



Sexual Harassment of Female Employees in the Workplace: Imperative For Stringent Legal And Policy

Enobong Mbang Akpambang

Reader in the Department of Public Law, Ekiti State University, Ado-Ekiti, Nigeria
barrister@yahoo.com

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DOI: https://doi.org/10.25041/plr.v3i2.2754	<p><i>This article presents the challenges associated with work-related sexual harassment of female employees and assess whether binding legislative and policy frameworks exist to address the issue in Nigeria. To achieve this objective, the research employs both doctrinal and comparative approaches, reviewing relevant literature and comparing Nigeria's legal position with that of selected foreign jurisdictions with established anti-harassment legislation. Additionally, theoretical models are utilized to explain potential causes of sexual harassment. The findings indicate that sexual harassment in the workplace has been extensively studied both domestically and internationally, with data revealing its prevalence in both public and private sectors and its significant negative impact on employers as well as the health and psychological well-being of employees. The research highlights that, unlike other countries, Nigeria lacks specific anti-sexual harassment legislation, and existing national legal frameworks addressing sexual offenses are insufficient to effectively combat the problem. Consequently, the article recommends the implementation of stringent legal and policy measures in Nigeria to address the multifaceted issue of workplace sexual harassment, drawing on practices observed in the three foreign jurisdictions examined.</i></p>

A. Introduction

Incidents of job-associated sexual harassment targeting female employees are not a recent phenomenon. This issue dates back to the early days when women first entered the labor market,



driven by the need for financial independence.¹ As employment opportunities were limited, women became vulnerable to sexual advances from male employers, supervisors, and colleagues.² Research indicates that sexual harassment affects employees across all levels, not just those in lower positions³, though women in positions of authority face a heightened risk of harassment. Such incidents are reported in both public⁴ and private sectors.⁵ Estimates suggest that approximately one in two women encounter sexual harassment in the workplace.⁶

In the early 1920s, women working in various roles, including clerical positions and domestic work, frequently reported instances of sexual misconduct.⁷ However, these complaints were often dismissed by their male-dominated employers, who typically advised victims to resign if they could not endure the harassment.

A significant shift occurred in the mid-1970s with the rise of women's emancipation groups advocating for gender equality in all aspects of life. It was during this period that the term "sexual harassment" was coined in 1975 by a group of women at Cornell University in the USA, following a case brought by Carmita Wood, a former employee who sought benefits after leaving her position due to sexual advances from her supervisor.⁸ Research by Mowatt indicates that in America and Europe, around 50% of female workers experience unsolicited sexual advances.⁹ A national survey conducted by the United States Merit Systems Protection Board revealed that 42% of the 10,644 female federal employees surveyed reported overt sexual harassment at work. Financially, the report estimated that the U.S. federal government incurred approximately \$189 million in costs directly or indirectly associated with sexual harassment over the research's two-year period.¹⁰

In Nigeria, there is a significant lack of accurate data on the prevalence of sexual harassment of female workers in the workplace, although its occurrence is undeniable. Existing literature indicates that sexual harassment is prevalent across various sectors, including

¹ Louise F. Fitzgerald, "Sexual harassment: Violence against women in the workplace" (1993) 48(10) *American Psychologist*, 1070-1076, <https://doi.org/10.1037/003-066X.48.10.1070>.

² Onyeka C. Okongwu, "Are laws the appropriate solution: The need to adopt non-policy measures in aid of implementation of sex discrimination laws in Nigeria" (2021) 21(1) *International Journal of Discrimination and the Law*, 26-46 at 31.

³ R. Yousaf and R. Schmiede, "Underrepresentation of women at academic excellence and position of power: Role of harassment and glass ceiling" (2016) 4 *Open Journal of Social Science*, 173-185 at 174.

⁴ U.S. Merit Systems Protection Board, *Sexual Harassment in the Federal Workplace: Is it a Problem?* A report of the U. S. Merit System Protection Board, Office of Merit System Review and Studies, Washington DC, March 1981. See also U.S. Merit Systems Protection Board, *Sexual Harassment of Federal Workers: An Update*. A report of the U. S. Merit System Protection Board, Government Printing Office, Washington DC, 1987.

⁵ Louise F. Fitzgerald et. al., "Antecedents and consequences of sexual harassment in organizations: A test of an integrated model" (1997) 82(4) *Journal of Applied Psychology* 578-589. See also, Louise F. Fitzgerald et. al., "The incidence and dimensions of sexual harassment in academia and the workplace" (1988) 32 *Journal of Vocational Behavior*, 152-175.

⁶ Louise F. Fitzgerald, "Sexual harassment: Violence against women in the workplace," *op.cit.*

⁷ Sascha Cohen, "A brief history of sexual harassment in America before Anita Hill" (11 April 2016) *Time*, retrieved from <<https://time.com/4286575/sexual-harassment-before-anita-hill/>> (last accessed 13 July 2021).

⁸ *Ibid.*

⁹ J. G. Mowatt "Sexual harassment-New remedy for an old wrong" (1986) 7 *Industrial Law Journal* 637; also in (1987) 104 *South African Law Journal* 439.

¹⁰ U. S. Merit Systems Protection Board, *Sexual harassment in the federal workplace: Is it a problem?* *Op. cit.*

academia¹¹, banking¹², the legal profession¹³, healthcare¹⁴, information technology¹⁵, and other areas of Nigerian society, both public and private.¹⁶ The scarcity of precise data is largely due to the underreporting of sexual harassment cases by victims, who may fear stigmatization or retaliation, among other reasons.¹⁷

This issue is further exacerbated by the absence of a comprehensive anti-sexual harassment statute in Nigeria, unlike in countries such as the USA¹⁸, South Africa¹⁹ and India,²⁰ where specific laws address various forms of sexual harassment. Although Nigeria is a signatory to international frameworks that condemn sexual harassment²¹, it lacks an explicit national law prohibiting workplace sexual harassment. The Nigerian federal legislature is currently considering the Sexual Harassment of Students in Tertiary Educational Institutions (Prohibition) Bill 2019.²² However, this bill is narrowly focused on students in higher education institutions and does not address the broader issue of workplace harassment. According to a report by Stand To End Rape (STER) in Nigeria, at least 64% of women have reported experiencing sexual harassment in their workplaces.²³

¹¹ Olaoluwa Samson Agbaje *et. al.*, “Workplace gender-based violence and associated factors among university women in Enugu, south east Nigeria: An institutional-based cross-sectional research” (2021) 21 *BMC Women’s Health*, 124-145. See also O. Adamolekun, “Sexual harassment on campus: A counsellor’s reflection” (1989) 4 *Nigerian Journal of Counselling and Development*, 53-57.

¹² Fred Femi Akinfala & Tunde Komolafe, “Sexual harassment as a predictor of organizational outcome” (2017) 20(1) *Journal for the Psychological Research of Social Issues*, 60-73; M. B. Shukurat, “Sexual harassment in Nigerian deposit money banks: The influence of age, education and job tenure,” (2017) 13(1) *Skyline Business Journal*, 60-68 at 60.

¹³ Adetutu Deborah Aina-Pelemo *et. al.* “Sexual harassment in the workplace: Case research of the Nigerian legal sector” (2019) 86 *Journal of Law, Policy and Globalisation*, 121-137.

¹⁴ O. L. Abodunrin *et. al.* “Prevalence and forms of violence against healthcare professionals in a south-western city, Nigeria” (2014) 2(8) *Sky Journal of Medicine and Medical Sciences*, 067-072. See also Oyedunni Sola Arulogun, Isaac K. Omotosho & Musibau A. Titiloye, “Experience of sexual harassment and coping strategies among students of the school of nursing of a tertiary hospital in southwest Nigeria,” (2013) 5(4) *International Journal of Nursing and Midwifery*, 70-75 at 72-74.

¹⁵ 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, p. 1-16.

¹⁶ Paul A. Ejembi, *et. al.*, “The trajectory of Nigerian law regarding sexual harassment in the workplace,” (2020) 4(2) *African Journal of Law and Human Rights* 1-9 at 1.

¹⁷ Olugbenga Jelil Ladebo, “Sexual harassment in academia in Nigeria: How real?” (2003) 7(1) *African Sociological Review*, 117-130.

¹⁸ See for instance, the USA Civil Rights Act 1964, Title VII; the Code of Federal Regulations (CFR) 1991, chap 29, sec 1604.11.

¹⁹ Code of Good Practice on Handling of Sexual Harassment Cases in the Workplace 2005 (as amended).

²⁰ See 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).

²¹ For a more detailed list of some countries with anti-sexual harassment laws, see R. Husbands, “Sexual harassment law in employment: An international perspective” (1992) 131(6) *International Labor Review* 535-560 at 540, 544.

²² 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.

²³ “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.”

‘What Should Every Nigerian Know About Sexual Harassment in the Workplace?’

This article aims to explore the theoretical foundations of sexual harassment, examine the meaning and potential consequences of workplace harassment in Nigeria, and critically analyze both national and international legal instruments. The goal is to assess their effectiveness in addressing the pervasive issue of sexual exploitation within the Nigerian labor market.

