

# THE NIAMEY GUIDELINES TO COMBAT SEXUAL VIOLENCE AND ITS CONSEQUENCES IN AFRICA AND SEXUAL HARASSMENT: A CASE STUDY OF NIGERIA

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## Abstract

*This article examines the importance of the provisions of the Niamey Guidelines to Combat Sexual Violence and its Consequences in addressing sexual violence, including sexual harassment in Africa. Using Nigeria as a case study, the article examines the provisions of international and regional human rights instruments in addressing sexual harassment. It discusses the Guidelines' approach to addressing sexual violence, including sexual harassment. The article highlights some of the salient provisions of the Niamey Guidelines on sexual violence, which include the obligation of states to prevent sexual violence, protecting and supporting victims of sexual violence, investigating and prosecuting sexual violence, ensuring reparation to implementing international and regional norms on sexual violence at the national level. The analysis of the Niamey Guidelines vis-à-vis legislation to address sexual harassment in Nigeria is grounded in asking the woman question. This refers to how laws, policies and judicial decisions take account of the lived experiences of women. Thereafter, the article discusses some of the gaps in the approach by the Nigerian government to address sexual harassment and offers recommendations for the way forward.*

**Keywords:** *Niamey Guidelines, sexual harassment, gender-based violence, Africa*

## 1 Introduction

Sexual harassment is a pervasive problem that is often overlooked and considered an inconsequential private matter. Sexual harassment has very serious consequences for victims, such as loss of means of livelihood, termination of education, emotional trauma, depression, assault, rape, and so forth, depending on the type or degree of the harassment.<sup>1</sup> Conducts

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<sup>1</sup> F Bondestam & M Lundqvist "Sexual Harassment in Higher Education – a Systematic Review" (2020) 10 *European Journal of Higher Education* 397.

constituting sexual harassment such as catcalls, lewd remarks, unwanted and inappropriate touching or groping, demands for sex as conditions for good grades, promotion or favourable working conditions, public display of sexual organs, stalking, sexual bullying and coercion are commonly experienced by victims every day in schools, workplaces, and private and public places.<sup>2</sup> While sexual harassment affects both males and females, it often disproportionately affects the latter.<sup>3</sup> Sexual harassment of women is an act of gender-based violence prohibited under international law. Various international and regional human rights instruments such as the International Covenant on Civil and Political Rights (“ICCPR”), the Convention on Elimination of All Forms of Discrimination against Women (“CEDAW”), the Convention on the Rights of Persons with Disabilities (“CRPD”) and the African Charter on Human and Peoples’ Rights (“African Charter”) recognise the rights to life, dignity, liberty, health, freedom from torture, inhuman and degrading treatment, and non-discrimination. These rights are relevant in protecting against incidents of sexual violence in general and sexual harassment in particular.

Sexual harassment is widespread in all nations of the world. The #MeToo movement in the wake of the Hollywood scandal in 2017 was a wake-up call for women globally to draw attention to this ignoble vice. This precipitated actions such as surveys to assess the level of the problem as well as advocacy and legislative and policy measures to address it. Sexual harassment has been identified in several international and regional instruments, including the African Commission on Human and Peoples’ Rights (“ACHPR”) Guidelines on Combating Sexual Violence and its Consequences in Africa (the “Niamey Guidelines” or “Guidelines”),<sup>4</sup> as a major form of sexual violence or gender-based violence (“GBV”). As with other forms of GBV, women are more vulnerable than men to sexual harassment. According to a survey conducted in 2018, 81% of women globally have experienced sexual harassment.<sup>5</sup> Africa as a region is not left out in this scourge. Indeed, Africa accounts for one of the largest percentages of cases of sexual violence including sexual harassment occurring worldwide.<sup>6</sup>

Kiki Mordi, an undercover journalist who conducted an investigation to expose the prevalence of sexual harassment at Nigerian and Ghanaian

<sup>2</sup> R Latcheva “Sexual Harassment in the European Union: A Pervasive But Still Hidden Form of Gender-Based Violence” (2017) 32 *Journal of Interpersonal Violence* 1821.

<sup>3</sup> 1821.

<sup>4</sup> ACHPR Guidelines to Combat Sexual Violence and its Consequences in Africa (2017).

<sup>5</sup> R Chatterjee “A New Survey Finds 81 Percent of Women have Experience Sexual Harassment” (2018-02-21) *NPR* <<https://www.npr.org/sections/thetwo-way/2018/02/21/587671849/a-new-survey-finds-eighty-percent-of-women-have-experienced-sexual-harassment>> (accessed 26-01-2022).

<sup>6</sup> The report indicated that the lifetime prevalence rates of sexual violence were higher across Africa than in other regions – more than half of the 19 countries across Africa with data reported prevalence of at least 20%. Across all the other regions only one country reported prevalence over 20 percent. See United Nations “The World’s Women Report” (2015) *UNStats* 144 <[https://unstats.un.org/unsd/gender/downloads/WorldsWomen2015\\_chapter6\\_t.pdf](https://unstats.un.org/unsd/gender/downloads/WorldsWomen2015_chapter6_t.pdf)> (accessed 26-01-2022). See also WHO *Global and regional estimates of violence against women: prevalence and health effects of intimate partner violence and non-partner sexual violence* (2013).

Universities, stated that the problem was far greater than expected.<sup>7</sup> According to United Nations (“UN”) Women Advisor, Rosalina Nhachote, domestic violence and sexual harassment are two of the major factors that deprive women of access to the formal labour market; dealing with sexual harassment in the workplace thus remains a big challenge.<sup>8</sup> The most recent gender barometer for the Southern African Development Community reveals “a setback of at least 5 years on issues of safeguarding women’s rights”.<sup>9</sup> Studies equally show that sexual harassment is highly prevalent in Nigeria, especially in higher institutions of learning and in workplaces.<sup>10</sup> In a study conducted to evaluate patterns of sexual harassment in higher institutions in Anambra State, Nigeria,<sup>11</sup> 312 female workers between the ages of 23 and 37 from three higher institutions were surveyed.<sup>12</sup> The survey revealed a high prevalence of sexual harassment of female workers in the selected institutions and put it at an average figure of 69.4%. Job insecurity was identified as a major consequence of sexual harassment.<sup>13</sup>

The adoption of the Niamey Guidelines by the African Commission in 2017 is both a necessary and timely response to combat issues of sexual violence, including sexual harassment in Africa. The Guidelines are the first comprehensive attempts at the regional level, to address all forms of sexual violence, including sexual harassment. Against this backdrop, this article examines the importance of the provisions of the Guidelines in addressing sexual violence, including sexual harassment in Africa. Using Nigeria as a case study, the article examines the provisions of international and regional human rights instruments in addressing sexual violence. It then discusses the Guidelines’ approach to addressing sexual violence, including sexual harassment. The analysis of the Niamey Guidelines *vis-à-vis* legislation to address sexual harassment in Nigeria is grounded in “asking the woman question”. This refers to how laws, policies and judicial decisions take account of the lived experiences of women. Thereafter, the article discusses some of the gaps in the approach by the Nigerian government and offers recommendations for the way forward.

<sup>7</sup> E Vaughn “How Undercover Journalists Exposed West Africa’s ‘Sex for Grades’ Scandal” (2019-10-25) *NPR* <<https://www.wbur.org/npr/771427782/how-undercover-journalists-exposed-west-africas-sex-for-grades-scandal>> (accessed 26-01-2022).

<sup>8</sup> N de Silva “The Challenge of Gender Equality in Africa” (2021-03-09) *Africanews* <<https://www.africanews.com/2021/03/09/the-challenge-of-gender-equality-in-africa/>> (accessed 26-01-2022).

<sup>9</sup> De Silva “The Challenge of Gender Equality in Africa” (2021-03-09) *Africanews*.

