

SEXUAL HARASSMENT AT THE WORKPLACE

NEC FOR INSURANCE AND PENSIONS INDUSTRY

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STRUCTURE OF PRESENTATION

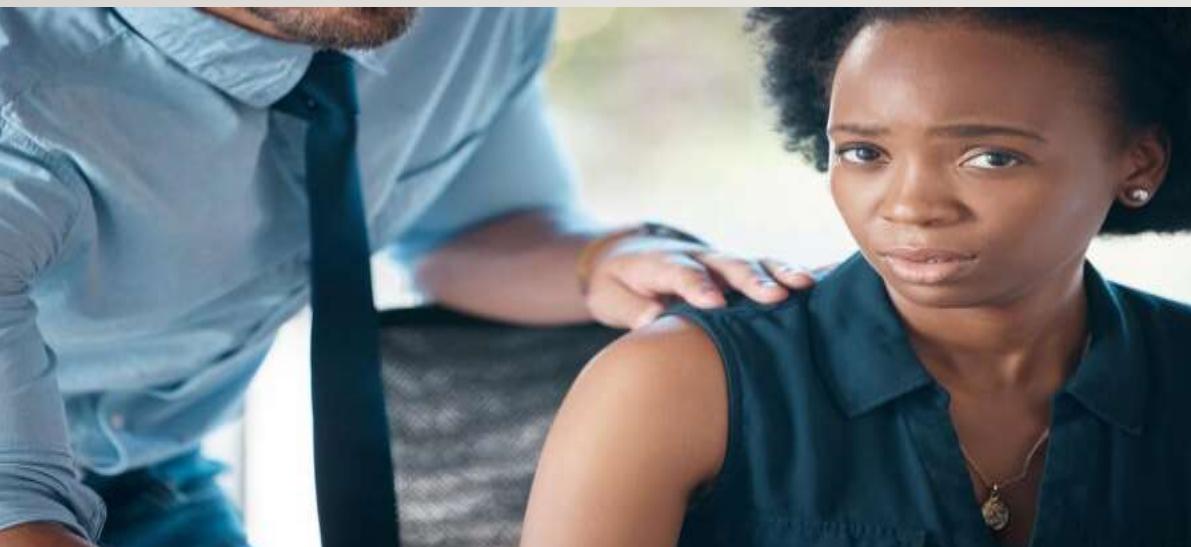
- Overview of SH
- History and definition of sexual harassment in Zimbabwe - 2002 through to 2023.
- Sexual harassment before the 2023 Amendment
- Gender-based harassment since 2023
- SH and the constitution
- SH on the international plane
- SH in ILO Conventions – C190
- Did LAA 11 of 2023 impact SH in the workplace
- Is it enough?

WHAT COMES TO MIND WHEN WE MENTION SH?



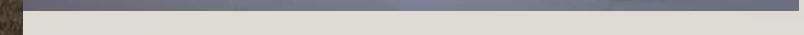


Is it only against women?





Can men also be victims?



OVERVIEW OF SH

- It is a problematic issue even in developed nations and in the world of work
- Men and women in one place – power and poverty in one place – genesis
- factors -age – class – education – income – occupation –opportunities –
- SH & patriarchy ??? – but is it only found patriarchal societies though – western nations
- Victims were traditionally women, now men are coming up slowly and surely.
- Most organisation now have policies – but issue is whether there is compliance?

HISTORY OF SH IN ZIMBABWE

- Sexual harassment was not directly part of our labour law before 2002.
- Sexual harassment was not expressly defined in the definition section of the LA before the LAA No. 11 of 2023.
- It started to be somewhat defined in LAA 17 of 2002.
- It came as part of wider legislative changes that sort to eliminate gender discrimination mainly against women.
- It was, in piecemeal fashion, introduced to our law, first as a way of dealing with discrimination in terms of ‘sex’, and then ‘gender’ – Section 7(a) of LAA 17 of 2002.
- The anti-gender discrimination crusade escalated in Section 7 (b) of LAA 17 of 2002 with Section 5(2a) of the LA introducing *“the equal remuneration for male and females employees for work of equal value”*
- It then found expression in our statutes via section 8 of the LAA No. 17 of 2002 as later amended by section 37 of LAA No. 7 of 2005

DEFINITION OF SH

- After LAA 17 of 2002, it was now obliquely defined in Section 8(h) of the LA as follows;

“ An employer or any other person commits an unfair labour practice if, by act or omission, engages in unwelcome sexually-determined behaviour towards any employee, whether verbal or otherwise, such as making physical contact or advances, sexually coloured remarks, or displaying pornographic materials in the workplace.”
- NB – emphasis on acts/omissions, unwelcome sexually determined behavior, verbal/otherwise, physical contact or advances, sexually colored remarks, displaying porn.

