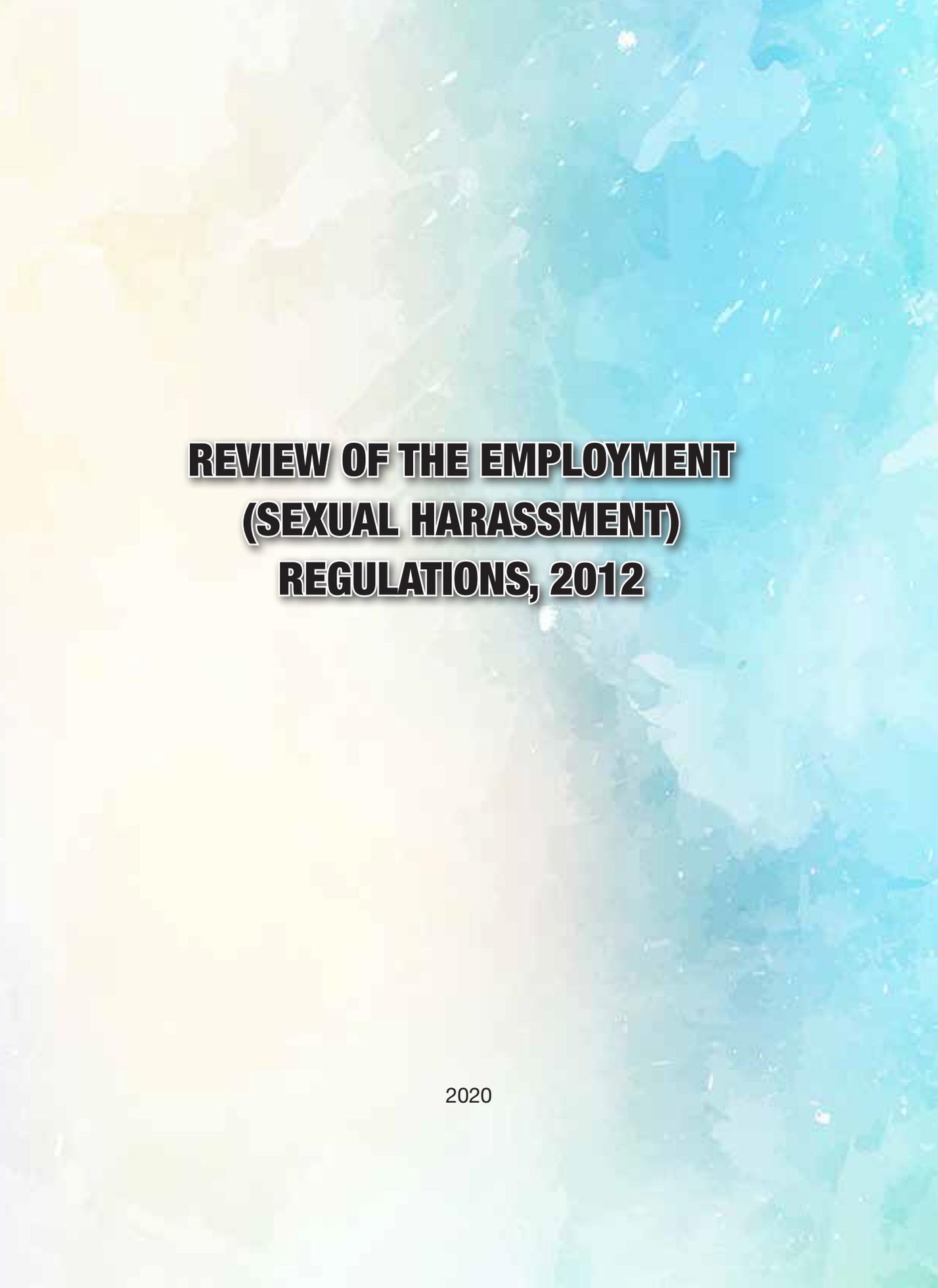


A photograph of a woman in traditional Ugandan attire, including a black headwrap with gold patterns and a yellow and green striped top. She is looking slightly to the right. The background is blurred, showing other people and colorful fabrics.

**REVIEW OF THE
EMPLOYMENT
(SEXUAL
HARASSMENT)
REGULATIONS,
2012**

2020



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ACRONYMS

AMwA	Akina Mama wa Afrika
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
COMESA	Common Market for Eastern and Southern Africa
CSO	Civil Society Organization
FIDA Uganda	Uganda Association of Women Lawyers
HIVOS	Humanist Institute for Co-operation with Developing Countries
ILO	International Labour Organization
ILO C190	International Labour Organization Convention 190 on Violence and Harassment, 2019
ILO R206	International Labour Organization Recommendation 206 on Violence and Harassment, 2019
PTSD	Post-Traumatic Stress Disorder

The review of the Employment (Sexual Harassment), Regulations, 2012 by Uganda Association of Women Lawyers (FIDA Uganda), with support from the Humanist Institute for Co-operation with Developing Countries (HIVOS) is being undertaken under the auspices of the Women@Work Campaign, a multi-country project advocating for decent work for women in horticultural value chains. FIDA-U's role in the campaign is to enhance access to justice and the legal framework protecting women workers and influence legislation and policy around corporate accountability. The project focuses on increasing rights awareness and access to justice and accountability for women workers; promotion of evidence-based advocacy for the strengthening of regulatory frameworks protecting women workers and strengthening the capacity of duty bearers to promote access to justice for women workers.