<sup>10</sup> OE Okundu, A Afolabi, PC Ikonta & UR Iloma “Prevalence of Sexual Harassment in a Faith-Based Institution of Higher Learning in South-Western Nigeria” (2020) *Global Journal of Health Science* 1; PA Ejemi, AD Aina-Pelemo, E Owo & IT Aina “The Trajectory of Nigerian Law Regarding Sexual Harassment in The Workplace” (2020) 4 *AJLHR* 1, 4.

<sup>11</sup> EI Anierobi, CE Etodike, VN Nwogbo, NU Okeke & MN Nwikipo “Evaluating Sexual Harassment against Female Workers in Higher Institutions in Anambra State, Nigeria” (2021) 11 *International Journal of Academic Research in Business and Social Sciences* 265-278.

<sup>12</sup> 266.

<sup>13</sup> 266.

## 2 International norms and standards on sexual harassment

While there are no specific human rights instruments addressing sexual harassment under international law, the provisions of various human rights instruments are useful in addressing sexual harassment. It must be noted that women's rights organisations and feminist scholars played a crucial role in drawing the attention of the international community to the incidence of violence against women, including sexual harassment. At the end of the Second World War, the UN, in a bid to prevent the recurrence of the grotesque violation of human rights during the war, adopted the Universal Declaration of Human Rights ("UDHR") in 1948. The UDHR emphasises respect for the dignity of all human beings. Article 2 prohibits all forms of discrimination on various grounds including sex. The UDHR further underscores that all persons are born free and equal in dignity and rights.<sup>14</sup> To this end, human dignity must be affirmed in places of work, without limiting it to the ability to receive remuneration for work. This implicitly highlights the need to accord a person in the workplace a dignified existence free from violence and harassment.<sup>15</sup> While the UDHR is not binding on states, it has been argued that it has attained the status of customary law and remains influential in the drafting of national constitutions worldwide.<sup>16</sup>

Furthermore, provisions of other international human rights instruments can be applied directly or indirectly to address sexual harassment. For instance, the ICCPR guarantees rights as life, liberty, dignity and non-discrimination, which are all related to sexual harassment. Similarly, the International Covenant on Economic, Social and Cultural Rights<sup>17</sup> ("ICESCR") guarantees the rights to work, family equality and an adequate standard of living. These rights are crucial in ensuring equality for women and other marginalised groups in the workplace as well as addressing discriminatory practices, including sexual harassment.

The adoption, of the CEDAW in 1979, was a milestone in the recognition of women's rights internationally. Although there is no specific reference to violence or sexual harassment in the Convention, subsequent interpretations have addressed both. For instance, considering emerging norms and standards such as General Recommendations 19 and 35, the CEDAW Committee has reiterated the inclusion of sexual harassment as a form of GBV.<sup>18</sup> Moreover, the Committee has continued to urge states to take adequate measures to deal

<sup>14</sup> Article 1 of the Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III).

<sup>15</sup> Article 23(3).

<sup>16</sup> H Hannum "The Status of Universal Declaration on Human Rights in National and International Law" (1996) 25 *Ga J Intl & Comp L* 287; see also, SG Barnabas "The Legal Status of the United Nations Declaration on the Rights of Indigenous Peoples (2007) in Contemporary International Human Rights Law" (2017) 6 *International Human Rights Law Review* 242-261.

<sup>17</sup> International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 23 March 1976) 993 UNTS 3. The fourth preambular paragraph recognises that human rights derive from the inherent dignity of the human person.

<sup>18</sup> General Recommendation No 35 on gender-based violence against women, updating general recommendation No 19 UN Doc CEDAW/C/GC/35.

with sexual harassment through policy and legislative reforms.<sup>19</sup> In some of its concluding recommendations to states, the Committee has expressed concerns on the incidence of sexual harassment and called on states to adopt measures to address it.<sup>20</sup> For instance, in its concluding observations to Serbia, the Committee expresses concerns about the lack of political will by the government to address sexual harassment in the workplace. It further calls on the government to adopt an appropriate legal framework to address sexual harassment. In the same vein, the Committee has expressed concern regarding the efforts of the government of Poland to address sexual harassment in the workplace.<sup>21</sup>

Over the years, the CEDAW Committee has included, in the guidelines for state reporting, the need to address negative stereotypes of women. This is a welcome development as it will go a long way in ensuring that states take decisive steps to address all forms of negative stereotyping, which can exacerbate gender inequality and the low status of women. This is, in particular, important in combating sexual harassment in the workplace. Experience has shown that sexual harassment of women is fueled by negative stereotypes that portray women as wanting advances from men and viewing women as “sex objects”. By this pragmatic approach, the CEDAW Committee is asking the woman question to challenge structural processes and socio-cultural practices that often perpetuate discrimination against women.

Cook and Cussack have identified three main ways in which a law, policy or practice can discriminate against women based on gender stereotypes.<sup>22</sup> These are if the law, policy or practice leads to a difference in treatment; if the law, policy or practice impairs or nullifies a woman from enjoying her human rights or fundamental freedoms; and if the application, enforcement or perpetuation of a gender stereotype in law, policy or practice is unjustifiable.<sup>23</sup> Sexual harassment not only constitutes discrimination against women, but may also impair them from enjoying other rights.

The CEDAW Committee had the opportunity to address gender stereotypes in the context of sexual harassment in *S v Philippines*.<sup>24</sup> However, the Committee missed an opportunity to reaffirm its commitments to eliminate the negative gender stereotypes that have plagued women. In that case, M.S alleged that Mr G assaulted her on various occasions between May 1999 to November 1999. All the alleged assaults took place at social events arranged by the corporation or at parties hosted by fellow employees of the corporation. The most serious alleged assault took place at a party hosted by a fellow employee in November 1999. The alleged assaults took place in view of other attendees of the party and involved Mr G. The matter was dismissed at the

<sup>19</sup> UN Committee on the Elimination of Discrimination Against Women (CEDAW), General Recommendation No 19: Violence against women, 1992.

<sup>20</sup> See Concluding Observations to Serbia, the CEDAW Committee 72nd Session, 14 March 2019.

<sup>21</sup> See CEDAW Committee Concluding Observations to Poland adopted during the 1249th and 1250th meetings, on 22 October 2014 (see CEDAW/C/SR.1249 and 1250).

<sup>22</sup> RJ Cook & S Cusack *Gender Stereotyping: Transnational Legal Perspective* (2010) 226.

<sup>23</sup> 226.

<sup>24</sup> Communication no. 30/2011: Committee on the Elimination of Discrimination against Women: Decision adopted by the Committee at its 58th session (30 June–18 July 2014) UN Doc CEDAW/C/58/D/30/2011.

High Court for want of evidence; the Court of Appeal subsequently overturned the decision of the High Court and upheld the claims of M.S. Crucial to the decision of the Supreme Court of Philippines in overturning the decision of the Court of Appeal was its conclusion that M.S.'s account of the events did not conform with "common human experience" because the alleged assaults occurred in crowded venues and there were no other witnesses to the alleged events. M.S did not slap or walk away from Mr G after he assaulted her on the sofa and instead danced with him and failed to "raise hell" after he groped her breasts and buttocks, and M.S failed to raise the assaults in her resignation letter.

