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ABSTRACT

Recently, more women have come out with their experiences with sexual assault, and they have exposed sexual assaulters in the process. This movement has become known as the #MeToo movement. While it started in the USA, it has quickly spread to other parts of the world. This is despite a culture making sexual assault a norm and victim-blaming.

It is against this backdrop that this article explores sexual assault, the social factors that affect how sexual assault is treated, and the legal framework in place against sexual assault. Of particular concern is sexual assault in work environments. Despite how common it is, sexual assault against women by male co-workers is severely under-reported. Even more, no domestic law provides for sexual assault in work spaces. Instead, courts are forced to rely on international laws, amongst other options. This article recommends a framework to curb sexual assault in Nigeria.

1.0. INTRODUCTION

Six rounds of sex in exchange for movie roles, “business meetings” mandated in private hotel suites and accusations of childishness when one calls out sexual misconduct. Workplace sexual harassment in Nigeria is an epidemic: a silently swept-under-the-rug epidemic.¹ After

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¹ C. Izuzu “Sexual harassment in Nollywood is an Epidemic; But Who Will Speak Up?”, available at <https://www.pulse.ng/entertainment/movies/sexual->

all, “what defence does a person in Nigeria have? With the legal system that takes years? ... Please,” said Joke Silva.² The actress is right: The Nigerian legal system fails victims of workplace sexual harassment. The country is in dire need of statutory and administrative protections.

However, this problem transcends Nigeria’s borders. The rise of the #MeToo movement has exposed weaknesses in the implementation of sexual harassment protection laws across the globe.³ The movement, which developed in the United States and gained most of its traction in the country, highlights the limitations of Title VII of the Civil Rights Act of 1964 (Title VII) and the Employment Opportunity Commission (EEOC) in protecting victims of workplace sexual harassment.⁴ Evidently, even when protections do exist, they may not work as well as they should.⁵ Thus, it is one aspect to establish legal protections and another for them to function.

[harassment-in-nollywood-is-an-epidemic-id7572149.html](https://www.cnn.com/2017/11/25/health/sexual-harassment-violence-abuse-global-levels/index.html) (accessed 3 June 2020).

² *Ibid.*

³ C. Powell, “#MeToo Goes Global and Crosses Multiple Boundaries” available at <https://www.cfr.org/blog/metoo-goes-global-and-crosses-multiple-boundaries> (accessed 3 June 2020) (reporting that despite high rates of sexual harassment, the #MeToo campaign has been somewhat less visible in the Middle East, partly due to norms that attach stigma and shame to speaking out). Studies show that eighty-seven percent of women in Vietnam, seventy-nine percent in India, seventy-seven percent in Cambodia, and eighty-four percent in Bangladesh have experienced some form of sexual harassment; M. Senthilgam, “Sexual Harassment: How it Stands around the Globe”, available at <https://www.cnn.com/2017/11/25/health/sexual-harassment-violence-abuse-global-levels/index.html> (accessed 3 June 2020). Nonetheless, sexual harassment allegations of prominent individuals following the #MeToo movement were mainly documented in the United Kingdom and United States; K. Fox and J. Diehm, “#MeToo’s Global Movement: The Anatomy of a Viral Campaign”, available at <https://www.cnn.com/2017/11/09/world/metoo-hashtag-global-movement/index.html> (accessed 3 June 2020).

⁴ Chicago Tribune, “#MeToo: A Timeline of Events”, available at <http://www.chicagotribune.com/lifestyles/ct-me-too-timeline-20171208-htmlstory.html> (accessed 3 June 2020).

⁵ R. Abelson, “Effectiveness and Consistency of E.E.O.C. are questioned”, available at <https://www.nytimes.com/2001/08/02/business/effectiveness-and-consistency-of-eeoc-are-questioned.html> (accessed 3 June 2020); Human Rights Watch, “Corruption on Trial? The Record of Nigeria’s Economic and Financial Crimes Commission”, available at

Given that Nigeria has not yet established a comprehensive system for dealing with sexual harassment, the shortcomings of legal protections in the United States' extensive legal regime can guide Nigeria in designing functional statutory and governmental agency protections from the ground up.⁶ Here, sexual harassment is defined as "unwelcome sexual advances, requests for sexual favours, and other verbal or physical harassment of a sexual nature,"⁷ which prevent predominantly women from maximizing their potential in the workplace. Without reliable legal avenues to bring claims, victims of workplace sexual harassment in Nigeria are treading uncharted territory by speaking up against discrimination. As such, this article examines workplace sexual harassment in Nigeria and proposes a blueprint for creating an effective system to curb the problem.

In Section 2.0, this paper considers the current state of workplace sexual harassment in Nigeria. It specifically provides evidence of the gendered menace and explores the laws – or lack thereof – that address workplace sexual harassment in Nigeria. In Section 3.0, this paper looks to the United States, a country where the #MeToo movement has brought sexual harassment to the forefront of media and intellectual discourse. The United States operates as a helpful comparison because of the substantial focus placed on improving its already-developed system.

Section 3.0 analyses Title VII and the EEOC, legal safeguards against workplace sexual harassment in the United States, while delineating the flaws in the United States' system as it currently exists. Proposed reforms to remedy these flaws include extending Title VII coverage, enacting workplace gender parity provisions, adopting adequate baseline funding for the EEOC, enforcing anti-harassment compliance trainings, and investigating sexual harassment claims thoroughly.

<https://www.hrw.org/report/2011/08/25/corruption-trial/record-nigerias-economic-and-financial-crimes-commission> (accessed 3 June 2020).

⁶ O. Abudu, "Sexual Harassment in Nigeria: It's Everybody's Problem", available at <https://guardian.ng/issue/sexual-harassment-in-nigeria-its-everybodys-problem/> (accessed 10 June 2020).

⁷ EEOC, "Sexual Harassment", available at <https://www.eeoc.gov/sexual-harassment> (accessed 8 November 2018).

Finally, Section 4.0 builds off the values and criticisms of the United States' workplace sexual harassment protections to suggest a legal model that can be implemented in Nigeria. This model involves closing Nigeria's gender gap, enacting broad statutory protections for its informal-economy employees, and establishing a functional agency that enforces laws against workplace sexual harassment. Although the high rate of corruption and lack of accountability in Nigeria may impinge on the efficacy of said model, a sexual harassment law along with an enforcing government agency will play a significant role in advancing gender justice in Nigeria.

2.0. OVERVIEW OF WORKPLACE SEXUAL HARASSMENT IN NIGERIA

A report by World Economic Forum ranked Nigeria 122 out of 144 countries in terms of gender equality.⁸ This is furthered by the fact that a 2010 Gender and Equal Opportunities Bill, which aimed to prohibit discrimination on the basis of sex was not passed by the Nigerian Senate.⁹ Auspiciously, the struggle for holistic gender justice has been propelled by discourse surrounding sexual harassment safeguards in the country. The Nigerian Senate “observed the growing menace and the growing culture of sexual harassment in institutions of higher learning” and consequently passed the Sexual Harassment in Tertiary Educational Institutions (Prohibition) Bill in 2016 (SHTEIB).¹⁰ Yet, as House Majority Leader, Representative Gbajabiamila argued, “the bill is too restrictive ... What about ... the work place?”¹¹

⁸ P. Abumere, “Nigeria Fails to Close Widening Gender Gap Even in 2017”, available at <https://www.pulse.ng/news/local/gender-equality-nigeria-fails-to-close-widening-gender-gap-even-in-2017/9bsd7mv> (accessed 3 June 2020).

⁹ N. Sambamurty, “Nigeria's Gender Equality Bill Was Rejected. Here's Why We're Still Hopeful”, available at <https://www.one.org/us/blog/nigerias-gender-equality-bill-was-rejected-heres-why-were-still-hopeful/> (accessed 3 June 2020).

¹⁰ Sexual Harassment in Tertiary Educational Institutions (Prohibition) Bill (2016) (proscribing “severe punishment for lecturers and academic staff of universities, who either sexually harass or assault their male or female students”).

¹¹ Urhobo Today, “Why Reps Dumps Omo-Agege's Sexual Harassment Bill”, available at <http://urhobotoday.com/?p=27901> (accessed 3 June 2020).

This Part provides an overview of workplace sexual harassment in Nigeria. Subsection 2.1 provides statistical and anecdotal evidence to illustrate the pervasive nature of sexual harassment in the country. Sub-subsection 2.1.1 identifies cultural and religious factors that permeate the discourse. Thereafter, sub-subsection 2.1.2 introduces the inadequate legal avenues for victims of sexual misconduct to seek redress. These include the National Industrial Court of Nigeria, Sharia Law: Penal Code of Northern Nigeria, Violence against Person's Act, and Nigerian Labour Act, discussed in sub-subsections 2.2.1, 2.2.2, 2.2.3, and 2.2.4 respectively. The introduction to these courts and statutes sets up a discussion in Section 3.0, which compares the legal protections available to victims of workplace sexual harassment in the United States.

2.1. State of Workplace Sexual Harassment

"She wore a short skirt," "she was out past 9:00pm," "she didn't say no." Justifications for sexual harassment are often so loud that they silence victims in Nigeria. As explained by one Nigerian senator, "the menace of sexual harassment has been there for a long time and has gone unchecked."¹² This section examines evidence of the rampant rate of workplace sexual harassment in Nigeria as well as the culture of silence that maintains the status quo.

2.1.1. Evidence of Rampant Sexual Harassment

In an interview, a female employee in Nigeria recounted how her supervisor "told her to quit the job if she was not ready to be his mistress. She pleaded but he told her that someone else had already taken the position."¹³ This female employee, like many others, is often caught in a conundrum: subjecting herself to being a sexual object or seeking new employment? The former appears to be a more viable route. Research by the Civil Liberties Organization in Nigeria affirmed

¹² A.M. Jimoh, "Senate Passes Sexual Harassment Bill", available at <https://guardian.ng/news/senate-passes-sexual-harassment-bill/> (accessed 3 June 2020).

¹³ E. Sessou, "Sexual Harassment: Real or Imagined Problem", available at <https://www.vanguardngr.com/2018/04/sexual-harassment-real-imagined-problem/> (accessed 3 June 2020).

that many women were given employment based on prerequisite sexual favours.¹⁴ In a country where the employment rate is low,¹⁵ poverty is the norm,¹⁶ and patriarchy is cultural,¹⁷ harassed women may perceive no choice at all. The reality of the economic climate in Nigeria is reflected by studies which show that victims of sexual harassment would rather avoid their abuser than report their experiences.¹⁸

Despite anecdotal evidence that points towards a high rate of sexual harassment in Nigeria, statistics deceptively suggest otherwise. In a survey, over sixty percent of respondents reported that they had not been harassed at work.¹⁹ In another report, about seventy-five percent of respondents indicated that they were rarely harassed.²⁰ These results should not be taken at face value. Meta-analytic studies suggest that inquiring about sexual harassment experiences using legally defined objective measures yield substantially lower rates than studies involving perceptual measures.²¹ It is worthy of note that the mere

¹⁴ S. Williams, "Nigeria, Its Women and International Law: Beyond Rhetoric", (2004) 4(2) *Human Rights Law Review*, pp. 229 and 252.

¹⁵ I. Okosun, "Poverty Alleviation and Employment Scenario in Nigeria: A Review", (2010) 2(1) *Insight on Africa*, pp. 67 and 70.

¹⁶ *Ibid*, at 69; N.M. Abdulraheem, R.K. Salman and A.I. Abikan, "Domestic Violence Against Women in Nigeria: A Scourge Devoid of Solution", (2014) 17(2) *Nigerian Law Journal*, pp. 78 and 79.

¹⁷ A.M. Essien and D.P. Ukpong, "Patriarchy and Gender Inequality: The Persistence of Religious and Cultural Prejudice in Contemporary Akwa Ibom State, Nigeria", (2012) 2(4) *International Journal of Social Sciences and Human*, p. 286.

¹⁸ Y. Noah, "Experience of Sexual Harassment at Work by Female Employees in a Nigerian Work Environment", (2008) 3(7) *International NGO Journal*, pp. 122 and 125.

¹⁹ A.O. Tayo, "Sexual Harassment: Dealing with this Menace in the Nigerian Workplace", available at <https://www.pulse.ng/gist/pop-culture/dealing-with-this-sexual-harassment-in-the-nigerian-workplace-id7592288.html> (accessed 3 June 2020).

²⁰ *Supra* n 18, at p. 125.

