

LEGAL REMEDY TO THE CHALLENGES OF SEXUAL HARASSMENT IN THE WORKPLACE IN NIGERIA: ECHOES FROM SOUTH AFRICA AND INDIA*

Abstract

The availability of a clear and precise legal framework is one of the remedies to sexual harassment in the workplace. Sexual harassment is an infringement on the right of workers. Its consequences affect the individual and organizations resulting to low productivity, legal costs, increased absences, mental and physical health challenge, and loss of skilled employees. Nigerian laws on sexual harassment are inadequate and engulfed with fundamental glitches. This article examined the Nigerian legal framework on sexual harassment in the workplace. It also considered the regional and international legal frameworks. In addressing this issue, comparison was made between South Africa and Indian legal interventions in preventing sexual harassment in the workplace. It concludes and recommends legislative reform to serve as a shield to the protection of workers and the prevention of sexual harassment in the workplace in Nigeria.

Keywords: Sexual harassment, Workplace, Challenges, Legal, Remedy

1. Introduction

There is no specific and precise legislation on sexual harassment in the workplace in Nigeria. Due to the inadequate framework, most offenders of sexual harassment escape prosecution and liability. Sexual harassment is a societal problem that has bedeviled the workplace all over the world, with severe consequences for victims and organizations. Most court decisions in Nigeria are based on International Treaties and National Industrial Court Rules. There is the need for legal reform protecting workers from unnecessary abuse, and victimization.

2. Legal Framework against Sexual Harassment in Nigeria

Constitution of the Federal Republic of Nigeria 1999 (as Amended)

The Constitution of the Federal Republic of Nigeria 1999 (as amended) provides a framework for the protection of human rights in Nigeria. These include the right to life, dignity of the human person, personal liberty; a fair hearing, the right to private life, freedom of thought, conscience and religion, peaceful assembly as well as the right of association and freedom of movement¹. Everyone is entitled to the fundamental rights irrespective of age and sex. Sections 33² and 34³ of the CFRN provide fundamental rights for all citizens which include workers. Section 33⁴ covers the right to life and 34 right to dignity. The Constitution makes provision for state policies directed in a way that ensures suitable employment opportunities for all Nigerians without any form of discrimination⁵. It provides that conditions of work should be just as well as humane to workers (male and female) and equally recognizes that the safety and health of workers should not be abused⁶. The Constitution seeks to protect workers from all forms of harassment including workplace sexual harassment which has its antecedent effect on them such as health and psychological challenges. Sexual harassment in the workplace is an infringement on fundamental rights especially the right to dignity of human person and the work environment.⁷ It can be likened to torture of the highest order and contrary to the provisions of the Constitution. It is inhuman and degrading and has led to psychological trauma for the victims or sometimes even death.

Labour Act CAP L1 LFN 2004

The Nigerian Labour Act⁸ is an extant legislation guiding employment and work-related matters. It makes provisions on employment – employees relations in Nigeria. However, the Labour Act makes no provision for sexual harassment in the workplace, neither for prevention nor response. On its part, the Employees Compensation Act 2010⁹ recognizes that mental stress may arise in the workplace and provides that an employer is bound to pay compensation to an employee for mental stress that is ‘an acute reaction to a sudden and unexpected traumatic event arising out of or in the course of the employee’s employment. The Court can interpret this provision in different ways, and one of it is compensation for sexual harassment in the workplace.

Criminal Code Act CAP C38 LFN 2004

The Criminal Code Act¹⁰ though with no express provision or mention of sexual harassment in the workplace prohibits indecent assault on males and females. The Act provides that it is an offence for anyone to assault a male indecently and in an unlawful manner. The offence is a felony which attracts imprisonment for three years¹¹, while an indecent assault on a female is a misdemeanor which attracts two years imprisonment. These provisions however prohibit workplace sexual harassment¹².