B. Discussion

1. The Definitions of Sexual Harassment

Various definitions of "sexual harassment"²⁴ have been proposed by different writers and organizations, reflecting the broad range of behaviors that may be considered harassment²⁵ and the differing perspectives from which sexual misconduct is viewed.²⁶ For instance, the International Labor Organization (ILO) Guidelines on Sexual Harassment Prevention at the Workplace define sexual harassment as *[A]ny unwanted conduct of a sexual nature, request for sexual favors, verbal or physical conduct or gesture of a sexual nature; or other behavior 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.*²⁷

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

- a. When compliance with sexual demands is a prerequisite for maintaining or obtaining employment, whether this condition is communicated directly or indirectly.
- b. When a supervisor or manager makes personal decisions based on an employee's acquiescence to or rejection of romantic advances.
- c. When the conduct is sufficiently intrusive or severe to unjustly interfere with an individual's job performance or to create a work environment that is intimidating, hostile, abusive, or offensive.²⁸

A review of the International Labor Organization (ILO) guidelines and Equal Employment Opportunity Commission (EEOC) standards indicates that sexual harassment in the workplace encompasses any sexually based conduct that adversely affects a female employee's employment status, safety, work performance, or threatens her livelihood.²⁹

In Nigerian law, there is no explicit statutory definition of sexual harassment in the workplace. However, the Violence Against Persons Prohibition Act 2015 (VAPP Act 2015) provides a general definition. According to the Act, sexual harassment is described as "unwanted conduct of a sexual nature or other conduct based on sex or gender which is

²⁴ L. U. Ogbonnaya *et. al.*, "Prevalence of sexual harassment/victimization of female students in Ebonyi State University Abakaliki, southeast Nigeria" (2011) 23(1&2) *Journal of Community Medicine and Primary Health Care* 55-67 at 56.

²⁵ Friday Raphael Egbegi, Benjamin Okorie Ajah & Onyejebu D. Chukwuemeka, "Eradicating sexual assault in Nigerian university system: The role of investigative journalism" (2019) 1(1) *Annals of Journalism and Mass Communication*, 1-6 at 2.

²⁶ Olugbenga Jelil Ladebo, "Sexual harassment in academia in Nigeria: How real?" (2003) 7(1) *African Sociological Review*, 117-130 at 122.

²⁷ International Labor Organization/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.

²⁸ U. S. Equal Employment Opportunity Commission, "Harassment", retrieved from <<https://www.eeoc.gov/harassment>> (accessed on 27 January 2022). See also European Commission's Recommendation on the protection of the dignity of women and men at work; *Official Journal of the European Communities*, No. L 49, 24 February 1992, Article 1. Adopted on 27 November 1991.

²⁹ Susan Sheffey, "Perceptions of sexual harassment in the workplace." Master's Thesis, Faculty of the Graduate School, Loyola University of Chicago, 1989, p. 6. Retrieved from <https://ecommons.luc.edu/luc_theses/3638> (last accessed on 24 January 2022).

persistent or serious and demeans, humiliates, or creates a hostile or intimidating environment. This may include physical, verbal, or non-verbal conduct."

Aina-Pelemo et al.³⁰ have identified several prevalent forms of job-related sexual harassment in Nigeria, including but not limited to unwanted romantic advances³¹, inappropriate touching or fondling of sensitive body parts, sexual gestures, remarks, intimidation, and rape.³² Additionally, the Obafemi Awolowo University Anti-Sexual Harassment Policy 2021 outlines other forms of sexual harassment within the university context, such as unsolicited gifts in exchange for sexual favors, persistent sexually explicit jokes, and the distribution or display of sexually suggestive materials lacking educational relevance.³³

To address the definitional challenges associated with sexual harassment, Fitzgerald et al. developed the Sexual Experiences Questionnaire (SEQ), which categorizes sexual harassment of female workers into three distinct behavioral dimensions: (1) gender harassment, which involves spoken or unspoken insulting conduct that conveys offensive, intimidating, or humiliating attitudes toward women; (2) unsolicited romantic attention, encompassing oral or non-oral behaviors that are unwelcome, unreciprocated, and insulting, such as unwanted touching or grabbing; and (3) sexual coercion, which includes behaviors such as threats, bribes, or making employment-related rewards contingent upon the female recipient's cooperation. The SEQ aims to promote uniformity in the conceptualization and measurement of sexual harassment.³⁴

In contrast, Mackinnon classifies inappropriate sexual behaviors into *quid pro quo* (QPQ) and hostile work environment (HWE) categories.³⁵ This classification has been widely acknowledged³⁶ and judicially recognized.³⁷ *Quid pro quo* harassment is more readily identifiable, occurring when an individual in a position of authority demands sexual favors in exchange for job benefits. Hostile work environment harassment, on the other hand, is less overt, involving unsolicited verbal or non-verbal sexual conduct, such as sexual jokes, touching, and electronically transmitted messages. These two forms of harassment may overlap or occur simultaneously.³⁸

In Nigeria, *quid pro quo* harassment is particularly prevalent, where individuals in authoritative positions may offer job benefits in exchange for sexual favors. Legally, *quid pro quo* is akin to 'trafficking,' representing a form of harassment involving an employee and a superior who can provide or withhold job benefits.³⁹ This form of harassment not only degrades the work environment but also undermines its professionalism and safety.⁴⁰

³⁰ Adetutu Deborah Aina-Pelemo, M. C. Mehanathan & Pradeep Kulshrestha "Sexual harassment at workplace: Judicial impact in Nigeria and India" (2018) 4(2) *Indian Journal of Law and Human Behavior*, 208-221.

³¹ VAPP Act 2015, section 46.

³² *Ibid* at 209. See also Tinuke Moradeke Fapohunda, "Gender differences in perceptions and experiences of sexual harassment in the workplace" (2014) 1(2) *Global Journal of Management and Business*, 033-044.

³³ Obafemi Awolowo University Anti-Sexual Harassment Policy 2021, at p.3.

³⁴ Louise F Fitzgerald, Michele J. Gelfand & Fritz Drasgow, "Measuring sexual harassment: Theoretical and psychometric advances" (1995) 17(4) *Basic and Applied Social Psychology*, 425-445.

³⁵ Catharine A. MacKinnon, *Sexual Harassment of Working Women: A Case of Sex Discrimination*, Yale University Press, 1979, 1 at 10; N. Taub, "Reviewed work(s): Sexual harassment of working women: A case of sex discrimination by Catherine A. MacKinnon" (1980) 80(8) *Columbia Law Review*, 1686-1695 at 1686.

³⁶ P. J. Altman & L Lavelle, "Insurance against sexual harassment and other employee related claims" (1998) 50(10) *Association Management*, 62-68 at 65; Jimmy Tindigarukayo, "Perceptions and reflections on sexual harassment in Jamaica" (2006) 7(4) *Journal of International Women's Studies*, 90-110 at 91.

³⁷ *Meritor Savings Bank v. Vinson* 477 U.S. 57 (1986) at 62, 65.

³⁸ Arthur F. Silbergeld & Stephanie Joiner, "Comments that create hostile environment may be unlawful discrimination" (1999) 25(4) *Employment Relations Today*, 113-120 at 113.

³⁹ Akeem Olalekan Ayub and K. Adegboyega, 'Implication of Workplace Sexual Harassment of the Working', *International Journal of Development and Management Review*, 15.1 (2020), 195-211.

⁴⁰ John D. Canoni, "Sexual harassment: The new liability" (1999) 46(1) *Risk Management*, 10 at 13.

2. Theoretical Frameworks for Work-Linked Sexual Harassment

To effectively address the contributory factors behind sexual harassment in the workplace, this section will explore several theoretical perspectives that may offer insights into the issue. Specifically, it will examine four key theoretical explanations: socio-cultural theory, biological theory, organizational theory, and sex-role spillover theory.

a. Socio-Cultural Theory (SCT)

The theory emphasizes the interplay between human development and the cultural values or societal beliefs within which individuals operate. It posits that the socio-cultural norms of a society significantly influence the individuals residing in it.⁴¹ In Nigerian society, as in many other African societies, a deeply entrenched patriarchal socio-cultural norm prevails.⁴² Within this context, women are often perceived as inferior to men. When extending this theory to the issue of sexual harassment in the workplace, it suggests that such harassment reflects a pervasive ideology of male dominance over women. The theory argues that this dynamic of dominance and subservience between the sexes is reinforced by prevailing socio-cultural norms.⁴³ Consequently, sexual harassment in the workplace can be viewed as a manifestation of gender-based power imbalances, where men often hold greater decision-making authority than women.⁴⁴ Such conventional beliefs render women particularly vulnerable to sexual abuse in occupational settings.⁴⁵

Nevertheless, it is my contention that the socio-cultural theory⁴⁶, which implicitly condones workplace sexual harassment against female employees, is fundamentally at odds with the principle of gender parity. This principle is enshrined 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 various regional and international human and women's rights instruments to which Nigeria is a signatory.

b. Natural Biological Theory (NBT)

The theory suggests that sexual harassment is not inherently a manifestation of chauvinistic or prejudiced behavior but rather a reflection of natural attraction between individuals of the opposite sex. According to this perspective, men are believed to possess a stronger sexual drive than women, which leads to sexually aggressive behavior in both workplace and non-workplace settings.⁴⁷ A second aspect of this theoretical explanation posits that individuals may find each other attractive and pursue emotional connections without intending to harass, particularly women. This viewpoint implies that the issue of unequal sexual drive is not a factor.⁴⁸

⁴¹ See ER services, "Vygotsky's sociocultural theory of cognitive development", retrieved from <<https://courses.lumenlearning.com/suny-lifespandevelopment/chapter/vygotskys-sociocultural-theory-of-cognitive-development/>> (accessed on 25 January 2022).

