



INITIATIVE FOR STRATEGIC LITIGATION IN AFRICA (ISLA)

| IN-DEPTH SEMINAR

LEGAL RESPONSE TO SUITS AGAINST VICTIMS OF
SEXUAL VIOLENCE BY THE ATTACKERS

WELCOME NOTE



Dear Participants,

I am delighted to welcome you to VAW In-depth Seminar on legal response to suits against victims of sexual violence by their perpetrators.

As we begin to collectively deepen our understanding on how the law can and has been weaponised against women victims of sexual violence, we look to you to help us understand how we can develop robust defences against these suits. We encourage you to actively share and contribute your experiences in the frontline, helping women defend themselves.

We hope that this Seminar shall be rewarding for you. We hope that you find it informative, helpful and that it helps you grow as a feminist lawyer.

Have a productive seminar.

Kind regards,

A handwritten signature in blue ink, reading 'Ndashe' with a stylized flourish at the end.

Sibongile Ndashe
Executive Director



Sibongile Ndashe is the Executive Director of the Initiative for Strategic Litigation in Africa (ISLA). She founded the organisation in 2014. Sibongile studied law at the University of the Western Cape and, later, started her legal career in 1999 as an Article Clerk at the Legal Resources Centre before moving to the South African Constitutional Court as a Research Clerk in the chambers of Justice Kriegler and Justice O'Regan. Her experience as a Research Clerk led her to realise that she wanted to earn a living trying to close the gap between how things are and how things should be. She then worked as an attorney at the Women's Legal Centre (WLC), leading the work on women's property rights and women's access to resources. At the WLC, Sibongile appreciated the value of courts in enabling the law to 'see' women and to right some of the wrongs that the very same law has caused to women. Sibongile later worked at

Interights as the lead lawyer on equality in Africa. Her focus at Interights was on litigating sexual rights and women's human rights and this work included the first case on women's rights at the African Commission on Human and Peoples' Rights, *Al-Kheir and others v Egypt*. She gained a 'bird's eye' view on how the law and courts in particular can be used to advance the human rights of women and people whose rights are violated on the basis of sexual orientation, gender identity and expression on the continent. Sibongile's work is driven by developing jurisprudence in gender and sexuality, before the African Human Rights Systems. Through her work, she is nurturing a pool of feminist litigators with expertise on gender and sexuality in addition to the legal empowerment of social movements to make decisions about litigation. Sibongile is a keen renovator and loves shopping for fabrics.

CONCEPT NOTE

This concept note:

1. Explains the purpose of the in-depth seminar and its location within ISLA's programme
2. Details why ISLA is looking to develop a legal strategy to suits against victims of sexual violence by their attackers
3. Outlines the working methods and the key legal issues that the seminar will address.



1 INTRODUCTION: ISLA'S MANDATE AND VAW PROGRAMME

Established in 2014, ISLA is a feminist pan-African organisation focused on the strategic litigation of women's human rights and sexual rights both a national levels and within the African human rights system. Our work is based on the belief that strategic litigation is an immensely powerful tool for social change because it helps to reframe the understanding of entitlements before the law and challenges the legal discourse. ISLA seeks to gain ground by creating domestic and regional jurisprudence in the area of women's human rights and sexual rights; strengthening the capacity of litigators and NGOs on the continent; and conducting rigorous research.

One of ISLA'S thematic areas of focus is violence against women (VAW); a critical area given that it "continues to persist as one of the most heinous, systematic and prevalent human rights abuses."¹ In Africa, it is exacerbated by particular cultural and political attitudes that impede progress.² VAW is an area in which there has to date been a dearth of jurisprudence in the region. The African Commission on Human and Peoples' Rights has only issued a handful of commissions that address the violation of women's rights³ and only a few of these cases have explicitly dealt with the issue as a violation of women's human rights.

ISLA has come into being as a much-needed response to the lack of legal developments and a skills deficit relating to VAW. Our aim is to expand VAW jurisprudence and establish a cumulative and progressive interpretation of

¹ Statement by United Nations Secretary General Ban Ki-moon, 2007, UN Press Release, SG/SM/11289-OBV/665-WOM/1660.

² The controversy surrounding the marital rape provision of the Uganda Marriage and Divorce Bill is illustrative of this.

³ For example: *Interights and Another v Egypt* (2006) AHRLR 94 (ACHPR 2006) (concerning Egypt's failure to protect women journalists from violence; *Democratic Republic of the Congo v Burundi, Rwanda and Uganda* (2004) AHRLR 19 (ACHPR 2003) (concerning rape and other human rights violations committed by armed forces); *Zimbabwe Human Rights NGO Forum v Zimbabwe* (2006) AHRLR 128 (ACHPR 2006) (rape and other human rights violations committed by supporters of the dominant political party).

women's human rights resulting in meaningful change in the lives of women. We believe that investment in local institutions and individuals is key, and one of the central functions of the VAW program is to strengthen the capacity of lawyers to understand relevant international, regional and domestic women's rights standards, and to competently engage in strategic litigation. In the long term, this will expand the pool of domestic lawyers engaging such work.

In fulfilling the mandate of the VAW programme, ISLA focuses on partnering with a network of specific institutions across the continent.⁴ Our activities include: conducting tailored capacity strengthening programs; holding litigation seminars at which participants receive litigation support; arranging follow up meetings to these litigation seminars; and providing ongoing assistance to the lawyers and organisation that we work with. The VAW programme will also carry out a series of in country visits to local partners' offices to assist in the development of strategic litigation plans and to establish institutional support practices. Ultimately, we will publish litigation manuals detailing various aspects of litigating violence against women.



