SEXUAL HARASSMENT IN TERTIARY EDUCATIONAL INSTITUTIONS IN NIGERIA: THE DEVELOPING LAW AND PRACTICE

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ABSTRACT

Sexual harassment has become one of the virulent scourges in Nigeria's tertiary educational institutions. Its prevalence and gravity are second only to cultism, while its endemic proportion is underscored by certain impunity on the part of perpetrators, and hopelessness, on the part of victims. The situation stemmed from the apparent lack of regulations and law against sexual harassment in Nigeria, and particularly in its tertiary educational institutions. Whatever remedies one might have hoped for, could only possibly be gleaned from the Criminal and Penal Codes of Nigeria, and to a more limited extent, the Nigerian laws of tort, labour, and the constitutional law. The problem is that no specific crime of tort of sexual harassment existed. Whatever laws that could be invoked to redress sexual harassment in tertiary educational institutions could only be tangential and definitionally inadequate. Therein lies the importance of the passage of the "Bill For An Act to Prevent, Prohibit and Redress Sexual Harassment of Students in Tertiary Educational Institutions and for Matters Concerned Therewith, 2020". Notwithstanding that the bill is yet to be assented to by the President, the developing law and practice on its subject matter has begun to evolve as shown by the rise in the number of cases that has been decided on sexual harassment in tertiary educational institutions in Nigeria, in recent times. To further enhance the developing law, not only will the President's assent to the Bill be imperative, lessons must be learnt from precedents from foreign jurisdictions. The following recommendations are therefore desirable: 1) that the Bill be reviewed and re-presented to the current President of Nigeria for assent; 2) that the Bill be reviewed to require the tertiary educational institutions to adopt policies on sexual harassment, in addition to

requiring them to establish Committees on Sexual Harassment; 3) that the scope of the Bill be widened to include primary and secondary schools, work places and religious organizations in order to holistically deal with the subject matter of sexual harassment in the country.

***Keywords*:** Developing Law and Practice, Nigeria, Sex, Sexual Harassment, Tertiary Educational Institutions.

INTRODUCTION

The phenomenon of sexual harassment in tertiary educational institutions in Nigeria received unprecedented attention with the passage of "A Bill for an Act to Prevent, Prohibit and Redress Sexual Harassment of Students in Tertiary Educational Institutions and for Matters connected therewith 2020". The Bill was sponsored by Senator Ovie Omo-Agege, the Deputy President of the Senate of Nigeria and other one hundred and six (106) Senators, as co-sponsors in 2019, and re-introduced to the Senate in 2020, two days after a BBC documentary exposed two lecturers of the University of Lagos and a lecturer of the University of Ghana for Sexual Harassment[i]. The Bill was speedily passed by the Senate amidst the sensational scandals and transmitted to the House of Representatives for concurrence and sent to the President for his assent[ii].

No doubt sexual harassment has become one of the virulent scourges in Nigerian's tertiary educational institutions. Its prevalence and gravity is second only to cultism while its endemic proportion is underscored by certain impunity on the part of perpetrators, and hopelessness, on the part of victims. This situation must have stemmed from the apparent lack of regulations and laws against sexual harassment in Nigeria and particularly in its tertiary educational institutions. Whatever remedies one might have hoped for, could only possibly be gleaned from the criminal law, the law of tort, labor law and constitutional law and never could be adequate as there were no specific crime or tort of sexual harassment in the Nigerian jurisprudence.

In justifying the passage of the Sexual Harassment Bill, the Chairman of the Committee on Judiciary, Human Rights and Legal Matters described sexual harassment in Nigeria's tertiary educational institutions as a "hydra-headed monster" and a "pandemic"[iii]. The Senate President

declares: 'we want to protect our daughters, sisters, and mothers from sexual predators… we want tertiary institutions to be safe and peaceful learning environment for everyone'.[iv]

However, during the public hearing on the Bill, the lecturers, students, academic bodies and civil organizations raised concerns about the passage of the Bill and proposed amendments thereto.[v] Particularly, the Academic Staff Union of Universities (ASUU) opposed the passage of the bill on the grounds that it violates 'all known global norms and legal principles in the sense that universities and other tertiary institutions are established by law as autonomous bodies'[vi] that 'can regulate their own affairs, including misconduct, generally amongst staff and students, with clearly articulated appropriate redress mechanisms.'[vii] The union observed that the Bill is *ad hominem* because it targets a particular community, namely, educators in the tertiary institutions, in spite of the fact that sexual harassment is a general societal problem that is not peculiar to tertiary institutions. It also observed that there are extant laws with sufficient provisions to deal with the subject matter, while 'a cross-section of stakeholders at the public hearing supported the widening of the scope of The Bill to accommodate primary and secondary schools, work places and religious organizations in order to holistically deal with the subject matter of sexual harassment in the country.'[viii]

It is against the fore-going background that this paper proposes to examine the following issues, accordingly:

1. Conceptual and theoretical framework for sexual harassment; 2. Brief historical development of the law of sexual harassment; 3. Evolving law and practice on sexual harassment in Nigeria; 4. Lessons from foreign jurisdictions; 5. Conclusion and recommendations.

CONCEPTUAL AND THEORETICAL FRAMEWORKS

Discussing the subject-matter of this paper necessarily demands the definition or clarification of relevant concepts and the theoretical planks upon which analyses may be based. Thus, hereunder, it is proposed to delineate the meaning of certain cognate concepts and consider possible theoretical bases for any meaningful discourse.

Conceptual Framework

The following concepts or terms have been considered as very relevant to the subject matter, viz: "Sexual Harassment;" "Sexual Offences;" "Sexual Assault;" "Gender Discrimination;" "Gender Inequality" and "Tertiary educational institutions."

However, the foregoing concepts and terms are in no way exhaustive of possible relevant terms, but it suffices to limit discussions to them.

i) Sexual Harassment: Sexual harassment has been described as a type of employment discrimination which consists in verbal or physical abuse of a sexual nature.[ix] To fully appreciate the foregoing statement, one needs to understand the meaning of "harassment", which is said to consist in 'words, conduct, or action (usually repeated or persistent) that, being directed at a specific person, annoys, alarms, or causes substantial emotional distress in that person and serves no legitimate purpose'.[x] However, viewed as a type of employment discrimination as stated earlier, it gives the impression that sexual harassment occurs only within employer and employee relations. This is misleading as it could occur within all dependency relationships, especially between males and females, including between homosexuals, both in the private and the public spheres.

Sexual harassment has been classified into two, namely: hostile environment sexual harassment and *quid pro quo* sexual harassment.

"Hostile environment sexual harassment" is that caused by an environment which is deliberately created to subject an employee to unwelcome verbal and physical sexual behaviors that are either severe or pervasive. In other words, in this kind of sexual harassment, sexually-oriented behaviors or practices, that make the working environment sexually abusive or offensive and thus intolerable, pervade.[xi] A typical example has been given as a situation where a group of co-workers repeatedly e-mailed pornographic pictures to a colleague who found the pictures offensive.[xii] According to case law, to succeed in an action based on hostile environment sexual harassment, a victim must show that; 1) he or she belongs to a protected class under the anti-discrimination law; 2) the harassment allegedly experienced was based on

sex; 3) the harassment was unwelcomed; 4) the harasser's conduct was so severe and / or pervasive, that it altered the victims-employees work environment by detracting from the employee's job performance.[xiii] On the other hand, *quid pro quo* sexual harassment is that in which the satisfaction of a sexual demand is used as the basis of an employment decision. The typical example of this kind of harassment is the situation where a boss fires or demotes an employee who refuses to go on a date with him or her.[xiv] However, the courts have also established that the plaintiff must prove; 1) that he or she belongs to a protected class under anti-discrimination law; 2) that the harassment allegedly experienced was based on sex; 3) the harassment was unwelcomed; 4) the plaintiff was subjected to unwelcome sexual harassment in the form of advances or request for sexual favors; and 5) the plaintiffs submission to the unwelcomed advances was an expressed or implied condition for receiving job benefit, or the plaintiff's refusal to submit resulted in a tangible job detriment such as reduction in pay, failure to obtain a raise or receive benefit or termination of employment.

This type of situations could also occur outside employment settings, like against students in educational institutions for refusing to yield to sexual demands. In fact educational institutions have become increasingly notorious for sexual harassment cases.

