Sexual Harassment of Female Employees in The Workplace: Imperative For Stringent Legal And Policy Frameworks In Nigeria

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Abstract
The central objective of the article was to investigate the challenges posed by work-associated sexual intimidation of female workers and whether there were binding legislative and policy frameworks to address the problem in Nigeria. To achieve the aim, the study adopted both doctrinal and comparative approaches by evaluating some available literature in the area and comparing Nigeria’s position with some selected foreign jurisdictions with legislative provisions barring harassment. The article also adopted some theoretical models to explain the possible reasons for sexual harassment. It was discovered that the menace of sexual harassment at workplace has received a robust attention domestically and globally from researchers and organizations with available data showing that the despicable practice occur both in public and private establishments and that it has considerable negative effects on employers as well as on the health and psychological welfare of employees. The work revealed that unlike some other countries, Nigeria lacked precise anti-sexual harassment legislation and that the extant national legislative frameworks on sexual-related offences are inadequate to effectively curb the problem. Thus, the article recommended that there is need for stringent legal and policy frameworks to be put in place in Nigeria in order to tackle the hydra-headed problem of job-related sexual harassment as are obtainable in the three foreign jurisdictions examined in the paper.

Keywords:
Hostile Work Environment, Quid Pro Quo, Sexual harassment

DOI:
https://doi.org/10.25041/plr.v3i2.2754
A. Introduction

Incidences of job-associated sexual harassment of female employees are not matters of recent developments as it has long been linked to when women first started to embark on economic activities in the labour markets outside their homes1 as they required financial independence for survival, and with fewer employment chances, women became susceptible to sexual advances from their male employers, bosses and co-employees.2 Studies have revealed that sexual harassment cuts across all cadres of employments and are not restricted to women in the lower positions, though the greater risk of harassment of women in the labour markets relate to women in authoritative positions.3 Reports of sexual harassment are prevalent in both public4 and private establishments.5 It has been estimated that about 1 in every 2 women have been confronted with the predicament of sexual harassment in the workplace.6 During the early 1920s, women who gained employment, either in circular jobs or as household workers, complained of sexual molestations at workplaces, although such complaints were trivialised by their male-dominated employers and victims were advised to withdraw their services if they were unable to cope.7

The decisive moment however, came in the middle of the 1970s as a result of the growth of women emancipation groups which campaigned for women liberation in all facets of life. As a matter of fact, it was during this era that the expression, “sexual harassment,” was first formed in 1975 by a group of women at the Cornell University, USA following a claim by its former employee, one Carmita Wood, against the institution for some benefits after she left her employment by reason of sexual advances by her boss.8 While Mowatt posited that in America and Europe, about 50% of female workers are faced with unsolicited sexual advances,9 a national survey on sexual harassment of federal workers conducted by the United States’ Merit Systems Protection Board revealed that 42% of the 10,644 women examined admitted that they were targets of overt sexual harassment at workplace. In financial terms, the report indicated that the U.S. federal government lost an estimated sum of $189 million as a result of implications accruing directly or indirectly from sexual harassment over the two-year duration covered by the study.10

Back home in Nigeria, there is dearth of accurate data on the prevalence of sexual intimidation of female workers in the workplace, though its prevalence is undeniable. Available

8 Ibid.
literature have revealed that sexual harassment incidences occur in academic institutions, legal field, medical field, information technology communication sector, and other spheres of the Nigerian society, both public and private. The lack of accurate data on sexual harassment in Nigeria has largely been attributed to underreporting of cases of sexual intimidation by victims, possibly because of fear of stigmatisation or reprisals, among many other reasons. This challenge is further compounded by the fact that unlike some other countries like the USA, South Africa and India, among others, where anti-sexual harassment statutes exist to checkmate various types of sexual harassment, Nigeria lacks an explicit statute barring sexual harassment at workplace, though there are a number of laws which outlaw sexual-allied offences, some of which would be examined. This is regardless Nigeria being a party to some global frameworks that forbid sexual harassment. There is an ongoing attempt by the Nigerian federal legislative houses to enact the Sexual Harassment of Students in Tertiary Educational Institutions (Prohibition) Bill 2019. However, this bill, as the title clearly indicates, is not broad-based as it is unfortunately restricted to students in tertiary educational institutions. Whereas based on a report from Stand To End Rape (STER) in Nigeria there are at least 64% of women who report that they have experienced sexual harassment in the workplace.  


Olusesan Ayodeji Makinde, Gender-based violence in male-dominated industry: Identifying and responding to challenges in Nigeria’s information and communications technology sector, London, United Kingdom: Advancing Learning and Innovation on Gender Norms (AliGN), 2021, pp. 1-16.


See for instance, the USA Civil Rights Act 1964, Title VII; the Code of Federal Regulations (CFR) 1991, chap 29, sec 1604.11.

Code of Good Practice on Handling of Sexual Harassment Cases in the Workplace 2005 (as amended).


The bill was passed at the Senate in July 2020. See Editorial “Nigeria: on sexual harassment bill” (17 July 2020) Daily Trust, retrieved from <https://allafrica.com/stories/202007170055.html> (last accessed 19 May 2021). In Nigeria, a bill cannot become a valid law until it has been passed by the National Assembly (comprising the Senate and the House of Representatives) and assented to and signed into law by the President of the Federal Republic of Nigeria- see the Constitution of the Federal Republic of Nigeria 1999, (as amended), section 58.

“STER is a non-profit organization that advocates against sexual violence and provides assistance and resources to survivors. In 2020, STER launched research to address a significant gap in knowledge about experiences of sexual violence in the workplace environment in Nigeria.”
Against the above milieu, the article seeks to investigate the theoretical basis for sexual harassment, the meaning and possible consequences of sexual harassment in the workplace in Nigeria as well as critically examine some national and foreign instruments on sexual harassment with a view to determining their adequacies in tackling the endemic dilemma of sexual exploitation in the Nigerian labour markets.

B. Discussion

1. Meaning and Perceptions of Sexual Harassment

Various definitions have been volunteered by some writers or organisations for the term “sexual harassment.” The challenge of having a universally acceptable meaning for the phrase may be as a result of a broad scope of demeanours that may be considered as encompassing harassment or the perception from which a sexual assault is viewed by a writer or organisation. For example, the ILO Guidelines on Sexual Harassment Prevention at the Workplace defines sexual harassment as: [A]ny unwanted conduct of a sexual nature, request for sexual favours, verbal or physical conduct or gesture of a sexual nature; or other behaviour of a sexual nature that makes the recipient feels humiliated, offended and/or intimidated, where such reaction is reasonable in the situation and condition; or made into working requirement or create an intimidating, hostile or inappropriate working environment.

