



UNIVERSITY OF LUSAKA

SCHOOL OF LAW

**ELIMINATING VIOLENCE AND HARASSMENT WITHIN THE WORK PLACE IN
ZAMBIA: LESSONS FROM BEST INTERNATIONAL PRACTICE (ILO CONVENTION
190 OF 2019) AND NAMIBIA**

BY

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LLB19116507

**An obligatory essay submitted to the University of Lusaka in partial fulfilment of the requirements
for the award of the Bachelor of Laws (LLB) Degree.**

2022

DECLARATION

I declare that this dissertation entitled, **ELIMINATING VIOLENCE AND HARASSMENT WITHIN THE WORKPLACE IN ZAMBIA: LESSONS FROM THE BEST INTERNATIONAL PRACTICE (ILO CONVENTION 190 OF 2019) AND NAMIBIA** which is hereby submitted in partial fulfilment of the requirement for the award of a Bachelor's Degree at the University of Lusaka is my own original work and it has not been previously submitted for the award of a degree at this university or any other tertiary institution.

I understand what plagiarism entails and I'm aware of the University's policy in this regard. Thus, where other peoples work is cited, I have duly acknowledged. The errors or omissions in this work are solely mine.

NOSIPHO HANNAH MWENENGUWE

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2022

RECOMMENDATION

I Ntemena Mwanamwambwa recommend that this dissertation prepared under my supervision by Nosipho Hannah Mwenenguwe, entitled **ELIMINATING VIOLENCE AND HARASSMENT WITHIN THE WORKPLACE IN ZAMBIA: LESSONS FROM THE BEST INTERNATIONAL PRACTICE (ILO CONVENTION 190 OF 2019) AND NAMIBIA**, be accepted for examination. I have checked it carefully and I'm satisfied that it fulfils the requirement pertaining to the format laid down in the regulations governing directed research.

Ms Ntemena Mwanamwambwa

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2022

ACKNOWLEDGEMENT

Firstly, I would like to thank God, the almighty, who has granted countless blessings, knowledge, and opportunity to me so that I have been finally able to accomplish the dissertation and make it this far.

My sincerest gratitude goes to my supervisor Ms Ntemena Mwanamwambwa who assisted in the process of completing the dissertation. Her expertise, patience and art of legal writing cannot go without being noticed Ma'am, I cannot thank you enough.

I would also like to express my gratitude to my parents Raphael Mweninguwe and Hellen Angella Mweninguwe, my grandmother Daisy Mbalame and my aunt Limbitso Joshi for loving, supporting and believing in me.

I would further like to acknowledge my friends Kitson Ng'ambi, Pelekelo Shanungu, Dorica Lungu, Akende Linyama and Buumba Mudenda for always being there and giving me their unconditional support during this period.

Lastly, my gratitude is extended to those whose names are not mentioned but still helped me to realize that I can do all things through hard work and God's grace.

DEDICATION

This dissertation is dedicated to my late grandfather, Justice Rodriques Mbalame.

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ABSTRACT

This thesis is on the elimination of violence and harassment within the working environment with lessons drawn from the best international practices and Namibia. This study focuses on the laws in Zambia with regards to violence and harassment and how Zambia does not have adequate laws. The purpose of this study is to emphasize on the importance of Zambia domesticating the Violation and Harassment convention that protects employees in a working environment from harassment as the convention gives a broad definition of who a worker is and takes an inclusive and integrated approach in its scope of protection. Furthermore, it applies to every sector, the formal and informal economy, rural and urban areas. The Convention equally covers all workers and employees irrespective of their contractual status. The objectives of this study include; the examining the best international practices on the elimination of violence and harassment in the workplace, to analyse the Namibian legal framework on the elimination of violence and harassment within the workplace and to investigate the extent to which the current Zambian legal framework eliminates violence and harassment within the workplace in order to draw lessons from best international practices and Namibia.

The methodology of this research is as follows; this research was a qualitative mode of research as data was collected from both primary and secondary sources which include, local and foreign legislation, textbooks, journal articles, internet sources and text books. The design of this research is blended between historical and narratives. The research couched as one which drew lessons from another country, in this case being Namibia and the international convention on Violence and Harassment 2019. The method of analysis of data collected was that of content analysis and focused on the context of the wording of the subject.

The major research findings were that Zambia does not have laws on violence and harassment and that the definitions provided in the acts are not fit for the working environment as such they have to be contextualized as such leading to different

interpretations in the working environment. Hence it is important that Zambia ratifies the international convention in order to domesticate and amend the current legislation that is there such as the Employment Code Act.

CHAPTER 1

1.0 GENERAL INTRODUCTION

It is imperative to have a safe working environment which is favorable in attaining firm and productive industrial relations. In order to be able to produce a working environment that is safe, it is important to make sure that working space is free from all forms of discrimination, including harassment. Any person that is found in a working place is most likely to be prone to various types of harassment, including sexual harassment and bullying. Each and every form of workplace harassment will disadvantage all parties. Some of the effects that come with such treatment include, workers, poor performance, which lessens work productivity and is likely to affect the well-being of the workers and their families. Increased turnover rates and low productivity can potentially affect the economic competitiveness in workplaces. According to Article 1 on the violation and harassment convention it defines harassment as “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”

Harassment frequently involves an abuse of power where the targets can experience difficulties in defending themselves. Harassment at the workplace is any unwelcome or offensive action, repeated or unreasonable act, addressed to a worker or a group of workers that causes difficulty in the performance of an assigned job or causes a worker

to feel that he/ she is working in a hostile working environment. This can also cause risk to the health and safety of the worker.¹

1.1 BACKGROUND OF THE STUDY

The International Labour Conference, adopted the International Labour Organization (ILO) Convention 190 and that was in 2019 and it's been two years since. The ILO Convention 190 is technically the first international treaty that addresses violence and harassment in the employment world. On the 25th of June 2021, the Convention was entered into force and that has marked a historical chance for state members to build a future of work grounded on respect and dignity for everyone. For years, violence and harassment has taken many forms which have led to physical, psychological, economic and sexual harm. As a result, Convention No. 190, alongside Recommendation No. 206 have been cognizant to the right of everyone in the employment world to be free from harassment and it has laid down a common framework for quick action. Further, there has been an increased risk of violence and harassment while in the times of this COVID-19 pandemic being faced, for example when considering the effects of the epidemic it has become very much important that C190 becomes applicable to employees where their workplace is and this can include both private and public spaces that have become a workplace for so many employees more than ever. Right before the COVID-19 pandemic estimations were made that one in every three women globally suffer physical and sexual abuse in their lifetime. The effect is that during the pandemic,

¹ International labour office, Guidelines on the prevention of workplace harassment

harassment towards women and girls increased. This factor contributes to gender based violence and harassment which adversely affects women and girls as such C190 supports the idea to adopt an integral and more gender responsive approach, hence adding to the creation of a fair and equal society².

