



THE SENATE
FEDERAL REPUBLIC OF NIGERIA
NATIONAL ASSEMBLY

**COMMITTEE ON JUDICIARY, HUMAN RIGHTS AND
LEGAL MATTERS**

REPORT

ON A

BILL FOR AN ACT TO MAKE PROVISION FOR THE PROHIBITION AND
PUNISHMENT OF SEXUAL HARASSMENT OF STUDENTS BY
EDUCATORS IN TERTIARY EDUCATIONAL INSTITUTIONS; AND FOR
RELATED MATTERS.

OCTOBER, 2016

REPORT OF THE SENATE COMMITTEE ON JUDICIARY, HUMAN RIGHTS & LEGAL MATTERS ON A BILL FOR AN ACT TO MAKE PROVISION FOR THE PROHIBITION AND PUNISHMENT OF SEXUAL HARASSMENT OF STUDENTS BY EDUCATORS IN TERTIARY EDUCATIONAL INSTITUTIONS; AND FOR RELATED MATTERS.

1.0 BACKGROUND

The Sexual Harassment in Tertiary Educational Institutions Prohibition Bill, 2016 was sponsored by ***Senator Ovie Omo-Agege (Delta Central Senatorial District)*** and Fifty Seven (57) other Co-sponsors (list attached herewith). The Bill was read for the *First Time* on Wednesday 4th May, 2016.

At the Plenary Sitting of Tuesday 24th May, 2016, the Senate deliberated on the general principles of the Bill. After extensive deliberations on the merits of the Bill by Distinguished Senators, it was read for the *Second Time*, and referred to the Senate Committee on Judiciary, Human Rights and Legal Matters, for further legislative action (Vide *Order of Referral dated 25th May, 2016*) and to report back with its recommendations.

2.0 Methodology

After the referral of the Bill, the Committee held several meetings whereby it deliberated and agreed on the following legislative framework, in furtherance of this assignment, to wit:

- i. To conduct a public hearing in order to avail the general public the opportunity to make their input on the proposed legislation;
- ii. To consult widely with stakeholders on the justifications and merits of the proposed legislation; and
- iii. To consider any other matter incidental to, that would be of assistance, in the discharge of its assignment.

3.0 Objectives of the Bill

The objectives of the Bill in the Committee's view, among other things, are as follows –

- i. Prohibit the offence of sexual harassment in tertiary institutions and impose stiff penalties on perpetrators;
- ii. Criminalise the act of neglect or failure of administrative heads of tertiary institutions to address complaints of sexual harassment within a specified period of time;
- iii. Create a strict liability offence by removing mutual consent, as a defence in prosecution of sexual harassment cases; and
- iv. Maintain and sustain the fiduciary relationship that exists between educators and students with the aim of making our tertiary institutions, centres of learning for inculcating value orientation.

4.0 Committee Legislative Action

As part of the legislative framework, the Committee held several meetings whereby it deliberated on the merits and justifications of the bill. In the course of its deliberations, the Committee had regard to views expressed by Distinguished Senators during debates on the general principles of the bill at its second reading stage. Accordingly, the Committee resolved to conduct a public hearing in order to avail stakeholders and the general public the opportunity to make their inputs on the proposed legislation.

As a prelude to the public hearing, the Committee placed advertisements in the print and electronic media and invited memoranda from stakeholders and the general public with a view to sensitising them on the provisions of the proposed legislation, ahead of the public hearing.

The Committee received memoranda from the following organisations and individuals, namely:

1. Office of the First Lady, Federal Republic of Nigeria.
2. The Hon. Attorney General of the Federation and Minister of Justice.
3. The Ministry of Women Affairs.
4. The Chairman, Nigerian Law Reform Commission.
5. The National Universities Commission.
6. The Legal Aid Council of Nigeria
7. Centre for Women Development.
8. Mrs. Felicia Bassey, Deputy Speaker, Akwa Ibom State House of Assembly.

9. Academic Staff Union of Universities (ASUU).
10. National Commission for Colleges of Education.
11. Policy and Advocacy Centre.
12. Robert Emukpoeruo, Esq – Managing Partner, Summit Law Chambers.
13. J. A. Agaba, Esq., Senior Lecturer & Head of Litigation, Nigerian Law School, Yola Campus.
14. M. E. Onoriode, Mrs., Senior Lecturer & Head of Department, Property Law Practice, Nigerian Law School, Abuja.
15. Mr. Elo Adhekpukoli, Esq.
16. The Black Leadership & Human Rights Centre Represented by its Executive Director, Prince Moses G. Duku, Esq.
17. National Female Students Association of Nigeria (NFSAN)
18. National Female Students Association of Nigeria (NFSAN) University of Uyo Chapter.
19. Citizens Vigilance Group Nigeria Represented by its Director-General.
20. E. R. O. Akpodiete & Associates.
21. Ufuoma Macdemoth.
22. African Centre for Leadership, Strategy & Development.

Mr. President, Distinguished colleagues, apart from the memoranda that the Committee received, oral presentations were also made at the public hearing by some stakeholders, NGOs, Civil Society Organisations and Individuals who did not make submissions before the hearing.

5.0 Public Hearing

On Monday 20th June, 2016, the Committee conducted a public hearing in line with its resolution. The purpose was to elicit views of stakeholders and the general public on the merits of the proposed legislation, for possible enactment as an Act of the National Assembly.

5.1 Opening

The President of the Senate, ***Senator (Dr.) Abubakar Olubukola Saraki, CON***, who was represented by ***Senator Philip Aduda***, the Minority Whip of the Senate, declared the Public Hearing open. In his keynote address, he stated that the 8th Senate as part of its legislative agenda, is committed to taking necessary legislative initiatives that are aimed at promoting equality and inclusiveness to ensure that the rights of women, youths and the vulnerable people in the society, are adequately protected. He stressed that the proposed bill is intended to provide a legislation to checkmate the ugly incidence of sexual harassment in our tertiary institutions, which has significantly affected the quality of learning, life and dignity of our children as a whole.

He reiterated that the legislature will be abdicating its responsibilities to make laws for the peace, order and good government of the Federation, if it fails to check this menace, which has the potential of hindering academic excellence among our students, especially among the female folks. He averred that the passage of this bill into law will further make the academic environment more accommodating for all who seek excellence and empowerment, which is the opportunity

that education has provided for all, especially for African Women who are committed to achieve greatness in all spheres of life.

In conclusion, he expressed confidence that contributions from stakeholders at the public hearing will enrich and impact on the proposed bill. He said that the bill, when eventually passed into law, will ensure that sexual depravity is no longer a factor, as our children will now seek to secure their future and as well enhance national productivity through learning, under a conducive environment. Finally, he commended the sponsor of the bill for introducing this bill and indeed the Senate Committee on Judiciary, Human Rights and Legal Matters, for their commitment in ensuring that a platform is provided for people to contribute to this piece of legislation.

