

Understanding culpability for sexual harassment in Uganda.

Introduction.

At the height of HIV activists' and the whistle-blowers' allegation of sexual harassment within UNAids and demanding Sidibé's¹ resignation, and calling for Theresa May's² government to intervene, Sidibé vehemently denied mishandling of sexual harassment allegations in the Agency he heads. He barely pleaded in all statements that came thereafter.³ In response to #MeToo movement, he said that, the move was welcome. That it was a wake-up call for every one and that all organisations are not immune from the problem of sexual harassment, which is deep-rooted in most of the places where people work⁴. In this same year, Brett Kavanaugh, almost failed at the highest serving point in the United States judiciary office, because of allegations to do with sexual harassment⁵.

The culpability for sexual harassment comes with mixed reactions and there is need to be developed a standard upon which any one would not be caught under the Latin law maxim of **Ignorantia juris non excusat**. Although the "reasonable person" standard has long been accepted by most courts as the correct measure for evaluating allegedly culpable conduct, courts⁶ have recently challenged its applicability in cases of sexual harassment. At the heart of this debate, as we shall discuss, is a body of research" suggesting that men and women differ in their judgments of what particular behaviours and comments constitute sexual harassment.

There is need to have an in-depth understanding of this widespread phenomena which albeit is given a lukewarm attention from many concerned stakeholders. This article attempts to answer the following questions. The first question which goes unanswered most of the time is whether many people (most especially men) do understand sexual harassment? Do the supervisors or bosses know their responsibility as far as sexual harassment is concerned? Is sexual harassment only prescribed in a work environment?

¹ UNAids chief

² British Prime Minister

³ <https://www.theguardian.com/society/2018/jul/18/unaid-chief-refuses-to-quit-over-handling-of-sexual-misconduct-claims#img-1> ("I received the complaint on 7 November 2016 and on 9 [November 2016] I called for an independent investigation," he said. "The independent investigation body of the WHO [World Health Organisation] told me they couldn't do it because the complaint came 18 months later. It was time-barred. I applied to waiver this constraint and go for full investigation.")

⁴ Ibid

⁵ See <https://www.vox.com/policy-and-politics/.../kavanaugh-fbi-investigation-ford-trump>

⁶ See *Idrifu v Uganda* (CRIMINAL APPEAL No. 0014 OF 2014) [2017]. And *Ellison v. Brady*, 924 F.2d 872, 878 (9th Cir. 1991) (adopting the reasonable woman rather than the reasonable person standard, explaining that "[i]f we only examined whether a reasonable person would engage in allegedly harassing conduct, we would run the risk of reinforcing the prevailing level of discrimination"); *Radtke v. Everett*, 471 N.W.2d 660, 664 (Mich. App. 1991) ("[W]e believe that in a sexual harassment case involving a woman, the proper perspective to view the offensive conduct from is that of the 'reasonable woman,' not that of the 'reasonable person.'"), appeal granted, 487N.W.2d 762 (Mich. 1992).

What is sexual harassment?

Sexual harassment can be defined as unwelcome and unwanted sexual advances, requests for sexual favours, and other verbal or physical contact of a sexual nature that creates a hostile or offensive environment. It can also be seen as a form of violence against women (and men, who can also be sexually harassed) and as discriminatory treatment. A key part of the definition is the word “unwelcome”.⁷ Sexual harassment is inextricably linked with power and often takes place in societies which treat women as sex objects and second-class citizens.” A common example of this is when women are asked for sexual favours in return for being given a job, or a promotion, or a raise. Although there are different legal definitions of sexual harassment in different countries and jurisdictions, but the most common forms of sexual harassment include telling sexual or dirty jokes, displaying or distributing sexually explicit drawings or pictures, letters, notes, emails, telephone calls, or material of a sexual nature.

The place where the above actions happen does not matter. Sexual harassment can take place anywhere – at work, at university, on the street, in a shop, at a club, while using public transport, at an airport, even in the home. Basically, it is unwelcome sexual attention that can take place in any public place, and also in private spaces.

Does the law create culpability for sexual harassment in Uganda?

Human rights based approach

In Uganda the constitution is the supreme law. Under Article 20, fundamental rights and freedoms of the individual are inherent and not granted by the State or any one. It is incumbent on every one in Uganda to respect, uphold and promote all the freedoms and rights of every person. The privacy and bodily autonomy of every one in Uganda is protected and no person whatsoever has the right to unlawfully violate their fundamental right.