⁴² G. A. Makama, "Patriarchy and gender inequality in Nigeria: The way forward" (2013) 9(17) *European Scientific Journal*, 115-144 at 116-118.

⁴³ L. Farley Sexual shakedown: *The sexual harassment of women on the job* (New York: McGraw-Hill, 1978), 9-18; J. Cagin & A. Fish, "The environmental factors that cause sexual harassment", retrieved from <https://espace.library.uq.edu.au/view/UQ:4837543/UQ4837543_OA.pdf> (accessed on 23 January 2022).

⁴⁴ See World Health Organization "Promoting gender equality to prevent violence against women", available at <https://www.who.int/violence_injury_prevention/violence/gender.pdf> (last accessed on 25 October 2021).

⁴⁵ *Ibid.*

⁴⁶ A. L. Ilika, "Women's perception of partner violence in a rural Igbo community" (2005) 9 *African Journal of Reproductive Health*, 77-88. See also A. Mitra and P. Singh, "Human capital attainment and gender empowerment: The Kerala paradox" (2007) 88 *Social Science Quarterly*, 1227-1242.

⁴⁷ S. S. Tangri, M. R. Burt & L. B. Johnson, "Sexual harassment at work: Three explanatory models" (1982) 38(4) *Journal of Social Issues*, 33-54.

⁴⁸ Susan Sheffey, "Perceptions of sexual harassment in the workplace." Master's Thesis, Faculty of the Graduate School, Loyola University, Chicago, 1989, p.12, retrieved from <https://ecommons.luc.edu/luc_theses/3638> (accessed on 24 January 2022).

However, the researcher contends that if sexual behavior arises from mutual attraction between individuals, it should not be used as a tool of coercion or oppression, particularly if one party, typically the woman, later wishes to withdraw from the romantic relationship. The principle of mutual consent and respect should prevail, and sexual advances should not persist as a form of force or manipulation when one party is no longer interested.

c. Organizational Theory (OT) and the Effect of Sexual Harassment on Victims and Organizations

In response to the limitations of the previously discussed socio-cultural theory (SCT), new behavioral theory (NBT), and occupational theory (OT)⁴⁹, Gutek and Morasch introduced the Sex-Role Spillover Theory (SRST).⁵⁰ Burgess and Borgida have also emphasized that SRST may provide the most comprehensive explanation for the occurrence of sexual harassment in workplace settings.⁵¹

SRST posits that sexual harassment in the workplace is frequently triggered by "sex-role spillover."⁵² This concept suggests that when a female worker is identified primarily by her gender role rather than her professional responsibilities, she is perceived predominantly as a woman rather than as an employee of the organization. Consequently, this perspective creates an eroticized workplace environment where female employees are viewed as potential romantic partners by male employers or colleagues.⁵³ This view is supported by the legal argument presented by the defense counsel in the Nigerian case of *Stella Ayam Odey v. Ferdinand Daapah & Cuso International*,⁵⁴ which asserted that it is a common occurrence for men to make sexual advances towards women, even in office settings.⁵⁵ In such contexts, the behavior of female employees is often misinterpreted as sexual and amorous, and such advances are considered appropriate or even welcomed.⁵⁶ Thus, when a job is perceived as inherently suited to either men or women, the sex-role spillover becomes integrated into the job-related role⁵⁷, making sex identity more prominent than job identity.⁵⁸

⁴⁹ S. S. Tangri, M. R. Burt & L. B. Johnson, "Sexual harassment at work: Three explanatory models" (1982) 38(4) *Journal of Social Issues*, 33-54.

⁵⁰ Barbara A. Gutek & B. Morasch, "Sex-ratios, sex role spill over, and sexual harassment of women at work" (1982) 38(4) *Journal of Social Issues*, 55-74. See also Barbara A. Gutek and Aaron Groff Cohen, "Sex ratios, sex role spillover, and sex at work: A comparison of men and women experiences" (1987) 40(2) *Human Relations*, 97-115.

⁵¹ Diana Burgess & Eugene Borgida, "Refining sex-role spillover theory: The role of gender subtypes and harasser attributions" (1997) 15(4) *Social Cognition*, 291-312 at 292.

⁵² Barbara A. Gutek, *Sex and the Workplace: The Impact of Sexual Behavior and Harassment on Women, Men, and Organizations* op. cit, at 15; Meredith A. Newman, Robert A. Jackson & Douglas D. Baker, "Sexual harassment in the federal workplace" (2003) 63(4) *Public Administration Review*, 472-483, <https://doi.org/10.1111/1540-6210.00309>. See also Robert A. Jackson & Meredith A. Newman, "Sexual harassment in the federal workplace revisited: Influence on sexual harassment by gender," (2004) 64(6) *Public Administration Review*, 705-717 at 708, <https://doi.org/10.1111/j.1540-6210.2004.00417.x>.

⁵³ Vicki Schultz, "Reconceptualizing sexual harassment" (1998) 107(6) *Yale Law Journal*, 1683-1805 at 1761. See also Vicki Schultz, "Reconceptualizing sexual harassment, again." (2018) 128 *Yale Law Journal Forum*, 22-66. Retrieved from <<https://www.yalelawjournal.org/forum/reconctualizing-sexual-harassment-again>> (last accessed on 8 February 2022).

⁵⁴ Suit No. NICN/CA/03/2016 (unreported) decided by the National Industrial Court of Nigeria, Calabar Division on 13 January 2017, per Hon. Justice Agbakoba. Retrieved from <<https://nicnadr.gov.ng/nicnweb/details.php?od=6262&p=STELLA%20AYAM%20ODEY%20VS%20FERDINAND%20DAAPAH%20ANOR>>. (last accessed on 25 October 2021).

⁵⁵ *Ibid*.

⁵⁶ Diana Burgess & Eugene Borgida, op. cit., at 292. See also K. Deaux, "How basic can you be? The evolution of research on gender stereotypes" (1995) 51 *Journal of Social Issues*, 11-20.

⁵⁷ 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.

⁵⁸ 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,

Sexual harassment in the workplace has adverse consequences for both the affected individuals and the organization as a whole. Empirical research highlights that sexual harassment has significant psychological and health impacts on female workers who experience it.⁵⁹ Studies have shown that female employees who encounter harassment report diminished job satisfaction, dissatisfaction with supervision, strained relationships with colleagues, and a lack of commitment to their organization. These psychological effects often lead to increased absenteeism⁶⁰, higher turnover intentions⁶¹, and a greater preoccupation with whether to leave their jobs.⁶² These negative experiences are linked to withdrawal from work and a decline in job performance, as work attitudes are closely tied to conventional job behaviors.⁶³

Further research indicates that women who face harassment at work frequently experience depression, symptoms of post-traumatic stress disorder (PTSD)⁶⁴, and chronic emotional issues.⁶⁵ Victims of sexual harassment also suffer from reduced self-confidence and poor self-image.⁶⁶ Comparatively, the impact of sexual harassment is found to be more detrimental than other typical job stressors, compelling victims to employ various coping strategies to either prevent further incidents or manage their survival in hostile work environments.⁶⁷

Moreover, Richard A. Aborisade's research underscores additional challenges faced by victims, particularly in Nigerian contexts. Many female students, for instance, encounter significant barriers in reporting rape due to stigma (18,78,26%).⁶⁸ As illustrated by the case of Felicia, a student at TASUED, victims often face social ostracism and discomfort from their communities. Felicia recounts her experience, noting that after being raped, she felt shunned by her neighbors and eventually had to relocate due to the pervasive stigma and judgment she faced.

Sexual harassment can profoundly undermine the integrity of the workplace, creating an environment perceived as unsafe, hostile, and toxic. This negative perception can disrupt team cohesion and reduce productivity, as victims and witnesses may feel pressured to leave their

Sex and the Workplace: The Impact of Sexual Behavior and Harassment on Women, Men, and Organizations (San Francisco: Jossey-Bass, 1985), 40.

⁵⁹ P. C. Morrow, J. C. McElroy and C. M. Phillips, "Sexual harassment behaviors and work related perceptions and attitudes" (1994) 45 *Journal of Vocational Behavior*, 295-309, <<https://doi.org/10.1006/jvbe.1994.1037>>

⁶⁰ Kimberly T. Schneider, Suzanne Swan and Louise F Fitzgerald, "Job-related and psychological effects of sexual harassment in the workplace: Empirical evidence from two organizations" (1997) 82(3) *Journal of Applied Psychology*, 401-415; see also U. S. Merit Systems Protection Board, *Sexual harassment in the federal workplace: Is it a problem?* A report of the U. S. Merit Systems Protection Board, Washington, D.C., March 1981, *op. cit.*.

