

SEXUAL HARASSMENT OF FEMALE STUDENTS BY LECTURERS IN NIGERIAN TERTIARY INSTITUTIONS: IS THE LAW HELPLESS?

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ABSTRACT: *The article examines the nauseating and recurring problem of sexual harassment of female students by lecturers in Nigerian tertiary institutions in recent times and questions whether the extant regulatory and policy frameworks are weak in addressing the problem. The recent exposure of sexual misconduct or “sex-for-marks” by some Nigerian university lecturers in a 53-minutes video released by a BBC African Eye secret agent, Kiki Mordi, appearing as a young applicant in search of an admission into a Nigerian university, illustrates that sexual harassment is ubiquitous in our higher educational institutions. Previous literature in this area have pointed out that there is a prevalence of female students being sexually pressured by their male lecturers in Nigerian higher institutions of learning, regardless whether they are public, private or faith-based institutions. But whether such pervasiveness and moral decadence is encouraged by dearth of binding or enforceable regulatory and policy frameworks is relatively lacking in most of the past articles examined. Also the repercussion on tertiary institutions, as employers, by way of vicarious liability arising from the sexual abuses perpetuated against female students by their employees would be examined in this article. To these extents, this article will fill the missing gaps. The study employs both primary and secondary sources of data information collection and shall subject same to content and contextual analysis in order to arrive at its conclusion. The article concludes that there are various potent provisions under existing Nigerian legislation which could successfully be relied upon in prosecuting harassers. The article also recommended inter alia, that the government and tertiary institutions must consciously take bold steps in tackling this malady so that sexual harassment will not continue to be a critical issue in our tertiary institutions both in the present and the future.*

KEYWORDS: *Educators; Female Students; Lecturers; Nigerian Tertiary Institutions, Romantic Relationships; Sexual Harassment; Vicarious Liability.*

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1. INTRODUCTION

There has been a significant increase in reports regarding sexual victimisation and abuses of female students by male teachers in Nigerian tertiary institutions in recent times. In 2019, a collaborative survey on sexual harassments was conducted by the African Polling Institute (API) and Heart Minders Advancement Initiative with spotlight on six tertiary institutions in Lagos State. From the study, about 61% of the students interviewed admitted to the prevalence of sexual harassments on campuses while 79% identified female students as the core victims of sexual harassment on campuses. With regard to perpetrators of sexual abuses, the report identified male lecturers and cultists as the prime architects.¹ It is rather worrisome that lecturers who owe their students a fiduciary duty of care as they stand *in loco parentis* over them are linked to a misconduct of scandalous and disgraceful nature like sexual violence against their female students. Though the survey report concentrated essentially on six tertiary institutions in Lagos State, south-west of Nigeria, its findings nonetheless properly situate the problem of sexual assaults in our educational institutions.

To further illustrate and corroborate the above survey report, it is worth mentioning some specific reported cases on individual basis. Sometime in October 2019, one Dr. Boniface Igbeneghu, who at the material time was lecturing at the University of Lagos, was seen on a viral video documentary making sexual advances to a BBC undercover reporter, Kiki Mordi, who pretended to be a secondary school leaver in quest of an entrance into the school as a student. The lecturer under the pretext of holding private tutorials had invited her to his office. In the course of the “tutorial lessons,” the lecturer was heard in the video clip informing the disguised reporter of a “cold room” situate at the university’s staff club that he alleged his academic colleagues frequently engaged in inappropriate sexual activities with female students in exchange for scores.² He went further to make suggestive sexual overtures to her and demanded for a kiss.³ Igbeneghu was initially suspended by the university authority⁴ along with another indicted colleague

¹ See Africa Polling Institute/Heart Minders Societal Advancement Initiatives, “RAPE AND SEXUAL ABUSE IN TERTIARY INSTITUTIONS IN NIGERIA (A CASE STUDY OF LAGOS STATE)” Retrieved from <https://africapolling.org/2019/12/10/rape-and-sexual-abuse-in-tertiary-institutions-in-nigeria/>. Accessed on 26 April 2021.

² The viral video documentary report forced the university management to close down the alleged staff club indefinitely. See “Sex for grades: No more ‘cold room experience’ as UNILAG shuts location” *Vanguard* (Lagos, 8 October 2019). Retrieved from <https://www.vanguardngr.com/2019/10/sex-for-grades-no-more-cold-room-experience-as-unilag-shuts-location/>. Accessed on 25 April 2021.

³ Samson Folarin, “UNILAG lecturer caught in sex-for-grade scandal” *The Punch* (Lagos, 7 October 2019). Retrieved from <https://punchng.com/unilag-lecturer-caught-in-sex-for-grade-scandal/>. Accessed on 25 April 2021.

⁴ Dennis Erezi, “Sex for grades: UNILAG suspends lecturer indefinitely” *The Guardian* (Lagos, 7 October 2019). Retrieved from <https://guardian.ng/news/outage-as-sex-for-grades-scandal-rocks-unilag/>. Accessed on 25 April 2021.

in the Department of Economics⁵ before they were later dismissed by the institution's Governing Council.⁶

Prior to the revelation by the *BBC Africa Eye*, in July 2015, one Dr. Afeeze Baruwa, a then part-time lecturer at the Distant Learning Institute of the same University of Lagos was accused of raping a female teenage prospective student in his office after promising to secure her admission into the school.⁷ Likewise, in January 2020 a female student of another Nigerian university, Obafemi Awolowo University (OAU) alleged that one of the male lecturers in her Department, Mr. Olabisi Olaleye, was sexually harassing her. Following her refusal to compromise, she failed in the course taught by the said lecturer. Her efforts to get some interventions from senior officials in the Faculty and Department yielded no result.⁸

Moreover, in 2019, the management of Ekiti State University sacked one of its male lecturers, Dr. Olaleye Aduwo, because of a "sex for marks" scandal. The dismissal of the university staff followed findings by a university panel established to look into a sexual impropriety allegation made by a female student against him.⁹ Also at the Benue State University, Makurdi and the University of Abuja, both located in the north-central geopolitical zone of Nigeria, male lecturers were alleged to have been sacked for sexual misconduct with their female students.¹⁰

The list is inexhaustible as it cuts across public, private and faith-based institutions, regardless of the geographical locations. This menace has ignited a debate on the subject with many advocating for the criminalisation of sexual victimisation in our educational institutions. As a matter of fact, the agitation prompted the Nigerian Senate to resuscitate its earlier abandoned 2016 anti-sexual harassment bill by proposing for an Act to Prevent, Prohibit and Redress Sexual Harassment of Students in Tertiary Educational

⁵ Adesina Wahab and Elizabeth Uwandu, "Another UNILAG lecturer suspended for sexual harassment" *Vanguard* (Lagos, 9 October 2019). Retrieved from <https://www.vanguardngr.com/2019/10/another-unilag-lecturer-suspended-for-sexual-harassment/>. Accessed on 25 April 2021.

⁶ See Sodiq Oyeleke, "UNILAG dismisses two lecturers in sex-for-grades scandal." *The Punch* (2 June 2021). Retrieved from <https://punchng.com/unilag-dismisses-two-lecturers-in-sex-for-grades-scandal>. accessed on 2 June 2021.

⁷ News Agency of Nigeria, "Ex-Unilag lecturer gives graphic details of how he slept with student" *Herald*. Retrieved from <https://www.hearld.ng/ex-unilag-lecturer-gives-graphic-details-of-how-he-slept-with-student/>. Accessed on 25 April 2021. See also Ben Ezeamalu, "Alleged Rape: Detained Unilag lecturer fails to appear in court" *Premium Times* (Lagos, 9 September 2015). Retrieved from <https://www.premiumtimesng.com/news/top-news/189730-alleged-rape-detained-unilag-lecturer-fails-to-appear-in-court.html>. Accessed on 25 April 2021.

⁸ Mojeed Alabi, "EXCLUSIVE: Nigerian university student records another lecturer threatening to fail her over sex" *Premium Times* (Lagos, 15 January 2020). Retrieved from <https://www.premiumtimesng.com/news/headlines/372689-exclusive-nigerian-university-student-records-another-lecturer-threatening-to-fail-her-over-sex.html>. Accessed on 25 April 2021.