1.2 STATEMENT OF THE PROBLEM

Every person has the right to work in an environment that is free from harassment and violence. Any issue relating to employment has been enshrined in the **Employment Code Act of 2019**. Although section 5 of ECA⁴ provides for non-discrimination within the place of employment, the Act is vague when dealing with issues of harassment and victimization. The Act in section 95(4)⁵ directs us to **The Anti-Gender Based Violence Act** which defines harassment in section 3 as “engaging in a pattern of conduct that induces in a person fear of imminent harm or feelings of annoyance and aggravation...”⁶This definition however only works in a domestic setting and not in a working environment as such there is seen to be a gap in the law in the sense that there are complaints by employees being dismissed from work or start to work in very harsh environments due to lack of enforcement towards employers. In addition to this

² V. Guseva, ‘**The Time Has Come to Ratify C190**’ available at http://www.ilo.org/caribbean/newsroom/WCMS_809334/lang--en/index.htm Accessed 22nd April 2022 at 11 hours

⁴ https://betterwork.org/wp-content/uploads/2017/10/Guidelines-on-the-Prevention-of-Workplace-Harassment_ENG-3.pdf accessed on 21/04/22 at 23 hrs

⁴ Act No.3 of 2019

⁵ Ibid.

⁶ Act No.1 of 2011

in the case of **Kitwe City Council V William Ng'uni**⁷ it was stated that a person cannot be constructively dismissed from employment as a result of frustration, victimization and harassment, because these are not the essentials in law that might render a dismissal to be constructive hence making it a legal problem which results to employees being unfairly treated.

Up to date Zambia has not ratified the Violation and Harassment convention 2019(No.190) which provides a “common framework for action and a unique opportunity to shape a future of work based on dignity and respect, and underlines the right of everyone to a world free from violence and harassment. It includes the first international definition of violence and harassment in the world of work, including gender-based violence.”⁸ Due to the lack of having the convention domesticated it has brought about problems of harassment in working environments.

This research aims to draw lessons from other jurisdictions such as Namibia that have ratified the convention.

1.3 RESEARCH OBJECTIVES

To examine the consequences on lack of legislation on harassment in work places and the importance of Zambia domesticating the violation and harassment convention 2019 as well as draw lessons from Namibia.

The specific objectives of this research are;

⁷ (2005) Z.R.57 (S.C.)

⁸ Namibia ratifies the domestic workers convention,2011(No.189) and the Violence and Harassment Convention 2019 (No.190), International Labour Organisation https://www.ilo.org/global/standards/WCMS_763748/lang--en/index.htm accessed on 21/04/22/ at 21hrs

1. To examine the best international practices on the elimination of violence and harassment in the workplace.
2. To analyse the Namibian legal framework on the elimination of violence and harassment within the workplace.
3. To investigate the extent to which the current Zambian legal framework eliminates violence and harassment within the workplace in order to draw lessons from best international practices and Namibia.

1.4 RESEARCH QUESTIONS

The following research questions will be used;

1. What are the best international practices on the elimination of violence and harassment within a workplace?
2. How does the Namibian legal framework eliminate violence and harassment within the workplace?
3. To what extent does the Zambian legal framework eliminate violence and harassment within the workplace in order to draw lessons from the best international practices and Namibia

1.5 SIGNIFICANCE AND PURPOSE OF THE STUDY

The purpose of this research is to emphasize on the importance of Zambia domesticating the Violation and Harassment convention that protects employees in a working environment from harassment as the convention gives a broad definition of who a worker is and takes an inclusive and integrated approach in its scope of protection. furthermore “It applies to every sector, the formal and informal economy, rural and urban areas. The Convention equally covers all workers and employees irrespective of their contractual status.”⁹ The research shall also contribute to the field of knowledge and literature available as well as serve as a catalyst for further research in the area of study.

1.6 SCOPE OF THE STUDY

By taking a unique, systemic perspective this research will focus on the Employment Act in relation to harassment and the importance of the Convention on Violation and Harassment 2019 as well as the need for Zambia to domesticate the convention and also look at other jurisdictions that have ratified this convention and draw lessons.

1.7 DEFINITION OF KEY TERMS

⁹ All you need to know on the convention 190 in the world of work, <https://www.akinamamawaafrika.org/wp-content/uploads/2020/03/AKINA-ILO-Convention-190-on-Violence-and-Harassment-.pdf> accessed on 22/04/22 at 03 hrs

Violence and Harassment which simply means “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”¹⁰

Workplace – “A workplace or place of employment is a location where people perform tasks, jobs and projects for their employer.”¹¹

1.8 LITERATURE REVIEW

Chris Chancey (2021) , stated that, “many victims of workplace harassment do not report it out of fear, and others are unsure of what conduct constitutes harassment in the sense that Although many victims of workplace harassment think they would recognize harassment and report it to those in charge, harassment often leaves them in an uncomfortable and confusing predicament.”¹² As such it very important that when claims that have been made in regards to harassment are taken seriously with as much discretion as possible.

This research is different from the authors in the sense that it will focus on laws that have been put in place in order to eliminate harassment within a workplace while drawing lessons from the best international practices.

¹⁰Convention on Violence and harassment (adopted 10 June 2019 , entered into force 21 June 2021) (C-190) art1

¹¹ Indeed for employer,What is considered a workplace <https://www.indeed.com/hire/c/info/what-is-considered-a-workplace-a-few-definitions>,accessed on 22/04/22 at 12 hrs

¹²S.Schooley, Workplace harassment :how to recognize it and report it (Business news daily,2021)

S.Gale, Irina Mordukhovich, Sami Newlan, Eileen McNeely stated that “Workplace abuse, including sexual harassment, is frequently experienced worldwide and is related to adverse mental health outcomes, and injuries. Flight attendants are an understudied occupational group and are susceptible to harassment due to working in a feminized, client-facing occupation with few protections or sanctioned responses against aggressive behaviors.”¹³ This research will focus on why it is important that laws on violence and harassment should be implemented not only within a workplace but in a country to prevent such events from reoccurring.

Fineran and Bennett (1999) stated that girls tend to experience more forms of sexual harassment as the relationship between a victim and a perpetrator may be an important contextual factor. This is because it helps us understand and determine the nature of the harassment and the consequences or effects that occur after that. My research is different from the authors in the sense that it includes both females and males being harassed within a workplace and ways in which violence and harassment can be eradicated within the workplace and not just the consequences or effects that tend to occur after that.

Einarson et al. (1994) observed that “bullying and harassment at work is a consequential problem”. As leaders enjoy a great deal of power they may expedient to bullying tactics on others toward their own personal gains which as argued by **Adams and Crawford (2009)**. “These happen because those at the top have more authoritative

¹³ S.Gale, I. Mordukhovich, The impact of Workplace Harassment on Health in a working Cohort, <https://www.frontiersin.org/articles/10.3389/fpsyg.2019.01181/full> accessed on 22/04/22 at 10hrs

power finding it easy for them to abuse their power in the name of organizational efficiency. As a result leaders become a supporter of the negative activities”¹⁴.

This research agrees with the authors however; this research will be based on having effective legislation in order prevent harassment from occurring in these working spaces.

Comer and Vega (2005) wrote “ bullying by colleagues may be the result of competition among co-workers for advancement and promotion”¹⁵. **Leymann** (1990) stated that “bullying comes from a desire to get at a person or punish him/her” ¹⁶.Moreover, the act of bullying“ can act as an organizational cancer eventually killing the entire organization”¹⁷.

As this study is conducted on female employees and there are several studies on violence against women advocate that malfunction to fulfill with sexual norms is often seen as a menace to men’s dominance, resulting in verbal and even physical sexual harassment”¹⁸

This study on the other hand will focus on harassment with regards to both females and males.

