

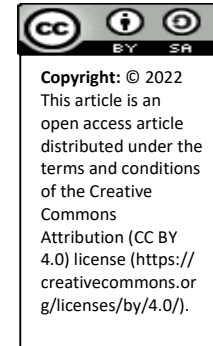
The Nigerian Bar Association Sexual Harassment Policy (NBASHP): Safeguarding Female Lawyers' Right To Dignity Of Human Person?

Faith Nwayemogho Opara

LLB (Hons) Ekpoma, LL.M (ABSU) BL,
Barrister and Solicitor of the Supreme Court of Nigeria.
Email: fynopara@gmail.com

David Tarh-Akong Eyongndi

LL.B (Hons) UNICAL, LL.M (Ibadan) BL,
Doctoral Candidate at University of Ibadan, Nigeria.
Lecturer, Private and Commercial Law Programme,
College of Law, Bowen University, Iwo, Osun State, Nigeria.
Email: david.eyongndi@bowen.edu.ng
eyongndidavid@gmail.com



Abstract

Sexual harassment is an ignominious act that female, due to their anatomical makeup are exposed to more than their male counterpart. Female employees, irrespective of status are predisposed to sexual harassment and the legal profession in Nigeria is not an exception. At the 61st Annual General Conference of the Nigerian Bar Association (NBA AGC) 2021, the NBA Women Forum (NBAWF) presented the NBA Sexual Harassment Policy (NBASHP) and same was adopted. The policy is aimed at curbing the menace of sexual harassment suffered by female lawyers in the workplace. The policy saddles stakeholders within the NBA with various responsibilities towards its promotion and implementation. No doubt, the initiative is a step in the right direction. This paper adopts analytic approach and rely on both primary and secondary data in interrogating whether this initiative is capable of safeguarding female lawyers' right to dignity of human person in Nigeria. It discusses challenges associated with the implementation of the policy, the role of stakeholders like International Federation of Women Lawyers (FIDA) and NBAWF. It examines the stance of the National Industrial

Court of Nigeria (NICN) towards workplace sexual harassment. It recommends public enlightenment, pro bono legal representation, expeditious trial of sexual harassment cases by NICN, sexual harassment victim support, adoption of naming and shaming policy by NBA against culprits of sexual harassment and award of punitive damages to victim as ways to ensure realisation of the policy's goals towards safeguarding female lawyers' right of dignity of human person.

Keywords: Dignity of human person, Female Lawyers, NICN, Nigeria, Sexual harassment, Victim

1: Introduction

Sexual harassment is an ignominious act that employees (irrespective of gender) are often exposed to at the workplace.¹ However, females' employees, owing to their anatomical makeup, are more predisposed to workplace sexual harassment than their male counterparts as noted by Eyongndi and Okongwu.² It is a menace that is not restricted to a particular workplace or location.³ Sexual harassment as an unfortunate workplace occurrence is an onslaught on the dignity of the human person of the victim and it inflicts mental, psychological and sometimes physical harm.⁴ There are domestic and international legal instruments that prohibits sexual harassment particularly at the workplace. Sexual harassment is a violent violation of the victim's right to dignity of his/her human person which is actionable at law.⁵ In 2010, the 1999 Constitution of the Federal Republic of Nigeria (Third Alteration) Act vest the National Industrial Court of Nigeria (NICN) with exclusive original civil jurisdiction to adjudicate over cases of workplace related sexual harassment.⁶ The legal profession in Nigeria is plagued by several menaces and workplace sexual harassment is one of such.⁷ Within the NBA, there are several interest groups which includes the NBA Women Forum and FIDA whose primary concern is the promotion

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¹ Aina D Aina-Pelemo, MC Mehanathan, and Pradeep Kulshrestha, "Indian Legal Profession and the Sexual Harassment of Women at Workplace Act" *Sexuality and Culture*, (2020) 24(1), 249-27.

² David T Eyongndi and Chi-Johnny Okongwu, "Interrogating the National Industrial Court Strides towards Attaining Safe Workplace for Nigeria's Female Worker" (2021) 6(1) *Bangladesh Institute of Legal Development Law Journal* 122-146 at 129. See also

Oluwatobiloba I. Ajay, "The Right to Work as a Social Right of Women in Nigeria" (2018) 9(4) *The Gravitas Review of Business and Property Law* 134.

³ Olugbenga J Ladebo, 'Sexual harassment in academia in Nigeria: How Real?' (2003).7/1 *African Sociological Reviews*, 117 at 121.

⁴ Halima Abiola '#NBAAGC Bullying and Sexual Harassment in the Legal/Justice Community by Ogaga Emoghwanre Esq.' (4 September, 2019) <<http://loyalnigerianlawyer.com/bullying-and-sexual-harassment-in-the-legal-justice-community-by-ogaga-emoghwanre-esq/>> accessed 20 February 2022.

⁵ See Section 34 of the 1999 Constitution of the Federal Republic of Nigeria Cap. C23 Laws of the Federation of Nigeria 2004.

⁶ Section 254C (k) of the 1999 CFRN (Third Alteration) Act, 2010.

⁷ Peter Ifeoma, "Read: Nigerian Female Lawyers Speak About Sexism in Practice – Do You Agree?" <https://dnlegalandstyle.com/2021/read-nigerian-female-lawyers-speak-about-sexism-in-practice-do-you-agree/> accessed 3 June 2022.

and protection of the interest and rights of female lawyers in Nigeria who form part of the vulnerable group in the legal profession.

Several female lawyers are victims of one form of sexual harassment or the other from their co-workers, clients and employers. The NBA as a professional body, is engaged in the promotion and protection of human rights, the rule of law and good governance in Nigeria.⁸ Its core value includes integrity, excellence, courage and professionalism. For its aim and objective to be realised, its members (males and females although there had been the belief that there are no women in the legal profession which had held sway for decades but recently, women groups within the NBA, are challenging and rightly disrupting this anachronistic *status quo* by advocating for the abandonment of the belief and recognition of both sexes within the profession because the cliché “there are no females at the bar” is a surreptitious and machiavellian means of covering the females under the shadow of males despite their distinction, elegance, prominence, and innumerable positive contribution to the legal profession), must be able to realise their full potentials in a healthy, safe and secured work environment.⁹

The scourge of sexual harassment as experienced more by female lawyers is a pathetic and worrisome trend which constitutes of the pervasive violation of human rights of the victim within the legal profession. If left unattended, it is capable of not only tarnishing the image of the profession but capable of preventing the NBA from realising its core values and protect its common dignity.¹⁰ It is an aberration and a serious dereliction from decency that is expected of the person of a legal practitioner. Eyongndi and Okongwu¹¹ have opined that sexual harassment is an irreparable violence against the victim as it causes mental health issues, ostracism, low self-esteem, among other negative impacts. To stem this ugly tide, the NBA Women Forum under the leadership of Professor Oluyemisi Bamgbose Senior Advocate of Nigeria (SAN), at the 61st Annual General Conference (AGC) of the Nigerian Bar Association which held from the 22nd to 29th day of October, 2021 at Port-Harcourt, in a concerted attempt to bridge the gap in the inadequacy and obsolescence of regulations on the issue of workplace related sexual harassment, presented the NBA Sexual Harassment Policy (NBASHP). The policy is a comprehensive document containing copious provisions on sexual harassment within the legal profession.

