

Employer Liability for Workplace Sexual Harassment in Nigeria: Bridging the Gap Between International Standards and Domestic Law

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Abstract

Workplace sexual harassment represents a pervasive violation of human dignity, equality, and labour rights across jurisdictions. In Nigeria, despite increasing recognition of the problem, the legal framework governing employer liability remains fragmented, underdeveloped, and largely reactive. This article undertakes a comprehensive examination of employer liability for workplace sexual harassment under Nigerian law, identifying critical deficiencies in the doctrines of vicarious liability, employer duty of care, and preventive obligations. It argues that the absence of a coherent statutory framework significantly undermines effective protection for victims and weakens institutional accountability. Through a comparative analysis of the United States and South Africa, the article highlights best practices that emphasise proactive employer responsibility and structured liability regimes. Drawing from international labour standards, including emerging global norms on workplace violence and harassment, the article proposes a robust legal reform agenda aimed at harmonising Nigeria's domestic framework with international best practices. It concludes that meaningful protection against workplace sexual harassment in Nigeria requires a paradigm shift from reactive adjudication to proactive regulatory enforcement grounded in clear statutory obligations.

Keywords: Employer, Liability, Sexual Harassment, Workplace, International Standard

1. Introduction

Workplace sexual harassment has increasingly emerged as a critical issue at the intersection of labour law, human rights discourse, and organisational governance. Far from being an isolated form of individual misconduct, it is more accurately understood as a manifestation of entrenched structural inequalities and asymmetric power relations within the workplace. These dynamics often reflect broader societal patterns of gender inequality, economic dependency, and institutional silence, which collectively create an environment in which harassment can occur and persist.¹At its core, sexual harassment constitutes a direct affront to the fundamental rights of workers, particularly the rights to dignity, equality, and safe and healthy working conditions. Its implications extend beyond the immediate harm to victims, affecting workplace morale,

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¹Krista Lynn Minnotte & Elizabeth Legerski, 'Sexual Harassment in Contemporary Workplaces: Contextualizing Structural Vulnerabilities' *Sociology Compass* (2019) 13(12).

productivity, and organisational integrity, while also undermining public confidence in labour protections and justice systems.²

In the Nigerian context, the prevalence of workplace sexual harassment has been widely acknowledged across both formal and informal sectors. It is particularly pronounced in industries characterised by rigid hierarchies, precarious employment arrangements, and limited regulatory oversight, where victims often lack the institutional support necessary to report or challenge misconduct. Cultural norms, fear of retaliation, job insecurity, and the stigma attached to reporting harassment further contribute to significant underreporting, thereby masking the true scale of the problem. Despite growing awareness, the legal and institutional response remains fragmented and insufficient. Existing statutory provisions, such as those found in labour and criminal laws, only tangentially address aspects of sexual harassment and fail to provide a coherent or comprehensive framework for addressing employer responsibility. Judicial interventions, while occasionally progressive, have been inconsistent and largely reactive, leaving critical questions of liability and enforcement unresolved.³

The role of employers in both preventing and addressing workplace sexual harassment is central and cannot be overstated. Employers exercise significant control over workplace structures, policies, and culture, and are therefore uniquely positioned to implement preventative measures such as clear anti-harassment policies, reporting mechanisms, staff training, and effective disciplinary procedures. In many jurisdictions, this recognition has led to the development of robust legal doctrines imposing both direct and vicarious liability on employers. Such frameworks not only ensure accountability but also serve a preventive function by incentivising organisations to actively foster safe and respectful work environments. The shift towards proactive employer obligations reflects a broader understanding that workplace harm is often systemic rather than purely individual⁴

However, Nigerian law has yet to fully internalise this evolving approach. The absence of explicit statutory provisions defining and regulating employer liability for workplace sexual harassment creates significant legal uncertainty. Victims face considerable challenges in seeking redress, as they must often rely on indirect or ill-fitting legal remedies that do not adequately capture the nature of the harm suffered. At the same time, employers are not subject to clearly articulated duties to prevent harassment, resulting in a regulatory gap that permits organisational negligence to persist with minimal consequence.⁵ This deficiency is further compounded by Nigeria's dualist approach to international law, which requires the formal domestication of international treaties before they can have binding effect within the domestic legal system. As a result, key international

² Malatjie KR & Grace Mbajiorgu, 'Sexual Harassment as a Gender Inequality and a Form of Workplace Discrimination: A South African Perspective' *Journal of Social Welfare and Family Law* (2024) 24(1–2).

