

A REVIEW OF THE NIGERIAN BAR ASSOCIATION SEXUAL HARASSMENT POLICY 2021*

Abstract

Sexual harassment has been a major problem faced by legal professionals across the globe. This inordinate sexual behavior has flooded the profession with imbalanced gender ratio since it influences female Lawyers' intention to exit the profession for an alternative job. In fact, sexual harassment has been documented as a foremost challenge tinted with negative impact, especially as it relates to career development for women within the profession. Although it is underreported due to several factors such as self-blamed, retaliation, termination, stigmatization, etc., the Nigerian Bar Association recently launched its Sexual Harassment Policy at the 61st Annual General Conference, held in Port-Harcourt, Nigeria, to create a safe workplace for all especially, female lawyers who are, or may have been sexually harassed during their day-to-day law practice. This study seeks to review the Nigerian Bar Association Sexual Harassment Policy 2021, and to possibly identify the advantages and disadvantages of the Policy. It makes suggestions for possible modification and implementation of the Policy. In achieving the aims of the study, the doctrinal research methodology was adopted and the Policy was critically reviewed.

Keywords: Legal profession; Legal professionals; The Nigerian Bar Association; Sexual Harassment Policy; Women Forum;

1. Introduction

The Policy¹ document containing Seventeen articles was championed and launched by the Nigerian Bar Association Women Forum in support of the Nigerian Bar Association, at the recently completed 61st Nigerian Bar Association Annual General Conference, held on 27th October, 2021 at Elekahia, Port-Harcourt, Rivers State. It commenced with a preamble written by the Nigerian Bar Association (NBA) President, Mr. Olumide Akpata, affirming the NBA's commitment to ensuring a safe workplace for all.

2. Gaps and Events warranting this Policy

Sexual harassment has been reported as a major problem faced by many legal professionals, especially those practising in private law firms in numerous States, such as- Nigeria, India, United States of America, Australia, Canada, New-Zealand, Scotland, United Kingdom *et cetera*.² Observably, most of the countries mentioned have a policy regulating issues of harassment especially sexual harassment in their legal profession and those without a specific Policy have a national law on sexual harassment. However, Nigeria does not have a precise national law but fragmented legal provisions on sexual harassment, which is enforced across the six geopolitical zones.

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¹ The Nigerian Bar Association Sexual Harassment Policy, 2021

² Aina-Pelemo, A. D., Mehanathan, M. C. & Kulshrestha, P. (2020). Indian Legal Profession and the Sexual Harassment of Women at Workplace Act. *Sexuality and Culture*, 24(1), 249-272; Aina-Pelemo, A. D., Mehanathan, M. C., Kulshrestha, P., & Aina, I. T. (2019). Sexual harassment in the workplace: Case study of the Nigerian legal sector. *Journal of Law, Policy and Globalisation*, 86, 121-137; Financial Times, 'Women lawyers say sexual harassment is fact of life at UK law firms' (Last accessed 7 November 2021); Hurley, S. (2018, May, 30). 'One in five New Zealand Lawyers sexually harassed: Law Society Survey finds.' <<https://www.nzherald.co.nz/nz/one-in-five-nz-lawyers-sexually-harassed-law-society-survey-finds/SCK3GAKTS6OZOU5M5BXRHTMR4Y/>> (Last accessed 7 November 2021); Golshan, T., (2017, October 7). *Study finds 75 percent of workplace harassment victims experienced retaliation when they spoke up*. Available at: <https://www.vox.com/identities/2017/10/15/16438750/weinstein-sexual-harassment-facts> (Last accessed 7 November 2021); Mundy, T. and Seuffert, N. (2017, August). *Advancement of Women in Law Firms: Best Practice Pilot Research Project*. Available at: <<https://womenlawyersnsw.org.au/wp-content/uploads/2015/03/Advancement-of-Women-in-Law-Firms-2017-WEB.pdf>> Last accessed 7 November 2021); H Sommerlad, 'A pit to put women in professionalism, work intensification, sexualization and work-life balance in the legal profession in England and Wales' (2016) 23/1 *International Journal of Legal Professional*, 61 at 61. doi.org/10.1080/09695958.2016.1140945; McJannett, M. (2016, September 19). Sexual harassment: an everyday problem. *The Journal of the Law Society of Scotland*. Available at: <http://www.journalonline.co.uk/Magazine/61-9/1022211.aspx> Last accessed 7 November 2021); S.K Mishra, 'Women in Indian Courts of Law: a study of women legal professionals in the district court of Lucknow, Uttar-Pradesh, India' (2015)24 *E-cadernos ces*, 78 at 94; Long, A. B. (2016). Employment Discrimination in the Legal Profession: Question of Ethics? *University of Illinois Law Review*, 2, pp. 445-486; K Toohey, 'Changing the rules: the experiences of female lawyers in Victoria. Victoria, Australia' [Victorian Equal Opportunity and Human Rights Commission] (2012) 1 at 4; Equality Works, (2011, June 11). *Preventing Bullying and Harassment in the Profession: Law Society Scotland*. Available at: <https://www.lawsocot.org.uk/media/10166/preventing_bullying_and_harassment_report_june_2011.pdf> (Last accessed 7 November 2021); Kay and Brockman, (2000). Barriers to Gender Equality in the Canadian Legal Establishment. *Feminist Legal Studies*. 8, pp. 169-198.