This review seeks to assess the provisions and gaps in the Sexual Harassment Regulations and provide recommendations to ensure that they are gender responsive. Specifically, the review seeks to ensure that provisions in the Sexual Harassment Regulations align with internationally held standards on sexual harassment, particularly in relation to International Labor Organisation Convention 190 on Violence and Harassment at Work (ILO C190) and other international and regional human rights standards. In addition, the review will also generate recommendations on how CSOs can influence the process of review of these Regulations. The review is part of a sustained effort towards the promotion of women's social-economic rights and access to justice for women by FIDA Uganda.

1.1. Objectives of the review

- Summarize the legal and policy framework on sexual harassment in Uganda, including applicable regional and international standards.
- Assess how the current regulations protect vulnerable workers especially women in the informal sector from sexual harassment at work.
- Identify gaps in the Employment (Sexual Harassment) Regulations, 2012 and make recommendations on necessary changes to align the Regulations with ILO C190 and other international and regional human rights standards.

Sexual harassment in the workplace is now largely regarded as a matter of great concern and urgency, particularly gaining attention and momentum in the last three years with the worldwide traction of the Me Too movement.¹ However, sexual harassment has existed for as long as women and men have occupied the same spaces. When women’s work migrated *en masse* to the public sphere, they were met with gender-based discrimination in the form of low cadre jobs and discrepancies in pay compared to men.² Sexual harassment became a manifestation of the power that men held in comparison to women. *“Women are much more likely to be victims of sexual harassment precisely because they more often than men lack power, are in more vulnerable and insecure positions, lack self-confidence or have been socialized to suffer in silence.”*³ Acts of violence against women and other vulnerable populations are not isolated incidents: they are linked to structural inequalities, making them an issue of broader societal concern as well as a matter of social justice.⁴

Although the reckoning on abuse of power through sexual harassment has not been as widespread in Uganda, there have been flashpoints of conversations on sexual assault. In 2018, the Makerere University Committee investigating sexual harassment at the university presented preliminary findings from their enquiry that showed that female students were hostage to the culture of *“sex for marks”* where lecturers had the power to make a student fail or pass depending on whether they agreed or refused to have sex with them.⁵ A legislator was also publicly derided for refusing *“love messages”* from a man who stalked and sent her sexually explicit messages.⁶ More recent incidents have included a social media maelstrom where women publicly named their abusers as they crossed over into the new year, no longer wanting to carry the burden of their silence with them.⁷ The Parliament of Uganda has also been reported to harbor high rates of sexual violence, perpetrated against Personal Assistants.⁸ The most public case to date however, may be of a Senior State Attorney who accused her boss, the Deputy Solicitor General, of several years of sexual

1 The Me Too Movement is a movement against sexual violence, started by Tarana Burke in 2006 and gaining worldwide attention in 2017. The movement worked to create a space online and offline for women to share stories of their own sexual assault, by family members, workmates and strangers on the street. See Akina Mama wa Afrika Tukuzike: *Listen to Us: Experiences of sexual harassment against women in the world of work in Uganda* (2020) 7.

2 Foundations of Western Culture *Women’s roles in the Industrial Revolution* <https://foundations.uwgb.org/womensroles/>

3 Akina Mama wa Afrika *Understanding Sexual Harrassment in the world of work* (2020).

4 See L Hong & SB Marine ‘Sexual violence through a social justice paradigm: Framing and applications’ *New Directions for Student Services* (2018) 25-27.

5 G Ssali ‘Uganda: Makerere University lecturer ordered to respond to “sex for marks” allegations’ *AllAfrica* 27th February 2018 <https://allafrica.com/stories/201802280176.html>

6 B Ndagire, ‘MP Rwabwogo reads Isiko’s love text messages in court’ *Daily Monitor* 25th November, 2018. <https://www.monitor.co.ug/News/National/MP-Rwabwogo-reads-Isiko-love-text-messages-court/688334-4867290-okh90t/index.html>

7 See L Kukunda ‘Women take on the patriarchy’ *Development and Cooperation* 12th September 2019 <https://www.dandc.eu/en/article/women-uganda-protest-against-sexual-harassment-using-metoo-hashtag>

8 Personal assistants accuse MPs of sexual harassment, The Observer, 11th June, 2019, <https://observer.ug/news/headlines/61009-personal-assistants-accuse-mps-of-sexual-harassment>

harassment.⁹ That case became a litmus test for the public's understanding of, and empathy for survivors of sexual harassment. Tabloid coverage showed a largely unsympathetic public.¹⁰

The #MeToo Movement's lack of traction in Uganda may be indicative of the larger societal attitude towards violence against women as women are seen as playing an active role in the violence visited upon them. The normalisation of violence is grounded in the belief that women are subordinate to men and have to be disciplined when they err; and also that their bodies are for public consumption. Remarks about women's way of dressing and being little temptresses luring men into sin are commonplace. A baseline study commissioned by Akina Mama wa Afrika (AMwA) in 2017 to gauge the state of violence against young women in institutions of higher learning revealed that the most common forms of violence at universities sampled were: sexual harassment including sex for academic marks, intimate partner violence, rape, blackmail, emotional and psychological violence, violence using information and communication technologies particularly social media and mobile phones.¹¹

Another study that documented the experiences of women with sexual harassment in banks, flower farms and markets further showed that not only is there deliberate effort to force women to accept sexual harassment as part of work culture, even where reporting mechanisms existed, there was intentional frustration of cases by the institutions where the women worked.¹² The study focused on these three sectors as they are predominated by women and recorded incidents such as younger and newer flower farm workers being disproportionately impacted by sexual harassment, while in banks bank tellers who interfaced with clients reported high cases of sexual harassment as well.¹³

Despite the normalization and invisibilization of women's experiences with sexual harassment, it does not mean that the physical and mental pain, the humiliation and other impacts of the vice are not felt. Sexual harassment plays a critical role in excluding and driving women out of the labour force.¹⁴ Sexual harassment is therefore a form of discrimination against women and a human rights violation, which obligates States to prevent, investigate, prosecute, and provide remedies for such acts. Further, this issue is a feminist concern because it demonstrates the urgent need to address the gendered dynamics of violence in both the public and private spheres, and recognize its links to gender inequalities.