³ Aliyu Abubakar, Musa Yahaya & Ahmad Aliyu Zanwa, 'Appraisal of Workplace Sexual Harassments in Nigeria: The Inadequacy of the Extant Laws' *LexScriptio Journal of Jurisprudence and Public Law* (2024) 2(1), 17-35

⁴ Joanna Grossman, 'The Culture of Compliance: The Final Triumph of Form over Substance in Sexual Harassment Law' *Harvard Women's Law Journal* (2003) 26, 3.

⁵ Similoluwa Daramola, 'The Adequacy of the Law on Workplace Sexual Harassment in Nigeria' *Journal of Law, Policy and Globalization* (2023) 136

labour standards and human rights instruments addressing workplace harassment remain underutilised in shaping national legal obligations.⁶

This article seeks to address these challenges through a comprehensive and critical examination of the Nigerian legal framework governing employer liability for workplace sexual harassment. It interrogates the existing statutory and judicial landscape, identifying doctrinal inconsistencies and enforcement gaps that hinder effective protection for workers. The analysis further explores the evolving role of the judiciary in bridging these gaps, while assessing the extent to which international and comparative legal developments can inform domestic reform. By situating Nigeria within a broader global context, the article highlights both the deficiencies of the current regime and the possibilities for progressive transformation. Ultimately, it argues for the adoption of a coherent, proactive, and enforceable legal framework that clearly delineates employer responsibilities, strengthens victim protection mechanisms, and aligns domestic law with international best practices.

2. Gaps and Challenges

2.1 Absence of a Uniform Statutory Definition

A central doctrinal weakness in Nigeria's regulation of workplace sexual harassment is the absence of a comprehensive federal statute that clearly defines and governs the concept. Unlike jurisdictions with dedicated equality or anti-discrimination legislation, Nigeria relies on a fragmented framework derived from constitutional guarantees, criminal law, labour provisions, and judicial interpretation. None of these sources provides a single, codified definition that clearly outlines the elements, scope, and consequences of workplace sexual harassment.

This definitional gap creates significant legal uncertainty. In the absence of statutory guidance, courts adopt varying approaches, leading to inconsistent interpretation, fluctuating evidentiary standards, and unpredictable outcomes. Claimants face uncertainty as to what must be proven, while employers lack clear benchmarks for compliance, often resulting in weak or inconsistent workplace policies.⁷

Beyond doctrinal implications, the absence of a uniform definition undermines preventive regulation. Without clearly imposed legal duties, employer responses remain largely reactive rather than proactive, limiting the development of effective workplace safeguards. It also weakens the normative role of law in signalling that sexual harassment is a serious violation of dignity and equality.⁸

Overall, the lack of a codified definition remains a foundational gap, hindering legal coherence, effective enforcement, and meaningful protection for workers.

2.2 Absence of Statutory Duty of Care

A major gap in Nigeria's legal framework on workplace sexual harassment is the absence of an explicit statutory duty of care imposed on employers to maintain a harassment-free working environment. Unlike more developed labour regimes, where legislation clearly obligates employers to take reasonable and proactive steps to prevent harassment, Nigerian law does not

⁶ Ibid

⁷ Ibid

⁸ Ibid

expressly codify such a duty. As a result, employer responsibility remains largely implicit, fragmented, and dependent on general principles rather than clear statutory command.⁹

In practice, this absence significantly constrains the ability of courts and regulatory bodies to hold employers accountable for workplace negligence. Without a defined legal duty, liability cannot easily be established on the basis of failure to prevent harassment, even where employers have been aware of risks or prior incidents. Courts are therefore often limited to addressing individual perpetrators rather than examining systemic organisational failures, such as inadequate policies, lack of reporting mechanisms, or failure to act on complaints.¹⁰

This gap also weakens the preventive function of labour regulation. A statutory duty of care typically serves not only as a basis for liability but also as a compliance mechanism, compelling employers to adopt internal safeguards, training programmes, and disciplinary procedures. In its absence, such measures remain discretionary rather than legally required, resulting in uneven standards across workplaces and limited institutional accountability.¹¹

Furthermore, the lack of a clearly articulated duty of care undermines the development of a robust jurisprudence on employer liability. It restricts judicial capacity to evolve negligence-based standards tailored to workplace harassment, thereby limiting legal innovation and consistency. Employers may avoid liability even in situations where harm was foreseeable and preventable, simply because the law does not expressly impose a preventive obligation.¹²

Ultimately, the absence of a statutory duty of care represents a structural weakness in Nigeria's employment law framework. It shifts the legal system toward a reactive model focused on punishing individual misconduct, rather than a preventive model that holds organisations accountable for maintaining safe and dignified workplaces. Addressing this gap is essential for strengthening employer liability and aligning domestic law with international standards on workplace protection.¹³

2.3 Lack of Preventive Framework

A significant weakness in Nigeria's legal response to workplace sexual harassment is the absence of a mandatory preventive framework requiring employers to adopt proactive measures aimed at eliminating harassment before it occurs. Unlike modern regulatory systems that impose structured obligations on employers, Nigerian law does not expressly require the establishment of workplace policies, training programmes, or formal reporting and complaint mechanisms dedicated to addressing sexual harassment.

