

A BILL

FOR

**AN ACT TO MAKE PROVISION FOR THE PROHIBITION OF SEXUAL
HARRASSMENT OF STUDENTS BY EDUCATORS IN TERTIARY EDUCATIONAL
INSTITUTIONS AND FOR MATTERS CONNECTED THEREWITH, 2016**

Sponsor: **SENATOR OVIE A. OMO-AGEGE** (*Delta Central*)

Co-sponsors:

1. **SENATOR BIODUN OLUJIMI** (*Ekiti South*)
2. **SENATOR ABDULLAHI ADAMU** (*Nasarawa West*)
3. **SENATOR ALIYU SABI ABDULLAHI** (*Niger North*)
4. **SENATOR ROSE OKO** (*Cross River North*)
5. **SENATOR THEODORE AHAMEFULE ORJI**, CON (*Abia Central*)
6. **SENATOR PRINCESS STELLA ODUAH**, OON (*Anambra North*)
7. **SENATOR MONSURAT SUNMONU** (*Oyo Central*)
8. **SENATOR BEN MURRAY-BRUCE**, MON (*Bayelsa East*)
9. **SENATOR FATIMAT RAJI-RASAKI** (*Ekiti Central*)
10. **SENATOR AHMED OGEMBE** (*Kogi Central*)
11. **SENATOR BINTA MASI GARBA** (*Adamawa North*)
12. **SENATOR OLUREMI TINUBU**, OON (*Lagos Central*)
13. **SENATOR IBRAHIM GOBIR** (*Sokoto East*)
14. **SENATOR JAMES MANAGER** (*Delta South*)
15. **SENATOR FOSTER OGALA** (*Bayelsa West*)
16. **SENATOR DAVID UMARU** (*Niger East*)
17. **SENATOR ISAH MISAU** (*Bauchi Central*)
18. **SENATOR BARAU JIBRIN** (*Kano-North*)
19. **SENATOR UTAZI CHUKWUKA** (*Enugu North*)
20. **SENATOR AISAGBONRIODION MATTHEW URHOGHIDE** (*Edo South*)
21. **SENATOR OHUABUNWA AZIKIWE MAO** (*Abia-North*)
22. **SENATOR MELAYE DINO** (*Kogi West*)
23. **SENATOR KURFI UMARU** (*Katsina Central*)
24. **SENATOR JOSEPH OBINNA OGBA** (*Ebonyi Central*)
25. **SENATOR MOHAMMED HASSAN** (*Yobe South*)
26. **SENATOR JOSHUA MOLTOBOK LIDANI** (*Gombe South*)
27. **SENATOR DANJUMA LAAH** (*Kaduna South*)
28. **SENATOR SHEHU SANI** (*Kaduna Central*)
29. **SENATOR ABDULLAHI ABUBAKAR GUMEL** (*Jigawa North West*)
30. **SENATOR ALIYU WAMAKKO** (*Sokoto North*)
31. **SENATOR ABUKAKAR KYARI** (*Borno North*)

32. **SENATOR BALA IBN NA'ALLAH** (*Kebbi South*)
33. **SENATOR SULEIMAN NAZIF** (*Bauchi North*)
34. **SENATOR SAMUEL ANYANWU** (*Imo East*)
35. **SENATOR NYAKO ABDUL-AZIZ** (*Adamawa Central*)
36. **SENATOR OLANREWaju TEJUOSO** (*Ogun Central*)
37. **SENATOR JEREMIAH USEN** (*Plateau South*)
38. **SENATOR SAMUEL EGWU** (*Ebonyi North*)
39. **SENATOR BARNABAS GEMADE** (*Benue North East*)
40. **SENATOR MOHAMMED LAFIAGI** (*Kwara North*)
41. **SENATOR OLAMILEKAN ADEOLA** (*Lagos-West*)
42. **SENATOR ENYINNAYA ABARIBE** (*Abia-South*)
43. **SENATOR JONAH JANG** (*Plateau North*)
44. **SENATOR ISIAKA ADELEKE** (*Osun West*)
45. **SENATOR DURO FASEYI** (*Ekiti North*)

BE IT ENACTED by the National Assembly of the Federal Republic of Nigeria as follows:

Citation

1. This Act may be cited as the **Sexual Harassment in Tertiary Educational Institutions Prohibition Act, 2016**.

Definition of Terms

2. In this Act, unless the context indicates otherwise,

"administrative head" means the vice chancellor of a university, rector of a Polytechnic/Monotechnic or a provost of a college of education or any officer who is the chief executive officer of any tertiary academic institution.

"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.

"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.

"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.

"Sexual harassment" includes:

- (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.
- (b) any unwelcome sexual attention from an educator who knows or ought reasonably to know that such attention is unwelcome to the student; or
- (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 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; or
- (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 any person enrolled in any educational or 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.

Relationship of Trust

3. A relationship of authority, dependency and trust shall be construed to exist between an educator and a student in an institution if:
 - (1) the educator is directly or indirectly involved in the full-time or part-time academic training, teaching, advising, supervising and education of the student; or
 - (2) the educator has direct or indirect academic or non-academic authority over the student; or
 - (3) the student depends, directly or indirectly, on the educator in any manner whatsoever.

Offences

4. An educator shall be guilty of committing an offence of sexual harassment against a student if he/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 study in an institution; or

- (3) has sexual intercourse with a student or demands for sex from a student or a prospective student as a condition to the giving of a passing grade or the granting of honours and scholarships, or the payment of stipend, allowance or other benefits, privileges or considerations; or
 - (4) 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; or
 - (5) directs or induces another person to commit any act of sexual harassment under this Act, or cooperates in the commission of sexual harassment by another person without which it would not have been committed; or
 - (6) 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; or
 - (7) 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
 - (8) whistles or winks at a student or screams or exclaims or jokes or makes sexually complimentary or uncomplimentary remarks about a student's physique.
5. For the purposes of the offences created in Section 4 of this Act, it shall be a defence that the educator and the student are legally married.
 6. It shall not be a defence to any offence created in Section 4 of this Act that a student consented to the offence.

Commencement of Criminal Proceedings

7. 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.

Penalty

8. Any person who commits any of the acts specified in Section 4 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 years and there shall be no option of a fine.

Civil Action for Breach of Fiduciary Duty

9. Notwithstanding the provisions of Sections 4, 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.
10. 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.

Institutional Disciplinary Measures

11. 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 Act 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 Act 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 Act 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.

12. **Institutional Disciplinary Procedure**

- (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 4 of this Act.

- (2) The complaint mentioned in sub-section (1) of this section of this Act 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 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.

Judicial Review

13. 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.

Criminal Liability of Administrative Head

14. 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.
15. 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.

Liability for false Complaint

16. 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 determined 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.
17. 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.
18. 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.

Protection of Students from Victimization

19. The administrative head of an institution shall ensure that a student who makes a sexual harassment complaint pursuant to 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.
20. 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.