At this point, it may be necessary to examine the definitions of "sexual harassment" that have been offered by two international organs, namely, the United Nations Committee on the Elimination of Discrimination against Women, and the European Communities Commission. The UN Committee on Elimination of the Discrimination against Women defines "Sexual Harassment to include;

> Such unwelcomed sexually determined behavior as physical contact and advances, sexual[ly] colored remarks, sexual pornography and sexual demands, whether by words or action. 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 the employment, including recruiting or promotion, or when it creates a hostile working environment.[xv]

On the other hand, the European Communities Commission's Code on sexual harassment defines "sexual harassment" as unwanted conduct of sexual nature, or other conduct based on

sex affecting the dignity of women and men at work.[xvi] It went on to state that it can include unwelcomed physical, verbal or non-verbal conduct.

Such unwelcomed conduct of sexual nature may be physical, verbal or non-verbal.[xvii] Thus, Nwazuoke observes as follows:

> Physical conduct of sexual nature include unwanted physical contact ranging from touching, patting, brushing against another's body, pinching, assaults to coercing sexual intercourse. Objectionable non-verbal conduct of sexual nature include the display of pornography or sexually-suggestive gestures. Verbal conduct of a sexual nature include unwelcome sexual advances and propositions, lewd comments and innuendoes.[xviii]

The "unwelcomeness" of the conduct implies that the perpetrator knew or ought reasonably to have known that the conduct is unwelcomed to the recipient or victim. This will be more so, if the recipient does not freely reciprocate it.[xix] This also raises the question of the relevant perspective; that of a reasonable man or that of a reasonable woman? This is so, as men and women's attitudes to sexual-oriented conduct may not necessarily be the same.

ii) Sexual Offences: Sexual offences may be viewed as those offences that have to do with sexual relations or conduct. The Criminal Code Act of Nigeria defines "offence" in its Interpretation Section as: "an act or omission which renders the person doing the act or making the omission liable to punishment under this code or under any act or law… ."[xx] Thus, "sexual offences" may appropriately be defined as those sexual acts or omissions which render the person doing the act or making the omission liable to punishment under any code or act or law. Classic example of such codification under the common law include the English Sexual Offences Act, 1956, the Sexual Offences (Amendment) Act, 1976, which codifies common law as laid down by the House of Lords in *DPP v Morgan*.[xxi] That provision was replaced by the Criminal Justice and Public Order 1994, which redefines rape by substituting a new section 1 of the Sexual Offences Act 1956, and expanding the definition of rape to include anal intercourse as well as vaginal intercourse with a person who did not consent to it.[xxii] The current Sexual Offences Act, 2003, of England redefines rape to include oral, penile penetration. Of course, rape is arguably the most serious of all sexual offences, which may include indecent exposure, indecent assault, defilement etc. . However, the Nigerian Bill for an Act to Prevent,

Prohibit and Redress Sexual Harassment of Students in Tertiary Educational Institutions and Matters connected Therewith, of June 2020 defines "sexual offences" as:

> Including sexual intercourse with a student or demand for sex from a student or a prospective student or intimidating or creating a hostile or offensive environment for the student by soliciting for sex or making sexual advances.

Other offences identified in the bill as constituting sexual harassment include grabbing, hugging, kissing, rubbing, stroking, touching, pinching the breasts or hair or lips or hips or buttocks or any other sensual part of the body of a student; or sending by hand or courier or electronic or any other means, naked or sexually explicit pictures or videos or sex-related objects to a student, whistling or winking at a student or screaming, exclaiming, joking or making sexually complimentary or uncomplimentary remarks about a student's physique or stalking a student.[xxiii]

Sexual Assault: To determine the meaning of "sexual Assault", it would be necessary to understand the meaning of the word "Assault" both under the law and in general parlance. In *Winfield & Jolowicz on Tort*,[xxiv] the learned authors define "Assault" in the following terms: "Assault is an act of the defendant which causes the claimant reasonable apprehension of the infliction of a battery on him by the defendant. In popular… language, the word "assault" is used to describe either or both of these torts...."[xxv]

Kodilinye and Aluko define "assault" as the intentional putting of another person in fear of an imminent battery.[xxvi] They also observe that the fore-going notion is limited to the law of torts, while the word connotes the application of physical force to the person, in popular usage.[xxvii]

The Criminal Code of Nigeria seems to have favored this popular usage as it defines the term as including both an application of force and a threat or attempt to apply force.[xxviii] On the other hand the Penal Code,[xxix] which governs the criminal law in the northern states of Nigeria defines the offence in terms that are similar to those under its definition in tort, while also providing for the offence of criminal force which is equivalent to battery.[xxx]

From the foregoing definition of "assault", it therefore follows that "sexual Assault" could be defined as the intentional putting of another person in fear of an imminent battery of sexual

nature. Of course, "battery" in this context means "the intentional application of force to another person."[xxxi]

iii) Gender/Gender Discrimination: The word "gender" has been regarded as a broader, more encompassing and more complex term than "sex", as it may better account for the many different life experiences of women and men than biological differences between the sexes.[xxxii] Language and gender theorists have generally made a distinction between sex as physiological and gender as a cultural or social construct. Such social constructions of these biological differences have often been used to justify male privileges or re-assert traditional family and gender roles, like women's so-called "natural" role as mothers and nurturers. Out of these differences have grown a certain form of discrimination, which has been described as "Gender Discrimination". Thus "gender discrimination" may be said to have been occasioned when on the ground of a person's sex or gender, he or she is treated less favorably than persons of the opposite gender. More particularly, gender discrimination against women has been defined as any distinction, exclusion or restriction or any differential treatment based on sex and whose objectives or effects compromise or destroy the recognition, enjoyment or the exercise by women, regardless of their marital status, of human rights and fundamental freedoms in all spheres of life".[xxxiii]

iv) Gender Inequality: The term gender inequality describes the historically unequal power relations that have existed between men and women on account of their gender. By this concept women are considered inferior and subordinate to men. The following sources of law have been acclaimed as the foundations of gender inequality in general and under the Nigerian law, in particular: a) the common law and the received English law; b) the Judeo-Christian traditions; c) the Islamic principles; and d) customs and customary laws.[xxxiv]

v) Tertiary Educational Institutions: The 'Law Insider' has provided various definitions of "Tertiary Educational Institutions" as follows: "Tertiary Institution means a university or other tertiary education providers recognized by the employer, which offers degrees, or diplomas or teach education...."[xxxv] It also defines it as "any institution that provides post-secondary school education on a full-time, part time or distance education basis".[xxxvi] However, it further provided another definition which might be more utilitarian for the purpose of litigation for being more apt and detailed. It states:

> [T]ertiary institution (tersiêre instelling) means building used for tertiary educational purposes such as (but not limited to) lecture buildings, administrative offices, residential buildings, libraries, laboratories, hostels, recreational and sports facilities, and any other uses and buildings which may be ordinarily associated with a university/college and its activities as a diverse multi-faceted learning and research institution whether or not such buildings are located on the same land unit.[xxxvii]

Interestingly, Olubanji and Akinwande, in discussing the role of stakeholders in managing Nigeria tertiary educational institutions specifically defined tertiary educational institutions in Nigeria as "institutions offering higher and advanced forms of education in the nation's universities, colleges of education, Polytechnics and monotechnics".[xxxviii] Thus, this definition is apt for the purpose of this paper.

Theoretical Framework:

To effectively analyze and discuss the developing law and practice on sexual harassment in tertiary educational institutions in Nigeria, certain relevant theories must be examined here. Such theories are Natural law theory; Feminist legal theory; Gender based legal theory and Positivist legal theory.

