporting as the audience tends to pity them so much and as a result, many female employees end up not reporting these cases due to the fear of being ashamed. Victims feel ashamed after the act has happened and end up blaming themselves for having contributed to it. Due to the blame they shift to themselves, many female victims who are sexually harassed at workplaces end up not reporting because they feel like it is their fault. According to Akina Maama wa Africa in her research¹⁶⁴, she also noted that due to shame, victims end up blaming the misconduct of the harassers on themselves. In the same way, in a publication made in the Daily Monitor, it was stated that “*people assume it is an offense and shameful to be sexually harassed.*”¹⁶⁵ Because the victims feel ashamed because they feel responsible for the actions that were committed against them, many female employees end up not reporting their sexual harassment experiences at the workplace.

I have also been able to find out that among the consequences that come with reporting is blaming the victim for having contributed to it. Having reported the sexual harassment, many female employees tend to be blamed for having put on miniskirts and acted in a manner that was welcome to the harassers. This was also confirmed by Akina Maama wa Africa¹⁶⁶ in her findings concerning reasons why many female employees do not complain about sexual harassment where she noted that “*women are afraid they will be blamed*”. In the same way, according to research conducted by Caroline Kimeu, Namujuzi Flavia 30 and a shopkeeper in Kabaganda said, “*Nobody takes sexual harassment seriously around here. They end up blaming the victim*”¹⁶⁷ The same was found in the research conducted by Keishi Foecke¹⁶⁸ where she states that for many women, speaking means them struggling and facing stigmatization. He also says that it also leads them to being

¹⁶³ Ibid note 137

¹⁶⁴ Ibid note 41

¹⁶⁵ Ibid note 141

¹⁶⁶ Ibid note 41

¹⁶⁷ Ibid note 20

¹⁶⁸ Keishi Foecke, (October 2019) No more Silence: The emergency of the #Me too movement in Uganda available at <https://pulitzercentre.org> Accessed on 3rd May 2024.

nicknamed among other consequences that make them believe that the harassment is her fault and therefore many of them end up not reporting these cases.

I have as well been able to find out that the fear of witnessing their employers being hurt by the outcomes of sexual harassment among which is losing their jobs prevents many female victims of sexual harassment from reporting those cases as it makes them come up with ways of ensuring that they don't report their employers among which is a belief that the harassment was not offensive. In a research conducted by Akina Maama wa Africa, she notes that; *"They convince themselves it wasn't a big deal."*¹⁶⁹ Because many of the female employees are merciful and wouldn't want to see their bosses who are the employers in this incidence suffer, a lot of them end up not reporting the sexual harassment cases. According to Akina Maama wa Africa, the failure to report is based on the belief that *"boys will always be boys."* Because many female employees believe that boys will forever be boys, it means that they will always be a powerful gender and therefore, end up having mercy over them with a spirit that they were exercising their power as men hence not reporting them for sexual harassment. This also justifies why many female employees do not report sexual harassment cases experienced by them as they wouldn't want to witness their bosses suffering the consequences of sexual harassment to employers.

4.4 PROVING SEXUAL OFFENCES AND THE INFLUENCE OF SOCIAL MEDIA

Concerning the research I have conducted, I have come to learn that female employees at times remain silent concerning sexual harassment because the burden of proving sexual offenses is high and it lies on the victims. Because so many of them report such cases after the lapse of some time, most of them must have lost evidence for example DNA samples could have been lost due to showers. Due to that, many victims end up losing cases not because they weren't sexually harassed but because they fail to prove these cases due to lack of evidence. In a research conducted by Caroline Kimeu¹⁷⁰, Mwesigye, working with End Sexual Harassment Initiative stated that the burden of proving these cases falls heavily on victims.