⁹ Abiodun Nejo, "Ekiti varsity sacks lecturer over alleged sexual harassment," *The Punch* (6 December 2019). Retrieved from <https://punchng.com/ekiti-varsity-sacks-lecturer-over-alleged-sexual-harassment/>. Accessed on 26 April 2021.

¹⁰ See "UNIABUJA Senior Lecturer Caught Pants Down With Female Student." Retrieved from <https://schoolings.org/uniabuja-senior-lecturer-caught-pants-down-with-female-student/>. Accessed on 28 April 2021. See also Joseph Erunke, "Sex for mark: UniAbuja terminates appointments of 2 profs, demotes others," *Vanguard* (16 December 2019). Retrieved from <https://www.vanguardngr.com/2019/12/sex-for-mark-uniabuja-terminates-appointments-of-2-profsdemotes-others/>. Accessed on 28 April 2021.

Institutions and for Matters Connected therewith in 2019. The article therefore, seeks to examine the meaning, causes and impacts of sexual harassment along with the various anti-sexual harassment legal and policy frameworks with a view to answering the vital question posed by the article.

2. MEANING AND CHARACTERISTICS OF SEXUAL HARASSMENT

Though sexual harassment is a thriving moral decadence in our tertiary institutions, it lacks a precise definition as it has been variously defined. Reesor defines the phrase as consisting of unwanted sexual behaviour which meddles with an employee's job or the educational performance of a student.¹¹ Such conducts may go along with threats or punishment if the person rejects the unsolicited advances.¹² In the views of Omonijo *et al.*,¹³ sexual harassment refers to an unsolicited and disgusting sexual pressures or demands made to a person that could either be oral or suggestive and which, when accepted or refused, will directly or indirectly have consequences or intrusion into an individual's occupation or academic performance and/or makes the workplace or educational institution an unfriendly or unfavourable atmosphere.¹⁴

The definition proffered by Omonijo *et al.* is in agreement with the view expressed by Coletta on the subject regarding workplace harassment.¹⁵ Coletta went further to say that though disgusting comments about someone's sexual characteristics can give rise to sexual intimidation allegations, but that illegal sexual harassment does not necessarily take account of insignificant jokes, trivial isolated occurrences or discourteous remarks. On the contrary, according to her, the harassment becomes unlawful when it happens regularly, severely or persistently to the extent that it makes the workplace environment unfavourable or unpleasant for the victim in terms of employment decisions like sacking or demoting of the victim.¹⁶ What Coletta however, failed to appreciate is the fact that those "minor teasing" and out-of-the-way minor incidences or uncouth sexual remarks may actually lay the foundation for full-blown sexual harassment in our tertiary institutions and such must be nipped in the bud from inception.

Statutorily, the Ekiti State Gender Based Violence (Prohibition) Law, 2019 defines "sexual harassment" to mean "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 may include physical, verbal or non-verbal

¹¹ Loraine M. Reesor, "Sexual harassment in the university: a study of faculty women at Iowa State University" (1987) *Retrospective Theses and Dissertation*. 16918. Retrieved from <https://lib.dr.iastate.edu/rtd/16918>. Accessed on 28 April 2021.

¹² *Ibid.*

¹³ Dare Ojo Omonijo *et al.*, "A Study of Sexual Harassment in Three Selected Private Faith-Based Universities, Ogun-State, South-West Nigeria," 2013 1(9) *Open Journal of Social Science Research*, pp. 250-263.

¹⁴ *Ibid.*, p. 250. See also the definition of "sexual harassment" under the regulations implementing the Title VII of the US Civil Rights Act 1964-Title 29 of the Code of Federal Regulations (CFR), section 1604.11(a) (1991) - the section provides generally on guidelines on discrimination based on sex. The provision is available at <https://www.law.cornell.edu/cfr/text/29/1604.11>. The fuller text of the CFR is also available at <https://www.law.cornell.edu/cfr/text>. Both accessed on 11 May 2021.

¹⁵ Kristen N. Coletta, "SEXUAL HARRASSMENT ON SOCIAL MEDIA: WHY TRADITIONAL COMPANY SEXUAL HARASSMENT POLICIES ARE NOT ENOUGH AND HOW TO FIX IT," (2018) 48 *SETON HALL LAW REVIEW*, p. 450.

¹⁶ *Ibid.* See also *Meritor Savings Bank v. Vinson* 477 U.S. 57 (1986) at 65-66.

conduct.”¹⁷ This definition tends to view sexual harassment from a gender-based perspective. The truth is that what constitutes sexual harassment from the perception of a man may differ from the viewpoint of a woman or girl. While a man, for instance, may not consider non-verbal or gestural sexual advances as constituting an inappropriate sexual relationship, a woman or girl may. This is because women, by their very nature, have wider discernment of sexual harassment behavioural patterns than the men.¹⁸ The Ekiti State law also considers sexual harassment or sexual assault of a girl or woman as another variety of violent behaviour against women and accordingly criminalises it.¹⁹

According to a United State of America’s apex court decision in *Meritor Savings Bank v. Vinson*²⁰ and the Obafemi Awolowo University Anti-Sexual Harassment Policy, 2013, the two leading species of inappropriate sexual behaviours are the *quid pro quo* and hostile environment. With respect to the *quid pro quo* sexual molestation, the harasser swaps or trades off an item or service, more often than not in the case of a student, unmerited privileges, favour or higher academic grades in exchange for sexual gratification or monetary benefits from the victim. This is a more easily identified form of sexual victimisation in our higher institutions. Conversely, a sexually related pressure which makes the place of work or academic surroundings adverse to the harassed victim is a more hidden sort of sexual intimidation as it takes the pattern of unsolicited verbal or non-verbal sexual conducts (like sexual jokes, posters, touching and electronically generated messages, etc) targeted at the victim, who in the case of Nigerian tertiary institutions is often a female student.²¹

The various definitions proffered above for the phrase, “sexual harassment,” agree with the general notion that where a victim expressly or by necessary implications submits to the harasser’s sexual advances it often attracts some forms of unmerited benefits, entitlements or privileges to her while refusal may have some consequences on her work or academic performances as well as render the workplace or learning environment hostile, intimidating or offensive to the uncompromising victim. Such unwanted sexual pestering may occur from an isolated incident or comprise of repeated actions happening over a period of time.

3. CAUSES OF SEXUAL HARASSMENT

A number of reasons account for why sexual harassments thrive in our tertiary institutions. Some possible causes would be mentioned here briefly. First, sexual harassment arises due to acts of indiscipline on the side of lecturers and female students involved. On the part of female students, it is argued that their manipulative tendencies

¹⁷ Ekiti State Gender-Based Violence (Prohibition) Law, 2019, section 63.

¹⁸ See generally, Fred C. Lunenburg, “Sexual Harassment: An Abuse of Power,” (2010) 13(1) *International Journal of Management, Business and Administration*, pp. 1-7.

¹⁹ Ekiti State Gender-Based Violence (Prohibition) Law, *op. cit.*, section 1(4)(ii)(h)(i).

²⁰ 447 US 57 June 19, 1986.

²¹ See the Obafemi Awolowo University, Ile Ife, Nigeria Anti-Sexual Harassment Policy, 2013, paragraph 1.2. See also Adetutu Deborah Aina and Pradeep Kulshretha, “Sexual Harassment in Educational Institutions in Delhi” NCR (India): Level of Awareness, Perception and Experience,” (2017) 21(1) *Sexuality and Culture*, 106. See also Pieter Alexander Grobler *et. al.*, “A model for the management of sexual harassment in South African companies,” (2003) 21(1) *South African Journal of Higher Education*, p. 37.

and indecent exposures or provocative dressing draw the unwholesome attention of their male lecturers to them. This has caused some universities to prescribe dress codes for their students,²² though such is seriously frowned at and considered as a form of violence against women under some statutes.²³

It is submitted however, that the justification of “inappropriate dressing” as reason for sexual harassment is merely used as a porous defence by licentious male lecturers to continue in their shameful sexual conducts as “experiences have shown that randy teachers in higher institutions often prefer to go for well-dressed, vulnerable female students.”²⁴ While one is not disputing the negative consequences of indecent dressing in our tertiary institutions, the real problem conversely, is that such philandering male lecturers lack self control or discipline in their sexual appetites. For instance, in the unfortunate cited cases of Akindele, Aduwo and Baruwa, none of them stated that the indecorous attires of their victims lured them into the sexual misconducts.