Natural law theory: The stoics were the original proponents of the natural law theory; and they believed that man as part of nature is governed by reason.[xxxix] However, for them, man should not rely on his own reason alone, but also on divine reason, which ultimately disposes him to morality and natural justice.[xl] As this author acknowledges elsewhere, inspirationally, the natural law theory draws from nature and reason, while historically, as Friedman notes, it is "a tale of the search of mankind for absolute justice and truth".[xli]

The theory is premised on the assumption that there is a law of nature according to which tenets and principles, all things including man himself ought to behave. Here, the ought proposition is obligatory and not idealistic. Thus, natural law theories hold that there are fundamental, universal, compelling forces which guide human behaviors independently of enacted law, and that these forces grow out of and conform to nature and form the basis for rules of conduct which have been established by the divine author of human nature.[xlii] Therefore, for the stoics, the course of the universe is "... ordained by a lawgiver... and rigidly by the laws of nature".[xliii]

In other words, "there are objective moral principles which depend upon the nature of the universe and which can be discovered by reason".[xliv] Those principles are what are viewed as constituting the natural law.[xlv]

The relevance of the natural law theory to the present discourse lies in the fact that it has far-reaching implications for the rights and status of women. Whilst positing that all human beings are equal, paradoxically, it discriminates between men and women on the ground of men's apparent superiority of strength and stamina and postulates the need to protect women.[xlvi]

Feminist legal theory: the feminist legal theory is an off-shoot of the natural law theory. It is essentially a theory of power. It seeks to interrogate the historically-unequal power relations that have existed between the male and the female gender, which implications have included the notion that "sexuality is gendered as gender is sexualized"[xlvii]

For MacKinnon, male and female are created through the erotization of dominance and submission. He emphasizes:

> The man/woman difference and the dominance/submission dynamic define each other. This is the social meaning of sex and the distinctively feminine account of gender inequality. Sexual objectification, the central process within the dynamic, is at once epistemological and political. The feminist theory of knowledge is inextricable from the feminist critique of power because the male point of view forces itself upon the world as its way of apprehending it.[xlviii]

In other words, MacKinnon, like most feminists view relations between man and woman or male and female from the prism of dominance and submission; and gender inequality and sexual objectification of women. Therein lies the relevance of the feminist legal theory to this discourse on sexual harassment. Essentially, the Feminist Legal Theories focus attention on the subordinate status of women in society, but have in recent times changed their emphasis from inequality to difference.

The feminist approaches have included: Conservative Feminism; Liberal Feminism; Radical Feminism; Socialist Feminism; Postmodern Feminism; Essentialism Feminist Theory; Anti-Essentialism Feminist Theory; Dominance Feminist Theory and African Feminist Theory. The fore-going theories may afford a veritable framework and background for discussing the

developing law and practice on sexual harassment in tertiary educational institutions, and the need for adequate legislative interventions. However, engaging in a full scale discussion of the approaches may detract from the scope of this paper.

BRIEF HISTORICAL DEVELOPMENT OF THE LAW ON SEXUAL HARASSEMENT

Generally, the history of women as subjects of law is very short. In fact, until the end of the nineteenth century, women were under the law and in public terms considered as "non-persons".[xlix] This meant that they were not accorded human rights. However, the legal categorization of women as non-persons was challenged through a series of cases in which women sought recognition as legal persons and equal entitlement to participate alongside men in the public sphere.[l] With successful legal challenges, women became recognized as subjects of law rather than just objects of law.

However, for a long time domestic violence was not viewed as a violation of women's human rights, as it was not perpetrated by the state. It was, in fact, not viewed as a violation of any law, as it was characterized as 'private', 'natural', or 'cultural'.[li] After all, women were considered to be less human. Even in the public sphere, certain abrasive male behavior was also considered as natural, even though they may be blatant sexual harassment. According to Mackinnon, they are usually rationalized in such old adages as 'boys will be boys', and excused in spite of the psychological violence that they impact on women.[lii]

The turning point was signalled in the US, and subsequently, world-wide by the US Supreme Court, in the Clarence Thomas confirmation hearing on sexual harassment.[liii] That hearing recognized sexual harassment as a form of actionable discrimination in the US and awakened "the American public consciousness" to its ills! That awakening transcended the American jurisdiction and encouraged many other countries to follow suit.[liv] However, it was not until 1976 that any US District Court recognized and held sexual harassment as actionable sex discrimination under Title VII.[lv] Understandably, the early cases which were adjudged to have established a cause of action for sexual harassment under Title VII were those involving egregious and blatant violations and not the subtle pervasive discrimination that was

experienced by women in general. A line of cases bear this out. They include: *Tomkins v. Public Service Electric & Gas Co.*;[lvi] *Munford v. James T. Barness & Co.*[lvii] and *Williams' Case*[lviii] It was also at this time that the US Judiciary expanded the ambit of sex discrimination law to include *quid pro quo* sexual harassment.[lix] Ten years later (1986) the US Supreme Court went ahead to recognize hostile environment claims as *bona fide* causes of action under Title VII.[lx]

In that case of *Vinson*, the Supreme Court stated that the gravamen of any sexual harassment claim is that the alleged sexual advances were "unwelcome".[lxi] The Court further held that economic harm is not necessary to ground sexual harassment under Title VII.[lxii]

Clearly, sexual harassment regulations and their consequent case law in the US triggered legal developments around the world as other countries began to realize that sexual harassment is not just about sex, but about sex as a vehicle to discriminate; to subjugate women, and to assert power over them.[lxiii] This realization saw the European Community (EC) adopting a non-binding code of practice on sexual Harassment.[lxiv]

Some countries have gone beyond this code. For instance, both France and the United Kingdom have enacted legislations or adjudicated cases on sexual harassment, while other EC countries, as well as Australia, Canada and New Zealand, have established legal mechanisms for redressing sexual harassment claims.[lxv] Japan, a country known for its respect for the authority rather than litigiousness is not left out. There, a Court held that crude remarks by a boss to his employee, which caused her to leave the job, warranted a payment of approximately $12,500, as compensation.[lxvi]

African Countries have also been influenced by this legal development. This could be seen in some specific provisions of the Protocol to the African charter on Human and People's Rights on the Rights of Women in Africa (2003).[lxvii] For instance, the Protocol provides for States Parties to take appropriate and effective measures to enact and enforce laws that will prohibit all forms of violence against women which include unwanted or forced sex within the private or the public spaces.[lxviii] Of course, this provision has implications for sexual harassment of women. However, under its Article 12 titled 'Right to Education and Training' the Protocol makes direct provisions for the protection of the girl-child and the women from sexual harassment in schools and other educational institutions. Consequently, a number of African Countries have enacted legislations addressing sexual harassment in schools, especially in

tertiary educational institutions. Such countries include South Africa, which enacted the Code of Good Practice on the Handling of Sexual Harassment Cases[lxix]; Benin Republic, which has also enacted a legislation that prohibits sexual harassment in various places, including schools, and Ghana, which prohibits immoral or sexual relations with a pupil or student in any educational institution. Other countries like Kenya, Senegal and Burkina Faso have also addressed sexual violence and harassment against students and prescribed disciplinary actions against erring teachers. [lxx] More recently, Nigeria commenced a legislative action to check sexual harassment in her tertiary educational institutions by passing a Bill for an Act to Prevent Prohibit and Redress Sexual Harassment of Students in Tertiary Educational Institutions and for Matters Connected Therewith, in her National Assembly.[lxxi] However, the bill is yet to be assented to, but clearly marks a milestone in the evolution of the law and practice on sexual harassment in Nigeria's tertiary educational institutions.

EVOLVING LAW AND PRACTICE ON SEXUAL HARASSMENT IN NIGERIA

The law and practice on sexual harassment in Nigeria has just begun to evolve. Though not justiciable yet, the Bill for an Act to Prevent, Prohibit and Redress Sexual Harassment in Tertiary Educational Institutions and for other Matters (2020) marks a watershed in the evolution of the law and practice on sexual harassment in Nigeria generally, and specifically in its tertiary educational institutions. Prior to the passing of the bill, the legal framework for redressing incidents of sexual harassment in Nigeria was rather tangential and tentative. This was so as, for a long time, Nigeria had no specific legislation on sexual harassment, except what could be gleaned from the fundamental rights provisions of the 1999 Constitution, and the Criminal and Penal Codes that were applicable to the southern and the Northern states, respectively.[lxxii]The Nigeria Constitution provides that every individual is entitled to respect for the dignity of his person, and accordingly – "a) no person shall be subjected to torture or to inhuman or degrading treatment; b) no person shall be held in slavery or perform forced or compulsory labor".[lxxiii] Clearly, though the fore-going provision is not specifically on sexual harassment, it has far-reaching implications for it, as the fundamental rights of victims are inevitably abused in most cases of sexual harassment. This much and even more was affirmed

by the National Industrial Court (NIC) of Nigeria, in the case of Ejike *Maduka v. Microsoft Nigeria Ltd. And 3 Others.*[lxxiv]

Besides stating that sexual harassment is an affront to the dignity of the person and a breach of the right to freedom from degrading treatment, as amended, the Court alluded to the influence of international human rights instruments in its evolution as a crime in Nigeria. It restated with approval the definition of sexual harassment as enshrined in the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) General Recommendation No. 19 of 1992.[lxxv] Thus, for its purposes, "sexual harassment" is:

> Such unwelcome sexually determined behavior as physical contact and advances, sexually colored 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 grounds to believe that her objection would disadvantage her in connecting with her employment, including recruitment or promotion or when it creates a hostile working environment.[lxxvi]

Furthermore, the Court observes that (CEDAW) Recommendation No.12 recognizes sexual harassment as violence against women.[lxxvii]

International treaties and conventions have played pivotal roles in the evolution of sexual harassment as a crime in Nigeria. Such international instruments include: the Universal Declaration of Human Rights (UDHR) of 1948,[lxxviii] the Convention on the Elimination of All forms of Discrimination against Women (CEDAW) of 1979;[lxxix] the African Charter on Human and Peoples Rights, 1981.[lxxx] Protocol to the African Charter on the Rights of Women, 2003; and the Beijing Conference and the Platform for Action of 1995. While the two Criminal Codes of Nigeria mentioned earlier could be creatively construed to address some aspects or incidents of sexual harassment, they may be inadequate for redressing the offence of sexual harassment for being imprecise when matched with the legal definition of sexual harassment. For instance the Criminal Code's provisions in sections 351 to 353 may be construed to criminalize certain elements or ingredients of sexual harassment, but they seem flawed by imprecision.