1.9 RESEARCH METHODOLOGY

This study will be conducted in a qualitative nature. The purpose for this reason is that it allows the researcher to draw diverse or different types of designs which will focus on

¹⁴ S.Tangem, the effect of workplace bullying and sexual harassment on counterproductive workplace behavior,5/12/17.Vol 14, international journal of Business Economic and Law,p2.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Hoel ,Einarsen, bullying and emotional abuse in the workplace (CL,2011)P23

data collection, analysis and writing hallowed to the study in accordance to what Creswell has stated.¹⁹

1.10 RESEARCH APPROACH

The research will be carried out through a qualitative mode of research. This means that information will be collected from both primary and secondary sources which include case law, legislation, journals, books, articles, scholarly writing and newsletters.

1.11 RESEARCH DESIGN

Since the research method is qualitative, the adopted design is a blend between narrative and historical. The focus on data collection, analysis and writing hence are more suitable considering that the subject is concentrated on the need for Zambia to Domesticate the convention on Violence and Harassment for employees in order to have effective legislation that deals with harassment in workplaces.

1.12 RESEARCH TYPE

This research shall be couched as one to draw lessons from another country, thus contrasts will be drawn between the Namibian legal framework that has ratified the convention on violence and harassment as it seems to have in place better legislative frameworks when it comes to the subject matter, of which Zambia does not provide in their current laws.

¹⁹ Creswell JW. Research Design Qualitative, and Mixed Methods Approaches,(SAGE Publisher, 2009)

1.13 STUDY POPULATION

Zambia has approximately a population of 19,244,849 people. while on the other hand Namibia has approximately a population of 2,633,918 people.

1.14 SAMPLING SIZE

This study the sample size will be 10 people and this number denotes the number of actual research subjects who are most likely to take part in the research as the subjects will be able to provide firsthand information on how the absence on effective harassment laws has affected them.

1.15 SAMPLING TECHNIQUES

A purposive technique will be used with this regard it shall be focused on people being individuals who have first-hand information or people who are familiar with the subject matter. It will also be based on observation from writers who have had encounters of experiencing any form of harassment and how harassment can negatively affect an employee in a working place.

1.16 DATA COLLECTION

Primary data shall be gathered through interviews and participant observations. The people that are affected by the inadequacy by the provisions of harassment will be interviewed. The general public that is aware of the subject will be interviewed too. Secondary data will be by use of published works from notable authors on the said subject matter.

1.17 DATA ANALYSIS

During the course of this study data collection will be in the form of audio recordings of interviews as well as assessing secondary data of the Namibian population as the researcher cannot access primary data. The researcher will find already existing data sets which have been collected from sources such as research organizations.

1.18 ETHICAL CONSIDERATIONS

From the onset and throughout this research, the author shall endeavor in all cases, to take requisite ethical considerations into account to not violate any written law, cultural beliefs, and/or breach and individuals right to privacy. In an attempt to adhere to the aforementioned, prior consent shall be requested from individuals or organizations willing to participate in the study as well as from the University of Lusaka ethics committee.

1.19 RESEARCH OUTLINE

CHAPTER ONE which is the introduction of the research and gives the statement of the problem, the background of the study and the research objectives.

CHAPTER TWO examines the best international practices on the elimination of violence and harassment within the workplace.

CHAPTER THREE analyses the Namibian legal framework on violence and harassment.

CHAPTER FOUR investigates the current Zambian legal framework on violence and harassment in order to draw lessons from the best international practices and Namibia.

CHAPTER FIVE summaries the contents provided in the preceding chapters of this dissertation. Simultaneously, it makes recommendations that will aid in resolving the problem identified in this thesis.

1.20 TIMETABLE WITH INTENDED TIMELINE

ACTIVITY	DATE	DURATION
Submission of chapter 2 to supervisor	29 th July,2022	3 Weeks
Submission of chapter 3 to supervisor	26 th August, 2022	1 month
Submission of chapter 4 to supervisor	30 th September, 2022	1 month
Submission of chapter 5 to supervisor	4 th October, 2022	1 month
Submission of dissertation to course coordinator	18 th November, 2022	1 day

CHAPTER 2

AN EXAMINATION OF THE BEST INTERNATIONAL PRACTICES ON THE ELIMINATION OF VIOLENCE AND HARASSMENT IN THE WORKPLACE (ILO CONVENTION NUMBER 190 OF 2019)

2.0 INTRODUCTION

The main objective of this chapter is to examine what the best international practices on the elimination of violence and harassment within a workplace specifically looking at the international labour organization C190- violence and harassment convention, 2019 as well as the lessons that can be drawn from the Violence and Harassment Convention.

2.1 BACKGROUND OF C190

On 21 June 2019, the Violence and Harassment Convention hereinafter called C190 and its accompanying Recommendation (R206) may be the most wide-reaching set of labour standards yet adopted by the ILO, establishing the right of everyone to a world of work free from violence and harassment. It is the first international treaty to recognize the right of everyone to a world of work free from violence and harassment, including gender-based violence and harassment. In defining violence and harassment as a range of unacceptable behaviours and practices, the Convention focuses on the harm that may be caused, whether physical, psychological, sexual or economic. It also recognises and defines the specificities of gender-based violence and harassment.

The Convention applies to every sector, in the formal and informal economy and in rural and urban areas. It covers all workers irrespective of their contractual status, including job applicants, job seekers, volunteers, trainees, interns, apprentices and workers whose employment has been terminated. It also recognises that people whose

experience of violence and harassment is exacerbated by discrimination and inequality must have the strongest and most robust protection. It leaves no one behind.

C190 expands the concept of the world of work beyond the immediate physical workplace, covering situations linked to or arising out of work, such as work-related trips, travel or social activities and ‘cyber-bullying’, and it demands that violence and harassment involving third parties – whether they are clients, customers, patients, or members of the public – be considered and addressed.

It requires action to mitigate the impact of domestic violence in the world of work, providing a lifeline to victims of domestic violence who might otherwise lose their job or be forced to choose between income and safety.

2.2 WHAT IS C190?

ILO C190 is revolutionary as it largely closes the global regulatory gap on workplace sexual harassment. It recognises that violence and harassment in the world of work can constitute a human rights violation or abuse, is a threat to equal opportunities and is unacceptable and incompatible with decent work.²⁰ **According to Article 1 of C190** it defines what violence and harassment is as well as defines what gender based violence to being “(a) the term “violence and harassment” in the world of work 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

²⁰ Akina mama wa Afrika, All you need to know about ILO Convention 190 and Recommendation 206 on Violence and Harassment in the world of work. <https://www.akinamamawaafrika.org/wp-content/uploads/2020/03/AKINA-ILO-Convention-190-on-Violence-and-Harassment-.pdf> accessed on 27/07/22 at 12:24 hrs

harassment; (b) the term “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.”²¹

It is imperative to note that the function of C190 provides broad protection as well as expands on who a worker is. ILO C190, in aiming to define who a worker is it, takes a broad and integrated tactic in its scope of protection. Which happens to apply to every sector, the formal and informal economy, rural and urban areas. Subsequently, the Convention equally covers all workers and employees despite their contractual status. The scope of protection extends to job applicants, job seekers, volunteers, trainees, interns, apprentices and workers whose employment has been terminated. It recognises that individuals exercising the authority, duties or responsibilities of an employer can also be subjected to violence and harassment. “The Convention also makes it clear that violence and harassment involving third parties whether they are clients, customers, patients, or members of the public must be considered and addressed with sturdy and robust protection for people whose experience of violence and harassment is exacerbated by discrimination and inequality.”²²

It is also very important to note that C190 is read together with **Recommendation 206** and according to recommendation 206 Appropriate measures to mitigate the impacts of domestic violence in the world of work referred to in **Article 10(f) of the Convention** could include: (a) leave for victims of domestic violence; (b) flexible work arrangements