Besides, there are reported cases where male lecturers demand that their male students hire ladies or prostitutes to sleep with them before such male students could pass in courses taught by the randy lecturers. According to a student of Auchu Polytechnic, some female students in the school who are equally harassed by the male lecturers are utilising the opportunity to make money for themselves as they offer to sleep with the concerned lecturers and get paid by the male students. In the process, the female, apart from doing the male student a favour, also does herself one as both are rewarded with higher grades by the randy lecturers. The students often refer to this practice as a “sleep for two” syndrome.²⁵

Thus, cases of this nature are vivid signs of corruption, self-indulgence and indiscipline on the part of the lecturers and the students involved and must not be encouraged under any guise. A student who goes to the extent of hiring his girlfriend or a prostitute to sleep with a lecturer and /or even make cash payment to his lecturer in exchange for marks may probably be engaging in other criminal activities like stealing, robbery and *yahoo-yahoo* or internet scams to enable him cut corners and reap the academic fruits of fraud.

The second possible reason for sexual harassment is the exploitation of unequal power or authority relations by some male lecturers. In this sense, some male lecturers consider themselves as the *Alpha and Omega* in the courses they teach. Most times, such lecturers teach more than one compulsory course and any student who refuses to dance to the tune of their unsolicited sexual overtures would be victimised or failed as the lecturer exercises to his advantage the unbalanced authority he exerts over the student. Thus, female students, especially the vulnerable or less brilliant ones, who in the scheme of things, are considered as the “less powerful individuals” are put in a very tight or

²² Iyabo Lawal, “Dress code and search for moral sanity on campuses,” *The Guardian* (2 May 2019). Retrieved from <https://guardian.ng/features/dress-code-and-search-for-moral-sanity-on-campus/>. Accessed on 13 May 2021.

²³ See for example, Ekiti State Gender-Based Violence (Prohibition) Law, 2019, section 1(4)(ii)(u).

²⁴ Iyabo Lawal, “Dress code and search for moral sanity on campuses,” *The Guardian* (2 May 2019), *op. cit.*

²⁵ See Jesusegun Alagbe “School where prostitutes assist male students to get marks,” *The Punch*. Retrieved from <https://punchng.com/school-where-prostitutes-assist-male-students-to-get-marks/>. Accessed on 8 May 2021.

difficult situation.²⁶ It will take a strong determination or moral strength on the part of such a student to resist such “rewarding” temptation from the lecturer.

Thirdly, peer pressure may also lead to sexual harassment. Female students who themselves have benefited from such acts may lure their friends into befriending or sleeping with male lecturers in exchange for good grades or receive some forms of unmerited favours. The impact of peer influence is also tied to the collapse or compromise in our social, cultural and religious values where vices are celebrated at the expense of virtues. The fourth likely cause of sexual harassment is anchored on the patriarchal nature of our society. The Nigerian society, like other African societies, considers men to be more superior to the women. In such a society, women are seen as mere objects of sex. Thus, the commodification of women’s sexuality could cause a randy educator to perceive sex as a commodity for which he is entitled to be rewarded with for every unmerited favour, benefit or kindness he shows to his female student.

4. EFFECTS OF SEXUAL INDECENCY IN TERTIARY INSTITUTIONS

The consequences of sexual impropriety in an academic environment, which also serves as a workplace, have extensive impacts on virtually every area of the institution ranging from the reputation of the university in the minds of right thinking members of the public to low staff and students’ morale. Under this heading, attempt would be made at investigating some of the ways sexual harassment negatively affects an academic community and its members.

a. Sexual Harassment Compromises the Integrity of Academic Institutions

Sexual harassment undermines the mission statements and integrity of a university establishment as it is portrayed as an unsecured, unsafe and hostile environment for education, employment, on-campus living and participation in other university activities. As a result of this, many parents may not be willing to send their wards or children to such an institution. Proactive steps must therefore, be taken to stamp out sexual harassment from academic institutions.

b. Affects Productivity and Motivation of Staff and Students

Improper sexual relationship in academic institutions also constitutes serious threat to the learning experience in addition to the welfare of both workers and students, as it often results in low motivation of the victim and other students to work hard in their educational performances. While the victim may be distracted by reason of the presence of sexual insinuations from his harassing lecturer, other hardworking students, including their male counterparts, may display lack of interest in studying hard as they may have the attitude that regardless of how seriously they face their studies, ladies who are willing to compromise their moral integrity with flirtatious lecturers would still excel with unmeritorious higher grades.

In a study conducted on 262 women, approximately 75 per cent of them considered that sexual harassment seriously undermined their job performances. Specifically, these women attributed their declined enthusiasm to work as well as incapability to focus on

²⁶ Fred C. Lunenburg, “Sexual Harassment: An Abuse of Power” (2010) 13(1) *INTERNATIONAL JOURNAL OF MANAGEMENT, BUSINESS, AND ADMINISTRATION*, p. 1.

their work to unwanted sexual advances and innuendo at workplace.²⁷ In financial terms, a Deloitte research approximated that about \$2.62 billion productivity loss was suffered as a result of sexual harassment within a two-year period (i.e. 2018-2019) in Australia.²⁸ Though these studies focused basically on workplace sexual harassments, the uncontroverted lesson derivable from them is the fact that sexual harassment has the capacity of seriously weakening a person's motivation, including a student's stimulus to excel in his/her academic performances at school.²⁹

c. *Emotional, Psychological and Sexual Health*

Sexual harassment may also expose the harassing lecturer and the harassed female student to emotional torture, inner guilt and depression, and if not well managed, may result in suicidal thoughts or tendencies.³⁰ Mara Gordon has posited that traumatic impact of sexual harassment has long-term repercussions on women's health. The study noted that women who encountered sexual harassment had nearly threefold higher risk of developing depressive indications as well as devastating stress reactions, sleeps disorder, high blood pressure, increased incidence of clinically critical anxiety and lowered self-esteem.³¹ The connection between sexual harassment and mental or emotional health of the victim was also judicially recognised in the South African case of *Grobler v. Naspers Bpk*,³² where the trial Judge found that the "chronic emotional problems" of the plaintiff were the result of the sexual harassments she was subjected to by her boss and which she could not have escaped from regardless of her attempts to do so without the likelihood of losing her job.³³

Furthermore, sexual harassment may negatively impact on the reproductive health of both the harasser and the harassed. It is possible that a lecturer who cannot control his sexual cravings may likely have multiple sex partners. This may open doors to his acquiring and spreading sexually transmitted diseases to an unsuspecting harassed student and vice versa. Aside from this, there is a possibility that the randy lecturer may also impregnate the female student³⁴ thereby compounding her problems as she may be forced to drop out of school. Besides, where he denies liability for the pregnancy or the

²⁷ See Peggy Crull, "Stress Effects of Sexual Harassment on the Job: Implications for Counselling," (1982) 52(3) *American Journal of Orthopsychiatry*, pp. 539-544.

²⁸ Deloitte Access Economics, *The Economic Costs of Sexual Harassment in the Workplace: Final Report* (Deloitte Access Economics, March 2019), p. 5.

²⁹ *Davis v. Monroe* 526 U. S. 629 (1999).

³⁰ See "MAO college lecturer commits suicide after false sexual harassment allegations, *Daily Times*. Retrieved from <https://dailytimes.com.pk/486499/mao-college-lecturer-commits-suicide-after-false-sexual-harassment-allegations/>. Accessed on 15 May 2021. See also, "Boniface Igbenighu of UNILAG Attempts Suicide Over Sex For grade Scandal-Crime-Nigeria," *Nairaland Forum* (8 October 2019). Retrieved from <https://www.nairaland.com/5459790/boniface-igbenghu.unilag-attemis-suicide>. Accessed on 15 May 2021.

³¹ Mara Gordon, "Sexual Assault and Harassment May Have Lasting Health Repercussion for Women." Retrieved from <https://www.npr.org/sections/health-shots/2018/10/03/653797374/sexual-assault-and-harassment-may-have-lasting-health-repercussions-for-women>. Accessed on 17 April 2021.

³² 2004 (4) SA 220 (C); (2004) 25 ILJ 439 (C), delivered on 19 March 2004.

³³ *Ibid*, per Nel J.

