

## Human rights and academic harassment: Policy vs. action

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**This comment discusses the available laws around human rights which relates to academic harassment. We discuss how human rights are being violated by institutions together with how and to what extent institutions violate their own policies in action. We proposed recommendations on changing this age-old issue in our science backyard.**

Institutions, regardless of their type (i.e., public bodies, quasi-public or private entities) have a duty to conduct harassment investigations in a principled, responsible and lawful manner. They must conform to the layered legal framework of the country in which they are established, the principles of academic freedom and non-discrimination as well as comply with the highest standards in public life, including integrity, honesty, selflessness, openness, objectivity, accountability and leadership. The legal framework, on the other hand, encompasses not only equality and labour laws, but also international and national human rights law. Protecting targets against human rights abuses is a legal obligation for public or quasi-public institutions; private institutions, on the other hand, have the responsibility to respect human rights and to support targets' rights to access an effective remedy when their human rights are breached.

The 2011 United Nations Guiding Principles of Business and Human Rights<sup>1</sup> – the first global framework on business-related human rights abuses – include the principle of due diligence in identifying, preventing, mitigating and accounting for hazards negatively affecting human rights. Although the Guiding Principles do not define the term 'abuse', international human rights law defines it as any activity or act aimed at the destruction of any human right or freedom or at their limitation to a greater extent than is provided by human rights law (see, for example<sup>2</sup>). In addition, the United Nation's Draft of international legally binding instrument to regulate, in international human rights law, the activities of transnational

corporations and other business enterprises, defines ‘human rights violation or abuse’ as ‘any harm committed by a state or a business enterprise, through acts or omissions in the context of business activities, against any person or group of persons, individually or collectively, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their human rights, including environmental rights’.<sup>3</sup>

It is well understood that harassment, bullying, and discrimination cause physical, mental, emotional and economic harms to targets<sup>4-6</sup>; what is not fully understood, at least in the academic community, is that harassment and bullying also violate human rights in multiple ways. For example, in the context of the European Union and in line with the EU Charter of Fundamental Rights, which binds all 27 Member States of the EU<sup>7</sup>, the fundamental rights involved are: the right to human dignity (Art. 1), the right to respect for a human being’s physical and mental integrity (Art. 3), respect for private and family life (Art. 7), protection of personal data (Art. 8), freedom of thought, conscience and religion (Art. 10), freedom of expression and information (Art. 11), freedom of assembly and of association (Art. 12), freedom of the arts and sciences (Art. 13), freedom to choose and occupation and right to engage to work (Art. 15), equal treatment/non-discrimination (Art. 21), equality between men and women (Art. 23), the right of collective bargaining and action (Art. 28), the right to protection against unjustified dismissal (Art. 30), fair and just working conditions (Art. 31), the right to health care (Art. 35) and the right to an effective remedy and a fair hearing (Art. 47). Notably, the European Social Charter of the Council of Europe<sup>8</sup> explicitly recognizes the right to dignity at work (Art. 26). Article 26 obliges the signatories to ensure not only the effective prevention of sexual harassment in the workplace or in relation to work, but also to: “promote awareness, information and prevention of recurrent reprehensible or distinctly negative and offensive actions directed against individual workers in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct”.

In recognition of the above-mentioned legal obligations, all institutions have established relevant policies and procedures (e.g., health and safety policy, equality and diversity or dignity at work policy, student complaints procedure and staff grievance policy and procedure, disciplinary policy, and public interest disclosure or whistleblowing policy), in principle, to protect targets. The policies are essentially universal and quite thorough; in fact, it would be very difficult to find a university with a deficient policy and procedural framework.

The question is, if these well-written institutional commitments are intended to protect targets and their human rights, why are the issues of academic harassment and bullying so common in various scientific disciplines<sup>9, 10</sup>? In other words, why do institutions fail to follow their own policies and procedures with appropriate action<sup>11</sup>?