²¹ P. McDonald, "Workplace Sexual Harassment 30 Years on: A Review of the Literature", (2011) 14 *International Journal of Management Review*. For a theoretical explanation of why individuals who experience sexual harassment may be reluctant to report the problem, see D. Wear, J.M. Aultman, and N.J. Borges, "Rethorizing Sexual Harassment in Medical Education: Women Students' Perceptions at Five U.S. Medical Schools", (2007) 19(1) *Teaching and Learning in Medicine*, pp. 20 and 20-29 (suggesting that some younger women seek

fact that individuals do not report sexual harassment does not mean that what they experience is not sexual harassment. Indeed, sexual harassment is so rampant in Nigeria that “co-workers would make unsolicited sexual comments ... and women wouldn’t think it was out of place.”²² A female journalist asserted that she “never really ... felt harassed even though these things happened ... so regularly.”²³ To many Nigerian women, coping with inappropriate comments and less-than-subtle sexual requests at work is “part of the skills women in these parts of the world develop since men will surely do these things.”²⁴ Thus, rather than illustrating that sexual harassment is not widespread, a study that found that only about twenty-seven percent of Nigerian women ascribe sexual harassment as “very offensive,”²⁵ reflects an embedded culture of silence, one where speaking up is frowned upon and victims become accustomed to discriminatory treatment.

2.1.2. Culture of Silence

Socio-cultural values in Nigeria permeate the formulation and administration of laws in the country. The director of Vision Spring Initiatives, an organization dedicated to achieving gender equality in Nigeria, put it succinctly when she said that “persons who have been sexually harassed most times have silence in common ... not unrelated with culture and fear of the consequences of reporting such cases.”²⁶

The Nigerian custom surrounding workplace sexual harassment can, at least in part, be attributed to the belief that a woman’s place is in

to distance themselves from negative connotations of feminism and political correctness).

²² S. Busari and T. Idowu, “The #MeToo Stories You Haven’t Heard: Meet the Women Speaking Out in Nigeria”, available at https://edition.cnn.com/2018/03/02/africa/nigeria-rape-survivors-metoo-asequals/?utm_cid=%20cnni-com-fb-africa-link (accessed 3 June 2020).

²³ The World Staff, “Sexual Harassment at Work is a Global Problem. Now, The World is Finally Talking About It,” available at <https://www.pri.org/stories/2017-10-20/sexual-harassment-work-global-problem-now-world-finally-talking-about-it> (accessed 3 June 2020).

²⁴ *Ibid.*

²⁵ *Supra* n 18, at 125.

²⁶ *Supra* n 13.

the home: her employment prospects are not a primary concern.²⁷ Conversely, men yield power based on their control of women within the family and workplace.²⁸ The effect is that the Nigerian society accommodates discriminatory acts and practices to the benefit of the man. Consequently, sexual harassment thrives as an offshoot of a patriarchal structure.²⁹

Nigeria's patriarchal culture discourages women from engaging in sexual activities or conversations. While men are praised for their sexual drive, women are stigmatized for being sexually active. The stereotype that a woman's sexual urges are merely a means to a procreative end is manifest in the Nigerian custom that only men can engage in extramarital affairs, have many wives, and keep concubines.³⁰ A woman is labelled a disgrace if she dares such. This socio-cultural perspective on sexuality has influenced the disclosure of harassment and the punishment of harassers in Nigerian workplaces. Instead of punishing the harasser, the harassed is shamed.³¹ The impact of misogynistic norms is an enabling culture, one that has victims of harassment concluding that silence is a more palatable route than reporting their experience.³² Such traditions conflict with the concept of justice.³³

While these misogynistic "practices defended in the name of culture ... preserve patriarchy at the expense of women's rights,"³⁴ they work

²⁷ *Supra* n 14, at p. 252.

²⁸ A.Y. Ige and I.A. Adeleke, "Evaluating the Role of Culture on Sexual Harassment: The Case of Nigerian Organizations", available at <http://ilera2012.wharton.upenn.edu/RefereedPapers/IgeAY%20AdelekeIA%20ILERA.pdf> (accessed 3 June 2020).

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ *Ibid.*

³² *Supra* n 18, at p. 125.

³³ F. Raday, "Culture, Religion, and Gender. Roundtable: An Exchange with Ronald Dworkin", (2003) 1 *International Journal of Constitutional Law*, pp. 663 and 666.

³⁴ *Ibid.* For decades, Nigerian women have been oppressed under the guise of culture. Culture has been cited as the basis for female gender mutilation, female disinheritance, and harmful widowhood practices; O. Akor "The Need for a Law against Harmful Traditional Practices", available at <https://www.dailytrust.com.ng/the-need-for-a-law-against-harmful-traditional-practices.html> (accessed 3 June 2020).

in tandem with religion.³⁵ Interpretations of Sharia law and Christian ideology are strongly grounded in Nigerian tradition as depicted by the false notion that sexual harassment is a by-product of “irresponsible” dressing and lack of modesty.³⁶ Yet, “cultural defence” and “religious freedom” arguments contribute to victim shaming and ultimately keeping victims silent.³⁷ The false impression that Nigerian culture and religious interpretations are inherently misogynistic - that is, letting go of discriminatory practices discards historical foundations - perpetuates gendered inequality.

2.2. Legal Protections against Sexual Harassment

The Nigerian constitution “prohibits torture and other inhuman or degrading treatment” against any individual.³⁸ Although equality is formally guaranteed in the constitution, Nigeria has conceded to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) Committee that “additional domestic legislation is needed to implement the Convention.”³⁹ Despite this assertion, a draft bill on the “Abolition of All Forms of Discrimination against Women in Nigeria and Other Related Matters” was not approved by the National Assembly.⁴⁰ To the contrary, legislation such as the Penal Code of Northern Nigeria, which permits wife battery for punishment⁴¹ and the Criminal Code, which classifies sexual assault as

³⁵ *Infra* sub-subsection 2.2.2.

³⁶ *Supra* n 13.

³⁷ *Supra* n 33.

³⁸ Constitution of the Federal Republic of Nigeria (CFRN) (1999), s. 34(1).

³⁹ V.A. Dormady, “Status of the Convention on the Elimination of All Forms of Discrimination against Women”, (1999) 33(2) *The International Lawyer*, pp. 637 and 639; Nigeria is a State Party to CEDAW, although it has not domesticated the treaty. This is attributed to the “myriad of harmful traditional practices in Nigeria that are obviously incongruous with certain provisions of the CEDAW articles.” See “Nigeria: Why Country cannot Domesticate CEDAW”, available at <https://allafrica.com/stories/200809300359.html> (accessed 3 June 2020).

⁴⁰ United Nations, Concluding Observations of the Committee on the Elimination of Discrimination against Women 3 (2008), available at <https://www.refworld.org/pdfid/4efb2f122.pdf> (accessed 3 June 2020) (internal quotation marks omitted).

⁴¹ Penal Code of Northern Nigeria 2000, s. 55(1)(d).

a misdemeanour,⁴² encourage sexual harassment and institutionalize domestic violence. This section examines the minimal and many times non-existent legal protections available to victims of workplace sexual harassment in Nigeria.

2.2.1. Minimal Protection: National Industrial Court of Nigeria

The National Industrial Court of Nigeria (NICN) has exclusive jurisdiction over employment matters.⁴³ The 1999 Nigerian Constitution (as amended) confers the NICN with jurisdiction over matters “relating to or connected with any dispute arising from discrimination or sexual harassment at the workplace.”⁴⁴ Similarly, the NICN has the power to apply international treaties relating to employment in local cases.⁴⁵ Thus, although there is no national legislation prohibiting workplace sexual harassment, victims may seek legal remedy through the NICN using international law.

In *Ejeke Maduka v Microsoft Nigeria*, the court relied on international labour standards in adjudicating plaintiff’s sexual harassment claims.⁴⁶ There, the court stated that plaintiff’s employment termination due to her refusal of sexual advances amounted to a “breach of her fundamental human rights” under CEDAW and International Labour Organization (ILO) laws. These laws, according to the court, “are applicable to construe the fundamental rights of the applicant expressly guaranteed in the 1999 Constitution as amended.”⁴⁷ Four

⁴² Criminal Code Act 1990, Cap. C38, Laws of the Federation of Nigeria, 2004, s. 360.

⁴³ CFRN (1999) (as amended), s. 254(c); National Industrial Court of Nigeria Act 2006, s. 7.

⁴⁴ CFRN (1999) (as amended), s. 254(c).

⁴⁵ *Ibid.*

⁴⁶ *Ejeke Maduka v Microsoft Nigeria* (2013) NICN/LA/492/2012, available at <https://mikedugeri.wordpress.com/2017/04/01/workplace-sexual-harassment-court-judgment-in-the-case-of-ejeke-maduka-v-microsoft-nigeria-limited/> (accessed 13 June 2020) (awarding approximately \$250 million in sexual harassment lawsuit).

⁴⁷ *Ibid*; Convention Concerning Discrimination in Respect of Employment and Occupation (Convention No. 111 1958), Article I. Available at https://www.ilo.org/wcmsp5/groups/public/@dgreports/@gender/documents/genericdocument/wcms_114189.pdf (accessed 3 June 2020). (“Discrimination

years after *Ejeke Maduka*, the NICN revised its Civil Procedure Rules to include *procedure* for bringing sexual harassment claims.⁴⁸ These rules provide that an employee with a sexual harassment claim must indicate whether the harassment was physical, verbal, non-verbal, or based on quid pro quo.⁴⁹

2.2.2. Minimal Protection: Sharia Law and Penal Code of Northern Nigeria

The Nigerian Constitution attempts to establish a secular state, which is not bound to any religion. In practice, Sharia law, which is grounded in Islamic faith, is applicable in twelve out of the thirty-six states in the country, where Muslim populations are the majority.⁵⁰ This law, which exists in tandem with state criminal and civil law, is based on Islamic moral codes.⁵¹ In a Sharia system, in which a rape victim must produce four witnesses to support her claim, or face being stoned to death for being “promiscuous”,⁵² it is no wonder that many women do not speak up when they face sexual harassment.

The implementation of Sharia law in tandem with the Penal Code of Northern Nigeria silences women living under Northern jurisdiction.⁵³ The Penal Code reflects a legislative compromise to harmonize

includes ... any distinction, exclusion ... made on the basis of sex ... which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.” (internal quotation marks omitted)).

⁴⁸ Rules of Civil Procedure 2017, Order 14.

⁴⁹ *Ibid.*

⁵⁰ K. N. Roberts, “Constitutionality of Shari’a Law in Nigeria and the Higher Conviction Rate of Muslim Women under Shari’a Fornication and Adultery Laws”, (2005) 14 *Southern California Review of Law and Women’s Studies*, pp. 315 and 329.

⁵¹ S. Atta, “Too Many of Nigeria’s Women are Targets – Not Just the Kidnapped Girls”, available at <http://time.com/103531/nigeria-boko-haram-sharia-law/> (accessed 3 June 2020). While the Nigerian government has condemned stoning and beating as forms of punishment promoted by Sharia law, the adoption of Sharia law remains a state right in the country; *Ibid.*

⁵² *Supra* n 50.

⁵³ There is overlap between the Penal Code of Northern Nigeria and Sharia law as both are grounded in Islam. However, Sharia law contains some more conservative provisions. See Human Rights Watch, “Political Shari’a?” available at <https://www.hrw.org/report/2004/09/21/political-sharia/human-rights-and-islamic-law-northern-nigeria> (accessed 3 June 2020).

criminal laws governing individuals in Northern Nigeria to align with their predominantly Islamic beliefs. Amongst other sections which ban violent sexual assault,⁵⁴ the Act prohibits the “use of words, gestures or acts to insult the *modesty* of a woman.”⁵⁵ While this provision technically criminalizes sexual harassment, it is contextualized through Muslim lens where women are secluded to prevent “temptations of the world.”⁵⁶ The paternalistic approach of the Act focuses on women being modest rather than the human right to be free from discrimination.

2.2.3. Minimal Protection: Violence against Persons Act

The *Violence against Persons Act* prohibits violence against individuals and provides remedies for victims of violence.⁵⁷ Extending the reach of the Nigerian Criminal Code Act,⁵⁸ this statute covers rape, infliction or the threat of infliction of bodily injury, verbal abuse, and coercion. Thus, it prohibits extreme forms of sexual assault. Although the Act states that intimidation is a misdemeanour offence, it does not have an explicit sexual harassment provision.⁵⁹

2.2.4. Absence of Protection: Nigerian Labour Act

The Nigerian Labour Act (NLA) governs employment practices in Nigeria.⁶⁰ From recruitment to relief, the Act prescribes the obligations of both employees and employers. Yet, the statute fails to address sexual harassment.⁶¹ Consequently, there is no national

⁵⁴ Penal Code of Northern Nigeria 2000, s. 282(1).

⁵⁵ V. L.K. Essien, “The Northern Nigerian Penal Code: A Reflection of Diverse Values in Penal Legislation” (1983) 5(1) *New York Law School Journal of International and Comparative Law*, pp. 89 and 95.

⁵⁶ *Ibid.*

⁵⁷ Violence Against Persons (Prohibition) Act 2015 (Nigeria).

⁵⁸ Criminal Code Act 1990 (Nigeria) (criminalizing only extreme forms of sexual assault).

⁵⁹ Violence against Persons (Prohibition) Act 2015 (Nigeria).