³⁴ Lawrence Njoku, "UNN suspends lecturer for allegedly impregnating student," *The Guardian* (16 February 2021). Retrieved from <https://guardian.ng/news/unn-suspends-lecturer-for-allegedly-impregnating-student/>. Accessed on 13 May 2021. See also, Bridget Edokwe, "UNN Suspends Lecturer For Impregnating Four Students Within 4 Years," *BarristerNG.Com* (16 February 2021). Retrieved from <https://barristerng.com/unn-suspends-lecturer-for-impregnating-four-students-within-4-years/>. Accessed on 13 May 2021.

paternity of the intending child,³⁵ such a child may grow up to be a miscreant in the society as he or she may be forced into crime without adequate parental care and attention requisite for a child's proper upbringing.

d. Production of "Half-Baked" Graduates

Another harmful effect of sexual assault in Nigerian tertiary institutions is that it results in the churning out of ill-trained or "half-baked" graduates into the Nigerian society as serious minded and industrious students are failed or given poor grades when they refuse to yield to sexual overtures by morally bankrupt teachers while the academically poor and lethargic students who succumb to such sexual advances are rewarded with unmerited excellent grades. Ibekwe, quoting Joy Ezeilo, a law professor and the Executive Director of Women's Aid Collective, recounts an unfortunate story of how a university lecturer nicknamed *Kiss-me-and pass*, solicited for kisses from his female students if they wanted excellent grades in his courses.³⁶

The regrettable situation of scoring brilliant grades through the window of sexual harassment in our institutions of learning did not escape the scrutiny of the trial court in *Federal Republic of Nigeria v. Professor Richard Iyiola Akindele*³⁷ when Hon. Justice M. A. Onyetenu observed thus:

*One of the unfortunate fallout of this kind of sexual abuse in our educational institutions is that, it leads to the institution producing half-baked graduates as best brains and hardworking students who do not pander to the sexual whims and caprices of their lecturers and teachers are robbed of well-deserved excellent results while lazy and indolent students who pander to such whims of lecturers will end up with non-deserved excellent results.*³⁸

In view of the above ugly scenario as rightly portrayed by the learned trial Judge, one can only imagine the havocs such incompetent and unsound graduates encouraged by immoral lecturers would have wrecked on the Nigerian society in their various areas of "qualifications" over the years.

e. Enthronement of Tran-Generational Cheating Culture

By this I mean that female students who, while in schools, either lured or accepted sexual overtures from their promiscuous lecturers in exchange for rewards may still extend the frontiers of such scheming propensities to their workplaces later in life. As a matter fact, such culture of cheating may inadvertently be transferred by them to their children. Parents who are themselves products of manipulative academic excellence may not see anything wrong if their own children elect to "use what they have to achieve what they don't have." In recent times, reports abound on how some parents have encouraged or assisted their children in cheating during national or regional examinations conducted

³⁵ See Samson Folarin, "Lecturer impregnated me, rejected pregnancy, says nursing student. It wasn't me, I used condom-Lecturer," *The Punch* (22 May 2017). Retrieved from <https://punchng.com/lecturer-impregnated-me-rejects-pregnancy-says-nursing-student-%E2%80%A2-it-wasnt-me-i-used-condom-lecturer/>. Accessed on 13 May 2021.

³⁶ Nicholas Ibekwe, "How Nigerian Universities encourage sexual harassment of female students," *Premium Times* (21 March 2015). Retrieved from <https://www.premiumtimesng.com/news/headlines/178879-how-nigerian-universities-encourage-sexual-harassment-of-female-students.html>. Accessed on 7 May 2021.

³⁷ Charge No. FHC/OS/60C/2018 of the Federal High Court, Osogbo Judicial Division, Osun State, decided on 17 December 2018 (Unreported).

³⁸ *Ibid.*

by the National Examination Council (NECO), West African Examinations Council (WAEC) and Joint Admissions and Matriculations Board (JAMB).³⁹ The absence of available empirical studies linking sexual harassment in tertiary institutions to subsequent examination malpractices by their children does not necessarily deny the possibility of such nexus.

5. LEGAL FRAMEWORK ON ANTI-SEXUAL HARASSMENT

Attempt would be made under this sub-head to examine some legislation and policy framework that could be resorted to by female victims of sexual harassment in pressing criminal charges against harassing male lecturers in our tertiary institutions.

a. *Criminal Code Act/Law*

Lagos State criminal legislation has made an express provision penalising sexual harassment with a 3 year jail term for a convicted offender.⁴⁰ However, in the absence of a statute penalising sexual harassment in unambiguous terms, offenders may be charged to court based on related sexual offences provisions of the Criminal Code Act/Law. For examples, Dr. Afeez Baruwa, a former teaching staff of the University of Lagos, was charged with and convicted of rape contrary to section 258 of the Criminal Law, 2011.⁴¹ In appropriate cases too, other provisions of the Criminal Law/Code which could be relied upon in the prosecution of lecturers for sexual harassment of their students include but not limited to: sexual assault by penetration;⁴² attempt to commit rape and sexual assault by penetration;⁴³ and sexual assault,⁴⁴ indecent assault on females,⁴⁵ and defilement and abduction of a girl under 18 years with intent to have carnal knowledge of her.⁴⁶

Criminal prosecution under the Criminal Code could also be resorted to by a lecturer in pressing criminal charges against a female student for malicious falsehood. Dr. Peter Otubu, a former teacher at the Ambrose Alli University, Ekpoma found himself in such unfortunate situation. He was dismissed by his institution on a bogus allegation by a female student that he was having a romantic relationship with her. He later pressed 8-counts criminal charges at the Magistrate Court, Ekpoma against the female student along with other students involved.⁴⁷ Two of the principal suspects who were siblings, Judith Okosun and Juliet Okosun, were convicted and sentenced to two years imprisonment.⁴⁸

³⁹ Ayodele, "Parents encouraging exam malpractice-Lawmaker," *The Punch* (19 October 2017). Retrieved from <https://punchng.com/parents-encouraging-exams-malpractice-lawmaker/>. Accessed on 7 May 2021.

⁴⁰ Criminal Law, Vol. 3, Cap. C17, Laws of Lagos State, 2015, section 264.

⁴¹ Now section 260, Criminal Law, Vol. 3, Cap. C17 Laws of Lagos State, 2015. See Fikayo Olowolagba, "Ex-UNILAG lecturer found guilty of rape, sentenced to 21-years in prison" *Daily Post* (20 February 2020). Retrieved from <https://dailypost.ng/2020/02/20/ex-unilag-lecturer-found-guilty-of-rape-sentence-to-21-years-in-prison/>. Accessed on 25 April 2021.

⁴² Criminal Law of Lagos State, 2015, section 261- the penalty attracts life imprisonment.

⁴³ *Ibid*, section 262- the penalty is 14 years imprisonment.

⁴⁴ *Ibid*, section 263- the penalty is 3 years imprisonment.

⁴⁵ Criminal Code Act, Cap. C38, Laws of the Federation of Nigeria, 2004, section 360.

⁴⁶ *Ibid*, section 225.

⁴⁷ See *C.O.P. v. Judith Ivie Okosun & Others*, Charge No. MEK/18C/2012 (Unreported).

⁴⁸ *Ibid*. See also Michael Egbejule and Ijeoma Thomas-Odia, "Eight years after, court convicts female students, vindicates AAU lecturer in sex for marks scandal," *Guardian*. Retrieved from <https://guardian.ng/news/eight->

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

The VAPP Act 2015 similarly contains some notable provisions that can accommodate criminal sanctions for sexual harassment of a female student. Most times, female students allege that male lecturers who sexually harass them do so through the instrumentality of intimidation, coercion or threats. In this regard, VAPP Act enjoins that coercing a person to get involved in any act to the injury of the victim's welfare either bodily or psychosomatically is prohibited and the offender is liable to imprisonment for 3 years.⁴⁹ In addition, pressurising a person by means of force or intimidation to be involved in any behaviour or act, sexual or otherwise to the detriment of the victim constitutes an offence punishable with an imprisonment term or an imposition of a fine.