By virtue of *Section 6.3 of the Law Society of Upper Canada Rules of Professional Conduct, (as amended)*, adopted October 24, 2013 and effective October 1, 2014; the sexual harassment of Colleague, Client, Staff members and any other person by a Lawyer is prohibited in the Canadian Legal profession. Similarly, to support the 1992 Anti-Sexual Harassment Policy, Resolution 302 was adopted by the American Bar Association in February, 2018 to further strengthen policies to address issues of sexual harassment and retaliation from harassers after reporting such incidence within the profession.³ *Rules 8.4(g) of the Model Rules of Professional Conduct of the American Bar Association Groups* also classifies sexual harassment or discrimination as a punishable professional misconduct. *The 2011 Law Society of Scotland Standards of Conduct for Solicitors Rules 15* specially classifies all forms of discrimination as a professional misconduct.⁴ The online survey findings of the Law Society from April 5th to May 1st, 2018 revealed that 18% of the total participants (31% women and 5% men) have been sexually harassed among New Zealand Legal Professionals.⁵ This led to the provision of *New Zealand Bar Association Conducts and Values Policy, Discrimination and Harassment: information for Barristers*, 30th May, 2018. This policy is to add sexual harassment and discrimination to the list of categories of professional misconduct to be reported to the New Zealand Law Society when violated.⁶ Flowing from the event above, it could be established that sexual harassment is rife in the Legal Profession.

Since the inception of the Nigerian legal profession and the Nigerian Bar Association, there had never being a Policy preventing, prohibiting and redressing issues of sexual harassment in the profession despite the culture of sexual harassment in the profession. Although very few empirical studies have been conducted on sexual harassment in the Nigerian legal sector nevertheless, a 2019 study conducted by Aina-Pelemo, et al found that among 561 Nigerian Lawyers (68% female and 32% male) residing in Abuja had experienced sexual harassment either as a Lawyer or Legal attached trainees, 63.5% were aware of a Colleague (female or male Lawyer/Legal trainee) who had experienced sexual harassment in their workplace and 83.6% admitted that sexual harassment hinders the growth of the Nigerian Legal Profession.⁷ A research scholar reported that his personal communication with a judge revealed that harassment is also at the bench.⁸ The alarming rates of sexual harassment occurrences within the Nigerian legal profession though underreported, have also being reiterated in Nigerian News reports: A Journalist reported that the 2019, Nigerian Bar Association Annual General Conference, extensively analyzed the widespread of bullying and sexual harassment in the legal / justice community.⁹ Legal Business Day and This Day reported the need for sexual harassment policy in the Nigerian Legal profession so as to set a good example to other professions and the country.¹⁰ Hence, the need for the NBASHP to regulate, penalize, educate and curb all manners of sexual behaviors that are unbecoming of legal professionals in the workplace.

3. Substantive Provisions of the NBA Sexual Harassment Policy

Article 2 of the Policy document presents the purpose of the policy which is to prevent and address the corporate issues of sexual harassment, to promote healthy, safe, productive and conducive workplaces for Nigerian legal practitioners as well as serve as a guide for employers to adopt an official policy and regulation on the subject matter. The legal framework of sexual harassment was briefly analyzed in Article 3 of the NBASHP to include the following instruments: Nigerian Labor Law, 2004, National Industrial Court, Civil

³This recent 2018 adopted resolution is provided to support the 1992 anti-harassment policy of the American Bar Association to combat retaliation after reporting sexual harassment, and to create zero tolerance of sexual harassment in the American legal profession. Available at (Last accessed 7 November 2021);

⁴ Equality Works, (2011, June 11). *Preventing Bullying and Harassment in the Profession: Law Society Scotland*. Available at: <https://www.lawscot.org.uk/media/10166/preventing_bullying_and_harassment_report_june_2011.pdf> (Last accessed 7 November 2021);

⁵ Hurley, S. (2018, May, 30). *One in five New Zealand Lawyers sexually harassed: Law Society Survey finds*. Available at: <https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12061142> (Last accessed 7 November 2021).

⁶ New Zealand Bar Association, (31, May 2018). *NZBA Conduct and Values Policy May 2018*. Available at: <<https://www.nzbar.org.nz/news/nzba-conduct-and-values-policy-may-2018>> (Last accessed 7 November 2021).