CTND...

- Through the same Act, Section 8(g) of the LA, made harassment at the point of recruitment to be another unfair labour practice. It provides that;

“An employer or any other person commits an unfair labour practice if, he/she demands from any employee or prospective employee any sexual favour as a condition of—

- (i) *the recruitment for employment; or*
- (ii) *the creation, classification or abolition of jobs or posts; or*
- (iii) *the improvement of the remuneration or other conditions of employment of the employee; or*
- (iv) *the choice of persons for jobs or posts, training, advancement, apprenticeships, transfer, promotion or retrenchment; or*
- (v) *the provision of facilities related to or connected with employment; or*
- (vi) *any other matter related to employment”*

SH AS DEFINED IN LAA 11 OF 2023

- It is only when LAA 11/23 came that sexual harassment received a definition in the definition section of the LA, albeit as part of a broader phenomenon known as '**GENDER-BASED VIOLENCE AND HARASSMENT**' which is defined in Section 2 of the LA as;

*"means violence and harassment directed at persons because of their sex or gender, or
affecting persons of a particular sex or gender disproportionately, and includes sexual harassment"*

- On its part 'violence and harassment' is defined in Section 2 of the LA as;

'in the context of section 6(3) and section 8 refers to a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment'

VIOLENCE AND HARASSMENT AT THE WORK PLACE

- Section 6(3) of the LA provides that;

(3) No person shall directly or indirectly act in a manner that amounts to violence and harassment towards another person at the workplace including any action in the course of, linked with or arising out of work—

 - (a) in the workplace, including public and private spaces where they are a place of work;*
 - (b) in places where the worker is paid, takes a rest break or a meal, or uses sanitary, washing and changing facilities;*
 - (c) during work-related trips, travel, training, events or workplace organised social activities;*
 - (d) through work-related communications, including those enabled by information and communication technologies;*
 - (e) in employer-provided accommodation; and*
 - (f) when commuting to and from work.*
- (4) Any person who contravenes subsection (3) shall be guilty of an offence and liable to a fine not exceeding level 12 or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment.

**Key features to current
VIOLENCE and
HARASSMENT laws.**

BREAKING IT DOWN

- “violence and harassment”
 - A range of unacceptable behaviors or practices – undefined, objective, subjective?
 - Threats thereof [of unacceptable behaviours and practices] – mere threat?
 - whether a single occurrence or repeated – it doesn’t have to be repeated to be SH
 - that aim at, result in, or – harm does not have to happen, aim/intention/outcome
 - are likely to result in physical, psychological, sexual or economic harm, - spectrum of harm is wide
 - and includes gender-based violence and harassment;” – SH is just but a facet of V&H
- “gender-based violence and harassment” means violence and harassment directed at persons because of their sex or gender, or affecting persons of a particular sex or gender disproportionately, and includes sexual harassment”
- NB – Not only for women, men too.

VIOLENCE AND HARASSMENT AS A CRIME-S6

- Introduction of a new crime and act of misconduct called 'violence and harassment' as defined in s2 – note, offence is not SH but V&H
- Section 6(3) - Can be committed at work, on the way to work, online, on work-related trips etc – **Most codes of conduct have this misconduct – but it was not this well defined**
- Up to level 12 fine or 10 yrs imprisonment if convicted
- Misconduct charge and dismissal whether or not criminal charges have been raised or sustained. – read with Section 12B(4) – *implications on the law of mitigation???*

VIOLENCE AND HARASSMENT AS AN UNFAIR LABOUR PRACTICE – S8

- Engaging in violence and harassment by employer as defined in ss2 and 6 now an additional layer of unfair labour practices.
- Interesting how ‘employer’ is referred to and whether liability for the commission of such offenses as listed in ss2 and 6(3) by individual can be attributed to the employer.
- Your thinking on V&H should not be about SH alone, go beyond causing others discomfort.
- Elaborate process for dealing with unfair labour practices in Section 93 arw section 63 for NECs – *that should not be the sole deterrent though – attitudes have to change*

