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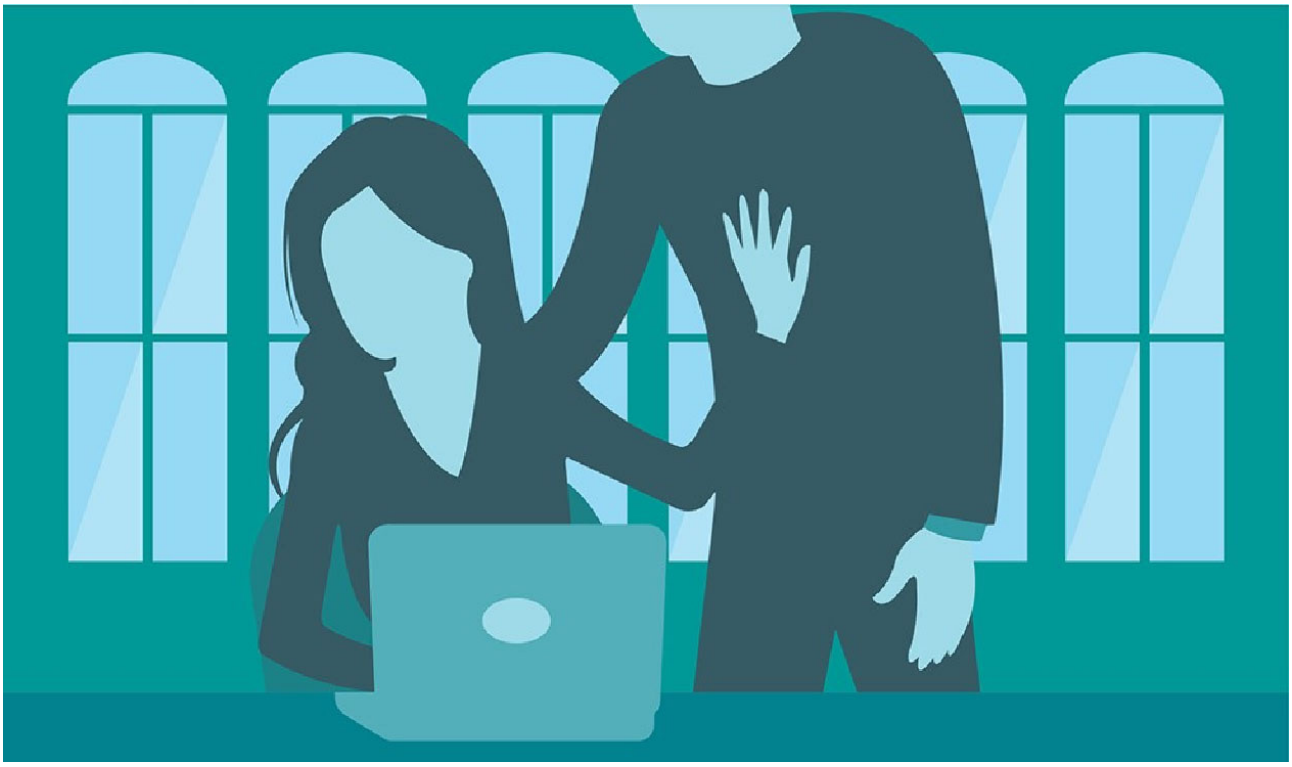
Sexual Harassment at the Workplace

Overview of Uganda's Regulatory Regime



1. Introduction

Uganda had its ("me too") moment recently when several women went public decrying the sexual harassment and exploitation that they have suffered at the hands of prominent persons including their employers. It is generally understood that there is widespread sexual harassment at work places in Uganda a lot of which goes unreported because of the fear of victimization. This publication highlights Uganda's regulatory regime against sexual harassment.

2. What is sexual harassment?

Sexual harassment generally connotes unwelcome sexual advances, requests for sexual favours and all other forms of sexual pressures and conduct whether physical, verbal or non-verbal. It ranges from acute physical forms such as rape and attempted rape to everyday human behaviours like whistling, winking, telling sexual related jokes and comments about someone and making sexually suggestive signals and gestures.

The overriding factor is that the behavior is unwelcome to the recipient. It may take place in any social environment including the workplace, church, home, school, public or private transport, online and on social media, among others. It is also gender neutral; that is, the perpetrators and the victims may be of either gender, male or female. That said, there is little dispute that the female gender is more susceptible to falling victims of sexual harassment owing to deep rooted social, economic, cultural and other factors.

At the workplace, sexual harassment involves making acceptance or rejection of sexual advances, favours or conduct, a consideration in making decisions concerning the target's employment, interfering with the target's performance or creating a hostile work environment for the victim. Sexual harassment at the workplace is prohibited by Ugandan law. The prohibition is part of the right to equality and human dignity, and freedom from discrimination and inhuman and degrading treatment embedded in the Constitution of Uganda, 1995.

It is thus paramount for every employer and employee to acquaint themselves with the law on sexual harassment.

