

**THE UNIVERSITY OF ZAMBIA**  
**SCHOOL OF LAW**

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**TITLE: THE LEGAL ASPECT OF SEXUAL HARASSMENT IN  
WORK PLACES IN ZAMBIA IN LIGHT OF THE AMENDMENT  
TO THE PENAL CODE CAP 87 BY THE PENAL CODE  
AMENDMENT ACT, ACT No. 15 OF 2005.**

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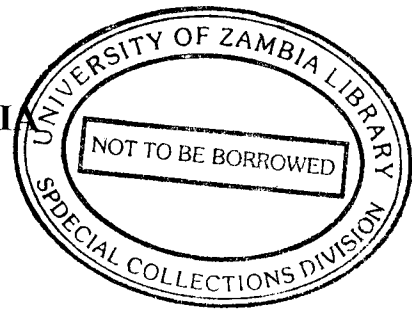
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**SUBMITTED IN PARTIAL FULFILMENT OF A BACHELOR'S DEGREE  
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**SCHOOL OF LAW**



I RECOMMEND THAT THE OBLIGATORY ESSAY PREPARED UNDER MY  
SUPERVISION

BY  
KAVIMBA, ROSE N.

ENTITLED  
THE LEGAL ASPECT OF SEXUAL HARASSMENT IN WORK PLACES IN  
ZAMBIA IN LIGHT OF THE AMENDMENT TO THE PENAL CODE CAP 87  
BY THE PENAL CODE AMENDMENT ACT, ACT No. 15 OF 2005.

BE ACCEPTED FOR EXAMINATION. I HAVE CHECKED IT AND I AM  
SATISFIED THAT IT FULFILLS THE REQUIREMENT RELATING TO FORMAT A  
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DATED THIS.....11<sup>th</sup>..... DAY OF .....JANUARY..... 2007

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SIGNATURE..........

## DECLARATION

I, KAVIMBA, ROSE N. COMPUTER NO. 21112649 DO DECLARE THAT I AM THE AUTHOR OF THE DIRECTED RESEARCH ESSAY ENTITLED:

**THE LEGAL ASPECT OF SEXUAL HARASSMENT IN WORK PLACES IN ZAMBIA IN LIGHT OF THE AMENDMENT TO THE PENAL CODE CAP 87 BY THE PENAL CODE AMENDMENT ACT, ACT No. 15 OF 2005.**

AND THAT IT IS A PRODUCT OF MY OWN INGENUITY AND THAT DUE ACKNOWLEDGEMENT HAS BEEN GIVEN WHERE OTHER SCHOLAR'S WORKS HAVE BEEN USED OR CITED. I TRULY BELIEVE THIS RESEARCH HAS NOT BEEN PREVIOUSLY PRESENTED IN THE SCHOOL FOR ACADEMIC WORK.

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DATE:..... 12 / 01 / 07 .....

## **ACKNOWLEDGEMENTS**

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To the Fourth year class of 2006...the journey we started together does not end here... its only just began! It goes without saying, after four years, we all family. May the good Lord be with you always.

# **DEDICATION**

Mary and Anderson: this is for you!

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Studies find that sexual harassment is still endemic, often hidden, and present in all kinds of organisations. Yet it is still not always viewed as a problem, which has to be systematically tackled. The issue is of concern for both women and the employers as studies show that sexual harassment touches lives of nearly 40-60% of working women.

Thus, combating sexual harassment involves developing understanding of what is sexual harassment and change of attitudes in all- be it employees, colleagues, friends, administrators, employers or the law makers. Sexual harassment may be defined as behaviour towards a person that is offensive because it demeans him or her on the basis of his or her sex, or because it involves inappropriate and unwelcome sexual advances. It often includes the use of a position of power by the harasser towards the victim. Such behaviour can range from objectionable comments to serious sexual offences, or the demand of sexual favours in return for favourable treatment (or refraining from unfavourable treatment).<sup>4</sup>

Statistics states that three (3) out of four (4) women will experience sexual harassment in workplaces, globally. For instance in the Republic of South Africa, it is estimated that 77% of women are being sexually harassed in workplaces<sup>5</sup>. Sadly, in Zambia there are no statistical findings to show the extent of sexual harassment in workplaces. This paper aims at empirically looking at the reasons behind this weakness in people's awareness and the laws available for protection against such harassment in workplaces.

## **1.2 Definitions of Major Concepts**

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<sup>4</sup> National Gender Policy Gender in development Division. Office of the President. (2004).

<sup>5</sup> <http://www.un.org/womenwatch/daw/cedaw>



To fully appreciate the objectives of this paper, there is need to understand some of the terms that will be referred to; Terms such as Sexual harassment, employees, employers and the workplace.

Harassment occurs where on grounds of sex, race or ethnic or national origins or sexual orientation or religion or belief or for a reason which relates to a disabled person's disability – A engages in unwanted conduct which has the purpose or effect of (a) violating B's dignity; or (b) creating an intimidating, hostile, degrading, humiliating or offensive environment for B. the conduct is deemed to have the required effect if having regard to all the circumstances including in particular the perception of B it should reasonably be considered as having that effect.<sup>6</sup>

So far as Sexual Harassment is concerned, the Laws of Zambia under the penal Code Amendment no. 15 of 2005 defines harassment in section 137A. (3) as:

*(a) a seductive sexual advance being an unsolicited sexual comment, physical contact or other gesture of a sexual nature which one finds objectionable or offensive or which causes discomfort in one's studies or job and interferes with academic performance or work performance or conducive working or study environment;*

*(b) Sexual bribery in the form of soliciting or attempting to solicit sexual activity by promise of reward;*

*(c) Sexual threat or coercion which include procuring or attempting to procure sexual activity by threat of violence or victimization; or*

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<sup>6</sup> D, Keenan & S, Riche. BUSINESS LAW, 7<sup>th</sup> ed, Sweet & Maxwell: London,(2004),p.214.

(d) *Sexual imposition using forceful behaviour or assault in an attempt to gain physical sexual contact.*

Thus, one can interpret this section to mean that sexual harassment is the unwanted conduct related to the sex of a person occurs with the purpose or effect of violating the dignity of that person; and, any form of unwanted, non – verbal or physical conduct of a sexual nature occurs with the purpose o effect of violating the dignity of a person, in particular, when creating an intimidatory, hostile, degrading, humiliating or offensive environment.

The University of Zambia HIV and AIDS policy defines Sexual harassment as being the unwelcome sexual advance request or sexual favours, and other verbal or physical conducts of a sexual nature, when submission to or rejection of this conduct explicitly or implicitly affects a person's employment or education, unreasonably interferes with a person's work or educational performance, or creates an intimidating, hostile or offensive working or learning environment.<sup>7</sup>

Sexual harassment may involve individuals of either sex, that is, it may be between members of the same or opposite sex. Sexual harassment typically involves a person in a position of power as the initiator. However, it may occur in a number of ways, for example, harassment of student by student, staff member by staff member, staff member by student or student by staff member or employee by employer, where there is an element of threat or coercion in the behaviour.<sup>8</sup>

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<sup>7</sup> C, Chirwa (ed).The university of Zambia HIV and AIDS policy, Unza press: Lusaka, (2006) p.16.

<sup>8</sup> *ibid.*

According to the Employment Act,<sup>9</sup> “employee means any person who has entered into or work under a contract of service, whether the contract is express or implied, is oral or in writing, and whether the remuneration is calculated by time or by work done, or is in cash or kind, but does not include a person employed under a contract of apprenticeship made in accordance with the Apprenticeship Act or a casual employee.

Where as employer means any person, or any firm, corporation or company, public authority or body of persons who or which has entered into a contract of service to employ any person, and includes any agent, representative, foreman or manager of such person, firm, corporation, company, public authority or body of persons who is placed in authority over such person employed”<sup>10</sup>

The learned authors on Sexual Harassment law define Sexual harassment at workplace as being generally classified into two distinct types. The first being 'Quid pro quo', which means seeking sexual favours or advances in exchange for work benefits and it occurs when consent to sexually explicit behaviour or speech is made a condition for employment or refusal to comply with a 'request' is met with retaliatory action such as dismissal, demotion, difficult work conditions. And the second type known as 'Hostile working environment' is a more pervasive form of sexual harassment involving work conditions or behaviour that make the work environment 'hostile' for the woman to be in. Certain sexist remarks, display of pornography or sexist/obscene graffiti, physical contact/brushing against female employees are some examples of hostile work environment, which are not made conditions for employment. <sup>11</sup>

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<sup>9</sup> Chapter 268, volume 15 of the Laws of Zambia.

<sup>10</sup> Ibid, S2.

<sup>11</sup> N, Raymond. Combat law, vol 2, Issue 3, August- September (2003).

In all definitions, the term unwelcome or unwanted is the key word in defining sexual harassment. It is the impact and effect the behaviour has on the recipient that will define the behaviour as sexual harassment. It should also be noted that sexual harassment can and does occur to both male and females; however, the majority of the victims are female. It might be suggested that more women than men are sexually harassed at their places of work because of traditionally held views that women are inferior to men and naturally fragile.

A workplace is any place where working relationships exist, where employer and employee relations exist. This could be formal or informal environment, even domestic worker such as a house maid or a gardener has an employer/employee relationship with their master. There are several duties that an employer owes to his or her employee amongst which is the duty to provide a safe and secure working environment which in all instances should prevent sexual harassment.

### **1.3 Laws Governing Employment Relations and Prohibiting Sexual Harassment in Workplaces in Zambia and Other Jurisdictions.**

Although the issue of sexual harassment has been debated in most developed countries as early as the 1940s, it is only now that it has become the subject of recent legal debate across Africa as evidenced by the Parliamentary bills of some African states.<sup>12</sup> Most countries have taken steps to prevent and protect their citizens from sexual harassment in workplaces, learning institutions and other sectors of society. This paper aims at looking at the newly amended Penal Code which has provided for sexual harassment. It will examine the adequateness of the Amendment Act and comparatively look at the different

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<sup>12</sup> <http://new.bbc.co.uk/1/cii/world/Africa/4791625.sm> (16.aug.06)

Sexual harassment laws of other nations and what measures or policies may be used as guidelines when enhancing or reforming Zambia's current Laws on sexual Harassment.