9 A Wesaka 'Senior State Attorney accuses Deputy Solicitor General of sexual harassment' Monitor 12th May 2019 <https://www.monitor.co.ug/uganda/news/national/senior-state-attorney-accuses-deputy-solicitor-general-of-sexual-harassment-1825234>

10 R Agasha 'She came to office with her breasts almost uncovered' – Solicitor General Gash responds in Sexual Harassment Case' *The Legal Reports* 10th February 2020 <https://thelegalreports.com/2020/02/10/she-came-to-office-with-her-breasts-almost-uncovered-solicitor-general-gash-responds-in-sexual-harassment-case/>

11 AMwA *Uganda Baseline Study on Violence Against Young Women* (2017).

12 See AmwA (n 1 above) 13.

13 As above.

14 SK Johnson 'Has sexual harassment at work decreased since #MeToo?' *Harvard Business Review* 18th July 2019 <https://hbr.org/2019/07/has-sexual-harassment-at-work-decreased-since-metoo>

The legal and policy framework analyzed hereunder sets out protection against discrimination inter alia on the basis of gender, without specifically mentioning sexual harassment. This is so because sexual harassment is substantively an issue of equality which disproportionately affects women workers.

3.1. National level legal and policy framework

3.1.1 The Constitution of the Republic of Uganda, 1995 (as amended)

The Constitution of Uganda of 1995 contains several provisions on the principle of nondiscrimination and equal rights of women and men.¹⁵ Article 21 provides, "All persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law... [A] person shall not be discriminated against on the ground of sex, race, colour, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability. It further provides for state protection of women's rights and for obligations to facilitate the realization of women's full economic potential. The constitutional provisions are actuated by primary and subsidiary legislation.

3.1.2 The Employment Act, 2006

This is the law that governs all matters regarding employment and workplace relationships. It affords employees protection from discrimination as well as affirming the unlawfulness of sexual harassment in the workplace.¹⁶ The Employment Act is also the enabling legislation under which the Employment (Sexual Harassment) Regulations, 2012 were enacted.¹⁷ The detailed analysis of this law and the extent to which it offers protection to women in the workplace is discussed under Section 4 of this report.

3.1.3 The Equal Opportunities Commission Act, 2007

The Equal Opportunities Commission Act establishes the Equal Opportunities Commission pursuant to Article 32(2) of the Constitution to give effect to the state mandate to take affirmative action in favour of marginalized groups.¹⁸ The functions of the Commission are among others to monitor, evaluate and ensure that policies, laws, plans, programs, activities, practices, traditions, cultures, usages and customs of organs of state at all levels; statutory bodies and agencies; public bodies and authorities; private businesses and enterprises; non-governmental

¹⁵ See Art 33.

¹⁶ Secs 6 and 7.

¹⁷ Sec 97.

¹⁸ Art 32(1).

organizations, and social and cultural communities, are compliant with equal opportunities and affirmative action in favour of groups marginalized on the basis of sex, race, colour, ethnic origin, tribe, creed, religion, social or economic standing, political opinion, disability, gender, age or any other reason created by history, tradition or custom.¹⁹

The Commission also has powers to investigate and handle allegations of discrimination.²⁰ Sexual harassment in the workplace, as a continuation of the unequal power relations between men and women, is a form of gendered discrimination that can be addressed under the mandate of the Commission.

3.1.4 The Penal Code Act, Cap 120

This is the law that provides for offences and penalty and although it does not expressly provide for sexual harassment in the workplace as a criminal offence there is a thin line between sexual violence offences and forms of sexual harassment.

Section 128 of the Penal Code Act provides for the offence of indecent the assault expressed as follows:

- “(1) Any person who unlawfully and indecently assaults any woman or girl commits a felony and is liable to imprisonment for fourteen years, with or without corporal punishment.*
- (2) It shall be no defence to a charge for an indecent assault on a girl under the age of eighteen years to prove that she consented to the act of indecency.*
- (3) Any person who, intending to insult the modesty of any woman or girl, utters any word, makes any sound or gesture or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen by such woman or girl, or intrudes upon the privacy of such woman or girl, commits a misdemeanour and is liable to imprisonment for one year.”*

Although criminal law creates liability for certain kinds of workplace harassment, it has been criticized as a blunt instrument in employment law.²¹

3.2 Regional level legal and policy framework

3.2.1 Maputo Protocol, 2003

The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (The Maputo Protocol) places an obligation on State Parties to take appropriate measures to eliminate all forms of discrimination against women and guarantee equal opportunity and access in the sphere of education and training.

¹⁹ Sec 14.

²⁰ Sec 14(2).

