



REPORT

**OF THE PORTFOLIO COMMITTEES ON PUBLIC SERVICE, LABOUR AND SOCIAL
WELFARE; AND WOMEN AFFAIRS, COMMUNITY, SMALL AND MEDIUM ENTERPRISES
DEVELOPMENT**

ON

**THE PETITION RECEIVED FROM EMTHONJENI WOMEN'S FORUM ON SEXUAL
HARASSMENT IN THE WORK PLACE**

THIRD SESSION - NINTH PARLIAMENT

AUGUST 2021

S.C. 29, 2021

ORDERED IN TERMS OF STANDING ORDER NO. 17:

- (1) At the commencement of every session, there shall be as many Committees to be designated according to government policy as the Standing Rules and Orders Committee may deem fit.
- (2) Each select committee shall be known by the portfolio determined for it by the Standing Rules and Orders Committee.

TERMS OF REFERENCE OF PORTFOLIO COMMITTEES

STANDING ORDER NO. 20

Subject to these Standing Orders, a portfolio committee shall-

- a) examine expenditure administration and policy of government departments and other matters falling under their jurisdictions as Parliament may, by resolution determine.
- b) consider and deal with all bills other than a Constitutional Bill, and statutory instruments or other matters which are referred to it by or under resolution of the House or by the Speaker;
- c) consider or deal with an appropriation or money bill or any aspect of an appropriation or money bill referred to it by these Standing Orders or by or under a resolution of this House;
- d) monitor, investigate, inquire into and make recommendations relating to any aspect of the legislative programme, budget, policy or any other matter it may consider relevant to the government department falling within the category of affairs assigned to it, and may for that purpose consult and liaise with such department; and
- e) consider or deal with all international treaties, conventions and agreements relevant to it, which are from time to time negotiated, entered into or agreed upon.

1.0 INTRODUCTION

Sexual harassment has become a major issue of concern affecting the work place, public, private and other spaces. Pursuant to Section 149 of the Constitution, the Portfolio Committees on Public Service, Labour and Social Welfare; and Women Affairs Community, Small and Medium Enterprises Development received a petition from Emthonjeni Women's Forum imploring Parliament to comprehensively address the issue of sexual harassment in the work place. In particular, the petitioners beseeched Parliament to review the Labour Act [Chapter 28:01] in order to strengthen provisions to curb violence and sexual harassment in the work place. The petitioners noted that Section 8 of the Labour Act defines sexual harassment through inference, categorising it as an unfair labour practice which is inappropriate considering its adverse and usually life altering impacts on victims psychologically, socially and economically. Additionally, the petitioners highlighted that the Act lacks provisions for compensation of victims in relation to the harm suffered and remedies which address the psychological effects through recourse to rehabilitative services. The petitioners also called for the ratification of the International Labour Organisation Convention No. 190 on the Elimination of Violence and Harassment in the World of Work.

2.0 OBJECTIVES

The objectives of the inquiry were to:

- ❖ ascertain the prevalence of sexual harassment in the country and its impact on victims;
- ❖ assess the available framework and processes of securing redress;
- ❖ solicit stakeholder views on whether the Labour Act and other laws adequately address issues of sexual harassment in the work place and other spaces; and
- ❖ come up with recommendations which address the relief sought by the petitioners.

3.0 METHODOLOGY

The Committees undertook the following activities as part of the inquiry:

3.1 They attended a capacity building workshop organized by Parliament in collaboration with the Southern African Parliamentary Support Trust to unpack the concept of sexual harassment and the petition received from Emthonjeni Women's Forum. Apart from members of the two Portfolio

Committees, the workshop was attended by Emthonjeni Women’s Forum and the Female Students Network.

3.2 They received oral evidence from the Minister of Public Service, Labour and Social Welfare.

3.3 They conducted public hearings from 31 May to 4 June 2021 as follows:

DATE	PROVINCE	LOCATION
31 May 2021	Mashonaland West	Rimuka Community Hall, Kadoma
		Hurungwe Rural District Council Guest House
1 June 2021	Masvingo	Rutenga-Mwenezi Rural District Council Offices
		Mucheke Community Hall, Masvingo
	Midlands	Gokwe-Nembudziya
2 June 2021	Masvingo	Nyika Growth Point – Training Centre
	Bulawayo	Selbourne Hotel, Bulawayo
3 June 2021	Manicaland	Moffat Hall, Mutare
		Diamond FM Radio Station
	Matebeleland South	Dingumuzi Hall, Plumtree
4 June 2021	Mashonaland East	Mbuya Nehanda Hall, Marondera
	Harare	National FM Radio Station
	Matebeleland North	Agape Mission, Nkayi

The public hearings attracted high attendance by a cross-section of members of the society including; church leaders, village heads, workers unions, university students, civil society organisations, ordinary men and women, amongst other groups.