Similarly, the U.S. Equal Employment Opportunity Commission (EEOC) defines sexual harassment in the workplace as unwanted sexual overtures, demand for sexual favouritism, and other spoken or physical behaviour of a sexual character that occurs under any of the undermentioned instances:

a. when yielding to the sexual pressure is a precondition for continuing or securing an employment either expressed in direct or indirect language;

b. where a superior or boss makes personal decisions as a result of a worker’s surrendering to or refusal of romantic advances; or

c. where the conduct is invasive or severe enough to unfairly meddles with an individual’s job efficiency or make the work environment intimidating, hostile, abusive or offensive.

A community reading of the above cited ILO guidelines and EEOC reveal that sexual harassment in the workplace is perceived as any kind of sexually established conduct that undermines a female employee’s employment, safety, work performance or threatens her means of livelihood.

There is no explicit statutory definition of what constitutes sexual harassment in the workplace in the corpus of any Nigerian law. A federal legislation, the Violence against Persons

1. What Should Every Nigerian Know About Sexual Harassment in the Workplace?
27 International Labour Organisation/Ministry of Manpower and Transmigration, Guidelines on Sexual Harassment Prevention at the Workplace, (Issued by the Circular Note of the Minister of Manpower and Transmigration No. SE.03/MEN/IV/2011, Indonesia, April 2011), 5.
Prohibition Act 2015 (VAPP Act 2015), however, provided a general definition for the phrase, “sexual harassment”, as an “unwanted conduct of sexual nature or other conduct based on sex or gender which is persistent or serious and demeans, humiliates or creates a hostile or intimidating environment and this may include physical, verbal or non-verbal conduct.”

Mackinnon and her colleagues have suggested that the more frequent types of job-related sexual harassment in Nigeria include, but not limited to, unwanted romantic advances, inappropriate touching or fondling of sensitive parts of the body, sexual-related gestures, remarks, intimidations and rape. The Obafemi Awolowo University Anti-Sexual Harassment Policy 2021 mentions other categories of sexual harassment in the context of the university to include unsolicited gifts in exchange for sexual reward or pleasure, persistent licentious jokes of sexual nature and forwarding or displaying sexually suggestive materials to recipient without educational relevance.

However, to curb the associated definitional problem of sexual harassment, Fitzgerald et al., developed the Sexual Experiences Questionnaire (SEQ) in which they identified sexual harassment of a female worker as a three dimensional behavioural set up, namely, (a) gender harassment (i.e. spoken or unspoken insulting conduct that conveys offensive, intimidating or humiliating attitudes towards a woman); (2) unsolicited romantic attention (i.e. oral or non-oral conducts that are insulting, unwelcome and unreciprocated, for example, unwanted touching or grabbing of a female employee); and (3) sexual coercion which includes employing such behaviours like threats, bribes or making employment related rewards conditional on cooperation of the female recipient. The authors submitted that the emergence of the SEQ can lead to uniformity in conceptualising and measuring sexual harassment.

Mackinnon on the other hand classified inappropriate sexual behaviours into the quid pro quo (QPQ) and hostile work environment (HWE) and this distinction has been generally acknowledged and judicially recognised. QPQ is a more easily identified form of sexual victimisation while the HWE harassment is a more hidden sort of sexual intimidation as it takes the pattern of unsolicited verbal or non-verbal sexual conducts (like sexual jokes, touching and electronically generated messages, etc) targeted at the victim.

Generally, there is a possibility for the two forms of sexual harassment to either overlap or subsist concurrently. Sexual harassment on a quid pro quo basis is common in Nigeria, this harassment is likened to when someone who has authority in a job or company, tries to trade job benefits for pleasure in sexual gratification. In legal terms, quid pro quo has the meaning of ‘trafficking’ which is a type of harassment between an employee/worker and someone with authority such as a 'supervisor' who can provide job benefits. In the quid pro quo, sexual harassment is carried out in the form

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30 VAPP Act 2015, section 46.
33 Obafemi Awolowo University Anti-Sexual Harassment Policy 2021, at p.3.
of offering or even providing better working conditions or opportunities than rewards for sexual relations. This will obviously create an unhealthy and conducive or unfriendly work environment.\(^{40}\)

2. **Theoretical Frameworks for Work-Linked Sexual Harassment**

   In order to properly situate the possible contributory reasons why sexual harassment happens in job environment, attempts would be made under this heading to identify some theoretical orientations which could probably provide answers to this enquiry. In this respect, reliance would be placed on four theoretical explanations, namely, socio-cultural, natural biological, organisational, and sex-role spillover theories.

   a. **Socio-Cultural Theory (SCT)**

      The theory accentuates the relationship between human growths and the cultural values or societal beliefs in which they operate in. It argues that the socio-cultural norms of a given society have significant impact on an individual who lives in it.\(^{41}\) The Nigerian society, like other African societies, operates a deeply-rooted patriarchal socio-cultural norm.\(^{42}\) In such a society, women are considered as being inferior to the male gender. Extending the frontiers of this theory to issues of sexual harassment in the workplace, the theory advocates that sexual harassment in the occupational setting is an expression of common idea of male supremacy over women and that both sexes are interrelated in a manner that maintains this structure of domination and subservience.\(^{43}\) Sexual harassment can therefore, be perceived as gender-based caused by unequal power relationships between men and women regarding employment and promotion opportunities\(^{44}\) that encourages men to enjoy greater decision-making powers than women at workplace.\(^{45}\) Such conventional beliefs make women vulnerable to sexual abuses by men at work locations.\(^{46}\)

      It is however, my argument that socio-cultural theory, which tolerates job-related sexual harassment against female workers, is an affront to the principle of gender parity as endorsed in Article 4(1) of the African Union’s Constitutive Act, section 42(1) of the Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended) and a number of other regional and global instruments on human and women’s rights that Nigeria is a signatory to.

   b. **Natural Biological Theory (NBT)**

      The theory posits that sexual harassment is not really a chauvinistic or a prejudiced conduct but is a demonstration of a normal attraction that exists between persons of the opposite sex. The theory presupposes that men possess stronger sexual urge than women and consequently, they behave in a sexually aggressive way both in the place of employment and in other environments outside workplace.\(^{47}\) The second perspective of this theoretical explanation is that

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\(^{45}\) Ibid.


individuals may be attractive to each other and may pursue that emotional sentiment without necessarily intending to harass the other party, mostly women. This latter view therefore, excludes the issue of unequal sex drive. Nonetheless, it is my contention that if the sexual behaviour flows out of a mutual attraction between parties involved, it should not be used as an instrument of force or oppression where the woman subsequently becomes disinterested or wants to opt out of a romantic relationship.

c. Organisational Theory (OT) and Effect of Sexual Harassment on Victims and Organisations

As a result of the inadequacies of the earlier discussed SCT, NBT and OT, Gutek and Morasch proposed the SRST. Burgess and Borgida have also stressed that SRST possibly signifies the most considerable explanation why sexual harassment takes place in the work setting. Generally, SRST suggests that sexual harassment in the workplace is commonly triggered by “sex-role spillover”.