⁶⁰ Labour Act 2004, Cap. LI, Laws of the Federation of Nigeria, 2004. The NLA is one of many statutes regulating employment in Nigeria. Others include the *Trade Union Amended Act*, 2005 (Nigeria), *Employees Compensation Act*, 2010 (Nigeria), *Factories Act*, 2004 (Nigeria), and *Pensions Act*, 2004 (Nigeria), none of which have provisions on sexual harassment.

⁶¹ Labour Act 2004 (Nigeria).

statute that explicitly prohibits sexual misconduct in the workplace.⁶² This legislative oversight disregards women's rights and fails to implement the CEDAW Committee's recommendation.⁶³

2.3. Organizational Policies against Sexual Harassment

While some employers institute guidelines that regulate sexual harassment,⁶⁴ internal policies are often not taken seriously without national laws prohibiting such actions. A study in Nigeria showed that about ninety percent of people who were sexually harassed did not send a complaint to their office's Human Resources department.⁶⁵ Accordingly, a former executive in an oil and gas company explained that they never got a complaint directly "none of the victims would admit it as harassment but you would notice the occasional looks. Executive predators are common."⁶⁶ This silence is not surprising seeing that about thirty percent revealed that their previous reports of sexual misconduct went unresolved and about thirty-seven percent stated that they feared the loss of their jobs.⁶⁷ The culture of dirty jokes, butt grabs and intimidation has been inadequately addressed by the internal policies of business organizations.

Unlike the United States where the Harvey Weinstein scandal rocked the nation,⁶⁸ it is unlikely that a business in Nigeria would collapse as a result of sexual harassment revelations.⁶⁹ Rather, because victims of workplace sexual harassment often perceive justice as non-existent, they suffer in silence. This is exemplified by a study where participants attributed their reluctance to file sexual harassment complaints to the

⁶² At least one state in Nigeria has criminalized sexual harassment. Lagos State's criminal law decrees that "any person who sexually harasses another is guilty of a felony and is liable to imprisonment for three years." Criminal Law of Lagos State 2011, s. 262.

⁶³ *Supra* n 39 and 40 (and accompanying text).

⁶⁴ *Supra* n 19 ("In most organizations, there are policies that deal with sexual harassment.").

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

⁶⁸ *Infra* n 74 and 75 (and accompanying text).

⁶⁹ *Supra* n 23.

perception that “the authorities would not do anything”.⁷⁰ For the brave women who speak up, the Nigerian police trivialize their mishap as a “private matter”, rarely ever investigating the situation.⁷¹ This is evidenced by the fact that only ten percent of rape cases in Nigeria result in convictions.⁷² Consequently, the assumed learned helplessness of many victims of workplace sexual harassment is fuelled by the government’s disregard of gender justice. It is paramount that Nigeria’s workplace sexual harassment laws are developed and enforced on a national level.

Without national laws that prohibit hostile work environments, victims are unlikely to bring their claims. Thus, the CEDAW Committee’s urge that the Nigerian government should “enact legislation prohibiting sexual harassment in the workplace, including sanctions, civil remedies and compensation for victims”.⁷³ This paper takes CEDAW’s recommendation further by examining how to best develop Nigeria’s anti-sexual harassment legal system through the lens of the United States, a country where the #MeToo movement has triggered large scale conversations and reform surrounding workplace sexual harassment. Looking to the United States can help guide the Nigerian legislature and executive in creating a better system, one void of the shortcomings that have been highlighted by the #MeToo movement

⁷⁰ K. Johnson, “Sexual Harassment in the Workplace: A Case Study of Nigeria”, (2010) 8(1) *Gender and Behaviour*, pp. 2903 and 2914.

⁷¹ N.M. Abdulraheem, et al., *supra* n 16, at p. 79. Domestic violence is a significant problem in Nigeria with about fifty percent of Nigerian women having been battered by their husbands. About ninety-seven percent of women would not report these cases to the Nigerian police; *Ibid*, at p. 83. Some scholars have attributed this to the cultural context of family privacy in Nigeria. See This Day, “Nigeria: Reforming Our Laws a Problem, Implementation a Greater Challenge”, available at <https://allafrica.com/stories/201507140958.html> (accessed 3 June 2020) (“There is often reluctance to investigate or prosecute domestic violence or sexual crimes because of the cultural contexts of family privacy.”).

⁷² United States Department of State, “Country Report on Human Rights Practices for 2011, Nigeria”, available at <http://www.state.gov/documents/organization/186441.pdf> (accessed 5 December 2012).

⁷³ *Supra* n 40, at p. 6.

3.0. WORKPLACE SEXUAL HARASSMENT IN THE UNITED STATES

“Harvey Weinstein paid off sexual harassment accusers for decades”.⁷⁴ This New York Times headline accusing Hollywood mogul, Harvey Weinstein, of sexual assault was more than scandalous: It inspired the #MeToo movement, perhaps the largest scale movement against sexual harassment in modern history.⁷⁵ Since then, over “219 celebrities, politicians, and CEOs have been accused of sexual misconduct” in the United States.⁷⁶ The outcry of women in the United States made evident that despite legal protections for victims of sexual harassment such as Title VII and the EEOC, many suffer from workplace sexual harassment in silence.⁷⁷ For instance, in fiscal year 2015, before the #MeToo movement began,⁷⁸ approximately one-third of charges received by the EEOC included allegations of workplace harassment.⁷⁹ Yet, about three in four victims of workplace

⁷⁴ J. Kantor and M. Twohey, “Harvey Weinstein Paid Off Sexual Harassment Accusers for Decades”, available at <https://www.nytimes.com/2017/10/05/us/harvey-weinstein-harassment-allegations.html> (accessed 3 June 2020).

⁷⁵ K. Sutton, “The Media is officially in the #MeToo Movement for the Long Haul”, available at <https://mic.com/articles/187292/the-media-is-officially-in-the-metoo-movement-for-the-long-haul#.uVW5q06h6A> (accessed 3 June 2020).

⁷⁶ D. Roberts, “What so Many Men are Missing About #MeToo. Sexual Discrimination and Abuse Constitute a Crisis; Louis C.K. will be Fine”, available at <https://www.vox.com/2018/9/10/17826168/me-too-louis-ck-men-comeback> (accessed 3 June 2020).

⁷⁷ J. Goldscheid, “Is Sexual Harassment a Civil Rights Violation? It Should Be”, available at <https://www.aclu.org/blog/womens-rights/sexual-harassment-civil-rights-violation-it-should-be> (accessed 3 June 2020). (“The fact that #MeToo has taken off as a viral hashtag is a stark reminder that gender-based violence and harassment persist despite years of public attention and law reform.”).

⁷⁸ To qualify, this Note analyses #MeToo as “beginning” in 2017, following Weinstein’s sexual assault allegations and actress Alyssa Milano’s #MeToo solidarity tweet. However, the movement was originally founded by civil rights activist, Tarana Burke, decades ago. See S.E. Garcia, “The Woman Who Created #MeToo Long Before Hashtags”, available at <https://www.nytimes.com/2017/10/20/us/me-too-movement-tarana-burke.html> (accessed 3 June 2020).

⁷⁹ EEOC, Report of the Co-Chairs of the Select Task Force on the Study of Harassment in the Workplace 6 (2016),

harassment never report the misconduct.⁸⁰ To put it succinctly, sexual harassment is a persistent problem in the global workplace, even in places like the United States, where effective, longstanding mechanisms exist.

As the president of women's advocacy group, Legal Momentum, said, "Nobody will disagree that something needs to be done about sexual harassment, but the devil is in the details."⁸¹ Establishing an effective system that combats workplace sexual harassment is complicated. This is exemplified by the rise of the #MeToo movement in the United States, a country with seemingly robust sexual harassment protections. While creating laws and establishing an agency are steps in the right direction, there are nuanced factors worth considering. This Part examines workplace sexual harassment protections in the United States, probing into their efficacy and highlighting areas in which reforms will strengthen their legitimacy. Taken together, this analysis helps create an exemplar for an efficient legal framework in Nigeria such that the country can bypass the flaws in the United States' system.

Firstly, subsection 3.1 provides an overview of these protections as they currently exist. Specifically, sub-subsection 3.1.1 analyses Title VII, the law which prohibits discrimination on the basis of sex in workplaces and sub-subsection 3.1.2 examines the EEOC, the agency that enforces Title VII. Thereafter, subsection 3.2 delves into proposed statutory reforms to tackle the shortcomings of Title VII. These include laws that promote workplace gender equality, extend Title VII coverage, and increase EEOC funding. Finally, subsection 3.2 analyses proposed reforms to augment the EEOC's objectives. In particular, subsection 3.2 suggests that the EEOC enforces anti-harassment compliance trainings and engages in comprehensive investigations. The analysis of these legal protections provides a

https://www.eeoc.gov/eeoc/task_force/harassment/report_summary.cfm

(accessed June 3, 2020) (approximating charges alleging harassment on the basis of sex, race, disability, age, national origin, colour, and religion).

⁸⁰ *Ibid.*

⁸¹ C. Kelly and A. Hegarty, "#MeToo was a Culture Shock. But Changing Laws Will Take More than a Year", available at <https://www.usatoday.com/story/news/investigations/2018/10/04/metoo-me-too-sexual-assault-survivors-rights-bill/1074976002/> (accessed 3 June 2020).

background to Section 4.0, which borrows from critiques of the current United States system to create a blueprint for workplace sexual harassment safeguards in Nigeria.

3.1. Current Legal Protections against Sexual Harassment

Title VII is widely regarded as the United States' most visible pronouncement of its commitment to equality. Amidst calls for racial equality, Congress enacted the statute and established the EEOC to curb workplace harassment.⁸² However, its statutory and administrative reach towards discrimination on the basis of sex has often left scholars on both sides of the aisle. Given minimal legislative history and concerns surrounding delegation of law-making authority, this section provides a brief overview of Title VII and the EEOC in 3.1.1 and 3.1.2 respectively. This review provides context for sexual harassment reforms, which are analysed in subsections 3.2 and 3.3.

3.1.1. Statute: Title VII

Title VII prohibits employment discrimination on the basis of “race, colour, religion, sex, or national origin.”⁸³ The Smith Amendment, which satirically added “sex” as a proscribed basis for employment discrimination, was neither debated before the Judiciary Committee nor the Education and Labour Committee.⁸⁴ Rather, it was speedily adopted in the House under the “five-minute” rule.⁸⁵ As such, there is

⁸² J.J. Donohue, “Is Title VII Efficient?” (1986), 134(6) *University of Pennsylvania Law Review*, p. 1411.

⁸³ Civil Rights Act 1964, 42 U.S.C., s. 2000e-2.

⁸⁴ (1964) 110 *Congressional Record*, p. 2577 (statement of Rep. Smith) (“An imbalance of spinsters, shutting off the ‘right’ of every female to have a husband ... is a grave injustice”); F.J. Vaas, “Title VII: Legislative History”, (1966) 7 *Boston College Industrial and Commercial Law Review*, pp. 431 and 439.

⁸⁵ (1964) 1120 *Congressional Record*, pp. 2577 – 2584 (covering only about nine pages of House debate on discrimination on the basis of sex); Congressional Institute, 112th Congress House Floor Procedures Manual, available at <https://www.conginst.org/112th-congress-house-floor-procedures-manual/xii-amendments-under-the-five-minute-rule/> (accessed 2 January 2019) (explaining that under the five-minute rule, “the author of an amendment is recognized for five minutes, followed by recognition of a Member who wishes to speak in opposition for five minutes”).

little legislative history on workplace discrimination on the basis of sex under Title VII.⁸⁶

The lack of congressional guidance on discrimination on the basis of sex proved problematic for both the EEOC and the courts.⁸⁷ Within fewer than one hundred days of enacting the law, sex discrimination cases comprised about fifteen percent of the EEOC's caseload.⁸⁸ However, with poor legislative direction, early court opinions did not construe Title VII as permitting sexual harassment claims.⁸⁹ The refusal was rooted in the notion that sexual harassment was a "personal attack, not a gender issue."⁹⁰ It was not until a 1986 case, *Meritor Savings Bank v. Vinson* that the Supreme Court concluded that sexual harassment was prohibited under Title VII, more than twenty years after Title VII passed.⁹¹ Despite the Supreme Court's decision, lower courts grappled with the parameters of sexual harassment under Title

⁸⁶ Vaas, *supra* n 84, at p. 441.

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*

⁸⁹ *Tomkins v Public Servs. Elec. & Gas Co.*, 422 F. Supp. 553, 556 (D.N.J. 1976) (refusing to recognize sexual harassment as discrimination under Title VII), *rev'd*, 568 F.2d 1044 (3rd Cir. 1977); *Corne v Bausch & Lomb, Inc.*, 390 F. Supp. 161, 163 - 165 (D. Ariz. 1975) (holding that a woman subjected to sexual advances failed to state a claim under Title VII), *vacated*, 562 F.2d 55 (9th Cir. 1977).