In jurisdictions with developed labour and equality legislation, prevention is treated as a core component of employer responsibility. Employers are typically required to develop clear anti-harassment policies, conduct regular staff training, establish confidential reporting channels, and ensure prompt and impartial investigation of complaints. These measures are designed not only

⁹ Abubakar A, Yahaya M & Zanwa AA, 'Appraisal of Workplace Sexual Harassments in Nigeria: The Inadequacy of the Extant Laws' *LexScriptio: A Journal of Jurisprudence and Public Law* (2025) 2(1), 17–35 <https://journals.kwasu.edu.ng/index.php/lexscriptio/article/view/287> accessed 26th April 2026

¹⁰ Ibid

¹¹ Ibid

¹² n (23)

¹³ Ibid

to respond to incidents but to actively prevent their occurrence by shaping workplace culture and behaviour. In contrast, the Nigerian framework lacks such codified obligations, leaving preventive measures largely to the discretion of individual employers.¹⁴

This absence contributes to a predominantly reactive legal approach, where intervention occurs only after harm has already been suffered. Without legally mandated preventive systems, many workplaces operate without formal mechanisms for reporting or addressing harassment, thereby increasing the likelihood of underreporting, silence, and institutional neglect. Employees may be left without safe or trusted avenues for complaint, particularly in environments characterised by power imbalances or hierarchical authority structures.¹⁵

The lack of a preventive framework also weakens enforcement and accountability. Where employers are not legally required to implement structured safeguards, it becomes difficult to assess compliance or measure negligence. This limits the ability of courts and regulators to evaluate whether reasonable steps were taken to prevent harassment, thereby narrowing the scope of employer liability.¹⁶

More broadly, the absence of preventive obligations undermines the development of a workplace culture rooted in dignity, equality, and respect. Legal systems that emphasise prevention help to normalise awareness, discourage misconduct, and reinforce organisational responsibility. In Nigeria, however, the absence of such a framework means that protection against sexual harassment remains largely dependent on post-incident remedies rather than proactive institutional safeguards.¹⁷

Overall, this gap reflects a critical shortcoming in the regulatory architecture governing workplace conduct. Strengthening the law to include mandatory preventive measures would significantly enhance employer accountability, improve protection for employees, and align Nigeria's framework with international best practices in workplace equality and safety.

3 International labour standards

International labour standards and broader human rights frameworks have, over time, developed a progressively robust understanding of workplace sexual harassment as not merely a private or interpersonal issue, but as a structural violation of dignity, equality, and safe working conditions. This evolution reflects a global shift from treating harassment as isolated misconduct to recognising it as a systemic labour rights concern requiring preventative regulation, employer accountability, and effective remedies. Instruments developed under the International Labour Organization (ILO), alongside key human rights treaties, now form the backbone of this international consensus. However, Nigeria's domestic legal framework has not fully incorporated these developments, creating a significant gap between global expectations and national enforcement realities, particularly in relation to employer liability.¹⁸

¹⁴ n(17)

¹⁵ Ibid

¹⁶ Hope, A. A. & Munro, C. L. (2021), "Getting to Zero Sexual Harassment in the Workplace," *American Journal of Critical Care*, 30(4), 250–252.

¹⁷ Ibid

¹⁸International Labour Organization, *Violence and Harassment Convention, 2019 (No 190)*

A central pillar of international labour standards in this area is the recognition that harassment constitutes a violation of the right to decent work. The ILO Violence and Harassment Convention, 2019 (No. 190), together with its accompanying Recommendation No. 206, represents the most comprehensive global instrument addressing workplace violence and harassment. It explicitly defines harassment to include behaviours and practices that cause physical, psychological, sexual, or economic harm, and it extends protection beyond formal employees to include interns, job applicants, and informal workers. Importantly, it imposes a clear expectation that member states adopt laws requiring employers to take active steps to prevent and address workplace harassment, including risk assessment, policy development, training, and accessible complaint mechanisms. The Convention therefore shifts responsibility from reactive dispute resolution to proactive prevention.¹⁹