In the United Kingdom, there is a European Code of Practice that advises employers on how to prevent sexual harassment, but employers are not legally bound to comply with it. Employees may sue an employer if they are treated unfairly because of racial or sexual discrimination. This protection is wide-ranging, including the toleration by an employer of harassment by fellow workers, and extending to the selection and appointment of new staff. Workers also have the right to equal pay for jobs which are of equal value to the employer, regardless of sex. This is not limited to jobs of the same kind: a canteen worker, for example, may be able to claim pay equal to that of a shop floor worker if the value of the work to the company is not shown to be different. Pay includes all financial benefits, such as pensions.

In the United Kingdom, Zambia's former Colonial ruler, Sexual harassment is defined and prohibited under several Acts such as the Sex Discrimination Act 1976(Amendment) Regulations of 2005, Criminal Justice and Public order Act 1994 (which creates a criminal offence for intentional harassment), the Public Order Act 1986, and the protection from Harassment act 1997 (which is wide ranging and cover the discriminatory harassment and bullying at work).

African nations apart from Zambia have also taken cognizance of sexual harassment as a legal concern. Countries such as Benin in West Africa have just made Sexual Harassment illegal in Schools, at work and in the home. Another Developing Country of Africa, Kenya, whose parliament, which despite its deep rooted traditional beliefs of superiority

of men over women, voted most recently affirmatively for the enactment of a bill that has criminalized sexual harassment. The Kenyan government took cognizance of the fact that sexual harassment is a threat to development and an infringement of people's rights, such as the right to security and their dignity.<sup>13</sup>

Further, other countries in southern Africa have also recognized the effect of sexual harassment in society and are taking strides in combating it. The Republic of South African courts of law, paved the way for sexual harassment laws in southern Africa when they adjudicated over a matter in 1989 in the Industrial relations Court in Durban. Under the South African Constitution, South African citizens are granted protection from Discrimination of all kinds including sexual harassment. Most recently in 2005, changes were made to the Code of Good Practice which is a legal guide used by employers to create company policy. Employers, firms, organizations are obliged to follow the guide and failure to implement the measures outlined would result in civil liability.

In Zimbabwe, a country in southern Africa that is a neighbor of Zambia, the Women's Affairs Minister Oppah Muchinguri noted that *"...the magnitude of gender-based violence is both frightening and shocking and the Statistics are proof enough as to why we need violence legislation..."* at a discussion on the Domestic violence Bill which was before Parliament on the 20<sup>th</sup> day of September 2006. The bill will widen the scope of domestic violence to include physical, sexual, emotional, psychological and economic abuse as well as harassment and stalking. If passed into law, the bill will mandate the

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<sup>13</sup> <http://www.state.gov/g/drl/rls/hrrpt/2005/61575.htm>

Zimbabwe republic police to have a special section at every police station dealing with domestic violence.<sup>14</sup>

Zambia is a signatory to most major international conventions and treaties such as the United Nations (UN) Charter, the Universal Declaration of Human Rights (UDHR), The African Charter on Human and Peoples Rights, which have all proclaimed and agreed that non discrimination and equality are cardinal norms of international human rights law.

Some international instruments developed in the context within the context of the UN to deal with gender discrimination. The Instruments provide minimum standards that UN member states are expected to institute and uphold within their systems of law.

Despite Zambia being a signatory to these international instruments, they do not automatically become law. International instruments become a part of the domestic law of a particular country by a process known as domestication. In Zambia, this means that after the Government ratifies or accedes to an instrument, making us party to that instrument, its contents must be enacted into law by the Zambian Parliament.

The Zambian Constitution has a Bill of rights; which was inspired by the United Nations declaration of Human Rights. Part III of the Constitution, comprising articles 11 and 26, contains provisions protecting the fundamental rights and freedoms of the individual. Article 11 is the core and provides:

*“it is recognized and declared that every person in Zambia has been and shall continue to be entitle to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political pinions,*

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<sup>14</sup> [http://www. Newzimbabwe.com/pages/incest52.14741.html](http://www.Newzimbabwe.com/pages/incest52.14741.html)

*colour, creed, sex, or marital status, but subject to the limitations contained in this part, to each and all the following, namely;*

*(a) life, liberty, security of the person and protection of the law;*

*(b) freedom of conscience, expression, assembly, movement and association*

*© Protection of the privacy of his home and other property and deprivation of property without compensation.”<sup>15</sup>*

Article 12 ad 24 are elaborations of the Constitution’s protection of these rights and freedoms article 28 provides for the enforcement of rights in the courts of law and jurisdiction is placed in the high court of Zambia.

Employment relations in Zambia is regulated by various Acts such as the Employment Act Chapter 268, the industrial and Labour Relations Act chapter 269, the Employment (Special Provisions) Act Chapter 270, the Worker’s Compensation Act chapter 271 and the Employment of Young Persons and Children Act chapter 274 of the Laws of Zambia.<sup>16</sup>

Most complaints concerning employment relations have involved discrimination; however, there is now a separate head of liability for harassment in regard to sexual offences. It is no longer an aspect of detriment as it has been for many years. Sexual Harassment was recently criminalized by the Penal code Amendment Act, act no 15 of 2005. The Act provides under section 137A:

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<sup>15</sup> The Constitution of Zambia, Volume 1 of the Laws of Zambia.

<sup>16</sup> Vol 16 of The Laws of Zambia.



*“(1) Any person who practices sexual harassment in a work place, institution of learning or elsewhere on a child commits a felony and is liable upon conviction, to imprisonment for a term of not less than three years and not exceeding fifteen years.*

*(2) A child who commits an offence under subsection (1) is liable to such community service or counseling as the court may determine in the best interests of the child.”*

This Act does not limit sexual harassment victims to females only but covers victims of both sexes. The Act recognizes that harassment can be in a workplace, in an institution of learning or elsewhere. Thus, an employer can sexually harass an employee and/or an employee can sexually harass an employer. However in most instances of sexual harassment, the harasser is often includes the use of a position of power by the harasser towards the victim. Such behaviour can range from objectionable comments to serious sexual offences, or the demand of sexual favours in return for favourable treatment (or refraining from unfavourable treatment).

It is yet to be seen whether sexual harassment charges may be successfully brought under discrimination as provided in section 108 of the Industrial and labour Relations (Amendment) Act<sup>17</sup>

In conclusion, it has been the essence of this chapter to introduce the discourse and draw attention to the fundamental principles pertaining to the study in issue. These include such principles or terms such as what sexual harassment is, what a workplace is, and who are an employee and employer are. Further, the chapter has also endeavoured to highlight the various Sexual harassment Laws, not only those in Zambia, but other states as well

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<sup>17</sup> Act no.30 of 1997.

such as the United Kingdom and South Africa. It is worth noting that although sexual harassment occurs to all, women are the most violated and victimized.

## **2.0 CHAPTER TWO**

### **Introduction**

When people get into employment, they hope not only to earn a living but earn it in a safe and secure environment. Employers have an implied and express obligation to provide a safe working environment for their employees. Sexual harassment was not viewed as a threat to a safe and secure environment but in recent years, growing recognition has been given to this subject that was once a taboo, and probably still is in some countries. The problem of unwelcome and unwanted harassment of a sexual nature is being tackled in the legislatures and visibly in some courts of different countries. Specific laws now address sexual harassment as a wrong and as unacceptable in places of employment.

This chapter will look at sexual harassment in workplaces and discuss the Penal Code (Amendment) Act no. 15 of 2005, its legal implications, enforcement and possible obstacles to its implementation. The chapter will further look at its concurrent supporting laws and international instruments on Sexual harassment.

### **2.1 Sexual Harassment in Workplaces**

Sexual harassment is increasingly viewed as one of the most egregious forms of violence against women in the workplace, and is particularly a problem in the new global economy where the work force is comprised largely of young women with little formal education or previous work experience<sup>18</sup>. Subcontracting and other forms of flexible work, particularly agriculture, also make it very difficult for women to organize against such abuse. Further, these young women may be doubly affected by an industrial

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<sup>18</sup> M.R., Cutrufli. Women of Africa: roots of oppression, Zed Press: London (1983), p.52.

hierarchy that reinforces culturally based discrimination. Studies find that sexual harassment is still endemic, often hidden, and present in all kinds of organizations. Yet it is still not always viewed as a problem, which has to be systematically tackled. The issue is of concern for both women and the employers as studies show that sexual harassment touches lives of nearly 40-60% of working women.<sup>19</sup>

The affront to personal dignity that occurs as a result of sexual and other types of harassment, by definition, detrimentally affects the work environment. It is important to understand that the intent of a person's behavior, whether the behaviour is face -to- face or behind another employee's back may be irrelevant in determining whether or not a behaviour is sexual harassment. What matters is the impact of the behaviour on the work environment. Regardless of intent, the behaviour may be judged on its impact upon the work environment. Therefore, the statement that the conduct was not intended to have a negative consequence is not valid defense of harassing behaviour.

It is important to note that the boundaries of the work environment are not determined by location. Instead the boundaries of the work environment are defined by whether or to the person is doing something related to his or her job. For this reason, harassment can occur in locations outside the traditional work site. The workplace includes any place where employees happen to be for work related purposes. This includes traveling to work-related conferences or branch offices, attending staff parties, attending conferences, or at the home of a colleague for a work-related activity.

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<sup>19</sup> N, Raymond. Campaign Against Sexual Harassment, India Centre for Human Rights and Law, Mumbai (2005), p.29.