²¹ Convention on Violence and harassment (adopted 10 June 2019 , entered into force 21 June 2021) (C-190) art1

²² Akina mama wa Afrika, All you need to know about ILO Convention 190 and Recommendation 206 on Violence and Harassment in the world of work. <https://www.akinamamawaafrika.org/wp-content/uploads/2020/03/AKINA-ILO-Convention-190-on-Violence-and-Harassment-.pdf> accessed on 28/07/22 at 22hrs.

and protection for victims of domestic violence; (c) temporary protection against dismissal for victims of domestic violence, as appropriate, except on grounds unrelated to domestic violence and its consequences; (d) the inclusion of domestic violence in workplace risk assessments; (e) a referral system to public mitigation measures for domestic violence, where they exist; and (f) awareness-raising about the effects of domestic violence.²³

2.3 THE WORLD OF WORK EXPANDED BY C190

The starting point is **Article 3 of the ILO C190** which includes all potential forms of violence and harassment that impact on the world of work are included in C190. This includes third-party violence and harassment (from clients, customers, patients, students and the general public) as well as domestic violence when it impacts the workplace. The Convention is particularly strong on ending gender-based violence, which is defined as 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. It requires governments to implement a gender-responsive approach to ending violence and harassment in the world of work by addressing underlying causes and risk factors. These include gender stereotypes, multiple and intersecting forms of discrimination, and unequal gender-based power relations. It recognises that women workers and workers who experience discrimination and inequality, and who belong to one or more vulnerable groups or groups in situations of vulnerability, are disproportionately affected by violence and harassment in the world of work. Although not defined in the Convention, the Recommendation notes that

²³ Ibid.

vulnerable groups and groups in situations of vulnerability should be interpreted in accordance with applicable international labour standards and human rights instruments. This could include a wide range of groups experiencing discrimination such as Lesbian, gay, bisexual, transgender and intersex hereinafter called LGBTI+ people, minority ethnic groups and migrant workers.

Furthermore, **According to Article 3** “ILO C190 expands the concept of the world of work beyond the immediate physical workplace, covering situations linked to or arising out of work, such as (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 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.”²⁴

ILO C190 also recognizes Gender Based violence as a workplace issue and as such has put in place measures to eradicate gender based violence within the world of work as such it has defined the term gender based violence **in Article 1 of the convention** and recognises the effects of domestic violence on the world of work, acknowledging that gender-based violence and harassment disproportionately affects women and girls and establishing the obligation of states to develop policies with an inclusive, integrated, intersectional approach, which is critical to addressing multiple forms of discrimination and unequal gender-based power relations. It requires action to mitigate the impact of

²⁴ Ibid.

domestic violence in the world of work, providing a lifeline to victims of domestic violence who might otherwise lose their job or be forced to choose between income and safety.

2.4 STATE OBLIGATIONS/ RESPONSIBILITIES UNDER CONVENTION 190 IN ORDER TO PREVENT VIOLENCE AND HARASSMENT WITHIN A WORKPLACE.

Article 9 of the convention is the starting point which provides that “ Each Member shall adopt laws and regulations requiring employers to take appropriate steps commensurate with their degree of control to prevent violence and harassment in the world of work, including gender-based violence and harassment, and in particular, so far as is reasonably practicable, to:

- (a) adopt and implement, in consultation with workers and their representatives, a workplace policy on violence and harassment;
- (b) take into account violence and harassment and associated psychosocial risks in the management of occupational safety and health;
- (c) identify hazards and assess the risks of violence and harassment, with the participation of workers and their representatives, and take measures to prevent and control them; and
- (d) provide to workers and other persons concerned information and training, in accessible formats as appropriate, on the identified hazards and risks of violence and harassment and the associated prevention and protection measures, including

on the rights and responsibilities of workers and other persons concerned in relation to the policy referred to in subparagraph (a) of this Article.”²⁵

As such governments are requested to pass laws that put obligations on employers to implement workplace policies, complaints procedures, risk assessments in occupational safety and health, awareness raising and guidance in the workplace. With its strong focus on gender-based violence, this is of huge importance to the sectors of the economy that

employ large numbers of women such as garments and textiles, agriculture, health and care services, domestic work, education, amongst others. In addition, governments are called upon to introduce an integrated approach to ending violence and harassment in their laws and policies on labour and employment, equality and non-discrimination, migration, occupational health and safety, and crime. Employers would have a role to carry out risk assessments in order to prevent violence and harassment. This includes psychosocial risks that arise from poor organisation of work, working conditions or job content. This could include the way that work is organised on a production line that could result in a heightened risk of harassment. For example, in the garment sector tight deadlines, unreasonable production line targets and long working hours are all factors that can affect the health and wellbeing of women workers, but they also create conditions that result in work pressure, stress and harassment, including sexual harassment. The standards also call for measures to prevent violence and harassment by and against third parties and ensure that they are included in risk assessments, for example, in order to identify and act upon the risks of violence and harassment regularly

²⁵ Convention on Violence and harassment (adopted 10 June 2019 , entered into force 21 June 2021) (C-190) art1

faced by workers in customer facing jobs. “Further measures are called for to enable victims of violence and harassment to have access to support, services and remedies, such as counselling, information and emergency services, medical care and treatment and psychological support, shelters and other crisis centers and specialized police units or specially trained officers. In the area of enforcement and remedy, the Convention includes a role for labour inspectors, the police and the judiciary, who should receive gender-responsive training and guidance on ending gender-based violence and harassment and discrimination against workers. It is important also to note that employers and trade unions are requested to draw up training and guidelines to assist them in preventing and addressing violence and harassment in the world of work.”²⁶

In addition to this, states have a duty to adopt national laws and regulations defining gender-based violence and harassment in the world of work, consistent with the Convention and “to ensure that labour inspectorates and other relevant authorities, as appropriate, are empowered to deal with violence and harassment in the world of work, including by issuing orders requiring measures with immediate executory force, and orders to stop work in cases of an imminent danger to life, health or safety, subject to any right of appeal to a judicial or administrative.”²⁷

In accordance with **Article 10(g) of the Convention**²⁸, States also have an obligation to ensure that workers have the right to remove themselves from a work situation which they have reasonable justification to believe presents an imminent and severe danger to

²⁶ CNV international, **its time for a world of work free from harassment**, (2020, CNV international)p6

²⁷ Akina mama wa Afrika, All you need to know about ILO Convention 190 and Recommendation 206 on Violence and Harassment in the world of work. <https://www.akinamamawaafrika.org/wp-content/uploads/2020/03/AKINA-ILO-Convention-190-on-Violence-and-Harassment-.pdf> accessed on 28/07/22 at 22hrs.

²⁸Convention on Violence and harassment (adopted 10 June 2019 , entered into force 21 June 2021) (C-190) art8

life, health or safety due to violence and harassment, without suffering retaliation or other undue consequences, and the duty to inform management.