One of the main reasons for institutional failure to support targets and follow their own policies is that, similar to all other instances of non-compliance with legal rules, the individuals responsible for enforcing the above-mentioned policies and procedures (e.g., internal harassment investigation committee members<sup>11</sup>) do not engage in rigorous enforcement, and thus perpetrators are confident that they will 'get away' with their wrongful and unlawful conduct. Coverage of scandals by news media around incidences of academic harassment and bullying confirms the wrong-headedness of institutions' tendency to protect perpetrators and get rid of targets.<sup>11-13</sup> Unfortunately, it seems that in many institutions responsible departments (e.g., human resources) have a Janus face: they ensure the visibility of the 'paper rules' as well as the invisibility of those in managerial positions who break them; they support rather than critique abuses of power by managers and members of the executive and even conceal human rights abuses which, if raised publicly, would damage the reputation of the university/hospital/institution.

In institutions where bullying is customarily used as a management technique, one often finds responsible departments actively taking part in 'framing' innocent individuals by providing false evidence or false testimony (often uncorroborated hearsay); unlawfully surveilling targets by monitoring his/her communications at work, email correspondence and office work; and gaslighting when a complainant raises concerns.<sup>14</sup> An organizational culture of fear and control makes the environment quite hostile, negatively affecting the psychological and mental integrity of staff and pressuring the target to resign. Sometimes, the targeted employee is placed on a 'kill list': the individual is subjected to false misconduct allegations, is suspended from work for several months without being given any particulars of a complaint against him/her, and is finally dismissed following *in absentia* disciplinary hearings and without any due process or natural justice guarantees. Such an aggressive, unethical and unlawful management strategy is often supported by a culture of denial of any wrongdoing on the part of the institution and an eagerness to force the target's silence by obtaining a non-disclosure agreement.

Clauses of non-admission of any liability on the part of the institution in insurance contracts account for the raucous denial of any wrongdoing and unnecessary and prolonged suffering of the target. This is a significant structural problem that is often invisible and, therefore, remains unaddressed despite its significant implications in the identification and prevention of human rights abuse, discrimination, victimization and harassment. If there is a contractual agreement that prevents an organization from admitting any liability and, thus, any facts that could give rise to legal liability, then no complaint of bullying, victimization, harassment, discrimination or malpractice can ever be addressed fairly.

Evidently, none of the policies and procedures described above authorizes and/or justifies the organizational harassment facing the target. On the contrary, institutional policies and procedures in relation to health/safety or equality/diversity or dignity at work, staff and student complaints and discipline prohibit behaviours such as those described in the foregoing paragraph. It is only by violating the principles of equality, inclusion, fairness, honesty and integrity that bullies can succeed in their conflict entrepreneurship (i.e., the artificial creation of problems), isolation, intimidation and abuse of the target. Furthermore, it is precisely by condoning and shielding unacceptable and unlawful behaviours that organizational cultures permit the repetitive, systematic and progressively escalating pattern that distinguishes bullying and victimization from other isolated workplace behaviours.

### **What can be done?**

The only effective way to improve institutions' actions against academic harassment and bullying is to involve other stakeholders including funding and legal agencies in investigating and responding to complaints.<sup>15</sup> Robust institutional actions against academic harassers can mean that institutions sustain reputational damage and may lose the funding that perpetrators bring in. Therefore, getting rid of the targets and protecting harassers with public money<sup>16</sup> can be thought of as the strategy that causes the least harm! By enforcing laws around academic harassment (specifically the violation/abuse of human rights) and withdrawing funding from perpetrators, other responsible stakeholders can make institutions more responsible and 'response-able' to address academic harassment. Regulators could ensure that institutions comply with data protection regulations, have operational and effective grievance procedures and even produce an annual statement incorporating all information about complaints, grievances, and bullying and harassment incidents as well as a

detailed account of the steps taken to ensure that the workplace is free from bullying and harassment, institutional lying and victimization and that there is no human rights abuse. It is in the public interest for everyone to know that a specific organization makes honest attempts to conduct itself with integrity, does not use its own money (or that of taxpayers) to protect perpetrators, respects the law and human rights and professionalism, and has a zero tolerance for dishonest, unethical and abusive behaviours. If institutions are mandated to provide annual statements to that effect (along with action plans), mindsets and organizational cultures will inevitably change. In other words, the integrated collaboration of all stakeholders to improve the institutional response to academic harassment and bullying (rather than weaponization of the policies) makes institutions accountable for creating a safe work environment, free from bullying, victimization and harassment.

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