Closely linked to the ILO framework are broader international human rights instruments that reinforce the obligation of states to protect individuals from discrimination and abuse in employment settings. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), for instance, has been interpreted through General Recommendation No. 19 and later General Recommendation No. 35 to explicitly include sexual harassment as a form of gender-based violence that impairs women's equality in employment. These interpretations impose a due diligence obligation on states to prevent, investigate, punish, and provide remedies for such conduct. Similarly, the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognises the right to just and favourable working conditions, which includes safe and healthy workplaces free from harassment.²⁰

Within this international framework, employer liability emerges as a key enforcement mechanism. Modern standards increasingly reject the notion that liability should depend solely on direct participation by employers in acts of harassment. Instead, liability is grounded in institutional responsibility. Employers are expected to ensure that workplace environments are free from harassment through the implementation of preventive systems and effective response mechanisms. Failure to establish such safeguards may itself constitute a breach of international labour obligations, even where the employer did not directly perpetrate the misconduct. This approach reflects a shift toward "positive obligations" in labour governance, where employers are active duty-bearers rather than passive supervisors of workplace behaviour.²¹

Despite these developments, Nigeria's domestic legal system remains only partially aligned with international standards. While constitutional guarantees of dignity and freedom from discrimination exist, and certain statutory and judicial developments have addressed aspects of sexual harassment indirectly, there is no comprehensive legislative framework that fully domesticates the obligations set out under instruments such as ILO Convention No. 190. As a result, employer liability in Nigeria is often fragmented and largely dependent on general principles of tort, criminal law provisions, or ad hoc judicial interpretation. This reactive structure contrasts sharply with the preventive and systemic model endorsed internationally.²²

¹⁹ Ibid

²⁰ CEDAW Committee, General Recommendation No 19: Violence against Women (1992) UN Doc A/47/38; CEDAW Committee,

²¹ n(66)

²² n (25)

The absence of full domestication has several practical consequences. Employers are not consistently required by law to implement formal anti-harassment policies, conduct workplace risk assessments, or provide mandatory training on sexual harassment prevention. Reporting mechanisms are often informal or nonexistent, and where they exist, they lack statutory backing. This weak institutional framework reduces accountability and places a disproportionate burden on victims to initiate complaints without guaranteed procedural protection or organisational support. It also undermines deterrence, as employers may not face clear legal consequences for failing to prevent harassment unless a specific incident is successfully litigated.²³

Furthermore, Nigeria's limited incorporation of international labour standards restricts the development of consistent jurisprudence on employer liability. In jurisdictions that have fully integrated instruments like ILO Convention No. 190, courts and tribunals increasingly apply a standard of "reasonable preventive measures" when assessing employer responsibility. In contrast, Nigerian courts often rely on traditional fault-based reasoning, which may not adequately capture systemic negligence or institutional failure to prevent harassment. This creates a gap between evolving global standards and domestic judicial practice.²⁴

In sum, international labour standards provide a clear and increasingly unified framework that conceptualises workplace sexual harassment as a structural violation requiring proactive employer responsibility. These standards emphasise prevention, accountability, and institutional reform rather than merely post-incident redress. Nigeria's partial domestication of these norms limits their effectiveness within the domestic legal order and weakens the legal basis for comprehensive employer liability. Bridging this gap would require not only legislative reform aligned with ILO Convention No. 190 and related instruments, but also a reorientation of legal doctrine toward recognising employers as primary agents responsible for ensuring safe and dignified workplaces.

4. Reform Proposals

4.1 Comprehensive Legislation

A comprehensive legislative framework remains the most critical reform needed to effectively regulate workplace sexual harassment and clearly define employer liability in Nigeria. At present, the legal regime is dispersed across constitutional provisions, criminal statutes, labour regulations, and limited judicial interpretation. This fragmented structure creates uncertainty, weakens enforcement, and places excessive reliance on general legal principles rather than a coherent statutory system specifically designed to address workplace harassment. A dedicated statute would therefore serve as the cornerstone for harmonising standards, strengthening accountability, and aligning domestic law with internationally accepted best practices.²⁵

A well-designed Nigerian statute would go beyond simply prohibiting sexual harassment. It would establish a structured regulatory framework that clearly defines prohibited conduct, delineates employer duties, and creates enforceable mechanisms for prevention, reporting, investigation, and sanction. Crucially, it would recognise workplace sexual harassment as both an individual wrong and an institutional failure, thereby grounding employer liability not only in direct misconduct but also in negligence or failure to take reasonable preventive steps. Such a statute would shift the