2. PROJECT INTRODUCTION AND WORKING METHODS OF IN-DEPTH SEMINAR

ISLA has conceived a three-phase project to explore ways in which the law can be used to protect women who speak out against their perpetrators.

Through this project, ISLA seeks to develop jurisprudence on defences available to women who face legal consequences as result of publicly naming their perpetrators.⁵ Increasingly, we are becoming aware of the use of the following legal avenues by perpetrators of violence to silence victims and their advocates within the African context:

- ❑ Civil defamation;⁶
- ❑ Criminal defamation;
- ❑ Protection from harassment legislation that provides for protection orders, including gag orders;
- ❑ Lawyers intended to curb cyber harassment and
- ❑ Domestic violence legislation that provides for protection orders, including gag orders.

These developments are following in line with similar suits in the global context.⁷

⁴ Our current cohort has ten partner organisations and works with twenty one lawyers in seven countries (South Africa, Malawi, Tanzania, Kenya, Uganda, Ivory Coast and Burkina Fasso) .

⁵ Sunstein CR, 'Law in the Era of #MeToo' University of Chicago Legal Forum, Vol. 2019, pp. 261-272

⁶ *Wambui Mwangi v Tony Mochama and Another Civil Appeal No 507 of 2019* (High Court of Kenya); *Carlton Douglas Kasirye v Sheena Ahumuza Bageine aka Tasha Civil Suit No 25 of 2020* (Uganda High Court); *Ian Njagi Njeru v Nyaguthii Kioi* (Case No 97 Of 2020 High Court of Kenya).

⁷ Corbet S, Women cleared of defamation in French sexual misconduct case April 2019 <https://apnews.com/article/c11662782a4040fa899ed6b03db52dc0> (Accessed 11 November 2020). Woman behind French #MeToo movement is fined for defamation <https://www.nbcnews.com/news/world/woman-behind-french-metoo-movement-fined-defamation-n1058901> (Accessed 11 November 2020). Swedish #MeToo activist told to pay damages to man she accused of rape <https://www.thelocal.se/20191209/>



In this project, we wish to surface the gendered use of these laws to silence women who speak out against their perpetrators.

In this first phase, lawyers representing the women who have been sued and amicus will present their cases, an intervention that we call an in-depth seminar. ISLA has a raft of tailor-made capacity strengthening activities that include in-depth seminars. In-depth seminars are capacity strengthening events for partner lawyers who are developing cases. The seminars are used to develop a litigation plan with arguments to be made, evidence to be presented and comparative and international human rights standards to be relied upon. ISLA staff and external experts also comment on draft briefs, providing substantive input on the cases. A group of 12 lawyers will meet to workshop five cases with a view to discussing the defences, looking at the international legal framework that enable victims of violence to speak and sharing comparative experiences that are emerging from across the globe. There will also be a webinar on the margins of the seminar, the last day, to have a public conversation on creating an enabling and safe environment for women to speak up and name their perpetrators.

Phase two shall begin to identify other ways in which the law can be reformed or expanded in order to provide protection for women victims. Some of these opportunities may be non-disclosure agreements, anti-SLAPP (Strategic Lawsuits Against Public Participation) lawsuits and defamation countersuits by women victims.

The third phase shall involve engaging with donors to envision a basket of care for these cases. These include financial assistance around cost orders, damages and psycho-social support.

3. OBJECTIVES OF THE IN-DEPTH SEMINAR

We consistently strive to increase our own capacity on VAW issues in order to refine and reinforce our methods and perspectives. At this seminar, we are seeking to understand the various in which the law is being used to silence and to explore how the existing defences can be broadened to take into account the state obligation to protect women from violence. More specifically, we invite the participants to:

- ❑ Share knowledge that will help the lawyers to expand the defences;
- ❑ Document the relevant cases, Including, the different laws that are used to silence to surface the various ways that the law has been used to silence survivors on the continent;
- ❑ Develop a network of feminist litigators and a repository of information for those who seek to use the law to defend survivors

swedish-metoo-activist-told-to-pay-damages-to-man-she-accused-of-rape 9 December 2019. Stocker v Stocker (Supreme Court Appeal) [2019] UKSC 17 UKSC 2018/0045 3 April 2019;

4. KEY PRINCIPLES IN OUR LITIGATION WORK

The following principles inform our work and should be taken into consideration as we develop this project: . ISLA aims to:

- ❑ Collaborate with lawyers who are working on similar issues globally, regionally and nationally in order to develop jurisprudence before the African human rights system and national courts.
- ❑ Focus on the development of important principles, relevant across the board to VAW and specifically on defences for victims of violence and their supporters.
- ❑ Build upon issues in which we have existing experience and expertise – for example working with the procedural nuances of the regional bodies.⁸
- ❑ Develop a strategy for locating women's experiences in the law, by asking the 'woman' question;
- ❑ Work collaboratively with civil society and not duplicating work undertaken more effectively by others.
- ❑ Engage in out of court advocacy to shift the public narrative that is necessary if the litigation is to have an effective role in changing society.⁹

5. THEMES FOR DISCUSSION AND DEVELOPMENT

This in-depth seminar aims to provide a deeper understanding of the socio-legal contexts in selected jurisdictions and also allow the participants to begin to consider the viability of the defenses that survivors can use to guard themselves against they find themselves faced with a defamation claim after they have disclosed their experience of violence or abuse.

The overarching themes of the in-depth seminar are:

- i. An overview of the *elements of defamation* and defences.
We will make use of examples to illustrate how these claims have been interpreted in cases brought against survivors of violence, including international law
- ii. A consideration of recent cases that have the potential of *setting new precedent* and providing a roadmap for litigators to use when assessing how to defend their clients in defamation cases.