Thus, combating sexual harassment involves developing understanding of what is sexual harassment and change of attitudes in all- be it employees, colleagues, friends, administrators, employers or the law makers.

Harassment can involve sexual advances or requests for sexual favour whereby submission to such conduct is made explicitly or implicitly a term or condition of employment; or whereby such conduct has the effect of substantially creating an intimidating or hostile working environment. Indeed, in many countries, it may also extend to bodily searches and pregnancy testing for refusing sexual advances<sup>20</sup>. Recognizing, however, that definitions of sexual harassment vary widely between countries and indeed between individuals, and that there is not yet a widely acknowledged international definition, in this discourse the terms sexual abuse and sexual harassment are used interchangeably, to highlight the fact that the nature of the violations is wide and often extends to violent abuse and even rape.

Patriarchal attitudes and values are the biggest challenge in implementation of any law concerning women in our society. Combating these attitudes of men and women and the personnel involved /responsible for implementation of laws and systems is most crucial in prevention of unwanted sexual behaviour. Preventing and avoiding sexual harassment involves all levels of employees/persons in any organisation-employees and colleagues, management and bodies like trade unions. Most importantly it requires for the employer to act before a problem occurs.

Steps Employers Can Take to Prevent Sexual Harassment a policy / procedure designed to deal with complaints of sexual harassment should be regarded as only one component

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<sup>20</sup> women's Environment and Development Organization (WEDO) , Mapping Progress, 42 (March 1998).

of a strategy to deal with the problem. The prime objective should be to change behaviour and attitudes, to seek to ensure the prevention of sexual harassment.

Currently, there limited international instruments that deal with violence against women in the workplace. The United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is, to date, the most comprehensive international instrument specially prohibiting sexual harassment in Article 11 of the General Recommendation 19.<sup>21</sup>

The International Labour Organisation (ILO) is a specialized United Nations agency that has addressed sexual harassment as a prohibited form of sex discrimination under the Discrimination (Employment and Occupation) Convention (N0.111) the ILO has made clear that sexual harassment is more than a problem of safety and health, and unacceptable working conditions, but is also form of violence (primarily against women). Sexual harassment however is not defined as a “core” labor right by the International Labor Organisation (ILO), the international body foremost responsibility for defining workplace rights. Some Authors have argued that the ILO which has only a convention prohibiting discrimination based on gender does not specifically prohibit sexual harassment. Nor does Recommendation 111 clarify that it prohibition of sex discrimination incorporates sexual harassment, although the ILO committee of experts has alluded to a prohibition of harassment by virtue of Convention 111.<sup>22</sup>

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<sup>21</sup> J. Aeberhard-Hodges. “Sexual harassment in employment: Recent Judicial and arbitral trends”, INTERNATIONAL LABOUR REVIEW (ILR), VOL 135 (1996) Article No.5.

<sup>22</sup> Ibid.

The failure to recognize harassment as a core labor violation has widespread implications. For example, in recent years a number of multinational corporations have adopted voluntary codes of labour practice, governing their operations, and their suppliers worldwide. These codes draw heavily on ILO-defined core labour rights, as do any existing “labor” or “social” clauses in various trade agreements. Further, failure by the ILO to recognize sexual harassment as a widespread labor rights violation has translated into a lack of attention to this critical issue at the level of national governments and multinational corporations.<sup>23</sup>

## **2.2 The Penal Code (Amendment) Act No. 15 of 2005: Sexual Harassment in Workplaces and Its Legal Implication.**

Zambia has taken a progressive stand on sexual harassment as one of the only few countries to prohibit sexual harassment directly as through legislation. This amendment act is an attempt at a comprehensive and ambitious treatment of sexual harassment by specifically defining conduct that’s prohibited and the consequences of engaging in such behaviour. It represents an important starting point or combating sexual harassment. A wide range of factors can facilitate or retard the effectiveness of provisions’ objectives. The law’s effect on social reform might be questionable, given the endemic gender violence, the level of economic development or lack of it, the political power of the trade union movement and the extent of unemployment and the high poverty levels faced by a developing country like Zambia. Law, certainly an important mechanism for change, has been successfully used to remove the most blatant forms of discrimination against women.

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<sup>23</sup> Ibid.

### **2.3 Enforcement Of Amendment Act. No. 15 Of 2005**

The constitution of Zambia prohibits any form of discrimination. In particular, Article 23(2) of the constitution categorically provides that no person should be treated in a discriminatory manner by any person acting by virtue of a written law or in performance of the functions of any public office. Therefore, all Zambians and persons living in Zambia are amenable to the law and must comply with its provisions failure to which they will be prosecuted.

This amendment may only be enforced by the courts of law upon proof of occurrence of or attempt of the offence. However, there is need for all sectors of society to work together to fully exploit this new provision of the law, the victims need to be encouraged and supported so as to enable them feel secure enough to report harassment incidents, further, officers of the law mandated with the task of solving such crimes, such as the victim support unit police officers, lawyers and non-governmental organisations should work diligently to prevent this cancer of society.

### **2.4 Practical Application Of The Amendment Act And Current Obstacles To Its Implementation**

Probably the most understated reason for failure to fully address sexual harassment include problems of definition of the concept, the sensitivity of the issues thus inability of victims to report cases and the society's failure to appreciate the impacts of such behaviour not only on the victims, but also the work environment within which harassment occurs.<sup>24</sup>

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<sup>24</sup> S. L. Webb. Shockwaves: the Global Impact of Sexual Harassment, New York (1994), p. 75.



Most women themselves fail to recognise sexual harassment and treat it as trivial and routine. Such has been the internal coping mechanism. Ignoring offensive behaviour or denying its existence is the most common ways women deal with sexual harassment.

Studies in some African Countries such as Kenya and Zimbabwe have shown that men tend to believe that harassment is an acceptable behaviour at the workplace. Indeed statistics illustrated that 71% of men viewed sexual harassment as normal and acceptable behavior. However the remaining 29% of men view sexual harassment as a nuisance. To the contrary, 90% of the women viewed sexual harassment to be nuisance and did not like it. About 10% viewed the behaviour as normal and acceptable, and some even considered it an advantage for a boss to develop a sexual interest towards a woman.<sup>25</sup> In Zambia however, there are no statistical findings and as such one can only guess at the perceptions held by people. However, most Non-governmental organizations that deal with issues of gender discrimination and abuse have noted that very few Zambians have faith in the judicial system and justice, thus most victims shun reporting incidents of sexual harassment for fear of victimization and even embarrassment.

The issue of sexual harassment in workplaces worldwide has been shrouded in silence and there have been very few reliable studies to date of problems affecting women in the developing world. Moreover, the problem of sexual harassment in the workplace has been poorly defined while in some contexts sexual harassment is understood to indicate inappropriate verbal communication or off-color jokes, research in this discourse also

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<sup>25</sup> <http://www.un.org/womenwatch/daw/cedaw>

identified harassment to mean coerced or forced sexual intercourse as a condition of continued employment or advanced.<sup>26</sup>

Some reports on gender violence and sexual harassment have noted that despite revelations in the media, several factors such as tradition, shame, denial, embarrassment, avoiding legal consequences, fear of reprisals, lacks of access to help, social isolation, emotional dependency and poor public responses were some of the key reasons why many victims, especially female victims hid their cases, failed to report cases and did not leave their abusive husbands, partners or workplaces.<sup>27</sup>

To be fully effective, there is need to for people to know but their rights and change their attitudes towards incidents of sexual harassments. Research has shown that women lack awareness about their legal rights and they are the major victims of sexual harassment. Human Rights Watch interviewed illiterate women and those with advanced degrees and found their legal knowledge and experiences remarkably similar. These can be traced back to a number of historical factors such as cultural norms, beliefs, customary laws and historical reasons.

The ideas of self-perception and attitudes are important to understand the impact of cultural norms and beliefs. An attitude can be described as an acquired or learned tendency to react towards something, by action, high are timid and withdrawing, or by action which are expressive of the freedom of approaching, or approachability.<sup>28</sup> In other

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<sup>26</sup> Op cit.

<sup>27</sup> <http://www.un.org/womenwatch/daw/cedaw>

<sup>28</sup> M,Chuulu. Women and Justice, Myth or reality in Zambia; women and the Administration of Justice. Women and Law in Southern Africa, Zambia ,(2002), P.14.

words, attitudes can either be negative, or positive in their values towards something, or somebody. This means that they are self-inflicting or can be inflicted by others. Whereas self-perception refers to the way a person, in this case a woman, sees herself and her place in society. Customary laws have profound impact on women and their legal rights in the legal systems of almost all the African countries. Customary laws are mostly unwritten and constantly evolving norms that exist in parallel with statutory law. There are as many customary laws as there are tribal communities, and each has its own unique characteristics. Most African legal systems formally recognize customary laws so far as it is “applicable and is not repugnant to justice and morality or inconsistent with any written law.”<sup>29</sup> In terms of their content, customary laws largely follow pre-colonial patterns with regard to women and their legal rights.