According to this argument, when a female worker is identified by gender role instead of her work-related responsibility, she is seen primarily as a woman instead of as an employee of an organisation. This will result in an erotised workplace where female workers are considered as probable romantic companions by male employers or co-workers. This position finds support in the legal submission advanced by the learned counsel to the defendant in the Nigerian case of Stella Ayam Odey v. Ferdinand Daapah & Cuso International to the effect that it was a normal consequence that men would make sexual overtures to women even in the office. Under such situations, female employees’ conducts are frequently misconstrued as sexual and amorous advances made to them are deemed appropriate and even desired. Thus, when work is perceived as a man’s job or a woman’s job, the sex-role spills over and becomes

55 Ibid.
integrated, expressly or implicitly, into the job-related role since sex identity has become more significant than job identity.\(^{57}\)

Job-allied sexual harassment has negative consequences both on the harassed worker and the organisation generally. Empirical findings reveal that sexual harassment has negative work-associated psychological and health effects on female workers who have encountered it. One of the studies revealed that female employees who were harassed reported decreased fulfilment with work, supervision, and poor relationship with fellow workers as well as lack of dedication to the establishment.\(^{59}\) Such psychological challenges can result in increased level of non-attendance at work,\(^{60}\) high turnover plans\(^ {61}\) and greater time spent on considering whether or not to quit the job.\(^ {62}\) This is in addition to occurrences of work and job withdrawals as attitude to work is closely linked with conventional job behaviour.\(^ {63}\)

Other studies have revealed that women who encountered one form of harassment or the other at work reported that they experienced depression and signs of post-traumatic stress disorder (PTSD)\(^ {66}\) and “chronic emotional problems.”\(^ {65}\) Female victims of sexual harassment also suffer decreased confidence and poor self-image.\(^ {66}\) Relatively, it has been reported that sexual harassment exerts significant harmful effects on victims than other normal diurnal job stressors,\(^ {67}\) forcing victims to adopt various coping strategies to either forestall a repeat of such occurrences or to make them survive in the hostile work environments.\(^ {68}\)

In addition, based on the results of Richard A. Aborisade's research, there are other obstacles that show how victims find it difficult to report rapes experienced by Nigerian women who are students. Most of them (18,78,26%) have stigma.\(^ {69}\)


“...I can't report because our people don't like hanging out with girls who are raped. Even realized that once it happened to me, most of my neighbors were no longer free with me. Several times they would whisper, talk about me, once I approached them they would stop and start making moves for themselves. I had to move out of that house because of that.” (Felicia, 200 levels, Tasued)

With regard to the organisation, sexual harassment could undermine the integrity of the workplace as it could be depicted as an unsafe, hostile and toxic environment. Such representations could endanger team cohesion and affect productivity as victims and eyewitnesses may be compelled by prevailing circumstances to leave the job resulting in high employee turnover. In financial terms, a Deloitte research approximated that about $2.62 billion productivity loss was suffered as a result of sexual harassment within a two-year period (i.e. 2018-2019) in Australia. In other instances, where the incidence becomes a subject of litigation, employers may face huge litigation and monetary damages expenses. A Nigerian court recently awarded a special damages of ₦16, 862,511 (US$40,808) against an employer for the unlawful termination of a female worker’s job because she refused to accede to the improper romantic overtures by her boss.

d. Sex-Role Spillover Theory (SRST)

As a result of the inadequacies of the earlier discussed SCT, NBT and OT, Gutek and Morasch proposed the SRST. Burgess and Borgida have also stressed that SRST possibly signifies the most considerable explanation why sexual harassment takes place in the work setting. Generally, SRST suggests that sexual harassment in the workplace is commonly triggered by “sex-role spillover” or the number of gender roles that affect is the introduction of gender-based roles into the work environment. According to this argument, when a female worker is identified by gender role instead of her work-related responsibility, she is seen primarily as a woman instead of as an employee of an organisation. This will result in an erotised workplace where female workers are considered as probable romantic companions.

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by male employers or co-workers.\textsuperscript{78} This position finds support in the legal submission advanced by the learned counsel to the defendant in the Nigerian case of Stella Ayam Odey v. Ferdinand Daapah & Cuso International\textsuperscript{79} to the effect that it was a normal consequence that men would make sexual overtures to women even in the office.\textsuperscript{80} Under such situations, female employees’ conducts are frequently misconstrued as sexual and amorous advances made to them are deemed appropriate and even desired.\textsuperscript{81} Thus, when work is perceived as a man’s job or a woman’s job, the sex-role spills over and becomes integrated, expressly or implicitly, into the job-related role\textsuperscript{82} since sex identity has become more significant than job identity.\textsuperscript{83}

3. Some International Instruments and Foreign Domestic Statutes on Sexual Harassment

a. International Instruments

1. United Nations’ Universal Declaration on Human Rights (UDHR) 1948\textsuperscript{84}

This foremost human rights instrument does not overtly mention sexual harassment at the workplace but recognises equality in dignity and rights, freedoms and equal protection against any discrimination, including on grounds of sex.\textsuperscript{85} Agreed that Nigeria was not an independent country at the time of adoption of this historic human rights document, but the fact remains that Nigeria has signed and ratified a number of other treaties and global instruments premised on the contents of the UDHR. Two other subsequent human rights Covenants similarly banned discriminatory practices in broad terms.\textsuperscript{86}

2. ILO Discrimination (Employment and Occupation) Convention 1958\textsuperscript{87}

The Convention does not plainly address sexual harassment issues, but considers “discrimination” as encompassing “any distinction, exclusion or preference made on the basis...of sex” capable of invalidating or undermining equal advantage or dealings in work or job.\textsuperscript{88} This makes the subject of sexual harassment relevant in the context of employment discrimination as women are often adversely affected by such sexual misconduct.\textsuperscript{89} State parties


\textsuperscript{80} Ibid.


\textsuperscript{82} Alison M. Konrad & Barbara A. Gutek, “Impact of work experience on attitudes towards sexual harassment” (1986) 31(1) Administrative Science Quarterly, 422-438 at 425.

\textsuperscript{83} S. S. Tangri & S. M. Hayes, “Theories of sexual harassment” In: W O’Donohue (Ed.) Sexual Harassment, Theory, Research, and Treatment (Needham Heights, Ally and Bacon, 1997), 112-128 at 116; Barbara A. Gutek, Sex and the Workplace: The Impact of Sexual Behaviour and Harassment on Women, Men, and Organisations (San Francisco: Jossey-Bass, 1985), 40.

\textsuperscript{84} Adopted and proclaimed by UNGA Resolution 217A (III) of 10 December 1948.

\textsuperscript{85} Ibid., Articles 1, 2, and 7.


\textsuperscript{88} Ibid., Article 1.