3.4 The Committees analysed written submissions received from stakeholders including the Women’s Coalition of Zimbabwe, Zimbabwe Congress of Trade Unions, Women’s Academy for Leadership and individual persons.

4.0 BACKGROUND

The International Labour Organisation (ILO) defines sexual harassment as “a sex-based behaviour that is unwelcome and offensive to its recipient.” Sexual harassment usually takes two forms, namely; *quid pro quo* when a job benefit such as a pay rise, promotion, or even continued employment is made conditional on the victim acceding to demands to engage in sexual behaviour and a hostile working environment in which the conduct creates conditions that are intimidating or humiliating for the victim. Behaviour that qualifies as sexual harassment include:

- ❖ **Physical** - physical violence, touching, unnecessary close proximity.
- ❖ **Verbal** - comments and questions about appearance, life-style, sexual orientation, offensive phone calls.
- ❖ **Non-verbal** - whistling, sexually-suggestive gestures, display of sexual materials such as pornography.
- ❖ **Cyber harassment** – through text messages or internet-based platforms such as WhatsApp and Facebook.

Sexual harassment “pollutes” the working environment and can have devastating effects on the health, confidence, morale and performance of individuals affected by it. The anxiety and stress caused by sexual harassment commonly leads to loss of production time as victims take time off work due to sickness and become less efficient. In some instances, employees even opt to resign which adversely affect their livelihoods.

Transparency International Zimbabwe (TIZ) is a leading voice on highlighting issues of sexual harassment in Zimbabwe through its reports on incidences of sexual harassment in the public sector, colleges and universities. According to the TIZ Report on Gender and Corruption in Zimbabwe of 2019, the country recorded an unprecedented number of reports by women being forced to exchange sex for employment or business favours during that particular year. More than 57 percent of 1 680 women surveyed in the report indicated they had been forced to offer sexual favours in exchange for jobs, medical care and even when seeking placements at schools for their

children. Women in business also experienced sexual harassment when seeking government tenders. In June 2020 the Public Service Commission (PSL) secretary, reported to the Portfolio Committee on Women Affairs, Community, Small and Medium Enterprises Development that 19 cases of sexual harassment in government ministries had been recorded since 2019 and that 10 of them had emanated from the Ministry of Primary and Secondary Education. The Committees were also informed that sexual harassment was rampant at universities and colleges where women were abused to secure better grades or by “semester husbands” who ask for sexual favours in exchange for upkeep.

Sexual Harassment, also referred to as 'sextortion' is a form of corruption or extortion and is a global phenomenon that causes serious harm, robbing women of dignity and opportunity, and undermining confidence in public institutions and other spheres of life. It apparently appears that sex is a 'currency' in many corrupt deals in Zimbabwe. Sexual harassment seem to have been institutionalized, and women have been suffering in silence for a long time. Thus, the need to effectively deal with sexual harassment in its various forms across sectors.

The supreme law of the country, the Constitution of Zimbabwe No. 20 of 2013, does not expressly provide for the right to be protected against sexual harassment, although there are provisions which can be relied upon to protect women against this vice. These include section 3 (f) on equality of all human beings; section 3(g) on gender equality; section 11 on fostering of fundamental rights and freedoms; section 13 on national development; section 14 on empowerment and employment creation; section 17 on gender equality; and section 24 on work and labour relations. Sexual harassment is a human rights issue and the following sections of the Constitution are pertinent in this regard: section 51 on right to human right dignity; section 52 on the right to personal security; section 53 on freedom from torture or cruel and inhuman degrading treatment or punishment, section 54 on freedom from slavery and servitude; section 56 on equality and non-discrimination; section 65 (4) on labour rights and satisfactory conditions of work; and section 80 on the rights of women.

5.0 ORAL EVIDENCE FROM THE MINISTRY OF PUBLIC SERVICE, LABOUR AND SOCIAL WELFARE

Hon. Prof. P. Mavima, the Minister of Public Service, Labour and Social Welfare assured the Committees of the government's commitment to ending violence and sexual harassment as evidenced by signing the ILO Convention 190 on the Elimination of Violence and Sexual Harassment of 2019. Other initiatives included the drafting a Sexual Harassment Policy for the Civil Service by the Public Service Commission and conducting sensitisation meetings on ending sexual harassment which had been held in November 2020.