⁹⁰ M.R. Peirce, "Sexual Harassment and Title VII: A Better Solution", (1989) 30(4) *Boston College Law Review*; N.M. Abdulraheem et al., *supra* n 16.

⁹¹ (1986) 477 U.S. 57, 66.

VII. What constituted sexual harassment,⁹² who could be sexually harassed,⁹³ and when did “gender” matter?⁹⁴

While Title VII has many loopholes with regards to discrimination on the basis of sex, its vague nature has provided both the EEOC and courts with broad administrative--interpretative authority.⁹⁵

⁹² The Supreme Court in *Harris v Forklift Systems, Inc.*, took a “middle path between making actionable any conduct that is merely offensive and requiring the conduct to cause a tangible psychological injury.” (1993) 114 S. Ct 367, 370 371 (“Title VII comes into play before the harassing conduct leads to a nervous breakdown. A discriminatorily abusive work environment, even one that does not seriously affect employees’ psychological well-being, can and often will detract from employee’s job performance, discourage employees from remaining on the job, or keep them from advancing in their care.”); see also Guidelines on harassment Based on Race, Colour, Religion, Gender, National Origin, Age or Disability, 58 Fed. Reg. 51,266 (proposed 1993) (to be codified at 29 C.F.R. 1604.11) (classifying harassing behaviour into “epithets, slurs, negative stereotyping, or threatening, intimidating, or hostile acts” and “written or graphic material that denigrates or shows hostility or aversion toward an individual or group ... and that is placed on walls, bulletin boards, or elsewhere on the employer’s premises or circulated in the workplace”); R.D. Lee Jr. and P.S. Greenlaw, “The Legal Evolution of Sexual Harassment”, (1995) 55(4) *Public Administration Review*, pp. 357 and 359 (analysing harassing behaviour under the EEOC’s 1993 guidelines).

⁹³ As of 2006, firing an employee because of their sexual orientation was considered lawful in 33 states. See J.E. Snyder and R.S. Bauch, “Sexual Orientation Discrimination in the Workplace”, (2006) 20 *CBA Rec.* 44, 45; see also *Evans v Georgia Regional Hospital*, (2017) 850 F.3d 1248, 1255 (11th Cir. 2017) (permitting the termination of an employee because of her lesbian status). But see *Baldwin v Fox*, EEOC Decision No. 0120133080, 2015 WL 4397641 (July 15, 2015) (holding that “sexual orientation is inherently a sex consideration” and thus falls under Title VII’s protections); *Hively v Ivy Tech Community College* 853 F.3d 339, 345 (7th Cir. 2017) (same); *Zarda v Altitude Express, Inc.*, 883 F.3d 100, 112 (2nd Cir. 2017) (en banc) (same).

⁹⁴ *Carreno v IBEW Local No. 226*, 54 Fair Employment Practice Case (BNA) 81, 82 (D. Kan. 1990) (dismissing a Title VII harassment claim under the rationale that “the harassment suffered by the plaintiff was ... because of his sexual preference” and not because of his gender).

⁹⁵ For instance, although prohibiting discrimination on the basis of sexual orientation was probably not within Congress’ purview when enacting Title VII, the court can enforce a more liberal position. See, *Hively’s case*, 853 F.3d at 345; *Zarda’s case*, 883 F.3d at 112. With society’s changing notions of sex and gender, gay rights, trans rights, and those in-between, can be safeguarded through a flexible reading of Title VII.

Furthermore, administrative codes which prohibit hostile work environments have been enacted to bridge Title VII's statutory gap.⁹⁶

3.1.2. Agency: EEOC

The EEOC was established to combat unlawful employment discrimination.⁹⁷ While Congress expressly delegated authority to the agency to issue procedural regulations under Title VII,⁹⁸ the Supreme Court has held that the EEOC lacks the power to issue substantive ones.⁹⁹ Thus, the EEOC cannot enact new laws that are not present in Title VII.¹⁰⁰

⁹⁶ California Government Code, s. 12940 (2018) ("It is unlawful ... for an employer to discriminate on the basis of ... genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation."); (2018) 41 Code of Federal Regulations, s. 60-20.8 (prohibiting sexual harassment); Internal Revenue Service News Release FS- 98-11 (Apr. 1, 1998) (outlining Internal Revenue Service's policy on sexual harassment).

⁹⁷ Civil Rights Act 1964, 42 U.S.C., s. 2000e-2 (1964). The EEOC is tasked with enforcing Title VII, the Americans with Disabilities Act, and the Age Discrimination in Employment Act. 42 U.S.C., s. 2000e-4 (2018) (consolidating enforcement authority for federal employment discrimination statutes in the EEOC).

⁹⁸ Civil Rights Act 1964, 42 U.S.C., s. 2000e-12 (2018) ("The Commission shall have authority from time to time to issue, amend, or rescind suitable procedural regulations to carry out the provisions of this subchapter."); see also *EEOC v Commercial Office Products Co.*, (1988) 486 U.S. 107, 116 (deferring to the EEOC's interpretation in a procedural regulation).

⁹⁹ *General Elec. Co. v Gilbert*, (1976) 429 U.S. 125, 141. The court's conclusion was controversial. The amendment to the House bill, which gave the EEOC authority to issue "procedural" regulations was introduced two days before passage and adopted without debate. See (1964) 110 Congressional Records 2575. This suggests that Congress may not have aimed to curtail the EEOC's law-making power. Nonetheless, the distinction between substantive and procedural regulation is rarely debated. "Substantive law largely affects behaviour through procedure" whereas procedural law "sets out the rules for enforcing substantive rights." P.T. Baumann et al., "Substance in the Shadow of Procedure: The Integration of Substantive and Procedural Law in Title VII Cases", (1992) 33(2) *Boston College Law Review*, pp. 211 and 216; *Byrd v Blue Ridge Rural Electric Cooperative Inc.*, (1958) 356 U.S. 525 (holding that whether a judge or jury decides the status of an employee is a procedural issue); 22 Code of Federal Regulations 40.24(b) (2018) (defining prostitution, a substantive law).

¹⁰⁰ R.H. White, "The EEOC, the Courts and Employment Discrimination Policy: Recognizing the Agency's Leading Role in Statutory Interpretation", (1995) 51 *Utah Law Review*, pp. 51 and 93 (explaining the EEOC's law-making limitation).

Although, the EEOC may not legislate, the agency is not necessarily barred from giving meaning to Title VII. In fact, it is plausible that “Congress denied the EEOC the power to fill in statutory gaps while implicitly delegating the power to interpret statutory ambiguities.”¹⁰¹ Nonetheless, there is uncertainty as to whether the EEOC’s interpretations of Title VII are entitled – as seen in *Chevron U.S.A., Inc. v Natural Resources Defence Council, Inc.* – to deference.¹⁰² That is, whether federal courts are compelled to defer to the government agency’s interpretation of the statute which it administers.¹⁰³

The EEOC’s mandate to enforce Title VII indicates that some level of statutory interpretation must occur in particular; the EEOC must determine whether conduct constitutes discrimination. Prior to filing a Title VII lawsuit alleging discrimination, employees must file charges with the EEOC.¹⁰⁴ Barring voluntary settlement between parties, the

¹⁰¹ *Ibid*; *Griggs v Duke Power Co.*, (1971) 401 U.S. 424, 424 (deferring to the EEOC’s “Uniform Guidelines for Employee Selection Procedures” because the guidelines related to the *methods* of proving whether an employment test was “job-related,” rather than a statutory interpretation); *Hall v Gus Construction Co.*, (8th Cir. 1988) 842 F.2d 1010, 1013 – 1016 (applying EEOC guidelines in finding employer liability for abusive treatment of women by male co-workers); *Yates v Avco Corp.*, (6th Cir. 1987) 819 F.2d 630, 634 – 635 (employing EEOC guidelines in finding that employer knew or should have known supervisor was sexually harassing women); *Henson v City of Dundee*, (11th Cir. 1982) 682 F.2d 897, 903 - 905 (applying EEOC guidelines in finding employer knew about hostile work environment, and was therefore liable for sexual harassment).

¹⁰² (1984) 467 U.S. 837, 842-844 (“If the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency’s answer is based on a permissible construction of the statute.”).

¹⁰³ *Ibid*; J. A. Yavelberg, “The Revival of *Skidmore v Swift* Judicial Deference to Agency Interpretations after *EEOC v ARAMCO*” (1992) 42 *Duke Law Journal*, pp. 166 and 192 (arguing that all EEOC rulings are ineligible for *Chevron* deference); A.W. Blumrosen, “Society in Transition IV: Affirmation of Affirmative Action Under the Civil Rights Act of 1991”, (1993) 45 *Rutgers Law Review*, pp. 903 and 910 (asserting that the EEOC’s Uniform Guidelines are entitled to *Chevron* deference because other agencies participating in development of guidelines have substantive rulemaking powers); *Supra* n 100, at p. 94 (“Agency’s substantive rulemaking powers supports *Chevron* deference even though agency lacks cease-and-desist power.”). This issue of ascribing *Chevron* deference to the EEOC was raised in *Garcia*, where the Supreme Court denied certiorari. *Garcia v Spun Steak Co.* (1994) 114 S. Ct. 2726, 2726 (denying cert.).

¹⁰⁴ The legal process for filing discrimination claims differs based on the employer. See EEOC, “Questions and Answers: The Application of Title VII and the ADA to Applicants or Employees Who Experience Domestic or Dating Violence,

EEOC investigates the claim and concludes on whether there is reasonable cause to believe a violation of Title VII occurred. If the EEOC determines that a claim lacks merit, the employee retains the right to sue in federal court.¹⁰⁵ On the other hand, if the EEOC finds that discrimination likely occurred, the agency seeks resolution through an informal voluntary process called conciliation. In the event that conciliation does not succeed, the EEOC has discretion to litigate the violation in federal court. Again, the employee may file a lawsuit if the EEOC does not.¹⁰⁶ Thus, to meet Congress' goal of administratively resolving employment disputes, the EEOC requires some interpretive power to adjudicate claims.¹⁰⁷

Nonetheless, the EEOC's impact is far from abysmal. In fiscal year 2016, the agency resolved 97,443 charges and reached more than 315,000 members of the workforce.¹⁰⁸ Of \$482 million secured for victims of workplace discrimination, \$347.9 million was attained through administrative mediation, conciliation, and settlements.¹⁰⁹ When administrative solutions fail, the EEOC considers several factors in deciding whether to file a lawsuit. These include the strength of

Sexual Assault, or Stalking", available at <https://www.eeoc.gov/laws/guidance/questions-and-answers-application-title-vii-and-ada-applicants-or-employees-who> (accessed 13 June 2020) (explaining that private sector employees file a "charge of discrimination" with the EEOC and federal government employees file an "EEOC complaint" with their contracting agency); EEOC, "Milestones: 1965", available at <https://www.eeoc.gov/eeoc/history/35th/milestones/1965.html> (accessed 8 November 2018) (asserting that Title VII requires the EEOC to defer charges to state or local Fair Employment Practices Agencies (FEPA) so that attempts to resolve disputes are first undertaken under local laws).

¹⁰⁵ EEOC, "What You Can Expect after a Charge is Filed", available at <https://www.eeoc.gov/employers/process.cfm> (accessed 8 November 2018) (explaining the process of resolving claims).

¹⁰⁶ *Ibid.* Filing EEOC claims and federal lawsuits based on sexual harassment are subject to time limitations.

¹⁰⁷ *Supra* n 100, at p. 54 ("One would suppose it is the EEOC to whom Congress, expressly or impliedly, confided the authority to interpret the laws administered by that agency.").

¹⁰⁸ EEOC, "What You Should Know: EEOC's Fiscal Year 2016 Highlights", available at https://www.eeoc.gov/eeoc/newsroom/wysk/2016_highlights.cfm (accessed 8 November 2018).

¹⁰⁹ *Id.* The strength of the agency's voluntary mediation program is evidenced by its seventy-six percent success rate. *Id.*

evidence, the particulars of the case, and perhaps most importantly, the impact of the specific litigation in combating workplace discrimination generally.¹¹⁰

The EEOC recognizes that eliminating employment patterns that discriminate against a class of individuals is critical to ensuring safe workplaces. As a result, the agency prioritizes the eradication of systemic discrimination in workplaces.¹¹¹ Within administrative contours for instance, the EEOC settled a case alleging sexual harassment and retaliation against a class of Latino farm workers for \$1.05 million.¹¹² The agency also secured a consent decree, which provides for affirmative action goals for women applicants.¹¹³ On the litigation end, in fiscal year 2014, twenty-five percent of the EEOC's active court docket involved challenges to systemic discrimination.¹¹⁴ One of such cases involved eighty-two women who were subjected to sexual assaults, sexual solicitations, derogatory comments, groping and pornographic displays.¹¹⁵ That case, which was settled for \$8

¹¹⁰ EEOC, "About EEOC", available at <https://www.eeoc.gov/eeoc/> (accessed 8 November 2018) (mentioning the EEOC's litigation considerations).