\textsuperscript{89} International Women’s Rights Action Watch Asia Pacific “Sexual harassment in the workplace: Opportunities and challenges for legal redress in Asia and the Pacific” IWRAW Asia Pacific Occasional Papers Series No. 7 (IWRAW Asia Pacific 2005), 1 at 28.
are required to design appropriate national measures to tackle occupational discriminations, including harassment.\textsuperscript{90} Similarly, a subsequent adopted ILO Violence and Harassment Convention No. 190 of 2019\textsuperscript{91} interpreted “gender-based violence and harassment” to include “sexual harassment”\textsuperscript{92} and enjoins States to ensure that complainants of sexual intimidations are accorded access to appropriate and effective remedies without victimisation.\textsuperscript{93}

3. Convention on Elimination of All Forms of Discrimination against Women (CEDAW) 1979\textsuperscript{94}

This is perhaps the leading comprehensive bill of rights on women’s rights as it, \textit{inter alia}, brought to global acknowledgement the panoptic description of “discrimination against women.”\textsuperscript{95} CEDAW does not expressly mention sexual harassment or violence against women, but in its General Recommendations No. 19 of 1992, the Committee on Violence against Women\textsuperscript{96} identified gender-based violence as constituting discrimination against women strongly condemned under the Convention.\textsuperscript{97} The General Recommendations defines sexual harassment of women to include: “Such unwelcome sexually determined behaviour as physical contact and advances, sexually coloured remarks, showing pornography and sexual demands, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable ground to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile working environment.”\textsuperscript{98}

Significantly too, the Recommendations admitted that parity in employment can be critically undermined when women experience gender-based violence like work-associated sexual harassment\textsuperscript{99} and accordingly holds State parties accountable for acts of gender-specific violence perpetuated by private individuals where the State fails to act with appropriate diligence to prevent the infringement of such rights or punish the violators.\textsuperscript{100} Member countries are to provide information on sexual harassment and the measures adopted to protect women from workplace sexual abuses, including legal measures like criminal sanctions and civil remedies and compensatory clauses.\textsuperscript{101} Unfortunately, general recommendations of this nature have no obligatory force on endorsing countries\textsuperscript{102} though national courts may find them helpful.

\textsuperscript{90}ILO Discrimination (Employment and Occupation) Convention 1958, Articles 2 and 3.
\textsuperscript{92}Ibid, Article 1. See also an earlier General Surveys on Equality in Employment and Occupation Convention 1996, para. 39.
\textsuperscript{93}Ibid, ILO Discrimination (Employment and Occupation) Convention 1958, Article 10.
\textsuperscript{97}CEDAW, Article 2.
\textsuperscript{98}CEDAW General Recommendation No. 19, Article 11: 18.
\textsuperscript{99}Ibid, Article 11.17.
\textsuperscript{100}Ibid, preamble para. 9.
\textsuperscript{101}Ibid, Article 16: 24(j) & (t).
when dealing with sexual harassment claims that local laws are either unclear or lack provisions as was done by a Nigerian court in Ejieke Maduka v. Microsoft Nigeria Limited & 3 Ors.103

4. **Declaration on the Elimination of Violence against Women Africa 1994**104

In recognition of the vital obligation for a global application to women of the rights and standards regarding equality, security, freedom, integrity and dignity of every human being,105 and for a successful implementation106 of CEDAW, the Declaration categorises sexual harassment and intimidation, whether at place of employment or educational institutions, as a form of violence against women107 and calls on States parties to condemn, prevent and adopt all apposite methods or policies to abolish such unacceptable behaviour.108

5. **Beijing Declaration and Platform for Action 1995**

This soft law identified sexual harassment and intimidation at workplace, educational institutions and other spaces as a form of violence against women that is capable of nullifying the attainment of gender parity and enjoyment of human rights and basic liberties by women. It therefore, calls on relevant stakeholders, including national governments, employers, labour unions and civil societies to ensure that programmes and processes are developed to eradicate sexual harassment in all educational institutions and workplaces.109 This is in addition to the government and other relevant actors employing integrated steps towards the abolition and barring of all types of violence against women by implementing all human rights norms on women’s rights including CEDAW.110

6. **ILO Decent Work for Domestic Workers Convention (No. 189) 2011**111

The Convention sets out work principles for persons involved in domestic work within the scope of employment relationship.112 Each member country is required to adopt steps to ensure that domestic workers are provided with adequate protection from every kind of abuse, harassment and violence113 as well as enjoy fair terms of employment and decent working conditions, including respect for their privacy,114 right to safe and healthy environment.115

7. **Implementation of International Treaties by the Nigerian Government**

Notwithstanding the idealistic clauses embodied in the above discussed global instruments, the rights of female workers against employment-connected sexual harassment will remain a mirage and mere promises on paper until the treaties and other similar ones are domesticated in Nigeria as enjoined under the Constitution of the Federal Republic of Nigeria (CFRN)1999 (as amended).116 As a matter of fact, an attempt was made in 2007 to domesticate the CEDAW but it did not scale through for a number of reasons including the fact that the lawmakers considered its provisions to be too westernised to meet the yearnings and aspirations of the rural African

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103 Suit No. NICN/LA/492/2012, page 1-32 (unreported), decided by the National Industrial Court of Nigeria, Lagos Judicial Division on 19 December, 2013, per Obaseki-Osaghae, J., at 25, 27, and 29.
105 Ibid, preamble para. 1.
106 Ibid, preamble para. 3.
107 Ibid, Article 2(b).
110 Ibid, Chapter IV, paras. D1.124(e) & (f).
111 Ibid, Article 1.
112 Ibid, Article 5.
113 Ibid, Article 6.
116 See CFRN 1999, section 12.
women.¹¹⁷ Thus, the above examined non-domesticated instruments lack binding forces in Nigeria¹¹⁸ and contribute little or no benefit to the lives of Nigerian women.¹¹⁹

b. Some Foreign Domestic Statutes on Sexual Harassment

Some legal frameworks in the United States of America, South Africa and India on sexual harassment would be examined under this heading of the work. While the U.S. is regarded as a developed country, South Africa and India, like Nigeria, are developing countries and members of the Commonwealth of Nations with similar British-oriented legal system.

1. Position in the United States of America

Within the United States, a federal legislation, Title VII of the Civil Rights Act 1964 (as amended), does not specifically bar sexual harassment at the workplace, but it makes it illegal for organisations with 15 or more workers in its employment to discriminate against workers on enumerated bassses, including sex.¹²⁰ However, as earlier pointed out, a federal agency, the Equal Employment Opportunity Commission (EEOC), assigned with the responsibility of controlling work-related discrimination defines “sexual harassment” under the Code of Federal Regulations (CFR) in relation to an infraction of section 703 of Title VII as “unwanted sexual advances, requests for sexual favours, and other verbal or physical conduct of a sexual nature.”¹²¹ In deciding whether the alleged behaviour amounts to sexual harassment, the EEOC is required to evaluate the prevailing situations of every case and not to consider it purely from the legal or technical perspective.¹²² It is incumbent on employers to educate their workers on job-linked sexual harassment as well as implement proactive measures towards barring and eradicating such inappropriate behaviours in the workplace.¹²³