In addition to the burden of proof being high, sexual harassment is also not considered a crime in Uganda hence many victims who are subjected to sexual harassment in the workplace end up

¹⁶⁹ Ibid note 41

¹⁷⁰ Ibid note 20

confused about how to report such incidents. Since sexual harassment is not provided for as an offence in the Penal Code Act¹⁷¹, many victims find it not easy to report such cases to the police as it is only covered in the civil sector hence justifying not reporting of these cases by female victims. According to a publication made by the Daily Monitor, Ssemakadde a Human Rights lawyer notes that:

*One cannot be imprisoned in Uganda for the offense of sexual harassment. The only consequences the harasser can face are among others loss of their job, reputation, and status, and as well made to compensate the victim.*¹⁷²

In a research conducted by Caroline Kimeu, Akumu, one of the persons used in conducting the research went ahead and said:

*People do not get mad when it happens and there are no consequences. There is no word for sexual harassment as well. 'Okusobya ku bakazi' which would be interpreted as rape of women is the closest.*¹⁷³

In the research I have conducted, I have also been able to find out that apart from the lack of a distinct criminal provision for sexual harassment, a lot of female employees are ignorant of the existence of Sexual harassment laws in the civil sector and as a result, they end up not complaining. Since workplaces that have less than 25 employees are not required to have sexual harassment policies and because some of those that are required to have the policies do not have them, a lot of female employees end up lacking knowledge about what exactly sexual harassment is at the workplace and even when they are faced with it, Most of them do not know the way forward and as a result, they end up remaining silent concerning the harassment. According to an article published by the New Vision¹⁷⁴, Joy, who was an intern had this to say concerning her being sexually harassed at a media house:

¹⁷¹ Ibid note 26

¹⁷² Ibid note 141

¹⁷³ Ibid note 20

¹⁷⁴ UBC, 'Sexual harassment at workplace' (9th December, 2022) available at <https://youtu.be/9riyWPGIiH4> Accessed on 3rd May 2024.

I never knew I was being harassed. Instead, I thought I was popular and associating with him. He always came to hug me and say many seductive words that I felt embarrassed. I feared to react harshly. Later, I regretted not being stronger and reporting him.

Because many employees are not aware that there is a law that protects them from being harassed at the workplace, many of them end up remaining silent not because they don't want to come up and complain against the vice but because they aren't aware that they can come up and complain and as a result be remedied.

In addition to the burden of proving sexual harassment cases being high, I have also found out that the high rate of corruption in ordinary courts and other bodies reported also prevents very many female victims from reporting their sexual harassment experiences. Corruption today has become a very challenging vice as many different parties like the police, labor officers, and court officials all want to be bribed before they can offer the services they are entitled and paid to offer among which is ensuring that justice is served. This proves a challenge to some female victims mostly the poor ones to easily access justice due to the absence of funds to finance such people that would easily help them win cases. Therefore due to the loss of hope of accessing justice due to the failure to give bribes, many female employees end up remaining silent as they feel they won't be helped even when they come out to speak about these experiences as the standard of proof is so high and the individuals that would have helped them to win these cases through bribery can't due to their failure to pay bribes. As a result, due to corruption, the employers who are most of the time financially stable end up winning the cases hence justifying the remaining silent of female employees. In a publication made by the Daily Monitor, Ssemakadde, a Human Rights lawyer explained that:

Many sex-related crimes are still diverted to the traditional justice systems that exist within ethnic, religious, and cultural settings. These are more readily accessible, humane, speedy, and corruption-free forums of dispute resolution compared to the court system.¹⁷⁵

Due to a lack of hope in getting remedies from courts, many individuals end up resorting to justice from the public which is most of the time attained through social media platforms. Social media is full of people who judge others considering the circumstances at hand and before many people