On that note, he formally declared the public hearing open.

5.2 Proceedings

Mr. President, Distinguished Colleagues, I wish to state that the public hearing attracted a large number of stakeholders and members of the general public. This, in fact underscores the importance which Nigerians attach to this piece of legislation. There were presentations for and against the passage of the bill.

The highlight of presentations by stakeholders who supported the passage of the bill, are as follows: Firstly, stakeholders unanimously expressed the view that the aim of sanctioning sexual harassment in tertiary institutions is to ensure the provision of a conducive learning environment for both male and female students so that no student

on account of his or her gender should have to learn in a tensed environment characterised by sexual harassment. The prevalence of sexual harassment, they said, is a serious menace that must be addressed frontally in our tertiary institutions.

In the same vein, stakeholders also held the view that sexual harassment in educational institutions should not be treated with levity in view of the special nature of relationship that exists between educators and students, which is anchored on the principles of *loco parentis*. By this principle, an educator is under obligation to play the role of a father and he is legally and ethically bound to protect students from sexual harassment, violence and ensure that in addition, order and discipline prevail in schools. Accordingly, they posited that the introduction of this bill must be seen as a laudable effort by the National Assembly to give effect to the Fundamental Objectives and Directive Principles of State Policy and other forms of protection, guaranteed to citizens under the 1999 Constitution of the Federal Republic of Nigeria, as amended.

Furthermore, it was also argued that the need to tackle sexual perversion in our educational institutions, which this bill seeks to address, is commendable as it contains innovative provisions, which seek to improve on the extant laws on the subject. However, given the fact that sexual harassment is one of the social evils generally plaguing our society, it will be appropriate if the scope and application of the bill is expanded to deal with every possible incident of sexual harassment within the Nigerian society, with primary and secondary schools included, so as to obviate the need for any future enactment of similar legislation on sexual harassment.

Similarly, stakeholders averred that the National Assembly has the legislative powers to criminalise any mischievous human action, including sexual harassment of students by educators, which has negative effect on the standards of education, in any part of the Federation. Therefore, it is the duty of the National Assembly to prescribe minimum standards of education at all levels, which include ethical and moral standards, among others. Accordingly, they commended its passage to Distinguished Senators.

Finally, to further adumbrate on the points earlier highlighted, with respect to constitutionality or otherwise of the bill, stakeholders contended that the proposed bill does not in any way conflict with the Nigerian Constitution. What the bill seeks to do, in effect, is to amplify the provisions of the Constitution, especially section 42, which prohibits sex discrimination and section 21, which upholds the preservation of cultures that enhance human dignity and consistent with freedom, equity and justice. Apart from giving effect to the constitutional provisions, the bill equally reinforces the provisions of the Violence Against Persons Prohibition Act, 2015 by emphasising on the implementation of the sexual component within the tertiary educational institutions, considering the endemic nature of sexual harassment in tertiary institutions.

In this connection, Mr. President, Distinguished colleagues, it is trite that by enacting this bill into law, the Nigerian Government would be fulfilling part of its International Obligations undertaken through the ratification of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the African

Charter on Human and Peoples Rights, the Protocol to the African Charter on the Rights of Women in Africa, and the African Charter on the Rights and Welfare of the Child, amongst others.

Mr. President, Distinguished colleagues, permit me at this juncture, to point out that whilst all those that made presentation at the Public Hearing, spoke in favour of the passage of the Bill, the Academic Staff Union of Universities (ASUU), in no uncertain terms, opposed the passage of the Bill and predicated their position on the following grounds:

Firstly, they contended that the bill violates all known global norms in the sense that universities and other tertiary institutions are established by law. They stated that universities are autonomous bodies and have their own laws, which regulate their affairs, including misconduct generally amongst staff and students, with clearly articulated appropriate redress mechanisms. Accordingly, any law which seeks to supplant these laws violates the universities autonomy. In this instance, they posited that the bill violates the Federal Government of Nigeria and Academic Staff Union of Universities (ASUU) Agreement of 2009. And in the same vein, they stated that the proposed legislation being *Ad hominem*, violates the cardinal principle of law, which frowns at laws that target at a particular person or a particular group of people only – in this case, the tertiary institutions “educator” as well as a clear violation of section 42 (1) of the Constitution of the Federal Republic of Nigeria, 1999, as amended.

Secondly, they argued that the bill failed to take cognisance of various extant legislations with specific references to the Criminal Code (sections 218, 219, 220, 223, 224, 226 and 227); the Penal Code (sections 275, 276, 278, 281 and 282); the Child Rights Act, 2003 (section 11); the Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015 (section 15) and the Violence Against Persons (Prohibition) Act, 2015. They pointed out that all these laws have adequate provisions to deal with the issue of sexual offences and they are quite wider in scope than the provisions of this proposed bill.

Thirdly, to buttress their points on the opposition to the passage of the bill, they presented some policy documents from some select universities, such as, University of Uyo Gender Policy; Sexual Harassment Policy from the University of Ibadan; Gender Policy for Obafemi Awolowo University, Ile-Ife; Gender Policy approved by the Governing Council of the University of Jos, etc., which they believe are sufficient enough to handle the issue of sexual harassment in our tertiary institutions. They stated that the university authorities have not been negligent or found wanting in enforcing rules and regulations, arising from those policies.

Finally, they reiterated that ASUU as a Union does not condone cases of sexual harassment in any form and that the Bill should fail because it is unwarranted, jurisprudentially weak, a bundle of contradictions and has no probative value.

6.0 Legislative Summary

Mr. President, Distinguished colleagues, we have endeavoured to provide a legislative summary of the bill hereunder. The summary seeks to provide a detailed clause – by – clause analysis of the key provisions of the bill. It also provides the reason or justification for the introduction of new provisions, deletion of obsolete provisions and the basis for sustaining some provisions of the bill. The summary no doubt provides the underlining reasoning for our observations, findings and recommendations.

Clause 1

Clause 1 deals with the Objective of the Bill. The Committee introduced this new clause in order to provide, at a glance, the intent and purport of the Bill for easy comprehension.

Clause 3

Clause 3 deals with offences. The Committee amended this clause by introducing a new subsection (1). The existing subsection (1) of the clause, was renumbered as subsection (2) and paragraphs (a), (b) and (c) under the subsection, were deleted, as set out in the Bill because they are superfluous provisions. Similarly, subsection (2) of the clause was deleted because it appears ambiguous. Its intendment has been succinctly captured in the now renumbered subsection (3), which has been further redrafted for elegance.

Clause 6

Clause 6 deals with proof of commission of offences. This is a new clause introduced by the Committee for the purpose of proving any of the offences listed in clause 3 of this bill. The rationale behind this is to make it unnecessary for the prosecution to prove the intention of the accused person or the condition under which the sexual harassment was carried out.