The majority of the Committee gave a short judgment and dismissed the communication on the basis that it was inadmissible under Article 4(2)(c) of the Optional Protocol for not being "sufficiently substantiated".<sup>25</sup> The majority relied on the State's argument that the Supreme Court ruling was based upon the fact that the author's complaint lacked substance and credibility. The majority stated that it was the role of national courts to evaluate the facts and evidence in a particular case unless it could be established that this evaluation was biased or based on gender harmful stereotypes.<sup>26</sup> However, committee member, Patricia Schulz, dissented. Ms Schulz found that the communication was "sufficiently substantiated" and that there was evidence of gender stereotyping in the Supreme Court's judgment. In particular, Ms Schultz stated that to suggest that all women would react to an assault in the same way, was a gender stereotype. She stated that not all women would react to an assault by slapping the assailant and "raising hell", particularly if the assailant is a superior and the assault occurred in the presence of colleagues.<sup>27</sup> Further, not all women would choose to refer to an assault in their resignation letter. One important lesson to learn from this decision is that prospective litigants on sexual harassment should carefully build their case in such a way as not to leave "cracks in the wall".

Moreover, the Committee on the Rights of the Child, in its General Comment 30 on violence against children, has condemned all forms of sexual violence, including harassment of children and adolescents, as a gross violation of various human rights. The Committee on Economic, Social and Cultural Rights in General Comment 22 has addressed sexual violence including sexual harassment as a violation of women's right to sexual and reproductive health. It enjoins "States to ensure employment with maternity protection and parental leave for workers, including vulnerable workers such as migrant workers or women with disability, *as well as protection from sexual harassment at the workplace*".<sup>28</sup> The Committee further notes that a

<sup>25</sup> Communication no. 30/2011: Committee on the Elimination of Discrimination against Women: Decision adopted by the Committee at its 58th session (30 June–18 July 2014) UN Doc CEDAW/C/58/D/30/2011.

<sup>26</sup> Communication no. 30/2011: Committee on the Elimination of Discrimination against Women: Decision adopted by the Committee at its 58th session (30 June–18 July 2014) UN Doc CEDAW/C/58/D/30/2011.

<sup>27</sup> Communication no. 30/2011: Committee on the Elimination of Discrimination against Women: Decision adopted by the Committee at its 58th session (30 June–18 July 2014) UN Doc CEDAW/C/58/D/30/2011.

<sup>28</sup> Committee on Economic, Social and Cultural Rights (CESCR) General Comment 22 (2016) on the Right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights) (Emphasis added).

violation of the obligation to protect exists where a state fails to prevent the incidence of violence including sexual harassment.<sup>29</sup>

The UN Special Rapporteur on violence against women has played an important role in raising awareness about the incidence of sexual violence, including sexual harassment, against women worldwide. In some of her reports and country visits, the Special Rapporteur has expressed concerns about violence against women, including sexual harassment, as a threat to the enjoyment of women's fundamental rights and freedoms. For instance, in her report on combating violence against women journalists, she expressed deep concerns about "sexual harassment and other forms of GBV, including the rampant sexism and discriminatory practices that pervade the newsroom".<sup>30</sup> She has called on states to take concrete and adequate measures to address this serious challenge.<sup>31</sup>

Besides these binding instruments, the international community has established further standards on this issue. For instance, in 1993, the UN General Assembly adopted the Declaration on the Elimination of Violence against Women ("DEVAW").<sup>32</sup> It defines violence against women to include "sexual harassment and intimidation at work, in educational institutions or elsewhere".<sup>33</sup> It urges states to strive towards combating sexual harassment and other acts of violence against women by preventing and investigating such acts.<sup>34</sup> The 1993 Vienna Declaration and Programme of Action defines GBV to include all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, as incompatible with the dignity and worth of the human person and to be eliminated.<sup>35</sup>

In 1994, it was agreed at the International Conference on Population and Development that states should "take full measures to eliminate all forms of exploitation, abuse, harassment and violence against women, adolescents and girls".<sup>36</sup> At the Fourth World Conference on Women in Beijing 1995, the international community noted that "sexual harassment is a form of discrimination that limits girls' access to education; the fear or threat of violence such as sexual harassment is an obstacle to the achievement of equality".<sup>37</sup> It called on states to enact and enforce laws against gender discrimination in the workplace, as well as calling on governments, trade unions, and community organisations to develop programmes and procedures

<sup>29</sup> CESCR General Comment 22 para 59.

<sup>30</sup> See the Report of the Special Rapporteur on violence against women, its causes and consequences on Combating violence against women journalists presented during the 44th Session of the Human Rights Council held from 15 June–3 July 2020 UN Doc A/HRC/44/52.

<sup>31</sup> Combating violence against women journalists – Report of the Special Rapporteur on violence against women, its causes and consequences UN Doc A/HRC/44/52.

<sup>32</sup> Declaration on the Elimination of Violence against Women (adopted 20 December 1993) UN Doc A/RES/48/104.

<sup>33</sup> Article 2.

<sup>34</sup> Article 2.

<sup>35</sup> Vienna Declaration and Programme of Action (adopted 12 July 1993) UN Doc A/CONF.157/23).

<sup>36</sup> Programme of Action of the International Conference on Population and Development UN Doc. A/CONF.171/13 (1994).

<sup>37</sup> Para 7.8

to eliminate sexual harassment in educational institutions, workplaces, and elsewhere.<sup>38</sup>

The International Labour Organization (ILO) Convention 190 is a landmark achievement and the first-ever global treaty on violence and harassment in the workplace. It followed years of campaigning by trade unions, civil society and women’s organisations.<sup>39</sup> The discussion towards the adoption of this Convention began in 2015 and was due to the pervasive nature of sexual harassment in the workplace. It was adopted in June 2019 during the International Conference of the International Labour Organisation in Geneva. About 187 government, employer and employee representatives make up the General Conference of the ILO. The ILO is the only tripartite UN agency with governments, employers, and workers’ representatives. Some of the important provisions of the Convention include the broad definition of what constitutes sexual harassment in Article 1, the definition of where sexual harassment may take place.<sup>40</sup> More importantly, it calls for a gender-sensitive approach to addressing sexual harassment. In essence, the ILO Convention 190 is asking the woman question when it urges states to adopt a gender-sensitive approach to sexual harassment.

It should be noted that feminist scholars and commentators have consistently argued for a gender-sensitive approach to the challenge of sexual harassment. They have proposed that laws and policies to address sexual violence, including sexual harassment, must put women at the centre. In other words, they argue that such laws and policies must reflect the lived experiences of women.<sup>41</sup> This implies that such laws and policies must ask the woman question. One of the ways the woman question can be asked is to challenge inaction or silence in addressing sexual harassment in the workplace. When feminists question the failure to decisively adopt gender-sensitive policies and processes to address sexual harassment, they are asking the woman question. Joyner observes that asking the woman question means “examining how the law fails to reflect the experiences and values that seem more typical of women than of men”.<sup>42</sup> The method similarly recognises the fact that, historically, women have been and are still a disadvantaged group that requires special attention. Bartlett opines that it is imperative to challenge existing structural inequality and highlight the historically disadvantaged position of women with a view to correcting this by asking the woman question.<sup>43</sup> The woman question interrogates the

<sup>38</sup> Beijing Declaration and the Platform for Action, Fourth World Conference on Women, China, September 4–15 1995, UN Doc A/CONF.177/20 para 78.

<sup>39</sup> The International Labour Organization (ILO) Convention (190) and Recommendation (260) on ending violence and harassment against women and men in the world of work adopted on 21 June 2019 in Geneva at the International Labour Conference.

<sup>40</sup> Article 3. These include work-related trips, travel, training and social events.

<sup>41</sup> See for instance, N Fraser *Unruly Practices: Power, Discourse and Gender in contemporary Social Theory* (1989); J Butler *Gender Trouble: Feminism and the Subversion of Identity* (1990); SM Okin *Justice, Gender and the Family* (1989).

<sup>42</sup> C Joyner *United Nations and International Law* (1997) 183.