²¹ H Samuels ‘A Defining Moment: A Feminist perspective on the law of sexual harassment in the workplace in the light of the Equal Treatment Amendment Directive’ *Feminist Legal Studies* 12 (2004) 181-211.

3.2.2 African Union Gender Policy, 2009

This Policy establishes a framework to accelerate the realization of gender equality, fairness, non-discrimination and fundamental rights in Africa. The main purpose of the Gender Policy is to establish a clear vision and make commitments to guide the process of gender mainstreaming and women empowerment to influence policies, procedures and practices which will accelerate the achievement of gender equality, gender justice, non-discrimination and fundamental human rights in Africa. The commitment of the policy regarding addressing sexual harassment in the workplace is to ensure that states uphold the rule of law, create legislation that align with global and regional standards on non-discrimination and comply with African Union Treaty obligations to ensure the elimination of gender inequalities and abuse at all levels.²²

3.2.3 COMESA Gender Policy, 2000

The Common Market for Eastern and Southern Africa (COMESA) Gender Policy 2000 has the overall goal of fostering gender equality and equity at all levels of regional integration and cooperation in order to achieve sustainable socio-economic development in the region. Among others, the policy commits governments in the region to fulfil their gender obligations under the various international and regional instruments and institutions including CEDAW, Social Summit for Sustainable Development, and the African and Beijing Platforms for Action.²³

The Treaty For The Establishment Of The East African Community (As amended on 14th December, 2006 and 20th August, 2007) provides for the role of women in social economic development and obligates partner states (Uganda included) to promote full participation and integration of women in the economy, abolish laws, policies and practices that are discriminatory to women and ensure employment and professional progress for women workers.²⁴

While all the above instruments provide for equality before the law, equal protection of the law and non-discrimination on the basis of sex, these provisions do not necessarily translate into the fulfillment of state obligations.

3.3 International level instruments

3.3.1 Convention on the Elimination of all Form of Discrimination Against Women, 1979

The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) directs States Parties to take appropriate measures to eliminate discrimination against women in all fields, specifically including equality under law, in governance and politics, the workplace, education, healthcare, and in other areas of public and social life.

²² Part 3.

²³ Compendium on Gender Equality and Women's Empowerment in Uganda's Health Sector (2018).

²⁴ Article 121

3.3.2 Beijing Declaration and Platform for Action, 1995

The Beijing Declaration and Platform for Action recognizes sexual harassment as a form of violence against women and as a form of discrimination, and calls on multiple actors including government, employers, unions, and civil society to ensure that governments enact and enforce laws on sexual harassment and that employers develop anti-harassment policies and prevention strategies.

3.3.3 The International Labour Organization Convention on Violence and Harassment in the world of work, 2019 (ILO C190)

The International Labour Organization Convention 190 on Violence and Harassment (ILO C190) was adopted on 21st June, 2019, ushering in a fresh set of protections for workers and establishing global standards to end gender-based violence and harassment in the world of work. Uganda, like many other ILO Member countries adopted the convention, signaling a commitment to domesticate and implement the aspirations of the framework. ILO C190 is cited in concert with Recommendation 206 of the ILO which serve as non-binding guidelines. The Convention lays down the basic principles to be implemented by ratifying countries, while a related Recommendation supplements the Convention by providing more detailed guidelines on how it could be applied.

The Convention acknowledges that gender-based violence and harassment disproportionately affects women and girls and that this can constitute a human rights violation or abuse. It also recognizes that violence and harassment is a threat to equal opportunities, is unacceptable and incompatible with decent work; affects a person's psychological, physical and sexual health, dignity, and family and social environment; affects the quality of public and private services, and may prevent persons, particularly women, from accessing, and remaining and advancing in the labour market. Most importantly, it recognises that domestic violence can affect employment, productivity and health and safety, and that governments, employers' and workers' organizations and labour market institutions can help, as part of other measures, to recognize, respond to and address the impacts of domestic violence.

The framework is forward looking and groundbreaking in its provisions as it makes clear what obligations governments and employers have to keep employees safe from violence and harassment, while also expanding the definition of violence and harassment to be as comprehensive as possible [Art1], and also widening the scope of what the world of work constitutes [Art 3], and who it protects [Art 2].

The Convention mandates state parties to adopt, in accordance with national law and circumstances and in consultation with representative employers' and workers' organizations, an inclusive, integrated and gender-responsive approach for the prevention and elimination of violence and harassment in the world of work. Such an approach should take into account, among other things, (a) prohibiting in law violence and harassment; (b) ensuring that relevant policies address violence and harassment; (c) adopting a comprehensive strategy in order to implement measures to prevent and combat violence and harassment; (d) establishing or strengthening enforcement and monitoring mechanisms; (e) ensuring access to remedies

and support for victims; (f) providing for sanctions; developing tools, guidance, education and training, and raising awareness, in accessible formats as appropriate; and ensuring effective means of inspection and investigation of cases of violence and harassment, including through labour inspectorates or other competent bodies.

Other notable provisions of the Convention include: accounting for violence and harassment involving third parties such as clients, customers, or service providers [Art 4(2)]; and protections for workers in the informal economy [Art 8] like market women, street vendors, and domestic workers. The Convention's complementary instrument, ILO R206, also provides a robust redress mechanism as it recommends that victims should have access to compensation in cases of psychosocial, physical or any other injury or illness which results in incapacity to work [Art 15], and that victims of domestic violence should be granted leave to recoup [Art 18 (a)].