⁷ Aina-Pelemo, A. D., Mehanathan, M. C., Kulshrestha, P., & Aina, I. T. (2019). Sexual harassment in the workplace: Case study of the Nigerian legal sector. *Journal of Law, Policy and Globalisation*, 86, 121–137.

⁸ O. J Ladebo, 'Sexual harassment in academia in Nigeria: how real?' (2003).7/1 African Sociological Reviews, 117 at 121.

⁹ H Abiola '#NBAAGC bullying and sexual harassment in the legal / justice community by Ogaga Emoghwanre Esq.' (4 September, 2019) <<http://loyalnigerianlawyer.com/bullying-and-sexual-harassment-in-the-legal-justice-community-by-ogaga-emoghwanre-esq/>> accessed 6 November, 2021.

¹⁰Legal Business Day, 'The NBA should have a Sexual Harassment Policy' (9 July, 2020) <<https://legal.businessday.ng/2020/06/26/the-nba-should-have-a-sexual-harassment-policy/>> accessed 6 November, 2021; Soniyi Tobi, 'Nigeria: NBA to Lead Gender Reform in Judicial Sector' (4 October, 2021). <<https://allafrica.com/stories/202010040013.html>> accessed 6 November, 2021.

Procedure Rules, 2017, Order 14 Rules 1(a) (b) (c) & (d), Violence against Persons' (Prohibition) Act, 2015, Employees Compensation Act, 2010, The Criminal Law of Lagos States, 2011.

Article 4, inter-alia, extensively addresses the scope of the Policy. It applies to both private and public sector irrespective of size, whether companies, enterprises and/or businesses. Furthermore, aside from the office environment, the Article defines workplace to include places other than the registered office so far, work-related events or activities transpire there. Places such as, conferences, workshops, official business trips, work related communications, business meals etc Article 5 of the NBASHP defines sexual harassment as any sexual behavior that affects the dignity of women and men which is considered unwanted, unacceptable, inappropriate and offensive to the recipient and creates a hostile, intimidating, unstable, uncondusive or offensive work environment. It classifies sexual harassment in the workplace into four types- physical conduct of a sexual nature, a verbal form of sexual harassment, a non-verbal form of sexual harassment and quid pro quo harassment. Notably, this definition is in line with the definition provided by the International Labor Organization (ILO) on sexual harassment. Although, the NBA's definition is a good starting point, it cannot be the final word on sexual harassment in the profession, given its varied forms and manifestations.

Article 5 further defines a behavior that is not sexual harassment in the workplace, such behavior should be occasional or one that is socially and culturally acceptable. Also, consensual sexual interaction may not constitute sexual harassment, except such act is with an underaged then the matter of consent will be irrelevant. However, the article further provides for the defense of social and cultural acceptability. This defense is, in many ways, problematic. The indicators of social and cultural acceptability are unknown and could be a convenient shield for perpetrators. For instance, since cultures are not necessarily homogeneous in a plural society as Nigeria, one may ask whose culture is referenced in article 5? Is it the victim's culture or the perpetrator's culture? To put it more clearly, perpetrator may easily justify their conducts based on their own cultures which may differ from the victim's culture. As a minimum, the policy document could have provided further guidance on the scope and/or limits of these exceptions.

Beyond the contents of article 5, one may argue that the Policy document is a reactive and proactive one which is structured to address the ongoing problem of sexual harassment and to prevent the sexual menace from further occurring in the legal profession. This is a regulatory policy to checkmate any sexual behavior that is unbecoming of a lawyer, especially when it has to do with power differences. Article 6 of the policy spells out the roles and responsibilities of workers/employers which include creating a work environment free from all forms of harassment, adopting a Sexual Harassment Policy or incorporating sexual harassment as part of the Work Code of Conduct, including sexual harassment in the staff orientation, education and training programmes, responding quickly to any complaints of sexual harassment and monitoring the smooth implementation of the Policy.

Employees or workers' responsibilities are classified into a six-point agenda under article 6 which is as follows: to understand the organizational Policy on sexual harassment, observe behaviors or engaging conduct in potential sexual harasser and be sensitive to colleagues or friends who may be offended with the verbal or non-verbal behavior, examine one's behavior and not trivialize sexual harassment, confront the harasser and let them know that their conduct or act is inappropriate, employ a strategy to address the issue formally or informally by building the evidence base and supporting victims or complainants of sexual harassment in every way possible. This indicates that a zero-tolerance approach to sexual harassment is not only the duty of the employer but the duty of everyone in the workplace.