⁶¹ O. E. Amah, "Job satisfaction and turnover intention relationship: The moderating effect of job centrality and life satisfaction" (2009) 17(1) *Research and Practice in Human Resource Management*, 24-35; Anne M. O'Leary-Kelly *et. al.*, "Sexual harassment at work a decade (plus) of progress" (2009) 35(3) *Journal of Management*, 503-536.

⁶² Louise F. Fitzgerald *et. al.*, "Antecedents and consequences of sexual harassment in organizations: A test of an integrated model" (1997) 82(4) *Journal of Applied Psychology*, 578-589 at 586.

⁶³ Kathy A. Hanisch and Charles L. Hulin, "General attitudes and organizational withdrawal: An evaluation of a casual model" (1991) 39(1) *Journal of Vocational Behavior*, 110-128.

⁶⁴ Bonnie S. Dansky and D. G. Kilpatrick, "Effects of sexual harassment." In W. T. O'Donohue (Ed.) *Sexual Harassment: Theory, Research, and Treatment* (Needham Heights, MA: Allyn & Bacon, 1997), 152-174.

⁶⁵ *Grobler v. Naspers Bpk* 2004 (4) SA 220 (C); (2004) 25 ILJ 439 (C), delivered on 19 March 2004.

⁶⁶ Mara Gordon, "Sexual assault and harassment may have lasting health repercussion for women." Retrieved from <<https://www.npr.org/sections/health-shots/2018/10/03/653797374/sexual-assault-and-harassment-may-have-lasting-health-repercussions-for-women>> (last accessed 17 April 2021).

⁶⁷ Kimberly T. Schneider, Suzanne Swan and Louise F. Fitzgerald, "Job-related and psychological effects of sexual harassment in the workplace: Empirical evidence from two organizations" (1997) 82(3) *Journal of Applied Psychology*, 401-415 at 404; Fred Femi Akinfala & Tunde Komolafe, "Sexual harassment as a predictor of organizational outcomes" (2017) 20(1) *African Journal for Psychological Studies of Social Issues*, 60-73.

⁶⁸ Richard A Aborisade, 'Barriers to Rape Reporting for Nigerian Women: The Case of Female University Students', *International Journal of Criminology and Sociological Theory*, 7.2 (2014), 1-14. 6

jobs, leading to high employee turnover.⁶⁹ Financially, the impact is significant; for example, a Deloitte research estimated that sexual harassment resulted in approximately \$2.62 billion in productivity losses over a two-year period (2018-2019) in Australia.⁷⁰ Additionally, litigation stemming from harassment can lead to substantial legal and monetary costs for employers.⁷¹ For instance, a Nigerian court recently awarded N16,862,511 (approximately USD 40,808) in special damages against an employer for unlawfully terminating a female employee who refused to accept inappropriate romantic advances from her supervisor⁷².

d. Sex-Role Spillover Theory (SRST)

Due to the limitations of the previously discussed Socio-Cultural Theory (SCT), New Behavioral Theory (NBT), and Occupational Theory (OT)⁷³, Gutek and Morasch introduced the Sex-Role Spillover Theory (SRST).⁷⁴ Burgess and Borgida have emphasized that SRST may offer the most substantial explanation for the occurrence of sexual harassment in the workplace. SRST posits that sexual harassment is frequently triggered by "sex-role spillover," which refers to the introduction of gender-based roles into the work environment.⁷⁵ According to this theory, when a female worker is identified more by her gender role than her professional responsibilities, she is perceived primarily as a woman rather than as an employee.⁷⁶ This perception leads to an eroticized workplace where female employees are viewed as potential romantic partners by male colleagues or supervisors.⁷⁷ This view is supported by the legal argument in the Nigerian case *Stella Ayam Odey v. Ferdinand Daapah & Cuso International*⁷⁸, where it was argued that it is a common occurrence for men to make sexual advances towards

⁶⁹ Leora N Rosen & Lee Martin, "Incidence and perceptions of sexual harassment among male and female U.S. army soldiers" (1998) 10(4) *Military Psychology*, 239-257; Carra S. Sims, Fritz Drasgow & Louise F. Fitzgerald "The effects of sexual harassment on turnover in the military: Time-dependent modelling" (2005) 90(6) *Journal of Applied Psychology*, 1141-1152.

⁷⁰ Deloitte Access Economics *The economic costs of sexual harassment in the workplace: Final Report* (Deloitte Access Economics, March 2019) 1 at 5.

⁷¹ "Effects of sexual harassment in the workplace", retrieved from <<https://www.360training.com/blog/effects-of-workplace-sexual-harassment>> (accessed on 28 January 2022).

⁷² *Stella Ayam Odey v. Ferdinand Daapah & Cuso International* Suit No. NICN/CA/03/2016 (unreported) decided by the National Industrial Court of Nigeria, Calabar Division on 13 January 2017, per Hon. Justice E. N. N. Agbakoba. Retrieved from <<https://nicnadr.gov.ng/nicnweb/details.php?od=6262&p=STELLA%20AYAM%20ODEY%20VS%20FERDINAND%20DAAPAH%20ANOR>>, (last accessed on 25 October 2021).

⁷³ S. S. Tangri, M. R. Burt & L. B. Johnson, "Sexual harassment at work: Three explanatory models" (1982) 38(4) *Journal of Social Issues*, 33-54.

⁷⁴ Barbara A. Gutek & B. Morasch, "Sex-ratios, sex role spill over, and sexual harassment of women at work" (1982) 38(4) *Journal of Social Issues*, 55-74. See also Barbara A. Gutek and Aaron Groff Cohen, "Sex ratios, sex role spillover, and sex at work: A comparison of men and women experiences" (1987) 40(2) *Human Relations*, 97-115.

⁷⁵ Diana Burgess & Eugene Borgida, "Refining sex-role spillover theory: The role of gender subtypes and harasser attributions" (1997) 15(4) *Social Cognition*, 291-312 at 292.

⁷⁶ Barbara A. Gutek, *Sex and the Workplace: The Impact of Sexual Behavior and Harassment on Women, Men, and Organizations* op. cit, at 15; Meredith A. Newman, Robert A. Jackson & Douglas D. Baker, "Sexual harassment in the federal workplace" (2003) 63(4) *Public Administration Review*, 472-483, <https://doi.org/10.1111/1540-6210.00309>. See also Robert A. Jackson & Meredith A. Newman, "Sexual harassment in the federal workplace revisited: Influence on sexual harassment by gender," (2004) 64(6) *Public Administration Review*, 705-717 at 708, <https://doi.org/10.1111/j.1540-6210.2004.00417.x>.

⁷⁷ Vicki Schultz, "Reconceptualizing sexual harassment" (1998) 107(6) *Yale Law Journal*, 1683-1805 at 1761. See also Vicki Schultz, "Reconceptualizing sexual harassment, again." (2018) 128 *Yale Law Journal Forum*, 22-66. Retrieved from <<https://www.yalelawjournal.org/forum/reconctualizing-sexual-harassment-again>> (last accessed on 8 February 2022).

⁷⁸ Suit No. NICN/CA/03/2016 (unreported) decided by the National Industrial Court of Nigeria, Calabar Division on 13 January 2017, per Hon. Justice Agbakoba. Retrieved from <<https://nicnadr.gov.ng/nicnweb/details.php?od=6262&p=STELLA%20AYAM%20ODEY%20VS%20FERDINAND%20DAAPAH%20ANOR>>.(last accessed on 25 October 2021).

women even in the office.⁷⁹ In such contexts, female employees' behaviors are often misinterpreted as sexual advances, and these advances are considered appropriate or even expected.⁸⁰ Thus, when a job is viewed as being suited to either men or women, sex-role spillover integrates gender identity into the job-related role⁸¹, making sex identity more prominent than job identity.⁸²

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

a. International Instruments

1) United Nations' Universal Declaration on Human Rights (UDHR) 1948⁸³

The Universal Declaration of Human Rights (UDHR), a seminal human rights instrument, does not explicitly mention sexual harassment in the workplace. However, it upholds the principles of equality in dignity, rights, freedoms, and protection against discrimination, including discrimination based on sex.⁸⁴ Although Nigeria was not an independent country at the time of the UDHR's adoption, it has since signed and ratified several treaties and global instruments that are grounded in the UDHR's principles. Furthermore, two subsequent human rights covenants also prohibit discriminatory practices in broad terms.⁸⁵

2) ILO Discrimination (Employment and Occupation) Convention 1958⁸⁶

The Convention does not explicitly address sexual harassment but defines "discrimination" as encompassing any distinction, exclusion, or preference based on sex that can invalidate or undermine equal opportunity or treatment in employment.⁸⁷ This broad definition makes the issue of sexual harassment relevant within the context of employment discrimination, as women are frequently adversely affected by such misconduct.⁸⁸ State parties are thus obligated to implement national measures to address occupational discrimination, including harassment. Additionally, the International Labor Organization's Violence and Harassment Convention No. 190, adopted in 2019⁸⁹, explicitly includes "sexual harassment" under the broader category of "gender-based violence and harassment".⁹⁰ The Convention mandates that States ensure

⁷⁹ *Ibid.*

⁸⁰ Diana Burgess & Eugene Borgida, *op. cit.*, at 292. See also K. Deaux, "How basic can you be? The evolution of research on gender stereotypes" (1995) 51 *Journal of Social Issues*, 11-20.