2.5 LESSONS THAT CAN BE DRAWN FROM C190

As mentioned earlier C190 will protect workers from an environment that free from violence and harassment in the sense that they will be able to work freely and without fear and if violence or harassment has occurred within a workplace the convention has been set to raise awareness and make available easily digestible education and information about the Convention to members and society at large in accordance with **Article 11(c) of the convention.**²⁹

Secondly, Promote the ratification and implementation of the new ILO Violence and Harassment Convention, 2019 (No. 190) and its accompanying Recommendation (No. 206) as well as be able to share and discuss policies and measures to prevent, remedy and eliminate violence and harassment in the abovementioned sectors, taking into account good practices and lessons learned. Encourage industry stakeholders to take further action, including through their commitment to responsible business conduct and due diligence.³⁰

The Convention will enhance consultations with employers' and workers' organizations which happens to be at the center of the development, implementation and monitoring of laws and policies to prevent and end violence and harassment in the world of work. This is relevant to laws on occupational safety and health, equality, non-discrimination

²⁹ Ibid.

³⁰ ILO International Training Centre and Fair Wear Foundation: Gender-based violence in global supply chains – Resource kit, 2016.

and migration, and extends them to workers who are most vulnerable. “Collective bargaining remains one of the most important instruments for implementing the new standards, including their application through workplace or sectoral collective bargaining and across global supply chains through Global Framework Agreements between global unions and multinational companies. And even if governments have not yet ratified the Convention, the Convention along with the Recommendation are a blueprint for workplace negotiations and collective bargaining.”³¹

2.6 CONCLUSION

In conclusion to all this, the main objective of **ILO C190** as it read together with **Recommendation 206** is to make the working environment free from violence and harassment to everybody irrespective of their jobs as well as gender as the convention defines gender based violence within the working environment, the convention also places state obligations/responsibilities to ensure that the working environment is free from violence and harassment at the same time raise awareness. The convention recognizes that violence and harassment in the world of work can constitute a human rights violation or abuse, and that violence and harassment is a threat to equal opportunities, is unacceptable and incompatible with decent work, and the importance of a work culture based on mutual respect and dignity of the human being to prevent violence and harassment, and recalling that Members have an important responsibility to promote a general environment of zero tolerance to violence and harassment in order to facilitate the prevention of such behaviours and practices, and that all actors in the

³¹ 4 Better Work Thematic Brief: “Sexual harassment at work: Insights from the global garment industry”, June 2019

world of work must refrain from, prevent and address violence and harassment as stated in the preamble of C190.³²

Subsequently, acknowledging that violence and harassment in the world of work affects a person's psychological, physical and sexual health, dignity, and family and social environment, and that violence and harassment also affects the quality of public and private services, and may prevent persons, particularly women, from accessing, and remaining and advancing in the labour market, and noting that violence and harassment is incompatible with the promotion of sustainable enterprises and impacts negatively on the organization of work, workplace relations, worker engagement, enterprise reputation, and productivity.

³² Convention on Violence and harassment (adopted 10 June 2019 , entered into force 21 June 2021) (C-190)

CHAPTER 3

ANALYSING THE NAMIBIAN LEGAL FRAMEWORK ON THE ELIMINATION OF VIOLENCE AND HARASSMENT WITHIN THE WORKPLACE.

3.0 INTRODUCTION

This chapter seeks to analyse the Namibian legal framework on the elimination of violence and harassment within the workplace specifically looking at the Namibian laws before the ILO's violence and harassment convention, 2019 hereinafter called (C190), had been adopted in the country as well as the laws after (C190) had been adopted. At the same time be able to draw lessons from the current legal framework in the country by looking at how C190 has helped the country.

3.1 BACKGROUND

Namibia began its campaign to ratify C190 early in 2019 months later C190 had been adopted in June and on the 9th December 2020 Namibia was the third country, after Fiji and Uruguay, and the first African country, to ratify the ILO's C190. This was done through a virtual ceremony where the President of Namibia, His Excellency, Penda Naanda, Permanent Representative of Namibia to the United Nations Office at Geneva, deposited these instruments of ratification with ILO Director-General.³³

Namibia having struggled to deal with the problem of sexual and gender based-violence hereinafter called GBV harassment, with the adoption of C190 it has introduced

³³International labour organization Namibia ratifies the Domestic workers convention, 2011(No.189) and the violence and harassment convention ,2019 (No,190) https://www.ilo.org/global/standards/WCMS_763748/lang-en/index.htm accessed on 29/08/2022 at 22hrs.

an important overall framework within which Namibia can address deep-seeded social problems that have a unique impact on the World of Work. C190 being the first international instrument that broadly defines gender based violence in the working environment, provides a common framework for action and a unique opportunity to shape a future of work based on dignity and respect as it underlines the right of everyone to work in a world free from violence and harassment.

“For many years, Namibia has been grappling with the problem of sexual and gender-based violence and harassment. The legacy of apartheid in the form of racist violence and harassment is unfortunately still alive, particularly in the world of work, and bullying and various forms of behaviors that inflict physical, emotional, and/or economic harm persist.”³⁴

These conventions are very important in the sense that domestic workers happen to be protected from unfair practices that are seen and experienced at global level.³⁵

3.2 NAMIBIAN LAWS BEFORE C190 WAS ENACTED

To begin with, The Namibian **Constitution in Article 21(1)(j)** states that “All persons shall have the right to practice any profession, or carry on any occupation, trade or business”.³⁶ This Article denotes the first Constitutional right given to the employee against unfair labour practices such as unfair dismissal, freedom from harassment or

³⁴ Ibid.

³⁵ IDWFED, Namibia; the government passed the C189 and C190 on December 9 <https://idwfed.org/en/updates/namibia-the-government-passed-the-c189-and-c190-on-december-9> accessed on 30/08/2022 at 01:03hrs

³⁶ Act No.1 of 1990

any other situation in the workplace which will hinder the employee' enjoyment of this said right. Other Constitutional rights which complement the “**Article 21(1)(j)**” right include the right to dignity in **Article 8** and the right to equality and freedom from discrimination in **Article 10**.³⁷ The right to dignity is a residual human right and its effect is that where violence and harassment is perpetrated against a person in the workplace, it ultimately injures their dignity. Moreover, **Article 5 of the Constitution** states that “the fundamental rights and freedoms enshrined in this Chapter shall be respected and upheld by the Executive, Legislature and Judiciary and all organs of the Government and its agencies and, where applicable to them, by all natural and legal persons in Namibia, and shall be enforceable by the Courts in the manner hereinafter prescribed.”³⁸

The Labour Act 1992 dealt with all issues related to employees in the country. The Labour Act contained all the basic conditions of employment, termination of contracts of employment, unfair dismissal just to mention a few. **The Labour Act 11 of 2007**³⁹ is the primary legislation in Namibia enacted for the protection and prevention of violence against men and women in the workplace. This Act binds all employees across all industries in employment except independent contractors. This means the focused groups of this report such as security officers, retail workers and domestic workers gain legal recognition and protection in Namibia on the basis of the provisions of **the Labour Act 11 of 2007**⁴⁰. Despite all this, the act did not deal with issues related to violence and

³⁷ Ibid.

³⁸ Ibid.

³⁹ Act No.11 of 2007

⁴⁰ Ibid.

harassment within the workplace or give a descriptive definition of what gender based violence is within the working environment.