3. What amounts to sexual harassment at the work place?

Section 7 of the Employment Act 2006 offers a comprehensive description of what amounts to sexual harassment. Specifically, the Act provides for several instances which amount to sexual harassment of an employee by an employer or an employer's representative. The key components of sexual harassment under this section are;

- Direct or indirect request to an employee for sexual intercourse, sexual contact or any form of sexual activity which contains a promise of a preferential or detrimental treatment of an employee or a threat about the present or future employment status of the employee.
- Use of unwelcome and offensive language, written or spoken, or visual materials of a sexual nature, and showing physical behavior of a sexual nature, which affect the employee's job performance and job satisfaction. Such behavior can be offensive and unwelcome as a one-off act or as a result of repetition.

An employer's representative refers to people who have authority over employers, that is, those in supervisory and managerial positions.

Further, in determining sexual harassment at the workplace, it is important to consider the impact a sexual advance, request or gesture has on the employee's treatment at work, job security, equality with other employees and job satisfaction.

It is equally important to note that the legal regime governing sexual harassment at the workplace does not replace the provisions of criminal laws prohibiting crimes such as rape, attempted rape, indecent assault, cyber harassment among others. Thus, the perpetrator may, in addition to sanctions under the employment laws, face criminal prosecution for commission of offences under the Penal Code and other legislation.

4. Obligations of the employer

Section 7(4) of the Employment Act requires an employer with more than twenty-five employees to put in place measures to prevent sexual harassment at their workplace. The Employment (Sexual Harassment) Regulations 2012, go further to detail the measures envisaged under the Act.

a) Sexual Harassment Policy

Every employer with more than twenty-five employees is required to adopt a written policy against sexual harassment. The policy must contain the following;

- A notification to staff about the prohibition of sexual harassment
- Prohibition of retaliation against an employee for filing a sexual harassment complaint.
- Description of examples of sexual harassment.
- Sanctions upon being found guilty of sexual harassment
- Description of the process for filing sexual harassment complaints
- Training programs on sexual harassment for employees and members of the sexual harassment committee, supervisory and managerial staff.

It is incumbent upon the employer to provide copies of the sexual harassment policy to every employee, old and new. A copy must also be displayed and posted in a conspicuous area at the workplace. The law further requires the policy to be prepared in a simple language which employees can understand.

Although the legal threshold for having a mandatory sexual harassment policy is more than twenty five employees, it is advisable for every employer to have a sexual harassment policy, to guide and regulate internal handling of sexual related grievances.

b) Designation of a person in charge of sexual harassment complaints

An employer with more than twenty-five employees must designate a gender sensitive person to take charge of sexual harassment complaints. Such a person receives and acknowledges receipt of complaints.

c) Sexual Harassment Committee

Every employer is required to establish a four member sexual harassment committee comprised of the representatives of management and the employees or their labour unions. The chairperson of the Committee is designated by the employer.

Functions of the sexual harassment committee include to;

- Receive and register sexual harassment complaints
- Initiate internal investigations
- Keep records of the nature of sexual harassment offences, proceedings, documents and actions taken.
- Respond to complaints within fourteen days of receiving them
- Review the sexual harassment policy
- Prepare reports of complaints to the Labour Officer and the Commissioner for Labour

It should be noted that the requirement to establish a sexual harassment committee is not restricted to employers with more that twenty-five employees. Thus, this is a mandatory requirement for all employees.

d) Prohibition of sexual materials at the workplace

Employers must prohibit the dissemination at the workplace of explicit sexual materials including voice mail, e-mails, graphics, downloaded material or websites. This prohibition must also be incorporated in the sexual harassment policy.

e) Confidentiality

Employers, along with all other people involved in sexual harassment procedures, must keep confidential all information received in handling sexual harassment complaints. The duty to hold such information confidential extends beyond the period of termination of the employment relationship between the employer and employee. Breach of this duty of confidentiality is criminal offence.

f) Prohibition of retaliation and discrimination

People involved in sexual harassment claims whether by filing a complaint, reporting, testifying as witnesses, attending meetings or cooperating in investigations are protected from retaliation and discrimination on the basis of their involvement. Employers must desist from taking actions of a retaliatory nature and discrimination against such people. Some of the listed forms of retaliation and discrimination include termination, denial of promotion, demotion in title or duties, transfer to a less favorable position or location, involuntary placement on leave, hostile or abusive treatment, decreasing remuneration or benefits, coercion and threats and intimidation.

g) Taking action against false and frivolous claims

Making of false and frivolous claims of sexual harassment by employees is prohibited. In the event of such claims, an employer is mandated to take appropriate disciplinary action against the concerned employee. Because what is appropriate disciplinary action is not defined by the law, the employer should make such a provision in the sexual harassment policy.

5. Handling and resolution of sexual harassment claims

Sexual harassment claims should be resolved within the employer's internal mechanisms which enable unhindered reporting, investigation, hearing and sanction. However, if a complaint is not satisfactorily handled internally within the employer's sexual harassment procedures, the affected employee may lodge a complaint with the labour officer who has powers to investigate and resolve the dispute. Where the labour officer fails to resolve the dispute, it is referred to the labour commissioner. From the labour commissioner, a complaint is referred to the Industrial Court for a full hearing and final determination. Appeals from the Industrial Court to the Court of Appeal are permissible on points of law only.