Clause 7

Clause 7 deals with Filing of Sexual Harassment Complaint. The clause was redrafted to provide a platform for representatives of students, guardians or lawyers to file sexual harassment complaint against an educator. It was also redrafted for elegance and clarity.

Clause 8

Clause 8 deals with the right of a petitioner or complainant to forward petition before appropriate authorities. This clause was introduced in order to ensure that any written petition on sexual harassment is delivered to the Administrative Head of the institution and the Head of the affected Department, for record purposes.

Clause 9

Clause 9 deals with commencement of criminal proceedings. It is our view that for criminal proceedings to commence, the procedure for its commencement should be spelt out, hence the introduction of this new clause.

Clause 10

Clause 10 deals with Penalty. This clause was amended as set out in the attached table because in our concerted view, maximum sentences are very rarely imposed. As such, in our further opinion, Judges should be given the discretion to deal with various situations that may arise, taking into account, aggravating and mitigating factors because sexual harassments vary in degrees of seriousness. This amendment is also in line with the Administration of Criminal Justice Act and sentencing guidelines in many jurisdictions. Also, the Committee introduced a new subsection (2) as set out in the table because the offences created in clause 3 (5) and (6) are lesser and should carry a corresponding lesser penalties.

Clause 11

Clause 11 deals with Fiduciary Duty of Care. This *omnibus* clause was introduced by the Committee because under clause 3 of this Bill, an offence of violation of fiduciary duty of care by an educator was created and there should be a corresponding provision to justify its existence.

Clause 13

Clause 13. The Committee deleted clause 13 because clause 3 of the bill does not create any cause of action. And in any event, the action being a civil action will inevitably attract the standard of proof that is required in civil actions.

Clause 14

Clause 14 deals with institutional disciplinary procedure. The Committee amended clause 14 by increasing the number of days given to administrative head of an institution within which to set up

an investigative panel after sexual harassment complaint has been made from 7 days to 21 days. The rationale is to allow for sufficient time to make relevant consultations where necessary and to allow for other exigencies of service. Secondly, it was recommended that the nomenclature of the panel to investigate sexual harassment should be Sexual Harassment Investigation Panel because the Panel is to investigate and not to prohibit as contemplated in the bill. In line with this amendment, the phrase 'Sexual Harassment Investigation Panel', is hereby substituted for the phrase 'Sexual Harassment Prohibition Committee' wherever it appears in the bill.

Clause 16

Clause 16 deals with judicial review. The Committee redrafted the clause in order to check multiplicity of actions and for elegance.

Clause 18

Clause 18 deals with failure of Administrative Head to set up Sexual Harassment Investigation Panel. The Committee amended this clause by reducing the fine from N2,000,000 to N1,000,000. Also, the terms of imprisonment contemplated in the bill, was deleted. The rationale behind this amendment is that imposition of imprisonment and an option of fine of N2,000,000, for failure of the administrative head to set up a panel on time, is considered too severe. It is also our concerted view that such offence should not carry sentence of imprisonment.

Clause 21

Clause 21 deals with remedy on grounds of false allegation. The clause was redrafted as set out in the table because it is our view that failure of the prosecution to prove its case, may not be the fault

of the student and it is therefore inappropriate to punish the student on that ground. The clause has been redrafted to address this issue and it is also for elegance.

Clause 22

Clause 22 deals with protection of student from victimization. This clause was amended as set out in the attached table by deleting the words appearing after the word "institution" in line 6, because they appear to restrict the protection of a victim to a period of time.

Clause 24

Clause 24 deals with Public Officers Protection Laws not Applicable in the Commencement of Proceedings for Breach of Fiduciary Duty of Care. This clause was introduced by the Committee to ensure that any public officer, who committed the offences contemplated in this bill, will not hide under the Public Officers Protection Act to avoid prosecution.

Clause 25

Clause 25 deals with Interpretation. Under this clause, the Committee introduced 'Magistrate Court' to form part of the definition of the word "court" in the bill because it is our view that some form of sexual harassment offences may not be very serious and can properly and expeditiously be dealt with by a Magistrate Court. Similarly, the Committee introduced the definition of the phrase "fiduciary duty" because the phrase featured prominently in the bill and it is a key element of the offence of sexual harassment. It is therefore imperative to define it for the purpose of clarity.

7.0 Observations

Flowing from the submissions/presentations made by stakeholders and the general public on this proposed legislation and arising and having analysed same, we hereby make the following observations:

1. That the preponderance of views expressed by stakeholders and members of the public that made presentations at the public hearing supported the passage of the bill, except the Academic Staff Union of Universities;
2. That sexual harassment affects the emotional and academic wellbeing of students and can provoke and exacerbate conflicts among students and contribute to a hostile learning environment;
3. That some stakeholders questioned the legislative competence of the National Assembly to legislate on this subject matter on the ground that the legislation is not within the legislative powers of the National Assembly provided for either in the Exclusive Legislative List, the Concurrent Legislative List, or the supplementary provisions of the Constitution of the Federal Republic of Nigeria 1999, as amended;
4. That the failure to address the menace of sexual harassment in the institutions of higher learning with appropriate legislative intervention, as has been done in other jurisdictions, is the reason for the upsurge in sexual harassment in our tertiary institutions;

5. That with the high prevalence of sexual harassment in our tertiary institutions, hardwork is sacrificed on the altar of mediocrity and a culture of laziness, indiscipline and inefficiency is entrenched over and above excellence;
6. That the Academic Staff Union of Universities (ASUU) is of the view that the bill, is *ad hominem* because it targets a particular community, which in this case, are the educators in the tertiary institutions, whereas sexual harassment is a general societal problem that is not peculiar to tertiary institutions alone;
7. That ASUU is also of the opinion that the bill is an unnecessary interference with the Universities' autonomy because in addition to universities' internal procedures of handling sexual harassment issues, there are extant laws with sufficient provisions to deal with the subject matter that this bill intends to address; and
8. That a cross-section of stakeholders at the public hearing supported the widening of the scope of the bill to accommodate the primary and secondary schools and also places of work to avoid enactment of a similar legislation on this subject matter in the near future.