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¹ Constitution of Federal Republic of Nigeria 1999 (as amended) Chapter IV, Section 33-41

² *Ibid*

³ *Ibid*

⁴ *Ibid*

⁵ *Ibid*, Section 17 (3) (a)

⁶ *Ibid*, Section 17 (b) and (c)

⁷ *Ibid*, Section 34 (1)

⁸ Labour Act Cap L1 LFN 2004

⁹ Section 8 (1) (2) of the Employees Compensation Act 2010

¹⁰ Criminal Code Act, Cap C38 LFN 2004

¹¹ Section 353, Criminal Code Act CAP C38 LFN 2004

¹² Section 360, *Ibid*.

Penal Code Act CAP P53 LFN 2004

The Penal Code defines indecent assault under Sections 281, 282 and 285¹³ and it impliedly includes sexual harassment. This Code covers the Northern part of Nigeria.

Violence against Persons (Prohibition) Act 2015 (VAPP Act)

The Violence Against Persons (Prohibition) (VAPP) Act, 2015 recognizes the concept of sexual harassment. However, it makes no decisive provision protecting against or criminalizing sexual harassment in the workplace. The VAPP Act is aimed at eliminating violence in private and public life. It seeks to provide remedies for victims and imposes appropriate punishment on offenders. The law defines sexual harassment as an 'unwanted conduct of a sexual nature or other conduct based on sex or gender which is persistent or serious and demeans, humiliates or creates a hostile or intimidating environment and this includes physical, verbal or non-verbal conduct.¹⁴ The VAPP Act¹⁵ recognizes that attempting to demand or requiring sexual intercourse in exchange for employment is sexual intimidation.¹⁶ By the provision of Section 38¹⁷ of the Act, 'every victim is entitled to receive the necessary materials, comprehensive medical, psychological, social and legal assistance through government agencies and/or non-governmental agencies providing such assistance they need. There is an urgent need for a comprehensive national legislation on sexual harassment taking cognizance of its prevalence in the workplace. Today, about 34 states in Nigeria including the FCT have domesticated the VAPP Act 2015.¹⁸

Independent Corrupt Practices Commission (and other Related Offences Act) 2000

By the Provisions of ICPC Act in Section 8 (1a) (2) and 18(b)¹⁹ Sexual Harassment by public officers is seen as corrupt practices and an abuse of office punishable with imprisonment.

Criminal Code Law of Lagos State 2011

The Lagos State government's response to the challenge of sexual harassment is the inclusion in its criminal code,²⁰ of a section devoted to the prohibition of harassment. Section 262 frowns at any unwanted sexual advances, demand for sexual favouritism as well as other oral or corporal behaviour of a sexual character which when succumbed to or rebuffed impliedly or expressly influences an individual's occupation or academic prospects or unfairly meddles with the individual's vocation or attainment.²¹ The law prescribed three years imprisonment for transgressors and protects everyone including people harassed in the workplace environment and imposes a criminal sanction. It has territorial limitation because it is not a Federal Act, and therefore limited in its application to Lagos State which is one state out of the thirty-six States of Nigeria and the Federal Capital Territory Abuja.

National Industrial Court of Nigeria (Civil Procedure) Rules 2017

The Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010 which came into effect on the 4th day of March, 2011 conferred a wider jurisdiction on the court; Section 6(5) of the Constitution has been amended to include the National Industrial Court as a Superior Court of record²². Under the Constitution of the Federal Republic of Nigeria, 1999, (as amended), the National Industrial Court has jurisdiction to sit on employment and workplace conditions, industrial relations, and labour law in Nigeria. This jurisdiction is equally reiterated in section 7 of the National Industrial Court Act, 2006²³. The National Industrial Court has deliberated upon a handful of cases concerning sexual harassment in the workplace, which led to the dismissal of survivors from their employment for refusing to accept the sexual advances of their supervisors in the workplace. Notable amongst these cases is the landmark case of *Maduka v Microsoft & Ors*²⁴ where the National Industrial Court applied sections 34 and 42 of the Constitution of the Federal Republic of Nigeria 1999 (as amended),²⁵ the African Charter on Human and Peoples' Rights 1981²⁶ and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) to find the employers of the claimant (defendants) guilty. The National Industrial Court has since then adjudicated workplace sexual harassment cases occasioning wrongful termination of employment which, amongst others, include *Dorothy Adaeze Awogu v TFG Real Estate Limited*,²⁷ *Pastor (Mrs) Abimbola Patricia Yakubu v Financial Reporting Council of Nigeria & Another*²⁸. These cases were addressed under the civil jurisdiction of the National Industrial Court. They were all in favour of the Claimants.