⁸ One of the objectives of the NBA is to promote rule of law.

⁹ Nkechi Uzpchukwu Okeke, Elizabeth Ifeoma Anierobi, and Anthony Obinna Ezennaka, “Impact of Sexual Harassment on Psychosocial Adjustment of Female Undergraduate Students in Higher Institutions in Anambra State” (2021) 8(1) *Social Sciences and Education Review*, 198-215.

¹⁰ Agency Report “Female Lawyers’ Harassment by Senior Colleagues takes Centre Stage at NBA Conference” <https://www.premiumtimesng.com/news/more-news/348900-female-lawyers-harassment-by-senior-colleagues-takes-centre-stage-at-nba-conference.html> Accessed 1 June 2022.

¹¹ David T. Eyongndi, and Chi-Johnny Okongwu, “Interrogating the National Industrial Court Strides towards Attaining Safe Workplace for Nigeria’s Female Worker” (2021) 6(1) *Bangladesh Institute of Legal Development Law Journal* 122-146.

Despite this effort, seeing that prior to the introduction of the NBASHP, there have been in existence legal frameworks against sexual harassment in the workplace in Nigeria nevertheless, the menace has persisted necessitating the adoption of the NBASHP.¹² This state of affair raises many issues. These issues include, can this policy (i.e. NBA sexual harassment policy) engender the safeguard of female lawyers' right to dignity of human person which sexual harassment is a violation? What is the stance of the NICN as a specialised court towards workplace related sexual harassment? What are the challenges that confronts the implementation of the NBA sexual harassment policy and the way out? What is the role of stakeholders within the legal profession in Nigeria in implementing the policy? This paper, while addressing these issues, focuses on determining whether or not the NBASHP is capable of safeguarding female lawyers' dignity to human person within and outside the legal profession.

The paper is divided into five parts. Part one contains the introduction. Part two examines legal frameworks on the protection and prohibition of workplace sexual harassment in Nigeria. Part three is an appraisal of the NBA Sexual Harassment Policy highlighting its provisions. Part four examines the stance of the NICN towards workplace sexual harassment in Nigeria. Part five examines the challenges confronting the implementation of the policy and the role of stakeholders within the legal profession towards its implementation. Part six contains the conclusion and recommendations.

2. Legal Frameworks on the Protection and Prohibition of Workplace Sexual Harassment in Nigeria

This section of the paper examines domestic, regional and internal legal frameworks on the protection and prohibition of sexual (particularly workplace) harassment in Nigeria. From the outset, it is apposite to state that most legal instruments do not make specific mention of sexual harassment in their prohibitive provision but uses terms that encapsulates sexual harassment. At the domestic level, section 34 of the 1999 Constitution of the Federal Republic of Nigeria (herein simply referred to as 1999 CFRN) guarantees every individual respect for the dignity of his/her human person; as such, no one shall be subjected torture or to inhuman or degrading treatment. The foregoing provision of the 1999 CFRN adequately capture sexual harassment. Sexual harassment is the worse form of torture or inhuman or degrading treatment to be inflicted on a human being which is a gross violation of the dignity of the human person of the victim.

¹² See Section 34 of the 1999 Constitution of Federal Republic of Nigeria Cap. C23 Laws of the Federation of Nigeria, 2004; Section 46 of the Violence Against Persons (Prohibition) Act 2015, Section 351, 352 and 360 of the Criminal Code Cap. C38, LFN, 2004; Sections 281, 282 and 285 of the Penal Code Cap. P. LFN 2004; Section 264 of the Criminal Law of Lagos State, 2011; Section 262, Kaduna State Penal Code Law, 2017; Section 18 of the Lagos State Prohibition Against Domestic Violence Law 2007; Section 63, The Ekiti State Gender-Based Violence (Prohibition) Law 2019.

Torture within the context of section 34(1) of the 1999 CFRN, cannot be restricted to physical infliction of bodily pain, to do so would be absurd. Sexual harassment inflicts not only physical but emotional and psychological pain on the victims leaving such a person traumatised and this is a form of torture.¹³ Section 245C (g) of the 1999 Constitution (Third Alteration) Act, 2010 (hereafter simply referred to as 1999 CFRN (Third Alteration) Act, 2010), which exclusive original civil jurisdiction on the NICN empowers the court to adjudicate over dispute relating to or connected with or arising from discrimination or sexual harassment from the workplace. Thus, by this provision, the NICN is constitutionally empowered to adjudicate over workplace sexual harassment cases and award damages accordingly. Order 14 Rule 1 of the National Industrial Court (Civil Procedure) Rules 2017 made by the President of the Court pursuant to 254F of the as1999 CFRN (Third Alteration) Act specifies forms of sexual harassment which a claimant may bring a claim for damages for.

These includes physical conduct of sexual nature which involves unwanted physical contact ranging from touching to sexual assault and rape, strip search by or in the presence of the opposite sex, gesture that constitutes the alleges sexual harassment, it could also be verbal sexual harassment which includes unwelcome innuendoes, suggestions and hints, sexual advances, comments with sexual overtones, sex related jokes or insults, or unwelcome graphic comments about a person's body, unwelcome inappropriate enquiries about a person's sex life and unwelcome whistling at a person or group of persons, any document, material or exhibit in further support of the claim. There is also non-verbal form of sexual harassment which includes unwelcome gestures, indecent exposures, and unwelcome display of sexually explicit pictures and objects. There is also *quid pro quo* sexual harassment which is where an owner, employer, supervisor, member of management or co-employee undertakes or attempts to influence or influences the process of employment, promotion, training, discipline, dismissal, salary increments or other benefits of an employee or job applicant in exchange for sexual favours.