8.0 Findings

After a painstaking evaluation and analysis of submissions, observations and other viewpoints espoused by stakeholders, during our mark-up session, we hereby make the following findings:

1. That the introduction of this bill is appropriate and it is coming at the time when victims of sexual harassment in our tertiary institutions, are in a state of despair and probably feeling unsafe and unprotected as a result of the absence of legislations that would curb its prevalence;
2. That the bill elicited wide and unprecedented support of not only Distinguished Senators as demonstrated during debates on the general principles of the bill but an overwhelming number of Nigerians see this bill as a necessary legislative intervention that will bring sanity and good order to the educator-student relationship in our tertiary institutions;
3. That the National Assembly has the legislative powers and competence to legislate on this subject matter by virtue of the provisions of the Constitution, hence the law shall apply throughout the Federation based on the following constitutional grounds, to wit –
 - i. The legislation can be seen as giving effect to the Fundamental Objectives and Directive Principles of State Policies and other guarantees to citizens under the provisions of the 1999 Constitution of the Federal Republic of Nigeria, as amended and that the enactment of Acts of the National Assembly such as NAFDAC Act, the EFCC Act, the Examination Malpractices Act and the ICPC Act, etc stemmed from this and other relevant provisions of the Constitution;

- ii. Section 4 (2) of the Constitution provides that the National Assembly shall have power to make law for the peace, order and good government of the Federation or any part thereof with respect to any matter included in the Exclusive Legislative List;
 - iii. The National Assembly can also legislate in the Concurrent Legislative List to the extent prescribed therein. For example, Item 60 (e) of the Exclusive Legislative List gives the National Assembly the power to make laws prescribing minimum standards of education and since sexual harassment compromises the standard of education in the tertiary institutions, the National Assembly can make laws relating to standards of conduct of educators and students in tertiary educational institutions;
 - iv. With respect to making laws for the tertiary education, Items 27, 28, 29, and 30 of the Concurrent Legislative List, are instructive. Item 27 specifically gives the National Assembly the power to make laws for the Federation in respect of university education, technological education or such professional education as may from time to time be designated by the National Assembly;
4. That this bill is not targeted at a particular community i.e. the educators and that it does not interfere with the autonomy of the universities, rather it is intended to reposition and strengthen our tertiary educational institutions to maintain the core values of

etiquette and excellence, which are the cardinal objective of our educational institutions;

5. That in spite of the existing internal procedures in some tertiary institutions, these do not have the force of law and sexual harassment cases, still continue unabated, hence this bill will fill a huge gap and give a legal backing to any internal rule to check the incidence of sexual harassment;
6. That contrary to ASUU's claim that there are extant laws that can sufficiently address sexual harassment in our tertiary institutions, it is our contention that there are no such laws in place, the only one that comes close to that, is the Violence Against Persons (Prohibition) Act, 2015, which is only applicable in the Federal Capital Territory, Abuja; and
7. That this legislation is meant to address incidence of sexual harassment in tertiary institutions only, as there are other laws that address sexual offences in respect of persons under the age of 18 years such as the Child's Rights Act 2003.

9.0 General Comments

In the Committee's view, the intendment of the bill is excellent and timely because sexual harassment in tertiary institutions is increasing rapidly and needs to be curbed by appropriate legislation, setting out the scope of the offence, the procedure for dealing with it and appropriate remedies. The provisions of the bill are quite commendable and definitely will have a strong deterrent effect on potential harassers. It should be noted at this juncture, Mr.

President, Distinguished colleagues, that the preponderance of views expressed at the hearing by the stakeholders and members of the public supported the passage of the bill on cogent grounds, except the Academic Staff Union of Universities. In our opinion, the passage of this bill by this Distinguished Senate, will be a step in the right direction because for us as a country to achieve sustainable development, growth and stability, we must have a clear cut legal framework that will enable our institutions of learning, produce good leaders. This and other important benefits are what the educational system offers to the country and as such the sector should be insulated against all forms of negative tendencies. Accordingly, we commend its passage to Distinguished Senators.

10.0 Recommendation

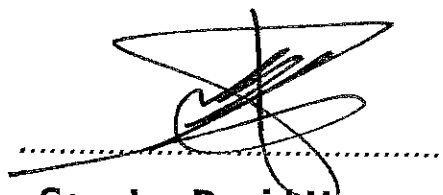
Flowing from the presentations of stakeholders and the foregoing observations/findings, the Senate Committee on Judiciary, Human Rights and Legal Matters, to which the Bill for an Act to make Provision for the Prohibition and punishment of Sexual Harassment of Students by Educators in Tertiary Educational Institutions; and for Related Matters, was Referred, having favourably considered same, recommends as follows:

"That the Senate do consider and pass the Sexual Harassment in Tertiary Educational Institutions Prohibition Bill, 2016, as amended".

I SO MOVE.

11.0 Conclusion

Finally, we wish to use this opportunity to thank the President of the Senate and our Distinguished Colleagues for the opportunity to serve in this capacity and to respectfully commend the passage of this Bill to the Senate.

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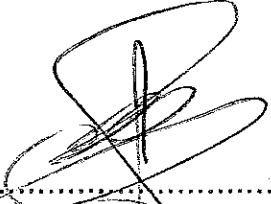
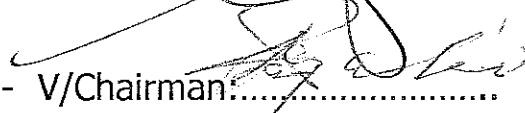
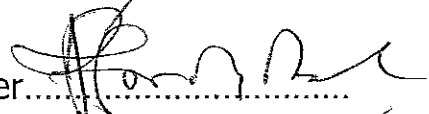
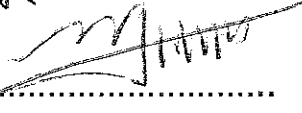
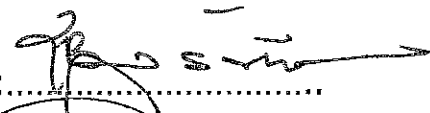
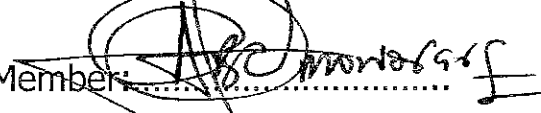
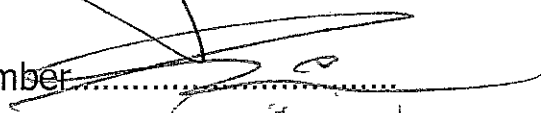
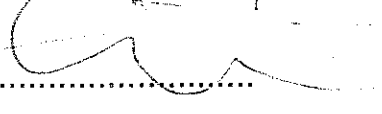
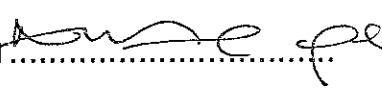
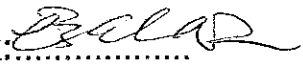
Senator David Umaru

Chairman

ENDORSEMENT PAGE

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48. Senator Olamilekan Adeola (Lagos West)
49. Senator Enyinnaya Abaribe (Abia South)
50. Senator Jonah Jang (Plateau North)
51. Senator Isiaka Adeleke (Osun West)
52. Senator Peter Nwaoboshi (Delta North)
53. Senator Duro Faseyi (Ekiti North)
54. Senator Andy Uba (Anambra South)
55. Senator Tijjani Kaura (Zamfara North)
56. Senator Nelson Effiong (Akwa Ibom South)
57. Senator Albert Bassey Akpan (Akwa Ibom North East)