The (Sexual Harassment) Regulations, 2012, referred to as “*the Regulations*” are a supplementary instrument to the Employment Act, 2006. The Regulations therefore draw their mandate from that legislation. This analysis focuses primarily on areas of the instrument that require further discussion and possible amendment. Areas of the Regulations assessed to not have any contention have been left out. The analysis shall relay the provision as recorded in the Regulations, which shall be followed by a comment. The test the Regulations were subjected to was: whether it was fair in principle, whether it was relevant to the contemporary context of sexual harassment, and whether it promoted the equal realization of dignity and human rights for all genders with the understanding that gender and power dynamics disproportionately disfavour women in both the public and the private sphere. Proposals for amendment here, by default, also extend to similar provisions within the Employment Act.

4.1. Analysis of Regulations

4.1.1. Preamble to the Regulations

Comment: The Regulations contain no preamble. A preamble delineating the objectives of the Regulations and stating clearly that this instrument serves to further expound on the provisions on sexual harassment made in Section 7 of the Employment Act, 2006, should be included. Inasmuch as the Regulations are made to protect both women and men from sexual harassment at work, an acknowledgement that unequal gender-based power relations cause women to disproportionately suffer sexual harassment is important to ensure that the application of these provisions is made through a gender lens.

4.1.2. Scope of the Instrument

Based on the provisions within the Regulations, the scope of this instrument appears to be limited to a very narrow definition of what the workplace is and where the employer’s responsibility lies. As per Article 3 of the ILO C190, the Regulations should consider sexual harassment occurring in the course of, linked with or arising out of work:

- (a) *in the workplace, including public and private spaces 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, trainings, 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.*

This widened scope covers workers in the informal economy that is presently left out of this legislation.

4.1.3. Use of the term employee instead of worker

Comment: Use of the term employee throughout the Regulations implies that sexual harassment only happens between an employer and employee and restricts its scope and application to that narrow rigid relationship, leaving out the myriad of people in the world of work who suffer sexual harassment as well. A more encompassing and comprehensive term that would capture the different actors in the world of work could be "worker". As in Article 2 of ILO C190, this term would apply to "workers and other persons in the world of work, including employees as defined by national law and practice, as well as persons working irrespective of their contractual status, persons in training, including interns and apprentices, workers whose employment has been terminated, volunteers, job seekers and job applicants, and individuals exercising the authority, duties or responsibilities of an employer."

4.1.4. Sexual Harassment by employer or employer's representative

The provision on sexual harassment in Section 7 of the Employment Act reads:

"(1) An employee shall be sexually harassed in that employee's employment if that employee's employer, or a representative of that employer [performs the acts described as sexual harassment by the Act]."

The Act then clarifies:

"(3) Employer's representative is a person who is employed by that employer, who either has authority over the employee alleging sexual harassment or is in a position of authority over other employees in the workplace of the employee alleging sexual harassment."

Comment: The framing of the offence implies that sexual harassment is only perpetrated by people in positions of authority. While persons in positions of authority are more likely to use power derived from their positions to abuse subordinates, positional authority is not the only expression of power in the workplace. Sexual harassment most often takes place because of unequal power relations between men and women, which means that sexual harassment can happen amongst peers of different genders. The central theme to feminist analysis of sexual harassment in the workplace is viewing it as part of a wider issue. In particular, women's position within the gendered social hierarchy, that is, patriarchal society. Workplace sexual harassment is the continuation of this unequal power relationship between the sexes in an employment

context.²⁵ Society confers more power on men by default of being male. This very power enables them to access positional authority which further amplifies their power. This becomes the most visible expression of power in the workplace. The disproportionate power that men wield over women, even when they are peers, should therefore not remain unacknowledged as it allows for potential abuse to go unresolved. Any instances of use of the term "employer's representative" within the Regulations should therefore be substituted with "person" or "worker" as sexual harassment can be perpetrated by anyone with power.

4.1.5. Provision on employer to designate a person in charge of sexual harassment

Regulation 8(1) of the Regulations provides:

“An employer [...] shall designate a person who is gender sensitive to be in charge of sexual harassment complaints.”

Regulation 9 goes on to set out the duties of this designated person.

Comment: This provision made under Regulation 8 of the Regulations is vulnerable to abuse. Reporting should be made to any member of a constituted sexual harassment committee. Leaving it to one person narrows reporting channels and may frustrate cases that have a conflict of interest. If a potential complainant does not trust the person designated, then they will be unable to exercise their right to report and access justice. Large workplaces can also consider a system that does not always require in-person reporting where cases simply go to a central repository and then all members of the sexual harassment committee are alerted. These provisions under Regulation 8 and 9 of the Regulations should therefore be voided.

4.1.6 Definition of sexual harassment

Provision defining sexual harassment:

“In these Regulations, unless the context otherwise requires—

‘Sexual harassment in employment’ means—

- a. a direct or implicit request for sexual intercourse, sexual contact or any other form of sexual activity that contains—*
 - i. an implied or express promise of preferential treatment in employment;*
 - ii. an implied or express threat of detrimental treatment in employment;*

²⁵ Samuels [n 21 above] 184.

iii. an implied or express threat about the present or future employment status of the employee.”

Comment: The definition of SH is adequate and comprehensive. However, the definition should make it clear that the request for sexual favours should be considered harassment whether as a single or repeated occurrence.

4.1.7 Workplace sexual harassment policies

Regulation 3 provides that:

“(1) An employer with more than twenty five employees shall adopt a written policy against sexual harassment...”