Section 264 of the Criminal Law of Lagos State¹⁴ criminalises sexual harassment by providing that any person who sexually harasses another commits a felony and is liable on conviction to imprisonment for three years. By the use of "any person" by the law, it connotes that sexual harassment is not a menace that is suffered by any sex but by all (male and female). The Law defines sexual harassment as unwelcomed sexual advances, request for sexual favours and other visual, verbal or physical conduct of a sexual nature which when submitted to or rejected impliedly or expressly affects a person's employment or education opportunity or reasonably interferes with the person's work or educational performance; impliedly or explicitly suggests that submission to or rejection of the conduct will be a factor in academic or employment

¹³ Nicole Spector, "The Hidden Health Effects of Sexual Harassment" (Better by Today, 13 October, 2017) Available online at <https://www.nbcnews.com/better/health/hidden-health-effects-sexual-harassment-ncna810416> Accessed 1 April 2022.

¹⁴ Criminal Law of Lagos State Cap. C17, Laws of Lagos State 2015.

decisions, or creates an intimidating, hostile or offensive learning or working environment.

This law has criminalised sexual harassment and defines its scope which cut across employment and educational. Section 8 of the Employees Compensation Act¹⁵ entitles an employee to compensation for mental stress not resulting from an injury for which the employee is otherwise entitled to compensation if the mental stress is an acute reaction to a sudden and expected traumatic event arising out of or in the course of the employee's employment. Thus, an employee who is a victim of workplace sexual and has suffered the concomitant trauma of the violation, aside claiming damages against the perpetrator in person, is also entitled to payment of compensation by the employer. The utilitarian value of this provision is to jerk employers to take necessary precautionary measures (such having in place a workplace sexual harassment policy with strict punitive measure) towards attaining a sexual harassment free work environment.

Unfortunately, the Labour Act¹⁶ which is the principal legislation on labour and employment matters contains no provision on harassment or workplace sexual harassment. This shortcoming, is very difficult to justify on any reasonable ground. It is extremely difficult to imagine that as at the time the Labour Act was enacted (i.e. 1974), sexual harassment was not an issue that occurs at the workplace for it to have not attracted the attention of the legislature. While the reason for the omission is hardly justifiable, it is abundantly clear that the omission is fundamental and should have since it became a serious employment menace, been addressed through review of the Act. Surprisingly, the Labour Act, like several other legislation, has remained in its original enacted form despite several fundamental changes that have taken place in the polity requiring review of the law. This legislative apathy for review of laws so that they are *in tandem* with existing realities is an unenviable characteristics of the Nigerian legislature which should not be. Articles 4 and 5 of the African Charter on Human and Peoples Rights recognises the inviolability of every human being and as such, they are entitled to the respect of the dignity inherent and integrity in them.

3. Highlighting the substantive Provisions of the NBA Sexual Harassment Policy

Before the provisions of the NBASHP are highlighted, it is pertinent to give a background to the emergence of the Policy. At the 2019 AGC of the NBA which held at Lagos, the issue of sexual harassment in the legal profession was vociferously discussed with worrisome revelation of this menace being perpetuated against female lawyers particularly those working in law firms. Thus, the NBAWF, immediately swung into actions by taking practical and proactive steps towards addressing the

¹⁵ Employees Compensation Act, 2010.

¹⁶ Labour Act Cap. L1 Laws of the Federation of Nigeria (LFN) 2004.

issue being aware of the fact that, if the menace is left unaddressed, it poses grievous consequences for the entirety of the legal profession which is revered as a noble profession. The NBAWF being mindful of some of the objectives which includes but not limited to address matters of interest to female lawyers; ensuring efficient and result-oriented networking amongst female lawyers; being an influential voice for female lawyers in the society and globally and building a platform that encourages female lawyers to have a global outlook, perspective, and reach and address other matters that affect female lawyers with the aim of empowering them for success, set up a Sexual Harassment Policy Drafting Committee (SHPDC) under the chairmanship of the Chairperson of the NBAWF.

The NBASHP consist of twenty substantive matters dealing with various issues. Article 1 is the preamble which indicate that the President of the NBA in furtherance of his commitment to empowering, inspiring and supporting female lawyers across Nigeria, mandated the Advocacy Committee of the NBAWF to draft the NBASHP. Article 2 which contains the policy statement which is a restatement of the commitment of the NBAWF to providing a safe work environment for all employees devoid of the menace of sexual harassment, treat all incidences seriously and promptly probe all allegations thereto while ensuring that all culprits are decisively punished.

The policy statement also undertook to guarantee the confidentiality of complainants to ensure that complains are not exposed to victimisation howsoever. Article 3 deals with the goal of the policy which is to help employers to improve their own policy or regulation (or adopt/incorporate the NBASHP into theirs), for adverting and addressing sexual harassment, while promoting healthy, safe and productive workplaces. Article 4 makes provisions on the legal framework upon which the Policy is to be implemented. It notes that the Labour Act (hereinafter simply referred to as LA) which is the principal labour legislation is inadequate as it contains no provision on sexual harassment or any kind of harassment during employment. It noted that in a bid to curb the lacuna in the LA, the NICN (Civil Procedure) Rules, 2017 deals with four types of sexual harassment. They are physical conduct of a sexual nature, verbal form of sexual harassment, non-verbal form of sexual harassment and *quid pro quo* harassment.

Article 5 consist of the scope of the policy which is that it is applicable to all companies/enterprises (public/private) irrespective of size. Workplace within the scope of the Policy is not restricted to the actual place where work is usually done but any location where work related business may be conducted pursuant to the employment contract or any other work arrangement. Workplace therefore include but not limited to work related social activities, conferences and workshops, official business travels, business meals, work related telephone conversations; and work related communications through electronic media. If sexual harassment occur via any of the aforementioned media, same comes within the scope of the NBASHP.