THE SENATE
FEDERAL REPUBLIC OF NIGERIA
NATIONAL ASSEMBLY

COMMITTEE ON JUDICIARY, HUMAN RIGHTS AND LEGAL MATTERS

REPORT

ON

A BILL

**FOR AN ACT TO MAKE PROVISION FOR THE PROHIBITION AND PUNISHMENT OF
SEXUAL HARASSMENT OF STUDENTS BY EDUCATORS IN TERTIARY EDUCATIONAL
INSTITUTIONS; AND FOR RELATED MATTERS**

OCTOBER, 2016

REPORT OF THE SENATE COMMITTEE ON JUDICIARY, HUMAN RIGHTS AND LEGAL MATTERS ON A BILL FOR AN ACT TO MAKE PROVISION FOR THE PROHIBITION AND PUNISHMENT OF SEXUAL HARASSMENT OF STUDENTS BY EDUCATORS IN TERTIARY EDUCATIONAL INSTITUTIONS; AND FOR RELATED MATTERS. ~~CONNECTED THEREWITH.~~

CLAUSES	PROVISIONS OF THE BILL	COMMITTEE'S RECOMMENDATION	REMARKS
	LONG TITLE A Bill For an Act to Make Provision for the Prohibition of Sexual Harassment of Students by Educators in Tertiary Educational Institutions and for Related Matters Connected Therewith.	LONG TITLE A Bill For an Act to Make Provision for the Prohibition <i>and Punishment</i> of Sexual Harassment of Students by Educators in Tertiary Educational Institutions; <i>and for Related Matters.</i> Connected Therewith.	
1.		<i>Objective of the Bill</i> <i>1. The objective of the Bill is to create equal learning opportunities for students of tertiary institutions in an atmosphere devoid of sexual harassment and promote ethical standards of education and respect for human dignity in tertiary educational institutions by providing for:</i> <i>(a) Protection of students against sexual harassment by educators in tertiary educational institutions;</i> <i>(b) Prevention of sexual harassment of students by educators in tertiary educational institutions; and</i> <i>(c) Redress of complaints of sexual harassment of students by educators in tertiary educational institutions.</i>	
2.	Relationship of Trust 1. A relationship of authority, dependency and trust shall be construed to exist between an educator and a student in an institution if:	Relationship of Authority, Dependency and Trust 2. Retained as in the Bill	

	(a) the educator is directly or indirectly involved in the full-time or part-time academic training, teaching, advising, supervising and education of the student; (b) the educator has direct or indirect academic or non-academic authority over the student; or (c) the student depends, directly or indirectly, on the educator in any manner whatsoever.		
3.	Offences 2. An educator shall be guilty of committing an offence of sexual harassment against a student if he or she: (1) has sexual intercourse with a student who is: (a) less than 18 years of age; or (b) an imbecile or of generally low mental capacity; or (c) blind or deaf or otherwise physically challenged. (2) has sexual intercourse with a student or demands for sex from a student or a prospective student as a condition to giving of a passing grade or the granting of honours and scholarships, or the payment of stipend, allowance or other benefits, privileges or considerations; (3) solicits sex from or makes sexual advances towards a student when the sexual solicitation or sexual advances result in an intimidating, hostile or offensive environment for the student;	Offences 3. An educator shall be guilty of committing an offence of sexual harassment against a student if he or she: <i>(1) violates the fiduciary duty of care in section 11 of this Bill;</i> (2) has sexual intercourse with a student <i>or demands for sex from a student or prospective student.</i> (a) Deleted (b) Deleted (c) Deleted (3) Deleted (3) <i>intimidates or creates a hostile or offensive environment for the student by soliciting for sex from the student or making</i> sexual advances towards a student; when the sexual solicitation or sexual advances result in an	

	(4) directs or induces another person to commit any act of sexual harassment under this Bill, or cooperates in the commission of sexual harassment by another person without which it would not have been committed; (5) grabs, hugs, rubs or strokes or touches or pinches the breasts or hair or lips or hips or buttocks or any other sensual part of the body of a student; (6) displays, gives or sends by hand or courier or electronic or any other means naked or sexually explicit pictures or videos or sex related objects to a student; or (7) whistles or winks at a student or screams or exclaims or jokes or makes sexually complimentary or uncomplimentary remarks about a student's physique.	intimidating, hostile or offensive environment for the student; (4) Retained as in the Bill (5) grabs, hugs, <i>kisses</i>, rubs or strokes or touches or pinches the breasts or hair or lips or hips or buttocks or any other sensual part of the body of a student; (6) Retained as in the Bill (7) Retained as in the Bill	
4.	3. For the purposes of the offences created in Section 3 of this Act, it shall be a defence that the educator and the student are legally married.	<i>Defence on Grounds of Marriage</i> 4. For the purposes of the offences created in <i>Section 3 of this Bill</i>, it shall be a defence that the educator and the student are legally married.	
5.	4. It shall not be a defence to any offence created in Section 3 of this Act that a student consented to the offence.	<i>Students' Consent not a Defence</i> 5. It shall not be a defence to any offence created in <i>Section 3</i> of this <i>Bill</i> that a student consented to the <i>commission of the</i> offence.	
6.		<i>Proof of Commission of Offences</i> 6. <i>For the purpose of proving the commission of any of the offences in Section 3 of this Bill, it shall not be necessary for the prosecution to prove the intention of the accused person or the condition under which</i>	

		<i>the act of sexual harassment was carried out.</i>	
7.	Commencement of Criminal Proceedings 5. A complaint for the offence of sexual harassment may be made by a student or by any other person to the Nigerian Police or to the Attorney-General who shall take necessary measures to commence criminal proceedings against the educator.	Filing of Sexual Harassment Complaint 7. A complaint for the offence of sexual harassment under this Bill, <i>shall be made in writing</i> by a student or by <i>a student's representative who may be the student's relative, guardian, or lawyer, or any person who has interest in the wellbeing of the student</i> to the Nigerian Police or the Attorney-General who shall take necessary measures to <i>prosecute the educator in accordance with the provisions of this Bill.</i>	This clause has been redrafted for elegance and clarity.
8.		Petitioner or Complainant to forward Petition to Appropriate Authorities 8. <i>A copy of the written sexual harassment petition complaining of sexual harassment in section 7 of this bill shall be delivered by the petitioner or complainant to both the administrative head of the institution and the head of Department of the alleged offender for record purposes and such actions that may be required under this Bill.</i>	
9.		Commencement of Criminal Proceedings 9. <i>Criminal proceedings shall commence or be deemed to have commenced under this Bill when a charge has been filed in Court and the processes served on an educator who is alleged to have committed a sexual harassment offence under this Bill.</i>	
10.	Penalty 6. Any person who commits any of the acts specified in Section 3 of this Act is guilty of an offence and shall, on conviction, be sentenced to imprisonment of up to 5 years but not less than 2	Penalty 10. (1) Any person who commits any of the <i>offences</i> specified in Section 3 (1), (2), (3), (4) and (5) of this Bill is guilty of an offence and shall, on conviction, be sentenced <i>to</i>	The rationale behind this amendment is that Judges should be given the discretion to deal with