In appropriate cases, employers can be held vicariously liable for workplace sexual harassment perpetrated by co-employees,¹²⁴ non-employees,¹²⁵ and its supervisory officers.¹²⁶ In Williams v. Saxbe,¹²⁷ the court maintained that sexual harassment was a discriminatory practice within the contemplation of Title VII as it constituted a false obstacle to “employment which was placed before one gender and not the other despite the fact that both genders were similarly situated.”¹²⁸ Similarly, in Sandra Bundy v. Delbert Jackson,¹²⁹ the court went beyond classifying sexual harassment as a contravention of Title VII to holding that an employer could

¹¹⁸ Registered Trustees of National Association of Community Health Practitioners of Nigeria & 2 Ors. v. Medical & Health Workers Union of Nigeria Supreme Court Appeal No. SC.201/2005, decided by the Supreme Court on 11 January 2008. See also Medical Health Workers Union of Nig. v. Minister of Minister of Labour & Productivity (2005) 17 NWLR (Pt. 953) 120 at 155-157.
¹²¹ CFR 1604.11(a).
¹²² CFR 1604.11(b).
¹²³ CFR 1604.11(e).
¹²⁴ CFR 1604.11(c).
¹²⁵ CFR 1604.11(d).
¹²⁷ 413 F. Supp. 654.
¹²⁸ Ibid at 657-658. See also Barnes v. Costle 561 F.2d 983 (D. C. Cir. 1977).
be held accountable for the sexual harassment of its supervisors against a female co-worker where it is obvious that the company tolerated the misconduct.\textsuperscript{130} Victims can sustain an action for HWE sexual harassment without necessarily establishing palpable economic loss\textsuperscript{131} or concrete psychological harm.\textsuperscript{132}

Lastly, in \textit{Merit Saving Bank v. Vinson},\textsuperscript{133} a female bank employee brought an action against her employer and her supervisor at the bank because of persistent sexual harassment by her supervisor. The U.S. Supreme Court, due to the state of the evidence before the court, refused to issue an unqualified rule on employer liability in sexual harassment cases by their supervisory officers, but admitted that the mere present of a complaint process in the bank and the bank’s rule against discrimination along with the respondent’s neglect in using the established procedure did not necessarily exonerate the bank from such liability.\textsuperscript{134}

2. \textbf{Position in South Africa}

Sexual harassment in the workplace is regulated by the Code of Good Practice on Handling of Sexual Harassment Cases in the Workplace 2005 (as amended). Section 4 of the Code defines sexual harassment as an unsolicited sexual behaviour that infringes on the liberties of a worker and constitutes an obstacle to fairness in the workplace, taking into considerations certain factors like: (a) if the harassment is established on the forbidden reasons of sex or sex orientation; (b) if the sexual behaviour was unwanted; (c) the character and scope of the alleged sexual behaviour; and (d) the effect of the inappropriate sexual misconduct on the worker. The character of the unwanted sexual conduct may be of a physical nature (e.g. physical contact, touching of the victim, sexual assault, etc.), oral conduct (e.g. unsolicited sex-related jokes, uncouth insinuations or suggestive sexual remarks and sexually unambiguous messages by electronic processes, etc) or unspoken behaviour (e.g. unwanted gestural or lewd exposure or forwarding erotically overt pictures or objects to the victim, etc).\textsuperscript{135} Though the South African Code is wide-ranging as it covers all genders, it is on the other hand mute in respect of holding employers vicariously liable for employment-associated sexual victimisation by their employees if they negligently failed to adopt measures to stop harassment in the workplace.\textsuperscript{136} But in \textit{Media 24 Limited & Anor v. Sonja Grobler},\textsuperscript{137} the Supreme Court of Appeal held in a case of sexual harassment of a female employee by her trainee manager that an employer can be vicariously held liable if it failed to take appropriate steps to prevent sexual harassment of its workers in the workplace.\textsuperscript{138}

\textsuperscript{130} See also \textit{Anderson v. Methodist Evangelical Hospital Inc.} 464 F. 2d 723 at 725 (1972) and \textit{Robinson v. Jacksonville Shipyards Inc & Others}, 760 F. Supp. 1486 (1991), where plaintiff alleged that her employer created and encouraged an erotically hostile and offensive work environment. Her claims were based on various nude, sexually suggestive or submissive pictures of women pasted in the workplace, including open remarks by male co-workers and supervisors that were demeaning to the female gender.

\textsuperscript{131} \textit{Sandra Bundy v. Delbert Jackson, op. cit} at 942.

\textsuperscript{132} \textit{Teresa Harris v. Forklift System Inc} 510 US 17 (1993); 114 S.CT. 367 (1993).

\textsuperscript{133} 477 U. S. 57 (1986).

\textsuperscript{134} \textit{Ibid}, at 69-73. See also \textit{Borlinton Industries Inc v. Ellerth} 524 U. S. 742 (1998).

\textsuperscript{135} Code of Good Practice on Handling of Sexual Harassment Cases in the Workplace 2005 (as amended), section 5(3).


\textsuperscript{137} Case Number 301/04 decided on 1 June 2005. See also \textit{Grobler v. Naspers Bpk} 2004 (4) SA 220 (C).

\textsuperscript{138} \textit{Media 24 Limited & Anor}, ibid. at page 38-39, para. 65; page 40, para. 67 and page 43, para. 71.
3. Position in India

Work-allied sexual harassment is a common concern confronting many workers in India, although it is underreported as a result of multiple reasons. In 2019, National Crime Records Bureau is reported to have recorded about 505 cases of “insult to modesty of women at the work or in office premises,” though there is a possibility that the figure could have been greater as a result underreporting by victims and poor data collection mechanisms by organisations. The need for enactment of specific anti-sexual harassment legislation in India was necessitated by the Supreme Court case of Vishakha & Ors. v. State of Rajasthan & Ors., a case involving the gang-raping of a female government social worker in her place of work in 1992. Prior to the case, sexual harassment cases were prosecuted purely under criminal statutes. To cure the legislative vacuum, the Supreme Court in the instant case relied on some Indian constitutional provisions, international treaties ratified by Indian and its formulated guidelines to hold that sexual harassment at workplace was a human rights infringement. Sixteen years later, the Vishakha Guidelines resulted in the endorsement of the Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act No. 14 of 2013 (PoSH Act 2013) and its attendant Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Rules 2013 (PoSH Rules 2013).

As the long title indicates, the primary objective of the PoSH Act 2013 is to stipulate standards for ensuring the prevention and prohibition of sexual harassment of women at work and to provide redressal to affected women, irrespective of age or employment position. The definition of sexual harassment under the Act covers cases of physical, spoken or unspoken harassing behaviours either expressly or impliedly, including situations such as assuring privileged treatment. In a digital world that we now operate in, Indian courts have maintained that sexual harassment can still, in appropriate cases, be imputed in a “work-from-home” situation or where employees, in the course of their duties, were lodged in distinct rooms in flats or hostels rented by the employer for its employees. Thus, the definition of workplace extends to the office of the worker, including service providers, the places a female worker goes

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140 Ibid.