In the case of Zambia the relationship between law and resources is more complex because of several factors such as the multiplicity of the substantive rules and procedures created by the dual legal system and the changing legal framework. Like other countries in the southern African region, Zambia’s two systems of law have continued to develop almost separately. One is the formal sys which has enjoyed superior recognition and a large share of available resources such as manpower and infrastructure,

There are a number of measures that unions can take to combat sexual harassment. The goal is to make union members sensitive to the problem and to create a climate to discourage sexual harassment and, if it occurs, a climate where victims will feel comfortable turning to the union for assistance. Trade Unions in unorganized sector can play a definite and vital role in helping set up complaints mechanism and instituting

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<sup>29</sup>D.L, Rhode. Justice and Gender. Harvard University Press: Cambridge (1985), P. 34.

systems/channels that could provide forum for recipients of sexual harassment in unorganised sector to complain.<sup>30</sup>

Research has indicated that although victims of sexual harassment observed that they were at risk of contracting HIV/AIDS, they found themselves trapped between yielding to sexual abuse because of poverty and lack of job security. Research has further shown that the more financially unstable an individual is, the more vulnerable they were to sexual harassment.<sup>31</sup>

For instance in Kenya, research has established that there is rampant sexual harassment on coffee and tea picking plantations. Studies have further established that men collaborate in the exploitation of not only women but their girl children too. Due to ignorance of avenues of redress and fear of being fired, those women often do not report these cases and when they do they are intimidated. Further research also showed there was lack of training and education of trade union representatives on how to handle sexual harassment.<sup>32</sup>

## **2.5 The Remedies Available Against Sexual Harassment under the Amendment Act**

The Penal Code (Amendment) Act No. 51 of 2005 with regards to section 137A is a relatively novel area of law in Zambia and its practical effectiveness will depend on its interpretation by the Courts of Law and the confidence that the victims will have in the

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<sup>30</sup> J. P. Englander. "Handling Sexual Harassment in the Workplace", THE CPA JOURNAL, New York, (1992), P. 18

<sup>31</sup>

<sup>32</sup> <http://www.state.gov/g/drl/rls/hrrpt/2005/61575.htm>

law, the legal officer and labour officers' ability to investigate and resolve complaints of sexual harassment effectively.

To assess the effectiveness, this paper will look at the terminology used and the target group, basically the parameters of the provision and the remedies outlined in the Amendment Act.

Sexual harassment as an offence falls under the heading of Offences against Morality in the Penal Code (Amendment) Act. From the provision of section 137A (1), the parameters of the law on Sexual harassment have been outlined and include both adults and children. From the onset, the Amendment Act has recognized that sexual harassment occurs in a “*work place, institution of learning or elsewhere...*”, thus venue of incident is not limited to a particular place. This broadens the chances of victims of sexual harassment reporting such incidents because the law recognizes that sexual harassment can happen anywhere.

However for one to succeed in a claim for sexual harassment, sexual harassment must be identified. The Act does not limit sexual harassment to mere physical sexual contact but has been couched in wide terms to include other unwanted advances or conduct. Sexual harassment is categorically stated to mean:

(a) *a seductive sexual advance being an unsolicited sexual comment, physical contact or other gesture of a sexual nature which one finds objectionable or offensive or which causes discomfort in one's studies or job and interferes with academic performance or work performance or conducive working or study environment;*

(b) *Sexual bribery in the form of soliciting or attempting to solicit sexual activity by promise of reward;*

(c) *Sexual threat or coercion which include procuring or attempting to procure sexual activity by threat of violence or victimization; or*

(d) *Sexual imposition using forceful behaviour or assault in an attempt to gain physical sexual contact.*

The Act states that *“Any person who practices sexual harassment in a work place, institution of learning or elsewhere on a child commits a felony and is liable, upon conviction, to imprisonment for a term of **not less than three years** and **not exceeding fifteen years**.*

*A child who commits an offence under subsection (1) is liable to such community service or counseling as the court may determine in the best interests of the child”*

It is the opinion of the Author that by setting a minimum penalty of three years, many would be harasser would be deterred from committing the offence of sexual harassment. However, the author noted with dismay that the Amendment act was a reactive response to eliminate sexual harassment as opposed to taking a preventive response, by victims, employers and the government.

It was further noted by the author that the redress available under the Amendment Act is obviously punishment for the offender, or damages for past wrong, it essentially fails to compensate the victim for the harm suffered in terms of the victim’s work environment. Although justice is done, the victim may have lost their employment, promotion, dignity,

self respect, or some other intangible asset.<sup>33</sup> It's been stated that at best the law offers limited protection and redress to victims of sexual harassment. Moreover, it is the powerless that have the least access to redress in the court, as the process is often time-consuming, expensive and alienating.<sup>34</sup>

The issue of sexual harassment needs understanding, assessment, sensitivity and commitment from all quarters but mostly from the senior managerial authority as their commitment and action can achieve the aim of prevention and effective resolution of sexual harassment at workplace and a gender friendly, discrimination free workplace.

The effectiveness of the amendment act remains at the level of speculation as there have been no reported cases that have tested its remedies.

It is interesting that other states, such as Australia, South Wales and New Zealand, have through legislation granted protection to a person who lodges or intends to lodge a complaint of sexual harassment from victimization. These states have made it unlawful to take retaliatory action against a person just because they wish to complain about harassment or discrimination.<sup>35</sup> It is the author's view that protection against victimization should be given to a person who gives or proposes to give evidence or information in proceedings conducted under the Penal code amendment Act in Zambia. Such protection will encourage victims and witnesses to report sexual harassment cases because then it will diminish the threat of retaliation from the harasser.

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<sup>33</sup> J.G, Mowatt. "Sexual Harassment: New Remedy For Old Wrong" Industrial Law Journal, Vol. 7, (1986)p. 645

<sup>34</sup> *ibid*

<sup>35</sup> *Op cit.*

## **2.6 Concurrent Supporting Laws to the Amendment Act and International Instruments on Sexual Harassment**

Growing civil society and government concern regarding violence against women has led to the formulation of different international instruments that have been adopted by various States. As a result, this calamity is internationally recognized today as a human rights issue that requires a coordinated and integral response on the part of States, civil society and the international community.

Discrimination in employment based on sex and sexual harassment violate the most basic principles of international human rights Law. As a member of the United Nations, Zambia must comply with its directives and regulations regarding sex discrimination and sexual harassment in the workplace. The provisions of the Universal declaration of Human Rights and other international instruments, such as ILO and CEDAW, define Zambia's obligations as a member of the international community. Zambia has ratified the International Covenant on Civil and Political Rights and the Convention on the Elimination of All forms of Discrimination against women and is bound by the terms of these treaties.

International human rights instruments prohibit discrimination in employment based on sex and condemn sexual harassment as a form of violence against women. In addition, they also reflect an understanding that sexual harassment is a serious and widespread problem. A government's failure to remedy inequalities in the workplace based on sex



discrimination and sexual harassment is a violation of its obligations under international law.<sup>36</sup>

The Universal Declaration and the Civil and political Covenant imposes on its member states the requirement that they provide an effective and adequate remedy for acts violating fundamental rights guaranteed by constitution or by law. The Zambian legal system does not provide an adequate remedy for denying woman her fundamental right to work, to equality under the law and to safe, equitable and dignified working conditions.

Different documents incorporating recommendations and commitments have been adopted internationally to address violence against women, which have served as a basis for the formulation of national and regional legislation and plans addressing violence against women.<sup>37</sup>

United Nations Commission on the Status of Women (1946), women in many countries have gained legal rights and fuller access to education and the professions. . In 1975 the United Nations launched a Decade for Women programme, and major conferences were held in 1975, 1980, and 1985, and again in 1995. The 1995 conference, held in Beijing, China, centered on human-rights issues relating specifically to women.<sup>38</sup>

Despite the progress made to improve women's rights in many parts of the world, it is clear that equality between women and men has not been achieved in many respects, particularly in the developing world. In recent years, there have been initiatives to tackle

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<sup>36</sup> M. M, Munalula., WOMEN, GENDER DISCRIMINATION AND THE LAW: Cases and material, Lusaka: unza Press(2005) p.15

<sup>37</sup> Women and Gender in Countries in transition: A UNICEF Perspective, UNICEF Regional office for Central and Eastern Europe, Commonwealth of Independent States and Baltic States, 32(1994).

<sup>38</sup> <http://www.un.org/womenwatch/confer/beijing/reports/platesp.htm>

sexism on an international level. For example, four United Nations (UN) Women's Conferences have been held, bringing together an international group of delegates to work towards the promotion of women's rights worldwide. The Conference has outlined a number of sexist practices which governments need to take action against, including rape, domestic violence, female circumcision, the killing of female children, unsafe abortions, property laws which discriminate against women, and women's unequal share in education and power.<sup>39</sup> These are complex issues which demand careful treatment and it is likely that they will remain causes for international concern for many years to come.

Sexual harassment—suggestive or abusive behaviour made towards colleagues which has a sexual motive, or unwelcome sexual advances by colleagues—is not mentioned in sex discrimination legislation, although such legislation has been used in a considerable number of harassment cases. There is a European Code of Practice that advises employers on how to prevent sexual harassment, but employers are not legally bound to comply with it.<sup>40</sup>

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, and the Middle East and among the signatories of the Helsinki accords.<sup>41</sup> There are a handful of encouraging government initiatives to reform the criminal justice system and improve the state's response to violence against women, including a specialized sex offenses court and rape reporting centers in some local police stations. However, the positive effect of these efforts is undercut by the lack of a coordinated

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<sup>39</sup> *ibid*

<sup>40</sup> *ibid*

<sup>41</sup> *ibid*

national strategy to address violence against women and to ensure that policy changes are implemented throughout the criminal justice, health and welfare systems.