²³ Ibid

²⁴ Ibid

²⁵ n (3)

legal approach from reactive adjudication to proactive compliance, which is the dominant model in leading comparative jurisdictions.²⁶

In the United States, the regulation of workplace sexual harassment is primarily anchored in Title VII of the Civil Rights Act of 1964, supplemented by extensive judicial interpretation and enforcement guidelines issued by the Equal Employment Opportunity Commission (EEOC). Although Title VII does not explicitly use the term “sexual harassment,” courts have interpreted discrimination “because of sex” to include both quid pro quo harassment and hostile work environment harassment. A defining feature of the U.S. model is the development of employer liability through case law, particularly the *Faragher v. City of Boca Raton*²⁷ and *Burlington Industries v. Ellerth* decisions.²⁸ These cases established that employers are vicariously liable for harassment by supervisors, but may avoid liability if they can demonstrate that they exercised reasonable care to prevent and correct harassment and that the employee unreasonably failed to utilise internal reporting mechanisms. This creates a strong incentive for employers to implement internal policies, training programmes, and complaint procedures, embedding compliance within organisational governance.

South Africa, by contrast, adopts a more explicitly statutory and constitutionally grounded approach. Workplace sexual harassment is addressed through the Constitution of the Republic of South Africa, 1996, particularly the rights to dignity, equality, and fair labour practices, as well as through the Employment Equity Act 55 of 1998. Importantly, South Africa has developed a detailed Code of Good Practice on the Handling of Sexual Harassment Cases in the Workplace, issued under labour legislation, which provides practical guidance to employers on prevention and response.²⁹ This Code requires employers to adopt clear workplace policies, conduct regular training, establish confidential reporting mechanisms, and ensure prompt and impartial investigations. Liability is therefore strongly institutional, as employers may be held responsible for failing to comply with these statutory and quasi-statutory obligations, even where they did not directly perpetrate the harassment.³⁰

When compared to these jurisdictions, Nigeria’s current legal framework reveals significant deficiencies. There is no single comprehensive statute that defines workplace sexual harassment, prescribes employer duties, or establishes a unified enforcement mechanism. As a result, employer liability is often determined through general principles of negligence or vicarious liability, without clear statutory guidance on preventive obligations. This contrasts sharply with the United States, where liability is shaped by a well-developed judicial doctrine incentivising compliance, and South Africa, where statutory codes impose direct and proactive duties on employers.³¹

²⁶ Ibid

²⁷ 524 US 775 (1998).

²⁸ 524 US 742 (1998).

²⁹ Anri Botes, ‘Identifying Sexual Harassment in the Workplace? Do Not Forget to Remember the Code of Good Practice’ *Industrial Law Journal* (2015) 36, 1719.

³⁰ Constantine Ntsanyu Nana, ‘Sexual Harassment in the Workplace in South Africa: The Unlimited Vicarious Liability of Employers?’ *Journal of African Law* (2008) 52, 245.

³¹ Obioma H. Onyi-Ogelle & Chiyemenum Okechuku Wodi, ‘Legal Remedy to the Challenges of Sexual Harassment in the Workplace in Nigeria: Echoes from South Africa and India’ *International Review of Law and Jurisprudence (IRLJ)* (2023) 5(2), 95–107.

Another key difference lies in the institutional enforcement structure. In the United States, the EEOC provides an administrative mechanism for receiving complaints, investigating claims, and facilitating settlements before litigation. In South Africa, the Commission for Conciliation, Mediation and Arbitration (CCMA) performs a similar quasi-judicial function, ensuring accessible dispute resolution. Nigeria, however, lacks a specialised, well-resourced administrative body dedicated specifically to workplace harassment claims, leaving victims to rely heavily on ordinary courts, which may be slow, costly, and procedurally complex.³²

A comprehensive Nigerian statute would therefore need to integrate the strengths of these comparative models while addressing local legal gaps. It should establish a clear statutory definition of workplace sexual harassment, impose a non-delegable duty on employers to maintain a harassment-free workplace, and require the adoption of internal policies, training programmes, and reporting systems. It should also introduce a structured liability framework that recognises both direct and indirect employer responsibility, similar to the preventive liability model in South Africa and the incentive-based liability model in the United States. Additionally, the statute should create a specialised enforcement mechanism, whether through an administrative agency or labour tribunal, to ensure accessible and efficient resolution of complaints.³³

In conclusion, comparative analysis demonstrates that effective regulation of workplace sexual harassment depends on the existence of a dedicated legislative framework that combines clear definitions, proactive employer duties, and accessible enforcement mechanisms. The United States achieves this through a strong judicially developed liability framework that incentivises employer compliance, while South Africa adopts a more codified statutory and policy-driven model that imposes explicit preventive obligations. Nigeria's absence of a comparable comprehensive statute leaves a significant gap in both protection and enforcement. Enacting a dedicated workplace sexual harassment law would therefore represent a crucial step toward strengthening employer accountability and aligning Nigeria's labour standards with international best practice.