¹⁷⁵ Ibid note 141

take such cases to court, they are silenced by the public mostly through comments made concerning their experiences on different social media platforms. In a publication made by the Daily Monitor, Milly Nassolo Kikomeko, a women's rights activist stated that “*the victims are always silenced by society through social media and are never given a chance to tell their stories.*” She added that by the time social media is considered to be a public court, victims feel judged before taking any legal proceedings something that prevents many of them including women from taking and having any legal proceedings hence preventing them from speaking out¹⁷⁶. Due to the influence of social media, therefore, a lot of women end up not reporting sexual harassment cases at workplaces. In the same way, in a research conducted by Prudence Nyamishana,¹⁷⁷ Kemigisha a 19-year-old old revealed her thoughts on how social media would prevent her from reporting her sexual harassment experience. She had this to say:

I would report my case to the police but I would never share this issue on social media because I wouldn't want the attention that comes with social media. I don't want to be labeled a whore-you know how our society is.

Therefore, due to the influence of social media justice that comes due to loss of hope in the justice system, many female victims of sexual harassment end up not reporting these cases.

4.5 THE INFLUENCE OF CULTURAL BELIEFS AND PRACTICES AND THE IDEA OF MALE DOMINANCY

I have also found out that cultural beliefs and practices also influence the presence of sexual harassment in workplaces and prevent female victims from reporting. Different cultures have different cultural practices that make women look like they are sex subjects and that men can have them for sex at any time they feel like. While speaking about sexual harassment, Minister Betty Among said that according to the Karamojong culture which she happens to belong to, for one to come up with marriage, men are required to forcefully have sex with their would-be wives and if they succeed, they proceed and make them their wives. She went ahead and said; “*so if you say that is sexual harassment, then where is our culture?*”¹⁷⁸ Because many people including female

¹⁷⁶ Ibid

¹⁷⁷ Ibid note 48

¹⁷⁸ Ibid note 173

employees have strong beliefs in their cultures, a Karamojong woman would find it unreasonable to come out and report their employer for sexually harassing them as they have a belief within their culture that forced sex is a sign of superiority and power by a man that is if he succeeds in having sex with the woman. This, therefore, justifies why female employees in some regions such as Karamoja remain silent even when they are sexually harassed by their employer

Throughout my research, I have found out that ideas of male dominancy are inserted into men by cultural practices who grow to become judges which also determine their decisions in courts of law. Because men are groomed to be superior and women inferior, they end up not taking sexual harassment seriously as they consider it to be mere sex. According to the article published by Caroline Kimeu, it was stated that; *“These are judges who grew up in our families. They probably wonder, ‘Why is she bothering about a small issue like sexual harassment? Can’t she just move on?’”*¹⁷⁹ Due to such mindsets that are possessed by judges who later on give decisions based on such mindsets, a few ladies end up succeeding in such claims, and as a result, many of them who would have come up to report such cases end up keeping quiet with a belief that the judges will give biased decisions. According to Betty Benjamin who happens to be one of the co-founders of the Girly Network, she states that women are trained to be like sexual beings. She goes ahead and says that; *“You are groomed to sexually satisfy a man, to bear children, to do all those things”*¹⁸⁰. This also justifies why female employees do not report sexual harassment cases as within themselves, they have a belief that offering sex is one of the duties they are mandated to do. Sexual harassment is about power, not sex according to Akina Mama wa Afrika¹⁸¹. She says that harassment occurs when there is a power imbalance. She states that women are much more likely to be victims of sexual harassment just because, unlike men, they lack power and they are in more vulnerable and insecure positions. This subjects them to sexual harassment and as a result, they end up being silent due to a belief they have that they cannot win complaints against men who are most of the time considered a powerful gender.

As per the same issue of culture influencing the level of reporting of sexual harassment claims, Ndagire asserts that sexual harassment in the workplace is surrounded by a culture of stigma and

¹⁷⁹ Ibid note 20

¹⁸⁰ Ibid

¹⁸¹ Ibid note 41

silence that often goes unnoticed or never reported which is also attributed to male dominance. When Annet Musoke took over an Administrative role at an oil mining company, she became one of the few women working in their department. From here, she received different encounters of harassment as she was often bombarded with unwelcome comments about how sexy she looked whenever she wore dresses. *“I saw boundaries being crossed but I felt powerless to do something. I felt like picking battles that I was not prepared for.”*¹⁸² This shows how powerless and inferior she felt towards reacting to the sexual abuse committed by the employer hence justifying women’s remaining silent despite being sexually harassed today.