Article 6 deals with the definition of sexual harassment and adopts the definition of the ILO which is that sexual harassment is any behaviour of sexual nature that affects the dignity of women and men, which is considered as unwanted, unacceptable, inappropriate and offensive to the recipient, and that creates an intimidating, hostile, unstable or offensive work environment. It classifies actions/conducts/behaviours that constitute sexual harassment to include physical, verbal, non-verbal, and *quid pro quo*. The policy recognises the fact that occasionally, decent complimentary remarks could be made and this will not constitute sexual harassment hence, occasional compliments that are socially and culturally acceptable and proper are not considered as sexual harassment. Also, any interaction of a sexual nature which is consensual (except for those prohibited by the law such as sexual intercourse with underage persons), welcome or reciprocated is not considered as sexual harassment. Abudu¹⁷ has captured in an elaborate manner the meaning and effect of sexual harassment on the victim when he opined as follows:

Sexual harassment refers to persistent and unwanted sexual advances where the consequences of refusing are potentially disadvantageous to the victim. While each individual's experience differs, the circumstances have worrying similar features; they typically include an all-powerful (usually male) figure in a position of authority who takes advantage of his status and position to subject others (mainly women but, in some cases, men) to degrading and unacceptable behaviours. Sexual harassment is a particularly difficult crime to define and prove because it dwells in the shadows. It resides in a world of my words against yours, often without witness and corroboration. It covers a range of inappropriate and unwarranted advances from unwanted touching, groping, kissing without permission, to making sexualized remarks about a person's appearance, clothes and desirability. Those on the receiving end of such behaviour feel powerless, voiceless and/or embarrassment to push back and or object to it. They often fear victimization retaliation or being shamed, and, in many instances, the victim carries the act as a stain, a dirty secret to be buried in the hope that, with the gradual passage of time, the stain will fade.

It is apposite to note that the policy recognises the fact that anyone, irrespective of sex, can be a victim of sexual harassment and sexual harassment could also transpire between persons of the same sex. Irrespective of the victim or harasser, for anything to constitute sexual harassment, the conduct or behaviour in question, must be

¹⁷ Olamide Abudu, "Sexual Harassment in Nigeria: It is Everybody's Problem" available online at <https://www.google.com/amp/s/guardian.ng/issue/sexual-harassment-in-nigeria-it's-everybody's-problem/amp> > last visited 6 January 2022.

unwelcome by the person against whom it is directed.¹⁸ The NBAFW solemnly recognises the fact that sexual harassment quite often than not, occurs between persons of unequal power in a workplace, a manifestation of power relationship in the work environment.

Article 7 spell out the roles and responsibilities of the employer, employees/workers, trade union, employers' organisation and human resources department of every establishment in curbing workplace sexual harassment. Under the Policy, every employer has the duty to create and maintain a working environment which is free from sexual harassment, put in place a Code of Conduct or Policy on Sexual Harassment in the workplace alternatively, adopt that of the NBA, respond swiftly to workplace sexual harassment accusation and ensure that alleged victims do not have fear of retaliation or feel that their grievance are being ignored or trivialised, and every employer shall ensure that sexual harassment is averted in the workplace by adoption, promotion, monitoring and implementation of a sexual workplace harassment policy. All employees irrespective of their sex, status, level, or any distinguishing feature, have the responsibility of engendering a zero tolerant sexual harassment workplace environment, discourage and report inappropriate behaviours and conform to the organisations sexual harassment policy in all their dealings.

This they will do by observing the 6 point agenda of the ILO which is to understand, observe, examine, confront, resolve and support victims of workplace sexual harassment. Trade unions on their part have the duty to partake in the growth and operation of company's sexual harassment policy and ensure that issues related to sexual harassment are negotiated in a just and transparent manner, provide information, guidance and representation to employees who have fallen victim to sexual harassment as well as to an employee against whom allegation of sexual harassment has been made. The Human Resources Department (HRD) is charged with the vital duty of endeavouring to prevent workplace sexual harassment by building a culture of respect and trust amongst employees. However, when sexual harassment ensues, and a complaint is made, the HRD has the duty to take particulars of the complaint from the complainant, keep the details of the complaint obtained from the complainant with all supporting evidence, launch an investigation into the complaint, carry out checks to ascertain if there is previous record of sexual harassment levelled against the harasser, inform the complaint of the company's

¹⁸ Bimbo Atilola, *Recent Developments in Nigerian Labour and Employment Law* (Lagos: Hybrid Consult, 2017) 50-51. He opined that "Sexual harassment may take diverse and varied forms. It is not limited to demand for sexual favours made under threats of adverse job consequences but also includes any unwanted conduct of sexual nature or other conduct based on sex, which violates the dignity of a person, and in particular when it creates an intimidating, hostile, degrading, humiliating or offensive work environment for the recipient. Sexual harassment is a serious and real problem for various working women in Nigeria. It has been viewed as one of the most egregious forms of violence against women in the workplace and has increasingly become a subject of concern to working women, trade unions and human rights organizations."

procedure and the availability of the option of seeking legal redress to him/her, and take into account the wishes of the alleged victim with regard to their preferred mode of settlement, inform the alleged harasser of the complaint and request for a response to the complaint, seek resolution of the complaint where the alleged harassed employee is disposed to amicable settlement, or set in motion a disciplinary process depending on the gravity of the harassment. Being aware of the devastating effect of sexual alleged harassment, the policy enjoins the HRD not to blame the complainant under no circumstance, conceal a report or discourage employees from reporting cases of sexual harassment.

Article 8 deals with the need to help victims of sexual harassment by all stakeholders in the workplace. Aside investigating and ensuring that where culpability is established, harassers are punished accordingly, employers are to support victims of sexual harassment especially those that have been traumatised by the experience. This help could be in form of permitting them few days off from work to restore the victim's mental health or facilitating professional counselling with a therapist. The employer in addition to offering help hereinafter mention, should assure the victim that his/her employment will not be jeopardised during the period of recovery from the aftermath of the harassment. Article 9 makes provision for complaint procedure by an employee who has been allegedly harassed sexually. Thus, anyone who is being harassed, where possible, shall first and foremost, inform the harasser that the conduct/behaviour is unwanted and unwelcome. This initial complaint, is to afford the harasser an opportunity to know that his/her action is unwelcomed by the recipient hence, same should be discontinued forthwith assuming that same may be unintended.

This is without prejudice to the fact that in some instances where there is inequality between the victim and the harasser, the victim may be unable to challenge the harasser. In fact, in such instance of inequality, it will be requiring or demanding the impossible (a thing which the law cannot do) for the victim to challenge the harasser and it is to ameliorate such or ensure that the harasser does not go unchallenged that the law has set up avenue for complaints by helpless but not hopeless victims. Where a designated person receives a complaint of sexual harassment, he/she shall record the date, time and facts of the incident, ascertain the views of the victim as to the anticipated outcome, acquaints the victim with the company's procedure on handling complaints, keep a confidential record of all discussions, respect the victim's choice, and inform the alleged victim of alternative remedial procedures aside the company's. Aside making it obligatory for designated persons to receive complaints of sexual harassment, it is necessary to ensure that mechanisms are put in place to ensure that the complaints are received in good faith and manner.