In response to the appeal by Emthonjeni Women's Forum for the government to amend the Labour Act so as to amplify provisions to curb sexual harassment in the work place, the Minister indicated that the Ministry's position was that the Constitution and Section 8 of the Labour Act adequately address issues of violence and sexual harassment in the work place. In addition, he explained that as a Minister his jurisdiction was limited to regulating sexual harassment in the work place. He further highlighted that the government had opted to domesticate the ILO Convention 190 before ratification in order to avoid the intricacies of reporting and supervision associated with that move. However, he highlighted that the Ministry was amenable to the enactment of a statutory instrument which was informed by the ILO Convention 190.

6.0 PUBLIC HEARINGS AND WRITTEN SUBMISSIONS

In its inquiry, the joint Committees focused on the following key areas: prevalence and impact of sexual harassment, legal provisions on sexual harassment, handling of sexual harassment reports.

6.1 Prevalence and Impact of Sexual Harassment

The joint Committees were informed that cases of sexual harassment were very prevalent in work places, colleges, universities, churches, informal sector, public spaces such as bus termini, on-line platforms and social media. Examples of forms of sexual harassment that were highlighted to the joint Committees include; sexist comments by touts at bus stations, sex for food relief and or during distribution of agricultural inputs, "a thigh for a pass" at colleges. It was also mentioned several times to the joint Committees that women experience inappropriate forms of touch or conduct in bus queues and by police when they evacuate informal traders in cities and at growth points. The

joint Committees were dismayed to receive submissions indicating that, invariably, women and girls constitute the majority victims of sexual harassment although men and the boy child at times experienced the same. Widows and women in politics were particularly identified as highly vulnerable to sexual harassment. The joint Committees also learnt that victims of sexual harassment range from female and male students and workers, including people living with disabilities, some of whom were unable to communicate their ordeal.

Members of the public attested that sexual harassment was deeply rooted in local cultural practices such as “chiramu” according to which it was permissible in some relationships such as between a wife and her husband’s younger brother or a man and his wife’s younger sister. Additionally, excessive poverty and the high unemployment rate in the country which increased vulnerability levels, particularly amongst women were put forward as key drivers of sexual harassment. Furthermore, members of the public noted that sexual harassment thrived due to ignorance as to which acts constituted the vice. The use of electronic gadgets by learners as required by the new educational curriculum also enabled youngsters to access pornographic material through the internet.

The Committees learnt that sexual harassment could have long term effects on victims and their families, for instance when an individual contracted sexually transmitted infections such as HIV and AIDS. It was also highlighted that victims suffered psychological trauma which could affect their productivity in schools and work places. In extreme cases sexual harassment could lead victims to commit suicide.

6.2 Legal provisions on sexual harassment

The joint Committees were informed that although the Constitution protects the rights of women, the challenge is that the Constitution does not expressly provide for the right to be protected against sexual harassment. Relevant sections of the Constitution that protect women rights mentioned during public hearing include section 3 (f); 3(g); section 14; section 17; section 24; section 51; section 52 and section 80.

Members of the public and stakeholder organisations reiterated that the Labour Act does not provide a comprehensive definition of sexual harassment. It was noted that the Act narrowly defined sexual harassment as an unfair labour practice towards any employee, whether verbal or

otherwise, such as making physical contact or advances, sexually coloured remarks, or displaying pornographic materials in the workplace. The joint Committees were further informed that the Labour Act neither provides for compensation to the victim nor state how the compensation is computed. Additionally, the other remedy available under the Labour Act was cessation but there were concerns that it does not address the injury caused or trauma the victim maybe experiencing. Stakeholders also complained that the Act lacks mechanisms to protect the victim or whistleblower against retribution from the perpetrator and their sympathizers who may still be in authority. It was further reported that the Labour Act fails to provide any counselling for the victim of sexual harassment. In addition, the joint Committee noted with concern that although the Act had provisions on remedies, the number of registered cases of victims seeking compensation or criminal sanction was very low.

In the same vein, submissions were made to the joint Committee on the provisions of Public Service Act [Chapter 16:04] and the Public Service Regulations of 2000, pertaining to sexual harassment. Concerns were raised that these regulations recognise sexual harassment as an act of misconduct under the First Schedule. Furthermore, stakeholders bemoaned that the Regulations do not list or outline actual types of behaviour which may be included in the category of conduct that constitute sexual harassment. Additionally, it was noted that the Public Service Act was yet to be aligned with the Constitution.