Section 351 provides: "Any person who unlawfully assaults another is guilty of a misdemeanor, and is liable, if no greater punishment is provided, to imprisonment for one year". On the other hand, section 352 provides: "Any person who assaults another with intent to have canal knowledge of him or her against the order of nature is guilty of a felony, and is liable to imprisonment for fourteen years." Section 353 could be invoked to redress sexual harassment of male victims. It states: "Any person who unlawfully and indecently assaults any male person is guilty of a felony, and is liable to imprisonment for three years...."

In the light of the developing law and practice on sexual harassment, it is doubtful that the fore-going provisions would readily ground convictions for sexual harassment, especially as the definition and what constitutes the offence seem settled. Similarly, the provisions of the Penal Code that seem relevant to the offence of sexual harassment are only tangentially so. They include sections 281 and 285. Section 281 states: "Whoever, in order to gratify the passions of another person, procures, entices, or leads away, even with her consent a woman or girl for immoral purpose shall be punished with imprisonment which may extend to seven years and shall also be liable to fine. " Section 285, on the other hand provides:

> "Whoever commits an act of gross, indecency upon the person of another without his consent or by the use of force or threats compels a person to join with him in the commission of that act, shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine. Provided that a consent by a person below the age of sixteen years to such an act when done by his teacher, guardian or a person entrusted with his care or education shall not be deemed to be a consent within the meaning of this section."

However, it appears that the country seldom witnessed prosecutions, of sexual harassment under the codes, but legal developments in the US and Europe and UN activities on the protection of human rights, especially of women catalyzed the evolution of the offence of sexual harassment both as a human right and a criminal law issue in Nigeria. It triggered a flurry of legislations at the states level, as such legislations fall within the concurrent legislative list.

The following states either passed fresh laws on sexual harassment or amended and updated their laws on sexual harassment: Kano State passed the Kaduna State Penal Code Law, 2017;

Lagos State passed its Criminal Law of Lagos State, 2011; Ekiti State passed its Ekiti State Gender-Based violence (Prohibition) Law, 2019.[lxxxi] The fore-going list is not exhaustive. All the laws made provisions for the offence of sexual harassment. Besides the fore-going state laws, certain rules of court provide for the procedures and practice on the law of sexual harassment. Prominent among these is the National Industrial Court of Nigeria Civil Procedure Rules (the NIC Civil Procedure Rules), 2017. The Rules make provision for sexual harassment in the workplace and recognizes that it is an offence for which a person can bring a claim in court.[lxxxii] In *Ejike Maduka v. Micro-soft Nigeria Ltd & 3 ors.*[lxxxiii], the National Industrial Court of Nigeria had occasion to hold that an employer can be held vicariously liable for sexual harassment committed by its employees. It also observed that there is a duty on employers to have a policy on sexual harassment and to investigate cases in line with the policy. The Court opined:

> ....by the inaction and silence of the 1st and 2nd respondents, they both tolerated and ratified the 3rd respondent's conduct which is against their policy of prohibition and non-tolerance of sexual harassment, gender discrimination and retaliatory action. It held that they are both in breach of their duty of care and protection to the applicant and are vicariously liable for the acts of sexual harassment carried out by the 3rd respondent within the apparent scope of authority they entrusted to him.[lxxxiv]

This reasoning of the Court could apply to pin responsibility upon tertiary educational institutions, as employers of defendants/respondents in cases of sexual harassment.[lxxxv] At this point it has become necessary to draw attention to the existence of the Bill for an Act to Prevent, Prohibit and Redress Sexual Harassment in Tertiary Educational Institutions, and for other Matters, 2020. This is because of the promise it holds for the evolution of the law and practice on sexual harassment in Nigeria.

The Bill had since been submitted to President Mohammad Buhari before the end of his tenure, but he failed to sign it into law. Before it was submitted to the office of the former President, the Senate Committee on Judiciary, Human Rights and Legal Matters considered the Bill and made consequential recommendations for the final draft. Thus, our analysis here will be based on those recommendations.

The "Redress" in the long title was deleted by the Committee to de-emphasize restitution, which is a civil remedy and emphasize retribution which is intended to serve as a deterrent to offenders. Therefore, the recommended long title is: "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.[lxxxvi] Clearly, on the face of the long title, the bill exclusively targets staff of tertiary institutions and has been observed to be an *Ad-hominem* legislation for violating the cardinal principle of law, which frowns at laws that target a particular person or a particular group, which in this case are the "educators" in tertiary educational institutions.[lxxxvii] Furthermore, the Bill has also been criticized for seeking to over-reach and violate the Universities (Miscellaneous Provisions) (Amendment) Act, 2003, otherwise known as the University's Autonomy Act No. 1 of 2007. The Act provides for the autonomy of universities, and grants them the power to regulate their own affairs, which includes misconducts among staff and students. It also provides adequate redress mechanisms for violations.[lxxxviii] These claims may well be tested in court if and when the Bill is signed into law. It is here submitted that there seems to be a high probability that the claims will succeed.

The Bill is divided into twenty-five clauses, namely: 1. "Objective of the Bill" 2. "Relationship of Authority", "Dependency and Trust;" 3. "Fiduciary Duty of Care"; 4. "Offences"; 5. "Defense on Grounds of Marriage"; 6. "Student's Consent not a Defense"; 7. "Proof of Commission of Offence"; 8. "Filing of Sexual Harassment Complaint"; 9. "Petitioner or Complainant to Forward Petition to Appropriate Authorities"; 10. "Penalty"; 11. "Civil action for Breach of Fiduciary Duty"; 12. "Institutional Disciplinary Measures"; 13. "Independent Sexual Harassment Investigative Committee"; 14. "Institutional Disciplinary Procedure"; 15. "Judiciary Review"; 16. "Criminal Liability of Administrative Head"; 17. "Penalty for Failure of Administration Head to Setup Independent Sexual Harassment Investigative Committee"; 18. "Liability for False Complaint"; 19. "Implementation of Recommendation of Independent Sexual Harassment Investigation Committee"; 20. "Remedy on Grounds of False Allegation"; 21. "Protection of Students from Victimization"; 22. "Penalty for Victimization of Students in Respect of Complaint"; 23. "Public Officer's Protection Laws not Applicable in the Commencement of Proceedings for Breach of Fiduciary Duty of Care"; 24. "Interpretation"; and 25. "Citation". The Committee went further to recommend an additional clause titled "Explanatory Memorandum", which it says is necessary to explain the purposes of the Bill.[lxxxix]

The Bill which seeks to promote and protect ethical standards in tertiary educational institutions provides for specific offences which will amount to sexual harassment, when committed by a lecturer or a member of staff in any tertiary educational institution. According to the Bill, a lecturer is guilty if he/she:

(1) has sexual intercourse with a student or demands for sex from a student or a prospective student; or
(2) intimidates or creates a hostile or offensive environment for the student by soliciting for sex from the student or making sexual advances towards the student; or
(3) directs or induces another person to commit any act of sexual harassment under this Bill, or cooperates in the commission of sexual harassment by another person without which it would not have been committed; or
(4) grabs, hugs, kisses, rubs or strokes or touches or pinches the breasts or hair or lips or hips or buttocks or any other sensual part of the body of a student; or
(5) displays, gives or sends by hand or courier or electronic or any other means naked or sexually explicit pictures or videos or sex related objects to a student; or
(6) whistles or winks at a student or screams or exclaims or jokes or makes sexually complimentary or uncomplimentary remarks about a student's physique or stalks a student.[xc]

Clause 5 provides what seems to be the only defence to sexual harassment under the Bill, to wit, that the educator and the student are legally married. According to Clause 6, consent shall not even be a defence, neither shall the prosecutor be required to prove the intention of the accused person or the condition under which the act of sexual harassment was carried out.[xci] In other words, the Bill creates strict liability offences.