According to Section 5 of **The Labour Act 11 of 2007** provides for the prohibition of discrimination and sexual harassment in the workplace. **Section 5 (7)(b)** thereof states that harassment “means any unwarranted conduct of a sexual nature towards an employee which constitutes a barrier to equality in employment where: (i) the victim has made it known to the perpetrator that he or she finds the conduct offensive; or (ii) the perpetrator should have reasonably realized that the conduct is regarded as unacceptable, taking into account the respective positions of the parties in the place of employment, the nature of their employment relationships and the nature of the place of employment.”⁴¹

The faultiness of the section was that It had narrowed the scope of harassment in the workplace to only sexual harassment. Sexual harassment is arguably the most common form of harassment in the workplace, but many other specific forms of harassment in the work place against men and women were increasing globally and in Namibia. These include discriminatory harassment, racial harassment, gender harassment, religious harassment, disability-based harassment, sexual orientation-based harassment, age-based harassment, and many more. Simultaneously, The Labour Act also contained no express provision that directly abhors violence against men and women in the workplace, it also never protected workers and children against forced labour and child labour.

⁴¹ ibid

“Cases of sexual harassment and violence in the workplace, including promotions being denied because victims refuse to sleep with their bosses, had remained largely unreported, unresolved and unpunished, a report submitted to the National Assembly had shown. This is despite evidence that there is a direct relationship between domestic violence and violence and harassment at the workplace.”⁴²

Furthermore, the study concluded that 72% of Namibians view sexual harassment as the main and most problematic form of violence and/or harassment in the world of work in Namibia. It further found that at least 5% of the women, 3% of the men, and two out of the three transgender people who took part in the study claimed they have been denied a job or promotion because they refused to sleep with the boss. Women are the most abused and harassed at work. “In particular younger women who are new at a company tend to be 'tested' or taken advantage of,” the report states.⁴³

One of the most popular types of harassments that are addressed in the country is seen to be sexual harassment an example is seen In the Namibian case of ***Life Office of Namibia Ltd V Amakali and Another***⁴⁴ the respondent had been charged with two counts of sexual harassment of the female coworkers and the verbal abuse of another female coworker. “⁴⁵The ruling of this case was that the company acted appropriately in terminating the respondent’s employment because sexual harassment and discrimination in the workplace are serious offenses that create obstacles to equality in employment.”

⁴² S. Likela, Sexual harassment Swept under the Carpet In Namibia, (News National,2021) p1

⁴³ S.D.Adeel, Sheehama, Violence and Harassment in the world of work in Namibia(international labour organization,2019)p3

⁴⁴ (78 of 2013) [2014] NALCMD34(08 August 2014)

⁴⁵ ibid

3.3 NAMIBIA AFTER RATIFYING THE CONVENTION ON VIOLENCE AND HARASSMENT (No.190) AND LESSONS THAT CAN BE DRAWN FROM THE NAMIBIAN LEGAL FRAMEWORK

As stated earlier Namibia ratified C190 on the 9th of December 2020 becoming the third country in the world to ratify this convention and the first country in Africa to do so. Some of the lessons that can be drawn from Namibia are; According to the president/ambassador Penda Naanda stated that “The adoption of C190 has introduced an important framework within which Namibia can address deep-seated social problems, Namibia as a country has been grappling with sexual and gender based violence and harassment. The legacy of apartheid in the form of racist violence and harassment is unfortunately still alive, particularly in the world of work, and bullying and various forms of behaviours that inflict physical, emotional, and/or economic harm persist.”⁴⁶

Namibia having ratified ILO Convention 190 ensures that its principles are upheld through legislation and national policies that institutionalize and strengthen frameworks to ensure equal and fair treatment of women in the workplace and the eradication of gender-based violence and harassment at work. For example, the ministry’s proposal to incorporate a fundamental right to freedom from violence and harassment obligations to the ILO convention into the labour Act of 2007 was accepted. Namibia’s approach to ratification was systematic and inclusive, they began to implement the convention as soon as they ratified it by doing so, this element ensured initial success. There was seen to be change in other words advancements when dealing with Political will. From the beginning of the ILO debate, the Minister of Labour and Employment Creation

⁴⁶ International labour organization Namibia ratifies the Domestic workers convention, 2011(No.189) and the violence and harassment convention ,2019 (No,190) [https://www.ilo.org/global/standards/WCMS_763748/lang--en/index.htm](https://www.ilo.org/global/standards/WCMS_763748/lang-en/index.htm) accessed on 29/08/2022 at 22hrs.

appraised Cabinet of the importance of the proposed new international labour standards. This was at a time when government was attempting to respond to public outcry against increasing GBV. The fact that C190 comprises of what GBV is within the world of work serves as great achievement as employees' rights are protected.

When looking at law reform, the ministry's proposal to incorporate a fundamental right to freedom from violence and harassment, obligations of the ILO Convention, into the Labour Act of 2007 was accepted after the Ministry of Planning put together a committed managerial level violence harassment working group, with this, the role of each component of the Ministry in implementing the Convention was outlined and a roadmap was prepared and Research with the assistance of the ILO, an initial study was conducted in 3 industries, and designed and validated by a tripartite group. The study found that 72% of women and a similarly high number of men agreed that sexual harassment was a reality for most women in Namibia.

3.4 CONCLUSION

In conclusion to all this, Namibia ratifying the C190 has been a great achievement in order to deal with sexual and gender based violence harassment. More importantly C190 has been important to the country as it has helped in recognizing the right of all people to be free from violence and harassment in the World of Work which is essential for the labour force because it: Establishes a new right: the right to not be violated or harassed in the world of work. Acknowledges violence and harassment as cross-cutting phenomena in the world of work. Recognises the importance of freedom of association

to guarantee this new right. Recognises the right to equality and nondiscrimination for workers in vulnerable situations. Covers all sectors and explicitly states the inclusion of the public sector and lastly, Includes Occupational Safety and Health as fundamental elements in the exercise of this right.

CHAPTER 4

AN INVESTIGATION OF THE EXTENT TO WHICH THE CURRENT ZAMBIAN LEGAL FRAMEWORK ELIMINATES VIOLENCE AND HARASSMENT WITHIN THE WORKPLACE WITH LESSONS FROM THE BEST INTERNATIONAL PRACTICES AND NAMIBIA.

4.0 INTRODUCTION

The main aim of this chapter is to investigate the extent to which the current Zambian legal framework eliminates violence and harassment within the workplace in order to draw lessons from the best international practices Convention 190 which will be used as a yardstick to measure Zambia's compliance as well as draw lessons from Namibia.

4.1 THE EMPLOYMENT CODE ACT

From the onset, **The Employment Code Act**⁴⁷ provides for the prohibition any form of discrimination within the workplace, in accordance with **section 5 of The Employment Code Act** which states that "An employer shall promote equal opportunity in employment and eliminate discrimination in an undertaking. (2) An employer shall not, in any employment policy or practice discriminate, directly or indirectly, against an employee or a prospective employee (a) on grounds of colour, nationality, tribe or place of origin, language, race, social origin, religion, belief, conscience political or other opinion, sex, gender, pregnancy, marital status, ethnicity, family responsibility, disability, status, health, culture or economic grounds; and (b) in respect of recruitment, training, promotion, terms and conditions of employment, termination of employment or other matters arising out of the employment."⁴⁸ However, this section is vague when dealing with issues of harassment as well as victimization in the working environment Moreover,

⁴⁷ Act No.3 of 2019

⁴⁸ *ibid*

according to **section 95(4) of the Employment Code Act** directs us to **The Anti-Gender Based Violence Act** which states that “For the purposes of this section, ‘harassment’ has the meaning assigned to the words in the Anti-Gender Based Violence Act, 2011”⁴⁹.