Comment: There should be no threshold in terms of the number of employees for the development and application of a sexual harassment policy. All places of work, regardless of the number of workers, should have a policy. Leaving this provision unchallenged suggests that sexual harassment only becomes a severe enough problem meriting regulation in work environments with a large number of workers. Furthermore, the majority of Uganda’s businesses are small with an average of 2 employees,²⁶ which means that a large swathe of the working populace would be left unprotected.²⁷

4.1.8 Sexual harassment committee

Regulation 10 provides that:

- “(1) An employer shall establish a sexual harassment committee composed of representatives of management and employees or labour union representatives selected annually by each party.*
- (2) The committee shall comprise four members including the Chairperson designated by the employer.*
- (3) Members of the committee shall be persons knowledgeable in and sensitive to gender and sexual harassment issues.”*

²⁶ Uganda Bureau of Statistics ‘Census of Business Establishments, 2010/11’ (2011).

²⁷ As above. The information obtained showed that on average 2 persons were employed per business. The highest average employment size was in the Construction sector where an average of 22 persons were employed per business. This was followed by the businesses in the utility sector with an average employment size of 16 persons per business. The manufacturing sector, which includes food processing and other manufacturing, employed an average of 4 persons per business while education and health employed an average of 8 persons per business just like in the finance and insurance sub-sectors.

Comment: The committee should consist of an odd number for voting purposes. A recommended number should be at least 5 but members but could be more. Members of the committee should not only be knowledgeable and sensitive to gender issues, but should have a demonstrable track record that supports this. Since women are disproportionately impacted by sexual harassment, it is likely that the committee shall more often than not, hear cases lodged by women. The committee should therefore be composed of at least 50% women. Further, to ensure representation of all workers' interests and voices, workplaces should ensure departmental representation within the committee. Committee members should be people of high integrity who have never been accused of sexual harassment. Members of the committee should recuse themselves in instances where a conflict of interest may arise in a case presented before them.

4.1.9 Procedure for handling sexual harassment complaints by Labour Officer

The procedure for handling sexual harassment complaints by a labour officer is set out in Regulation 13. Regulation 13(2) also provides that the person alleged to have harassed the complainant may be temporarily transferred, reassigned or sent on leave pending the completion of the investigations.

Comment: From handling labour disputes, the terms of reference for labour officers are so many and varied such that the handling of cases of sexual harassment may not be prioritized. Furthermore, offences of a sexual nature are always sensitive, a matter which not all labour officers may be equipped to deal with. As with other units in the Justice Law and Order Sector, a specialized unit within the labour office to deal with sexual harassment should be considered. The members of this unit would receive additional training on handling offences of a sexual nature which will enable responsiveness to reported cases. Labour offices should also be equipped to handle cases of sexual harassment. Art 10(h) of ILO C190 stipulates that States should "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 authority which may be provided by law." A department dedicated to cases of sexual harassment could potentially reduce the backlog of cases within the office as it could enable disposal of cases within 14 days as mandated by the Regulations.

Regulation 13(2) is potentially harmful as an alleged assaulter could repeat their actions at the station to which they are transferred. A person alleged to have harassed a complainant should be sent on leave pending the completion of the investigations.

The Regulations are furthermore silent on what a complainant can do when reports of sexual harassment are ignored, or when the accused is not removed from the environment. Reference is made to ILO C190 Art 10(g) which states that workers have the right to remove themselves from a work situation which they have reasonable justification to believe presents an imminent and serious danger to life, health or safety due to violence and harassment, without suffering retaliation or other undue consequences, and the duty to inform management. This recommendation should be adopted in the Regulations.

4.1.10 Referral to the Industrial Court

Regulations 14 allows with the referral of sexual harassment cases to the Industrial Court.

Comment: In regard to witnesses, the Court should strongly encourage the use of expert witnesses like psychologists. Sexual harassment by its nature is difficult to prove and expert witnesses in other jurisdictions have proved to be helpful in establishing a reasonable standard of proof and objectively educating the arbitrators on what behavior(s) constitute(s) sexual violence.

Both the Court and Labour Officer should consider a complainant's sexual history immaterial to the case and therefore inadmissible as evidence. Sexual history is oftentimes used to discredit the integrity of a complainant's claim. In some instances, a complainant may have consented to propositions of a sexual nature. This should not be used against them if that attention later on becomes unwanted. Furthermore, consent could have been procured under duress as the complainant may have feared reprisal. A case of sexual harassment should stand on its own merit as the facts are presented.

The Court should also consider listening to proceedings of sexual harassment in camera to protect the complainant's privacy and maintain the integrity of the case. Cases of a sexual nature tend to become tabloid fodder with the complainant's personal lives put under scrutiny for the public to consume. This may constitute and encourage further harassment, causing more harm which may make complainants unlikely to pursue cases against their abusers.

4.1.11 Retaliation and discrimination

Regulation 17(1) provides that:

“A person involved in a sexual harassment complaint under these Regulations shall not be retaliated against for doing the following—
consulting on, reporting or filing a complaint of sexual harassment;
testifying as a witness in a claim of sexual harassment;
cooperating during any investigation of a sexual harassment complaint;
participating in a meeting constituted to discuss sexual harassment in the workplace;

discussing the complaint of sexual harassment with the labour union representatives or the employers' organizations; and carrying out any duties as a member of the committee on sexual harassment."

Regulation 17(4) provides that:

"In determining whether an action is discriminatory, the proximity in time between the action and the protected activity shall be taken into account but the fact that an action occurred after a protected activity does not make it discriminatory."