The penalties for the offences are stiff and offer no option of fines. The Bill provides:

> Any person who commits any of the offences or acts specified in Clause 4 (1), (2) and (3) of this Bill is guilty of an offence of felony and shall on convention, be sentenced to an imprisonment term of up to 14 years but not less than 5 years, without an option of a fine.
>
> Any person who commits any of the offences or acts specified in Clause 4 (4), (5) and (6) of this Bill is guilty of an offence and shall be liable on conviction to

imprisonment term of up to 5 years but not less than 2 years, without an option of a fine.[xcii]

The Bill also provides for disciplinary measures for institutions and penalties for administrative personnels who fail to take necessary actions to redress cases of sexual harassment. It provides a minimum fine of ₦5,000,000.00 or imprisonment for five years or both, for administrative head who is convicted in the circumstances. So also would any Chairman of Independent Sexual Harassment Committee established under the Bill be liable on conviction to a maximum of ₦2,000,000.00 or imprisonment for 12 months, or both for failure to submit an annual report on sexual harassment complaints received and actions taken on them to the highest management body of the institution.

However, for the purposes of this paper, it is not necessary to analyze and evaluate the entire provisions of the bill, as that could form the subject-matter of another paper. It is here only proposed to point attention towards the developing law and practice.

In the interim, there is a growing number of court decisions and institutional disciplinary sanctions against erring lecturers in cases of sexual harassment of students. The case of *Professor Richard Akindele v Federal Republic of Nigeria*[xciii] readily comes to mind. In that case the Independent Corrupt Practices Commission (ICPC), prosecuted Prof. Richard Akindele of the Obafemi Awolowo University for demanding sex from his student. The court held that mere demand for sexual gratification is an offence and abuse of power, especially with regard to educational institutions. The Professor was caught on tape demanding sex from a female student. He was dismissed from office and sentenced to two years imprisonment. On appeal, the court of appeal affirmed the judgment of the lower court.

In the earlier case of *Tunde Salima v Federal Republic of Nigeria*,[xciv] a student accused one Tunde Salima, a lecturer, of sexual harassment. The accused lecturer was tried by the National Industrial Court of Nigeria (NICN) and convicted, whereupon he was dismissed from his employment. Dissatisfied with the judgment, the respondent appealed to the Court of Appeal, which upheld his appeal and re-instated him to his job in the university.

At about the same time as the fore-going case was reported, one Dr. Mohamed Sani Idiagbon, the former Head of Department of English Language at the University of Ilorin was reported to have sexually harassed a second year student (Faith), who had gone to his office because of

a continuous assessment test that she had missed. It appears that the said lecturer had seized the opportunity to sexually harass her. An audio recording of the alleged encounter went viral forcing the university authority to remove the alleged erring lecturer and suspend him from the university. However, the lecturer refused to honor the invitation to the disciplinary committee set up by the university, but rather resigned his appointment with the institution.

Undaunted by that development, the university continued to investigate the matter and vowed to punish him, if found guilty of the allegation. According to the Corporate Affairs Officer of the university: "The university frowns against sexual harassment or any other harassment at that. The university is making necessary investigation and once we are done, the culprit will be brought to book."[xcv] Unfortunately, it does appear that the investigations were closed following the death of the lecturer.[xcvi]

It is noteworthy that the Independent Corrupt Practices and Other Related Offences Commission (ICPC) has joined the vanguard to curb incidents of sexual harassment in the tertiary educational institutions of learning. The commission commenced investigation of, at least, 15 cases of sexual harassment as at September, 2022. The chairperson of the commission reported that it had received about 17 reports in relation to sexual harassment out of which one had resulted in a conviction via a plea bargaining, while another resulted in a system study.[xcvii] Of course, the earlier cited *case of Akindele*[xcviii] which the Commission prosecuted ended in the conviction of the lecturer.

Many tertiary educational institutions in Nigeria have had to deal with cases of sexual harassment, since the first sensational cases of sexual harassment went viral on social media. In just a space of one year, no fewer than 18 lecturers in the country's tertiary educational institutions have been indicted and dismissed over sexual harassment.[xcix]

With the current spate of dismissals over cases of sexual harassment, lecturers in Nigeria's tertiary educational institutions now face an atmosphere of anxiety and fear. This is so, because there is now the possibility of using allegations of sexual harassment as a weapon for persecution, blackmail and witch-hunting against lecturers in general. This may lead some lecturers into adopting desperate and pre-emptive measures. The case of *Dr. Chukwunonye Akajuru v The Port-Harcourt Polytechnic & 7 ors.*[c] may be instructive in this regard.

In that case, the applicant challenged the setting up of an investigative committee on sexual harassment against him, urging the court to issue an order of *certiorari* to quash the decisions of the committee. The court found that the applicant did not put before it any fact showing that the committee had already commenced its investigation or that it made some recommendations against him, and held as such. The court also found and held that the applicant did not present before the court, a dispute in respect of which the court could invoke its judicial powers to determine. In other words, the court found that there is no factual situation, which could enable the applicant to obtain any remedy from the respondents, and so held. According to the learned judge, "as it is, the applicant was merely apprehensive of the committee's action (investigation and recommendation) against him without any confirmation of his apprehension and then went to court to stop them. Consequently, the court held that the respondents have not done any wrong to the applicant to warrant the filing of this suit against them. It, therefore, held that the suit lacked merit and accordingly dismissed it.

LESSONS FROM FOREIGN JURISDICTIONS

The need to seek lessons for Nigeria from foreign jurisdictions is rather compelling. This is so, as Nigeria has just only begun to take sexual harassment in tertiary educational institutions seriously by seeking to criminalize it. In the absence of a developed jurisprudence in sexual harassment in Nigeria, it is necessary to look to other jurisdictions for lessons. Thus, this paper may be drawing lessons from more developed jurisdictions like the US, Australia, India and even South Africa

In the US; sexual harassment cases in tertiary institutions are governed by Title IX Education Act Amendments of 1972, which provides: “no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance.”[ci] The scope of liability under this legislation has continued to evolve, especially in the face of changing technologies.[cii] It is also believed that the scope of liability under the Nigerian Bill on sexual harassment in tertiary institution would evolve with the passage of time, after it has been assented to.

In the U.S. case of *Gebser v. Lago Vista Independent School District*, the Supreme Court resolved a conflict within the District Courts and established the current legal standard that is used to impose liability on a school district in cases of Title IX violations by an employee of that school district.[ciii] In that case, a high school student in the Lago Vista Independent School District had a sexual relationship with one of her teachers. She did not report the relationship to school officials. However, the teacher was arrested and had his employment terminated by the school district, after it was discovered that they were having sex. Before discovering them, the high school's principal had received multiple complaints from parents of two other students, that the same teacher made sexually suggestive remarks to students. The teacher apologized for the comments, when confronted, and was warned about the conduct. The principal did not investigate the matter any further.

Gebser and her mother filed a suit raising, among other things, a claim for damages against Lago Vista under Title IX of the Education Act Amendments of 1972.[civ] The Federal District Court granted Lago Vista summary judgment and affirmed the Fifth Circuit that held that school districts are not liable under Title IX for teacher-student sexual harassment, unless an employee with supervisory power over the offending employee actually knew of the abuse, had the power to end it, and failed to do so, and ruled that petitioners could not satisfy that standard. In other words, the school district can only be held liable for its own behavior, which must be that it acts with deliberate indifference to known harassment. In so holding the Supreme Court rejected both vicarious liability and constructive knowledge as liability standards.[cv]

It should also be noted that the express statutory means of enforcing Title IX is administrative, but the court held in *Canonon v. Universtity of Chicago*,[cvi] that Title IX is also enforceable through an implied private right of action.