4.2 Clear Liability Rules

Clear and well-defined liability rules are essential for any effective legal framework addressing workplace sexual harassment, particularly in determining the extent to which employers are responsible for the conduct of their employees. In the Nigerian context, the absence of codified rules on employer liability creates significant uncertainty, leading to inconsistent judicial outcomes and weak deterrence. A comprehensive reform would therefore require the explicit codification of vicarious liability principles, alongside clearly defined statutory conditions under which employers will be held responsible for acts of workplace sexual harassment. This would not only strengthen accountability but also align domestic law with established international standards.³⁴

At its core, vicarious liability in the employment context is based on the principle that an employer may be held legally responsible for wrongful acts committed by an employee within the scope of employment or in connection with their work environment. However, in modern labour law systems, especially in relation to sexual harassment, liability has evolved beyond strict notions of "scope of employment" to include institutional responsibility for failing to prevent or address foreseeable harm. A reformed Nigerian framework would therefore need to clarify that employer

³² Ibid

³³ n (23)

³⁴ Ibid

liability arises in three key circumstances: where the employer directly commits the act, where the perpetrator is acting in the course of employment (particularly supervisory roles), and where the employer negligently fails to prevent, investigate, or remedy harassment once it occurs or becomes foreseeable.³⁵

In the United States, employer liability for workplace sexual harassment is largely shaped by judicial doctrine under Title VII of the Civil Rights Act of 1964. The Supreme Court's decisions in *Faragher v. City of Boca Raton*³⁶ and *Burlington Industries v. Ellerth*³⁷ established the modern framework for vicarious liability. Under this approach, employers are automatically liable for harassment committed by supervisors when it results in tangible employment actions such as dismissal, demotion, or loss of benefits. However, where no tangible employment action occurs, employers may invoke an affirmative defence by demonstrating two conditions: first, that they exercised reasonable care to prevent and promptly correct harassment; and second, that the employee unreasonably failed to take advantage of preventive or corrective opportunities provided by the employer. This system effectively balances victim protection with incentives for employers to implement robust internal compliance structures such as policies, reporting channels, and training programmes.³⁸

South Africa adopts a more explicitly statutory and policy-driven approach. Under the Employment Equity Act 55 of 1998 and the accompanying Code of Good Practice on the Handling of Sexual Harassment Cases in the Workplace, employers bear a clear duty to eliminate unfair discrimination, including sexual harassment, in the workplace. Importantly, South African law imposes a form of strict institutional responsibility where employers may be held liable if they fail to take reasonable steps to prevent harassment or respond appropriately once it occurs. The Code requires employers to adopt written policies, establish confidential reporting systems, and ensure prompt and impartial investigations. Liability is therefore not only reactive but also preventive, as failure to comply with these prescribed obligations can itself ground employer responsibility.³⁹

In contrast, Nigeria currently lacks a codified framework that clearly defines when and how employer liability arises in cases of workplace sexual harassment. Courts often rely on general principles of tort law, such as negligence or vicarious liability, but without consistent statutory guidance. This results in uncertainty regarding whether employers are liable for supervisory harassment, peer-to-peer harassment, or harassment that occurs outside formal working hours but within the employment context. It also weakens enforcement because employers are not under a clear legal obligation to demonstrate preventive compliance in order to avoid liability.⁴⁰

A reformed Nigerian statute should therefore explicitly codify vicarious liability in line with international best practice. First, it should establish automatic employer liability for harassment committed by supervisors or managerial staff, given their authority and control over subordinate employees. Second, it should extend liability to peer-to-peer harassment where the employer knew or ought reasonably to have known about the conduct and failed to take corrective action. Third, it should introduce a statutory defence similar to the U.S. model, allowing employers to avoid liability only where they can prove that they implemented reasonable preventive measures and

³⁵ Bamidele Adebayo, 'The Nexus Between Vicarious Liability of Employers and the Acts Committed in the Course of Employment' *Journal of Commercial and Property Law* (2021) 8(4)

³⁶ 524 US 775 (1998).

³⁷ 524 US 742 (1998).

³⁸ *Burlington Industries Inc v Ellerth* 524 US 742 (1998); *Faragher v City of Boca Raton* 524 US 775 (1998).