⁸ Given that admissibility criteria – for example, standing issues, victim status and exhaustion of domestic remedies – often provide sever obstacles for litigation, we believe we have a role in litigating to ensure that these procedural matters are approached with flexibility by human rights bodies.

⁹ ISLA is currently working with National Arts Festival [NAF], Center for the Study of Race Gender and Class [RGC] at the University of Johannesburg and GALA to develop a Charter for the Arts sector to work as a Model to protect women who speak up against their perpetrators.



6 BACKGROUND

5.1. *Social Contextual Background*

Much of the impetus for #MeToo was the continued refusal by varied actors to believe women who reported sexual violence in general and harassment in particular.¹⁰ Indeed, as Prof MacKinnon noted:

‘This mass mobilization against sexual abuse, through an unprecedented wave of speaking out in conventional and social media, is eroding the two biggest barriers to ending sexual harassment in law and in life: the disbelief and trivializing dehumanization of its victims.’¹¹

However, with more women embracing the global #MeToo movement by naming perpetrators of sexual violence, often by way of social media platforms, there has been a counter-response by perpetrators who file litigations designed to punish and silence these women victims. The Time’s Up Legal Defense Fund, which was founded to help workplace harassment victims cater to their legal bills, has up to 20 percent of its caseload dealing with defamation suits against women victims.¹²

In the African context, while the use of social media platforms to name perpetrators of violence has allowed for increased legitimization of these claims by the MeToo movement, the backlash faced by those who disclose include civil and criminal defamation suits.¹³ The larger #MeToo movement might be understood as a challenge to a system of sex discrimination and to institutions that engage in or perpetuate it. 6 Unfortunately, in the male dominated courts where secondary victimisation is rife, the legal standards that are applicable do not take cognisance of the gains being made in the social movement.

One of the foremost social impacts of these suits is the chilling effect not only to the individual victim but also to other women who wish to name their perpetrators.¹⁴ Even if the victim is eventually successful in defending the claim, the lengthy and expensive court process may dissuade potential victims from coming forward. This was further elaborated by Deborah Turkheimer who noted, in part, that:

“In an ironic twist, a survivor who deliberately eschews formal reporting channels for whatever reason (but often, to avoid the credibility discount) may eventually wind up in a courtroom anyway, telling her story under the most formal conditions possible,

¹⁰ Bartlett, Katharine T., ‘Gender Law: After Twenty-Five Years’ *Duke Journal of Gender Law & Policy*, Vol. 27, Issue 1 (2020), pp. 1-24.

¹¹ MacKinnon C ‘#MeToo Has Done What the Law Could Not’ 4 February 2018 <https://www.nytimes.com/2018/02/04/opinion/metoo-law-legal-system.html> (accessed 10 November 2020).

¹² Pauly M, ‘She Said, He Sued: How libel law is being turned against MeToo accusers’ March/April 2020 <https://www.motherjones.com/crime-justice/2020/02/metoo-me-too-defamation-libel-accuser-sexual-assault/> (Accessed 10 November 2020).

¹³ See, for example, *Wambui Mwangi v Tony Mochama and Another* Civil Appeal No 507 of 2019 (High Court of Kenya); *Carlton Douglas Kasirye v Sheena Ahumuza Bageine aka Tasha* Civil Suit No 25 of 2020 (Uganda High Court); *Ian Njagi Njeru v Nyaguthii Kioi* (Case No 97 Of 2020 High Court of Kenya)

¹⁴ Gouws A ‘#MeToo isn’t big in Africa. But women have launched their own versions’ 7 March 2019 <https://theconversation.com/metoo-isnt-big-in-africa-but-women-have-launched-their-own-versions-112328> (accessed 3 November 2021).

having expended enormous resources along the way, in exclusive service of beating back a claim that she lied about her abuse. With defamation law lurking in the background, no survivor could be faulted for deciding to forsake unofficial reporting altogether and to keep silent about her abuse.”¹⁵

Defamation claims are also expensive to defend, and may result in severe financial implications for the victims both in legal fees and fines. Furthermore, women victims may fear the shame of being found liable for a defamation claim, which suggests dishonest character and tarnishes their reputation.¹⁶ For example, an alleged victim who spoke out about a sexual assault by Cristiano Ronaldo, despite an agreement to settle the case, faces not only a countersuit for defamation but also widespread public shaming orchestrated by the footballer’s public relations team.¹⁷

The chilling effect of the threat of defamation suits is compounded by the social context within which this work would ensue. Women in African countries grapple with historical, patriarchal notions of what a woman’s “place” is. The gendered construction of men and women’s sexuality is seen as the root of the high rate of sexual violence.

From this perspective, patriarchal social conditioning results in the perception that a good woman would not easily consent to sexual intercourse and it is the role of the man to persuade her to engage in sexual activity with him. This creates an environment that excuses male sexual aggression as being normal gender relations and where only extreme cases of brutal abuse are considered socially reprehensible. As a result, a woman speaking out against her abuser is faced with social ridicule and negative public scrutiny.

5.2. Legal Contextual Background

As noted above, legal responses to #MeToo Movement have typically been within the context of defamation. While defamation laws vary from country to country, most jurisdictions have developed means in which the plaintiff may bring either criminal or civil action against the defendant for alleged defamatory words. Defamation incorporates the torts of libel (written words) and slander (spoken words).¹⁸ With slight variation depending on selected jurisdictions, in general, to prove defamation, the Plaintiff must establish that the statements complained have to be defamatory in character, secondly that the statements referred to the claimant or that he could be identified, and thirdly, that the statements were published or communicated to someone other than claimant.