⁸¹ 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.

⁸² 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 Behavior and Harassment on Women, Men, and Organizations* (San Francisco: Jossey-Bass, 1985), 40.

⁸³ Adopted and proclaimed by UNGA Resolution 217A (III) of 10 December 1948.

⁸⁴ *Ibid.*, Articles 1, 2, and 7.

⁸⁵ See International Covenant on Economic, Social and Cultural Rights (adopted on 16 December 1966 by UNGA Resolution 2200 A (XXI); entered into force on 3 January 1976), Articles 2(2) & 3; International Covenant on Civil and Political Rights (adopted by UNGA on 19 December 1966; entered into force on 23 March 1976), Articles 2(1), 3 & 26.

⁸⁶ Adopted by the General Conference of the International Labor Organization on 25 June 1958 as Convention No. 111 of 1958; entered into force on 15 June 1960. Nigeria ratified the Convention on 2 October 2002.

⁸⁷ *Ibid.*, Article 1.

⁸⁸ ILO Discrimination (Employment and Occupation) Convention 1958, Articles 2 and 3.

⁸⁹ Adopted at Geneva during the 108 ILC session on 21 June 2019; entry into force 25 June 2021. Text copy available at

<https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C190> (last accessed on 27 August 2021).

⁹⁰ *Ibid.*, Article 1. See also an earlier General Surveys on Equality in Employment and Occupation Convention 1996, para. 39.

complainants of sexual harassment have access to appropriate and effective remedies without facing victimization.⁹¹

3) Convention on Elimination of All Forms of Discrimination against Women (CEDAW) 1979⁹²

This is perhaps the leading comprehensive bill of rights on women's rights as it, *inter alia*, brought to global acknowledgement the panoptic description of "discrimination against women."⁹³ 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 Women⁹⁴ identified gender-based violence as constituting discrimination against women strongly condemned under the Convention.⁹⁵ The General Recommendations defines sexual harassment of women to include: "*Such unwelcome sexually determined behavior 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*".⁹⁶

Significantly too, the Recommendations admitted that parity in employment can be critically undermined when women experience gender-based violence like work-associated sexual harassment⁹⁷ 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.⁹⁸ 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.⁹⁹ Unfortunately, general recommendations of this nature have no obligatory force on endorsing countries¹⁰⁰ though national courts may find them helpful when dealing with sexual harassment claims that local laws are either unclear or lack provisions as was done by a Nigerian court in *Ejike Maduka v. Microsoft Nigeria Limited & 3 Ors.*¹⁰¹

4) Declaration on the Elimination of Violence against Women Africa 1994¹⁰²

In acknowledgment of the essential obligation to uphold global standards of equality, security, freedom, integrity, and dignity for all individuals¹⁰³, the Declaration emphasizes the need for effective implementation of CEDAW.¹⁰⁴ It categorizes sexual harassment and intimidation, whether occurring in workplaces or educational institutions, as forms of violence

⁹¹ *Ibid*, ILO Discrimination (Employment and Occupation) Convention 1958, Article 10.

⁹² Adopted by the United Nations General Assembly on 18 December 1979 and entered into force on 3 September 1989. Nigeria signed the Convention on 23 April 1984; ratified the Convention on 13 June 1985.

⁹³ Jane Aeberhard-Hodges, "Sexual harassment in employment: Recent judicial and arbitral trends" (1996) 135(5) *International Labor Review*, 499-533 at 505.

⁹⁴ United Nations Report of the Committee on the Elimination of Discrimination against Women: Eleventh Session, Instrument No. A/47/38, New York, 1992, retrieved from <<https://www.refworld.org/docid/52d920c54.html>> (last accessed on 26 August 2021).

⁹⁵ CEDAW, Article 2.

⁹⁶ CEDAW General Recommendation No. 19, Article 11: 18.

⁹⁷ *Ibid*, Article 11.17.

⁹⁸ *Ibid*, preamble para. 9.

⁹⁹ *Ibid*, Article 16: 24(j) & (t).

¹⁰⁰ Jane Aeberhard-Hodges, "Sexual harassment in employment: Recent judicial and arbitral trends" (1996) 135(5) *International Labor Review*, 499-533 at 505

¹⁰¹ 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.

¹⁰² A/RES/48/104; adopted by the UNGA on the report of the Third Committee (A/48/6291) on 23 February 1994.

¹⁰³ *Ibid*, preamble para. 1.

¹⁰⁴ *Ibid*, preamble para. 3.

against women.¹⁰⁵ The Declaration calls on State parties to unequivocally condemn, prevent, and adopt all necessary measures or policies to eradicate such unacceptable behaviors.¹⁰⁶

5) Beijing Declaration and Platform for Action 1995

This soft law identifies sexual harassment and intimidation in workplaces, educational institutions, and other settings as forms of violence against women that undermine the achievement of gender parity and the enjoyment of human rights and basic liberties by women. It calls upon relevant stakeholders—including national governments, employers, labor unions, and civil societies—to develop and implement programs and processes aimed at eradicating sexual harassment in all educational and workplace environments.¹⁰⁷ Additionally, it urges governments and other pertinent actors to adopt integrated measures to eliminate all forms of violence against women by adhering to human rights norms related to women's rights, including the provisions of CEDAW.¹⁰⁸

6) ILO Decent Work for Domestic Workers Convention (No. 189) 2011¹⁰⁹

The Convention establishes work principles for individuals engaged in domestic work within the framework of the employment relationship.¹¹⁰ It mandates that each member country implement measures to ensure that domestic workers are protected from all forms of abuse, harassment, and violence.¹¹¹ Additionally, it requires that domestic workers are provided with fair terms of employment and decent working conditions, including respect for their privacy¹¹² and the right to a safe and healthy work environment.¹¹³

7) Implementation of International Treaties by the Nigerian Government

Despite the idealistic provisions outlined in the aforementioned global instruments, the protection of female workers against employment-related sexual harassment remains largely theoretical and ineffectual until these treaties are domesticated in Nigeria, as required by the Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended).¹¹⁴ In fact, an attempt to domesticate CEDAW in 2007 failed, partly because lawmakers deemed its provisions too Westernized to address the needs and aspirations of rural African women.¹¹⁵ Consequently, these non-domesticated instruments lack binding force in Nigeria¹¹⁶ and offer minimal practical benefit to Nigerian women.¹¹⁷

b. Foreign Domestic Statutes on Sexual Harassment

¹⁰⁵ *Ibid*, Article 2(b).

¹⁰⁶ *Ibid*, Article 4.

¹⁰⁷ Beijing Declaration and Platform for Action 1995, Chapter IV, paras. D. 112-113 and para.D1.126(a).

¹⁰⁸ *Ibid*, Chapter IV, paras. D1.124(e) & (f).

¹⁰⁹ Adopted at the 100th Session of the ILO on 16 June 2011.

¹¹⁰ *Ibid*, Article 1.

¹¹¹ *Ibid*, Article 5.

¹¹² *Ibid*, Article 6.

¹¹³ *Ibid*, Article 13.

¹¹⁴ See CFRN 1999, section 12.

¹¹⁵ Onyeka C. Okongwu, "Are laws the appropriate solution: The need to adopt non-policy measures in aid of the implementation of sex discrimination laws in Nigeria" (2021) 21(1) *International Journal of Discrimination and the Law* 26-46 at 34.

¹¹⁶ *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 Labor & Productivity* (2005) 17 NWLR (Pt. 953) 120 at 155-157.

¹¹⁷ Eghosa O. Ekhator, "Protection and promotion of women's rights in Nigeria: Constraint and prospects." In M Addaney (Ed.) *Women and Minority Rights Law: African Approaches and Perspectives to Inclusive Development*. The Netherlands: Eleven International Publishing, 2019, 17-35 at 32; Flora Alohan Onomrerhinor "A re-examination of the requirement of domestication of treaties in Nigeria" (2016) 7 *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* 17-25 at 20-21. See also Mojbol Olfnk Okome, "Domestic, regional, and international protection of Nigerian women against discrimination: Constraint and possibilities" (2002) 6(3) *African Studies Quarterly*, 33-63.

This section will examine the legal frameworks for addressing sexual harassment in the United States, South Africa, and India. The United States, being a developed country, has well-established legal mechanisms in this area. In contrast, South Africa and India, like Nigeria, are developing countries and members of the Commonwealth of Nations with British-oriented legal systems.