SH AND THE ZIMBABWEAN CONSTITUTION

- **Section 24** – aspirational clause: - *The State and all institutions and agencies of government at every level must adopt reasonable policies and measures, within the limits of the resources available to them, to provide everyone with an opportunity to work in a freely chosen activity, in order to secure a decent living for themselves and their families.*
- **Section 51** – right to human dignity – *Every person has inherent dignity in their private and public life, and the right to have that dignity respected and protected*
- **Section 53** – right not to be subjected to inhuman and degrading treatment - *No person shall be subjected to ... inhuman or degrading treatment....*
- **Section 56** – equality and non discrimination on the basis of sex and gender - *SH violates one's right to equality and non-discrimination*
- **Section 65** – right to safe and fair labour standards – *Every person has the right to fair and safe labour practices and standards and to be paid a fair and reasonable wage.*

SH IN THE REGION

- Practical lessons for implementation within the Zimbabwean jurisdiction can be learnt from South Africa with its Employment and Equity Act 55 of 1998 Code of Good Practice: Sexual Harassment wherein;
 - (a) entities are encouraged to put in place policies to deal with sexual harassment and those policies be effectively communicated and understood by all employees.
 - (b) because of the exclusive nature of the Code it has sufficient content and clarity to be used as a guideline in instances of sexual harassment.

SH IN THE REGIONAL COURTS

- The Constitutional Court of South Africa in **McGregor v Public Health and Social Development Sectoral Bargaining Council & Others [2021] ZACC 14 para 1** noted that:

“Sexual harassment is the most heinous misconduct that plagues a workplace.” Although prohibited under the labour laws of this country, it persists. Its persistence and prevalence “pose a barrier to the achievement of substantive equality in the workplace and is inimical to the constitutional dream of a society founded on the values of human dignity, the achievement of equality and the advancement of human rights and freedoms...and non-sexism”. Not only is it demeaning to the victim, but it undermines their dignity, integrity and self-worth, striking at the root of that person’s being. Yet, what this means is that for as long as sexual harassment persists, so the Constitution becomes an eidolon, and its promises of equality and dignity, equally illusive.”

SH IN ZIMBABWEAN COURTS

- In a recent decision, the High Court set out guidelines for the assessment of compensation for sexual harassment in **Mbatha v Zizhou & Another HH 675-21** as follows:
 - (a) The nature, extent, duration and seriousness or intensity of the injury to feelings
 - (b) The subjective circumstances and the gender of the victim and of the perpetrator
 - (c) The power dynamics or power relations and social-economic imbalances between the victim and the perpetrator
 - (d) The age difference between the victim and the perpetrator
 - (e) The pattern of behaviour or conduct of the perpetrator before or after the wrongful act
 - (f) The prevalence of such misconduct and the general conditions of employment
 - (g) The degree of the deprivation of the amenities of life as a result of the injury suffered.

SH on the International stage

AT UNITED NATIONS LEVEL

- [General Assembly Resolution 48/104](#) on the Declaration on the Elimination of Violence Against Women defines violence against women to include sexual harassment, which is prohibited at work, in educational institutions, and elsewhere (Art. 2(b)), and encourages development of penal, civil or other administrative sanctions, as well as preventative approaches to eliminate violence against women (Art. 4(d-f)).
- The [Convention on the Elimination of all Forms of Discrimination against Women](#) (CEDAW) directs States Parties to take appropriate measures to eliminate discrimination against women in all fields, specifically including equality under law, in governance and politics, the workplace, education, healthcare, and in other areas of public and social life. (Arts. 7-16).
- Moreover, the [Beijing Platform for Action](#), para. 178, recognizes sexual harassment as a form of violence against women and as a form of discrimination, and calls on multiple actors including government, employers, unions, and civil society to ensure that governments enact and enforce laws on sexual harassment and that employers develop anti-harassment policies and prevention strategies.