Comment: The instances of retaliatory discrimination defined by the Regulations are in and of themselves unlawful, no matter when they are committed. Their connection to a case of sexual harassment is therefore immaterial. Furthermore, someone can still be retaliated against, several years after the reporting of a case of sexual harassment. A time lag therefore is not a mitigating factor when one complains of discriminatory behavior.

4.1.12 False and frivolous claims

Regulation 18 provides that:

"(1) An employee shall not knowingly raise a false or frivolous sexual harassment claim. Where an employee raises a false or frivolous sexual harassment claim, the employer may take appropriate disciplinary action against that employee."

Comment: Tort law in Uganda already makes provision for false and malicious prosecution.²⁸ It has become apparent that only laws adjudicating sexual offences have specific provision on false claims. It works as an unobvious reminder/threat to survivors to be silent or else the law will be weaponized against them. People can bring false claims under any number of offences but these instruments make no mention of the penalty they will suffer. It is therefore curious that sexual offences harbor this provision. This instrument and the Sexual Offences Bill, 2019 that make room for this provision insinuate that more often than not, sexual offence claims are lies. This implies that women and girls who disproportionately report these cases are perceived to be lying and that is why the law leaves room for doubt by explicitly making a provision on false claims, where it is already encoded in law. Further, this provision appears to be a deterrent to would-be allegations of sexual misconduct. They implicitly tell the complainants to have an airtight case or risk getting punished for wrongful reporting. One could also rightly claim that this provision exists to protect men, who make up the greatest majority of perpetrators.

²⁸ See *Mohammed Tumusiime v Uganda Revenue Authority* HCCS No.480/2017.

4.1.13 Offence and penalty

Regulation 19 provides that a person who contravenes these Regulations, commits an offence and is liable on conviction to a fine not exceeding six currency points or imprisonment not exceeding three months or both.

Comment: The penalty is so frivolous that it makes a mockery of the experiences of survivors of sexual harassment. The figure for the penalty should be revised upwards to serve as deterrent to perpetrators. Furthermore, there should also be consideration for rehabilitative interventions for perpetrators.

4.2 Provisions to include in the Regulations

- a. The regulations are silent on remedies for survivors. There should be consideration for reparations in the form of a monetary compensation. The Code of Conduct on Sexual Harassment in the Workplace developed by the Industrial Relations Committee in Bangkok,²⁹ advises that if a survivor of sexual harassment has suffered damages, such as a demotion or denial of a promotion, as a consequence of the harassment, it is appropriate that this person be compensated appropriately. The survivor should also be compensated for any monetary loss arising out of a denial of employment-related benefits which were rightfully due to him/her. Non-staff members, such as clients or contractors should also be informed that if a complaint against them is rightfully upheld, it could result in termination of a contract, suspension of service or business cooperation.
- b. The Regulations should make provision for the creation of a registry of offenders. The names of persons convicted of sexual harassment should be made public. This should allow companies to have a point of reference when hiring new staff.
- c. The Regulations should include a statement that it is unlawful to retaliate against an employee for filing a complaint of sexual harassment or for co-operating in an investigation of a sexual harassment complaint. A statement as well as provisions that show commitment to protect complainants can be in the form of formal articulation by management about their commitment to support the complaints process to its conclusion.
- d. A statement of the consequences for employers who are found to have committed sexual harassment should be included in the Regulations. Consequences should apply to anyone found to have committed sexual harassment.
- e. The Regulations should provide for education and training programmes on sexual harassment for all employees on a regular basis. The Regulations should prescribe the minimum number of annual trainings for workers on sexual harassment. The term “regular basis” can be subjectively interpreted by employers who can use their discretion to have the trainings so infrequently that they will have no impact. It should be clear, however, that training on sexual harassment as part of the orientation process for new employees should be mandatory.

²⁹ https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-hanoi/documents/publication/wcms_421220.pdf

- f. The Regulations should include a clear statement on consensual relationships within the workplace. So long as the relationship remains consensual and the conduct is welcome, the relationship will not be in contravention of sexual harassment legislation. However, it is critical to acknowledge that consensual relationships can cease to be so at a point in time. Strong guidance on resolution of such circumstances should therefore be provided.
- g. The provision of psychosocial support is presently missing from the Regulations. Psychosocial support, in whichever way this can be applied, should be available to survivors of sexual harassment. The emotional toll that abuse exacts should not be treated lightly as studies show that survivors are traumatized by their experiences and often deal with post-traumatic stress disorder (PTSD). A statement mandating employers to make this available before re-integrating the survivor into the workplace should therefore be included.
- h. The instrument is silent on compliance mechanisms to ensure adherence to provisions in the Sexual Harassment Regulations. Compliance to the Regulations should be included as a critical element for ensuring workplace safety. The Labour Office should therefore consider it as criteria for investigation as they conduct routine inspections on workplace safety and wellbeing. Penalties should be prescribed for workplaces found not to have a sexual harassment policy.

A few questions have been identified for further engagement by legal scholars, activists, and lawmakers.

5.1 Vicarious liability for employers

Should an employer be held responsible for sexual harassment perpetrated against an employee? In order for places of work to be more deliberate in routing out sexual harassment, can a worker sue their institution for failing to put in place measures to protect them and by extension being complicit with their abuser in perpetrating sexual harassment? Furthermore, in instances where reporting of sexual harassment by a worker has been frustrated by management, can this be cause to bring a lawsuit against the employer? If employers are held liable for workplace injuries and other unfortunate scenarios that may befall a worker, why should an employer not be held responsible for sexual harassment?