Stalking or groping is another example of sexual harassment which is criminalised under the statute. Attempting, aiding, inciting, abetting and/or counselling an individual to perpetrate the offence are equally penalised.⁵⁰ The Act does not only criminalise rape but it goes further to expand the orbit of its definition beyond the traditional idea of "vagina-penile penetration." The criminal act of rape now covers a deliberate insertion of any part of the body of the harasser or object into the female reproductive organ, mouth or anus of the victim in the absence of the authorisation of the victim or where the permission of the victim was obtained, it was done by way of threat or intimidation or apprehension of hurt or as a result of bogus and deceitful representation. Unless in exceptional cases, the penalty for rape is life imprisonment⁵¹ in addition to compensatory damages for the victim as the court may deem fit.⁵² This is aside from the registration of a convict's offender's name in a sexual offenders' register which could be made accessible to the public.⁵³

Indisputably, some of the unsolicited sexual harassments often come in the form of sexual overt or suggestive electronic and mobile messages. Destroying, altering, mutilating or falsifying such electronic documents⁵⁴ or evidence could constitute an offence under section 7 of the Act.⁵⁵ However, the statute has a circumscribed jurisdiction as it operates only in the Federal Capital Territory, Abuja and such other States that have domesticated.⁵⁶

c. Child's Rights Act 2003

By the admissions regulations stipulated by the Joint Admissions and Matriculation Board (JAMB), the minimum age for applicants requiring admittance into any Nigerian tertiary institution is 16 years. The implication of this is that a lecturer who harasses an

years-after-court-convicts-female-students-vindicates-aau-lecturer-in-sex-for-marks-scandal/. Accessed on 1 May 2021.

⁴⁹ The VAPP Act 2015, section 3.

⁵⁰ *Ibid*, section 17.

⁵¹ *Ibid*, section 1(1)(2).

⁵² *Ibid*, section 1(3). For other rights or remedies available to the victim, see section 38 of the Act.

⁵³ *Ibid*, section 1(4).

⁵⁴ For a fuller definition of the term, "document," see section 258(1) of the Evidence Act 2011.

⁵⁵ See for example the case of *Professor Richard Iyiola Akindele v. Federal Republic of Nigeria*, Appeal No. CA/AK/80C/2019 (Unreported), decided by the Court of Appeal, Akure Judicial Division on 5th March 2021.

⁵⁶ The VAPP Act 2015, section 27. See also the domesticated Ekiti State Gender-Based Violence (Prohibition) Law, 2019.

underage female student, except an underage married woman may be prosecuted under the relevant clauses of this statute.⁵⁷ For instance, under clause 31 of the legislation, it is unlawful to engage in sexual intercourse with a minor; contravention of that law amounts to a rape with a penalty of a life jail term for the offender. The mere fact that the minor's consent was obtained is immaterial. Secondly, it is also of no consequence that the violator considered the minor of being of or more than the majority age of eighteen years.⁵⁸ Intimate abuse or exploitation of a child in a manner not mentioned in the legislation is also banned and violators are liable to fourteen years imprisonment upon conviction.⁵⁹ The major problem with this piece of legislation, however, is that not every State of the Federation has domesticated it and consequently would not have the force of law in such States.⁶⁰

d. Corrupt Practices and Other Related Offences Act 2000

The Corrupt Practices and other Related Offences Act, 2000 is another criminal legislation that has, in recent times, been desperately resorted to in the criminal prosecution of educators accused of sexual harassment in Nigerian tertiary institutions, though there is no explicit provision on sexual corruption in the said statute. As a matter of fact, the anti-corruption body, ICPC, has taken a strong stance in favour of victims of sexual harassment in our academic institutions. The litmus test for sexual harassment prosecution under this statute came before Honourable Justice Maureen Adaobi Onyetenu of the Federal High Court, Osogbo in the celebrated case of *Federal Republic of Nigeria v. Professor Richard Iyiola Akindede*.⁶¹ The facts leading to the prosecution of that case were that the defendant was a professor in the Department of Management and Accounting at the Obafemi Awolowo University, Ile-Ife, Osun State, Nigeria, where he taught, among other courses, Research Method.

Sometime in September 2017, one Miss Monica Osagie, a student offering the said course taught by the defendant alleged that the defendant did demand for sexual pleasure from her in exchange for a passed mark in the said course, which she had allegedly failed. Following public condemnation after the said student had released the recorded video into the internet, various individuals, groups, including the ICPC became interested in the case resulting in the anti-corruption body preferring a four court charge against the defendant. The charges centred on the defendant: asking for sexual gains for himself from a female student contrary to section 8(1)(a)(ii) of the Act; soliciting sexual gratifications to upgrade her scores contrary to section 18(d) of the Act; altering of evidence in the WhatsApp chats between himself and the female student by deleting numerous portions of his side of the conversation contrary to section 15(a) of the Act; and age falsification contrary to section 25 (1)(b) of the Act.

⁵⁷ A child is defined under section 277 of the statute as a person under the age of eighteen years. Though the Act recognises the majority age as being eighteen years, this is however, whittled down by the provision of section 29(4)(b) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) which states that the majority age of eighteen years does not apply to any married woman as she is "deemed to be of full age."

⁵⁸ Child's Rights Act 2003, section 31(3)(a)(b).

⁵⁹ *Ibid*, section 32.

⁶⁰ As at year 2020, about 11 States in the northern part of Nigeria had not domesticated the legislation in their respective States. See Usang Maria Assim, "Why the Child's Rights Act still doesn't apply throughout Nigeria" *The Conversation* (24 September 2020). Retrieved from <https://theconversation.com/why-the-childs-rights-act-still-doesnt-apply-throughout-nigeria-145345>. Accessed on 19 May 2021.

⁶¹ Charge No. FHC/OS/60C/2018, decided on 17 December 2018 (Unreported).

Prior to his arraignment, learned counsel to all the parties in the case had met and entered into a “plea bargain” arrangement. Consequently, on arraignment, the defendant pleaded guilty to all the four counts of the charge and was accordingly convicted on each of them and sentenced to two years jail term with no choice of monetary payment as a penalty. Giving reasons for the conviction and rejection of the plea bargain, the learned trial Judge stated thus:

*I have carefully considered the nature and gravity of this offence as well as its prevalence in our society. Everyday young girls are being turned into sex slaves by their lecturers and teachers, even Primary School children are beginning to complain. This court as well as our society abhors this kind of sexual abuse on our children and young persons. It must not be allowed to continue....There is a dire need to deter such practices of sexual harassment and abuse in our society and because of this, this court will not grant a non-custodial sentence as applied in the plea bargain....Thus, in line with S. 290 of the Administration of Criminal Justice Act, I will impose a custodial sentence.*⁶²

A subsequent attempt to reverse the conviction on a jurisdictional pedestal failed at the Court of Appeal which upheld the lower court’s decision.⁶³ At the Court of Appeal, the appellant had contended that since the nucleus of the complainant’s allegation was on sexual harassment at his place of work, the proper court with jurisdiction to entertain the criminal action was the National Industrial Court in line with section 254C (1)(g) of the Nigerian 1999 Constitution and not the Federal High Court where he was tried and convicted. In resolving the jurisdictional issue, the appellate court noted that though the National Industrial Court has the exclusive jurisdiction to handle civil cases pertaining to bias or inappropriate sexual relationship at the place of work, it lacked such exclusivity when it comes to criminal charges on those issues. In other words, the National Industrial Court has a concurrent jurisdiction with other courts like the Federal High Court, High Court of a State or High Court of the FCT, Abuja when it comes to criminal matters concerning sexual corruption at workplace.⁶⁴ The decisions of both courts in this matter are welcome developments as it is hoped that they would encourage in the fight against sexual victimisation of female students in higher institutions of learning.

*e. Prevention, Prohibition, and Redressal of Sexual Harassment in Tertiary Educational Institutions Bill, 2019*⁶⁵

The reintroduction of the bill in 2019, after its first introduction in the Senate in 2016,⁶⁶ was a child of necessity following general outcry over a released viral video of

⁶² *Ibid*, per Honourable Justice Maureen Adaobi Onyetenu.

⁶³ *Professor Richard Iyiola Akindele v. Federal Republic of Nigeria*, Appeal No. CA/AK/80C/2019 (Unreported), decided by the Court of Appeal, Akure Judicial Division on 5th March 2021.

⁶⁴ *Ibid*. See also *Amiwero v. A. G., Federation* (2015) 15 NWLR (Pt. 1482) 353.

⁶⁵ The Bill which was initiated at the Nigerian Senate was sponsored by Senator Ovie Omo-Agege, the Deputy Senate President representing Delta Central Senatorial District, and co-sponsored by 106 other Senators. It was subsequently passed at the Senate in July 2020. See Editorial, “Nigeria: On Sexual Harassment Bill,” *Daily Trust* (17 July 2020). Retrieved from <https://allafrica.com/stories/202007170055.html>. Accessed on 19 May 2021.