³⁹ Employment Equity Act 55 of 1998

⁴⁰ n (23)

responded promptly and effectively to complaints. Fourth, it should recognise liability for systemic negligence, where the absence of policies, training, or reporting mechanisms creates a foreseeable risk of harassment.⁴¹

The comparative analysis demonstrates that both the United States and South Africa have moved beyond traditional fault-based liability toward preventive and institutional models. The United States achieves this through a hybrid judicial framework that incentivises compliance, while South Africa relies on statutory and code-based obligations that directly impose duties on employers. Both systems share a common principle: employer liability is not limited to direct wrongdoing but extends to failures of prevention and response. Nigeria's current framework, by contrast, remains underdeveloped in this respect, lacking clear statutory triggers for liability and consistent enforcement standards.⁴²

In conclusion, codifying clear liability rules in Nigerian law would significantly strengthen the legal response to workplace sexual harassment. By explicitly defining vicarious liability and outlining precise conditions under which employers are responsible, Nigeria would move toward a more predictable, deterrent-based, and victim-sensitive legal framework. Aligning with the United States' incentive-based model and South Africa's statutory duty-based system would ensure that employer responsibility is no longer ambiguous, but firmly grounded in proactive compliance and institutional accountability.

4.3 Mandatory Preventive Measures

Mandatory preventive measures represent one of the most effective tools for addressing workplace sexual harassment because they shift the legal focus from post-incident remedies to pre-emptive risk management. In the Nigerian context, the absence of legally enforceable preventive obligations has contributed to weak institutional responses, inconsistent workplace practices, and limited employer accountability. A reformed legal framework should therefore impose clear statutory duties on employers to implement structured preventive systems, including workplace policies, training programmes, and accessible reporting mechanisms. These measures should not be optional or discretionary; rather, they should form binding legal obligations, compliance with which would directly influence employer liability.⁴³

At the core of a preventive regime is the requirement that employers adopt comprehensive workplace sexual harassment policies. Such policies must clearly define prohibited conduct, outline complaint procedures, specify disciplinary consequences, and guarantee protection against retaliation. In addition, they should be communicated to all employees and made easily accessible within the workplace. Without such formalised policies, employees often lack clarity on what constitutes harassment and how to report it, which significantly increases underreporting and impunity. A robust Nigerian statute would therefore need to mandate the existence of written, enforceable anti-harassment policies as a minimum compliance requirement for all employers, regardless of size or sector.⁴⁴

Training is another essential component of preventive measures. Employers should be legally required to conduct regular and structured training sessions for all employees, with additional specialised training for supervisors and managerial staff. Such training should focus on identifying prohibited conduct, understanding reporting procedures, and promoting respectful workplace

⁴¹ Ibid

⁴² Ibid

⁴³ ILO Convention No 190 (2019)

⁴⁴ Ibid

culture. Importantly, supervisory training is particularly critical because managers often serve as the first point of contact for complaints and are responsible for organisational compliance. Without adequate training, even well-drafted policies may remain ineffective in practice.⁴⁵

Reporting mechanisms constitute the third pillar of preventive obligations. Employers should be required to establish safe, confidential, and accessible channels through which employees can report harassment without fear of retaliation. These mechanisms should include multiple reporting options, such as internal complaint units, designated officers, or independent reporting channels. Additionally, the law should require employers to ensure prompt investigation and resolution of complaints within defined timelines. The absence of structured reporting systems in many workplaces contributes significantly to silence and underreporting, particularly in environments characterised by power imbalances.⁴⁶

Comparatively, international standards provide strong models for such mandatory preventive frameworks. In the United States, although federal law under Title VII does not explicitly prescribe detailed preventive measures, the enforcement framework developed by courts and the Equal Employment Opportunity Commission (EEOC) effectively compels employers to adopt them. The Faragher–Ellerth defence plays a central role in this regard. Employers can avoid liability for supervisory harassment only if they can demonstrate that they exercised reasonable care to prevent and correct harassment and that the employee failed to utilise available reporting mechanisms. This legal incentive has led most U.S. employers to adopt formal policies, mandatory training, and internal complaint procedures as standard practice. Additionally, the EEOC issues detailed guidelines encouraging employers to implement anti-harassment policies, training programmes, and reporting systems, which have become de facto compliance standards.⁴⁷

South Africa adopts a more explicit and prescriptive statutory approach. Under the Employment Equity Act 55 of 1998 and the Code of Good Practice on the Handling of Sexual Harassment Cases in the Workplace, employers are directly required to take proactive steps to eliminate harassment. The Code provides detailed guidance on the development of workplace policies, the implementation of training programmes, and the establishment of confidential reporting systems. Employers are expected to communicate policies clearly, ensure accessibility of complaint mechanisms, and conduct prompt, fair, and confidential investigations. Unlike the United States, where preventive measures are largely incentivised through liability rules, South Africa embeds these obligations directly into statutory and regulatory instruments, making compliance a legal requirement rather than a strategic choice.⁴⁸