I have also found out that due to cultural beliefs that make women a submissive gender and not leaders, many people still take this into account and as a result, do not vote for them to be part of the committees that make decisions in employment and as a result, they end up lacking a leader that would come up and complain on their behalf in such committees concerning the harassment. Because many individuals end up voting for men to constitute committees in different opportunities, women end up losing out on representation on such committees and as a result, airing out their views among which are those against sexual harassment becomes difficult. In their research¹⁸³ in different workplaces to find out about the working conditions of employees therein, students from the Institute of Development Studies were informed that most of the women in market areas had no platforms for power. They were also informed that the lack of representation meant struggling to address their problems faced at the workplace. Due to lack of representation therefore that is based on ideas of male dominance created by different cultural beliefs, a lot of women end up remaining silent concerning sexual harassment as many of them tend to think that they have no one to present their views and their problems as well. This is also a justification for women remaining silent concerning sexual harassment at places of work.

4.6 CONCLUSION

In conclusion, according to the research I have conducted to ably find out reasons as to why female employees do not come out to report sexual harassment cases, I have been able to come up with

¹⁸² Betty Ndagire,(June 2023) The secrecy shrouding sexual harassment at workplace available at <https://www.monitor.co.ug> Accessed on 21st February, 2024

¹⁸³ Institute of Developmental Studies, (October 2021) Calling out workplace sexual harassment in Ugandan Markets available at <https://www.ids.ac.uk> Accessed on 3rd May 2024.

many of them among which is the fear of not being taken seriously, the fear of stigmatization, the fear of consequences that come up with reporting, the long period taken to grant remedies to aggrieved parties among others. The most mentioned issue in different articles is the issue of fear of consequences that come up upon reporting among which the fear of losing jobs and creating a harsh working environment among others.

CHAPTER FIVE

5.1 CONCLUSION

In conclusion, Catherine Macknorr was the first legal scholar to talk about the vice of sexual harassment at workplaces and she classified it to be *quid pro quo* which occurred when the perpetrator forfeited employment benefits and condition of work harassment which provided a hostile working environment to the employee. It is from the definition formulated by Catherine Macknorr that different legislations like the Employment Act of 2006 of Uganda were formulated. The Employment Act of 2006 of Uganda under section 7 provides for the prohibition of sexual harassment in the workplace and it provides that employees should report to labor officers in case they are subjected to sexual harassment. Due to the presence of this provision, employees are expected to come up and report in case they are sexually harassed. However, this is not the reality as many of the female employees that are subjected to sexual harassment end up remaining silent even when they are sexually harassed at work. The main objective of my study was therefore to find out why many female victims who are subjected to sexual harassment at workplaces end up keeping quiet despite the existence of different laws under which they could claim against their employers as many of the scholars had a lot to say about sexual harassment at workplaces though a few of them tackled the issue of why female employees never revealed their experiences and those that did covered it in just paragraphs. In my findings, I have been able to find out that the fear of consequences that come after reporting like losing jobs, the belief that nothing will be done even when they report, the fear of being blamed for having contributed to the harassment through indecent dressing among other reasons, as shown above, prevent many female victims of sexual harassment at different workplaces from reporting. I therefore recommend that the Government comes up with education programs to educate different employees about the dangers of sexual harassment and as a result, they will be able to speak against it despite the reparations that may come with reporting. I also argue female employees to come up and say NO to sexual harassment at their places of work as they have a constitutional right to work in a favorable environment that is a sexual harassment-free one as provided for in Article 40 of the Constitution of the Republic of Uganda (1995) as amended.