¹⁵ Deborah Tuerkheimer, “Beyond #MeToo,” New York University Law Review 94, no. 5 (November 2019): 1146-1208 at 1190.

¹⁶ Shaina Weisbrot, (2020), ‘The Impact of the #MeToo Movement on Defamation Claims Against Survivors’, 23 CUNY L. Rev. 332.

¹⁷ Ken Ritter, ‘Lawyer: Ronaldo Rape Accuser Was ‘Emotionally Fragile’ at Time of Settlement’, ASSOCIATED PRESS (Oct. 3, 2018, 9:30 AM), <https://perma.cc/Z4HF-GEWD> (accessed 3 November 2021).

¹⁸ Rodney A. Smolla, Law Of Defamation § 8:5 (2d ed. 2019).

The #MeToo Movement has brought a new dimension into the traditional understanding of defamation through the use of online platforms. This Movement, which is chiefly characterized by the use of social media platforms to publicly expose perpetrators, raises legal questions on the role of these technological sites within the larger context of defamation. Reflecting on the need for courts to develop the common law where infringements of privacy take place in the social media Willis J held that:

“It is the duty of the courts harmoniously to develop the common law in accordance with the principles enshrined in our Constitution. The pace of the march of technological progress has quickened to the extent that the social changes that result therefrom require high levels of skill not only from the courts, which must respond appropriately, but also from the lawyers who prepare cases such as this for adjudication.”¹⁹

...

“The law has to take into account changing realities not only technologically but also socially or else it will lose credibility in the eyes of the people. Without credibility, law loses legitimacy. If law loses legitimacy, it loses acceptance. If it loses acceptance, it loses obedience. It is imperative that the courts respond appropriately to changing times, acting cautiously and with wisdom.”²⁰

Online defamation has evolved into a distinct area of litigation in view of the evolving technological landscape. This form of defamation may be understood as any person who puts information on the web which is obscene, lewd, lascivious, filthy, or indecent, with intent to annoy, abuse, threaten, or harass another person.²¹

In the South African context, courts have found that social media is qualitatively different from electronic news media despite the fact that news of significance may feature on both.²² While this distinction can be argued to be a pragmatic one, the consideration is to what extent the publishers of information on perpetrators of sexual violence can seek to rely on the defences traditionally available to the media.

Whatever the case, it seems as if defences to online defamation are similar to defences in traditional forms of defamation. These are justification (the truth of the statement), fair comment (whether the statement was a view that a reasonable person could have held), and privilege (whether the statements were made in Parliament or in court, or whether they were fair reports of allegations in the public interest).

Justification, that is, truth is an absolute defence to any claim of defamation and is thus preferred by defendant-victims in defending themselves against defamation suits.²³ Justification as truth is also preferred as it allows survivors some flexibility because minor inaccuracies do not automatically render the assertion of sexual

¹⁹ H v W (12/10142) [2013] ZAGPJHC 1; 2013 (2) SA 530 (GSJ); 2013 (5) BCLR 554 (GSJ); [2013] 2 All SA 218 (GSJ) (30 January 2013) at para 8

²⁰ Ibid., at para 31.

²¹ The Communications Decency Act 1996 (CDA) (United States Enactment)

²² H v W (12/10142) [2013] ZAGPJHC 1; 2013 (2) SA 530 (GSJ); 2013 (5) BCLR 554 (GSJ); [2013] 2 All SA 218 (GSJ) (30 January 2013) at para 35.

²³ Malla Pollack, *Litigating Defamation Claims*, in 128 AM.JUR. TRIALS 1, § 2 (2013).

assault as untruthful as long as the substance, gist, or sting of the charge is generally accurate.²⁴

However, the burden of proof in defamation cases can make this defence challenging, as the plaintiff-perpetrator needs only to put forth some evidence of a statement of fact by the defendant that can be proven false with the plaintiff's prima facie case.²⁵ In other words, Defamation law puts the *burden of proving the truth of allegedly defamatory statements* on the defendant, rather than the plaintiff.

This burden is made worse by the fact that the defendant- victims are subjected to improperly-high standards of proof in these suits, that is, beyond a reasonable doubt rather than proof on a balance of probabilities.²⁶ Put differently, we have witnessed that defamation proceedings against the backdrop of the #MeToo Movement have required victims to prove their truth with evidence beyond their testimony, which has, more often than not, resulted in loss.

Another challenge to this defence is evidentiary as this defence requires the survivor to publicly present the details of their traumatic experience to prove their own truthfulness, when there is often minimal evidence of the violence other than the survivor's own testimony.²⁷

A second possible defence to online defamation may be opinion. This defence arises where a statement cannot be independently verified as true or false. However, statements that contain both opinion and fact may be actionable where the facts alleged are defamatory and false.

This approach provides a specific hurdle to the use of this defence in #MeToo case since precedent, such as *Giuffre v Maxwell*²⁸ and *Green v Cosby*,²⁹ have illustrated that a survivor's allegations of abuse are provable as true or false and are not matters of opinion. Additionally, survivor-defendants who raise an opinion defense may expose themselves to patriarchal misconceptions that abusive behaviors are merely misinterpreted by the survivor and that the abuser's actions did not fall outside of the scope of what was legally permissible.

²⁴ Jackson v. Mayweather, 10 Cal. App. 5th 1240, 1261 (Ct. App. 2017)

²⁵ Shaina Weisbrot, (2020), 'The Impact of the #MeToo Movement on Defamation Claims Against Survivors', 23 CUNY L. Rev. 332

²⁶ Deborah Tuerkheimer, 'Beyond #MeToo' New York University Law Review 94, no. 5 (November 2019): 1146-1208 at 1190.