The Criminal Law (Codification and Reform) Act [Chapter 9:23] also partially address the issue of sexual harassment. Section 67(1) stipulates that indecent assault is committed where “a male commits upon a female person any act involving physical conduct that would be regarded by a reasonable person to be an indecent act...” Stakeholders noted that this provision only offers protection against sexual harassment involving physical conduct and excludes other forms such as verbal and cyber.

6.3 Handling of sexual harassment reports

Throughout the public hearing meetings, the joint Committees consistently received complaints relating to how cases of sexual harassment were being handled, and quality of care given to the victims, both at crime scenes, work places and by the Police after a formal report is made. The joint Committee was dismayed to learn that both workplace management and the Police treat victims of sexual harassment with some degree of “undue skepticism”. In extreme cases, Police

Officers were allegedly dissuading victims from proceeding with prosecution or mocked them in front of onlookers at the front office. The Police were said to always encourage victims of sexual harassment and or other sexual offences to sign a withdrawal or “Victim Waiver,” which absolved the police from responsibility of investigating the crime. Withdrawal of cases was reported to be rampant even at courts. As a result of the poor handling of complainants, the joint Committee learnt that a lot of cases of sexual harassment were not being reported because of fear that management or law enforcement agents would not handle them properly. Submissions made also reflected that there was nothing done at work places to ensure post-investigation and comfort for the victim. Even in cases where harassment was found to have occurred, no measures were being taken to create a conducive work environment free of sexual harassment. Given that sexual harassment is primarily viewed as a form of misconduct, the victim and harasser often continue to work together or the latter is just transferred to another school or government department. It was the conclusion of the joint Committees that given that scenario, the overwhelming majority of people who experience sexual harassment never file formal charges, and of the few who do, only a small percentage of such cases reach the courts. Submissions made to the joint Committee indicated that court proceedings, for those cases that made it to prosecution stage, were often long drawn out and protracted for months, which compounds the victim’s trauma.

7.0 OBSERVATIONS

7.1 Sexual harassment affects both males and females in Zimbabwe regardless of social standing, age or location. However, there is a general lack of awareness of the exact acts that constitute sexual harassment. Some members of the public confused sexual harassment with rape and other sexual offences.

7.2 Sexual harassment is currently an under-regulated issue which is rampant in the work place, informal sector, political spaces, tertiary institutions and society at large. While sexual harassment is regulated by various pieces of legislation such as the Labour Act, Public Service Act and the Criminal Law (Codification and Reform) Act, all fall short of fully addressing sexual harassment in its various forms. The Labour Act and Public Service Act regulate employment relationships in the private formal sector and civil service respectively, leaving out the informal sector which accounts for about 95 percent of employment in Zimbabwe. Moreover, the Acts inadequately

address sexual harassment issues in the world of work as these narrowly define sexual harassment, do not provide protection and remedies for victims.

7.3 The government signed the ILO Convention No. 190 and Recommendation No. 206 on the Elimination of Violence and Harassment in the World of Work in 2019 and these instruments are still pending ratification by Parliament in terms of Section 327 of the Constitution. These instruments are key for the elimination of violence and sexual harassment in the work place. The Convention recognizes that violence and harassment in the world of work, and other spaces, constitute a human rights violation or abuse, is a threat to equal opportunities, unacceptable and incompatible with decent work. Additionally, the Convention acknowledges that violence and sexual harassment affects a person's psychological, physical and sexual health, dignity, and family and social environment, and also affects the quality of public and private services, prevent persons, particularly women, from accessing and advancing in the labour market. Furthermore, the Convention and Recommendation call upon State Parties to adopt a comprehensive strategy in order to implement measures to prevent and combat violence and harassment, strengthen enforcement and monitoring mechanisms, ensuring access to remedies and support for victims, and also providing for sanctions for offenders.

7.4 As duty bearers, the Police have been found wanting in terms of ensuring that perpetrators of sexual harassment and other related cases are prosecuted. There is a general perception that Police Officers lack the know-how to handle such cases and the requisite resources to enable them to effectively execute their duties, including vehicles and an adequate number of Officers manning the Victim Friendly Unit. Corrupt tendencies have also been noted to be a serious challenge undermining service delivery by the Police Service.

8.0 RECOMMENDATIONS

8.1 Ratification of ILO Convention No. 190 and Recommendation No. 206

The Minister of Public Service, Labour and Social Welfare should urgently submit a motion to Parliament seeking ratification of the ILO Convention No. 190 and Recommendation No. 206 in terms of section 327 of the Constitution by 30 August 2021.