142 (1997) 6 SCC 241; AIR 1997 Sc 3011, decided by the Supreme Court of India on 13 August 1997.


144 See for example Articles 14, 15, 19, 21, 51 and 253 of the Indian Constitution.

145 For example, the CEDAW, Articles 11(1)(a) & (f) and 24 as well as the Beijing Declaration and Platform for Act 1995.

146 The Vishakha Guidelines was issued by the Supreme Court pursuant to Article 32 of the Indian Constitution.

147 PoSH Act 2013, section 2(a). The affected woman does not necessarily have to be an employee of the company; a customer or client who is harassed at a workplace can seek protection on the statute, See also Nishith Desai Associates, Prevention of Sexual Harassment at the Workplace (POSH): Legal & HR Considerations, (Mumbai: Nishith Desai Associates, December 2020), 1-39 at 1.

148 PoSH Act 2013, section 2(n) and 3(2).

149 Saurabh Kumar Mallick v. Comptroller & Auditor General of India 151 (2008) DLT 261, decided by High Court of Delhi on 9 May 2008. See also Sanjeev Mishra v. The Disciplinary Authority & General Manager, Zonal Head, Bank of Baroda & others, S. B. Civil Writ Petition No. 150/2021, decided by Rajasthan High Court, India on 11 January 2021, retrieved from <https://indiankanoon.org/doc/4965315/> (accessed on 31 January 2022), where it was held in the latter case that in a present digital world, it was possible for a harasser to be in a particular location and act on a digital platform harassing another lady who may be working in a different location and that such would still amount harassment on a workplace.
to in the course of discharging her work responsibilities.\textsuperscript{150} The Act mandates employers, whether in the organised or unorganised sector, having more than 10 employees in its organisation to constitute an internal committee (IC) in all its branches to be headed by a woman at a senior level from among the employees with a minimum of 4 members and where the organisation has less than 10 employees, then, sexual harassment complaints would be channelled to the local committee (LC) created in the relevant district.\textsuperscript{151} Complaints are to be filed within 3 months of it occurrence, subject to extension for another 3 months;\textsuperscript{152} but no format is stated either in the PoSH Act or PoSH Rules in which the complaint should be filed.\textsuperscript{153}

Failure of the employer to implement the recommendations of the committee makes it liable to a penalty of INR 50,000 (US$673.15)\textsuperscript{154} and/or revocation, withdrawal or non-renewal of licence for conducting business.\textsuperscript{155} While section 19 of the Act sets out the obligations of an employer, which includes but not limited to providing a safe working environment for the employee, sections 20 and 21 thereof details the responsibilities of District Officers.\textsuperscript{156} The punishment that may be imposed on harasser under the Act include, inter alia, withholding of promotion, increment in salary, termination of service, community service and payment of compensation to the aggrieved woman.\textsuperscript{157} Courts in India have often exercised restraints in interfering with sanctions imposed by the established statutory committees except the sanctions are unreasonable or disproportionate to the sexual misconduct.\textsuperscript{158} Frivolous, false or malicious complaints attract sanctions under the statute, though inability to prove sexual harassment claims may not necessarily render it a falsehood or a malicious accusation.\textsuperscript{159}

The statute also recognises the need for confidentiality of the identities of the complainant and witnesses that appear before the IC/LC, a breach of which attracts punishment under relevant services rules or a fine INR 5,000 (US$67.31).\textsuperscript{160} Some of the flaws of the statute are that it is not all embracing as it is limited to workplace sexual harassment of women and does not extend to harassment of men, same-sex or transgender workers. Also making the employer the sole appointee of the committee members may open the floodgates to a host of abuses as there is a tendency of the employer appointing his close associates into the committee.

4. Some Nigerian Legislative Frameworks on Sexual Crimes

It is pertinent to point out from onset that Nigeria lacks a clear-cut statute on sexual harassment at workplace including in the Labour Act 2004 and other allied statutes. However, attempt would be made under this section of the work to examine some existing legislative frameworks on sexual-related offences with the intention of discovering their potency or flaws in the ultimate fight against sexual harassment at workplace in Nigeria.

\textsuperscript{150} PoSH Act 2013, section 2(o).
\textsuperscript{151} PoSH Act 2013, sections 4 and 6.
\textsuperscript{152} PoSH Act 2013, section 9. Such complaint could be lodged directly by the victim or her heir, relative, friend, co-employee, psychologist, psychiatrist, or a worker of National or State Commission for Women.
\textsuperscript{153} However, for a suggested format, see Nishith Desai Associates, \textit{Prevention of Sexual Harassment at the Workplace (POSH): Legal & HR Considerations}, December 2020, p. 9.
\textsuperscript{154} Conversion rate as at 9 January 2022. See PoSH Act 2013, section 17; PoSH Rules 2013, rule 12.
\textsuperscript{156} See also PoSH Act 2013, section 11(3) for powers of the IC and LC while inquiring into complaints of workplace sexual harassment.
\textsuperscript{157} PoSH Act 2013, sections 13 and 15.
\textsuperscript{159} PoSH Act 2013, sections 14.
\textsuperscript{160} Conversion rate as at 9 January 2022.
5. **Criminal Law of Lagos State 2011**

Lagos State criminal statute has made a clear provision sanctioning sexual harassment with a 3 year jail punishment for a delinquent.¹⁶¹ The statute frowns at any unwanted sexual advances, demand for sexual favouritism as well as other ocular, oral or corporal behaviour of a sexual character which when succumbed to or rebuffed impliedly or expressly influences an individual’s occupation or academic prospect or unfairly meddles with the individual’s vocation or academic attainment.¹⁶² The flaws with this statute are that the penalty prescribed under the law is not stringent enough to deter wrongdoers against sexual harassment; the law is only applicable to Lagos State and cannot be used in criminal prosecution for sexual harassment in other jurisdictions.


The CRA 2003 is a domesticated form of the Child’s Rights Convention (CRC) and seeks to protect the rights of a Nigerian child.¹⁶³ The Act considers a child to be a person under the age of eighteen years.¹⁶⁴ It is possible therefore, that an employer who sexually harasses a child engaged as an apprentice or domestic servant at her workplace may be prosecuted under applicable clauses of this legislation for related sexual offences.¹⁶⁵ For example, under article 31 of the law, it is illegal to be involved in sexual intimacy with a minor; the fact that the child’s prior endorsement was obtained is irrelevant.¹⁶⁶ However, aside from the fact that the protection under the law is limited to a particular age-bracket, the statute also lacks express provision on sexual harassment and it is not replicated in every State of the Federation.¹⁶⁷ Hence, it may prove an ineffective legislation in curtailing job-related sexual harassment.