²⁷ See generally, McKee v. Cosby, 874 F.3d 54, 63 (1st Cir. 2017) (quoting McKee v. Cosby, 236 F. Supp. 3d 427, 442 (D. Mass. 2017).

²⁸ Giuffre v. Maxwell, 165 F. Supp. 3d 147, 156 (S.D.N.Y. 2016)

²⁹ Green v. Cosby, 138 F. Supp. 3d 114, 133 (D. Mass. 2015)

COURTS' RESPONSE TO DEFAMATION SUITS AGAINST WOMEN WHO SPEAK OUT



KENYA

Wambui Mwangi v Tony Mochama and Another Civil Appeal No 507 of 2019
(High Court of Kenya)

The court ruled in favour of the plaintiff, who alleged defamation against women victims he was accused of harassing, and awarded an extraordinarily high amount of damages against the defendants. The court opined that the defamation was not justified in that the 1st defendant, the victim, had failed to establish that the sexual assault occurred. In making this ruling, the court tested the evidence of the truth using the 'beyond reasonable doubt standard of proof' to find against the defendants.



UNITED KINGDOM

Stocker v Stocker (Supreme Court Appeal) [2019] UKSC 17 UKSC 2018/0045
3 April 2019

A victim of sexual violence named her perpetrator on Facebook who in turn instituted a defamation suit against her. In the lower courts, the Judges found her comment to be defamatory, despite her argument that her comments were true or substantially true on the basis that the meaning ascribed by the court to her words was not what in fact what the perpetrator had done to her. On appeal to the Supreme Court, the said court ruled that the meaning of the words ascribed by the lower courts was incorrect and, therefore, found that justification of truth was in fact applicable in this case. In sum, therefore, the court ruled that even if all her allegations were considered not to have been established to the letter, the defence of justification was still upheld.

FRANCE

Dennis Baupin v MediaPart Paris Criminal Court (2019)

The Court dismissed a defamation case against six women who accused a former French lawmaker of sexual misconduct and the journalists who reported the allegations. In this case, the court found that the women and journalists acted in good faith, which is in itself a defence for defamation under French law and ordered the Plaintiff to pay 1,000 euros (\$1,120) in damages to each of the 12 people he sued.¹



INDIA

Mobashar Jawed Akbar v. Priya Ramani The Court of Shri Ravindra Kumar Pandey, New Delhi, (2021)

MJ Akbar filed a defamation lawsuit against P. Ramani after she made statements in print media and online platforms calling MJ Akbar a sexual predator. MJ Akbar's claims were dismissed because the court recognised that P. Ramani disclosed the truth regarding the incident of sexual harassment against her, based on the testimony of P. Ramani and her friend, and that she made the publication in good faith and for the protection of other women's interest regarding sexual harassment at the workplace.



SWEDEN

Karl Fredrik Virtanen v Cecilia Wallin Stockholm District Court (2020)

A journalist was found liable for defamation after making public disclosure of allegations against her alleged rapist. She was handed a suspended sentence and 5,000 kronor fine, and ordered her to pay 90,000 kronor (\$9,400) in damages to Virtanen. In coming to this conclusion, the Court found that the social media posts were not justifiable in accordance with Swedish law.



¹ Lavric Sabrina ' Plainte pour diffamation de Denis Baupin : la relaxe de Mediapart: T. corr. Paris, 19 avr. 2019

7. ABOUT THE PUBLICATION: ISLA'S INSIGHTS ON WOMEN WHO SPEAK

One of the main outputs of the In-Depth Seminar is a publication on ISLA's Insights on Women Who Speak. These insights will include:

- ❑ An overview of defamation laws in selected domestic contexts and in the international plane and interrogating existing deficiencies therein;
- ❑ Comparative judicial responses to defamation cases against the backdrop of the #MeToo Movement, including, an in-depth analysis of notable cases;
- ❑ Sharing and documenting identified solutions on how to protect women survivors who speak up from legal blowbacks initiated by perpetrators;

The publication is intended for legal practitioners who provide assistance to women survivors in seeking legal redress against their perpetrators. It is also targeted at donors to provide guidance on how to increase funding structures in order to help women survivors overcome financial impediments in their quest to access justice. It will therefore be useful for donors to understand the challenges that defamation suits generally pose in order to better inform their assessment of proposals for grants in a more contextual manner. Emergency funders are also targeted in light of the roles which they can potentially play in supporting sword defamation litigation and women litigants who may face reprisals.



Agenda: Violence Against Women |

IN-DEPTH SEMINAR

LEGAL RESPONSE TO SUITS AGAINST VICTIMS OF SEXUAL VIOLENCE BY THE ATTACKERS: Mombasa, Kenya

Zoom Details: <https://us06web.zoom.us/j/88460702684>

Meeting ID: 884 6070 2684

MONDAY

13 DECEMBER, 2021

TIME	PROGRAMME
09:00 – 09:15	Welcome & Introductions to the meeting <i>Presenter: Sibongile Ndashe</i> Introduction and Objectives of the In-depth Seminar Presentation of the Expectations of the Seminar
09.15 - 09.45	A conversation: Project Background <i>Moderator: Emmah Wabuke</i> Guidance Questions¹: - What is ISLA's vision of defending women who speak up against their perpetrators? - What is ISLA's analysis of the current situation? - Why is it important to feminist lawyers? - What are the objectives of the convening?
09:45 – 11.45	Module 1: International Legal Framework: Defending Women who speak <i>Presenter: Dr Keina Yoshida</i> Guidance Questions: - What is the framework governing defamation and gender violence in international law? - Why is it important to feminist lawyers? Module 2: Comparative Jurisprudence: Emerging Standards on Women who Speak <i>Presenter: Jennifer Robinson</i> Guidance Questions: - What trends are emerging from Global North on legal responses to suits against victims of sexual violence? - What approaches have different jurisdictions adopted in interpreting defences to online defamation? - What are the potential areas of legal reform and intervention?
11.45 – 12.00	Plenary
12.00 – 12.30	Logistics
12.30 – 14.00	Lunch

¹ Guidance questions provide a general sense of what we hope to capture in a session. There is no expectation that presenters will answer all questions in their presentations.