5.2 RECOMMENDATIONS

Having found out that many female employees do not report sexual harassment cases due to the fear of consequences that come along with reporting, I have come up with recommendations to different bodies like the Government of Uganda and, The Parliament among many others bodies what to do to enable female employees speak up when they are faced with sexual harassment at their places of work.

I would like to recommend to the female victims of sexual harassment to accept the fact that the harassment is evil. They should accept the fact that the harassment is an unlawful act and come out to complain about it. Ariana Maama wa Africa in the same spirit recommends to the victims of sexual harassment that; “*First, never apologize or make excuses for the offender. If they are making unwelcome advances, see it for what it is and object to it.*”¹⁸⁴ Through accepting that the harassment is unlawful, they will be able to come up and make complaints hence addressing the issue of female victims of sexual harassment not coming out to make complaints concerning sexual harassment. Through coming out to say no, employees will have raised their standards not to be viewed as sex objects and this will help them get better jobs in the future. A report by USAID revealed how important saying no to sexual harassment is in the workplace. As they published:

*Saying “no” to inappropriate sexual advances she received did not put an end to Janneth’s ambition to get a job based on her qualifications. She was sure that she had done the right thing and felt that she needed to preserve her dignity and stick to the principles and value system she had been instilled with. Today, Janneth is an Administrative Officer with Jolah Company Limited and coordinates the company’s supply chain in Agago and Kitgum Districts in northern Uganda.*¹⁸⁵

This also shows how the importance of coming out to say no to sexual harassment.

¹⁸⁴ Ibid note 41

¹⁸⁵ USAID, (November 2019) Not Afraid To say “No”. A brave young woman’s story of not giving in to sexual harassment available at <https://2017-2020.usaid.gov> Accessed on 3rd May 2024

Having accepted that sexual harassment is evil, I recommend to the victims of sexual harassment to loudly deny being harassed. They could do this by making an alarm, informing their peers about it, and if possible recording the incidences surrounding the sexual harassment. This will help them have evidence and witnesses during the trial of these cases. Akina Maama wa Africa also brings out this recommendation as she states; *“If you feel safe enough to do so, you should tell the harasser to stop. Say it loud enough for others to hear for extra emphasis or to have witnesses. “Making an alarm will not only help the victim get witnesses that will help in the trial of this case but will also help in proving some elements of the action among which is that the behavior was unwelcome to the victim. Akina Maama wa Africa also emphasizes the importance of keeping evidence such as recordings and notes:*

Document, document, document! Confide in colleagues, and keep records of messages or other materials that are being used to harass you. This may prove useful should you choose to pursue legal action.

As a result, due to the presence of the required evidence in case the victims kept it, many cases concerning sexual harassment in the workplace will be handled hence enabling many more female employees to come up and make complaints concerning the harassment having witnessed other victims reporting sexual harassment and being remedied. State minister for ICT, as she was then as well, argued victims to come out and report sexual harassment cases. She noted, *“Do not keep quiet about sexual harassment of any nature. Report these people to authorities, and the government shall be able to protect you.”* It is only through reporting that the responsible bodies will get to know what is happening at workplaces. I therefore argue employees to come out and report these cases. In case the workplace has a sexual harassment policy, the best people to report to first should be the members of the committee and then the labor officer, and later on to the Industrial court if the necessity arises. Through reporting to such bodies, the sexual harassment complaints will be handled hence enabling many more employees to gain confidence in such justice bodies and as a result, many of them will come up to report to those bodies hence addressing the issue of women remaining silent after being sexually harassed to their places of work. This is also recommended by Akina Maama wa Africa in her study as she notes that; *“If you want to*

report the harasser, a good place to start would be your organization's sexual harassment policy, if it has one”¹⁸⁶

There is also a need for bodies that handle sexual harassment claims to observe the privacy of victims in case a complaint is made to them that is to say through dealing with the claims in a confidential and right manner. By following the right procedures in handling these claims, very many female employees will be able to come up and complain against cases of sexual harassment hence addressing the issue of female victims of sexual harassment remaining silent despite being harassed at the workplace. Kiwalabye as well as his research¹⁸⁷ brings about this recommendation.