This is to forestall a situation where a complainant is exposed to ridicule and the attendant opprobrium that comes from mocking sexual harassment victims by the receiver of their complaint who most times, treat victims with the attitude of "you

brought this upon yourself” instead of gushing out pure and mild empathy to succour the trauma of the victim whether same is real or feigned. Throughout the complaint process, it is the obligation of the company to offer the alleged victim professional assistance. A person who is allegedly harassed, could either route his complaint through the informal or formal complaint mechanism depending on the nature and severity of the harassment. In either mechanisms, the right of fair hearing of the alleged victim and harasser must be respected and the process must be concluded within 14 days.

Article 10 makes provision for sanctions and disciplinary measures against an established case of sexual harassment. A harasser may be liable to any of these punishments depending on the nature and gravity of the harassment, verbal or written warning, reduction in wages, transfer, demotion, suspension, dismissal. Where the harasser is a legal practitioner, in addition to the already stated punishments, the person will be reported to the Legal Practitioners Disciplinary Committee (LPDC) for trial and appropriate punishment. Article 11 deals with implementation of the policy. It enjoins all companies to include a sexual harassment in the workplace policy in the staff handbook/manual and appropriate orientation should be given to staff especially those hired subsequent to the adoption of the policy. Article 11 deals with evaluation of the policy.

It requires supervisors and managers and all those responsible for dealing with sexual harassment to periodically evaluate the policy and ascertain the compliance/implementation level and make necessary changes towards attaining a sexual harassment free workplace.

Article 12 makes provision for useful tips for employers in implementing the policy towards attaining its goals. Thus, the employer could place the policy on the company’s website for publicity, included in induction manual for new employees, display of the policy on notice boards, distributed and signed by all staff with an undertaking to abide by it, etc. these suggested tips are geared towards creating awareness about the existence and the need to comply with the policy on sexual harassment. Article 13 contain recommendations on procedures relevant to sexual harassment in the workplace.

Thus, a company’s sexual harassment policy should generally be stand-alone, written in simple, direct language which is understandable to all employees irrespective of their education level. A workplace sexual harassment policy should include the following key issues, prohibition of sexual harassment in the workplace, clear definition of sexual harassment, a straightforward complaint procedure, protective and remedial measures for alleged victims, disciplinary rules against alleged harassers and persons who make false sexual harassment allegation, and sexual harassment poster to be displayed in conspicuous places at the workplace to serve as

reminders/deterrence. These guidelines are geared towards ensuring that a workplace sexual harassment policy is concise and easy to implement.

Article 14 deals with effective management modelling. It requires the management of all establishments to model by demonstrating a strong commitment to the establishment's sexual harassment policy through appropriate behaviours. Where the management of an organisation demonstrates firm commitment against workplace sexual harassment, this will entrench the culture of zero tolerance for workplace sexual harassment and serve as deterrence to anticipatory perpetrators. Article 15 makes provision for good workplace modelling by enjoining employers to create and maintain a working environment which is free from sexual harassment through the removal of offensive, pornographic or sexually explicit materials from the workplace, regular monitoring of the policy and procedure to deal with sexual harassment; constitution of mixed sex panel for job interviews; and putting in place electronic monitoring system to record sexual harassment incidence that may occur.

This procedure is to ensure that the menace of sexual harassment is prevented and where it occurs, it is dealt with decisively to instil deterrence. Article 16 makes provisions encouraging victims of sexual harassment to speak up as the menace can exhaust those who endure it this is due to either fear of not being heard, reprisal attack or stereotyped. The NBAWF assures all victims of necessary support throughout the process from laying of complaint till same is judicially disposed of. Curiously, Article 17 contains the names of members of the Policy drafting committee as a substantive as opposed to a residuary provision. Ideally, the names of the members who drafted the policy should not be made a substantive part of the policy or enjoys such magnificent prominence but placed on a schedule or a subsidiary/ancillary part of the policy.

4. The NICN Stance towards Workplace Sexual Harassment

As already stated, the NICN is a specialised court vested with exclusive original civil jurisdiction over labour and allied matters. The 1999 CFRN (Third Alteration) Act, 2010 vest it with jurisdiction to adjudicate over disputes relating to and arising from workplace sexual harassment. Eyongndi¹⁹ has posited that pursuant to its enhanced jurisdiction, the NICN has adjudicated over some workplace related sexual harassment disputes (see for instance, the cases of *Pst. Mrs. Abimbola Patricia Yakubu v. Financial Reporting Council of Nigeria & n Anor*²⁰, *Mrs. Issey Celestina Akinlolu-Ojo v. United Bank for Africa*²¹ and *Ejike Maduka v. Microsoft Nigeria Limited & Ors.*²²), this section of the paper examines the stance of the court by gleaning from these decisions.

¹⁹ David T. Eyongndi, "An Examination of Female Employee Rights under Nigerian Law" (2017) 8(4) *The Gravitas Review of Business and Property Law* 17-30 at 19.

²⁰ Unreported Suit No. NICN/LA/673/2013, Judgment delivered on the 24th day of November, 2016.

²¹ Unreported Suit No. NICN/LA/497/2012 Judgment delivered on 1st February, 2016.

²² [2014] 41 N.L.L.R. (Pt. 125) 67.

*In Pst. Mrs. Abimbola Patricia Yakubu v. Financial Reporting Council of Nigeria & Anor.*²³

The claimant is an employee of the 1st Defendant and the 2nd Defendant was her superior. The 2nd Defendant despite being aware that the Claimant was married and pregnant with her third child, persistently made sexual overtures to her which she found annoying and unwelcome, despite repeated protest against his conduct, he persisted in the shameful and annoying behaviour incessantly harassing the claimant. When the claimant will not give in to his embarrassing amorous behaviour, the 2nd Defendant resorted to redeployment of the claimant with the hope that she will be frustrated and heed to his lustful desire. He persistently engaged her in obscene talk, sexual gestures, stalking, continuous local trips with the Claimant, and reprehensible marriage proposals to the claimant to her annoyance.