Lessons may also be derived from Australia. Besides, the policy of Flinders University in Australia, which defines sexual harassment as "any unwanted, unwelcome or uninvited behavior of a sexual nature," and makes reference both to behavior which creates a hostile working environment, the policy of the University of South Australia explicitly notes that sexual harassment is generally associated with the exercise of power and usually occurs within relationships of unequal power or authority,[cvii] including between superiors and subordinate.

The lesson here is that the inclusion of statements that recognize the power dimensions of sexual harassment may have significant effects on complainant's levels.[cviii] Furthermore, while emphasizing that sexual harassment is much more likely to be directed at women than men, the University of South Australia policy "states that it is possible for men to be sexually harassed by women and by other men and for women to be sexually harassed by other women."[cix] The Australian case of *Fitz-Gibbon & Park v Liu*[cx] is instructive in this regard.

In that case, two men who lived in a same sex relationship complained that a female neighbor had sexually harassed them. The tribunal found that the event complained about happened, and then proceeded to consider whether they constituted sexual harassment under the Anti-Discrimination Act, 1991 of Australia (the Act). In doing this, the Tribunal observed that the Act is not constrained to particular areas and can apply to all facets of life including prohibition on sexual harassment. Particularly, it found that the use of the term "faggot" in reference to homosexual men would obviously cause offences, and that the comments and the deliberate playing of lyrics repeating the term was easily found to be offensive. It also found that they also had sexual connotation, which were aimed at offending and humiliating the men, and held that the conduct amounts to sexual harassment that is prohibited under the Act.[cxi]

In addition to judicial responses, many countries establish a grievance or complaint committee to investigate complaints, issue advice on appropriate disciplinary measures, and, in some instances, enforce sanctions. In India, the Supreme Court has required that 'Sexual Harassment Committees' be established in each workplace, while in Philippines, the sexual harassment legislations provide that a 'Committee on decorum and investigation' should be setup to investigate complaints.[cxii] Consequently, almost all government department in India have setup this kind of committee. So also have most public sector organizations.

It has also been observed that sexual harassment committees in India are very often composed primarily of personnel and therefore inadequately represent the perspective of employees. For this reason, "some organizations indicate that grievance commissions, which hear sexual harassment complaint, should include worker representatives."[cxiii] For instance, at Jawaharial Nehru University in India, it was felt that the sexual harassment committee should include employee representatives and union members in addition to students and teachers. Given the nature of most incidents of sexual harassment cases, it is desirable that the Sexual Harassment

committees and investigating bodies should include women.[cxiv] In fact, the Supreme Court of India took this into account and stated within its guidelines for work place policies that the chair-person and at least half of the members of Sexual Harassment Complaints Committees should be women. The Committees are also required to include one NGO participant. However, neither this nor the gender-balance requirement is always fulfilled in practice.[cxv]

South Africa had taken steps aimed at curbing sexual harassment at the workplace from, as far back as, 1989, in the case that has become commonly known as the *J v M*.[cxvi] However, as with most countries, her regulation of sexual harassment in educational institutions is relatively recent.[cxvii] For instance her Employment of Educators Act 76 of 1998 provides that 'an educator is guilty of misconduct if the educator…commits sexual or any other form of harassment.'[cxviii]

Be that as it may, it seems that the Code of Good Practice on the handling of Sexual Harassment Cases ("the Code") which was also issued in 1998 was meant to complement the Act. The Code which was later amended in 2005 remained operational alongside the amended version until 2018, when the original version was withdrawn.[cxix]

As has been observed, the original version provided quite a loaded and open-ended definition of "Sexual harassment", as follows: 'unwanted conduct of sexual nature'. The unwanted nature of sexual harassment distinguishes it from behavior that is welcome and mutual.[cxx] Item 3(2) of the Code also provides that sexual attention becomes sexual harassment if:

> (a) the behavior is persisted in, although a single incident of harassment can constitute sexual harassment; and/or
>
> (b) The recipient has made it clear that the behavior is considered offensive; and/or
>
> (c) The perpetrators should have known that the behavior is regarded as unacceptable.

In Item 4, the drafters of the Code then went on to list examples of forms of sexual harassment which is usual with the legislations of this sort.

In consequence of Item 3(2) (a) of the Code, the Labour Court found that the employee's conduct did not amount to sexual harassment because the employee did not persist in the behavior after the complainant told him that his overtures were unwelcome. However, by the same provision, a single incident may, in exceptional circumstances, constitute sexual

harassment. A typical example would be where a conduct constitutes an objective sexual harassment as in where the perpetrator forcefully kisses, looks up a person's skirt, gropes or pinches or touches someone sexually, as in the classical case of *J v M*[cxxi] and in the case of *Naptosa Obo Makhaphela Khaya Lethu v South West Gauteng TVET & Department of Higher Education & Training.*[cxxii]

In the former case of *J v M*,[cxxiii] the alleged perpetrator was said to have caressed, slapped the buttocks and fondled the complainant's breast, while in the latter case, the harasser was charged with sexual harassment in that he called the complainant into his room, tried to kiss her, fondled and touched her private parts and breasts, even when she was crying out for help. In *University of Venda v Malueke*[cxxiv], the harasser made it clear that the complainant would not pass the examination on the course that he taught unless she submitted to his sexual advances. Of course, this is a clear case of *quid pro quo* sexual harassment. It may have been a single incident but it was a serious one. Besides, the perpetrator's conduct clearly offended all known South African Laws and regulations on sexual harassment, which includes the Employment of Educators Act 76 of 1998; the South African Code of Good Practice in the handling of Sexual Harassment Cases; the South African Council for Educators Code of Professional Ethics and the policy Regulating Educator-on-Learner Sexual Misconduct.

Clearly, there are abundant lessons to be drawn from both the legislations and the case laws from the foreign jurisdictions that we have reviewed under this sub-heading.

CONCLUSION AND RECOMMENDATIONS

Sexual harassment of students in tertiary educational institutions has indeed engaged the consciousness of most governments in the world, as has been demonstrated in this paper. Though the principal legislation in Nigeria on sexual harassment in tertiary educational institutions is yet to be assented to, by the President, the developing law and practice on sexual harassment in tertiary educational institutions has begun to evolve as shown by the rise in the number of court cases on it, in recent times. Certainly, the developing law and practice would benefit from contemporary developments in foreign jurisdictions as has been exemplified in this paper. It therefore remains to emphasize that the nascent jurisprudence on sexual

harassment in tertiary educational institutions in Nigeria can only continue to improve with lessons from foreign jurisdictions and be assured by the ultimate promulgation of the Act on sexual harassment.

In view of the above conclusion, the following actions are hereby recommended:

1. That the "Bill for an Act to Prevent, Prohibit and Redress Sexual Harassment of Students in Tertiary Educational Institutions and Matters Connected Therewith", be reviewed by the 10th National Assembly and presented to the current President for his assent.

2. That the Bill be reviewed to require the tertiary educational institutions to adopt policies on sexual harassment, in addition to requiring them to establish Committees on Sexual Harassment; and

3. That the scope of the Bill be widened to include primary and secondary schools, work places and religious organizations in order to holistically deal with the subject matter of sexual harassment in the country.

ENDNOTES

[i] See "Sex for Grades : BBC documentary exposes UNILAG lecturer, more" available at sunnewsonline.com/https://www.goggle.com/... (sourced on 8-8-2023). While the University of Ghana has largely exonerated the two lecturers that were indicted in the BBCdocumentary, UNILAG (University of Lagos) sacked the two lecture's that were indicted at the university two years after the documentary was made public. (see News Wires NGR of 02/06/2021, available at https://newswirengr.com/... (sourced on 8-8-2023).
[ii] Iroanusi, Q, 'Senate pass anti-sexual harassment bill', available at http://www.premiumtimes.ng.com (July 7 2020) (accessed 25-4-2020). Unfortunately the bill has not been assented to until May 2023, when President Buhari left office.
[iii] Ibid.
[iv] Ibid.
[v] Ibid.
[vi] See Report of the public hearing of the senate committee on judiciary, human rights and legal matters on the Bill for an Act to Prevent, Prohibit and Redress Sexual Harassment of Students in Tertiary Educational Institutions and for Matters connected therewith. See also The University (Miscellaneous Provisions) (Amendments) Act 2003 (otherwise called the Universities Autonomy Act No.1, 2007) which was enacted by the National Assembly and signed into law on 10th July 2003. It was later gazzeted by the Federal Republic of Nigeria Official Gazette No.10, Volume 94 of 12th January 2007 as Act No.1 of 2000. This Act applies only to federal universities.
[vii] Ibid.
[viii] Op cit.
[ix] Garner, B.A. (ed), *Black's Law Dictionary* (8th edition), St. Paul, west, a Thomson business, 2004, 1407. Clearly, the above definition is relative to sexual harassment within the employment environment.
[x] Ibid, 733.