¹¹¹ EEOC, "Systemic Discrimination", available at <https://www.eeoc.gov/eeoc/systemic/index.cfm> (accessed 8 November 2018) (explaining the EEOC's mandate to tackle systemic discrimination).

¹¹² EEOC, "Rivera Vineyards Settles EEOC Suit Alleging Sexual Harassment, Retaliation, Job Segregation", available at <https://www.eeoc.gov/eeoc/newsroom/release/6-15-05.cfm> (accessed 3 June 2020).

¹¹³ *Ibid*; EEOC, "ABM Industries Settles EEOC Sexual Harassment Suit for \$5.8 Million" available at <https://www.eeoc.gov/newsroom/abm-industries-settles-eeoc-sexual-harassment-suit-58-million> (accessed 3 June 2020) (reporting \$5.8 million settlement of case where twenty-one Hispanic female janitorial workers were subjected to unwelcome touching, explicit sexual comments and requests for sex); EEOC, "Pitre Car Dealership to Pay over \$2 Million to Resolve EEOC Same-Sex Sexual Harassment Suit", available at <https://www.eeoc.gov/eeoc/newsroom/release/4-1-14.cfm> (accessed 3 June 2020) (resolving a class claim involving severe same-sex sexual harassment and retaliation for over \$2 million).

¹¹⁴ EEOC, "What You Should Know: The EEOC, Conciliation, and Litigation", available at https://www.eeoc.gov/eeoc/newsroom/wysk/conciliation_litigation.cfm (accessed November 8 2018).

¹¹⁵ EEOC, "International Profit Associates to pay \$8 Million for Sexual Harassment of Eighty-Two Women", available at

million, as well as subsequent wins, suggest that the EEOC is at least doing something right.¹¹⁶ Curbing systemic discrimination involves uprooting sexual harassment by instilling preventive measures.

Prevention is the most effective weapon against sexual harassment.¹¹⁷ As the EEOC's Select Task Force on the Study of Harassment in the Workplace reported, majority of individuals who suffer from workplace harassment do not report their experiences.¹¹⁸ To the contrary, victims tend to ignore their harassers, endure discriminations, or deny the weight of situations.¹¹⁹ Thus, it is imperative that the EEOC enforces strong policies that deter workplace sexual harassment in the first place.

3.2. Statutory Reforms Tackling Sexual Harassment since #MeToo

Despite the EEOC's effort to implement Title VII, the #MeToo movement indicates that more comprehensive mechanisms against sexual harassment are necessary. Since the #MeToo movement began, state and federal legislatures in the United States have been pressured to hold hearings and introduce bills that address sexual harassment.¹²⁰ For instance, Maryland, Illinois, Louisiana, New Hampshire and Delaware have criminalized sexual relations between law enforcement and people in their charge.¹²¹ Yet, few new laws substantially remove barriers to eliminating workplace sexual harassment. At the state level, a number of laws have been passed but majority are limited in scope.¹²²

<https://www1.eeoc.gov/eeoc/newsroom/release/3-28-11a.cfm?renderforprint=1> (accessed 3 June 2020).

¹¹⁶ *Ibid.*

¹¹⁷ *Infra* n 180 and 182 (and accompanying text).

¹¹⁸ EEOC, "Report of the Co-Chairs of the Select Task Force on the Study of Harassment in the Workplace 16", available at https://www.eeoc.gov/eeoc/task_force/harassment/report_summary.cfm (accessed 3 June 2020) ("Examining the myriad and complex issues associated with harassment in the workplace.").

¹¹⁹ *Ibid.*

¹²⁰ *Supra* n 81.

¹²¹ *Ibid.*

¹²² A USA Today study found only two state bills that passed in 2017, which address two or more recommendations from anti-sexual harassment activists. Vermont law now prohibits mandatory non-disclosure agreements for sexual

Even less assuring, Congress has not passed any laws related to sexual harassment in the workplace, not even regarding its own procedure surrounding claims against congresspersons, which lags behind EEOC standards.¹²³

Senator Speier's 2014 proposal that there be mandatory sexual harassment training in Congress "was rebuffed by the Chair of the committee who wouldn't even take it up as an amendment in the committee let alone on the floor."¹²⁴ Fast-forward to the #MeToo era, a letter from 1,400 former congressional staffers urged leadership to mandate harassment training and reform the system for filing complaints.¹²⁵ Consequently, the House passed an amendment to the Congressional Accountability Act to "strengthen victims' rights, require third-party investigations and hold members personally financially liable for settlements."¹²⁶ Negotiations to rectify this bill in Senate have hit more substantial roadblocks as major provisions that deter sexual harassment have been protested.¹²⁷ Congressional action is paramount to prevent future victims of sexual harassment from remaining silent.

Federal legal reforms are imperative because a person's right to safe working environments should not be contingent on where they live.¹²⁸ Comprehensive federal workplace sexual harassment laws can best be instituted in three ways. First, Congress can pass a separate statute,

harassment, extends sexual harassment protections to independent contractors, and allows auditing workplaces for compliance. New Delaware law now makes employers responsible for sexual harassment when the employer fails to take corrective action, prevents employers from retaliating against an employee for filing a discrimination charge, and empowers the Department of Labour to investigate violations.

¹²³ ACLU, "Congress: In the Age of #MeToo, Hold Yourself Accountable for Harassment and Discrimination", available at <https://action.aclu.org/petition/congressional-accountability> (accessed 8 November 2018) (explaining that the "current system puts the onus on the victim, does little to address the unequal power dynamics between victims and perpetrators, and often re-traumatizes survivors").

¹²⁴ *Supra* n 81.

¹²⁵ *Ibid.*

¹²⁶ *Ibid.*

¹²⁷ *Ibid.*

¹²⁸ *Infra* sub-subsection 3.2.2.

which goes in-depth into workplace sexual harassment. While this path is most efficacious, it is unlikely that 2018's partisan Congress would pass such legislation.¹²⁹ Second, Congress can provide the EEOC with the authority to make substantive rules.¹³⁰ Such agency power will allow for flexibility and real-time decisions that enhance the EEOC's capacity to enforce Title VII. Third, Congress can amend Title VII to ensure fundamental protections are available to all. This involves clarifying the parameters of sex-based discrimination and incorporating suggested reforms into legislation. Regardless of the process, as a result of the #MeToo movement, the American Civil Liberties Union, Leadership Conference on Civil and Human Rights, National Women's Law Centre, and over thirty other undersigned organizations urge lawmakers to eliminate workplace sexual harassment through numerous proposed reforms.¹³¹

This section focuses on those proposed reforms which may be juxtaposed in the Nigerian context. These include promoting workplace gender equality, expanding legal protections against harassment to all working people, and allocating greater resources to the EEOC.¹³² Subsection 3.3 analyses each proposed reform in turn as they highlight areas in which the United States' system falls short, despite pre-existing mechanisms. This provides a background for Section 4.0, which offers a blueprint for sexual harassment protections in Nigeria.

¹²⁹ B. Bowman, "Partisan Divide in US Congress the Worst It's Ever Been" available at, <https://theglobepost.com/2018/10/01/polarization-politics-study/> (accessed 3 June 2020) ("Polarization between Democrats and Republicans in the U.S. Congress is the worst it's ever been, which makes it difficult to make any progress on social or economic policies, a new study released by Michigan State University found").

¹³⁰ *Supra* sub-subsection 3.1.2.

¹³¹ National Women's Law Centre, "A Call for Legislative Action to Eliminate Workplace Harassment" available at <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2018/10/Workplace-Harassment-Legislative-Principles.pdf> (accessed 3 June 2020).

¹³² *Ibid.*

3.2.1. Workplace Gender Equality

Sexual harassment is a by-product of workplace sex segregation and inequality.¹³³ Thus, eliminating patterns of inequality is critical to giving marginalized individuals the power to stand against discrimination.¹³⁴ Dismantling unnecessary workplace hierarchy requires employment law reforms that restrain arbitrary authority and enable work - life balance.¹³⁵ Suggested reforms include amending the *Family and Medical Leave Act*, 1993 (FMLA) by mandating paid maternity leave,¹³⁶ passing the proposed *Paycheck Fairness Act* “requiring employers to demonstrate that wage differentials are based on factors other than sex,”¹³⁷ and enacting the proposed Schedules that allow the *Work Act* prohibit unfair and unpredictable scheduling practices that hinder the success of women in the workplace.¹³⁸ Consequently, groups like 5050by2020 advocate for increased female participation in core leadership positions in Hollywood¹³⁹ and others like #Angelsaim for gender parity in Silicon Valley.¹⁴⁰ Laws must be formulated to alter

¹³³ V. Schultz, “Reconceptualizing Sexual Harassment, Again”, (2018) 128 *Yale Law Journal*, pp. 22 and 42.

¹³⁴ *Ibid.*

¹³⁵ C. Ingraham, “The World’s Richest Countries Guarantee Mothers More Than a Year of Paid Maternity Leave, the U.S. Guarantees Them Nothing”, available at <https://www.google.com/amp/s/www.chicagotribune.com/business/ct-biz-guaranteed-maternity-leave-20180206-story.html%3foutputType=amp> (accessed 3 June 2020) (“President Bill Clinton signed the Family and Medical Leave Act, which included a provision giving eligible workers 12 weeks of *unpaid* leave to care for a new child.” (emphasis added)).

¹³⁶ *Ibid.*

¹³⁷ ACLU, “Equal Pay for Equal Work: Pass the Paycheck Fairness Act”, available at <https://www.aclu.org/other/equal-pay-equal-work-pass-paycheck-fairness-act> (accessed 26 November 2018).

¹³⁸ Schedules That Work Act, (2017) H.R. 2942, 115th Cong.

¹³⁹ “5050by2020”, available at <https://5050by2020.com> (accessed 8 November 2018) (“What does 50/50 mean? It means reimagining leadership to reflect all of us.”).

¹⁴⁰ #Angels, “The #ANGELS Story”, available at <https://www.helloangels.co/about> (accessed 8 November 2018) (“Our mission is to get more women on the cap tables of successful start-ups.”); Letter from M. Goodman, Dir., LGBTQ, Gender & Reprod. Justice Project, ACLU of Southern California, to A. Y. Park, Regional Attorney, EEOC L.A. District Office, available at <https://perma.cc/PDE5-NVRB> (accessed 13 June 2020) (demanding the EEOC to investigate television industry’s sex segregation and discriminatory use of recruiting practices).

power structures and reshape the mindsets of co-workers and supervisors who ascribe women as lesser.

Because workplace upper management is overwhelmingly occupied by men and bottom ranks are disproportionately filled by women, men may learn a false sense of superiority.¹⁴¹ Accordingly, the link between sexual harassment and sex segregation can be erased when there is “equal representation, opportunities, benefits and pay for all women workers” in every industry and arm of government.¹⁴² After all, there is a reason why most cases of sexual harassment are male-harasser female-victim:¹⁴³ “There is massive male sexual entitlement ... public spaces are run by men” who are enabled by social norms.¹⁴⁴ If women occupy equal positions of power, sexual harassment is less likely to be normative and protections are more likely to be ensured.

3.2.2. Title VII Coverage

Title VII only applies to employers with a minimum of fifteen employees.¹⁴⁵ “As long as an employer hires no more than fourteen

¹⁴¹ M. Puente, “Women are Rarely Accused of Sexual Harassment, and There’s a Reason Why”, available at <https://www.usatoday.com/story/life/2017/12/18/women-rarely-accused-sexual-harassment-and-theres-reason-why/905288001/> (accessed 3 June 2020) (explaining the power imbalance that promotes sexual harassment).

¹⁴² N.Y. Times, “Open Letter from Time’s Up”, available at <https://www.nytimes.com/interactive/2018/01/01/arts/02women-letter.html> (accessed 3 June 2020).

¹⁴³ *Supra* n 141.

¹⁴⁴ Senthilingam, *supra* n 3. In the restaurant industry for example, female employees often tolerate sexual harassment to get tips. Activists have beckoned on Congress to require minimum wage be paid to tipped workers. See also *supra* n 131. Since the #MeToo movement, there has been an increase in EEOC filings involving sexual harassment in restaurants. See, Press Release, EEOC, “EEOC Sues Daisy Dukes & Boots Saloon for Sexual Harassment and Retaliation”, available at <https://www.eeoc.gov/eeoc/newsroom/release/10-2-18.cfm> (“A male assistant manager of Daisy Dukes’ Chesterfield, VA restaurant sexually harassed Michelle Henard and other female employees.”); EEOC, “Las Trancas Restaurant to Pay \$66,598 To Settle EEOC Sexual Harassment and Retaliation Lawsuit”, available at <https://www.eeoc.gov/eeoc/newsroom/release/8-9-18c.cfm> (accessed 3 June 2020) (“A restaurant in Martinsburg, W.V., has agreed to pay \$66,598 and provide other relief to settle an employment discrimination lawsuit filed by the [EEOC].”).