The 2nd Defendant resorted to making her work beyond the official working period. When the 2nd Defendant's various acts of sexual, harassment had become unbearable, particularly redeployment of the claimant to Kaduna to report to an office who was her junior, she petitioned and her employment was subsequently terminated. She file a suit challenging her termination and damages for wrongful termination of her employment and for the several acts of sexual harassment culminating in psychological torture, emotional stress, depression and desecration of her marriage, self-esteem and pride as a married woman. Then Defendants in their joint defence, denied the case as presented by the claimant averring that the 2nd defendant has worked in the 1st Defendant and many other government establishments for several years without any record of harassment or any other blemish howsoever hence, the allegation of the claimant against him are meant to tarnish his name. The 2nd Defendant did not file any defence to controvert the case of the claimant nor did he attend court.

The NICN after a careful review of the pleadings and based on the state of the law, came to the conclusion that the claimant has satisfactorily made a case of sexual harassment against the Defendants as committed by the 2nd defendant. The NICN awarded the sum of N 5,000, 000: 00 (Five Million Naira) only as damages against the 2nd Defendant personally against his several acts of sexual harassment and the concomitant effect on the claimant. The NICN observed that the damage done to the claimant by the defendants cannot be monetarily quantified/compensated.

In *Dorothy Adaeze Awogu v. TGF Real Estate Ltd.*²⁴ the NICN again unequivocally stood against sexual harassment at the workplace. In this case, the claimant was employed by the defendant to prospect for client/customer with her beauty otherwise, her employment will be terminated. She was unable to meet the set target and her superiors piled sexual pressure on her. She failed to succumb to same which infuriated them and her employment was terminated on the guise that she had failed

²³ Unreported Suit No. NICN/LA/673/2013, Judgment delivered on the 24th day of November, 2016.

²⁴ Unreported Suit No: NICN/LA/262/2013 Judgment delivered on 4th of June, 2018.

to attract business for the defendant as agreed. She brought an action for wrongful termination and damages for sexual harassment against the defendant. The NICN held that given the circumstances of the termination, it was wrongful and the action of her superior amounted to sexual harassment. She was accordingly awarded damages.

In *Ejike Maduka v. Microsoft Nigeria Limited & Ors.*²⁵ the claimant was an employee of the 1st defendant and its Enterprise Marketing Manager and the Diversity Champion for Women's Rights in West, East and Central Africa for Microsoft World-Wide. The 1st Respondent is the agent of the 2nd Respondent while the 3rd Respondent is the 1st Respondent Country Manager and its Chief Executive Officer and the 4th Respondent is the claimant's immediate Boss. Her case was that since the 3rd Respondent assumed office, he indulged in sexual harassment of her and other female staff through various acts of sexual harassment. By virtue of her position, she stood against the 3rd Respondent sexual harassment and warned him to desist but he ignored her and persisted. She contends that his acts of sexual harassment amounted to trespass to her person, violation her privacy and breach of her and other victims right to dignity of their human person. She reported the 3rd Respondent unwelcomed and distasteful behaviour to the 4th Respondent and the Human Resource Manager of the 1st Respondent but both of them did nothing about her complain and the acts continued. Due to this, her workplace became discomfoting as she found the actions of the harasser intolerable hence, she was constrained to report same to her husband who came and issued a stern verbal warning to the 3rd Respondent.

The 3rd Respondent was sorely embarrassed by this action of hers through her husband and vowed to retaliate. The Claimant had also challenged the 2nd Respondent who has flagrantly breached the 1st Respondent policy on insider's trading when he awarded a contract to his wife hence, her complaints against the 3rd Respondent were not given the desired attention. Subsequently, she was informed that her employment had been terminated after the various confrontations, harassment and intimidation she had suffered. She was forced to sign a letter of released purporting that her she voluntarily left the 1st respondent employ. She was threatened that her gratuitous two month salary will not paid unless she signed the release letter else, her employment will be terminated. She refused to bulge and the letter was delivered at her house. She brought the action challenging her termination and sought for damages for wrongful termination and sexual harassment by the 3rd Respondent. She challenged the subsequent ratification of her termination by the 2nd Respondent which was against the 1st Respondent global policy on sexual harassment. The Court awarded her the sum of ₦13, 225, 000, 000 (Thirteen Million, Two Hundred and Twenty-Five Thousand Naira) only as general damages for the violation of her various rights protected by law and compelled the 1st and 2nd

²⁵ [2014] 41 N.L.L.R. (Pt. 125) 67.

Respondents to immediately implement its zero-tolerance sexual harassment policy to prevent a reoccurrence of the claimant's predicament to other employees.

It is clear that the NICN is intolerant to sexual harassment at the workplace and will effectuate the NBASHP where there is a violation. It has the vires to adjudicate over any dispute arising or connected with it. However, considering the amount of damages awarded by the NICN in *Pst. Mrs. Abimbola Patricia Yakubu v. Financial Reporting Council of Nigeria & Anor.*²⁶ with the need to stem the ugly tides of sexual harassment, it is expected that the NICN will award punitive damages where a case of sexual harassment is made. This will serve as a deterrent to the menace.²⁷ Eyongndi²⁸ has argued that the quantum of damages awarded by the NICN in some of the cases discussed above is meagre and incapable of bringing about the needed deterrence hence, where the court finds that a case of sexual harassment has been made, punitive or exemplary damages should always be awarded and where the employer who has an implied obligation to forestall such is complicit, vicarious liability should be invoked to encourage taking of preventive or remedial actions by employers.

5. Challenges Confronting the Implementation of the NBASHP and Way-forward

Despite the adoption of the NBASHP and its laudable objectives which are targeted at preventing and providing guidelines for the sanctioning of sexual harassment in the legal workplace, the implementation of same faces several challenges. These challenges range from institutional, cultural and attitudinal. This section examines these challenges and proffer way-forwards.

The Policy places the task of its implementation on the Human Resources Department (HRD) of the firm without recognising the fact majority of the law firms in Nigeria are either mushroom or less developed and do not have a HRD or its equivalent. Most are managed by the Principal Partner (PP) and a Head of Chambers (HOC) appointed by the PP. Where the harasser is either the PP or the HOC, reporting an incident of sexual harassment is practically impossible because it becomes a matter of who watches the watch dog? Or who polices the police? The lack of an external enforcer other than an imaginary HRD which is lacking in most law firms possess a challenge to the implementation of the policy.²⁹ Aside the law

²⁶ Unreported Suit No. NICN/LA/673/2013, Judgment delivered on the 24th day of November, 2016.