African Charter on Human and Peoples' Rights 1981

The African Charter on Human and Peoples' Rights (The African Charter) which is one of the constituents of the African Human Rights system was adopted by the Assembly of Head of States and Governments of the Organization of African Unity in 1981 and entered into force in 1986.²⁹ The African Charter covers a wider range of rights when compared to the other regional human rights instruments, such as the European and the Inter-American Human Rights System.³⁰ The protocol to the African Charter on Human and Peoples' Rights on

¹³Penal Code Act CAP 53 LFN 2004

¹⁴ Preamble to the Violence Against Persons (Prohibition) Act 2015.

¹⁵ Violence Against Persons (Prohibition) Act 2015.

¹⁶Section 46 VAPP Act 2015

¹⁷ A D Aina – Palemo and P AdoleEjemi, *Sexual Harassment and the Law*, (Jose University Press 2020) 174

¹⁸ *Ibid*

¹⁹Independent Corrupt Practices Commission (and other Related Offences Act) 2000

²⁰Lagos State Criminal Code Law 2011

²¹Section 264 (2) (a) – c of the Criminal Law of Lagos State Vol 3, Cap 17

²²Section 2 of the Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2011 inserts a new paragraphs after section 6(5) of the Principal Act.

²³ Constitution of the Federal Republic of Nigeria 1999(as amended) Section 254(1)

²⁴ [2014] NLLP (Pt 125) 67 NIC, [2014] NWLR (Pt125) 67

²⁵Constitution of the Federal Republic of Nigeria

²⁶African Charter on Human and Peoples Right 1981

²⁷ Suit No: NICN/LA/202/2013 National Industrial Court Lagos Division June 4 2018.

²⁸ (Unreported) Suit No. NICN/LA/673/2013, National Industrial Court Lagos Division 2016

²⁹R Murray, *The African Commission on Human and Peoples's Right and International Law* (2000)

³⁰F Vileon, *international Human Rights Law in Africa* (2007) 237

the Rights of Women in Africa, 2003 (the Women's Protocol) was enacted and entered into force on 25th November 2005. This protocol supplements the African Charter.³¹ The Women's Protocol among other things, seeks to bridge the gender gap by promoting gender equality, especially by removing discrimination in a variety of fields, and constitutes the most obvious demonstration of the African union's promotion of gender perspective.³² Unlike any other regional and international instrument, the African Charter has included the concept of the peoples' rights. Paragraph 11 of the Women's Protocol states that the Protocol was adopted to address the concern that despite the ratification of the African Charter and other international human rights instruments by the majority of the states... women in Africa still continue to be victims of discrimination and harmful practices. The instruments aim is to reaffirm states' solemn commitment to eliminate all forms of discrimination and harmful practices against women and to promote equality between women and men through appropriate legislative, institutional and other measures. Articles 12-13³³ specifically mentioned sexual harassment in education and the workplace. The Protocol to the African Charter on the Rights of Women states that State Parties to the instrument should have laws in their national constitutions and other legislative instruments that combat all forms of discrimination against women³⁴. These laws should be able to curb and eliminate all forms of discrimination, particularly those cultural and traditional harmful practices³⁵ which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for women and men³⁶.

European Social Charter 1961 (Revised in 1996)