¹⁴⁵ Civil Rights Act 1964, (2018) 42 U.S.C., s. 2000e. See, *Arbaugh v Y & H Corp.* (2006) 126 S.Ct. 1235, 1245 (holding that an employer cannot seek to dismiss

employees, it can refuse to hire women, Moslems, or disabled persons, and it will not be in violation of federal discrimination law.”¹⁴⁶ Although an employer who is not covered by federal law may be subject to state or local anti-discrimination laws, many states have similar limitations on which employees can bring claims.¹⁴⁷ As such, Congress must address Title VII’s coverage-based loopholes, which render reporting sexual harassment an “unthinkable risk.”¹⁴⁸

Expanded federal protection is especially important for those who occupy positions as independent contractors, farm workers, and domestic workers because they currently fall outside the purview of Title VII.¹⁴⁹ As of 2009, the United States Census Bureau reported that there are 1.5 million domestic workers in the United States.¹⁵⁰ These high-risk workers are predominantly immigrant women and women of

Title VII claims *after* trial based on an assertion that they had fewer than fifteen employees).

¹⁴⁶ R. Carlson, “The Small Firm Exemption and the Single Employer Doctrine in Employment Discrimination Law”, (2006) 80 *St. John’s Law Review*, p. 1197.

¹⁴⁷ For instance, in the states of Oklahoma, South Carolina, Texas, Utah, West Virginia, Nebraska, Nevada, Mississippi, Georgia, Florida, Arkansas, and Alabama, anti-discrimination laws only cover workplaces with at least fifteen employees. See Workplace Fairness, *Discrimination Claims State Laws*, available at <https://www.workplacefairness.org/minimum> (accessed 8 November 2018) (summarizing state anti-discrimination laws).

¹⁴⁸ Time Staff, “700,000 Female Farmworkers Say They Stand with Hollywood Actors Against Sexual Assault”, available at <http://time.com/5018813/farmworkers-solidarity-hollywood-sexual-assault/> (accessed 3 June 2020); J. Ross, “Sexual Assault Endured by Domestic Workers Overlooked in National Conversation”, *Wash. Post*, available at https://www.washingtonpost.com/news/post-nation/wp/2017/11/29/sexual-assault-endured-by-domestic-workers-overlooked-in-national-conversation/?utm_term=.f9bda4f0bb61 (accessed 3 June 2020) (“Today black, Latina and Asian women comprise forty percent or more of the nation’s nannies, maids and home health-care aides.”).

¹⁴⁹ Ross, *ibid.* (“A home health-care aide, had been on the job just a few weeks when her client, a mentally sharp but physically fragile elderly man, grabbed her breast”).

¹⁵⁰ A.J. Hiller and L.E. Saxtein, “Falling Through the Cracks: The Plight of Domestic Workers and Their Continued Search for Legislative Protection”, (2009) 27 *Hofstra Labour and Employment Law Journal*, p. 233 (discussing the loopholes in Title VII, which adversely impact domestic workers); see also *supra* n 131 (calling for Congress to extend federal protection to individuals who are not considered “employees,” such as independent contractors and unpaid interns).

colour facing intersectional disadvantages imposed by race and national origin.¹⁵¹ Considering that these workers are usually the only employee in their workplace, their employers are often exempt from Title VII protections.¹⁵² While #TimesUp, a legal defence fund with about \$13 million in donations, helps protect less privileged women from sexual misconduct and retaliation, reformers argue that Congress should cover *all* workers under Title VII, so that every person who suffers sexual harassment is availed core federal protections against workplace harassment.¹⁵³

During Senate debate on Title VII, Senator Cotton warned that if the statute was applied to all employers and the EEOC had to investigate every complaint, it would require a “small army” for enforcement.¹⁵⁴ Yet, reformers argue that it is injudicious to turn a blind eye to harassment simply because its resolution may be costly.¹⁵⁵ Rather, it is imperative to reach a practical solution that manages resources effectively. Establishing full Title VII coverage and administrative

¹⁵¹ E. Lewis, “Who Is at Highest Risk of Sexual Harassment?”, available at, <https://www.aclu.org/blog/womens-rights/womens-rights-workplace/who-highest-risk-sexual-harassment> (accessed 3 June 2020) (“Women who work in low-wage positions also often face intersectional disadvantages”); see also Ross, *supra* n 148 (“In passing some of the nation’s core labour laws ... lawmakers intentionally excluded occupations in which most of the nation’s black, Latino and Asian workers were employed such as domestic work and farm labour.”).

¹⁵² S. Bapat, “Domestic Workers Face Rampant Harassment on the Job, with Little Protection”, available at https://www.salon.com/2017/11/30/domestic-workers-face-rampant-harassment-on-the-job-with-little-protection_partner/ (accessed 13 June 2020) (“These workers are isolated ... They are alone with their perpetrators, and they’re trying to keep their job”); Ross, *supra* n 148.

¹⁵³ C. Buckley, “Powerful Hollywood Women Unveil Anti-Harassment Action Plan”, available at https://www.nytimes.com/2018/01/01/movies/times-up-hollywood-women-sexual-harassment.html?rref=collection%2Fbyline%2Fcara-buckley&action=click&contentCollection=undefined®ion=stream&module=stream_unit&version=latest&contentPlacement=1&pgtype=collection&_r=0 (accessed 3 June 2020) (explaining #TimesUp’s legal defence fund aimed to help less privileged protect themselves from sexual misconduct).

¹⁵⁴ (1964) 110 Congressional Record S13086 (statement of Sen. Cotton).

¹⁵⁵ P. Jenoff, “As Equal as Others: Rethinking Access to Discrimination Law”, (2012) 81(1) *University of Cincinnati Law Review*, pp. 85 and 99 (“Even accepting the argument that complying with employment discrimination laws and defending cases that arise under them is costly, there are still compelling arguments against the minimum employees requirement as presently codified.”).

efficiency can be achieved using varied routes. First, the EEOC can be restructured similar to the National Labour Relations Board (NLRB), which adopted self-tailored jurisdictional limits to manage its administrative resources.¹⁵⁶ Second, Title VII's small business exemption can be tailored to particular businesses and evolved according to the demands on the EEOC's resources.¹⁵⁷ Third, Congress can adopt a Title VII coverage exemption that allows any employee bring sexual harassment claims.¹⁵⁸ Finally, Congress can implement federal laws similar to those in New York, California, and Oregon, known as Domestic Worker Bill of Rights.¹⁵⁹ Regardless of how Congress decides to extend protection, increased EEOC funding is paramount for all individuals in all workplaces to be safeguarded against harassment and discrimination.¹⁶⁰

3.2.3. EEOC Funding

According to a US News Report, the average wait time to resolve private complaints at the EEOC is about 295 days.¹⁶¹ "The main reason that the EEOC's charge process is so problematic is that it has been subject to utterly unrealistic expectations," owing to its inadequate

¹⁵⁶ *Supra* n 146, at p. 1268 (explaining that the NLRB's earliest use of the single employer doctrine "was to reach firms that might be exempt from the Board's jurisdiction unless they were combined with affiliated firms into a single employer").

¹⁵⁷ *Ibid.* ("The EEOC's regulations are sufficiently vague to permit the EEOC a fair amount of latitude for applying the doctrine according to the demands on agency resources").

¹⁵⁸ A similar "exemption" is present for racial discrimination. Under the Civil Rights Act 1866, there is no threshold on how many employees a business must hire in order to incur liability based on racial discrimination. 42 U.S.C. § 1981 (2018).

¹⁵⁹ Ross, *supra* n 148. These state laws, Domestic Worker Bill of Rights, allow domestic workers file sexual harassment claims regardless of Title VII coverage. Importantly, many of these laws apply to employers who only employ one worker.

¹⁶⁰ *Infra* n 162 (and accompanying text).

¹⁶¹ J. Calfas, "A \$16 Million Win for #MeToo and Time's Up Was Slipped into Trump's Budget", available at <http://time.com/money/5221146/metoo-eeoc-funding-increase/>; (accessed 3 June 2020). See also Associated Press, "At the EEOC, harassment cases can languish for years", available at <https://wtop.com/national/2018/04/at-the-eeoc-harassment-cases-can-languish-for-years/> (accessed 3 June 2020) (averaging 543 days for federal employee complaints to be handled by the EEOC).

funding.¹⁶² Until the EEOC is fully funded beyond a “symbolic level,” the agency will continue to have too many complaints and too little resources to thoroughly handle them in a timely manner.¹⁶³

In response to criticisms surrounding the EEOC’s expertise and capacity to enforce sexual harassment laws, Congress granted a \$16 million increase in the EEOC’s budget for the 2018 fiscal year.¹⁶⁴ While one cannot conclude on the adequacy of the 2018 budget, funding is already furthering the EEOC’s reach. This is evidenced by the agency’s fifty percent increase in lawsuits challenging sexual harassment in fiscal year 2018 compared to fiscal year 2017.¹⁶⁵ What is certain is the need for sufficient baseline funding subject to contextual increase. Adequate baseline funding ensures that the EEOC can litigate a higher volume of cases and reach more industries, which are ripe with systemic discrimination.¹⁶⁶ To enforce Title VII’s mandate, the EEOC must have resources to train, investigate and litigate, such that employers are aware that sexual harassment will be not be tolerated.

Statutory reforms bridge legal gaps that enable sexual harassment. However, it is crucial that the EEOC is able to leverage these laws to enforce preventative measures and tackle discriminative practices when they arise.

3.3. Administrative Reforms Tackling Sexual Harassment Since #MeToo

Formal legislation is futile without proper implementation. While Title VII has loopholes, the #MeToo movement highlights the EEOC’s unsatisfactory enforcement of existing anti-sexual harassment provisions. In the wake of the movement, traffic on EEOC’s website

¹⁶² *Supra* n 5.

¹⁶³ *Ibid.*

¹⁶⁴ Calfas, *supra* n 161 (explaining that prior to increase, the EEOC faced staff cuts and hiring freezes).

¹⁶⁵ EEOC, “EEOC Releases Preliminary FY 2018 Sexual Harassment Data” available at <https://www.eeoc.gov/eeoc/newsroom/release/10-4-18.cfm> (accessed 3 June 2020).

¹⁶⁶ EEOC, “EEOC Sues Beavers’ Inc. / Arby’s For Sexual Harassment of Teen Workers available at <https://www.eeoc.gov/eeoc/newsroom/release/3-30-18.cfm> (accessed 3 June 2020) (explaining lawsuit against a team leader trainee who repeatedly pressured young female employees to have sex with him).

has doubled, which suggests that individuals are curious to understand the agency's role in preventing and punishing sexual harassment.¹⁶⁷ Given the need for administrative effectiveness in enforcing Title VII, this section examines challenges to the EEOC and limitations to achieving its objectives. In particular, sub-subsection 3.3.1 suggests that the EEOC should enforce anti-harassment compliance trainings and sub-subsection 3.3.2 urges that the agency conduct comprehensive investigations. This analysis, together with the proposals for statutory reform in subsection 3.2, aids in formulating a framework for an agency that effectively tackles workplace sexual harassment in Nigeria.

3.3.1. Anti-Harassment Compliance Trainings

Many workers are familiar with dreary trainings: They have gathered in a room, watched a formal PowerPoint presentation, which explains why sexual harassment is “bad,” and ticked boxes that confirm that they attended the compliance seminar. According to the Bureau of Labour Statistics, ninety-eight percent of companies have sexual harassment policies and seventy percent of employers mandate sexual harassment trainings.¹⁶⁸ Too often, these policies and trainings are used as shields by employers who seek to deflect liability.¹⁶⁹ In *Faragher v City of Boca Raton* and *Burlington Industries, Inc.* and *Burlington Indus. Inc. v Ellerth*, the Supreme Court determined that a company can avoid liability in a sexual harassment case if it showed that it had trained

¹⁶⁷ S.J. Pearlman and D.J. Moss, “Proskauer Delivers #MeToo Webinar with EEOC Commissioner Feldblum”, available at <https://www.lawandtheworkplace.com/2018/09/proskauer-delivers-metoo-webinar-with-eeoc-commissioner-feldblum> (accessed 3 June 2020) (“Visits to the EEOC website related to harassment issues have more than doubled with the expansion of the #MeToo movement.”).

¹⁶⁸ S.K. Johnson, J.F. Kirk, and K. Keplinger, “Why We Fail to Report Sexual Harassment”, available at <https://hbr.org/2016/10/why-we-fail-to-report-sexual-harassment> / (accessed 3 June 2020).

¹⁶⁹ *Supra* n 131. Poor employer incentive to actually prevent harassment is further evidenced by the fact that not many employers signed onto the EEOC’s “It’s on Us campaign,” which sought to provide workplaces with tools to prevent sexual harassment; Equality Now, “United States: End Sexual Harassment in the Workplace!”, available at https://www.equalitynow.org/united_states_end_sexual_harassment_in_the_workplace?locale=en (accessed 8 November 2018).

employees on its anti-harassment policies.¹⁷⁰ Consequently, rather than addressing unacceptable behaviour, many employers engage in symbolic compliance with the law.