All persons in Uganda are equal by law according to Article 21 of the constitution. They are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law and no one is supposed to be treated differently because of their sex or disability. Article 24 of the constitution protects the dignity of every one in Uganda. No person shall be subjected to any form of torture or cruel, inhuman or degrading treatment. This includes respect of a person to their psychological or mental wellbeing. This right is non-derogable according to Article 44 of the constitution.

All duty bearers including employers and individuals have a legal obligation to accorded full and equal dignity of the person to women as men⁸. The State is specifically mandated to provide the facilities and opportunities necessary to enhance the welfare of women to enable them to realise their full potential and advancement including laws, policies,

⁷ <https://www.humanrights.gov.au/publications/sexual-harassment-workplace-legal-definition-sexual-harassment>

⁸ See Article 33 of the constitution

strategies and actions platforms to prevent and response to sexual harassment. The State's legal responsibility is further stretched to protection of women and their rights, taking into account their unique status and natural maternal functions in society⁹.

Sexual harassment at the work place: what is the legal framework?

The law regulating relationship at work places is the employment Act¹⁰. It is provided in the Act¹¹ that discrimination in employment shall be unlawful. Sexual harassment is specifically prohibited in the act¹². The Act provides that an employee shall be sexually harassed in that employee's employment if that employee's employer, or representative of that employer- (a) directly or indirectly makes a request of that employee for sexual intercourse, sexual contact or any other form of sexual activity that contains- (i) an implied or express promise of preferential treatment in employment; (ii) an implied or express threat of detrimental treatment in employment; (iii) an implied or express threat about the present or future employment status of the employee; (b) uses language whether written or spoken of a sexual nature; (c) uses visual material of sexual nature; or (d) show physical behaviour of a sexual nature, which directly or indirectly subjects the employee to behaviour that is unwelcome or offensive to that employee and that, either by its nature or through repetition, has a detrimental effect on that employee's employment, job performance, or job satisfaction.

It is against the employment law if the employer does not have guidelines or manuals for sexual harassment. Section 7 provides that every employer who employs more than twenty five employees is required to have in place measures to prevent sexual harassment occurring at their work place.

Regulations for sexual harassment in workplaces?

Under the Employment Act, the Employment (Sexual Harassment) Regulations, 2012 were made pursuant to sections 7 and 97(1) of the parent Act. Under the regulations, "harassment" means verbal or physical abuse or behaviour that unreasonably interferes with work or creates an intimidating, hostile, or offensive work environment including intimidation; and "intimidation" means physical or verbal abuse, or behaviour directed at isolating or humiliating an individual or a group or at preventing them from engaging in normal activities and includes— degrading public tirades by a supervisor or colleague; deliberate insults related to a person's personal or professional competence; threatening or insulting comments, whether oral or written including by e-mail; and deliberate desecration of religious or national symbols or both. Every employer with more than twenty five employees shall adopt a written policy against sexual harassment

A sexual Harassment Committee is provided for under part III. Every employer shall establish a sexual harassment committee composed of representatives of management and

⁹ Article 33(3) of the constitution.

¹⁰ THE EMPLOYMENT ACT, 2006. An Act to revise and consolidate the laws governing individual employment relationships and to provide for other connected matters.

¹¹ See section 6 of the Employment Act

¹² See section 7 of the Employment Act

employees or labour union representatives selected annually by each party to intevalia receive and register complaints of sexual harassment in a form prescribed in the First schedule; The regulations also detail the sexual Harassment Complaints Procedure. An employee who is sexually harassed in any way described in these Regulations, by the employer or employers' representative, shall lodge a complaint to the labour officer.

Where the commissioner has failed to dispose of a complaint referred to him or her under regulation 13(f) he or she shall refer the matter to the Industrial Court for hearing and the people involved are protected by law. Under the regulations, an employee shall not knowingly raise a false or frivolous sexual harassment claim and where an employee raises a false or frivolous sexual harassment claim, the employer may take appropriate disciplinary action against that employee; and every person who contravenes these Regulations, commits an offence and is liable on conviction to a fine not exceeding six currency points or imprisonment not exceeding three months or both.

Conclusion

Sexual harassment is understood differently by different people. However ignoratia non excusant must be the answer for the harassers, be women or men. The use of law may be a powerful tool in both prevention and response to sexual harassment in all context and equality between women and men must be seen as a struggle of humanity, a struggle for both men and women. In the face of sexual violence and discrimination, everyone is concerned and everyone needs to act.