Human Rights Watch calls on the government of South Africa to take up the challenge of establishing a coordinated national strategy to address violence against women. Its Africa division was established in 1988 to monitor and promote the observance of internationally recognized human rights in sub-Saharan Africa.<sup>42</sup>

The need to promote and protect the human rights of women has been re-affirmed through several activities such as the four world conferences, which took place in the last 30 years. The results of these conferences were the adoption and drafting of several international Human Rights Instruments to emphasize and enhance the world's awareness and recognition of women's rights. Instruments such as The Vienna Declaration and Programme of Action, adopted at the World Conference on Human rights in 1993, which recognized that gender-based violence is "...incompatible with the dignity and worth of the human person, and must be eliminated...by [way of] legal measures and through national action and international cooperation in such fields as economic and social development, education, safe maternity and health care, and social support." In addition, it recognizes the importance of eliminating violence against women "in public and private life" and urges States to end this violence in compliance with the Declaration on the Elimination of Violence against Women.<sup>43</sup>

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<sup>42</sup> *ibid*

<sup>43</sup> Declaration on the Elimination of Violence Against Women, art. 2(b), G.A. RES. 48/104, 48 U.N. GOR Supp. (No. 49) at 217, U.N. Doc A/48/49 (1993)

In the same year, a Declaration was issued at the World Conference on Human Rights for its adoption by the General Assembly in December, which dealt with the Elimination of violence against women. It was established within the Declaration that violence against women "...constitutes a violation of the rights and fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and freedoms..."<sup>44</sup>

The Declaration establishes that violence against women, is not limited to, but encompasses:

*"Physical, sexual and psychological violence occurring in the family, including mistreatment, battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal family violence and violence related to exploitation, Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere in the public domain, trafficking of women and girls, and by the State, wherever it occurs..."*<sup>45</sup>

A few years later, at the fourth world conference on women held in 1995, the Beijing Declaration and platform for action was adopted which identified violence against women as an obstacle to the achievement of equality, development and peace, and as an act that violates and hinders the enjoyment of women's human rights and freedoms. Violence against women was included as one of the twelve "critical areas" towards which governments, the international community, and civil society, including non-governmental

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<sup>44</sup>ibid

<sup>45</sup> Reproduced from UN website

organizations and the private sector, should orient their efforts in aims of achieving gender equality and the advancement of women.<sup>46</sup>

## **Conclusion**

This chapter endeavoured to examine the Amendment Act by looking at the Sexual harassment Laws in other jurisdictions, the international instruments that have created global standards for the protection of women's rights and promotion of gender equality. The issue of gender equality remains very problematic in the African context and Zambia, by the Amendment of this Act, has taken it's a further step in combating it. However, Zambia can still learn a lot from other countries which have sexual harassment laws and the remedies that are available in those jurisdictions. This will be looked at in the following chapter, which will also look at some working examples from other jurisdictions on the mechanisms for promoting and enhancing labour laws with regards to sexual harassment laws.

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<sup>46</sup> <http://www.un.org/womenwatch/confer/beijing/reports/platesp.htm>

### 3.0 CHAPTER THREE

#### **Introduction**

Sexual harassment might be considered a relatively new phenomenon in Zambia because it has just recently been given legal recognition as a form of sexual offence and a criminal wrong. However, in other jurisdictions which might be termed more “advanced”, they have been dealing with sexual harassment laws and remedies for quite some time, such as in the United Kingdom, New Zealand and the United States of America. The evolution of such legislation over the past 20 years has been significant. Specific laws now address sexual harassment as a wrong and as unacceptable in places of employment. In addition, there are labour codes addressing the issue and laws on human rights and equality covering all aspects of gender –based discrimination. But there are very few international instruments that address sexual harassment specifically at the international level such as the 1992 General Recommendation under the United Nations Convention on the Elimination of Discrimination Against Women (CEDAW).

Laws and enforcement procedures are pointless unless they have an impact at their intended subjects. By failing to enforce its laws and condemn or respond to the problems of sex discrimination and sexual harassment in employment, a government fails to protect women’s rights to equality in the workplace and to a safe and dignified work environment. A government’s failure to provide effective remedies to victims of sexual

discrimination and sexual harassment violates the right to an effective remedy for the violation of fundamental human rights guaranteed by international human rights law.<sup>47</sup>

Zambia might be able to learn and copy from these jurisdictions which have a head start when it comes to dealing with sexual harassment. Thus, this chapter will look at the different sexual harassment laws and remedies available in other states.

### **3.1 Sexual Harassment Laws And Remedies In Other Jurisdictions: A brief overview of The Laws Governing The Prevention And Protection Of Employees Against Sexual Harassment In Workplaces of Other Jurisdiction**

This part of the discourse will concentrate on the Sexual harassment laws and remedies available in other jurisdictions, such as, the Republic of South Africa, the United Kingdom, the United States of America and the Republic of Kenya just to mention a few.

It can not be denied that society in both developed and developing countries is far more aware today than before that harassment, particularly of women, is a common and dangerous issue in the workplace. The world's women movement has also played a vital role in ensuring the recognition of sexual harassment as a human rights issue.

Until the mid-1980s few countries had any explicit legislation on sexual harassment, though broader legislation has been increasingly applied to the problem, resulting in relevant jurisprudence. From the early 1990s many more countries have passed specific legislation.<sup>48</sup>

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<sup>47</sup> International Covenant on Civil and Political Rights, art. 2(1), G. res. 2200A (XXI), 21 U. N. GAOR Supp. (no. 16 ) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976 and the Universal Declaration of Human Rights, art 8, G.A. Res. 217A (III), U. N. Doc. A/810 at 71 (1948).

<sup>48</sup> J. Aeberhard-Hodges, International labour Review (ILR), Vol 135, "Sexual harassment in employment: Recent Judicial and Arbitral trends" (1996) p 44.

The Republic of South Africa has addressed the issue of sexual harassment in workplaces in its Labour Relations Act of 1995, which is supplemented by the Notice of Code of Good Practice on the Handling of Sexual Harassment Cases. In its schedule, the Notice states that:

- “1. The objective of this code is to eliminate sexual harassment in the workplace.*
- 2. This code provides appropriate procedures to deal with the problem and prevent its recurrence.*
- 3. This code encourages and promotes the development and implementation of policies and procedures that will lead to the creation of workplaces that are free of sexual harassment, where employer and employees respect one another’s integrity and dignity, and their right to equity in the workplace.”<sup>49</sup>*

The Notice is intended as a guide for employers and employees and outlines who the perpetrators and victims of sexual harassment may include. The Notice firstly defines sexual harassment, highlights its different forms and then provides guiding principles, policy statements and procedures to deal with sexual harassment.

It is worth noting that the Code acknowledges a victim’s right to press separate criminal and or civil charges against an alleged perpetrator and the legal rights of the victim are in no way limited by the code.

The remedies against sexual harassment found in the South African Labour Relations Act of 1995 include termination of employment of the harasser, imprisonment in extreme cases, and monetary compensation for the victim.<sup>50</sup>

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<sup>49</sup>Notice 1367 of 1998 of the National Economic Development and labour Council

<sup>50</sup> Labour Relations Act of the Republic of South Africa of 1995.



Kenya recently enacted a Sexual Offences Act in July 2006, which provides for harsher punishment for rapists and sexual offenders. The Act recognizes the equality of men and women and highlights the right to security of all human beings.<sup>51</sup> The redress available for the victim is minimal; it does not include monetary compensation, merely severe warning, and termination of his /her employment and if harassment causes physical injury imprisonment for the harasser.

At the national level, the United States of America was one of the first countries to define sexual harassment, as a prohibited form of sex discrimination that violates Title VII of the Civil Rights Act, a federal law. The U.S. government body that enforces the Civil rights Act, the equal Employment Opportunity Commission (EEOC) defines sexual harassment as

*“unwelcome sexual advances, requests for sexual favours, and other verbal or physical conduct of a sexual nature,” when*

*(1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;*

*(2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or*

*(3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.”*

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<sup>51</sup> <http://allafrica.com/stories/200607140858.html>

In addition to national definitions of sexual harassment, most states in the U.S. also prohibit sexual harassment, through state laws that may differ slightly from the federal definitions.<sup>52</sup>

It is interesting to note that under federal laws, employees subjected to either type of harassment, quid pro quo or hostile work environment, may seek equitable relief or injunctive relief. Compensatory or punitive damages are not normally awarded in sexual harassment cases, It may be obtained by alleging tort claims. It is considered by some labour and employment lawyers that companies can lessen their vulnerability to sexual harassment lawsuits by adopting formal and explicit sexual harassment policy, setting up a grievance mechanism, actively enforcing policies, and taking proper remedial actions once harassment claims have been substantiated.<sup>53</sup>

In Canada, all labour issues are within the jurisdiction of the provinces, and each territory or province administers its own human rights law. All Canadian human rights acts at the provincial level prohibit discrimination in employment on the basis of sex. The Canadian Human rights Act does not precisely define sexual harassment, but the Canadian labour Code defines it explicitly as “any conduct, comment, gesture or contact of a sexual nature that (a) is likely to cause offense or humiliation to any employee; and (b) that might, on reasonable grounds, be perceived by that employee as placing a condition of a sexual nature on employment or on an opportunity for training or promotion.”<sup>54</sup>

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<sup>52</sup> S. L, Webb Shockwaves: the Global Impact of Sexual Harassment. New York(1994)P.12.

<sup>53</sup> J. P, Englander,: “Handling sexual harassment in the workplace”: CPA JOURNAL CPA JOURNAL CPA JOURNAL, New York: CPAs, (1992),P.59.

<sup>54</sup> *ibid*

The law in Canada does provide for imprisonment of the harasser in extreme cases of sexual harassment with a minimum of six months or community service instead of imprisonment. For harassers below the age of sixteen, it provides for detention in rehabilitation centers with the maximum being two years. It also provides for termination of employment for the harasser and compensation from the employer, if he failed to provide adequate training on sexual harassment and prevention measures.

The U.S. and Canadian definitions of sexual harassment are found in national laws and are closely tied to the type of remedy available to a victim of this form of violence.

Despite the lack of a universal definition of sexual harassment, there is general consensus about what constitutes prohibited conduct. For the action to be considered sexual harassment it must meet these criteria:

- (1) (the action) is related to sex or sexual conduct;
- (2) (the conduct) is unwelcome, not returned, not mutual; and
- (3) (the conduct) affects the terms or conditions of employment, in some cases including the work environment itself.<sup>55</sup>

Laws and enforcement procedures are pointless unless they have an impact at the workplace. In North America, Western Europe and in other areas, women are now prepared to make complaints because they see that these do not fall on deaf ears. In many situations, however, the impact has been less striking. That is why working with groups like trade unions is an important strategy of the ILO. Union leaders and activists can go out and inform employees of their rights, of existing laws and how they can use them.