These “formal trainings” are problematic because they fail to uproot the problem: preventing harassment and discrimination. The New York State legislature recognized these shortcomings and drafted an anti-sexual harassment training scheme, one of the most comprehensive in the United States. Starting October 2018, every employer in New York must adopt a model sexual harassment training program, which includes specific goals and means to achieve those goals.¹⁷¹ Similarly, the states of California, Connecticut, and Maine mandate such trainings for employers who meet a certain employee-count threshold.¹⁷²

While the EEOC cannot mandate compliance trainings due to the agency’s procedural-substantive law-making limitation,¹⁷³ they can adopt the administrative stance that employers must meet a certain “effective training” threshold in order to avert sexual harassment liability.¹⁷⁴ Blueprints for these trainings should be provided by the EEOC.

The EEOC is in the process of releasing updated enforcement guidelines on sexual harassment for employers.¹⁷⁵ These guidelines should incorporate “effective training” thresholds. An effective anti-sexual harassment training program is one that is properly tailored and

¹⁷⁰ *Burlington Industries Inc. v Ellerth* (1998) 118 S. Ct. 2257; *Faragher v City of Boca Raton* (1998) 118 S. Ct. 2275.

¹⁷¹ EEOC, “Report of the Co-Chairs of the Select Task Force on the Study of Harassment in the Workplace”, available at https://www.eeoc.gov/eeoc/task_force/harassment/upload/report.pdf (accessed 3 June 2020) (EEOC, Report of Co-Chairs). New York state law requires that anti-sexual harassment trainings: (i) be interactive; (ii) explain sexual harassment; (iii) provide examples of sexual harassment; (iv) provide information concerning remedies available to victims of sexual harassment; (v) provide information concerning complaint adjudication; and (vi) address responsibilities for supervisors.

¹⁷² *Ibid.*

¹⁷³ *Supra* sub-subsection 3.1.2.

¹⁷⁴ *Supra* n 171 (explaining that the EEOC sometimes seeks compliance training clauses in settlement agreements).

¹⁷⁵ *Calfas, supra* n 161.

continuous. Similar to the state of New York, the EEOC should implore employers to conduct annual and interactive trainings using audio-visuals aids and simulations.¹⁷⁶ Such trainings should confront conduct, which although might be legal, are unacceptable and might trigger future discrimination.¹⁷⁷ This involves incorporating elements of unconscious bias training and promoting an active bystander approach.¹⁷⁸ Importantly, individuals in a supervisory capacity should receive more rigorous and holistic coaching that emphasizes accountability and compels cultural transformation.¹⁷⁹

The EEOC can incite a culture shift on sexual harassment through outreach and educational services. The agency should have effective resources that employers can easily adapt to their specific business needs. Currently, the EEOC hires representatives who are available to provide free trainings to employers on a limited basis.¹⁸⁰ However, these trainings do not assist employers in educating *against* harassment prevention per se. Rather; they provide general information about the EEOC, their mandates, enforceable laws, and charge-complaint processes. Although these impart useful knowledge, they do not uproot the problem. While the EEOC's Training Institute offers fee-based trainings, which address prevention, these are unlikely to be utilized by small mom-and-pop businesses.¹⁸¹ Consequently, the EEOC should offer free comprehensive training resources that businesses can self-employ. Until there is a federal law, which requires compulsory and effective trainings, the EEOC should operate within its power to both provide effective training resources and incentivize employers to utilize them.

¹⁷⁶New York State, "Model Sexual Harassment Prevention Training", available at <https://www.ny.gov/sites/ny.gov/files/atoms/files/SexualHarassmentDRAFTModelTraining.pdf> (accessed 3 June 2020).

¹⁷⁷ *Supra* n 171, at p. 44.

¹⁷⁸ *Ibid*, at pp. 11 and 14.

¹⁷⁹ *Supra* n 177.

¹⁸⁰ EEOC, "Outreach, Education & Technical Assistance", available at <https://www.eeoc.gov/eeoc/outreach/index.cfm> (accessed 28 November 2018).

¹⁸¹ *Ibid*.

3.3.2. Comprehensive Investigations

About half of the EEOC's investigations on sexual harassment claims yield "no reasonable cause."¹⁸² That is, the agency does not find grounds for employer liability. This might account for why the percentage of employers who agree to mediate EEOC charges before investigations begin is considerably lower than the percentage of charging parties who agree to mediate.¹⁸³ Perhaps many employers simply do not think they will be found liable.

Employers are not ignorant in taking their chances. In seventy percent of cases closed in 2017, EEOC investigators determined that there was insufficient evidence to find that discrimination occurred.¹⁸⁴ This is not surprising seeing that the EEOC has limited resources and personnel to execute thorough evaluations of every claim.¹⁸⁵ As such, the agency prioritizes cases it believes are "strong" and often closes some without a full investigation. While this is a strategic decision, dismissing complaints without a fair process where all parties are heard can discourage workers from pursuing their claims. One way to ameliorate such budgetary concern is to promote confidential and/or anonymous reporting of harassment findings by laymen.¹⁸⁶ Budget aside, the EEOC should adopt an approach where they first and foremost, believe survivors.¹⁸⁷

¹⁸² EEOC, "Charges Alleging Sex-Based Harassment (Charges filed with EEOC) FY 2010 - FY 2018", available at https://www.eeoc.gov/eeoc/statistics/enforcement/sexual_harassment_new.cfm (accessed 8 November 2018).

¹⁸³ EEOC, "Enforcement", available at <https://www.eeoc.gov/enforcement> (accessed 8 November 2018).

¹⁸⁴ Associated Press, *supra* n 161.

¹⁸⁵ As of the writing of this Paper, the EEOC had 549 investigators handling the thousands of claims it receives; *Ibid*.

¹⁸⁶ *Supra* n 131 ("Require employers to provide multiple internal reporting mechanisms, including options for confidential and/or anonymous reporting.").

¹⁸⁷ M. Quinn, "As Sexual Harassment Reforms Stall in Congress, Statehouses Take the Lead", available at <http://www.governing.com/topics/politics/gov-sexual-assault-harassment-statehouse-congress-kavanaugh-ford.html> (accessed 13 June 2020) ("First and foremost, you have to believe survivors" ... you have to have an environment where people feel safe coming forward").

Evidently, “it’s easy to say there’s no reasonable cause if you don’t do an investigation.”¹⁸⁸ This was highlighted by the Supreme Court nomination hearings of Brett Kavanaugh, during which many called for a full FBI investigation into Dr. Blasey Ford’s sexual harassment allegations against him.¹⁸⁹ Believing survivors is imperative. That is not to say that the EEOC should rush to judgment against those accused of sexual misconduct. Rather, due process involving transparent and thorough investigations is required. It must find the balance between construing women as though they lack agency and dismantling power disparities that leave marginalized groups vulnerable.¹⁹⁰

In the event that a full investigation accurately yields “no reasonable cause,” claimants should be adequately protected against retaliation. Although federal law prohibits retaliation against those challenging harassment, studies have found that seventy-five percent of those who reported harassment experienced some form of pay cut, career impairment, or reputation damage.¹⁹¹ Thus, the EEOC should more effectively investigate actions, and the threat of actions, which instill fear and tend to keep individuals from stepping forward.

When individuals raise claims with “reasonable cause,” the EEOC should ensure that liable parties are proportionately penalized. In 2016, there was only a forty-four percent success rate for conciliation of charges after the agency found reasonable grounds for discrimination.¹⁹² It is no shock why employers may not take the administrative process seriously: The EEOC litigates less than eight percent of the cases where it believes discrimination occurred and conciliation proved unsuccessful.¹⁹³ These numbers indicate that a

¹⁸⁸ Associated Press, *supra* n 161.

¹⁸⁹ L.M. Lapidus, “A Full Investigation is Needed into the Sexual Assault Allegations against Brett Kavanaugh”, available at <https://www.aclu.org/blog/womens-rights/violence-against-women/full-investigation-needed-sexual-assault-allegations> (accessed 3 June 2020) (“It is critical that a confirmation vote be delayed until a thorough and transparent investigation can be conducted”).

¹⁹⁰ *Supra* n 77.

¹⁹¹ Equality Now, *supra* n 169.

¹⁹² *Supra* n 108.

¹⁹³ *Supra* n 114 (“When deciding whether to file a lawsuit, the EEOC considers several factors, including the seriousness of the violation, the type of legal issues

good number of employers escape repercussions for harassment. Given the current climate surrounding sexual harassment, the EEOC should employ a divide-and-conquer approach. The agency should strengthen collaborative efforts with state and local FEPAs, non-profits like the ACLU, and private law firms committed to pro bono.

Consequently, it is necessary that the EEOC performs more effective educational outreach that changes mindsets and dispels the culture of silence. When claims of sexual harassment arise, the EEOC should ensure that investigations are thorough and do not negatively impact the complainant.

Despite the United States' shortcomings, the state of sexual harassment laws in Nigeria is even direr. Evidence of rampant workplace sexual harassment, a culture of silence surrounding the discourse, and a lack of adequate legal protections to remedy the problem suggests that the Nigerian legislature can borrow from the strengths in the United States' system and imbibe reforms that bypass the United States' flaws. As Section 3.0 highlights, there is much to be done in strengthening sexual harassment protections in the United States. Title VII's minimal legislative history on discrimination on the basis of sex and the EEOC's substantive law-making restrictions have proven to be obstacles in the movement against sexual harassment. Consequently, statutory reforms which address gender parity, Title VII coverage, and EEOC funding are necessary. Notwithstanding loopholes in the law, the EEOC can more competently prevent sexual harassment by enforcing anti-harassment compliance trainings and conducting comprehensive investigations. These reforms can help in establishing a more efficient system in the United States as well as instituting an effective one at the outset in Nigeria, which adequately prevents, deters, and punishes sexual harassment.

in the case, the wider impact the lawsuit could have on the agency's efforts to combat workplace discrimination, and the resources available to litigate the case effectively.”).

4.0. IMPLEMENTING UNITED STATES' SAFEGUARD IN NIGERIA

Comprehensive sexual harassment protections in Nigeria are necessary. This Part proposes a two-pronged system in Nigeria: a statute and an effective agency to administer the law. In particular, this Part imports the United States' sexual harassment safeguards – along with their proposed reforms discussed in Section 3.0 – into the Nigerian context. Subsection 4.1 modifies the United States' system to propose a culturally ideal statutory and administrative structure that addresses sexual harassment in Nigeria. While the goal is to bypass the shortcomings of the United States' system, subsection 4.2 takes cognizance of the high rate of corruption and administrative mismanagement in Nigeria, and possible limitations to enforcing sexual harassment protections in the country.

4.1. Proposed Legal Protections against Sexual Harassment

As discussed in subsection 2.2, there is no national law in Nigeria which addresses workplace sexual harassment. While the NICN has ruled against sexual harassment using international law and has procedures for bringing sexual harassment claims,¹⁹⁴ there needs to be nationally entrenched sexual harassment laws. Not only will creating a national law educate individuals about their rights but statutory safeguards also inspire legitimacy, highlighting that the Nigerian government does not tolerate sexual harassment. The goal is not to eradicate core ethnic traditions but to incite a societal shift, which creates room for progressive culture while guaranteeing fundamental women's rights. This section proposes a culturally sensitive statute and agency, which address sexual harassment in Nigerian workplaces.

The analysis of United States' system in Section 3.0 shows that Nigeria requires a comprehensive statutory system that prevents workplace sexual harassment and encourages victims to bring claims without

¹⁹⁴ Rules of Civil Procedure 2017, Order 14 (Nigeria).

adverse repercussion.¹⁹⁵ On the federal level, statutorily addressing workplace sexual harassment in Nigeria can be done in one of two ways: The Nigerian parliament can amend the Nigerian Labour Act to include a provision against sexual harassment or it can pass an independent statute that bars sexual harassment across contexts. Given the tabled concerns surrounding the SHTEIB bill, it is too narrow and should extend beyond higher institutions to include workplaces, the latter route is more practical.¹⁹⁶ Moreover, an independent statute enables more in-depth provisions, bypassing statutory problems present in Title VII.¹⁹⁷

Regardless of which route is taken, workplace sexual harassment laws in Nigeria must provide maximum coverage. With over sixty percent of Nigeria's economy fuelled by the informal economy – “economic activities undertaken by individuals and organizations, which are not subject to full government regulations”¹⁹⁸ – it is even more pertinent that the country's workplace sexual harassment law has a broader

¹⁹⁵ Sub-subsection 3.1.2 (explaining the limitations to Title VII's vague prohibition of discrimination on the basis of sex).

¹⁹⁶ *Supra* n 12 (explaining that aiming to combat sexual harassment in tertiary institutions, the Nigerian Senate passed the Sexual Harassment in Tertiary Education Institution Bill (SHTEIB), which provides for a five-year imprisonment or N5 million fine [approximately \$13,800] as punishment for sexually harassing students).