The European Social Charter (ESC) is a Council of Europe Treaty and was adopted on the 18th October 1961 and entered into force on 26th February 1965. Revised in 1996, the Charter complements the European Convention on Human Rights in the field of economic and social rights. The European Committee of Social rights had first ensued a clear statutory prohibition of sexual harassment and that a rigorous, and comprehensive statutory framework is essential for state actors to comply with since anything less may deny the authorities an adequate legal basis to take the action necessary to prevent sexual harassment in work environment in all economic sectors. Article 7 covers the protection of workers and mainly from the point of view of employment and working conditions. This provision also extends its protection to include all dangers of a physical and moral kind to which workers are exposed. The European Union has a range of trade and diplomatic devices available to influence States' ratification of the various legal instruments in this area of sexual harassment in the workplace. Such convergence of approaches and cross fertilization of standards across the European, International and National legal systems has clear potential to challenge the various forms of sexual harassment in the workplace which exist in Europe³⁷. Article 26 of the Revised Social Charter imposes obligations on state parties in consultation with employers and workers' representatives, to promote awareness, information and prevention of sexual and moral harassment in the workplace³⁸. Article 26(2) of the Revised Charter imposes an obligation on state parties 'to take all necessary preventive and reparatory measures to protect individual workers against recurrent, reprehensible or distinctly negative and offensive action directed against them in the workplace or in relation to their work since these actions constitute a humiliating behaviour.³⁹ The European Council of Social Rights (ECSR) has stated that there must be a possibility for employers to be held liable when harassment occurs in relation to work, or the premises under their responsibility, regardless of the defendant or the victim who is a third person in a sense of not being employed by a said employer i.e. an independent contractor, self-employed workers, visitors, clients and others⁴⁰.

Convention on Preventing and Combating Violence against Women and Domestic Violence 2011

The Istanbul Convention was adopted by the Council of Europe in 2011. State parties are obliged to prohibit, prevent, prosecute and eliminate violence against women, including sexual harassment, and all forms of domestic violence, including economic violence. The Convention was open for signature in May 2011 and entered into force on the 1st of August 2014⁴¹. The core of the Istanbul Convention is clearly the prevention and the fight against violence against women, with a special focus on the domestic dimension of the violence⁴². According to the Convention, violence against women is no more considered as a private offence addressed to an individual, but instead as a violation of international human rights, since it 'interferes with the full enjoyment of rights and freedoms by women⁴³. Article 40 of the Istanbul Convention⁴⁴ provides that:

Parties shall take the necessary legislative or other measures to ensure that any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile degrading, humiliating, or offensive environment, is subject to criminal or other legal sanctions.

It is provided that flowing from Article 40, sexual harassment is subject to criminal or 'other' legal sanctions which means that it is within the option of the victim to pursue his case either in criminal prosecution or civil action. So many national systems consider sexual

³¹ Article 65 on the African Charter provides special Protocols may be adopted to supplement its provisions.

³² E Evans and R Murray, the State reporting Mechanism of the African Charter on Human and Peoples' Rights in Evans and Murray (eds) 49

³³ Article 12-13 of the Protocol to the African Charter to Human and Peoples' Right of Women in Africa 2003

³⁴ Organization of African Unity, Constitutive Act of the African Union, 2000, Article 2 (a) – (c)

³⁵ *Ibid*, Article 3

³⁶ *Ibid*, Article 2 (2)

³⁷ European Commission: Sexual Harassment in the Workplace in the European Union: Employment and Social Affairs, Equality between women and men. European Commission, Directorate-General for Employment, Industrial Relations and Social Affairs unit V/D 1998

³⁸ Sweden had ratified both paragraphs of Article 26 of the Convention, Declaration Contained in the Instrument of ratification deposited on 29th May 1998.

³⁹ European Committee of Social Rights Conclusions on Sweden on Article 26 (1) and (2) of the European Social Charter 2003 df/SWE/26/2/EN:2003/df/SWE/26/1/EN

⁴⁰ *Ibid*

⁴¹ Official Website of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) found in <https://www.core.int/en/web/instabul/violence-against-women> 4

⁴² R J M C Wuegg, 'What potential does the Council of Europe Convention on Violence against women hold a regards domestic violence' [2012] (16) (7) *Journal of Human Rights* 947

⁴³ S De – Vido, 'The Ratification of the Council of Europe Istanbul Convention by the European Union (2016) 74

⁴⁴ *Ibid* at 33

harassment under criminal law, administrative law or other legal actions in dealing with sexual harassment⁴⁵. This provision deals with three main forms of behavior: verbal, non-verbal or physical conduct of sexual nature unwanted by the victim. Verbal conduct refers to words or sounds expressed or communicated by the perpetrator, such as jokes, questions, remarks, and may be expressed orally or in writing. Non-verbal conduct, on the other hand, covers any and may be expressed orally or in writing⁴⁶. Non-verbal conduct, on the other hand, covers any expressions or communication on the part of the perpetrator that do not involve words or sounds, for example, facial expressions, hand movements or symbols. Physical conduct refers to any sexual behavior of the perpetrator and may include situations involving contact with the body of the victim. As in Article 36⁴⁷, any of these forms of behavior must be of a sexual nature in order to come within the remit of this provision.

Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women 1994

The Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women 1994 provides that every woman has the right to the recognition, enjoyment, exercise⁴⁸ and protection of all human rights and freedoms enshrined in regional and international human rights instruments, such as right to life, personal liberty, human dignity, among others⁴⁹. The Convention expressly recognizes the relationship between gender-based violence and discrimination, and indicates that violence of that kind is a reflection of the historically unequal power relations between women and men, and that the right of every woman to a life free from violence includes the right to be free from all forms of discrimination and to be valued and educated free of stereotyped patterns of behaviour⁵⁰. It also affirms the right of women to be free from violence and requires states to impose penalties and enact legal provisions to protect women from harassment and other forms of violence. Thus, any act of sexual harassment is tantamount to violence against women under the Convention.

The Convention expressly stipulates that 'every woman has the right to be free from violence in both public and private spheres. It follows that women are entitled to be free from all acts of sexual harassment be it in the public or private domain.

Beijing Declaration and Platform for Action 1995

The Beijing Declaration and Platform for Action was adopted by the UN at the end of the Fourth World Conference on Women: Action for Equality, Development and Peace, which took place in Beijing, China, from September 4 to 15, 1995. Sexual Harassment in the workplace as a form of violence against women and workers that is capable of nullifying the attainment of gender parity and the enjoyment of human rights and basic liabilities of women. Sexual harassment, as a serious phenomenon of sexism directed at women; which has also become one of the key issues of common concern. Sexual harassment in the workplace, as violence against women, not only violates women's human rights and fundamental freedom, but also leads to their disadvantages. Sexual harassment as a widespread violence directed at women, violates women's dignity and value. To build a mechanism to curb violence against women, the Platform for Action specifically points out that the absence of adequate gender dis-aggregated data and statistics on the incidence of violence makes the elaboration programmes and monitoring of changes difficult. The lack of or inadequate documentation and research on sexual harassment in the workplace impedes efforts to designing specific intervention strategies. Comprehensive measures need be taken to prevent and eliminate violence against women. Women and men can be mobilized to overcome gender-based violence and effective public measures can be taken to address both the causes and the consequences of violence. The Platform for Action states that 'the experience of sexual harassment is an affront to a worker's dignity and prevents workers from making a contribution commensurate with their abilities. Sexual harassment affects workers human rights and fundamental freedom, causes their disadvantage in the socio-economic structure, and delays the process of gender equality. The platform for Action proposes that sexual harassment should be eliminated⁵¹.

Universal Declaration of Human Rights 1948

Universal Declaration of Human Rights although not a treaty and as such not a legally binding instrument, generally has extensive relevance in the field of international human rights law⁵². The Universal Declaration of Human Rights together with the two covenants adopted in 1966⁵³ for instance make up what is generally known as the international bill of rights⁵⁴. The Universal Declaration on Human Rights lays down the foundation for all human rights related legislation internationally. Although the UDHR did not expressly mention sexual harassment in the workplace it recognizes equality in dignity and rights freedoms and equal protection against any discrimination, including on grounds of sex.⁵⁵ The UDHR provides for the elimination of every form of discrimination between men and women in the pursuit of their civil, social, economic and political rights⁵⁶. This is why the term 'sex' was explicitly included in the definition of prohibited discrimination⁵⁷. The UDHR recognizes the importance of the right to work. This is very clear in its provision encouraging member states to recognize the right of everyone to work and to freely choose any employment of their choice and the need for the

⁴⁵ Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence

⁴⁶ Council of Europe Treaty Series No. 210 Explanatory Report to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence 32.