1. Sexual Harassment at the Workplace in the United States of America

In the United States, while Title VII of the Civil Rights Act of 1964 (as amended) does not explicitly prohibit sexual harassment in the workplace, it makes it illegal for organizations with 15 or more employees to discriminate based on sex, among other factors.¹¹⁸ The Equal Employment Opportunity Commission (EEOC), the federal agency responsible for enforcing workplace discrimination laws, defines "sexual harassment" under the Code of Federal Regulations (CFR) in relation to Section 703 of Title VII as "unwanted sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature."¹¹⁹ The EEOC assesses whether the alleged behavior constitutes sexual harassment by evaluating the context of each case rather than solely relying on a legal or technical perspective.¹²⁰ Employers are required to educate their employees about sexual harassment and to implement proactive measures to prevent and eliminate such behaviors in the workplace.¹²¹

Employers can be held vicariously liable for workplace sexual harassment committed by co-employees¹²², non-employees¹²³, and supervisory officers.¹²⁴ In *Williams v. Saxbe*¹²⁵, the court recognized sexual harassment as a discriminatory practice under Title VII, highlighting it as an impediment to employment that affects one gender more than the other despite both being similarly situated.¹²⁶ Similarly, in *Sandra Bundy v. Delbert Jackson*¹²⁷, the court extended Title VII's scope by holding that an employer could be liable for supervisory harassment if the company was found to have tolerated such misconduct.¹²⁸ Victims of hostile work environment (HWE) sexual harassment do not need to demonstrate tangible economic loss¹²⁹ or concrete psychological harm to sustain a claim.¹³⁰

In *Meritor Savings Bank v. Vinson*¹³¹, a female bank employee sued her employer and her supervisor for persistent sexual harassment. The U.S. Supreme Court, given the evidence at hand, did not establish a definitive rule on employer liability for supervisory harassment but acknowledged that the mere existence of a complaint process and anti-discrimination policies did not necessarily absolve the employer from liability, particularly if the established procedures were not utilized effectively.¹³²

¹¹⁸ 42 US Code, section 2000e-2(a)(1).

¹¹⁹ CFR 1604.11(a).

¹²⁰ CFR 1604.11(b).

¹²¹ CFR 1604.11(e).

¹²² CFR 1604.11(c).

¹²³ CFR 1604.11(d).

¹²⁴ 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*. Kuala Lumpur, Malaysia: IWRAW Asia Pacific, 2005, 1-34 at 20.

¹²⁵ 413 F. Supp. 654.

¹²⁶ *Ibid* at 657-658. See also *Barnes v. Costle* 561 F.2d 983 (D. C. Cir. 1977).

¹²⁷ 641 F.2d 934 (D. C. Cir. 1981).

¹²⁸ See also *Anderson v. Methodist Evangelical Hospital Inc.* 464 F. 2d 723 at 725 (1972) and *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.

¹²⁹ *Sandra Bundy v. Delbert Jackson*, *op. cit* at 942.

¹³⁰ *Teresa Harris v. Forklift System Inc* 510 US 17 (1993); 114 S.Ct. 367 (1993).

¹³¹ 477 U. S. 57 (1986).

¹³² *Ibid*, at 69-73. See also *Borlinton Industries Inc v. Ellerth* 524 U. S. 742 (1998).

2. Sexual Harassment at the Workplace in South Africa

In South Africa, sexual harassment in the workplace is governed 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 unsolicited sexual behavior that infringes upon a worker's liberties and undermines fairness in the workplace. The definition considers factors such as: (a) whether the harassment is based on prohibited grounds of sex or sexual orientation; (b) whether the sexual behavior was unwanted; (c) the nature and extent of the alleged sexual behavior; and (d) the impact of the inappropriate conduct on the worker. Sexual harassment may manifest as physical conduct (e.g., unwanted touching, sexual assault), oral conduct (e.g., unsolicited sexual jokes, suggestive remarks, or sexually explicit messages), or non-verbal conduct (e.g., lewd gestures or sending sexually explicit pictures).¹³³

Although the South African Code is comprehensive in addressing harassment across all genders, it does not explicitly address employer liability for vicarious liability in cases where employers fail to implement measures to prevent harassment. However, in the case of *Media 24 Limited & Anor v. Sonja Grobler*¹³⁴, the Supreme Court of Appeal established that an employer can be held vicariously liable for the sexual harassment of an employee by a trainee manager if the employer failed to take appropriate steps to prevent such harassment.¹³⁵

3. Sexual Harassment at the Workplace in India

Work-related sexual harassment is a significant issue in India, though it remains underreported due to various factors.¹³⁶ In 2019, the National Crime Records Bureau recorded approximately 505 cases of "insult to modesty of women at work or in office premises."¹³⁷ However, this figure may be an underestimate due to underreporting by victims and inadequate data collection mechanisms by organizations. The necessity for specific anti-sexual harassment legislation in India emerged from the Supreme Court case *Vishakha & Ors. v. State of Rajasthan & Ors.* (1992)¹³⁸, which involved the gang-raping of a female government social worker at her workplace.¹³⁹ Prior to this case, sexual harassment was addressed solely under criminal statutes.¹⁴⁰ To address this legislative gap, the Supreme Court relied on Indian constitutional provisions¹⁴¹, international treaties ratified by India, and formulated guidelines to classify workplace sexual harassment as a human rights violation.¹⁴²

¹³³ Code of Good Practice on Handling of Sexual Harassment Cases in the Workplace 2005 (as amended), section 5(3).

¹³⁴ Case Number 301/04 decided on 1 June 2005. See also *Grobler v. Naspers Bpk* 2004 (4) SA 220 (C).

¹³⁵ *Media 24 Limited & Anor*, *ibid.* at page 38-39, para. 65; page 40, para. 67 and page 43, para. 71.

¹³⁶ Bhavya Jhaveri, "Women in Indian workplaces: Challenges in addressing workplace sexual harassment," (2021) *Global Policy Review*. Retrieved from <<https://www.theiwi.org/gpr-reports/india-workplace-sexual-harassment-challenges>> (accessed on 10 February 2022).

¹³⁷ *Ibid.*

¹³⁸ (1997) 6 SCC 241; AIR 1997 Sc 3011, decided by the Supreme Court of India on 13 August 1997.

¹³⁹ See for instance, sections 292, 293, 294, 354, 375 and 509 of the Indian Penal Code. See also Information Technology Act 2000, section 67, 72; Protection of Children from Sexual Offences Act 2012, section 11; and Indecent Representation of Women (Prohibition) Act 1986, section 7.

¹⁴⁰ A. Bhuyan and S. Khaitan, "Eight years on, India's law to prevent workplace sexual harassment is marred by poor data collection," (2021). Retrieved from <<https://scroll.in/article/987583/eight-years-on-indias-law-to-prevent-workplace-sexual-harassment-is-marred-by-poor-data-collection>> (accessed on 10 February 2022).

¹⁴¹ See for example Articles 14, 15, 19, 21, 51 and 253 of the Indian Constitution.

¹⁴² For example, the CEDAW, Articles 11(1)(a) & (f) and 24 as well as the Beijing Declaration and Platform for Act 1995.

Sixteen years later, the Vishakha Guidelines¹⁴³ led to the enactment of the Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act No. 14 of 2013 (PoSH Act 2013) and the associated Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Rules 2013 (PoSH Rules 2013). The primary objective of the PoSH Act 2013 is to set standards for preventing and prohibiting sexual harassment at work and to provide redress for affected women, regardless of their age or employment status. The Act's definition of sexual harassment encompasses physical, verbal, or non-verbal behaviors that are either explicit or implicit, including cases involving the promise of preferential treatment.

The primary objective of the Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act 2013 (PoSH Act 2013) is to establish standards for preventing and prohibiting sexual harassment of women at work and to provide redress to affected women, regardless of their age or employment position.¹⁴⁴ The Act defines sexual harassment to include physical, verbal, or non-verbal behaviors that are either explicit or implicit, including situations involving the promise of preferential treatment.¹⁴⁵ In the context of modern work environments, Indian courts have affirmed that sexual harassment can also occur in "work-from-home" situations or in accommodations provided by the employer¹⁴⁶, such as rented flats or hostels. Consequently, the definition of "workplace" encompasses not only the employee's office but also service providers and any locations visited by the employee in the course of their duties.¹⁴⁷

The Act mandates that employers with more than 10 employees establish an Internal Committee (IC) at each branch, chaired by a senior female employee and comprising at least four members. For organizations with fewer than 10 employees, complaints are directed to a Local Committee (LC) established in the relevant district.¹⁴⁸ Complaints must be filed within three months of occurrence, with an extension of an additional three months permitted.¹⁴⁹ However, neither the PoSH Act nor the PoSH Rules specify a required format for filing complaints.¹⁵⁰

Failure by an employer to implement the recommendations of the committee under the PoSH Act 2013 may result in a penalty of INR 50,000 (US\$673.15)¹⁵¹ and/or the revocation, withdrawal, or non-renewal of the business license.¹⁵² Section 19 of the Act outlines the obligations of employers, which include providing a safe working environment, while Sections

¹⁴³ The *Vishakha Guidelines* was issued by the Supreme Court pursuant to Article 32 of the Indian Constitution.

¹⁴⁴ 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.

¹⁴⁵ PoSH Act 2013, section 2(n) and 3(2).

¹⁴⁶ *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 Rajasdthan High Court, India on 11 January 2021, retrieved from <<https://indiankanoon.org/doc/49655315/>>(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 in a workplace.