<sup>43</sup> KT Bartlett “Feminist Legal Methods” (1989) 103 *Harvard Law Review* 829-888.



various forms of inequalities that women have been subjected to. It demands justification for women's different roles and subjugation in society.<sup>44</sup>

### 3 Normative framework on sexual harassment under the African human rights system

The various human rights provisions in the African Charter, the Protocol to the African Charter on the Rights of Women<sup>45</sup> ("Maputo Protocol") and the African Charter on the Rights and Welfare of the Child<sup>46</sup> are important in addressing sexual harassment. Under the African Charter, articles 2, 3, 4 (on the right to life), 5 (on dignity) and 15 (on the right to work) are relevant in addressing sexual harassment. Articles 2 and 3 deal with equality before the law and non-discrimination respectively. Explaining the relevance of articles 2 and 3 in *Purohit and Moore v The Gambia*, the Commission observed as follows:

"Articles 2 and 3 of the African Charter basically form the anti-discrimination and equal protection provisions of the African Charter. Article 2 lays down a principle that is essential to the spirit of the African Charter and is therefore necessary in eradicating discrimination in all its guises, while Article 3 is important because it guarantees fair and just treatment of individuals within a legal system of a given country. These provisions are non-derogable and therefore must be respected in all circumstances in order for anyone to enjoy all the other rights provided for under the African Charter."<sup>47</sup>

This is a strong statement from the Commission that can have far-reaching implications for vulnerable and marginalised groups that may encounter any form of discrimination in their daily lives.

The Maputo Protocol contains some radical and progressive provisions to address all forms of violence against women, including sexual harassment. It contains a broad definition of violence in article 1 to cover various issues including sexual harassment:

"Violence against women" means all acts perpetrated against women which cause or could cause them physical, sexual, psychological, and economic harm, including the threat to take such acts; or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life in peace time and during situations of armed conflicts or of war ..."<sup>48</sup>

Article 4 provides that "States Parties shall take appropriate and effective measures to:

"a) enact and enforce laws to prohibit all forms of violence against women including unwanted or forced sex whether the violence takes place in private or public."

The Maputo Protocol further urges states to take holistic action towards preventing and punishing acts of violence against women. It equally enjoins

<sup>44</sup> For a detailed discussion on this see E Durojaye & O Oluduro "The African Commission on Human and Peoples' Rights and the Woman Question" (2016) 24 *Feminist Legal Studies* 315.

<sup>45</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (adopted 13 September, entered into force 25 November 2005) CAB/LEG/66.6.

<sup>46</sup> Article 5 of the African Charter on the Rights and Welfare of the Child (adopted on 1 July 1990, entered into force 29 November 1999) OAU Doc. CAB/LEG/153/Rev.2 (1990).

<sup>47</sup> *Purohit and Moore v The Gambia*, Communication No 241/2001, Sixteenth Activity report 2002-2003, Annex VII.

<sup>48</sup> Article 1 of the Maputo Protocol.

states to take necessary steps to rehabilitate victims of violence. While the provision does not specifically mention sexual harassment, it is argued that a combined reading of articles 1 and 4 requires states to take measures to address sexual harassment against women in the workplace. More importantly, Article 12(c) of the Maputo Protocol requires states to:

“Protect women, especially the girl-child from all forms of abuse, including sexual harassment in schools and other educational institutions and provide for sanctions against the perpetrators of such practices.”

It further enjoins states to ensure that women who have experienced sexual harassment are provided with counselling and are rehabilitated. This is a progressive approach to sexual harassment that seems to take into cognisance women’s lived experiences. Studies have documented a high incidence of sexual violence, including assault and harassment, experienced by girls in schools across some countries in southern Africa.<sup>49</sup> This not only poses a threat to attendance at school but may also result in psychological trauma for the girls. Thus, in this laudable provision on sexual harassment, the Protocol is clearly asking the woman question. The Protocol takes a gender-sensitive approach by recognising that women and girls are susceptible to sexual harassment in all institutions of learning and need not only be protected but also have access to counselling and treatment where necessary.

While the African Commission and the African Court are yet to interpret the provision of Article 12(c), a Zambian High Court has found that sexual assault and rape of a 13-year-old schoolgirl by a male teacher amounts to a breach of duty on the part of the teacher and is inconsistent with the fiduciary relationship between learners and educators.<sup>50</sup> The Court noted that school teachers are in a position of moral superiority, and a young schoolgirl’s “consent” is fictitious in light of the ethics compelling a teacher to not engage in sexual relations with schoolgirls. It awarded damages against the teacher and further held that the Ministry of Education and Attorney-General are both complicit in this case and should be vicariously liable. Although this case did not refer to the Maputo Protocol, nonetheless, it serves as a good example of reflecting the lived experiences of girls and women in sexual harassment cases. By rejecting the argument of the teacher about the consensual nature of the relationship, given the age of the girl and rather highlighting the power dynamics at work, the Court focused on the woman question. It should be noted that Nigeria has ratified most of the international and regional human rights instruments discussed above. Hence, the country is expected to implement the provisions of these instruments. To this extent, the Nigerian government must ensure that efforts at addressing sexual harassment in the country are consistent with asking the woman question.

<sup>49</sup> See for instance, Paper 5: Women and Law in Southern Africa Trust-Zambia, Cornell Law School. Avon Global Center for Women and Justice, and Cornell Law School. International Human Rights Clinic “They are Destroying our Futures: Sexual Violence Against Girls in Zambia’s Schools” (2012) *Avon Global Center for Women and Justice and Dorothea S. Clarke Program in Feminist Jurisprudence* <[http://scholarship.law.cornell.edu/avon\\_clarke/5](http://scholarship.law.cornell.edu/avon_clarke/5)> (accessed 15-02-2022); see also D Smith & V du Plessis “The Sexual Harassment in The Education Sector” (2011) 14 *PELJ* 172-217.

<sup>50</sup> *Mashita Katakwe v Hakasenke* High Court of Zambia (2006) 2006/HP/0327.

#### 4 The Niamey Guidelines to combat sexual violence and its consequences

As already noted, in 2017, the African Commission adopted the Niamey Guidelines as a way of responding to the pervasive challenge of sexual violence in Africa. The Guidelines were a product of activism and collaboration by civil society groups, especially women's rights organisations and the Special Rapporteur on the Rights of Women in Africa (SRRWA). Emphasising the goal of the Guidelines, the SRRWA notes that “[t]he goal of these *Guidelines* is to guide and support Member States of the African Union in effectively implementing their commitments and obligations to combat sexual violence and its consequences”.<sup>51</sup> The Guidelines serve as an important document with laudable provisions that would seem to ask the woman question. Though not binding, the Niamey Guidelines contain provisions that if effectively implemented will go a long way in minimising the incidence of sexual violence, including sexual harassment. The Niamey Guidelines deal with sexual violence in all ramifications.

The Guidelines are divided into six parts, ranging from the definition of sexual violence, the obligation of states to prevent sexual violence, the duty to protect and support victims of sexual violence, investigating and prosecuting sexual violence, ensuring reparation to implementing international and regional norms on sexual violence at the national level. The document adopts a holistic definition of sexual violence, which encompasses sexual harassment. In broadly defining sexual violence, the Guidelines note that “[s]exual violence means any non-consensual sexual act, a threat or attempt to perform such an act, or compelling someone else to perform such an act on a third person”.<sup>52</sup> It identifies sexual violence to include sexual harassment, rape, sexual assault, forced marriage, forced pregnancy, anal or virginity tests, forced sterilisation, forced prostitution, forced nudity and trafficking.<sup>53</sup> The Guidelines recognise that certain forms of sexual violence may amount to an international crime and could constitute torture cruel, inhuman and degrading treatment.<sup>54</sup>

In addition to the traditional obligations of states to respect, protect and fulfil women's rights in the context of sexual violence, including sexual harassment, the Guidelines impose further obligations on states, such as the duty not to do harm, the due diligence principle, the duty to protect women from sexual violence, the duty to ensure access to justice for women who have experienced sexual violence, and ensuring the principle of non-discrimination in all efforts to combat sexual violence, including sexual harassment.<sup>55</sup> Similar to the Maputo Protocol, the Guidelines require states to prevent sexual violence, prosecute perpetrators of sexual violence and rehabilitate victims of sexual violence. These principles and obligations of states are important and require

<sup>51</sup> See L Asuagbor (Special Rapporteur on the Rights of Women in Africa) “Foreword to the Guidelines on combating sexual violence and its consequences in Africa” 2017 (the “Guidelines”).

