



Harassment and stalking

The increasing problems of stalking and harassment in Namibia are of real concern, but too few people know what to do if they are being stalked or harassed. Harassment and stalking can be traumatic for the victim, and while legislation has attempted to combat these problems, further law reform is needed to tackle the problem effectively.

Whilst 'stalking' and 'harassment' can be quite similar, there is an important difference between the concepts. 'Stalking' is a general term to describe repeatedly following or bothering another person in circumstances that would cause a reasonable person to be afraid for his or her safety. There is no specific law against stalking in Namibia as yet, although many other countries have such laws.

By contrast, there is a legal definition of 'harassment', and legal protection against it in some contexts. For example, in the Combating of Domestic Violence Act, harassment is defined as "repeatedly following, pursuing or accosting the complainant, family member or dependant of the complainant, or making persistent unwelcome communications". So repeatedly sending sms's or phoning the victim's family could be a form of harassment. Therefore, whilst some kinds of stalking can also be classified as harassment, from a legal perspective, the terms are not interchangeable.

If harassment occurs in a domestic relationship, such as between husband and wife or parents and child, the Combating of Domestic Violence Act provides a remedy. The victim can obtain a protection order from a magistrates' court directing the perpetrator to stop the offending

behaviour. Ignoring a protection order can result in a fine of up to N\$8,000, a prison sentence of up to two years, or both.

Similarly, sexual harassment in the workplace is covered by Namibia's Labour Act. 'Sexual harassment' is unwarranted sexual behaviour towards an employee by the employer or a co-worker.

There are two possible ways to identify sexual harassment.

One is where the employee has indicated that the conduct is unwelcome.

The second is where any reasonable person would find the behaviour unacceptable. An example would be where one employee attempts to fondle another

employee's breasts or buttocks in the workplace. Where a victim resigns to escape harassment, the Labour Act considers this as "constructive dismissal" (i.e. it is viewed as if the employer fired the employee), entitling the victim to the same remedies as an employee who has been unfairly dismissed, and serving as a warning to employers of the danger of tolerating a culture of sexual harassment in the workplace.

If harassment occurs in a situation that is outside of a domestic relationship or in the workplace, the offender could be charged with the criminal offence of *crimen injuria*: the unlawful, intentional and serious violation of the dignity or privacy of another person. Alternatively, some instances of stalking may be prosecuted as assault or even the threat

EVERYONE HAS THE RIGHT TO FEEL SAFE IN THEIR DAILY LIVES, WHETHER AT HOME, AT WORK OR ANYWHERE ELSE.

I don't care. You are mine.

AAAAAAH! We are not together anymore. Let go of me.



Drawing by Perfecto - Rehoboth Y.G.

If you are experiencing stalking or harassment, you should speak to a trusted friend or adult. You can also speak to any person in authority, such as a teacher, pastor or policeman. Harassment is against the law and victims do not have to suffer in silence.

of assault. Stalking can also be addressed by the crime of trespass, since a person's presence on land or in buildings without the permission of the owner or tenant is prohibited by the Trespass Ordinance of 1962.

In conclusion, the law in Namibia recognises the problem of harassment in domestic relationships and in the workplace. When harassment occurs in other situations, the law does provide some protection, but the law in Namibia could be made stronger to help protect people. The main gap in the law is when harassment takes place outside of a domestic or employment relationship in situations where there is no violence, or no proof that the dignity of the victim has been violated. Behaviours such as following a person or lurking outside a person's home or place of business, or sending unwanted messages are examples of behaviour that could be covered by a new law on stalking. To be useful, a new law would need to be wide enough to cover the many forms that stalking can

take. It should also focus on the actions of the stalker and not on the reaction of the victim. The Legal Assistance Centre has made detailed suggestions for a new law on this topic which could help many people in Namibia. You can read about this at www.lac.org.na/projects/grap/Pdf/mono3stalking.pdf

Thomas Wood and Dianne Hubbard
Legal Assistance Centre

Otjitandi tjiza povandu tjive hena oku zuvasana poskole, poviungura poo ponganda. Rumwe omukwenu we kutukana ove tjiwa pura amu ha kaene. Otjitandi otji-na tji tjiza povina ovititi tjinapyo.

Malanda Kandivi, Kephias M. P.S.

Conflict occurs when people don't agree with each other, at school, at work or at home. When your friend swears at you and you ask why he swore at you, you end up fighting. That is how it starts – from simple things.

Translated by Lucia David