¹⁴⁷ PoSH Act 2013, section 2(o).

¹⁴⁸ PoSH Act 2013, sections 4 and 6.

¹⁴⁹ 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.

¹⁵⁰ However, for a suggested format, see Nishith Desai Associates, *Prevention of Sexual Harassment at the Workplace (POSH): Legal & HR Considerations*, December 2020, p. 9.

¹⁵¹ Conversion rate as at 9 January 2022. See PoSH Act 2013, section 17; PoSH Rules 2013, rule 12.

¹⁵² PoSH Act 2013, section 26. See *Global Health Private Ltd., & Anor. v. Local Complaints Committee, District Indore & Ors.* Writ Petition No. 22314 and 22317 of 2017, decided by Madhya Pradesh High Court, India on 16 September 2019, available from <<https://indiankanoon.org/doc/88140454/>>(accessed on 31 January 2022)..

20 and 21 detail the responsibilities of District Officers.¹⁵³ Sanctions for perpetrators under the Act can include withholding promotions, salary increments, termination of employment, community service, and compensation payments to the affected woman.¹⁵⁴ Indian courts generally refrain from interfering with sanctions imposed by statutory committees unless they are deemed unreasonable or disproportionate to the misconduct.¹⁵⁵ The Act also stipulates penalties for frivolous, false, or malicious complaints, though the inability to prove a claim does not automatically imply falsehood or malice.¹⁵⁶

The statute mandates confidentiality for the identities of the complainant and witnesses appearing before the Internal Committee (IC) or Local Committee (LC), with breaches resulting in penalties under relevant service rules or fines of INR 5,000 (US\$67.31).¹⁵⁷ However, the Act has several limitations: it specifically addresses workplace sexual harassment of women and does not extend to harassment of men, same-sex, or transgender workers. Additionally, the provision allowing employers to appoint committee members could lead to potential abuses, as there is a risk that employers might select their close associates, thereby undermining the impartiality of the committee.

4. Legislative Frameworks on Sexual Crimes in Nigeria

Nigeria currently lacks a specific statute addressing sexual harassment in the workplace, including within the Labor Act 2004 and other related statutes. This section will examine existing legislative frameworks related to sexual offences with the aim of assessing their effectiveness and identifying potential shortcomings in combating workplace sexual harassment in Nigeria.

5. Criminal Law of Lagos State 2011

The Lagos State criminal statute provides for a clear sanction against sexual harassment, including a penalty of up to three years' imprisonment for offenders.¹⁵⁸ The statute addresses unwanted sexual advances, demands for sexual favors, and other sexual behaviors—whether visual, verbal, or physical—that affect an individual's employment or academic prospects, or unfairly interfere with their professional or academic achievements.¹⁵⁹ However, the statute has notable limitations: the prescribed penalty may be insufficient to effectively deter potential offenders, and its applicability is confined to Lagos State, rendering it ineffective for prosecuting sexual harassment cases in other jurisdictions.

6. Child's Rights Act 2003 (CRA 2003)

The Child's Rights Act (CRA) 2003, a domesticated form of the Child's Rights Convention (CRC), aims to protect the rights of children in Nigeria¹⁶⁰, defining a child as an individual under the age of eighteen.¹⁶¹ Consequently, employers who sexually harass a child employed as an apprentice or domestic servant could potentially be prosecuted under the CRA for related sexual offences.¹⁶² For instance, Article 31 of the Act criminalizes sexual intimacy with a

¹⁵³ See also PoSH Act 2013, section 11(3) for powers of the IC and LC while inquiring into complaints of workplace sexual harassment.

¹⁵⁴ PoSH Act 2013, sections 13 and 15.

¹⁵⁵ *Vidya Akhave v. Union of India & Others*, Writ Petition No. 796 of 2015 decided on 4 October 2016 by High Court of Bombay, available from <<https://www.legitquest.com/case/vidya-akhave-v-union-of-india-others/A114E>> (accessed on 31 January 2022). See also *Om Kumar v. Union of India* (2001) 2 SCC 386.

¹⁵⁶ PoSH Act 2013, sections 14.

¹⁵⁷ Conversion rate as at 9 January 2022.

¹⁵⁸ Criminal Law, Vol. 3, Cap. C17, *Laws of Lagos State, 2011*, section 264.

¹⁵⁹ *Ibid*, section 264(2)(a)-(c).

¹⁶⁰ CRA 2003 section 1.

¹⁶¹ *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".

¹⁶² 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

minor, regardless of prior consent.¹⁶³ However, the Act's scope is limited to a specific age group and lacks explicit provisions addressing sexual harassment. Moreover, it is not uniformly enacted across all States in Nigeria, which may undermine its effectiveness in addressing job-related sexual harassment comprehensively.¹⁶⁴

a. Violence Against Persons (Prohibition) Act 2015 (VAPP Act 2015)

This federal statute addresses various aspects of sexual intimidation by criminalizing acts such as , sexual coercion,¹⁶⁵ stalking or groping,¹⁶⁶ and rape.¹⁶⁷ It also includes provisions for offenses related to the destruction or alteration of sexually suggestive electronic or mobile messages under section 7.¹⁶⁸ Despite these measures, the statute's jurisdiction is limited to the Federal Capital Territory, Abuja, and other States that have adopted it.¹⁶⁹ Moreover, while it provides a definition for "sexual harassment,"¹⁷⁰ it lacks comprehensive provisions on the subject within the statute itself. This indicates a need for more robust and inclusive legislation to effectively address and combat sexual harassment.

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

The 1999 Constitution of the Federal Republic of Nigeria (CFRN) explicitly mentions "sexual harassment" by granting exclusive jurisdiction to the National Industrial Court of Nigeria (NICN) to handle civil disputes arising from such issues.¹⁷¹ This acknowledgment underscores the reality of workplace sexual harassment and the necessity for legal remedies.¹⁷² Although the CFRN does not define "workplace," the Employees' Compensation Act 2010 clarifies that it includes any place where work-related activities occur, encompassing work-related social functions and interactions via electronic media.¹⁷³

A notable case within the NICN's jurisdiction was *Ejieke Maduka v. Microsoft Nigeria Limited & 3 Ors*,¹⁷⁴ where the plaintiff alleged that her employment was terminated due to her refusal to succumb to persistent sexual harassment by a superior. The NICN upheld her claims, finding that the repeated inappropriate behavior by the superior violated her rights to dignity

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.

¹⁶³ CRA 2003, section 31(3)(a)(b).

¹⁶⁴ See U. M. Assim "Why the Child's Rights Act still doesn't apply throughout Nigeria" (24 September 2020) *The Conversation*, retrieved from <<https://theconversation.com/why-the-childs-rights-act-still-doesnt-apply-throughout-nigeria-145345>> (last accessed 19 May 2021).

¹⁶⁵ The VAPP Act 2015, sections 3 and 5.

¹⁶⁶ *Ibid*, section 17.

¹⁶⁷ 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).

¹⁶⁸ See for example the case of *Professor Richard Iyiola Akindele v. Federal Republic of Nigeria*, Appeal No. CA/AK/80C/2019 (Unreported), decided by the Court of Appeal, Akure Judicial Division on 5th March 2021. See also Enobong Mbang Akpambang, "Sexual harassment of female students by lecturers in Nigerian tertiary institutions: Is the law helpless?" (2021) 86 (3) *The Juridical Current*, 29-50 at 39.

¹⁶⁹ 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).

¹⁷⁰ *Ibid*, section 46.

¹⁷¹ CFRN 1999, section 254C (1)(g).

¹⁷² Employees' Compensation Act No. 13 of 2010, Cap. E7A, Vol. 5, *Laws of the Federation of Nigeria 2004 (Revised Edition)*, section 73.

¹⁷³ International Labor Organization/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.

¹⁷⁴ 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.

and freedom from discrimination, as protected under sections 34(1)(a) and 42 of the CFRN, and reinforced by the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act 2004.¹⁷⁵

In *Abimbola Patricia Yakubu v. Financial Reporting Council of Nigeria & Another*¹⁷⁶, the claimant alleged that her direct supervisor subjected her to persistent sexual advances, seductive compliments, and inappropriate gestures. Her refusal led to punitive redeployments, forced late nights, and unwelcome visits to her hotel rooms during official trips. Despite her formal complaints to higher authorities, no investigation was conducted, and her employment was ultimately terminated.

The court ruled in favor of the claimant, awarding damages of N5,000,000 (US\$12,100) against the 2nd defendant for sexually harassing her, creating a hostile work environment, and violating her dignity. The court ordered her reinstatement, but not as the 2nd defendant's personal secretary.¹⁷⁷ 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"*.¹⁷⁸

Regarding the adversarial or accusatorial nature of the Nigerian legal system¹⁷⁹, the court's reluctance to hold the first defendant vicariously liable can be understood. The court operates neither as a "charitable organization" nor as a "Father Christmas," and thus is not inclined to grant relief that a party has not explicitly sought.¹⁸⁰ This underscores the necessity for litigation lawyers to have a thorough understanding of their clients' cases and to be aware of the appropriate remedies to pursue when presenting their cases in court.