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<sup>55</sup> *ibid.*

After extensive research, the author noted with discontent that the majority of people from developed countries, such as the United States of America and the United Kingdom, were of the view that:

*"...in most African cultures where the rights of a woman are little if not non-existent, and where the laws are not properly drawn to address the issue, sexual harassment is not usually paid much attention to. Most women victims of sexual harassment don't have the courage to report it because they have little chance to be believed, and many so, they do not see how the perpetrator would be prosecuted..."*<sup>56</sup>

And Zambia is no exception, this was confirmed in an interview the author had with a labour officer from the Ministry of Labour, Mr. M. Mwiya.<sup>57</sup> Who stated that his office dealt with cases of employment complaints and on average, the office received about 12 sexual harassment cases annually, from their Lusaka office alone. He observed that, off the record, the office received numerous reports of sexual harassment but only a handful of the complainants were officially reported and he cited many factors which contributed to the lack of reporting by the victims of sexual harassment and amongst them were: lack of faith in the legal system, lack of adequate redress, fear of victimization not only from the harasser but from fellow employees as well, humiliation and self blame and the fear of loss of employment. In addition, Mr. Mwiya highlighted that although the vast majority of complaints alleging sexual harassment were brought by female employees against male harassers, the law also protected aggrieved males. The

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<sup>56</sup> <http://news.bbc.co.uk/1/hi/world/africa/4791625.stm>

<sup>57</sup> Personal interview held on the 19th. day of September 2006

male populace rarely reported because they simply ignored the harassment or feared that their colleagues would consider them not “man-enough” to handle the situation.

He further stated that because of the afore mentioned factors, even the reported cases never actually get to go to court, because in most cases, the complainant would withdraw the compliant or simply not return once a date of reconciliatory hearing was fixed for both the complainant and the accused to attend.

He agreed with the author that the government and employers need to work hard to ensure that the public becomes aware of their rights in employment, such as the right to safe working environments, and the remedies available for them in cases of sexual harassment, discrimination or unfair treatment, remedies like imprisonment for the harassers as provided under the Penal Code Amendment Act No. 15 of 2006. He said that currently, the government had little resources to compel companies and employers to adhere to mandatory policy guidelines, grievance procedures and remedial, especially those that addressed sexual harassment and abuse in workplaces.

He was of the view that because of the sensitive nature of sexual harassment, the victim usually feels unable to approach the perpetrator and lodge formal grievance. He thus suggested a pragmatic move of establishing an office with qualified lawyers, counselors and psychologists, outside the actual organization or company management level to whom victims would report their complaints, seek advise and counseling in confidence.

For instance in Canada, laws that address sexual harassment do not require the victim to confront the alleged harasser in order to establish that the behaviour was unwelcome, additionally it is not necessary for the victim of sexual harassment to expressly object to

the conduct if a reasonable person would understand the behaviour to be offensive and sexual in content.

According to selected Socio-Economic indicators 1999, published by the central statistics office of the Republic of Zambia, out of the total employed labour force, 47% were women while 53 were men. Statistics at the Drop in center of the Young Women Christian Association in Lusaka show that between 1998 and 2000, 3% of women on the annual basis experienced incidents of sexual harassment at places of work. Relating this to the total female labour force, it can be estimated to about 10% of working women in Zambia who annually experience sexual harassment at places of work. However, the actual statistics could be higher because most victims opt to suffer their humiliation in silence than to risk their employment or ruin prospects for promotion.<sup>58</sup>

In South Africa, Women who seek redress for abuse often face police officers who are indifferent or hostile; medical examiners who are ill-trained and inaccessible; prosecutors who are inexperienced and, at times, biased; and judges who doubt women's credibility as survivors of or witnesses to violence and therefore hand down lenient sentences to those convicted of abuse. A dearth of legal and social support services further exacerbates the effects of violence against South African women.<sup>59</sup>

There are a handful of encouraging government initiatives to reform the criminal justice system and improve the state's response to violence against women, including a specialized sex offenses court and rape reporting centers in some local police stations. However, the positive effect of these efforts is undercut by the lack of a coordinated

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<sup>58</sup> Central Statistics Office – Living Conditions in Zambia: Preliminary Report, 1998.

<sup>59</sup> Human Rights Watch: violence on women in South Africa, UN Publication, Cape town (2001) p. 23.

national strategy to address violence against women and to ensure that policy changes are implemented throughout the criminal justice, health and welfare system.<sup>60</sup>

### **3.2 Discussion of Working Examples Of Mechanisms For Promoting And Enhancing Labour Laws With Regards To Sexual Harassment In Workplaces From Other Jurisdictions.**

The number of countries that have taken specific action, adopting legislation regarding sexual harassment, sex discrimination is steadily adding up. Currently there are slightly over 36 countries with legislation specifically targeted against sexual harassment. Other countries have very broad health and safety legislation, which could be extended to cover sexual harassment as a danger to the health, both mental and physical, of an employee. Another area is among employers. The ILO is working with recently democratized or recently independent countries which has led to the rewriting of numerous labour laws, with, in a large number of cases, attention being paid to sexual discrimination in employment. The process is lengthy and involves very specific work, but in the long term it is paying off in its impact and results.<sup>61</sup>

In India, it has been only six years since sexual harassment was for the first time recognised by The Supreme Court as human rights violation and gender based systemic discrimination that affects women's Right to life and livelihood. The major significant development and achievement on sexual harassment at workplace was the landmark judgment by the Supreme Court in the Vishaka case of 1997. The Court defined sexual harassment very clearly as well as provided guidelines for employers to redress and

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<sup>60</sup> J. P, Englander, Handling sexual harassment in the workplace: CPA JOURNAL, New York, (1992),P.16.

<sup>61</sup> Jane Aeberhard –Hodges, International labour Review (ILR), Vol 135, "Sexual harassment in employment: Recent Judicial and Arbitral trends" (1996), p77.

prevent sexual harassment at workplace.<sup>62</sup> The court for the first time recognized sexual harassment as a human Rights violation. The Vishaka judgment kept with India's obligation under CEDWA and their international instruments and laid down broad based guidelines.

In the Vishaka case, Vishaka, an Indian woman was sexually harassed at her place of work by her male boss. The boss constantly made unwanted and unwelcome physical advances of a sexual nature towards her despite her complaining and objecting to the advances.

While the Apex Court has given mandatory guidelines, known as Vishaka Guidelines, for resolution and prevention of sexual harassment enjoining employers by holding them responsible for providing safe work environment for women, the issue still remains under carpets for most women and employers.<sup>63</sup>

The spirit of "Vishaka" is very positive and makes major shifts in dealing with acts of sexual harassment at workplaces. It lays a major responsibility on the employers to provide safe work environment to women employees and stresses on prevention.

Vishaka guidelines apply to both organized and unorganized work sectors and to all women whether working part time, on contract or in voluntary/honorary capacity. The guidelines are a broad framework which put a lot of emphasis on prevention and within which all appropriate preventive measures can be adapted. It stresses on clear role of employer for both prevention and resolution of sexual harassment at the workplace. One very important preventive measure is to adopt a sexual harassment policy, which

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<sup>62</sup> N, Raymond. Combat law, vol 2, Issue 3, August- September (2003).

<sup>63</sup> Ibid.



expressly prohibits sexual harassment at work place and provides effective grievance procedure, which has provisions clearly laid down for prevention and for training the personnel at all levels of employment.<sup>64</sup>

As a result of the Vishaka case, the National Commission for Women (NCW) proposed a Sexual Harassment of Women at their workplace (Prevention) Bill first in 2000 and later a redraft in 2003. To date, no Act has been enacted in India to address Sexual harassment.

Critics of the proposed Bill say that the title of the Bill itself remains incomplete as the Bill should provide for both resolution and prevention of sexual harassment. The Bill does not specify and clarify the preventive role of the employer although the title suggests prevention. The Bill has thrown up many concerns and leaves a lot to be desired in many areas, viz., definitions, clarity of roles of different people involved in resolution mechanism, suggested punishment among others. The Bill does however provide for punishment in the form of imprisonment and fines for the harassers.<sup>65</sup>

Three months after Chile's passage of a law on sexual harassment, officials report a big jump in the number of complaints. One woman's testimony and lawsuit helped spur the law, which had been stuck in parliamentary debate for 14 years.<sup>66</sup>

Giovanna Riveri worked at the Ministry of Agriculture, where her male boss would sexually harass her daily. Riveri filed a complaint to the National Service for Women — better known as SERNAM — in the expectation it might be able to apply some sort of sanctions against her boss. When that didn't happen, she stopped going to work and was fired from her job.

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<sup>64</sup> *ibid*

<sup>65</sup> *ibid*.

<sup>66</sup> <http://www.un.org/womenwatch/confer/beijing/reports/platesp.htm>

She filed a case for wrongful dismissal that made its way up to the Supreme Court. In April 2003, the court declared she'd been the victim of harassment and an unfair dismissal and awarded her about US\$17,000 in damages, paid by her former employer. Her case is widely credited with spurring Chile into action on an issue that had made it a regional laggard.<sup>67</sup>

Under Chile's new law, an employer must adopt measures to safeguard those involved after a complaint by separating work places and schedules. Employers must launch internal investigations and report back to the Ministry of Labour.

If the harassment is confirmed, the perpetrator is to be fired without compensation and the victim has the option of pursuing legal action in the courts. If the perpetrator is the victim's boss, the victim can quit the company and receive the compensation normally paid when a worker resigns, plus an additional 80%. He or she also maintains the right to pursue legal action in the courts and demand additional compensation for moral and psychological damage. Jail time is not among the punishments.<sup>68</sup>

Before this new law, women could try to mount lawsuits based on labour laws, but it would take years and Riveri's was the first woman in Chile to win a sexual harassment suit.