⁶⁶ The 2016 Bill was rejected by both legislative houses at the federal level as it failed to cover sexual relationship in the workplace and also because it included a defence for consent by the victim which has been excluded in the current proposed bill, among other reasons.

BBC documentary on sexual harassment by lecturers in Nigerian and Ghanaian tertiary institutions in October 2019.⁶⁷ The proposed bill aims at promoting and safeguarding moral principles in Nigerian higher institutions of learning. It provides for the prevention of sexual harassment and redressal of complaints.⁶⁸ The proposed bill prescribes a penalty of not more 14 years but not less than 5 years in jail for any lecturer found culpable.⁶⁹

The offences created under the proposed bill are strict liability offences and thus, the establishment of guilty intent of the offender is dispensed with.⁷⁰ A person charged under section 4 of the proposed bill can raise as a defence that he is legally married to the student⁷¹ but mere consent of the student to commission of the offences created under the section does not constitute a defence.⁷² A victim of sexual harassment can also maintain a civil action in court for the breach of fiduciary duty of care owed to him or her by a tutor. The standard of proof in such civil action is as applicable in all civil suits.⁷³ The Bill also makes provisions for commencement of proceedings,⁷⁴ institutional disciplinary measures⁷⁵ and procedure,⁷⁶ judicial review⁷⁷ and the establishment of institutional independent sexual harassment prohibition committee.⁷⁸ The administrative heads of tertiary institutions who fail to act within the stipulated period of the lodgement of sexual harassment complaints by the victim or his/her representative is culpable and on conviction may be liable to at two years jail term or a minimum of five million Naira fine or both. Similarly, the Bill prescribes suspension as punishment for a student whose complaint of sexual harassment is found by the Independent Sexual Harassment Prohibition Committee to be false or malicious.⁷⁹

The proposed bill has been lauded in some quarters as a “landmark legislation” capable of addressing the incessant incidences of sexual harassment in our tertiary institutions which have occasioned pedagogic fraud, despondency and multifaceted adverse impacts on individuals and the society generally.⁸⁰ Some critics have also described it as “segregationist or non-inclusive law” as it purely targets teaching staff

⁶⁷ “Nigeria seeks anti-sexual harassment law after #SexForGrades film,” *BBC NEWS* (10 October 2019). Retrieved from <https://www.bbc.com/news/world-africa-49998134>. Accessed on 19 May 2021.

⁶⁸ Prevention, Prohibition, and Redressal of Sexual Harassment in Tertiary Educational Institutions Bill, 2019, *op. cit.*, section 1.

⁶⁹ *Ibid*, section 11. For a fuller scope of what constitutes sexual harassment offences created under the proposed Bill, see section 4 thereof. However punishment for offences created under sections 4(4)(5) and (6) of the proposed Bill attracts imprisonment term of 5 years but not less than 2 years without an option of a fine-see section 12 thereof.

⁷⁰ *Ibid*, section 7.

⁷¹ *Ibid*, section 5.

⁷² *Ibid*, section 6.

⁷³ *Ibid*, sections 13 and 14.

⁷⁴ *Ibid*, section 8.

⁷⁵ *Ibid*, section 15.

⁷⁶ *Ibid*, section 17.

⁷⁷ *Ibid*, section 18.

⁷⁸ *Ibid*, section 16.

⁷⁹ *Ibid*, section 21

⁸⁰ See Editorial, “Nigeria: On Sexual Harassment Bill,” *Daily Trust* (17 July 2020). Retrieved from <https://allafrica.com/stories/202007170055.html>. Accessed on 19 May 2021.

that constitute a small fraction in our tertiary institutions.⁸¹ Obviously, this assertion can be faulted as the definition of the term, “educator” in the context of the proposed bill reveals that it encompasses, *inter alia*, “all academic and non-academic staff, or a faculty or non-faculty member of a tertiary institution” either serving as a permanent or temporary instructor or provides “professional educational services.”⁸²

It is further submitted however, that incidences of sexual harassment have been reported in workplaces outside the scope covered by the bill as well as in other educational institutions like the primary and secondary schools.⁸³ Thus, as it is, the bill is not all embracing in tackling sexual harassment incidence even in the entire educational sector.⁸⁴ Furthermore, the proposed bill uses some imprecise terms like “legally married”⁸⁵ without defining the phrase in the interpretation section. It is a known fact that three basic types of marriages are contracted in Nigeria, namely, statutory marriage, Islamic marriage and customary marriage. In the circumstances, does the term refer to the three categories or only to a statutory marriage? The need for a proper definition of the phrase cannot be overemphasised in view of the requirement of the Maputo Protocol to the effect that for a marriage to be legally recognised, it must be documented in a written form and registered in compliance with a domestic law.⁸⁶ While this may be possible regarding a statutory marriage, it becomes doubtful in relation to marriages contracted under Islamic and customary laws.

It is equally possible for intended couples to meet themselves anywhere, inclusive of a workplace or educational environment. Would it be a crime, therefore, for an unmarried “educator” to meet his intended life partner who is a student in an academic environment where he teaches and starts a relationship towards marriage with her? I shudder to think so. I feel that the general intendment of the bill is to abolish sexual harassment and sanction lecturers who take undue advantage of vulnerable students by exploiting them for unethical individual benefits or sexual gratification.⁸⁷ It is not the intendment of the drafters or framers of the proposed legislation to inhibit a matured female student from freely choosing a prospective marital partner even among her academic tutors.

⁸¹ Tunde Fatunde, “Does the new sexual harassment bill unfairly target academic?” *University World News* (20 August 2020). Retrieved from <https://www.universityworldnews.com/post.php?story=20200820081902475>. Accessed on 19 May 2021.

⁸² Prevention, Prohibition, and Redressal of Sexual Harassment in Tertiary Educational Institutions Bill, 2019, *op. cit.*, section 26.

⁸³ See E. A. Enzuladu *et al.* “Sexual Abuse among Female Secondary School Students in Jos, North Central Nigeria,” (2013) 15 (1) *Journal of Medicine in the Tropics*, pp. 9-12. See also Rotimi Ojomoyela & Shehu Danjuma, “Ekiti secondary school teacher impregnates 17-year-old student” *Vanguard* (10 March 2020). Retrieved from <https://www.vanguardngr.com/2020/03/ekiti-secondary-school-teacher-impregnates-17-year-old-student/>. Accessed on 19 May 2021. See also Tijjani Ibrahim, “Teacher Impregnates His 12-Year-Old Student in Katsina,” *Daily Trust* (21 January 2021). Retrieved from <https://dailytrust.com/teacher-impregnates-his-12-year-old-student-in-katsina>. Accessed on 19 May 2021.

⁸⁴ See Editorial, “Nigeria: On Sexual Harassment Bill,” *Daily Trust* (17 July 2020), *op. cit.*

⁸⁵ See section 5 of the Bill.

⁸⁶ Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, 2003, Article 6(d).

⁸⁷ See section 3 of the Bill.

f. *Convention on Elimination of All Forms of Discrimination Against Women, 1979*⁸⁸ and the *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2003*⁸⁹

The CEDAW General Recommendation No. 19 on Violence against Women⁹⁰ defines sexual harassment of women to include:

*such unwelcome sexually determined behaviour as physical contact and advances, sexually coloured remarks, showing pornography and sexual demands, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable ground to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile working environment.*⁹¹

It is submitted that sexual harassment would conveniently come within the meaning of "discrimination against women" contemplated under Article 1 of CEDAW as it is directed against a female by reason of her being feminine or that negatively impacts on her unreasonably in such a manner as to cause corporal, emotional or sexual injury on her in addition to impairing or nullifying her enjoyment of other basic guaranteed freedoms. Consequently, the Committee on Elimination of Discrimination against Women recommended that member countries should provide data on unwanted sexual molestation and what steps have been undertaken to safeguard women from being sexually harassed or victimised in their place of employment.⁹²

Similarly, the Maputo Protocol is another landmark human rights instrument that advocates women's rights and gender equity in line with stipulated provisions in global declarations and conventions. It is supplementary to the African Charter on Human and Peoples' Rights in Africa.⁹³ In relation to sexual harassment in educational institutions, the Maputo Protocol enjoins all State Parties to adopt all suitable mechanisms to safeguard women and the girl-child from every form of unwanted sexual abuse, inclusive of the ones that happen in academic environments, and correspondingly stipulate punishments for malefactors. Provision for opportunity to be counselled and rehabilitated should also be made available to women who are subjected to such practices.⁹⁴

Regardless the idealistic clauses in these global and regional instruments, the rights of women protected under them will continue to remain a mirage and mere promises on paper until the treaties are domesticated in Nigeria as enjoined under the Nigerian 1999 Constitution.⁹⁵

⁸⁸ Adopted by the United Nations General Assembly on 18 December 1979 and entered into force on 3 September 1989.