⁴⁷ *Ibid*

⁴⁸ *Ibid*

⁴⁹ Adopted 9th June 1994) 33 ILM 1618

⁵⁰ Article 4, Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women

⁵¹ L Xiaonan and H Zhouzheng, 'Beijing 25 Retrospect and Prospect: The Establishment of Sexual Harassment Prevention Mechanism in the Workplace from the perspective of Human Rights. (2020) Chinese Society for Human Rights Studies, September 7

⁵² Much of the content of the UDHR stems from customary international law. See generally M A Glendon, 'The Rule of Law in the Universal Declaration of Human Rights' [2004] (2) *Northwestern University Journal of International Human Rights*,

⁵³ The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights

⁵⁴ K Bales and P T Robinsons, 'No one shall be held in Slavery or Servitude: A critical analysis of International Slavery' [2001] (2) *Human Rights Review* 20

⁵⁵ Article 1, 2 and 3 of the Universal Declaration of Human Right 1948

⁵⁶ J, Bond, 'International Intersectionality: A Theoretical Intersectionality: A Theoretical and Pragmatic Exploration of Women's International Human Rights. Violation' [2003] (52) (71) *Emory Law Journal* 82.

⁵⁷ Article 2, Universal Declaration of Human Rights

conditions of work to be favourable and just to everyone⁵⁸. Sexual harassment in the workplace is a serious violation of this provision because it poses a threat to the victim(s) and needs to be addressed.

ILO Convention on Discrimination (Employment and Occupation) 1958 NO.111

The aim of this Convention is to protect against discrimination in employment and occupation on the grounds of sex, race, colour, religion, political opinion, national or social origin. It requires ILO member states to declare and pursue a national policy designed to promote equality of opportunity and treatment with a view to eliminating discrimination. The Convention considered sexual harassment as a form of indirect discrimination since it involves an abuse of power by those in authority to influence workplace decisions. Workers are denied opportunity to reach their potential since their gender attributes are given more relevance and audience than their abilities. Such an act undermines their integrity, dignity and their well-being at the workplace.⁵⁹ Sexual harassment therefore becomes relevant in the context of employment discrimination as women are adversely affected by sexual misconduct. Innovative approaches to deal with workplace issues need to be elaborated and tested, documented and disseminated in order to build a genuine knowledge base on decent work policies.

Indigenous and Tribal Peoples Convention 1989 (NO.169)

This 1989 Convention is an International Labour Organization Convention which deals with the tribal people in independent countries where their social, economic and cultural situations are different from other states. The Convention is also known as Tribal Peoples Convention 1989 and came into force on the 5th day of September 1991 after the general conference of the International Labour Officers on the 27th June 1989. The Tribal Peoples Convention, 1989 (No169) is the only international instrument that expressly makes prohibition for sexual harassment. Under Article1,⁶⁰ it provides for special protection either in whole or partially to tribal groups to maintain their dignity. Article 2⁶¹ puts responsibility on state governments to maintain the dignity of these groups. Article 20(3) (d)⁶² provides that governments shall do everything possible to prevent any discrimination between belonging to the people to whom the convention applies and other workers, including taking measures to ensure that they enjoy protection from sexual harassment.

Convention on Elimination of All Forms of Discrimination Against Women 1979 (CEDAW)

CEDAW is a fundamental document on the equal treatment of women and elimination of discrimination against them. The Convention explicitly acknowledges that extensive discrimination against women continues to exist 'and emphasises that such discrimination violates the principles of equality of rights and respect for human dignity.'⁶³ As defined in Article 1, discrimination is understood as any distinction, exclusion or restriction made on the basis of sex in the political, economic, social, cultural, civil or any other field.⁶⁴ CEDAW does not expressly mention sexual harassment or violence against women, but in its general recommendation, No.19 of 1992. The General Recommendations define Sexual Harassments to include: 'Such unwelcome sexually determined behaviour as physical contact and advance sexually coloured remarks showing pornography and sexual demands, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem.' It is discriminatory when a woman has reasonable ground to believe that her object would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile working environment.⁶⁵ The Recommendations admitted that parity in employment can be critically undermined when women experience gender-based violence like work-associated sexual harassment⁶⁶ and accordingly holds states parties accountable for acts of gender-specific, violence perpetrated by private individuals where the state fails to act with appropriate diligence to prevent the infringement of such rights or punish the violators.⁶⁷