The remedies available to the victim in English law are some times considered inadequate. These remedies include: injunctions against the perpetrators, prohibiting them to continue with the offensive conduct; imprisonment for a minimum of two months; and in compensation form the employer(s). If the harassment involves physical

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<sup>67</sup> *ibid.*

<sup>68</sup> *ibid.*

contact without consent, it may amount to a crime or a civil wrong, for which redress is available. The same is often true if the harasser uses unpleasant telephone calls, or pesters the victim in his or her home. However, comments or jokes which the recipient finds objectionable will often find no redress in law.<sup>69</sup>

Many instances of sexual harassment occur in the place of employment, and the picture with regard to redress is more promising in this context. A harassed employee may be able to take action against his or her employer if the working environment is unfavourable to him or her on the grounds of his or her sex. This will be the case particularly when the employee has complained reasonably about fellow workers and the employer has taken no action to solve the problem. The difficulty with this solution is that the redress is only indirectly against the harasser, and the victim may be unwilling to take legal action for fear of damaging the employment relationship. Many cases are brought only when the harassed employee has been forced to resign by the situation.<sup>70</sup>

In countries such as New Zealand and the United Kingdom, if the victim can reasonably claim that the harassment makes him or her fear that a criminal offence is threatened, or that the harassment will interfere with the use of land (such as the home), an injunction may be available to stop the behaviour.

In the United Kingdom, employees may sue an employer if they are treated unfairly because of racial or sexual discrimination. This protection is wide-ranging, including the toleration by an employer of harassment by fellow workers, and extending to the selection and appointment of new staff. Workers also have the right to equal pay for jobs

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<sup>69</sup> D, Keenan & S, Riche. BUSINESS LAW, 7<sup>th</sup> ed, Sweet & Maxwell: London, (2004), p.214.

<sup>70</sup> J, Aeberhard –Hodges, International labour Review (ILR), Vol 135, “Sexual harassment in employment: Recent Judicial and Arbitral trends” (1996) p 44.

which are of equal value to the employer, regardless of sex. This is not limited to jobs of the same kind: a canteen worker, for example, may be able to claim pay equal to that of a shop floor worker if the value of the work to the company is not shown to be different. Pay includes all financial benefits, such as pensions.<sup>71</sup>

Most countries have taken the initiative of sex harassment training in abide to curb sexual harassment. How else could employees get to spend a couple of hours talking about dirty jokes, smutty screen saves and how to distinguish permissible from impermissible hugs at the work? How else could employees get to claim, if sued for harassment, that they did their best to prevent it?

Harassment education in some form has been around for a quarter – century. Interest has increased in recent years due to several factors: well publicized multimillion – dollars verdicts in harassment cases, the continued high volume of complaints and U.S. Supreme court decisions that reward training. In *Burlington Industries v. Ellerth* and *Faragher v. City of Boca Raton*, the court recognized a defense for employers in liability suits if they exercised “reasonable care” to prevent and correct harassing behaviour and if the complainants unreasonably failed to take advantage of the remedial channels available. In *Kolstad v. American Dental Association*, the court also provided a safe harbor from punitive damages for employers that adopted anti-discrimination policies and education programs. In addition, four states- California, Connecticut, Maine and Massachusetts – require harassment training for designated groups.<sup>72</sup>

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<sup>71</sup> Op cit

<sup>72</sup> <http://www.Law.com/jsp/nlj/PubArticleNLJ.jsp?id=1137146709504>

However, critics of sexual harassment training have stated that, as well as the voluntary programs that many employers have initiated, there is no convincing evidence of their effectiveness. No systematic body of research has assessed the impact of training on long-term attitude or behavioral change, or on the frequency of harassment. What limited evidence is available suggests grounds for concern. For example, one study by psychologist James Witherspoon found that prior harassment training did not affect individuals' overall evaluations of videotaped harassment scenarios.

A further problem with education programs is the lack of quality control. The risk is that poorly designed programs might encourage resentment and perpetuate the sexual bias that they are meant to address. This may be an untended result of the training of highlighting trivial examples of harassment and underscoring the risk of personal liability for managers.<sup>73</sup>

Law enforcers should be wary of individuals who would try to use the law for their own personal gain, it might be to settle personal vendettas or to 'fix' certain colleagues or employees. However, in light of the common law rule that 'he who alleges should prove' might deter 'false-victims', by the victims failure to substantiate their allegations. It might also act to the disadvantage of a genuine victim who might not be able to prove that the conduct complained about made the said victim feel 'uncomfortable'.

## **Conclusion**

It is worth noting that most countries are enacting legislation that are designed to combat sexual harassment and some countries are making headway in combating sexual

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<sup>73</sup> *ibid*

harassment in the workplace. It has been the essence of this chapter to draw attention to some working examples of sexual harassment laws and remedies in other jurisdictions, which the government of Zambia might learn from. The chapter not only discussed the laws and remedies available in other jurisdictions, it also addressed their positive and negative attributes.

In most developed states such as the United Kingdom and the United States of America, the remedies available usually include imprisonment, injunctive relief against the perpetrator and compensation from the employer. It is also possible to bring a successful action against an employer, especially if the employer has not taken any measures to prevent sexual harassment such as having anti-harassment policies, prevention training workshops, counseling facilities with qualified personnel and properly laid down reporting procedures.

Trade unions in these countries may also be taken to task for the non implementation of sexual harassment policies and training of union members.<sup>74</sup>

It would be interesting to see whether despite the lack of specific legislation making an employer liable for the acts of employees in cases of sexual harassment in Zambia, the employer would still be held legally liable for the acts of sexual harassment committed by employees under the principle of 'vicarious liability'.<sup>75</sup>

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<sup>74</sup> Jane Aeberhard –Hodges, *International labour Review (ILR)*, Vol 135, "Sexual harassment in employment: Recent Judicial and Arbitral trends" (1996) p 87.

<sup>75</sup> Vicarious Liability- liability which falls on one person (A) as a result of the action of another person(B) which has caused injury to a third person. In employment law, this liability is owed by an employer for the acts or omissions of his employees committed during the course of employment. (Sheila Bone(Ed).*Osborn's Concise Law Dictionary*, 9<sup>th</sup> ed, Sweet & Maxwell, London, (2001), p. 400. OSBORN'S CONCISE LAW DICTIONARY)

It was noted by the author that very few trade unions have specific sexual harassment policies and thus they did not appear under examples of working mechanisms. Most trade unions merely have discrimination policies that are vague and do not have specific sexual harassment training. This is true for the Zambia Revenue Authority (ZRA) trade union and the Bank of Zambia trade union. The constitution of the ZRA union provides for a staff manual or staff policy. The staff manual provides for employee conduct and disciplinary measures, it does not contain a clause that specifically proscribes sexual harassment; the closest it does is proscribe against any form of discrimination.<sup>76</sup> The author is of the view that this is inadequate because the manual does not define sexual harassment and as much as it provides for disciplinary measures in instances of discrimination such as severe warning and termination of employment for the assaulter, these measures are not enough for a sexual harassment victim who usually experiences victimization and suffers from emotional depression. There is no real compensation offered to the victim such as counseling and monetary compensation.

The next chapter will outline the findings of the research and give the recommendation on measures that can be implemented to enhance the current sexual harassment laws in Zambia, and conclude the whole discourse.

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<sup>76</sup> Zambia Revenue Authority Staff Manual

## **4.0 CHAPTER FOUR**

### **4.1 Summary**

This paper has critically discussed sexual harassment in workplaces in Zambia, by looking at the Penal Code (Amendment) Act no. 15 of 2005.

In chapter one, the paper discussed the concept of sexual harassment, by looking at major definitions and the laws governing employment relations and prohibiting sexual harassment in workplaces in Zambia and other Jurisdictions.

Chapter two critically discussed sexual harassment in workplaces, it looked at the two major forms of sexual harassment identifiable in workplaces. The chapter further discussed the Penal Code (Amendment) Act no. 15 of 2005, its legal implications and its enforcement. It looked at possible obstacles to its implementation and its concurrent supporting laws and international instruments on Sexual harassment.

In chapter three, a brief overview of the Laws governing the prevention and protection of employees against sexual harassment in workplaces of other jurisdiction was looked at. The chapter further discussed working examples of mechanisms for promoting and enhancing labour Laws with regards to Sexual Harassment in workplaces from other jurisdictions.

This final chapter seeks to draw in all the treads of the foregoing chapters, and based upon this discussion highlight the importance and indeed, the relevance of sexual harassment laws in Zambia. Further, based on the previous discussion, it lays down



recommendations for the further implementation and establishment of sexual harassment laws in Zambia.

#### **4.2 Recommendations on Measures That Can Be Implemented To Enhance The Available Legal Framework On Sexual Harassment?**

In light of the foregoing discussion, the discourse will now look at how best to integrate sexual harassment laws in the Zambian legal system, to firmly establish its position as an important and viable law in Zambia.

Despite the introduction of the laws relating to sexual harassment by the Amendment Act No. 15 of the Penal Code, there is much to be done. The introduction of sexual harassment laws has not for example taken into account the basic principles of sexual harassment such as the different types of harassment. The amendments to the penal code though commendable for coming into existence, still need to address the fundamental issues such as legal framework, institutional framework, and financing of these institutions that will handle sexual harassment cases. Thus, there is need, therefore for more than just amendments to the statutory provisions relating to sexual harassment in employment. There is need for more resources such as human and financial and the government should provide for effective training of people that will run the institutions tasked to address the issue of sexual harassment. Government's commitment should be seen even in the national budget, which should include resources for the setting up of agencies specifically tasked to handle the prevention of sexual harassment.