Evidence has shown that some places of work use the attractive appearances of their workers to attract clients. Workplaces like bars are highly sexualized with workers encouraged to dress provocatively for the benefit of keeping customers longer and spending more. The same situation applies to banks where more attractive women are hired as bank tellers to better attract customers. Banks have reported that women who engage with clients more regularly are more prone to be victims of sexual harassment. How can such institutions be better held accountable?

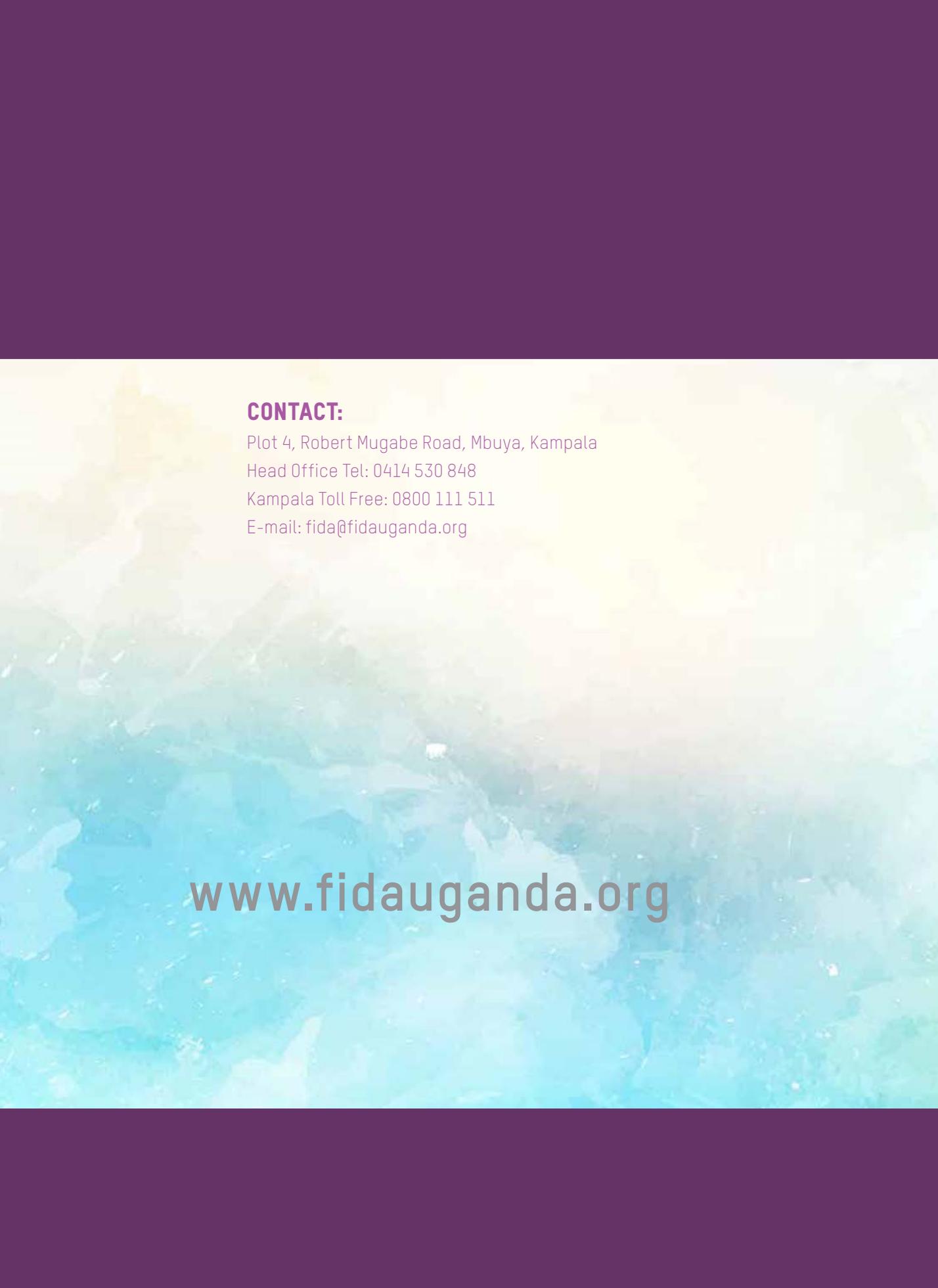
5.2 Referral to the Industrial Court

Referral of cases to the Industrial Court is at the discretion of the Labour Commissioner, in case of failure to dispose of the case at the Labour Office. Cognisant of bureaucracy and red tape around these structures, could a complainant take their case directly to the Industrial Court? The motivation here is the idea that delayed delivery of justice is justice denied.

5.3 Evidentiary requirements to prove sexual harassment

The instrument is silent on evidentiary requirements for sexual harassment cases. The nature of sexual harassment cases is that they most often happen in private without witnesses. Furthermore, in the moment of harassment, it may be difficult for a survivor to document the incident. Placing a high bar on evidence to prove sexual harassment should therefore take this reality into account.

Furthermore, there has been debate amongst legal scholars and activists about the burden of proof of sexual harassment and sexual offence in general. There has been a school of thought that has proposed that the burden of proof should lie with the accused who should show that their advances were desired and welcomed. This question deserves further exploration as it raises issues around protection of survivors from re-victimization as they do not have to relive their experiences of sexual harassment in the process of disposing of their burden of proof.



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