Article 6, inter-alia, apportion duty to the Trade Union as follows, to ensure that issues related to sexual harassment in the workplace are negotiated in a just and transparent manner as well as ensure that victims are properly guided, equipped with information and represented. Likewise, Human Resource of the organization is to imbibe the culture of respect and trust among workers to prevent sexual harassment, and issues of such are to be treated promptly when it is brought to their knowledge. However, Article 7 ought to be added to the list of responsibilities of the employer provided under Article 6 which is to provide necessary support for the complainant or victim of sexual harassment in the form of work leave and consulting a psychologist or counselor if needed. Article 8 of the NBASHP provides for formal or informal complaints mechanism for victims of sexual harassment. Peradventure the alleged harasser is found guilty of the allegation. Article 9 subjects such person to sanction and disciplinary measures including the report of the person to the Legal Practitioner Disciplinary Committee (LPDC) and immediate dismissal of the harasser. It is pertinent to note that the Policy also covers third party harassment, that is, non-staff, clients, contractors and friends of the organization.

Ordinarily, the implementation of this Policy ought to be included as a part of the responsibilities provided for employers and employees under Article 6 but, it is stated distinctively under Article 10 by the drafter as follows- employers or companies are to include sexual harassment in the staff handbook as well as train employees annually on the content of the Policy as part of the induction/on-boarding into the company and ensure that all employees are informed of organization's zero tolerance to sexual harassment. The evaluation of the policy is contained in Article 11. It states that supervisors, managers and those dealing with sexual harassment cases in an organization are to report yearly on compliance with this Policy. The format and procedure for this report is, however, unclear. Meanwhile, on the basis of this report, the company will evaluate the effectiveness of the policy and make necessary changes. However, the prospect of implementing this article without any penalty for failure to do so is highly doubted.

4. Advantages of the Policy

The advantage of this Policy is that it protects all lawyers and those dealing with lawyers in Nigeria, including those practicing in firms or organizations that are not dealing with law related businesses. So far the complaint is to prevent, prohibit and redress issues of sexual harassment of a qualified lawyer who has been called to the Nigerian Bar as an advocate and solicitor of the Supreme Court of Nigeria, the Policy would apply. Another notable advantage is that law students and Paralegals coming to law organizations for internship or legal traineeship or legal attachment could rely on Article 9 of the Policy when faced with the issue of sexual harassment during their internship or traineeship, as the Policy deals with third party harassment.

5. Disadvantages of the Policy

However, the disadvantage is that the formal method of seeking redress provided above seems vague and impracticable specifically within the private law firms based on its structure. Most private firms in Nigeria do not have Human Resource Departments as they are usually owned by the Principal partner and managed by the Head of Chambers that have been employed by the Principal partner. Hence, the Principal partner or Head of Chambers in most cases occupies the role of Human Resources and could also be the harasser. Thus, it is apt to ask, *Quis custodiet ipsos custodes?* Can the victim formally report the issue to the harasser having observed the duty of confronting the harasser without any retaliation? This is highly doubted. The constitution of a neutral NBA body with high confidentiality to entertain complaints of sexual harassment against Principal partners/Managing directors of any law firms or organizations may be a more effective strategy. The Policy did not specify its scope and boundaries when it has to do with entertaining complaints of sexual harassment against any members of the committee constituting the LPDC and the categories of sexual harassment that will be referred to LPDC. If this is not explicitly stated it could be misconstrued by the interpreters or users. Also, inclusion of the drafters' names as a substantive article (Article 17) in the Policy seems abnormal; those names could be included in a separate category not as an Article because it has nothing to do with the sexual harassment.

6. Conclusion and Recommendations

The article reviews the Nigerian Bar Association Policy on sexual harassment. It found that the drafters of the Policy are good intentioned and the Policy would encourage courageous lawyers or persons dealing with lawyers, or those facing sexual harassment to speak up against the act. However, having provided a policy, the effect might still be wanting without an external platform for reporting harassment involving senior members of the Bar, principal partners, head of chambers and members of the Body of Benchers. Aside from an independent mechanism, there is need for proper education, clear understanding of the law, zero-harassment organisational structure, diverse methods of trainings including workshops, seminars, conferences etcetera as a part of Nigerian Bar Association's duty to lawyers especially the younger ones. However, addressing sexual harassment through a 'Self-regulatory Approach' of this nature under the Professional Code of Conduct might likely create fear of being ostracised or debarred on the part of Lawyers who display such misconduct within the profession, as well as create an organisational culture that have zero-tolerance to sexual harassment. Hence, it is a calling for the employers, especially law firms' owners to ensure that every member of the profession working in their organisation is provided with decent working conditions and environment in order to aid the development of the profession. The NBA needs to put practicable steps in place to ensure that this Policy is properly and effectively implemented. There is also a need to address the boundaries of the NBA and the LPDC when issues of sexual harassment are at stake. In this way, organisational duties and responsibilities of both bodies are not conflated or misconstrued, as this could disrupt the administration of justice to victims.