⁸⁹ The Maputo Protocol, as it is often called, was adopted by the Conference of Heads of State and Government in Maputo, Mozambique in July 2003 and came into force on 25 November 2005.

⁹⁰ U.N. Doc. A/47/38 at 1 (1993).

⁹¹ *Ibid*, Article 11: 18.

⁹² *Ibid*, Article 24(j).

⁹³ The Maputo Protocol, *op. cit.*, para. 1 of the Preamble.

⁹⁴ *Ibid*, Articles 12(1)(c) and (d). See also Article 13(c).

⁹⁵ See the Constitution of the Federal Republic of Nigeria, 1999 (as amended), section 12.

6. SOME POLICY FRAMEWORK ON SEXUAL HARASSMENT BY NIGERIAN UNIVERSITIES

Various educational institutions have put in place some anti-sexual harassment policy framework to checkmate the menace of sexual harassment in their respective institutions. Such institutions include but not limited to the Obafemi Awolowo University, Ile Ife,⁹⁶ University of Lagos,⁹⁷ University of Ibadan,⁹⁸ and University of Port Harcourt.⁹⁹ However, it is not intended here to critically examine the provisions of each of these policy frameworks, but to mention some of the relevant provisions for the purpose of this article.

In each of the above policy frameworks, what constitutes sexual harassment is clearly spelt out. For instance, the University of Lagos Policy on Sexual Harassment, Sexual and Romantic Relationships 2017 posits that such behaviour could be in the form of physical sexual behaviour or oral or unspoken behaviour that tends towards sex including objectionable touching; immorally suggestive remarks or jokes; sexual insinuations (like hooting, sucking, lip-smacking); pretended “accidental” brushing sexual parts of the body; lewd or lustful phone calls and sending sexually unambiguous emails, short message service sent or posted through a social network; unjustifiable channelling of educational or work-related talks into an amorous-related talks; monitoring, or video recording in another electronic manner intimate relationship or indecent exposure which intrudes into a person’s privacy without the awareness and permission of the parties involved or disseminating such recorded pictorial or audio sexual activities without the knowledge and approval of all the recorded parties and recipients.¹⁰⁰ The legal implication of the Policy using the word “include” in the provision indicates that it has the effect of extending or broadening the scope of the concepts covered by the terms mentioned in the Policy.¹⁰¹ In such a situation, it would be a futile argument on the part of the harasser that such expansive interpretation was not explicitly mentioned in the Policy.

As part of its formulated policies and strategies to eradicate sexual harassment from the institution, the OAU Anti-Sexual policy mandates the university authority to sensitise every member of the university concerning the ills of the menace so as to stimulate an attitude of societal obligation towards its abolition. One of the ways the university goes about this is by erecting bill boards in strategic locations in the campus for dissemination information on anti-sexual harassment.¹⁰² Moreover, the OAU Policy enjoins the university to carry out regular monitoring and assessment so as to measure the level of performance and attainment of the anti-sexual harassment goals of the university.¹⁰³ On

⁹⁶ See Obafemi Awolowo University, Ile Ife, Anti- Sexual Harassment Policy, 2013.

⁹⁷ University of Lagos Policy on Sexual Harassment, Sexual and Romantic Relationships, 2017. The Policy was approved by the Senate of the University of Lagos on 30th August 2017

⁹⁸ The University of Ibadan Sexual Harassment Policy 2012.

⁹⁹ The University of Port Harcourt Sexual Harassment Policy 2019.

¹⁰⁰ University of Lagos Policy on Sexual Harassment, Sexual and Romantic Relationships, 2017, Clause 14. See also OAU Anti-Sexual Harassment Policy, Clause 1.1; UNIPORT Anti-Sexual Harassment Policy, Clauses 1.1. 1.14; and UI Anti Sexual Harassment Policy, Clause 6.0-6.1.3.

¹⁰¹ *Jirgbagh v. U. B. N. Plc* (2000) FWLR (Pt. 26) 1790 at 1814; *Okesiyi v. Lawal* (1991) 2 SCNJ 1.

¹⁰² Obafemi Awolowo University, Ile Ife, Anti- Sexual Harassment Policy, 2013, Clause 3.2.1(xi).

¹⁰³ *Ibid*, Clause 3.2.4.

the part of the UI policy, such strategy includes widely publicising the university's norms, values and standards including respect for everyone as well as organising regular orientation and reorientation programmes for staff and students concerning sexual harassment.¹⁰⁴

The punishment prescribed for violators of the policy vary from one institution to the other. For example, under the UNIPORT Anti-Sexual Harassment Policy, employees of the university found liable for sexual harassment shall be subjected to various disciplinary sanctions including suspension or outright termination of appointment.¹⁰⁵ Furthermore, in the case of University of Lagos and as a means of discouraging sex-for-grades, where the university is satisfied that any of its degree or certificates or promotion was fraudulently obtained by means of sexual misconduct, the institution may nullify or revoke the degree or certificate awarded.¹⁰⁶ With respect to consensual sexual or romantic relationship between its staff and students, the UNIPORT Policy seriously frowns at it and considers it an improper behaviour capable of attracting a disciplinary sanction for non-disclosure.¹⁰⁷

7. IS SEXUAL HARASSMENT A PRODUCT OF FAILURE OF LEGAL MECHANISM?

This significant question would be addressed from two perspectives, namely, on the basis of the above discussed statutory provisions as well as the basis of the principle of vicarious liability:

a. The Statutory Provisions

First, from the angle of the various statutes discussed above, it is obvious that prior to the reintroduction of the anti-sexual harassment bill at the Senate in 2019, a number of offences have been created in our statute books which can effectively be relied upon in the prosecution and conviction of any lecturer who sexually harasses a female student. Even the 1999 Nigerian Constitution gives an exclusive jurisdiction to the National Industrial Court to hear and determine civil cases in connection with controversies emanating from discriminatory practices and an unwelcome sexual impropriety that take place in occupational environment.¹⁰⁸ The import of this constitutional provision is that a female student who is sexually assaulted or abused in a tertiary institution, being a workplace, can in addition to a criminal prosecution, institute a civil action in the court to seek available remedies against the harassing lecturer. The mere fact that those provisions of the law and other similar ones were not relied upon in suing or penalising sexual harassers can certainly not be deemed to be either evidence of flaws in those laws or dearth of anti-sexual harassment provisions in our statutes. Rather, they could be associated with the recurrent problems of ignorance and lack of enforcement by the victims or the relevant authorities.

¹⁰⁴ See generally UI Anti-Sexual Harassment Policy, Clause 7.0

¹⁰⁵ UNIPORT Anti-Sexual Harassment Policy, Clause 12.3. See also UNILAG Anti-Sexual Harassment Policy, Appendix 1, which stipulates various disciplinary measures and sanctions for various categories of sexual harassment conduct.

¹⁰⁶ UNILAG Anti-Sexual Harassment Policy, Appendix 1, Para. G

¹⁰⁷ UNIPORT Anti-Sexual Harassment Policy, Clause 1.15 and Clause 12.15.

¹⁰⁸ The Constitution of the Federal Republic of Nigeria, 1999 (as amended), section 254C (1)(g).

b. The Principle of Vicarious Liability

Normally, a person is held accountable for his own wrongful action and such liability cannot be extended to another person. However, in some circumstances arising out of a special relationship, like master-servant relationship, an employer can be vicariously held responsible for the wrongful act occasioned by the servant to a third party in the course of his service to the master.¹⁰⁹ Thus, in appropriate situations, the principle of vicarious liability in the law of torts can be relied upon by a female student in holding her institution accountable in a claim for damages for sexual harassment and abuse by a male lecturer. In the absence of locally decided authorities in this area, reliance shall be placed on decided authorities by foreign courts holding educational institutions vicariously liable for sexual misconducts by their employees.