TIME	PROGRAMME
14:00 – 16.00	Module 3: Wambui Mwangi v Tony Mochama and Another Civil Appeal No 507 of 2019 <i>Presenter: Beatrice Njeri</i> Guidance Questions: - What were the facts and procedural history of the case? - What was the plaintiff- perpetrator's case theory? - What was the defence put forward by the defendant-victim? - What was the reasoning of the Court? - What other strategies (beyond the law) were adopted by either party? - What lessons can we draw from the case for future suits?
16.00 - 16.30	Plenary
16.45 - 17.00	Closing Remarks <i>Moderator: Emmah Wabuke</i>
End of Day	

TUESDAY

14 DECEMBER, 2021

TIME	PROGRAMME
09:00 – 09:15	Recap of First Day
09:15 – 11:15	Module 4: Ian Njagi Njeru v Nyaguthii Kioi (Case No 97 Of 2020 High Court of Kenya) <i>Presenter: Winfred Odali</i> Guidance Questions: - What were the facts and procedural history of the case? - What was the plaintiff- perpetrator's case theory? - What defences were put forward by the defendant-victim? - What was the reasoning of the Court? - What other strategies (beyond the law) were adopted by either party? - What lessons can we draw from the case for future suits?
11:15 – 11:30	Tea Break
11:30 – 13:30	Module 5: Carlton Douglas Kasirye v Sheena Ahumuza Bageine aka Tasha Civil Suit No 25 of 2020 (Uganda High Court) <i>Presenters: Beatrice Kayaga & Primah Kwagala</i> Guidance Questions: - What were the facts and procedural history of the case? - What was the plaintiff- perpetrator's case theory? - What was the defence put forward by the defendant-victim? - What was the reasoning of the Court? - What other strategies (beyond the law) were adopted by either party? - What lessons can we draw from the case for future suits?
13:30 – 14:30	Lunch break

TIME	PROGRAMME
14:30 – 16:30	Module 6: Daniell Segerman v Anees Petersen <i>Presenter: Zanele Malindi</i> Guidance Questions: - What were the facts and procedural history of the case? - What was the plaintiff- perpetrator's case theory? - What was the defence put forward by the defendant-victim? - What was the reasoning of the Court? - What other strategies (beyond the law) were adopted by either party? - What lessons can we draw from the case for future suits?
End of Day	

WEDNESDAY	15 DECEMBER, 2021
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TIME	PROGRAMME
09:00 – 09:30	Recap of Second Day
09:30 – 11:30	Module 7: Mdlekeza v Gallie <i>Presenter: Brenda Madumiso-Pajibo</i> Guidance Questions: - What were the facts and procedural history of the case? - What was the plaintiff- perpetrator's case theory? - What was the defence put forward by the defendant-victim? - What was the reasoning of the Court? - What other strategies (beyond the law) were adopted by either party? - What lessons can we draw from the case for future suits?
11:30 – 11:45	Tea Break
11.45 - 13.00	Next Steps and Partner Mapping Guidance Questions: - Who is working to defend women sued by their perpetrators globally? - Who is working to defend women sued by their perpetrators in Africa? - What are the areas of potential collaborations? - Who is funding this work? - What other resources are available? - How can advocacy campaigns and research efforts support the litigation and vice versa? - How can we share information better? - What is happening in the next coming months? - What are ISLA plans in taking this work forward?
13:00 - 14.00	Lunch break
14.00 - 16.00	Webinar - Legal Response to Suits Against Victims of Sexual Violence by the Attackers <i>Moderator: Dr Ruth Nekura</i>
	Panelists: Winfred Odali Zanele Malindi Beatrice Kayaga Beatrice Njeri
16.00– 16:30	Closing Remarks End of the Day

PARTICIPANTS AND EXPERTS

LEGAL RESPONSE TO SUITS AGAINST VICTIMS OF SEXUAL VIOLENCE BY THE ATTACKERS:



BEATRICE KAYAGA

ASSOCIATE NETWORK PARTNER LAWYER - WPI

Beatrice is a Human Rights lawyer at the Women's Probono Initiative in Uganda leading advocacy on impact litigation of indigent women and girls. She has undertaken various investigations into human rights abuses such as sexual violence faced by persons with mental disabilities in Gulu District. Beatrice has handled cases involving domestic violence, human trafficking, child marriages and sexual violence; and conducted litigation surgeries where lawyers who are like minded agree on issues to litigate and develop an advocacy plan for the litigation. Her interests are Human rights and advocacy especially women's and children's rights, activism for marginalized groups, Sexual Reproductive and Health Rights, Economic rights and Conflict resolution.