	years and there shall be no option of a fine.	<i>imprisonment for 3 years</i> , or to a fine of 1 Million Naira or both.	various situations that may arise because sexual harassments vary in degrees of seriousness. This is also in line with the Administration of Criminal Justice Act and sentencing guidelines in many jurisdictions.
		<i>(2) Any person who commits any of the offences specified in Section 3 (6) and (7) of this Bill is guilty of an offence and shall, on conviction, be sentenced to 1 year imprisonment, or to a fine of 500,000 Naira or both.</i>	The justification for this new sub-clause (2) is that offences created in clause 3 (6) and (7) are lesser and should carry a corresponding lesser penalties.
11.		<i>Fiduciary Duty of Care</i> <i>11. An educator shall be deemed to owe a fiduciary duty of care to a student and, in observance of this fiduciary duty of care, the educator shall not exploit a student or the relationship of authority, dependency and trust in section 2 of this Bill for personal gains, sexual pleasure, immoral satisfaction, or in any way whatsoever that benefits the educator to the disadvantage of the student.</i>	This omnibus clause is necessary since violation of fiduciary duty of care by an educator, constitutes an offence under clause 3 of this Bill.
12.	Civil Action for Breach of Fiduciary Duty 7. Notwithstanding the provisions of Sections 3, 7 and 8 of this Act or any other part of this Act, the right of a student who alleges sexual harassment by an educator to commence and maintain a civil action in Court for breach of fiduciary duty contrary to Section 3 of this Act is preserved.	Civil Action for Breach of Fiduciary Duty 12. Notwithstanding the provisions of Sections 3, 7, 8, 9, and 10 of this Bill or any other part of this <i>Bill</i> , the right of a student who <i>complains or</i> alleges sexual harassment by an educator to commence and maintain a civil action in Court for breach of fiduciary duty contrary to Section 3 of this Bill is preserved.	
13.	8. The standard of proof in any proceedings for breach of fiduciary duty under Section 3 of this Act shall be the same standard applicable in all civil proceedings.	13. Deleted	This clause has been deleted because clause 3 does not create any cause of action. And in any event, the action

			being a civil action will inevitably attract the civil standard proof.
14.	Institutional Disciplinary Measures 9. Nothing shall preclude an institution from proceeding under the institution's established Rules and Regulations for the internal administrative discipline of staff in related circumstances, provided that: (a) Where criminal proceedings under this Bill have been commenced and pending in a court in respect of a complaint of sexual harassment, no disciplinary body in an institution shall have the power to commence or to continue disciplinary proceedings in respect of acts to which this Bill relates. (b) Where internal disciplinary proceedings have been concluded and appropriate sanctions imposed, such administrative or disciplinary sanctions shall not be a bar to prosecution in a court under this Bill for acts of sexual harassment. (c) Where internal administrative or disciplinary sanctions have been imposed before commencement of criminal proceedings, a court, in passing sentence, shall have regard to the sanctions already imposed on the educator.	Institutional Disciplinary Measures 13. Retained as in the Bill	
15.	Institutional Disciplinary Procedure 10. (1) Where a student complains of sexual harassment, he or she shall submit a written Sexual Harassment Complaint to the administrative head of the institution where the complaint arose and shall specify the name and address of the educator who is alleged to have committed sexual harassment as defined under Section 6 of this Act.	Institutional Disciplinary Procedure 14. (1) Where a student complains of sexual harassment, he or she shall submit a written Sexual Harassment Complaint to the administrative head of the institution where the complaint arose and shall specify the name and address of the educator who is alleged to have committed sexual harassment under Section 7 of this Bill.	