[xi] Nwazuoke, A.N, 'Sexual harassment: meaning and the law,' Igbinedion University Law Journal, (volume 1, September 2003), 23.
[xii] Ibid, 1407.
[xiii] See *Veco, Inc. v Rosebrock*, 970 P.2d 906,910(Alaska 1999); *Elezovic v Ford Motors Co*; 697 .N.W 2d.851 868-69(Mich.2005). *Goins v W. Group*, 635 N.W.2d 717, 725 (Minn. 2001). *Nava v. City of Santafe*, 103 P.3d 571, 574(N.M. 2004; lively, 830 A.2d 888; *Cincinnatin Bar Ass'n v. Young*, 731 N.E. 2d 631, 639-40(Ohio200), all cited in farkas, R' et al; State Regulation of 'Sexual Harassment, The Georgetown Journal of Gender and the law (volume .xx:421) (2019), 427.
[xiv] See, *Kauffman v. Allied signal, Inc*., Autolite Div., 970 f.2d 178, 186 (6th Cir. 1992); *Island v Buena Vista Resort*, 103 S.W.3d 671, 676-77(Ark.2003); *Schmitz v. Bob Evans Farms*, Inc., 697 N.E.2d.1037, 1040(Ohio ct.App.1997); *Edward v Wornick Family Foods Corp*; 878 S.W.2d 653, 658-59 (Tex. App.1994); *Westmore land Coal co. v. W. VA* Human rights Comm'n, 382 S.E.2d 562, 566-67(W. Va.1989).
[xv] See UN Committee on the Elimination of Discrimination against Women: Recommendation No.19: Violence against Women (Eleventh session), New York, January (1992), document No (CEDAW/1992).LT Add.15.
[xvi] See official journal of the European communities vol.35, no. l.49, 49, 24 February, 1992, 4-8, as cited in nwazukoe, A.N., op.cit.,286.
[xvii] Nwazuoke, ibid, 292.
[xviii] Ibid.
[xix] Ibid.
[xx] See, Criminal Code Act, CAP C38, Laws of the Federation, 2004, 19.
[xxi] (1975) ALLER 347;SHC120.
[xxii] Ibezim, Emma, "Sexual offences under the Law: A Critical Analysis of the offence of Rape" in Okpaga, A and Okeke VOS and Nwanolue, BOG, *Great Issues in Domestic and International Politics: Themes and Analysis*, Rex Charles and Patrick Publications, Nimo(2011),311-312
[xxiii] See again 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 there with (SB.77) page.5 of 24.
[xxiv] W.V.H Rogers, *Winfield & Joloiwicz on Tort* (17th edition), London, Sweet & Maxwell, 2006, 88.
[xxv] Ibid.
[xxvi] Gilbert Kodilinye and Oluwole Aluko, *The Nigerian Law of Torts*, (3rd edition), Spectrum Books Limited, London, 2018, 12.
[xxvii] Ibid.
[xxviii] See section 252 of the Nigerian Criminal Code (CAP "(38"), Laws of the Federation, 2004.
[xxix] See section 264 of the Penal Code(CAP 89)with Northern States Federal Provisions Act(CAP345)
[xxx] See also, section 263 of the Penal Code of Northern States of Nigeria.
[xxxi] Gilbert KOdilinye, op cit,.
[xxxii] Litosseliti, L. *Gender and Language: Theories and Practice*, Hodder Arnold Education, London, 2006, 10. See also Emmanuel Chinweike Ibezim, *International Humanitarian Law: Protecting the Rights of Women in Armed Conflicts in Africa*, Nigeria, DR Congo and Sierra Leone (Vol.1) (The lighthouse books, Agape Inc., 2021), 100.
See section 1(1) of the Sex Discrimination Act of the U.K. (1975).
[xxxiii] See the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003), Art.1 (f). The 1994 UN Declaration on the Elimination of Violence against Women used the phrase "Unequal Power Relations" to describe relations between men and women and asserts it as the root of gender violence against women.
[xxxiv] Emma. C. Ibezim and others, "Gender Issues in Nigerian Law: Development and need for changes", U.O Umozuruike and E.C Ngwakwe, *Conference Proceedings of the 42nd Annual Conference of Nigerian Association of Law Teachers (Law and the Challenges of Nation Building in the 21st Century)*, 2009, 61-68.
[xxxv] Available at www.lawinsider.com>Dictionary(last visited on 5-6-23).
[xxxvi] Ibid.
[xxxvii] Ibid.
[xxxviii] Komolafe Thompson Olubanji and Kazeem Abiodun Akinwande, 'Managing Nigerian Tertiary Educational Institutions Successfully: the Role of Stakeholders', available at www.research gate.net (last visited on 5-6-2023).
[xxxix] Nnabue, U.S.F., *Understanding Jurisprudence and legal theory*, Owerri, Bon Publications, 2016, 67.
[xl] Ibid.

[xli] Emmanuel Chinweike Ibezim, *International Humanitarian Law*, op cit, 33. See also Russell, B, *A History of Western Philosophy*, New York, Simon and Schuster, 1945 quoted in D. and Hashi, F., 'Law as an Institutional Barrier to the Economic Empowerment of Women', Working paper no.2, New York, World Bank, 1989, 14.
[xlii] Garner, B.A., *Black's Law Dictionary*, (5th edition) St. Paul, West Publishing Company, 1979.
[xliii] Russell, B., op.cit.
[xliv] Freedman, M.D.A(ed), *Lloyd's Introduction to Jurisprudence* (7th edition), London, Sweet & Maxwell Ltd; 2001, 90.
[xlv] Ibid.
[xlvi] Craik, E.M, "Marriage in Ancient Greece" in Craik, E.M (ed), *Marriage and Property,* St. Andrews, Aberdeen University Press, 1984, 22. See also Ibezim E.C, "*The Beijing Conference and the Human Rights Protection of Women: A Critical Review",* 2000. (An Unpublished LLM Dissertation), 24.
[xlvii] C.A Mackinnon, "Feminist, Marxism, Method and the State: toward Feminist Jurisprudence", in JO Bridgeman and Susan Millns, *Feminist Perspective on Law-Laws Engagement with the Female Body*, London, Sweet and Maxwell, 1998, 73.
[xlviii] Ibid, 73-74.
[xlix] JO Bridgeman and Susan Millns, "Are Women Persons Too?", in Bridgeman, J and Millns, S, *Feminist Perspective on Law-Laws Engagement with the Female Body*, London, Sweet and Maxwell,1998, 73.
[l] Ibid. such cases include *Charlton v Lings* (1868) L.R.4C. 374.; *Bebb v. Law Society* (1914) 1 ch.286.
[li] Mary, S.E, "Gender Violence" in Forsy the.D.P (ed), *Encyclopedia of Human Rights* (vol.2), see also, Emmanuel Chinweike Ibezim, "Gender Based Domestic Violence in Nigeria: A Social-Legal perspective" in Epiphany Azinge and Lillian Uche, *Law of Domestic Violence in Nigeria*, NIALS, Lagos, (2012) 20.
[lii] Beverly H. Earle and Gerald A. Madek, 'An International Perspective on Sexual Harassment Law,' Law and Equality Journal (1993) (vol. 12: 43, at 46).
[liii] Ibid, 43.
[liv] Ibid.
[lv] See *Williams v. saxbe*, 413F. Supp.654(C.D.C 1976).
[lvi] 568F.2d 1044 (3rd Cir. 1997).
[lvii] 441F. Supp.459, 456-66(E.D. Mich. 1977).
[lviii] 413F. Supp.at 657-61.
[lix] See Bonnie. Westman, Note, The Reasonable Woman Standard: Preventing Sexual Harassment in the Work Place, 18WM. MITCHELL L.REV 795, 798-99 (1992) as cited in Beverly H. and Gerald A. Madek, op cit.
[lx] See *Vinson*, 477 US at 63.
[lxi] Supra, at 68. The unwelcomeness test established by the court is, however, not always easy to satisfy.
[lxii] Supra.
[lxiii] Ibid.
[lxiv] Ibid.
[lxv] Ibid.
[lxvi] See Steven R. Weisman, 'Landmark Harassment Case in Japan,' N.Y. Times April 17 1992 at A3 (Discussing "Seku hara", the term for sexual harassment in Japan).
[lxvii] The Protocol otherwise known as the Maputo Protocol was adopted in July, 2003
[lxviii] See Art. 4(2) (a) of the Protocol.
[lxix] See The Code of Good Practice on the Handling of Sexual Harassment Cases (1998) of South Africa, available at www.ncpi.nlm.nih.gov>articles>P (sourced on 3-7-2023); this Code makes South Africa one of the countries around the world, which have specifically designed legislation to deal with sexual harassment.
[lxx] See 'Legal Strategies under regional and international human rights law', available at www.scielo.org.sa>scielo, sourced on3-7-2023.
[lxxi] See The Report of the Senate Committee on A Bill for an Act to Prevent, Prohibit and Redress Sexual Harassment of Student in Tertiary Educational Institution and for matters connected therewith (SB.77), date June 2020.
[lxxii] See Yusuf Dankofa, 'Sexual Harassment as Women's Right Violations: Law as a tool for Protection and Redress,' being a paper that was presented at the International Women's day Celebration conference Organized by the Gender Policy Unit, Ahmadu Bello University, Zaria on 10th March 2021, 7. See Criminal Code (CAP "(38)") Laws of the Federation, 2004, and Penal Code(CAP 89)/Northern States Federal Provision Act CAP 345).
[lxxiii] See section 34 of the 1999 Constitution of the Federal Republic of Nigeria. See also' Sexual Harassment in the workplace' available at: https://nigeriaactionforjustise.org/legal_areas/sexual harassment_in_the_workplace/what_does_the_law_say_about_sexual_harassment (accessed 20-7-2023).