WINFRED ODALI

TRANSITIONAL NETWORK PARTNER – CREAM

Winfred Odali is an Advocate of the High Court of Kenya. She has a passion for using the law as a tool to empower women and girls to live in dignity and enjoy their full rights and freedoms as enshrined in domestic, regional and international instruments. She started working at the Centre for Rights Education and Awareness (CREAW) in 2018 as a lawyer under the Access to Justice Programme where she handled a wide array of legal aid cases affecting women and girls in Kenya. While working under the Access to Justice Programme, she was privileged to participate in the first cohort of the Strategic Litigation Training under the Initiative for Strategic Litigation in Africa (ISLA) in Johannesburg, South Africa. As an alumni of the intensive ISLA Training Programme, she now employs the knowledge and skills she gained on strategic litigation as a Strategic Litigation Advocate at CREAM Kenya.

BEATRICE NJERI

TRANSITIONAL NETWORK PARTNER – CREAM

Beatrice Njeri an Advocate of the High Court of Kenya. She started her career as a commercial advocate but was deeply concerned with the inequalities she observed in life. In 2015, she joined the Centre for Rights Education and Awareness (CREAW) as a Legal Officer with the quest to making a contribution to positive change in the world by advancing the rights of marginalized women and children. She worked in the Access to Justice as the Team lead until 2020.

After undergoing the pilot training on Feminist Litigation, offered by the Initiative for Strategic Litigation (ISLA) in 2018-2020, she was transitioned to found the Strategic litigation department at CREAW. She is currently serving as a Strategic Litigation Counsel. She has a growing interest in litigating for social change to contribute to both aspects of prevention and response on violence against women and girls. Every day she seeks to contribute to to this change using my knowledge, skill and experience. She desires to see a world where women and girls live in a world free from violence and discrimination.

**PRIMAH KWAGALA**

Primah Kwagala (She/her/hers) is an award-winning human rights lawyer, Chairperson of Female Lawyers in the Uganda Law Society and Executive Director of the Women's Probono Initiative (WPI) - an organisation whose vision is a Uganda free of violence and discrimination against women and girls. WPI works to achieve their vision through legal representation of vulnerable women and girls suffering discrimination, legal empowerment, research and knowledge sharing. In January, 2020 Primah was named Peace and Reconciliation Laureate by the French and German Embassies to Uganda in honour of her work defending women against violence and discrimination in Uganda.

**ZANELE TANYA MALINDI**

Zanele Malindi is a Candidate Attorney and Bertha Justice Fellow at the Centre for Applied Legal Studies (CALS). She is currently working in the Gender Justice Program. She is a 2018 LLB graduate from the University of the Witwatersrand. In 2015, she graduated from the University of Cape Town with a BSocSci in Politics and Economic History. Prior to joining CALS, she was employed in the housing and refugee departments at ProBono.Org. Zanele is passionate about human rights law, equality and social justice. She hopes to be able to assist in the realisation of rights and values codified in the South African Constitution.





BRENDA MADUMISE-PAJIBO

Brenda Madumise-Pajibo is a South African advocate and business woman. She is a staunch advocate to end all forms of violence against women. In 2019-2020 she co-chaired the Interim Steering Committee on Gender Based Violence and Femicide (GBVP) at The Presidency where she presided over the development of a R1.6 billion Emergency Response and Action Plan (ERAP) and the National Strategic Plan on GBVF. She is one of the founding directors of The Wise Collective (dba Wise 4 Afrika), a feminist advocacy organization for gender equality through advancing women inspired solutions for empowerment. Madumise-Pajibo has had an illustrious career over two decades in legal, business, governance and civil society sectors.



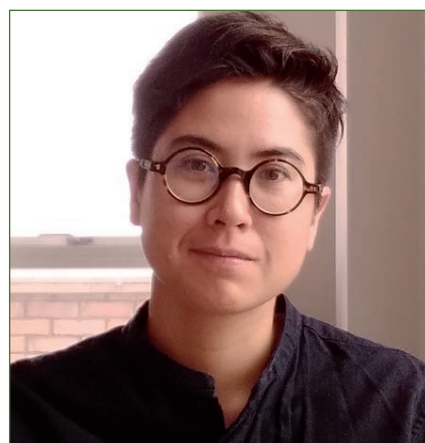
JENNIFER JEN ROBINSON

Jennifer Jen Robinson en Robinson is a barrister at Doughty Street Chambers in London with a broad practice in media law, public law and international law. She has appeared before the International Court of Justice, has given expert evidence at the UN and regularly engages with UN Special Mechanisms. Jen has a particular focus on free speech, advising media organisations, journalists and whistle-blowers and issues associated with media law, journalist safety, unlawful detention and targeting. Her recent work includes advising the UN Special Rapporteur in relation to the investigation into the murder of Jamal Khashoggi, acting for the International Federation of Journalists in relation to attacks on Palestinian journalists, and advising Julian Assange and WikiLeaks in relation to US extradition proceedings. She acted for Amber Heard in Johnny Depp's unsuccessful defamation claim in the UK over her allegations of domestic violence and has advised the Women's Equality Party, Rape Crisis and women's rights groups on defamation issues associated with campaigning and reporting on gender-based violence.

Before joining the UK Bar, Jen created the Bertha Justice Initiative, a global program to support strategic public interest and human rights litigation and educate the next generation of movement lawyers. Jen serves as a trustee of the Bureau for Investigative Journalism and on the advisory boards of the European Center for Constitutional, Human Rights and the Bonavero Human Rights Institute at Oxford University and the Grata Fund, a public interest litigation fund in Australia.

DR KEINA YOSHIDA

Dr Keina Yoshida is a barrister at Doughty Street Chambers in London practising in the areas of human rights, inquiries and inquests and media law. Keina has an international and domestic practice with a particular focus on equality and discrimination. Keina is on the Panel C counsel of the Equality and Human Rights Commission and sits on the boards of the Feminist Review Trust and Feminist Legal Studies. Keina holds a PhD in law from the London School of Economics and Political Science. Keina is a Research Officer at the Centre for Women, Peace and Security. Keina has lectured in a number of universities including the LSE (2015), City University (2018), SOAS (2020), the Kofi Annan International Peacekeeping Training Centre (Ghana) (2017) on international human rights law and regularly publishes in leading journals of Economics).