ILO Convention on Elimination of Violence and Harassment in the World of Work, 2019 (190)

This Convention is the first international treaty to recognize the right of everyone to a world of work free from violence and harassment, including gender-based violence and harassment. The Convention was adopted in June 2019, by the International Labour Conference of the International Labour Organization (ILO), and came into force on 25th June 2021 and was ratified in Nigeria on the 6th October 2022 but will come into force on 8th November 2023. The issue of violence and harassment at work has a very close relation to gender-based violence and discrimination against women and to the intersection with other vulnerable groups such as migrant workers; domestic workers; workers in the informal sector of the economy, workers with disabilities and those who are employed either part-time or in any other form of employment that is distinct from permanent full time employment. Those groups of individuals it does appear have higher risks to be subjected to violence and harassment at work. In the world of work, sexual violence combines physical and psychological violence and can manifest in such behaviours, as unwanted comments, jokes, brief physical contact and sexual assault.⁶⁸ One of the most common manifestations of sexual violence is sexual harassment and it can manifest in two different ways.⁶⁹ The first one being 'quid pro quo' and it occurs when the victim's job benefits such as a pay rise, promotion or continuation of employment depends on participation in a conduct of a sexual nature. Second, is the hostile working environment, which covers conduct that creates an

⁵⁸ *Ibid*

⁵⁹ According to the United Nations Committee on the Elimination of Discrimination against Women, workplace, sexual harassment has been addressed at National and International levels as both an aspect of gender discrimination and a form of violence against women.

⁶⁰ Indigenous and Tribal Peoples Convention 1989 (No 169)

⁶¹ *Ibid*

⁶² *Ibid*

⁶³ UN General Assembly, Convention on the Elimination of all Forms of Discrimination Against Woman 1979, Preamble

⁶⁴ UN General Assembly, Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

⁶⁵ CEDAW General Recommendation No.19, Article 11:18

⁶⁶ *Ibid*

⁶⁷ *Ibid*, Preamble, Para 9

⁶⁸ *Ibid*

⁶⁹ Committee of Experts on the Application of Conventions and Recommendations, General Observation on the Convention on discrimination (Employment and Occupation) 1958 (No 111) 91st ILC Session (2003)

unwelcoming, offensive working environment. For example, a hostile environment can be created by sex-based comments, disparaging remarks about the sex of the victim, innuendos and the display of sexually suggestive or explicit material.⁷⁰

Violence and harassment in the world of work affect a person's psychological, physical and sexual health, dignity, family and social environments. Violence and harassment at the workplace also have economic development implications, such as being incompatible with the promotion of sustainable enterprises and impacting negatively on the organization of work, workplace relations, worker engagement, enterprise reputation, and productivity. It calls for member states to adopt laws and regulations that would require employers to take appropriate steps proportionate to their level of control to prevent violence and harassment in the world of work, including gender-based violence and harassment. Workers and employers must have a basic comprehension of the prohibited conducts, and the cases in which the policy would be applied to them.

ILO Decent Work for Domestic Workers Convention 2011 (NO.189)

The ILO Convention on Decent work for Domestic workers is an attempt to address domestic workers' labour rights as 'global rights' in order to overcome not only the discrimination that these workers experience in their working lives but also to eradicate the stigmatization that underpins their general segregation. Sexual harassment is in most cases perpetrated by male employers and younger male members of the household. Female employers who are made aware generally side with the family, access the worker of instigating the behaviour and retaliate against them⁷¹. It is difficult to challenge a perpetrator of sexual harassment directly, for some migrant domestic workers it may also be completely at odds with cultural norms that mitigate against confronting men⁷².