<sup>52</sup> See part 1, para 3.1 of the Guidelines.

<sup>53</sup> See part 1, para 3.1.

<sup>54</sup> See part 1, para 3.1.

<sup>55</sup> See part 1B.

that legislative frameworks at the national level combat sexual harassment in line with the principles. This is commendable given that the Guidelines are meant to be implemented at the national level. Such legislative frameworks must incorporate norms and standards contained in international and regional human rights instruments on sexual violence.<sup>56</sup> Moreover, such laws and policies must reflect the lived experiences of women. In other words, they must ask the woman question. States are expected to enact specific laws to combat sexual violence, including sexual harassment.<sup>57</sup>

It remains to be seen whether states will be willing to implement the Guidelines at the national level. If the experience with binding instruments such as the Maputo Protocol is anything to go by, then much more effort will be required to ensure that the Guidelines are effectively implemented at the national level. A study conducted to assess the level of implementation of the African Charter and the Maputo Protocol at the national level has shown mixed results. While some states have, to a large extent, implemented the provisions of the Protocol, others still lag behind.<sup>58</sup> This calls for more activism on the part of civil society groups and stronger oversight functions from national human rights institutions.

In addition, the Guidelines urge states to adopt and implement national action plans to ensure that their provisions are translated into action at the national level.<sup>59</sup> This is an important requirement that should galvanise states to take concrete measures towards ensuring that the provisions of the Guidelines do not become paper tigers. More importantly, states are required to establish national gender institutions or national human rights institutions that will ensure that the laudable provisions of the Guidelines are implemented at the national level.<sup>60</sup> Given the importance of data to combating the incidence of sexual violence, the Guidelines urge states to strengthen data collection in a disaggregated manner that will inform evidence-based policies and programmes in response to sexual violence, including sexual harassment.<sup>61</sup> Bearing in mind the challenges with creating awareness with the Guidelines, states are enjoined to adopt appropriate measures that will ensure their dissemination.<sup>62</sup>

## 5 Legislative framework on sexual harassment in Nigeria

The Constitution of the Federal Republic of Nigeria, 1999 (as amended) (the “Nigerian Constitution”) contains several important provisions that can be applied to address sexual harassment. Notably, chapter IV of the Nigerian

<sup>56</sup> Part 6A.

<sup>57</sup> Part 6A.

<sup>58</sup> See VO Ayeni *The Impact of the African Charter and Maputo Protocol in Selected Countries in Africa* (2016).

<sup>59</sup> Part 6B of the Guidelines.

<sup>60</sup> Part 6C.

<sup>61</sup> Part 6D.

<sup>62</sup> Part 6E.

Constitution guarantees fundamental rights such as life,<sup>63</sup> dignity,<sup>64</sup> liberty<sup>65</sup> and privacy.<sup>66</sup> Section 42 of the Nigerian Constitution prohibits discrimination on various grounds including sex, ethnicity, religion or political affiliation. As noted above, GBV, including sexual harassment, is inconsistent with the principle of non-discrimination. Commenting on the importance of this provision to addressing gender inequality, the Nigerian Court of Appeal noted, “[a]ny form of societal discrimination on grounds of sex, apart from being unconstitutional, is an antithesis to a society built on the tenets of democracy, which we have freely chosen as a people”.<sup>67</sup> This statement provides a bulwark to victims of GBV, including sexual harassment.

There is no specific legislation dealing with sexual harassment in Nigeria. However, the provisions of the Criminal Law of Lagos State<sup>68</sup> deals with this issue. Section 262 defines and criminalises sexual harassment as an offence punishable with three years’ imprisonment. It remains the only law that specifically defines sexual harassment in Nigeria and imposes penalties for it. Regrettably, this law is only applicable in Lagos State and does not extend to the rest of the country. The law equally has no provision for civil remedies. However, the Violence Against Persons Prohibition (“VAPP”) Act, 2015<sup>69</sup> contains provisions that define and criminalise certain conduct that typically characterises sexual harassment, including the use of intimidation, force or coercion to compel victims to carry out or tolerate sexual acts.<sup>70</sup> For instance, section 3 of the VAPP Act provides that “a person who coerces another to engage in any act to the detriment of that other person’s physical or psychological well-being commits an offence and is liable on conviction to a term of 3 years imprisonment”. Section 5(1) of the VAPP Act further provides that,

“[a] person who compels another, by force or threat, to engage in any conduct or act, sexual or otherwise, to the detriment of the victim’s physical or psychological wellbeing commits an offensive conduct and is liable on conviction to a term of imprisonment not exceeding two years or to a fine not exceeding N500,000.00 or both.”

Section 18 of the VAPP Act criminalises intimidation and prescribes a punishment of a maximum of one year’s imprisonment and/or a fine not exceeding N200,000, or both.

The combined reading of these sections would seem to criminalise some elements of sexual harassment. It should be noted that the VAPP Act in section 46 defines sexual harassment as:

<sup>63</sup> Section 33 of the Nigerian Constitution.

<sup>64</sup> Section 34.

<sup>65</sup> Section 35.

<sup>66</sup> Section 37.

<sup>67</sup> *Mojekwu v Mojekwu* (1997) 7 NWLR (part 512) 283 (CA), 305.

<sup>68</sup> Criminal Law of Lagos State C17 (2011).

<sup>69</sup> The VAPP Act also suffers the same limitation as the Criminal Law of Lagos State as it is only applicable in the FCT. However, the law has been adopted in 22 states of the Federation.

<sup>70</sup> For a detailed analysis of the Act, see C Onyemelukwe “Legislating on Violence Against Women: A Critical Analysis of Nigeria’s Recent Violence Against Persons (Prohibition) Act, 2015” (2016) 5 *DePaul Journal of Women, Gender and the Law* <<https://via.library.depaul.edu/jwgl/vol5/iss2/3>> (accessed 26-01-2022); see also, N Chibueze, I Iyioha & E Durojaye “Violence Against Prohibition Act, the Maputo Protocol and Women’s Rights in Nigeria” (2018) 39 *Statute Law Review* 337-347.

“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 conduct.”

Furthermore, the definition of Sexual Intimidation by the Act directly fits into the purview of sexual harassment. The Act defines sexual intimidation as:

“Any action or circumstances which amount to demand or actual demand for sexual intercourse with either a male or a female under any guise, as a condition for passing examination, securing employment, business patronage, obtaining any favour in any form, as defined in this Act or any other enactment.”<sup>71</sup>

It further extends sexual intimidation to include:

- “(c) acts of deprivation, withholding, replacing or short-changing of entitlements, privileges, rights, benefits, examination or test marks or scores, and any other form of disposition capable of coercing any person to submit to sexual intercourse for the purpose of receiving reprieve thereto; or
- (d) any other action or inaction construed as sexual intimidation or harassment under any other enactment in force in Nigeria.”<sup>72</sup>

However, the VAPP Act does not classify the offences defined and punishable under sections 3, 5 and 18 thereof as sexual harassment, sexual intimidation or any of the other relevant conduct defined under section 46. There is therefore no apparent link between the defined key terms and the offences created in the Act. This creates a gap wherein an act is defined but not directly criminalised. A more effective approach would have been to criminalise and prescribe punishment for each of these acts, as seen in the case of section 262 of the Criminal Law of Lagos State.