When compared with these jurisdictions, Nigeria’s current framework appears significantly underdeveloped. There is no comprehensive statutory requirement mandating employers to adopt anti-harassment policies, conduct regular training, or establish structured reporting systems. As a result, workplace responses to sexual harassment are often informal, inconsistent, or entirely absent. This regulatory gap weakens prevention efforts and places undue burden on victims to initiate complaints without institutional support.⁴⁹

⁴⁵ J Bret Becton, J Bruce Gilstrap & Maurice Forsyth, ‘Preventing and Correcting Workplace Harassment: Guidelines for Employers’ *Business Horizons* (2017) 60(1) 101–111.

⁴⁶ Ibid

⁴⁷ Equal Employment Opportunity Commission, *Enforcement Guidance on Harassment in the Workplace* (1999);

⁴⁸ n (93)

⁴⁹ n (25)

A reformed Nigerian statute should therefore adopt a hybrid model combining the strengths of both the United States and South Africa. From the U.S. model, Nigeria can draw the principle of liability-driven compliance, where failure to implement preventive measures directly affects employer liability. From the South African model, it can adopt clear statutory and regulatory prescriptions that specify minimum compliance requirements.⁵⁰ Specifically, Nigerian law should mandate: (i) written workplace sexual harassment policies applicable to all employers; (ii) compulsory periodic training for employees and supervisors; and (iii) the establishment of confidential, accessible, and well-publicised reporting and investigation mechanisms. Compliance should be monitored through labour inspectorates or a specialised regulatory body, with penalties for non-compliance.

5. Conclusion

The existing legal framework governing employer liability for workplace sexual harassment in Nigeria remains largely fragmented, underdeveloped, and insufficient to provide comprehensive protection for employees. Although constitutional provisions on dignity and non-discrimination, alongside isolated statutory and criminal law provisions, offer a foundational basis for redress, they do not amount to a coherent or specialised regime capable of addressing the complexities of workplace sexual harassment. As a result, protection is often indirect, inconsistent, and heavily dependent on judicial interpretation rather than clear legislative direction. This creates uncertainty for both employers and employees and weakens the overall effectiveness of the legal system in preventing and addressing harassment in the workplace.

Judicial intervention has played a significant role in attempting to fill these gaps. Nigerian courts, through evolving interpretations of tortious liability, constitutional rights, and employment principles, have occasionally recognised the seriousness of workplace harassment and provided remedies in specific cases. However, judicial innovation is inherently limited. Courts can only respond to disputes brought before them and cannot establish comprehensive preventive frameworks or impose systemic obligations on employers. Consequently, reliance on litigation alone places an excessive burden on victims, many of whom may be discouraged from pursuing legal action due to procedural, financial, or evidentiary challenges. This reactive approach fails to address the structural nature of workplace harassment and does not adequately promote prevention.

The absence of a dedicated legislative framework further exacerbates these challenges. Unlike comparative jurisdictions that have developed clear statutory or quasi-statutory regimes defining employer obligations, liability standards, and preventive duties, Nigeria lacks a unified law specifically addressing workplace sexual harassment. This legislative gap means that key issues such as employer responsibility, reporting obligations, training requirements, and internal grievance mechanisms are not clearly regulated. As a result, organisational responses to harassment vary widely, often depending on internal policies that are not legally mandated or uniformly enforced.

In contrast, international best practices demonstrate the importance of comprehensive and proactive legal frameworks. Jurisdictions such as the United States and South Africa have developed structured systems that impose clear obligations on employers to prevent and address workplace harassment. These systems combine statutory duties, liability rules, and enforcement

⁵⁰ Ibid

mechanisms that encourage compliance and reduce reliance on litigation. The comparative analysis highlights that effective regulation is not achieved solely through prohibitions, but through detailed frameworks that institutionalise prevention, accountability, and redress.

Accordingly, meaningful reform in Nigeria requires a shift from a fragmented and reactive model to a comprehensive and proactive legislative approach. This would involve the enactment of a dedicated statute on workplace sexual harassment that clearly defines prohibited conduct, codifies employer liability, and imposes mandatory preventive obligations such as workplace policies, training, and reporting systems. Such a framework would not only enhance legal clarity but also strengthen institutional responsibility and promote a safer and more equitable working environment.