*Christine Franklin v. Gwinnett County Public Schools*¹¹⁰ was the first case in which the US apex court held that a monetary damages claim could be sustained under Title IX of the Federal Education Amendments, 1972. The petitioner had alleged that she was sexually harassed frequently by a tutor and sport coach at the school. She claimed that the teachers and administrators of the school knew about the harassment, which other students were also exposed to, but neglected to take any action to avert its continuance.

Another Title IX action instituted on account of inappropriate sexual relationship in an educational institution was the case of *Gebser v. Lago Vista Independent School District*.¹¹¹ In that case, the petitioner, one Alida Star Gebser, a student in the respondent's institution alleged that a male teacher, Frank Waldrop, habitually made sexually suggestive comments to her in the school in addition to engaging in sexual intercourse with her during home visits, although never in the school premises. There was evidence that the female student did not report the sexual misconduct of Waldrop to the school authority, as according to her, she wanted to continue having Waldrop as her tutor. Subsequently Waldrop and Gebser were found by the police engaging in sexual intercourse. This resulted in the termination of his employment and withdrawal of his teaching license by the school's board. Gebser and her mother instituted an action against the school and Waldrop for damages. The claim of the petitioners was refused right from the trial district court up to the US Supreme Court.

It is submitted that unlike the earlier case of *Christine Franklin*, the *Gebser case* determined the contours of responsibility of an academic institution in cases of lecturer-student sexual harassment. It insisted that for an institution to be held liable, the claimant would have to establish, *inter alia*, that the authority of the academic institution had actual knowledge of the alleged sexual advances and was intentionally apathetic or nonchalant to the employee's sexual misconduct. As a matter of fact, no such cogent and convincing evidence were placed before the court in the *Gebser case*. Moreover, the court maintained that the failure of the institution to fashion out an anti-harassment

¹⁰⁹ This is often referred to as *respondet superior*. It has its root in the legal conjecture that every action performed by the servant in and about his master's business is carried out in line with his master's explicit or implicit authority and is in truth the acts of the master.

¹¹⁰ 503 U.S. 60 (1992).

¹¹¹ 524 U.S. 274 (1998). See also *Gebser v. Lago Vista Independent School District-law case*. Retrieved from <https://www.britannica.com/topic/Gebser-v-Lago-Vista-Independent-School-District>. Accessed on 16 May 2021.

policy or procedure to channel such grievances did not amount to actual notice or intentional apathy.¹¹²

On the other hand, can an academic institution be held culpable for unsolicited peer sexual advances concerning students of the institution? Even though this poser is not the primary focus of this article, a somewhat digression by examining the case of *Davis v. Monroe County Board of Education*,¹¹³ tend to provide an answer to this question. There, a parent brought an action under Title IX for injunction and monetary damages against an educational institution, Monroe County Board of Education, and other school officials as defendants for prolonged sexual harassment of the petitioner's minor daughter (LaShonda) by her classmate simply identified as G.F. The petitioner maintained that the inappropriate sexual conduct of the classmate to her daughter was repeatedly brought to the attention of the classroom teacher, other teachers and the principal of the school, but notwithstanding, no disciplinary sanction was meted out to the male harasser. The latter was subsequently charged to court and he pleaded guilty to the sexual misconduct. Unfortunately, both the trial district court and the appellate court dismissed the claim arguing that an educational institution cannot be held responsible for sexual misconduct relating to "student-to-student."

On a subsequent appeal to the U.S. Supreme Court, the apex court, in a 5-4 split decision overturned the ruling of the Eleventh Circuit Court of Appeals and held that a school board would be held accountable in a student-student romantic relationship. The rationale for the ruling was not unconnected with the intentional and nonchalant attitude of the school authority towards the handling of the persistent sexual harassment case despite having prior knowledge of it. The above cases provide serious legal mandates why our tertiary institutions must take issues of sexual harassment seriously if they do not want to be vicariously held liable for the sexual abuses of their employees.

8. CONCLUSION AND RECOMMENDATIONS

The article investigated the problem of sexual harassment of female students, especially by male lecturers, in Nigerian tertiary institutions with a view to determining whether the existing legal and policy frameworks are potent enough to tackle the problem. The article discovered that sexual corruption is entrenched in our society and has permeated our tertiary institutions at an alarming rate with its multidimensional impacts on the victims, the harassers, the academic institutions and the society generally. It was also found out that various laws have, at one time or the other, been put in place to checkmate sexual assaults on women and girls, though none was enacted to specifically tackle the nuisance of sexual harassment in schools.

In order to combat sexual harassment in our tertiary institutions, it is imperative that both the Nigerian government and academic institutions must have a zero tolerance for such obnoxious practice. Thus, academic institutions lacking in policy framework on

¹¹² *Doe v. Lago Vista Independent School District* 106 F.3d 1223 (1997).

¹¹³ See also 526 U. S. 629 (1999). See also *Davis v. Monroe County Board of Education*-law case. Retrieved from <https://www.birannica.com/topic/Davis-v-Monroe-County-Board-of-Education>. Accessed on 17 May 2021.

sexual harassment must not only enact one but must go the extra mile of educating both their staff and students on what constitutes sexual harassment in their institutions. Effective channels of reporting and necessary procedure for sanctioning culprits must be expressly spelt out in such policies. It is also necessary for the tertiary institutions to bear in mind that in appropriate situations, they could, as employers, be vicariously held liable for sexual harassment committed by their staff or employees either within the premises of the institution or in the course of discharging their duties for the institution.

With particular reference to the proposed Nigerian Senate's anti-sexual harassment bill, there is need to codify a more all-embracing legal framework that regulates all forms of inappropriate sexual relationship in all educational institutions, places of employment, and religious organisations. The extant proposed bill appears to be a piece of legislative judgment targeted only at educators at post-secondary academic institutions, whereas, there are reports of sexual harassment in other facets of the Nigerian society. Moreover, the "definition of terms" section of the bill needs to be revisited to either expand the scope of some of the definitions or provide definitions for some of the imprecise terms used in the bill but which are not defined therein. For instance, it is doubtful if an educator could be prosecuted under the proposed Act for a romantic relationship with a woman or girl who is not "enrolled" in the institution as a student. This is because the definition of a "student" envisaged under the bill relates to a person who is registered as a student in an educational or training programme in a post-secondary institution.

Furthermore, adequate provisions should be made in the bill penalising a student who overtly, covertly or by suggestive remarks initiates, continues, seduces, encourages or engages in any form of amatory affairs with a lecturer with intent to secure unmerited favours or obtain higher marks or grades in a course(s) taught by such a licentious lecturer. This should be in furtherance of the school authority reversing such unmerited grade or invalidating any certificate obtained as a form of benefit for a romantic adventure between a student and an educator. Inclusion of such clauses would go a long way in portraying the bill as a balanced and an unbiased piece of legislation as it is currently perceived to be more student-friendly to the detriment of the lecturers. It is a known fact that in some instances, a desperate female student could initiate such relationship for exploitative purposes.

Similarly, there should be ample clauses in relation to counselling and rehabilitation programmes for both the student and the lecturer involved. Such timely programmes will assist in handling the emotional and traumatic stresses which the parties and their family members may likely undergo either before or after the report has become a subject of public discussion. It is also suggested that if the intended anti-sexual harassment legislation would not suffer the same fate like the VAPA Act 2015 and the Child's Rights Act 2003, State governments must domesticate it in their respective domains for due enforcement and prosecution of offenders in the States.

Notwithstanding the loopholes inherent in the proposed 2019 Anti-Sexual harassment, it is submitted that the bill is a welcome development, especially as it protects students from victimisation either by the lecturer directly involved or by other educators within or outside the institution where the harassment occurred.¹¹⁴ Moreover,

¹¹⁴ Prevention, Prohibition, and Redressal of Sexual Harassment in Tertiary Educational Institutions Bill, 2019, *op. cit.*, section 24.

there is no limitation period regarding complaint against sexual harassment in civil or criminal proceedings. The implication of this is that an aggrieved student who was sexual harassed can always institute a civil action or press criminal charges against the perceived harasser even several years after leaving the institution.¹¹⁵

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¹¹⁵ *Ibid*, section 25.