²⁷ Alero Akeredolu, "Giving Voice to the Voiceless: A Review of the National Industrial Court Rules and Judgments on Sexual Harassment in the Nigerian Workplace" in OD Amucheazi and B Atilola, *The National Industrial Court and Progressive Development of Labour and Employment Law in Nigeria* (Ed.) (Lagos: Hybrid Consult, 2019) 596.

²⁸ David T Eyongndi, "The Imperative of Engendering an Egalitarian Legal Framework for the protection of Female Employees' Rights in Nigeria" (2022) 1-25.

²⁹ Eniola Ayoola "Female lawyers hail Passage of Sexual Harassment Prohibition Bill" <https://nnn.ng/female-lawyers-hail-passage-of-sexual-harassment-prohibition-bill/> accessed 18 June 2022.

firm or industry based enforcement platform provided for in the policy, creating a neutral arbiter to entertain and determine sexual harassment complaints would have been a better option in implementing the policy.

Furthermore, the fear of reprisal action from either the harasser or his/her cronies within the legal profession as well as the inherent challenge of guaranteed confidentiality in handling of complaint is another challenge. Naturally, even when an alleged victim is being assured of the confidentiality, the truth is that he/she continues to entertain fear of reprisal action from the harasser especially when he/she is a person of means. Imagine a situation where the alleged harasser is a Senior Advocate of Nigeria (SAN) or a lawyer considered as a “superior member of the bar” and the victim is a young lawyer, it will take extra guts for a complaint to be made and serious reassurance of confidentiality for any meaningful investigation to be carried out. The inherent culture of “seniority and respect” and the rather conservative nature of the legal profession may in fact, inhibit reporting of harassment incidents by vulnerable victims especially victims who have no influential background or godfather/godmother. It is worrisome that virtues such as respect/seniority in the legal profession which ordinarily should cause beneficiaries to conduct themselves in dignifying manner, would be used as cover-up for moral recklessness and bankruptcy to the chagrin of vulnerable members of the profession who ought to be protected at all cost.

Several cultural stereotypes work against women in Nigeria and the legal profession unfortunately, is not an exception. The general cultural view that women in general are inferior to men is a silent precipitant of workplace sexual harassment. The sexual objectification of women tends to give the erroneous impression that they are inferior and could be used. Ordinarily, one would have expected that giving the touted nobility and decorousness of the legal profession as lawyers pride themselves as “learned” not just in terms of its real connotation of being qualified as lawyers but generally as knowledgeable, temperate, disciplined and well well-mannered, issue such as sexual harassment, should not be mentioned in relation to them. However, education, knowledge and training are not adequate to cure man from human depravities of which sexual harassment is most embarrassing to say the least.

One cannot wish away the act of undue interference by some members of the legal profession especially senior/elderly lawyers who from time-to-time intervene in matters of misconduct to broker amicable resolution all in a bid to prevent the washing of dirty linen in public. Where a case of sexual harassment is alleged against a lawyer especially a senior member of the Bar and senior lawyers intervene to broker amicable settlement or suppress same in a bid to preserve the “dignity” of the perpetrator or the legal profession at large, this act, is capable of undermining the policy and renders same inefficacious. Thus, the enforcers of the policy must ensure that at no opportunity is allowed for undue interference by any lawyer, irrespective of status to obstruct the course of justice. All lawyers, irrespective of status or age at

the Bar alleged to have engaged in any form of sexual harassment, must be made to face the process and if found culpable, appropriate sanctions are imposed. This will ensure that as far as implementation of the policy is concerned, there are no sacred cows.

The scope of the Policy is unwieldy as the draftsmen did not expressly delineate and this can lead to unnecessary controversy. NBA is an association of legal practitioners in Nigeria and whatever regulation made by it, is binding on it (its members) and not the general public. The policy is made applicable to all companies, enterprises/businesses, both public and private, it is doubtful if the NBA through any of its regulatory policy can bind the general public especially when same is not a regulatory instrument enacted by the legislature. Thus, making the policy applicable to beyond its primary constituency (i.e. the legal profession) may engender difficult in its implementation. It is not clear whether the intendment of the draftswomen was that where a legal practitioner is engaged in any company, business/enterprise whether private or public, the policy binds the employer without more but this cannot be easily deduced from the clear and unambiguous phraseology of the policy. Thus, viewing the matter from this prism is highly refutable. Thus, it would have been tidy if the policy drafting working group had clearly spelt out the scope of its application in clear and unambiguous terms. Adding the names of the policy drafting working group members as a substantive chapter in the policy is somewhat unconventional and inappropriate. It is ideal that such ancillary matter is banished to a schedule or residual part of the policy hence, it the policy should be revised with a view to moving these names to a schedule.

Regrettably, there seems to be a calculated conspiracy against females in the legal profession as the tides are constantly against them. For instance, titles used in the profession a predominantly if not exclusively masculine such as my lords, even when judges and justices refer to themselves, it is “my learned brother” even if it is a male judge/justice that is referring to a female judge/justice. When a female lawyer announcing appearance in court for a client, the judge is fast to ask her if she is Miss or Mrs. but a male lawyer is never asked such a question to ascertain his marital status. If the marital status of a male lawyer is never an issue, one cannot stop wondering why that of a female lawyer should attract any attention save the fact that “she is female.” Even the NBA Constitution supports this sacrilegious and acrimonious stance as the head of each NBA Branch as recognised in the Association’s constitution is “Chairman” whether male or female; suggesting that the position is ordinarily reserved for male lawyers. It seems as if, despite the height of enlightenment and the need for gender equity and justice, the vanguard of human rights protection and promotion (i.e. NBA) is still not free from traditional African chauvinist proclivity of subjugation of women. The fact that the evolution of the legal profession promoted discriminated against women as they were not allowed to aspire and be admitted into it, cannot be an excuse for the subsistence of this treacherous, uncivilised and appalling abnormality in this contemporary times. This barbarism

is captured in Shakespeare's *Merchant of Venice*, Portia was a woman that posed as a man so as to appear before the court as a counsel.³⁰ This egregious treatment persisted for century to the effect that if women had to practice law, they can only successfully do so by concealing their identity by taking that of a man. Indeed, the dehumanisation of women has been for a long time especially in terms of aspiring into certain "choice" profession. At some time, women could aspire and become nurses but not doctors. Lord Neaves in *Jex-Blake v. Senatus of Edinburg University*³¹ had arrogantly downplayed the intellectual acumen of women by finding (although without an iota of scientific proof) that men are physically and intellectually superior to women and the permanent abode of success attainment of women should be confinement to absolute mistresses of their houses as extra ordinary women could attain heights attainable by ordinary men. In the 19th century, the Law Society of England would not allow women to sit for its examinations left not to become lawyers.