3. South Africa and Indian Legal Interventions on Sexual Harassment in the Workplace

South Africa:

South Africa has indicated several legal steps to curb sexual harassment in the workplace. In an effort to fight against sexual harassment in the workplace, the South African government enacted several laws such as the Constitution of the Republic of South Africa 1996, the Employment Equity Act of 1998, the Occupational Health and Safety Act 1993, the Labour Relations Act 1995, the Protection from Harassment Act 2013. All these efforts were put in place to prevent sexual harassment in the workplace. The word sexual harassment is found in most of the Acts. Section 4 of the Code of Good Practice on the handling of sexual harassment cases in the workplace defines sexual harassment as an unsolicited sexual behaviour that infringes on the liberties of a worker and constitutes an obstacle to fairness in the workplace. The South African Code covers all genders but it does not hold employers liable for employment-related sexual harassment if they are found culpable.

India

The Indian government also enacted several legislation geared towards the prevention of sexual harassment in the workplace. Some of the Statutes are, the Constitution of India 1950, Indecent Representation of Women (Prohibition) Act, 1986, Protection of Human Rights Act 1993, and several other laws on the prevention of sexual harassment in the workplace. The Indian government also enacted the Sexual Harassment of Women at the Workplace (Elimination, Prohibition and Redress) Act No.14 of 2013 and Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal Rules 2013). The POSH Act is to ensure the prevention and prohibition of sexual harassment of women at work and to provide remedy to affected persons. In this Act, the definitions of workplace extend to worker, persons discharging their responsibilities irrespective of the place and location. The Act further stipulates the procedure in the collection of sexual harassment complaints. However, the Act is gender sensitive as it protects only women and the jurisdictional power given to employers to appoint committees.

4. Lessons for Nigeria

Nigeria lacks a specific statute on sexual harassment in the workplace. There is the need for legal intervention by reforming the existing laws and enacting specific statutes dealing with sexual harassment in the workplace. This Statute must define sexual harassment and the elements that constitute sexual harassment in the workplace. Sexual harassment in the workplace needs be made a constitutional issue unlike South Africa and India. There should be adequate and punitive sanctions for sexual harassment offenders. Equally, the domestication and enforcement of ratified international treaties become imperative.

5. Conclusion and Recommendations

This article considered the inadequacies in the legal framework in Nigeria on sexual harassment in the workplace. Nigeria lacks specific legislation to curb sexual harassment in the workplace. Ratified international instruments have not as a matter of fact addressed this issue. The inadequate legal framework in Nigeria has given perpetrators and offenders of sexual harassment in the workplace an escape route from conviction and stiffer punishment. Policies and regulations need be put in place and must be compulsorily adopted by all organizations and institutions. There is also the need for a sexual offender's registry and mechanism for the collection of data. The National Industrial Court of Nigeria ought to gear up to the task because sexual harassment is an infringement of the fundamental rights of a person against gender discrimination, and inhuman and degrading treatment. The enactment of specific legislation, policies and enforcement mechanisms is indeed a legal remedy to sexual harassment in the workplace in Nigeria. A Statute on sexual harassment in the workplace needs be enacted and provide an acceptable definition. There should be sexual offences and collection of data registry. This is mainly on cases of sexual harassment in the workplace. Sexual harassment being a crime against humanity should be made a constitutional issue.

⁷⁰Meeting of Experts on Violence Against Women and Men in the World of Work. Background paper for discussion at the meeting of Experts on violence against Women and Men in the World of Work (Geneva 3-6, October 2016) Conditions of work and Equality Department, International Labour Office, Geneva 2016, Para 13

⁷¹Vox, House-keepers and names have no protection from Sexual Harassment under Federal Law <https://www.vox.com/2018/4/26/17275708/house-keepers.names.sexual.harassment.law>; In Ghana for example, where domestic workers live in the house of their employers, they are punished when they refuse to give into the request of the employers adolescent sons and are accused by the female employers of attempting to break their marriage when domestic workers report to them. Tsikata Dzodzi, Domestic Work and Domestic Workers in Ghana: An Overview of the Legal Regime and Practice (2009) Geneva. International Labour Office 29.

⁷²D.Vellos, 'Immigrants Domestic Workers and Sexual Harassment Convention No 190, Art 2. <https://www.ILO.org/dyn/norm/ex/en/f/psNORMLEXMB:121000.Nop121000-theCODEC190>.