Ejembi et al identify section 9 of the Employees Compensation Act, 2010 as another relevant law, which provides for the award of compensation to an employee who suffers mental stress due to a sudden and unexpected traumatic event that an employee experiences at work.<sup>73</sup> This provision is a long stretch as it is coined in very general terms, and it does not apply to students who are victims of sexual harassment. The writers also refer to the Nigerian National Industrial Court, which is empowered under section 254(1)(g) of the Nigerian Constitution to entertain cases of disputes arising from discrimination or sexual harassment in the workplace.<sup>74</sup>

However, in July of 2020, the Nigerian Senate passed the Bill to Prohibit and Redress Sexual Harassment of Students in Tertiary Educational Institutions.<sup>75</sup> The Bill imposes a fiduciary duty of care on an educator not to exploit his or her relationship with his student for personal gain, sexual pleasure, or immoral satisfaction, or in any way that violates the sanctity of the fiduciary relationship existing between the student and the educator.<sup>76</sup> Clause 4 of the Bill criminalises the commission of several forms of conduct as constituting

<sup>71</sup> See s 46 of the VAPP Act.

<sup>72</sup> Section 46.

<sup>73</sup> Ejembi et al (2020) *AJLHR* 4.

<sup>74</sup> See the case of *Ejieleke Maduka v Microsoft Nigeria Limited* (2014) NLLR (Pt 125) 67 NIC cited in Ejembi et al (2020) *AJLHR* 2.

<sup>75</sup> Sexual Harassment in Tertiary Education Bill (2020) <<https://elect-her.org/wp-content/uploads/2020/07/Sexual-Harassment-Bill-2020.pdf>> (accessed 07-06-2021).

<sup>76</sup> See cls 2 and 3 of the Sexual Harassment Bill.

sexual harassment when committed by an educator against a student. These include sex or demand for sex; creating a hostile or offensive environment by requesting for sex or making sexual advances; directing, inducing or aiding another person to commit any act of sexual harassment; grabbing, hugging, kissing, rubbing or stroking or touching or pinching the breasts or hair or lips or hips or buttocks or any other sensual part of the body of a student; displaying or sharing of nude or pornographic videos, images or sex objects to a student; whistling, winking, shouting or making sexual comments about a student's physique; and stalking.

Offences under clause 4 (1, 2 and 3) are punishable by a minimum of 5 and a maximum of 14 years' imprisonment, while offences under clauses 4 (4, 5 and 6) are punishable by a minimum of 2 and maximum of 5 years' imprisonment, respectively. The Bill further stipulates in clause 6 thereof that the consent of a student cannot be raised as a defence to the commission of any of the offences created under clause 4. This is a very important provision that aligns with a gender-sensitive approach to sexual harassment. It recognises the power dynamics that often characterise the incidence of sexual harassment between a female student and a male lecturer. This coincides with the feminist position that laws and policies on sexual violence, including sexual harassment, must address power imbalances and resonate with women's lived experiences.<sup>77</sup> Clause 7 further states that the prosecution need not prove the intention of an accused person or the circumstance for the commission, where such person is charged with the offence of sexual harassment.

Clause 13 provides for the right of the student to institute a civil proceeding against the perpetrator of sexual harassment notwithstanding any criminal cases filed against him or her. Clause 16 of the Bill mandates the head of every higher educational institution in Nigeria to establish an Independent Sexual Harassment Prohibition Committee to hear and investigate cases of alleged sexual harassment. According to the Bill, criminal or civil proceedings can be instituted against a perpetrator of sexual harassment.<sup>78</sup> Furthermore, there is no time limitation to bring an action for sexual harassment under the Bill.<sup>79</sup> This is a positive development as one of the main concerns with the criminal law approach to sexual harassment is that it does not allow the victims to claim damages directly from the perpetrators of such acts.

Nevertheless, while this Bill has been successfully passed by the Senate (Upper House) it is yet to be passed by the House of Representatives (Lower House). The Bill was introduced to the National Assembly and passed by the Nigerian Senate already in 2016 but was rejected by the House of Representatives.

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<sup>77</sup> See for instance, C Makinnon *Sexual Harassment of Working Women* (1979).

<sup>78</sup> See cls 8 and 13 of the Sexual Harassment Bill.

<sup>79</sup> Clause 25 of the Sexual Harassment Bill.

## 6 Assessing the consistency of the legislative framework on sexual harassment in Nigeria with the Niamey Guidelines

An examination of the legal provisions discussed above reveals that the current laws and measures against sexual harassment by Nigeria meet the primary responsibility of states to provide for suitable domestic legislation to effectively combat sexual violence as prescribed by the Niamey Guidelines.<sup>80</sup> However, as noted above, Part 1(B) of the Guidelines outlines certain general principles and obligations which states must fulfil to protect victims from sexual violence adequately, including sexual harassment. These include the non-discrimination principle, the do no harm principle, the due diligence principle, obligations to prevent and provide protection against sexual violence and its consequences, the obligation to guarantee access to justice and investigate and prosecute the perpetrators of sexual violence as well as provide effective remedies for victims.

With regard to the non-discrimination principle,<sup>81</sup> the VAPP Act is not expressly discriminatory as it does not limit its application to any class of persons on any of the identified grounds for discrimination. However, while the VAPP Act adopts gender-neutral language, it fails to expressly recognise the fact that women are more susceptible to violence, especially sexual violence, in Nigeria.<sup>82</sup> As noted earlier, section 42 of the Nigerian Constitution read together with articles 2 and 18 of the African Charter (Ratification and Enforcement Act), prohibits discrimination against persons in Nigeria on the grounds of sex, race, religion, ethnic group, place of origin, political opinion or any other opinion, national or social origin, fortune, birth or other status.<sup>83</sup>

Regarding the “do no harm” principle,<sup>84</sup> which requires states to guarantee the well-being and security of the victims and witnesses of sexual violence, section 28 of the VAPP Act provides that “an application for a protection order may be made before the High Court following a complaint of violence by the complainant”. Such protective order if granted is effective throughout the whole country and no time limitation shall apply to a victim seeking the order. However, the expression “following a complaint of violence” implies that a person can only seek a protection order after the occurrence of the violent act. Hence, the threat of its commission would not suffice to entitle a person to the order, and mere witnesses to the crime cannot seek protection either. It is noteworthy that certain acts of sexual harassment stop at the threshold of threats. Since sexual harassment was not directly criminalised as an act of violence under the Act, victims of sexual harassment might be unable to seek protection under this provision. Conversely, clause 23 of the Anti-Sexual Harassment Bill obligates the administrative head of an institution to ensure adequate protection from further victimisation to a student on account of

<sup>80</sup> Preamble to the Niamey Guidelines 9.

<sup>81</sup> 17.

<sup>82</sup> See Onyemelukwe (2016) *DJWGL* <<https://via.library.depaul.edu/jwgl/vol5/iss2/3>>.

<sup>83</sup> Ejemi et al (2020) *AJLHR* 5. These provisions are however generally applicable and is not limited to cases of sexual violence.

<sup>84</sup> Niamey Guidelines 18.



making a complaint of sexual harassment under the Bill. Clause 24 thereof makes any educator or person within an institution who victimises a student for making a sexual harassment complaint liable for the same criminal sanctions, disciplinary punishment, or damages as the educator against whom the original allegation of sexual harassment was made.