#### **Recommendations:**

Firstly, there is need to redefine sexual harassment in the Penal Code, currently, it is ambiguous and may be understood to be an offence only if it is committed against a child. There is also a need to include sexual harassment as an offence in the Industrial and labour Relations Act of Zambia. Sexual harassment should be defined clearly, prohibited and harassers should be held criminally liable. Further, the Act should mandate employers to adopt anti-sexual harassment policies and provide counseling for both the victims and the harassers.

Secondly, there is, in any event, the consideration of the need firstly to educate the general public on sexual harassment, in order to make people informed, in particular, given the relative novelty of sexual harassment laws in Zambia. The government and other stake holders should launch awareness campaigns to inform the public about sexual harassment laws and employees' rights. Further, information should be distributed in local language discussing what sexual harassment is, what behaviour amounts to harassment, how to prevent it and the dangers of sexual harassment, such as the risk of contracting HIV/AIDS.

Further, as earlier stated, the Zambian government should further educate the public about the problem of sex discrimination against women, including sexual harassment, and support education programs for employers, employees, school children, university students, young parents and non-government organizations on the subject of sex discrimination and sexual harassment in the workplace and in educational institutions. There are no government sponsored programs to provide training and education for employers and employees on the detrimental effects of discrimination and sexual harassment in the workplace. There are no government sponsored programs to study the

problem of sexual harassment and the resulting costs from loss of productivity and illness (such as depression and in very extreme cases, Sexually transmitted diseases, even HIV/AIDS) or absence from work.

Secondly, there is need for developing preventive educational programmes directed towards providing appropriate support and confidential counseling in cases of sexual harassment, establishing and implementing procedures to deal effectively with alleged cases of sexual harassment. This would include procedures for reporting, documentation, mediation, investigation and liaison with existing institutional disciplinary authorities, when appropriate. Further, the reporting procedures should be made very flexible and 'victim – friendly', by ensuring confidentiality and providing various options for the complainant to take. They should range from informal mediation, pressing charges for disciplinary action by the institution or reporting the matter to the police for the due process of the law to take its course.

Thirdly, there should be specialized training for judges, magistrates, police and relevant local and national officials on laws relating to sexual harassment and their responsibility to enforce those laws. In the same vein, the Industrial Labour relations tribunal should be mandated to deal with sexual harassment cases concerning workplaces. The tribunal should be decentralized and establish similar tribunals outside the capital city. Further, the Zambian government should strengthen the Labour Offices mandated to deal with sexual harassment complaints in the Ministry of Labour, by ensuring that it operates independently and is adequately funded, staffed and equipped. To enable it operate without fear or favour.

Fourthly, there are a number of measures that trade unions can take to combat sexual harassment. Trade unions should include in their policies, sexual harassment education and prevention measures. An anti-harassment policy should set forth the following: an express commitment to eradicate and prevent sexual harassment and express prohibition of sexual harassment; a definition of sexual harassment including both quid pro quo and hostile work environment giving examples; an explanation of penalties (including termination) the employer will impose for substantiated sexual harassment conduct; a detailed outline of the grievance procedure employees should use; a clear statement that anyone found guilty of harassment after investigation will be subject to immediate and appropriate disciplinary action a clear understanding and strict rules regarding harassment of or by third parties like clients, customers etc. additional resource or contact persons available for support and consultation; an express commitment to keep all sexual harassment complaints and procedures confidential and time bound; provisions for training of employees at all levels. an anti retaliation policy providing protection against retaliation to complainants, witnesses, Complaints Committee members and other employees involved in prevention and complaints resolution.

Fifthly, policies and procedures should be adopted after consultation or negotiation with employee representatives .The goal is to make union members sensitive to the problem and to create a climate to discourage sexual harassment and, if it occurs, a climate where victims will feel comfortable turning to the union for assistance. Trade Unions in unorganized sector can play a definite and vital role in helping set up complaints mechanism and instituting systems/channels that could provide forum for recipients of sexual harassment in unorganized sector to complain.

Sixthly, the Zambian government might also follow the step taken by the Republic of South Africa and compel employers to adopt a Labour Code in places of work and failure to do adopt a labour code should be made a criminal offence. The Labour code should be consistent with the constitutional provisions that guarantee that no privileges or restrictions of rights on the grounds of sex. The code should contain standard procedures that employees and employers to use for sexual harassment complaints. In the realm of labour relations, the government should also provide a private cause of action against an employer who engages in sexual harassment.

Currently, there are no governmental agencies specifically set up to handle complaints of this nature. The Zambian government should also create an administrative body to review complaints of sex discrimination and sexual harassment in the workplace.

And seventhly, companies should also be mandated and encouraged by the Zambian government to include prohibitions against sexual harassment in their employment policies. Companies and employers should have grievance mechanisms within their internal regulations and provide specific training to the problem of sexual harassment. Trade unions can also play a vital role by educating the labour force about the individual rights of the workers and the remedies available to victims of sex discrimination and sexual harassment.

It should be noted that Zambia's dire economic crisis and high unemployment rate, despite having criminalized sexual harassment, might still cause a barrier for the victims who are usually powerless and in no financial position to hire attorneys. Moreover, Additional legal barrier exist for the victim seeking redress for sexual harassment claims.

The victims must use the criminal code to bring a sexual harassment complaint in the courts. A criminal action, however, has a higher standard of proof than a civil action and provides no remedy against the employer. Thus, there is need for encouraging victims to also bring civil claims against their employers and or victims and need for increased legal aid services provided to the poor and vulnerable. This can be achieved by ensuring that all lawyers take up pro- bono cases, with at least one sexual harassment case annually.

### **4.3 Conclusion**

This paper has examined sexual harassment laws in Zambia. The discourse included the identification of the salient provisions in the Penal Code Amendment Act, as well as a critical analysis as regards its efficacy.

Sex discrimination and sexual harassment in employment are serious and pervasive problems for women in Zambia. Women suffer from discrimination in every phase of the employment process: (i) women experience discrimination in the recruitment and hiring process; (ii) women face sexual harassment in the workplace – women are subjected to unwelcome hints and sexual comments, demands for sexual favours and, in the most extreme cases, rape, at the hands of their supervisors and co-workers.

The inevitability of sexual harassment laws can not be overstated, Zambia like any other country with labour relations should be cognizant of the fact that sexual harassment exists and preventive measures should be set up to curb it.

In 2005, Zambia Parliament adopted an amendment bill to amend the Penal code due to changes in the ideological inclinations and world wide women's movements which influenced the Zambian Government decided to criminalize sexual harassment in the workplace.

However, it is yet to be seen whether the regulation, promotion and enforcement of these laws will be successful. Many problems or hurdles may hinder the efficacy of this new legislation and among them are poverty, lack of information or knowledge, and fear of intimidation. Apart from this, sexist attitudes which are infused in most African societies: according to Human Rights Watch Report most men believe that women are weak, incapable of handling responsibility and in need of male protection. The guise of male "protection" does not obscure the fact that intimidating women and sexually abusing them is a way of asserting control over women's autonomy, bodies and labour<sup>77</sup>. As important as cultural diversity and respecting custom may be, if customs are a source of discrimination and encourage sexual harassment, they-like any other norm-must evolve. This is crucial not only for the sake of women's equality, but be there are real social consequences to depriving half the population of their right to personal security. International organizations have identified sexual harassment as contributing to low agriculture production, food shortage, underemployment and retarded development. In Zambia, more than 80% of the population lives in poverty, the economy is at one of its lowest since independence and HIV/AIDS rates escalating on a daily basis<sup>78</sup>. The agricultural sector, which greatly contributes to most countries gross domestic product and depends on women's labour, is usually stagnated due to injustices against women,

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<sup>77</sup> Human Rights Watch Report, 1999.

<sup>78</sup> Louise Cord et al, Pro-Poor Growth in the 1990s: Lessons and Insights from 14 countries, Washington, World Bank Report,(2005) p. 41.

which includes sexual harassment. In order for Zambia to meet its development aims, sexual harassment that retards development and ultimately economic growth needs to be adequately and systematically addressed.<sup>79</sup>

The advent of sexual harassment has brought with it a number of problems. It might be argued that sexual harassment laws are a result of hurried and ambitious enactments of enabling legislation. It might even be argued that the sexual harassment laws are tailor-made policies that are not viable and may fail to achieve the expected results. Currently, most employees often have little awareness of their rights and seldom have means to enforce them. Victims who try to fight back are often victimized and threaten with dismissal from employment. Further, most companies interviewed do not have sexual harassment compliant procedures in their employee complaints guideline.

As a result, the efficacy of the laws may have been affected. The failure to take into account the need to place laws in conformity with other related laws may led to inconsistencies, conflicting legislation and lack of co-ordination among regulators involved in the enhancement of freedom. It might also be argued that the enactment of the Sexual harassment has also failed to take into account the social and economic conditions pertaining within the country, which might encourage such behaviour and hinder sexual harassment reporting.

Despite the slow recognition that sexual harassment in workplaces harm not just the victim but society's development as a whole, little has been done practically to prevent and redress these violations. Averting these abuses on a continent where traditional

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<sup>79</sup> Ibid. p 42



values and customs influence people's perceptions on conduct will be a monumental task. A concerted effort is needed not just to improve legal protections, but to modify customary laws and practices and ultimately to change people's minds. With extreme poverty, corruption, a moribund economy, and catastrophic HIV/AIDS rates, Zambia can no longer afford to ignore sexual harassment in workplaces. Eliminating sexual harassment with respect to labour rights is not only a human obligation but economically beneficial.

Finally, the author fully appreciates that sexual harassment is a manifestation of unequal power relations between men and women and thus reflects the symptoms of a larger societal problem to insubordinate one gender group, especially women by men. Quite clearly having a sexual harassment law or company policies will not stop all sexual harassment but it does sensitize potential harassers to the unacceptable and punishable nature of their behaviour and sensitizes potential victims to means of prevention and redress.

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