¹⁹⁷ *Supra* n 90 (and accompanying text) (explaining that the single word “sex” has too little legislative history and provides poor guidance to the courts on how to resolve sexual harassment cases). Broadly defining statutory terms like “sex” might be difficult given the Nigerian Law Reform Commission's mandate to reform laws in consonance with prevailing societal norms. See *This Day*, *supra* n 71. Consequently, it is crucial to incorporate a public relations campaign along with the legal strategy: issue reports, push news headlines, and place prominent individuals at the forefront of the sexual harassment discourse.

¹⁹⁸ Proshare, “Informal Economy and Poverty Reduction in Nigeria”, available at <https://www.proshareng.com/news/NIGERIA%20ECONOMY/Informal-Economy-and-Poverty-Reduction-in-Nigeria/41237> (accessed 3 June 2020) (“The informal economy ... include(s) photography, catering, hairdressing, motorcycle services, tailoring, fashion designing, carpentry, painting, etc.”); “Nigeria's Informal Economy Accounts for sixty-five percent of GDP IMF”, available at <https://www.businessamlive.com/nigerias-informal-economy-accounts-65-gdp-imf/> (accessed 3 June 2020) (providing a statistical analysis of Nigeria's informal economy).

reach than Title VII.¹⁹⁹ Any and every Nigerian employee should be able to bring a sexual harassment claim.

To enforce the sexual harassment law, the Nigerian parliament should create an independent agency – one that works hand-in-hand with the NICN or is an offshoot of NICN.²⁰⁰ Firstly, the agency should be granted *substantive* rule-making power in order to efficiently resolve employment disputes.²⁰¹ Secondly, the agency should have the power to hold trials and litigate systemic discrimination.²⁰² These legal procedures, ideally the outcome of comprehensive investigations, should be granted a high degree of judicial deference.²⁰³ This ensures that civil and criminal penalties are enforceable. Thirdly, the agency should be allocated sufficient funding subject to supply-demand increase. As exemplified by the EEOC, this would certify that the agency has adequate resources to achieve its goals.²⁰⁴ Finally, the agency should be charged with conducting mandatory and effective anti-harassment compliance trainings to employers.²⁰⁵ These administrative provisions enable statutory protections.

A detailed statute and well-established agency are germane to minimizing workplace sexual harassment in Nigeria. Given the general

¹⁹⁹ Similar to state legislation in the United States, at least one Nigerian state has made plans to protect domestic workers. Ross, *supra* n 148; G. Salau, “Concerns Mount as Lagos Plans to Regulate Domestic Workers, Guards”, available at <https://guardian.ng/sunday-magazine/concerns-mount-as-lagos-plans-to-regulate-domestic-workers-guards/> (accessed 3 June 2020) (explaining Lagos states’ plan to regulate domestic workers).

²⁰⁰ CFRN (1999) (as amended), s. 254(c) (conferring NICN with jurisdiction over employment matters).

²⁰¹ White, *supra* n 100, at p. 96 (and accompanying text).

²⁰² BBC News, “Nigeria’s EFCC ‘Failing to Tackle Corrupt Politicians’”, available at <https://www.bbc.com/news/world-africa-14671687> (accessed 13 June 2020) (“Nigeria’s courts were sometimes “an obstacle to accountability”, with most of the EFCC’s big cases stalled for years without the trials commencing.” [internal quotation marks added]).

²⁰³ Yavelberg, *supra* n 103, at p. 192 (and accompanying text).

²⁰⁴ *Supra* sub-subsection 3.2.3.

²⁰⁵ *Supra* sub-subsection 3.3.1.

ineffectiveness of Nigerian administrative bodies,²⁰⁶ the success of a sexual harassment agency can strengthen other agencies.

4.2. Limitations to Proposed Protections against Sexual Harassment

Although an independent sexual harassment agency in Nigeria highlights that sexual harassment is not tolerated, social structures in Nigeria may limit its effectiveness. A 2009 audit found that virtually all administrative bodies in Nigeria mismanage government funds.²⁰⁷ Because statutes and administrative agencies do not exist in a vacuum, the high rate of corruption and general lack of government accountability in Nigeria pose a threat to the effectiveness of proposed sexual harassment protections.²⁰⁸

Corruption is so endemic in Nigeria that agents of the Economic and Financial Crimes Commission (EFCC) have told politicians that if bribed, “they would destroy documentation [needed] to launch an alleged investigation into mismanagement of public funds.”²⁰⁹ The high level of corruption in the country means that even though the proposed sexual harassment agency is allocated sufficient funds, their

²⁰⁶ *Supra* n 202 (explaining the EFCC’s ineffectiveness); O. Lanre and A. Kingimi, “At Least Four Killed in Boko Haram Attack on Nigerian City”, available at <https://www.reuters.com/article/us-nigeria-security/at-least-four-killed-in-boko-haram-attack-on-nigerian-city-idUSKBN1HX373> (accessed 3 June 2020) (noting the failure of Nigeria’s National Emergency Management Agency to suppress Boko Haram militants); A. Maja-Pearce, “Nigeria’s Power Problem”, available at <https://www.nytimes.com/2014/08/08/opinion/adewale-maja-pearce-nigerias-power-problem.html> (accessed 3 June 2020) (narrating the inability of former government-owned National Electric Power Authority to provide constant power supply); N. Eweka, “The Nigerian Police Force is Pitiful, Incompetent, Ineffective, Inefficient and Corrupt”, available at <https://dailytimes.ng/nigerian-police-force-pitiful-incompetent-ineffective-inefficient-corrupt/> (accessed 3 June 2020) (“The Nigerian Police Force is the worst in the world according to the World Internal Security and Police Index.”).

²⁰⁷ E.S.I. Ejere, “Promoting Accountability in Public Sector Management in Today’s Democratic Nigeria”, (2013) *Tourism and Management Studies*, p. 953.

²⁰⁸ *Infra* n 209 and 212.

²⁰⁹ BBC News, “Nigeria Anti-Fraud EFCC Agents Jailed for Taking Bribes”, available at <https://www.bbc.com/news/world-africa-19843161> (accessed 3 June 2020) (“Two anti-corruption agents in Nigeria have been given five-year prison terms for accepting bribes.”).

grant might be syphoned.²¹⁰ Consider for instance, an incident at the Nigerian Joint Admissions and Matriculations Board, where an employee alleged that a snake ate \$100,000.²¹¹ Such far-fetched stories are common. Nigerian agencies constantly evade accountability so much so that the Human Rights Watch asserted that “proven criminality is no bar to the highest echelons of politics in Nigeria.”²¹²

As of 2011, the EFCC had prosecuted thirty politicians, convicting four and incarcerating none.²¹³ The EFCC’s lack of accountability and its selectivity in investigations and prosecutions is somewhat attributed to its political reigns: It is used as a presidential weapon against political opponents.²¹⁴ “A situation where opportunistic and selective application of laws is the order of the day does not augur well for the vitality of rule of law.”²¹⁵ Rather, it facilitates corruption and impedes on fundamental human rights. Consequently, ensuring that the proposed sexual harassment agency is politically independent is pertinent to its legitimacy and effectiveness.²¹⁶

Drafting a progressive sexual harassment statute in Nigeria is necessary. But even more crucial is guaranteeing that said statute is properly implemented. Preventing and punishing sexual harassment

²¹⁰ *Supra* n 207 (“Due to the poor culture of accountability, corruption has become a way of life in Nigeria; to the extent that it is trite to say that officials are not only corrupt, but corruption is official.”).

²¹¹ BBC News, “Nigerian Snake Ate Millions of Naira, Clerk Says”, available at <https://www.bbc.com/news/world-africa-43030827> (accessed 3 June 2020).

²¹² *Supra* n 202 (“When a ruling party chief ... emerged from prison ... after serving a ... sentence following a landmark EFCC prosecution, he was treated to a rapturous welcome by members of Nigeria’s political elite...” [internal quotation omitted]).

²¹³ *Ibid.*

²¹⁴ Proshare “The Economic and Financial Crimes Commission’s (EFCC’s) Critical Role in Growing the Economy”, available at <https://www.proshareng.com/news/Nigeria%20Economy/The-Economic-and-Financial-Crimes-Commission’s--Efcc’s--Critical-Role-in-Growing-the-Economy-/14392> (accessed 3 June 2020).

²¹⁵ *Supra* n 207, at p. 957.

²¹⁶ J. Ibietan, “Corruption and Public Accountability in the Nigerian Public Sector: Interrogating the Omission”, (2013) 5(15) *European Journal of Business and Management*, pp. 41 and 47 (explaining that Nigeria’s administrative agency officials should be selected based on meritocracy and should be compelled to undergo public service trainings).

requires accountability and integrity from public officials. The Nigerian government must set the stage for a sexual harassment agency that is free from political influence, staffed based on meritocracy, and subject to checks and balances.

5.0. CONCLUSION

Since the #MeToo movement began in the United States, discourse surrounding sexual harassment has been brought to the forefront of political campaigns, board meetings, and even judicial hearings. Today, most people would agree that sexual harassment is foul. The challenge is doing something to tackle it. This is complicated by a lack of consensus around defining what constitutes sexual harassment and assessing how the problem should be ameliorated. In the United States, these questions have been tackled with a wide range of proposed reforms, which include remodelling Title VII and the EEOC. However, in a country like Nigeria where victims of sexual harassment rarely consider their experiences as sexual harassment, the problem becomes convoluted.

Sexual harassment is normalized in Nigeria, at least in part due to the lack of statutory and administrative protections in the country. To remedy the harm, it is imperative that the Nigerian parliament pass workplace sexual harassment protection laws promptly. Learning from the United States' context, a comprehensive statute that clearly prohibits sexual harassment is necessary in Nigeria. The vagueness of Title VII and its loopholes stalled progress in the fight against sex discrimination, a predicament that Nigeria does not necessarily have to experience. Rather, Nigeria's forward-thinking law must provide maximum coverage and exist alongside affirmative action policies.

While workplace gender equality minimizes Nigeria's culture of silence, victims of sexual harassment will only speak if they are guaranteed that their claims will be effectively resolved without repercussion. An effective administrative agency must be established to handle sexual harassment claims in Nigeria. Unlike the United States' EEOC, the Nigerian agency should have clear authority to issue substantive rules. With proper adjudicatory power, political independence, and adequate funding to issue comprehensive

investigations, victims of workplace sexual harassment have a high chance of achieving redress.

Yes, there is no clear-cut solution preventing harassment or ensuring that victims speak about their experiences. This article is cognizant of its seemingly utopic proposal: Given that Nigeria lacks workplace sexual harassment protections, “corruption is extolled as national culture,”²¹⁷ and patriarchy is deeply-ingrained in the country,²¹⁸ bypassing the #MeToo movement altogether requires a tremendous societal shift. National campaigns, awareness movements, and social media conversations are necessary. Yet, these are not mutually exclusive from this article’s proposed legal strategy. Instituting comprehensive sexual harassment protections in Nigeria bolsters social awareness and deters sexual harassers.

Functional sexual harassment protections in Nigeria have the power to incite change across other administrative agencies in the country. From the EFCC to the police force, proposals in this paper can be adapted to hold Nigerian officials accountable. Similarly, this paper’s blueprint can be modified to support countries like Mali, Russia, and Indonesia,²¹⁹ in designing functional statutory and governmental agency protections.

²¹⁷ C. Ojukwu and J.O. Shopeju, “Elite Corruption and the Culture of Primitive Accumulation in 21st Century Nigeria”, (2010) 1(2) *International Journal of Peace and Development Studies*, p. 15.

²¹⁸ The Nigerian parliament must manage legal pluralism to ensure the enforcement of sexual harassment laws in Northern Nigeria. While the proposed law can mandate enforcement regardless of contrary laws, legal pluralism is part of a larger problem that requires a broad solution in order to safeguard gender justice. See sub-subsection 2.2.2.

²¹⁹ World Policy Centre, “Is Sexual Harassment Explicitly Prohibited in the Workplace?”, <https://www.worldpolicycenter.org/policies/is-sexual-harassment-explicitly-prohibited-in-the-workplace> (accessed 2 January 2018) (listing countries without workplace sexual harassment prohibitions); UCLA Fielding, “Nearly 235 Million Women Worldwide Lack Legal Protections from Sexual Harassment at Work”, available at <https://ph.ucla.edu/news/press-release/2017/oct/nearly-235-million-women-worldwide-lack-legal-protections-sexual> (accessed 3 June 2020) (“More than one-third of the world’s countries (68) do not have any workplace-specific prohibitions of sexual harassment in place.”).

Sexual harassment protections are germane to gender justice. The time is up for requesting sex in exchange for movie roles, mandating “business meetings” in private hotel suites, and accusing victims of childishness when they call out sexual misconduct. Nigeria’s culture of silence must no longer be celebrated.