	(2) The complaint mentioned in subsection (1) of this section of this Bill may be made by the student in person or by the student's relative, guardian, or lawyer, or any person who has sufficient interest in the wellbeing of the student. (3) Upon receipt of a Sexual Harassment complaint by the administrative head, he shall, within seven (7) working days, constitute a panel to be known and called Sexual Harassment Prohibition Committee to determine sexual harassment complaints under the provisions of this Act. (4) Where the complaint is against an academic staff, the Sexual Harassment Prohibition Committee shall be headed by a non-academic staff, who shall not be less than the rank of an Assistant Director or its equivalent with membership which shall include a representative of the student body and a representative of the academic staff of the institution. (5) Where the complaint is against a non-academic staff, the Sexual Harassment Prohibition Committee shall be headed by an academic staff, who shall not be less than the rank of a Senior Lecturer or its equivalent with membership which shall include a representative of the student body and a representative of the administrative or non-academic staff of the institution. (6) The membership of the Sexual Harassment Prohibition Committee shall be five (5) persons, including a Chairman who shall direct the Committee's proceedings. (7) Any 3 (three) members of the Sexual Harassment Prohibition Committee, including the Chairman, shall form a	(2) Retained as in the Bill (3) Upon receipt of a Sexual Harassment complaint by the administrative head, he shall, within seven (7) twenty one (21) working days, constitute a panel to be known and called Sexual Harassment Prohibition Investigation Panel to determine sexual harassment complaints under the provisions of this Bill. (4) Where the complaint is against an academic staff, the Sexual Harassment Investigation Panel, shall be headed by a non-academic staff who shall not be less than the rank of an Assistant Director or its equivalent with membership which shall include a representative of the student body and a representative of the academic staff of the institution. (5) Where the complaint is against a non-academic staff, the Sexual Harassment Investigation Panel, shall be headed by an academic staff, who shall not be less than the rank of a Senior Lecturer or its equivalent with membership which shall include a representative of the student body and a representative of the administrative or non-academic staff of the institution. (6) The membership of the Sexual Harassment Investigation Panel shall be five (5) persons, including a Chairman who shall direct the Committee's proceedings. (7) Any 3 (three) members of the Sexual Harassment Investigation Panel, including the Chairman, shall form a	It is our considered opinion that the 7 days given to the administrative head to set investigative panel, be increased to 21 days to allow for sufficient time to make relevant consultations where necessary and allow for other exigencies of service. Secondly, it was reasoned that the nomenclature of the panel to investigate sexual harassment should be Sexual Harassment Investigation panel because the panel is to investigate and not to prohibit.
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	quorum. (8) A Sexual Harassment Prohibition Committee shall conduct its proceedings with utmost fairness to the parties and compliance with the rules of natural justice. (9) A Sexual Harassment Prohibition Committee shall judiciously and fairly exercise its discretion with regards to the number of witnesses that may be allowed to testify during its proceedings. (10) The decision of the Sexual Harassment Prohibition Committee, which shall be in writing, shall be by a simple majority. (11) Where the complaint of a student is made out, the Sexual Harassment Prohibition Committee may recommend to the administrative head, the dismissal of the educator or any other appropriate sanction such as reduction in rank of the educator concerned. (12) Where it is shown at the conclusion of the Sexual Harassment Prohibition Committee's proceedings that the complaint was false or was made with malice, the committee may recommend to the administrative head, appropriate sanction against the student which may include dismissal of the student from the institution or other appropriate sanction which may include suspension for up to one year. (13) A Sexual Harassment Prohibition Committee shall deliver its decision in writing within thirty (30) days from the date of its inauguration by the administrative head.	quorum. (8) A Sexual Harassment <i>Investigation Panel</i> shall conduct its proceedings with utmost fairness to the parties and in compliance with the rules of natural justice. (9) A Sexual Harassment <i>Investigation Panel</i> shall judiciously and fairly exercise its discretion with regards to the number of witnesses that may be allowed to testify during its proceedings. (10) The decision of the Sexual Harassment <i>Investigation Panel</i>, which shall be in writing, shall be by a simple majority. (11) Where the complaint of a student is made out, the Sexual Harassment <i>Investigation Panel</i> may recommend to the administrative head, the <i>prosecution or</i> dismissal of the educator or any other appropriate sanction such as reduction in rank of the educator concerned <i>and the Panel shall ensure appropriate restitution for the student.</i> (12) Where it is shown at the conclusion of the Sexual Harassment <i>Investigation Panel</i> proceedings that the complaint was false or was made with malice, the <i>Panel</i> may recommend to the administrative head, suspension <i>not exceeding</i> one year. (13) A Sexual Harassment <i>Investigation Panel</i>, shall deliver its decision in writing within thirty (30) days from the date of its inauguration by the administrative head.	The inclusion of the phrase "prosecution or" in the Bill is to accommodate a recommendation for prosecution of the offender.
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16.	Judicial Review 11. An educator or a student shall be entitled to apply to a High Court for judicial review of the decision of a Sexual Harassment Prohibition Committee, if the educator or student is dissatisfied with that decision or part thereof.	Judicial Review 15. An educator or a student shall be entitled to apply to a High Court for judicial review of the <i>final</i> decision of a Sexual Harassment <i>Investigation Panel</i>, if the educator or student is dissatisfied with that decision or part thereof. <i>The application for judicial review under this section may be consolidated with any civil proceedings commenced on behalf of the affected student pursuant to the provisions of this Bill.</i>	This is to check multiplicity of actions.
17.	Criminal liability of Administrative Head 12. Where before the commencement of criminal proceeding under this Act for sexual harassment, a student has made a formal complaint in writing to the administrative head of the institution complaining of sexual harassment against an educator, it shall be an offence for the administrative head to fail or neglect to set up a Sexual Harassment Prohibition Committee to look into the complaint within seven (7) working days of receipt of the complaint.	Criminal liability of Administrative Head 16. Where before the commencement of criminal proceedings <i>for sexual harassment under this Act</i>, a student <i>or his or her representative makes a sexual harassment complaint</i> to the administrative head of the institution against an educator, it shall be an offence if the administrative head <i>wilfully fails or neglects</i> to set up a Sexual Harassment <i>Investigation Panel</i> to look into the complaint within <i>Thirty (30)</i> working days of <i>receiving</i> the complaint <i>from the student</i>.	
18.	13. An administrative head who is guilty under Section 13 of this Act shall, upon conviction, be sentenced to not less than two (2) years imprisonment or a fine of not less than N2,000,000.00 or both.	Penalty for Failure of Administration Head to Set up Sexual Harassment Investigation Panel 17. An administrative head who is guilty under Section 14 of this Bill shall, upon conviction, be sentenced to not less than two (2) years imprisonment or <i>be liable to pay</i> a fine of N1,000,000.00.	The imposition of imprisonment and an option of fine of N2,000,000, for failure of the administrative head to set up a panel on time, is considered too severe. It is also our view that such offence should not carry the weight of imprisonment.

19.	Liability for false Complaint 14. Where a complaint has been made to an administrative head and a Sexual Harassment Prohibition Committee has been set up, if after completion of its proceedings, the Committee determines that the complaint is false, the Committee may, recommend sanctions to the administrative head against the student, including dismissal of the student from the institution.	Liability for false Complaint 18. Deleted	
20.	15. An administrative head shall implement the recommendations of a Sexual Harassment Prohibition Committee if, after seven (7) working days of the decision or recommendations of a Sexual Harassment Prohibition Committee, an educator or student did not bring an action in Court for a judicial review of the recommendations.	Implementation of Recommendation of Sexual Harassment Investigation Penal/Committee 18. An administrative head shall implement the recommendations of a Sexual Harassment <i>Investigation Panel</i> if, after <i>twenty one (21)</i> working days of the decision or recommendations of a Sexual Harassment <i>Investigation Panel</i>, an educator or student did not bring an action in Court for a judicial review of the recommendations.	
21.	16. Where criminal proceedings are commenced and concluded under Section 7 of this Act and the educator is discharged and acquitted of the charge on the ground not only that the prosecution failed to prove its case but that the allegation was false, the Attorney-General may recommend to the administrative head sanctions to be meted out to the student, including dismissal from the institution.	Remedy on grounds of False Allegation 19. Where criminal proceedings <i>and appeals</i> are commenced and concluded under Section 7 of this Act and the educator is discharged and acquitted of the charge on the ground not only that the prosecution failed to prove its case but that the allegation was false, the Attorney-General may recommend to <i>a disciplinary action may be taken against the student by</i> the administrative head <i>in line with the internal disciplinary procedure of the Institution, which may include but not restricted to expulsion</i> from the institution.	It is our concerted view that failure of the prosecution to prove its case, may not be the fault of the student and it is therefore inappropriate to punish the student on that ground. The clause has been redrafted to address the aforesaid issue and for elegance.
22.	Protection of Students from Victimization 17. The administrative head of an institution shall ensure that a student who makes a sexual harassment complaint pursuant to	Protection of Students from Victimization 20. The administrative head of an institution shall ensure that a student who makes a sexual harassment complaint	This clause was amended by deleting the words appearing after the word