Infuriated by this injustice, four women sued the Society in *Bebb v. Law Society*³² contending that Section 1 of the Interpretation Act states that masculine provisions included feminine hence, the Attorneys and Solicitors Act of 1729 ought to be applicable to both sexes thereby enabling them to qualify as either Barristers of Solicitor. Despite the profoundness of this pristine argument, the Court rejected same by relying on a medieval treatise, *The Mirror of Justices*, which annoyingly states that the law will not suffer women to be attorneys, nor infants not serfs. Thus, since women, could not qualify as lawyers, it was useless allowing them to take the law Society examination. Imosemi³³ opined that an exception however existed to this chauvinist general rule in the case of Miss Margaret Brent, circa 1640, that was allowed by Lord Baltimore to practice law as a woman; even so, she was still referred to as 'Gentleman Margaret Brent' whenever she appeared in the Maryland colonial court.³⁴ To seek refuge under this excuse is not only too pedestal and unconvincing but clannish thus, proactive steps should be taken urgently to correct these adherent abnormalities in the profession which have been perpetuated for too long.

Thus, to overcome these challenges, the various stakeholders within the legal profession (such as Nigerian Bar Association Young Lawyers Forum (NBAYLF), Christian Lawyers Fellowship of Nigeria (CLASFON), Muslim Law Association of Nigeria (MULAN), International Federation of Female Lawyers (FIDA), Body of

³⁰ In Act IV, scene 1, Portia's true love has failed to pay off his debts to a creditor who seeks retribution in the form of a pound of flesh. By coupling her famous plea for mercy with a slippery legal argument, Portia's persuasion wins over the judge.

³¹ (1873) 11 M 784.

³² (1914) 1 CH 286.

³³ Adekunbi Imosemi, "The Rights and Plights of Female Lawyers in the Legal Profession: A Paradigm Shift from Denial to Recognition" 5(2) *African Human Rights Law Journal*, 237-247 at 237-234.

³⁴ Albisetti, J. 'Portia Ante Portas: Women and the Legal Profession in Europe, ca. 1870–1925,' (2000) 33

Journal of Social History, 825–857.

Senior Advocates of Nigeria (BOSAN), must recognise the fact that, they have crucial roles to play.³⁵ Sensitisation of their members and the public is necessary to create awareness. In fact, the herculean nature of speaking up against sexual harassment is acknowledged in the policy when it noted that “sexual harassment can exhaust those who endure it. Speaking up about this issue is often tough for fear of not being heard, upsetting managers and challenging corporate culture.” The policy realising this daunting task, advised victims thus “please, do not let these fears daunt you. We need to know what is going on so we can act on it. And by raising your voice on this issue, you help your company create a happy workplace and thrive.” It is indisputable that the implementation of this policy is capable of safeguarding the dignity of lawyers especially female lawyers who are more exposed to the menace of sexual harassment. Thus, all hands must be on deck to aggressively implement the policy towards furthering the nobility of the profession. In fact, the NBA and the NBAWF, should ensure that an *ad hoc* reward mechanism is put in place to encourage victims to report perpetrators. Adoption of “naming and shaming” policy will aid the implementation of the NBASHP. In the event that a lawyer engages in sexual harassment and is found culpable after due process of the law has been followed, his or her name should be published on the website of the NBA and be conspicuously displayed on signboards in various courts across the nation.

6. Conclusion and Recommendations

Extrapolating from the analysis above, it is clear that sexual harassment is a violation of the right to dignity of the human person of the victim and happens it all walks of life. The NBA as an association of nobility, has demonstrated its commitment to combat this hydra-headed monster within its fold by its adoption of the NBASHP engineered by the NBAWF. The Policy has made laudable provisions and set up institutional mechanisms to guarantee its enforcement within the legal profession. Despite the laudableness of the policy, realising its objectives faces several challenges and calls for synergy between all the stakeholders within the legal profession. The culture of undue interference by senior members of the Bar to cover up the wrongdoing of some members based on personal affiliations or status must be discouraged for the more decent culture of naming and shaming culprits to serve as deterrent to others. Sexual harassment is an act that should not be heard of within the legal profession that pride itself as a noble profession; its members are held in high esteem in the society. It is an act that is unbecoming and inconsistent with the ethos and expectation of the society from learned people.

Based on the foregoing, it is recommended that the policy should be reviewed and its scope of application be clearly defined because in its present state, it is made to apply beyond the legal profession and there is not express provision in it to suggest that

³⁵ Faith Adeoye, “How Workplace Sexual Harassment forces many out of their Dream Jobs” <https://tribuneonline.ng.com/how-workplace-sexual-harassment-forces-many-out-of-their-dream-jobs/> accessed 16 June 2022.

same is applicable in any employment once a lawyer is an employee. The names of the drafting committee members contained in article 17 should be removed and banished to a schedule as same cannot occupy the space of a substantive provision.

There is need for rigorous collaborative efforts by all the stakeholders within the legal profession to sensitise itself and members of the public of the existence and available sanctions against violators. While the policy tasked employers and employees alike with responsibility towards stemming the tides of sexual harassment, the policy regrettably, does not make any provision where the employer abdicates from performance, thus, the policy should be e-evaluated and review with a view to making provisions for employers abdicates from their responsibility.

To ensure that punishment melted out to persons against whom a claim of sexual harassment is established achieves deterrent effect, the quantum of damages awarded by the NICN should be punitive or exemplary and not nominal as awarded in some of the cases discussed in part four of the Article.

Furthermore, NBA as an association should adopt the name and shame policy of publishing the name of persons who have been proved to have engaged in sexual harassment after due process of law has been followed. The names of such despicable lawyers should be published on the NBA website and displayed on signboards in courts in Nigeria. Aside this serving as caveat to members of the public, fear of such treatment is an enough deterrent to the legal community to desist from such ignoble, immoral and deprived conduct.

Moreover, provisions in the NBA Constitution and the various NBA Branches Bye-Laws that subjugate or capable of subjugating female lawyers under the shadow of male lawyers should be expunged from these laws to pave way for gender sensitivity/neutral, equity and justice. Referring to a female lawyer as the “Chairman” of an NBA Branch because that is the nomenclature captured by the law is abhorrent, clannish, repugnant to decency and gender insensitive.