[lxxiv] (2014)NLLR. (pt. 125) 67 NIC, 7.
[lxxv] Yusuf Dankofa, op cit. 3.
[lxxvi]Ibid, 3-4.
[lxxvii] Ibid, 4.
[lxxviii] See UNGA Res. 217 A (111), available at www.un.org/overview/rights.html. (accessed on 9-8-2023) The Convention entered into force on 10th December 1948. See also Malcom D. Evans (ed), *Blackstone's International Law Documents* (9th edition), Oxford, Oxford University Press, 2009, 42.
[lxxix] Sandly Gandhi, *Blackstone's International Human Rights Documents* (6th edn.), Oxford, University, 2008, 62.
[lxxx] The charter entered into force in 1986, and was ratified in 1986; Nigeria domesticated it with the enactment of the African Union Charter on Human and Peoples Right (Ratification and enforcement) Act, Cap.A9 Laws of the Federation of Nigeria, 2004.
[lxxxi] Available at: http://nigeria.actionfor justice.org/legal areas/sexual-harassment-in-the-workplace/what-does-the-law-say-about-sexual-harassment/(sourced on 4-7-2023).
[lxxxii] See order 14 of the National Industrial Court of Nigeria Civil Procedure Rules, 2017.
[lxxxiii] (2014)NLLR (pt.125)67 NIC, 7.
[lxxxiv] Supra.
[lxxxv] Yusuf Dankofa, op.cit., 3-4
[lxxxvi] See the report of the Senate Committee on Judiciary, Human Rights and Legal Matters on the Bill for an Act to Prevent, Prohibit and Redress Sexual Harassment of Students in Tertiary Educational Institutions and for Matters connected therewith, available at: https://placing.org/i/wp-content/uploads/2020/07/Senate-Report-on-Sexual-Harassment-of-Students-in-Tertiary-Educational-Institutions-Prohibition-Bill-2019.pdf.
[lxxxvii]Ibid, 11.
[lxxxviii] Ibid, 10-11.
[lxxxix]Ibid.,24.
[xc] See Clause 4(1) – (6) of the Prevention, Prohibition and Redressal of Sexual Harassment in Tertiary Educational Institutions Bill, 2019.
[xci] Clauses 6 and 7
[xcii] Clauses 11 and 12
[xciii] (2019/LCN/13537/CA).
[xciv] (NICN/IL/05/2016).
[xcv] See 'Unilorin sexual harassment: Dr. Mohammed Sani Idiagbon', available at www.bellanaija.com (sourced on 31-7-2023).
[xcvi] 'Former Unilorin Staff Accused of Sexual Harassment dies' available at www.midlandpost.ng created 09 August 2020 (accessed 31-7-2023).
[xcvii] Kunle Sanni, 'ICPC probes 15 Sexual harassment cases', available at https://www.premiumtime (accessed on 20-8-2023).
[xcviii] *Supra.*
[xcix] See 'sexual Misconduct: OAU, UNIABUJA DISMISS PROFS, 14 OTHERS', available at https://punchng.com/sexual-misconduct-oau-uniabuja-dismissed-four-profs-14-others/ (accessed on 7-9-23). According to a 2018 Survey by the World Bank Groups Women, "In 2021, OAU dismissed three lecturers from the Department of English Language, International Relations and Accounting over sexual harassment of students. The Kaduna state university, in January 2021 announced the dismissal of a lecturer in a Department of Geography for sexually assaulting a student. The Rivers State College of Health Science and Management Technology suspended a lecturer for three months for sexually harassing a 100 level female student. The Federal University, Ado-Ekiti suspended a lecturer in the Department of Media and Theatre Arts in June 2021 for sexual misconduct. The same month, the management of the University of Lagos announced the dismissal of two Lecturers over a similar offence. In august the same year, the university of Port-Harcourt announced the dismissal of a lecturer of the Department of Foreign Languages and Literature over sexual misconduct…" the list continued with dismissals of lecturers in the following Institutions: Federal Polytechnic; Bauchi; Ignatius Ajuru university of Education; Kwara State University and University of Abuja.
[c] (Suit no: NICN/PHC/6M/2019).
[ci] Kathrine T. Bartlett, Gender and Law, Boston, Little , Brown & Company, 1993, 222.
[cii] Ibid.
[ciii] See Thompson and Horton, LLP; Chris Gilbert, 'Thin-King Back: The Top Ten Supreme Court Cases Imparting Education', available at https:casetext.com//>case>analysis (accessed on 20-8-2023).

[civ] In *Franklin v Gwinnet County Public School*, 503 U.S. 60, the court established that monetary damages are available in such an action but made no effort to delimit the circumstances in which that remedy should lie.
[cv] Op.cit.
[cvi] 441 U.S 677.
[cvii] Nelien Haspels, et.al. *, Action Against Sexual Harassment at Work in Asia and the Pacific*, Bangkok, ILO, 2001,115.
[cviii] Ibid, 116.
[cix] Ibid., 117.
[cx] QCAT 259 (12 July 2022). See also *Fitz- Gibbon & Park v. Liu*, available at www.qhrc.qld (accessed on 20-8-2023).
[cxi] In the South African Case of *Vodacom Service Provider Company (pty) Ltd v. Phala* (JR217/05(2007) ZALC 13), a woman was alledged to have: exposed her artificial breast to the complainant (alledgelly after they requested her to do so); called the complainant to her office to measure the size of their manhood, something which it is alledged arose from a conversation between the complainants and accused, pinched the complainants' bottoms, etc. she was dismissed in the disciplinary hearing but the Commissioner reinstated her with compensation equivalent to six months remuneration.
[cxii] Nelien, op.cit, 122.
[cxiii] Ibid, 123.
[cxiv] Ibid.
[cxv] Ibid.
[cxvi](1989) 10 IL 755 (IC).
[cxvii] Lux Lesley Kubjana, et. al, 'Understanding the Law on Sexual Harassment in the Work Place (Through a caselaw lens): A Classic Fool's Errand', available at http://www.scielo.org.za>scielo (accessed on 9-8-2023).
[cxviii] Ibid, 105 at fn.101. See also Items 3.8,3.10, and 3.11 of the South African Council for Eduactors Code of Professional Ethics available at: https://www.sace.org.za/assets/.../sace_58684/2018/11/22/ethics%2obrochure.pdf. See also Coetzee "Law and Policy Regulating Educator-on-learner Sexual Mis-conduct" 2012 1 Stell LR7676.
[cxix] The original version was withdrawn by GNR 1394 in GG 42121 of December, 2018.
[cxx]Item 3(1) of the Code.
[cxxi] Supra.
[cxxii] Case No: ELRC 97-16/17GP.
[cxxiii] Supra.
[cxxiv] (2017) 38 ILJ 1376 (LC).