	this Act is adequately protected and not subjected to any form of victimization by the educator who is complained against or any other educator within the institution or in another institution during the pendency of any civil, criminal or internal institutional disciplinary proceedings initiated under this Act.	pursuant to this Bill is adequately protected and not subjected to any form of victimization by the educator who is complained against or any other educator within the institution or in another institution. during the pendency of any civil, criminal or internal institutional disciplinary proceedings initiated under this Act.	"institution" in line 6, because they appear to restrict the protection of a victim to a period of time.
23.	18. An educator in the institution in question or in another institution who victimizes a student in respect of any complaint under this Act, shall be liable to the same criminal sanctions, disciplinary punishment or damages as the educator whom the student originally complained against.	Penalty for Victimization of Students in Respect of Complaint 21. <i>Any educator or person in an institution where sexual harassment is alleged or in another institution, who victimizes a student in respect of a sexual harassment complaint under this Bill, shall be liable to the same criminal sanctions, disciplinary punishment or damages as the educator whom the student originally complained against.</i>	Redrafted for elegance.
24.		Public Officers Protection Laws not Applicable in the Commencement of Proceedings for Breach of Fiduciary Duty of Care 22. <i>For the purpose of commencing any civil proceedings in court for breach of fiduciary duty of care or any criminal proceedings against an educator under this Bill, the limitation period for commencing actions against a public officer stipulated in the Public Officers Protection laws or any other law limiting the time of commencement of proceedings against a public officer in force in Nigeria or any part thereof, shall not be applicable.</i>	
25.	Definition of Terms 19. In this Act, unless the context indicates otherwise: "administrative head" means a vice chancellor of a university, a	Interpretation 23. In this Bill Retained	

	rector of a Polytechnic/Monotechnic, a provost of a college of education or any officer who is the chief executive officer of any tertiary academic institution or any other person acting in that capacity. "attorney-general" means Attorney-General of the Federation or Attorney General of a State. "court" means a High Court of a State or of the Federal Capital Territory and the Federal High Court. "educator" means a faculty or non-faculty member of a tertiary educational institution including a professor, lecturer, graduate assistant, post-doctoral fellow or associate serving as a full-time or part-time instructor or a teaching fellow in similar institutional roles who teaches, educates or trains students or who provides professional educational services; or a staff or member of any tertiary educational institution who may have authority over or a mentoring relationship with any student and also includes, coaches, supervisors of student employees, advisors and directors of student organizations, students' residential fellows, and persons who advise, mentor, or evaluate students or any person who oversees any aspect of any student's academic work.	Retained "court" means <i>a Magistrate Court</i>, High Court of a State or of the Federal Capital Territory and the Federal High Court. "educator" means <i>every employee of a tertiary educational institution including academic and non-academic staff, or</i> a faculty or non-faculty member of a tertiary educational institution including a professor, lecturer, graduate assistant, post-doctoral fellow or associate serving as a full-time or part-time instructor or a teaching fellow in similar institutional roles who teaches, educates or trains students or who provides professional educational services; or a staff or member of any tertiary educational institution who may have authority over or a mentoring relationship with any student and also includes, coaches, supervisors of student employees, advisors and directors of student organizations, students' residential fellows, and persons who advise, mentor, or evaluate students or any person who oversees any aspect of any student's academic work. <i>"fiduciary duty" means an inviolable duty of care founded on honourable human behaviour, obligation</i>	'Magistrate Court' has been introduced to form part of the definition of terms because it is our view that some form of sexual harassment may not be very serious and can properly and expeditiously be dealt with by a Magistrate Court. The phrase 'fiduciary duty' featured prominently in the Bill. It is therefore
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		<i>of good faith, honesty, and respect for human dignity and rights owed to a student by an educator on the basis of a unique relationship of authority, dependency and trust by which an educator exercises direct supervisory responsibilities or superiority over a student.</i>	imperative to define it for the purpose of clarity.
	"institution" means any public or private tertiary or post-secondary educational institution in Nigeria and this includes any university, polytechnic, monotechnic, or college of education.	Retained	
	"relationship of authority, dependency and trust" means a relationship between an educator and a student where the educator exercises or is reasonably expected to exercise direct or indirect supervisory responsibilities over the student; a relationship that forbids all forms of sexual coercion or sexual consensus, including amorous relationships that jeopardizes or likely to jeopardize the integrity of the educational process or impairs the learning environment through conflict of interest.	Retained	
	"Sexual harassment" includes:	Retained	
	(a) Sexual intercourse between an educator and a student where the student is below the age of 18 years or is an imbecile or of generally low mental capacity or physically challenged.	Deleted	
	(b) any unwelcome sexual attention from an educator who knows or ought reasonably to know that such attention is unwelcome to the student;	Retained	
	(c) any unwelcome implicit or explicit behaviour, suggestions, messages or remarks of a sexual nature that have effect of offending, intimidating or humiliating the student or a	Retained	

	related person in circumstances which a reasonable person having regard to all the circumstances would have anticipated that the student or such related person would be offended, intimidated or humiliated; (d) any implied or expressed promise of reward by an educator to a student or related person for complying with a sexually oriented request or demand; (e) any implied or expressed threat of reprisal or actual reprisal from an educator to a student or related person for refusal to comply with a sexually oriented request or demand; "sexual intercourse" means penetration of a sexual nature of the vagina or anus or mouth of the student by the penis or mouth or finger of the educator or any instrument or toy by the educator and for this purpose, a male student can be sexually harassed by a female educator; "student" refers to all persons enrolled in any and all educational and training programs of a tertiary educational institution or post-secondary institution, and this includes persons seeking admission to study in any tertiary educational institution or post-secondary institution; "Supervision" means course teaching, training, examining, grading, advising, counselling, and includes any other form of guidance of a student on any academic or non-academic matter.	Retained Retained <i>(f) a single incident of sexual harassment defined as in paragraphs (a) to (e) above, constitutes harassment.</i> "sexual intercourse" means penetration of a sexual nature of the vagina or anus or mouth of the student by the penis or mouth or finger of the educator or any instrument or toy by the educator and for this purpose, a male student can be sexually harassed by a female <i>or male</i> educator; "student" refers to all persons enrolled in any <i>or</i> all educational and training <i>programmes</i> of a tertiary educational institution or post-secondary institution, and this includes persons seeking admission to study in any tertiary educational institution or post-secondary institution; Retained	This is necessary to avoid unnecessary legal arguments as to whether a single incident, can amount to harassment. It is our view that the phrase "or male" be added to this definition to expand the scope of the offence as it has been reported that even male students have been sexually harassed by male educators.
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26.	Citation 20. This Act may be cited as the Sexual Harassment in Tertiary Educational Institutions Prohibition Bill, 2016.	Citation 24. Retained as in the Bill	
	EXPLANATORY MEMERANDUM This Bill seeks to make provision for the Prohibition of Sexual Harassment of Students by Educators in Tertiary Institutions, and for Related Matters.	EXPLANATORY MEMERANDUM Retained as in the Bill	