Similarly, in *Stella Ayam Odey v. Ferdinand Daapah & Cuso International*¹⁸¹, the claimant alleged that the first defendant sexually harassed her by slapping her buttocks, embracing her without consent, and repeatedly commenting that her voice was "arresting" him. The plaintiff's refusal to submit to the persistent harassment resulted in the termination of her employment. The court awarded damages of N16,862,511 (US\$40,808) against the defendants.

¹⁷⁵ *Ibid.*, at 24-25.

¹⁷⁶ Suit No. NICN/LA/673/2013 (Unreported) decided by the National Industrial Court of Nigeria, Lagos Division on 24 November 2016. Retrieved from <<https://www.nicnadr.gov.ng/judgement/details.php?od=6320>> (last accessed on 26 October 2021), per Hon. Justice Oyewumi.

¹⁷⁷ *Ibid.*

¹⁷⁸ *Ibid.*

¹⁷⁹ Abiola Sanni, *Introduction to Nigerian Legal Method*, Second and Enlarged Edition, Obafemi Awolowo University Press Ltd., 2006, 139.

¹⁸⁰ *Stowe v. Benstowe* (2012) 9 NWLR (Pt. 1306) 450; *Attorney-General of the Federation v. Attorney-General of Abia State* (2002) 6 NWLR (Pt. 764) 542.

¹⁸¹ Suit No. NICN/CA/03/2016 (unreported) decided by the National Industrial Court of Nigeria, Calabar Division on 13 January 2017, per Hon. Justice Agbakoba. Retrieved from <<https://nicnadr.gov.ng/nicnweb/details.php?od=6262&p=STELLA%20AYAM%20ODEY%20VS%20FERDINAND%20DAAPAH%20ANOR>>. (last accessed on 25 October 2021).

In *Dorothy Adeeze Awogu v. TFG Real Estate Ltd*¹⁸², another sexual harassment case brought before the National Industrial Court of Nigeria (NICN) as a human rights action, the claimant, employed as a property consultant under the supervision of Gavin Smyth, reported ongoing harassment, discrimination, and unfair labor practices by her supervisor. She alleged that Smyth instructed her to use her attractiveness to attract potential clients to the company, and when she refused, she was dismissed. The court awarded her N2,500,000 (US\$6,050) in damages, stating, "The actions of the defendant through Gavin Smyth were not only dehumanizing but also violated the principles of labor dignity. The defendant's conduct constitutes both a fundamental rights infringement and a tort. The claimant is unequivocally entitled to compensation."¹⁸³

7. National Industrial Court of Nigeria (Civil Procedure) Rules 2017

The rules govern the conduct of civil matters at the National Industrial Court of Nigeria (NICN). In a sexual harassment claim within the workplace, the claimant must specify in their complaint whether the alleged harassment constitutes physical conduct of a sexual nature, verbal harassment, non-verbal harassment, or quid pro quo (QPQ) harassment.¹⁸⁴ Failure to provide adequate evidence to substantiate the claim may result in the case being dismissed.¹⁸⁵

8. Sexual Harassment of Students in Tertiary Educational Institutions (Prohibition Bill) 2020 (Anti-Sexual Harassment Bill) 2019¹⁸⁶

The bill that is designed to promote and maintain moral standards in Nigerian higher educational institutions¹⁸⁷ proposes a prison sentence of no less than 5 years and no more than 14 years for any educator found guilty of sexual harassment.¹⁸⁸ The bill classifies offenses as strict liability offenses, eliminating mutual consent as a defense for alleged harassers.¹⁸⁹ It penalizes administrative heads of tertiary institutions for failing to address sexual harassment complaints within the prescribed timeframe.¹⁹⁰ The bill also stipulates that students whose complaints are determined by the Independent Sexual Harassment Prohibition Committee (ISHPC) to be false or malicious may face suspension.¹⁹¹ Notably, the absence of a limitation

¹⁸² Suit No. NICN/LA/262/2013 (unreported) decided by the National Industrial Court of Nigeria, Lagos Division on 4 June 2018, per Hon. Justice Kanyip. Retrieved from <<https://judgement.nicnadr.gov.ng/details.php?case=1983>>(last accessed on 25 October 2021).

¹⁸³ *Ibid* at para. 74.

¹⁸⁴ *National Industrial Court of Nigeria (Civil Procedure) Rules 2017*, Order 14 rule 1(1) (a)-(d).

¹⁸⁵ *Ibid*, Order 14 rule 2(3).

¹⁸⁶ In its deliberation on the bill, the Senate Committee on Judiciary, Human Rights and Legal Matters, recommended that in order to deemphasise civil settlement in issues associated with sexual harassment and to stress on criminal retribution, which the primary goal of the proposed law, the long title of the bill should be slightly amended to read, "A Bill for an Act to Make Comprehensive Provisions for the Prohibition and Punishment of Sexual Harassment of Students by Educators in Tertiary Educational Institutions; and for Related Matters." See, National Assembly, *The Senate Committee on Judiciary, Human Rights and Legal Matters Report on A Bill for an Act to Prevent, Prohibit and Redress Sexual Harassment of Students in Tertiary Educational Institutions and for Matters Connected Therewith (SB.77)*, June, 2020, Retrieved from <<https://placng.org/i/wp-content/uploads/2020/07/Senate-Report-on-Sexual-Harassment-of-Students-in-Tertiary-Educational-Institutions-Prohibition-Bill-2019.pdf>>(last accessed on 10 February 2022).

¹⁸⁷ Anti-Sexual Harassment Bill 2020, section 1.

¹⁸⁸ *Ibid*, sections 6 and 7.

¹⁸⁹ *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.*

¹⁹⁰ *Ibid*, section 20.

¹⁹¹ *Ibid*, section 21; the Committee is created under section 16 thereof.

period for civil or criminal proceedings under the bill allows aggrieved students to pursue legal action or file criminal charges against alleged harassers even after leaving the institution.¹⁹²

While the bill has been praised by some as a significant step towards addressing the persistent issue of sexual harassment in Nigerian tertiary institutions¹⁹³ and restoring moral integrity, it has notable shortcomings. The primary limitation of the bill is its narrow focus, as it does not address sexual harassment in workplaces beyond tertiary educational institutions.¹⁹⁴ Section 15(1) of the bill, which mandates that disciplinary actions by institutional ISHPCs be suspended once criminal proceedings are initiated, should be removed. This provision could hinder the effective functioning of the ISHPC and may lead to prolonged cases in the court system, potentially causing institutions to lose interest in ongoing matters after years of litigation.

C. Conclusion

This research examines the prevalence and detrimental effects of work-related sexual harassment on both female employees and employers in Nigeria. It reveals that Nigeria lacks a specific legislative framework to address inappropriate sexual advances in the workplace. Existing statutes related to sexual offenses and international instruments that have not been domesticated have not effectively tackled the issue. Additionally, approximately 70% of women in Nigeria experience sexual harassment, yet many victims are reluctant to report incidents to law enforcement, which perpetuates the problem. Currently, sexual harassment cases are prosecuted through provisions in other penal statutes or as human rights matters. Furthermore, victim protection is a crucial aspect of law enforcement to ensure that victims of sexual harassment receive legal redress.

Any regulatory framework addressing sexual harassment in Nigeria must provide a clear definition of sexual harassment, encompass all sectors of society and the economy, and specify the consequences for such actions. Issues like rape, discrimination, and harassment have long-term effects on the quality of life for Nigerian women. This research aims to explore how law enforcement implications could influence public security in Nigeria.

Drawing on global instruments and legislative examples from other jurisdictions, it is recommended that the Nigerian government establish a stringent legal framework to criminalize sexual harassment in the workplace and offer adequate remedies for victims. The absence of such a framework in Nigeria implicitly suggests to employers that sexual harassment is not a serious crime or human rights abuse, thereby encouraging its continuation. The proposed law should mandate employers to implement anti-sexual harassment policies and procedures, similar to the Indian Prevention of Sexual Harassment (PoSH) Act and its accompanying rules. Legislation efforts could begin at the National Assembly, similar to Nigeria's existing bill addressing sexual harassment in tertiary institutions.

The judicial activism demonstrated by the National Industrial Court of Nigeria (NICN) in recognizing sexual harassment as a violation of workplace rights and expanding protections against inhuman or degrading treatment and gender discrimination is a positive development. This approach should be maintained in the absence of explicit legal provisions on the subject in Nigerian labor statutes. It is essential to remember that labor statutes are intended to protect employees due to the unequal power dynamics between employers and employees. In cases of workplace sexual harassment, perpetrators often exploit their privileged positions to impose

¹⁹² *Ibid*, section 25.

¹⁹³ 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).

¹⁹⁴ For a detailed discussion on the Anti-Sexual Harassment Bill 2020, see EM Akpambang "Sexual harassment of female students by lecturers in Nigerian tertiary institutions: Is the law helpless?" (2021) 3 *Curentul Juridic/The Juridical Current*, 29 at 41-43, 48-50.

sexual demands, adversely altering the working conditions of employees, particularly women, who are forced to navigate unwanted romantic advances or overtures.¹⁹⁵

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