AFRICAN UNION & SUB-REGIONAL BODIES

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa obligates State Parties to take appropriate measures to:

- Eliminate all forms of discrimination against women and guarantee equal opportunity and access in the sphere of education and training;
- Protect women from all forms of abuse (including sexual harassment);
- Ensure transparency in recruitment, promotion and dismissal of women, and combat and punish sexual harassment in education and the workplace. (See: Articles 12-13)

AFRICAN UNION SUB-REGIONAL BODIES

Sub-regional bodies in Africa also have addressed sexual harassment. For example, the [Southern African Development Community Protocol on Gender and Development](#), in article 22, requires that states parties by 2015 must:

- *enact legislative provisions, and adopt and implement policies, strategies, and programmes which define and prohibit sexual harassment in all spheres, and provide deterrent sanctions for perpetrators of sexual harassment.*
- The protocol has been signed by Angola, Democratic Republic of Congo, Lesotho, Madagascar, Mauritania, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia, and [Zimbabwe](#).
- The [Economic Community of West African States](#), which includes Benin, Burkina Faso, Cape Verde, Cote d'Ivoire, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, and Togo, also has put in place regional policy on sexual harassment in the workplace and in educational institutions.

EUROPE

- The [Charter of Fundamental Rights of the European Union](#) specifically enshrines the right to be free from discrimination on the basis of sex, and Article 23 obligates states to ensure equality between men and women in all areas.
- The [Charter of Fundamental Rights of the European Union](#) prohibits discrimination on the grounds of sex and enshrines the right to equal treatment between men and women in all areas, including employment, work and pay, vocational training, and access to goods and services;
- Emphasises that sexual harassment constitutes discrimination on the grounds of sex;
- Prohibition, at a minimum, of behavior meeting the definition of sexual harassment in the workplace and in the provision of goods and services;
- Encourage employers to take measures to combat all forms of sexual discrimination and prevent harassment in the workplace.

ORGANIZATION OF AMERICAN STATES

- The Organization of American States treats sexual harassment as an issue of violence against women, instead of a discrimination issue.
- Accordingly, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Belem do Para) affirms the right of women to be free from violence, including sexual harassment in employment or any other context, and requires states to impose penalties and enact legal provisions to protect women from harassment and other forms of violence.
- Article 2 states that sexual harassment in the workplace, educational setting, health facilities, or any other place constitutes violence against women.

SH AND ILO CONVENTIONS

- The ILO Committee of Experts on the Application of Conventions and Recommendations has confirmed that sexual harassment is a form of sex discrimination covered by the [Discrimination \(Employment and Occupation\) Convention \(No. 111\)](#) of 1958.
- The ILO's [Indigenous and Tribal Peoples Convention \(No. 169\)](#) also specifically prohibits sexual harassment in the workplace.
- Dedicated convention [C190 - Violence and Harassment Convention, 2019 \(No. 190\)](#)
- In June 2019, at the Centenary Conference of the International Labour Organization, the [Violence and Harassment Convention \(No. 190\) and its accompanying Recommendation \(No. 206\)](#) were adopted.
- The global community has made it clear that violence and harassment in the world of work will not be tolerated and must end.
- Our LAA 11/23 amendment was inspired in part by the International Labour Organisations Convention 190

C190 CONTINUED...

- The International Labour Organization's (ILO) Convention 190, also known as the Violence and Harassment Convention, is an international treaty that aims to create a world of work free from violence and harassment:
- **Scope** - The convention applies to all types of violence and harassment, including gender-based violence, that occurs in any work-related setting. It covers all sectors, from private to public, and in both formal and informal economies.
- **Definitions** - The convention defines violence and harassment as a "range" of unacceptable behaviors and practices, rather than drawing a line between the two.
- **Protections** - The convention protects a wide range of people, including employees, trainees, volunteers, job applicants, and people exercising employer responsibilities.
- **Ratification** - Governments that ratify the convention must put in place laws and policies to prevent and address violence and harassment.
- **Implementation** - The convention offers a roadmap for reforming laws and policies at the national level.
- **Accompanying Recommendation** - The convention is accompanied by Recommendation 206