The due diligence principle requires states to adopt necessary legislative or regulatory measures to prevent and investigate acts of sexual violence committed by state and non-state actors, prosecute and punish perpetrators, and provide remedies to victims.<sup>85</sup> No provision for the protection of vulnerable persons from the risk of perpetration of sexual violence by states and non-state actors is contained in the VAPP Act. There have been several allegations of sexual violence by the police and military against women and girls in internally displaced persons' camps in North-East Nigeria.<sup>86</sup> However, reports indicate that most perpetrators enjoy impunity for these offences.<sup>87</sup> The African Commission has held in the *Zimbabwe Human Rights NGO Forum v Zimbabwe* that failure by the state to prevent or address acts of violence perpetrated by individuals or third parties will amount to the breach of duty to protect.<sup>88</sup> In explaining the basis for this, the Commission notes:

“Thus, an act by a private individual and therefore not directly imputable to a state can generate responsibility of the state, not because of the act itself, but because of lack of due diligence to prevent the violation or for not taking the necessary steps to provide the victims with reparations.”<sup>89</sup>

Given that most acts of sexual harassment take place in private spheres, this decision becomes important in ensuring that states are held accountable for failure to address them. The government cannot give an excuse that the act of sexual harassment occurs in a private firm or organisation. It should be noted that the Economic Community of West African States (“ECOWAS”) Court in a case involving the sexual assault of four women by security agents of the Nigerian government held that the action constituted a breach of obligations under the African Charter and the Maputo Protocol to protect the right to dignity and to uphold the right to be free from torture inhuman and degrading treatment.<sup>90</sup> Similarly, in *Mary Sunday v Nigeria* (“*Mary Sunday*”) the ECOWAS Court held that the failure of the Nigerian Police Force to investigate a complaint of domestic violence made by the applicant violated her right to access to justice and to be heard guaranteed in Article 7 of the African Charter.<sup>91</sup> This case provides a strong basis for arguing that the Nigerian government is obligated under international law to protect women from all forms of sexual assault, including sexual harassment. It can be argued that the ECOWAS Court was asking the woman question in the *Dorothy*

<sup>85</sup> L. Hasselbacher “State Obligations Regarding Domestic Violence: The European Court of Human Rights, Due Diligence, And International Legal Minimums of Protection” (2010) 8 *Nw J Int'l Hum Rts* 190.

<sup>86</sup> Amnesty International “Submission to the United Nations Committee on the Elimination of Discrimination Against Women” 67th Session (2017) 8-9.

<sup>87</sup> Onyemelukwe (2016) *DJWGL* <<https://via.library.depaul.edu/jwgl/vol5/iss2/3/>>.

<sup>88</sup> *Zimbabwe Human Rights NGO Forum v Zimbabwe* (2005) AHRLR 128 (ACHPR 2005), see also *Egyptian Initiatives for Personal Rights v Egypt* (2011) AHRLR 90 (ACPHR 2011).

<sup>89</sup> Para 143.

<sup>90</sup> *Dorothy Njemanze v Nigeria* ECOWAS Court of Justice (12-10-2017) ECW/CCJ/JUD/08/17.

<sup>91</sup> *Mary Sunday v Federal Republic of Nigeria* (ECW/CCJ/APP/26/15) [2018] ECOWASCJ 11 (17 May 2018).

*Njemanze case* when it found the Nigerian government responsible for failing to protect the four women from sexual abuse by security agents.

On the obligation to prevent sexual violence and its consequences, especially through the eradication of the root causes of sexual violence, the Federal Government of Nigeria has adopted the National Gender Policy.<sup>92</sup> This policy aims to establish legal equality for women and men and eliminate all obstacles to the social, economic and political empowerment of women as well as incorporate a gender perspective into all aspects of the National Planning Policy.<sup>93</sup> Notwithstanding this policy, gender inequalities and GBV remain prevalent in Nigeria. The adoption and implementation of policies that specifically address these root causes of sexual violence would be more impactful in curbing the trend. Furthermore, the Nigerian government would still be required to adopt a national action plan to implement the provisions of the Guidelines, especially as regards sexual harassment. The Guidelines make it clear that the adoption of a national action plan is crucial to ensuring the effective implementation of their lofty provisions at the national level.

In fulfilment of its obligation to provide protection against sexual violence and its consequences, the Nigerian government, in collaboration with international development partners and civil society organisations, has taken considerable steps to provide the requisite social, psycho-social, security and medical care to victims of sexual violence through the establishment of Sexual Assault Referral Centres,<sup>94</sup> provision of shelters, counselling and necessary medical care to GBV victims/survivors. However, the focus of these services has been more on victims of rape, physical or sexual assault and domestic violence. Rarely do victims of sexual harassment approach or access care from these facilities. It is recommended that institutions, including schools and workplaces, which are flashpoints for the occurrence of sexual harassment, should put in place measures to protect victims through the provision of these services. This will not only be in line with the Guidelines but also go a long way in ensuring adequate protection and safeguards for victims of sexual violence, including sexual harassment.

To ensure access to justice for victims of sexual violence, all the extant laws identified above provide access to justice for victims of sexual harassment through human rights provision and the criminalisation of the act. Although specific provisions and measures to ensure trial without undue delay, impartiality, independence and effectively in a manner that guarantees identification and conviction of perpetrators of sexual violence are not contained in applicable laws like the VAPP Act, they are provided for in the Nigerian Constitution and the Administration of Criminal Justice Act, 2015. Nonetheless, as exemplified by the decision in *Mary Sunday*, access to justice remains a significant challenge for victims of GBV, including sexual

<sup>92</sup> National Gender Policy (2006) <<https://nigerianwomentrustfund.org/wp-content/uploads/National-Gender-PolicySituation-Analysis.pdf>> (accessed 26-01-2022).

<sup>93</sup> The Policy was reviewed in 2011 but was not published. Another review of the policy is currently ongoing.

<sup>94</sup> United States Agency for International Development “Strengthening the response to Gender-Based Violence in Nigeria” (20-03-2020) *USAID* <[https://pdf.usaid.gov/pdf\\_docs/PA00X239.pdf](https://pdf.usaid.gov/pdf_docs/PA00X239.pdf)> (accessed 12-03-2022).

harassment in Nigeria.<sup>95</sup> A National Gender-Based Violence Dashboard of Nigeria indicates that of the total of 4 185 SGBV cases reported in 6 spotlight states of the federation between 2020 and 2021, there are only 767 active cases, 214 closed cases and 11 convicted cases.<sup>96</sup> This is a clear indication that the government will need to do more to ensure that perpetrators of sexual violence, including sexual harassment, in the country are brought to book. Both the Guidelines and the Maputo Protocol require states to ensure that acts of violence against women are properly sanctioned. Usually, cases of sexual violence against women, including sexual harassment are rarely prosecuted in Nigerian courts due to a low level of reporting or investigation. This may constitute an act of discrimination. One example of a case dealing with sexual harassment is that of *Federal Republic of Nigeria v Richard Akindele*<sup>97</sup> (“*Akindele*”). In *Akindele*, a postgraduate student of the Obafemi Awolowo University alleged that one of her professors demanded sex in exchange for marks. The professor was charged with abuse of office. Initially, the accused had pleaded not guilty, however, this was subsequently changed to a guilty plea. He was therefore convicted and sentenced to imprisonment for 2 years. This is one of the few cases dealing with sexual harassment by a Nigerian court. While the conviction is a welcome development, the fact that the sentence was light, and the court failed to engage in a feminist analysis on the issue, leaves much to be desired. It can be argued that the court failed to ask the woman question in *Akindele*. The court could have made a stronger statement on the obligations of the Nigerian government to address sexual harassment in public and private spheres as envisaged by the Niamey Guidelines.