6. Conclusion

The sexual harassment at the work place is real. It is incumbent upon the employers to put in place robust mechanisms and procedures to prevent it, and where it occurs to ensure it is reported and fully investigated and appropriate actions taken.

For readers wishing to learn more, Cristal Advocates is holding an employment regulatory compliance workshop at its offices on Wednesday 25th and Thursday 26th March 2020. For more information please visit our website (http://cristaladvocates.com/) or get in touch with your usual Cristal contact.

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Francis leads the litigation and dispute resolution practice at the firm. He is an Advocate of the High Court of Uganda with expertise in oil and gas, infrastructure and dispute resolution. He has been part of teams advising on projects in Uganda, Tanzania, Mozambique and South Africa. He specializes in regulatory compliance, national content, health and safety and dispute resolution.

He joined Cristal Advocates from Kizza, Tumwesige, and Ssemambo Advocates. He previously worked with the Advocates Coalition for Development and Environment (ACODE). He also undertook a traineeship with the oil and gas division of Webber Wetzel in Johannesburg, South Africa.

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Denis is the Managing Partner at Cristal Advocates where he also leads the energy and tax practice. He is qualified both as a Lawyer and Chartered Accountant with vast experience serving various industries in Sub Saharan Africa. Before joining Cristal Advocates, he had worked for close to 10 years with Deloitte and Touche where he started his career and rose to senior managerial positions.

At Deloitte, he lived and worked in Uganda, Kenya, Tanzania and the United Kingdom for over 6 years and subsequently became the firm's chief of staff for the Energy and Resources Industry Group seeing him play a lead advisory role in Uganda, Kenya, Tanzania, Mozambique, South Sudan, Somalia and Ethiopia.

Denis is widely published and a regular commentator in the local, regional and international media and speaker at various forums regarding the taxation and financing of energy projects as well as the protection of large capital projects within the framework of international investment law.

He holds a Master of Laws degree in Petroleum Taxation and Finance from the University of Dundee in the United Kingdom, a Post Graduate Diploma in Legal Practice and a Bachelor of Laws degree from Makerere University. ■

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Bill is a Senior Advisor with Cristal Advocates. He has concentrated on working with energy companies with a particular focus on cross border transactions and M&A since 1989 and is a leading global energy and tax practitioner with wide international experience. Between 1986 and 1998, he worked in London with the UK tax authorities and Big Four accounting firms. From 1998 to 2004, he was based in Kazakhstan working across the Caspian region with Deloitte. He was in the region at the time it was developing its infrastructure for crude oil production with international investment following the collapse of the Soviet Union.

From 2004 to 2008, he worked in Russia where he led Deloitte's oil and gas industry group and established Deloitte's office in Sakhalin. He moved to East Africa in 2009 leading Deloitte's energy and resources industry group in Uganda, Kenya, Tanzania, Rwanda, Ethiopia and Mozambique. He was initially based in Kampala, Uganda later relocating to Dar es Salaam, Tanzania. Bill returned to the UK in 2014 supporting Deloitte UK teams working on outbound projects investing in Africa and was a key member of Deloitte UK's energy and resource practice until his retirement from the firm in September, 2018.

Bill is a graduate of Oxford University and completed his inspectors' training with the UK Inland Revenue in 1989. ■

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John leads the public policy and advocacy practice at the firm and combines unique public and private sector experience.

Prior to joining Cristal Advocates, he had worked as a Private Secretary to the President of the Republic of Uganda. During this time, he participated in several public and private sector engagements that included advising and coordinating activities relating to oil and gas as well as infrastructural projects of national significance. John had earlier worked with the Post Bank Uganda Limited and Shonubi Musoke and Co. Advocates.

He holds a Bachelor of Laws degree from Makerere University and a Post Graduate Diploma in Legal Practice from the Law Development Centre and various other qualifications. ■

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Dickens leads the oil and gas practice at Cristal Advocates. He has an in depth appreciation of Uganda's oil and gas sector having served as the maiden Company Secretary of the Uganda National Oil Company (UNOC) and the Uganda Refinery Holding Company Limited (URHC). UNOC represents the Government of Uganda commercial interests in the oil and gas sector while URHC represents government interests in the refinery project as well as managing the petrol based industrial park.

Dickens was instrumental in UNOC's formation and initial period of operation and also served as its head of Contracts, Negotiations and Advisory until May 2018. Prior to joining UNOC, Dickens was Legal Counsel at the Petroleum Directorate of the Ministry of Energy playing key legal advisory roles on the negotiation and implementation of PSAs, Joint venture and other oil and gas agreements. He was also part of the team that shepherded the process of enacting the current Ugandan oil and gas Legislations and Regulations including the local content requirements.

He is a certified project control specialist (IFP) and holds a Master of Laws Degree in Petroleum Law and Policy from the University of Dundee in the United Kingdom, a Post Graduate Diploma in Legal Practice and a Bachelor of Laws degree from Makerere University. ■

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