I also recommend that Parliament amends the Employment Act to provide for sexual harassment policies to address sexual harassment claims in workplaces that have less than 25 employees and to as well amend the Penal Code Act cap 120 to make sexual harassment at the workplace an offense his research, Timothy Chemonges¹⁸⁸ suggested that:

There is therefore need for male dominated companies, government agencies, departments and authorities in Uganda to have specific policies in place to address sexual harassment in their work environment, vise the laws on sexual harassment in the workplaces like the Employment Act limit the number of employees required before an employer can put in place measures to prevent or investigate sex dual harassment in their work places.

In case the Employment Act¹⁸⁹ provides for a remedy to employers having less than 25 employees as well, they will as well be protected at workplaces, and as a result, they will be able to come out and report such cases as they would have learned about sexual harassment from workplaces through the policy. As a result, such individuals will also be able to complain about sexual harassment hence addressing the vice. According to research conducted by Caroline Kimeu, Mwesigye who works with Africa End Sexual Harassment suggests the need to come up with a law that addresses all employees regardless of their number at the workplace. She notes that:

¹⁸⁶ Ibid note 41

¹⁸⁷ Ibid note 30

¹⁸⁸ Ibid note 31

¹⁸⁹ Ibid note 10, Section 7

*I wouldn't encourage anyone to speak out unless the law is amended to protect victims because, as it stands, there are so many examples of where victims have not been protected.*¹⁹⁰

Employment laws were introduced with a view of eliminating sexual harassment at all places of work. This also includes places of work with less than 25 employees. According to Caroline Kanyago in her research¹⁹¹, notes, “*Until the enactment of the 2006 Employment Act, sexual harassment was one of the issues that the law discreetly overlooked in Employment relationships.*” This shows that the Act intended to protect all workers at places of work from sexual harassment regardless of their number. Because the Employment Act 2006 only provides a sexual harassment policy to employers with more than 25 employees, I, therefore, recommend to Parliament to amend this law so that it covers and protects all employees by mandating a sexual harassment policy in all workplaces.

I recommend that the Government supports organizations and social media platforms that come up to fight for the rights of women among which are those that advocate for the prohibition of sexual harassment in the workplace. Since most of these are charitable organizations that do this work for free, with their help, many female victims will be able to come up and report to them such cases hence addressing the problem of women remaining silent despite being sexually harassed at their places of work. Ssemakadde a Human Rights lawyer in a publication made by the New Vision, gives an example of a platform that gives people on social media help in speaking out about their sexual harassment experiences at the workplace. He notes that:

*The # MeToo encourages people to use social media tactics to publicize their allegations of sex crimes committed by prominent or powerful men without any intention of seeking justice in the formal setting.*¹⁹²

With the government sponsoring such Programmes, a lot of women employees who are subjected to sexual harassment at workplaces will be able to come out and make complaints hence addressing the issue of victims not making complaints.

¹⁹⁰ Ibid note 20

¹⁹¹ Caroline Kanyago Kalagala, ‘Endangering Employment relationships: Intergrating a gender perceptive into the Ugandan Employment law’ (United Nations University, May 2017)

¹⁹² Ibid note 141.