According to section 3 of the Anti-Gender Based Violence Act it defines “harassment ” to mean engaging in a pattern of conduct that induces in a person the fear of imminent harm or feelings of annoyance and aggravation, including (a) sexual contact without the consent of the person with whom the contact is made and making unwanted sexual advances; (b) following, pursuing or accosting a person or making persistent, unwelcome communication with a person and includes— (i) watching, loitering outside or near a building where the harassed person resides, works, carries on business, studies or happens to be; (ii) repeatedly making phone calls or using a third party to make phone calls to the harassed person, whether or not conversation ensues; (iii) repeatedly sending, delivering or causing the delivery of offensive or abusive letters, telegrams, packages, facsimiles, electronic mail or other offensive objects or messages to the harassed person; or (iv) engaging in any other menacing behavior.”⁵⁰

However, this definition is seen to be problematic in the sense that it does not define harassment within the working environment as harassment has evolved over the years to not only include sexual harassment but to also include physical, psychological or economic harm. Harassment is a wide term and this definition does not fit in well in workplaces. This definition however only works in a domestic setting and not in a working environment as such there is seen to be a gap in the law in the sense that there

⁴⁹ Ibid.

⁵⁰ Act No 1. of 2011

are complaints by employees being dismissed from work or start to work in very harsh environments due to lack of enforcement towards employers. In addition to this in the case of **Kitwe City Council V William Ng'uni**⁵¹ it was stated that a person cannot be constructively dismissed from employment as a result of frustration, victimization and harassment, because these are not the essentials in law that might render a dismissal to be constructive hence making it a legal problem which results to employees being unfairly treated.

Furthermore, it is imperative to note that there is no provision which provides for who constitutes to be a “victim” in the **Employment Code Act**. The other legislature that we can look into is **The Gender Equity And Equality Act**⁵² according to section 2 it states that “victimisation ” means the unfair treatment of a person by another person as a result of the person’s performance of, or refusal to perform, an action”⁵³ However, this definition is not tailored made for the working environment especially in situations where the court is faced with a case where a victim is supposed to be defined, the definition in section 2 will be used which does not fit in the working environment as it only provides a general definition. This causes disengagement throughout the workforce and ultimately create tension and discord.

4.2 THE IMPLICATIONS OF THE INADEQUACY OF THE ZAMBIAN LEGAL FRAMEWORK.

It is imperative to note that any form of harassment and violence leads to constructive dismissal, Constructive dismissal occurs, when the employer by his/her conduct or

⁵¹ (2005) Z.R.57 (S.C.)

⁵² Act No.22 of 2015

⁵³ Ibid.

behaviour commits a fundamental breach of the contract which forces the employee to resign.

The breach in this case arises because the employer acts in a manner which is fundamentally against the contract of employment so that the employee as the injured party, is entitled to treat the contract as repudiated. The employee resigns and then brings an action for breach of contract, claiming damages for breach of the contract of employment. However, In the case of **Kitwe City Council V William Ng'uni** Silomba Js stated that “under the two grounds of appeal for purposes of putting the law in proper context, that the plaintiff could not have been constructively dismissed from employment as a result of frustration, victimization and harassment, because these are not the essentials in law that might render a dismissal to be constructive”⁵⁴ It is seen that the law is lacking when dealing with laws relating to violence and harassment within the working environment and this leads to a number of consequences to both the victim and the employer.

This is seen to have serious consequences for everyone involved, including the victim, those who witness the harassment and are emotionally affected by it, as well as the employer.”⁵⁵ Some of the consequences include Psychological and physical injuries, retaliation, a transfer or reassignment, demotion and loss of benefits and being fired.

Psychological and physical injuries along with the employment-related consequences, the victims of harassment frequently suffer harassment-related psychological injuries as

⁵⁴ (2005) Z.R.57 (S.C.)

⁵⁵ https://cronelawfirmplc.com/sexual-harassment/what-are-the-consequences-of-harassment/accessed_on_14/08/22 at 9hours.

well, including depression, anxiety, headaches, lowered self-esteem, sleep disorders, weight loss or gain, and sexual dysfunction.

Being fired Sometimes, there is a clear link between harassment and the damage it causes. When a person has been fired or demoted for refusing the sexual overtures of a coworker or supervisor. Often, they will be given some false reason for being fired, but the real reason remains very clear. Even if there is a valid reason for them to be fired, the decision to do so may still be related to the harassment.

Demotion and loss of benefits. This can lead to a person a losing their standing in the company, which can jeopardize future pay raises and employment opportunities.

A demotion is usually accompanied by the loss of other employment benefits such as:

- Wages
- Pension contributions
- Medical benefits
- Overtime pay
- Sick pay
- Bonuses
- Vacation pay
- Profit sharing contributions

On the other hand, the employer may also suffer “in terms of increased absenteeism, lower productivity, higher employee turnover, loss of morale, and the cost of fighting harassment lawsuits”⁵⁶

A transfer or reassignment is another consequence “From time to time, an employee who files a harassment complaint will be transferred or re-assigned to another department, branch, or location within the company, while the harasser goes unpunished. In many cases, being transferred or re-assigned in this manner can be considered punishment for speaking up about the harassment, especially if it results in the loss of any future pay, benefits, or opportunities for advancement.”⁵⁷

4.3 THE CONSEQUENCES OF BORROWING DEFINITIONS FROM OTHER ACTS

Borrowing definitions from other acts is a clear indication that the law is lacking in this case the fact that the Employment Code Act does not provide for the definition of violence and harassment. By borrowing definitions from other act tends to be problematic in the sense that it does not provide for the appropriate definitions that are suitable in other words are not tailored made for the working environment. This also goes for the term victim or what amounts to gender based violence within the working environment. This has caused a number of problems in that harassment has evolved.

4.4 LESSONS THAT CAN BE DRAWN FROM C190 AND NAMIBIA.

⁵⁶ Ibid.

⁵⁷ ibid

Firstly, C190 provides a suitable definition of “harassment and “violence” within the working environment as “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”⁵⁸. It also provides for the definition of what gender based violence is in a working environment. Other lessons that can be drawn from C190 are; C190 will protect workers from an environment that free from violence and harassment in the sense that they will be able to work freely and without fear and if violence or harassment has occurred within a workplace the convention has been set to raise awareness and make available easily digestible education and information about the Convention to members and society at large in accordance with **Article 11(c) of the convention**.⁵⁹

Secondly, Promote the ratification and implementation of the new ILO Violence and Harassment Convention, 2019 (No. 190) and its accompanying Recommendation (No. 206) as well as be able to share and discuss policies and measures to prevent, remedy and eliminate violence and harassment in the abovementioned sectors, taking into account good practices and lessons learned. Encourage industry stakeholders to take further action, including through their commitment to responsible business conduct and due diligence.⁶⁰

⁵⁸ Convention on Violence and harassment (adopted 10 June 2019 , entered into force 21 June 2021) (C-190) art2

⁵⁹ Ibid.

⁶⁰ ILO International Training Centre and Fair Wear Foundation: Gender-based violence in global supply chains – Resource kit, 2016.