ZIMBABWE AND RATIFICATION OF C190

- At their meeting of 23 September 2022, tripartite partners (government, business, and labour) under the framework of the Tripartite Negotiation Forum (TNF) recommended that Government initiates the process towards the ratification of the Convention concerning the elimination of Violence and Harassment in the world of work, 2019 (No.190).
- It is a critical step to ensure the country aligns its practices and legislation to international frameworks to promote safe workplaces that are free from violence and harassment.
- But why not ratify – accountability to ILO, cherrypicked the provisions and put it in domestic law

EFFECTS OF SH IN THE WORKPLACE

Effects of Sexual Harassment

- Decreased employee morale
- Lost Productivity
- Staff Turnover
- Attrition
- Costly investigation and litigation
- Negative exposure and publicity
- Increased absenteeism
- Decreased efficiency
- Erosion of organization's brand names, goodwill, and public image- Negative impact on stock price
- Reputation and Growth of Company

Effects of Sexual Harassment

- There is a great amount of guilt and shame that victims wrongfully feel.
- Stress, anger, frustration, helplessness, depression and hopelessness are emotions that victims might experience.
- Other negative experiences are possible such as financial difficulties, physical ailments and relationship problems.
- Sexual harassment can also be harmful to the company.
- Employee morale generally declines, productivity can suffer, the reputation of the company can be compromised and financial burdens can be incurred due to lawsuits and settlements.

DOES THE LA SUFFICIENTLY PROTECT VICTIMS FROM SH?

After the 2023 amendment, more women are said to report SH but some argue that;

- The prescribed remedies are insufficient [*Unfair labour practices, crime, misconduct – how does this heal a victim?*]
- No formula for calculating the amount of compensation in relation to the harm done, - see para 20 - **Mbatha** case
- The remedies do not address the psychological harm experienced by the victim through recourse to rehabilitative services.
- The Act's remedies for unfair labor practices, such as compensation and criminal sanctions, are general and may not be sufficient for sexual harassment.
- The Act lacks mechanisms for complaint procedures, counseling, and procedures for compensation; - *but is this for the LA?*
- There are no mechanisms to prohibit punishing action by the perpetrator and/or his or her sympathizers in the future i.e. The Act does not provide mechanisms to ensure that the perpetrator and their sympathizers do not take retributive actions against the victim..
- The remedies take time and require real tenacity to survive the stigma and embarrassment of having to recount abuse – Read para 1, 3 & 8 of Mafusire J's judgment in **Mbatha** case.

WAYS OF COMBATING SEXUAL HARASSMENT IN THE WORKPLACE

- **Establish a clear policy:** Every organization should have a comprehensive and clear policy on sexual harassment that defines what constitutes harassment, how to report it, and the consequences of engaging in such behaviour. This policy should be communicated to all employees and reviewed regularly.
- **Provide training:** All employees, including managers and supervisors, should receive training on what constitutes sexual harassment, how to recognize it, and how to prevent it. This training should be ongoing and should include information on the organization's policy and procedures for reporting incidents.
- **Encourage reporting:** Employees should feel comfortable reporting incidents of sexual harassment without fear of retaliation. Employers should create an environment where employees feel safe to report incidents and know that their complaints will be taken seriously.
- **Investigate and take action:** Once an incident of sexual harassment is reported, the employer should investigate the matter thoroughly and take appropriate action. This may include disciplinary action or termination of employment, depending on the severity of the offence.
- **Create a supportive workplace culture:** Employers can promote a workplace culture that is respectful and inclusive of all employees. This can be achieved through ongoing training, modelling appropriate behaviour, and encouraging open communication.

COMBATING SH CNTD...

- **Provide resources:** Employers can provide resources to employees who have experienced sexual harassment, such as access to counselling services or legal advice.
- **Lead by example:** Employers and leaders should lead by example and model appropriate behaviour. They should also take action to address incidents of sexual harassment and create a workplace culture that does not tolerate such behaviour.
- **Establish clear channels of communication:** Employees should have a way to report sexual harassment that is easy and confidential. Employers should make sure that employees know who to report incidents to and provide multiple channels for reporting.
- **Take swift action:** Employers should take swift action to address incidents of sexual harassment. Delayed action can lead to further harm and can create a sense that the employer is not taking the matter seriously.
- **Regularly review policies and procedures:** Employers should regularly review their policies and procedures related to sexual harassment to ensure that they remain up-to-date and effective. They should also solicit feedback from employees to identify areas for improvement

THANK YOU ALL

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