I also recommend that the government conducts research and finds out about different situations in different bodies like police and courts and the way they handle sexual harassment claims in case they are brought before them. With a view of how proceedings are handled in such bodies, the Government will be able to hold them accountable for the activities they perform among which is handling sexual harassment cases and as a result, many of them will ensure good service delivery which is rightfully attending to the victims of sexual harassment hence enabling female victims of sexual harassment to come up and make complaints concerning the vice. This is as well suggested by Ssemakadde a Human Rights lawyer in his discussion with the Daily Monitor.¹⁹³

I would also like to recommend that the Government come up with an anonymous platform to enable victims to secretly come up and report their experiences. With such a platform, female employees who seem shy to come out and report their sexual harassment experiences will be able to come up and report using such platform cases, and as a result, such people will as well be provided with remedies hence addressing the problem of women not coming out to complain against sexual harassment. In a research conducted by Caroline Kimeu¹⁹⁴, Mwesigye, who was working with Africa End Sexual Harassment says she is to come up with an anonymous reporting platform where women could ably report their sexual harassment complaints. She says she is aware that it would face such challenges as defamation cases but it could stop many perpetrators. She says; *“Going through the proper channel doesn’t pay.”* This hence justifies the need for an anonymous reporting platform

Realizing that sexual harassment is faced by many female employees, I would advise the employees to collectively come up and complain against employers who sexually harass them. By coming out to complain collectively, their cry will easily be heard hence addressing the problem of them keeping quiet when they are sexually harassed as many of them will get the guts to come out to complain against the vice. In a research conducted by Prudence Nyamishana¹⁹⁵, she recommended that collective groups be adopted because such of #Me Too, and #Aid Too had helped women to speak up. While speaking to parliament female employees, Minister Miria Matamba¹⁹⁶ said that the struggle needs women to join forces to educate their fellow women and

¹⁹³ Ibid

¹⁹⁴ Ibid note 20.

¹⁹⁵ Ibid note 48.

¹⁹⁶ Ibid note 143

as well direct them to offices where to report. She says that this is the only way to enable women to speak.

I recommend that the general public to as well come out and support women in making complaints concerning sexual harassment in the workplace. Not only should employees come out to complain against the sexual harassment actions but they should also be joined by the general public as together we can achieve the goal of ending sexual harassment at workplaces. Ronald Musoke in his article¹⁹⁷ emphasizes the importance of fighting against sexual harassment daily. He says; “We cannot wait for Women’s Day or International Day of the Girl Child; it has to be something that we consciously do daily.” There is therefore a need to fight against sexual harassment daily which I also recommend to all individuals.

I also recommend that employers finance the training of their human resource managers to have more skills in the sexual harassment sector. With them having expertise in such a field, they will be able to pass on the right information to their fellow employees as they will have attained the best knowledge about sexual harassment. Prudence Nyamishana¹⁹⁸ also had this to note concerning the training of human resource managers:

Facilitating Human Resource Managers to understand what sexual harassment means will enable them to consistently pass on this message to staff members to keep it fresh in the organizations; not for the policies to just sit on shelves only to be presented during the auditing season.

I also argue employers to take extra steps to ensure that their workers are well protected at their places of work against sexual harassment. Employers, apart from having sexual harassment policies should take extra steps to find out what happens on the ground that I to say if the policy is followed and take extra steps to ensure that those that do not follow the policy are penalized. With this, many female employees at the workplace will come out to complain as they would have gained confidence in their employers that they will take steps to punish the harasser. This was also suggested by The Speaker of Parliament Anita Among in January¹⁹⁹.

¹⁹⁷ Ronald Musoke,(November 2021) Ending silence around gender based violence available at <https://www.independent.co.ug> Accessed on 3rd May 2024

¹⁹⁸ Ibid note 48

¹⁹⁹ Ibid note 143

I also recommend that the government come up with training programs for all individuals about sexual harassment. Due to ignorance of the laws concerning sexual harassment at workplaces, very many Ugandans end up confused about what exactly constitutes sexual harassment at the workplace. Barbra Kaija, a New Vision Editor in Chief while speaking at the Inaugural Women in News Uganda alumni conference in Kampala, had this to say; *“Sometimes people do things and they do not know that it is sexual harassment.”*²⁰⁰ Therefore, by the government coming out to offer training to all individuals concerning harassment, very many of them will get to know what exactly it is and be able to come up and fight against it.

²⁰⁰ Ibid note 137

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