The Convention will enhance consultations with employers' and workers' organizations which happens to be at the center of the development, implementation and monitoring of laws and policies to prevent and end violence and harassment in the world of work. This is relevant to laws on occupational safety and health, equality, non-discrimination and migration, and extends them to workers who are most vulnerable. "Collective bargaining remains one of the most important instruments for implementing the new standards, including their application through workplace or sectoral collective bargaining and across global supply chains through Global Framework Agreements between global unions and multinational companies. And even if governments have not yet ratified the Convention, the Convention along with the Recommendation are a blueprint for workplace negotiations and collective bargaining."⁶¹

Namibia having ratified ILO Convention 190 ensures that its principles are upheld through legislation and national policies that institutionalize and strengthen frameworks to ensure equal and fair treatment of women in the workplace and the eradication of gender-based violence and harassment at work. Namibia's approach to ratification was systematic and inclusive, they began to implement the convention as soon as they ratified it by doing so, this element ensured initial success. There was seen to be change in other words advancements when dealing with Political will. From the beginning of the ILO debate, the Minister of Labour and Employment Creation appraised Cabinet of the importance of the proposed new international labour standards. This was at a time when government was attempting to respond to public outcry against

⁶¹ 4 Better Work Thematic Brief: "Sexual harassment at work: Insights from the global garment industry", June 2019

increasing GBV. The fact that C190 comprises of what GBV is within the world of work serves as great achievement as employees' rights are protected.

When looking at law reform, the ministry's proposal to incorporate a fundamental right to freedom from violence and harassment, obligations of the ILO Convention, into the Labour Act of 2007 was accepted after the Ministry of Planning put together a committed managerial level violence harassment working group, with this, the role of each component of the Ministry in implementing the Convention was outlined and a roadmap was prepared and Research with the assistance of the ILO, an initial study was conducted in 3 industries, and designed and validated by a tripartite group. The study found that 72% of women and a similarly high number of men agreed that sexual harassment was a reality for most women in Namibia.

4.5 CONCLUSION

In conclusion to this, the Zambian legal framework is weak when dealing with issues of violence and harassment within the workplace. Looking at the fact that borrowed definitions always have to be contextualized to the working environment which may lead

to varying definitions as well as interpretations. These definitions that are borrowed are not suitable for the working environment for example, the definition of violence and harassment and gender based violence have not been defined, the definitions are therefore borrowed from other acts of parliament.

It is important that Zambia ratifies the convention on violence and harassment (C190) this is because it provides for these definitions within the working environment and by ratifying this act it is seen that the main objective of **ILO C190** as it read together with **Recommendation 206** is to make the working environment free from violence and harassment to everybody irrespective of their jobs as well as gender. The convention also places state obligations/responsibilities to ensure that the working environment is free from violence and harassment at the same time raise awareness. The convention recognizes that violence and harassment in the world of work can constitute a human rights violation or abuse, and that violence and harassment is a threat to equal opportunities. The convention also recognizes that violence and harassment is unacceptable and incompatible with decent work, and the importance of a work culture based on mutual respect and dignity of the human is important to prevent violence and harassment. Furthermore, recalling that Members have an important responsibility to promote a general environment of zero tolerance to violence and harassment in order to facilitate the prevention of such behaviours and practices has been recognized in the convention, and that all actors in the world of work must refrain from, prevent and address violence and harassment as stated in the preamble of C190.⁶²

⁶² Convention on Violence and harassment (adopted 10 June 2019 , entered into force 21 June 2021) (C-190)

From Namibia we learn that that its principles are upheld through legislation and national policies that institutionalize and strengthen frameworks to ensure equal and fair treatment of women in the workplace and the eradication of gender-based violence and harassment at work. Namibia's approach to ratification was systematic and inclusive, they began to implement the convention as soon as they ratified it by doing so, this element ensured initial success.

CHAPTER 5

CONCLUSIONS AND RECOMMENDATIONS

5.1 INTRODUCTION

This chapter summaries the contents provided in the preceding chapters of this dissertation. simultaneously, it is aimed at making recommendations that will aid in resolving the problem identified in this dissertation which is, Zambia does not have sufficient laws on violence and harassment within the working environment.

5.2 GENERAL CONCLUSION

The Zambian legal framework is weak when dealing with issues of violence and harassment within the workplace. Looking at the fact that borrowed definitions always have to be contextualized to the working environment which may lead to varying definitions as well as interpretations. These definitions that are borrowed are not suitable for the working environment. This is seen through section 5 of ECA⁶³ which provides for non-discrimination within the place of employment, the act is vague when dealing with issues of harassment and victimization. The act in section 95(4)⁶⁴ directs us to **The Anti-Gender Based Violence Act** which defines harassment in section 3 as “engaging in a pattern of conduct that induces in a person fear of imminent harm or feelings of annoyance and aggravation...”⁶⁵This definition however only works in a domestic setting and not in a working environment as such there is seen to be a gap in the law in the sense that there are complaints by employees being dismissed from work or start to work in very harsh environments due to lack of enforcement towards employers.

5.3 SUMMARY OF CHAPTERS

This thesis consists of five chapters which analyse the problem in relation to violence and harassment within the working environment in Zambia with lessons drawn from the best international practices; the convention on violence and harassment 2019 and Namibia

5.4 CHAPTER ONE

In the first chapter the legal issue was identified thereby creating a foundation for the research study. This chapter highlighted the three objectives of the study which had been elaborated in the other three chapters. Furthermore, this Chapter also highlighted the significance of the study. In this chapter it was concluded that there are no laws in regards to violence and harassment hence making it a legal problem. It emphasized on

⁶³ Act No.3 of 2019

⁶⁴ Ibid.

⁶⁵ Act No.1 of 2011

the importance of Zambia domesticating the Violence and Harassment convention that protects employees in a working environment from harassment.

5.4 CHAPTER TWO

This chapter focused on an international instrument the convention on violence and harassment 2019 which protects the rights of employees within the working environment from violence and harassment. This chapter concluded that it is important that many countries including Zambia should ratify and implement C190 and that members that ratify have an important obligation to promote a general environment of zero tolerance to violence and harassment.

5.5 CHAPTER THREE

This chapter focused on analyzing the Namibian Legal framework on the Elimination of Violence and Harassment. It was found, in this chapter, Namibia having ratified ILO Convention 190 ensures that its principles are upheld through legislation and national policies that institutionalize and strengthen frameworks to ensure equal and fair treatment of women in the workplace and the eradication of gender-based violence and harassment at work. The chapter concluded with an acknowledgment that Namibia as one of the countries in the Africa that ratified the international convention there has been great change in the employment world.

5.6 CHAPTER FOUR

This chapter focused on investigating the extent to which the current Zambian legal framework eliminates violence and harassment within the workplace with lessons drawn from the best international practices and Namibia. It was found that many definitions are borrowed from other acts and are contextualized for the working environment which lead to different interpretations of the acts, making them not suitable for the working environment. It was also found that harassment does not only include sexual but also physical, emotional and many more which result in people resigning, being demoted,

relocated and even being fired. Making many employees afraid to talk about such issues when they arise.

5.7 RECOMMENDATIONS

Having highlighted the inadequacies of the Zambian laws and rules with respect to the protection of the right to work in an environment that is free from violence and harassment, this research study proceeds to make recommendations. The research recommendations are mainly bordered around the amendments to be made to the existing laws in Zambia and for Zambia to ratify the international instrument. The following are some of the recommendations:

The author recommends that Zambia ratifies the **Convention on Violence and Harassment (C190)** to domesticate and amend the suitable legislation as the convention deals with all forms of harassment within the working environment. The act also deals state obligations and responsibilities in order to prevent violence and harassment within the world of work.

The author recommends that The **Employment Code Act** ⁶⁶ Should be amended to include the definition of what amounts to harassment within the working environment and who is a victim with lessons drawn from C190.

The author also recommends that the term “Violence” in the world of work should be included the **Anti-Gender based violence Act** and **The Gender Equity and Equality Act**.

⁶⁶ Act No. 3 of 2019

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