This federal statute is not completely mute on ingredients bothering on sexual intimidation as it contains some remarkable clauses that can accommodate criminal sanctions for sexual harassment of a female employee at workplace. The law criminalises inter alia, sexual coercion,¹⁶⁸ stalking or groping,¹⁶⁹ and rape.¹⁷⁰ Destroying, altering entries, mutilating or falsifying sexually overt or suggestive electronic and mobile messages could amount to an offence under section 7 of the Act.¹⁷¹ However, the statute has a restricted jurisdiction as it operates only in the Federal Capital Territory, Abuja and such other States that have

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¹⁶² Ibid, section 264(2)(a)-(c).
¹⁶³ CRA 2003 section 1.
¹⁶⁴ Ibid, sec 277. Compare with sec 29(4)(b) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) which states that the majority age of eighteen years does not apply to any married woman as she is “deemed to be of full age”.
¹⁶⁵ An “employee” has been defined statutorily inter alia, as a person employed by an employer under oral or written contract of employment whether on a continuous, part-time, temporary, apprenticeship or causal basis and includes domestic servant who is not a member of the family of the employer including any person employed in the Federal, State and Local Governments, and any of the government agencies and in the formal and informal sectors of the economy- see Employees’ Compensation Act No. 13 of 2010, Cap. E7A, Vol. 5, Laws of the Federation of Nigeria 2004 (Revised Edition), section 73.
¹⁶⁶ CRA 2003, section 31(3)(a)(b).
¹⁶⁸ The VAPP Act 2015, sections 3 and 5.
¹⁶⁹ Ibid, section 17.
¹⁷⁰ The definition of ‘rape’ under the statute goes beyond the traditional idea of “vagina-penile penetration” to cover the deliberate insertion of any part of the body of the harasser or object into the female reproductive organ, mouth or anus of the victim without her authorization - see Ibid, section 1(1)(2).
domesticated it. Furthermore, apart from providing the definition for the phrase, “sexual harassment”, no express provision is made in the corpus of the statute regarding it. There is therefore, need to enact a more comprehensive legislation that could successfully tackle sexual harassment issues.

b. Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended)

The only express reference to the term, “sexual harassment”, in the corpus of the 1999 CFRN is in relation to conferring exclusive jurisdiction on the National Industrial Court of Nigeria (NICN) to adjudicate on civil matters relating to any dispute arising from “discrimination or sexual harassment at workplace.” The fact that the framers of the Constitution vested authority on the NICN to entertain such matters is a tacit admission of the existence of sexual harassment at workplace and the need to give victims of such abuses the rights to seek for appropriate legal redress in court. Though the CFRN 1999 failed to define what constitutes a “workplace”, the Employees’ Compensation Act 2010 defines the phrase to include any “premises or place a person performs work or needs to be or is required to be in the course of employment.” Workplace therefore, encompasses all places where job-related trade is carried out by reason of work tasks or job relationship, including work-related social functions or interactions through telephones or electronic media.

One of the foremost suits on sexual harassment entertained by the NICN in its jurisdictional capacity as endorsed under the CFRN 1999 was Ejike Maduka v. Microsoft Nigeria Limited & 3 Ors, where the applicant, a staff of the 1st Respondent, alleged that the respondents terminated her employment with the company as a result of her refusal to surrender to the persistent sexual harassment of the 3rd respondent who was her hierarchal superior and the Chief Executive Officer of the 1st respondent in Nigeria. In upholding the applicant’s claims, the court held that the repeated inappropriate sexual behaviour of the 3rd respondent by constantly tickling Ejike on the waist and fondling her body despite her express protests constituted a grave infringement of her rights to dignity of human person and freedom from discrimination protected under sections 34(1) (a) and 42 of the CFRN 1999 and further strengthened by clauses 2 and 5 of the domesticated African Charter on Human and People’s Rights (Ratification and Enforcement) Act 2004.

Again in Abimbola Patricia Yakubu v. Financial Reporting Council of Nigeria & Another, the claimant alleged that the 2nd defendant, who was her direct boss, subjected her to sexual advances and unrelenting seductive compliments and gestures and that her refusal to yield to the sexual intimidation resulted in punitive redeployments including various official journeys around the country with the 2nd defendant. It was also the complaint of the claimant that the 2nd defendant made her work late nights in the office and also visited her in her hotel rooms each time they travelled together on official assignments. She alleged that her respective

172 The VAPP Act, section 27. As at April 2021, about 23 States of the Federation have either passed or domesticated the VAPP Act. See “VAPP tracker” available at <https://www.partnersnigeria.org/vapp-tracker/> (last accessed 23 June 2021).

173 Ibid, section 46.

174 CFRN 1999, section 254C (1)(g).


176 International Labour Organisation/Ministry of Manpower and Transmigration, Guidelines on Sexual Harassment Prevention at the Workplace, (Issued by the Circular Note of the Minister of Manpower and Transmigration No. SE.03/MEN/IV/2011, Indonesia, April 2011), 5.

177 Suit No. NICN/LA/492/2012 (unreported), decided by the National Industrial Court of Nigeria, Lagos Judicial Division on 19 December, 2013, per Obaseki-Osaghae, J.

178 Ibid, at 24-25.

formal reports of the sexual harassment to the Honourable Minister and the Permanent Secretary in charge of her establishment were not investigated. The 1st defendant also neglected to reprimand the 2nd defendant after becoming aware of his inappropriate lustful conducts towards the claimant. Refusal to accede to the persistent sexual demands and overtures culminated in the termination of her employment by the 1st defendant.

The court found in favour of the claimant and awarded inter alia the sum of ₦5,000, 000 (US$12,100) damages against the 2nd defendant for “sexually harassing the claimant, discrimination against her, inhuman and executive recklessness of the 2nd defendant, thereby creating a hostile working environment for the claimant and for the violation of her human dignity and self worth/respect.”\(^{180}\) An order for reinstatement to her position, but not as a personal secretary to the 2nd defendant, was also made by the court. Unfortunately, it was not part of the claims of the claimant for the 1st defendant to be vicariously held liable for the acts of the 2nd defendant; otherwise the court would readily have granted it in the circumstances of the case. The court made this fact known in the following words: “The attitude, the response and decision of the 1st defendant, as it relates to the claimant’s complaint about the sexual harassment by the 2nd defendant, I must say leaves a sour taste in the mouth. I say so in view of the fact that the 1st defendant did actually realized that the 2nd defendant’s actions were unbecoming of an officer of his status, they even recommended a leadership training for him and advised him to watch his relationship with his female staff; they equally advised him to desist from visiting his female staff at night, but failed to reprimand the 2nd defendant. I would have awarded damages against the 1st defendant but could not do so in view of the fact that the claimant did not ask for it”.\(^{181}\)

Given the adversarial or accusatorial legal jurisprudence operated under the Nigerian legal system,\(^{182}\) the reluctance of the court in not holding the 1st defendant vicariously liable can be appreciated as the court is not a “charitable organisation” or a “Father Christmas” to grant unto a party the relief he/ she did not seek for from the court.\(^{183}\) This therefore, calls for litigation lawyers to always have a full grasp of the facts of their clients’ cases and to know the appropriate remedies to seek for on their behalf in the presentation of their cases before the court.