RUTH NEKURA

Ruth Nekura is a human rights lawyer and socio-legal researcher with 10 years' experience working in gender equality and women's rights with a focus on law and policy reform, advocacy and program implementation. Her work involves conducting gender analyses of laws and implementation practices. She is passionate about access to justice and invokes both structural and individual level analyses to challenge systemic inequality and re-imagine ways of overcoming barriers to women's access to justice. She is an advocate of the High Court of Kenya, and holds an LLM (Human Rights Law) and a PhD (in Public Law) from the University of Cape Town.

Her PhD research used a feminist human rights approach to assess the fulfilment of State responsibility to act with due diligence to prevent and effectively respond to violence against women and girls, through the implementation of multi-sector approaches (One-Stop-Centres) that integrate health, legal and psychosocial services to support victims of sexual violence in Kenya and South Africa, comparatively. She previously worked with the Coalition On Violence Against Women (COVAW), Kenya Law Reform Commission, and the Centre for Law and Society (UCT).

She is a member of the Initiative for Strategic Litigation (ISLA) Panel of Experts (IPE), and has provided technical expertise to various other organisations and initiatives at different levels; from supporting social movements at the grassroots level to national and international NGOs, such as, the World Health Organization (WHO), Womankind Worldwide, the Kenya Network of Organisations Working on the Rights of Women/Girls with Disabilities, the American Jewish World Service (AJWS), International Federation of the Red Cross and UN Women- Kenya





Sibongile Ndashe is the Executive Director of the Initiative for Strategic Litigation in Africa (ISLA). She founded the organisation in 2014. Sibongile studied law at the University of the Western Cape and, later, started her legal career in 1999 as an Article Clerk at the Legal Resources Centre before moving to the South African Constitutional Court as a Research Clerk in the chambers of Justice Kriegler and Justice O'Regan. Her experience as a Research Clerk led her to realise that she wanted to earn a living trying to close the gap between how things are and how things should be. She then worked as an attorney at the Women's Legal Centre (WLC), leading the work on women's property rights and women's access to resources. At the WLC, Sibongile appreciated the value of courts in enabling the law to 'see' women and to right some of the wrongs that the very same law has caused to women. Sibongile later worked at Interights as the lead lawyer on equality in Africa. Her focus at Interights was on litigating sexual rights and women's human rights and this work included the first case on women's rights at the African Commission on Human and Peoples' Rights, *Al-Kheir and others v Egypt*. She gained a 'bird's eye' view on how the law and courts in particular can be used to advance the human rights of women and people whose rights are violated on the basis of sexual orientation, gender identity and expression on the continent. Sibongile's work is driven by developing jurisprudence in gender and sexuality, before the African Human Rights Systems. Through her work, she is nurturing a pool of feminist litigators with expertise on gender and sexuality in addition to the legal empowerment of social movements to make decisions about litigation. Sibongile is a keen renovator and loves shopping for fabrics.



EMMAH WABUKE

Emmah Wabuke is a feminist lawyer who holds an LL.M from Harvard Law School. She is currently pursuing her PhD from the University of Cambridge (Selwyn College) where she is also a Gates Cambridge Scholar. Emmah has undertaken research on varied areas around women's experiences in the law, including, as a Consultant for Kenya Legal and Ethical Issues Network on HIV and AIDS (KELIN); CleanStart Kenya; and National Gay and Lesbian Commission, Kenya. She currently works at ISLA as a Consultant.

ISLA STAFF

LESEGO NCHUNGA

Lesego Nchunga studied law at the University of Botswana, and is currently a candidate for a master's in human Rights with the Centre for Human Rights, at the University of Pretoria. She has worked as an attorney in private practice, as well as a lawyer in national women's rights organisations, and an international organisation. As a consultant, Lesego has developed curriculum, and conducted various other research work on an array of human rights concerns including gender-based violence litigation in Botswana, human rights violations against tribal minorities and indigenous persons with thematic focus on women's rights, amongst others. Lesego played a role in the implementation of the incremental approach towards strategic litigation in Botswana, leading up to the case on the decriminalisation of same-sex sexual intercourse in Botswana. Specifically, Lesego worked with the local movement in Botswana, as the lawyer in the case for the registration of the LGB organisation LEGABIBO (2014 and 2016). She was also the lawyer in the transgender rights cases in Botswana, which were decided favourably by the High Court in the country. Lesego has also worked extensively with women's rights organisations, in Botswana, on various legal aid programmes on women's access to justice, primarily focusing on cases of violence against women, as well as women's inheritance rights and women's right to land ownership and control. At ISLA, Lesego is the Women's Socio-Economic Rights (WSER) Lawyer. Her work has a regional focus, with a view at using the law as a tool for social change in various areas that affect economic justice.



ANNETTE WANGONG'U

Annette Wangong'u works as the Feminist Litigation Network manager at ISLA. She holds a Bachelor's degree in Political Science from The University of St. Thomas – Minnesota, and a Master's degree in Gender and Law from the University of London, School of Oriental and African Studies. Annette has vast experience as a researcher on various topics focusing on gender and state building for the International Development Research Center-funded East African Resilience Hub in Kenya. She has also previously worked as a researcher and programme officer in health and governance leveraging African feminist theory and the growing body of work around African feminist legal approaches in the analysis of health legislative and policy frameworks.





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