8.2 Domestication of ILO Convention No. 190 and Recommendation No. 206

Once Parliament approves the ILO Convention No. 190 and Recommendation No. 206, the Minister of Public Service, Labour and Social Welfare and relevant government departments should immediately endeavour to domesticate the instruments in order to facilitate the effective elimination of violence and sexual harassment in the work place by 31 March 2022.

8.3 Amendment of the country's labour laws

The Ministry of Public Service, Labour and Social Welfare should submit a bill to Parliament amending the Labour Act [Chapter 28:01] and Public Service [Chapter 16:04] Act by 31 October 2021. Apart from aligning the mentioned Acts to the Constitution, the bill should amongst other key issues; criminalise sexual harassment, define sexual harassment comprehensively, ensure easy access to appropriate and effective remedies and safe, fair, and effective reporting and dispute resolution mechanisms and procedures, including transferring reported case to police for further investigation, arrests and trial of offenders. In addition, the bill should guarantee the privacy and confidentiality and provide protection mechanisms for complainants against victimization or retaliation, witnesses and whistle blowers. Furthermore, it should provide legal, psycho-social, medical and administrative support measures for complainants. Enactment of the above mentioned law should be followed by public awareness campaigns by the Ministry to ensure that workers and other stakeholders know their rights.

8.4 Enactment of a distinct law on sexual harassment

The Ministry of Women Affairs, Gender, Community, Small and Medium Enterprises Development should urgently draft and submit a stand-alone and all-inclusive Sexual Harassment Bill to Parliament by 31 January 2022. This Bill should address all forms of sexual harassment occurring in various sectors including: the education sector, formal and informal world of work, public, churches, and social spaces, private and political spaces. The proposed Bill should particularly provide for a broad and clear definition of sexual harassment. In line with section 3.4 of the United Nations Handbook (2020), the bill should criminalize sexual harassment, outline clear punitive measures for perpetrators of both light and grave offenses, including effecting mandatory imprisonment of offenders. The bill should also make it mandatory for all organisations including political parties to establish anti-sexual harassment policies as part of their codes of

conduct. This will go a long way in protecting women political candidates from sexual harassment, assault and rape during elections. It is further strongly recommended that anyone convicted of sexual offenses should be barred from contesting for public positions. Finally, the proposed Bill should set out clear rules regarding media coverage of sexual harassment, and other sexual offenses, pertaining identity of the victims and use of sexist language whose effect exposes and aggravates the victim's trauma. Once the Bill is passed into law, the Ministry of Women Affairs, Community and Small and Medium Enterprises Development should conduct extensive public awareness campaigns on the Act and sexual harassment in general.

8.5 Gender Based Violence One Stop Centres to deal with sexual harassment cases

The Ministry of Women Affairs, Community and Small and Medium Enterprises Development should extent the mandate of the Gender Based Violence One Stop Centres to dealing with sexual harassment cases. In collaboration with the Ministry of Finance and Economic Development and other relevant government departments, the Ministry of Women Affairs, Community and Small and Medium Enterprises Development should ensure the availability of adequate human and material resources at all times and decentralize the One Stop Centres to district level by 31 August 2022.

8.6 Provision of adequate resources to the Police Service

The Ministry of Finance and Economic Development should allocate adequate financial resources to the Ministry of Home Affairs and Cultural Heritage through the 2022 National Budget, in particular for purchasing vehicles and ensuring that Victim Friendly Units (VFUs) at all police stations across the country have enough material and human resources at all times. Financial resources should also be availed for training all Police Officers on handling sexual harassment and related cases. This will enable investigating officers to offer professional services to victims reporting cases of sexual harassment in a conducive environment and facilitate gathering the necessary evidence for logical conclusion of cases.

8.7 Ending corruption in the Police Service

The Ministry of Home Affairs and Cultural Heritage should implement stern measures to stamp-out corruption and restore public confidence in the Police Service, particularly in the handling of cases by 30 September 2021.

9.0 CONCLUSION

In view of the high prevalence of cases of sexual harassment in both the formal world of work, informal sector, private and public spaces, the proposed Sexual Harassment Bill provides a historic opportunity for Parliament and the government in general to curb sexual harassment in the country. The findings of the joint Committees clearly indicate that a stand-alone Act of Parliament that criminalizes sexual harassment and also codifies all other relevant provisions existing in other pieces of legislation is long overdue.