Although the Nigerian National Human Rights Commission exists to provide quasi-judicial remedies for victims of human rights violations, the institution will need to redouble its efforts in dealing with cases of sexual violence, including sexual harassment. The Commission can be more proactive by, for example, launching investigations into the prevalence of sexual harassment in Nigerian educational institutions and providing concrete recommendations. This will ensure that perpetrators of such acts are held accountable, and that appropriate relief is provided to victims. As recommended by the Guidelines, the time has come for the Nigerian government to establish a National Gender Human Rights Institution that will engage with issues of sexual violence, including sexual harassment. This will ensure improved attention to these issues. In other countries such as Kenya<sup>98</sup> and South Africa,<sup>99</sup> National Gender Human Rights Institutions exist in addition to the traditional national human rights bodies.

<sup>95</sup> United Nations Nigeria “Gender-Based Violence in Nigeria during the COVID-19 Crisis: The Shadow Pandemic” 4 May 2020 <<https://nigeria.un.org>> (accessed 26-01-2022).

<sup>96</sup> National Gender Based Violence Dashboard <<https://reportgbv.ng/#/>> (accessed 26-01-2022).

<sup>97</sup> *FRN vs Prof. Richard I. Akindele (Former Lecturer of Obafemi Awolowo University)* <<https://corruptioncases.ng/cases/frn-vs-prof-richard-i-akindele-former>> (accessed 26-01-2022).

<sup>98</sup> This is known as the National Gender and Equality Commission established by the National Gender and Equality Commission Act 15 of 2011.

<sup>99</sup> This is known as the Commission for Gender Equality created under section 187 of the Constitution of the Republic of South Africa, 1996.

The difficulty in enacting laws or successfully passing bills that protect women from sexual harassment is a classic example of how the Nigerian government fails to ask the woman questions by enacting laws that reflect the values and experiences that seem more typical of women than of men. As earlier noted, women statistically constitute a significantly large percentage of the victims of sexual violence in Nigeria and worldwide. Hence the imperative need to enact laws that specifically target this challenge. The VAPP Act which is currently the most comprehensive national law that protects women from violence went through an arduous 12-year period in the National Assembly before its enactment<sup>100</sup>. Major concessions including changing its name from Violence against Women Act to VAPP Act and watering down some of its important provisions before the Nigerian male-dominated Legislature could pass it into law.<sup>101</sup> These issues resulted in a situation where acts of sexual violence including sexual harassment were defined but not criminalised in the Act. Similarly, the Anti-Sexual Harassment in Tertiary Institution Bill was, as mentioned earlier, passed by the Nigerian Senate in 2016 but failed to make it through the second chamber (House of Representatives). The bill was re-introduced to the National Assembly by the Deputy Senate President, Ovie Omo-Agege, in 2019 and successfully passed by the Senate in July 2020,<sup>102</sup> while the House of Representatives has to date failed to pass it. It therefore appears to be suffering the same fate, as the ninth Assembly would be rounding off by 2023.

Furthermore, in December 2021, the attempt by Senator Biodun Olujimi to reintroduce the Gender and Equal Opportunities Bill to the Senate was met with stiff resistance by some Senators who claimed that the Bill was against the Islamic religion and culture in the North.<sup>103</sup> This bill would have *inter alia* protected women from sexual harassment and discrimination in the workplace. Enactment of this law by Nigeria would amount to the fulfilment of some of its obligations under the Niamey Guidelines and international/regional instruments on women's rights. This is the third frustrated attempt to pass the Bill since its first introduction in March 2016.<sup>104</sup> Thus, the Nigerian government has failed to ask the woman question by its nonchalance and inaction towards the enactment or implementation of laws that protect women from sexual violence including sexual harassment.

Moreover, as discussed, societal prejudice and bureaucracy in the Nigerian criminal justice system often discourage victims from reporting let alone pursuing cases of sexual harassment in court. An example was the case of Senator Elisha Abbo where despite overwhelming evidence of sexual

<sup>100</sup> Onyemelukwe (2016) *DJWGL* 9.

<sup>101</sup> 9.

<sup>102</sup> H Umoru "Whistling, winking now offences as Senate Passes Sexual Harassment Bill" (08-07-2020) *Vanguard* <<https://www.vanguardngr.com/2020/07/whistling-winking-now-offences-as-senate-passes-sexual-harassment-bill/>> (accessed 26-01-2022).

<sup>103</sup> QE Iroanusi "Again gender equality bill suffers setback at Senate" (15-12-2021) *Premium Times* <<https://www.premiumtimesng.com/news/headlines/500980-again-gender-equality-bill-suffers-setback-at-senate.html>> (accessed 26-01-2022).

<sup>104</sup> Iroanusi "Again gender equality bill suffers setback at Senate" (15-12-2021) *Premium Times*.

harassment<sup>105</sup>, the Court had to strike out the case for want of diligent prosecution by the police.<sup>106</sup> This is further proof of the failure of the Nigerian government to ask the woman question in guaranteeing access to justice for victims of sexual harassment.

## 7 Conclusion and recommendations

This article discussed the incidence of sexual harassment in Nigeria and the applicable international and regional norms on this issue. More specifically, it examined the provisions of the Niamey Guideline adopted by the African Commission in 2017. It argued that the Guidelines broadly define sexual violence to include sexual harassment and places obligations on states to take concrete measures to address sexual harassment. This was followed by a discussion of the legislative framework in Nigeria to address sexual harassment and a consideration of whether this framework is consistent with the provisions of the Guidelines.

While to some extent the legislative framework in Nigeria is in line with the Guidelines, gaps still exist that require urgent response from the Nigerian government. The current legislative framework at the national level is defective and ambiguous, making it difficult to hold perpetrators of sexual harassment accountable. Therefore, there is a need for the speedy enactment of the Bill on Sexual Harassment in Tertiary Educational Institutions in the country. Moreover, the government should require schools and workplaces to adopt a policy on sexual harassment as well as establish counselling and support units for victims of sexual harassment.

In addition, the government must strengthen its justice system to facilitate access to justice for victims of sexual harassment. This will include removing barriers to courts as well as providing the needed support physically and psychologically to enable victims to seek redress without fear or intimidation. In other words, the justice system must be victim-centred as well as gender-sensitive. The establishment of a national gender equality institution is essential to address issues bordering on sexual violence, including sexual harassment. This institution would complement the work of the Nigerian National Human Rights Institution.

Also, it will be necessary for the Nigerian government to adopt a national action plan to implement the Guidelines at the national level. Currently, it cannot be ascertained if such a plan exists. Further, there is a need to create awareness about the incidence and consequences of sexual harassment as well as the obligations under international and regional laws, including the Guidelines. In this regard, the Nigerian government would need to work with civil society groups to disseminate the Guidelines among policymakers and

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<sup>105</sup> A video had emerged of the Senator slapping a female attendant at an adult toy shop and ordering his police orderly to arrest her. Following public outrage at his actions, he publicly apologised to Nigerians and the woman.

<sup>106</sup> QE Iroanusi "Assault: Court dismisses suit against Senator, Elisha Abbo" (01-08-2020) *Premium Times* <<https://www.premiumtimesng.com/news/headlines/406149-assault-court-dismisses-suit-against-senator-elisha-abbo.html>> (accessed 26-01-2022).

relevant institutions. This will ensure familiarity with the provisions of the Guidelines and pave way for its incorporation into policies and programmes by stakeholders.

Reliable and accurate data is key to addressing the incidence of sexual harassment. Therefore, the Nigerian government would need to redouble its efforts in conducting research that will generate reliable data to enable it to develop plans and programmes in response to sexual harassment. This must be complemented with continued efforts to assess and monitor existing programmes and services for addressing sexual violence, including sexual harassment. It is noteworthy that sexual harassment is not included in the types of sexual violence identified on the dashboard.<sup>107</sup> Given its prevalence, there is a critical need to include it to give room for reporting on its occurrence.

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<sup>107</sup> See *Dorothy Njemanze v Nigeria* ECOWAS Court of Justice (12-10-2017) ECW/CCJ/JUD/08/17.