Similarly, in *Stella Ayam Odey v. Ferdinand Daapah & Cuso International*,\(^{184}\) the claimant alleged that the 1st defendant sexually harassed her by slapping her buttocks, embracing her without her consent and always telling her that her voice was “arresting” him. Refusal of the plaintiff to accede to the persistent sexual harassment led to the termination of her employment. The court awarded the sum of ₦16,862,511 (US$40,808) as damages against the defendants. The case of *Dorothy Adeeze Awogu v. TFG Real Estate Ltd*\(^{85}\) was another sexual harassment case instituted at the NICN as a human rights action. The claimant, who was employed as a property consultant by the defendant under the direct supervision of one Gavin Smyth, complained of constant harassment, discrimination and unfair labour practice at workplace by the said direct boss. She alleged that the boss directed her to use her beauty in wooing potential

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\(^{180}\) *Ibid.*

\(^{181}\) *Ibid.*


clients to the company and that when she declined, she was sacked by the defendant. In awarding her the sum of ₦2,500,000 (US $6,050) as damages against the defendants, the court held thus, “the actions of the defendant via Gavin Smyth were not only dehumanising but went against the grains of dignity of labour. The actions of the defendant are sufficient to ground actions in fundamental right infringement as well as in tort. The claimant is no doubt entitled to recompense.”


The rules regulate how civil matters are conducted at the NICN. In a claim of sexual harassment at workplace, the claimant must show in her complaint whether the alleged sexual harassment was physical conduct of a sexual character; a verbal kind of sexual harassment; a non-verbal form of sexual harassment and/or a QPQ harassment. Failure to adduce satisfactory evidence to substantiate the claim may result in its being non-suited or dismissed.

8. Sexual Harassment of Students in Tertiary Educational Institutions (Prohibition Bill) 2020 (Anti-Sexual Harassment Bill) 2019

The bill, which aims at encouraging and upholding moral standards in Nigerian higher educational institutions, recommends a punishment of not exceeding 14 years but not less than 5 years in jail for any educator found culpable. Offences fashioned under the bill are strict liability offences since mutual consent as a vital defence by a harasser in the prosecution of sexual harassment cases has been removed. Neglect or failure by administrative heads of tertiary institutions to address sexual harassment complaints within the stipulated period is penalised under the bill. Similarly, suspension, as a form of punishment, is prescribed for a student whose complaint is found by the Independent Sexual Harassment Prohibition Committee (ISHPC) to be false or malicious. Significantly, the absence of a stipulated limitation period for civil or criminal proceedings under the bill means that an aggrieved student can always institute a civil action or press criminal charges against the perceived harasser even after leaving the institution.

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186 Ibid at para. 74.
188 Ibid, Order 14 rule 2(3).
190 Anti-Sexual Harassment Bill 2020, section 1.
191 Ibid, section 11. For a fuller scope of what constitutes sexual harassment offences created under the proposed Bill, see section 4 thereof. However, in the report of the Senate Committee on Judiciary, Human Rights and Legal Matters, a recommendation was made to include that aside from jail term, a delinquent who violated the provisions of section 4 of the bill could be made to pay a fine of ₦5million (US$12,013) or both fine and imprisonment term. The reason for the suggestion was anchored on the need to give judicial officers the discretionary power of dealing with various situations that may occur as a result of varying degrees of the seriousness of each case of sexual harassment- see page 7 of the said Report, op. cit.
192 Ibid, sections 6 and 7.
193 Ibid, section 20.
194 Ibid, section 21; the Committee is created under section 16 thereof.
While the bill has been acclaimed by some individuals as a milestone law that could assist in curbing the recurring problem of sexual harassment in Nigerian tertiary institutions, and returning academic institutions to the path of moral rectitude, it is submitted that its principal weakness is that the bill is not all embracing and cannot adequately address issues of sexual harassment in the workplace outside its circumscribed tertiary educational institutions’ scope. Moreover, the provision of section 15(1) of the bill which requires that disciplinary measures by institutional ISHPC should be put on hold once a criminal action on the subject matter has been commenced in the court of law should be expunged from the law. The reason is that such provision has the capacity of obstructing the effective performance of the ISHPC in the discharge of its intended statutory functions. Second, cases instituted in the court may take a longer time to be concluded from the court of first instant, and possibly to the appellate jurisdiction of Supreme Court. There is therefore, likelihood that the institution may become disinterested in continuing with the matter after several years of “abandoning” it.

C. Conclusion

The work discussed the pervasiveness and negative impacts of work-related sexual harassment both on female employees and on the employers in Nigeria. It was discovered that Nigeria lacks specific legislative framework to curb the problem of inappropriate sexual advances in the place of employment and that neither the clauses in extant statutes on sexual-related offences nor the non-domesticated global instruments on the subject have effectively addressed the menace. In addition, 70% of women in Nigeria experience sexual harassment. Most of the victims of harassment are reluctant to report to law enforcement, this is also a driving force for sexual harassment to continue. Consequently, at the moment, sexual harassment cases are prosecuted either through the windows provided in other penal statutes and/or as human rights matters. Furthermore, protection for victims of sexual harassment is an integral part of law enforcement, so that victims who experience sexual harassment get legal protection.

Any instrument that regulates the prohibition of sexual harassment in Nigeria must clearly define sexual harassment and must cover all sectors of society and economists and be clear about the consequences that will be accepted for such actions. Rape, discrimination and other harassment will affect the quality of life of Nigerian women in the long term. As the purpose of writing this research, how the implications of law enforcement will affect the quality of public security in Nigeria.

Drawing strength from the global instruments and the legislative examples in other jurisdictions examined in the work, it is suggested that the Nigerian government should put in place stringent legal framework that would outlaw sexual harassment in the workplace and provide adequate remedies for victims. Lack of such framework in Nigeria is a tacit encouragement to employers not to consider cases of sexual harassment in their workplaces as serious crime, human rights abuses and unfair labour practices against victims. Clauses should be inserted in such a law that would make it compulsory for employers to similarly put in place anti-sexual harassment policies in their organisations with inbuilt procedures as was seen under the Indian PoSH Act and its attendant Rules. Like the extant Nigeria’s anti-sexual harassment in tertiary institutions bill, the legislative task could begin at the National Assembly.

However, the judicial activism displayed by the NICN in the above cases by recognising sexual harassment as an infraction of the right of a person in the place of work as well as

widening the scope of the guaranteed rights against subjecting a person to inhuman or degrading treatment and gender discrimination to cover cases of sexual harassment is a salutary development and should be sustained in the absence of express provisions on the subject in Nigerian labour statutes. It must be bore in mind that the intendment of every labour statute is the protection of employees as a result of the unequal power relations between employers and employees.\(^{198}\) When it comes to the issues of sexual harassment at workplace, the perpetrator of the act often employs a privileged position of power to introduce sexual obligations into the workplace thereby adversely changing the working conditions of employees, mostly women, who are compelled by prevailing circumstances to contend with unwanted romantic requests or overtures.\(^{199}\)

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